IN THE SUPREME COURT OF FLORIDA
CASE NO.: SC17-829

DCA Case No.: 2D15-304; 2D15-677
Lower Tribunal Case No.: 10-16698-CI-21

D.H. and L.H., minor children, by and through their next friends and permanent guardians, RICHARD HARKINS and SUELLEN HARKINS,

Petitioners/Appellants,

vs.

ADEPT COMMUNITY SERVICES, INC. and B.E.A.R.R., INC.,

Respondents/Appellees.

PETITIONER'S BRIEF ON JURISDICTION

RICHARD A. FILSON, ESQ.
Fla. Bar No. 435074
FILSON & PENGE, P.A.
Co-Counsel for Plaintiffs
2727 S. Tamiami Trail, Suite 2
Sarasota, Florida 34239
Telephone: 941.952.0771
Facsimile: 941.951.2142
filsonlawfirm@gmail.com

HOWARD M. TALENFELD, ESQ.
Fla. Bar No. 312393
NICOLE R. CONIGLIO, ESQ.
Fla. Bar No. 084939
TALENFELD LAW
Co-Counsel for Plaintiffs
1776 N. Pine Island Road, Suite 222
Fort Lauderdale, Florida 33322
Telephone: 754.888.5437
Facsimile: 954.644.4848
howard@justiceforkids.us
nicole@justiceforkids.us

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SUMMARY OF ARGUMENT

The Second District Court of Appeal's Opinion in this case (the "Opinion") is of great public importance because it demonstrates a misunderstanding of the legal standard as to when a cause of action accrues for a minor child for statute of limitation purposes. It expressly and directly conflicts with three (3) other District Courts opinions resulting in claims for minor children accruing at different times in the Second District as opposed to the First, Third and Fourth Districts. Particularly, the lower court decision here improperly abrogates the standard for accrual confirmed by the First, Third, and Fourth District Courts of Appeal that a cause of action for a minor child does not accrue until an adult capable of brining the action knows of the invasion of the minor's legal rights. Significant grounds for a sufficient conflict thus exist to invoke the jurisdiction of this court.

STATEMENT OF THE CASE AND FACTS

Pursuant to Florida Rules of Appellant Procedure Rule 9.030(a)(2)(A)(iv), D.H. and L.H., minor children, seek review of the Opinion. D.H. and L.H. are twins. Their mother, who is developmentally disabled, received services from Appellees, Adept Community Services, Inc. (hereinafter "Adept") and B.E.A.R.R., Inc. (hereinafter "B.E.A.R.R.") which were intended to help her live on her own and care for her children. On November 22, 2010, the grandparents filed a negligence complaint against Adept and B.E.A.R.R. The grandparents sued on behalf of the twins as their "next friends and permanent guardians." In sum, they alleged that Adept and B.E.A.R.R. knew that the mother required round the-clock help to take care of the twins yet negligently provided services that left the twins alone in the mother's care resulting in physical, mental, and emotional injuries to them. Opinion p. 3-4.

B.E.A.R.R. moved to dismiss the complaint, asserting that it was barred by the four-year statute of limitations applicable to negligence claims under section 95.11(3)(a). The trial court denied that motion without prejudice to B.E.A.R.R.'s raising the statute of limitations issue again by way of motion for summary judgment.

B.E.A.R.R. filed a motion for summary judgment, in which Adept later joined, arguing, among other things, that the twins' negligence claims were barred

by the four-year statute of limitations. In substance, they argued that the twins' grandparents were aware of the twins' injuries more than four years before suit was filed and could have brought an action on behalf of the minor child within the four-year limitations period but failed to do so. The twins disputed the legal capacity of the grandparents to sue on the twins' behalf and the grandparents' knowledge of the alleged invasion of the twins' legal rights. The court denied the motion.

Adept and B.E.A.R.R. filed motions for reconsideration. They argued that the grandparents were able to sue on the twins' behalf as next friends at any time after they became aware of the twins' injuries and their connection to the alleged negligence of Adept and B.E.A.R.R. As a result, they argued, the twins' negligence complaint was time-barred. The trial court agreed and entered a final summary judgment in favor of Adept and B.E.A.R.R. The twins, through their grandparents, timely appealed.

On April 5, 2017, the Second District Court of Appeal affirmed the trial court's final summary judgment holding, in part:

> 1. Any argument that a cause of action for a minor child does not accrue until an adult capable of bringing the action knows of the invasion of the minor's legal rights is improper because it is an expression of the delayed discovery doctrine.
>
> 2. The statute of limitations would have expired if it ran from the date the grandparents learned of the abuse, because they could have sued as "next friends."

