

# Supreme Court of Florida

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No. SC00-2487

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**PATRICIA J. NALE, etc., et al.,**  
Petitioners,

vs.

**ROBERT M. MONTGOMERY, JR., et al.,**  
Respondents.

[March 7, 2002]

PER CURIAM.

We granted review of Nale v. Montgomery, 768 So. 2d 1166 (Fla. 4<sup>th</sup> DCA 2000), based on apparent conflict with Silvestrone v. Edell, 721 So. 2d 1173 (Fla. 1998). See art. V, § 3(b)(3), Fla. Const. Upon closer examination, however, we find that jurisdiction was improvidently granted in this case. Therefore, we dismiss review of this cause.

It is so ordered.

WELLS, C.J., and SHAW, ANSTEAD, PARIENTE, LEWIS, and QUINCE, JJ.,  
concur.

HARDING, J., dissents with an opinion.

NO MOTION FOR REHEARING WILL BE ALLOWED.

HARDING, J., dissenting.

I would grant jurisdiction in this case in order to resolve the conflict between the case below and Blumberg v. USAA Casualty Insurance Co., 790 So. 2d 1061 (Fla. 2001). The district court stated that Silvestrone<sup>1</sup> only applies to malpractice actions, not common law negligence actions. See Nale v. Montgomery, 768 So. 2d 1166, 1167-68 (Fla. 4<sup>th</sup> DCA 2000). However, In Blumberg, this Court recently held that “a negligence/malpractice cause of action accrues when the client incurs damages at the conclusion of the related or underlying judicial proceedings or, if there are no related or underlying judicial proceedings, when the client's right to sue in the related or underlying proceeding expires.” 790 So. 2d at 1065. Hence, pursuant to Blumberg, when determining whether a cause of action has accrued, the same rule applies regardless of whether the action is for malpractice or common law negligence. By dismissing this case and allowing the analysis in the case below to stand, the majority calls into question the viability of this Court’s opinion in Blumberg.

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1. Silvestrone v. Edell, 721 So. 2d 1173 (Fla. 1998).

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

Fourth District - Case No. 4D99-4228

(Palm Beach County)

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