FLORIDA MUNICIPAL ATTORNEYS ASSOCIATION

FLORIDA MUNICIPAL LAW REPORTER

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November - December 2009

Editor's Note: The following case law summaries were reported from November 1, 2009, through December 31, 2009.

Section 1. Recent Decisions of the Florida Supreme Court

None reported.

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

Counties – Labor Relations – Public Employees Relations Commission Improperly Stayed Collective Bargaining Impasse-Resolution Proceedings – Prompt Resolution of Collective Bargaining Dispute Is in Everyone's Best Interest, and There Is No Record Support for PERC's Finding that Immediate Resolution of Impasse Is Not Critical.

Miami-Dade County filed a petition to vacate a stay of a collective bargaining impasse process entered by the Florida Public Employees Relations Commission (PERC). After several months of negotiations with the Transport Workers' Union of America (TWU) the county felt the process had come to an impasse. The county instituted proceedings to resolve an impasse, requesting a hearing before a special master. TWU then filed an unfair labor practices complaint with PERC alleging the county had not bargained sufficiently over compensation issues. PERC then stayed the impasse-resolution proceedings. The court held that it is in fact an unfair labor practice to avoid resolution of disputes through the impasse procedure, but the impasse procedure was properly invoked in this case. *Miami-Dade County v. TWU*, 34 Fla. L. Weekly D2391 (3RD DCA November 18, 2009).

Workers' Compensation – Compensable Accidents – Heart Disease – Firefighters – Presumption of Compensability – Where Claimant Had Been Certified as a Firefighter by a Former Employer, but Pre-employment Physical for Current Employer Revealed that He Suffered from Heart Disease, There Was No Presumption that Claimant's Cardiac Incident Was Compensable.

Miami-Dade County appealed the order of a judge of compensation claims' finding the county was responsible for workers' compensation benefits on account of William Davis' heart disease. Davis was certified as a firefighter by the City of Gainesville in 1972 and no heart disease was found during his initial physical for certification. Later, in 1995, Davis was diagnosed with heart disease during a pre-employment physical for Miami-Dade County, but the doctor found no reason Davis could not perform his duty. In 2002, Davis had a heart attack while off duty, and was subsequently provided a presumption of compensability. In overturning the decision of the lower court, the 1st DCA held Mr. Davis' 1995 pre-employment physical revealed his heart disease, and therefore, did not give rise to a presumption of occupational causation. *Miami-Dade County v. Davis*, 34 Fla. L. Weekly D2418 (1st DCA November 24, 2009).

Workers' Compensation – Compensable Accidents – Heart Disease – Firefighters – Presumption 0f Compensability – Where Claimants Pre-Certification Physical Revealed No Evidence of Heart Disease, but Claimant's Pre-employment Physical Examination Revealed Evidence of Heart Disease Pre-existing Employment, Was Not Entitled to Presumption of Compensability of Heart Disease – Passing Pre-Certification Physical Examination and Receiving Firefighter Certification Does Not Entitle Individual to Presumption that Any Heart-Disease-Related Disability He May Suffer Is a Result of Being a Certified Firefighter – Claimant Seeking to Rely on Statutory Presumption of Compensability Must Prove that He or She Underwent a Physical Examination upon Entering a Period of Employment During Which the Condition Arises, and that the Examination Did Not Show Any Evidence of Heart Disease.

Jerry Hunter challenged the judge of compensation claims' ruling that he was not entitled to a presumption of com-

pensation for heart disease he suffered while employed as a firefighter. Although Hunter's pre-certification physical indicated he had no heart disease; his most recent pre-employment physical revealed evidence of heart disease. Anyone who wishes to serve as a firefighter in Florida must pass a pre-certification physical under Chapter 633, Florida Statutes. However, an employer may require an optional pre-employment physical under Chapter 112, Florida Statutes. If the employer chooses to require the optional physical and that physical reveals evidence of heart disease, a presumption of compensation is not available to the claimant for the condition. *Hunter v. Seminole County*, 34 Fla. L. Weekly (1st DCA November 24, 2009).

Public Employees – Labor Relations – Arbitration Award Allowing Employee to Be Reinstated in State Health Insurance Program – Circuit Court Erred by Vacating and Declining to Enforce an Arbitration Award that Brought an End to Arbitration to Which the Parties Resorted After They Failed to Agree on How to Resolve Grievance – Collective Bargaining Agreement Created Grievance Procedure, Culminating in Arbitration When Necessary, as an Alternative to Judicial or Administrative Proceedings, at the Grievant's Option, and Grievance Procedure Is Available in Lieu of Judicial or Administrative Procedures.

