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IN THE SUPREME COURT OF FLORIDA

GRETNA RACING, LLC,

Petitioner,

v.

FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, ETC.

Respondents.

Case No. SC15-1929

L.T. Case Nos. 1D14-3484; 2013050343

ON REVIEW FROM THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

AMICUS CURIAE BRIEF OF THE CITY OF GRETNA IN SUPPORT OF PETITIONER GRETNA RACING, LLC

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TABLE OF CONTENTS

Table of Authorities iii

Statement of Interest 1

Summary of the Argument 1

Standard of Review 2

Argument 3

Section 551.102(4), Florida Statutes, requires that a referendum approving slot machines be held after the effective date of the statute, and because that has been done in this case, the Petitioner Gretna Racing, LLC is entitled to the license at issue 3

Conclusion 14

Certificate of Service 14

Certificate of Compliance 15

TABLE OF AUTHORITIES

Cases

Delva Continental Group, Inc.,
137 So. 3d 371 (Fla. 2014) 2

Florida Dept. of Transp. v. Clipper Bay Inv., LLC,
160 So. 3d 858 (Fla. 2015) 2

Florida State Racing Commission v. Bourquardez,
42 So. 2d 87 (Fla. 1949) 6

Gretna Racing LLC v. Department of Professional Regulation, Division of Pari-Mutuel Wagering,
2015 WL 5773536 (Fla. 1st DCA 2015) 4, 10, 11, 12

Heart of Adoptions Inc. v. J.A.,
963 So. 2d 189 (Fla. 2007) 12

Holly v. Auld,
450 So. 2d 217 (Fla. 1984) 3

Kasischke, v. State,
991 So. 2d 803 (Fla. 2008) 8

Kortum v. Sink,
54 So. 3d 1012 (Fla. 1st DCA 2010) 6

Licata v. State,
81 Fla. 649, 88 So. 621 (Fla. 1921) 7

License Acquisitions, LLC v. Debary Real Estate Holdings, LLC,
155 So. 3d 1137 (Fla. 2014) 3

Miller v. Kase,
789 So. 2d 1095 (Fla. 4th DCA 2001) 6

Penzer v. Transportation Insurance Company,
29 So. 3d 1000 (Fla. 2010) 8

Schwegmann Bros. v. Calvert Distillers Corp,
341 U.S. 384 (1951).. 11

State ex rel. Bie v. Swope,
159 Fla. 18, 30 So. 2d 748 (Fla. 1947) 6

State v. Bodden,
877 So. 2d 680 (Fla. 2004) 6

Ward v. State,
986 So. 2d 479 (Fla. 2008) 7

Wausau Ins. Co. v. Haynes,
683 So. 2d 1123 (Fla. 4th DCA 1996)... 6

Statutes

Section 551.102(4), Florida Statutes.. passim

Other Authority

Theodore M. Bernstein, THE CAREFUL WRITER, 23 (New York 1977) 7

Prentice Hall, Writing and Grammar, § 21.1 (2008) 5, 6

Oliver Wendell Holmes, *Collected Legal Papers*, 207 (1920)............................... 11

STATEMENT OF INTEREST

Gretna is a city in Gadsden County, Florida. The pari-mutuel wagering facility operated by the Petitioner, Gretna Racing, LLC, is located in Gretna and it is operated with the City's consent under the terms of a development agreement.

The parties entered into a master plan that will be implemented in three phases over the next ten years. In the first phase, the parties will build an equine racetrack and club facility that will be used for quarter horse racing. In the second they will construct one or more convention hotels. And in the third they will build and lease restaurants and shops on or near the racetrack.

The City of Gretna has a vital economic interest in ensuring that the master plan will come to fruition, and the success of the plan depends on the issuance of the license that is the subject of the present controversy. The issues in this case are of great public interest to all Floridians, but the disposition of the case will have a direct impact on the City of Gretna and its residents.

SUMMARY OF THE ARGUMENT

The argument in this brief is directed exclusively to the statutory interpretation issues addressed in section II. B. of the majority opinion by the First District Court of Appeal on rehearing. Section 551.102(4), Florida Statutes, does not require the enactment of subsequent legislation authorizing a referendum on slot machines, as the First District concluded. To the contrary, it requires that a

countywide referendum authorizing slot machines be held after the effective date of the statute. That has been done.

The voters of Gadsden County approved of slot machines at pari-mutuel wagering facilities in the County in a referendum held in 2012, after the statute went into effect. Because Gretna Racing otherwise met all of the requirements of the statute, the application it made with the Division of Pari-Mutuel Wagering for a license to operate slot machines at its facility in Gadsden County should have been granted.

For these reasons, the decision by the First District Court of Appeal affirming the order denying the application must be reversed.

