

IN THE SUPREME COURT OF FLORIDA

HILLSBOROUGH COUNTY HOSPITAL)
AUTHORITY d/b/a FAMILY CARE)
MEDICAL CENTER, MENTAL HEALTH)
CARE, INC. d/b/a Baylife)
Centers, ANTHONY PIDALA, JR.,)
M.D., DAVID TULSIK, M.D.,)
EMERGENCY MEDICAL ASSOCIATES)
OF TAMPA BAY, P.A., and)
ST. JOSEPH'S HOSPITAL, INC.,)
)
Petitioners,)
)
v.)
)
REBECCA COFFARO,)
)
Respondent.)
_____)

Appeal No. SC00-665

Appeal of a Certified Question of Great Public Importance
by the Second District Court of Appeal of Florida
Lakeland, Florida

Reply Brief of St. Joseph's Hospital, Inc.

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Certificate of Type Size

The undersigned counsel certifies that the type size used in the brief is courier 12 point, which conforms to the requirements of the Florida Supreme Court.

Reply Argument

Certified Question

IS A 90-DAY EXTENSION PURCHASED UNDER SECTION 766.104(2), FLORIDA STATUTES (1995), INCLUDED IN THE LIMITATIONS PERIOD WHEN CALCULATING WHETHER A PLAINTIFF IS ENTITLED TO AN ADDITIONAL 60 DAYS UNDER SECTION 766.106(4) FOR FILING SUIT.

1. Plain Wording of Section 766.106(4)

As we stated in our initial brief on the merits, the issue in this appeal turns upon when the statute provides the plaintiff the additional 60 days or the remainder of the statute of limitations to file suit in a situation when the plaintiff filed a petition for an automatic 90-day extension of the statute of limitations under section 766.104(2). The answer brief fails to address this issue adequately because it does not address the plain wording of the Florida Statutes or the Florida Rules of Civil Procedure. As we pointed out in our initial brief, the trial judge cited section 766.106 in his order and thus based his ruling on the plain and obvious meaning of this statute. Section 766.106 makes clear that the proper date to use for determining when a claimant has 60 days or the remainder of the statute of limitations to file suit is the day which the claimant receives the notice of termination pursuant to section 766.106. It specifically states that: "Upon receiving notice of termination of negotiations in an extended period, the claimant shall have 60 days or the remainder of the period of the statute of limitations, whichever is greater, within which to file suit." § 766.106(4), Fla. Stat. (1995) (emphasis supplied). The language of this statute is clear and unequivocal and thus cannot be ignored by the courts.

In the answer brief, the plaintiff argues that "it is obvious that both statutory sections are ambiguous and capable of different interpretations." Answer Brief at p. 9. We respectfully disagree with the plaintiff's contention that either section 766.106 or 766.104 are unclear or ambiguous. Interestingly, the plaintiff fails to identify the purported ambiguousness of either section. What is unclear or ambiguous about section 766.106? Nothing. It appears that the plaintiff is actually arguing that she misunderstood the statutes. Her unilateral misunderstanding, however, is not a basis for the courts to essentially rewrite the statutes in a manner inconsistent with the plain wording of the statutes just to excuse her mistake.

2. Chronological Analysis

When reading the answer brief, it is difficult to understand how the plaintiff arrived at her conclusion that her complaint was timely filed. This source of this confusion is the product of an analysis that is not in chronological order. Unlike the analysis employed by each of the defendants, the analysis of the plaintiff jumps around and relies upon the constitutional notion of access to the courts. Answer Brief at p. 13. This analysis oftentimes leads to confusing results, and in some instances, the creation of bad law. The only real efficient manner to calculate the statute of limitations in medical malpractice cases is to start the analysis at the beginning and work chronologically to the end. First, it must be determined when the claimant knew, or reasonably should have known, about the negligence and resulting injury. Second, a claimant's attorney must proceed through the condition precedents

contained in the statutes and explained to some degree within the Florida Rules of Civil Procedure. Finally, it must be determined if the complaint was filed within the time for filing a complaint. When the analysis follows a chronological order, it is relatively simple for a trained attorney to understand.

The fact that the Legislature created condition precedents for medical malpractice actions, or the fact that these condition precedents may not be easily understood by some attorneys, is not a reason to circumvent the Legislative will. That will, as stated in the plain wording of section 766.106(4), makes clear that the plaintiff had 60 days or the amount of time left on the statute of limitations (whichever was greater) from the day she received the letter rejecting her claim to file suit. As the trial judge ruled in his order, the plaintiff failed to do so and therefore her suit was barred by the statute of limitations.

Conclusion

Based upon the foregoing, the court should quash the decision of the Second District Court of Appeal and reinstate the judgments of the trial court.

Respectfully Submitted,

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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above was served to: Donna L. Hwalek, Esquire, Post Office Box 151681, Tampa, FL 33684-1681, Michael N. Brown, Esquire, Allen, Dell, Frank & Trinkle, P.A., 101 East Kennedy Blvd., Suite 1240, Tampa, FL 33602; Elaine Seymour, Esquire, Carson, Guemmer & Nicholson, P.A., 3002 West Kennedy Blvd., Tampa, FL 33609-3106; and Marlene Reiss, Esquire, Stephens, Lynn, Klein & McNicholas, P.A., 2 Datran Center, 9130 South Dadeland Blvd., PH 2, Miami, FL 33156; by U.S. Mail on this 5th day of June, 2000.

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