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SID J. WHITE

MAY 5 1986

IN THE
SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

BROWARD COUNTY, a political)
subdivision of the State of)
Florida,)
))
Petitioner,)
))
vs.)
))
JOHN LA ROSA,)
))
Respondent.)
_____)

CASE NO.: 68, 649

FOURTH DISTRICT COURT
OF APPEAL CASE NO. 84-404

PETITIONER'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND THE FACTS

On June 23, 1980, Clifton G. Smith filed a complaint against John LaRosa with the Broward County Human Relations Division alleging discriminatory practices in connection with the rejection on grounds of race of Clifton G. Smith in his attempt to lease an apartment owned by John LaRosa. The complaint was investigated by the Broward County Human Relations Division which in turn found reasonable cause to believe that a discriminatory practice had occurred in violation of the Broward County Human Rights Ordinance. The matter was presented to a hearing panel consisting of five members of the Broward County Human Rights Board on February 24, 1981, and April 23, 1981. At the conclusion of the hearing, the panel found that John LaRosa had violated the Broward County Human Rights Ordinance and ordered that John LaRosa cease and desist from committing acts of racial discrimination in connection with the rental of housing units; that John LaRosa forthwith pay Clifton G. Smith the sum of \$5,000.00 representing expenses and attorney's fees, and that John LaRosa, within six months from the date of the order, either pay to Clifton G. Smith an additional \$4,000.00 representing compensation for humiliation and embarrassment or make available to Clifton G. Smith the same or similar apartment. The order was signed by the chairman of the panel on the twelfth day of May 1981. Respondent did not seek appellate review of the order.

On August 31, 1981, Respondent John LaRosa filed a complaint for declaratory and other relief in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, against Broward County, the individual members of the Broward County Commission, and the individual members of the Broward County Human Rights Board Panel. The Respondent

sought the invalidation of various provisions of the Broward County Human Rights Ordinance as being violative of Article I, Sections 9, 14, 15, 16, 18, 19, 21 and 22 of the Florida Constitution. The Complaint further alleged that the final order entered by the Broward County Human Rights Board Panel on May 12, 1981, violates Article II, Section 3, Article III, Section 11(3) and Article V, Section 14 of the Florida Constitution, as an invalid legislative usurpation of the judicial authority of the courts of the State of Florida. On October 11, 1983, Respondent LaRosa filed a Motion for a Summary Judgment. On December 21, 1983, a hearing was held before the Circuit Court on Respondent's Motion for Summary Judgment. Final Summary Judgment declaring the Broward County Human Rights Ordinance to be unconstitutional to the extent that it provides in Section 16 $\frac{1}{2}$ -67 thereof for payment of money damages in violation of Article I, Section 18 of the Florida Constitution (Petitioner's Appendix, Tab A, p. 2) was entered by the court.

On February 21, 1984, Broward County, timely filed a Notice of Appeal perfecting jurisdiction in the Fourth District Court of Appeal. On October 3, 1984, the Fourth District Court of Appeal heard oral argument on the merits in that appeal. Thereafter, on October 5, 1984, the court ordered counsel to serve supplemental briefs on the constitutional issues discussed at oral argument. On March 19, 1986, the Fourth District Court of Appeal rendered its opinion in the above-styled case, holding that Section 16 $\frac{1}{2}$ -67(b)(8) of the Broward County Code of Ordinances violates Article I, Section 22 of the Florida Constitution insofar as it deprives a person of his inalienable right to trial by jury where a party is tried before a tribunal with the power to award unliquidated damages for humiliation and embarrassment. (A certified copy of this opinion is provided in the Petitioner's Appendix at Tab B.)

The opinion also held that the award of such damages pursuant to county ordinance is violative of Article I, Section 18 of the Florida Constitution which provides that no administrative agency shall impose a sentence of imprisonment nor shall it impose any other penalty except as provided by law, and further held that said provision violates Article II, Section 3 of the Florida Constitution in that the powers exercised by the Human Rights Board are basically and fundamentally judicial.

Based upon the construction of the foregoing constitutional provisions by the Fourth District Court of Appeal, Broward County filed its Notice to Invoke the Discretionary Jurisdiction of the Supreme Court on April 8, 1986.

SUMMARY OF JURISDICTIONAL ARGUMENT

Petitioner Broward County seeks the grant of jurisdiction by this Court for discretionary review of a decision of the Fourth District Court of Appeal that expressly construes provisions of the state constitution.

