SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

GERALDINE SEALE,

Appellant,

v.

EMSA CORRECTIONAL CARE, INC.,

Appellee.
_____/

CASE NO: 96,908

DCA CASE NO: 98-04187

LOWER COURT NO: G 98-804

PETITIONER'S INITIAL BRIEF ON JURISDICTION

RICHARD J. MANNO, ESQ.
P.O. Box 4979
Orlando, FL 32802
Counsel for Appellant/Petitioner

BILL MCCABE, ESQ.
1450 West SR 434, #200
Longwood, FL 32750
Co-Counsel for Appellant/Petitioner

This is a Petition for Discretionary Review from an Order of the Second District Court of Appeal, Lakeland, Florida, Opinion filed 9/29/99.

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TABLE OF CITATIONS

PRELIMINARY STATEMENT

The Petitioner, GERALDINE SEALE, shall be referred to herein as "Seale".

The Respondents, EMSA CORRECTIONAL CARE, INC., shall be referred to herein as "EMSA".

The Honorable Cecelia M. Moore, Circuit Judge, shall be referred to herein as the "TC" (Trial Court).

References to the Record on Appeal shall be abbreviated by the letter "V" (Volume) and followed by the applicable volume and page number.

References to the Appendix attached hereto shall be referred to by the letter "A" and followed by the applicable appendix page number. The Appendix contains the Order on Defendant's Motion for Summary Judgment dated 9/23/98, the Opinion of the First District Court of Appeal filed 9/29/99.

STATEMENT CERTIFYING SIZE AND STYLE OF FONT

The font used in this brief is 12 Point Courier New.

STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

On 2/26/96, SEALE transmitted a charge of discrimination against EMSA under the ADA as well as the Florida Human Rights Act to both the Florida Commission of Human Relations (FCHR) (V1-22-24)and the EEOC (V1-25-27). The FCHR acknowledged receipt of the charge of employment discrimination on 2/28/96 (V1-20). The EEOC acknowledged receipt of the charge of discrimination on 2/28/96 **(Vl-21).**

Thereafter, on 3/19/98 SEALE filed a one count complaint in the Circuit Court of the 10th Judicial Circuit, in and for Polk County, Florida (V1-1-9). The basis of the complaint was that EMSA violated the Florida Civil Act of 1992 on the basis of handicap (V1-6-9). The Complaint also alleged compliance with all conditions precedent (V1-4), and provided inter alia, that:

> "More than 180 days have passed since the Plaintiff filed her charge."" (Vl-4).

Thereafter, on 5/5/98, EMSA filed their Answer (V1-10-14), wherein they listed the following as an affirmative defense.

> "Plaintiff's claims are barred by the applicable statutes of limitations." (Vl-12).

On 8/7/98, EMSA filed its Motion for Summary Judgment (V1-15-**27)** in the MSJ, EMSA contended the following:

> "5. The one year limitations period for filing a Civil Action for employment discrimination under the Florida Civil Rights of 1992 begins to run at the expiration of the 180 day period in which the Florida Commission on Human Relations (herein after "Florida Commission) has to make a reasonable cause determination if the Florida Commission does not make a reasonable cause determination within the 180 day period. , ." (Vl-16).

EMSA further contended that the FCHR had 180 days from 2/28/96 in which to make a reasonable cause determination and that this 180 day period expired on 8/26/96 (V-16-17).

EMSA further contended that the FCHR did not make a reasonable cause determination by 8/26/96; thus, Seale had 1 year from 8/26/96 in which to file a civil action, pursuant to the Florida Civil Rights Act of 1992 (V1-17). That is, as argued by EMSA, that SEALE had until 8/26/97 to file this action (V1-17).

EMSA further contended that since SEALE did not file the suit until 3/19/98, she filed it outside the applicable statute of limitations and her action is time barred (Vl-17).

Thereafter on or about 9/18/98, SEALE filed a Memorandum of Law in opposition to EMSA's Motion for Summary Judgment (V1-30-77). As part of SEALE's argument, SEALE argued that the clear and plain language of F.S. 760.11(8) was permissive language, in that it does not require that the aggrieved person proceed under F.S. 760.11(4) if the Commission fails to conciliate or determine whether there is reasonable cause in any complaint within 180 days of the filing of the Complaint, but rather provide that the aggrieved person "may" proceed under 760.11(4) as if the Commission determined there was reasonable cause.

