IN THE SUPREME COURT OF FLORIDA
CASE NO. SC04-755
LOWER TRIBUNAL CASE NO.: 2D03-2046

JANET MAGGIO,

Petitioner/Appellant,

vs.

FLORIDA DEPARTMENT OF LABOR
AND EMPLOYMENT SECURITY,

Respondent/Appellee.

ON APPEAL FROM THE
SECOND DISTRICT COURT OF APPEAL
LAKELAND, FLORIDA

INITIAL BRIEF OF PETITIONER

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CERTIFIED QUESTION OF GREAT IMPORTANCE

ARE CLAIMS FILED PURSUANT TO THE FLORIDA CIVIL RIGHTS ACT OF 1992 TORT CLAIMS AND THUS SUBJECT TO THE PRESUIT NOTICE REQUIREMENTS OF SECTION 768.28(6), FLORIDA STATUTES (2003)?

STATEMENT OF THE CASE AND FACTS

NATURE OF THE CASE

This in an employment discrimination case. Petitioner, Janet Maggio (hereinafter "Petitioner" or "Maggio"), has been legally blind since the age of ten (R 313, Early History, page 20 in Volume 1 of Claim Book)[1].

Maggio began working for Respondent, State of Florida Department of Labor and Employment Security (hereinafter "Respondent" and sometimes in the record called "AWI"), in April 1985 (R 318, page 25 in Volume 1 of Claim Book) and resigned from her employment in May 1998 (R 93, paragraph 28).

The Respondent engaged in employment discrimination by subjecting Maggio to disparate treatment, disparate impact, and the lack of reasonable accommodation because of her handicap (R 94, paragraph 30).

[1]R means record on appeal.

STATEMENT OF THE FACTS

Acts of discrimination by the Respondent occurred within four years of Maggio's filing of the complaint on December 19, 2001 (R 7, complaint filed). Maggio's affidavit, which was signed on December 31, 1997 as part of her filing an administrative charge of discrimination with the federal Equal Employment Opportunity Commission (hereinafter "EEOC") against the Respondent, stated that acts of discrimination occurred on December 31, 1997 (R 97). In addition, Maggio's EEOC affidavit stated that on December 19, 1997, the Respondent did not schedule her for computer and other work-related training (R 97). Regarding this incident on December 19, 1997, Maggio stated in her deposition that her coworkers attended an Excel and Microsoft training session (R 253, Lines 1 to 9, [page 178 of the deposition]).

The Respondent continued in its acts of employment discrimination toward Petitioner up until her resignation in May 1998 (R 93, paragraph 28).

Janet Maggio is a person with a disability (R 89, paragraph 15). The Respondent knew that Maggio was legally blind when it hired her (R 318, page 25 in Volume 1 of Claim Book).

Petitioner's condition is not correctable to any degree with glasses. Even with eyeglasses, she is legally blind. § 413.033(1), Fla. Stat. (2003) (R 89, paragraph 17).

COURSE OF THE PROCEEDINGS

On December 31, 1997, Petitioner filed an administrative charge of discrimination with the federal EEOC and the Florida Commission on Human Relations (hereinafter "FCHR") against the Respondent (R 97-99).

Prior to filing this action in the lower tribunal, Maggio had filed an action against the Respondent in the United States District Court for the Middle District of Florida. This federal action was dismissed by the District Court on December 5, 2001, in an unpublished opinion in the case of *Janet Maggio v. State of Florida, Department of Labor and Employment Security*, Case No. 8:98-CV-2473-T-17B basis of the cases *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356 (2001)and *Garrett v. Board of Trustees of the University of Alabama*, 261 F.3d 1242 (11th Cir. 2001).

