In The Supreme Court of Florida

CASE NO. 85,494

WILLIAM N. RICH, JR., et al.,

Appellants,

v.

STATE OF FLORIDA, VILLAGE CENTER COMMUNITY DEVELOPMENT DISTRICT, et al.,

Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT IN AND FOR LAKE COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE
VILLAGE CENTER COMMUNITY DEVELOPMENT DISTRICT

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TABLE OF CONTENTS

CITATION OF AUTHORITIES

Statutes:

Cases:

STATEMENT OF THE CASE AND FACTS

Pursuant to Rule 9.210(d), Fla. R. App. Pr., only areas of disagreement are addressed in this Statement, the Statement in appellants' brief being otherwise accurate. This Appellee is the Village Center Community Development District, and hereafter is called "District". Record references are to the initial Appendix propounded by appellants (A-__) or to the Supplemental Appendix of this Appellee (SA-__).

The District was created by municipal ordinance of the Town of Lady Lake under the authority of Chapter 190, Florida Statutes. With the proceeds of the bonds sought to be validated, it proposes to acquire certain "facilities" both within and without the boundaries of the District. Bonds are to be retired by contractual user fees. Where facilities lie outside the bounds of the District, the District has entered into the necessary interlocal agreements with the Town of Lady Lake (SA-2), Lake County (SA-13), and Village Community Development District No. 1 (SA-8), respectively, authorizing the District to acquire such facilities and provide such services otherwise within the territories of those respective bodies. The present owner and proposed seller of the facilities allows the use of the facilities for a contractual fee. In the proposed acquisition, the District will receive an assignment of those contractual rights, which provide the revenues with which to retire the proposed bonds. No taxation or other involuntary assessment is involved.

The State appeared in opposition below, but has chosen not to appeal. These appellants style themselves "Intervenors below". They have filed an "Answer and Affirmative Defenses" which fails to allege that they are property owners, taxpayers, citizens of the District or otherwise interested. By a separate and unsworn "Motion to Intervene" they argue that they

are severally "citizens, residents and taxpayers" of Lake or Sumter Counties, and that collectively they are "users" of the facilities proposed for acquisition by the District. They assert neither by pleading nor unsworn motion any status as citizens, residents or taxpayers of the District. In their Initial Brief (pp 2-3), appellants make a number of factual statements concerning the facilities proposed for District acquisition, and the supposed constituent documents of the seller's development. These factual statements are apparently drawn from an unsworn Memorandum of Law (App., Exhibit 6). There is neither pleading, proof nor proffer of these matters.

ISSUES ON APPEAL

I.

THE CIRCUIT COURT CORRECTLY DECLINED TO ADMIT APPELLANTS AS PARTIES TO THE BOND VALIDATION PROCEEDINGS.

II.

THE CIRCUIT COURT CORRECTLY HELD THAT THE PURPOSE OF THE BONDS IS LAWFUL.

SUMMARY OF ARGUMENT

First, these appellants have no standing. They have no justiciable interest in the outcome of the proceedings. They are not citizens, residents or taxpayers of the District, nor have they alleged, proved or offered to prove any interest in these proceedings. Indeed, the "interests" they argue on the merits are the alleged interests of others (citizens, residents and taxpayers of the district) who have not objected. Idle curiosity or officious intermeddling is no substitute for justiciable interest. The State, as guardian of the interests of the public and the actual citizens, residents and taxpayers of the District, chose not to appeal.

Second, even if appellants had standing, their position is wrong on the merits. Here, the affected district, municipal and county governments have entered agreements for this District to be the sole provider of services that otherwise would be within the purview of multiple overlapping jurisdictions. Florida's public policy clearly encourages interlocal agreements and the most efficient and economical use of public resources. Cases are legion in which cities and counties have acquired utilities, recreational amenities or other facilities originally constructed by developers, and operated them as public or proprietary facilities. Here, the District proposes no more. By the interlocal agreements, the Town of Lady Lake, Lake County and Village Community Development District No. 1 have, for their respective jurisdictions, agreed with the District that it shall acquire and operate these drainage, security and recreational facilities. The District proposes no taxation or other involuntary exaction. The bonds are to be retired from voluntary fees and contractual revenues.

ARGUMENT

I.

