IN THE SUPREME COURT OF FLORIDA

CASE NOS. 84,385 and 84,386
(Consolidated on Appeal to the Florida Supreme Court)

IN RE: THE ESTATE OF
CHARLES W. SMITH, Deceased

DALE S. WILSON and HAROLD "BUDDY" JIMMISON, CO-PERSONAL REPRESENTATIVES, H.H. ADAMS, FLORA C. JONES, LOUISE G. SMITH, FRANK O. YOUNG, ALMA YOUNG, his wife, CLYDE S. HICKS and HAROLD "BUDDY" JIMMISON, Individually,	ON APPEAL FROM THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA
	AND
Petitioners/Appellants,	ON PETITION FOR DISCRETIONARY REVIEW OF THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA
vs.	
SHIRLEY I. SCRUGGS,	
Respondent/Appellee.	DISTRICT CASE NO: 93-731

PETITIONERS'/APPELLANTS' CONSOLIDATED BRIEF ON MANDATORY AND DISCRETIONARY JURISDICTION

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STATEMENT OF THE CASE AND OF THE FACTS

A. Procedural Posture Of Appeal

On September 21, 1994, petitioners/appellants, Dale S. Wilson and Harold "Buddy" Jimmison, Co-Personal Representatives of the Estate of Charles W. Smith, H.H. Adams, Flora C. Jones, Louise G. Smith, Frank O. Young, Alma Young, his wife, Clyde S. Hicks and Harold "Buddy" Jimmison, individually (hereinafter collectively "Petitioners"), filed a Notice of Appeal invoking this Court's **mandatory jurisdiction** and a separate Notice to Invoke Discretionary Jurisdiction seeking to invoke this Court's **discretionary jurisdiction.**

By order of this Court, dated September 22, 1994, the notice of appeal and the discretionary review notice were consolidated pursuant to section II.A.4., Supreme Court Manual of Internal Operating Procedures. Thus, this brief addresses both this Court's mandatory and discretionary jurisdiction.

B. This Court Has Both Mandatory And Discretionary Jurisdiction.

Petitioners invoke the mandatory jurisdiction of this Court pursuant to Florida Constitution, article V, section 3(b)(1) and Fla.R.App.P. 9.030(a)(1)(A)(ii), because the

First District Court of Appeal declared section 95.11(3)(b), Florida Statutes invalid as applied.

Petitioners also invoke the discretionary jurisdiction of this Court pursuant to Florida Constitution, article V, section 3(b)(3) and Fla.R.App.P. 9.030(a)(2)(A)(ii) and (iv), on the basis that the First District Court of Appeal expressly construed article I, section 21 of the Florida Constitution and its decision expressly and directly conflicts with King v. Estate of Anderson, 519 So.2d 67 (Fla. 5th DCA 1988).

C. Proceedings Below And The Facts Of This Case

Charles W. Smith ("decedent") died on January 18, 1992. On January 28, 1992, his will was admitted to probate and petitioners Dale S. Wilson and Harold "Buddy" Jimmison were appointed personal representatives. Respondent, who was not a beneficiary under the will, sought to have the will declared invalid and inherit from the decedent's estate as his alleged illegitimate heir.

Before she could challenge the decedent's will, respondent had to allege she was an heir at law under the intestacy laws. Respondent alleged that decedent had acknowledged paternity in writing and alternatively sought to adjudicate paternity pursuant to the probate statute,

section 732.108(2)(b), Florida Statutes. However, under the applicable statute of limitations for establishing paternity, respondent was required to bring any paternity action within four years from the date she reached the age of majority. § 95.11(3)(b), Fla. Stat.

