

IN THE SUPREME COURT OF FLORIDA

Case No. 66,290

Third District Case No. 84-748

SOUTHERN RECORDS & TAPE :  
SERVICE, et al., :

Petitioners, :

vs. :

THE HONORABLE MURRAY :  
GOLDMAN, etc. :

Respondent. :

**FILED**

JAN 18 1985

CLERK, SUPREME COURT

By *[Signature]*  
Chief Deputy Clerk

PETITIONERS' BRIEF ON MERITS

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## INTRODUCTION

This brief is submitted on behalf of the Petitioner, SOUTHERN RECORDS AND TAPE SERVICE, TONE DISTRIBUTORS, INC., and Q RECORDS AND TAPE, INC., (hereinafter referred to as "SOUTHERN RECORDS"). The Respondent is the HONORABLE MURRAY GOLDMAN (hereinafter referred to as "RESPONDENT").

The symbol "A" will be used to indicate the Appendix to this brief. All emphasis is provided by counsel unless otherwise indicated.

SOUTHERN RECORDS seeks the reversal of the decision of the Third District Court of Appeal denying its Petition for Writ of Prohibition in that same directly conflicts with the decision of WINN-DIXIE STORES, INC. V. FERRIS, 408 So.2d 650 (Fla. 4th DCA 1981), review denied, 419 So.2d 1197 (Fla. 1982). Additionally, the decision of the Third District interprets the provisions of Chapter 11A of the Code of Metropolitan Dade County in a manner contrary to the Florida Constitution and its dictates.

STATEMENT OF THE CASE AND FACTS

A charge of discrimination was filed by one, Emerita E. Abreu with the Equal Employment Opportunity Commission on August 21, 1979 alleging discrimination in employment based upon her sex. A similar charge was filed with the Dade County Fair Housing and Employment Appeals Board on October 16, 1979. (A 1-4). After a hearing before the Dade County Fair Housing and Employment Appeals Board, orders were entered awarding attorney's fees and back pay to Emerita Abreau. (A 7-9).

Thereafter, a Petition for Rule Nisi was filed by Office of the County Attorney on behalf of the Dade County Fair Housing and Employment Appeals Board seeking to "enforce the final orders of employment discrimination and attorney's fee against SOUTHERN RECORDS AND TAPE SERVICES, a Florida corporation transacting business in Dade County, and its successors in interests, TONE DISTRIBUTORS, INC. and Q RECORDS AND TAPE, INC." Further, the County sought the issuance of a Rule Nisi "directing the employer to show cause why a Writ of Execution or such other process as may be necessary to enforce the said orders shall not be issued." (A 5-6). SOUTHERN RECORDS sought the dismissal of

the petition before the lower court. (A 10-13). This motion was denied. (A 14).

Consequently, SOUTHERN RECORDS petitioned the Third District for a Writ of Prohibition alleging that the lower court had no jurisdiction to enforce violations of county ordinances. This Writ of Prohibition was denied and the Third District certified that its decision was in conflict with the case of WINN-DIXIE STORES, INC. V. FERRIS, supra. (A 18-21).

Accordingly, relief was sought in this Honorable Court. (A 22).

ISSUE

WHETHER THE DECISION OF THE THIRD DISTRICT ERRONEOUSLY REFUSED TO GRANT PROHIBITION HEREIN.



SUMMARY OF ARGUMENT

SOUTHERN RECORDS respectfully submits that the decision of the Third District Court of Appeal in denying its Petition for Writ of Prohibition was in error in that same directly conflicts with the decision of **WINN-DIXIE STORES, INC. v. FERRIS, supra**. The Circuit Court did not have jurisdiction to entertain a suit to enforce a county ordinance and, further, to allow such a suit to be entertained by the Circuit Court is to allow the County to unconstitutionally determine the jurisdiction of the courts. Moreover, SOUTHERN RECORDS respectfully submits that Chapter 11A of the Code of Metropolitan Dade County is unconstitutional in that it allows the County to delegate an essentially judicial responsibility to an administrative body, i.e., the award of equitable remedies without the necessity of a trial de novo.

ARGUMENT

THE DECISION OF THE THIRD DISTRICT  
ERRONEOUSLY REFUSED TO GRANT PRO-  
HIBITION HEREIN.