3. The statute of limitations was not tolled pursuant to Fla. Stat. section 95.051(l)(h) because a dependency court guardian ad litem existed.

STANDARD OF REVIEW

The Florida Supreme Court has discretionary jurisdiction to review a decision of a District Court of Appeal that expressly and directly conflicts with a decision of the Supreme Court or another District Court of Appeal on the same point of law. Fla. R. App. P. 9.030(a)(2)(A)(iv). When a district court reaches a "conflicting conclusion in a case involving substantially the same controlling facts as were involved in allegedly conflicting prior decisions" of other district courts, this Court's conflict jurisdiction warrants accepting review. *Nielsen v. City Sarasota*, 117 So. 2d 731, 734 (Fla. 1960); *see also Crossley v. State*, 596 So. 2d 447, 449 (Fla. 1992).

ARGUMENT

The Second District is in express and direct conflict with the First, Third, and Fourth District, on the issue of when a cause of action accrues for a minor child.

The Second District Court of Appeal's opinion in this case, is of great public importance as it demonstrates an erroneous understanding of when a cause of action accrues for a minor child. Its holding directly and expressly conflicts with the holdings contained in the majority opinions rendered by the Fourth District Court of Appeal in *Doe No. 3 v. Nur-Ul-Islam Academy, Inc.*, 2017 WL 1076928 (Fla. 4th

DCA 2017)[1], by the First District Court of Appeal in *S.A.P. v. Dep't of Health & Rehab, Servs.*, 704 So. 2d 583, 586 (Fla. 1st DCA 1997), and the Third District Court of Appeal in *Drake v. Island Cmty. Church, Inc.*, 462 So. 2d 1142 (Fla. 3d DCA 1984). The controlling facts in all of these cases are substantially similar in that they all focus on the issue of when a cause of action accrues for a minor child.

Particularly, the Second District Court of Appeal held that in the case of a minor child, the date of the accrual of the cause of action does not occur when an adult with authority to sue on the minor's behalf knows or should know of the minor's injury and its connection to the defendant's negligence. The Court stated that this standard of determining accrual contained in the decisions of *S.A.P. v. Dep't of Health & Rehab, Servs.*, 704 So. 2d 583, 586 (Fla. 1st DCA 1997), and *Drake v. Island Community Church, Inc.*, 462 So. 2d 1142 (Fla. 3d DCA 1984), was no longer good law based on this Court's ruling in *Davis v. Monahan*, 832 So. 2d 708 (Fla. 2002). The Second District Court of Appeal in its Opinion particularly stated that the accrual of a case of a minor predicated on an adult's knowledge of negligence was tantamount to a delayed discovery argument which was limited by this Court in Davis to other types of cases.[2]

[1] The opinion for *Doe No. 3 v. Nur-Ul-Islam Academy, Inc.*, 2017 WL 1076928 (Fla. 4th DCA 2017) was dated March 22, 2017. A corrected opinion was filed on May 5, 2017.

[2] This Court in *Davis v. Monahan*, 832 So. 2d 708 (Fla. 2002) held that the delayed discovery doctrine was not applicable to a claim made for misappropriation of assets. It did not discuss, or consider the issue of when a cause of action for a minor accrues.

The holding of the Fourth District Court of Appeal in *Doe No. 3 v. Nur-Ul-Islam Academy, Inc.*, 2017 WL 1076928 (4th DCA 2017) expressly and directly conflicts with the Second District Court of Appeal's analysis of when a cause of action for a minor child accrues. The Fourth District in Doe No. 3 instead agreed with the analysis of the Third District Court of Appeal in *Drake By and Through Fletcher v. Island Community Church, Inc.*, 462 So. 2d 1142 (Fla. 3d DCA 1984). There, the Third District deemed it elementary that:

> "A cause of action cannot be said to have accrued, within the meaning of [the statute of limitations], until an action can be instituted thereon. There must be some person capable of suing or being sued upon the claim in order for the statute to begin to run."

Id. at 1144 (alteration in original) (quoting *Berger v. Jackson*, 156 Fla. 251, 23 So. 2d 265, 269 (Fla. 1945)). Stating that Florida Rule of Civil Procedure 1.210(b) does not allow a minor to bring suit on his or her own behalf, the Third District Court of Appeal expressly held in Drake that:

> "It follows, then, that the statute of limitations could not begin to run against the minor child in the present case until the parent knew or reasonably should have known those facts which supported a cause of action. Since the complaint in this action alleges that the parent did not have this knowledge, the statute did not commence to run as a matter of law against the minor child." Id.