Respondent was born out of wedlock in 1932 and reached the age of majority in 1953. She did not bring her action to determine paternity until 1992. Applying section 95.11(3)(b), Florida Statutes, the trial court found that respondent was time-barred from challenging the will because she had brought suit to determine paternity over 35 years after she reached the age of majority. The trial court entered summary judgment for petitioners holding that respondent had failed to submit any proof that decedent had acknowledged paternity in writing and that the statute of limitations barred respondent from seeking an adjudication of paternity. App. 3.[1]

On appeal, the First District reversed, finding that "on both statutory construction grounds and constitutional

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[1] "App. ____" refers to the Appendix which is attached to this brief. The First District's opinion is at App. 1-10. The First District Court's opinion is now also reported at 640 So.2d 1152 (Fla. 1st DCA 1994). Petitioners/Appellants timely moved for rehearing, rehearing en banc and filed a suggestion of direct conflict and question of great public importance. The First District denied all requested relief by order rendered August 23, 1994. App. 11.

grounds we hold that section 95.11(3)(b) may not be utilized to bar [respondent's] action for inheritance." App. 10 (emphasis added).

SUMMARY OF ARGUMENT

The decision of the First District declared the statute of limitations for paternity actions, section 95.11(3)(b), Florida Statutes, invalid, holding that as applied to bar a paternity claim in a probate proceeding it violated the right of access to the courts guaranteed by article I, section 21 of the Florida Constitution. Thus, this Court has **mandatory jurisdiction.** Also, this Court should exercise its **discretionary jurisdiction** because the First District's decision expressly and directly conflicts with the Fifth District's decision, King v. Estate of Anderson, 519 So.2d 67 (Fla. 5th DCA 1988), and expressly construed article I, section 21 of the Florida Constitution.

ARGUMENT

I. THIS COURT HAS MANDATORY JURISDICTION BECAUSE THE FIRST DISTRICT HELD THAT SECTION 95.11(3)(b) WAS INVALID AS APPLIED BECAUSE IT UNCONSTITUTIONALLY DEPRIVED RESPONDENT OF ACCESS TO THE COURTS.

The First District found that the application of section 95.11(3)(b), Florida Statutes, amended to its present form in 1986, retroactively barred respondent's

action to establish paternity over three decades before respondent's right to inherit had vested at the decedent's death in 1992. The court held that "retroactive application of the statute would violate [respondent's] constitutional right of access to the courts in contravention of article I, section 21 of the Florida Constitution" because such a "[p]reemption of [respondent's] claim by use of a statute which never allowed the claim to arise offends the Florida Constitution. We reach this result on access to courts grounds." App. 6, 9 (emphasis added).

The First District's holding that the statute of limitations for establishing paternity, as applied to bar respondent's paternity claim in a probate proceeding, violated the constitutional right of access to the courts, invokes the mandatory jurisdiction of this Court. See L.M. Duncan & Sons v. City of Clearwater, 478 So.2d 816, 817 (Fla. 1985) (Supreme Court has mandatory jurisdiction where lower court held Florida Statute unconstitutional as applied).[2]

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[2] Additionally, this Court has mandatory jurisdiction because the First District also held that to apply section 95.11(3)(b) would violate the equal protection clause as it would:

> treat[] similarly situated illegitimate children with disparity -- for the child whose father dies during the child's minority, the right to seek
>
> (continued...)

II. THIS COURT ALSO HAS DISCRETIONARY JURISDICTION BECAUSE THE FIRST DISTRICT'S DECISION: A.) EXPRESSLY AND DIRECTLY CONFLICTS WITH A DECISION OF THE FIFTH DISTRICT AND B.) CONSTRUES THE ACCESS TO THE COURTS CLAUSE OF THE FLORIDA CONSTITUTION.

A. The First District's Decision Expressly And Directly Conflicts With The Decision Of The Fifth District In King v. Estate of Anderson, 519 So.2d 67 (Fla. 5th DCA 1988).

The First District held that the limitations period of section 95.11(3)(b) did not bar respondent's paternity claim: an "action to inherit is a distinct statutory cause of action, not within the contemplation of the bar imposed by section 95.11(3)(b)." App. 6. Thus, the First District concluded that the "trial court erred by construing section 95.11(3)(b) as applying to frustrate [respondent's] effort to establish paternity solely for purposes of inheritance." Id.

This holding expressly and directly conflicts with the decision of the Fifth District in King v. Estate of Anderson, 519 So.2d 67 (Fla. 5th DCA 1988), which involves the identical question of law. (King opinion attached at

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[2](...continued)

> inheritance is always preserved; for the child who is twenty-two or older at her father's death, the right would never be preserved.

