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MAY 15 1998
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IN THE SUPREME COURT OF FLORIDA

RONALD SCHULTZ, CITRUS COUNTY PROPERTY APPRAISER, and NORINE S. GILSTRAP, CITRUS COUNTY TAX COLLECTOR,

Petitioner,

Case No. 92,803

DCA CASE NO: 96-01973

v.

LOVE PGI PARTNERS, L.P., and SUGARMILL WOODS, INC.,

Respondents.

______/

ON REVIEW FROM THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENTS LOVE PGI PARTNERS, L.P. AND SUGARMILL WOODS, INC. BRIEF ON JURISDICTION

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TABLE OF CONTENTS

	Page
SUMMARY OF ARGUMENT	1
ARGUMENT	2

TABLE OF AUTHORITIES

Cases: Page

City of Jacksonville v. Florida First National Bank of Jacksonville, 339 So. 2d 632 (Fla. 1976) 2

City of St. Petersburg v. Austin, 355 So. 2d 486 (Fla. 2d DCA 1978) 3

Davis v. St. Joe Paper Co., 652 So. 2d 907 (Fla. 1st DCA 1995) 4

Frenchman, Inc. v. Dept of Admin, Dept of Transp., 495 So. 2d 750 (Fla. 1986) 5

Love PGI Partners, L.P. and Sugarmill Woods, Inc. v. Ronald Schultz, 23 Fla. L. Weekly D417 (Fla. 5th DCA February 6, 1998) 1, 2, 4, 7-10

Paddock v. Chacko, 553 So. 2d 168 (Fla. 1989) 2

Robbins v. Yusem, 559 So. 2d 1185 (Fla. 3d DCA 1990) 2, 4, 8

Taplis v. State, 703 So. 2d 453, 454 (Fla. 1997) 3

Wilkinson v. Kirby, 654 So. 2d 194 (Fla. 2d DCA 1995) 4

Statutes

Section 163.3194(1), Florida Statutes 8

Section 163.3202, Florida Statutes 8

Section 380.04(3)(e), Florida Statutes 7

Section 125.01, Florida Statutes 10

Other Authorities

Art. V., Section 3(b)(3), Fla. Const. 1, 2, 5, 10

Section 1500, Citrus County Land Development Code 7

SUMMARY OF ARGUMENT

This Court's exercise of its discretionary jurisdiction requires that the petitioner ("Schultz") demonstrate the existence of an express and direct conflict between opinions of the district courts of appeal on the same question of law. Schultz asserts here, that the conflict exists between the Fifth District's opinion in Love PGI Partners, L. P. v. Schultz, 23 Fla. L. Weekly D417 (Fla. 5th DCA February 6, 1998), and the opinion of the Third District in Robbins v. Yusem, 559 So. 2d 1185 (Fla. 3d DCA 1990). In fact, those opinions do not conflict. Instead, they address legally and factually distinct issues and cannot, therefore, address the same question of law. Thus, there is no conflict nor any basis for this Court's jurisdiction.

The underlying premise of the Fifth District's opinion in Love PGI is the conclusion that the Citrus County Land Development Code ("Citrus County Code") has no application to Sugarmill's agricultural activities because those activities are not "development," as a matter of law. Therefore, the Fifth District did not address the issue of law decided in Robbins -- whether the legality of the use of property, under the applicable zoning code, was a factor to be considered in the determination of whether the agricultural activity was bona fide. Consequently, because the Fifth District did not reach the issue addressed in Robbins, the cases address factually distinct issues and there is no jurisdictional conflict. Art. V., Section 3(b)(3), Fla. Const. Schultz also asserts that the Third and Fifth District opinions conflict because they reached differing

results. That assertion is incorrect. The Fifth District did not misconstrue the application of Section 163.3194(5), Florida Statutes, or its application to "development."

It is clear that the Fifth District's opinion in Love PGI addresses a completely separate issue of law from that decided in Robbins. Therefore there is no conflict and there is no basis for this Court's exercise of its discretionary jurisdiction. Article V., Section 3(b)(3), Florida Constitution.

