

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

FILED

S'D J. WHITE

APR 1 1985

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

TALLAHASSEE HOUSING AUTHORITY,)
)
Petitioner,)
)
vs.)
)
FLORIDA UNEMPLOYMENT APPEALS)
COMMISSION and CONNELL BARRON,)
)
Respondents.)
_____)

CASE NO.: 66,663

Petition for Discretionary Review of a Decision
of the District Court of Appeal of the First District of Florida

JURISDICTIONAL BRIEF

OF

THE RESPONDENT

UNEMPLOYMENT APPEALS COMMISSION

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STATEMENT OF THE CASE AND THE FACTS

Case

With the following exceptions, the Commission adopts the Statement of the Case of petitioner, Tallahassee Housing Authority. Throughout the statement, Mr. William T. Moore who conducted the administrative hearing in this cause is referred to as "claims referee." Mr. Moore's correct title is "appeals referee." (R-68); §443.151(4)(a), Fla. Stat. (1983). The petitioner's statement indicates Mr. Moore's decision was "determined" on March 21, 1984. Although dated March 21, 1984, the decision was mailed to the parties and, therefore, rendered on March 26, 1984. (R-68); §443.151(4)(b)3., Fla. Stat. (1983). The petitioner's statement asserts that the First District Court of Appeal:

[A]ffirmed the decision of the Unemployment Appeals Commission stating that the Tallahassee Housing Authority had failed to prove that Mr. Barron's 298 hours of absences had been a detriment to them. (emphasis added).

(Pet. Juris. Br. at 2). The petitioner's statement is neither an accurate nor complete representation of the rationale expressed in the court's opinion. Since the substance of the District Court's opinion is the basis of this Court's alleged jurisdiction, it will be more fully discussed in the argument section of this brief where such discussion properly belongs. For the purpose of the Statement of the Case, it is sufficient to say the First

District Court of Appeal affirmed the final order of the Unemployment Appeals Commission by a two/one decision with written majority and dissenting opinions.

The petitioner's Statement of the Case asserts that the decision of the court below conflicts with a decision by the Second District Court of Appeal. The Commission disagrees for the reasons set forth in the argument section of this brief.

Finally, the Commission disagrees with the petitioner's statement that this Court has jurisdiction of this cause.

Facts

The Commission substantially disagrees with the petitioner's Statement of the Facts. Since the issue before the Court is whether express conflict exists, the only relevant facts are those expressed in the opinion of the court below. Matters contained in the petitioner's statement that are not contained in the court's opinion, even if supported by the record, are irrelevant to the jurisdiction issue. Moreover, any conflicts between the petitioner's Statement of the Facts and the court's expression must be resolved in favor of the court. Jenkins v. State, 385 So.2d 1356, 1358 (Fla. 1980). Thus, the petitioner's statement that Mr. Barron was represented by counsel at a pre-termination hearing is irrelevant because the court did not rely on any such fact as a basis for its decision.

Similarly petitioner's statement regarding Mr. Barron's paychecks is irrelevant because the court's opinion makes no reference to them. Likewise petitioner's statement regarding the defenses raised, if any, by Mr. Barron at the pre-termination conference is irrelevant. Finally, petitioner's statement that Mr. Barron had previously been provided a copy of the summary used against him at the hearing before the appeals referee is contrary to the court's statement that Mr. Barron denied having "been confronted with the summary prior to that hearing." Tallahassee Housing Authority v. Florida Unemployment Appeals Commission, Case No. BC-126, slip op. at 3 (Fla. 1st DCA, February 11, 1985).

SUMMARY OF ARGUMENT

Petitioner argues that Tallahassee Housing Authority v. Florida Unemployment Appeals Commission, Case No. BC-126 (Fla. 1st DCA, February 11, 1985) expressly and directly conflicts with City of Riviera Beach v. Florida Department of Commerce, 372 So.2d 1007 (Fla. 4th DCA 1979). No such conflict exists. The First District Court of Appeal expressed no disagreement with the rule of law applied by the Second District Court of Appeal in City of Riviera Beach. The First District acknowledged City of Riviera Beach but held it inapplicable to the case before it because of material differences in the facts of the two cases. The two decisions are in complete harmony. In no way do they create the kind of discord that would invoke this Court's jurisdiction.

ARGUMENT

THE DECISION OF THE DISTRICT COURT OF
APPEAL DOES NOT EXPRESSLY AND DIRECTLY
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FLORIDA DEPARTMENT OF COMMERCE, 372 So.2d
1007 (Fla. 4th DCA 1979).

The Court's discretionary jurisdiction to resolve interdistrict conflict may only be invoked when the conflict in decisions is "express" and "direct." Art. V, §3(b)(3), Fla. Const.; Fla. Rule of App. P. 9.030(a)(2)(A)(iv). No such conflict exists between this case and City of Riviera Beach v. Florida Department of Commerce, 372 So.2d 1007 (Fla. 4th DCA 1979).

