IN THE SUPREME COURT OF FLORIDA

SUPREME COURT CASE NO. SC 02-2166
LOWER TRIBUNAL CASE NO. CAK-02-826

CHRISTOPHER J. SCHRADER

Appellant,

vs.

FLORIDA KEYS AQUEDUCT
AUTHORITY, an Independent
Special District,

Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE
SIXTEENTH JUDICIAL CIRCUIT IN AND FOR
MONROE COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE AND FACTS

This appeal is from a final judgment entered in a bond validation proceeding initiated by the Florida Keys Aqueduct Authority ("FKAA") in the Circuit Court in and for Monroe County, Florida. The primary issue presented by this appeal can be summarized as follows: is a state law that authorizes local governments in Monroe County, and only Monroe County, to pass wastewater related laws more restrictive than those provided for under general law a special law?

The FKAA is an autonomous public body created by the laws of the State of Florida, including Chapter 76-441, Special Laws of Florida, 1976 as amended and supplemented by Chapters 77-604, 77-605, 80-546, 83-468, 84-483,84-484,86-419, 87-454 and 98-519, Special Laws of Florida (hereafter collectively referred to as the "Act"). (App. A, ¶ 2.A).

The primary purpose and function of the FKAA is to obtain, supply and distribute an adequate water supply for the Florida Keys and to collect, treat, and dispose of wastewater in those areas of the Florida Keys delineated in the Act.(App. A, ¶ 2.C). Monroe County has designated FKAA as its wastewater provider.(App. A, ¶ 2.E) FKAA is developing and plans to own, operate and maintain wastewater systems in Monroe County. (App. A, ¶ 4.B). FKAA's powers include the authority to issue debt for purposes of fulfilling its wastewater duties. (App. A, ¶ 2.E).

On July 24, 2002, FKAA filed its Complaint in the lower court seeking validation of the proposed issuance of $83,000,000 in sewer revenue bonds. The purpose of the proposed bond issuance was to provide financing for the construction of a wastewater system in the City of Marathon, a municipality in Monroe County, subject to the wastewater jurisdiction of FKAA. (App. C, pgs. 16-18). As required by Chapter 75, Florida Statutes, on July 25, 2002 the Circuit Court issued a show cause order and scheduled a hearing for August 26, 2002 in Key West, Florida.

In addition to seeking validation of the proposed bond issuance and other relief, the Complaint requested the Circuit Court validate, approve and confirm that section 4, Chapter 99-395, Laws of Florida was a general law and that certain ordinances passed by Monroe County and the City of Marathon were legal and enforceable. (App. A, pg. 15, ¶ E-F).

Section 4 of Chapter 99-395 authorized local governments in the Florida Keys area of critical state concern to pass ordinances requiring Monroe County property owners to connect to a central sewerage (wastewater) system (App. E). At the time of its passage, specific Florida Statutes already required owners of onsite systems like septic tanks and cesspits to connect to an available wastewater system. Portions of Chapter 99-395 amended those statutes, but section 4 did not. (App. E). Section 4 applied only to local governments in the Florida Keys, and it authorized them to

require owners of package sewerage treatment facilities ("Package Plants") to connect to a central wastewater system, a power not shared by operators of public or investor owned wastewater systems outside of the Florida Keys and regulated under the statutes that the bill amended. (App. E). Package Plants are wastewater systems similar in function to those being designed and constructed by the FKAA, but operate on a smaller scale. (App. C, pgs. 48-50).

The ordinances FKAA sought to have declared legal and enforceable were ordinances requiring connection to FKAA constructed wastewater systems that were passed by Monroe County and the City of Marathon under the authority granted by section 4 of Chapter 99-395 (the "Connection Ordinances").(App. C, pgs. 21,32,39).

On August 26, 2002, counsel for Appellant, CHRISTOPHER J. SCHRADER ("SCHRADER") appeared at the scheduled hearing and served SCHRADER's answer and affirmative defenses, taking issue only with the relief requested by FKAA as to section 4 of Chapter 99-395 and the Connection Ordinances [1]. (App. B).

Specifically, SCHRADER asserted that section 4 of Chapter 99-395 is a special law because it applied only to Monroe County, and it had been passed as a general

[1] A representative of the State Attorney's Office for the 16th Judicial Circuit and another citizen, Jerry Wilkinson, were present and participated in the hearing as well. The State Attorney's office did not take issue with the relief requested by FKAA and the issues raised by Mr. Wilkinson are not germane to this appeal.

law, thereby violating Article III, section 10 of the Florida Constitution which requires, in part, publication of a notice of intent to enact a special law. Further, this deficiency renders section 4 of Chapter 99-395 and the Connection Ordinances passed pursuant thereto unenforceable.(App. B).

During the course of the hearing, the parties stipulated that Chapter 99-395, Laws of Florida had been passed as a general law thereby leaving a single disputed issue (as between FKAA and SCHRADER) to be decided by the Circuit Court: whether section 4 of Chapter 99-395 is, through its language and effect, a special law subject to the requirements of Article III, section 10 of the Florida Constitution. (App. C, pg. 69).