THE CIRCUIT COURT CORRECTLY DECLINED TO ADMIT APPELLANTS AS PARTIES TO THE BOND VALIDATION PROCEEDINGS.

Appellants claim standing under Fla. Stat. §75.07. That statute is substantially unamended since the Compiled General Laws of 1927.[1]

The statute provides that "any property owner, taxpayer, citizen or person interested may become a party to the action by moving against or pleading to the complaint at or before the time set for hearing." (emphasis supplied)

This Court's interpretation of that statute has been clear and unquestioned since its adoption in 1927. In *Belmont v. Town of Gulfport*, 122 So. 10 (Fla. 1929), Belmont, like these appellants, was found not to be a proper party to intervene, and he appealed. It appeared that he was not a taxpayer, and this Court affirmed his exclusion, saying:

> "The construction of the word "citizen" as used in [this] statute means a citizen whose rights or interests as an individual are involved. It means a citizen *having a justiciable interest in the litigation* and does not mean to confer upon a citizen possessing no justiciable interest in the litigation the right to make himself a party to such litigation to raise questions which do not affect his rights either as a taxpayer or as a citizen. Nor was it the intention of the Legislature when using the word "citizen" in that statute to constitute every nontaxpaying citizen a guardian of the rights of the public. Under our government the rights and interests of citizens constituting the public are provided protection by the

[1]Chapter 67-257, Laws of Florida, reorganized Chapter 75 of the Statutes "by deleting provisions contained in 1967 Florida rules of civil procedure, deleting provisions preempted by or in conflict with said rules, deleting obsolete and unnecessary language . . . ." Those changes are accordingly considered nonsubstantive.

interposition of duly qualified public officials upon whom the law imposes that burden." (emphasis supplied)

Two days prior to the hearing in the instant case, appellants filed an answer and affirmative defenses. That pleading contains no averment that these appellants are property owners, taxpayers, citizens or persons interested. At the same time, they filed an unsworn motion to intervene (which is not a motion against the complaint as provided in Fla. Stat. §75.07). The motion to intervene says that they are severally citizens, property owners and taxpayers of Lake or Sumter Counties but is silent as to their status as citizens, property owners or taxpayers of the District.

Nor is appellants' standing established by their unpleaded and unproven argument that they are "users" of the facilities proposed for acquisition by the District. In their Memorandum of Law (A-Exhibit 6) they conceded that their position as "users" before and after the issuance of the proposed bonds and acquisition of facilities by the District would be unchanged. Their fees would remain the same. Indeed they conceded on questioning by the trial judge (Transcript of Proceedings, A-Ex. 8, p. 17, l. 20) that such an interest, if any, was a "collateral issue". Accordingly the trial court was well within its discretion in finding that they were not "persons interested" in the proposed transactions.

Appellants place their sole reliance as to this point on the decision in *Meyers v. City of St. Cloud*, 78 So.2d 402 (Fla. 1955). In so doing, they make two errors, one legal and the other factual.

Their legal error is in failing to comprehend the issue in *St. Cloud.* The case was before the Court on motion to dismiss the appeal, on the ground that the appellants had not intervened prior to the return date in the lower court. Based on the statute as it then existed, the Court

found that intervention by appeal after judgment was permissible. That provision of the statute was deleted by the 1967 amendments conforming the law to the Rules of Civil Procedure.[2]

Their factual error is in failing to appreciate that the appellants in *St. Cloud* were indisputably taxpayers, citizens and property owners of St. Cloud. That status does not appear in the instant case.

The Court's decision in *State v. Florida State Improvement Commission*, 75 So.2d 1 (Fla. 1954) is more apt. In that case, during the time when the statute so permitted, the supposed appellants petitioned to intervene after the return date. Their petition was denied by the Court, but they were permitted to file a brief *amicus curiae*. This Court found [at p. 6] that the supposed appellants:

> "...never became parties to the proceeding and are not proper parties on the appeal. The Circuit Judge did not abuse his discretion in denying ... the right to intervene. As they were not parties to the cause, they had no right or authority to prosecute an appeal and have no standing in this Court."

This appeal should likewise be dismissed for lack of standing by the nominal appellants.

II.

THE CIRCUIT COURT CORRECTLY HELD THAT THE PURPOSE OF THE BONDS IS LAWFUL.