SOUTHERN RECORDS respectfully submits that the decision of the Third District was erroneous in that the Circuit Court acted without jurisdiction when it entertained an action to enforce the mandates of a county ordinance. Jurisdiction rests solely in the County Courts to interpret Chapter 11A of the Code of Metropolitan Dade County and to allow otherwise is to place an unconstitutional interpretation on same.

In this regard, prohibition allows a superior court to prevent an inferior court from exercising or usurping jurisdiction with which it has not been vested by law. Prohibition is not utilized when a court acts in excess of its jurisdiction, but where it has none to entertain the matter and thereby leaving no other adequate remedy for a party. ENGLISH V. McCRARY, 348 So.2d 293 (Fla. 1977); BURKHART V. CIRCUIT COURT OF ELEVENTH JUDICIAL CIRCUIT, 1 So.2d 872 (Fla. 1941); SCHOOL BOARD OF MARION COUNTY V. ANGEL, 401 So.2d 359 (Fla. 5th DCA 1981). The jurisdiction of Circuit Courts is outlined in Section 26.012, Fla. Stat. in pertinent part as follows:

(1) Circuit Courts shall have jurisdiction of appeals from County

Courts except appeals of County Court orders or judgments declaring invalid a state statute or a provision of the State Constitution. Circuit Court shall have jurisdiction of appeals from final administrative orders of local government code enforcement boards.

Additionally, Section 34.01, Fla. Stat. outlines the jurisdiction of the County Courts in pertinent part as follows:

(1) County Court shall have original jurisdiction:

\* \* \*

(b) Of all violations of municipal and county ordinances;

The creation and delegation of responsibilities for courts may only be determined by the State Legislature. See, Article V, Sec. 1, Florida Constitution (1968). Therefore, it was inappropriate for the Circuit Court to entertain the petition for rule nisi filed on behalf of the Fair Housing and Employment Appeals Board because same involved the enforcement of the provisions of Chapter 11A of the Code of Metropolitan Dade County.

A similar situation was presented in the case of WINN-DIXIE STORES, INC. V. FERRIS. A petition for enforcement was filed on behalf of the Broward County Board of County Commissioners and the Human Rights Board of Broward County seeking to enforce an order finding discrimination in

employment. On the same day that a charge of discrimination was filed with the Broward County Human Rights Board, a complaint was filed with the Equal Employment Opportunity Commission created under Title VII, 42 U.S.C. 2000e, et. seq. of the Civil Rights Act of 1964. In **FERRIS**, the county sought to have the Circuit Court confirm and enforce the Human Rights Board order and the county ordinance which created the Board purported to create jurisdiction in the Circuit Court for such an action. In finding prohibition appropriate the court stated:

The Circuit Courts of Florida do not have jurisdiction to enforce municipal or county ordinances. Article V, Sec. 6(b) provides that County Courts shall have uniform jurisdiction throughout the State and that such jurisdiction shall be as prescribed be general law. Pursuant to this constitutional mandate, the Legislature has described the jurisdiction of County Courts in Section 34.01, Florida Statutes (supp. 1980) which provides: 'County Courts shall have original jurisdiction: . . . (b) of all violations of municipal and county ordinances . . . .' In short, County Courts have jurisdiction to enforce municipal and county ordinances and the vesting of said jurisdiction in the County Court deprives the Circuit Courts of this jurisdiction. 408 So.2d at 652.

The Broward County Attorney's office attempted to argue that its suit was actually one for injunction and thus within the

jurisdiction of the Circuit Court. The Fourth District refused to accept this argument relying on the plain and simple allegations of the petition filed below and therefore, the court determined that prohibition was appropriate. See also, **OLD REPUBLIC INSURANCE COMPANY V. WHITWORTH**, 442 So.2d 1078 (Fla. 3d DCA 1983) (prohibition is proper remedy where court acting without jurisdiction in suits seeking to have Circuit Court determine liability for on the job injury which is within the exclusive province of the Worker's Compensation Act.) See generally, **LOWE V. PIERCE**, 437 So.2d 142 (Fla. 1983); **FESTA V. BRITTON**, 372 So.2d 1168 (Fla. 3d DCA 1979); **STATE ex rel ALTON V. CONKLING**, 421 So.2d 1108 (Fla. 5th DCA 1982).

In the instant case, despite any attempts to allege to the contrary, the Petition below sought to enforce the judgment of the Fair Housing and Employment Appeals Board, and, in fact, entitled itself "Petition for Rule Nisi". This is patently clear from a simple reading of the petition. Black's Law Dictionary defines a Rule Nisi as:

A rule which will become imperative and final unless cause be shown against it. This rule commands the party to show cause why he should not be compelled to do the act required, or why the object of the rule should not be enforced.

