LCW:JMH

IN THE SUPREME COURT OF FLORIDA

FILED

DEC 31 1980

SID J. WHITE
CLERK SUPREME COURT
By Chief Deputy Clerk

DEAN FORSBERG and
WALTER FREEMAN,

Appellants,

vs.

THE HOUSING AUTHORITY OF THE
CITY OF MIAMI BEACH and
MURRAY GILMAN, Executive
Director,

Appellees.

CASE NO. 54,623

APPELLANTS' SUPPLEMENTAL BRIEF

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ISSUE PRESENTED

THE EFFECT OF ARTICLE I, § 23
ON PUBLIC ACCESS TO TENANT
FILES MAINTAINED BY THE MIAMI
BEACH HOUSING AUTHORITY

ARGUMENT

ISSUE

THE EFFECT OF ARTICLE I, § 23 ON PUBLIC ACCESS TO TENANT FILES MAINTAINED BY THE MIAMI BEACH HOUSING AUTHORITY.

In Shevin v. Byron, Harless, Schaffer, etc., 379 So.2d 633 (Fla.1980), this Court concluded that under the Federal Constitution a person's right of disclosural privacy was not so broad as to protect personal and family information obtained on applicants for the position of managing director of the Jacksonville Electric Authority, from disclosure to the public under Chapter 119 of the Florida Statutes.

The Court further rejected the contention that both Art. I, § 9 and Art. I, § 12, Fla.Const. guarantee a right of disclosural privacy and concluded "That there is no support in the language of any provision of the Florida Constitution or in the judicial decisions of the State to sustain ... a state constitutional right of disclosural privacy." Shevin, at p. 639.

Appellants submit that Art. I, § 23, Fla.Const. mandates a change in the reasoning in Shevin, and further requires this Court to conclude that disclosure to the public pursuant to Chapter 119 of the Florida Statutes of the personal, private and family information submitted to the MIAMI BEACH

HOUSING AUTHORITY in order to obtain public housing, is unconstitutional as applied.

Article I, § 23 provides the state constitutional right to privacy missing in Shevin. Article I, § 23 provides in pertinent part,

> SECTION 23. Right of Privacy - Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein....

It is submitted that this constitutional provision includes a disclosural right to privacy which restricts the release and dissemination of personal, private and family information contained in governmental files, and creates a protected privacy interest under the kind of circumstances presented in Paul v. Davis, 424 U.S. 693 (1976) and in Shevin.

In Shevin this Court cited Laird v. State, 342 So.2d 962 (Fla.1977), as clear authority that Florida has no general state constitutional right of privacy.

In Laird, this Court held that no constitutional right to privacy existed to protect the individual's right to possess and smoke marijuana in the home. The Court distinguished the result reached in Ravin v. State, 537 P.2d 494 (Ak.1975) on the basis that Ravin, in part, based its decision on an Alaskan state constitutional right to privacy which had no analogue in Florida. The Alaskan constitutional provision provided "The right of the people to privacy is recognized and shall not be infringed."

Surely, the scope of Art. I, § 23, Fla.Const. is at least as expansive as the Alaskan constitutional provision and elevates privacy to a fundamental constitutional right. And, in order to overcome a fundamental constitutional right the government needs a compelling state interest. See eg. Laird v. State, supra, at p. 965, note 4; Ravin v. State, supra, The law must be shown necessary, and not merely rationally related to the accomplishment of a permissible state policy. McLaughlin v. Florida, 379 U.S. 184, 196 (1964).

Appellants submit that while Chapter 119 may be rationally related to the purpose of protecting against and exposing corrupt government (here, the MIAMI BEACH HOUSING AUTHORITY, in particular), that this rationale presents no compelling state interest for the MIAMI BEACH HOUSING AUTHORITY to disclose private, personal and familial information contained in the tenant files to the general public. The monitoring function of Chapter 119 can be accomplished by less pervasive and intrusive means than allowing general public rumaging through the files. When the State may constitutionally act to regulate activities, the least restrictive alternative must be utilized when infringing upon an individual's fundamental constitutional rights and "State regulation may not be achieve by means which sweep unnecessarily broadly and thereby invade the areas of protected freedoms." See eg. Griswold v. Connecticut, 381 U.S. 479, 485 (1965).

It is submitted that in order for this personal,

private and familial information to be released and disclosed by the Housing Authority to a member of the general public, that first that member of the public must bring suit as contemplated by § 119.11, Fla.Stat. and demonstrate to the Court a compelling need for such information to overcome the tenants' right of disclosural privacy established by Art. I, § 23. (The Court might even hold an in camera inspection of the files and order deleted that portion of the tenant's personal, private and familial information for which no compelling reason for disclosure has been demonstrated, before released to the individual public member seeking access).

This would be an excellent way for the Court to resolve and balance the competing interests of the public's right to know and the tenant's right to privacy.

In Ravin, supra, the Alaskan Supreme Court recognized the distinctive nature of the home as a place where the individual's privacy receives special protection. And, while in the case at bar, privacy in the home is not directly involved, the information here is required to be disclosed to the Housing Authority in order to obtain a home, and this information, as well, is disserving of special protection. This also serves as a basis on which to distinguish Shevin.