On December 19, 2001, Maggio filed her complaint in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (R 7). Respondent filed a motion to dismiss with prejudice due to the fact that Petitioner had not complied with the pr-suit notice requirements contained in § 768.28, Fla. Stat. (2003). On November 19, 2002, the lower tribunal entered an order dismissing Maggio's complaint without prejudice on the basis that Maggio's claims under the Florida Civil Rights Act of 1992 (Part I of chapter 760, Fla. Stat.) "must be filed in accordance with the requirement of Florida Statutes § 768.28" (R 45, paragraph 2). Then, on

December 5, 2002, Maggio filed an amended complaint (R 86). Respondent again filed a motion to dismiss and summary judgment on the basis that Maggio had still not complied with the presuit notice requirements contained in § 768.28. On April 8, 2003, (filed with the Clerk April 14, 2003), the lower tribunal entered the order granting the Respondent's motion to dismiss and for summary judgment (R 504).

Maggio appealed the trial court's order to the Second District Court of Appeal. On April 2, 2004, the appellate court upheld the trial court's order and certified the question to the Florida Supreme Court.

DISPOSITION IN THE LOWER TRIBUNAL

The lower tribunal upheld the holding of the trial court and certified the following question as one of great public importance to the Florida Supreme Court:

> ARE CLAIMS FILED PURSUANT TO THE FLORIDA CIVIL RIGHTS ACT OF 1992 TORT CLAIMS AND THUS SUBJECT TO THE PRESUIT NOTICE REQUIREMENTS OF SECTION 768.28(6), FLORIDA STATUTES (2003)?

SUMMARY OF ARGUMENT

PETITIONER'S ACTION AGAINST THE STATE OF FLORIDA UNDER § 760.11, FLA. STAT. (THE CIVIL RIGHTS ACT OF 1992), IS NOT A TORT SUBJECT TO THE TORT NOTICE REQUIREMENT IN § 768.28(6)(a), FLA. STAT. (2003).

The trial court erred in ruling that "aggrieved persons" bringing claims under the Florida Civil Rights Act of 1992 (hereinafter "FCRA") against the state must comply with the notice requirements of § 768.28(6). The FCRA includes the State of Florida, as well as governmental agencies and subdivisions in the definition of a "person" who can be sued under the statute, which is a separate and independent waiver of sovereign immunity by the state. The provisions of § 768.28 do not apply to actions brought under the FCRA, except to the limited extent that the FCRA incorporates subsection (5), which limits the total amount of recovery against the state. Application of the principles of statutory construction lead to the conclusion that the Florida Legislature carefully considered the issue of sovereign immunity when it enacted the FCRA in 1992 and chose to put the waiver of sovereign immunity in the FCRA itself. And, further, that it clearly considered § 768.28 when it made the waiver contained in the FCRA because it chose to incorporate only a single provision, § 768.28(5). Its decision not to incorporate any more evinces a clear intention that no other provisions of § 768.28 apply to the FCRA.

Chapter 760 is a self-contained special statute that specifically addresses discrimination. Its provisions should control over the general provisions of § 768.28 relating to the waiver of sovereign immunity. The FCRA already provides for a complete claims procedure that serves the very same purpose as the notice requirement in § 768.28(6), which is simply to put the state on notice of the complaint. To require a claimant to comply with both notice provisions is an unnecessary and repetitive technicality that hinders the process of seeking redress for discrimination from the state and its agencies.

FCRA claims are statutory liabilities based upon a specific statute. Therefore, they do not sound in tort. Applying § 768.28 to the FCRA is inconsistent with its remedial purposes and undermines its effectiveness. The FCRA should be liberally construed in order to allow all aggrieved parties access to remedies available to them.

The appellate court's reliance on *Scott v. Otis Elevator Co.*, 572 So. 2d 902 (Fla. 1990), is misplaced. The retaliatory discharge cause of action in the Workers Compensation Statute contains neither a notice provision nor a comprehensive administrative exhaustion requirement prior to the initiation of a claim for statutory discharge brought against a state agency under this statute and should trigger the notice requirements of § 768.28(6), Fla. Stat., because there is no reason to conclude that this statute operates independent of the sovereign immunity provisions of § 768.28 as

does The Florida Civil Rights Act of 1992. Likewise the same argument would apply to a claim by a state employee that he was wrongfully dismissed in connection with jury service as permitted under 30.21(3), Fla. Stat. (2003). Both of these statutes create causes of action for compensatory damages without any notice requirement at all.

