IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC09-490

ROMAN RAMIREZ,

Petitioner,

v.

CHARLES H. McCRAVY,

Respondent.

______________________________/

ANSWER BRIEF OF RESPONDENT, CHARLES H. McCRAVY
(On Discretionary Review from the Third District Court of Appeal)

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INTRODUCTION

The petitioner, Roman Ramirez, was the plaintiff in the trial court and the appellant in the Third District Court of Appeal. The respondent, Charles H. McCravy, was the defendant in the trial court and the appellee in the Third District Court of Appeal. In this brief, the petitioner will be referred to as "Ramirez," plaintiff or petitioner, and respondent will be referred to as "McCravy," defendant, or respondent. The symbol [R "__"] will designate the documents contained in the Record on Appeal.

STATEMENT OF THE CASE AND FACTS

Four years and four days after an accident, the plaintiff, Roman Ramirez, filed his lawsuit against the defendant, Charles H. McCravy, on March 7, 2007. R 5-6. Plaintiff later filed an amended complaint stemming out of the same accident. R 7-8. Defendant moved to dismiss the claim based on the expiration of the four year statute of limitations contained in Florida Statutes section 95.11(3). R 13-25. The trial court denied the motion to dismiss without prejudice, allowing the defendant to raise the statute of limitations issue as an affirmative defense. R 26.

The defendant raised the statute of limitations as an affirmative defense and moved for a summary judgment on the issue. R 27-29; 31-76. In an effort to avoid the obvious expiration of the four year limitations period, plaintiff contended that various tolling orders entered by the Florida Supreme Court in response to natural disasters effectively tolled all statutes of limitation long after the emergency situations.[1] After a hearing on the motion, the trial court granted the motion for summary judgment and entered a final summary judgment in favor of defendant. R 127; 143. Plaintiff

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[1] According to plaintiff, there were six applicable tolling orders during the four year time period from the March 3, 2003 accrual of the cause of action until the expiration of the four year limitations period. The orders will be discussed in the argument section.

appealed to the Third District Court of Appeal. T 141-142. On February 18, 2009, the Third District Court of Appeal entered its opinion in the case, affirming the summary judgment for defendant and rejecting plaintiff's "novel argument that prior hurricane-related administrative orders tolled the statute of limitations for his tort action." Additional details regarding the third district's opinion will be discussed in the argument sections.

Plaintiff sought discretionary review of the third district's decision in the Supreme Court of Florida. The parties filed jurisdictional briefs, and on September 9, 2009, this Court accepted jurisdiction of this case.

SUMMARY OF ARGUMENT

The Supreme Court has no discretionary jurisdiction to review the third district decision under review because it does not expressly and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law. First, the third district's decision concerned the "novel argument" that prior hurricane-related administrative orders of the Supreme Court tolled the statute of limitations for his tort claim. By definition, a court ruling on a "novel argument" could hardly conflict - either expressly or directly - with a decision of another district court or the Supreme Court. Further, the third district's decision concerning whether a supreme court administrative order can extend the statute of limitations does not conflict with any case cited by plaintiff because those decisions never reached the same legal question as the opinion below.

The trial court properly granted summary judgment based on the expiration of the four year statute of limitations prior to the time plaintiff filed his claim. To avoid this fatal error, plaintiff relies upon a series of Florida Supreme Court emergency administrative orders that provided temporary relief to parties and counsel who could not meet their duties and obligations as a result of various natural disasters. The Supreme Court specifically designed these orders to assist lawyers and litigants in meeting their duties and obligations when their ability to meet these responsibilities

was **temporarily impeded** by a natural disaster that caused a temporary closure of the courthouse.

