

Supreme Court of Florida

No. SC96540

TRAYLOR BROTHERS, INC., ,
Petitioner,

vs.

**TORA SHIPMAN, as Personal Representative of the
Estate of Maurice Shipman,**
Respondent.

[April 6, 2000]

PER CURIAM.

We have for review Traylor Brothers, Inc., v. Shipman, 738 So. 2d 1028 (Fla. 1st DCA 1999), which certified conflict with Comisky v. Rosen Management Service, Inc., 630 So. 2d 628 (Fla. 4th DCA 1994), and Mid-Florida Associates, Ltd. v. Taylor, 641 So. 2d 182 (Fla. 5th DCA 1994), concerning the issue of a motion to dismiss alleging untimely service under Florida Rule of Civil Procedure 1.707(j). We have jurisdiction. Art. V, § 3(b)(4), Fla. Const. In Thomas v. Silvers, 748 So. 2d 263 (Fla. 1999), we resolved this conflict by approving the decision of the district court

below and holding that an order denying a motion to dismiss that is based on untimely service under rule 1.070(j) is not an order which determines “jurisdiction of the person” and therefore is not directly appealable under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(i). Therefore, we approve the First District’s decision in Traylor Brothers, based on our decision in Thomas.

It is so ordered.

HARDING, C.J., and SHAW, WELLS, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of Appeal - Certified Direct Conflict of Decisions

First District - Case No. 1D99-1672

(Duval County)

J. Scott Murphy and Michael H. Gotschall of Murphy & Cooley, Orlando, Florida,

for Petitioner

Allen L. Poucher, Jr. of Dawson, Galant & Sulik, P.A., Jacksonville, Florida,

for Respondent