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Supreme Court of Texas.
In the Interest of A. D., a child.
No. 00-0337.

March 25, 2001.

Appearances:

Rhonda Amkraut Pressley, State of Texas Attorney Generals Off.
Child Support Enfcmt., Austin, TX, for petitioner.
Michael Calvin Abbott, Orange, TX, for respondent.

Before:

Chief Justice Thomas R. Phillips, Justice Priscilla R. Owen,
Justice Harriet O'Neil, Justice Wallace B. Jefferson, Justice Nathan
L. Hecht, Justice Deborah Hankinson, Justice James A. Baker, Justice
Craig Enoch, Justice Xavier Rodriguez.

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PETITIONER

JUSTICE: Thank you. Be seated. [inaudible] here at the moment but I'm pleased to welcome Judge -- well, soon to be Judge Wallace Jefferson [inaudible] is watching oral arguments. The Court is ready to hear argument from petitioner in In the interest of A.D.

SPEAKER: May it please the Court. Miss Rhonda Pressley will present argument for the petitioner. Petitioner has reserved five minutes for rebuttal.

ORAL ARGUMENT OF RHONDA AMKRAUT PRESSLEY ON BEHALF OF THE PETITIONER

MS. PRESSLEY: May it please the Court. There really is no vested right not to take court order for child support. To find a vested right that it could call with impermissibly impaired by the issuance of the administrative writ withholding this case.

JUSTICE: What would the same thing be true of any damages that would be due under a new cause of action that the legislature created?

MS. PRESSLEY: But --

JUSTICE: Like the [inaudible] for example. When they created it, they created it only prospectively but when you make the same argument then while those -- there's no vested right not to cheat people and get away with it. So you should be able to go ahead and get damages.

MS. PRESSLEY: Well, that it -- my argument isn't limited to -- to that -- to that at all.

JUSTICE: Wouldn't it be fair to say that this -- I forgot his name, this gentleman had he been aware of the law and agreeing the law, and keeping up with it, and then for a certain period of time, he was gonna be subject to the possibility [inaudible]. But had he been reading the law, he would have seen that my [inaudible] looks like that kind of escape because four years plus 18 years of age and [inaudible] so he felt confident, sure and certain that he was not gonna be obligated with anything and [inaudible] they changed the rules on it and said that he has [inaudible]. Why is that not a problem?

MS. PRESSLEY: I don't think that he could have had a legitimate expectation that the law was never going to change. To be legitimate, that expectation would have to be backed by some legal authority to make it legitimate and there is none.

JUSTICE: What about if the court doesn't have jurisdiction, there's no way to enforce what your claim is?

MS. PRESSLEY: To enforce an administrative writ?

JUSTICE: Yeah, if the court can't hear it. Isn't that a legitimate expectation that you can't be found liable if the court can't hear the case at all? Now, as I understand your argument is that you're drawing a difference between a limitation and jurisdiction. In your view, these series of statutes involved jurisdiction, [inaudible] there's no vested right because the legislature contains procedural jurisdiction as they walk which they did here.

MS. PRESSLEY: Mm-hmm.

JUSTICE: But isn't there some expectation that you know before that there was a theory of the law that said, the court no longer has jurisdiction after four years to enforce this obligation even though in child support that he had an expectation. There is no court that can order to do that [inaudible] but we also said eight years later they said, well, it's gonna be something different.

MS. PRESSLEY: That scenario has happened before in two cases, Wilbanks and Kuykendall and in both cases the extension of jurisdiction after a lapse was upheld in one case.

JUSTICE: Oh, I'm not saying they can't do it. The question is, the retrospective application of what they've done to somebody who already thought there was no jurisdiction to enforce this -- that -- this judge did.