These emergency tolling orders were meant to excuse the failure to complete a task that simply could not be timely completed within the remaining time when the hurricane or storm occurred. Since the Supreme Court has the constitutional power to adopt rules for the practice and procedure in all courts, this Court can extend time limits when a party's ability to comply with court deadlines is inhibited by an emergency or natural disaster. However, this Court does not otherwise have the legislative power to create windfall extensions to the statute of limitations. Moreover, even if the Court had such power, the tolling orders were never intended to grant such windfall extensions many months or years after the emergency situation passed. The trial court thus properly ruled that the Supreme Court's emergency administrative orders did not excuse the plaintiff's failure to timely file his claim. The final summary judgment for defendant must therefore be affirmed.

RESPONSE TO JURISDICTIONAL ARGUMENT

THE SUPREME COURT HAS NO DISCRETIONARY JURISDICTION TO REVIEW THE THIRD DISTRICT DECISION UNDER REVIEW BECAUSE IT DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL OR OF THE SUPREME COURT ON THE SAME QUESTION OF LAW.

Article V, section 3(b)(3), of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv) provide the Supreme Court with the discretion to review a decision of a district court of appeal "that **expressly and directly conflicts** with a decision of **another** district court of appeal or of the supreme court on the **same** question of law." (Emphasis added). Unfortunately for plaintiff, this criteria is not met, and there is no discretion for the Supreme Court to even consider review of the third district decision.

In order to determine whether the third district decision expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law, we must first consider the legal rulings made by the third district court. To begin, the third district notes in the first sentence of its decision that Ramirez "appeals the trial court's final summary judgment in favor of defendant, Charles H. McCravy, raising **the novel argument** that prior hurricane-related administrative orders tolled the statute of limitations for his tort action." Since the

appeal involved a new or unusual argument, this is a strong indication that the third district's decision cannot expressly and directly conflict with any other decision.

The third district decision noted that "Article V, section 2, grants to the Florida Supreme Court the power to 'adopt rules for the practice and procedure in all courts.'" The opinion then pointed out that section 95.051, Florida Statutes (2006), enumerated eight different, specific grounds for tolling limitations periods - none of which were applicable here. The opinion observed that Ramirez's late filing was not attributable to any of the six weather emergencies.

In the opinion, the third district concluded that the Supreme Court's administrative

> orders should be strictly construed in the contexts of statutes, as opposed to rules. *See Sullivan v. State*, 913 So.2d 762 (Fla. 5th DCA 2005) and *State v. Hernandez*, 617 So.2d 1103 (Fla. 3d DCA 1993) (both dealing with the speedy trial rule). We reach this conclusion because the six administrative orders recite as its authority article V, section 2, of the Florida Constitution, which grants the Florida Supreme Court the power to 'adopt rules for the practice and procedure in all courts,' not to modify statutes. Furthermore, we have the Florida Supreme Court itself in *Hearndon* [*v. Graham*, 767 So.2d 1179 (Fla. 2000)] specifically declaring that by enumerating eight grounds in section 95.051, the legislature has basically precluded application of any other tolling provisions that imaginative litigants may come up with. To toll means to suspend or interrupt. There is nothing intrinsic in the language that requires tacking extra days at the end of a four year period. Therefore, by strictly construing the administrative orders, we find that they have no application to this case as the weather emergencies did not in any way delay Ramirez from promptly filing his suit.

The third district essentially ruled that it would give greater scrutiny to a Supreme Court administrative **order** that implicated a potential extension of a **statute** of limitations, as opposed to an extension of a time frame under a rule of **procedure**. In this regard, the ruling was in fact novel, as this legal issue was never considered in the cases that Ramirez suggests pose express and direct conflict. Significantly, the opinion specifically distinguished the *Sullivan* and *Hernandez* cases because those decisions involved the extension of a time frame in the context of a procedural **rule** (speedy trial) and not the extension of a **statute** of limitations, for which the Supreme Court has not been provided such a constitutional grant of power.