The American Federation of State, County and Muncipal Employees (AFSCME) appealed a circuit court judgment vacating and declining to enforce an arbitration award on behalf of John Parrish, a member and former corrections officer. The Florida Department of Corrections (DOC) dismissed Parish while his application for disability retirement was pending. Parish then filed a grievance with the assistance of the union. His grievance stated his discharge was "not for just cause" and requested he be "returned to work," among other requests. While the grievance was pending, his application for disability retirement was approved, but his retirement did not resolve all of the issues. Eventually, an arbitrator ruled DOC lacked just cause to discharge Parrish because of failure to comply with certain personnel rules. After a dispute as to the terms of the award and clarification by the arbitrator, DOC filed a motion to vacate the award, which was granted by the circuit court. On appeal, the 1st DCA reversed the trial court, holding it erred in concluding the final arbitration award exceeded the scope of the grievance and in concluding the award contravened the powers of the state. *Parrish v. DOC and DMS*, 34 Fla. L. Weekly D2348 (1st DCA November 13, 2009).

Counties – Comprehensive Plan – Special Use Permit – Use of Property that Is Designated Rural Residential for a Horseback Riding School and to Board and Stable Horses More Closely Falls Under the Category "Commercial: Agriculture Related" Use, Which Is Impermissible Even After Issuance of Special Use Permit, than Under Categories of Activity-Based or Resource-Based Recreational Uses, Which Are Permissible Under County's Development Code – Trial Court Erred in Upholding Zoning Board's Issuance of Special Use Permit.

Harold Keene challenged the decision of the Zoning Board of Adjustment of Putnam County to grant his neighbors, Ronald and Ossie Wilson, a special use permit (SUP) to operate a horseback riding school and horse boarding facility and to hold endurance trail runs. The Wilson's property is designated as rural residential in the Putnam County Comprehensive Plan and the staff report related to the SUP designated the activities of a riding school and boarding facility as "commercial: agricultural-related use" and "rural recreational uses." Keene then filed suit seeking a declaratory judgment that the SUP was erroneously granted because under Putnam County's Comprehensive Plan "commercial: agriculture-related use" and "rural recreational uses" are prohibited in rural residential areas, even with an SUP. At trial the zoning board admitted these were inappropriate uses in a rural residential area, and the trial court allowed the zoning board to assert the Wilson's activities were also closely akin to permissible uses under the comprehensive plan. On appeal the 5th DCA overturned the trial court and held the SUP was erroneously issued. Specifically, the trial court failed to comply with provisions of the comprehensive plan that require proposed uses be placed in use categories into which they most closely fit. *Keene v. Putnam County Zoning Board of Adjustment*, 34 Fla. L. Weekly (5th DCA October 30, 2009).

Taxation – Ad Valorem – Homestead Exemption – No Error in Finding that a Taxpayer Who Lived in One Unit of a Five-Unit Apartment Building Owned by Her Was Not Entitled to Special Tax Treatment for the Portion of Her Property that She Rented to Tenants – There Is No Distinction Between Property Appraiser's Treatment of Taxpayer's Land and Apartment Building, and Both May Be Divided Between Portion that Is Used as Taxpayer's Homestead and Portion that Is Used as Rental Property.

Anna Karayiannakis owned a five-unit apartment building and lived in one of the units. This appeal is the result of Karayiannakis's challenge to the Palm Beach property appraiser's treatment of her property for ad valorem taxation purposes. The property appraiser only applied Florida's homestead exemption to the apartment unit she resides in and 37 percent of the land. The application of the exemption to 37 percent of the land was due to the fact that the apartment unit occupied by Karayiannakis accounted for 37 percent of the apartment building's space. She agrees the apartment building may be divided in the manner described, but not the land the building occupies. The 4th DCA upheld the decision of the trial court and the value

adjustment board, holding the language in statute shows real property is divisible for tax-exemption purposes. *Karayiannakis v. Property Appraiser for Palm Beach, et. al.*, 34 Fla. L. Weekly (4th DCA December 9, 2009).

Real Property – Harris Private Property Protection Act – Property Owner Cannot State a Cause of Action Under Act Based upon Adoption of an Ordinance of General Applicability Pursuant to the Police Powers of a City in a Situation Where a Municipality Has Taken No Further Action Concerning Application of the Ordinance to a Particular Piece of Property – Trial Court Properly Dismissed Claim Under Act by Property Owner Against City Which Enacted Ordinance Imposing Height and Setback Restrictions in Zoning District After Owner Had Never Applied for a Development Order or Building Permit.

