Supreme Court of Florida

No. SC09-490

ROMAN RAMIREZ,
Petitioner,

vs.

CHARLES H. MCCRAVY,
Respondent.

[May 20, 2010]

PER CURIAM.

We initially accepted jurisdiction to review the decision of the Third District Court of Appeal in Ramirez v. McCravy, 4 So. 3d 692 (Fla. 3d DCA 2009), based on express and direct conflict with Hankey v. Yarian, 755 So. 2d 93 (Fla. 2000), and Sullivan v. State, 913 So. 2d 762 (Fla. 5th DCA 2005). After further consideration, we conclude that jurisdiction was improvidently granted. Accordingly, we hereby discharge jurisdiction and dismiss this review proceeding.

It is so ordered.

PARIENTE, CANADY, POLSTON, LABARGA, and PERRY, JJ., concur.
PARIENTE, J., concurs with an opinion.
QUINCE, C.J., dissents.
LEWIS, J., dissents with an opinion.

NO MOTION FOR REHEARING WILL BE ALLOWED.

PARIENTE, J., concurring.

Because the dissent contends that our discharge of jurisdiction should be of great concern to litigants, I write briefly to place the holding of the Third District opinion in the context of the facts of the case. If litigants must "beware" of any principle of law, it is that this Court's administrative tolling orders cannot be employed to grant a windfall extension to a statute of limitations when the litigant has not alleged that he was unable to timely file the lawsuit because of the courthouse closure. Essentially, that is the holding of the Third District in Ramirez v. McCravy, 4 So. 3d 692 (Fla. 3d DCA 2009)—that litigants cannot rely on this Court's tolling orders to add days to the statute of limitations established by the Legislature when there is no connection between the litigant's failure to file the lawsuit in a timely manner and the emergency that gave rise to the tolling order.

Clearly, if the courthouse is closed due a weather emergency at the time that a litigant is required to file a lawsuit, that day is treated no differently than a Saturday, Sunday, or holiday for computation purposes. Florida Rule of Appellate Procedure 9.420(f)(15) makes that computation explicit, and this common-sense application (that when the courthouse is closed, a pleading cannot be filed) should be made explicit in all other rules.

In this case, Ramirez filed his lawsuit several days after the four-year statute of limitations expired but never alleged that he relied on the courthouse closures in failing to timely file his lawsuit. In fact, the statute of limitations did not expire until six months after the last courthouse closure!

With regard to the Court's six tolling orders issued because of numerous hurricanes and tropical storms in 2004, 2005, and 2006, the facts were set forth by the Third District:

> The last administrative order covered the period from August 25 through August 31, 2006. Thus, Ramirez had more than six months after the last weather emergency forced the closure of the Eleventh Judicial Circuit.
>
> Ramirez has not explained how his late filing was attributable to any of the six weather emergencies. He has not alleged that these hurricanes or storms in any way "temporarily impeded the ability of [his] attorneys . . . in the performance of their duties and obligations with respect to" the timely filing of his lawsuit.
>
> . . . .
>
> Ramirez has not alleged that he relied on the administrative orders, or that they lulled him into inaction.

Ramirez, 4 So. 3d at 693.

The Third District "recognize[d] that traditional notions of justice, due process and access to courts, all justify the emergency administrative orders entered by the chief justices due to the weather emergencies." Id. at 694. However, under the facts of this case, it concluded:

> 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.

Id.

I originally voted to accept jurisdiction because I was concerned that the Third District questioned this Court's authority to enter administrative orders. Upon further review of the decision, the briefing, and oral argument, however, I conclude that the Third District provided a reasonable construction of the Court's administrative orders in the context of statutes of limitations and that its decision does not conflict with decisions addressing the speedy trial rule or decisions regarding equitable tolling. In my view, the purpose of the administrative orders was to assist those litigants and lawyers impacted by the weather emergencies. The purpose of the administrative orders would not be served if a litigant could tack on days to a statute of limitations where the last weather emergency occurred six months before the expiration and the litigant does not allege that the delay in filing was based on any of the weather emergencies.

For all these reasons, I agree with the decision to discharge jurisdiction and allow the Third District Court of Appeal decision to stand.

LEWIS, J., dissenting.

I dissent. The decision below and the principle of law specifically announced as the basis for the conclusion is in express and direct conflict with every Florida decision that has previously upheld any extension of a statutory time period based upon procedural rules or considerations, such as rules which extend any statutory time deadline due to the status of governmental facilities being closed for weekends, holidays, disasters and otherwise, along with the myriad of other practical circumstances and situations that the judicial branch has addressed for as long as the judicial system has existed. There is also misapplication of law conflict with Hearndon v. Graham, 767 So. 2d 1179 (Fla. 2000), and express and direct conflict with every other decision in Florida that has ever explained the concept of "tolling," all of which are contrary to the decision below. It appears that my colleagues who permit the announced legal reason for the decision below to stand find no express and direct conflict with the following principle and Justice Pariente attempts to explain away the stated **principle of law**:

> **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 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.

Ramirez v. McCravy, 4 So. 3d 692, 694 (Fla. 3d DCA 2009) (emphasis supplied). Justice Pariente goes to great effort to assert an unstated subjective intent in administrative orders contrary to the specifically stated principle of law articulated very clearly by the Third District as the reason and basis for its conclusion. Justice Pariente articulates an intent never voiced by the court below. When a court announces its decision and specifically states "We reach this conclusion because" followed by a clearly articulated principle of law, I read the words of the opinion rather than suggesting an unstated subjective intent.

Litigants beware! The principles of law announced in the decision below have far reaching consequences. The principle of law announced by the court below may or may not be correct but it must be resolved to avoid the destabilizing effect of its application. Accordingly, I dissent because the destabilizing effect of the principles announced should be addressed.

Application for Review of the Decision of the District Court of Appeal - Direct Conflict of Decisions

Third District - Case No. 3D08-676

(Dade County)

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for Petitioner

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