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IN THE SUPREME COURT OF FLORIDA

ROBERT F. MILLIGAN, Comptroller,
Florida Office of the Comptroller, and
Head of the Department of
Banking & Finance,

CASE NUMBER 91,533
4th DCA CASE NUMBER 97-02927
LOWER TRIAL CASE NUMBER CL 97-3951 AE

Appellant,

vs.

PALM BEACH COUNTY BOARD
OF COUNTY COMMISSIONERS,
BURT AARONSON, Chairman,

Appellee.

**ANSWER BRIEF OF AMICUS CURIAE FLORIDA ASSOCIATION OF COUNTIES
AND FLORIDA ASSOCIATION OF COUNTY ATTORNEYS ON BEHALF OF
APPELLEE PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS**

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SUMMARY OF ARGUMENT

The Appellant has come to this Court seeking a windfall. The Appellant requests this Court to award it fees that the Legislature has unilaterally and statutorily waived. The Office of the Comptroller is trying to force each of the 67 counties in the State of Florida to pay fees clearly in contravention of the law by creating a misplaced fiction of statutory construction.

No obligation exists for an indigent defendant to pay appellate filing fees. In clear and unambiguous language, the Legislature has statutorily waived the obligation for indigent appellants to pay filing fees and positively relinquished the requirement that counties pay those costs.

This Court has specified that the purpose of Section 939.15, Florida Statutes, is to prescribe which governmental entity in the state must pay court costs of indigent appellants. The Legislature, in 1989, amended that statute and stated that when an indigent defendant is represented by the public defender, the county is required to pay those costs pursuant to Section 27.54(3), Florida Statutes. Because there exists no requirement or authorization for the counties to pay appellate filing fees for indigent defendants using the public defender, a county may not be compelled to pay those costs without being in contravention of the Florida Constitution and Florida Statutes.

Taken together, the Laws in Florida do not conflict. Section 939.15, Florida Statutes, specifies that the counties are to pay those costs enumerated in Section 27.54(3), Florida Statutes. Section 27.54(3), imposes no duty upon Palm Beach County to pay appellate filing fees. Sections 27.3455(1)(d)&(3)(d) account for expenditures and do not impose a clear obligation or duty for counties to pay filing fees. As a result, Appellants argument lacks merit and the Trial Court's Order should be upheld.

ISSUE

WHETHER THE TRIAL COURT PROPERLY DISMISSED APPELLANT'S COMPLAINT FOR WRIT OF MANDAMUS.

The Trial Court in the Fifteenth Judicial Circuit properly dismissed the Appellant's Complaint for Writ of Mandamus, correctly recognizing that there exists no statutory provision creating a duty for Palm Beach County to pay appellate filing fees for indigent defendants represented by the public defender.

ARGUMENT

1. COUNTIES ARE NOT FINANCIALLY RESPONSIBLE FOR INDIGENT DEFENDANTS APPELLATE FILING FEES.

Appellate Court filing fees have been statutorily waived by the Florida Legislature for indigent defendants. An investigation of relevant Florida Statutes and case law, clearly reveals that no obligation exists for an indigent defendant to pay appellate filing fees. As the obligation to pay appellate filing fees has been waived, then it would certainly lend itself to reason that there is no statutory obligation for counties to pay filing fees on such defendant's behalf.

Article VIII, Section 1 (b) of the Florida Constitution mandates that disbursement of county funds shall only be allowable as provided for by general law. In support of that constitutional mandate flows Section 924.051(9), Florida Statutes (Supp. 1996), which provides that funds of the state or **its political subdivisions**, may not be used, directly or indirectly, in appellate proceedings unless the use is constitutionally or statutorily mandated. Therefore, if appellate filing fees for indigent Defendants are in fact waived then there can be no obligation for the county to pay such a fee.

Section 924.17, Florida Statutes (1995), states "[i]f the Court determines that the defendant

is indigent and unable to pay costs, the appeal shall be **supersedeas** without payment of costs.” (emphasis added). The Florida Supreme Court has instructed that Section 924.17, Florida Statutes, “should be liberally construed so as to accomplish the intention of the lawmakers.” Cheney v. Rowe, 11 So. 2d 585, 587 (Fla. 1943). The Court stated that the enumerated rights protected by Section 924.17, concerned those assurances provided for in the Florida Constitution and by statute outlining the right of appeal by a defendant. Id.