For example, in *Sullivan*, the fifth district noted that during the time between Sullivan's arrest and the expiration of the speedy trial period, three administrative orders of the Supreme Court were entered wherein "all time limits authorized by rule and statute affecting the speedy trial procedure" were "tolled" in Seminole County due to hurricanes Charley, Frances and Jeanne for a cumulative tolling period of 15 days. *Id*. at 763. When the three tolling orders were considered, the notice of expiration of speedy trial was premature. *Id*. The State thus had the extra time to bring Sullivan to trial.

Unlike the third district opinion below, the fifth district in *Sullivan* never considered or ruled upon the legal impact of a Supreme Court administrative order

upon an attempt to extend a **statute** of limitations, as opposed to the extension of a time frame in a **procedural rule** such as speedy trial. One test of express and direct conflict is whether the decisions are irreconcilable. *Aravena v. Miami-Dade County*, 928 So.2d 1163 (Fla. 2006). There can be no conflict at all, and certainly no express and direct conflict, when *Sullivan* never reached the same legal question as the opinion below. Since the decisions are easily reconcilable, there is no express and direct conflict.

Similarly, in *Hernandez*, the State appealed the discharge of a criminal defendant following the State's failure to bring the defendant to trial within 10 days of an August 18, 1992 trial court order to do so. On August 24, 1992, Hurricane Andrew stormed through South Florida. As a result, the Supreme Court issued an order tolling "all time limits authorized by rule and statute affecting the speedy trial procedure in criminal and juvenile proceedings beginning August 24, 1992, for two weeks." *Id*. at 1103.

As explained by the third district in *Hernandez*, this order tolled the running of the speedy trial window period in the case. Thus, "five days of the 10-day window had elapsed prior to August 24th, and the window was tolled from August 24th through

September 6th. Thereafter, the window resumed running on September 7th. Clearly, only eight days of the window period had elapsed when the defendant was discharged on September 9th. His discharge was, therefore, premature and is reversed." *Id.* at 1103.

Hernandez, like *Sullivan*, never even considered (let alone ruled upon) the legal impact of a Supreme Court administrative order upon an attempt to extend a **statute** of limitations, as opposed to the extension of a time frame in a **procedural rule** such as speedy trial. Therefore, there can be no conflict between *Hernandez* and the opinion below because *Hernandez* never reached the same question of law as the opinion below.[2]

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[2] Moreover, in both *Hernandez* and *Sullivan*, the appellate courts extended the deadline (by the extra time in the tolling orders) for a party to complete its obligations within the required time. These obligations could not otherwise be completed because of the hurricane's disruption of the court system. Both decisions are consistent with defendant's position that the orders were meant to alleviate temporary difficulties caused by hurricanes or storms that **temporarily impeded** the ability of counsel or the parties to meet court deadlines. Neither decision suggests that a party may use these types of tolling orders to excuse a failure to timely file a claim years after the emergencies have passed.

In addition, *Hernandez* - a third district decision - cannot legally serve as a basis for Supreme Court jurisdiction. As noted, Rule 9.030(a)(2)(A)(iv) provides the Supreme Court the discretion to review "decisions of district courts of appeal that expressly and directly conflict with a decision of **another** district court of appeal or of the supreme court on the same question of law." Thus, even if there were any legal conflict between *Hernandez* and the opinion below (and there is not), it would only constitute intra-district conflict and could not form the basis for conflict review by the Supreme Court.[3]

Plaintiff also suggests that the third district opinion below conflicts with the supreme court's opinion in *Hankey v. Yarian*, 755 So.2d 93 (Fla. 2000). However, there is no conflict between the decisions. Unlike the third district opinion below, *Hankey* never even considered whether a supremecourt administrative order can extend the statute of limitations.

As the Supreme Court explained in *Hankey*, "[a]t issue is the calculation of the statutory time limitations for filing a medical malpractice action under chapter 766 of the Florida Statutes. Specifically, the question is whether the ninety-day 'tolling' period under section 766.106(4), Florida Statutes, plus any other extension agreed to

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[3] Plaintiff recognizes that intra-district conflict does not confer jurisdiction upon this Court. (Initial Brief, p. 10).

by the parties as provided for under that subsection, *suspends* the running of the two-year statutory limitation period for filing suit. . . . We conclude that the tolling period provided by section 766.106(4) does interrupt and suspend the running of the limitations period."

