

THE SUPREME COURT
OF FLORIDA

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DEBBIE CAUSSEUX

FEB 21 2000

CLERK, SUPREME COURT

BY DJ

JOHN ELLSWORTH
Petitioner,

vs.

Case No: SC 00-190

POLK COUNTY BOARD OF COUNTY
COMMISSIONERS,
Respondent,

PETITIONER'S AMENDED BRIEF IN SUPPORT OF
JURISDICTION

DICESARE, DAVIDSON & BARKER, P.A.
Merette L. Oweis, Esquire
Post Office Box 7160
Lakeland, Florida 33807-7160
(941) 648-5999
Attorney for Appellant
Florida Bar No. 001521

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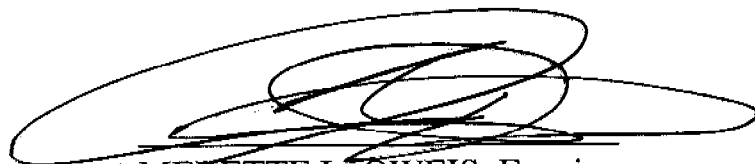
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CERTIFICATE OF FONT AND SIZE

I hereby certify this Brief is typed in 14 point, Times Roman style.

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MERETTE L. OWEIS, Esquire

TABLE OF CASES AND STATUTES

CASES:

Jollie v. State 405 So. 2d 418 (Fla. 1981) 3

Joshua v. City of Gainesville, 734 So. 2d 1068 (Fla. 1st DCA), review granted
735 So. 2d 1285 (Fla. 1999) 3

Taylor v. State, 601 So. 2d 540 (Fla. 1996) 3

Walker v. State, 682 So. 2d 555 3

STATUTES:

§760 .11 (5) 3

SUMMARY OF ARGUMENT

The Second District Court of Appeal issued a PCA opinion specifically citing the case of Joshua v. City of Gainesville. This case is presently under review by this Court. In situations where the cited authority for a Florida appellate Court's decision is an opinion under review by the by the Florida Supreme Court this Court has jurisdiction to review the Florida Appellate Court's decision.

STATEMENT OF FACTS

On February 11, 1997, Petitioner filed an administrative claim with the EEOC and Florida Commission on Human Relations (FCHR). (App. R Vol.1 Pg. 9) It was assigned a Florida Human Relations Commission case number 97-1174. (App. R. Vol.1 Pg. 13).

The Petitioner remained in contact with representatives of the Florida Commission on Human Relations and was told repeatedly that an investigation would be made in the following months. (App. R. Vol.1 Pg. 27) Petitioner was never advised by any spokesperson at the Florida Commission on Human Relations that after 180 days he may hire a private attorney who may pursue a claim for him. (App. R. Vol.1 Pg. 27) Further, he was never advised that at the expiration of 180 days he has one year to file suit in this matter. (App. R. Vol.1 Pg. 27)

The Petitioner filed a civil complaint on November 16, 1998, (App. R. Vol.1 Pg. 8) and an amended complaint relating back to the first complaint on January 25, 1999. (App. R. Vol.1 Pg. 29)

On or about December 4, 1998, the Respondent filed a Motion to Dismiss claiming that the Petitioner had filed a lawsuit beyond the expiration of the Statute of Limitation set forth §760.11(5), claiming that the Petitioner had filed his lawsuit three months past the Statute of Limitations. (App. R. Vol.1 Pg. 20)

A hearing was held on the matter on January 26, 1999 (App. R. Vol.1 Pg. 18) and an Order entered granting Respondent's Motion to Dismiss on February 2, 1999.

(App. R. Vol.1 Pg. 51).

On March 4,1999 a Notice of Appeal was filed. Oral Argument was held on December 1,1999. The Second District Court of Appeals on December 29, 1999 rendered a per curiam decision which cites to a specific controlling precedent. The cited precedent is the case of Joshua v. City of Gainesville, 734 So. 2d 1068 (Fla. 1st DCA), review granted 735 So. 2d 1285 (Fla. 1999).

A Notice to invoke Discretionary Review by this Court was filed on January 25, 2000.

ARGUMENT

The decision of the Second District Court of Appeal is sometimes referred to as a “citation PCA”. There are limited circumstances in which a decision of this type is reviewable by the Florida Supreme Court, those include PCA opinions which cite a case that is presently pending before this Court or cases which have been reversed. Jollie v. State 405 So. 2d 418 (Fla. 1981), Walker v. State, 682 So. 2d 555 (Fla. 1996); Taylor v. State, 601 So. 2d 540 (Fla. 1996).

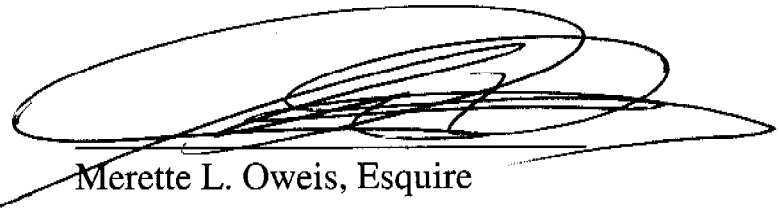
The cited precedent in the Second District Court of Appeals decision was Joshua v. City of Gainesville, 734 So. 2d 1068 (Fla. 1st DCA), review granted 735 So. 2d 1285 (Fla. 1999). This case is presently pending before the Florida Supreme Court.

Joshua was dismissed by the trial court due to the Statute of Limitations noted in §760.11 (5) Florida Statutes, the exact same limitations period was used in the dismissal of the instant case. (App. R. Vol 1 Pg. 19-21, 51) This Courts decision in Joshua if resulting in a ruling in favor of the Petitioner will directly effect the instant case. This is the exact situation for which this Court envisioned a method of review in Jollie.

CONCLUSION

Because the PCA opinion by the Second District Court of Appeal specifically cites the Joshua case which is a case presently under review by this Honorable Court, this Court has jurisdiction to review the instant case.

Respectfully Submitted this 18th day of February 2000

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Merette L. Oweis, Esquire

APPENDIX

1. Opinion of the Florida District Court of Appeals, Second District dated December 29, 1999