IN THE SUPREME COURT OF FLORIDA

HAINES CITY COMMUNITY DEVELOPMENT, d/b/a PARKVIEW VILLAGE,

Petitioner,

v.

LEILA HEGGS,

Respondent.

Case No. 84,243

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

Petitioner's Reply Brief On The Merits

Jerri A. Blair
Florida Bar Number 0525332

Blair & Cooney, P.A.
Post Office Box 130
Tavares, Florida 32778
Phone: (904) 343-3755

Counsel for Petitioner,
Haines City Community Development, d/b/a Parkview Village

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES PAGE

COURT RULES

Florida Rules of Appellate Procedure

PREFACE

The Respondent's Answer Brief shall be referred to as AB.

I. THE SECOND DISTRICT HAD JURISDICTION AND DISCRETION TO REVIEW THE DECISION OF THE CIRCUIT COURT UNDER ANY STANDARD OF REVIEW.

Whether the standard of review to be applied by the Second District in this case is that found in Combs v. State, 436 So.2d 93 (Fla. 1983) or Education Development Center, Inc. v. Zoning Board of Appeals, 541 So.2d 106 (Fla. 1989), the prerequisites for obtaining jurisdiction in a district court for review of a circuit court appellate decision are met in this case.

It appears that the issue here is what constitutes miscarriage of justice. It was clear that in Combs there was no miscarriage of justice caused by the lower tribunal's legal error because in Combs the legal error complained of did not impact the outcome of the case. It is equally clear that in Education Development the legal error complained of did constitute a miscarriage of justice because it reversed the outcome of a case. Similarly, in this case, there is no question that there is miscarriage of justice because the legal error of the circuit court reversed the outcome of a case. Where there is a complete reversal of the outcome of a case, there will always be a sufficient basis for jurisdiction for review if there is legal error.

Respondent argues that Education Development did not announce a broader appellate standard, but merely reiterated the two prong standard of Combs. AB at 11. However, the more important point is that Education Development recognized implicitly that where there has been a reversal there necessarily is the requisite miscarriage of justice.

II. THE CIRCUIT COURT IMPROPERLY APPLIED THE LAW GIVING A BASIS FOR JURISDICTION IN THE DISTRICT COURT.

In discussing the cases in which the Combs standard has been applied, respondent cites Horatio Enterprises, Inc. v. Rabin, 614 So.2d 555 (Fla. 3rd DCA 1993). AB at 12. Horatio is a case which supports the existence of error in this case and supports jurisdiction in the district court. The legal error of the circuit court in Horatio in reversing a county court judgment caused a miscarriage of justice because it resulted in a forfeiture of a sublease. In this case, the reversal of the county court judgment by the circuit court resulted in a miscarriage of justice because it resulted in the forfeiture of petitioner's cause of action for eviction, thus disturbing petitioner's property rights. It would be abhorrent to concepts of due process to announce that remedies are available to one party in a lawsuit but not the other. Under the reasoning of the respondent with regard to the Horatio case, that would be the outcome since respondent seems to be arguing that if Heggs had lost at the circuit court level, there would have been jurisdiction in the district court, but that the opposite is not true.

In fact, Horatio reiterates some of the very principles that are most important in resolution of the issues before this court. In Horatio, the circuit court reversed the county court's judgment and voided a sublease. 614 So.2d at 555. As noted by the Third District:

> The circuit court essentially retried the case by reweighing and reevaluating the evidence and, in so doing, departed from the essential requirements of law. Moody v. State, 574 So.2d 260 (Fla. 4th DCA 1991) (circuit court failed to afford the county court's decision the presumption of correctness to which it is entitled). The rulings of a trial court arrive in appellate courts with the presumption of correctness and appellate courts must interpret the evidence in a manner most favorable to sustain the trial court's ruling.

614 So.2d at 555-556. See also Schlanger v. State, 397 So.2d 1028 (Fla. 3d DCA), review denied, 407 So.2d 1105 (Fla. 1981); McNamara v. State, 357 So.2d 410 (Fla. 1978); Augusta Corp. v. Strawn, 174 So.2d 422 (Fla. 3d DCA 1965). The Third District goes on to note that the appellate court "may not substitute its judgment for that of the trier of fact". 614 So.2d at 556. The court cites to the decision of this court in Helman v. Seaboard Coastline Railroad Company, 349 So.2d 1187 (Fla. 1977), in which this court quashed a decision of a district court of appeal which failed to give deference to the findings of fact by a trial court. Id. In Helman this court noted that it is not function of the appellate court to reevaluate the evidence and substitute its judgment for that of the finder of fact. 349 So.2d at 1189. Here, the circuit court did substitute its judgment for that of the finder of fact, and, thus, there was a departure from the essential requirements of law.