STANDARD OF REVIEW

The question presented in this case is whether the First District Court of Appeal interpreted section 551.102(4), Florida Statutes, correctly. Because the interpretation of a state statute presents a pure question of law that is reviewable de novo, *see Florida Dept. of Transp. v. Clipper Bay Inv., LLC*, 160 So. 3d 858 (Fla. 2015); *Delva Continental Group, Inc*., 137 So. 3d 371 (Fla. 2014), this Court is not required to defer to the decision by the lower tribunal. Instead, the Court is free to interpret the statute as though it were being interpreted for the first time on review.

ARGUMENT

Section 551.102(4), Florida Statutes, requires that a referendum approving slot machines be held after the effective date of the statute, and because that has been done in this case, the Petitioner Gretna Racing, LLC is entitled to the license at issue.

The definition of the phrase "eligible facility" in section 551.102(4), Florida Statutes, is not ambiguous. As we will explain, the statute can only mean that the referendum approving slot machines must be held after the effective date of the law, as Gretna Racing contends. The statute does not require that legislation authorizing the referendum be enacted after the effective date of the law, as the First District Court of Appeal concluded on rehearing.

Throughout the argument in this Brief, the City of Gretna relies on the established principle that a statute must be interpreted according to its plain meaning. *See License Acquisitions, LLC v. Debary Real Estate Holdings, LLC,* 155 So. 3d 1137, 1144 (Fla. 2014); *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984). Because section 551.102(4) conveys a clear and definite meaning, the district court should not have relied as it did on extrinsic sources of information to determine its meaning.

The ultimate question in this case is whether Gretna Racing is entitled to obtain a license to operate slot machines at its facility in Gadsden County. The answer to the question depends on the meaning of the phrase "eligible facility" in the third clause of section 551.102(4). By the text of the statute,

> (4) “Eligible facility” means . . . any licensed pari-mutuel facility in any other county in which a majority of voters have approved slot machines at such facilities in a countywide referendum held pursuant to a statutory or constitutional authorization after the effective date of this section in the respective county, provided such facility has conducted a full schedule of live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required licensed fee, and meets the other requirements of this chapter.

§ 551.102(4), Fla. Stat.

The District Court of Appeal reasoned that the phrase “after the effective date of this section” modifies the phrase “pursuant to a statutory or constitutional authorization,” so that the authorization to operate slot machines would depend on the enactment of another law on the same subject at some point in the future. *See Gretna Racing LLC v. Department of Professional Regulation, Division of Pari-Mutuel Wagering*, 2015 WL 5773536, at *8 (Fla. 1st DCA 2015). Based on this reasoning, the court concluded that Gretna Racing is not yet entitled to a slot machine license, even though Gadsden County has already held a referendum approving slot machines. *Id.*

This interpretation directly contradicts the plain meaning of the statute. The phrase “after the date of this section” is clearly a reference to the time when the referendum must be held, not the time when some hypothetical future statute authorizing the referendum must have been enacted. This point can be proven conclusively by applying the rules of English grammar.

The phrase "after the effective date of this section" is an adverbial phrase. It can only be used to modify a verb, an adjective or another adverb. *See* Prentice Hall, Writing and Grammar, § 21.1 (2008). It was used here to modify the verb "held." The event to be held was the referendum authorizing slot machines, not the authorization for the referendum. It follows that the phrase "after the effective date of this section" is a reference to the date of the referendum. The sentence makes perfect sense this way:

> "Eligible facility" means . . . any licensed pari-mutuel facility in any other county in which a majority of voters have approved slot machines at such facilities **in a countywide referendum held pursuant to a statutory or constitutional authorization after the effective date of this section in the respective county** . . .

§ 551.102(4), Fla. Stat. (emphasis added). The adverbial phrase "after the effective date of this section" necessarily refers to an action, not to a thing. The only action to which it could refer in this sentence is the action by the county in holding the referendum. Thus, the disputed phrase "after the effective date of this section" refers to the date of the referendum, not the date of a potential future law authorizing the referendum. Under the rules of grammar, no other reading of the statutory language is possible.

The district court's conclusion that the phrase "after the effective date of this section" modifies "a statutory or constitutional authorization" cannot be correct for the simple reason that the word "authorization" is a noun. An adverbial phrase

cannot be used to modify a noun. *See* Prentice Hall, Writing and Grammar, § 21.1 (2008). This is an established rule of grammar and it makes good sense when applied to the sentence at issue here. The phrase "after the effective date of this section" answers a question about when the action must take place. However, the phrase "a statutory or constitutional authorization" does not refer to an action (a verb); it refers to a thing (a noun).