Although FKAA presented several arguments in response to that of SCHRADER, the Circuit Court seemingly rejected all of the arguments save one: section 4 of Chapter 99-395 was a general law, not a special law. (App. C, pg. 99). The Court entered a final judgment finding both it and the Connection Ordinances legal and enforceable. (App. D, ¶ 8-9, 22) These are the findings with which SCHRADER takes issue in this appeal.

SUMMARY OF ARGUMENT

Article III, section 10 of the Florida Constitution requires that prior to enacting a special law, notice of the intent to enact the special law must be published in a manner provided by general law. The purpose of this provision is to allow those who will be most affected by the actions of the legislature to be heard prior to the enactment of the special law.

Section 4 of Chapter 99-395 relates to and is designed to operate solely in Monroe County. It grants the local governments in Monroe County unique powers not enjoyed by most other operators of waste water treatment systems throughout the rest of the State. Local governments in Monroe County, and only Monroe County, can require owners of Package Plants to connect to a central sewer system. They can also require property owners with onsite sewage systems to connect to a central sewer system within 30 days after the system becomes available, as opposed to 1 year.

Because section 4 of Chapter 99-395 relates to and operates only within a specifically indicated part of the State, it is a special law that was passed without the notice required by Article III, section 10 of the Florida Constitution. Thus, those portions of the final judgment finding that section 4 of Chapter 99-395 Laws of Florida was passed as a general law and the Connection Ordinances legal and enforceable should be reversed.

ARGUMENT

SECTION 4, CHAPTER 99-395, LAWS OF FLORIDA IS A SPECIAL LAW PASSED IN VIOLATION OF ARTICLE III, SECTION 10 OF THE FLORIDA CONSTITUTION

Article III, section 10 of the Florida Constitution states:

> No special laws shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provisions for referendum, is conditioned to become effective only upon approval by the vote of the electors of the area affected.

As observed by this Court:

> The prime purpose of the constitutional requirement that notice be given in such instances is to apprise persons directly interested in the matter or thing to be affected of the nature and substance of a bill, so that such enactments, or the essential substance thereof, may be contested, if that is so desired.

City of Naples v. Moon, 269 So.2d 355 (Fla. 1972), *quoting State ex rel. Watson v. City of Miami*, 253 Fla. 653, 15 So.2d 481 (Fla. 1943).

The constitution defines a special law as a special or local law. Art. X , § 12(g), *Fla. Const*. This Court has previously distinguished special and local laws:

> A special law is one relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when classification is not permissible or the classification adopted is illegal; a local law is one relating to, or designed to operate only in, a

> specifically indicated part of the State, or one that purports to operate within classified territory when classification is not permissible or the classification is illegal.
>
> *State ex rel. Landis v. Harris*, 120 Fla. 555, 562-563, 163 So. 237, 240 (Fla. 1934); *State ex rel. Gray v. Stoutamire*, 131 Fla. 698, 179 So.2d 730 (Fla. 1938); *State ex rel. Buford v. Daniel*, 87 Fla. 270, 99 So. 804 (Fla. 1924)

City of Miami v. McGrath III, 824 So.2d 143 (Fla. 2002); *quoting, Department of Bus. Regulation v. Classic Mile, Inc.*, 541 So.2d 155, 1156 (Fla. 1989);

A special law is not converted into a general law by the legislature passing it as a general law. If its operative effect is that of a local or special law, this Court will treat it as such in determining its validity. *Classic Mile at* 1157.

In this instance, it is undisputed that Chapter 99-395 was passed as a general law. Thus, the issue to be resolved by this Court is whether section 4 of Chapter 99-395 is a law that relates to or is designed to operate only in a specifically indicated part of the State or purports to operate within a classified territory when classification is not permissible or the classification is illegal.

Chapter 99-395 revised existing general laws that, prior to the enactment of the bill, applied to virtually all property owners outside of Monroe County. It also established separate laws that applied only to Monroe County.

The provisions that affected property owners outside of Monroe County were

set forth in sections 1, 2 and 7 of Chapter 99-395. These sections amended Florida Statutes sections 381.0065-381.0067, the laws of statewide application requiring property owners with onsite sewage treatment systems, such as cesspits and septic tanks, to connect to any publicly owned or investor owned wastewater system within one (1) year after any such system becomes available. *See*, *Fla*. *Stat*, § 381.0065-381.0067 (2002). The mandatory connection requirement provided for in these statutes does not, however, require Package Plants permitted and regulated by the Florida Department of Environmental Protection under Chapter 403, Florida Statutes, to connect to a publicly or privately owned sewer system. *Fla. Stat.*, § 381.0065(2)(j), § 381.00655(2002). As explained *supra*, Package Plants are smaller wastewater systems that collect, treat and dispose of wastewater similar to those being constructed by FKAA.

