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IN THE DISTRICT COURT OF APPEAL
OF THE SECOND JUDICIAL DISTRICT
IN AND FOR THE STATE OF FLORIDA

GORDON WAYNE WATTS,
Petitioner/Plaintiff/Appellant,

vs.

FLORIDA COMMISSION
ON HUMAN RELATIONS,
Respondent/Defendant/Appellee.
_____/

DCA NO.: 2D02-4061

Lower Tribunal
Case Number: 22-01590

REPLY BRIEF OF THE APPELLANT

GORDON W. WATTS, Petitioner / Plaintiff / Appellant
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STATEMENT OF THE CASE AND FACTS

After careful review of the "Statement of the Case and Facts" section of the response brief filed on March 04, 2003, by the appellee, The Florida Commission on Human Relations (FCHR), the appellant,

Gordon Watts, in and through his counsel (himself, pro se), wishes to make these potential corrections:

* The statement of the FCHR, while nearly correct, omits some details, contained in the Initial Brief of the Appellant (Watts).

* This statement correctly points out various allegations about a disputed point (whether or not the FCHR employee taking the phone call on December 19, 2001 referred the matter to the Equal Employment Opportunity Commission and whether or not this employee made objections at that time about the timliness issue.

The Appellant, Watts, wishes to state for the record that his allegations are correct as deferred to the Arguments below.

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SUMMARY OF REBUTTAL

Rebuttal addresses only the allegations made in the response of the FCHR:

Petitioner satisfied the law as stated in argument section of initial brief.

The Appellee, FCHR, acknowledged the "Strict" and "Lenient" arguments made by Appellant, Watts, but chose not to give a response to the "Lenient" argument, which is probably the strongest argument made. FCHR chose not to respond to the latter argument becasue agency knew it was wrong on this point.

The Commission's own rules mandate acceptance as timely of item in question, supported by case law and State Law, as appropriate.

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REBUTTAL

STANDARD OF REVIEW
Pursuant to Fla.R.App.P.9.210(b)(5), Petitioner states the following standards of review on which appeal is based:

*** Fla.R.App.P 9.100(k)(Reply), which allows 20 days from response and up to 15 pages; and,

*** Fla.R.App.P. 9.420(d)(Additional Time After Service by Mail), which adds 5 days from mailing brief.

In rebuttal to the arguments raised by the FCHR in regards to the filing with any unit of the government that is a fair employment practice agency under C.F.R. $ 1601.70-1601.80:

The appellant acknowledges that the Tallahassee Police Department is not a listed member of the agencies shown in the federal code cites, and further admits that this may be a "weak" legal argument, but if it were to be pursued, the avenue would be to note that "[t]he city of Tallahassee is an Equal Opportunity Employer," as cited on its website, http://www.state.fl.us.citytlh/human_resources/employment.html.

This invokes 1601.70(b), which allows the FEP Commission to defer to any state or local agency, even if it has not applied for FEP designation, if it meets any one of the three requirements, and the Tallahassee Police Department appears to meet the first requirement in 1601.70(a), namely in that it is authorized to grant relief from the practice of discrimination, presumably by hiring or promotion of a qualified applicant - or the firing or discipline of an offending supervisor. This Police Department is a "state or local" agency, as well, thus giving it possibly legal standing here, and this basis, if upheld

on appeal, would possibly set case law precendent about how a person so aggrieved might file a grievance and be accepted.

In rebuttal to the arguments raised by the FCHR in regards to the standards set by St. Petersburg Motor Club v. Cook:

Helen Cook, the appellee, was aware of the potential discrimination all along, and this court found that "[w]e must focus on the time of the discriminatory act, not upon the time at which the consequenses became most painful, and accordingly, the limitations period commenced to run no later than the date on which the board of directors clearly established its official position as it related to the appellee and notified her." (Cook, citing Deleware State College v. Ricks 449 U.S. 250, 101 S.Ct. 498, 66 L.Ed.2d 431). (1980)

The appellee, FCHR, claims appellant Watts admited to knowlwdge of the discrimination in an AOL instant message to "Republican Marty's" secretary. This, however, is not true: A closer reading of the e-note, indicates that appellant Watts relayed the police officer's claims that Marty was offended by his Indian attire, and asked "[a]re these claims true?" (Record:000007)

Appellee, FCHR, takes issue with the fact that appellant did not have the EEOC (Equal Employment Opportunity Commission) or the FCHR sign his complaint, but this expectation is unreasonable, in that both agencies refused, the EEOC indicating that is only handeled "employment" complaints, and the FCHR's refusal based on the (false) claim that FCHR only handled "housing and employment" issues, not those relating to public accomidations.

