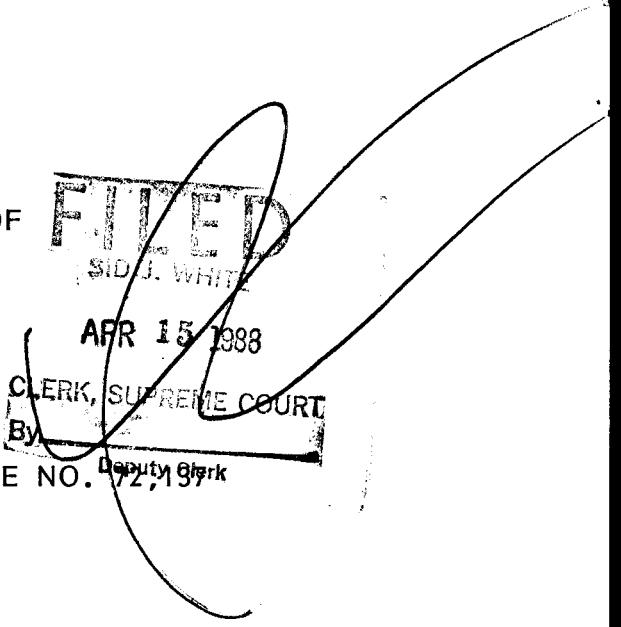
IN THE SUPREME COURT OF
THE STATE OF FLORIDA



RICA GRETZ

vs.

FLORIDA UNEMPLOYMENT
APPEALS COMMISSION
_____/

CASE NO. 72,137

PROCEEDING ON QUESTION OF GREAT PUBLIC IMPORTANCE
CERTIFIED BY THE FIRST DISTRICT COURT OF APPEAL

INITIAL BRIEF OF PETITIONER

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April 14, 1988

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STATEMENT OF THE CASE

This is a proceeding on a question of great public importance certified to this Court by the First District Court of Appeal for the State of Florida (hereinafter "First DCA"). Petitioner Rica Gretz brought a rules challenge pursuant to §120.56, Fla. Stat. (1987) challenging rules 38E-3.003(2)(b) and 38E-3.009(3) Fla. Adm. Code promulgated by the Unemployment Appeals Commission (Commission). Those rules for the first time attempted to charge fees in unemployment appeals. Rule 38E-3.003(2)(b) authorized the Commission to charge a fee for duplication of the record on appeal. Rule 38E-3.009(3) authorized the Commission to charge a fee for provision of a transcript of the agency hearing.

On February 26, 1987, hearing officer Robert T. Benton, II, upheld Ms. Gretz' rules challenge, and declared the rules invalid insofar as they attempted to charge fees for a copy of the record and transcript in unemployment appeals. The Commission appealed, and the First DCA issued an order on January 5, 1988 reversing the hearing officer's decision. In doing so, it certified the following question to this Court:

> WHETHER A CLAIMANT IN AN UNEMPLOYMENT COMPENSATION CASE MAY BE CHARGED A FEE BY THE UNEMPLOYMENT APPEALS COMMISSION FOR THE PROVISION OF A TRANSCRIPT OF THE AGENCY HEARING

Petitioner filed her notice to invoke discretionary jurisdiction of this Court on March 18, 1988. This Court has jurisdiction pursuant to Article V, Section 3(b)(4) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(v).

STATEMENT OF THE FACTS

Rica Gretz is the single parent of four minor children. After being fired from her job at Heritage Nursing Home, she applied for unemployment benefits to help support her family. She was denied those benefits initially and through the administrative appeals process. She then sought judicial review of the agency's decision. On December 18, 1986, she was informed by the Commission that pursuant to the then newly-promulgated rules, she would be required to pay for a copy of the transcript and record in her appeal. She was notified that the Commission intended to charge $1.75 per page for the transcript and $.25 per page for copies of the record. All of Ms. Gretz' monthly income is required to help meet the monthly expenses of supporting her family. She had no money that she could use to pursue her unemployment appeal. Thus, Ms. Gretz filed the rules challenge claiming that the newly promulgated rules conflicted impermissibly with a portion of the Florida Unemployment Statute, §443.041(2)(a) Fla. Stat. (1985), which prohibits charging "fees of any kind in any proceeding..." under the Chapter.

SUMMARY OF THE ARGUMENT

Ms. Gretz argues that the language of §443.041(2)(a) Fla. Stat. (1987) clearly prohibits "fees of any kind in any proceeding..." under the Chapter. The courts are bound by the plain meaning of the statute and are not free to interpret the statute in a contrary manner. The plain meaning of this statute prohibits fees of any kind, including a fee for the transcript and record on appeal.

