SUPREME COURT OF FLORIDA

CASE NO. 02-145

Validation Appeal From A Final Judgment of the
Fourteenth Judicial Circuit
Bay County, Florida

PANAMA CITY BEACH COMMUNITY REDEVELOPMENT AGENCY,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

AMENDED ANSWER BRIEF OF APPELLEE

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Introduction

Appellee, the State of Florida (the "State") was a mandatory party defendant in

the trial court by virtue of Section 75.02, Fla. Stat. (2001) and is the Appellee in this proceeding. The State is a defendant in all bond validation cases brought under Chapter 75, Fla. Stat. and is represented by the State Attorney for the sole purpose of carrying out those statutory obligations. In the validation hearing below, the State Attorney in and for the Fourteenth Judicial Circuit of the State of Florida (the "State Attorney") was the representative of the State and taxpayers, property owners, and citizens of the City of Panama City Beach and the Pier Park Community Development District, including nonresidents owning property or subject to taxation therein. The State Attorney is charged by law with the obligation to examine the complaint and raise defenses to the complaint if it appears to be, or there is reason to believe, it is defective, insufficient or untrue, or if in the opinion of the State Attorney the issuance of the bonds or certificates in question has not been duly authorized. *See* § 75.05, Fla. Stat. (2001).

Upon receipt of the validation complaint below, the State undertook the considerable review of all of the records and proceedings of the City of Panama City Beach, Florida (the "City"), the City Community Redevelopment Agency (the "CRA") and the Pier Park Community Development District (the "CDD") pertaining to the issues raised in the validation proceeding. The validation complaint had extensive documentation attached to it relevant to the matters pled. The State answered the Complaint and required strict proof of the matters pled, and prior to validation proceedings, met with counsel for the Plaintiffs to further examine and satisfy itself that the Complaint was not defective, insufficient or untrue. After that review, the State did not object to validation of the matters set forth in the Complaint because, in the State's view, all conditions precedent for validation had been demonstrated by the

Plaintiffs. Despite the lack of opposition to the validation, and notwithstanding the extensive review and examination by the State Attorney in which the inescapable conclusion was reached by the State that the record compelled validation, the trial court denied validation based upon a novel legal theory that a portion of the redevelopment area, which has not been fully developed, did not or could not constitute a "blighted area" under the Community Redevelopment Act of 1969, Florida Statutes, §163.330 - 163.462 (the "Act"). This portion of the Final Judgment should be overturned, as it goes beyond the proper role of the judiciary in reviewing validation complaints. The language of §163.340(8)(a) and (b), Fla. Stat. (2001), permits a finding of a blighted area where, as here, the conditions set forth by the Florida Legislature are found to exist by the local legislative body and there is substantial competent evidence to support such a finding. Based upon the uncontradicted and clear evidence before the court below as to the existence of blight under either (a) or (b) above, the State confesses error by the trial court and this Court should reverse and validate the declaration of blight and the related proceedings and documents.

References to the Parties and the Record

The Appellee/Defendant, State of Florida, will be referred to as the "State," the Appellant/Plaintiff, the Panama City Beach Community Redevelopment Agency, will be referred to as the "CRA," Plaintiff Panama City Beach will be referred to as "City", and Plaintiff Pier Park Community Development District will be referred to as "CDD." References to the Appendix will be cited by the "Volume number (Vol __)" followed by the tab number, followed by the page number(s). References to the

Transcript of the validation hearing on October 29, 2001 attached to the Appendix will be cited ”Vol VI-TO" followed by the page number. References to the transcript of the evidentiary hearing subsequently ordered by the trial court on December 6, 2001 will be cited by ”Vol VI-T" followed by the page number. Any capitalized undefined terms shall be given the same meaning given to such terms in CRA's Initial Brief.