Earlier Florida Supreme Court decisions have defined "construing" and have set forth certain essential requirements which must be met before the Supreme Court will exercise its discretionary jurisdiction. Generally, the decision must explain, define, or otherwise eliminate existing doubts relating to the constitutional provision in question. More specifically, the constitutional question must have been raised at the first opportunity; the constitutional provision claimed to have been violated must have been designated specifically either by explicit reference to the article and section or by quotation of the provision; the facts showing the violation must have been stated, and the constitutional question must have been preserved throughout for review.

The instant case satisfies each such requirement as can be readily discerned by reviewing the Summary Final Judgment of the Circuit Court (Petitioner's Appendix, Tab A) and the opinion rendered by the Fourth District Court of Appeal (Petitioner's Appendix, Tab B).

JURISDICTIONAL ARGUMENT

I.

IN HOLDING THAT SECTION 16 $\frac{1}{2}$ -67(b)(8) OF THE BROWARD COUNTY HUMAN RIGHTS ORDINANCE VIOLATES ARTICLE I, SECTION 18; ARTICLE I, SECTION 22 AND ARTICLE II, SECTION 3 OF THE FLORIDA CONSTITUTION INsofar AS IT ALLOWS FOR THE AWARD OF MONEY DAMAGES BY A BROWARD COUNTY HUMAN RIGHTS BOARD PANEL FOR HUMILIATION AND EMBARRASSMENT SUFFERED AS A DIRECT RESULT OF A DISCRIMINATORY PRACTICE, THE FOURTH DISTRICT COURT OF APPEAL "CONSTRUED" THESE CONSTITUTIONAL PROVISIONS WITHIN THE MEANING OF ARTICLE V, SECTION 3(b)(3) OF THE FLORIDA CONSTITUTION.

Although decided prior to the 1980 amendments to Article V of the Florida Constitution, those early cases interpreting what is required in order to invoke the Supreme Court's jurisdiction to review cases which expressly construe a provision of the constitution have continuing vitality to the extent of defining the term "construing." The Supreme Court considered the matter of construing a state constitutional provision in Carmazi v. Board of County Commissioners, 104 So.2d 727 (Fla. 1958). This case stands for the proposition that where a right is being invaded, application of the constitutional provision which guarantees that right involves a construction of the constitution. As pointed out in the concurring opinion of Justice Drew in Carmazi, supra, quoting with approval the Georgia Supreme Court case Thompson v. State, 199 Ga. 250, 33 S.E.2d 903 (1945):

The words "construction of the constitution", etc. as here employed, contemplate construction where the meaning of some provision of the constitution is directly in question, and is doubtful by force of its own terms or under the decisions of the Supreme Court of the United States or of the Supreme Court of Georgia, . . .

Later that same year in Armstrong v. City of Tampa, 106 So.2d 407 (Fla. 1958), the Supreme Court of Florida again had occasion to interpret whether or not the decision of a lower court construed a controlling provision of the state or federal constitution. The rule established in Armstrong is that:

. . . in order to sustain the jurisdiction of this court there must be an actual construction of the constitutional provision. That is to say, by way of illustration, that the trial judge must undertake to explain, define, or otherwise eliminate existing doubts arising from the language or terms of the constitutional provision. It is not sufficient merely that the trial judge examine into the facts of a particular case and then apply a recognized clear cut provisions of the Constitution. 106 So.2d at 409.

As was the case in Carmazi, supra, the lower court in Armstrong did not have to apply a controlling constitutional provision to the facts of that case. But it is clear from these opinions that had the controlling provision been applied, this would have been sufficient to establish jurisdiction in the Supreme Court to review the lower court decision. The rule announced in Armstrong was subsequently weakened in a series of cases but ultimately revitalized in Ogle v. Pepin, 273 So.2d 391 (Fla. 1973).

Additionally, this case falls squarely within the four procedural prerequisites established in International HOD Carriers' Building and Common Laborers' Union Local 478-AFL-CIO v. Heftler Construction Company, 112 So.2d 848 (Fla. 1959). The requirements set forth therein are first, the constitutional question must have been raised at the first opportunity; second, the constitutional provision claimed to have been violated must have been discussed specifically either by explicit reference to the article and section or by quotation of the provision; third, the facts showing the violation must

have been stated and fourth, the constitutional question must have been preserved throughout for review. This requirement contemplates adequate coverage of the constitutional question in the appellate briefs. The Summary Final Judgment entered by the Circuit Court and the decision of the Fourth District Court of Appeal (Petitioner's Appendix, Tabs A and B, respectively) demonstrate compliance with each of the above requirements.