The First DCA was incorrect in its determination that the Commission can charge a fee for these services. The First DCA based

its decision on its determination that the Commission is not required to provide a copy of the transcript, therefore the §441.041(2)(a) prohibition does not apply to that service. That finding is flawed in two ways. The Administrative Procedures Act §120.57(1)(b)7, Fla. Stat. (1987) requires that the Commission provide a copy of the transcript. Again, that language could not be any clearer and is not open for contrary interpretation by the courts. The First DCA incorrectly relied on the case of Roberts v. Unemployment Appeals Commission, 512 So.2d 212 (Fla. 3rd DCA 1987) in arriving at its decision that the Commission was not obligated to provide a transcript, rather than dealing with the mandatory statutory language of 120.57(1)(b)7. Furthermore, even if the Commission was not required to provide the transcript, it still could not charge any fee for this service. Section 443.041(2)(a) prohibits fees of any kind, not just fees for services it must provide.

ARGUMENT

I. UNDER THE RULES OF STATUTORY CONSTRUCTION, SECTION 443.041(2)(a) OF THE FLORIDA STATUTE MUST BE READ TO PROHIBIT ANY CHARGES INVOLVED IN PURSUING AN UNEMPLOYMENT APPEAL

It is a well settled tenet of statutory construction that words in a statute must be given their plain, ordinary meaning. This Court stated in Tropical Coach Lines, Inc. v. Carter, 121 So.2d 779, 782 (Fla. 1960),

> [i]n making a judicial effort to ascertain the legislative intent implicit in a statute, the courts are bound by the plain and definite language of the statute and are not authorized to engage in semantic niceties or speculations. If the language of the statute is clear and unequivocal, then the legislative intent must be derived from the words used without involving incidental rules of construction or engaging in speculation as to what the judges might think that the

> legislators intended or should have intended. Fine v. Moran, 74 Fla. 417, 77 So. 533; Miami Bridge Co. v. Railroad Commission, 155 Fla. 366, 20 So.2d 356; State ex rel. Bie v. Swope et al., 159, Fla. 18, 30 So.2d 748.

Similarly this court has stated,

> [w]hen the legislative intent is clear from the words used in the enactment, courts are bound thereby and may not seek a meaning different from the ordinary or common usage connotation of such words unless, upon a consideration of the act as a whole and the subject matter to which it relates, the court is necessarily lead [sic] to a determination that the legislature intended a different meaning to be ascribed to the language adopted by it.

Gay v. City of Coral Gables, 47 So.2d 529, 532 (Fla. 1950).

The language of §443.041(2)(a) could not be any clearer in prohibiting any charges to anyone pursuing an unemployment claim. That section states:

> No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the Commission or division or their representatives or by any court or any office thereof... [emphasis supplied]

Indeed, it is difficult to imagine how the legislature could have worded this section more strongly. Clearly, it prohibits fees of any kind, including fees for a transcript and record on appeal.

Because the language found in that section is so clear, it is not necessary to look beyond the words themselves, but if that is done, there is even more support for Ms. Gretz' position. The declaration of policy section of the Unemployment Law found at §443.021, Fla. Stat. (1987) states:

> Economic insecurity due to unemployment is a serious menace to health, morals, and welfare of the people of this state. Unemployment is therefore a subject... which requires appropriate action by the legislature... to lighten its burden which now so often falls with crushing force upon the unemployed work and his family...

This section read together with §441.041(2)(a) shows the clear legislative intent that unemployed workers be allowed to pursue their claim for unemployment benefits unhindered by any financial barriers. The Commission's attempt to charge $1.75 per page for the transcript and $.25 per page for the record on appeal would do just that, place an insurmountable economic barrier in the path of many unemployment claimants. In Ms. Gretz' case, paying for the record and transcript on appeal is likely to cost over $100.00 (a transcript of 50 pages would cost $87.50, and a record of 100 pages would cost $25 for a total of $112.50). Ms. Gretz does not have any spare income to allot to this expense even when she is working. Thus, Ms. Gretz is faced with the choice of depriving her children of food or other essentials in order to pursue her unemployment claim, or simply giving up her unemployment claim. This is clearly a choice the legislature did not want unemployed workers to have to make. The end result of the Commission's charges for these services will be that many unemployment claimants will simply not be able financially to pursue their claim. It is clear that this is exactly what the legislature sought to avoid by prohibiting "fees of any kind".