App. 9-10.

App. 12-13). In a brief opinion, the Fifth District in King applied section 95.11(3)(b) to bar an alleged illegitimate heir from trying to establish paternity in a probate proceeding, holding that:

> [w]hen [decedent] died, the appellant, then twenty-six years of age, claimed to be entitled to an interest in the estate as an illegitimate heir, pursuant to section 732.108(2), Florida Statutes. The trial court correctly held that appellant's claim was barred by the four year limitation period in section 95.11(3)(b) for actions relating to the determination of paternity.

King, 519 So.2d at 68 (emphasis added).

Inexplicably, the First District did not cite or discuss King, even though it was heavily briefed by both parties. Nevertheless, the First District reaches a directly opposite result in a case involving the same facts, the identical probate statute and the identical statute of limitations. Therefore, this Court has discretionary jurisdiction. See Ford Motor Company v. Kikis, 401 So.2d 1341, 1342 (Fla. 1981) (not necessary that district court explicitly identify conflicting district court decisions in its opinion to create "express" conflict under § 3(b)(3)).[3]

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[3] In the First District, respondent argued that King had no force because it is a per curiam opinion of the Fifth District. However, a per curiam opinion (unlike a per (continued...)

This Court should exercise its discretion to hear this case to ensure uniformity in the probate laws. As it stands now, whether or not an alleged illegitimate heir can ignore the statute of limitations for paternity actions and wait until after the putative father dies before first seeking an adjudication of paternity may depend upon whether the estate is probated in the First District or the Fifth District. Under the First District's decision, a testator cannot know before he dies whether his property will be distributed according to his will because he cannot know whether, following his death, an alleged heir will try to prove paternity and then challenge his will. Likewise, because the First District's decision allows post-death actions to determine paternity, a First District resident who dies without a will may not be able to rely on the intestacy laws to determine the distribution of his estate, while a Fifth District decedent likely can.[4] This untenable inter-district conflict in the application of the probate and

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[3](...continued)
curiam affirmance without opinion) has full precedential effect and can provide the basis for conflict jurisdiction in this Court. E.g., Timmons v. Combs, 608 So.2d 1 (Fla. 1992) (conflict jurisdiction in this Court based on per curiam opinions of the district courts); New York Times Co. v. PHH Mental Health Services, Inc., 616 So.2d 27 (Fla. 1993) (same).

[4] Here, the decedent lived in Clay County (within the First District). If he had lived in neighboring Putnam County (within the Fifth District), King would apply and respondent's claim would be time-barred.

intestacy laws presents the paradigm for exercise of this Court's discretionary review.

B. The First District's Decision Construes The Access To The Courts Clause Of The Florida Constitution And Presents Important And Recurring Issues Of Florida Constitutional Law.

As previously discussed, the First District's decision expressly construes the "access to the courts" section of the Florida Constitution, article I, section 21, Florida Constitution, thereby invoking the discretionary jurisdiction of this Court. The First District's construction of the "access to the courts" clause to invalidate a limitations period established by the legislature in part to protect decedents from belated allegations of paternity, presents important issues of Florida constitutional law. The First District's decision also has broad implications for other limitations and repose statutes, subjecting them to similar constitutional challenges which were previously unavailable. Moreover, the First District's decision is contrary to recent holdings of this Court in the statute of repose area, Kush v. Lloyd, 616 So.2d 415 (Fla. 1992) (upholding constitutionality of medical malpractice statute of repose); Firestone Tire & Rubber Co. v. Acosta, 612 So.2d 1361 (Fla. 1992) (applying repealed products liability statute of repose to bar unaccrued cause of action), as well as the decision of the United States Supreme Court in Lalli

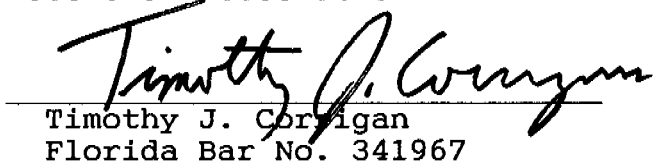
v. Lalli, 439 U.S. 259 (1978) (upholding constitutionality of New York statute barring adjudication of paternity after death of putative father). Thus, this case presents significant and recurring constitutional issues which deserve this Court's attention.

