FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-2768

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES,

Appellant,

v.

THE HENRY AND RILLA WHITE FOUNDATION, INC.,

Appellee.

CORRECTED PAGES: pg 3 & 4
GRAMMATICAL CORRECTIONS ARE UNDERLINED IN RED
MAILED: December 16, 2020
BY: FTA

On appeal from the Department of Agriculture and Consumer Services.
Marisa Atherley, Hearing Official

December 14, 2020

ORDER ON MOTION TO VACATE AUTOMATIC STAY AND EXPEDITE APPEAL

LONG, J.

We write to address Appellee's motion to vacate the automatic stay and to expedite the appeal. We grant the motion for the reasons below.

I.

This case involves an appeal from an administrative Final Determination that reviewed Appellee's appeal of a notice of action issued by the Department of Agriculture and Consumer Services,

Division of Food, Nutrition, and Wellness (DACS) for improper payments made to Appellee during its participation in the National School Lunch Program.

DACS is the state agency responsible for administering the U.S. Department of Agriculture's (USDA) National School Lunch Program (NSLP). *See* Fla. Stat. § 595.404. DACS receives federal funds from the USDA and then reimburses eligible School Food Authorities (SFAs) for providing meals to children. This reimbursement may be recouped by DACS if the SFA is not in compliance with federal regulations.

In the action below, DACS sought recoupment from Appellee of more than $13 million in NSLP funds disbursed for the 2014-2019 fiscal years. DACS also sought to reject Appellee's still-pending claims of about $500,000 for reimbursement for meals served under the NSLP in 2019 and 2020. DACS alleged that Appellee was ineligible to operate as an SFA as defined in 7 C.F.R. § 210.2, because the Department of Juvenile Justice (DJJ) juvenile detention centers being served by Appellee did not meet the definition of a "school" as defined in 7 C.F.R. § 210.2. That is, because the centers were operated by for-profit businesses and Appellee was not the governing body for the centers. DACS also alleged that Appellee lacked the authority to sponsor the centers under the program because Appellee did not have a contract in place with DJJ or the for-profit businesses operating the centers when the program was being implemented.

After a hearing on the appeal, a DACS hearing officer ruled for Appellee, finding that the DJJ facilities are public residential childcare institutions under 7 C.F.R. § 210.2 and that Appellee had the legal authority to sponsor the centers under the program. The Final Determination issued by the hearing officer also found that Appellee was entitled to relief from the demand for reimbursement of the $13 million in previous payments and the unpaid, still-pending claims of $500,000.

II.

DACS filed a notice of appeal challenging its hearing officer's Final Determination. Florida Rule of Appellate Procedure

9.310(b)(2) imposes an automatic stay when a governmental entity seeks appellate review.* Thus, an automatic stay pending review is currently in effect in this case.

A court may vacate an automatic stay only "under the most compelling circumstances." *Fla. Dep't of Health v. People United for Med. Marijuana*, 250 So. 3d 825, 828 (Fla. 1st DCA 2018) (quoting *State, Dep't of Envtl Prot. v. Pringle*, 707 So. 2d 387, 390 (Fla. 1st DCA 1998)). The party seeking to vacate an automatic stay has the burden of demonstrating that (1) the equities are "overwhelmingly tilted" against maintaining the automatic stay, (2) it will suffer irreparable harm if the automatic stay is maintained, and (3) it is likely to prevail on the merits of the appeal. *Id.* (quoting *Tampa Sports Auth. v. Johnston*, 914 So. 2d 1076, 1084 (Fla. 2d DCA 2005)). We hold that Appellee has met its burden in these three respects to justify vacating the automatic stay.

First, there are compelling circumstances to warrant vacating the stay. Appellant contends that the equities at issue are merely monetary, which favors maintaining the automatic stay. We disagree. Here, the equities overwhelmingly tilt in favor of vacating the stay. Appellee has complied with DACS's application process to participate in the NSLP, yet DACS has not processed Appellee's application. The current academic year has already begun, and Appellee continues to provide daily meals to the children at multiple DJJ facilities. Further delay and uncertainty over Appellee's ability to provide meals would cause monetary

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* Florida Rule of Appellate Procedure 9.310(b)(2) broadly excepts all administrative action appeals under the Administrative Procedure Act from the automatic stay provision. While this is an administrative action appeal, the agency appeal process was created by Rule 5P-1.002, Florida Administrative Code, pursuant to Section 595.404(11), Florida Statutes (2020). Because it is not an administrative action *under the Administrative Procedure Act*, it is not excepted from the automatic stay provision as other administrative action appeals are.

harm while also unjustifiably risking significant impairment to DJJ operations.

Similarly, these compelling circumstances and equities also show that Appellee would suffer irreparable harm if the stay is maintained. DACS's actions in denying reimbursement for meals that are now being provided to DJJ facilities compromises Appellee's ability to serve as an SFA, to provide meals to the children currently in DJJ's care, and threatens Appellee's viability as an organization by exacerbating future monetary harm. *See Tampa Sports Auth.*, 914 So. 2d at 1079 (finding that the appellee demonstrated irreparable harm where the harm would be compounded by maintaining the automatic stay).

Lastly, based on this panel's preliminary review, Appellee is likely to prevail on the merits in this appeal. The final determination being appealed carries a presumption of correctness. *Smith v. Coal. to Reduce Class Size*, 827 So. 2d 959, 961 (Fla. 2002). DACS's own hearing officer made several findings of fact that reinforce Appellee's position and are supported by the record. The hearing officer found clear evidence that Appellee was expressly authorized by the DJJ, DACS, and the USDA to administer the NSLP at DJJ's facilities since 2012. Additionally, DACS's independent interpretation of regulatory statutes is not entitled to deference. *See* Art V, §21, Fla. Const. The Final Determination made conclusions of law finding that DJJ is the state agency statutorily tasked with the administration of the juvenile justice system and that the facilities in question are public residential childcare institutions under 7 C.F.R. §210.2. Appellee appears to meet all prerequisites for meal reimbursement. In comparison, DACS offers nothing to justify the denial of reimbursement other than its recent unilateral reclassification of DJJ facilities as private for-profit institutions.

III.

Having considered Appellee's motion and Appellant's response, we agree with Appellee that the balance of equities, irreparable harm, and likelihood of success on appeal warrant vacating the automatic stay. Similarly, to mitigate further harm and resolve the uncertainty over the continued funding of the

NSLP at DJJ facilities during the active school year, this appeal will be expedited. *See Muniz v. Muniz*, 789 So. 2d 370, 373 n.2 (Fla. 3rd DCA 2001) ("This Court is always willing to expedite appeals where the justice of the cause requires it.")

The automatic stay is vacated and the appeal will be expedited. Appellee's answer brief is due 15 days from the date of this order, and any reply brief is due 15 days after the answer brief.

OSTERHAUS and JAY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Steven L. Hall, General Counsel, Magdalena Anna Ozarowski, Deputy General Counsel, and Darby G. Shaw, Senior Attorney of the Department of Agriculture and Consumer Service's Office of the General Counsel, Tallahassee, for Appellant.

D. Ty Jackson and George Levesque of GrayRobinson, P.A., Tallahassee, for Appellee.