If there remains any doubt about the proper interpretation of §443.041(2)(a), the court in Baeza v. Pan American/National Airlines, 392 So.2d 920, 923 (Fla. 3rd DCA 1980) gives further guidance.

> Unemployment compensation law is remedial, humanitarian legislature and should be liberally and broadly construed... to accomplish its purpose to promote employment security and to secure for the citizen of the state certain grants and privileges. It provides that all doubts as to the proper construction of any provision of the Chapter shall be resolved in favor of conformity with those requirements. The Unemployment Compensation Law should be liberally construed in favor of claimants. [emphasis supplied]

The statute itself also requires that the chapter "be liberally construed to accomplish its purpose to promote employment security..." §443.031. Thus, even if it were not crystal clear that no fees of any kind may be charged by the UAC, an interpretation of the statute liberally and broadly in favor of the claimants would require it.

In spite of this clear statutory language and other supporting information, the First DCA determined that §443.041(2)(a) does not apply to fees for the transcript and record on appeal because there is no requirement that the Commission furnish these items. This argument is flawed for two reasons. First, the Commission is clearly required to furnish a copy of the transcript and record. Second, even if that were not true, §443.041(2)(a) does not distinguish between fees for services the Commission is required to perform and fees for other services. The statute prohibits fees of any kind. Each of these flaws will be examined in turn.

A. The Commission Must Furnish a Copy of the Transcript and Record on Appeal

The State Administrative Procedures Act requires that the Commission provide a transcript. It states at §120.57(1)(b)7, Fla. Stat. (1987):

> The agency shall accurately and completely preserve all testimony in the proceedings, and, on the request of any party, it shall make a full or partial transcript available at no more than actual cost. [emphasis supplied]

Clearly, this section requires that the Commission furnish a transcript. The Commission has argued that its only obligation under this statute is to ensure that the testimony is preserved and made

available. The Commission says it does this by offering a copy of the tape of the hearing (again at a charge to the unemployment claimant). However, that is not what the statute requires. It specifically says the agency must preserve the testimony and make a transcript available. The legislators specifically used the word transcript the second time and it must be assumed they did so for a purpose. Had they not intended that a transcript be required they could easily have used the word testimony twice. They did not. The statute requires a transcript and the Commission must provide it.

There have also been attempts to read §120.57(1)(b)7 to authorize the Commission to charge "actual costs" for the transcript. Again that is not what the section says. That section does not require that any fees be charged. It merely states that the agency cannot charge more than its costs. Section 120.57 provides a ceiling over which the agency cannot charge for provision of the transcript. It does not require that actual costs be charged, or even attempt to speak to what amount, if any, the agency should charge below that ceiling. It establishes no floor. If, as in this case, there is another statute that sets the costs within that ceiling, than the other statute controls. Here the APA requires that the Commission provide a transcript of the hearing. It sets a ceiling over which the Commission cannot charge for provision of the transcript. The unemployment statute, §443.041(2)(a) controls what charges the Commission can assess, and it states no fees can be charged.

The First DCA, instead of dealing with the mandatory statutory language found at §120.57(1)(b)7 merely cites the case of Roberts v. Unemployment Appeals Commission, 512 So.2d 212 (Fla. 3d

DCA 1987) for the proposition that the Commission need not provide a transcript. The Roberts case provides no discussion of the mandatory language of §120.57(1)(b)7, but merely cites to he case of Smith v. Department of Health and Rehabilitative Services, 504 So.2d 801 (Fla. 2nd DCA 1987). The Smith case does analyze the statute but its holding is inapplicable to this case. The Smith court was dealing with the issue of whether the Department of Health and Rehabilitative Services must provide a free transcript to indigents in administrative appeals. The Unemployment Statute prohibiting "fees of any kind" was inapplicable. Instead, the general indigency statute §57.081 Fla. Stat. (1985) was at issue. That statute only entitles indigents to "receive the services of the courts, sheriffs, and clerks ... without charge". [emphasis supplied] Thus, the issue the court was dealing within Smith was whether preparation of the transcript was a specific function of the agency clerk. If so, §57.081 would require that the clerk not charge for that service. The court found that preparation of the transcript was not explicitly the clerk's responsibility. Rather, the court stated: "the statute §120.57(1)(b)(6) [now §120.57(1)(b)7] requires the agency to preserve testimony and make it available ..." [emphasis supplied] Smith supra at 801. Thus, the Smith case actually states in dicta that §120.57(1)(b)7 requires the agency to provide the transcript, the exact opposite of what the Roberts case cites it for. The First DCA's reliance on Roberts was in error and should be reversed by this court. The mandatory statutory language of §120.57(1)(b)7 is controlling and requires that the Commission provide the transcript.