ARGUMENT

PETITIONER'S ACTION AGAINST THE STATE OF FLORIDA UNDER § 760.11, FLA. STAT. (THE CIVIL RIGHTS ACT OF 1992), IS NOT A TORT SUBJECT TO THE TORT NOTICE REQUIREMENT IN § 768.28(6)(a), FLA. STAT. (2003).

A. Chapter 760 Contains a Separate and Independent Waiver of Sovereign Immunity Which Makes § 768.28 Unnecessary.

The standard of review of this pure question of law is *de novo*. *Klonis v. Dept. of Revenue*, 766 So. 2d 1186, 1189 (Fla. 1st DCA 2000). In *Klonis,* the court considered whether the FCRA contained a waiver of sovereign immunity. The FCRA expressly provides that "the state and its agencies and subdivisions shall not be liable for punitive damages," and "[t]he total amount of recovery against the state and its agencies and subdivisions shall not exceed the limitation as set forth in s. 768.28(5)." § 760.11(5), Fla. Stat. (2003). These provisions from the FCRA show that the Florida Legislature intended that the State of Florida and its agencies would be sued as a "person" as defined in the statute. *Klonis*, 766 So. 2d at 1190. The immunity granted to the State of Florida and its agencies regarding punitive damages, and the language limiting other types of damages, shows a clear, unambiguous legislative intent that state agencies could be named as defendants in claims under the FCRA. *Jones v. Brummer*, 766 So. 2d 1107 (Fla. 3d DCA 2000). Analyzing the language of the FCRA, the Florida Legislature has waived the State of Florida's sovereign immunity

under Chapter 760. *Id*. at 1107; *Bell v. Board of Regents, State of Florida*, 768 So. 2d 1244 (Fla. 1st DCA 2000); *Longman v. City of Tallahassee*, 776 So. 2d 1130 (Fla. 1st DCA 2001); *Williams v. School Board of Palm Beach County*, 770 So. 2d 706 (Fla. 4th DCA 2000). This analysis makes it clear that this waiver of sovereign immunity under the FCRA is a separate and independent waiver that does not depend upon § 768.28, which specifically addresses the state's waiver of sovereign immunity in tort actions.

Section § 768.28(5) is incorporated by reference into the FCRA. Section 768.28(5) places limits on recoveries against the state. The FCRA makes no other reference to § 786.28. The FCRA contains an independent waiver of sovereign immunity, which makes it clear that when the legislature incorporated that single subsection of § 768.28 by reference, it meant to incorporate no more than that. Furthermore, the other provisions of § 768.28 are unnecessary because of the independent waiver of sovereign immunity already present in the FCRA.

b. Chapter 760 Contains a Separate and Independent Presuit Notice Requirement Which Makes § 768.28(6) Unnecessary.

The conclusion that the notice requirement of § 768.28(6) does not apply to the FCRA is supported by the comprehensive and specific administrative exhaustion procedure contained in the FCRA. The FCRA's administrative claims process

mirrors and serves the very same purpose as the notice requirement in § 768.28(6), which states that "an action may not be instituted on a claim against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency, and also...to the Department of Financial Services...within three years after such claim accrues." The only reason that the Department of Financial Services is to be notified in these tort actions is that the "affected agency or subdivision may, at its discretion, request the assistance of the Department of Financial Services in the consideration, adjustment, and settlement" of any tort claim. § 768.28(3), Fla. Stat. (2003).

The FCRA establishes the FCHR, a state entity assigned to the Florida Department of Management Services, empowered to investigate, determine and conciliate all FCRA claims. §§ 760.03 and 760.06, Fla. Stat. (2003). FCRA claimants are required to file a charge of discrimination with the FCHR as a condition precedent to filing their suit in court under the FCRA. §§ 760.11(7) and 760.11(8), Fla. Stat. (2003). The charge must contain a short, plain statement of the facts describing the violation and any relief sought. § 760.11(1) Fla. Stat. (2003). Within five days of the date the charge is filed, the FCHR must send a copy of the charge to the person who allegedly committed the violation by registered mail. Id. As defined in the FCRA, the "person" who allegedly committed the violation includes the state, any governmental

