THE SUPREME COURT OF FLORIDA

CASE NO. 94,935

DENEACE JOSHUA,

Petitioner,

vs.

CITY OF GAINESVILLE,

Respondent.

ON DISCRETIONARY REVIEW FROM
THE FIRST DISTRICT COURT OF APPEAL
TALLAHASSEE, FLORIDA

HCA NEW PORT RICHEY HOSPITAL, A/K/A NEW PORT RICHEY HOSPITAL, INC.'S AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT

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CERTIFICATE OF TYPE SIZE AND STYLE

I hereby certify that the type size and style used throughout this brief is 14 point Times New Roman.

Marie Tomassi, Esquire

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STATEMENT OF FACTS AND OF THE CASE

HCA New Port Richey Hospital, a/k/a New Port Richey Hospital, Inc. ("New Port Richey Hospital" hereinafter) hereby adopts the Statement of Facts and of the Case as set forth by the Respondent.

SUMMARY OF THE ARGUMENT

Florida Statute Section 760.11 requires a claimant who intends to file suit to do so within one year of a "reasonable cause" determination. Section 760.11 clearly and unambiguously equates non-action by the Florida Commission on Human Relations ("the Commission" hereinafter) within 180 days as the equivalent of a "reasonable cause" finding. Thus, as a matter of pure statutory construction, the one year statute of limitations begins to run at the expiration of the 180 day period if the Commission has failed to make a determination.

All of the District Courts of Appeal that have decided this issue have held that the one year statute of limitations begins to run at the expiration of the 180 day period if the Commission fails to render its decision, without any suggestion of conflict. No court has found ambiguity in the statute, and Florida law requires its application as drafted.

To the extent petitioner or any of her amici assert public policy arguments, they are simply in the wrong forum. For the reasons set forth herein, in the City of Gainesville's responsive brief and in the brief of any other amicus that may appear on behalf of respondent, the decision entered below should be affirmed.

ARGUMENT

I. FLORIDA STATUTE SECTION 760.11 IS CLEAR AND UNAMBIGUOUS AND MUST BE APPLIED AS DRAFTED.

The Florida Civil Rights Act contained within Chapter 760 establishes certain rights and remedies and allows a claimant to pursue a claim for alleged unlawful discrimination. Section 760.11 sets forth administrative and civil remedies and imposes certain duties and obligations on a claimant and on the Commission. This section allows a person who perceives himself to have been "aggrieved" by a violation of the Florida Civil Rights Act to file a complaint with the Commission within 365 days of the alleged violation. Fla. Stat. § 760.11(1).

The Commission is charged with investigating allegations in the complaint. Indeed, the statute provides that "[W]ithin 180 days of the filing of the complaint, the commission shall determine if there is reasonable cause to believe that discriminatory practice has occurred . . .". Fla. Stat. § 760.11(3), emphasis added. In the event of a finding of reasonable cause, the complainant has the option of either bringing a civil action or requesting an administrative hearing. Fla. Stat. § 760.11(4). Any such civil action must be brought "no later than 1 year after the date of determination of reasonable cause . . .". Fla. Stat. § 760.11(5).

In the event the Commission fails to determine within 180 days whether there is reasonable cause, the complainant "may proceed under subsection (4), as if the

commission determined that there was reasonable cause." Fla. Stat § 760.11(8). Thus, the statutory scheme enacted by the legislature starts running the one-year statute of limitations on filing a civil action at the expiration of the 180 day period in which the Commission is to make a reasonable cause determination. Any other construction would be unreasonable and would fail to give effect to all portions of the statute. See Milano v. Moldmaster, Inc., 703 So. 2d 1093 (Fla. 4th DCA 1997). As the Milano Court suggests in dicta, any other interpretation of the statutory scheme would allow the plaintiff an open-ended extension that would render the statutory limitation meaningless. Id. at 1095.

It is axiomatic that all parts of a statute must be read together in accordance with "reason and common sense" in order to achieve a consistent whole. See Alderman v. Unemployment Appeals Commission, 664 So. 2d 1160 (Fla. 5th DCA 1995); Forsythe v. Longboat Key Beach Erosion Control District, 604 So. 2d 452 (Fla. 1992). Florida law on this issue is clear. "Where possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another." Forsythe, 604 So. 2d at 455.

Construing all portions of § 760.11 together, in a manner that gives effect to each provision, leads to the conclusion reached by the Milano Court; that is, the one-year statute of limitations for filing a civil action commences after 180 days if the Commission

has failed to make a determination or to conciliate the matter.[1] Such a construction gives effect to all subsections of § 760.11, including the one-year statute of limitation and the mandate that the Commission shall determine whether reasonable cause exists within 180 days. Any other construction, and particularly that advanced by petitioner, would render either or both of these provisions meaningless. Thus, as a matter of statutory construction, the decision below should be affirmed.