Appellants will candidly recognize that the second sentence of Art. I, § 23, which reads " This section shall not be construed to limit the public's right of access to public

records as provided by law" presents an apparent obstacle to their position in that we are urging this Court to limit the public's right of access under Chapter 119 (emphasis added). However, this obstacle is apparent only, and not real. It is overcome by adhering to the basic principles of constitutional interpretation, in construing the words "public records" as used in Art. I, § 23.

The question is whether "public records" as used in Art. I § 23, is synonymous with "public records" as technically defined in Chapter 119, or has a meaning which those words are generally and popularly understood to mean in the language. Appellants submit that "public records" as used in Art. I, § 23 is not synonymous with the term as defined in Chapter 119, but rather has a meaning which those words are generally and popularly understood to mean.

> The words and terms of a Constitution are to be interpreted in their most usual and obvious meaning, unless they have been used in a technical sense. The presumption is in favor of the natural popular meaning which the words are usually understood by the people who have adopted them. Schooley v. Judd, 149 So.2d 587, 590 (Fla.2d DCA 1963); City of Jacksonville v. Glidden Co., 169 So. 216, 217 (Fla.1936).

The fundamental object to be sought in construing a constitutional provision is to ascertain the intent of the framers and the provision must be construed or interpreted

in such manner as to fulfill the intent of the people. Gallant v. Stephens, 358 So.2d 536, 539 (Fla.1978); State ex. rel. Dade County v. Dickinson, 230 So.2d 130 (Fla.1969); Gray v. Bryant, 125 So.2d 846 (Fla.1960).

From the legislative history of Art. I, § 23 (see document attached), it is apparent that the State Legislature was at least in part reacting to this Court's decisions in Laird v. State, supra, and Shevin v. Harless, etc., supra, holding that there was no general constitutional right to privacy.

And since Shevin v. Harless, etc., involves access to governmental records under Chapter 119, it is clear that the legislature was not using the term "public records" in Art. I, § 23, to be synonymous with the term as used in Chapter 119, but rather with a meaning which the term "public records" is generally and popularly understood to mean. "Public" records as defined in Black's Law Dictionary, and Webster's Collegiate Dictionary, are records "pertaining to a state, nation, or whole community." The information contained on a tenant's application in a file maintained by the Housing Authority does not pertain to the whole community, but only pertains to private, personal and familial information of the individual applicant. The information involved in the case at bar, then, is not public record within the meaning of Art. I, § 23, and the outcome seemingly mandated by Shevin v. Harless, ect., supra, is reversed by the constitutional right

to disclosural privacy contained in Art. I, § 23.

Constitutional interpretation is governed by the rule of reason and unreasonable or absurd consequences should be avoided. City of St. Petersberg v. Briley, Wild & Assoc., Inc., 239 So.2d 817, 822 (Fla.1970); Florida Dry Cleaning, etc. Board v. Everglades Laundry, 188 So. 380 (Fla.1939). A construction of the Constitution which renders a provision superfluous, meaningless, or inoperative should not be adopted by the Court. State ex. rel. West v. Butler, 69 So. 771 (Fla. 1914).

If this Court construes "public records" as used in Art. I, § 23 to be synonymous with "public records" as defined in Chapter 119, then this Court will be permitting the State Legislature to define the scope of the constitutional protection provided by simple legislative enactment or amendment to Chapter 119. Likewise, the legislature could also change the scope of the constitutional protection by simple legislative enactment or amendment to Chapter 119. Such a construction, then, would render the constitutional right to privacy meaningless.

On the other hand, this Court, by giving "public records" a construction importing the natural, popular meaning to the term provided by Black's Law Dictionary and Webster's Collegiate Dictionary, and requiring a court procedure under Chapter 119 by which a person seeking personal, private and familial information contained in Housing Authority

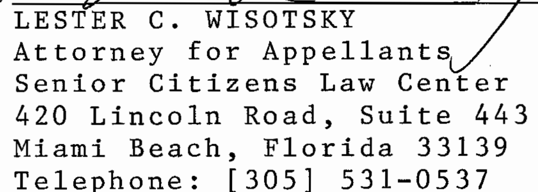
records must demonstrate a compelling need for such information to overcome the tenants' right of disclosural privacy, will provide a full, meaningful, and reasonable interpretation to Art. I, § 23.

CONCLUSION

Appellants submit that with the passage of Art. I, § 23, it becomes clear that tenant files maintained by and sought from the MIAMI BEACH HOUSING AUTHORITY herein, contain private, personal and familial information, which is protected by the constitutional right to disclosural privacy thereby provided, that any different outcome that might be mandated by Shevin v. Harless, etc., supra, is changed, and that the judgment of the lower court should be reversed.

Respectfully submitted,

LEGAL SERVICES OF GREATER MIAMI, INC.

By 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing APPELLANTS' SUPPLEMENTAL BRIEF was mailed this 30th day of December, 1980, to the following:

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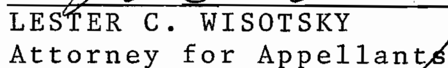

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