

THE SUPREME COURT OF FLORIDA

AMERICAN OPTICAL CORP., et al.

Case No. SC08-1617, SC08-1639

Appellants/Petitioners,

v.

DANIEL N. WILLIAMS, et al.,

L.T. Case Nos: 4D07-143, 4D07-144
4D07-145, 4D07-146, 4D07-147
4D07-148, 4D07-149, 4D07-150
4D07-151, 4D07-153, and 4D07-154

Appellees/Respondents.

RESPONDENTS' BRIEF ON JURISDICTION

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Rule 9.030(a)(2)(A)(ii), (iv) and (vi), Fla. R. App. P.2

I.
STATEMENT OF THE CASE AND FACTS

The Petitioners' Statement of the Case and Facts is accurate. We would add only that, although the Petitioners are correct that the primary basis for the District Court's holding is that the Plaintiffs' causes of action represent vested rights, which could not constitutionally be retroactively divested by the Act, the District Court also recognized that there are other available bases for precluding retroactivity that do not require the recognition of vested rights. Thus (Opinion at 3), the District Court quoted this Court's holding in *McCord v. Smith*, 43 So. 2d 704, 708-09 (Fla. 1949) that retrospective legislation is invalid "in those cases where invested rights are adversely affected or destroyed or when a new obligation or duty is created or imposed, or an additional disability is established, in connection with transactions or considerations previously had or expiated."¹ We

¹Thus, the Court has invalidated the retroactive application of statutes that create new obligations or duties, or additional disabilities, whether they affect vested rights or not. See, e.g., *Arrow Air, Inc. v. Walsh*, 645 So. 2d 422, 424 (Fla. 1994) *Arrow Air, Inc. v. Walsh*, 645 So. 2d 422, 424 (Fla. 1994) ("[W]e have never classified a statute that accomplishes a remedial purpose by creating substantive rights or imposing new legal rights as the type of 'remedial' legislation that should be presumptively applied in pending cases"); *L. Ross, Inc. v. R.W. Roberts Construction Co., Inc.*, 481 So. 2d 484 (Fla. 1986) *L. Ross, Inc. v. R.W. Roberts Construction Co., Inc.*, 481 So. 2d 484 (Fla. 1986) (statute creating a right to attorneys' fees); *Yamaha Parts Distributors Inc. v. Ehrman*, 316 So. 2d 557 (Fla. 1975) *Yamaha Parts Distributors Inc. v. Ehrman*, 316 So. 2d 557 (Fla. 1975)

make this point only to emphasize that if the Court accepts jurisdiction, these alternative bases for invalidation of the Act's retroactive application remain available, without necessarily addressing the issue of vested rights.

II. SUMMARY OF ARGUMENT

We agree with the Petitioners that this Court has both mandatory and discretionary jurisdiction to review the decision of the District Court.

III. ARGUMENT

The District Court's decision does expressly declare the Act to be unconstitutional, which invokes this Court's mandatory appellate jurisdiction under Article V, §3(b)(1) of the Florida Constitution and Rule 9.030(a)(1)(A)(ii), Fla. R. App. P. In addition, the District Court's decision does expressly construe a provision of the State Constitution; it certifies direct conflict with the decision of another District Court of Appeal; and it expressly and directly conflicts with that

(invalidating abstractly procedural statute requiring ninety days' notice of termination of a franchise agreement, that would have interfered with pre-existing contractual rights). *See also Russell Corp. v. Jacobs*, 782 So. 2d 404, 405 (Fla. 1st DCA), review denied, 791 So. 2d 1098 (Fla. 2001) *Russell Corp. v. Jacobs*, 782 So. 2d 404, 405 (Fla. 1st DCA), review denied, 791 So. 2d 1098 (Fla. 2001) (amendments to workers'-compensation statute could not apply retroactively, because "[a] party's substantive rights under workers' compensation law are fixed at the time of the claimant's accident and injury").

decision, conferring discretionary jurisdiction under Article V, §3(b)(3) and (4) of the Florida Constitution, and Rule 9.030(a)(2)(A)(ii), (iv) and (vi), Fla. R. App. P. The decision construes the due process provision of Article I, §9 of the Florida Constitution; it certifies conflict with *DaimlerChrysler Corp. v. Hurst*, 949 So. 2d 279 (Fla. 3d DCA), *review denied*, 962 So. 2d 337 (Fla. 2007). And it conflicts with the holding of *Hurst* on the question of whether an accrued cause of action is a vested right under Florida law.² For all three of these reasons, the Respondents agree that the Court also has discretionary jurisdiction to review the District Court's decision in this case.

IV. CONCLUSION

For the reasons stated, the Respondents acknowledge the Court's mandatory and discretionary jurisdiction to review the decision of the District Court.

Respectfully submitted,

²We do not agree that the District Court's decision conflicts with *State, Department of Transportation v. Knowles*, 402 So. 2d 1155 (Fla. 1981) *State, Department of Transportation v. Knowles*, 402 So. 2d 1155 (Fla. 1981) or *Department of Agriculture and Consumer Services v. Bonanno*, 568 So. 2d 24 (Fla. 1990) *Department of Agriculture and Consumer Services v. Bonanno*, 568 So. 2d 24 (Fla. 1990), which applied a three-part balancing test in the entirely different context of evaluating retroactive legislation that abrogates the value of an individual's claim, but have not been applied to the retroactive abolition of a pre-existing cause of action.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. mail upon all counsel on the attached Service List on this ____ day of October, 2008.

By: _____

Joel S. Perwin

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the type size and style used throughout this Brief is 14-point Times New Roman double-spaced, and that this Brief fully complies with the requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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