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SID J. WHITE

MAR 1 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

_____ /

PETITIONER'S REPLY BRIEF

/

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Florida Rules of Procedure

Florida Rule of Appellate Procedure 9.030(b)(2)(B) 1

SUMMARY OF ARGUMENT

Where the prevailing party at the trial level is wrongfully reversed by a circuit court, the District Court of Appeal's scope of review should be broader than if the non-prevailing party were seeking review.

The determination as to whether there was a prevailing party is necessarily a factual determination. This is evidenced by Respondent's attempt to support the circuit court's decision by making all sorts of factual references and distinctions. This is a classic case of a circuit court judge substituting its judgment for that of the county judge's.

I. 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?

As Respondent has not answered this argument, Petitioner has no reply other than to reiterate there should be a difference in the scope of review by a district court when reviewing a circuit court's appellate decision. If the same party who sought an appeal is seeking certiorari review, then the scope of review should not include whether there was competent substantial evidence to support the circuit court's decision as that would be granting a second appeal. However, where the party who is seeking review was the appellee and the circuit court reversed, then the scope of review should include an evaluation of the evidence to determine if the circuit court had departed from the essential requirements of law by substituting its judgment for that of the trial court's. As the Second District Court of Appeal did not do this, this Court should quash the opinion and remand with instructions to quash the circuit court's decision as it clearly departed from the essential requirements of law.

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.

Respondent argues that the circuit court did not substitute its judgment for that of the trial court's, then goes on and cites a litany of facts (without making references to the record) to support the circuit court's decision. Respondent fails to cite any law holding there can be no prevailing party when there is a settlement. Instead Respondent tries to distinguish the cases cited in the initial brief, by making factual distinctions.


The factual determination as to whether there was a prevailing party was the county judge's not the circuit court judge's. There was plenty of evidence to support the county judge's determination that the association was the prevailing party. The association brought an action to enforce a clear, unambiguous, legal deed restriction: no pets. The respondents agreed to get rid of their pet. The fact that the association allowed them 120 days should not prevent them from being the prevailing party as the matter probably would have taken that long to get scheduled for trial. There is no question that the respondents forced the association into filing the lawsuit and incurring substantial legal fees before they agreed to abide by the deed restrictions.

As there was competent substantial evidence to support the county court's determination that the association was the prevailing party, the circuit court departed from the essential requirements of law by substituting its own judgment.

CONCLUSION

This Court should quash the decision of the District Court of Appeal and remand with instructions that the circuit court's decision should also be quashed and the county court's decision should be reinstated.

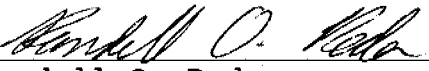
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail on this 27th day of February, 1995 to Wayne T. Phillips, 2555 Enterprise Road #7, Clearwater, FL 34623.



Randall O. Reder