In Schermerhorn v. Local 1625 of Retail Clerks International Association, 141 So.2d 269 (Fla. 1962), the Supreme Court granted jurisdiction because the lower tribunal construed a provision of the Florida Constitution and reversed the decision of the lower court which had held that an agency shop clause did not contravene the "right to work" provision of the Declaration of Rights. See also Plante v. Smathers, 372 So.2d 933 (Fla. 1979).

In the instant case, the Fourth District Court of Appeal undertook to explain that the award of money damages by an administrative agency exercising quasi-judicial powers constitutes a violation of Article I, Section 18; Article I, Section 22 and Article II, Section 3 of the Florida Constitution. In holding as it did, the court explained the distinction between the term "penalty" and the payment of money damages. The court then went on to hold that Article I, Section 18 of the Florida Constitution, which provides that "[n]o administrative agency shall impose a sentence of imprisonment nor shall it impose any other penalty except as provided by law," had been violated. (Petitioner's Appendix, Tab B, p. 4.) This holding clearly falls within the Supreme Court's definition and the requisite elements of "construing" a provision of the Florida Constitution.

There can be no doubt as to the fact of construction by the Fourth District Court of Appeal of Article I, Section 22 of the Florida Constitution.

The Court construed Article I, Section 22 of the Florida Constitution, reserving the right of trial by jury as to those issues which were triable by a jury at common law, to be violated where a party is tried before an administrative agency with the power to award money damages. The court below reached this conclusion notwithstanding the fact that civil rights recognized and protected by the ordinance did not exist at common law. (Petitioner's Appendix, Tab B, pp. 6-7.) In so holding, the opinion of the Fourth District Court of Appeal falls within the rule stated in Armstrong, supra, and complies with the requirements set forth in Heftler, supra at 852.

The final point to be made herein involves the construction by the Fourth District Court of Appeal of Article II, Section 3 of the Florida Constitution, which provides that "[t]he powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." The court construed Article II, Section 3 in such a manner as to hold that the legislature lacks the constitutional authority to establish an administrative agency empowered to try "common law" actions for money damages awarded for humiliation and embarrassment suffered as a direct result of a discriminatory practice. Therefore, the court reasoned, Broward County also lacks such authority (Appendix, Tab A, p.6). Once again, this holding puts the decision of the court below within the rule announced in Armstrong and Heftler, supra.

CONCLUSION


In an apparent, although perhaps understandable, uneasiness over the power of an administrative agency to award money damages for humiliation and embarrassment suffered as a direct result of a discriminatory practice, the Fourth District Court of Appeal declared Section 16½-67(b)(8) of the Broward County Human Rights Ordinance to be violative of Article I, Section 18, Article I, Section 22, and Article II, Section 3 of the Florida Constitution.

This holding is based upon the court's characterization of the nature of the Broward County Human Rights Ordinance as "penal" as opposed to "remedial." Therefore application of Article I, Section 18 of the Florida Constitution to the ordinance was a construction of this constitutional provision. Next, the Fourth District Court of Appeal held that even the legislature is precluded from establishing an administrative agency which may award money damages as being violative of Article II, Section 3. Finally, the Fourth District Court of Appeal construed Article I, Section 22 of the Florida Constitution, the right to jury trial, so as to preclude the award of money damages by an administrative agency in its exercise of quasi-judicial powers.

Where a district court of appeal renders a construction of a constitutional provision which appears likely to be erroneous, it is essential that the Supreme Court exercise its discretionary jurisdiction to review and correct the decision of the lower court. The instant case exemplifies just such a situation. The Fourth District Court of Appeal has construed Article I, Section 18; Article I, Section 22 and Article II, Section 3 of the Florida Constitution within the meaning of Article V, Section 3(b)3, of the Florida Constitution.

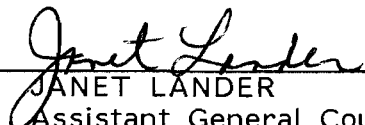
For the above stated reason, Petitioner Broward County prays this Court grant jurisdiction in this cause and review the decision of the Fourth District Court of Appeal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 2nd day of May, 1986, to GARY M. FARMER, Counsel for Respondent, 888 South Andrews Avenue, Suite 301, Fort Lauderdale, Florida 33301.



JANET LANDER
Assistant General Counsel

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