

0A 5-3-94

IN THE SUPREME COURT OF FLORIDA

WIREGRASS RANCH, INC.

Petitioner,

CASE NO. 82,463

vs.

DCA No. 92-01653

SADDLEBROOK RESORTS, INC.
and SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT,

Respondents.

_____ /

AMICUS BRIEF ON THE MERITS

APPEAL FROM THE DISTRICT COURT OF APPEAL
SECOND DISTRICT OF FLORIDA

FILED
SID J. WHITE
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CLERK, SUPREME COURT.
By _____
Chief Deputy Clerk

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STATEMENT OF THE CASE

The Environmental Confederation of Southwest Florida adopts the Statement of the Case submitted by Respondents Saddlebrook Resorts, Inc.

SUMMARY OF ARGUMENT

It is a violation of fundamental due process to allow a permit applicant to withdraw its application in an administrative agency proceeding after completion of the fact-finding process.

ARGUMENT

Administrative agencies are not exempt from the constitutional requirement of affording due process to all persons appearing before them. Thorn v. Florida Real Estate Commission, 146 So.2d 907, 909 (Fla. 2nd DCA 1962), *citing* Jonas v. Florida Real Estate Commission, 123 So.2d 264, 266 (Fla. 3rd DCA 1960). Due process consists of procedural safeguards that ensure a fair and just adjudication of one's rights before an impartial tribunal. Ryan's Furniture Exchange v. McNair, 162 So. 483, 487 (Fla. 1935); Art. I, § 9, Fla. Const. Fundamental principles of due process require notice of issues confronting litigants and a meaningful opportunity to be heard by an impartial adjudicator. Florida Public Service Comm. v. Triple A Enterprises, 387 So.2d 940 (Fla. 1980). A natural corollary to these fundamental principles is the right to enjoy the benefit of a final adjudication of the facts, rights and obligations that were at issue in the hearing process.

In the decision below, the Court of Appeal held that an administrative hearing process under Section 120.57, Fla. Stat., could be discontinued if a permit applicant

withdrew its application *prior* to completion of the fact-finding process. Saddlebrook v. Wiregrass, 18 Fla. L. Weekly, D1590, D1593. The Court held that a permit applicant may *not* terminate the process by attempting to withdraw after completion of the fact-finding process. Id. Allowing a permit applicant to withdraw *after* completion of the fact-finding process bestows upon the applicant an opportunity to avoid a seemingly unfavorable judgment and relitigate identical issues of fact and law. This violates long-standing principles of due process. It is for these reasons that the Florida Rules of Civil Procedure flatly prohibit voluntary dismissals after completion of the fact-finding process. Fla.R.Civ.P. 1.420(a)(1). The Federal Rules of Civil Procedure impose an even more stringent procedural safeguard by prohibiting voluntary dismissals after service of an answer or motion for summary judgment. Fed.R.Civ.P. 41(a)(1).

CONCLUSION

The Second District Court of Appeal in Saddlebrook recognized that fundamental due process includes the benefit of a final judgment and that due process must not be abrogated by allowing a permit applicant to block entry of a final order in an administrative proceeding by withdrawing its application after completion of the fact-finding process. We urge this Court to affirm the holding of the Second District Court of Appeal in Saddlebrook.

RESPECTFULLY SUBMITTED this 18th day of February, 1994.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Amicus Brief on the Merits has been furnished this 19th day of February, 1994 by 1st Class, U.S. Mail to:

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