IN THE SUPREME COURT OF FLORIDA

UNEMPLOYMENT APPEALS COMMISSION

Petitioner,

vs. Case No. 68,145

ZACHARY S. COMER

Respondent.

- -

UNEMPLOYMENT APPEALS COMMISSION

Petitioner,

vs. Case No. 68,442

PIERRE J. RENELUS

Respondent.

_____/

Petition for Discretionary Review of Decisions
of the District Court of Appeal of the Third District of Florida

REPLY BRIEF ON THE MERITS

OF

PETITIONER

UNEMPLOYMENT APPEALS COMMISSION

John D. Maher
Ashley Building, Suite 221
1321 Executive Center Drive, East
Tallahassee, Florida 32801-8247
(904) 487-2685

Attorney for Petitioner
Unemployment Appeals Commission

TABLE OF CONTENTS

TABLE OF CITATIONS

TABLE OF CITATIONS (Cont'd)

PREFACE

The following reference words and symbols will be used throughout this brief:

"Respondents" will designate, Zachary S. Comer and Pierre J. Renelus.

"Commission" will designate Petitioner, Unemployment Appeals Commission.

"Division" will designate Division of Unemployment Compensation.

"Florida Statutes" unless otherwise indicated will designate Florida Statutes (1985).

SUMMARY OF ARGUMENT

In Sagaert v. State Department of Labor and Employment Security, 418 So.2d 1228 (Fla. 3d DCA 1982) and Garcia v. Department of Labor and Employment Security, 426 So.2d 1171 (Fla. 3d DCA 1983), the Third District Court of Appeal disregarded the plain meaning of Section 443.151(6)(b)-(c), Florida Statutes (1985), and substituted an interpretation of the statute that is inconsistent with its plain meaning. In Sheppard v. State Department of Labor and Employment Security, 442 So.2d 1114 (Fla. 4th DCA 1983), the Fourth District Court of Appeal indicated that the Third District Court of Appeal had exceeded its authority by intrusion into matters delegated to the legislative branch. Despite the admonition of the Fourth District Court of Appeal, the Third District Court of Appeal reaffirmed its Sagaert and Garcia holdings in Comer v. Unemployment Appeals Commission, 481 So.2d 67 (Fla. 3d DCA 1985) and Renelus v. Unemployment Appeals Commission, No. 85-1556 (Fla. 3d DCA, March 4, 1986) which are under review in this case. The following discussion will demonstrate that the four decisions of the Third District Court of Appeal cannot be sustained on the basis that the court merely engaged in statutory construction. It will be shown that the court exceeded its authority and, therefore, the four decisions must be overturned.

ARGUMENT

ISSUE I

SECTION 443.151(6)(b)-(c), FLORIDA STATUTES (1985), IS PLAINLY WORDED AND THE LEGISLATURE'S INTENT IS OBVIOUS. THE THIRD DISTRICT COURT OF APPEAL DID NOT RESORT TO STATUTORY CONSTRUCTION TO INTERPRET AN AMBIGUOUS STATUTE. IT RESORTED TO EXCESSIVE JUDICIAL POWER TO OVERTURN A STATUTE IT DISAGREED WITH.

It has been argued that the decisions of the Third District Court of Appeal under review in this case are simply examples of a court engaging in statutory construction. An examination of the statute in question and the Third District's "construction" of it, however, demonstrate that the court did not construe the statute. It voided it. Section 443.151(6)(b)-(c), Florida Statutes (1985), provides that recipients of unemployment compensation overpayments must make restitution. Paragraph (b) provides that the Division of Unemployment Compensation may recover the overpayment by demanding payment, or it may recoup the overpayment from future benefits that become available to the recipient of the overpayment. Paragraph (c) restricts the authority to recoup overpayments from future benefits if such recoupment would defeat the purpose of the statute and be contrary to equity and good conscience. The statute provides no restriction on the division's ability to recover overpayments by civil actions.

In Sheppard v. State Department of Labor and Employment Security, 442 So.2d 1114 (Fla. 4th DCA 1983), the Fourth District Court of Appeal upheld the constitutionality of Sections 443.151(6)(b)-(c), Florida Statutes, and further held:

> The second [argument of the appellant] is that subsection (b) of the above statute compelled consideration of equity and good conscience before requiring repayment by appellant. We disagree with that argument as well, but wish to discuss it because our view expressly conflicts with that of the Third District Court of Appeal in Sagaert v. State Department of Labor and Employment Security, 418 So.2d 1228 (Fla. 3d DCA 1982). The court in Sagaert interpreted (b) to include defenses contained in (c), holding:
>
> * * *
>
> We respectfully believe the foregoing interpretation is an inappropriate invasion by the judiciary into the legislative arena, contrary to the constitutional mandate which separates the two respective governmental powers.

Despite the admonition from the Fourth District Court of Appeal that Sagaert represented an unconstitutional exercise of judicial power, the Third District Court of Appeal reaffirmed its Sagaert holding in Comer v. Unemployment Appeals Commission, 481 So.2d 67 (Fla. 3d DCA 1985) and Renelus v. Unemployment Appeals Commission, No. 85-1556 (Fla. 3d DCA, March 4, 1986). It also acknowledged that its decisions expressly and directly conflicted with Sheppard.

In Sagaert, the Third District Court of Appeal cited two cases which involved statutory construction: McKibben v. Mallory, 293 So.2d 48 (Fla. 1974); and Good Samaritan Hospital Association v. Simon, 370 So.2d 1174 (Fla. 4th DCA 1979). In McKibben the Florida Supreme Court rejected an interpretation of a newly enacted wrongful death statute that not only would have abrogated the intent of the statute but also would have rendered a portion of the statute unconstitutional. In Good Samaritan Hospital, the court was confronted with a statute which contained a contradiction. Section 768.40(2), Florida Statutes (1977), grants immunity to members of medical review committees from tort actions by health care providers, arising out of committee proceedings, so long as the committee member does not act with malice or fraud. Section 768.40(4), Florida Statutes, appears to bar discovery of any committee proceedings in any civil action against a health care provider. The court refused to construe Section 768.40(4), Florida Statutes, as a bar to discovery in cases involving malice or fraud because such an interpretation would directly conflict with Section 768.40(2).