The First District Court of Appeal's holding in *S.A.P. v. Dep't of Health & Rehab, Servs*., 704 So. 2d 583, 586 (Fla. 1st DCA 1997) also expressly and directly conflicts with the Opinion. In S.A.P., the First District Court of Appeal held that:

> "Under Florida Rule of Civil Procedure 1.210 a minor is incapable of bringing an action on his or her own behalf, but can only sue by and through a guardian ad litem, next friend, or other duly appointed representative. Thus, the statute of limitations will begin to run as to the parents or the legal guardian of the minor, in their capacity of next friend, when the parents or guardian knew or reasonably should have known of the invasion of legal rights. *Drake v. Island Community Church, Inc.*, 462 So. 2d 1142, 1144 (Fla. 3d DCA 1984), *pet. for rev. denied*. 472 So. 2d 1181 (Fla. 1985)." Id. at 585 – 586.

The Fourth District Court of Appeal in *Doe No. 3 v. Nur-Ul-Islam Academy, Inc.*, 2017 WL 1076928 (Fla. 4th DCA 2017) also expressly and directly rejected the analysis set forth by the Second District Court of Appeal in its Opinion that determining accrual of a cause of action of a minor based on when an adult becomes aware of a cause of action for a minor child is an improper application of the delayed discovery doctrine. The Fourth District Court of Appeal stated:

> "However, we do not agree that Doe's argument revolving around the application of rule 1.210(b) is a variation on the application of the delayed discovery doctrine. Doe's contention regarding the accrual of her cause of action is based on a separate rule and line of cases that are different from the principles of the delayed discovery doctrine. The rationale for protecting minors using rule 1.210(b) in conjunction with the statute of limitations (an adult must bring the action, so the adult must have knowledge of the injury) to delay accrual of the cause of action is different

> from the rationale for protecting minors under the doctrine of delayed discovery (the trauma of the injury induces suppression of consciousness) to delay accrual. Moreover, there is no case law which limits the application of rule 1.210(b) to intentional torts." Id.

The Court should exercise its discretion to review this case and resolve the conflict between the districts by holding that the statute of limitations will begin to run as to the parents or the legal guardians of minors, in their capacity of next friend, when the parents or legal guardian knew or reasonably should have known of the invasion of legal rights as set forth in *Doe No. 3 v. Nur-Ul-Islam Academy, Inc.*, 2017 WL 1076928 (Fla. 4th DCA 2017), *Drake By and Through Fletcher v. Island Community Church, Inc.*, 462 So. 2d 1142 (Fla. 3d DCA 1984) and *S.A.P. v. Dep't of Health & Rehab, Servs.*, 704 So. 2d 583, 586 (Fla. 1st DCA 1997).

The issue is of great public importance because as a result of the express and direct conflict between the Second District Court of Appeal with the First, Third, and Fourth District Courts of Appeal, claims for minor children accrue at different times depending on the District. There is thus no statewide uniformity on the issue of when a cause of action for a minor child accrues. Claims thus made timely in one District, could be barred by the statute of limitations in another. This creates chaos, injustice, and would encourage forum shopping under certain circumstances.

CONCLUSION

The Opinion is expressly and directly in conflict with the holdings of cases in the First, Third and Fourth District Courts of Appeal, and because these opinions cannot be reconciled with each other on controlling questions of law, Petitioner respectfully requests that this Court accept discretionary jurisdiction.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Florida E-Portal Service to: **KEVIN M. DAVIS, ESQ.**, (kdavis@defensecounsel.com, grivera@defensecounsel.com), *Attorney for Defendant, B.E.A.R.R. Inc.* and **J. ROBERT MCCORMACK, ESQ.**, (bob.mccormack@ogletreedeakins.com, christine.skalla@ogletreedeakins.com), *Attorney for Defendant, Adept Community Services, Inc.*, on this 12th day of May, 2017.

TALENFELD LAW
Howard M. Talenfeld
FBN: 312398
Nicole R. Coniglio
FBN: 84939
Counsel for Plaintiffs/Appellants

FILSON & PENGE, P.A.

/s/ Richard A. Filson
Richard A. Filson
FBN: 0435074
Counsel for Plaintiffs/Appellants

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rule of Appellant Procedure 9.210(a)(2).

FILSON & PENGE, P.A.

/s/ Richard A. Filson
Richard A. Filson