In Ansin v. Thurston, 101 So.2d 808, 811 (Fla. 1958), this Court announced:

A conflict in decisions . . . must be on a question of law involved and determined, and such that one decision would overrule the other if both were rendered by the same court; in other words, the decisions must be based practically on the same state of facts and announce antagonistic conclusions.

The Court concluded that its jurisdiction of such matters is limited to "cases where there is a real and embarrassing conflict of opinion and authority between decisions." Id. at 811.

This Court further explained the limits of its conflict jurisdiction in Nielsen v. City of Sarasota, 117 So.2d 731, 734 (Fla. 1960):

While conceivably there may be other circumstances, the principal situations justifying the invocation of our jurisdiction to review decisions of Courts of Appeal because of alleged conflicts are, (1) the announcement of a rule of law which conflicts with a rule previously announced by this Court, or (2) the application of a rule of law to produce a different result in a case which involves substantially the same controlling facts as a prior case disposed of by this Court. (Emphasis the Court's).

Neither of the situations described in Nielsen are present in this case. The First District Court of Appeal did not announce a rule of law antagonistic to the rule announced in City of Riviera Beach. The First District Court of Appeal actually relied on and quoted from City of Riviera Beach. The second situation described in Nielsen is equally inapplicable because the controlling facts of the two cases are dissimilar.

Both cases involved claims for unemployment compensation benefits. The legal issue presented in each case was whether the claimant was disqualified for unemployment compensation benefits pursuant to the misconduct provisions of Florida's Unemployment Compensation Law, Sections 443.036(24), 443.101(1), Florida Statutes (1983).

In City of Riviera Beach the Fourth District Court of Appeal held the claimant disqualified for misconduct because she had been discharged for:

"[a]bsence from duty without leave, or failure to report after leave of absence has expired."

372 So.2d at 1008. After a one week paid vacation the claimant requested an additional week to "get adjusted to" her newly adopted baby. The employer denied the request because last minute requests disrupt the employer's operations. Instead, the claimant was granted two additional days off, but was instructed by telephone and by certified mail to report for work after the two days. Two days later, the claimant telephoned her supervisor for the purpose of obtaining an additional extension, and notwithstanding that she did not reach the supervisor, failed to report for work.

The only similarity between the facts of City of Riviera Beach and the case for which review is sought is they both involve discharges for absenteeism. The First District Court of Appeal acknowledged that absenteeism could amount to misconduct but added the following proviso:

[A]n employer has the burden under section 443.036(24), Florida Statutes, to show misconduct with a preponderance of proof that the absences were indeed inexcusable and in detriment to the employer's interests.

Tallahassee Housing Authority, slip op. at 4. The District Court of Appeal then cited City of Riviera Beach as a case where an employer met the burden of proving misconduct by showing the absenteeism was unexcused and detrimental to the employer. The court's ultimate holding, however, was that:

Unlike the employer in City of Riviera Beach, appellant employer failed to meet its burden in this case.

Id. at 5. The basis for the court's decision was expressed as follows:

The commission reversed the appeals referee's decision, concluding that the evidence offered by appellant was insufficient to show misconduct on the part of Barron as there was no showing that absence alone violated any policy of the employer nor that such absences showed an intentional disregard on the part of Barron for the employer's interest so as to constitute misconduct within the meaning of Section 443.036(24), Florida Statutes.

* * *

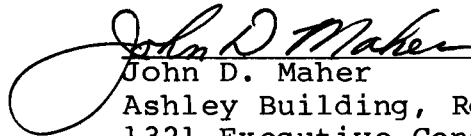
[W]e affirm the commission's reversal on the basis of the commission's application of the law to this case.

Id. at 3, 4. The District Court of Appeal cited with approval City of Riviera Beach. Its decision certainly does not expressly and directly conflict with it. The court merely held that the facts of City of Riviera Beach were different from the facts of the case before it and, therefore, a different result should obtain. Petitioner engages in extensive discussion of whether the result reached is consistent with sound social policy. Such discussion goes directly to the merits and is specifically proscribed by Florida Rule of Appellate Procedure 9.120(d). The Commission will not engage in such discussion.

CONCLUSION

Tallahassee Housing Authority v. Florida Unemployment Appeals Commission, Case No. BC-126, (Fla. 1st DCA, February 11, 1985) does not expressly and directly conflict with City of Riviera Beach v. Florida Department of Commerce, 372 So.2d 1007 (Fla. 4th DCA 1979). This Court lacks jurisdiction of this cause.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief was mailed to Paula L. Walborsky, Edgar C. Booth and Paula L. Walborsky, P.A., 324 East Virginia Street, Tallahassee, Florida 32301, James C. Conner, Jr., 325-F John Knox Road, Suite 120, Tallahassee, Florida 32303, and to Connell Barron, 2502 Holton Street, Apt. 135, Building F, Tallahassee, Florida 32304, on this 29th day of March 1984.


John D. Maher