FLORIDA MUNICIPAL ATTORNEYS ASSOCIATION

FLORIDA MUNICIPAL LAW REPORTER

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Editor's Note: The following case law summaries were reported from April 1, 2008, through June 30, 2008.

Section 1. Recent Decisions of the Florida Supreme Court

None reported.

Section 2. Recent Decisions of the Florida District Courts of Appeal

Eminent Domain – Community Redevelopment Agency – Trial Court Erred in Finding CRA Did Not Prove Condemnation of Petitioner's Property Was Reasonably Necessary.

The Mach family owned a parcel of land within a historic area of the City of Hollywood. The City of Hollywood created a CRA which planned to redevelop certain core areas of the downtown commercial district. The Machs' parcel was located within a core area. The planned development resulted in improvements that effectively encircled the Machs' parcel. And in the interest of historic preservation of a hotel, a 17-foot portion of the Machs' parcel would be needed for a planned parking structure. The CRA petitioned for taking of the entire parcel by eminent domain. The Machs argued taking of the entire property exceeded CRA's eminent domain power. The trial court agreed. On review, the second district reversed, finding that the interest of historic preservation has been recognized as a legitimate and lawfully sanctioned purpose for taking. A CRA must prove it determined the taking was reasonably necessary and that determination must not have been made through illegality, bad faith or gross abuse of discretion. The district court found competent, substantial evidence to support the taking in the trial testimony that taking only the 17-foot portion of the Machs' property would leave a virtually useless remnant parcel surrounded by new development. The court held the condemning authority need not present evidence pinpointing the need for the particular property sought to be condemned; broad discretion is vested in the condemning authority to determine what property and how much is necessary to condemn for public purposes; and the trial court may not refuse the taking on such concerns absent a clear abuse of discretion. Given the historic preservation goals underpinning the CRA's redevelopment plans in this case, a legitimate public purpose existed and details as to how much of the subject parcel should be taken could not be argued where the Machs never argued their right to retain a just portion of the property and the testimony that the parcel would be too small to be of any commercial use. *City of Hollywood Community Redevelopment Agency v. 1843 LC, Mach 1 Salon, Ansu Gallery et al.*, 33 Fla. L. Weekly D860 (Fla. 3d DCA March 26, 2008).

Intercepted Communications – 9-1-1 System – Trial Court Properly Granted City's Summary Judgment Where City Had Good-Faith Belief Its 9-1-1 System Comported with State Law, Though It Technically Did Not.

The claimants were emergency 9-1-1 operators for the City of Lake Worth. The claimants discovered that the city was recording inbound and outgoing non-emergency calls from the 9-1-1 center. The claimants' phone conversations on non-emergency lines and some incoming calls on non-published, non-emergency lines were recorded. Upon learning this, the claimants sued under the Florida Communications Act, which prohibits the intentional interception of any "wire, oral or electronic communications." The Act provides two exceptions for law enforcement agencies, but the city did not satisfy the conditions of either. Nevertheless, the trial court granted the city's motion for summary judgment, holding that the recordings were made within the statutory scheme and within the scheme provided for 9-1-1 calls and responses thereto. On review, the district court affirmed, based on the city's argument that its phone system existed to comply with the Florida Emergency Telephone Act (FETA). The city argued that under the Florida Emergency Telephone Act, local governments must provide 9-1-1 services that allow instant recording playback capability with at least eight minutes of storage capacity and that provides al-

ternate facilities to which calls can be routed in the event of failure of the primary Public Safety Answering Point. The city argued that to comply with the 9-1-1 statute, all phone lines in the call center needed to be recorded in the event any of them were needed to serve as the back-up system. And there was no reasonable way for the phone system to know the difference between emergency and non-emergency calls. The district court acknowledged FETA and the city's effort to comply therewith, but noted it is not an exception to the prohibitions contained in the Florida Communications Act. Nonetheless, the court held the city had a good-faith belief that the manner in which the instant playback system was installed was legal. The city produced affidavits showing its set up is the same as others cities in the state. The court noted that while the trial court found the correct result, it was based on the wrong reason. This so-called "tipsy coachman doctrine" permits an appellate court to affirm a trial decision in these instances; hence, the order was affirmed. *Ralph Brillinger, Shelly Stark and Lori Nedzweckas v. City of Lake Worth*, 33 Fla. L. Weekly (Fla. 4th DCA April 9, 2008).

Eminent Domain – Churches – Florida Religious Freedom Restoration Act – Trial Court Properly Ordered Church Property Condemned through Eminent Domain Based on Reasonable Necessity for Taking and Absent Substantial Burden Upon Free Exercise of Religion.

