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FILED

SID J. WHITE
AUG 26 1994

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

HAINES CITY COMMUNITY DEVELOPMENT, d/b/a PARKVIEW VILLAGE,
Petitioner,
LEILA HEGGS,
Respondent.

84 243

Case No. _____

District Court Case No. 94-00524
Circuit Appellate Case No. U-93
L.T. Case No. 93-CC-11-0282

Petitioner's Jurisdictional Brief

On review from the District Court of Appeal,
Second District, State of Florida

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STATEMENT OF THE CASE AND FACTS

Petitioner, Haines City Community Development, d/b/a Parkview Village (hereinafter "Parkview"), was the prevailing party in an action for eviction of respondent, Leila Heggs (hereinafter "Heggs"), in the County Court of the Tenth Judicial Circuit in and for Polk County, Florida. The trial court entered a final judgment of eviction in favor of petitioner. The circuit appellate court reversed and stated:

Appellee is estopped from terminating appellant's tenancy for late payment of rent without giving prior notice that the practice would no longer be acceptable. It appears to this court that appellee arbitrarily enforces its own rules and regulations regarding rent payments. In the past, appellee has allowed past due payments to accrue for several months without issuing a three day notice. Here, in the instant case, appellant failed to pay rent for two months, and then filed [sic] to satisfactorily attend to the matter. Appellee then issued the three day notice to which appellant did not respond. Appellee then initiated eviction proceedings. It does appear that at least some of the tenants understood that a three day notice means "quote or be evicted"; however, there is no indication that appellant was aware of this policy. Appellant even testified that there were times in the past when she had been served with a three day notice, had not tendered the rent within three days, and had not then been evicted or faced with any eviction proceedings.

Petitioner filed a petition for certiorari review in the Second District, arguing, among other things, that the circuit appellate court had departed from the essential requirements of law by improperly reweighing the facts. The Second District denied the petition, but specifically stated that in doing so it was applying

the standard set out in Combs v. State, 436 So.2d 93 (Fla. 1983). The Second District noted that ... "even though the circuit court found that respondent had a history of repeated nonpayment of rent, it reversed the final judgment of eviction." Haines City Community Development, d/b/a Parkview Village v. Heggs, ____ So.2d ____, 19 Fla. L. Weekly D1386, D1387 (Fla. 2d DCA June 22, 1994). The Second District stated that it was denying the petition "because the petitioner has not demonstrated that the circuit court's action has resulted in a miscarriage of justice as required by Combs v. State." 19 Fla. L. Weekly D1387. The Second District found that there was no prejudice to petitioner because petitioner could re-evict based upon nonpayment of rent in the future. Id. The Second District also stated that if it were applying the standard set out in Education Development Center, Inc. v. City of West Palm Beach Zoning Board of Appeals, 541 So.2d 106 (Fla. 1989), the decision might be different:

This standard is quite different from the one announced in Combs and could compel a different result in this case were we to find an incorrect application of the law by the circuit court.

19 Fla. L. Weekly at D1387. The Second District certified the following question as one of great public importance:

AFTER EDUCATION DEVELOPMENT CENTER, INC. V. CITY OF WEST PALM BEACH, 541 SO.2D 106 (FLA. 1989), DOES THE STANDARD OF REVIEW IN COMBS V. STATE, 436 SO.2D 93 (FLA. 1983), STILL GOVERN A DISTRICT COURT OF APPEAL WHEN IT REVIEWS, PURSUANT TO FLORIDA RULE OF APPELLATE PROCEDURE 9.030(b)(2)(B), AN ORDER OF A CIRCUIT COURT ACTING IN ITS REVIEW CAPACITY OVER A COUNTY COURT?

Petitioner filed a motion for rehearing arguing that in the instant case, there was prejudice sufficient to meet the standard set out in Combs. The Second District denied the motion for rehearing.

SUMMARY OF ARGUMENT

1. This court may review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance.

2. The decision of the district court of appeal expressly and directly conflicts with the decision of this court in Combs.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that passes upon a question certified to be of great public interest. Art. V, §3(b)(4), Fla. Const.; Fla. Rule of App. P. 9.030(a)(2)(A)(v).¹ Additionally, this court has jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the Supreme Court or another district court of appeal on the same point of law. Art. V, §3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iv).

¹ Petitioner recognizes that Rule 9.120(d) provides that no briefs on jurisdiction shall be filed if jurisdiction is invoked under Rule 9.030(a)(2)(A)(v), but, since petitioner is seeking to invoke jurisdiction under both Rule 9.030(a)(2)(A)(v) and Rule 9.030(a)(2)(A)(iv), as a matter of precaution, petitioner is filing this brief.

ARGUMENT

I. The District Court certified the question as one of great public importance.

Article V, Section 3(b)(4), Florida Constitution, provides that this court may review any decision of district court of appeal that passes upon a question certified by it to be of great public importance. Although the certificate by a district court of appeal that its decision involves a question of great public interest does not vest jurisdiction in this court, it does afford a basis for seeking review in this court and provides a jurisdictional basis for this court to hear the case. See Hillsborough Association for Retarded Citizens, Inc. v. City of Temple Terrace, 332 So.2d 610 (Fla. 1976); Gilliam v. Stewart, 291 So.2d 593 (Fla. 1974).