entity or agency. § 760.02(6), Fla. Stat. (2003). Therefore, any former employee of a state agency who alleges that their former state agency employer discriminated against them in violation of the FCRA is already required to file a charge of discrimination, which is then expeditiously forwarded to the state agency employer being charged. The state agency receives an exact copy of the complaint filed against it with the FCHR, notifying it that a complaint has been filed. At that point, the state agency has been effectively put on notice that there is a complaint pending against it. The state, governmental agency or subdivision should not be entitled to more notice than that which all other non-governmental employers receive, just because it is an extension of the state, especially when the state is already receiving sufficient notice in each and every instance of alleged discrimination.

Requiring the claimant to present another separate claim in writing to the appropriate agency in order to comply with § 768.28(6) is unnecessary and serves only as a trap for the unwary who, like the petitioner here, have run out of time to comply with § 768.28 and had no reason to believe there was any more steps required for them to take. In most situations where the three- year statute of limitations has not yet passed, the state agency, looking for a temporary respite from the lawsuit against them, could file a motion to dismiss. The unwary claimant, having now been put on notice of the provisions of § 768.28(6), would then comply by filing the appropriate letter

with the same agency even though that agency obviously already had notice of the complaint because of having received a Charge of Discrimination under Chapter 760. Interestingly enough, the attorney who would have prepared the motion to dismiss would have been hired under contract by the Division of Risk Management to represent the agency and prepare a motion to dismiss for failure to receive notice.

After the claimant presents the presuit notice to the same state agency, as required by § 768.28(6), the matter will be delayed for another one to three months while the agency has the opportunity to plead or make final disposition of the claim. §§ 768.28(6)(d) and 768.28(7), Fla. Stat. (2003). During this time, if the claimant remains unemployed, additional lost wages, attorneys' fees, and costs will continue to accrue, which the state may ultimately be responsible for. Alternatively, in those situations where the three year statute of limitations has already passed, the claimant will be barred from seeking a remedy for the alleged discrimination even though he or she has fully complied with all of the administrative prerequisites of § 760.01 et *seq.* and the particular agency subject to suit already had actual notice of the allegation against it since it had received notice from the FCHR.

If the charge of discrimination is based on race, gender, retaliation or pregnancy, the claimant may seek a Notice of Right to Sue from the EEOC and proceed in state or federal court on federal grounds. If the lcaimant seeks redress for age or disability

discrimination, the plaintiff is out of luck because these claims may not be filed against th state under federal law. Ironically, the federal statutes expose the state defendant to a $300,000 cap on damages which is three times the $100,000 cap contained in the FCRA. Applying the FCRA in this manner would be directly adverse to the Legislature's intent of securing freedom from discrimination for all individuals by liberal construction of the act.

C. Applying § 768.28 to Chapter 760 Defeats Its Express Remedial Purpose.

As stated in *Klonis*, courts must look to "'the provisions of the whole law, and to its object and policy,' rather than consider various statutory subsections in isolation from one another and out of context." 766 So. 2d at 1189. Courts should also consider whether a statutory interpretation is reasonable in light of the stated purpose of the statute. *Young v. Progressive Southeastern Ins. Co.*, 753 So. 2d 80, 85 (Fla. 2000).

Section 760.01(3), Fla. Stat. (2003), states: "The Florida Civil Rights Act of 1992 shall be construed according to the fair import of its terms and shall be liberally construed to further the general purposes stated in this section and the special purposes of the particular provision involved." (Emphasis added). The FCRA "is remedial and requires a liberal construction to preserve and promote access to the

remedy intended by the Legislature." *Joshua v. City of Gainesville*, 768 So. 2d 432, 435 (Fla. 2000).