MS. PRESSLEY: Mm-hmm. Yes, these cases actually [inaudible] I believe. In one case, [inaudible] enforcement jurisdiction [inaudible]. There is no way to enforce the child support obligation against the obligor. Subsequently, the legislature passed a law that gave forth extra jurisdiction, that six months to hold an obligor in contempt after the enforcement jurisdiction has expired [inaudible] suit with fraud who was held in contempt under the subsequently enacted law and denied of writ of habeas corpus at the time that it was [inaudible] constitutional has apply to him.

JUSTICE: Well, if this is kind of recognition that was Section 158.502 nothing [inaudible] judgment or as result of the record that indicate nonpayment can even [inaudible] writ issue without any court action against filing the amount [inaudible] do with that.

MS. PRESSLEY: If there were any issues generated that court action it was -- the reason is the administrative writ of [inaudible] was enacted was to imply the federal requirement that every state entitled for the [inaudible] issue a writ without any action from any other administrative court petition [inaudible].

JUSTICE: Well, it is somewhat -- that -- that gets to the part of my question then, how this particular statutory provision does held

with the provision without court jurisdiction with respect to child support matters. This operates even candidly with any action [inaudible] and it does say that administrative -- that the administrative writ maybe be issued at any time. How -- how -- I mean, what is the effect of the statute reflecting whether or not a court has jurisdiction? Isn't that already applied with that or is it operating separately. [inaudible] I think that is a difficult kind of question but I see this operated over separate apart from question related to continue jurisdiction of a court.

MS. PRESSLEY: I think I ask the similar question of the night before -- but they were inexplicably [inaudible].

JUSTICE: Well, then that's my question to you, I mean, is this just a separate animal that it is unrelated has a result to the federal requirement to someone in some court that it is operating separately [inaudible] jurisdictional --

MS. PRESSLEY: I think it's operating [inaudible] operating in separate avenue [inaudible] is not a [inaudible].

JUSTICE: Well, if -- if we were to determine that this particular statute which is we -- which is what really dealing with here -- or we have some limitation on it that -- that could not be effective. What would be the effect with our relationship with the federal government for not having this procedure in place for there being some limitation that [inaudible].

MS. PRESSLEY: I don't think that it has any implication with the federal government -- operate prospectively, I believe.

JUSTICE: I understand but they're the ones who said that there got to have something like this to play --

MS. PRESSLEY: Yes --

JUSTICE: But if we do interpret it in a way that limited the effectiveness of this administrative writ. What if -- what other implication of consequence is disclosed in that interpretation [inaudible] child support in the state.

MS. PRESSLEY: Oh, well, it might be [inaudible].

JUSTICE: Let me ask you what if Mr. Davis had in fact paid child support [inaudible] directly and there were no record of that with the attorney general's office and received this administrative writ, where would he go?

MS. PRESSLEY: He would go to the [inaudible] child support requirement. Legal orders contained in his child support [inaudible] --

JUSTICE: And if there was a --

MS. PRESSLEY: -- and they have a record --

JUSTICE: If there was a dispute. No. My question is, what if he paid her directly rather than through the child support office. And his defense is, I paid her directly I just didn't send it through the child support office. Therefore, I have met my obligation. Who would decide whether the writ was appropriate?

MS. PRESSLEY: In -- in the first instance the [inaudible] the attorney general will decide [inaudible]. It is their burden to prove [inaudible] did in fact [inaudible].

JUSTICE: Well, right but again my question being, if he had paid direct -- outside of that court, the record would show that. If he had in fact paid her directly and what if there was a dispute between them. He said, I paid her directly for many years and she accepted it but and we both sort of agree that that was okay but your record show no payment so you bring the administrative writ even without her -- being there. You could do that without her presence, for pushing for it, that's my understanding --

MS. PRESSLEY: He could.

JUSTICE: And so what if -- there was an evidentiary point is to whether this had in fact been paid directly and there was some defense. I guess my question is procedural, where -- where would he go to resolve that issue?

MS. PRESSLEY: He will go in the first instance to the agency [inaudible] and he [inaudible] to the court and, well, it was evidence that he has to the court. In my opinion would be, he could have protected himself by doing what the court order say.