ARGUMENT

As a condition precedent to this Court's exercise of jurisdiction, Schultz must demonstrate the existence of an express and direct conflict between the Fifth District's opinion in Love PGI Partners, L.P. v. Schultz, 23 Fla. L. Weekly D417 (Fla. 5th DCA February 6, 1998) -- without resort to the underlying record, Paddock v. Chacko, 553 So. 2d 168 (Fla. 1989)[1] -- and the opinion of a different district court on the same question of law. Art. V., Section 3(b)(3), Fla. Const.[2] Schultz asserts that the conflict is with the opinion of the Third District Court of Appeal in Robbins v. Yusem, 559 So. 2d 1185 (Fla. 3d DCA 1990). To the contrary, while those opinions concern the subject of ad valorem taxation, they address legally and factually distinct issues and do not, therefore,

[1]Schultz's references to the record testimony in his statement of the case and facts at pp. 3-5, and in his argument, at pp. 8-9, are erroneous and should be stricken.

[2]Schultz's reliance upon City of Jacksonville v. Florida First National Bank of Jacksonville, 339 So. 2d 632 (Fla. 1976), is misplaced. That case was decided under the pre-1980 Constitution.

address the same question of law. Thus, there is no conflict nor any basis for this Court's exercise of jurisdiction.

Despite this lack of express and direct conflict, Schultz asserts two bases for this Court's exercise of jurisdiction: express conflict arising out of the Fifth District's use of the phrase "[w]e disagree with Robbins" and conflict arising out of the purported "inconsistency" in the results of the Third and the Fifth District opinions.[3] Neither supports this Court's exercise of its discretionary jurisdiction.

Schultz's first basis -- express conflict between the Third and Fifth District decisions -- arises out of his assertion that the Fifth District's statement -- "We disagree with Robbins" -- evidences conflict sufficient for this Court to invoke its discretionary jurisdiction. Schultz is wrong. Taplis v. State, 703 So. 2d 453, 454 (Fla. 1997) ("The petitioner's attempt to establish conflict arises out of a confusing and misplaced sentence in Dodd [v. State, . . ."). The Fifth District's disagreement with Robbins, like the misplaced sentence cited in Taplis, is not evidence of conflict.

The underlying premise of the Fifth District's opinion in Love PGI, is the Court's conclusion that the Citrus County Code has no

[3]Schultz also alleges conflict with opinions of this Court based on his assertion that the trial court found Sugarmill's use of its land "illegal" and in order for the Fifth District to overturn that decision, it engaged in a re-weighing of the facts. That assertion is specious. The Fifth District did not "reweigh" the evidence; it interpreted the clear provisions of the Citrus County Code and Sections 193.461 and 380.04, Florida Statutes. Love PGI, 23 Fla. L. Weekly at D 420. It is fundamental that the interpretation of a statute is a question of law to be determined by the Court. City of St. Petersburg v. Austin, 355 So. 2d 486 (Fla. 2d DCA 1978).

application to Sugarmill's agricultural activities because those activities do not constitute "development," as a matter of law, and thus the Citrus County Code can not be applied to Sugarmill's agricultural activities for the purposes deemed relevant in Robbins -- determining if the use is legal and thus bona fide. Love PGI, 23 Fla. L. Weekly at D420. Specifically, the Fifth District concluded that forestry and cattle grazing -- because those activities are excluded expressly by the statute (and by the Citrus County Code[4]) from the definition of "development" -- those activities are "excluded from regulation of development pursuant to the statute and Code..." and thus the Citrus County Code "...has no impact on the classification of lands as agricultural for ad valorem purposes...". Id. Since the Code cannot be applied to Sugarmill's activities, then the Fifth District did not even address the consideration deemed relevant in Robbins, whether under the Code the activities are legal and thus "bona fide." Robbins, 559 So. 2d at 1188.

Neither Robbins nor any other case that addressed the issue of zoning as a consideration under Section 193.461, Florida Statutes,[5] raised or dealt with the preliminary question of whether the agricultural activities at issue constituted "development." Instead, those cases, including Robbins, presume that the specific

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[4]The Citrus County Code adopts the statutory definition of "development" as well as the statutory exclusions from that term. Consequently, the Fifth District's conclusions with respect to the statute apply equally to the Citrus County Code.