The Legislature is presumed to know the rules of grammar, and courts give effect to this presumption in reading the wording of a statute. *See State v. Bodden*, 877 So. 2d 680, 685 (Fla. 2004); *Florida State Racing Commission v. Bourquardez*, 42 So. 2d 87 (Fla. 1949); *State ex rel. Bie v. Swope*, 159 Fla. 18, 24, 30 So. 2d 748, 751 (Fla. 1947); *Kortum v. Sink*, 54 So. 3d 1012 (Fla. 1st DCA 2010) (finding that "the adverbial phrase 'directly or indirectly through any other person or entity' modifie[d]" all three of the subject statute's prohibitions against initiating contact, engaging in face-to-face or telephonic solicitation, and entering into a contract).

On the rule of grammar that applies here, Florida courts have recognized that adverbs and adverbial phrases can modify only verbs, adjectives, or other adverbs, not nouns. *See Miller v. Kase*, 789 So. 2d 1095 (Fla. 4th DCA 2001); *Wausau Ins. Co. v. Haynes*, 683 So. 2d 1123, 1126 n.2 (Fla. 4th DCA 1996) (Farmer, J., specially concurring) ("An adverb, an adverbial phrase, or an adverbial clause may

qualify several parts of speech, but a noun is not one of them.") (quoting Theodore M. Bernstein, THE CAREFUL WRITER, 23 (New York 1977)); *see, e.g., Licata v. State,* 81 Fla. 649, 88 So. 621 (Fla. 1921) (holding a verdict sufficient in form to support a judgment of conviction of the crime charged in the indictment, based on determination that the words "as charged in the information" were an adverbial phrase that modified the verb "receiving").

In the present case, the district court ignored the adverbial nature of the phrase "after the effective date of this section" and focused instead on the placement of that phrase in the sentence. Applying the doctrine of the last antecedent, the court reasoned that "after the effective date of this section" modifies the immediately preceding phrase, "pursuant to statutory or constitutional authorization," so that the authorization for the referendum must be approved by subsequent legislation. The error in the court's analysis on this point is that the doctrine of the last antecedent cannot be employed to overcome the grammatical limitations of the parts of speech. An adverb cannot be used to modify a noun. This immutable rule of grammar cannot be avoided simply by placing the adverb in closer proximity to the noun.

This Court has been careful in its use of the doctrine of the last antecedent, and for good reason. The Court applied the doctrine in *Ward v. State*, 986 So. 2d 479 (Fla. 2008), but in two other recent cases the Court declined to apply it on the

ground that it would change the plain meaning of the statute. *See Penzer v. Transportation Insurance Company*, 29 So. 3d 1000 (Fla. 2010); *Kasischke, v. State*, 991 So. 2d 803 (Fla. 2008).

The Court explained in *Kasischke* why the doctrine of the last antecedent is not always a reliable tool in the interpretation of statutes. In that case, the Court defined the last antecedent as "the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence." *Kasischke*, 991 So. 2d at 811, quoting 2A Norman J. Singer & J.D. Shambie Singer, Statutes and Statutory Construction § 47.33 (7th ed. 2007) (emphasis added). The Court went on to say that the doctrine "has created as much confusion and disagreement as the ambiguous modifiers its drafter set out to clarify" and that it should be used only "if no contrary intention appears" in the text of the statute. *Kasischke*, 991 So. 2d at 811. Similarly, in *Penzer*, the Court stated that the doctrine of the last antecedent "is not an absolute rule" and that it "cannot be applied in a way that ignores the plain reading of the language" of the statute. *Penzer*, 29 So. 3d at 1007.

Perhaps it is too obvious to say but the last antecedent rule can be applied only if it is possible for the clarifying phrase to modify the antecedent. In this case, the phrase "after the effective date of this section," however close it may lie in the

sentence to the phrase "pursuant to statutory or constitutional authorization," cannot be properly read to modify the word "authorization."

The Attorney General concluded in her opinion that future legislation would be necessary to authorize a referendum on slot machines. She expressed the view that section 551.102(4) does not authorize the issuance of a slot machine license in the absence of a statutory or constitutional provision "enacted" after the effective date of the law. (R.17) This conclusion might have been reasonable if the word "enacted" had appeared in the statute between the phrase "a statutory or constitutional authorization" and the phrase "after the effective date of this section," but it does not.

In its initial decision denying the application, the Division repeated the Attorney General's mistaken assumption that a law authorizing the referendum must be "enacted" after the effective date of section 510.102(4). (R.1) The hearing officer repeated this mistake again in the order following the informal hearing (R.764), and the Division repeated it yet again in its final order. (R.784) According to the Division, the authorization for the referendum must be "enacted" after the effective date of the statute. (R.784)

The First District Court of Appeal noticed that section 551.102(4) does not actually say that the statutory or constitutional authorization must be "enacted" after the effective date of the statute (it would be hard to overlook that fact), but it

concluded that the omission of the term "enacted" made no difference. The court brushed this problem off by stating that the hypothetical insertion of the verb "enacted" would serve no purpose other than to "provide a degree of clarity." *Gretna Racing,* 2015 WL 5773536, at *9.