Clearly the County did not seek an injunction which maintains the status quo, but sought to require the court to enter orders which the County alleged were required to enforce the provisions of its Code. Moreover, if an injunction was in fact sought by the Fair Housing and Employment Appeals Board, same could only be prosecuted by the Consumer Advocate in accordance with the provisions of Section 11A-28 of the Code of Metropolitan Dade County. However, the bare allegations of the Petition for Rule Nisi belie any assertions that this was an action to enjoin SOUTHERN RECORDS. The Petition states it seeks to enforce the Code and requests orders to assist in this endeavor. In fact, Respondents began discovery proceedings in the trial court to locate assets of SOUTHERN RECORDS to obtain monies ordered by the Fair Housing and Employment Appeals Board. (A 15-17).

SOUTHERN RECORDS would note that other remedies were available to the original complainant, Abreau, if she sought to prosecute her charges of employment discrimination. Specifically, Section 760.10(12), Fla.Stat. and Title VII, 42 U.S.C. Sec. 2000e, et.seq. of the Civil Rights Act of 1964, provide for access to the State Circuit Courts or the Federal District Courts for a trial *de novo* regarding the charge of discrimination. The original complainant had

filed a charge with the EEOC and, therefore, this avenue was available to her as in **FERRIS, supra**.

Moreover, to interpret Chapter 11A of the Code of Metropolitan Dade County so as to permit a suit to enforce in the Circuit Courts is to allow an impermissible delegation of responsibilities to the counties which rightly belongs to the Legislature. See, Article V, Sec. 1, Florida Constitution. In this regard, Article VIII, Sec. 1 of the Florida Constitution provides that counties only have powers which are not inconsistent with general law and, Section 125.01(w), Fla.Stat. provides the county may only do that which is not prohibited by law. As noted *infra*, Article V, Sec. 1, places the responsibility for the creation and delineation of duties with regard to courts in the the State Legislature which spoke in Sections 26.012 and 34.01, Fla.Stat. with regard to Circuit Courts and County Courts. Thus, to interpret Chapter 11A of the Code of Metropolitan Dade County so as to permit actions to enforce code violations in Circuit Court is to interpret same unconstitutionally and to allow an improper delegation of duties. See, **BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY V. BOSWELL**, 167 So.2d 866 (Fla. 1964).

Furthermore, SOUTHERN RECORDS respectfully submits that a review of the Petition for Rule Nisi in the Circuit

Court seems to indicate that the County was seeking to enforce the Board order without the necessity of a trial de novo. SOUTHERN RECORDS maintains that this would permit the County to in effect create a court contrary to the constitutional provisions noted above. Specifically, boards such as the Fair Housing and Employment Appeals Board have traditionally been utilized as fact finding agencies whose findings form the basis for a trial de novo in the court of appropriate jurisdiction. See, Section 760.10, Fla.Stat. and Title VII, 42 U.S.C Sec. 2000e, et.seq. of the Civil Rights Act of 1964. To suggest that the Fair Housing and Employment Appeals Board findings may stand on their own and not be subject to appropriate de novo challenge is to permit the County to create a court contrary to the Florida Constitution.

In this regard, Article V, Section 1 of the Florida Constitution states:

The judicial power shall be vested in a Supreme Court, District Courts of Appeal, Circuit Courts and County Courts. No other courts may be established by the state, any political subdivision or any municipality. The Legislature shall, by general law, divide the state into appellate court districts and judicial circuits following county lines. Commissioners established by law, or administrative officers or bodies may be granted quasi-judicial power in



matters connected with the functions of their offices.

Thus, Sections 26.012 and 34.01, Fla.Stat., established the jurisdiction of the Circuit and County Courts. However, the only courts which may be created are those authorized by Article V, Section 1. **SIMMONS V. FAUST**, 358 So.2d 1358 (Fla. 1978). In the instant case, METROPOLITAN DADE COUNTY, pursuant to Chapter 11A of its Code, created a board with the power to award equitable remedies of back pay and in effect created a court. Unfortunately, Article II of the Florida Constitution prohibits the delegation of duties of any branch of government to another. As stated in the case of **McRAE V. ROBBINS**, 9 So.2d 284 (Fla. 1942) in its concurring opinion:

While the essentially legislative and judicial 'powers of the government' as stated by Article II of the Constitution may not be delegated, yet because of the necessities arising upon contemplated contingencies or unascertained facts or conditions, or in the detailed or complicated administration of a law, when direct or immediate or continuing legislative or judicial action is inexpedient or impracticable, administrative functions, including quasi-legislative or quasi-judicial functions of government not involving any essentially judicial or legislative powers, may within definite limitations be conferred upon and exercised or performed by permissible administrative agencies. . .9 So.2d at 290.