In this case, however, there is no contradiction between Section 443.151(6)(b) and Section 443.151(6)(c), Florida Statutes. Paragraph (b) provides two methods for the division to collect overpayments, direct recovery and

recoupment from future benefits which may become available. Paragraph (c) places certain restrictions on the division when it elects to recoup overpayments from future benefits. The statute places no limitation on the division's ability to collect overpayments by direct recovery. Since there is no constitutional right to keep public funds which were paid in error, McKibben is not applicable to this case. Good Samaritan Hospital is also inapplicable because there is no contradiction in the statutory provisions under review here. Since the meaning of the statute is plain and unambiguous there is no necessity for any construction or interpretation of the statute. State v. Egan, 287 So.2d 1 (Fla. 1973).

The Sagaert opinion does not demonstrate that the Third District Court of Appeal was confused about the meaning of the statute. The court simply thought the statute unwise and refused to follow it. In so doing, the court exceeded its authority and, therefore, its decision must be overturned.

ISSUE II

SECTION 443.151(6)(b)-(c), FLORIDA STATUTES (1985), IS NOT INCONSISTENT WITH FEDERAL LAW OR FLORIDA'S UNEMPLOYMENT COMPENSATION LAW.

In its initial brief, the Commission explained the relationship between the federal government and the governments of the various states in the unemployment compensation program. Such discussion was included because respondent Renelus had argued before the Third District Court of Appeal that Section 443.151(6)(b)-(c), Florida Statutes (1985), as interpreted by the Commission, violated the supremacy clause of the United States Constitution. Renelus has apparently retreated from that position, but continues to argue that federal law dictates a construction of the statute inconsistent with its plain meaning. Renelus does not insist that the court strike the statute as unconstitutional. Amendment of the statute to meet his needs would be satisfactory. Unfortunately, the argument is made in the wrong forum. If the respondents perceive the statute to be unwise, unfair, or contrary to sound social policy such argument must be made to the legislature to change the statute. As the Fourth District Court of Appeal indicated in Sheppard, amendment of statutes is an exclusive function of the legislative branch of government which was invaded by

the Third District Court of Appeal in Sagaert, Comer, and Renelus. See also Garcia v. Department of Labor and Employment Security, 426 So.2d 1171 (Fla. 3d DCA 1983).

Respondents rely heavily on Gilles v. Department of Human Resources Development, 113 Cal. Rptr. 374, 521 P.2d 110 (1974). Gilles is also cited in the Sagaert decision. Gilles has no application to this case simply because it is based upon California's Unemployment Compensation Law which is substantially different from Florida's Unemployment Compensation Law in its treatment of overpayments. Unlike Florida's Unemployment Compensation Law, California's statute permits the "equity and good conscience" defenses in both recovery and recoupment actions. Cal. Unemp. Ins. Code, §§1375. The differences in the statutes preclude any profitable comparison between the Gilles decision and the decisions on appeal.

Respondents also suggest that Section 443.151(6)(b)-(c) should be amended because as written it conflicts with the legislative purpose of the unemployment compensation law. Section 443.021, Florida Statutes (1985), expresses the public purpose of Florida's Unemployment Compensation Law as:

> [t]he compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, subject, however, to the specific provisions of this chapter. (emphasis added).

Section 443.151(6), Florida Statutes, is a specific provision of Chapter 443. It clearly authorizes the Division of Unemployment Compensation to recover overpayments. The statute provides no defenses to the Division's authority to collect overpayments and none can be provided by judicial fiat.

ISSUE III

SECTION 443.151(6)(b)-(c), FLORIDA STATUTES (1985), AS INTERPRETED BY THE UNEMPLOYMENT APPEALS COMMISSION, IS NOT VIOLATIVE OF THE EQUAL PROTECTION CLAUSES OF THE FLORIDA AND THE UNITED STATES CONSTITUTIONS.

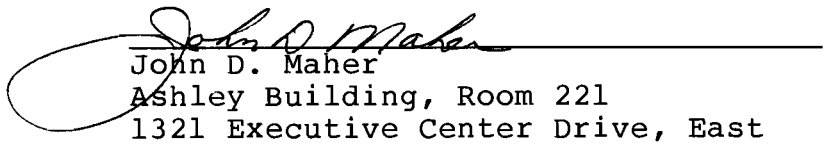
It its initial brief, the Unemployment Appeals Commission explained why the statute does not violate the equal protection clauses of the Florida and the United States Constitution.

CONCLUSION

The Third District Court of Appeal exceeded its authority in Sagaert, Garcia, Comer, and Renelus. The Court attempted to amend the statute contrary to the words contained in the statute in violation of the doctrine of separation of governmental powers.

The Comer and Renelus decisions must be quashed. Sagaert and Garcia must be overruled.

Respectfully submitted,



John D. Maher
Ashley Building, Room 221
1321 Executive Center Drive, East
Tallahassee, Florida 32301-8247
(904) 487-2685

Attorney for the Commission

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief was mailed to John R. Greenwood, Esq., Haitian American Community Association of Dade County (HACAD), Inc., 5901 N.W. 2nd Avenue, Miami, Florida 33127 and to Zachary Comer, pro se, 5920 S.W. 44th Terrace, Miami, Florida 33155 on this 19th day of May 1986.

John D. Maher