

OIA 3-7-89

IN THE SUPREME COURT OF FLORIDA

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CLERK, SUPREME COURT

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BOB MARTINEZ, Governor of
the State of Florida,

Appellant,

vs.

Case No. 73,601

THE FLORIDA LEGISLATURE, etc.,
et al.,

Appellees.

ANSWER BRIEF OF APPELLEES, JIM SMITH, SECRETARY OF STATE,
AND GERALD LEWIS, COMPTROLLER

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STATEMENT OF THE CASE AND FACTS

The plaintiffs, the Florida Legislature and certain of its members in their capacities as citizens and taxpayers as well as legislators, brought this suit against the Governor, Bob Martinez, and Jim Smith, Secretary of State, and Gerald Lewis, Comptroller of the State of Florida.

The amended complaint alleged that Smith and Lewis were "nominal parties" only and that the Governor was the "real party in interest." (R 236) Secretary Smith filed a notice acknowledging and stating that he would not argue the merits of the dispute. (R 319) Comptroller Lewis filed a similar acknowledgment indicating he would not address the merits unless so directed by the trial court. (R 338)

The amended complaint challenged the Governor's veto of portions of four specific appropriations in Chapter 88-555, Laws of Florida, the General Appropriations Act for 1988. These were number 118, an appropriation to the Department of Agriculture and Consumer Services, Division of Forestry; and numbers 528, 529 and 530, appropriations for the Department of Education/Board of Regents. The Governor did not veto the entirety of each of these items but only a portion thereof. (R 238, 239)

The Governor filed a counterclaim against the individual plaintiffs/legislators in his capacity as Governor but not in his capacity as citizen and taxpayer. (R 328) The counterclaim sought a declaratory judgment as to the legal status of certain intent documents known as "D-3 A's," and whether they were part of the General Appropriations Act and binding upon the executive departments and agencies of state government.

The Governor also filed a cross claim in his capacity as citizen and taxpayer against the nominal defendants, Secretary Smith and Comptroller Lewis. The cross claim sought to introduce new issues by questioning the constitutionality of two other 1988 acts, Chapters 88-556 and 88-557, Laws of Florida. Chapter 88-556 is an act relating to the implementation of the General Appropriations Act, Chapter 88-555. Chapter 88-557 sought to conform certain provisions of the Florida Statutes to the General Appropriations Act.

Neither Chapter 88-556 nor Chapter 88-557 has any bearing upon the particular items the Governor vetoed. The main action concerned only the propriety of the vetoes. Although the Governor's cross claim questioned the constitutionality of Chapters 88-556 and 88-557 in their entirety, it is to be noted that he did not attempt to veto those acts.

Defendant Smith filed a motion to abate the cross claim on the ground that he was a nominal party; that the issues raised by the cross claim had been bifurcated for trial at a later time; and that resolution of the complaint and counterclaim would be dispositive of the case. (R 371) At hearing, defendants Smith and Lewis argued this motion and an ore tenus motion to dismiss the cross claim. They contended that the cross claim was improper under Rule 1.170(g), Florida Rules of Civil Procedure, in that it did not arise out of the subject matter of the main action, which concerned solely the validity vel non of the Governor's veto of portions of items 118, 528, 529 and 530.

(T 12/22/88 at 106 et seq.; R 1817)

The trial court entered summary judgment in favor of the plaintiffs and dismissed the counterclaim. It also found that the motions of Smith and Lewis directed to the cross claim were moot.

SUMMARY OF THE ARGUMENT

The issue of the constitutionality of Chapters 88-556 and 88-557 does not arise out of or relate to the main action, which questioned only the legality of the Governor's vetoes; hence, the issue cannot be raised by a cross claim.

The judgment of the trial court fully disposed of the main action, there was no need to address the cross claim, and there is no reason for this Court to remand the case for a ruling on the cross claim. Courts do not decide constitutional questions unnecessarily nor do they render advisory opinions.

ARGUMENT

- I. THE TRIAL COURT PROPERLY DECLINED TO RULE ON THE MOTIONS DIRECTED TO THE CROSS CLAIM AND THERE IS NO REASON TO REMAND THIS CASE FOR CONSIDERATION OF THE MERITS OF THE CROSS CLAIM.

