

IN THE SUPREME COURT OF FLORIDA

067  
FILED  
OCT 10 1996  
CLERK SUPREME COURT

JAMES J. WOLF,

Petitioner,

CASE NO. 88,146

vs.

COUNTY OF VOLUSIA,

Respondent.

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BRIEF OF AMICUS CURIAE, SEMINOLE COUNTY,

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## INTRODUCTION/PRELIMINARY STATEMENT

Seminole County adopts the Introduction set forth in Volusia County's Answer Brief. The following matters are presented to this Court to respectfully assist the Court in making its decision in the case at bar which will have a significant impact upon local governments, specifically counties, and their respective taxation needs and budgetary constraints and responsibilities.

## STATEMENT OF THE FACTS AND CASE

Seminole County adopts and accepts Volusia County's Statement of the Facts and Case.

## SUMMARY OF ARGUMENT

The case at bar concerns a basic premise of statutory construction or interpretation. The question presented here is whether a court may impose taxable costs against a county for certain types of costs when the statute authorizing payment of certain taxable costs does not expressly provide for payment of those type of costs.

The Legislature of the State of Florida clearly intended that certain costs incurred by an acquitted defendant in defense of a criminal charge are to be borne by counties. The aforementioned taxable costs are delineated by specific enumeration as set forth in *Section 939.06, Florida Statutes (3995)*. Further, the Florida Legislature determined that the counties shall be responsible for payment of taxable costs in certain other circumstances. Thus, *Section 939.07, Florida Statutes (1995)*, mandates that counties shall pay certain costs in cases when a criminal defendant is

indigent or has been discharged by the state. Again, *Section 939.07, Florida Statutes (1995)*, expressly enumerates these taxable costs.

The Florida Legislature clearly intended for counties only to be responsible for payment of costs expressly enumerated as taxable against the counties. The rule of statutory construction, *expressio unius est exclusio alterius* applicable here requires that the County not be responsible for costs not specifically enumerated by statute. If the Legislature had intended otherwise, it could arguably have expanded the list of taxable costs in the intervening years since enactment of the subject statute in 1846. Absent such amendment, revision or modification by the Florida Legislature, the clear interpretation of such lack of action is that the Legislature did not intend for the counties to be taxed for costs other than those specifically enumerated by *Section 939.04, Florida Statutes (1995)* .

#### **ARGUMENT**

A basic tenet of statutory construction in interpreting a particular statute is to follow the plain language employed by the legislature, *St. George Island, Ltd. v. Rudd*, 547 So. 2d 961 (Fla. 1st DCA 1989); *Brooks v. Anastasia Mosquito Control Dist.*, 148 So. 2d 64 (Fla. 1st DCA 1963) . The First District Court of Appeal in *St. George Island* stated that "...[t]he presence of a term in one portion of a statute and its absence from another argues against reading it as implied by the section from which it is omitted". *Id.* at 961,

The prevailing and well established rule of statutory construction, *expressio unius est exclusio alterius*, dictates that a statute will ordinarily be construed as excluding from its operation all things not expressly mentioned, where a statute enumerates specific things, events, conditions, etc., on which it operates. *Brandon Chrysler Plymouth Jeep Eagle, Inc. v. Chrysler Corp.*, 898 F. Supp. 858 (M.D. Fla. 1995); See, **also** *DeSisco College, Inc., v. Town of Howey-in-the-Hills*, 706 F. Supp. 1479 (M.D. Fla. 1989), *affirmed* 888 F. 2d 766 (11th Cir. 1989) .

This Court recently utilized *expressio unius est exclusio alterius* to construe a statutory provision. In *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281 (Fla. 1988). The statute construed in *PW Ventures* concerned the absence of an exemption for a certain kind of public utility from a statute providing an exemption to another type of public utility. *Id.* at 283. See, also *Thayer v. State*, 335 so. 2d 815 (Fla. 1976).

Further, in *Townhouse Condominium, Inc. v. Millman*, 475 So. 2d 674, 676 (Fla. 1985), this Court definitively stated that:

[i]t is a general principle of statutory construction, well established in Florida's jurisprudence, that the mention of one thing implies the exclusion of another. *Id.* at 676.

In the case at bar, the issue is simply whether certain costs incurred by an acquitted defendant in defense of a criminal action are taxable costs pursuant to *Section 939.06, Florida Statutes (1995)*. *Section 939.06, Florida Statutes (1995)*, comprehensively governs the payment by counties of costs incurred by an acquitted

defendant in defense of a criminal action brought against that defendant by the State.

In the aforementioned statute, provision is made for payment of three (3) distinct types of costs. **Section 939.06, Florida Statutes (1995)**, permits payment by the counties for (1) "any costs or fees of the court" or (2) "any ministerial office" or (3) "for any charge of subsistence while detained in custody". § 939.06, **Fla. Stat. (1995)**.

The second sentence of the statute states that if a defendant "shall have paid any taxable costs in the case, the clerk or judge shall give him a certificate of the payment of such costs, with the items thereof, which, when audited and approved according to law, shall be refunded to him by the county." § **939.06, Fla. Stat. (1995)**. The latter portion of the statute specifically relates back to the first sentence of the statute. Thus, the language "taxable costs" in the second sentence of the statute is fully defined by the three (3) types of costs enumerated in the first portion of the statute.