SEALE also argued that although F.S. 760.11(3) places a good faith requirement on the FCHR to make best efforts to make a determination within a 180 day period, the FCHR is not divested of jurisdiction to continue an investigation beyond the 180 days, nor

does F.S. 760.11(3) require or mandate that the complaining party commence her lawsuit within 1 year of the 181st day after the charge is filed.

Following a hearing on 9/23/98, the trial court entered her Order on EMSA's Motion for Summary Judgment (V1-97, 98)(App. 1,2). In that Order the TC found as follows:

> "4. Plaintiff initially filed her charge of discrimination with both the Florida Commission and the EEOC on 2/28/96. The Florida Commission on Human Relations had 180 days from 2/28/96 in which to make a reasonable cause determination. F.S. 760.11(3)-(5) and (8)(1995); Milano v. Moldmaster, Inc., 703 So.2d 1093 (Fla. 4th DCA 1997).
>
> 5. Plaintiff failed to file suit within the 1 year limitations. As she filed this action on 3/19/98.
>
> 6. Accordingly, this action is time barred. There is no genuine issue of material fact to be tried. Defendant is entitled to a judgment in its favor as a matter of law." (V1-97).

A final judgment was entered in favor of Defendant in March, 1999. We do not have a copy in our file at this time and therefore a copy is not included in the appendix.

Thereafter, SEALE appealed the trial court's dismissal of her complaint to the Second District Court of Appeal.

On 9/29/99 the Second District Court of Appeal entered a per curiam affirmance of the trial court's order (App.-4). Specifically the Second DCA's opinion states as follows:

> 'PER CURIAM.
>
> Affirmed. See Joshua v. City of Gainesville, 734 So.2d 1068 (Fla. 1st DCA 1999), review granted, 735 So.2d 1285 (Fla. 1999)." (App.-4)

Thereafter, Claimant filed her Notice to Invoke Discretionary Jurisdiction before this Honorable Court.

A more specific reference to facts will be made during Argument.

POINT ON APPEAL

I

WHETHER OR NOT THIS HONORABLE COURT HAS JURISDICTION TO REVIEW THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL FILED SEPTEMBER 29, 1999 ON THE GROUNDS THAT THE DECISION PASSES UPON A QUESTION CERTIFIED TO BE ONE OF GREAT PUBLIC IMPORTANCE.

SUMMARY OF ARGUMENT

This Honorable Court has discretionary jurisdiction to review a decision of a DCA that passes upon a question certified to be of great public importance, Article V, Sec. 3(b)(4), Fla. Const., Rule 9.030(a)(2)(A)(v), Fla. R. App. P. In the case at bar, the sole basis of the Second DCA's opinion is based on the decision of the First District Court of Appeal in Joshua v. City of Gainesville, 734 So.2d 1068 (Fla. 1st DCA 1999). The First District Court of Appeal in Joshua v. City of Gainesville, supra, certified the exact same question in the case at bar as a question of great public importance. Since the question in Joshua v. City of Gainesville, supra, is the exact same question as exists in the case at bar, this Honorable Court has jurisdiction to decide the issue on this appeal.

ARGUMENT

I

WHETHER OR NOT THIS HONORABLE COURT HAS JURISDICTION TO REVIEW THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL FILED SEPTEMBER 29, 1999 ON THE GROUNDS THAT THE DECISION PASSES UPON A QUESTION CERTIFIED TO BE ONE OF GREAT PUBLIC IMPORTANCE.

Article V, Sec.3(b)(4), Fla.Const. provides:

"(b)JURISDICTION - THE SUPREME COURT: . . (4) may review any decision of a District Court of Appeal that passes upon a question certified by it to be of great public importance. . . ."

Additionally, Rule 9.030(a)(2)(A)(v) Fla. R. App. P. provides:

"(2) Discretionary Jurisdiction. The discretionary jurisdiction of the Supreme Court may be sought to review the:

(A) decisions of District Courts of Appeal that

. . . . .