The remaining sections of Chapter 99-395 did not, however, amend those statutes, and the provision at issue in this appeal, section 4, did not have statewide or even multi-county application[2].

[2] Sections 3, 8 and 9 of Chapter 99-395 required State agencies and Monroe County to report wastewater related information to the Legislature and Governor. Section 5 of the law defined "existing" as used in the Act. Section 6 created sewage requirements that applied only to Monroe County which are not presently at issue in this case.

Section 4, Chapter 99-395 provides:

> Section 4. Notwithstanding any provision of Chapter 380, part I, to the contrary, a local government within the Florida Keys area of critical state concern may enact an ordinance that:
>
> (1) Requires connection to a central sewerage system within 30 days of the notice of availability of services; and
>
> (2) Provides for a definition of onsite sewage treatment and disposal systems that does not exclude package sewage treatment facilities if such facilities are in full compliance with all regulatory requirements and treat sewage to advanced wastewater treatment standards or utilize effluent reuse as their primary method of effluent disposal.

As exhibited by its plain language, section 4 of Chapter 99-395 addresses only the rights of local governments in the "Florida Keys area of critical state concern." That area is defined in Florida Statutes and administrative regulations as all inhabitable lands in Monroe County, except the incorporated boundaries of the City of Key West and Federally owned property situated in Monroe County. *Fla.Stat.* § 380.0552(3) (2002), § 28-29.002, Chapter 28-29, *Fla. Admin. Code*.

Clearly, section 4 of Chapter 99-395 was intended to and did only apply to a specifically indicated part of the State, Monroe County, and, thus, is a special or local law. This conclusion is not only supported by the plain language of Chapter 99-395; it is supported by this Court's prior decisions as well.

A general law is "a law that operates universally throughout the state, uniformly upon subjects as they may exist throughout the state, or uniformly within a permissible classification." *Department of Business Regulation v. Classic Mile, Inc.*, 541 So.2d 1155, 1156 (Fla. 1989). A law that applies to only one county with no possibility that it will ever be applied to any other county is clearly a special law. *Id.* at 1157. To be clear, any law that creates a class of one is a special law if others cannot meet the criteria to become part of the class in the future. *Ocala Breeders' Sales Company, Inc. v. Florida Gaming Centers, Inc.*, 731 So.2d 21, 24 (Fla. 1st DCA 1999), 793 So.2d 899 (Fla.2001).

In *Alachua County, Florida v. Florida Petroleum Marketers Association, Inc.*, 553 So.2d 327 (1st DCA 1989), *aff'd*, 589 So.2d 240 (Fla. 1991), a case similar to the one at hand, Alachua County sought the authority to enact ordinances regulating underground petroleum storage tanks that were more extensive or stringent than those provided for under Federal or Florida law. In response, the legislature passed an amendment to a statute regulating the storage of petroleum products which already granted such authority to Dade and Broward Counties. The amendment granted Alachua County, and only Alachua County, the same authority.

The First District held that the amendment was a law that applied only to Alachua County, and there was no possibility that it would ever apply to any other

county. Thus, the amendment was a special law passed in violation of Article III, section 10 of the Florida Constitution. The decision of the First District was affirmed and adopted by this Court. *Alachua County, Florida v. Florida Petroleum Marketers Association, Inc.*, 589 So.2d 240 (Fla. 1991).

In this case, like *Alachua County*, section 4 applies to but one county; further, it can never apply to any other county. Thus, it creates a single class to which no other county can ever become a member. Accordingly, the law is a special law.

CONCLUSION

While there may be little issue as to the power of the legislature to ultimately pass mandatory sewer connection laws, if done properly, and although the protestations of those injured by such a law may fall on deaf ears, Article III, section 10 of the Florida Constitution demands that prior to the enactment of special laws like section 4, Chapter 99-395, persons affected by the law be given notice of the intent to enact the law, so they can timely voice their views and participate in the political process.

In this instance, the requirements of the Florida Constitution were not met. Thus, section 4, Chapter 99-395, Laws of Florida and the Connection Ordinances passed pursuant to the authority granted therein are both unconstitutional and unenforceable. For this reason, the final judgment should be reversed as to these

issues and/or findings.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing Initial Brief of Appellant and Appendix for Initial Brief of Appellant was mailed this 15th day of October, 2002, to: Grace E. Dunlop, Esq., Bryant, Miller and Olive, P.A., 101 East Kennedy Blvd., Ste 2100, Tampa, FL 33602, Nina Boniske, Esq., Weiss, Serota, Helfman, et al., 2665 S. Bayshore Drive, Miami, FL 33133, Robert Feldman, Esq., Florida Keys Aqueduct Authority, 1100 Kennedy Drive, Key West, FL 33040, and J. Jefferson Overby, Esq., 530 Whitehead Street, Key West, FL 33040.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief complies with the font requirements of Fla. R. App. P. 9.210.

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