The Legislature in Section 924.17, by granting an appeal “supersedeas without payment of costs” set aside the requirement of indigent defendants to pay court costs. Court costs have been interpreted to include filing fees. Cliburn v. State, 510 So. 2d 1155 (Fla. 3d DCA 1987).

The term “supersedeas” is defined as “[t]he name of a writ containing a command to stay the proceedings at law.” Black’s Law Dictionary p. 1289 (5th Edition 1979). In its original usage, a supersedeas, “was a writ directed to an officer, commanding him to desist from enforcing the execution of another writ which he was about to execute, or which might come into his hands.” Id. Accordingly, this section must logically be interpreted to mean that the Legislature superseded or suspended the requirement of indigents to pay court costs, including filing fees.

That the legislative intent controls the construction of statutes in Florida is uncontested. Public Health Trust of Dade County v. Lopez, 531 So. 2d 946 (Fla. 1988). Furthermore, courts should determine legislative intent primarily from the language of the statute. The plain meaning of the statutory language is the first consideration. Id., at 949. Generally, words should be given their plain and ordinary meaning unless defined in the statute. Graham v. State, 362 So. 2d 924 (Fla. 1978). As Section 924.17, Florida Statutes, proclaims in clear and unambiguous language, indigent defendants who are unable to pay costs shall be afforded an appeal supersedeas without the payment of costs.

In Cliburn v. State, 510 So. 2d 1155, 1156 (Fla.3d DCA 1987), a case involving an indigent criminal defendant represented by the office the public defender, the court citing Section 924.17, Florida Statutes, held that appellate filing fees could not be assessed as “[t]here is no legal authority under Florida law for the imposition of such appellate costs against insolvent defendants.”

Importantly, the Legislature did not temporarily waive the prepayment of court costs or filing fees nor did the Legislature pass that obligation on to the counties, as can be seen in other statutes. See, Section 57.081, Florida Statutes (1995), providing that “[n]o prepayment of costs to any judge, clerk, or sheriff is required in any action where the party has obtained from the clerk in each proceeding a certificate of indigency...”. Certainly, no “prepayment of costs” does not equate to “supersedeas without payment of costs.”

Appellant argues that filing fees must be paid by the county and that Rule 9.430, Florida Rules of Appellate Procedure, lends credence to Appellant’s claim that fees are not extinguished but merely transferred from indigent defendant to the counties.

Florida Rule of Appellate Procedure 9.430, states that

[a] party who has the right to seek review without payment of costs shall file a motion in the lower tribunal, with an affidavit showing the party’s inability either to pay fees and costs or to give security therefor. If the motion is granted, the party may proceed without further application to the court and without either prepayment of fees or costs in the lower tribunal or court or the giving of security therefor.

But, as the court in Harrell v. State Department Health and Rehabilitative Services, 361 So. 2d 715, 717 n. 1 (Fla. 4th DCA 1978), stated “the rule is not intended to expand the rights of indigents to proceed with an appeal without payment of fees or costs; those rights are a matter governed by substantive law.” Whether an indigent person has the right to the waiver of fees otherwise payable to the clerk of the court is to be answered only by the Legislature or the

Constitution. Warren v. Capuano, 269 So. 2d 380 (Fla. 4th DCA 1972), affirmed 282 So. 2d 873 (Fla. 1973). Thus, any right or privilege of an indigent person for relief from payment of filing fees must be found in substantive law. Simple resort to Florida Statutes, Section 924.17, reveals just such a substantive law, providing a right or privilege for indigent defendants to total relief from payment of filing fees. Cliburn v. State, 510 So. 2d 1155 (Fla. 3d DCA 1987).

As the court is required to give the words in Section 924.17, Florida Statutes, their plain and ordinary meaning, it is obvious that this section does not delay imposition of costs or transfer the obligation to pay costs to a different part of government, but instead abrogates such costs altogether. Such being the case, it would be improper under Article VIII, Section 1(b) of the Florida Constitution and Section 924.051(9), Florida Statutes, to require the counties to pay that which is not required, authorized or statutorily mandated.

2. SECTION 939.15, FLORIDA STATUTES, DOES NOT IMPOSE A DUTY UPON COUNTIES TO PAY INDIGENT APPELLANT FILING FEES.

A thorough examination of Florida Statutes reveals that no obligation exists for counties to pay filing fees when a criminal appellant uses the services of the public defender. As Article VIII, Section 1(b) of the Florida Constitution provides, the disbursement of county funds shall be allowable only as provided by general law. Further, Section 924.051(9), Florida Statutes, provides that county funds may not be used in criminal appellate proceedings unless constitutionally or statutorily mandated.

