SUPREME COURT OF FLORIDA

DENEACE M. JOSHUA

Petitioner,

vs.

CITY OF GAINESVILLE,

Respondent.
_____/

CASE NO.: 94,935

District Court of Appeal,
1st District - No. 98-893

BAY MEDICAL CENTER
AMICUS CURIAE BRIEF

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On Behalf of the City of Gainesville

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SUMMARY OF ARGUMENT

Petitioner's position that the one-year limitations period is inapplicable for civil actions brought under the Florida Civil Rights Act of 1992 where no determination of reasonable cause was made by the FCHR within the 180 time frame is incorrect. The language of the 1992 Act is clear and unequivocal and the plain meaning of the language of the Act illustrates that the legislature intended that this would be the sole procedure available for violations of the 1992 Act. The use of the word "may" in the 1992 Act is enabling and not permissive in nature. Even if there is some ambiguity found in the terms of the 1992 Act, the Court should still find that the legislative intent was to create a one-year statute of limitations in situations like that of the petitioner. The Florida Legislature enacted the 1992 Act and created a specific limitations period for actions under the 1992 Act and therefore, the general four-year statute of limitations founded on statutory liability no longer applies. Based on the foregoing, this Court should answer the Certified Question in the affirmative and uphold the rulings of *Milano* and its progeny.

ARGUMENT I

THE PLAIN MEANING OF THE LANGUAGE OF THE FLORIDA CIVIL RIGHTS ACT OF 1992, §760.01, *ET. SEQ.*, FLA. STAT., CREATES A ONE-YEAR STATUTE OF LIMITATIONS WHICH ACCRUES FROM THE EXPIRATION OF THE 180 DAYS WITHIN WHICH THE FLORIDA COMMISSION ON HUMAN RELATIONS HAS TO MAKE A DETERMINATION OF REASONABLE CAUSE EVEN WHEN NO SUCH DETERMINATION IS MADE. THE USE OF "MAY" WITHIN THE 1992 ACT IS ENABLING AND NOT PERMISSIVE IN NATURE AND ANY OTHER READING

OF THE STATUTE CREATES UNCERTAINTY IN THE ENFORCEMENT OF THE RIGHTS PROTECTED UNDER THE ACT.

A. Introduction

In 1992, the Florida legislature enacted the Florida Civil Rights Act of 1992 (hereinafter the "1992 Act"). The 1992 Act was an amendment and renaming of the former Human Rights Act of 1977. *See,* Fla. Session Law 92-177. One of the primary differences in the 1992 Act from its predecessor was the addition of §760.11, Fla. Stat., which is titled, "Administrative and civil remedies; construction." The addition of §760.11 created an exclusive remedial scheme and added an express statute of limitations for civil actions filed pursuant to the 1992 Act.

B. The Plain Language of the 1992 Act Requires that the Certified Question be Answered in the Affirmative

Section 760.11, Fla. Stat., establishes in clear and unequivocal language the "[a]dministative and civil remedies" for violations of the Florida Civil Rights Act of 1992. Courts are bound by the plain and definite language of a statute and when the language is clear there is no need for further statutory interpretation by the Court other than applying the plain meaning of the statute. *See, e.g. Nicoll v. Baker*, 668 So.2d 989 (Fla. 1996). It is clear from the plain language of the 1992 Act that the legislature created a one-year statute of limitations for the filing of a civil suit when the Florida Commission on Human Relations (hereinafter the "FCHR") fails to make a determination of reasonable cause within 180 days. The clarity of the statute is evidenced by the fact that no Florida Court has interpreted it in

any other manner since its enactment in 1992. *See, Milano v. Moldmaster*, 703 So.2d 1093 (Fla. 4th DCA 1997), *Crumbie v. Leon County School Board*, 721 So.2d 1211 (Fla. 1st DCA 1998), *Daugherty v. Kissimmee*, 722 So.2d 288 (Fla. 5th DCA 1998), and *Kalkai v. Emergency One*, 717 So.2d 626 (Fla. 5th DCA 1998).

