SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

GERALDINE SEALE,

Appellant,

EMSA CORRECTIONAL CARE, INC.,

Appellee.

CASE NO. 96,908

DCA CASE NO. 98-04187

LOWER COURT NO. G 98-804

RESPONDENT'S ANSWER BRIEF ON JURISDICTION

JOHN M. HAMENT, ESQ.
Kunkel Miller & Harnent
1800 Second Street, Suite 970
Sarasota, Florida 3423 6
Trial Counsel for Appellee/Respondent

TABLE OF CONTENTS

TABLE OF CITATIONS

Case Law **Page Number**

Statutory Law

Other Authorities

STATEMENT CERTIFYING SIZE AND STYLE OF FONT

The font used in this brief is **14** Times New Roman.

I. SUMMARY OF ARGUMENT

The Supreme Court may not exercise its discretionary jurisdiction to review the decision of the District Court of Appeal (DCA) rendered in this case where the DCA did not certify that its decision passes upon a question of great public importance. Rule 9.030(a)(2)(A)(v), Fla.R.App.P. See State of Florida v. Smulowitz, 486 So.2d 587 (Fla. 1986).

Even assuming *arguendo*, that the Supreme Court may exercise its discretionary jurisdiction to review a decision of a DCA that does not certify that its decision passes upon a question of great public importance, the DCA decision in the instant case did not pass upon a question of "great public importance," in that the actual legal question presented by Petitioner in its Notice deals with an extremely narrow procedural rule, to wit, statute of limitations, with very unique facts. Nor is the interpretation of the applicable statute so complex as to make the case one of "great public importance." Nor does the fact that the question presented by Petitioner has been certified by another DCA in another case compel this Court (which has granted review of that question) to exercise its discretionary jurisdiction to review the instant DCA decision, in that the

sole rationale for the other DCA's (1st) certification is inapplicable to the present case.

For these reasons, Respondent respectfully submits that this Honorable Court dismiss Petitioner's Notice invoking discretionary jurisdiction.

II. ARGUMENT

ISSUE NO. 1: THE DISTRICT COURT OF APPEAL DID NOT CERTIFY THAT ITS DECISION PASSES UPON A QUESTION OF "GREAT PUBLIC IMPORTANCE."

The Florida Constitution and the Florida Rules of Appellate Procedure, as well as case law, establish that the Supreme Court of Florida may not exercise its discretionary jurisdiction to review the decision of a District Court of Appeal (DCA) where the DCA does not certify that its decision passes upon a decision of great public importance. Fla. Const., Article V, Sec. 3(b)(4); Rule 9.030(a)(2)(A)(v), Fla.R.App.P.; See State of Florida v. Smulowitz, 486 So.2d 587 (Fla. 1986).

Article V, Section 3(b)(4) of the Florida Constitution states specifically:

> **"(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 ..." (emphasis supplied)

Without exception (to Respondent's counsel's knowledge), the Supreme Court of Florida has dismissed the Petitioner's Notice invoking discretionary jurisdiction

where the DCA decision did not certify that the decision passed upon a question of great public importance. For example, in State of Florida v. Smulowitz, supra, the Supreme Court of Florida dismissed the State's Notice invoking discretionary jurisdiction because the DCA did not certify that its decision on rehearing passed upon a question of great public importance. It is noteworthy, that the DCA's initial decision had certified that its decision passed upon a question of great public importance. However, the Supreme Court relinquished its jurisdiction to enable the DCA to consider a Petition for Rehearing. Finally, we note that the Supreme Court in Smulowitz dismissed the State's Notice invoking discretionary jurisdiction without prejudice, permitting the parties to seek discretionary review of the DCA decision on some other jurisdictional ground.

In the present case, the DCA decision does not certify that its decision passes upon a question of "great public importance." Accordingly, Respondent respectfully submits that this Court may not exercise its discretionary jurisdiction to review the DCA decision, and therefore Petitioner's Notice should be dismissed.

ISSUE NO. 2: THE DCA DECISION DID NOT PASS UPON A QUESTION OF "GREAT PUBLIC IMPORTANCE."

Petitioner urges this Court to accept jurisdiction of the DCA decision in this case based upon an uncertified question declared to be of "great public importance," but

omits completely any basis, argument or authority whatsoever supporting her contention. Instead, Petitioner merely refers to (i.e., attempts to "piggyback" on) another DCA decision, Joshua v. City of Gainesville, 734 So.2d 1068 (Fla. 1st DCA 1999), review granted, 735 So.2d 1285 (Fla. 1999), that involves dissimilar facts. Respondent respectfully submits that nothing in the record of the present case even remotely supports the assertion that the instant question is one of "great public importance" as recognized by the Supreme Court of Florida.