CONCLUSION

The First District's decision has far-reaching constitutional, probate and estate planning implications. Therefore, this Court should exercise its mandatory and discretionary jurisdiction to review and reverse the decision of the First District Court of Appeal.

Respectfully Submitted,

BEDELL, DITTMAR, DeVAULT & PILLANS
Professional Association

BY: 

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IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

IN RE: ESTATE OF CHARLES W. SMITH, Deceased

SHIRLEY I. SCRUGGS,

Appellant,

v.

DALE S. WILSON and HAROLD "BUDDY" JIMMISON, CO-PERSONAL REPRESENTATIVES, H.H. ADAMS, FLORA C. JONES, LOUISE G. SMITH, FRANK O. YOUNG, ALMA YOUNG, his wife, CLYDE S. HICKS and HAROLD "BUDDY" JIMMISON, Individually,

Appellees.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 93-731

Opinion filed June 29, 1994.

An appeal from the circuit court for Clay County. L. Thomas McAnnally, Judge.

Barry J. Fuller, Orange Park, for Appellant.

Bruce D. Johnson of Donahoo, Donahoo & Ball, Jacksonville, for Appellees.

KAHN, J.

Shirley I. Scruggs appeals from a final summary judgment in which the trial court determined that the statute of limitations

in section 95.11(3)(b), Florida Statutes (1991), bars her from bringing an action to determine her paternity for purposes of intestate succession. We find that Ms. Scruggs may institute an action to establish her paternity in a probate proceeding and reverse.

Ms. Scruggs was born out of wedlock in 1932. Her birth certificate lists her parents as Emily Isabel Johns and Charles Smith. Charles W. Smith died January 18, 1992. On January 28, 1992, his will was admitted to probate, and appellees Dale S. Wilson and Harold "Buddy" Jimmison were appointed personal representatives. Ms. Scruggs was not a beneficiary under the will. On April 20, 1992, Ms. Scruggs filed a Petition for Revocation of Probate and Letters of Administration in which she alleged that Smith lacked testamentary capacity to make his will and that the will was the product of undue influence. Ms. Scruggs maintained that she was the natural daughter of Smith and would inherit under the laws of intestacy if the trial court revoked the will. The personal representatives moved to dismiss for lack of standing. The trial court granted the motion to dismiss, finding that Ms. Scruggs' claim was barred by the statute of limitations for adjudication of paternity, section 95.11(3)(b), Florida Statutes (1991).[1] Ms. Scruggs filed a motion for rehearing which

[1]Section 95.11(3)(b), Florida Statutes, provides that an "action relating to the determination of paternity" must be brought within four years, "with the time running from the date the child reaches the age of majority."

was denied. Ms. Scruggs then filed an Amended Petition for Revocation of Probate and Letters of Administration in which she alleged that Smith had acknowledged paternity in writing. The personal representatives filed a Motion for Summary Judgment which the trial court granted after determining that there was no factual issue as to the allegation that Smith acknowledged paternity of Ms. Scruggs since Ms. Scruggs failed to submit any proof of the allegation. The trial court also reiterated its prior ruling that the statute of limitations bars Ms. Scruggs from adjudicating her paternity.

An illegitimate child is a lineal descendant of the father if "[t]he paternity of the father is established by an adjudication before or after the death of the father." § 732.108(2)(b), Fla. Stat. (1991)(e.s.). Prior to the effective date of this provision in 1976, an illegitimate could only inherit from the father if the father had acknowledged the child in writing. § 732.29, Fla. Stat. (1973).[2]

Section 732.108(2)(b) does not by its terms require the adjudication of paternity by an action pursuant to chapter 742. To the contrary, it would seem to us that inclusion in the Probate Code, chapter 732, of a provision allowing intestate succession by the illegitimate child of a father indicates that the issue of

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[2]This provision was held unconstitutional because it violated an illegitimate child's right to equal protection. In re Estate of Burris, 361 So. 2d 152 (Fla. 1978).

paternity may be properly adjudicated in the probate proceeding. Indeed, chapter 742 confirms our view:

> This chapter provides the primary jurisdiction and procedures for the determination of paternity for children born out of wedlock. When the establishment of paternity has been raised and determined within an adjudicatory hearing brought under the statutes governing inheritance, dependency under workers' compensation or similar compensation programs, or vital statistics, it shall constitute the establishment of paternity for purposes of this chapter.

