IN THE SUPREME COURT OF
THE STATE OF FLORIDA

ANNIE B. SMITH,

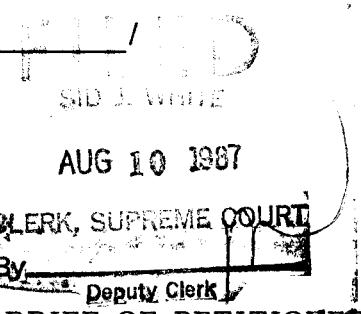
Petitioner,

vs. CASE NO. 70,440

DEPARTMENT OF HEALTH AND
REHABILITATIVE SERVICES,

Respondent.

_____/



REPLY BRIEF OF PETITIONER

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SUMMARY OF ARGUMENT

Petitioner argues that §57.081, Florida Statutes, requires the clerk of the Department of Health and Rehabilitative Services to provide her with a copy of the transcript of her administrative hearing without payment on appeal. Respondent's brief makes four assertions that may warrant reply.

First, the Department makes the unsupported statement that the relevant statutes should not be construed broadly, an assertion that is plainly false in relation to remedial statutes, such as §57.081. The law is clear that a broad construction is appropriate.

Second, the Department misstates the lower court's analysis of a key case and flatly contradicts a statement by the lower court in regard to that case.

Third, the Department's explanation that the Florida legislature added administrative agencies to §57.081 to bring appeals within the statute is clearly incorrect. While the 1980 legislative reforms were directed in part at the problem of applying §57.081 to appeals, the Department offers no rational explanation for why the addition of administrative agencies would be directed at the same issue.

Finally, the Department suggests that the law is well settled on the issue of administrative transcripts, a point apparently in conflict with the assumptions of each District Court of Appeal that certified the question to this Court.

I. THE DEPARTMENT'S REPRESENTATIONS ARE NOT SUPPORTED IN LAW OR FACT

A. The Department's Suggestion That The Statute Should Be Construed Narrowly Has No Basis In Law

In her initial brief, Petitioner argued that the Second District Court of Appeal (hereinafter "Second DCA") made several errors of law in its narrow construction of Florida Statutes §57.081, specifically its holding that the statute did not require administrative agencies to provide transcripts to indigent appellants. Initial Brief of Petitioner at 10-13. The Department's response recognizes the narrowness of the court's analysis[1] but states that such a construction was correct. Answer Brief of Respondent at 3, 7-8. The Department cites to no authority to support its point.

In fact, case law indicates just the opposite proposition. The Second DCA addressed the term "agency" as it was used in §120.57(1)(b)7. However, the actual statute at issue is §57.081, a remedial statute. Fields v. Zinman, 394 So.2d 1133, 1139 (Fla. 4th DCA 1981)(Hurley, J. concurring). It is designed "to grant indigents reasonably useful access to the civil justice system." Ludlow v. Brinker, 403 So.2d 969, 972 (Fla. 1981)(England, J. dissenting). As a remedial statute, §57.081 must be construed liberally in order to effect its purpose. Canada Dry Bottling Co. of Florida v. Meekins, Inc., of Dade County, 219 So.2d 439, 440 (Fla. 3d DCA 1969). This tenet regarding remedial statutes is a well settled principle of law. See

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[1] Specifically, the Department notes the Second DCA's statement that it was "not inclined to interpret the statute. . .in such a broad sense."

Department of Environmental Regulation v. Goldring, 477 So.2d 532, 534 (Fla. 1985); Board of Public Instruction of Broward County v. Doran, 224 So.2d 693, 699 (Fla. 1969); Ideal Farms Drainage District v. Certain Lands, 154 Fla. 554, 19 So.2d 234 (1944). The Department has identified no reason why this principle should be abandoned in construing §57.081.

B. The Department Misstates The Lower Court's Analysis With Respect To Case Law

The Department also misinterprets the Second DCA's analysis of Bower v. Connecticut General Life Insurance Company, 347 So.2d 439 (Fla. 3d DCA 1977). The Department suggests that the Second DCA cited Bower only for the proposition that a court reporter's fees are not waived under §57.081, an issue not specifically addressed by the 1980 amendments. Thus, the Department reasons that Bower is still good law in that respect. Answer Brief of Respondent at 4-5. However, the Department not only misreads the holding in Bower,[2] it mischaracterizes the Second DCA's reasoning. That reasoning plainly indicated that Bower was still persuasive because it already assumed that §57.081 applied to appeals. As the Second DCA gave no other reason for

[2] The Bower court never held that court reporter's fees were not waived under the statute. Although that may have been assumed, it was not at issue. Instead, the court found that transcription was not a service of the Dade County court or its clerk and therefore refused to order the clerk to pay an independent court reporter's fee. No cost waiver was at issue. The facts in Bower contrast sharply with Petitioner's case where the Department (and the clerk by definition) have the clear duty to prepare transcripts of administrative hearings under Florida Statutes §120.57(1)(b)7 and to waive their charges under §57.081.

adopting the Bower decision, the Department cannot now state that the Second DCA meant something other than what it plainly stated.[3]

C. The Department's Assertion That The Legislature Added Administrative Agencies to §57.081 To Allow Appeals Can Be Given No Weight

