IN THE SUPREME COURT OF FLORIDA

WIREGRASS RANCH, INC., Petitioner, vs. SADDLEBROOK RESORTS, INC., and SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, Respondents.	)	Case No. 82,463 DCA No. 92-01653

ON REVIEW FROM THE SECOND DISTRICT COURT OF APPEAL

RESPONDENT SADDLEBROOK'S BRIEF ON JURISDICTION

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SUMMARY OF ARGUMENT

Not every claimed conflict warrants review by this Court. Otherwise, review under Article V, Section 3(b)(3) of the Florida Constitution would not be discretionary; it would be mandatory. Indeed, Article V, Section 3(b) was substantially modified in 1980 to allow this Court to limit the exercise of its jurisdiction, including its discretionary jurisdiction, to important cases "that substantially affect the law of the state." Committee Notes to 1980 Amendment to Fla. R. App. P. 9.030(a). See also England & Williams, Florida Appellate Reform One Year Later, 9 Fla. St. L. U. Rev. 223, 247 (1981) ("One of the main objectives of the 1980 amendment was to restore the supreme court's discretion to deny review of district court decisions which, although ostensibly in direct conflict with other Florida appellate decisions, lack importance to the jurisprudence of the state.").

This is not a case that will "substantially affect the law of the state", and this Court should not exercise its discretionary jurisdiction under Article V, Section 3(b)(3) here, for two reasons. First, the asserted conflict concerns a narrow and arcane issue of administrative law that cannot arise again because of a subsequent agency rule change. Even if a similar issue were to arise in the future in the context of a proceeding before a different agency, it would not lead to a conflict in view of the Second District's straightforward application of settled principles of Florida administrative law. Second, there is no injustice or unfairness to remedy in this case. Even the

dissent agreed that "the result reached by the majority appears to be a fair result." (Opinion at 14.)

ARGUMENT

I. The Claimed Conflict Concerns A Narrow Issue Of Administrative Law That Will Not Arise Again.

The Second District's opinion addressed a narrow issue of administrative law that will not arise again: Whether the Southwest Florida Water Management District ("SWFWMD") was required to relinquish jurisdiction, and was barred from entering a final order, when petitioner Wiregrass filed a notice purporting to withdraw its petition after formal hearing, after the hearing officer's issuance of a recommended order and opinion, and after Wiregrass' request for agency review of the recommended order through the filing of written exceptions.

Wiregrass (as well as the case upon which it relies) recognizes that agency jurisdiction is not lost under such circumstances where the agency has incorporated by reference Florida Rule of Civil Procedure 1.420 concerning voluntary dismissal. (See Petitioner's Br. at 7-8; John A. McCoy Florida SFN Trust v. State Department of Health & Rehabilitative Services, 589 So. 2d 351, 352 (Fla. 1st DCA 1991).) SWFWMD recently did just that. (See Fla. Admin. Code R. 40D-1.510, which became effective July 13, 1993.) As a result, the issue in this case cannot and will not be repeated, and the claimed conflict should never arise again.

Nor is a similar conflict likely to arise with respect to some other agency in view of the Second District's well-

reasoned, straightforward application of settled principles of Florida administrative law. The Second District's decision was grounded on the fundamental and well-recognized distinction between agency jurisdiction and process. It held that SWFWMD's jurisdiction was invoked by Saddlebrook's application for a permit and that SWFWMD, therefore, was not divested of jurisdiction by Wiregrass' purported withdrawal of its petition for formal hearing, an aspect of agency process:

> [I]n a permitting process, the jurisdiction of an agency is activated when the permit application is filed. Jurisdiction to proceed in that permitting process to a conclusion of whatever process has been activated is only lost by the agency when the permit is issued or denied or when the permit applicant withdraws its application prior to completion of the fact-finding process.