§ 742.10, Fla. Stat. (1991) (e.s.).

Since establishment of paternity may be accomplished "under the statutes governing inheritance," we must determine whether the limitations provision relied upon by the trial judge, section 95.11(3)(b), applies to the present action, brought pursuant to section 732.108(2)(b).

Before its 1986 amendment, section 95.11(3)(b) provided merely that an action relating to the determination of paternity must be brought within four years. This provision had existed since 1974. § 95.11(3)(a), Fla. Stat. (Supp. 1974). Its antecedent in the lineage of current section 95.11(3)(b) was enacted in 1959 as section 95.11(9), Florida Statutes (1959), and was the first statute of limitations made specifically applicable to paternity actions.[3] This law provided that an action to establish paternity must be brought before the child reaches the

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[3]Prior to 1959, a "bastardy" proceeding was subject to a three year statute of limitations under former section 95.11(5)(a) which applied to "a liability created by statute." Wall v. Johnson, 78 So. 2d 371, 373 (Fla. 1955).

age of four years or within four years of the last payment of support by the alleged father. On its face, then, the precursor statute fits within the framework of an action for support.

In further exploring the applicability of the statute of limitations, it is useful to examine the derivation of the Probate Code section under which appellant seeks her remedy. Before 1974, an illegitimate child could not inherit from her father unless the father had acknowledged the child in writing. § 731.29, Fla. Stat. (1973). The present section 732.108(2)(b) emanates from chapter 74-106, Laws of Florida. Since an illegitimate who could not prove written acknowledgement could not inherit before passage of this law, we may safely conclude that during such time a paternity statute of limitations could never have been applied to bar determination of the right to inherit, nor could such an application have been contemplated by the legislature.

After the enactment of section 732.108(2)(b), a court observed that the "legislature clearly intended that an action could be maintained for the determination of paternity for inheritance purposes . . . ." In re Estate of Odom, 397 So. 2d 420, 422 (Fla. 2d DCA 1981). The same court approved the holding of C.L.W. v. M.J., 254 N.W.2d 446 (N.D. 1977), in which the North Dakota Supreme Court held "that the mother's right to bring an action during the father's lifetime to obtain a determination of paternity and support is a separate and distinct remedy from an action to determine paternity for the right to inherit." 397 So.

2d at 424. The North Dakota court said, and we now agree, "The two are separate remedies for separate purposes." 254 N.W.2d at 450.

Acknowledging that the action to inherit is a separate remedy from a paternity action to establish support, we should not merely assume that the same statute of limitations applies to each. The action to inherit is a distinct statutory cause of action, not within the contemplation of the bar imposed by section 95.11(3)(b). The trial court erred by construing section 95.11(3)(b) as applying to frustrate appellant's effort to establish paternity solely for purposes of inheritance.

Moreover, having examined this matter in light of the Florida Constitution, we question the trial court's use of a 1986 statute to bar a cause of action which, under the terms of the statute, would have expired in 1957, four years after appellant attained her majority. Absent clear legislative intent to the contrary, the presumption is against retroactive application of a statute of limitations. Durring v. Reynolds, Smith & Hills, 471 So. 2d 603 (Fla. 1st DCA 1985). Here, since Mr. Smith did not die until 1992, retroactive application of the statute would violate Ms. Scruggs' constitutional right of access to the courts in contravention of article I, section 21 of the Florida Constitution. Overland Constr. Co., Inc. v. Sirmons, 369 So. 2d

572, 573 (Fla. 1979).[4]