Appellants have acknowledged in their initial brief that the District has declared the acquisition of the facilities, and the issuance of revenue bonds for that purpose, to be a public purpose and that such a declaration comes to the trial court and to this court clothed with a

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[2]Rule 1.230, Fla. R. Civ. Pr., now provides that anyone *claiming an interest* in pending litigation *may* at any time be permitted to assert a right by intervention.

presumption of correctness. *Zedeck v. Indian Trace Community Development District*, 428 So.2d 647 (Fla. 1983).

Appellants proffered no evidence to rebut that presumption. Nor did the State introduce any evidence. Assuming *arguendo* their standing, appellants' case must therefore rest on the evidence submitted by the plaintiff District, or on the facial strength of their pleading.

Appellants' proposed Answer and Affirmative Defenses (A-Exhibit 3) raises three arguments. First, they assert without elaboration that there is no legitimate public purpose for the issuance of the proposed revenue bonds. Second, they argue that members of the District will not be able to use a substantial part of the facilities and that the project is therefore not within the purview of Chapter 190. Finally, they argue that repayment of the bonds would impose obligations on residents in violation of their applicable Declarations of Restrictions.

The simple answer is that each of their arguments is collateral, and outside the proper scope of judicial review. As they concede in their initial brief, the judicial inquiry is limited to the questions of the authority of the public body, the purpose of the bonds, and the compliance with all legal requirements. *Warner Cable Communications, Inc. v. City of Niceville*, 520 So.2d 245 (Fla. 1988).

Lest the Court be drawn into a more extensive inquiry than seems proper, the District will answer the pleaded arguments of appellants:

(a) The acquisition and operation of the facilities is a valid public purpose.

It is clear under Fla. Stat. §190.012(2)(a) that the acquisition of parks and facilities for recreational use is expressly within the authority of the District. Likewise under subsection

(2)(d), acquisition and maintenance of security facilities is expressly authorized. Finally, water management and control is expressly authorized under subsection (1)(a).

With respect to the acquisition of facilities beyond the boundaries of the District, the Legislature has clearly contemplated such acquisition. In Fla. Stat. §190.011(11), the District is given extraterritorial eminent domain powers (with the consent of the host local government).

Fla. Stat. §190.012(2)(d) further provides that, after receiving the consent of the local general-purpose government having jurisdiction, the District may, *inter alia, enlarge or extend or maintain additional systems and facilities.*

Fla. Stat. §163.01 is the Florida Interlocal Cooperation Act of 1969. It is applicable to all levels of government including cities, counties and special districts. It provides, in subsection (5), for the joint exercise of power by contract in the form of an interlocal agreement. Such agreements can even be entered with agencies of other states, which clearly would not otherwise have "extraterritorial powers" within Florida. Subsection (6) authorizes the provision that one or more parties to the agreement may administer or execute it. Subsection (5)(h) provides authority for the fixing of charges, rates, rents or fees in order to finance performance of such agreements.

In *Op. Atty. Gen. 84-40*, the Attorney General opined to the South Trail Fire Protection and Rescue Service District that by virtue of Fla. Stat. §163.01, it could lawfully enter an interlocal agreement with Lee County to provide fire services to portions of the unincorporated area outside the bounds of the District.

In the instant case, by such interlocal agreements, these governments have expressly authorized the District to acquire the facilities in question and provide the services in question.

Nothing in appellants' argument either in the lower court or in this Court challenges the legality or efficacy of those agreements. This Court held, in *State v. City of Daytona Beach*, 431 So.2d 981 (Fla. 1983) that the scope of judicial review of such agreements is limited to whether the public agency has authority to enter the agreement, whether its purpose is legal, and whether the proceedings authorizing it were proper. None of those issues have been raised by appellants or the State below, or here.

(b) The proposed bond issue provides sufficient benefit to members of the District.

Appellants argue that the expenditure must be for the benefit of members of the District. There are three flaws in their argument.

The first flaw is the fact that these appellants have no standing to assert the rights of, or wrongs done to, members of the District. While their solicitude for the members of the District may be admirable, it cannot convert officiousness into legal standing. In *Scalley v. Meminger*, 64 Fla. 464, 60 So. 180 (Fla. 1912), the challenger of municipal bonds was a resident citizen and taxpayer. He argued that the legislation authorizing the speedy validation procedure was defective because it did not afford nonresident property owners an opportunity to intervene. The Court found that his complaint affirmatively demonstrated that he was not in the class of persons affected by his complaint, and affirmed the validation.