(Opinion at 14 (emphasis in original).)[1]

To attack this holding, Wiregrass must misstate it. Thus, Wiregrass asserts that under the Second District's decision, if a petitioner "withdraws its petition even before the contemplated administrative hearing, the agency and the applicant must still go ahead with the administrative hearing to give the agency a basis for the entry of a final order." (Petitioner's Br. at 6 (emphasis omitted).) Wiregrass criticizes this "rule of law" because it will "inevitably result[] in unnecessary expenditure of time, money and resources." (Id. at 6-7.)

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[1] The Second District further noted "that nowhere in applicable statutory provisions, in the rules adopted by SWFWMD, or in the model rules of administrative procedure, is there a provision for a 'voluntary dismissal' of a proceeding in the permitting process by a party who is not an applicant without agency approval." (Opinion at 12.)

Of course, this is not what the Second District held. The Court nowhere suggested, let alone adopted a "rule of law", that an agency is required to hold a hearing (or for that matter observe any other particular process) with respect to a petition that has been withdrawn. Instead, it simply held that an agency could not be divested of jurisdiction with respect to a permit application by a petitioner's withdrawal of its petition challenging the application. That issue is wholly separate from whether the agency may elect to pursue a particular form of process, for example a hearing, where one is not required.

Wiregrass likewise misstates the implications of the Second District's decision in cases -- unlike this one -- where the applicant withdraws its permit application. Wiregrass suggests that, under the Second District's decision, the applicant can withdraw its application at any time (including after hearing and decision) and thereby deprive the agency of jurisdiction. (See Petitioner's Br. at 7-8.) What the Court actually suggested was exactly the contrary -- jurisdiction is lost only "when the permit applicant withdraws its application prior to completion of the fact-finding process." (Opinion at 14 (emphasis added).) Thus, the Court cited with approval the holding in Middlebrooks v. St. Johns River Water Management District, 529 So. 2d 1167 (Fla. 5th DCA 1988), that where "the fact-finding hearing officer had concluded the hearing process and submitted a recommended order to the district" the applicant

could dismiss the proceeding only with agency approval. (Opinion at 13.)[2]

In sum, the claimed conflict here concerns a narrow issue of administrative law that cannot and will not arise again in view of SWFWMD's recent rule change. Even if a similar issue were to arise in the future with respect to another agency, a conflict is highly unlikely in view of the Second District's straightforward application of long-settled principles of Florida administrative law.

II. There Is No Unjust Result To Remedy Here.

Nor is this a case where the Court should exercise its jurisdiction to correct an unjust result. Even the dissent agreed that "the result reached by the majority appears to be a fair result." (Opinion at 14.)

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[2] The Appellate Court's decision likewise does not conflict with a purported "body of law which has been developed by the First District." (Petitioner's Br. at 6.) All of the cases that Wiregrass cites involved dismissal before hearing and decision by the fact-finder. See Rudloe v. Fla. Dep't of Envtl. Regs., 517 So. 2d 731, 732 (Fla. 1st DCA 1987); RHPC, Inc. v. Dep't of Health & Rehab. Serv., 509 So. 2d 1267, 1268 (Fla. 1st DCA 1987); Humana of Fla., Inc. v. Dep't of Health and Rehab. Serv., 500 So. 2d 186, 187 (Fla. 1st DCA 1986), rev. denied, 506 So. 2d 1041 (Fla. 1987); Orange County v. Debra, Inc., 451 So. 2d 868, 869-70 (Fla. 1st DCA 1983). In addition, Debra and RHPC involved dismissal by the applicant -- not some third party intervenor or objector (See Debra, 451 So. 2d at 869; RHPC, 509 So. 2d at 1268), while the issue in Humana and Rudloe had nothing to do with the third-party petitioner's withdrawal of its petition. Instead, the appeals were brought by third-party intervenors who failed to timely file their own petitions and, therefore, had only a derivative right to a hearing dependent on the petitioner's continuation of its challenge. See Humana, 500 So. 2d at 187-88; Rudloe, 517 So. 2d at 732-33.

