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SID J. WHITE
FEB 9 1995
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

FOREST PARK CONDOMINIUM ASSOCIATION, INC. OF DUNEDIN, a Florida corporation not for profit,

Petitioner,

v.

CASE NO: 84,753

RICHARD W. WIDERA and MARLENE E. WIDERA, his wife.

Respondents.
_____/

RESPONDENTS' ANSWER BRIEF

WAYNE T. PHILLIPS, ESQ.
2555 Enterprise Road #7
Clearwater, FL 34623
(813) 799-3333
SPN #2787

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES:

I
STANDARD OF REVIEW

The questions is what is the standard of review to be applied by the District Court when determining whether to grant a Petition for Writ of Certiorari directed to an order of a Circuit Court acting in its review capacity over a County Court, pursuant to Rule 9.030 (b)(2)(B). It would appear that the Court in Education Development Center, Inc. v. City of West Palm Beach Zoning Board of Appeals, 541 So. 2d 106(Fla. 1989) limited the standards originally enunciated in Combs v. State, 436 So.2nd 93 (Fla. 1983). Presumably the Combs standard authorizes the District Court to determine if the Circuit Court sitting in its review capacity rendered a decision which is based upon competent substantial evidence. Haines City Community Development d/b/a Park View Village v. Heggs Case No: 94-00524 (Fla. 2nd D.C.A. 1994) purported to stand for the proposition that Combs is the correct standard and dismisses the more limited standard of Education Development Center.

The Respondents concede what appears to be an uncertainty with regards to the District Courts review standards based on Education Development Center, Combs and Haines City . Respondent, however, would ask this Court to resolve this issue and they do not believe that under either standard would the ultimate decision of the District Court be contrary to their interest.

Unlike most cases cited in Education Development Center, Combs, and Haines City, the review of the Circuit Court in the case at bar was from the decision of a County Court sitting in its trial capacity. The sole issue on appeal -- was there a "prevailing

party" so as to authorize the Court to award attorney's fees to such party when the litigants stipulated to an early settlement of their dispute (even before Court ordered mediation) in which it appeared that both parties compromised in order to reach such stipulated settlement? The Circuit Court, sitting in its review capacity simply determined as a matter of law without any citation of authority, that Petitioners could not be the prevailing party under such circumstances and reversed the County Court's order granting attorney's fees. A determination as to the correctness and/or propriety of the Circuit Court's decision in this case would not be altered regardless of the standards of review applied.

II

THE CIRCUIT COURT COMMITTED A MISCARRIAGE OF JUSTICE RENDERING A FACTUAL DECISION WHEN THERE WAS NO RECORD OF THE EVIDENCE PRESENTED TO IT, BY SUBSTITUTING ITS OWN JUDGMENT FOR THAT OF THE COUNTY COURT JUDGE'S AND FOR APPLYING AN INCORRECT PRINCIPLE OF LAW.

The Respondents have no real argument with any of the citations of authority and/or argument presented by the Petitioner, but would suggest that they are unnecessarily complicating a simple case and a common sense decision by the Circuit Court sitting in its review capacity.

With regard to there being no record and therefore no basis upon which the Circuit Court could reverse the County Court's decision the Petitioner's would simply state that there was no record as to factual issues which could have any bearing on this case. The County Court's decision which was ultimately appealed to the Circuit Court was simply an order granting attorney's fees and have absolutely nothing to do with the underlying facts. The Circuit Court did not rule that the County Court abused its discretion in granting an award of attorney's but simply that the award of attorney's fees was inappropriate and unlawful. While it is true that the Circuit Court by necessity had to substitute its judgment for that of the trial court it was not the judgment of the evidence which was reweighed or substituted, but simply the underlying basis for the Court's decision in the first instance.

Further, the Circuit Court was not, by its decision, making a broad brushed statement that there can not be a prevailing party when there has been a settlement. Clearly, all the cases cited by

the Petitioner wherein there have been last minute "roll-overs" after lengthy litigation is clearly distinct from the case at bar. Here the Petitioners wish to enjoin the Respondents from having a dog in Petitioners condominium complex or sought the eviction of Respondents. Respondents answered by claiming indiscriminate and selective enforcement of the condominium's rules and regulations which should bar the Petitioner's enforcement with regard to the case at bar. The dispute was immediately ordered to mediation but prior to mediation the parties stipulated wherein the Respondent's agreed to remove the dog within 120 days of the date of the stipulation. The Respondents did not stipulate to remove the dog on the eve of the trial, they did not offer policy limits of an insurance policy on the eve of trial, and they did not offer a quit claim deed on the eve of trial. Clearly, these are all circumstances where the defendants at trial gave up to avoid the inevitable result and the law is clear that the opposing side under those circumstances should be the prevailing party and attorney's fees should be granted.

As a matter of policy for litigants to engage in good faith negotiations and mediation and for each to "give-in" to reach a negotiated compromise, early in the proceedings should be applauded by the courts. To burden the Respondents with the obligations to pay fees both at trial level and at the appellate level would be destructive to the process of negotiated mediation and would be harmful to the administration of justice and judicial administration.

The Respondents assert now, as they always have, that the association is no more the prevailing party then they. The Circuit Court had an obligation to reverse if they found that to be true, as they clearly did. That decision should not be disturbed under either theory of review.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this 7th day of February, 1995 to RANDALL O. REDER, ESQ., 1060 W. Busch Boulevard, Suite 103, Tampa, FL 33612-7703.

WAYNE T. PHILLIPS, ESQ.
2555 Enterprise Road #7
Clearwater, FL 34623
(813) 799-3333
SPN #2787