# FIRST DISTRICT COURT OF APPEAL
# STATE OF FLORIDA

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No. 1D20-2135

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1000 FRIENDS OF FLORIDA, INC.
and ROBERT J. HOWELL,

Appellants,

v.

DANE EAGLE, in his Official
Capacity as the Executive
Director of the Florida
Department of Economic
Opportunity,

Appellee.

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On appeal from the Circuit Court for Leon County.
John C. Cooper, Judge.

November 3, 2021

WINOKUR, J.

1000 Friends of Florida, Inc. and Robert J. Howell appeal a final order dismissing their complaint with prejudice. Because the trial court correctly found that the Executive Director of the Department of Economic Opportunity (the "Director" or "DEO") is not a proper party to the suit, we affirm.*

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* Because the trial court correctly dismissed the complaint on the ground that the Director was not a proper party, we need not

Section 163.3215, Florida Statutes, addresses the right to challenge the consistency of a development order with a local government comprehensive plan. Subsection (3) of this statute provides that "[a]ny aggrieved or adversely affected party may maintain a de novo action . . . against any local government to challenge any decision" regarding a development order "which is not consistent with the comprehensive plan[.]" In 2019, the Legislature added subsection (8)(c) to section 163.3215, which reads as follows:

> The prevailing party in a challenge to a development order filed under subsection (3) is entitled to recover reasonable attorney fees and costs incurred in challenging or defending the order, including reasonable appellate attorney fees and costs.

Appellants filed suit against DEO seeking a declaration regarding the constitutionality of subsection (8)(c), alleging that section 163.3215(8)(c) "undermines the intent, purpose and rationale" of Florida's Community Planning Act "by chilling, frustrating, and punishing the ability of locally affected citizens to challenge local government decisions that are not consistent with the local Comprehensive Plan." DEO moved to dismiss the complaint on various grounds and the trial court granted the motion, finding Appellants lacked standing and DEO was not a proper defendant.

With regard to the "proper defendant" issue, this Court has held that "[t]he determination of whether a state official is a proper defendant in a declaratory action challenging the constitutionality of a statute is governed by three factors." *Scott v. Francati*, 214 So. 3d 742, 745 (Fla. 1st DCA 2017). Courts must first consider whether the named state official is charged with enforcing the statute. *Id.* "If the named official is not the enforcing authority, then courts must consider two additional factors: (1) whether the action involves a broad constitutional duty of the state implicating specific responsibilities of the state official; and (2) whether the

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address whether 1000 Friends or Howell had standing to bring the suit.

state official has an actual, cognizable interest in the challenged action." *Id.* (citations omitted). Applying these factors to this case, we conclude that DEO's Executive Director is not a proper defendant to this suit.

Appellants argue that DEO is the proper defendant because it has an actual cognizable interest in the case and because the case involves a duty or responsibility of DEO to implement the statutory mandate for the adoption and enforcement of local government comprehensive plans. Appellants further argue the test of "whether the government official is charged with enforcing the statute" is met when "the statute" is properly understood to mean Chapter 163, Part II, which covers sections 163.2511–163.3253.

A review of the statute reveals that the Director is not charged with enforcing the statute. DEO would play no role in awarding prevailing party attorneys' fees in a development order challenge litigated in the courts. The fact that DEO is the state land planning agency and has duties associated with other statutes within chapter 163 is immaterial to whether the Director is charged with enforcing the challenged statute.

Because the action does not involve "a broad constitutional duty of the state implicating specific responsibilities of the state official," we must then determine "whether the state official has an actual, cognizable interest in the challenged action." *Francati*, 214 So. 3d at 746. As we held in *Atwater v. City of Weston*, 64 So. 3d 701 (Fla. 1st DCA 2011), this analysis focuses on whether the named defendants have an actual interest in the outcome of the lawsuit, necessary for the court to exercise its jurisdiction to render a declaratory judgment:

> Even though the legislature has expressed its intent that the declaratory judgment act [chapter 86, Florida Statutes] should be broadly construed, there still must exist some justiciable controversy *between adverse parties* that needs to be resolved for a court to exercise its jurisdiction. Otherwise, any opinion on a statute's validity would be advisory only and improperly considered in a declaratory action.

*Id.* at 704–05 (quoting *Martinez v. Scanlan*, 582 So. 2d 1167, 1170–71 (Fla. 1991)).

Contrary to Appellants' assertion, DEO does not have an adverse interest in this case. Appellants argue DEO's central, pervasive and exclusive role in the comprehensive planning process that ultimately relies upon citizen enforcement renders it the proper defendant. Yet this argument illustrates why DEO does *not* have an adverse interest here. DEO has the statutory duty to review the adoption and amendment of each local government comprehensive plan to ensure compliance with the statutory requirements. *See* §163.3184, Fla. Stat. But only "aggrieved or adversely affected part[ies]" are authorized to enforce local comprehensive plans by bringing development order challenges under section 163.3215. If DEO relies on citizen enforcement as Appellants argue, then DEO does not have a sufficient stake in defending a statute that chills that enforcement.

Because the Director is not a proper defendant under *Francati*, the order granting the motion to dismiss is AFFIRMED.

RAY and LONG, JJ., concur.

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

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Mark Buckles, Interim General Counsel, Brandon White, Assistant General Counsel, and Jon Morris, Assistant General Counsel, Department of Economic Opportunity, Tallahassee, for Appellee.