

IN THE SUPREME COURT OF FLORIDA

ESCAMBIA COUNTY, FLORIDA

Petitioner,

v.

CASE NO. 65,347

CITY OF PENSACOLA, a
municipal corporation,

Respondent.

FILED

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EXPLANATION OF ABBREVIATIONS AND SYMBOLS

Petitioner, ESCAMBIA COUNTY, will be referred to as the "County";
Respondent, CITY OF PENSACOLA, will be referred to as the "City."

The Appendix to Jurisdictional Brief of Petitioner will be referred to as "App." and the symbols "p" or "pp" shall refer to the appropriate page number of the Appendix.

STATEMENT OF THE CASE AND FACTS

The City challenged various County services and programs as not providing the requisite benefit under Article VIII, Section 1(h), Florida Constitution, and Section 125.01(7), Florida Statutes. The legal issue in such "dual taxation" cases is whether the challenged County services and programs provide real and substantial benefits to municipal areas and residents. City of St. Petersburg v. Briley, Wild & Associates, Inc., 239 So.2d 817 (Fla. 1970). (App pp 45-52). The trial court found that services provided by the Escambia County Sheriff's "patrol division" and expenditures by the County on roads classified as "local roads" by the Florida Department of Transportation failed to provide real and substantial benefits to municipal areas. (App pp 6-9). The First District Court of Appeal affirmed the trial court on the grounds that ". . . it does not appear (contrary to the County's assertion) that the trial court applied an incorrect legal standard" (App. p. 2)

INTRODUCTION

The primary question before the First District Court of Appeal in this case was whether the trial court correctly interpreted and applied the Briley, Wild real and substantial benefits test. Likewise, the Fourth District Court of Appeal in Palm Beach County v. Town of Palm Beach, 426 So.2d 1063 (Fla. App. 4th DCA 1983) certified to this Court as a question of great public importance the identical question of whether the Briley, Wild real and substantial benefits test had been correctly interpreted and appropriately applied in the Palm Beach

County case. (App pp 12-21). Oral argument was held in the Palm Beach County case on October 3, 1983, and a final decision by this Court is pending.

In both the Palm Beach County case and this case, the fundamental issue is whether the trial court misinterpreted the Briley, Wild real and substantial benefits test by focusing upon the degree of direct benefit received by municipal areas and residents. The fact that no direct and primary benefit to municipal areas and residents is required under the real and substantial benefits test was established with clarity in Briley, Wild as follows:

"We hold that the proper interpretation of the language of this section of the Constitution does not require a direct and primary use benefit from a particular service to city-located property in order to remove the same from the proscription of the constitutional provision. It is sufficient to authorize county taxation of such property if the benefits accruing to the municipal areas are found to be real and substantial and not merely illusory, ephemeral and inconsequential. That it was not the intent of the framers of this provision of the Constitution to require a direct benefit to city-located property in order to avoid the proscription is evidenced by the fact that attempts to amend the provision to substitute the words 'directly' and 'primarily' for the word 'exclusively' were defeated before the proposition was submitted to the people for approval." (App pp 51-52).

In Briley, Wild, the county service challenged was the construction and expansion of sanitary sewerage facilities in the unincorporated area. This Court held that the resulting elimination of pollution in the waters of the County due to the improved sewerage facilities was a real and substantial benefit to city-situate property even though physical use of the facilities was totally unavailable to city residents and property. Thus, in Briley, Wild, there was no direct benefit to

city residents and property. The factors of benefit that were held to be real and substantial by this Court were all indirect.

The absence of any requirement of direct benefit under the real and substantial benefits test was recognized by the Fourth District Court in the Palm Beach County case when it reversed the trial court's finding based upon an analysis of the degree of direct benefit received by municipal areas:

"In Briley, Wild, the City of St. Petersburg was not to be connected into the sewer system, thus there was no direct benefit. In the present case, both direct and indirect benefits are involved. Applying the foregoing standard we have therefore concluded that there was not substantial competent evidence to support findings that the services and programs referenced by the complaints filed in this case did not provide real and substantial benefits to the respective municipalities." (emphasis added) (App p 20).

The City in this case and the Plaintiff municipalities in the Palm Beach County case utilized substantially identical benefit theories in marshalling evidence and presenting testimony. The trial court in this case focused its analysis on the degree of direct benefit received by municipal areas in the same manner as the reversed trial court in the Palm Beach County case. The findings of fact were substantially the same in both cases. Inexplicably, the First District Court affirms the trial court while the Fourth District Court's reversal of the trial court is pending in this Court.

THE FIRST DISTRICT COURT OF APPEAL DECISION AFFECTS BOARDS
OF COUNTY COMMISSIONERS AS A CLASS OF CONSTITUTIONAL OFFICERS
AND INVOLVES ISSUES OF GREAT PUBLIC IMPORTANCE.