JUSTICE: And the court would have jurisdiction to hear that.

MS. PRESSLEY: Yes, [inaudible] provide for [inaudible].

JUSTICE: Made a separate jurisdictional provision in it [inaudible]?

MS. PRESSLEY: Yes, there in that [inaudible] in Chapter 157 [inaudible].

JUSTICE: Right. Correct. In 158, it is entirely separate procedure strictly by the administrative writ and [inaudible] challenge their basic administrative procedure and then an alternative -- and then to follow up judicial review under Section [inaudible].

MS. PRESSLEY: Correct. That's correct. Now the main thing that the expiration of jurisdiction and the expiration of a statute of limitation on judge [inaudible] are different because when the statute of limitation [inaudible] probably [inaudible] would end up in a [inaudible] it constitute a different scenario. It has been [inaudible] on the other hand [inaudible] a proposition that you have been a dismissal for warrant of jurisdiction that is not on the matter all it does, replace the party where they were at the very beginning because [inaudible].

JUSTICE: Is that that the attorney general has an administrative process to collect it, even though of course [inaudible] jurisdiction to inner judgment of the court.

MS. PRESSLEY: No, I don't think it's done very much even to the court. Well, he got nothing that [inaudible] that court didn't have jurisdiction of the decision at this time. In fact nothing on [inaudible] it wouldn't improve [inaudible] if the writ is going to be extended [inaudible].

JUSTICE: So for example in the DTPA businesses of a certain size are not consumers if the legislature repealed that that differentiation said, anybody's a consumer. Could then -- should be brought for conduct that occurred to four years ago by businesses of -- of that size.

MR. ABBOTT: [inaudible] I'm distraughtly [inaudible].

JUSTICE: Well, you're enlarging the cause of actions.

MS. PRESSLEY: We're extending [inaudible] cause of action did that none of the or [inaudible] that the court of action is the original limitation of this Court obligation and that each of these is only a precedent to the court, the original judgment, the original limitation.

JUSTICE: Well, it is quite a remedy that first only goes back a few years and then has extended to go back to 11, that's quite a change in remedy.

MS. PRESSLEY: [inaudible] in 1993 [inaudible] to the very beginning [inaudible].

JUSTICE: You're saying that there's no, what? Nearly 20 years ago this Court move it around and found the statute of limitation [inaudible] Isn't that right?

MS. PRESSLEY: That's correct.

JUSTICE: Ten year -- a 10 year statute of limitation.

MS. PRESSLEY: [inaudible]

JUSTICE: And then the legislature came in and put limitation, do you saying not, they haven't put statute of limitation they put limitation on the jurisdiction of the court.

MS. PRESSLEY: Yes, [inaudible].

JUSTICE: Right, rather than a statute of limitation.

MS. PRESSLEY: Like you're saying. The party may not -- may bring a suit to a [inaudible] in so many years of the approval of the court of action or they said if the court may not enter the judgment.

JUSTICE: And now that's been removed.

MS. PRESSLEY: As of 1993 that's been removed.

JUSTICE: Why then doesn't the 10 year ... The legislature never fiddled with the statute of limitation. Why doesn't our [inaudible] case now control and there's a 10 years statute of limitation?

MS. PRESSLEY: At the same time at -- the legislature repeal that [inaudible] in 1993. They added two things to Section 14.41 one provision for a cumulative judgment and my group has said that the court might confirm it any conjunction for all child support. All would not be permitted to pay up.

JUSTICE: So you're contending there is no statute of limitations now?

MS. PRESSLEY: There is no statute of limitations -- their -- was [inaudible] conflict applicable, they're [inaudible] anymore than there --

JUSTICE: What --

MS. PRESSLEY: -- [inaudible] applicable [inaudible]

JUSTICE: So you're saying that as we stand today, there is no time for you within which this type of action must be brought. It can be brought at anytime in oppose of history?