The step by step process of reading through §760.11 is quite simple. Section 760.11(1) provides that an aggrieved person may file a complaint with the FCHR within 365 days of the alleged violation. Section 760.11(3) then allows the FCHR 180 days within which to make a determination of reasonable cause after a complainant has filed. If a determination of reasonable cause is made then §760.11(4) applies and provides that the complainant has two choices; filing a civil action or requesting an administrative hearing. If a civil action is filed then §760.11(5) applies and provides that the action must, "be commenced no later than 1 year after the date of determination of reasonable cause." If no determination of reasonable cause is made by the FCHR within the 180 days, then §760.11(8) applies and states that the complainant may then proceed under section (4) as if a determination of reasonable cause had been made by the FCHR.[1] At that point the complainant is back to the choice of a civil action or an administrative hearing under section (4). If a civil action is to be brought is must be brought pursuant to the terms of §760.11(5)

[1] It is also important to note that section (4) expressly provides that the choice of the civil action or the administrative hearing is the **exclusive** procedure available to the aggrieved party pursuant to the 1992 Act.

which provides for the one-year statute of limitations. The language of the statute, the statutory scheme, and the legislative intent could not be more clear. The legislature has provided the sole procedural scheme for violations of the 1992 Act and in doing so has created a one-year statute of limitations.[2] When a statute shortens the limitations period and the statute is clear and unequivocal, the shorter period should be construed strictly. *See, Silva v. Southwest Florida Blood Bank*, 601 So.2d 1184 (Fla. 1992) and *Baskerville-Donovan v. Pensacola Exec.*, 581 So.2d 1301 (Fla. 1991).

C. The Term "May" in its Context within the 1992 Act is Enabling as Opposed to Permissive in Nature

Petitioner, Joshua, at the District Court of Appeals level, focused on the "may" in §760.11(8) and interpreted that "may" to mean that if no reasonable cause determination was made by the FCHR, then the complainant had the choice of filing a civil action or simply waiting, and the one-year statute of limitations would not apply. This statutory interpretation does not fit into the plain meaning of the statute when the statute is read as a whole as is required. *See, Alderman v. Unemployment Appeals Commission*, 664 So.2d 1160 (Fla. 5th DCA 1995). If Petitioner's interpretation is

[2] The statute of limitations is actually almost two and one half years from the date of the alleged violation in that a party has 365 days to file a complaint with the FCHR who then has 180 days to investigate the claim. It is not until the expiration of the 180 days, nearly a year and one half after the alleged violation, that the one year statute begins to run. Practically speaking, the legislature simply shortened the four-year statute from *Hullinger v. Ryder Truck Rental, Inc.*, 548 So.2d 231 (Fla. 1989) to a two and one half year statute of limitations.

adopted by the Court it would create an open ended time within which a Complainant could file a civil action. Further, under Petitioner's interpretation, there would be different limitations periods for civil actions brought under the same statute.

The "may" in section (8) is clearly not permissive, but simply enabling in nature, that is, it allows the complainant to proceed as if a determination of reasonable cause had been made. *See, e.g., Babson v. Sebring* 155 So. 669 (Fla. 1934)(finding that the term "may" can be read as mandatory and not merely permissive). This is exactly the same type of enabling "may" as is contained in the language of §760.11(1), which provides in pertinent part that,"[a]ny person aggrieved by a violation of ss. 760.01-760.10 may file a complaint with the commission within 365 days of the alleged violation." (Emphasis supplied). Section 760.11(1) is the door into the remedies provisions of the 1992 Act for complaining parties. An aggrieved person may file a complaint with the FCHR within 365 days of the alleged violation. If the aggrieved person does not file within the 365 days, then they are prohibited from proceeding further under the remedies provisions of the 1992 Act. Notwithstanding the fact that the term "may" is used in §760.11(1), it is plain and obvious that a complaining party must file within the 365 days in order to take advantage of the remedial provisions of the 1992 Act. This same analysis also applies to the "may" contained in §760.11(8), upon which Petitioner bases her argument.

Following Petitioner's analysis, there would be no 365 day time limit from the date of the alleged violation of the act within

which to file a complaint with the FCHR. Because the language says "may", a party could simply wait as long as they desired before filing a complaint with the FCHR. This, of course would completely eviscerate the clear intent of the remedies provision of the 1992 Act, just as Petitioners interpretation of the "may" in §760.11(8) eviscerates the intent of the statutory scheme.