Hankey thus interpreted the medical malpractice **statute** and the tolling provisions contained in that statute. The decision never addressed the novel questions of law ruled upon by the third district opinion below. There is no conflict whatsoever. Both *Hankey* and the third district panel decision both interpret the word "toll" to mean "suspend". And while *Hankey* interpreted the tolling provision in the medical malpractice **statute** liberally (to further its purpose), the third district decision below interpreted the Supreme Court **administrative order** strictly insofar as it purported to extend a **statute** of limitations. Because *Hankey* never dealt with the same question of law, there can be no express and direct conflict between the cases. This Court should therefore reject jurisdiction in this case.

RESPONSE TO MAIN ARGUMENT

THE TRIAL COURT PROPERLY ENTERED FINAL SUMMARY JUDGMENT FOR DEFENDANT BASED ON THE PLAINTIFF'S FAILURE TO TIMELY FILE HIS CLAIM BEFORE THE EXPIRATION OF THE STATUTE OF LIMITATIONS.

Standard of Review

The court reviews *de novo* the summary judgment in favor of the defendant. *Collections, USA, Inc. v. City of Homestead*, 816 So.2d 1225, 1227 (Fla. 3d DCA 2002). Appellate review of an issue resolved by the trial court as a matter of law, based on the undisputed facts, is *de novo*. *Aravena v. Miami-Dade County*, 928 So.2d 1163 (Fla. 2006).[4]

Argument

The issue in this case is whether the Florida Supreme Court's emergency administrative orders entered during times of hurricane or storm excused plaintiff's failure to timely file his complaint within the four year limitations period - when the exigent circumstances created by those natural disasters had nothing at all to do with

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[4] We also note that the Supreme Court has the authority to consider alternative grounds for affirming the decision below that were not raised by the parties. *Continental Cas. Co. v. Ryan Inc. Eastern*, 974 So.2d 368 (Fla. 2008).

that failure. Because those orders do not apply to extend the limitations period in our case, the trial court properly granted summary judgment based on the expiration of the statute of limitations.

Statutes of limitations are generally enacted to bar stale claims which have been dormant for a number of years but which have not been enforced. *State Dept. of Health and Rehabilitative Services v. West*, 378 So. 2d 1220, 1227 (Fla. 1979). "[T]he purpose of a statute of limitations is to protect unwitting defendants from the unexpected enforcement of stale claims brought by plaintiffs who have slept on their rights." *Maynard v. Household Finance Corporation III*, 861 So.2d 1204 (Fla. 2d DCA 2003).

"The immunity from suit which arises by operation of the statute of limitations is a valuable a right as the right to bring the suit itself . . . . Statutes of limitation are not only calculated for the repose and peace of society, but to provide against the evils that arise from loss of evidence and the failing memory of witnesses . . . ." *Wiley v. Roof*, 641 So.2d 66 (Fla. 1994). "Once the defense of the statute of limitations has accrued, it is protected as a property interest just as the plaintiff's right to commence an action is a valid and protected property interest." *Id.* at 68. In light of the substantial property interests of a defendant regarding his limitations defenses, a plaintiff cannot lightly ignore these important rights.

The parties agree that plaintiff filed his initial complaint four years and four days from the March 3, 2003 accident upon which plaintiff sues. The parties further agree that without consideration of any tolling[5] orders of the Supreme Court, the four year statute of limitations set forth in section 95.11(3) expired prior to the filing of the claim. In order to avoid this harsh result, plaintiff creatively contends that various emergency tolling orders entered by the Florida Supreme Court in response to exigent circumstances in the Eleventh Judicial Circuit have the effect of tolling all statutes of limitations for the length of time listed in each order (combined together). Plaintiff's novel approach must fail.