Supplement to the Appellant's Statement of Facts

The State adopts the Statement of the Facts presented by the Appellant and hereby supplements such Statement of the Facts regarding the State's role in the validation as follows. The State filed an answer admitting those matters not in controversy and easily determined from the public records, i.e. that the City, CDD and CRA were duly created, and are validly existing and that the members of the City Council were duly elected, have assumed office and are authorized to act as described in the complaint. (Vol IV-3-1 to 4) The State further admitted that the CDD is a unit of local government organized and existing under the applicable provisions of law and the relevant enabling ordinance and that it had the authority to issue the bonds and levy the assessments as alleged in the complaint and as described in Chapter 190, Florida Statutes. Finally, and more relevant to this proceeding, the State admitted that the CRA was duly and validly created by the City and that it exists as a public agency under the laws of the State, and that the City Council has full power and authority to act ex-officio as the Agency under the Redevelopment Act. (Vol IV-3-2 to 3) All of these admitted matters were determinable from the certified copies of public records attached as exhibits to the complaint which exhibits constituted matters which may be judicially noticed under Section 90.202, Fla. Stat. (2001) or admissible in evidence

under Section 90.803 and 90.902, Fla. Stat. (2001) as self authenticated documents, absent evidence or allegation of fraud.

Prior to the validation hearing, the State required that it be provided with copies of all of the authenticated public records and the State Attorney carefully carried out his statutory obligation to examine the books and records relevant to the matter. As a result of such additional investigation, the State stipulated to the authenticity of all of the self authenticated documents necessary to prove the existence and actions of the Plaintiffs CDD, CRA and City and all other matters necessary to the proof of the action. (Vol IV-4) Accordingly, after the Plaintiffs presented their case at the validation hearing, the State offered no objection to validation. (Vol VI-TO-16)

After the validation hearing was completed, the trial court, inexplicably, and on its own initiative, set a further evidentiary hearing. (Vol V-7). Although the State did not believe that it was necessary for further evidence to be presented, it, in an effort to be responsive to the trial court and assure that the record was complete, responded to the trial court's Order Setting Evidentiary Hearing. The State set out for the trial court a recitation of the facts and even provided for the benefit of the trial court the certified copies of the minutes of the special meeting of the City Council of the City of Panama City Beach (the "City Council") of November 30, 2000, which the trial court had stated a desire to review during an informal telephonic hearing with counsel for the parties after the validation hearing had been completed. More importantly, the State advised the trial court that the legislative findings and determinations that "blight" exists are matters of legislative determinations, that the findings of blight and public purpose are supported by the record as such findings are based on various

resolutions, agreements, ordinances and the Pier Park Community Redevelopment Plan and amendments thereto, all adopted after several duly noticed and held public hearings. (Vol V-8). The State specifically argued to the trial court (and asserts in this Answer Brief) that the determinations of public purpose by the City and the CDD are consistent with the findings and declarations of the Florida Legislature, particularly Section 163.335(4), Fla. Stat. (2001). Finally, the State argued to the trial court and it is the State's position on appeal that such issues are legislative determinations and that neither the State, as an officer of the Executive Branch nor the trial court, in its judicial role, is authorized to challenge the bond validation on issues related to the wisdom of the project.

Statement of the Issue

The issue presented by this appeal is whether the trial court is allowed to second guess the City Council's legislative determination that the Pier Park area is a blighted area under the criteria in the Act and whether the trial court is authorized to substitute its judgment for that of the Florida Legislature as to what may constitute blight for purposes of the Community Redevelopment Act of 1969.

Summary of the Argument

The Final Judgment seeks to substitute the trial court's judgment for that of the City Council as to the existence of blight in the Pier Park Redevelopment Area, and for that of the Florida Legislature as to what conditions may be found to constitute that blight. The Final Judgment addresses weaknesses that the trial court perceived in both the legislation and in the City's declaration, stating that:

> The law should not be at war with common sense. The Court has tried mightily to reconcile the stated purpose of the Redevelopment Act with the facts before it. But when the Court places all the evidence alongside the Act - and reads all of it- it is plain that the District does not qualify for re-development. It has never been developed! By and large it is vacant land begging to be built on.
>
> Plaintiff's desire to extract a few words from the Act and to apply them to the District, irrespective of the obvious purpose of the Act leads to an absurdity. The Redevelopment Act does not apply. The request for validation must be denied. (Vol V-12)

The evidence before the City Council, both by virtue of the Redevelopment Plan (Vol II-Exh E) and the testimony presented to the City Council and provided by the State to the trial court in the minutes of the November 30, 2000, meeting of the Council, sufficiently support the Council's finding that the area in question was blighted. The trial court failed to give proper deference to the legislative findings of the City Council and those legislative powers of the Florida Legislature when creating the Act. The ruling of the trial court should be overturned, and the legality of the City and the CRA's actions associated with the CRA and the obligations of the CRA under the PIPA should be validated.