Broward County obtained an order condemning through eminent domain property on which a church operated. The church appealed, arguing the county failed to demonstrate the taking would serve a public necessity and that the taking was a violation of the Florida Religious Freedom and Restoration Act (FRFA). On appeal, the district court affirmed the trial court order. As to necessity, the court pointed out that Broward County offered testimony that it sought to expand a substance-abuse facility on the church's property and hence the finding of necessity was supported by competent substantial evidence. Absent any affirmative allegations or evidence of bad faith or gross negligence by the county, the requisite necessity for the taking was established. Next the court addressed the FRFA claim. A FRFA violation requires a showing that the condemnation posed a substantial burden on the free exercise of religion in that it either compels the religious adherent to engage in conduct that his religion forbids or forbids him to engage in conduct that his religion requires. The court explained that the Florida Supreme Court expressly rejected any definition of substantial burden other than that compelling conduct or that forbidding conduct. Here, the church's only evidence showing a substantial burden was the fact that its building was fundamental to its worship services. Though inconvenienced, nothing in the county's act of taking posed a substantial burden in terms recognized by the FRFA case law. The court noted there was nothing about this particular location that is unique or integral to the conduct of the religion. *Christian Romany Church Ministries, Inc. v. Broward County*, 33 Fla. L. Weekly D974 (Fla. 4th DCA April 9, 2008).

Attorney's Fees – Indigents – Municipal Ordinances – Under Section14, Article V, of the Florida Constitution, City of Fort Lauderdale Is Required to Fund Counsel Appointed to Represent Indigent Defendants Charged with Violation of Municipal Ordinances.

The City of Fort Lauderdale sought to enforce violations of its municipal ordinance that made unlawful under city ordinance the commission of any act within the city limits that would constitute a felony or misdemeanor under state law or county ordinance. Once the defendants were charged, court-appointed counsel was assigned and an issue was raised as to who would bear the cost of representation. In a few cases, the trial court found the State of Florida was responsible for the cost. In other cases, the trial court ruled the city was responsible for the cost. In this consolidated appeal, the district court considered Article V, §14(c) which provides: "No county or municipality, except as provided in this subsection, shall be required to provide any funding for the state courts system, state attorneys' offices, public defenders' offices, court-appointed counsel or the offices of the clerks of the circuit and county courts for performing court-related functions." Relying upon this provision, the city felt it was shielded from paying any court-appointed attorney fees. However, the district court considered the "Statement of Intent" of the Constitution Revision Commission, in which it was explained, "The state's obligation includes, but is not limited to, funding for all core functions and requirements of the state courts system and all other court-related functions and requirements which are statewide in nature." The district court concluded that the phrase "court-related functions" only applied to matters of "statewide" application. As such, whenever a municipal ordinance prosecution only pertains to violation of a municipal ordinance and not a state law, the public defender is not authorized to provide legal representation at state expense. Beyond this, the court reasoned that it is a local decision to criminally prosecute municipal ordinances, noting that an express statutory provision for municipal ordinance enforcement stipulates civil actions, not criminal prosecutions. Accordingly, even if there is some legitimate municipal purpose behind the criminalization of municipal ordinance violations, there is no logical reason to make all citizens throughout the State of Florida pay to enforce that purpose. *City of Fort Lauderdale and State of Florida, Judicial Administrative commission v. Jeffrey Crowder, Anthony James and Terrance Neely*, 33 Fla. L. weekly D1190 (Fla. 4th DCA April 30, 2008).

Code Enforcement – Liens – Costs – Trial Court Erred in Its Judgment to the Extent It Permitted County to Assess Payroll Expenses Associated with Its Code Enforcement Personnel in Connection with Demolition of Subject Property.

Sarasota County obtained orders to condemn and ultimately demolish property owned by Nancy Stratton. The county claimed a lien for $129,315.23, of which $18,865.67 represented an amount claimed by the county for payroll expenses allegedly incurred by its code enforcement employees in supervision the demolition. An additional $2,667.87 was for expense incurred by the fire marshal and $3,465 was for expense incurred by the Sheriff's Office. Further demolition was required based on the deteriorating condition of the subject property, so an additional lien of $91,072.86 was recorded, of which $5,382.48 was for payroll expenses allegedly incurred by code enforcement employees in supervising the demolition. The trial court entered a final judgment of foreclosure and scheduled a foreclosure sale of the property. Stratton appealed that judgment on several grounds, the only viable ground being a claim the county was not entitled to include the payroll expenses of its employees in its liens. The district court considered the county that its ordinances permitted an award of "the entire cost of demolition" and "all administrative costs," and that all the disputed payroll expenses fall under one of these categories. The district court explained that Chapter 162, Florida Statutes, limits the county to imposing fines and collecting the repair costs it actually incurs in correcting code violations. The county may also make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to §162.09(1). However, nothing in Chapter 162 permitted the county to directly pass through the payroll expenses for the time spent by its code enforcement employees to an individual property owner in code enforcement proceedings. The county's reliance on its own code of ordinances is misplaced because, the court explained, it cannot impose penalties that are not authorized by law. The court suggested payroll expenses may be included only as part of the increased fines allowed for the costs of enforcement of the county's code; however, the operational costs of the code enforcement department are a constant overhead, and no one particular portion can be considered a separate cost actually incurred in prosecution of a particular code violation. By contrast, the additional lien amounts reflecting the services of the fire marshal and Sheriff's Office did arise as a result of this particular event, and the investigation and participation therein. Therefore, such agencies' costs could be passed along and included in the lien against the subject property/owner. The judgment was reversed as to the award of the county's code enforcement personnel payroll expenses. *Nancy A. Burns Stratton v. Sarasota County*, 33 Fla. L. Weekly D1243 (Fla. 2nd DCA May 7, 2008).

