

IN THE SUPREME COURT OF FLORIDA

FILED

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MAY 13 1985

CITY OF ATLANTIC BEACH,
FLORIDA,

Petitioner,

v.

GEORGE BULL,

Respondent.

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

CASE NO: 66,446

DCA CASE NO: AW-339

GEORGE BULL,

Petitioner,

v.

CITY OF ATLANTIC BEACH,
FLORIDA,

Respondent.

CASE NO: 66,488

DCA CASE NO: AW-339

REPLY BRIEF ON THE MERITS
OF RESPONDENT/PETITIONER, GEORGE BULL

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STATEMENT OF THE CASE

The same abbreviations will be here used as indicated in the Initial Brief on the merits of Respondent/Petitioner, George Bull. (RIB, 1)

No useful purpose will be accomplished by replying to the quibblings recited in Petitioner's Reply Brief. (PAB, 1-2)

STATEMENT OF THE FACTS

Again, under the Statement of the Facts as contained in Petitioner's Reply Brief (PAB, 3-4) the City quibbles about matters having no relevance to the merits of this case. The City recites that in Bull's Initial Brief the scrivener "***rather freely summarizes the allegations of the Third Amended Complaint". (PAB, 3) Nothing will be accomplished by quibbling about the recitations of the Third Amended Complaint: It is in the record. The City argues that in the Third Amended Complaint "the only matter complained of in the complaint is the fact that the City did not seek competitive bids for the architectural consulting services***." (PAB, 3) The important fact is that the City did not seek competitive bids and therefore did not follow the law!

However, it is relevant to note the admission by the scrivener of the City's brief as to the argument sought to be made that "the issue was not presented to the trial court or to the First DCA in the instant case***." (PAB, 3-4) It is elementary that it is improper for the City to seek to

now argue before this Honorable Court facts or issues "not presented to the trial court or to the First DCA in the instant case." Accordingly, Petitioner's Reply Brief, or at least the Statement of the Facts therein contained, should be stricken. (Florida Livestock Board v. Hygrade Food Products Corp., 141 So.2d 6 (Fla. 1st DCA 1962) and authorities therein cited.)

A full and correct Statement of the Facts is contained in Bull's Initial Brief on the merits (RIB, 4-5) and no useful purpose will be accomplished by repetition herein.

SUMMARY OF ARGUMENT

The City repeatedly argues in Petitioner's Reply Brief that Bull has failed to acknowledge "the most recent decisions of this Court." That, of course, simply is not accurate. The cases apparently referred to by the City, Department of Administration v. Horne, 269 So.2d 659 (Fla. 1972) and Department of Revenue of the State of Florida v. Markham, 396 So.2d 1120 (Fla. 1981), as well as the Second District's case, Godheim v. City of Tampa, 426 So.2d 1084 (Fla. 2d DCA 1983) are all referred to in the Summary of Argument contained in Bull's Initial Brief (RIB, 5-6) and elsewhere under the argument portion of that brief. Under the Summary of Argument section of Petitioner's Reply Brief the City again quibbles about the constitutional challenge as contained in the dismissed Third Amended Complaint. (PAB, 6) In an attempt to set the matter straight once and for all, in the Third Amended Complaint appears the following:

"The contract or agreement resulting in the above mentioned payment to Walter J. Parks, Jr. by the Defendant City of Atlantic Beach, and such payment, are void and without authority of law whatsoever, same being in total disregard of Section II(b) of Article VIII of the Constitution of the State of Florida, in that the Defendant City of Atlantic Beach may only exercise a power for municipal purposes which is not prohibited by a general statute***."
(R. 47-48)

* * *

"The illegal payments *** will cause waste of, and injury to, the public funds, and the waste of, and injury to, public funds of the Defendant City of Atlantic Beach will inflict special injury upon Plaintiff in that it will cause an increase in his tax burden." (R. 48)