Argument

I. The trial court must not substitute its judgment for that of the City Council or the Florida Legislature as to what may lawfully constitute a "blighted area" under the Community Redevelopment Act of 1969.

The State carefully reviewed the record of the City, the creation of the CRA, the execution of the PIPA and the proposed issuance of the Bonds. It could find no reason why the Complaint for Validation should not have been granted below. The State confesses that the trial court committed error below when refusing to validate the CRA-related aspects of the financing below, as set forth below.

A. *The Final Judgment improperly refused to give the required deference to the findings of a "blighted area" made by the City when establishing the CRA and adopting the Plan*.

The role of the State in a Chapter 75 validation proceeding is to ensure that the local governments bringing forth the validation complaint have complied with the applicable laws when establishing the bonds and the revenue sources established to repay said bonds. "[I]t is the duty of a state attorney upon whom process has been effectuated in a bond validation proceeding, to carefully examine the petition and, if it appears to him, or if he has any reason to believe that said petition is defective, insufficient or untrue, or if in his opinion the issuance of the bonds in manner and form as proposed, is not legally authorized, to make such defense to the petition as to him shall seem proper." *State v. Sarasota County*, 159 So. 797, 800 (Fla. 1935).

The State vigorously defended the rights of those citizens subject to the validation. The evidence reviewed by the State below, albeit vast and extensive, could not, however, have been more clear on the central point of this appeal: there is within that record, evidence which supports the City's creation of the CRA and adoption of the Plan to deal with those conditions found to constitute blight along its beachfront corridor and within its City parks. The City followed the Act closely in making these findings of blight. It did not come to such a decision quickly, working for more than two years to create a framework to alleviate the problems that have afflicted that portion of the City. (Vol II-Exh E-6) The Plan adopted by the CRA documented the problems identified by the City and gave specific methods of alleviating them. (Vol II-Exh E) After the review and proof presented at the validation hearing, the State did not object to the validation.

When reviewing a validation complaint, however, it is neither the obligation nor the prerogative of either the State or the trial court to evaluate the merits or wisdom of a particular governmental project. In particular, community redevelopment agencies and community redevelopment plans are bound to be controversial, given the nature of redevelopment projects that often involve major changes to a community. This Court has even specifically recognized the problems with evaluating findings affiliated with such redevelopment activities. "The wisdom of authorizing the cataclysmic demolition and redesign of neighborhoods or even whole districts is not for the Court to determine." *State v. Miami Beach Redevelopment Agency*, 392 So.2d 875, 891 (Fla. 1980) (affirming community redevelopment agency's use of bond proceeds for community redevelopment plan). The trial court's decision ignored the guidance of this Court in *Miami Beach Redevelopment Agency*, and sought to inject the trial court into policy-making areas where courts should not venture. The trial court's decision focused on the legislative findings of blight made by the City when creating the CRA and adopting the Plan. In so doing, the trial court improperly sought to substitute its judgment for that of the City.

The Appellant recites the case law regarding the proper standards applicable to the review of determinations of "blight" when establishing community redevelopment areas. *JFR Investment v. Delray Beach Community Redevelopment Agency*, 652 So.2d 1261, 1262 (Fla. 4th DCA 1995), *citing Board of County Commissioners of Brevard County v. Snyder*, 627 So.2d 469, 474 (Fla. 1993) (actions of local government should be sustained so long as they are fairly debatable and not

clearly erroneous). The State concurs that the "fairly debatable" standard is the standard of review that should apply, and that the trial court ignored this standard by second guessing the policy making decision of the City Council in making its "blighted area" determinations. The record evidence regarding the blighted area, in particular the transportation-related blight that existed and would exist after construction of the project, was more than ample to support such a finding. In any event, it was not clearly erroneous, and should have not been overturned by the trial court.