The Second District Court of Appeal's interpretation of the FCRA is not a liberal construction of the statute and it serves to defeat the remedial purposes of the FCRA. The opinion adds another layer of administrative exhaustion for FCRA claimants, which is redundant and serves no additional useful purpose. Furthermore, the proposed interpretation undermines the FCHR's directive to promote and encourage the fair treatment of employees and eliminate discrimination. § 760.05, Fla. Stat. (2003). Allowing the state to hide behind this technicality in order to avoid some charges of discrimination would fly in the face of the intention of the FCRA and would serve only as another obstacle for employees who have been discriminated against.

D. Accepted Principles of Statutory Construction Make § 768.28 Inapplicable to Chapter 760.

Section 768.28 has no general application to the FCRA when the principles of statutory construction routinely applied by Florida courts are followed. "If a statute enumerates the things on which it is to operate, or forbids certain things, it is ordinarily construed as excluding from its operation all those matters not expressly mentioned." *Sun Coast International, Inc. v. Dept. of Bus. Regulation*, 596 So. 2d 1118 (Fla. 1st

DCA 1992). The specific reference to § 768.28(5), Fla. Stat. (2003), in the FCRA should therefore serve as evidence of the intent to exclude all other provisions of § 768.28 from the FCRA.

The lower tribunal's holding does not produce the result that standard statutory construction should. The court reasoned that the specific exclusion of §§ 768.72 and 768.73, Fla. Stat. (2003), shows a legislative intent to incorporate § 768.28. Following this reasoning, one would be assuming that the legislature meant to incorporate every other provision of Chapter 768 into the FCRA as well. If this had been the legislature's intent, it would not have been necessary to specifically incorporate § 768.28(5) into § 760.11(5) by reference. The legislature created a clear and unambiguous waiver of sovereign immunity in the FCRA, completely distinct from § 768.28, which addresses the state's sovereign immunity in tort claims. It is reasonable to infer from the manner in which the legislature incorporated one single provision of § 768.28 into the FCRA, coupled with the clear and unambiguous waiver of sovereign immunity contained therein, that the Legislature's intent was that only § 768.28(5) apply to the FCRA.

"[A] legislative direction as to *how* a thing shall be done is, in effect, a prohibition against its being done in any other way." *Sun Coast International, Inc.*, 596 So. 2d at 1121. Florida courts have held that when a statute is self-contained, it

covers only those subjects within its self-contained limitations and does not affect rights which are not within its purview or which are specifically excluded from its provisions. *See Grice v. Suwannee Lumber Manufacturing*, 113 So. 2d 742, 742 (Fla. 1st DCA 1959); *Laborers' Int'l Union of North America v. Burroughs*, 541 So. 2d 1160, 1164 (Fla. 1989). "It is well settled...that a special statute covering a particular subject matter is controlling over a general statutory provision covering the same and other subjects in general terms." *Adams v. Culver*, 111 So. 2d 665, 667 (Fla. 1959).

The FCRA fits the description of a self-contained, special statute because it covers only discrimination, a special area of law. Section 768.28, by contrast, is a general statute. The specific provisions of the FCRA should control due to the fact that it contains an independent waiver of sovereign immunity and a carefully articulated notice procedure.

The Florida Legislature knows how to make a cause of action subject to § 768.28, as opposed to making only a part of the statute applicable. For example, in § 556.106(2)(c), Fla. Stat. (2003), the legislature stated: "Any liability of the state, its agencies, or its subdivisions which arises out of this act shall be subject to the provisions of s. 768.28." While in § 760.11(5), the legislature incorporated only the dollar amount limit, not the entire tort statute: "The total amount of recovery against

the state and its agencies and subdivisions shall not exceed the limitations as set forth in s. 768.28(5)." When the legislature recognizes a cause of action as a tort, it will reference all of § 768.28, as it did in § 556.106. The use of different language in § 760.11(5) means that the legislature intended a different result, which was, more specifically, not to make Chapter 760 sound in tort. The specific inclusion of the dollar amount limitation shows the intent not to incorporate § 768.28 because, if the legislature had intended all of § 768.28 to apply, there would have been no need to incorporate only the limitation on the amount of recovery.

E. Actions Filed Under the FCRA Against State Agencies Are Not Torts and Should Not Be Subject to the Presuit Notice Provisions Contained in § 768.28(6).