Section 939.15, Florida Statutes (1995), does not provide the necessary statutory mandate, which a county is constitutionally required to have, before funds may be expended. The Legislature has, however, statutorily provided a list delineating exactly what the counties' responsibilities for expenses incurred by the public defender's office consists of. That list can be found in Section

27.54(3), Florida Statutes (1995). A careful review of Section 27.54(3), Florida Statutes, does not either expressly or impliedly require that a county be responsible for the payment of indigent appellate filing fees.

Section 27.54(3), states

[t]he public defenders shall be provided by the counties within their judicial circuits with such office space, utilities, telephone services, custodial services, library services, transportation services, and communication services as may be necessary for the proper and efficient functioning of these offices, except as otherwise provided in the General Appropriations Act. The public defender's office shall also be provided with pretrial consultation fees for expert and other potential witnesses consulted before trial by the public defender; travel expenses incurred in criminal cases by a public defender in connection with out-of-jurisdiction depositions; out-of-state and out-of-jurisdiction travel expenses incurred by public defenders or by investigators of public defenders while attempting to locate and interrogate witnesses for the public defender in defense of a criminal case; court reporter costs incurred by the public defender during the course of investigation and criminal prosecution... postindictment and postinformation deposition costs incurred by the public defender during the course of a criminal prosecution of an indigent defendant... and the costs of copying depositions of defense witnesses taken by the state attorney when such costs are certified by the public defender as being useful and necessary...

Section 27.54(3), Florida Statutes, dictates with great detail those expenses of the public defender's office for which the county is responsible. Various obligations are outlined for the counties concerning the operation of the public defender's office. Nowhere in Section 27.54(3), is the requirement that the county pay appellant filing fees. Because a list of several items exist in a statute which delineates what the county is responsible for, and notably appellate filing fees for indigent defendants are not included, the rule that the inclusion of one is the exclusion of another, *inclusio unius est exclusio alterius*, applies and must be adhered to. Caravasios v. M.W. Spates Construction Company, 441 So. 2d 1070 (Fla. 1983), (holding that attorney's fees are not authorized

in situations not listed in the enabling statute). The logical conclusion is that the Legislature purposely omitted those fees as an obligation of the county.

As the Court in Department of Health and Rehabilitative Services v. M.B., 33 Fla.L. Weekly S295, S297 (Fla. 1997), stated “[t]he legislature is presumed to know the meaning of words and the rule of grammar, and the only way the court is advised of what the legislature intended is by giving the [statutory language its] generally accepted construction.” quoting, Florida State Racing Commission v. Bourquardez, 42 So. 2d 87, 88 (Fla. 1949). Thus, when the language of a statute clearly conveys a definite and unambiguous meaning, the statute must be given its plain and obvious meaning. Holly v. Auld, 450 So. 2d 217 (Fla. 1984).

Appellant relies exclusively on Section 939.15, Florida Statutes, as it existed prior to the 1989 legislative amendments, for the proposition that counties are required to pay appellate filing fees, failing to recognize the significance to the change in language.

Section 939.15, Florida Statutes, now states

[w]hen the defendant in any criminal case pending in any circuit court or county court, a district court of appeal, or the Supreme Court of this state has been adjudged insolvent by the circuit judge, or the judge of the county court, upon affidavit and proof as required in s. 924.17, in cases of appeal, or when the defendant is discharged or judgment reversed, the costs allowed by law shall be paid by the county in which the crime was committed, upon presentation to the county commissioners of a certified copy of judgment of court against such county for such costs. **However, this section does not apply to indigent defendants represented by the public defender. In such cases, costs incurred pursuant to s. 27.54(3), shall be paid by the county** upon certification by the public defender as being useful and necessary in the preparation of a criminal defense, provided that the reasonableness of such expenses may be contested by the county in the criminal proceedings. (emphasis added).

The amendments to Section 939.15 made in 1989, Ch. 89-129, Section 1 at 371, Laws of Fla., added the last two sentences which relate to indigent defendants represented by the public

defender, and require that in such instances the county shall pay costs incurred pursuant to Section 27.54(3). As has been previously established, Section 27.54(3) does not enumerate filing fees in the exhaustive list of county responsibilities.