As recently as last summer, this Court faced a similar question of deference to local governmental legislative findings in *City of Winter Springs v. State*, 776 So.2d 255 (Fla. 2001) that are instructive in this appeal. The City of Winter Springs found that enhanced landscaping, signage and lighting along main thoroughfares within a residential development constituted a "special benefit" to assessed properties in a residential development. The trial court disagreed and invalidated the assessment. In reversing the trial court, this Court stated:

> In this case, however, the City's legislative finding that the special assessment confers a special benefit upon the land burdened by the assessment was not arbitrary and, therefore, was entitled to a presumption of correctness by the trial court. By substituting its own judgment for that of the locally elected officials, and thus failing to attach a presumption of correctness to the legislative determination, the trial court erred as a matter of law.

City of Winter Springs v. State, 776 So.2d at 258. *See also Boschen v. Clearwater*, 777 So.2d 958 (Fla. 2000) (city commission's findings of public health and safety were entitled to "great weight" by the reviewing court).

The trial court's role in this validation was anything but deferential and indicated its hostility to the project from a public policy standpoint. Instead of ruling on the validation at the October 29, 2001 hearing, the trial court called for a telephonic conference with counsel a week later and then set an evidentiary hearing so that it could review the deliberations of the City Council when establishing the CRA. (Vol V-7). Although no citizens intervened at the validation hearing[1], the trial court belatedly, and improperly, granted a Motion to Intervene filed after the after rendering a Supplemental Final Judgment when the party had not even sought to be heard on its Motion. In the Final Judgment itself the trial court admits its ruling is driven by public policy concerns, stating: that giving effect to the City's creation of the CRA and adoption of the Plan, which would improve transportation dramatically within the City, would result in the Redevelopment Area having "paved streets while thousands of Bay County taxpayers drive on dirt roads." (Vol V-12-6) This is not the proper role of the judiciary.

When reviewing the City Council's establishment of the CRA and the Plan, the trial court failed to recognize that the standard of review established by this Court in reviewing the creation of community redevelopment agencies and adoption of community redevelopment plans in *State v. Miami Beach Redevelopment Agency,*

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[1] The lack of opposition to the validation (other than the opposition of the trial court itself) is important to note. No party objected to the validation, despite the widespread notoriety that the Pier Park project has developed in the community. A condemnation order finding the existence of blight within the area that would become the CRA was even entered in December 2000 in the form of a stipulated judgment. *See* *City of Panama City Beach v. Florance*, Case No. 99-1755 (Fla. 14th Cir.Ct., December 7, 2000) (Vol V-Exh B) It is the trial court, and the trial court alone, which has objected to the findings of blighted area made by the City.

supra. In particular, this Court considered the entire record of findings by the City of Miami Beach regarding blight and creation of the redevelopment agency even where such findings were ". . . somewhat out of order." *State v. Miami Beach Redevelopment Agency*, 392 So.2d at 884. Thus, even if the evidence before the City Council on November 30, 2000 was insufficient, the subsequent findings of "blighted area" in the subsequent resolutions of the City, particularly in adopting the Plan in Resolution 01-09 (Vol II-Exh H), should have been considered by the trial court, but apparently were not.[2] While adopting the Plan may reflect debatable policy judgment on behalf of the City,[3] it does not reflect the City being arbitrary. Instead the trial court seemed intent on discussing its perspective on the wisdom and use of the property, noting the fact that a horse show and seafood festival currently use a portion of the Redevelopment Area, and expressing his concern over the impact on such events. (Vol V-7; Vol VI-T-99) Regardless of any feelings the trial court might have for such events, its review should have only reversed the findings of the City Council if arbitrary, and there was no such demonstration made.

The improvements sought by the City to the Redevelopment Area may be matters of legitimate public policy debate within the City, but they are not contrary to the statutory scheme established by the Florida Legislature when it created the Act. The Act specifically permits, in § 163.358(1), the findings of "blighted area" as made

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[2] The Plan approved by the City in Resolution 01-09 contains a study of the area which provides sufficient evidence supporting the City's determinations and itself spells out the City's findings as to blight in specific, painstaking detail. (Vol II-Exh E-14 to 29)

[3] The State has taken no position on the merits of the Plan itself, but only on the sufficiency and legality on its enactment.

by the City. Admittedly, the Florida Legislature has given broad latitude to local government when establishing such redevelopment areas in making the finding of blight. But it was not proper for the trial court to exercise its disagreement with the Act by invalidating the City's creation of the CRA and the establishment of the Plan where they were not clearly erroneous[4].