Each "dual taxation" case, whether at the trial or appellate level, is followed closely by all urban county and municipal governments.

The facts are analyzed and debated during annual attempts throughout the state to reconcile county budgets with the constitutional real and substantial benefits test. Because of the limited number of "dual taxation" cases, the facts of each case are known whether reported in the appellate decision or not.

While not discussing the facts, the First District Court attempted to distinguish the Palm Beach County case by asserting that the trial court in Palm Beach County had not considered "unquantified" or indirect benefits while the trial court in this case did. Such assertion is simply in error. The evidence presented and theories of benefit asserted by the plaintiff municipalities and their experts in both cases are virtually identical.

In Palm Beach County, the Fourth District Court summarized the evidence presented as to the challenged law enforcement as follows:

"The record supports the conclusion that the primary purpose of the sheriff's road patrol division is to operate as a police force for the unincorporated areas of Palm Beach County. The division does not regularly patrol any of the four plaintiff municipalities. The road patrol is a response-to-call service; however, a person calling from one of the plaintiff municipalities is ordinarily referred to the appropriate municipal police department." (App p 17).

Similarly, the trial court in this case summarized the almost identical evidence presented as to the sheriff's road patrol as follows:

"The patrol areas of the Sheriff's road patrol adjacent to the City do not include portions of the City. The Sheriff's road patrol does not routinely patrol any area of the City. Complaints received by the Sheriff's Department from areas within the City are referred to the City of Pensacola Police Department for responses unless the Sheriff's Department is specifically requested to respond. Evidence submitted at trial indicated a minute number of responses by the Sheriff's road patrol within the City." (App p 6).

The salient evidence relied on by the plaintiff municipalities and the trial court in both cases was a statistical analysis by expert witnesses of minimal incidents of direct benefit to municipal areas. In the Palm Beach County case, the statistical analysis concluded that the percentage of incidents where a deputy sheriff responded directly within the boundaries of a municipality or provided assistance directly to a municipality constituted 0.17% of the total activities of the sheriff for a year. (App p 37). In this case, this statistical analysis concluded that the number of cases where the law enforcement activity occurred within the boundaries of the City or where a city resident was the victim was 3.7% and 3.5% of the total cases of the sheriff for the two study periods.¹ Such statistical analysis embraces solely factors of direct benefit involving physical presence within the boundaries of a municipality or direct contact with a municipal resident or their property. Recognizing that a finding of lack of real and substantial benefit from such evidence of minimal direct benefit was a rejection of the Briley, Wild test, the Fourth District Court in Palm Beach County held:

"As these latter examples demonstrate, not every benefit that the municipalities derive from the road patrol and detective division are quantifiable, as that term has been used by the parties throughout this appeal. The direct and demonstrable benefits when coupled with these unquantifiable benefits compel the conclusion that, in total, the municipalities enjoy a real and substantial benefit from the sheriff's road

¹If a similar direct benefit statistical analysis had been performed by an expert witness in the Briley, Wild case, the conclusion would yield 0% of direct benefits to municipal areas from the challenged sewer system.

patrol and detective division. We therefore conclude that the trial court's holding to the contrary is not supported by substantial competent evidence." (App p 18).²

This legal standard rejected by the Fourth District Court that was utilized by the trial court in the Palm Beach County case and in the instant case is whether the challenged law enforcement service provides real and substantial benefit directly to municipal areas and residents. Or, stated differently, a service is provided in violation of the statutory and constitutional provisions if the service primarily benefits the unincorporated area. This novel standard of analysis focuses only on that portion of a county service that occurs directly within the boundary of the municipality or directly touches a municipal resident. The theory of the plaintiff municipalities, adopted by the trial court in both the Palm Beach County case and this case, is that the direct benefit received by the municipal area is insufficient. Such theory was rejected by this Court in Briley, Wild and repudiated by the Fourth District Court in Palm Beach County. Yet, the application of the identical rejected theory was affirmed by the First District Court in this case.

This misinterpretation of the Briley, Wild test in this case is highlighted by the following finding in the Final Judgment:

"The County argues that there are indirect benefits to the City. The Court finds that there are services provided by

²The term "unquantifiable" is applied by the Fourth District Court to evidence of factors of benefit not counted or quantified in the statistical analysis of direct benefit presented by the plaintiff municipalities in Palm Beach County and this case. Such factors of benefit do not involve physical presence within the boundaries of a municipality or contact with a municipal resident or property and thus also were labeled as "indirect benefits" by the Fourth District Court.

the County for which the citizenry of the City of Pensacola derive no real and substantial benefit and for which there are no indirect benefits as a matter of law." (App p 10).

Rejecting as a matter of law all indirect benefits that cannot be quantified is a backdoor finding that a certain degree of direct benefit to municipal areas is required under the Briley, Wild test.