If the language of §120.57(1)(b)7 were not clear enough, there is further indication that the Commission must provide a transcript. The

section of the APA dealing with judicial review requires that the review be "confined to the record transmitted." §120.68(4), Fla. Stat. (1987). The record for judicial review must consist of certain items listed in §120.68(5) in addition to the record under §120.57, which as set forth in §120.57(b)(6)(i), includes the "official transcript". Obviously only the agency can provide the official transcript.

Thus, the APA requires that the Commission provide a copy of the transcript. This is not a service which the Commission provides voluntarily, and can stop any time it chooses. If the Commission did stop providing transcripts, it would be in direct violation of §120.57(1)(b)7 which requires that it provide a transcript.

B. The Statute Does Not Distinguish Between Services Which the Commission Must Provide and Those Which It Voluntarily Provides

Section 443.041(2)(a) prohibits fees of any kind. Thus, even if the Commission was not required to provide the transcript, it still could not charge for that service. It simply may not charge a fee of any kind.

This argument is similar to one made earlier by the Commission which numerous other courts have rejected. The Commission at first argued that it was not required to provide the transcript, and thus in doing so, it was merely passing along its "cost" for this service, not charging a "fee" for it.

In a case exactly on point, the Supreme Court of New Jersey found that the terms "costs" and "fees" were not mutually exclusive. Sweeney v. Board of Review, Division of Employment Security, Department of Labor and Industry, 206 A.2d 345 (1965). The New

Jersey unemployment statute, R.S. 43:21-15(b), N.J.S.A., contains language which, in relevant part, is exactly the same as the Florida Statute. It states:

> No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the Commission or its representatives or by any Court or any officer thereof.

There, as here, the agency attempted to justify charging for the transcript by claiming it was a cost, not a fee. The Court stated:

> Let us define the terms. The word "fee" describes a charge made for a service rendered. The word "costs" here means an allowance made in favor of one litigant as against another. See 9A Words and Phrases (perm. ed. 1959-1960), Costs, pp. 634-636, and Vol. 16, Fee; Fees-As a Charge, pp. 525-526; Goodhart, "Cost", 38 Yale L.J. 849 (1929). Thus a payment for services made to the clerk of the court, to a witness, or to an attorney is a "fee", and if it is included among the items a party may recover from another, it is also a taxable "cost."...
>
> With this understanding of "fees" in mind, the statutory meaning becomes evident. Section 15(b) quoted above says a claimant shall not be charged "fees of any kind * * * by any court or any officer thereof." The stenographic record is transcribed by employees of the agency as part of their regular work. A charge by the agency to a claimant for the transcript would be a "fee" for the services so rendered.

Thus, the Commission's attempt to distinguish "costs" from "fees" must fail. A charge for a transcript may be a "cost" in one context, but that does not preclude it from being considered a fee when the Commission requires payment for its professional service of preparing a copy of the record and the transcript.

A number of other courts have also addressed this issue. Each has come to the conclusion that the charge for a transcript is a "fee". The statutory prohibition against fees of any kind precludes the agency from charging for the transcript. Smith v. Adams, 370 A.2d,

288 (N.H. 1977); Butler v. City of Newaygo, 320 N.W. 2d 401 (Mich. Ct. App. 1982); and Gray v. Blache, 493 So.2d 840 (La. Ct. App. 1986).

In all of these cases the unemployment statute prohibited "fees of any kind". In each case, the state unemployment agency attempted to charge for a transcript of the agency hearing. Each court refused to let them do so. Thus, every other state court which has considered this issue has found that no fees may be charged by the state unemployment agency for preparation of a transcript.

Thus, the First DCA's decision allowing a charge for provision of the transcript, along with the Third DCA's decision in Roberts, stand Florida alone among the many state courts which have considered this issue. Clearly, it is irrelevant what the Commission calls these charges and whether they are for mandatory or voluntary services. No fees may be charged any claimanat for any service in an unemployment claim.

CONCLUSION

For all of the above reasons, the answer to the question certified by the First DCA to this Court should be NO.

DATED this 14th day of April, 1988.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing INITIAL BRIEF OF PETITIONER has been sent by regular U.S. mail, postage prepaid, to JOHN D. MAHER, Ashley Building, Suite 221, 1321 Executive Center Drive, East, Tallahassee, Florida 32399-0681 on this 14 day of April, 1988.

Suzanne Harris
SUZANNE HARRIS

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