B. *The Final Judgment improperly narrows the powers of a City under the Act in ways that are inconsistent with the intent of the Florida Legislature*.

At the heart of this appeal is the ultimate fact that the Act says what it says and not what the trial court would like it to say. The bases for findings of "blight" under § 163.340(b) of the Act are amongst a host of factors that the Florida Legislature enumerated in the Act. The City followed the Act closely, making findings of a "blighted area" based on a host of factors, notably transportation-related blight. While the Final Judgment quarrels with the notion that the City can have blight, particularly where some land is currently vacant, the Act specifically includes such areas when contemplating redevelopment of blighted areas.

In one part of the Act, it provides that coastal resort and tourist areas such as the City "which are deteriorating and economically distressed due to building density patterns, inadequate transportation and parking facilities, faulty layout, or inadequate street layout, could through the means provided in this part, be revitalized and

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[4] The ruling by Judge Overstreet in the City of Panama City Beach v. Florance, Case No. 99-1755 (Fla. 14thCir.Ct., December 7, 2000) in recognizing the area was blighted only serves to underscore the very existence of a fair debate as to the existence of blight, at least as between the trial court below and Judge Overstreet — and further demonstrates that the City's creation of the CRA and the establishment of the Plan were not clearly erroneous.

redeveloped in a manner that will vastly improve the economic and social conditions of the community." §163.335(4), Fla. Stat. (2001). The unique challenges that coastal beach communities face in egress and ingress given the geography inherent in a coastal town with water on at least one side (and often all sides) of the community make it unremarkable that a beach community like the City would have blight associated with such parking, transportation and density issues.

The trial court's contention that the vacant land aspect of the CRA made it inconsistent with a finding of blight is also contradicted by the very text of the Act. It is certainly not unique or novel to acquire vacant land for redevelopment. In fact, the Act specifically contemplates the acquisition of areas of undeveloped, open land. *See* § 163.360(8), Fla. Stat. (2001) ("If the community redevelopment area consists of an area of *open land* to be acquired by the county or the municipality. . .") The State recognizes the fact that ultimately every community redevelopment plan must reach a point where cleared land is consolidated for the redevelopment contemplated by the Act. Here, as Appellant points out, the City, CRA and CDD effectively avoided the condemnation of a land mass critical to the success of a redevelopment project by acquiring that vacant land which was necessary for the critical mass to achieve the redevelopment.

The trial court's declaration that the Act does not support the finding of a blighted area is contradicted by its very terms. Although not a model of legislative clarity in all areas, the Act is extremely clear that (1) blight can be demonstrated in alternative ways, (2) that coastal resort and tourist areas are subject to particular blighted conditions unique to such communities and (3) that open land may be

included in, and is some ways the ultimate objective of, community redevelopment plans.

Conclusion

For the foregoing reasons, the Final Judgment should be reversed and the creation of the CRA and its obligations under the PIPA should be validated.

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Certificate of Service

I DO CERTIFY that a copy of the foregoing Amended Answer Brief of Appellee has been served by U.S. Mail to the Division of Bond Finance of the State Board of Administration, 1801 Hermitage Boulevard, Suite 200, Tallahassee, Florida 32308; Jonathan T. Johnson, Esq., Hopping Green & Sams, P.A., 123 South Calhoun Street, Post Office Box 6526, Tallahassee, Florida 32314, and William D. Tyler, Esq., Nabors, Giblin & Nickerson, P.A., Suite 1060, 2502 Rocky Point Drive, Tampa, Florida 33607, counsel for the CDD; Randall W. Hanna, Mark G. Lawson, Kenneth A. Guckenberger and Michael S. Davis, Bryant, Miller and Olive, P.A., The Exchange Building, 201 South Monroe Street, Suite 500, Tallahassee, Florida 32301, counsel for the City and the CRA; and Jeffrey P. Whitton, counsel for Intervenor pursuant to Order Granting Motion to Intervene by the trial court entered January 25, 2002, on this 5th day of April, 2002.

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Certification

The undersigned does hereby certify that this Answer Brief used 14 point Times New Roman type and does hereby comply with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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