This is established by the following facts, which were not disputed. In response to Wiregrass' complaints concerning surface water runoff in a civil nuisance suit, Saddlebrook applied to SWFWMD for a Management and Storage of Surface Water ("MSSW") permit approving the redesign of Saddlebrook's drainage system. (Id. at 3.) After SWFWMD issued a notice of proposed agency action that recommended issuance of the permit, Wiregrass filed a petition for a formal administrative hearing pursuant to Section 120.57. (Id.) In support of that petition, Wiregrass raised the same claims and presented the same evidence that it relied upon in its civil action. Saddlebrook opposed the injection of these claims and evidence into Wiregrass' administrative challenge; Wiregrass, however, claimed that these claims and evidence from its civil action were at the heart of its administrative challenge.

The Hearing Officer agreed. Accordingly, Saddlebrook was forced to incur the expense of defending a full-scale administrative trial on these claims. Thereafter, the hearing officer issued a Recommended Order which specifically addressed -- and rejected -- each of the claims raised by Wiregrass, including its claims of increased runoff, adverse impact, and damage. (Id.)

Wiregrass filed exceptions to the Recommended Order. Before SWFWMD could rule on those exceptions and enter a final order, however, Wiregrass filed a notice "withdrawing" its petition. (Id.) It thereafter succeeded in persuading SWFWMD that the agency was thereby automatically and necessarily

divested of jurisdiction to consider the Recommended Order and issue a final order.

On appeal, Saddlebrook argued that Wiregrass should not be able to avoid one of the key consequences of its election to prosecute its administrative challenge through trial and decision by a fact-finder -- that it would be bound by the result. (Id. at 4.) While allowing such "heads I win, tails you lose" gamesmanship might benefit Wiregrass (for example, by enabling it to relitigate the same claims concerning runoff and adverse impact in future administrative or other proceedings), Wiregrass had never advanced any agency policy or equitable consideration that supported, or was furthered by, such an eleventh-hour dismissal.

The Second District found that this was a matter for SWFWMD to determine, but that "by construing Wiregrass' notice of withdrawal or voluntary dismissal to automatically terminate SWFWMD's jurisdiction, SWFWMD has effectively precluded itself from the ability to determine the very issues Saddlebrook now raises here." (Opinion at 4-5 (emphasis in original).) Accordingly, the court reversed SWFWMD's order finding a lack of jurisdiction and "closing its file" with respect to Saddlebrook's permit application and remanded to SWFWMD for further proceedings consistent with the court's opinion. (Id. at 14.)

As even the dissent conceded, this was the "fair result." (Id.) The agency here made clear its policy against belated "withdrawals" like Wiregrass' after hearing and decision. Indeed, it adopted a rule that would prevent such gamesmanship --

and the claimed conflict here -- from recurring in the future. Yet, it concluded that it was helpless to implement this policy in this case because Wiregrass' withdrawal divested it of jurisdiction. The Second District held that the agency was not so limited. This conclusion was dictated by settled principles of Florida law, and Wiregrass does not point to any equitable or policy considerations that were contravened by this holding.

CONCLUSION

There is no good reason for this Court to expend its limited time and resources by exercising its discretionary review jurisdiction in this case. This is not a case that will substantially affect the law of the state. The claimed conflict raises a narrow issue that cannot arise again. Even if a similar issue were to arise in another factual context in the future, it would not lead to a conflict in view of the Second District's application of settled principles of Florida administrative law. Finally, there is no injustice or unfairness to be remedied here.

Respondent Saddlebrook Resorts, Inc. respectfully requests that the Court deny review.

Dated: October 28, 1993

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 28, 1993, I caused a copy of the foregoing Respondent Saddlebrook's Brief On Jurisdiction to be served on the following persons by U.S. Mail, first-class postage pre-paid:

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