[5]Or any of the other zoning cases cited by Schultz including Wilkinson v. Kirby, 654 So. 2d 194 (Fla. 2d DCA 1995), or Davis v. St. Joe Paper Co., 652 So. 2d 907 (Fla. 1st DCA 1995).

agricultural use was subject to regulation (i.e., met the definition of "development") and proceed to apply the specific regulations at issue to determine if the use was legal (either as a permitted use or a non-conforming use) and thus "bona fide" under Section 193.461, Florida Statutes. Since Robbins did not address the question of law decided in Love PGI -- whether, as a threshold matter, the activities at issue constituted "development" -- then Robbins cannot conflict with the Fifth District's decision and there is no basis for this Court to invoke its discretionary jurisdiction.[6] Art. V., Section 3(b)(3), Fla. Const.; Frenchman, Inc. v. Dept of Admin, Dept of Transp., 495 So. 2d 750 (Fla. 1986).

Schultz also asserts that this Court can exercise its discretionary jurisdiction because the opinions of the Third and Fifth District reach different results and thus conflict. While the concept of "conflict" involves the consideration of opinions that reach different results, those opinions must address the same question of law for that conflict to support this Court's discretionary jurisdiction. Art. V., Section 3(b)(3), Fla. Const. Here, the Fifth and the Third Districts did not decide the same question of law and thus, there can be no conflict as a matter of law. Nevertheless, Schultz still contends that conflict exists.

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[6]Schultz also asserts that this Court should look to the result, i.e., the Third District's determination that the agricultural use was not bona fide and the Fifth District's conclusion that the agricultural use was bona fide, is without merit. The Florida Constitution requires that the conflict arise out of the question of law decided, not the result. Art. V, Section 3(b)(3), Fla. Const.

Schultz asserts that these differing opinions evidence "conflict" because the Fifth District misconstrued the law when it relied on Section 163.3194(5), Florida Statutes, as one of the bases for its opinion. However, the only "misconstruction" of the law is by Schultz. Schultz's "misconstruction" argument, like his other theories, relies on his selective application of the provisions of Chapter 163, Florida Statutes. Schultz relies on the Legislature's use of the phrase "comprehensive plan" in Section 163.3194(5), Florida Statutes, as support for his contention that Section 163.3194, Florida Statutes, is limited in its application to comprehensive plans and thus has no application to this proceeding, because the regulation at issue here is the Citrus County Code, the County's local land development regulation. Schultz then concludes that the Fifth District "misconstrued" the significance of that statute in reaching its decision and that this "misconstruction" will support a determination of conflict. Schultz's assertion is nothing more than his expression of displeasure with the sound reasoning of the Fifth District's decision. However, even if the Fifth District "misconstrued" the application of Section 163.3194(5), Florida Statutes, to this proceeding, such a "misconstruction" does not demonstrate conflict and certainly not conflict meriting this Court's invocation of its discretionary jurisdiction.

It is clear from the Fifth District's opinion that the basis for its conclusion -- that Sugarmill's agricultural activities are excluded from regulation as "development" -- is the plain language of Section 380.04(3)(e), Florida Statutes, and the plain language

of the Citrus County Code, both of which evidence the clear intent to exclude certain activities -- like Sugarmill's forestry and cattle grazing -- from regulation as "development" and thus from regulation by the Citrus County Code. Love PGI, 23 Fla. L. Weekly at D420; §380.04(3)(e), Fla. Stat.; §1500, Citrus County Code. In fact, the Fifth District did not misconstrue the application of Section 163.3194(5), Florida Statutes, and it is Schultz's analysis that fails. First, Section 163.3194(5), Florida Statutes, is not the sole support for the Fifth District's Court's decision; the language of that statute merely reinforces the Court's interpretation of the plain language of Section 380.04, Florida Statutes ("It appears forestry and cattle raising activities are excluded from regulation of development pursuant to the statute and the Code. Further, Section 163.3194(5) expressly states..." Love PGI, 23 Fla. L. Weekly at D420). More importantly, however, is the fact that Section 163.3194(5), Florida Statutes, cannot be read -- as Schultz suggests -- in isolation from the remainder of Section 163.3194 or Chapter 163.3161, et seq., the Local Government Comprehensive Planning and Land Development Regulation Act ("Act"). When the Act is read as a whole, it is clear that Section 163.3194(5), Florida Statutes, applies to more than comprehensive plans; it applies to "development." For example, Section 163.3194(1), Florida Statutes, states:

163.3194 Legal status of comprehensive plan.

(1)(a) After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, **all development** undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.