MS. PRESSLEY: It can be brought at anytime [inaudible] yet the legislative intent for the child support purpose, remedies to remain available, the child support to be paid and it was [inaudible].

JUSTICE: Any other questions? Thank you, Counsel. The court is ready to hear arguments from respondent.

SPEAKER: May it please the Court. Mr. Michael Abbott will represent argument for the respondent.

ORAL ARGUMENT OF MICHAEL CALVIN ABBOTT ON BEHALF OF THE RESPONDENT

MR. ABBOTT: May it please the Court. If I may, I'd like to reserve [inaudible] on the same issue. One point was on the question concerning whether or not [inaudible] ruling and question concern would affect our rights [inaudible] to receive federal mandate [inaudible] complies with the federal mandates I would also point out that there some federal case law that these statutes do not preempt state law would they be continue to become complementary state law. There -- these statutes applied the prospectively comply [inaudible] with the federal mandates [inaudible] child support claim --

JUSTICE: We interpret it -- it is written to comply what the federal government requires and find that requirement is that may issue and read it anytime and we interpret the section as putting a common notation on it and we would be changing it so it was not in compliance with the federal law.

MR. ABBOTT: Your Honor, I don't believe that the statute [inaudible] the federal statute. Federal --

JUSTICE: But you just said it is written compliance with the federal law. And my understanding is that this kind of procedure including -- including absence of a time restriction we had any time to -- part of what is required.

MR. ABBOTT: And the basis for that statement is that -- [inaudible] context for constitutional notation. The federal statute requires that the state setup in the new state process what the child support [inaudible]. It is not necessary to use this language. This language is available by the -- by the Texas Legislature and to fulfill the federal mandates. The other thing is that -- the [inaudible] question whether or not there has been traditional involvement in this [inaudible] withholding. The answer to that, actually is yes, exactly requires that the current for following the [inaudible] of withholding unnecessary with the withholding employer [inaudible] the court to continue the jurisdiction which raises the issue of -- there is no court in jurisdiction [inaudible] I'd like to start on argument [inaudible] refuse.

JUSTICE: Can I --

MR. ABBOTT: Yes, please.

JUSTICE: -- ask you a question with the quote from Ex parte Abell. There we said retroactive laws have been upheld when no vested substantive right has been impaired but only to procedure or remedy has been changed and now we go on to say, the following changes had been held to be remedial, authorization of additional remedy for collecting past due child support.

MR. ABBOTT: That is the Harrison case, I believe it also cites Dupree. Now Harrison was a case, I believe, where the legislature enacted withholding statute. Dupree was a case where the legislature had changed the child support obligation age from 16 to 18. Now both of these changes -- both of these legislative changes took place adding time with the child support obligations on going on terms of paper. For example in Dupree, [inaudible] when the legislature enacted the post statute grievance issue the child support obligation's act is lacking.

JUSTICE: But doesn't that beg the question, I mean, the -- the statement here is that regardless of that, it's still remedial in nature and because of that it can affect a vested right. Regardless of the particular facts of that case, how do we get around the concept that this is a remedial provision?

MR. ABBOTT: Your Honor, I don't know that -- that it's necessary to this one but there are some [inaudible] some limitations it says purely [inaudible] statute referred on the SUI's knowing defendants or obligors that there are also pages that talk in terms of adding additional remedies [inaudible] provision that constitute --

JUSTICE: But this is not an additional remedy. If it's adding jurisdiction it's not adding a new remedy, more penalties, more payments. It's just adding a period of time for collection and that would seem to me that fit under the purely remitted -- purely remedial statements that we make and -- and, well, that we differentiate it in Ex parte Abell.

MR. ABBOTT: Your Honor, I believe that adding what the legislature is adding the three-year statute of limitation to [inaudible] limitations. It simply extended the time in which the additional amendments can be enforced, like the same rational we find there.