* * *

"Unless enjoined by this Court, Defendant City of Atlantic Beach will proceed *** in contravention of *** and without power under Section II(b) of Article VIII of the Constitution of the State of Florida; and *** which will constitute a taking without due process of law and in violation of the Constitution of the State of Florida, ***."
(R. 48)

"WHEREFORE, Plaintiff prays:

"1. That the Defendant City of Atlantic Beach be restrained from paying out funds *** until such time as the Defendant is in compliance with *** Section II(b) of Article VIII of the Constitution of the State of Florida." (R. 49)

The City's statement in Petitioner's Reply Brief:

"Bull's attempt to characterize the alleged statutory violation as some form of constitutional infirmity is poorly reasoned and untenable" (PAB, 6) is premature. Quite ob-

viously Bull was prevented from adducing evidence in support of his Third Amended Complaint because it was untimely dismissed, which is the gravamen of this proceeding. It is absurd to argue in a proceeding involving the dismissal of a complaint that the Plaintiff has failed in his proof!

ARGUMENT

Issue

WHETHER A TAXPAYER CITIZEN WHOSE TAXES WILL BE INCREASED, BUT, WHO OTHERWISE WILL SUFFER NO INJURY DIFFERENT FROM OTHER CITIZENS SIMILARLY SITUATED, HAS STANDING TO MAINTAIN AN ACTION TO ENJOIN UNLAWFUL EXPENDITURES BY GOVERNMENTAL OFFICIALS OR FOR OTHER RELIEF?

DOES THE RAISING OF A CONSTITUTIONAL ISSUE AFFORD STANDING?

The scrivener of Petitioner's Reply Brief again asserts that "appellee Bull refuses to acknowledge the most recent decisions of this Court on the issue now presented". (PAB, 7) Of course, such an assertion is inaccurate and fruitless. Bull's Initial Brief on the merits addresses virtually every decision of this Honorable Court rendered before and since Rickman v. Whitehurst, 74 So. 205 (Fla. 1917). (RIB, 7-29) It would be an unreasonable imposition upon the time of this Honorable Court to repeat here that which is there presented. Suffice to say, as to the "Rickman Rule" and the decisions of this Court since the rendition of that opinion, Bull will rely upon his argument as set forth in his Initial Brief on the merits.

Attempting to read more than is there into Department of Administration v. Horne, supra, the scrivener of the City's

Reply Brief quotes (PAB, 8) the following:

"Essentially, the "Rickman Rule" requires a showing of special injury." (269 So.2d 662)

By use of the introductory word "essentially" the author of that opinion obviously qualified the requirement of the showing of a special injury: Otherwise, the introductory word "essentially" means nothing.

Nor does Bull "either overlook or misconstrue" Horne and Markham as asserted in the City's Reply Brief. (PAB, 10) Instead, as demonstrated in Bull's Initial Brief on the merits, those decisions are harmonized with the statement in Rickman v. Whitehurst, supra:

"In the first place the complainant has the right to maintain the bill if the acts complained of were unauthorized and not within the powers of the board of county commissioners, and tended to produce a resultant injury to the complainant by increasing the burden of his taxes. *** The principle on which the right rests is that the taxpayer is necessarily affected and his burdens of taxation increased by any unlawful act of the county commissioners which may increase the burden to be borne by the taxpayers of the county, ***." (74 Fla. 207: Underlining added.)

which has been the law both before and since Rickman v. Whitehurst.

Under its second sub-heading the City has asserted in Petitioner's Reply Brief that: "Bull has failed to refute the strong public policy considerations which support and require the "no standing" rule which now exists". (PAB, 11) Apparently the scrivener of the City's brief subscribes to the theory that if he says something often enough it will become

true! The fact is, that in Bull's Initial Brief on the merits he thoroughly discussed the "public policy considerations" and demonstrated, both by citations and logic, that there simply is no public policy which will support or require the position urged by the City. (RIB, 27-33) It appears, however, that by employing the verbiage "which now exists" the scrivener of the City's brief misunderstands both Bull's position as well as the case law, as properly construed. It is Bull's position as articulated in his Initial Brief (RIB, 7-33) that under the law "which now exists" Bull, a taxpayer and resident of the City whose taxes will be increased as a result of the unlawful expenditure has standing. Further, the statement in Petitioner's Initial Brief that Bull suggests that this Honorable Court "abandon" the constitutionally provided means for redressing unlawful conduct (PAB, 15) is pure nonsense. The only suggestion that Bull has made for any abandonment is that the City abandon the practices which gave rise to this litigation!

