FLORIDA MUNICIPAL ATTORNEYS ASSOCIATION

FLORIDA MUNICIPAL LAW REPORTER

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October-December 2012

Editor's Note: The following case law summaries were reported for the period of October 1, 2012, through December 31, 2012.

Section 1. Recent Decisions of the Florida Supreme Court.

Torts – Sovereign Immunity – Denial – Appeals – An order denying summary judgment based on a claim of individual immunity under Section 768.28(9)(a), Florida Statutes, is subject to interlocutory review where the issue turns on a question of law – Section 768.28(2), Florida Statutes, extends status of state agency or subdivision to those corporations acting as instrumentalities of independent establishments of the state.

Keck, a bus driver employed by Jax Transit Management Corporation (JTM), hit Eminisor, a pedestrian, while operating a trolley owned by the Jacksonville Transportation Authority (JTA). JTM is a private corporation that is wholly controlled and intertwined with JTA. Eminisor sued JTA, JTM and Keck individually. Keck moved for summary judgment, claiming sovereign immunity shielded him from being named individually as a party to the suit. The trial court denied the motion, holding Keck's employer, JTM, was not granted statutory sovereign immunity because JTM was not an agent of the state or a state agency or subdivision under Section 768.28, Florida Statutes. Keck filed an interlocutory appeal. The question presented to the Supreme Court is whether appellate review of a denial for a motion for summary judgment based on a claim of statutory individual immunity must await the entry of a final judgment in the trial court if it turns on an issue of law. The Supreme Court held that, in a case of an individual employee, allowing an interlocutory appeal was proper because the state has not waived sovereign immunity for any of its officers, employees and agents. The court held that allowing an individual who is entitled to the immunity grant to be erroneously named as a party defendant in a lawsuit would mean the individual has effectively lost any statutory protection and the inability to pursue an interlocutory appeal would therefore render the statute meaningless. The court requested the Florida Bar Appellate Rules Committee submit an amendment to Rule 9.130 to provide the rule change mandated by the decision in the instant case. *Andreas Keck v. Ashleigh K. Eminisor,* 37 Fla. L. Weekly S697 (Fla. November 15, 2012).

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

Municipal corporations – Eminent domain – Code enforcement liens – Error to deny city's motion to use proceeds from a taking to satisfy an outstanding code enforcement lien on the condemned property based on determination that a motion is not a "petition" as the term is used in Section 162.09(3), Florida Statutes, and city was required to file an independent action.

The City of Boynton Beach condemned a landowner's property through eminent domain. The property was subject to two code enforcement liens. When the landowner moved to withdraw the proceeds from the condemnation from the court registry, the city filed a motion to withdraw the proceeds to satisfy the two code enforcement liens. The trial court denied the motion, holding the city failed to file a "petition" as required by Section 162.09(3), Florida Statutes, which governs the enforcement of liens. The trial court held the term "petition," which is undefined, should be defined consistent with Rule 1.100 of the Florida Rules of Civil Procedure. A "petition" in Rule 1.100 requires a pleading. Since a motion is not a pleading, the trial court held a petition cannot be made by a motion. The trial court concluded the city had to file an independent motion to enforce the liens. The 4th DCA reversed the trial court, holding the term "petition" as defined in Black's Law Dictionary and the Florida Probate Code only requires a written request to the court. Since the city's motion was a written request, it satisfied the requirements of Section 162.09(3), Florida Statutes. The DCA further held the trial court had jurisdiction to adjudicate the code enforcement liens because Florida's eminent domain laws expressly provide the court entering a taking order has the authority to resolve all claims against the property before any proceeds are disbursed. *City of Boynton Beach v. Frank Janots, Theodore Ryan, Gerhard Degen, Robert P. Brown, et. al.,* 37 Fla. L. Weekly D2366a (Fla. 4th DCA October 10, 2012).

Counties – Injunctions – Trial court abused its discretion in refusing to grant county's request for a temporary injunction to require restaurant to comply with ordinance while ordinance's constitutionality is being litigated – County has substantial likelihood of success on the merits where restaurant is continually providing outdoor entertainment in clear defiance of the ordinance despite knowledge of restrictions, prior entry of consent injunction, denial of its application to remove restrictions, and pending administrative proceedings.