That is simply not correct. The fact that the statute does not include the word "enacted" between the two phrases at issue proves the point the City is making here. The meaning would have been entirely different if the pertinent part of the statute had been drafted to say "a statutory or constitutional authorization enacted after the effective date of this section." In that event, the adverbial phrase "after the effective date of this section" could be taken as a modification of the verb "enacted." In fact, the addition of the term "enacted" by inference is the very thing that made it possible for the district court to conclude as it did that future legislation was required.

The Attorney General, the hearing officer, and the Division of Pari-Mutuel Wagering all took the liberty of adding the word "enacted" in a strategic location within the statute. They lacked authority to modify the statute in that way. The First District Court of Appeal then compounded the error by reading the statute as if it had said that the authorization must be "enacted" after the effective date of the law. It does not say that. Respectfully, the district court should have interpreted the statute as it was written.

Another revealing aspect of the decision under review is that the district court found it necessary to rely on extrinsic information in support of its decision. The court started out by stating that the Division's interpretation was "more consistent with the plain meaning" of the statute, *Gretna Racing,* 2015 WL 5773536, at *8, but then the court strayed into areas beyond the text of the statute in search of a justification for its decision. The court reasoned that its interpretation must be correct because it is unlikely that the Legislature would take any action that would undermine the effect of the Seminole Compact. *Id*. at *10. The court then added that its interpretation must be correct because it is consistent with remarks made by a senator on the floor of the Senate. *Id.* at *11.

This is not a reliable method of interpreting a statute. And it is not an appropriate method of interpretation if, as in the present case, the statute is clear on its face. As Justice Oliver Wendell Holmes famously said, "We do not inquire what the legislature meant; we ask only what the statute means." Oliver Wendell Holmes, *Collected Legal Papers*, 207 (1920), *quoted in Schwegmann Bros. v. Calvert Distillers Corp*, 341 U.S. 384, 397 (1951) (Jackson, J., concurring).

The district court misread the language of the statute and, as a consequence, the court arrived at a conclusion that effectively nullifies the very point of the law. The third clause of the statute established an alternative set of requirements under which a county could decide to allow slot machines at pari-mutuel wagering

facilities. Yet the district court has now decided that the statute does not actually offer the counties that option. The effect of the decision is to undo the legislation.

The district court attempted to justify its decision by characterizing the statute as one that sets a goal to be achieved in the future. "Not all statutes are blossoms, some are seeds" the court said. *Gretna Racing,* 2015 WL 5773536, at *11. However, no amount of rationalization can change the fact that the court's decision rendered the statute meaningless. If the decision by the district court is correct, the effect of section 551.102(4) would be to allow a party to obtain a license to operate slot machines if, at some point in the future, the Legislature enacts a law that will enable the citizens of a county to hold a referendum to decide whether they want to allow slot machines. If that is what the Legislature had intended, it would have simply waited until such time as it was ready to approve the referendum. Surely the Legislature does not go to the trouble of enacting a law merely to announce its intention to address a subject in the future.

A basic rule of statutory construction provides that "the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless." *Heart of Adoptions Inc. v. J.A.,* 963 So. 2d 189, 198 (Fla. 2007). It is fair to ask how this principle was applied in the lower tribunals in this case. The short answer is that it was not applied. The district court offered a lengthy history of slot machines and lotteries, a detailed explanation as to

why the original panel decision was reversed, and no fewer than five reasons why it interpreted the statute as it did. Yet in all of this the court did not explain what the statute means or what it was intended to do.

If the district court is correct, the third clause of the statute is merely an idle statement about a law that may or may not be enacted in the future. But that is not correct. The third clause plainly adds a set of criteria by which any county, even a small rural county in North Florida, can do what the Legislature has allowed in larger, more urban counties in South Florida. The decision under review subverts this plainly stated objective in the text of the statute.

In summary of these points, section 551.102(4) is subject to only one possible interpretation. The phrase "after the effective date of this section" is an adverbial phrase, which can only modify a verb, an adjective or another adverb. Because it describes when an action takes place, it modifies a verb. In the text of the statute, the only logical verb the phrase can modify is "held." The lack of any ambiguity in the grammar of the passage eliminates the need to resort to rules of statutory interpretation such as the last antecedent rule. However, even if it were necessary to invoke the rule, it, too, would point to "held" as the word the subject phrase describes. Applying basic grammar rules makes perfectly clear the meaning of the statute and leaves no room for any other reading.

CONCLUSION

This Court should reverse the decision by the First District Court of Appeal and hold that the Petitioner, Gretna Racing, Inc., is entitled to a license to operate slot machines under section 551.102(4), Florida Statutes, as it is written.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rules of Appellate Procedure 9.210(a)(2).

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