Indeed, the actual legal question presented by Petitioner in her Notice simply deals with the one-year statute of limitations period for filing an action under the Florida Civil Rights Act of 1992. See § 760.11(3)-(5)&(8), Fla. Stat. In other words, the legal question deals with an extremely narrow procedural rule promulgated by the Florida legislature setting forth the limitations period for filing employment discrimination actions, Even where the underlying DCA decision has in fact certified a question to be of "great public importance," the Supreme Court of Florida has consistently declined to exercise jurisdiction in cases where the certified question, like the instant one, dealt with an extremely narrow legal issue. See State of Florida v. Sowell, 734 So.2d 421 (Fla. 1999); Dade County Property Appraiser v. Lisboa, 737 So.2d 1078 (Fla. 1999). Nor can it be argued that interpretation of the applicable statute (§ 760.11(3)-(5)&(8), Fla. Stat.) is so complex as to make the case one of "great public

importance."' See Everard v. State of Florida, 559 So.2d 427 (Fla. 4th DCA 1990). Nor can it be argued that the question has such widespread ramifications that it rises to the level of one of "great public importance." See Everard, supra. Nor does the present case involve any conflict between any DCA decisions which otherwise might have warranted this Court's exercising its discretionary jurisdiction. Indeed, both the DCA decision in the instant case and the DCA decision referred to by Petitioner in the Joshua case reached the same result, namely, the discrimination lawsuits had been untimely filed, i.e., outside the one-year limitations period set forth in Section 760.

In short, the question raised by Petitioner deals simply with the one-year limitations period for filing civil actions under the Florida Civil Rights Act, as promulgated by the Florida legislature, and does not exhibit any indicia whatsoever that would compel it being characterized as one of "great public importance." Therefore, even assuming *arguendo,* that this Court may exercise its discretionary jurisdiction to review a decision of a DCA that does not itself certify that it passes upon a question of great public importance, Respondent respectfully submits that Petitioner's

---

[1] As pointed out and discussed within Issue No. 3, Petitioner in this case, unlike the Plaintiff in Joshua, who is pro se, was represented by counsel during all relevant time periods. Thus, Petitioner's counsel was on notice of, and responsible for complying with the limitations period.

Notice should be dismissed in that the DCA decision did not pass upon a question of "great public importance."

ISSUE NO. 3: THE RATIONALE IN THE JOSHUA CASE, UPON WHICH THE FOURTH DCA RELIED, FOR CERTIFYING THE QUESTION AT ISSUE AS ONE OF "GREAT PUBLIC IMPORTANCE," IS TOTALLY LACKING IN THE INSTANT CASE.

The sole rationale in Joshua for the Fourth DCA's certifying the limitations period question at issue is clearly articulated in the final paragraph of the decision as follows:

> "Because of the harsh result that will befall the **unwary, pro se claimant** who is misled by the seemingly permissive language of the Act and delays filing a civil action until after the passing of the deadline while awaiting the Commission's belated determination, we certify the following as a question of great public importance." (emphasis supplied)

It is self evident that the only reason the question was certified in the Joshua case was the DCA's concern for a **pro** se plaintiff who might misinterpret the statute. No such factual basis exists in the present case. On the contrary, the Petitioner in this case, to Respondent's counsel's knowledge, has been represented by counsel during all relevant time periods. Thus, in the present case, there was a "wary attorney," as opposed to an "unwary pro se claimant." Significantly, the Second DCA in this case did not certify the question at issue as one of "great public importance" notwithstanding that it was on notice of the Joshua case and the fact that the question had been so

certified in that case, the very case it relied upon to affirm the Circuit Court decision.

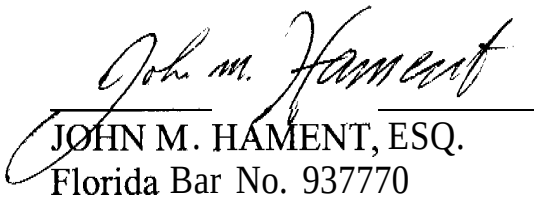
Because the rationale relied upon by the Fourth DCA in the Joshua case for certifying the question at issue as one of "great public importance" is lacking in the present case, Respondent respectfully submits that this Court should decline to exercise its discretionary jurisdiction as requested by Petitioner.

III. CONCLUSION

Based on the foregoing, Respondent respectfully requests that this Honorable Court dismiss Petitioner's Notice to Invoke Discretionary Jurisdiction and to decline jurisdiction of this case.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by U.S. Mail to Richard J. Manno, Morgan, Colling & Gilbert, P.A., Attorney for Appellant, P.O. Box 4979, Orlando, Florida 32801, and Bill McCabe, Shepherd, McCabe & Cooley, Co-Counsel for Appellees/Plaintiffs, 1450 State Road 434 West, Suite 200, Longwood, Florida 32750 on December 10, 1999.



JOHN M. HAMENT, ESQ.
Florida Bar No. 937770
Kunkel Miller & Hament
1800 Second Street, Suite 970
Sarasota, Florida 34236
Telephone: 94 1-365-6006
Facsimile: 94 1-365-6209
Counsel for Appellee/Respondent

G:\INPHYNET\EMSA\SEALE\S.Ct\JurisAnswerBrief.final.wpd