Plaintiff relies on six emergency administrative orders entered by the Florida Supreme Court in response to Hurricanes Frances, Jeanne, Katrina, Rita, Wilma and Tropical Storm Ernesto. Each such administrative order is titled: "In re: Emergency request to extend the time periods under all Florida Rules of Procedure for Miami-Dade County." Each order referenced a

[5] A "tolling" of a time period acts to interrupt the running thereof. *See Hearndon v. Graham*, 767 So.2d 1179, 1185 (Fla. 2000).

particular hurricane or storm that "caused the closure of the Miami-Dade County Courthouse" on a particular date.

Each order contained a "whereas" clause that stated: "WHEREAS this danger also may have **temporarily impeded the ability** of attorneys, litigants, witnesses, jurors, and others in the performance of their duties and obligations with respect to many legal processes throughout the State of Florida;"[6] (emphasis added). The orders also noted that they were made pursuant to administrative authority conferred by Article V, section 2, of the Florida Constitution and Florida Rule of Judicial Administration 2.030(a)(2)(B)(iv).

Paragraph 2 of each order stated: "In Miami-Dade County, all time limits authorized by rule and statute applicable to civil (inclusive of circuit and county),

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[6] On September 2, 1992, as a result of Hurricane Andrew, the Supreme Court published *In re: Emergency Petition to Extend Time Periods Under all Florida Rules of Procedure*, Supreme Court of Florida Case No. 80,387, 17 Fla. L. Weekly Supp. 578 (Fla. September 2, 1992). That original decision dealing with disaster relief contained virtually identical language to the subsequent emergency administrate orders issued by this Court: "WHEREAS the disaster also may **temporarily impede the ability** of attorneys, litigants, witnesses, jurors, and other in the performance of their duties and obligations with respect to many legal processes throughout the State of Florida;" (Emphasis added).

family, domestic violence, probate, traffic, and small claims proceedings are tolled from 5:00 p.m. on [specific date] through 8:00 a.m. on [specific date], *nunc pro tunc*." In other words, each of the six order tolled time limits for a specific period of days (31 days total when they are added together). Paragraph 4 of each order recognized that there might be instances where because of the hurricane or storm that applicable time limits could not be met even when considering the tolling periods provided. Such claims are to be resolved by the court on a case-by-case basis "where a party demonstrates that the **lack of compliance with requisite time periods was directly attributable to this emergency situation**." (Emphasis added).

In considering the language and structure of the six administrative orders relied upon by plaintiff, it is evident that this Court specifically designed the orders to assist lawyers and litigants in meeting their duties and obligations when their ability to meet these responsibilities was **temporarily impeded** by a natural disaster that caused the courthouse to be temporarily closed. The Supreme Court instituted the *temporary* tolling of deadlines to assist those who simply could not complete something (i.e., filing a complaint at the courthouse) because of the hurricanes and storms. This Court did not intend for this temporary tolling of the rules or statutes to excuse a party from failing to comply with statutory deadlines (such as limitations) that occurred many months or many years after the exigent circumstances no longer existed. Instead the

tolling orders temporarily excused actions that simply could not be completed within the time remaining under the rule or statute when the hurricane or storm occurred.

For example, let's assume that a defendant had twenty days to answer a complaint or risk a default. Assume that a hurricane hit Miami-Dade County on the eighteenth day, causing the courthouse to be closed for a week (and maybe the office of defense counsel to be damaged). Under these exigent circumstances, it is simply impossible for the answer to be filed by day twenty. Therefore, the obligation to file the answer would be tolled for a week (while the courthouse was closed) and the twenty day clock would resume when the courthouse re-opened - leaving the two day balance within which to file the answer. Similarly, a plaintiff who had two remaining days within a four year limitations period to file a complaint would likewise have the limitations period tolled (while the courthouse was closed) and then would still have two remaining days to file the complaint when the courthouse re-opened.

