

IN THE FLORIDA SUPREME COURT

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JAN 11 2006
TALLAHASSEE, FLORIDA
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BROWARD COUNTY, a political)
subdivision of the State of)
Florida,)
)
Petitioner,)
)
vs.)
)
JOHN LaROSA,)
)
Respondent.)

Case No. 68,649

* * *

ON DISCRETIONARY REVIEW
FROM THE FLORIDA DISTRICT COURT OF APPEAL
FOURTH DISTRICT
(CONSTRUCTION OF CONSTITUTION)
[Art. V, §3(b)(3)]

* * *

RESPONDENT'S BRIEF ON JURISDICTION

* * *

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106 So.2d 407 (Fla. 1958)

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Texts

Art. V, §3(b)(3), Fla. Const.

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Ch. 83-380, Laws of Florida

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STATEMENT OF CASE AND FACTS

For purposes of the jurisdictional question only,
Respondent accepts Petitioner's statement of the case and facts.

ARGUMENT ON JURISDICTION

I.

It is first important for this Court to notice clearly the precise jurisdictional provision of the Florida Constitution on which Petitioner attempts to seek review in this Court. Broward County does not cite any express conflict in the District Court's decision. Nor does Broward County say that the District Court expressly found valid a state statute. Indeed, the County mysteriously avoids even hinting at what is wrong with the District Court's decision in this case. Instead, Broward County argues jurisdiction in this Court solely and under that provision of Art. V, §3(b)(3), which provides that the Supreme Court:

"May review any decision of a district court of appeal that * * * expressly construes a provision of the state or federal constitution * * * ."

Respondent has been unable to find any decisions from this Court explaining the above provision since the electorate lessened this Court's jurisdiction by a constitutional amendment in 1980. Neither does Petitioner cite any recent decisions; instead, it argues that earlier decisions explaining the previous jurisdictional grant have "continuing vitality."

Assuming that they do, the very cases cited by Petitioner suggest that this Court lacks jurisdiction in this case. Under the decision in Armstrong v. City of Tampa, 106 So.2d 407 (Fla. 1958), the decision which is most apt, this Court's jurisdiction to review decisions which construe a constitutional provision is limited to those cases in which the District Court does more than merely apply an unambiguous constitutional provision to a particular set of facts. As this Court plainly said in Armstrong:

"In other words, actual construction of the language of the Constitution, either state or federal, must be involved to justify the jurisdiction of the Supreme Court. It is not sufficient to sustain our jurisdiction merely to point to a set of facts and contend that the trial judge failed to apply correctly a recognized provision of the Constitution. To convey jurisdiction to this Court by direct appeal it is necessary that the trial judge actually construe or interpret a section of the Constitution and then apply his construction to the factual situation presented to him." [emphasis added]

Id. at 410.

In the present case, however, both Judge Tedder in the Circuit Court and the District Court of Appeal as well merely applied the constitutional ban on penalties being assessed by administrative agencies, unless the legislature so directs, and the constitutional requirement for a jury trial in cases where someone seeks money damages for non economic injury. To say that

the meaning of either one of these constitutional provisions is "doubtful"-- either by its own content or as the result of some decision of this Court or of the United States Supreme Court-- is to read more into the decision of the Fourth District than is really there.

This Court's jurisdictional limitations in the Florida Constitution are generally construed strictly, not broadly. When Article V was amended by a vote of the electorate in 1980, the purpose of the amendment was to narrow and restrict this Court's jurisdiction-- not to expand it. Hence, if one reads Armstrong and Art. V, §3(b)(3) in that light, there is no jurisdiction in this Court to review the decision of the Fourth District in this case.

II.

The Advisory Committee and Court's Commentary to Rule 9.120 say that a petitioner may wish to include some discussion as to why the Supreme Court should exercise its discretion and entertain the case on the merits, if the Court should find that it actually does have jurisdiction. Conspicuously, Petitioner has omitted any such argument here. Broward County does not say why, assuming jurisdiction even exists, this Court should exercise it and review a decision of a District Court of Appeal which has invalidated a county ordinance. Of course, if the

decision in question had invalidated a state statute, as opposed to a county ordinance, there would be mandatory appellate jurisdiction, rather than discretionary jurisdiction in this Court. That is not the case here, however, where the decision merely affects Broward County.

Nor does Broward County suggest that the decision of the Fourth District will have statewide effect or importance. Indeed, there is not even any hint by Petitioner that the ordinance provision here invalidated has any functional counterpart in other cities and counties in this State. Thus, if a common ordinance provision found in every county of this State were the subject of a judicial decree invalidating it, that might be some basis for this Court to exercise its prerogative of discretionary review. Here, there is no such suggestion.

Finally, Broward County has not advised the Court that the ordinance in question was amended while this case was being decided in the District Court of Appeal. See Ch. 83-380, Laws of Florida. Indeed, after the decision of the Fourth District in this case was announced, the Broward County General Counsel's office told newspaper reporters that the decision of the Fourth District would have little, if any, effect, because of the amendment of the ordinance. If that is true, and Respondent expresses no opinion on the effect of the amendment to the ordinance, then it becomes immediately apparent that any exercise

by this Court of its discretionary jurisdiction would be improvident. In effect, the case may now be moot; and any decision by this Court would be merely advisory.¹

1. There is no suggestion by Broward County in its Brief on Jurisdiction that the subject of this appeal is one of those cases presenting an issue capable of repetition yet evading review.

CONCLUSION

For the reasons expressed in the preceding pages, Respondent most respectfully suggests to this Court that its jurisdiction to review the decision of the Fourth District in this case is very doubtful. Moreover, there is really no good reason for this Court to do so, even if it had jurisdiction, because of the limited application and effect of the District Court's decision. Respondent therefore requests that this Court deny discretionary review.

Respectfully Submitted,


Gary M. Farmer

GMF/js1
5/14/86
84-130.02

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Brief on Jurisdiction was placed in the U.S. Mail, First Class, postage pre-paid, and addressed to SUSAN F. DeLEGAL, General Counsel for Broward County, and JANET LANDER, Assistant General Counsel for Broward County, Governmental Center, Suite 423, 115 South Andrews Avenue, Fort Lauderdale, Florida 33301, on this 14th day of May, 1986.

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