FCHR claimed in its previous brief that its employee did not make these claims and did not refer the matter to the EEOC. There are, however, three (3) witnesses against that claim:

(1) The FCHR, itself, took three phone calls on December 09, 2001, as shown by the record (R:000008), and this hints that the complainant, Gordon Watts, received some sort of "no" answer;

(2) The appellant gives his word regarding this matter as a witness, albeit biased; and, lastly,

(3) The phone record shows only one phone call between the three calls to FCHR and the EEOC, namely an incoming call at around 11:26 pm on the 19th, indicating a "cause and effect" relationship between the calls to the FCHR and the eventual call to the EEOC. Why did appellant Watts call the EEOC? The record supports his recolection and the evasive actions of the FCHR, who never made this rebuttal in phone calls made to its agency - and not until the filing of a response brief. (Appellant apparently called EEOC only becasue of request by FCHR.)

It is unreasonable for the appellee FCHR to expect appellant to coerce or "make" an agency provide a date stamp. That would be like a cop kicking a tail-light out, and then citing for that in a ticket. One can not make the cop do anything forcibly, namely kick or not kick out the tail light.

Appellee raises Greene v. Seminole Electric, as supposedly being in "accord" with the prior citing of case law.

In rebuttal to this argument: Green only permits the circumstances of Florida Statute 95.051(2) to toll (suspend) the limitation period, but /s/ 95.051(2) makes certain exceptions, namley "those specified in this section, s. 95.091," and others. So, what does Section 95 include? Florida Statute 95.031, Computation of Time, is in this section, and states that "[e]xcept as provided in subsection (2) and in s.95.051...time...runs from the time the cause of the action accrues. (1) A cause of action accrues when the LAST element constituting the cause of action occurs," (Emphesis mine) and, "...is the FIRST WRITTEN DEMAND for payment..." (Emphesis mine).

This indicates that the *written* admission of discrimination is what starts the time-clock, but other statues cited below will more explicitly support this definition.

Indeed, the courts generally found in Merkle v. Robinson, 737 So.2d 540 (Fla. 1999) that statutes of limitations are to be considered substantitive law, which is subject to the "significant relationship" test, when a choice of law exists. (Accord Fulton County Administrator v. Sullivan, Florida Supreme Court, reference unavailiable currently). The result of this is that, even though, assuming arguendo Watts' action to be time-barred under Florida Law, the party will now be able to maintain an action in Florida. This argument is supported, ironically, by Florida Law, itself, below:

Appellee, FCHR, acknowledges the "lenient" argument made in initial brief - but with glaring ommission, does not rebut this argument! (Only rebutting the "strict" argument.) This is probably because this argument was the strongest one, in

which appellee's own rules and regulations made a distinction between when an action happened and when a person might find out the discrimitory nature (as opposed to just plain meannes as a cause for a mistreatment).

This court must overturn this unjust decision, in that it is contrary to Florida Statute 760.01(3), which mandates that the administration of The Florida Civil Rights section to be liberally construed, meaning, in plain English, that, where there is a conflict between rules, the more "liberal" standard shall start the time-clock.

That standard was stated on page 12 of the appellant's initial brief, quoting R:000015 of the record, which is a copy of the FCHR's own rules, allowing time to start whan petitioner "learned that a discrimitory action was taken." Unless FCHR attorneys can read minds, it is unreasonable to estimate when petitioner Watts "learned" anything.

And that is why the response brief chose not to respond to this argument: it was right. As well, appellee FCHR did not respond to appellent citation of McRae v. Robbins, which mandates "provisions for due notice to interested parties [including Watts] as to time and place with appropriate opportunity to be heard..." (pages 13 and 14 of appellant's Initial Brief). (McRae hints that "ignorance of the law" just might be an excuse, where it is occasioned soley by the negligence of the referee, with no contributory negligence on the part of the person seeking relief, and where evidence exists that complainant has made every valid effort to move the case along the proper channels.)

