

**IN THE SUPREME COURT
STATE OF FLORIDA**

Case No. SC01-103

CITY OF JACKSONVILLE, et al.

Petitioners,

v.

CHARLES DIXON, JR., et al.

Respondents.

ON PETITION FOR DISCRETIONARY REVIEW
FROM A DECISION OF THE FIRST DISTRICT COURT OF APPEAL

**AMICUS BRIEF OF THE FLORIDA BAR'S CITY, COUNTY AND
LOCAL GOVERNMENT LAW SECTION
IN SUPPORT OF THE PETITIONER, CITY OF JACKSONVILLE**

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STATEMENT OF THE CASE AND FACTS

The Florida Bar City, County and Local Government Law Section adopts the statement of the case and facts contained in the Initial Brief of the City of Jacksonville.

SUMMARY OF ARGUMENT

The First District Court of Appeal's decision in Dixon v. City of Jacksonville, 774 So. 2d 763, 765 (Fla. 1st DCA 2000.) is a departure from the method that this Court and other courts have used in reviewing an agency's interpretation of a statute or ordinance which that agency is charged with enforcing when that statute or ordinance is unambiguous. The First District Court of Appeal disregarded the City of Jacksonville's interpretation of its Comprehensive Plan because the Court determined that the City of Jacksonville's Comprehensive Plan provisions were unambiguous. However, both this Court and lower courts have consistently given great weight to an agency's interpretation and have not overturned an agency's interpretation unless that interpretation is clearly erroneous. Even when courts have determined that a statute or ordinance is unambiguous, courts have still given deference to an agency interpretation.

Regardless of the fact that the First District Court of Appeal determined that the City of Jacksonville's Comprehensive Plan was unambiguous, the Court was still obligated to give deference to the City of Jacksonville's construction of its Comprehensive Plan. The Court did not give any deference to the City of Jacksonville's interpretation. Thus, the First District Court of Appeal erred. Further, if this decision were to stand, it

would prohibit local government officials from dealing with unique situations which were not contemplated at the time that the statute or ordinance was adopted. With the loss of flexibility, governments would become more bureaucratic and citizens more frustrated.

ARGUMENT

In coming to the conclusion that the lower tribunal and the City of Jacksonville was erroneous in its interpretation of the City of Jacksonville's Comprehensive Plan, the First District Court of Appeal made the following statement:

We reject, moreover, the City's argument that deference should be given to the City's interpretation of a law which it administers, thereby requiring its approval so long as its construction falls within the range of possible interpretations. We are instead presented with a question which is purely one of law, and we are not constrained by more deferential standards from substituting our judgment for that of the lower tribunal. Dixon v. City of Jacksonville, 774 So. 2d 763, 765 (Fla. 1st DCA 2000.)

The effect of this statement leads to the conclusion that a court may reject an agency's interpretation of a statute or ordinance which that agency is charged with enforcing simply because a court has determined that the statute or ordinance is unambiguous.

As the First District Court of Appeals correctly asserts, the construction and interpretation of a statute is a question of law for the Court. Dixon at 765.

See also Edward J. Seibert, A.I.A., Architect and Planner, P.A. v. Bayport Beach and Tennis Club Ass'n, Inc., 573 So. 2d 889 (Fla. 2d DCA 1991.)

Further, when construing a statute or ordinance which is unambiguous, a court need not look to the rules of statutory construction. This Court, in State v. Dugan, 685 So. 2d 1210, 1211 (Fla. 1996) stated:

When interpreting a statute, courts must determine the legislative intent from the plain meaning of the statute. If the language of the statute is clear and unambiguous, a court must derive legislative intent from the words used without

involving rules of construction or speculating as to what the legislature intended. (Citations omitted.)

See also Verizon Florida v. Jacobs, No. SC01-323, 2002 WL 220589, at *2 (Fla. 2002.) (“There is no need to resort to other rules of statutory construction when the language of the statute is unambiguous and conveys a clear and ordinary meaning.”)

It is also well established that, in interpreting the meaning of statutes or ordinances, great weight should be given to the construction of a rule by an agency which is charged with its enforcement. Falk v. Beard, 614 So.2d 1086, 1089 (Fla. 1993); PW Ventures, Inc. v. Nichols, 533 So. 2d 281, 282 (Fla.1988) (“Contemporaneous construction of a statute by the agency charged with its enforcement is entitled to great weight.”) As this Court has stated, “courts should not depart from that construction unless it is clearly erroneous.” Falk at 1089.