When reading this section of the 1992 Act in harmony with its other related statutory provisions guided by the principles of reason and common sense, it is clear that the one-year statute of limitations applies to the Petitioner. *See, Alderman,* at 1161 and *Forsythe v. Longboat Key Beach Erosion Control District*, 604 So.2d 452 (Fla. 1992). Simply put, when there has been no determination of reasonable cause, a complainant, pursuant to section (8), may proceed as if the determination had been made, that is, the statute enables her to proceed under section (4). However, if a civil action is to be brought, then a complainant proceeds under section (5) and is bound by the mandatory language of that section. Section (5) applies to all civil actions brought under the 1992 Act and states that, "a civil action brought under this section shall be commenced no later than 1 year after the date of determination of reasonable cause."

D. Petitioner's Position Creates an Untenable Outcome

As a public entity, a public employer, and a community hospital, Bay Medical Center is extremely concerned with complying with all applicable civil rights requirements. In Bay Medical's position as both employer and public entity, it is exposed to a

great deal of liability and fully understanding and complying with civil rights laws is of the utmost importance. Petitioner's position would create an untenable outcome of having an open ended limitations periods and different limitations periods for claims made under the same act. The confusion and uncertainty which this position, if accepted by the Court, would cause would be damaging to all public employers throughout Florida. As a matter of public policy statutes of limitations should encourage plaintiffs to assert their actions diligently while evidence is fresh and available for the benefit of all parties involved. *See, Thermo Air Contractors Inc. v. Travelers Indemnity Co.*, 277 So.2d 47 (Fla. 3d DCA 1973). The clear remedies and procedure created by the 1992 Act and by *Milano, supra*, and its progeny should be affirmed by this Court.

ARGUMENT II

EVEN IF §760.11, FLA. STAT., IS FOUND TO HAVE SOME AMBIGUITY, THE LEGISLATIVE INTENT AND OTHER PRINCIPLES OF STATUTORY INTERPRETATION, WHEN APPLIED TO THE 1992 ACT, PRECLUDE THE DETERMINATION THAT THE ONE-YEAR STATUTE OF LIMITATIONS DOES NOT APPLY IN PETITIONER'S CASE.

If the Court finds any ambiguity in §760.11, Fla. Stat., then the foremost concern of the Court must be the determination of the intent of the legislature at the time of adopting the statute. The most important consideration in interpretation of a statute is to effect to the intent of the legislature. *See*, *Deason v. Florida Dept. of Corrections*, 705 So.2d 1374 (Fla. 1998). At the time just prior to the enactment of the 1992 Act, the Human Rights Act of

1977 was in effect. The Human Rights Act provided no specific statute of limitations for actions brought pursuant to its terms. *See,* Fla. Session Law 92-177. The purpose of the 1992 Act is to protect the interests of those who may be discriminated against. *See,* §760.01, Fla. Stat. (1997). In furthering that purpose the legislature added as an entirely new section, 760.11, Fla. Stat., which is entitled "Administrative and civil remedies; construction." Titles of statutes may be used as tools for determining the legislative intent. *See, Almendarez-Torres v. U.S.*, 116 S.Ct. 1219 (1998). Section 760.11 was clearly intended to be the statute which governed the remedies available under the 1992 Act. In fact the plain language of the section states that choosing from the election of remedies within the section, "is the exclusive procedure available to the aggrieved person pursuant to this act." §760.11(4), Fla. Stat. (1997). It simply does not make sense that the legislature would create a statute which is designed to encompass the civil and administrative remedies of the 1992 Act and then intend to have one particular situation governed by a general statute of limitations found in §95.11, Fla. Stat. (1997), especially in light of the fact that the legislature expressly stated that this was to be the sole procedure available to an aggrieved party under the 1992 Act. *See*, §760.11(4), Fla. Stat. (1997).

Petitioner's position that there is an open ended statute of limitations or that her situation is governed by a general four-year statute of limitations does not comport with the clear intent

of the legislature. Petitioner's situation, where a determination of reasonable cause was not made by the FCHR within 180 days, was a situation clearly contemplated by the legislature. *See*, §760.11(8), Fla. Stat. (1997). The legislature intended that particular situation would be disposed of within the terms of §760.11, which they expressly stated was the exclusive procedure available. *See*, §760.11(4), Fla. Stat. (1997). It is apparent from the terms of the 1992 Act that the legislature was attempting to allow complainants some control over their own cases by allowing them to file a civil action and remove their case from the control of FCHR once the initial 180 days had expired. The legislature was attempting to give complainants some responsibility for the "orderly and expeditious" resolution of their disputes. *Milano*, at 1095.