When the Florida Supreme Court previously addressed claims under the FCRA, it did not reference the tort statute of limitations, but rather cited the statute of limitations applicable to statutory liabilities. *Joshua*, 768 So. 2d at 437. Furthermore, this Court has held that an action under the FCRA is like an action founded on a statutory liability, not a tort action. *Id*. Therefore, FCRA claims are clearly not tort claims, but are "statutory liabilities."

The lower court's holding in this case creates undesirable results. If FCRA actions were torts, there would be a situation in Florida law in which the more a state agency institutionalized its discrimination by making the decision not to provide

reasonable accommodations to its disabled employees a planning-level decision, the more the government would be immune from FCRA liability. This is in direct conflict with the intent of the FCRA. *See Commercial Carrier Corp. v. Indian River County*, 371 So. 2d 1010 (Fla. 1979); *Trianon Park Condominium Assoc. v. City of Hialeah*, 468 So. 2d 912 (Fla. 1985). By allowing a state agency to claim that FCRA claims are torts, all state agencies will be virtually immune from discrimination that it claims is based upon a planning-level decision, such as a lack of sufficient funds in the state budget.

In *Dahl v. Eckerd Family Youth Alternatives, Inc.*, 843 So. 2d 956, 957 (Fla. 2d DCA 2003), the complainant filed a lawsuit under Florida's private-sector whistleblower act, §§ 448.101-448.105, Fla. Stat. (1999). The employee in that case had been working for an independent contractor of a state agency. The employer in Dahl claimed that as an independent contractor operating for the state, it was protected from suit by sovereign immunity under § 768.28. *Dahl* at 959. On appeal, the district court reversed, because no where in the public-sector act does it provide that it is the exclusive remedy for employees of independent contractors of state agencies who are retaliated against for their whistleblowing activities. *Dahl* at 958. Both the public and private-sector statutes were found to be remedial statutes deserving of a broad construction. *Id.* Both the public and private-sector statutes were designed for the

protection of employees and were to be construed liberally in favor of granting access to the remedy. *Id.*; *Hutchison v. Prudential Insurance Co. of America*, 645 So. 2d 1047, 1049 (Fla. 3d DCA 1994). The district court found that § 768.28 had no application in that case because the complainant was exercising a right of action under a statute and was not suing in tort. *Id*.

Here, as stated previously, the FCRA is a remedial statute deserving of broad construction, just as the whistleblower act is, and was designed for the protection of individuals. It should also be construed liberally in favor of granting the aggrieved party access to the remedy. As the district court in *Dahl* found, § 768.28 should have no application because this action arises under the FCRA, which is a statute like the whistleblower act, and should not be considered a suit sounding in tort.

There has been only one other Florida circuit court case that held that notice of a tort claim must be given prior to suing under the FCRA. *Bearelly v. State of Florida, Dept. of Corrections*, 2002 WL 982429 (Fla. Cir. Ct.) (April 2002), per curiam affirmed, 845 So. 2d 186. In that case, the circuit court found that a civil rights claim under the FCRA for wrongful discharge was subject to the presuit notice requirement contained in § 768.28(6). *Id.* Here, Petitioner's complaint is not for retaliatory discharge sounding in tort, but for discrimination in the employment relationship based upon a specific statutory liability, and is therefore, distinguishable

from the holding in *Bearelly*. *Id*. However, even if the case were based on a retaliatory discharge, *Bearelly* would not control simply because *Bearelly* is wrong. *Bearelly* is wrong because just the trial court in *Bearelly*, as was the appellate court below, were led astray by the application of *Scott v. Otis Elevator Co.*, 572 So. 2d. 902 (Fla. 1990), to an employment discrimination case under the Civil Rights Act of 1992. In *Scott*, the issue involved retaliatory discharge under the Workers Compensation Statute. Specifically, § 440.205 of the Workers Compensation Statute, allows for a civil action for compensatory damages for a retaliatory discharge for having filed a workers compensation claim. Other than the language creating the cause of action, § 440.205, Fla. Stat. does not contain any administrative notice requirements or prerequisites to filing suit. A state agency sued for a retaliatory discharge by a former employee under § 440.205, Fla. Stat., could be expected to comply with § 768.28(6), Fla. Stat., and give the state pre-suit notice. There is nothing in § 440.205, Fla. Stat., to suggest otherwise. Therefore, the pre-suit notice provisions of § 768.28(6), Fla. Stat., and a civil suit for retaliatory discharge are not in conflict.