The incorrect direct benefit standard utilized by the trial court in this case channelled all of the judicial analysis solely to law enforcement activities occurring directly within the boundaries of the City or directly involving a municipal resident as a victim.

On the issue of "local roads," the First District Court affirmed the identical benefit theory and evidence that was reversed by the Fourth District in the Palm Beach County case.

The fact that the theory of the City and findings of the trial court in this case on the issue of local roads was based upon the reversed trial order in the Palm Beach County case is unquestioned. The challenge in both cases was that all roads classified by the Florida Department of Transportation as local roads failed to provide the requisite benefit to municipal areas and residents. The permeation of this direct benefit analysis in the Final Judgment is illustrated by the following finding:

"Local roads primarily serve abutting property owners. All of the County's local roads are contained in the unincorporated areas of the County. Primary benefits of local roads are to the people who live on them." (emphasis added)
(App p 8).

If the decision of the First District stands and this Court concludes that the Briley, Wild case was correctly interpreted and applied in the Palm Beach case, the predictability of prior precedent and the real and substantial benefits test will be destroyed. How can a board

of county commissioners be expected to adopt a budget in conformity with the constitutional and statutory standard when faced with opposite legal conclusions from virtually identical facts? Which decision is correct is immaterial at this point in the appellate process. Both cannot be and their inconsistency creates chaos in an area of complex intergovernmental relations where stability resulting from consistent case law was emerging.³

THE FIRST DISTRICT COURT OF APPEAL DECISION CONFLICTS WITH
PALM BEACH COUNTY V. TOWN OF PALM BEACH, AND CITY OF ST. PETERSBURG
V. BRILEY, WILD & ASSOCIATES, INC.

The original decision of the Fourth District Court of Appeal in the Palm Beach County case was filed one day after the Final Judgment was entered in this case.⁴ Prior to and during trial and at the time the Final Judgment was drafted, the reversed trial order in the Palm Beach County case was touted on the latest precedent. (App pp 23-43). That the trial court in this case was influenced by the reversed final order in Palm Beach County is clear. At the hearing on the County's Motion for Rehearing based upon the decision of the Fourth District Court in Palm Beach County, the trial judge in this case recognized

³Petitioner was shocked when the First District Court ruled in this case while the Palm Beach County case was pending in this Court. The Palm Beach County case was argued extensively in the briefs and at oral argument. Petitioner requested the First District Court to defer its decision on Petitioner's Motion for Rehearing until this Court had ruled in Palm Beach County. The First District Court denied such request when it denied Petitioner's motion for rehearing and its motion to certify a question to this Court.

⁴In response to a motion filed by the municipalities in Palm Beach County, the Fourth District Court of Appeal revised its opinion to certify a question to this Court. (App p 22). A similar motion filed by the County with the First District Court of Appeal in this case was denied.

the conflict between his opinion and that of the Fourth District Court as follows:

"I think what we have is three judges at the appellate level and two at the trial level who have looked at, if what you say is correct, essentially the same facts, and have reached a three-two decision, is what it amounts to, which is simply to say that if it goes to the First District, or to the Supreme Court it could go either way. And I'm prepared to deny your motion at this time." (App p 53).

The First District Court cites Palm Beach County as authority for the proposition that the relevant standard" is a mixed question of law and fact and it is ". . . necessarily dependent upon the particular circumstances of each case" Such reference to the Palm Beach County decision evidences a fundamental misunderstanding of the thrust of the decision. The Palm Beach County decision is a rejection of the proposition that the Briley, Wild standard is dependent on the facts of each case. The essence of the Palm Beach County case is that a trial court does not have unbridled discretion in applying the Briley, Wild test to the "particular circumstances of each case." The Briley, Wild test from the inception incorporated certain parameters, one being that the requisite benefits need not be direct and primary. The Fourth District Court reversed the application of the "relevant standard" by the trial court to "the particular circumstances" before it for the following reasons:

"We suggest that one factor which distinguishes our holding from that of the trial court is in differing perceptions of the quantum and quality of benefit that is entailed in the concept of 'real and substantial.'" (App p 20).

The Court then quoted that portion of the opinion of this Court in the Briley, Wild case in which the necessity of any direct and primary benefit to municipalities was rejected.

The lack of any requirement of direct or primary benefit is a fundamental element of the real and substantial benefits test and is not dependent upon the particular circumstances of each case. The decision of the First District Court that the "relevant standard" bends in a vacuum free from precedent to fit the "particular circumstances of each case" is in direct conflict with the decisions of the Fourth District Court in Palm Beach County and this Court in Briley, Wild.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail this 12th day of June, 1984, to the following attorneys:

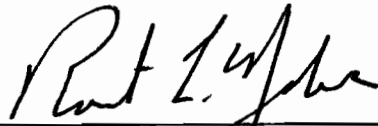
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