To be sure, the administrative orders of this Court were never meant to add a thirty-one day cushion to the limitations period for all persons in Florida who had claims that accrued around the same time as the claim of the plaintiff. The orders were meant to alleviate temporary difficulties caused by hurricanes or storms, not provide a grace period to those who make tardy filings years after the hurricanes were a distant memory.

Even the two cases cited by plaintiff applying these administrative orders to court deadlines support the defendant's position. First, plaintiff relies upon *State v. Hernandez*, 617 So.2d 1103 (Fla. 3d DCA 1993). In *Hernandez*, the State appealed the discharge of a criminal defendant following the State's failure to bring the defendant to trial within 10 days of an August 18, 1992 trial court order to do so. On August 24, 1992, Hurricane Andrew stormed through South Florida. As a result, the Supreme Court issued an order tolling "all time limits authorized by rule and statute affecting the speedy trial procedure in criminal and juvenile proceedings beginning August 24, 1992, for two weeks." *Id*. at 1103.

As explained by the third district court, this order tolled the running of the speedy trial window period in the case. Thus, "five days of the 10-day window had elapsed prior to August 24th, and the window was tolled from August 24th through September 6th. Thereafter, the window resumed running on September 7th. Clearly, only eight days of the window period had elapsed when the defendant was discharged on September 9th. His discharge was, therefore, premature and is reversed." *Id*. at 1103.

Plaintiff also relies upon *Sullivan v. State*, 913 So.2d 762 (Fla. 5th DCA 2005), another speedy trial case. In *Sullivan*, the Fifth District Court of Appeal noted that during the time between Sullivan's arrest and the expiration of the speedy trial period,

three administrative orders of the Supreme Court of Florida were entered wherein "all time limits authorized by rule and stature affecting the speedy trial procedure" were "tolled" in Seminole County due to hurricanes Charley, Frances and Jeanne for a cumulative tolling period of 15 days." *Id.* at 763. When the three tolling orders were considered, the notice of expiration of speedy trial was premature. *Id.* The State thus had the extra time to bring Sullivan to trial.

In both *Hernandez* and *Sullivan*, the appellate courts extended the deadline (by the extra time in the tolling orders) for a party to complete its obligations within the required time. These obligations simply could not otherwise be completed because of the hurricane's disruption of the court system. Both courts applied the tolling orders in the manner defendant suggests: the orders were meant to alleviate temporary difficulties caused by hurricanes or storms that **temporarily impeded** the ability of counsel or the parties to meet court deadlines. Nothing about either decision suggests that a party may use these types of tolling orders to excuse a failure to timely file a claim years after the hurricane emergencies have passed.

The polestar for interpreting the emergency administrative orders should be this Court's intent in entering the orders. We submit that the intent was to assist those temporarily troubled by the problems caused by the storms. The tolling orders were not meant to give windfall extensions to thousands of cases across the state years after

a storm temporarily impeded the ability of parties or counsel to complete a legal task. The orders were not meant to be a panacea for those who fail to diligently pursue their rights.

To the contrary, this Court should implement the intent of its emergency administrative orders and avoid an unreasonable windfall extension to plaintiff. Plaintiff, however, ignores the intent of the administrative orders in his effort to achieve such a windfall extension of time to file his complaint. Refusing to consider the purpose for the orders, plaintiff suggests that a "strict interpretation" of the language of the orders results in windfall extensions for all - no matter what the reason for the failure to file.