In Golfcrest Nursing Home v. State Agency for Health Care Administration, 662 So.2d 1330, 1333 (Fla. 1st DCA 1995), the First District Court of Appeals asserted:

It is well settled that the appellate court will give deference to any interpretation by an agency that falls within the permissible range of statutory interpretations. An agency’s interpretation of its own rules and regulations is entitled to great weight, and shall not be overturned unless the interpretation is clearly erroneous. This is true even if that interpretation is not the sole possible

interpretation, the most logical interpretation, or even the most desirable interpretation. (Citations omitted.)

Golfcrest Nursing Home at 1333

In Edward J. Seibert, supra, the Second District Court of Appeal reviewed whether it was error for the trial court to have allowed expert testimony to be considered by a jury for a determination of whether the defendant, an architect, acted in compliance with the Standard Building Code. Edward J. Seibert, 573 So. 2d at 891-892. During the trial, both plaintiff and defendant presented conflicting expert testimony regarding the meaning and interpretation of the Standard Building Code. Id. This testimony included the testimony of the official with the City of Longboat Key charged with interpreting the Standard Building Code. Id. At 892. The Second District Court of Appeal found that it was error to allow expert testimony stating that it was in the purview of the judge, not the jury to interpret the meaning of the Standard Building Code. Id. However, the Second District Court of Appeal recognized: “When an agency with the authority to implement a statute construes the statute in a permissible way, that interpretation must be sustained even though another interpretation may be possible.” Id. Thus, the Court determined that the lower tribunal erred in not accepting the interpretation of the City of Longboat Key official who was charged with interpreting and implementing the Standard Building Code. Id.

This Court, in Verizon Florida, supra, considered the interpretation of the agency charged with enforcing a statute even though the Court determined the statute be unambiguous and therefore not subject to statutory construction. Verizon Florida, No. SC01-323, 2001 WL at *2. After weighing the agency’s interpretation and reviewing the statute, this Court ultimately concluded that the agency’s interpretation was clearly erroneous. Id.

In the instant case, the First District Court of Appeal failed to even consider the City of Jacksonville’s interpretation of its Comprehensive Plan, let alone give it great weight or deference. To the contrary, the First District Court of Appeals stated “We are not of the view that the City’s 2010 Comprehensive Plan is ambiguous, thereby making it susceptible to different interpretations.” Dixon, 774 So. 2d at 756. Thus, after the First District Court determined that the City of Jacksonville’s Comprehensive Plan was unambiguous, it totally disregarded the City of Jacksonville’s interpretation of its Comprehensive

Plan. This decision is contrary to decisions of this Court and other appellate courts which give deference to the interpretation of agency when rendering their decision.

Further, the First District Court of Appeal sets a dangerous precedent by totally rejecting the City of Jacksonville's interpretation of its the Comprehensive Plan. In order to be effective, the interpretation of a Comprehensive Plan must be accorded some flexibility. Otherwise, Comprehensive Plan, as well as many other local government's regulations, will become even more bureaucratic and totalitarian. Government officials will have no ability to react to individual citizens and their unique situations except through more regulation. The First District Court of Appeal took the position that government officials should be given limited discretion:

Indeed, if we were to adopt the deferential standard applied to the plan by the lower court, the ultimate determination of a planned development would be placed within the discretion of whoever composes the membership of the governmental body's planning department at any given time, and the goal of certainty and order in future land use decision-making would be circumvented. Dixon at 765.

However, it is the government officials who are charged with implementing and enforcing a regulation on a day to day basis. These officials have a unique understanding of the effect of the regulations. If the First District Court's ruling is to stand, governmental officials will be so constrained by their own regulations that they will be unable to react to specific situations and unable to adequately address the needs of citizens.

CONCLUSION

For the foregoing reasons, the Florida Bar City, County and Local Government Law Section respectfully urges this Court to determine that courts should continue to give great weight and deference to an agencies interpretation of the statutes, ordinances and regulations which that agency is charged with enforcing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to Richard A. Mullaney, Tracey I. Arpen, Jr. and Karl J. Sanders, 117 West Duval Street, Ste. 480, Jacksonville, Florida 32202, Paul M. Harden, Esquire, 1301 Riverplace Boulevard, Suite 2601, Jacksonville, Florida 32207 and W.O. Birchfield, Esq., 50 N. Laura Street, Suite 3300, Jacksonville, Florida 32202, this 12 day of March, 2002.

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CERTIFICATE OF COMPLIANCE

I CERTIFY that the typeface used in this brief is Times New Roman 14-point font and therefore complies with the font requirements of Rule 9.210(a)(2), F.R.A.P.

Julia C. Mandell