Moreover, as stated in the case of **CANNEY V. BOARD OF PUBLIC INSTRUCTION OF ALACHUA COUNTY**, 278 So.2d 260 (Fla. 1973):

As a general rule administrative agencies have no general judicial powers, notwithstanding they perform some quasi-judicial duties, and the Legislature may not authorize officers or bodies to exercise powers which are essentially judicial in their nature. . .

An adjudicatorial proceeding before a public administrative officer or body is not an action at law. . . The administrative body is not a part of the judiciary. . . 278 So.2d at 262 (citations omitted).

Petitioner would respectfully submit that the award of legal or equitable damages is an essentially judicial power which cannot be delegated to an administrative body.

Therefore, in the case of **MAYO V. MARKET FRUIT COMPANY OF SANFORD**, 40 So.2d 555 (Fla. 1949) a representative from the office of the Commission of Agriculture heard a case involving the failure to account for use of fruit in violation of then Sections 596.11 and 596.14, Fla.Stat.. The Commission representative awarded damages in the amount of \$7,000.00. The Supreme Court only found this monetary award to be permissible because the Commission could not enforce its orders and a suit with a trial de novo was the only means for obtaining the damages sought. The court indi-

cated that if the Commission had the ability to enforce its own orders that this would result in the deprivation of trial by jury and access to the courts. The court further noted that the findings of the Commission's representative acted solely as evidence in the trial de novo. This is true as well in discrimination cases. See, **DICKERSON V. METROPOLITAN DADE COUNTY**, 659 F.2d 954 (5th Cir. 1981).

Accordingly, damages are a judicial remedy and are within the exclusive jurisdiction of the courts as provided by Article V of the Constitution. Thus, an administrative body cannot order equitable remedies. **BALTIMORE CONSTRUCTION COMPANY V. FLORIDA DEPARTMENT OF GENERAL SERVICES**, 363 So.2d 851 (Fla. 1st DCA 1978). Back pay, as herein, is an equitable remedy and beyond the province of the Fair Housing and Employment Appeals Board. See, **LINCOLN V. BOARD OF REGENTS**, 697 F.2d 928 (11th Cir. 1983).

SOUTHERN RECORDS respectfully submits that any action which the Fair Housing and Employment Appeals Board may take with regard to its findings must include a trial de novo with regard to the merits of the original charge of discrimination.

Therefore, SOUTHERN RECORDS respectfully submits that the Writ of Prohibition should have been issued by the Third District in that the Circuit Court was acting without

jurisdiction to entertain an action to enforce the provisions of the County ordinance. Additionally, to suggest that the County ordinance permitted such an action to be brought in Circuit Court is to interpret same in an unconstitutional fashion.

CONCLUSION

Based upon the foregoing cases, authorities and reasons, SOUTHERN RECORDS respectfully submits that the decision of the Third District must be reversed as same is in conflict with the case of WINN-DIXIE STORES, INC. V. FERRIS, supra. Prohibition was appropriate herein in that the RESPONDENT was acting without jurisdiction and to interpret the Code of Metropolitan Dade County otherwise is to make same unconstitutional.

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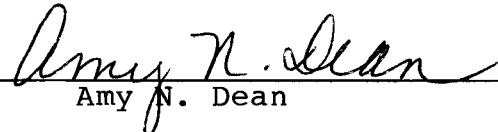
Miami, Florida 33156

By



Steven R. Berger

By



Amy N. Dean

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 15th day of January, 1985 to THE HONORABLE MURRAY GOLDMAN, Judge, Circuit Court, Dade County Courthouse, 73 W. Flagler Street, Miami, Florida 33130, DANIEL A. WEISS, Esquire, 1626 Dade County Courthouse, 73 W. Flagler Street, Miami, Florida 33130 and KEITH CHASIN, Esquire, 8585 Sunset Drive, Suite 75, Miami, Florida 33143.

By Amy N. Dean  
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