Section 3. Recent Decisions of the United States Supreme Court

Equal Protection – Public Employees – A Public Employee Cannot State a Claim under the Equal Protection Clause by Alleging Arbitrary Treatment Different from Similarly Situated Employees because Such "Class-of-One" Equal Protection Theory Does Not Apply in the Public Employment Context.

The petitioner, Anup Engquist, an Oregon public employee, filed suit against her employer, asserting claims under the Equal Protection Clause. She alleged she had been discriminated against based on her race, sex and national origin. She also brought a so-called "class-of-one" claim, alleging that she was fired not because she was a member of an identified class, but simply for arbitrary, vindictive and malicious reasons. A jury rejected her class-membership equal protection claims, but found for her on her class-of-one claim. The Ninth Circuit Court of Appeals reversed in relevant part, holding that extending the class-of-one theory to the public employment context would lead to undue judicial interference in state employment practices and invalidate public at-will employment. On review, the Supreme Court affirmed the Ninth Circuit Court, noting there is a crucial difference between the government exercising the power to regulate or license, as lawmaker, and acting as proprietor, to manage its internal operation. And in the public employment context, the government has significantly greater leeway in its dealings with citizen employees than in bringing its sovereign power to bear on citizens at large. Though the Court recognized a class-of-one theory in *Village of Willowbrook v. Olech*, that case was distinct in that there, the government singled Olech out with regard to its regulation of property, property assessment and property taxation schemes. The significant factor supporting the novel claim in *Olech* was the existence of a clear standard against which departures, even for a single plaintiff, could be readily assessed. However, there are some forms of state action which, by their nature, involve discretionary decisionmaking based on a vast array of subjective, individualized assessments. In such cases, treating like individuals differently is an accepted consequence of the discretion granted to governmental officials. Recognition of a claim that the state treated an employee differently from others for a bad reason, or no reason at all, is contrary to the employment at-will concept. Accordingly, the Ninth Circuit decision was affirmed. *Anup Engquist v. Oregon Dept. of Agriculture et al.*, 21 Fla. L. Weekly Fed. S302 (April 21, 2008).

Section 4. Recent Decisions of the United States Court of Appeals, Eleventh Circuit

Civil Rights – Equal Protection – Racial Discrimination – Trial Court Erred in Ruling Non-Hispanic Apartment Complex Owner Did Not Have Standing to Bring Equal Protection Claim on Behalf of Its Hispanic Tenants Alleging Race-Based Discrimination through Overcrowding Ordinance.

The Town of Jupiter enacted an ordinance aimed at residential overcrowding. Young Apartments, owners of an apartment complex which housed primarily Hispanic immigrants, was subjected to several code-enforcement actions based on the condition of the apartments. The town sought certain improvements in the apartments in accord with an agreed upon three-element timeline. Young did not comply with one element of the timeline, and Jupiter condemned a number of the apartments. Simultaneously, Young lost a pending contract to sell the property to another investor. Young then brought suit, alleging the town violated its Fourteenth Amendment rights through its enactment and enforcement of the overcrowding ordinance. On a motion to dismiss and for summary judgment, a trial court ruled Young lacked standing to bring a race-based discrimination claim on behalf of its Hispanic residents. Because the court concluded Young lacked standing, it conducted its analysis of the ordinance based on differential treatment of a non-suspect class using the rational-basis standard. On review, the Eleventh Circuit reversed as to the standing ruling. In reaching this conclusion, the court felt that the interests of Young and the Hispanic tenants were so closely inter-related, the standards for determining standing were sufficiently satisfied that it was error for the district court to deny Young's standing. Specifically, Young's complaint alleged facts in which both the Hispanic immigrant tenants and their landlords were targeted by Jupiter officials through a single course of conduct designed to drive the tenants out of town and the landlords out of business. It would be difficult, if not impossible, for Young to vindicate its own rights fully without implicating the rights of its tenants. And because Young has standing to attack the ordinance as racially discriminatory, a stricter standard of review should have been applied. *Young Apartments, Inc. v. Town of Jupiter, et al.*, 21 Fla. Law Weekly Fed. (11th Cir. June 5, 2008).

Section 5. United States District Courts for Florida

None reported.

Section 6. Announcements

FMAA Seminar Notebooks Available

Notebooks from the most recent FMAA Seminars are available for purchase. 2007 Annual Seminar notebooks are $50 each and 2008 Annual Seminar notebooks are $75 each. Please contact Tammy Revell at (850) 222-9684 or *trevell@flcities.com* for information.