We recognize that Durring and Overland Constr. Co. tested the constitutionality of statutes of repose, and not statutes of limitation. These cases nonetheless apply to our analysis. This is so because in the present case the statute, as applied by the trial court, acts as a statute of repose, barring appellant's cause of action long before it ever accrued. See Whigham v. Shands Teaching Hosp. and Clinics, Inc., 613 So. 2d 110, 112, n.4 (Fla. 1st DCA 1993)("A statute of limitations normally governs the time within which legal proceedings must be commenced after the cause of action accrues. A statute of repose, however, limits the time within which an action may be brought and is not related to the accrual of any cause of action . . . .").

In 1979 the supreme court in State, Department of Health and Rehabilitative Services v. West, 378 So. 2d 1220 (Fla. 1979), found section 95.11(3)(b), Florida Statutes (1975),[5] to be unconstitutional under the state and federal constitutions. The court weighed the state's objective to avoid stale claims against the impact of the statute upon illegitimates deprived of their

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[4] Florida's constitutional guarantee of access to courts restrains the legislature from abolishing a pre-existing statutory or common-law cause of action without providing an alternative form of redress. See Kluger v. White, 281 So. 2d 1 (Fla. 1973). The right to prove paternity in court was originally established by the Bastardy Act of 1828. B.J.Y. v. M.A., 617 So. 2d 1061 (Fla. 1993).

[5] This is the same statute as section 95.11(3)(a), Florida Statutes (Supp. 1974), supra.

right to support. The observations of the West court, striking down the statute on equal protection grounds, are instructive today:

> Although proof of paternity may become more difficult with the passage of time, this mere possibility cannot be allowed to work an unconstitutional discrimination against illegitimate children.
>
> * * *
>
> The only proper application of the statute of limitations to child support claims would be to those claims that have accrued in the past but which are not adjudicated. The state could properly say that a claim for child support not made within a certain time after it accrued is barred. However, since the duty of support continues throughout the minority of the child, new causes of action are being created each day that the natural father does not provide support. This duty of future support cannot be barred for illegitimate children if it is allowed for legitimate children.

378 So. 2d at 1227-1228. The court thus addressed, and rejected, a policy argument based upon reducing stale claims. Further, although the court spoke in the idiom of equal protection, its resolution of the issue is germane to access to courts analysis--a support claim that had not yet accrued could not be barred. Thus unaccrued future support, available to legitimate offspring, could not be denied those born out of wedlock.

Ms. Scruggs' right to inherit did not vest until Smith died in 1992. § 732.101(2), Fla. Stat. (1991); Garris v. Cruce, 404 So. 2d 785 (Fla. 1st DCA 1981), rev. denied, 413 So. 2d 876 (Fla. 1982). It is well established that a statute of limitations will not begin to run until the occurrence of the last event which

gives rise to the cause of action. § 95.031, Fla. Stat. (1991); Keller v. Reed, 603 So. 2d 717 (Fla. 2d DCA 1992); Hynd v. Ireland, 582 So. 2d 772 (Fla. 4th DCA 1991). This maxim is inconsistent with an application of section 95.11(3)(b), since the statute purports to bar the action four years after the child attained the age of majority, an event which, as we have observed, took place some thirty-five years before Smith died. Preemption of appellant's claim by use of a statute which never allowed the claim to arise offends the Florida Constitution. We reach this result on access to courts grounds. We note, however, that a decision otherwise would place a burden on an illegitimate child seeking to inherit, not shared by legitimate offspring. West, supra. But see, Lalli v. Lalli, 439 U.S. 259, 99 S. Ct. 518, 58 L. Ed. 2d 503 (1978) (Supreme Court without majority opinion upheld a New York statute which allowed an illegitimate child to inherit only if a court, during the father's lifetime, has entered an order declaring paternity).[6] As applied below, the statute also treats similarly situated illegitimate children with disparity--for the child whose father dies during the child's minority, the right to seek inheritance is always preserved; for the child who

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[6]Although we note the result in Lalli, we need not share the United States Supreme Court's concern with the availability of the putative father as "a substantial factor contributing to the fact-finding process." 439 U.S. at 271-272 (Powell, J. with two justices concurring). In Florida, the legislature has already decided that paternity may be proven after the father's death. § 732.108(2)(b); West, 378 So. 2d at 1225, n. 5.

is twenty-two or older at her father's death, the right would never be preserved.