JUSTICE: But we have said, haven't we? That this is not a statute of limitation we clearly said that, so how can you analogize to a pure statute of limitation?

MR. ABBOTT: I don't believe that this Court [inaudible] if I may --

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JUSTICE: Mm-hmm.

MR. ABBOTT: I don't believe that this statute is a purely statute of limitation. I believe that before this Court is correct in CLC when it said it is not clearly a statute of limitation, speaking of hybrid statute that the statute of limitation is only half true. This is a hybrid statute, this statute is a limitation, for example, in 1994, Miss Davis lost her bike bring her for some action [inaudible] with this one and exactly the same time and in the same statute. The court changed its jurisdiction while specific matters of jurisdiction appear that time. It is the two --

JUSTICE: Alright, let me -- before you get any further into that station, couldn't the legislature have just clearly raise this as a statute of limitation? What was the purpose in phrasing this in times during the jurisdiction? It would have been easy to phrase it as a statute of limitation.

MR. ABBOTT: The legislature calls it at the time of limitation.

JUSTICE: But why did they word it in terms of jurisdiction? Why did they make the choice to do that and --

MR. ABBOTT: The reading -- if I may go back to [inaudible].

JUSTICE: Well, let me just add another -- relate to my question, there have been cases that if held this is not a statute of limitations, letting that err -- err --

MR. ABBOTT: That's correct.

JUSTICE: -- the court but other courts, many courts upheld this is not a statute of limitations.

MR. ABBOTT: That's correct.

JUSTICE: The legislature has chosen to amend the statute many times and has never changed the wording presentably being contrast to both decisions. So hasn't the legislature in effect agreed that this is not a statute of limitations, it's merely jurisdictional.

MR. ABBOTT: Not necessary, your Honor, as Justice Hecht pointed out in one of his decisions, the legislature may have proved the result but I necessary agree with the reasons -- that the legislative doctrine [inaudible] now legislative in Hughes in 1983 when Texas Supreme Court decided that was trying to wrangle with the issue of the statute of limitation [inaudible] the Supreme court rule that the changes to statute of limitation was applicable to justice to apply and the judgment from this case within [inaudible] subsequent order for the child support. Subsequent to this action, the [inaudible] that the jurisdiction of the court ruled that the jurisdiction of the court [inaudible] the legislature enacted Section 14.41 [inaudible] 1985, 14.41 has provided two things. One is that the child support case could be enforced for 10 years from the day the action was broken. The other thing to provide is that any jurisdiction of the court was extended for two years [inaudible] there was another two years after the child emancipated or it's an obligation siege on terms to agree for the obligor to bring the action and extended jurisdiction in the Court but, however, this was essentially a floating statute of limitations. In other words we've got [inaudible] when the child is four years old and when the child is 12 years old, you lost when a child support did not maintain prior in that 10-year period. When the child is 17 years old, if the obligor has not take child support from the [inaudible] of the order, the obligee lost the right to enforce that [inaudible] judgment.

In '98 -- in 1993, I believe it was, and I will point out that all of these cases in the rule only 10 years statute 14.41(b) or basic third decisions only ruins the determinant for 14.41 claim of statute.

In 1993, that 10-year provision will do, that changed the complexion of the statute in terms. No longer that you have this floating ten-year statute in here where the obligee was none of the right to bring an action [inaudible] has been [inaudible] of 1993 the obligee did bring an action from the entire range and it was a four-year extra jurisdictional period during which the obligee had to bring for an action and this jurisdiction doesn't exist in fact the statute requires that a motion for enforcement to be brought forth. If motion for enforcement be brought -- it is not brought then that extra jurisdictional [inaudible] so it is any kind of limitation, kind of limitation on the right of the obligee bringing action at the time of limitation [inaudible] of the court continues jurisdiction.

JUSTICE: So you read this time limitations to be similar to a statute of limitations?

MR. ABBOTT: I'm sorry?