Secondly, even if appellants had standing to speak for the voters of the District, the property owners and voters in the District have expressed themselves otherwise. Through their duly elected Supervisors and manager, they have taken the position that the acquisition of the facilities by the District serves the interests of the property owners of the District. (A-8, p. 55).

Finally, appellants assert (though without proof or proffer) that they are nonresidents of the District but are entitled to use the District's facilities by contractual right. Then they argue (again without proof or proffer) that perhaps some members of the District might not have the same contractual rights. Thus, they contend, the public purpose fails because other members of the public (not including themselves) might be barred from District facilities.

As their sole authority, they cite *State v. Sunrise Lake Phase II Special Recreational District*, 383 So. 2d 631 (Fla. 1980). They argue that in that case, the Court required public access to the facilities in order to prove a public purpose. Yet they disprove their own argument; they assert that they are *not* barred from use of the District facilities.

This Court has often dealt with bond issues in which public agencies, in a proprietary capacity, construct facilities that are not only widely available for public use but provide a primary and substantial benefit to the public interest. In *State v. Daytona Beach Racing and Recreational Facilities District*, 89 So.2d 34 (Fla. 1956), this Court approved bonds which funded the construction of the Daytona Beach International Speedway by the District. A private corporation was given the right of possession for "periods of time aggregating not less than six months in each year for a period of forty years." In *Panama City v. State*, 93 So.2d 608 (Fla. 1957), the Court similarly discounted a challenge to the construction of concession buildings for private lease at a public marina, and stated:

> [at 613] "The development of the law in this State on this question and particularly a study of the legislative history with relation to public projects of a recreational and entertainment nature reveals the allowance to the public bodies of an extremely wide latitude in this field. [citations omitted]
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> [at 615] ". . . the difference is one of degree and not of kind . . . the Legislature may not only grant powers but it may prohibit the

> exercise of powers. . . . If there is to be a change in the law of this State with reference to the power of the cities to issue revenue bonds . . . with reference to the type of facilities that may be constructed with public money, that change should come from the Legislature."

(c) The unsupported argument that acquisition of the facilities would violate private restrictive covenants is collateral and cannot be resolved in validation proceedings.

Appellants' final argument is that somehow the acquisition of the facilities by the District would violate some declarations of covenants and restrictions in their deeds.

This argument is without legal merit; in *Ryan v. Town of Manalapan*, 414 So. 2d 193 (Fla. 1982), this Court held that a public body acquiring land subject to restrictive covenants is not bound by those covenants, whether the acquisition is by purchase or by eminent domain proceedings.

Nevertheless it is inappropriate to raise or adjudicate that issue in the instant proceedings. The argued covenants have not been pled or proffered, and are clearly collateral to the validation of the bonds. A similar argument was made in *McCoy Restaurants, Inc. v. City of Orlando*, 392 So.2d 252 (Fla. 1980). There, challengers to airport revenue bonds argued that "agreements for the lease of the airport facilities unconstitutionally delegate the authority's powers to the private and beneficial use of the airlines." The Court held that the argument as to validity of the lease agreements was clearly collateral and not properly the subject of a bond validation proceeding.

CONCLUSION

The judgment below should be summarily affirmed because the State has not appealed, these appellants lack standing, their arguments are collateral, and their arguments are ultimately meritless.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand to Steven J. Chase, Esquire, of Abel, Band, Russell, Collier, Pitchford & Gordon, Chartered, 240 South Pineapple Avenue, Sarasota, Florida; Randall N. Thornton, Esquire, Post Office Box 58, Lake Panasoffkee, Florida 33538; Michael D. Williams, Esquire, 255 South Orange Avenue, Suite 801, Orlando, Florida 32801; Jim McCune, Esquire, Assistant State Attorney, Public Interest Unit, 19 N.W. Pine Avenue, Ocala, Florida 34475; Division of Bond Finance of the State Board of Administration, Post Office Drawer 5318, Tallahassee, Florida 32314-5318; and Steven W. Johnson, Esquire and Steven M. Roy, Esquire, Post Office Box 491357, Leesburg, Florida 34749-1357 this 5 day of May, 1995.

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