The third district's distinction that this Court's tolling orders "should be strictly construed in the context of statutes, as opposed to rules" makes sense. Under Article V, section 2(a) of the Florida Constitution, the "supreme court shall adopt rules for the practice and procedure in all courts." Judicial Administration Rule 2.205, (a)(2)(B)(iv), in turn, gives the Court ". . . the power, upon request of the chief judge of any circuit or district, or sua sponte, **in the event of natural disaster**, civil disobedience, **or other emergency situation requiring the closure of courts or other circumstances inhibiting the ability of litigants to comply with deadlines** imposed by the rules of procedure applicable in the courts of this state, to enter such order or

orders as may be appropriate to suspend, toll, or otherwise grant relief from deadlines imposed by otherwise applicable statutes and rules of procedure for such period as may be appropriate, including, without limitation, those affecting . . . all civil process and proceedings, . . .”

The pre-condition granting this Court such power is a natural disaster or other emergency situation requiring the closure of courts or other circumstances **inhibiting the ability of litigants to comply with deadlines**. Therefore, unless the ability of litigants to comply with deadlines is inhibited, this Court is not given the power to extend such deadlines. Interpreting the Rule of Judicial Administration in this manner - consistent with its plain language - is also consistent with the Constitutional grant of power to the Supreme Court to adopt rules for the practice and procedure in all courts.

Succinctly put, this Court does not have the power to permit the sort of windfall extension sought by plaintiff - under circumstances where plaintiff's ability to comply with court deadlines was not inhibited. Moreover, even if the Court had such power, the tolling orders - as discussed - were never intended to grant such windfall extensions. In any case, the tolling orders were never meant to be interpreted as plaintiff suggests.

In its brief, plaintiff discusses the application of Florida Statutes sec. 95.051and this Court's decision in *Hearndon v. Graham*, 767 So.2d 1179 (Fla. 2000). Plaintiff

suggests that the third district's "reliance on sec. 95.051 is misplaced because it ignores this Court's analysis in *Hearndon*." (Initial Brief, p. 29). Plaintiff also concludes that "[i]nterpreting sec. 95.051 as providing an exhaustive list of grounds for the tolling of a limitations period that has already begun to run after the cause of action has accrued - - as the Third District has done - - ignores other statutory tolling provisions." (Initial Brief, p. 34). In fact, plaintiff cites to a number of statutes containing tolling provisions that are not listed in sec. 95.051.

However, plaintiff's analysis is inapposite. To be sure, there are statutory provisions enacted by the legislature that provide for the tolling of the statute of limitations under various circumstances. But these are all **statutes**, enacted by the legislature, which has the exclusive power under the Florida constitution to create such statutes. Pursuant to Article III, section 1 of the Florida Constitution, "The legislative power of the state shall be vested in a legislature of the State of Florida . . . " In contrast, the Supreme Court has the power under Article V, section 2(a), of the Florida Constitution, to "adopt rules for the practice and procedure in all courts."

Consistent with the power outlined in Judicial Administration Rule 2.205 (a)(2)(B)(iv), the Supreme Court had the power to enter the various tolling orders precisely because of the "emergency situation requiring the closure of courts or other circumstances inhibiting the ability of litigants to comply with deadlines." The tolling

orders relied upon by plaintiff could thus extend the limitations period to allow plaintiff to comply with court deadlines with which he could not otherwise comply. The tolling orders were never meant to provide a windfall extension to a party whose ability to comply with deadlines was not inhibited by the emergencies. As plaintiff concedes, the emergencies did not so inhibit his ability to comply with court deadlines, and he did not rely on the tolling orders in any manner.

Since the tolling orders provide no windfall extension to plaintiff, the result is that the complaint was filed after the expiration of the statute of limitations. The summary judgment in favor of the defendant must therefore be affirmed.

CONCLUSION

Respondent requests that this court affirm the final summary judgment in his favor.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 30th day of October, 2009 to: Marlene S. Reiss, Esq., P.A., Two Datran Center, Suite 1612, 9130 South Dadeland Blvd., Miami, FL 33156 and Bernard H. Butts, Jr., Esq., Bernard H. Butts, Jr., P.A., 1790 W 49th Street, Suite 210, Hialeah, FL 33012.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the font requirements of Rule 9.210(a)(2). This brief is submitted in Times New Roman 14 point font.

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