This Court has already specified that the purpose of Section 939.15, Florida Statutes, is to prescribe which governmental entity in the state must pay court costs of indigent defendants. State v. Byrd, 378 So. 2d 1231 (Fla. 1979). Clearly, the Legislature, by stating "... this section does not apply to indigent defendants represented by the public defender", has expressed its intent. The Legislature, in 1989, made an amendment to Section 939.15, in the clearest and a most unambiguous language possible. The Legislature stated that it intended for the counties only to pay those charges and fees delineated in Section 27.54(3). Because the language is clear, this Court should not interpret the statute to mean anything that the statute does not say. Forsythe v. Longboat Key Beach Erosion Control District, 604 So. 2d 452 (Fla. 1992).

Such judicial action, as what the Appellant herein requests, that being for this Court to legislate by imposing a duty upon counties to pay appellate filing fees for indigent persons by resort to a statute that imposes no clear legal duty to do so, is contrary to clearly established tenants of statutory interpretation. For "[e]ven where a court is convinced that the Legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity." Van Pelt v. Hilliard, 78 So. 693, 694 (Fla. 1918).

Therefore, the only possible conclusion that can be deduced from the language of Section 939.15 and Section 27.54(3), Florida Statutes, can be that the Legislature intended that counties not be obligated to pay appellate filing fees when the defendant is represented by the public defender.

As there exists no obligation to pay such court costs in appellate proceedings outside of

statute and the Legislature has clearly refused to impose upon the county any duty to pay such costs, this Court must uphold the ruling of the Circuit Court, finding that no clear legal duty or obligation exists for the county to pay such fees.

3. ***IN PARI MATERIA* READING OF LAW REVEALS NO CONFLICT.**

As the Appellant urges this Court to read Sections 939.15, 27.54(3), and 27.3455, *in pari materia* with one another, it is only too clear that there is no conflict between these statutes. Section 939.15, Florida Statutes, fails to impose an obligation upon a county to pay costs in cases wherein a defendant is represented by the public defender. Section 939.15, Florida Statutes, requires that only such costs be paid by the county in accordance with Section 27.54(3), which enumerates a lengthy, comprehensive, and complete list of costs to be assumed by the county. Further, Section 27.3455(1)(d)&(3)(d), imposes no obligation or duty upon the county to pay such costs as appellate filing fees, therefore, when read *in pari materia*, there is no conflict between the three statutes.

Section 27.3455(1), states

[e]ach county shall submit annually to the Comptroller and Auditor General a statement of revenues and expenditures as set forth in this section in the form and manner prescribed by the Comptroller in consultation with the Legislative Committee on Intergovernmental Relations, provided that such statement identify total county expenditures on:

...

(d) Appellate filing fees in criminal cases in which an indigent defendant appeals a judgment of a county or circuit court to a district court of appeal or the Florida Supreme Court.

...

(3) The priority for the allocation of funds collected pursuant to subsection (1) shall be as follows:

...

(d) ... for county expenditures on appellate filing fees in criminal cases. . .

No obligation can be inferred, from reading Section 27.3455, in its entirety, that a county shall be obligated to pay appellate filing fees.

As the court in City of Boca Raton v. Gidman, 440 So. 2d 1277, 1282 (Fla. 1983), held “[a] law should be construed together with any other law relating to the same purpose such that they are in harmony. Courts shall avoid a construction which places in conflict statutes which cover the same general field.” (citations omitted).

Section 939.15 imposes a duty upon counties to pay for the expenses enumerated in Section 27.54(3), in cases where an indigent defendant is represented by the public defender. Section 27.54(3), fails to list appellate filing fees as an obligation of the county and Sections 27.3455(1)(d) &(3)(d), neither create nor impose an obligation upon the counties to pay appellate filing fees, but in fact remains nothing more than an accounting tool. Therefore, no conflict is created by such an interpretation.

Rather, harmony is preserved by upholding the decision of the Trial Court, as Section 924.17, abrogates the responsibility for indigent defendants to pay appellate filing fees, and Section 27.54(3), excludes appellate filing fees from the exhaustive list of public defender expenditures, for which counties are financially responsible. To read Section 27.3455 as Appellant requests, would create just such a conflict among laws, as this court is obligated to avoid.

CONCLUSION

The Florida Association of County Attorneys and the Florida Association of Counties respectfully request this Court to find that the Trial Court made no error and did not abuse its discretion in finding that no obligation exists for a county to pay appellate filing fees for indigent defendants represented by the Public Defender.

Respectfully submitted this 17 day of November, 1997.

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CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been furnished to the below-named addressees by U.S.

Mail this 12 day of November, 1997.

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