Here the certified question is a question of great public importance which affects all courts in this state since the decision raises a question as to the correct standard of review to be used by a district court in reviewing a decision of the circuit appellate court in cases arising from the county courts. This case raises a question as to what showing of prejudice is required in order to justify vesting jurisdiction in the district courts. The Second District's opinion appears to limit jurisdiction to a greater degree than Combs which could affect the fundamental rights not only of petitioner, but of countless litigants throughout the State of Florida.

In Combs, this court found that there was not a departure from essential requirements of law because the right legal result was reached in that case even though the result had been reached for

the wrong legal reasons. 436 So.2d at 94. Because the right legal result had been reached, it was appropriate for the District Court to deny the petition for certiorari. Id. Obviously, if the right legal result was reached by the lower tribunal, no party suffered prejudice by the failure of an appellate court to correct a technical error which would not change the outcome of a case. However, it appears that this court needs to delineate the type of prejudice which must be suffered before the district court can justify asserting jurisdiction.

Here, the district court determined that because a subsequent eviction may be filed based upon subsequent failures to pay rent, even if the wrong party prevailed because of a departure from the essential requirements of law by the circuit appellate court, it is not sufficient prejudice to provide the district court with jurisdiction which would provide the court discretion to review this action. Although it does not appear that Combs would require such a drastic result, this interpretation of Combs could result in a loss of access to the district courts to numerous litigants who have been prejudiced by a departure from the essential requirements of law which affected their fundamental rights.

The language in Education Development which seemingly limits the standard enunciated in that case to cases arising from circuit appellate review of administrative actions has apparently confused the general standard. Under the Second District's reasoning, the scope of the District court's discretion seems to be the determining factor and that factor is based upon the degree of

prejudice. However, under Combs, it appears that the district court would have jurisdiction upon a showing of a departure from the essential requirements of law and the issue of prejudice does not seem to enter into the jurisdictional determination as indicated by the Second District in this case. Prejudice, under Combs, seems to be the factor which delineates the scope of the court's discretion. In this case, the standard for determination of the scope of discretion is brought into question. It is extremely important that this court clarify this standard in order to assure uniform application of the law.

II. The Second District's opinion expressly and directly conflicts with decisions of this court.

In Combs, this court stated that the district courts should exercise their jurisdiction to grant certiorari only "when there has been a clearly established principle of law resulting in a miscarriage of justice." 436 So.2d at 95-96. In Combs, this court held it was proper to deny certiorari because the right legal result was reached although there had been a departure from the essential requirements of law. 436 So.2d at 96. This court specifically noted:

Since the trial court reached the right result, albeit for the wrong reasons, the affirmance of the judgment by the circuit court on appeal did not depart from the essential requirements of law.

Id., citing Health Clubs Inc. v. Englund, 376 So.2d 453 (Fla. 5th DCA 1979). It was because the affirmance by the circuit court did not depart from the essential requirements of law that this court held that the district court's decision to deny certiorari was

correct. 436 So.2d at 96.

In this case, however, the district court indicated that it did not have jurisdiction even through the wrong legal result may have been reached by the lower court's departure from the essential requirements of law. This is completely opposite of the reasoning in Combs. In this case, the district court denied the petition for certiorari, stating:

The order did nothing more than reverse a county court's eviction judgment based on a particular set of facts. It did not deprive the petitioner of its day in court, nor has it foreclosed the petitioner from seeking eviction of the respondent because of future nonpayment of rent.

19 Fla. L. Weekly at D1387, citing State v. Roess, 451 So.2d 879 (Fla. 2nd DCA 1984). This ignores the fact that the petitioner prevailed on its day in court and was reversed because of a circuit appellate court reweighing facts improperly and departing from the essential requirements of law.

The Second District's opinion seems to be stating that a reversal of landlord's final judgment of eviction for wrong legal reasons action is not prejudicial because of the fact that the landlord can file additional cases in the future for additional future breaches of contract. However, it seems obvious that the landlord's position in this case was prejudiced. This certainly does not comply with the standards set out by this court in Combs.

Combs does encourage the district court to require a showing of prejudice to justify exercising its jurisdiction to review a petition for certiorari. However, this case clearly meets that

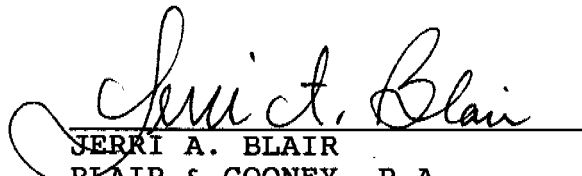
standard. Even though a landlord can seek eviction for future nonpayment of rent, these evictions would be for future breaches of contract not for the breach of contract which has already occurred. For the cause of action which formed the basis of this case, the petitioner prevailed on its day in court, but was improperly reversed by the circuit appellate court. Not only does this deprive the petitioner of the right to evict on the basis of this particular breach by the respondent, but it also subjects the petitioner to the potential of an attorney's fee award. See §83.48, Fla. Stat. This is prejudice of a nature which clearly gave discretion to the district court to exercise its jurisdiction under Combs. The decision of the Second District that it did not have jurisdiction under these facts is in conflict with the decision of this court. See Combs, supra. This provides an additional basis for exercise of jurisdiction by this court.

CONCLUSION

This court has discretionary jurisdiction to review the decision below, and this court should exercise their jurisdiction to consider the merits of the petitioner's argument.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Nora Leto,
Esq. Post Office Box 24688, Lakeland, Florida 33802-4688 by mail on
this the 25th day of August, 1994.



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