The FCHR did not respond on that point as well becasue they knew that this basis alone was sufficient to overturn: Indeed, a recent poll by the appellant finds that practically NO persons of the general public even know of the existance of the Florida Commission on Human Relations, or what it does. Thus, FCHR knows that its purposeful and willful lack of TV and paper advertisement was to blame for appellant searching many months daily praying and seeking diligently and still unable to find a State employee at the Capitol who knew to refer appellant Gordon Watts to this "hidden" agency.

(If this court doubts the "hiddenness" of the FCHR, appellant respectfully urges court to inquire of the general public "which agency would one turn to" for relief regarding public accomidations problems.)

Citing letters from the ACLU (Supplement: 003), a private attorney (S: 002), the Florida Office of the Attorney General (S:001) - supplements to the record on appeal, the first two of which the lower tribunal clerk omitted in initial preparation of record - and the office of former State Senator, John F. Laurent (R: 000022), APPLEEANT, respectfully brings to the attention of this court that none of the four (4) referrals mentions the Florida Commission on Human Relations, supporting the appellant claims of the "hidden" nature of the FCHR, which goes agains case law in McRae cited above: How could the appellant have "due notice" if practically NO ONE of the general - or even elite Tallahassee - public was aware of the existance of the FCHR? (Appellant could not, thus this court must overturn.)

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CONCLUSION

Commission rules clearly support appellant and petitioner Watts in his claims of timliness;

Case law support(s) commission rules per above, and case law draws the line in the sand, which, apparently, appellee and defendant has decided to cross;

Lastly, State Law, specifically that stated in ititial brief and in rebutt above, mandates acceptance by respondent, FCHR, of complainant's timely complaint.

For the reasons given, the appellee, The Florida Commission on Human Relations, has not shown this court that its assertion should stand.

It is suggested, as a remedy, that this court, for the reasons above, reverse and remand, in part regarding timliness in the instant case. It is further sought before this honorable Court that court would take into consideration steps to prevent *future* complainants from being "in the dark" about FCHR's existance and mission, specifically appellant prays this court (and appellee too) that appelle would institute an advertisement campaign (of radio, TV, and newspaper), to afford future complainants "due notice."

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CERTIFICATE OF FONT SIZE, FONT TYPE, AND MARGINS

Pursuant to Fla.R.App.P.9.210(a), Plaintiff hereby certifies that standards were met by using the following in typeset: Font Size = 14 ; Font Type = "Times New Roman" ; Margins = 1 inch in top, bottom, left, and right.

(but were they? --- be sure to check for this when reviewing rough draft)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to the following parties this 24th day of March, 2003 in duplicate by First Class U.S. Postal Mail - from two separate locations to ensure delivery, and with one copy Certified with return receipt.

Denise Crawford, Clerk of the Commission, c/o Fla. Comm. on Human Relations
2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301-4857

Second District Court of Appeal, State of Florida
Post Office Box 327 ~~~ 1005 East Memorial Boulevard, Lakeland, FL 33801

Respectfully submitted,

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Acting Attorney for the Appellant:
Gordon W. Watts, PRO SE

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_____/

DCA NO.: 2D02-4061

Lower Tribunal
Case Number: 22-01590

Motion for Oral Arguments

Pursuant to the appropriate Rule of Appellate Procedure, appellant, Gordon W. Watts, respectfully makes himself available for oral arguments:

It is rare that a poor, pro se appellant would live within waling distance of one of the five (5) Florida Courts of appeal. Therefore, appellant, Gordon Watts, takes opportunity to make himself available for oral arguments, to show respect for the court - and, appellant admits, to show deference for news media, who might show increased liklihood of coverage of a "live" event under our Federal First Amendments.

Supplement to the Index of Record

Pursuant to Fla.R.App.P.9.220(appendix), Petitioner hereby supplements the index in this cause. Supplement may be served with a petition, brief, motion, such as this reply brief of the appellant:

Volume 1 of 1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing MOTION and SUPPLEMENT was mailed to the following parties this 24th day of March, 2003 in duplicate by First Class U.S. Postal Mail - from two separate locations to ensure delivery, and with one copy Certified with return receipt.

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