Section 163.3194(1), Fla. Stat. (emphasis added).

In addition, Section 163.3202, Florida Statutes, states:

(1) Within 1 year after submission of its vested comprehensive plan for review pursuant to s. 163.3167(2), each county...shall adopt or amend and enforce **land development regulations that are consistent with and implement their adopted comprehensive plan.**

Section 163.3202(1), Fla. Stat. (emphasis added).

Clearly, the "regulation of development" contemplated under the Act goes beyond the mere application of the Citrus County Code. Instead, this "regulation of development" involves the adoption and implementation of land development regulations -- here, the Citrus County Code -- consistent with the adopted comprehensive plan which, under Section 163.3194(5), Florida Statutes, cannot affect the tax exempt status of lands classified as agricultural. §163.3202, Fla. Stat. Therefore, the Court did not "misconstrue" the application of Section 163.3194(5), Florida Statutes, to this matter. Instead, that statute reinforces the Court's conclusion that "...forestry and cattle raising activities are excluded from regulation of development pursuant to the statute and the [Citrus County] Code...," Love PGI, 23 Fla. L. Weekly at D420, by evidencing legislative intent supporting that contention. If comprehensive plans cannot affect the tax exempt status of agricultural lands, and land development regulations like the Citrus County Code must be consistent with those

plans, then land development regulations, like the Citrus County Code, cannot be used -- as Schultz asserts -- to conclude that Sugarmill's use of its property is "illegal" and thus not bona-fide. In short, the Fifth District did not "misconstrue" the law, it understood it. It is Schultz who misconstrues the law and this Court should deny his request for discretionary jurisdiction.

Finally, Schultz contends that the Fifth District's decision evidences that "zoning or land development regulations promulgated pursuant to Chapter 163.00, Laws of Florida (sic), are no longer a factor in [the] determination of a bona fide agricultural use" and that this "conclusion" creates conflict. Schultz's contention is unfounded.

First, the Fifth District did not reject the case law which concludes that zoning is a factor to be considered in, and is thus, relevant to, the issue of whether an agricultural use is "bona fide." In fact, the Court recognized that zoning could be one such consideration ("Zoning may be a consideration under the catchall 'other factors' provision in Section 193.461(3)(b)(7)...," Love PGI at D420). However, the Fifth District concluded that as a condition to the application of zoning -- as a factor -- the property appraiser must first determine that the activities under consideration constitute "development" and are thus subject to the zoning law. Here, the agricultural activities at hand did not constitute "development" -- because the activities fell within the express exclusion from that definition -- and thus the activities were not subject to the zoning regulations codified in the Citrus County Code

and those regulations could not be used to determine that Sugarmill's agricultural activities were not "bona fide." Id. Because the Fifth District's decision found the agricultural activities at issue to be outside the scope of the Code, it does not affect -- and thus does not conflict with -- the case law that addresses the issue of zoning under Section 193.461, Florida Statutes, including Robbins.[7]

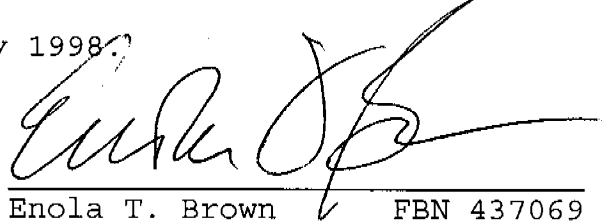
CONCLUSION

It is clear that the Fifth District's decision in Love PGI addresses a completely separate issue of law from that which was decided in Robbins. Therefore, there is no conflict and absent the existence of an express and direct conflict with the opinion of another district court of appeal, there is no basis for this Court's exercise of its discretionary jurisdiction. Art. V., Section 3(b)(3), Fla. Const.

[7]Schultz's argument fails because it is clear that Citrus County could have, under Chapter 125, Fla. Stat., limited the definition of "development" in the Citrus County Code to Section 380.04(1), Fla. Stat., which would have limited the exemptions and brought agricultural uses within its scope Section 125.01, Fla. Stat. Schultz's objection lies with the result reached, not with "conflict."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Respondent's Brief of Jurisdiction was sent by U.S. Mail to Clark A. Stillwell, Esquire, Brannen, Stillwell & Perrin, P.A., P.O. Box 250, Inverness, Fl 33451-0250 this 14th day of May 1998.



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