(v) pass upon a question certified to be of great public importance. . , ."

Certification by a DCA that a decision passes upon a question of great public interest is a pre-requisite to jurisdiction of the Florida Supreme Court to review on a ground of great public interest, Finkelstein v. Department of Transportation, 656 So.2d 921 (Fla. 1995), Allstate Insurance Company v. Langston, 655 So.2d 91 (Fla. 1995) at 93, fn 1.

In the case at bar, the Second District Court of Appeal affirmed the trial court's dismissal of Seale's complaint based on the First District Court of Appeal decision in Joshua v. City of Gainesville, 734 So.2d 1068 (Fla. 1st DCA 1999), review granted, 735 So.2d 1285 (Fla. 1999).

The issue in Joshua v. City of Gainesville, supra, is

identical to the issue in the case at bar. Furthermore, in Joshua v. City of Gainesville, supra, the First District Court of Appeal certified the following as a question of great public importance:

> "DOES THE SECTION 760.11(5), FLORIDA STATUTES (1995), ONE YEAR STATUTE OF LIMITATIONS FOR FILING CIVIL ACTIONS "AFTER THE DATE OF DETERMINATION OF REASONABLE CAUSE BY THE COMMISSION" APPLY ALSO UPON THE COMMISSION'S FAILURE TO MAKE ANY DETERMINATION AS TO "REASONABLE CAUSE" WITHIN 180 DAYS AS CONTEMPLATED IN SECTION 760.11(8), FLORIDA STATUTES (1995), SO THAT AN ACTION FILED BEYOND THE ONE YEAR PERIOD IS TIME BARRED?" Joshua v. City of Gainesville, supra at 1071.

This Honorable Court has accepted jurisdiction based on the aforesaid question of great public importance in Joshua v. City of Gainesville, supra, review granted, 735 So.2d 1285 (Fla. 1999).

The issue in Joshua v. City of Gainesville, supra, is identical to the issue in the case at bar. The Second District Court of Appeals' affirmance based solely on Joshua v. City of Gainesville, supra, wherein the First District Court of Appeal certified the aforesaid question as one of great public importance, gives this Honorable Court jurisdiction to accept the appeal in the case at bar based upon a question of great public importance, State v. Loftin, 534 So.2d 1148 (Fla. 1988). In State v. Loftin, supra, this Honorable Court held that it had jurisdiction for review of Loftin v. State, 517 So.2d 700 (Fla. 5th DCA 1987), because the District Court issued a per curiam decision without opinion citing two cases which were pending review in this Honorable Court. In State v. Loftin, supra, and in Jollie v. State, 405 So.2d 418 (Fla. 1981), this Honorable Court held that a per curiam decision without opinion of a District Court of Appeal which cites as controlling

authority a decision that is pending review in this Court constitutes prima facie express conflict for purposes of jurisdiction.

Similarly, it is respectfully submitted that when the Second DCA issued a per curiam decision without opinion citing the case of Joshua v. City of Gainesville, supra, a case pending review in this Honorable Court, that constitutes a prima facie showing that the issue in Seale v. EMSA Correctional Care, Inc. is an issue of great public importance.

Petitioner would also respectfully submit that the Florida Rules of Appellate Procedure specifically states that discretionary jurisdiction of the Supreme Court may be sought to review decisions of the District Courts of Appeal that:

> "Pass upon a question certified to be of great public importance".

The issue in this case was certified to be of great public importance by the First District Court of Appeal in Joshua v. City of Gainesville, supra, the case relied upon by the Second DCA in the case at bar.

CONCLUSION

It is respectfully requested that this Honorable Court grant Petitioner's Notice to Invoke Discretionary Jurisdiction, accept jurisdiction of this appeal, and direct the parties to file a Brief on the Merits.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. Mail on this 8th day of November, 1999 to: Richard J. Manno, Esquire, P.O. Box 4979, Orlando, FL 32802, John M. Hament, Esquire, 1800 Second Street, Suite 970, Sarasota, FL 34236.

BILL MCCABE, ESQ.
Fla. Bar No: 157067
1450 West SR 434, #200
Longwood, FL 32750
(407) 830-9191
Co-Counsel for Petitioner