Defendants' predecessor owned a parcel of land containing a hotel, marina and restaurant. The predecessor made extensive renovations to the hotel and marina without obtaining permits from Manatee County. The county agreed to permit the renovations after the fact, provided the predecessor agree to abide by several conditions, including an entertainment and noise restriction that was subsequently codified in a county ordinance. The defendants purchased the property subject to all laws, regulations and ordinances applicable to the property. Following the purchase, the defendants challenged the entertainment restriction in an administrative proceeding. While the administrative proceeding was pending, the defendants resumed outdoor entertainment in direct violation of the county ordinance. The county filed for a temporary injunction to require the defendants to comply with the ordinance during the administrative action. The trial court denied the injunction on the grounds the county's ordinance was unconstitutional. The county appealed the denial of the temporary injunction. To obtain a temporary injunction, the moving party must establish (1) a likelihood of irreparable harm and the unavailability of an adequate remedy at law; (2) a substantial likelihood of success on the merits; (3) a threatened injury to the petitioner that outweighs any possible harm to the respondent; and (4) that the granting of the injunction will not disserve the public interest. The 2d DCA held the first prong was met because the county was enforcing its police power and irreparable harm would result if the county could not enforce an existing ordinance. The third and fourth prongs were satisfied because the injunction would only require compliance with existing laws, which cannot be said to harm a business owner or do a disservice to the public. The court held the second prong is satisfied because, as in the instant case, the government has a right to relief when a person who opens a business aware of existing violations and ordinances continually operates a business in violation such laws. The court also noted public policy supports issuance of the temporary injunction because a denial would allow a permitted business to disregard any agreed upon restriction by challenging the restriction's enforceability, which would render the permitting process illusory. The DCA remanded the case for issuance of the temporary injunction. *Manatee County v. 1187 Upper James of Fla., LLC, et. al.*, 37 Fla. L. Weekly D2656a (Fla. 2d DCA November 16, 2012).

Municipal corporations – Ordinances – Ordinance requiring that water, sewer and stormwater management accounts be established in the name of the property owner does not conflict with Section 180.135, Florida Statutes – Statute does not preclude city from requiring landlords, but not their tenants, to contract with city for water and sewer services.

The City of North Lauderdale has an ordinance that requires landlords, but not their tenants, to contract with the city for water and sewer services. Jass Properties, LLC, a landlord, sued the city alleging the ordinance conflicts with Section 180.135, Florida Statutes, and is therefore invalid. Section 180.135 provides that a municipality may not refuse or discontinue utility services to the owner or tenant of a rental unit for nonpayment of service charges incurred by a prior tenant. The Fourth DCA held the dispositive question in determining whether there is a conflict is whether compliance with a municipal ordinance requires a violation of state statute or renders compliance with a state statute impossible. The DCA held nothing in Section 180.135, Florida Statutes, expressly prohibited the city from declining to contract with tenants and restricting agreements to property owners. Since there is no express prohibition in the state statute, there is no conflict and the city ordinance is valid. *Jass Properties, LLC v. City of North Lauderdale*, 37 Fla. L. Weekly D2674 (Fla. 4th DCA November 21, 2012).

Public employees – Whistle blowers – Local government entities – No error in granting summary judgment in favor of local housing authority where disclosures made by employee were not protected under Whistle-Blower's Act because they were not made to the chief executive officer of the local housing authority, or "other appropriate local official" as required by Section 112.3187(6), Florida Statutes.

A former employee of the Panama City Housing Authority filed suit alleging he was fired in violation of the Florida Whistle-Blower's Act. To receive protection under the act in circumstances related to disclosures involving a local government entity, an individual must have disclosed information to a chief executive officer or other appropriate local official. In the instant case, while still employed by the authority, the plaintiff filed a complaint with the U.S. Department of Housing and Urban Development (HUD) alleging pay discrimination. The plaintiff did not file a complaint with the authority's executive director, its Board of Directors, or anyone else at the authority. The trial court granted summary judgment to the authority, holding the plaintiff was not entitled to protection under the act because he never submitted a claim to the appropriate local official as required by statute. The First DCA upheld the trial court, holding HUD was a federal, not local, agency and had no administrative or enforcement powers over the authority. *Kenneth Quintini v. Panama City Housing Auth.*, 37 Fla. L. Weekly D2723 (Fla. 1st DCA November 28, 2012).

Public officials – Appeals – Certiorari – Order departed from essential requirements of law where subpoenas seek testimony from mayor as to his motive for legislative decision, and seek to compel mayor to testify as to information that is readily available from other sources. Miami-Dade County and Miami-Dade County Mayor Carlos Gimenez appealed an order of the Public Employees Relations Commission (PERC) denying Miami-Dade's motion to quash subpoenas from the Dade County Police Benevolent Association (PBA). An elected official's motives and reasoning used to make legislative decisions are not subject to judicial scrutiny. In the instant case, the Third DCA held the subpoenas should be quashed because the PBA sought testimony regarding the mayor's motive for vetoing resolutions of the Miami-Dade County Commission, which is legally irrelevant and not subject to judicial inquiry. Also, it is improper to subpoena a high-ranking official or agency head to testify concerning matters that are available from other sources or available through testimony from lesser-ranking officers. The DCA held that subpoenas should be quashed because the information the PBA sought could be readily obtained from the mayor's veto statements, the mayor's comments at public meetings and the testimony of a number of lower-ranking county officials. *Miami-Dade County & Miami-Dade County Mayor Carlos A. Gimenez v. Dade County Police Benevolent Assoc.*, 37 Fla. L. Weekly D2838 (Fla. 3d DCA December 12, 2012).

Section 3. Recent Decisions of the U.S. Supreme Court.

None Reported.

Section 4. Recent Decisions of the U.S. Court of Appeals, Eleventh Circuit.

None Reported.

Section 5. Recent Decisions of the U.S. District Courts for Florida.

None Reported.

Section 6. Announcements.

Mark Your Calendar
Florida Municipal Attorneys Association's seminar:

July 25-27, 2013 – Amelia Island Plantation.

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