Even if some ambiguity is found in the terms of §760.11, Fla. Stat. (1997), the legislative intent is clear from the tools of legislative interpretation available to the Court. The legislature intended that §760.11 of the 1992 Act would be the exclusive remedial procedure for violation of the Florida Civil Rights Act of 1992.

ARGUMENT III

THE ENACTMENT OF THE FLORIDA CIVIL RIGHTS ACT OF 1992, §760.01, *ET. SEQ.*, FLA. STAT., CREATED A SPECIFIC STATUTE OF LIMITATIONS FOR ALL CIVIL ACTIONS BROUGHT TO ENFORCE THE PROVISIONS OF THAT ACT AND, THEREFORE, THE GENERAL FOUR-YEAR STATUTE OF LIMITATIONS FOR ACTIONS FOUNDED ON STATUTORY LIABILITY UNDER §95.11, FLA. STAT., NO LONGER APPLIES TO CIVIL ACTIONS BROUGHT UNDER THE FLORIDA CIVIL RIGHTS ACT OF 1992.

Prior to the enactment of the 1992 Act, the Supreme Court of Florida held in *Hullinger*, *supra*, that an action for wrongful discharge under the former Human Rights Act was to be governed by the general four-year statute of limitations for actions founded on statutory liability rather than the two-year statute of limitations for actions to recover wages. *See*, §95.11(3)(f), Fla. Stat. (1997). In 1992, only two and one half years after the *Hullinger* decision §760.11 was created by the legislature. Section 760.11(5), provides that, "a civil action brought under this section shall be commenced no later than one-year after the date of determination of reasonable cause by the commission." It is well settled law in Florida that the legislature is presumed to know the then existing law when enacting a statute, including decisions by the judiciary on the subject which it subsequently enacts a statute. *See, Wood v. Fraser,* 677 So.2d 15 (Fla. 2d DCA 1996). Therefore, it must be presumed that the legislature knew that the Supreme Court had held a four-year statute of limitations applied to at least some types of actions brought under the Human Rights Act of 1977 when it enacted the 1992 Act.

The 1992 Act provides for remedial and procedural measures including a specific one-year statute of limitations which begins to run after the determination of reasonable cause or after the FCHR fails to make a determination within 180 days, consequently, the general statute of limitations from §95.11 which was used in *Hullinger* is no longer applicable. *See, Sheils v. Jack Eckerd Corp.*, 560 So.2d 361 (Fla. 2d DCA 1990)(holding that a more

specific statute of limitations covering a subject controls over the general statute of limitations covering the same subject even when the specific statute provides for a shorter time period). Subsequent to the enactment of the 1992 Act, the Fourth District Court of Appeals interpreted the provisions of the Act and held that the one-year statute of limitations was applicable to civil actions brought after the FCHR had failed to make a determination of reasonable cause within 180 days. *See, Milano, supra*. Soon after the *Milano* decision other district courts of appeal around the state began to fall in line with the reasoning of the Fourth DCA. *See, Crumbie, Daugherty* and *Kalkai, supra*. It is important to note that during this time no district court cited the *Hullinger* case as controlling on this same issue of statute of limitations where the FCHR failed to make a determination of reasonable cause within 180 days. In the case at bar, Petitioner would have this Court reinstate the rule from *Hullinger* and apply the general four-year statute of limitations to her situation, notwithstanding the express language of the statute which creates a specific one-year statute of limitations within which to file a civil action after the termination of the 180 days.

Based on the foregoing it is clear that the legislature intended to statutorily supersede the decision in *Hullinger* when it created the specific statute of limitations provision in §760.11(5), Fla. Stat. (1997).

CONCLUSION

WHEREFORE, Bay Medical Center, a special district and body politic of the State of Florida, respectfully requests that this Honorable Court answer the Certified Question in the affirmative and affirm the holdings in *Milano* and its progeny.

Respectfully submitted this 10th day of May, 1999.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by U. S. Mail to the following addressees, on this 10th day of May, 1999. I CERTIFY that same has been typed in Courier Font Size 12 and saved to diskette in WordPerfect 5.1.

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