Similarly, a juror dismissed from employment by a state agency for sitting on a jury could be required to give notice prior to filing suit under § 40.271(3), Fla. Stat (2003). Of course, § 40.271(3), may be a closer question as to whether or not the Legislature would have intended § 768.28(6), Fla. Stat., to apply because this seldom-

used statute specifically contains a provision allowing for punitive damages which stands in direct contradiction of § 768.28, which precludes punitive damages against a state agency. Section 40.271(3), Fla. Stat., does not make any distinction between a private or governmental employer. However, under the administrative scheme set forth in § 760.01 *et seq.*, there is a comprehensive notice provision and administrative remedy scheme provided. Ultimately, it should be of no moment to this court whether an action for wrongful discharge under the Civil Rights Act of 1992 constitutes a tort or not because the Legislature has provided a scheme for notice which is to be liberally construed to effect the purposes of the act. There is nothing liberal in allowing the petitioner to lose her cause of action against her former employer because, as a blind person, she failed to see a requirement for additional notice under § 768.28(6), which was unnecessary and cumulative to the notice provision of the FCRA.

G. Chapter 760 Should Be Construed In Accordance With Title VII of the Federal Civil Rights Act of 1964.

The opening paragraphs of the FCRA explains its purpose and the manner of interpretation that will effectuate that purpose. The FCRA's purpose and directed statutory construction are directly modeled after Title VII of the Civil Rights Act of 1964. *Joshua*, 768 So. 2d at 435. The FCRA, like Title VII, is remedial and a liberal construction must apply in order to preserve and promote the remedy intended by the

legislature. *Id*. The FCRA is patterned upon the federal Title VII anti-discrimination law and has been construed in a consistent manner by Florida courts. *Florida Dept of Community Affairs v. Bryant*, 586 So. 2d 1205 (Fla. 1st DCA 1991). A federal employee does not have to give notice under the Federal Tort Claims Act, 28 U.S.C. § 2675, for a Title VII or employment discrimination action. To sue the federal government in tort, presuit notice must be given. Presuit notice must also be given in order to sue the Florida government in tort. A federal employee, however, is not required to give presuit tort notice prior to suing the federal government under the federal civil rights laws on which the FCRA was patterned. A reasonable deduction would produce the same result in Florida. Since federal employees are not required to give presuit tort notice, former state employees should not be required to give presuit tort notice either. Rather, the administrative notices of the non-discrimination laws should be sufficient.

CONCLUSION

The lower tribunal's decision is an unreasonable construction of the FCRA. For all the foregoing reasons, Petitioner, Janet Maggio, requests this Court reverse the lower court's order and declare that the law and policy of the State of Florida is such that the provisions of § 768.28 do not apply to suits brought under the FCRA except to the limited extent that the FCRA specifically incorporates a particular subsection by reference.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Initial Brief of Petitioner was furnished by U.S. Mail to Jay P. Lechner, Esquire and Nancy A. Chad, Esquire, of Zinober & McCrea, 201 E. Kennedy Blvd., Ste. 800, Tampa, FL 33602; Mindy Raymaker, Acting General Counsel, Agency for Workforce Innovation, 1320 Executive Center Drive, Atkins Building-Kroger Center, Tallahassee, FL 32399-2250, and John W. Bakas, Jr., Esquire, Attorney for Plaintiff/Appellant, 201 E. Kennedy Blvd., Ste. 400, Tampa, FL 33602-5896, this 1st day of June, 2004.

GARY LEE PRINTY

CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.210(a)(2), I hereby certify that this brief was prepared using Times New Roman 14-point font and *Times New Roman Italic* 14-point font.

GARY LEE PRINTY