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FILED
SID J. WHITE
FEB 22 1999
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

PAULA JEAN HEARNDON,	:	
Petitioner	:	Case No. 92,665
vs.	:	First District Court of Appeal
KENNETH L. GRAHAM,	:	1st District - No. 92-3842
Respondent.	:	

PETITIONER'S REPLY BRIEF

NORM LA COE, Esq.
Attorney for Plaintiff
1321 Bailey Drive
Brighton CO 80601-9566
Ph. 303 659 1690 fax 659 1722
Fla.Bar Id.# 123772

HORACE N. MOORE, SR., Esq.
Suite 101
235 South Main Street
P.O. Box 2146
Gainesville FL 32602
Ph. 904 371 2300

TABLE OF CITATIONS

PETITIONER ADOPTS THE PREFACE
AND STATEMENT OF THE CASE AND FACTS
SUBMITTED BY APPELLEE

SUMMARY OF ARGUMENT

This case is not involve resurrection of or retroactive application of the statute of limitations after it has run. It concerns traumatic amnesia inflicted on Petitioner as part of the original injury.

Policy: the rapist of a child should not be permitted to destroy a victim's capacity to know her injuries until limitations has run, and then claim the protection of due process when at last she recovers enough to say 'no.' This is contrary to the constitutional right of access to the courts.

APPELLEE'S POINT ON APPEAL:

THE DOCTRINE OF "DELAYED DISCOVERY", CODIFIED IN FLORIDA STATUTE SECTION 95.11(7), AS A TOLLING EXCEPTION TO THE STATUTE OF LIMITATIONS FOR VICTIMS OF SEXUAL ABUSE, CANNOT BE RETROACTIVELY APPLIED NOR JUDICIALLY IMPOSED IN THE INSTANT CASE.

The public policy adopted by the Florida Legislature in amending Section 95.11 is very clear: Victims of childhood sexual abuse who are not able to bring suit within limitations should be permitted to do so when they recover memories or understand their injuries.

Responding to Appellee's citations and argument:

Lindabury v. Lindabury, 552 So.2d 1117 (Fla. 3rd DCA 1989), rev. dism. 560 So.2d 233 (1992), held (as quoted by Appellee) that "The last contemporaneous injury it itself sufficient to complete the cause of action and commence the limitations period."

Lindabury does not control his case, because the "last contemporaneous injury" was traumatic amnesia, which injury continued until 1987 or 1988. It is comparable to the victim who is knocked unconscious in a brain injury; inability to know is part of the injury, along with the physical trauma.

Sec. 95.051(2) states that only the Legislature may determine exceptions to limitations. This Court in The Fulton County Administrator v. Sullivan, 22 FLW S578 (Fla. 1997), ruled that it is a legislative--not a judicial--function to determine when limitations is tolled. In Fulton County, a murderer kept his silence, and the victim's family did not know until limitations had run. Fulton County does not control this case, as the murderer in that case merely kept passive silence (a Fifth Amendment right); no trauma was inflicted on the surviving family, contrary to the instant case in which psychic injury was actively and brutally inflicted on Appellant along with physical trauma. Fulton County's murderer kept still and silent; Hearndon's mother-murderer attacked savagely and brutally along with years of child rape. In this case, psychic injury was inflicted on the plaintiff/Appellant to destroy her ability to assert her legal rights. In Fulton County, it was not.

Appellant will not repeat the arguments of the initial brief. However, this Court has recognized exceptions to the standard limitations period, in numerous cases, as argued in the brief.

Further, this court has recognized causes of action relating to psychic injury. Tortious infliction of emotional distress is one line of cases; also see Meek v. Zell, 636 So.2d 105 (Fla. 1st DCA 1994), which recognized delayed psychic injury. In this case, psychic injury was manifested nine months after a daughter was injured in an explosion which kill her father. Limitations was not an issue, but physic injury was recognized as an independent cause. In this case, psychic injury was manifested after

years of corruption, child rape and torment. It follows that limitations does not run on psychic injury until the injury is manifest.

This argument is in harmony with those lines of cases involving sponges or implements left inside a surgery patient, asbestos injury, and others in which the injury is latent and limitations commences when it is discovered or should be discovered. "Delayed discovery" is nothing new or controversial in Florida jurisprudence.

The Florida legislature in fact attempted to amend Sec. 95.11, to extend limitations in cases of sexual abuse. This Court ruled that a rapist acquires a constitutional due process right to not be sued by his victim after the limitations period has run. Victim roof sued 19 years after the last incident of sexual abuse, and made no allegations to explain or excuse her failure to bring earlier action. She relied on the amendment to Sec. 95.11, which attempted to revive limitations for victims of childhood sexual abuse. This court ruled that once the limitations period has run, it cannot be revived. In this case, limitations never ran.

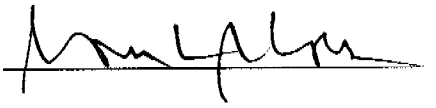
CONCLUSION

The public policy of the Florida Legislature in its attempt to amend Sec. 95.11 was to open the courthouse doors to victims who had failed to assert their rights within the normal limitations period. This Court did not strike down that public policy in Wiley v. Roof, 641 So.2d 66 (Fla. 1994) but merely stated that limitations could not be revived.

This Court should clarify its own public policy. Wiley seems to be understood to mean that no victim can sue who didn't make it by age 22 under the old law; however, Wiley only said limitations which has run can't be revived.

The question certified by the First District should be answered in the negative, and this Court should clarify the law of delayed discovery as it applies not only to cases involving asbestos, medical implements, but also psychic injury.

Respectfully Submitted,



NORM LA COE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing pleading, motion or paper has been served on Michael W. Jones, Esq., attorney for defendant, at P.O. Box 90099, Gainesville FL 32607, by U. S. Mail this 16th day of February, 1999.

NORM LA COE, Esq.
Attorney for Appellant
1321 Bailey Drive
Brighton CO 80601-9566
Ph. 303 659 1690 fax 659 1722
Fla.Bar Id.# 123772

HORACE N. MOORE, SR., Esq.
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