JUSTICE: You read this time limitations to be similar to a statute of limitations.

MR. ABBOTT: I do, similar to -- they are not statute of limitation. If they had the statute, a chef [inaudible] is an excellent example [inaudible] question [inaudible] is enough. If the time that the -- that the employer get started being a business community act complaining the [inaudible] to this action I believe [inaudible] complete that [inaudible].

JUSTICE: And I think that would be your view of the situation if having the exempted certain professional conduct from [inaudible] liability last section of two whenever they get it, if they then went back and repealed that exception that would have problems too, in your view?

MR. ABBOTT: I believe, who does thus, I'm sorry, I will try to give an example, for example under Chapter 21 Section 502 we have two components. Now they are separate, they are not like this statute and we have a hybrid statute, we have two entirely separate components [inaudible] component that is that the -- unless the employer has 51 employees the obligor [inaudible] not have [inaudible] jurisdiction [inaudible] any type of claim. The other component is the employee has specific time limits within which he is ready to complain against the employer based on discrimination. This statute differs from a fair jurisdiction or a fair limitation actions, this is a type of section that closes the time of limitation of the obligee because it's their right. Many of these cases, most of these cases in fact talked about collection difference at the time that the child [inaudible] and most of these cases or most of the cases that were coming up under the administrative old extensions involved children, in my case for example, any child [inaudible] in the State of Texas.

JUSTICE: If it isn't right just because we haven't had any enforcement mechanism employed since the people who haven't obligate their obligation to pay child support and this man getting caught up, I mean, our enforcement mechanism, have not been effective?

MR. ABBOTT: Really. At the time of that this statute is bothered.

JUSTICE: So you don't think we have a problem on this date claiming a child support and making [inaudible] an attempt to escape your obligations are -- are forced to do so.

MR. ABBOTT: I'm sorry, I didn't understand that question, your Honor, [inaudible]. Yes, there has been a problem. What I'm saying in this case, Miss David had four years after the trial that child leaves home --

JUSTICE: I see -- you -- you -- but my point is you are claiming a

picture of the fact that -- that there a lot of people who get married at [inaudible] age of majority and that as support as being collected forth before them and your complaint is about getting my question view, isn't that the result of the fact that we have had crisis in the area of collection of child support and we are now using the remedy that circumstance with such administrative remedy for be available now, and that's why we were seeing this happening at this point of time.

MR. ABBOTT: That [inaudible] my claim. I would point out that the legislature like [inaudible].

JUSTICE: What is the vested right?

MR. ABBOTT: The vested right --

JUSTICE: -- the part that you're trying to say in here.

MR. ABBOTT: The vested right is being expectation from our view as I was -- as I was going to say I want to open an argument of the court from Baker Hughes to permit a barged claim to be relied years later would underline [inaudible] is just one of the principal justification for statute of limitation. Thus the written in statute, stating in limitation period of the claim already barged on limitation.

JUSTICE: But Miss Pressley says that it's not the cause of action that in fact the cause of action was the original claim for the child support to be adjudicated and reduced to a judgment and in fact we pass the point when we're dealing with causes of action whether claims are barged and what we are dealing with now is a remedy to enforce the judgment as oppose to they could use type of circumstances that which deals with the original cause of action but you respond from argument on that, I think, that's what I understand from respondent.

MR. ABBOTT: On respondent, alright. In fact that's not the case, there was a judgment the child support taken at this stage, many [inaudible] many years ago.

JUSTICE: You never [inaudible].

MR. ABBOTT: [inaudible] I don't know exactly what the meaning it's was and in fact no evidence was taken at the lower [inaudible].

JUSTICE: [inaudible]?

MR. ABBOTT: From many, many, many years.

JUSTICE: There is a judgment implies, that obligation to a child support request and whether it was obligation time and how much and how claim that you should pay and how much his argument as you claim and release the judgment.