II. COURTS HAVE UNIFORMLY CONSTRUED § 760.11.

To date, the First, Fourth and Fifth District Courts of Appeal and the United States District Court in and for the Middle District of Florida have uniformly construed § 760.11 to cause the one-year limitation on filing a civil action to begin running at the expiration of the 180 day period in which the Commission is to make a reasonable cause determination. See Crumbie v. Leon County School Board, 721 So. 2d 1211 (Fla. 1st DCA 1998); Milano v. Moldmaster, Inc., 703 So. 2d 1093 (Fla. 4th DCA 1997); Adams v. Wellington Regional Medical Center, Inc., 727 So. 2d 1139 (Fla. 4th DCA 1999); Kalkai v Emergency One, 717 So. 2d 626 (Fla. 5th DCA 1998); Daugherty v. City of Kissimmee, 722 So. 2d 288 (Fla. 5th DCA 1998); Digiro v. Pall Aeropower Corp., 19 F. Supp. 2d 1304 (M.D. Fla. 1998).

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[1] Similarly, the 35 day limitation in § 760.11(6) for requesting an administrative hearing also starts to run at the expiration of the 180 day period.

There are no dissenting opinions filed in any of these cases and there appear to be no conflicting cases out of the Second or Third District. Thus, there is no conflict in the law as it is being applied and the Courts have unanimously agreed with the construction underlying the decision below. Petitioner has not demonstrated that these decisions are in error or that there is any reason for this Court to disagree with the construction given by the appellate courts and various lower courts. Thus, the decision below should be affirmed.

III. PETITIONER'S PUBLIC POLICY ARGUMENTS ARE MISPLACED.

In advocating for a reversal, Petitioner suggests several public policy arguments, such as the anticipated harsh result on pro se plaintiffs. The amicus briefs filed in support of Petitioner also make public policy arguments, including an argument made by the Florida Commission on Human Rights in its motion seeking leave to appear as an amicus curiae that the Commission's understaffing makes such a statutory construction inequitable. All of these public policy arguments are made in the wrong forum, regardless of their merits. Moreover, some of the arguments are directly contrary to logic.

Arguments addressed to whether the statutory scheme is a good plan, or works a harsh result, and to issues concerning the staffing and financing of the Florida Commission on Human Rights should be made, if at all, to the legislature. Indeed, it is

axiomatic that this Court does not have the power to change a statute for reasons of public policy but that instead, this is the exclusive domain of the legislature. See, e.g., Damiano v. McDaniel, 689 So. 2d 1059, 1061 (Fla. 1997), citing Kush v. Lloyd, 616 So. 2d 415, 422 (Fla. 1992). As the Fourth District succinctly stated:

> [W]hen a statutory provision is clear and unambiguous, we are obliged to give effect to the language the legislature has used. This court is not free to modify the effect of the statute.

Cobb v. Maldonado, 451 So. 2d 482, 483 (Fla. 4th DCA 1984) (regarding the effect of the medical malpractice statute of repose).

Moreover, some of Petitioner's (or amici's) policy arguments do not bear close scrutiny. For example, the National Employment Lawyers' Association suggests that because a claimant is not in control of the time in which the Commission makes a response and therefore can not manipulate a statute of limitations, it is unfair to let the statute start running. As the Milano Court recognized, however, a claimant "should be required to assume some minimum responsibility himself for an orderly and expeditious resolution of his dispute." Milano, 703 So. 2d at 1095. In fact, under the statutory scheme as it exists and as it has been found to work by all of the District Courts that have ruled on this matter, the claimant is free to file a civil action or to seek an administrative hearing if the Commission fails to act within 180 days, leaving the claimant in control over the progress of his or her claim after that administrative hurdle.

Finally, even the legislative history of this statute suggests that the legislature considered the impact of the 180 day requirement on the triggering of statute of limitations and specifically recognized that a claimant will have exhausted his or her administrative remedies at the expiration of 180 days after filing the claim. The one-year limitation contained in § 760.11(5) and the language in § 760.11(8) allowing a claimant to proceed as if reasonable cause had been found if the Commission failed to act within 180 days were added to § 760.11 by the 1992 amendments. In discussions about these changes, House Judiciary Committee staff attorney Bill Buzzett is quoted as expressing the concern that

> with higher remedies available in court, [will] the exhaustion of administrative remedies occur at the 180 day point and therefore all plaintiffs would jump to court. Should that be the case, the HRC [the Commission] will lose its value and instead it would become a 180 [sic] obstacle to relief in the courts.

Florida House of Representatives Memorandum dated November 19, 1991 from Billy Buzzett regarding Discrimination Workshop, p. 2.

This portion of the legislative history reveals that the legislature explicitly recognized that claimants would exhaust their administrative remedies if 180 days passed after the filing of their charge and without a determination, thus triggering the one-year statute of limitations, and the amendment passed without changing this result. It is

therefore presumed that the legislature intended this result. See Dept. of Health and Rehabilitation Services v. M.B., 701 So. 2d 1155, 1161 (Fla. 1997).

CONCLUSION

For the reasons set forth in Respondent's brief, herein and in the additional amicus curiae briefs that may be filed on behalf of Respondent, the decision entered below should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing HCA New Port Richey Hospital a/k/a New Port Richey Hospital, Inc.'s Amicus Curiae Brief has been furnished by U.S. mail this 10th day of May, 1999 to:

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