In February 2005, M&H Profit, Inc. purchased property in Panama City on Highway 98 with the intention of building a 20-story condominium on the site. Six weeks after the purchase, prior to M&H making application for a development order or building permit, the City of Panama City adopted an ordinance to codify the city's land-development code. The new ordinance imposed new height and setback restrictions. In October 2005, M&H met with the city planning manager who informed them their project would not meet local height and setback requirements. In March 2007, M&H submitted a notice of intent to file a cause of action under the Harris Act, claiming the enactment of the ordinance caused significant loss of value to the property. The city filed and the trial court granted a motion to dismiss, arguing the Harris Act pertains only to applied challenges, not facial, and M&H never applied for a building permit or development order. In affirming the decision of the trial court, the 1st DCA held the specific language of the Harris Act does not contemplate facial challenges, and the application of the Harris Act to these circumstances would unduly constrain the exercise of municipal Home Rule. *M&H Profit, Inc. v. City of Panama City*, 34 Fla. L. Weekly D2554 (1st DCA December 14, 2009).

Real Property – Wetlands – Counties – Development Orders – Action Seeking Declaratory, Injunctive And Mandamus Relief to Bar Individual Defendant from Developing Wetlands on His Property, Alleging County Wrongfully Refused to Enforce Its Comprehensive Plan and Regulations Relating to Replats with Respect to Defendant's Development Activities, and the Defendant Wrongfully Filled Wetlands Without First Obtaining a Permit – Trial Court Erred in Finding that Wetlands on Defendant's Property Were "Non-Jurisdictional" and, as a Result, County Was Not Required to Comply with Provision in Its Comprehensive Plan that Prohibited Development Within 50 Feet of Wetlands – Trial Court Erred in Ruling Defendant Was Not Required to Obtain a Development Order or Development Permit Before Clearing and Filling Wetlands Located on His Property – Trial Court Erred in Finding that Defendant Was Not Required to Comply with County's Subdivision Ordinance When He Replatted His Property and Converted Three Lots into Five New and Different Lots.

Fred Johnson appealed the final judgment of the trial court where he sought declaratory, injunctive and mandamus relief to bar appellee William Joseph Rish's development of wetlands near Johnson's home on Cape San Blas. Johnson claimed Rish and Bay County violated Bay County's comprehensive land-use plan and land development regulations when Rish was allowed to clear and fill wetlands, as well as replat the property, all without a development order. The Bay County Comprehensive plan prohibits development from occurring within 50 feet of wetlands. The trial court accepted Rish and Bay County's claim that Rish did not need a development order and the county was not required to regulate the wetlands in question because the Army Corps of Engineers and the Florida Department of Environmental Protection told Rish he did not need a permit from those agencies. The 1st DCA held the plain language of the Bay County Comprehensive Plan required the county to prohibit development within 50 feet of wetlands and the need, or lack thereof, for permits from other agencies was irrelevant. Further, Johnson claimed Bay County failed to enforce its subdivision ordinance when Rish was allowed to replat the property. The county's subdivision ordinance requires a development plan, which Rish did not have, if property is replatted into three or more lots. The trial court held Rish did not need to comply with the subdivision ordinance because he simply moved the boundaries of the existing plats. The 1st DCA held the moving of the boundaries of the plats on the property created two additional lots and was subject to the subdivision ordinance. The case was reversed and remanded for further proceedings. *Johnson v. Bay County and Rish*, 34 Fla. L. Weekly D2625 (1st DCA December 22, 2009).

Section 3. Recent Decisions of the United States Supreme Court

None reported.

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

Civil Rights – Municipal Corporations – Equal Protection – Conspiracy – Competitive Bidding – Insider-Outsider Political Discrimination – Plaintiff's Alleging City's Award of Bid for Contract to Manage Advertising Displays

at Airport to the Incumbent Advertising Contractor Was Based on Discriminatory Classification Between "Political Insiders and Outsiders" – Qualified Immunity – Individual Airport and City Defendants Did Not Violate Clearly Established Constitutional Right and Were Therefore Entitled to Qualified Immunity.

Corey Advertising filed suit against the City of Atlanta and individual city employees claiming they conspired to ensure Clear Channel Communications, the incumbent service provider, was awarded a contract to manage advertising displays at Hartsfield-Jackson Airport because of Clear Channel's status as a "political elite." The district court denied the defendant's motion for summary judgment based on the defendant's claim they were entitled to qualified immunity. A government official is entitled to qualified immunity if they are engaged in a discretionary function and their actions are not violating a constitutional right of the plaintiff that was clearly established at the time of the violation. The 11th Circuit Court of Appeals reversed the decision of the district court holding the defendants had not violated a constitutional right of the plaintiff and therefore were entitled to qualified immunity. *Corey Airport Services, Inc. v. City of Atlanta, et. al.*, 22 Fla. L. Weekly C274 (11th Cir November 16, 2009).

Section 5. Recent Decisions of the United States District Courts for Florida

None reported.

Section 6. Announcements

Mark Your Calendar

Future dates for Florida Municipal Attorneys Association Seminar:

- July 15-17, 2010 – Amelia Island Plantation
- July 21-23, 2011 – The Breakers, Palm Beach

FMAA Seminar Notebooks Available

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