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SUPREME COURT OF FLORIDA

CASE NO.: 85,880

L.T. CASE NO. 94-0450-CA

DEPARTMENT OF ENVIORNMENTAL PROTECTION, ET AL.,

APPELLANTS,

V.

BRUCE MILLENDER, ET AL.,

APPELLEES.

FRANKLIN COUNTY'S INITIAL BRIEF

ALFRED O. SHULER
SHULER AND SHULER
Florida Bar No. 007660
Post Office Box 850
Apalachicola, FL 32329
(904) 653-9226

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STATEMENT OF THE CASE AND FACTS

Appellee Franklin County accepts the Statement of the case and facts of Appellee Bruce Millender.

SUMMARY OF ARGUMENT

The trial court did not err. It was entirely proper for the trial court to consider the amendment as a whole and so as to give effect to the intent of the voters and the plain meaning of the operative language of the amendment. There is a conflict between the operative language of the amendment and the definition language, which was correctly resolved by the trial court.

ARGUMENT

1. THE TRIAL COURT CORRECTLY CALCULATED NET MEASUREMENT

The only evidence that was presented as to how the size of a net should be calculated that could be harmonized with the operative language of the amendment is that of Appellees, as embodied in the final judgment of the trial court. It can be assumed that the voters knew of the five hundred square feet net limit, as this received wide publicity and appeared in the summary of the amendment. It is unlikely that the voters knew or understood the definition to be substantially

different and inconsistent with the plain meaning of the operative language prohibiting nets in excess of five hundred feet.

The net measurement calculation of the trial court is the only interpretation which is presented to this Court that corresponds with reality. There seems to be no disagreement with the fact that the Appellee Crum's net contains less than five hundred actual and real feet of net.

Where, as here, there is a conflict between the operative and definitive language of a law or amendment, the operative language must govern. Certainly, the conflict should be resolved in favor of the plain language and actual fact.

The purpose of a definition is to clarify, not to alter the operative language of any enactment. The learned trial judge has succeeded in calculating net measurement so as to give effect to the plain intent of the voters.

It was entirely proper for the trial court to consider commercial feasability, which is another way of saying practicality. Appellants err in claiming that this issue was not raised. There was testimony in abundance on this issue.

Practicality and factuality have always been considered by courts of law, and there is nothing novel or improper in the trial court's consideration of commercial feasibility in the case now before this Court. The price of shrimp, the livelihood of thousands of good, hardworking Floridians, the flow of dollars overseas to import food formerly produced here, all depend upon the commercial feasibility of shrimp nets. Citizens who will work inshore waters with the nets here challenged have and will always be staunch protectors of the environment upon which their livelihood depends.

It is arrogant and cruel of the Appellees to contend that commercial feasibility is of no consequence here.

It is clear that the net measurement calculations of the Appellees will not limit but will exclude inshore shrimping.

II. THE TRIAL COURT CORRECTLY USED THE OPEN MESH MEASUREMENT.

The plain language of the amendment calls for the mesh to be measured in the open configuration. Had the amendment required the measurment of nets as demanded by Appelants, it would have been so stated. Appellants seek to have it both ways here, but should be denied, and the plain language of the amendment's operative language should be applied. This was done here by the trial court.

III. THE TRIAL COURT DID NOT ERR AS TO FCA'S EXAMINATION OF WITNESSES.

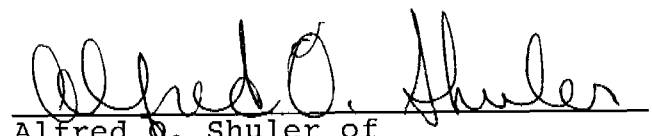
FCA, an intervenor, was subject to the same limitations as Franklin County, also an intervenor. FCA, in fact, was allowed greater leeway than Franklin County. Because FCA was allowed to enter the suit at the last minute, as was Franklin County, it would have been unfair to the original Plaintiffs to allow testimony of witnesses of FCA hitherto unknown to them.

CONCLUSION

The trial court did not err. Its judgment, which is here clothed with a presumption of correctness as to facts, has interpreted the amendment correctly and properly while fulfilling the traditional role of a court in a free society. The judgment herein appealed from reconciles the operative terms of the amendment with the definitions, and allows the affected people of this state to enjoy the fruits of their industry.

The judgment of the trial court should be sffirmed.

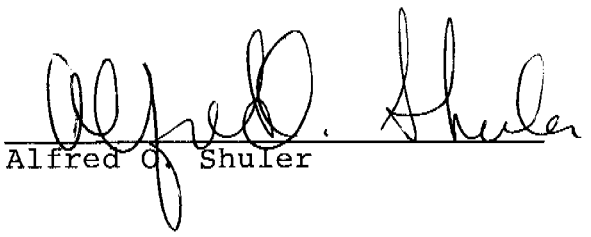
DATED July 30, 1995.



Alfred O. Shuler of
SHULER AND SHULER
Florida Bar No. 007660
P. O. Box 850
Apalachicola, Fl 32329
(904) 653-9226
Attorney for Appellee
Franklin County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by mail to Jonathan A. Glogau, Terry L. McCollough, J. Patrick Floyd, and Ronald A. Mowrey, this 31st day of July, 1995.



Alfred O. Shuler