MR. ABBOTT: The issue [inaudible] on how much was adjudicated at the time that the child support order was in --

JUSTICE: That's what I mean there is a judgment claim that adjudicated his obligation have to [inaudible].

MR. ABBOTT: That's correct.

JUSTICE: Okay.

JUSTICE: But that's not a judgment of the adjudication of the [inaudible]?

MR. ABBOTT: No, Sir.

JUSTICE: There is no judgment for [inaudible].

JUSTICE: That's correct.

JUSTICE: But I think that's the concept to judgment.

MR. ABBOTT: That's correct.

JUSTICE: [inaudible] did you pay attention to the question that the claimant is why we taking it -- taking for [inaudible] that did you not cause an action -- in fact you can't held responsible [inaudible]

MR. ABBOTT: The -- I was doing -- or as I did point out this -- in this case a judgment on child support restatement many, many years ago and then as far as I recall there is some action to be taken here, so

if this is an action through the court and accumulation of where -- where in this after -- created after -- probably most after the date the judgment was taken.

JUSTICE: We have -- we have multiple judgment on this case --

MR. ABBOTT: Yes.

JUSTICE: -- so do you think the writ [inaudible] --

MR. ABBOTT: No, only we have one. This -- these writs are not based upon judgments, these writs are based on the records according to the computer files as I understand, this explain to the Court of Appeals, based on the records, few records in attorney general's office. They're not passed on to any court, the question that Justice O'Neil raised on my opponent [inaudible] problem as to these cases, years and years ago, it is very, very common the parties to pay directly because the child support arrearages, we [inaudible] at a point of time that the obligor pay and the obligee having money so they will make a deal where he pays for his regimen and at that time [inaudible] only the years [inaudible] these things saying child support payments made outside of or other than is directed by this order that we may considered in addition to rather than [inaudible] in other words, if you don't pay the child support's arrearages it is considered [inaudible] so that resolved the issue that we still have a situation where years ago it was very, very, common to circumstances.

JUSTICE: -- there is question.

JUSTICE: We're misconnecting, your position is not maybe that the vested right not to pay child support, is that right?

MR. ABBOTT: That's correct.

JUSTICE: -- the vested right --

MR. ABBOTT: Should rely up on the time of limitation statute anything -- that the time of limitation [inaudible].

JUSTICE: Any other questions? Thank you, Counsel.

MR. ABBOTT: Thank you, your Honor.

REBUTTAL ARGUMENT OF RHONDA AMKRAUT PRESSLEY ON BEHALF OF THE
PETITIONER

MS. PRESSLEY: May it please the Court. When CLC said that [inaudible] provisions are not valid to apply because the statute was jurisdictional and denied an obligee or recovery of a [inaudible] when other cases told obligee that the obligor found it to a surface defense at trial would not be a blamer because jurisdiction can't be blame and it would be blamed for the first time on appeal, what are the legitimate expectations of the obligee? For saying that the expected came 15 years later for this any court to turn around and saying, no. It really is fact to these limitations, which fact to these limitation consequences, should the common revisions has apply? Counsel does not take issues with those results. This why I'm [inaudible] a hybrid by a hybrid is an exception what we find in asking this Court to do is to create an exception, some hybrid monster that is so far under the law and it has some that matters [inaudible] and one characteristic [inaudible] statute of limitation that to exempt that thing and we'll put that [inaudible] the benefit of this and that maximizes the obstacle of course, of the obligee. Would just certainly not the legislative intent, for that four to five [inaudible] the legislature have increasingly and extended jurisdiction from two years

to four years and it took away to 10 years and they put in 157.269 is a fourth ranger adjustment to the payment of a retained jurisdiction until all of them to repay. Now it's taken away any limit to jurisdiction. Were we had -- we're -- okay -- we had not decided to a single case where a court has said, that when those extension of jurisdiction occur, there was an unconstitutional impairment of a desperate way.

