IN THE SUPREME COURT OF FLORIDA

DAVID MASON,

Petitioner,

vs.

ARTURO SALINAS, JR.

Respondent.

CASE NO. 82-968

RESPONDENT'S JURISDICTIONAL BRIEF

On Review from the District Court of Appeal
Second District, State of Florida
In Case No. 92-4118

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PRELIMINARY STATEMENT

In this brief, the Respondent, **ARTURO SALINAS, JR.**, will be referred to as Respondent. The Petitioner, **DAVID MASON**, will be referred to as Petitioner.

Except as noted, citation to the record will be made by the letter "R" followed by the appropriate page number.

STATEMENT OF THE CASE AND OF THE FACTS

On August 26, 1992, Respondent, Plaintiff below, filed his verified Complaint alleging that Petitioner, Defendant below, sexually abused Respondent during Respondent's middle school years some fifteen (15) years earlier. (R 3-5). Petitioner was a Guidance Counselor at the school Respondent attended. (R 3).

Petitioner filed a Motion To Dismiss alleging that the Statute of Limitations barred Respondent's claim, notwithstanding Ch. 92-102, §1 which modified the statute of limitations with respect to civil actions founded on alleged abuse. (R 6-7).

A non-evidentiary hearing was held at which Petitioner's Motion To Dismiss was granted, with prejudice. (R 1).

Respondent's Notice of Appeal was filed on November 9, 1992. (R 2). The Second District Court of Appeal filed its decision on October 15, 1993, reversing the lower court. Petitioner's Motion For Rehearing was denied on November 29, 1993. Petitioner served his Notice To Invoke Discretionary Jurisdiction on December 28, 1993.

SUMMARY OF ARGUMENT

The district court correctly held that in amending §95.11, Fla. Stat., the legislature expanded the Statute of Limitations' claims period for abuse cases and revived claims previously barred by the former limitations period. While the Court may have impliedly upheld the validity of the statute, it did not expressly do so, but rather merely interpreted it.

There is no constitutional impediment to legislatively reviving claims otherwise barred by a Statute of Limitations, as such statutes go to matters of remedy only. Such is the opinion of the U. S. Supreme Court and no Florida court has expressly held otherwise. There is no conflict upon which to base jurisdiction.

ARGUMENT

I. THE DISTRICT COURT IS CORRECT IN HOLDING THAT THE LEGISLATIVE EXTENSION OF THE STATUTE OF LIMITATIONS APPLIES TO RESPONDENT'S CLAIM.

§95.11(7), Fla. Stat. (Supp. 1992), as amended reads:

> An action founded on alleged abuse, as defined in s. 39.01 or s. 415.102, or incest, as defined in s. 826.04, may be commenced at any time within 7 years after the age of majority, or within 4 years after the injured person leaves the dependency of the abuser, or within 4 years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later.

It is clear that the legislature intended this amendment to apply retroactively, i.e., to revive previously barred claims. See Homemakers, Inc. v. Gonzales, 400 So.2d 965 (Fla. 1981).

The Senate Staff Analysis and Economic Impact Statement (March 4, 1992) (R 19-21), specifically addresses the previously barred claim issue. Indeed, Paragraph IV, §A of the Analysis is entitled "Revival of Barred Claims". (R 20). The Analysis expressly states:

> Section 2 of the bill provides that any claim barred by the newly created statute of limitations could be brought within 4 years after the effective date of the act. (Id).

Section 2 provides:

> Notwithstanding any other provision of law, a Plaintiff whose abuse or incest claim is barred under section 1 of this act has 4 years from the effective date [April 8, 1992] of this act to commence an action for damages.

§95.11(7)(n.2);

The District Court interpreted the amendment and held that the legislature intended to revive claims previously barred. In doing so, it did not expressly rule the statute to be valid but rather rejected Petitioner's interpretation that the four (4) year extension was merely some sort of "savings" clause.