In addition, the Department suggests that the legislature's actions in 1980 to amend §57.081 were directed only to address the issue presented in Lee v. City of Winter Haven, 386 So.2d 268 (Fla. 2d DCA 1980) and Hillman v. Federal National Mortgage Association, 375 So.2d 336 (Fla. 4th DCA 1979). Answer Brief of Respondent at 5, 7. Those cases held that the pre-1980 version of §57.081 did not apply to appellate proceedings. In 1980, the legislature amended the statute to cover "any judicial or administrative agency proceeding." A judicial proceeding plainly includes appeals. See Chappell v. Department of Health and Rehabilitative Services, 419 So.2d 1051, 1052 (Fla. 1982). However, this does not explain why administrative agency proceedings were specifically added to the statute in 1980. The Department explains that this change was also directed at the issue of Lee and Hillman. However, as neither case involved administrative proceedings, such an explanation is untenable.[4] Furthermore, such an explanation flies in the

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[3] Ironically, Petitioner agrees with the Department that it is irrelevant whether the Bower court assumed that §57.081 covered appeals. Initial Brief of Petitioner at 6-10. While that point is certainly debatable, the proper analysis of the 1980 amendments is what the legislature intended by the 1980 amendments to §57.081. Id.

[4] The Department also states that the 1980 amendments do not require the Department clerk to "function as a court reporter." Answer Brief of Respondent at 5. Of course, this ignores the fact that the Department clerk is already required to perform transcription services (Footnote Continued)

face of the plain language of the legislative changes. There is no reason to believe that the legislature meant judicial appeal when it said "administrative agency proceeding."

Petitioner has noted that the only case before 1980 that sought to apply §57.081 to administrative action was Harrell v. Department of Health and Rehabilitative Services, 361 So.2d 715 (Fla. 4th DCA 1978), a case that already assumed the statute's application to appeals.[5] Thus the legislature must have wanted to "overrule" Harrell by extending the statute to cover administrative agencies. See Initial Brief of Petitioner at 9-10. The Department's counter-explanation is simply specious in light of this reasoning.

D. The Department's Suggestion That The Issue Presented By This Case Is Well-Settled In Its Favor Is Unfounded

Finally, the Department lists a string of cases, each relying on the other to support its position that §57.081 does not require the Department to waive transcription fees. Answer Brief of Respondent at 4-7. However, any suggestion that the law is settled on this question would be misleading. It should be noted that every court considering a case under the revised statute has certified the question to this Court, indicating some concern on the part of the district courts of appeal. Furthermore, of all the decisions, the Second DCA's opinion in this case

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(Footnote Continued)
by the APA. See note 2, above. The Department likewise likens its transcription fees to those of a private court reporter. Answer Brief of Respondent at 8. However, there is no comparison as outlined in Petitioner's Initial Brief, at 14, n. 8.

[5] Id. at 716 where the court granted the indigent petitioners' motion to proceed in forma pauperis.

is the only one that undertakes any analysis in light of the 1980 amendments to §57.081. All the other cases merely defer to the pre-1980 decisions or to cases that defer to them.[6] This is not surprising in light of the fact that since the first certification in Harris v. Department of Corrections, 486 So.2d 27 (Fla. 1st DCA 1986), each court has known

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[6] The Department also cites Roberts v. Unemployment Appeals Commission, ___ So.2d ___, 12 F.L.W. 1341 (Fla. 3d DCA May 26, 1987) for the proposition that indigents are not entitled to free transcripts on appeal. However, the issue presented in Roberts involves a completely different statute that is unique to unemployment appeals, namely Florida Statutes §443.041(2)(a). In the summer of 1986, the Unemployment Appeals Commission (UAC) promulgated a rule which, for the first time, required appellants to pay a fee for transcripts of their unemployment hearings. The rule was adopted despite the proscription against fees in §443.041. Fla. Admin. Code Rule 38E-3.009 (formerly 38E-3.09). A rules challenge was taken under Florida Statutes §120.54(4)(a) and the administrative hearings officer found the rule to be invalid. Gretz v. Department of Labor and Employment Security, 9 F.A.L.R. 1290 (Fla. DOAH 1987). However, the UAC has refused to follow the hearings officer's ruling, while pursuing an appeal to the First District Court of Appeal. Unemployment Appeals Commission v. Gretz, No. BS-198 (Fla. 1st DCA appeal docketed March 6, 1987). The appeal is still pending. Its resolution ultimately will settle the issues presented in Roberts. Of course, that resolution will have no effect on Petitioner Smith, who is not involved in an appeal from the UAC.

The Department takes note that the Roberts court cited the Second DCA's opinion in this case for the proposition that no statute or rule obliges the UAC to prepare transcripts on appeal. The Roberts court was simply wrong in this contention. As an administrative agency, the UAC is required to prepare transcripts under §120.57(1)(b)7, Florida Statutes. The mistake made by the Roberts court appears to have been based on the confusing statement in Smith that no statute "requires the clerk to prepare the transcript". Smith v. Department of Health and Rehabilitative Services, 504 So.2d 801, 801 (Fla. 2d DCA 1987). The court added that the statute "does not explicitly make [transcription] a clerk's function." Id. The Second DCA simply refused to interpret the term "agency" to include the agency clerk, despite the definition in §120.52(1)(b). However, while §120.57(1)(b)7 does not mention the clerk, its language assigning transcription duties to the agency could not be more clear, something the Roberts court apparently misunderstood. The Department's reliance on Roberts, a case that is demonstrably in error, would thus be unpersuasive, even if it were relevant.

that the issue ultimately would be resolved by this Court. Thus, it should be apparent that the law is far from settled and that the District Courts of Appeal are looking to this Court to resolve the matter.

CONCLUSION

For the foregoing reasons, Respondent's arguments should be rejected and the Court should answer the certified question as indicated in Petitioner's initial brief.

Respectfully submitted,

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