III. THE APPELLATE COURT MAY NOT SUBSTITUTE ITS JUDGMENT FOR THAT OF THE TRIAL COURT UPON THE DENOVO CONSIDERATION OF THE RECORD.

The appellate court is not free to reweigh evidence presented to the trial court and must affirm the trial court's judgment if

there is competent substantial evidence to support the trial court's decision. See Shaw v. Shaw, 334 So.2d 1316 (Fla. 1976), on remand, 336 So.2d 1282 (1976). As noted by the Florida Supreme Court in Shaw v. Shaw:

> ...it is not the prerogative of an appellate court upon the denovo consideration of the record, to substitute its judgment for that of the trial court.

334 So.2d at 14. The weight to be given evidence is a matter that is clearly within the exclusive providence of the trier of facts. See Tibbs v. State, 397 So.2d 1120, 1123 (Fla. 1981), affirmed, 457 U.S. 31, 102 S. Ct. 502, 70 L. Ed. 2d 378 (1982). Here, the circuit appellate court failed to adhere to these important appellate principles.

As discussed in the initial brief, the record was replete with evidence that Heggs received a notice that there would be no continued long term balances of unpaid rent in the fall of 1992; and, more importantly, that in early January she met with management and was told in no uncertain terms that she would either pay her rent or she would be evicted. There was also substantial evidence in the record, as noted in the initial brief, that all of the tenants at Parkview were aware at all times that if they received a three day notice and did not respond, an eviction would be pursued.

In arguing that there was no indication to Heggs that payment of late rent in the future would led to eviction, respondent completely ignores huge portions of the record that was before the trial court. See AB at 24-26. The circuit appellate court also

ignored the abundant evidence before it that supported the findings of the trial court judge. Thus, there was clearly a failure to observe the essential requirements of law. See Combs v. State, supra; Azama v. State, 487 So.2d 184 (Fla. 2d DCA 1985).

IV. THE CIRCUIT APPELLATE COURT MISAPPLIED THE LAW OF ESTOPPEL.

Contrary to the assertions of the respondent, the concept of equitable estoppel requires that the party raising the defense of estoppel present facts to support by a preponderance of the evidence that there was a representation of some material facts made by the party to be estopped to the party claiming the estoppel; that such representation is contrary to the conditions asserted by the estopped party; and that the party claiming estoppel must have relied upon such representation, and, because of such reliance, changed his position to his determent. See AB at 21-22; but see Phoenix Insurance Company v. McQueen, 286 So.2d 570 (Fla. 1st DCA 1973); Ennis v. Warm Mineral Springs, Inc., 203 So.2d 514 (Fla. 2d DCA 1967) (the burden of proving estoppel rests upon the party invoking it). See also Boynton Beach State Bank v. Wythe, 126 So.2d 283 (Fla. 2d DCA 1961); Hallam v. Gladman, 132 So.2d 198 (Fla. 2d DCA 1961).

There is no basis for application of estoppel in this case. The circuit appellate court indicated that because Heggs asserted that she believed that Parkview would accept late rent, Parkview was estopped from evicting her. However, what Heggs believed is irrelevant if it is not based upon words, admissions, conduct, acts or acquiescence of Parkview which would have reasonably led her to

believe in the existence of a certain of things. See Boynton Beach State Bank v. Wythe, supra. The record clearly contains competent substantial evidence that Parkview did not by word, admission, conduct, acts or acquiescence cause Heggs to so believe.

V. RESPONDENT'S ARGUMENT'S CONCERNING THE JURISDICTION OF THIS COURT IS CONTRARY TO ITS EARLIER ARGUMENT CONCERNING THE INTERPRETATION OF COMBS AND EDUCATION DEVELOPMENT.

Respondent argues that there is no basis for jurisdiction in this court other than the certification. Obviously, certification provides a sufficient basis for jurisdiction. However, it is also arguable that the Second District opinion is contrary to the decisions of this court in Combs and Education Development. Respondent initially argues that under both Education Development and Combs, there must be error that results in a miscarriage of justice. AB at 9-9. If so, then if the district court's opinion indicates that there does not have to be a miscarriage of justice under Education Development, it is contrary to Combs and Education Development. Further, it is contrary to the implication present in both cases that a miscarriage of justice occurs when there is a reversal of a trial court's decision caused by an error of law. Thus, there is jurisdiction in this court under either Rule 9.030(a)(2)(A)(iv) or (v).

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 10th day of November, 1994.

Jerri A. Blair
Florida Bar Number 0525332
Blair & Cooney, P.A.
Post Office Box 130
Tavares, Florida 32778
Phone: (904) 343 3755

Counsel for Petitioner,
Haines City Community
Development d/b/a Parkview
Village