

IN THE SUPREME COURT OF FLORIDA

AMANDA JEAN HALL, etc.,

Petitioner,


v.

Case No. SC11-1611

L.T. No. 1D10-2820

R.J. REYNOLDS TOBACCO CO.,

Respondent.

FILED
THOMAS D. HALL
2012 SEP 18 AM 9:32
CLERK SUPREME COURT
BY 

PETITIONER'S MOTION FOR REHEARING

The Petitioner Amanda Jean Hall respectfully moves for rehearing of the order dismissing this case because the Court has misapprehended the facts by concluding that this case is moot. While the action appeared to be on its way to becoming moot at the time of R.J. Reynolds Tobacco Company's suggestion, subsequent events demonstrate that it will not become moot for quite some time.

In its suggestion of mootness, Reynolds stated that it had "paid the judgment in full to Mrs. Hall," but this was not true then and is still not true today. As this Court's website indicates, in contrast to other cases where United States Supreme Court review has been exhausted, the judgment below has not been satisfied, Reynolds' bond remains posted, and Mrs. Hall is therefore prohibited from enforcing her judgment pending a ruling on her challenge to the constitutionality of the bond statute. *See Tobacco Legislation Appeals Bond Posted,*

http://www.floridasupremecourt.org/clerk/tobaccoBonds/TAB_Appeals-Bonds%20Posted062212.pdf (last visited Sept. 10, 2012)

Mrs. Hall recognizes that her responses may have contributed to the Court's misunderstanding. In her direct response, Mrs. Hall "buried the lead" by arguing first that the Court should not dismiss the case even if and when it becomes moot and only explained why the matter was not yet moot at the very end of her response. And she opened her request for judicial notice by stating, "Reynolds has filed a suggestion of mootness in this case because it has largely paid Ms. Hall's judgment at this point and, in any event, her judgment is no longer stayed under the subject statute." It appears that the Court may have mistakenly understood the assertion that her judgment is no longer stayed as a concession of mootness by Mrs. Hall, even though it was merely intended as a summary of Reynolds' argument. While the stay of the judgment below temporarily ended on March 26, 2012, when the Supreme Court of the United States denied certiorari, it has since been reinstated.

To the extent that Reynolds had any basis to represent that it had paid the judgment in full, that basis was removed on July 19, 2012, when the trial court held that the interest rate applicable to the judgment continues to be 6%, and not 4.75% as Reynolds had argued. (**Exhibit A.**) Reynolds appealed that order on August 17, 2012. (**Exhibit B.**) That appeal is pending as Case Number 1D12-3955

in the First District Court of Appeal, and Reynolds filed its initial brief on September 14, 2012.

Reynolds has still not paid all of the interest that is owed on the underlying judgment and because its bond under section 569.23 is still posted, Mrs. Hall remains unable to enforce this judgment. This case is accordingly not moot and will not become moot until the appeal in 1D12-3955 becomes final and Reynolds either prevails or finally pays the remaining interest owed on the judgment.

Moreover, even if this case were to become moot, Mrs. Hall's counsel is fully prepared to litigate the constitutionality of section 569.23 to the end. He has coordinated with the vast majority of the *Engle*-progeny plaintiffs whose judgments have been superseded pending appeals by the tobacco companies, including the amici in this case, and will institute as many review proceedings as are necessary in those cases to continue to litigate the issue until it returns to this Court. The parties and, much more importantly, the lower courts would not have to expend the resources necessary for that purpose if this Court not only grants rehearing because this case is not moot, but decides this appeal on the merits, even if this case becomes moot before review is complete. Thus, in ironic contrast to other cases where the Court has declined to dismiss a moot case even though both parties asked for dismissal to avoid the expense of litigating an issue that will not impact them, *e.g. Pino v. Bank of New York*, 76 So. 3d 927 (Fla. 2011), the Court

would conserve both judicial and party resources by deciding this case even if it were to become moot before oral argument.

WHEREFORE, the Court should rescind its dismissal of this case, reset it for oral argument, and decide this case on the merits without further concern for whether it becomes technically moot.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following persons by e-mail this 18th day of September, 2012:

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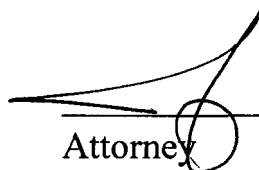
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IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

AMANDA JEAN HALL, Personal
Representative in the Estate of Arthur
Hall Sr., deceased,

Plaintiff,

v.

CASE NO.: 01-2007-CA-5098

DIV.: J

R.J. REYNOLDS TOBACCO COMPANY,
Defendant.

ORDER DETERMINING RATE OF INTEREST

(version for D)

THIS CAUSE came before the Court on Defendant R.J. Reynolds Tobacco Company's Motion to Determine Rate of Interest Payable on Judgment filed on April 23, 2012 and the Plaintiff's memorandum in opposition filed on April 27, 2012. A hearing on the matter occurred on May 24, 2012. The Court, having heard oral arguments and reviewed the file, hereby finds:

A jury verdict in this case was returned on March 12, 2010. The Final Judgment was entered March 23, 2010, *nunc pro tunc* to March 12, 2010. The Final Judgment awarded interest at the rate of 6% per annum, the then fixed statutory rate of interest. § 55.03, Fla. Stat. (2010) (amended 2011); Dep't of Financial Servs. (2010). To date, the judgment has not been satisfied.

The Defendant requests that the Court determine that the 2011 amendment to Florida's judgment interest rate statute, which changes the interest rate from a fixed to a variable rate, applies to the unpaid portion of the 2010 judgment. The Plaintiff, in contrast, argues that the statute in effect at the time the judgment was entered in 2010 controls until the judgment is paid. § 55.03, Fla. Stat. (2010).

The Court finds that the plain language of the statute at issue does not indicate retroactive applicability. Therefore, the judgment shall bear interest at the rate provided on the face of the judgment.

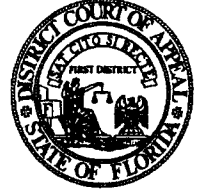
SO ORDERED this 19 day of ^{July}~~May~~, 2012.

ORIGINAL SIGNED BY
STANLEY H. GRIFFIS III
CIRCUIT JUDGE

Stanley H. Griffis III, Circuit Judge

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IN THE CIRCUIT COURT, EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

AMANDA JEAN HALL, etc.,

Plaintiff,

vs.

CASE No.: 07-CA-5098

Division: J

R.J. REYNOLDS TOBACCO Co.,

Defendant.

NOTICE OF APPEAL

NOTICE IS GIVEN that R.J. Reynolds Tobacco Company, Defendant/Appellant, appeals to the First District Court of Appeal the order of this Court rendered on July 23, 2012. The nature of the order is a non-final order entered after final order on an authorized motion, specifically an "Order Determining Rate of Interest." See Fla. R. App. P. 9.130(a)(4). A conformed copy of the order is attached as Exhibit "A."



J. K. Irby, Circuit and County Court Clerk, Alachua County, Florida, certifies this is a true copy of the document of record in this office, which may have been redacted as required by law. Witness my hand and seal on August 17, 2012

J. K. Irby, Clerk, Circuit and County Court

By [Signature]
Deputy Clerk

J.K. "BUDDY" IRBY
CLERK OF COURTS
ALACHUA COUNTY, FL.

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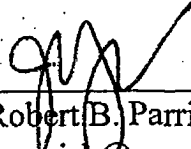
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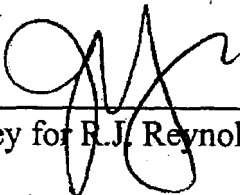
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