II. THERE IS NO CONFLICT JURISDICTION AS NO FLORIDA COURT HAS EXPRESSLY HELD THAT THERE IS SOME CONSTITUTIONAL IMPEDIMENT TO REVIVING CLAIMS WHICH WERE PREVIOUSLY BARRED BY A STATUTE OF LIMITATIONS.

The United States Supreme Court has stated:

> [Statute of Limitations] represents a public policy about the privilege to litigate... [T]he history of pleas of limitations shows them to be good only by legislative grace and to be subject to a relatively large degree of legislative control.
>
> Chase Securities Corp. v. Donaldson, 325 U.S. 304,314 (1945); 65 S.Ct 1137, 1142 (1945). See Osmundsen v. Todd Pacific Shipyard, 755 F.2d 730 (9th Cir. 1985).

"It is within the power of a legislature to enact a new limitation rule so as to revive claims already barred under a prior rule." U. S. v. Hunter, 700 F.Supp. 26,27 (M.D. Fla. 1988).

The general rule is that Statute of Limitations go to matters of remedy only. Davis v. Valley Distributing Co., 522 F.2d 827,830 (9th Cir. 1975)(n 7). To be sure, Petitioner may have the Statute of Limitations' protection while it exists but such protection does not involve substantive or fundamental rights and its protection may be removed. Chase Securities Corp. v. Donaldson, 325 U.S. 304,324 (1945); 65 S.Ct. 1137,1142 (1945).

This is not a case where Petitioner's conduct would have been different if the present rule had been known and the change foreseen. He can not say that he molested Respondent in reliance upon some former statute of limitations. Chase Securities at 316,1143. Nor is it likely that Petitioner can say any action was

undertaken by him in the assumption that the old statute would be continued. Id.

> ...[M]ultitudes of cases have recognized the power of the Legislature to call a liability into being where there was none before, if the circumstances were such as to appeal with some strength to the prevailing views of justice, and if the obstacle in the way of the creation seemed small. Chase Securities at 315,1143 (citing Danforth v. Groton Water Co., 178 Mass. 472,476; 59 N.E. 1033).

With the ever increasing awareness of both the pervasiveness of child abuse and its latent effects, it is not at all surprising that Florida's legislature has seen fit to join the ranks of other jurisdictions with expanded claims periods for victims of child abuse. See Senate Staff Analysis And Economic Impact Statement (R 7-9); K.E. v. Hoffman, 452 N.W.2d 509 (Minn. App. 1990).

Notwithstanding Petitioner's desparate, self-serving arguments that he, the alleged abuser, needs to be protected and that the courts will be flooded if abuse victims are allowed their day in court, the legislature has made it abundantly clear that it is the policy of the state to re-open the doors to the courthouse for young, traumatized victims of child abuse such as Respondent.

In the past, the doors to the courthouse were closed in the faces of the victims of child abuse long before they had a chance to discover that a cause of action ever even existed. Now, the legislature has made it clear that it is the policy of this State to re-open the doors in order to afford Respondent and others similarly situated meaningful access to the courts. There

is no constitutional reason why the courts themselves should close the doors on Respondent again. No Florida case found by Respondent has expressly held otherwise. But see Celotex Corp. v. Meeham, 523 So.2d 141,146 (Fla. 1988) (dicta in note 146-147). That being so, there is no conflict upon which to invoke this honorable court's discretionary jurisdiction.

CONCLUSION

The District Court did not expressly declare any statute valid. Rather it interpreted the amendment and determined that the legislature intended to revive claims such as Respondent's. No court has expressly held that there is a constitutional impediment to doing so. Such being the case, there can be no conflict upon which to base jurisdiction.

It follows that certiorari should be denied.

J. ARBY VAN SLYKE, P. A.

By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Respondent's Jurisdictional Brief has been furnished to **MICHAEL R. N. MCDONNELL, ESQUIRE, 720 Goodlette Road North, Suite 304, Naples, Florida 33940** this 10th day of February, 1994, by U. S. mail.

J. ARBY VAN SLYKE