Neither is there any merit to the argument by the City (PAB, 15) that affording standing to taxpayers who seek redress on account of unlawful expenditures of tax monies by a public entity should be likened to being "permitted to institute criminal proceedings against individuals suspected of violating the law". (PAB, 15) First, there is a clear distinction between the duties of the attorney general or state attorney in criminal proceedings and civil matters. Second, the scrivener of the City's brief overlooks the time

honored right of a victim of a crime to "swear out a warrant" for the offender!

The matters relating to constitutional remedies recited under the third sub-heading in Petitioner's Reply Brief (PAB, 13-15) are adequately and accurately covered in Bull's Initial Brief on the merits (RIB, 28-33) and will not be re-argued here.

It is interesting, however, that at no place in Petitioner's Reply Brief is there even an attempt to refute or address that portion of Bull's Initial Brief on the merits (RIB, 28-29) demonstrating that under Section IX, Article I, of the Constitution of the State of Florida and under G.B.B. Investments, Inc. v. Hinterkopf, 343 So.2d 899 (Fla. 3d DCA 1977), a resident taxpayer whose taxes will be increased as a result of an unlawful expenditure has "standing" as a constitutional right. By ignoring that portion of Bull's Initial Brief on the merits and failing to address that constitutional provision and the cases which have construed it the City inferentially concedes such to be the law.

Finally, under the fourth sub-heading in Petitioner's Reply Brief (PAB, 16-17) the City again argues that "Bull has not alleged separate constitutional grounds to support his attack against the City". Again making that assertion for the third time in this brief (PAB, 3, 6, 16) does not make it true. The City's position is clearly refuted in Bull's Initial Brief on the merits (RIB, 33-34) and with even greater specificity under the "Summary of Argument"

portion of this brief where the specific portions of the Third Amended Complaint are quoted. In the interest of attempted brevity those arguments and refutations will not be repeated here.

CONCLUSION

Bull does not suggest that this Honorable Court should "change" the existing law but only clarify that which Bull believes the law to be, viz: That taxpayers who allege that their taxes will be increased as a result of unlawful expenditures by a governmental entity have standing to challenge the expenditure.

There is a clear distinction between suits by taxpayers complaining of unlawful expenditures and those involving land use, zoning and public nuisances.

The Constitution itself affords standing to a taxpayer whose taxes will be increased as a result of unlawful acts by taxing authorities to seek redress.

There is no foundation in fact whatsoever to support the contention that allowing standing to taxpayers under such circumstances will result in vexatious litigation nor an undue burden on the Courts.

It is neither reasonable, practical, nor just to require taxpayers to obtain redress only through the Attorney General or some other elected official whose time or budget may render effective assistance impossible.


To relegate a taxpayer to his remedy at the polls is neither reasonable, just nor constitutional.

Public policy dictates that taxpayers should have access to the Courts to enjoin unlawful dissipation of their tax dollars.

Finally, in the case sub judice, Bull did, in fact, level a constitutional attack in the Third Amended Complaint: Accordingly, dismissal by the trial court was error.

RESPECTFULLY SUBMITTED this 10th day of May, 1985.

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By 

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been mailed to Claude L. Mullis, Esquire, and James F. Valenti, Jr., Esquire, Post Office Box 4099, Jacksonville, Florida 32201, and Thomson Zeder Bohrer Werth Adorno & Razook, 100 South Biscayne Boulevard, Suite 1000, Miami, Florida 33131, this 10th day of May, 1985.



Attorney