Moreover, other Florida Statutes relating to costs set forth a specific itemization **as** to the types of costs incurred for which a defendant may expect reimbursement. Specifically, **Section 939.07, Florida Statutes (1995)**, governs payment by the counties of costs incurred by a defendant in defense of a criminal action where the defendant is deemed to be indigent by the court or discharged. This Section requires that the counties shall "...pay the legal expenses and costs, as is prescribed for the payment of costs

incurred by the county in the prosecution of such cases, including the cost of the defendant's copy of all depositions and transcripts..." § 939.07, *Fla. Stat.* (1995). Further, **Section 27.34, Florida Statutes** (1995), enumerates the costs incurred by the State in the prosecution of a case for which a county is responsible for payment. Therefore, in addition to those costs mandated by **Section 27.34, Florida Statutes** (1995), **Section 939.07, Florida Statutes** (1995), requires that counties must pay the costs of all depositions and transcripts incurred in defense of a criminal action by defendants deemed to be indigent by the court or discharged.

A review of the cited statutes reveals that the language of the Florida Legislature is quite clear in detailing exactly what types of costs **are taxable** against the counties. Accordingly, Seminole County contends that the absence of a certain type of cost from a list set forth in a statute clearly leads to the logical conclusion that that particular cost was not intended by the Legislature to be reimbursed by counties to defendants.

This Court has previously determined that where a statutory provision is clear and not unreasonable or illogical in its operation, a court may not go outside the statute to give it a different meaning. **Coleman v. Coleman**, 629 So. 2d 103 (Fla. 1993). Further, this Court found that where language of **a statute is clear** and unambiguous, the language should be given effect without resort to extrinsic guide to construction. **Lamont v. State**, 610 So. 2d 435 (Fla. 1992).



The statute under consideration expressly and succinctly provides that:

[N]o defendant in a criminal prosecution who is acquitted or discharged shall be liable for any costs or fees of the court or any ministerial office, or for any charge of subsistence while detained in custody. If he shall have paid any taxable costs in the **case**, the clerk or judge shall give him a certificate of the payment of such costs, with the items thereof, which, when audited and approved according to law, shall be refunded to him by the county. § 939.06, Fla. Stat. (1995).

This Court has recently addressed the issue of taxable costs relative to *Section 939.06, Florida Statutes (1989)*. In *Board of County Commissioners v. Sawyer*, 620 So. 2d 757 (Fla. 1993), this Court specifically determined that investigative costs incurred in an acquitted defendant's defense of a criminal action were not "taxable costs" in accordance with the statute. In *Sawyer*, this Court expressly found that "cost provisions are a creature of statute and must be carefully construed." *Sawyer* at 758. This Court further found in **Sawyer** that "this Court has held for over a century that cost provisions against the State must be expressly authorized." *Id.*

This Court clearly indicated that it found *Section 939.06, Florida Statutes (1989)*, to be unequivocal on its face. *Id.* In addition, this Court stated in *Sawyer* that the plain meaning and language of the statute (*Section 939.06, Florida Statutes (1989)*), does not authorize an acquitted defendant to be reimbursed for any additional disbursements. *Id.*

This Court's decision in **Sawyer** is not strictly limited to investigative costs as the Petitioner in this case argues. Rather, **Sawyer** is applicable to all costs not specifically enumerated by **Section 939.06, Florida Statutes (1995)**. In summary, absent express authorization otherwise by statute, "taxable costs" are deemed to be only those specifically enumerated in the subject statute.

**CONCLUSION**


Seminole County respectfully requests this Court to find and determine that taxable costs are those costs expressly enumerated by **Section 939.06, Florida Statutes (1995)**, and affirm the decision of the Fifth District Court of Appeal in **County of Volusia v. Wolf**, 672 So. 2d 563 (Fla. 5th DCA 1996).

**DATED** this 15th day of October, 1996.

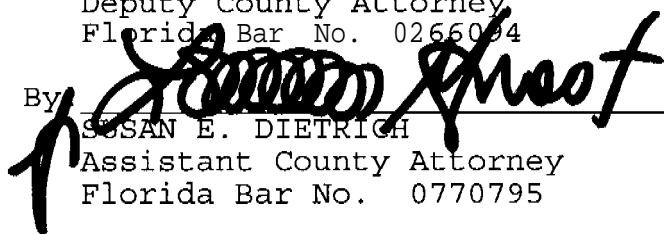
Respectfully submitted,

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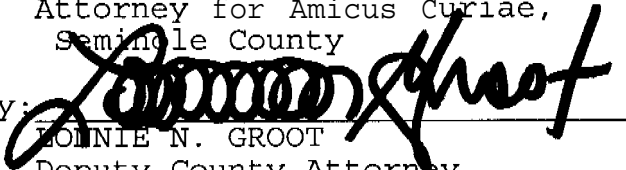
  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished to Kirk N. Kirkconnel, Esq., and David A. Benson, Esq., Post Office Box 2728, Winter Park, Florida 32790-2728, Attorneys for Petitioner, and Kelly A. Greene, Assistant County Attorney, Volusia County, Legal Department, 123 West Indiana Ave., DeLand, FL 32720-4613, Attorney for Respondent, by U.S. Mail this 15th day of October, 1996.

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