(Responding to Appellant's Point I. D.)

The amended complaint presented a single, narrow issue: whether the Governor could veto a portion or part of a specific appropriation in a general appropriation bill. The trial court ruled that he could not, observing that "Governor Martinez does not contend otherwise." (R 1706) That is all this case, as pleaded, should ever have been about.

If the issue of the constitutionality of Chapters 88-556 and 88-557 had any place in this case, it should have been raised by counterclaim against the plaintiffs who are real parties in interest, rather than against the nominal defendants. Moreover, because Chapters 88-556 and 88-557 bear no relation to the vetoed items, it cannot be contended that the question of their constitutionality "arises out of the subject matter of the original action." Hence, the issue could not be raised by cross claim. See Rule 1.170(g), Fla. R. Civ. P. Whether it could have been brought as a permissive counterclaim under Rule 1.170(b) is a moot point. Although the Legislature willingly submitted

itself to the jurisdiction of the lower court, the Governor did not question the constitutionality of Chapters 88-556 and 88-557 by counterclaim.

The fact that the trial court did not rule on the motion of Smith and Lewis in itself presents no ground for remand. The law in Florida brooks no dispute: a cross claim may not introduce an issue that is "immaterial and unrelated to the issues tendered by the original complaint." Florida Fuel Oil v. Springs Villas, Inc., 95 So.2d 581, 583 (Fla. 1957); see also International City Bank and Trust Co. v. Forest Shores, 340 So.2d 530 (Fla. 1st DCA 1976). The Court need not remand this case simply for a ruling on that point.

The summary judgment of the trial court fully disposed of the issues raised by the complaint and counterclaim. Addressing the constitutional questions posed by the cross claim would not have assisted in any way in clarifying a single point raised in the main action. It is fundamental that courts will not address constitutional issues that are not necessary to resolution of a case, In re Estate of Sale, 227 So.2d 199, 201 (Fla. 1969), nor will they render advisory opinions. Dobson v. Crews, 164 So.2d 252, 255 (Fla. 1st DCA 1964).

II. THE ISSUE OF THE CONSTITUTIONALITY
OF CHAPTERS 88-556 AND 88-557,
LAWS OF FLORIDA IS NOT PROPERLY
BEFORE THIS COURT.

(Addressed to Appellant's Point III.)

The issue of the constitutionality of Chapters 88-556 and 88-557, Laws of Florida, was raised only in the purported cross claim. As shown, the issue bore no relation to the main action and was therefore improperly raised as a cross claim. The lower court did not rule on the issue and there is therefore nothing for this Court to review. It is no more necessary for this Court to address the question than it was for the trial court.


Point III of appellant's brief should therefore be disregarded or stricken. It has no bearing upon the validity of the Governor's vetoes. It is well established that the Supreme Court will not pass on the constitutionality of a statute unless it becomes necessary to do so in order to dispose of a case. Frink v. State ex rel. Turk, 120 Fla. 394, 35 So.2d 10 (Fla. 1948).

CONCLUSION

Secretary Smith and Comptroller Lewis respectfully submit that appellant has failed to demonstrate any reason or need to remand this case for a ruling on the cross claim or for this Court to decide the issue it attempts to raise.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing ANSWER BRIEF OF APPELLEES JIM SMITH, SECRETARY OF STATE, AND GERALD LEWIS, COMPTROLLER has been furnished via United States mail to PETER M. DUNBAR, General Counsel, Office of the Governor, The Capitol, Suite 209, Tallahassee, Florida 32399; ALAN SUNDBERG, ESQUIRE, Post Office Drawer 190, Tallahassee, Florida 32302; KEVIN X. CROWLEY, ESQUIRE, General Counsel, Florida House of Representatives, Suite 420, The Capitol, Tallahassee, FL 32399-1300; ARTHUR J. ENGLAND, JR., ESQUIRE, Fine, Jacobson, Schwartz, Nash, Block and England, One CentTrust Financial Center, 100 Southeast Second Street, Miami, FL 33131 on this 17th day of February, 1989.


LOUIS F. HUBENER