Section 95.11(3)(b), as crafted by the legislature and applied by the trial court, would retroactively bar an action over three decades before the action accrued.[7] It would also bar an action that was unknown to Florida law at the time the supposed bar attached. We conclude that the legislature, when it last amended the statute in 1986, neither anticipated nor intended its applicability to the facts at bar. Therefore on both statutory construction grounds and constitutional grounds we hold that section 95.11(3)(b) may not be utilized to bar appellant's action for inheritance. Since her petition was timely for purposes of the Probate Code, she may proceed.

REVERSED and REMANDED.

ERVIN and JOANOS, JJ., CONCUR.

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[7]In Doe v. Shands Teaching Hospital and Clinics, Inc., 614 So. 2d 1170 (Fla. 1st DCA), rev. denied, 626 So. 2d 204 (Fla. 1993), we upheld the medical malpractice statute of repose, section 95.11(4)(b), Florida Statutes (1983), in the face of an access to courts challenge, even though the claim in that case was barred before the plaintiff knew or could have reasonably known she had an injury. As we specifically noted, however, a different analysis could be made where a new statutory enactment intervened to abolish an existing cause of action. 614 So. 2d at 1171. Here the 1986 statute came into being many years after appellant surpassed four years beyond the age of majority. The right of action in the present case is more like that in Diamond v. E.R. Squibb & Sons, Inc., 397 So. 2d 671 (Fla. 1981).

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399
Telephone No. (904)488-6151

August 23, 1994

CASE NO: 93-00731

L.T. CASE NO. 92-14 CP

In Re: Estate of Charles W. Smith, Deceased

v. Dale S. Wilson and Harold "Buddy" Jimmison, et al.

Appellant(s),

Appellee(s).

BY ORDER OF THE COURT:

Appellee's motion for rehearing, filed July 14, 1994, is DENIED.

Appellee's suggestion of direct conflict and suggestion of question of great public importance, filed July 14, 1994, is DENIED.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Jon S. Wheeler

JON S. WHEELER, CLERK

By: Sondra Joyner
Deputy Clerk

Copies:

Barry J. Fuller

Bruce D. Johnson

Willie KING, Appellant,

v.

ESTATE OF Willie ANDERSON, deceased, Appellee.

No. 87-249.

District Court of Appeal of Florida, Fifth District.

Jan. 28, 1988.

Claimant appealed adverse decision of the Circuit Court, Orange County, Gene Williams, J., retired, on his claim of entitlement to interest in estate as illegitimate heir. The District Court of Appeal held that claim was barred by four-year statutory limitation period for actions relating to determination of paternity.

Affirmed.

Descent and Distribution ⇐71(2)

Claim of entitlement to interest in estate as illegitimate heir was subject to four-year limitation period for actions relating to determination of paternity and was thus barred. West's F.S.A. §§ 95.11(3)(b), 732.108(2).

Gavin D. Lee, Altamonte Springs, for appellant.

James E.C. Perry of Perry & Lamb, P.A., Sanford, for appellee.

PER CURIAM.

When Willie Anderson died, the appellant, then twenty-six years of age, claimed to be entitled to an interest in the estate as an illegitimate heir, pursuant to section 732.108(2), Florida Statutes. The trial court correctly held that appellant's claim was barred by the four year limitation period in section 95.11(3)(b) for actions relating to the determination of paternity. *See Garris v. Cruce*, 404 So.2d 785 (Fla. 1st DCA 1981), *rev. denied*, 413 So.2d 876 (Fla. 1982).

AFFIRMED.

SHARP, C.J., and DAUKSCH and COWART, JJ., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Barry Fuller, Esquire, 2301 Park Avenue, Suite 404, Orange Park, Florida 32073 by U.S. Mail this 3rd day of October, 1994.

Beth E Lucas

Attorney