JUSTICE: I -- I have -- there have been cases from other courts that have dealt with these issue in other states.

MS. PRESSLEY: I really [inaudible] state because this dealt with a statute that was peculiar to Texas --

JUSTICE: Is it peculiar to Texas? Are there any other state that have some more statutes?

MS. PRESSLEY: I don't know [inaudible] has that described it similar.

JUSTICE: Are most other State's statutes more statute of limitations part of statutes?

MS. PRESSLEY: Some of them aren't, some of them are unlimited like the California have told them they have where its judgment.

JUSTICE: We need [inaudible].

MS. PRESSLEY: There's a slight difference but [inaudible] have it worked with -- they had had constitutional provision like that or they have interpreted like that or -- you know, I just didn't think it is necessary.

JUSTICE: Do you think the legislature's purpose in making the time jurisdictional was settled that it could not delay, it could be served at any time even on appeal?

MS. PRESSLEY: I think, the legislative reserved for itself the right to change, they do so, I [inaudible].

JUSTICE: No, but I mean when they made the time period jurisdictional do they do that instead of making it a limitation because they wanted parties to be able to raised it at any time even on appeal.

MS. PRESSLEY: Oh no, I don't think that would -- just consideration to somebody, I think, they would reserving to themselves the right to change as needed that -- once again the right to create remedy as needed to correct the problem in the state and it's -- by doing so, by not creating statute of limitation like, distinctly we could use it to create a statute of limitation. There's abuse to any essential [inaudible] of the idea thus saying, we're both get [inaudible] life. The repeal for instance, in 1993 of a ten-year provision, there was a case in which an obligor said, once it was repealed that he had a vested right against the enforcement of the installment that had become due more than ten years before the repeal of the statutes and to that case the court said, no that provision was also jurisdictional and so your claim is without [inaudible] there was nothing in a single case of it and it was a child support remedy or the extension of jurisdiction even with jurisdiction to lack had been held to be impermissibly, unconstitutional, there is not a single case in which an appellant court held that any of these provisions has been -- has -- were treated as statute of limitation due to statute of litigation with consequences and the law it doesn't exempt the limitations imported in to it.

JUSTICE: Another question I want -- do you agree with the discussion about this 1997 enactment which to comply with the federal mandate until you had to have this provision until about administrative withholding, so that it goes forward from less point that need

compliance so you don't lose federal [inaudible] is that correct?

MS. PRESSLEY: I thought, I was beginning to say that before you have this question, that I -- I don't -- the federal mandate does not -- just as we might have this administrative writ --

JUSTICE: Mm-hmm.

MS. PRESSLEY: -- related to child support that it can't -- it need -- it can't be -- it can't require that [inaudible] it does not say how much child support it have to be [inaudible].

JUSTICE: Well, I understand but this legislation satisfies the federal requirement --

MS. PRESSLEY: Yes, your Honor, I believe --

JUSTICE: -- from the date forward of this enactment. In other words it was enacted in 1997 so every year after that it has been compliance with the federal requirement, is that right?

MS. PRESSLEY: Well, yes --

JUSTICE: So do you get the federal requirement --

MS. PRESSLEY: -- you said that you couldn't collect but you could --

JUSTICE: No, I'm not -- aside from what you are collecting or not. As long as this statute is there, we -- the state stated that it gets federal money involved for child support purposes --

MS. PRESSLEY: Of course [inaudible] --

JUSTICE: So my next question is, if we hold in this case on impact

MS. PRESSLEY: Mm-hmm.

JUSTICE: -- and make that owe him that this 1997 doesn't apply to him because what we do --

MS. PRESSLEY: I don't think that it must be implicated.

JUSTICE: What?

MS. PRESSLEY: I don't think that it must be implicated as mentioned.

JUSTICE: [inaudible] thank you.

JUSTICE: Anything else? Thank you, Counsel.

JUSTICE: That concludes the argument in the second case we take another recess.

SPEAKER: All rise.

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