

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

ANGELO'S AGGREGATE MATERIALS,
LTD., a Florida limited partnership,

Appellant,

v.

PASCO COUNTY, FLORIDA, a political
subdivision of the State of Florida; and
DEBRA M. ZAMPETTI, in her capacity as
zoning administrator,

Appellees.

Case No. 2D12-3112

Opinion filed August 14, 2013.

Appeal from the Circuit Court for Pasco
County; Linda Babb, Judge.

Alan F. Wagner of Wagner, Vaughan &
McLaughlin, P.A., Tampa; and Thomas G.
Pelham of Wagner, Vaughan & McLaughlin,
P.A., Tallahassee, for Appellant.

Donald E. Hemke of Carlton Fields, P.A.,
Tampa; and Jeffrey N. Steinsnyder, County
Attorney, David A. Goldstein, Chief
Assistant County Attorney, and W.
Elizabeth Blair, Senior Assistant County
Attorney, New Port Richey, for Appellees.

Amy Taylor Petrick, West Palm Beach,
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of County Attorneys.

CRENSHAW, Judge.

Angelo's Aggregate Materials, Ltd. (Angelo's) appeals the dismissal of its suit for declaratory relief against Pasco County and its zoning administrator, Debra Zampetti (together the County). In the two-count complaint, Angelo's sought a declaration of its vested rights under the prior land use regulation and a declaration that certain portions of the County's Land Development Code (LDC) were unconstitutional. Because the circuit court erred in dismissing the complaint for failure to state a claim for relief and to exhaust administrative remedies based on county ordinances, we reverse.

Factual Background¹

Angelo's requested a conditional use permit from Pasco County in order to build a landfill adjacent to another landfill Angelo's operates. At the time of the application, the County's comprehensive plan denominated the relevant future land use as "AG/R" with an "A-C zoning district," which only required a conditional use permit for a landfill such as the one Angelo's sought to construct. Angelo's, based on communications with the County, also requested permits from the Florida Department of Environmental Protection. The Department required studies and filing fees of its own in addition to the resources Angelo's expended in working with the County.

In 2009, the county attorney advised the Board of County Commissioners that county staff determined that a comprehensive plan future land use map amendment to a "P/SP" designation would be required for Angelo's landfill.² The

¹The background is taken from the second amended complaint, and we construe the facts in the light most favorable to Angelo's as the nonmovant. See Smith v. City of Fort Myers, 898 So. 2d 1177, 1178 (Fla. 2d DCA 2005).

²We note that the County's Land Development Code was significantly revised effective January 1, 2012. The record does not reflect the relationship, if any,

prospect of an unexpected requirement for a comprehensive plan amendment upset Angelo's expectations, as seeking such an amendment would require significantly more time and resources than a conditional use permit, and logically would extirpate Angelo's investment in the permit. Subsequently, the County unanimously adopted the proposed changes over Angelo's objections. The County then placed Angelo's conditional use permit application on hold until there was a land use change to "P/SP." The County has rejected Angelo's appeals to the County placing the application "on hold."

Angelo's then brought a declaratory judgment action against Pasco County in circuit court in order to determine if Angelo's had vested rights in having its application considered under the comprehensive plan in effect as of the time of the application for the conditional use permit. Relying on the LDC, the circuit court dismissed the count for "equitable estoppel/vested rights" for Angelo's failure to exhaust its administrative remedies.³ The circuit court dismissed Angelo's claim that provisions of the LDC were unconstitutional for failing to state a cause of action. Angelo's appeals, raising various constitutional challenges to the circuit court's dismissal of its case.

"[A]dhering 'to the settled principle of constitutional law that courts should endeavor to implement the legislative intent of statutes and avoid constitutional issues,' " we need not discuss Angelo's constitutional arguments in depth because our resolution of this dispute does not require it. State v. Boyd, 846 So. 2d 458, 459-60 (Fla. 2003) (quoting State v. Mozo, 655 So. 2d 1115, 1117 (Fla. 1995)). The cause of

between the rewrite and the County staff's determination regarding the "P/SP" designation.

³We observe that, in Florida, "equitable estoppel is a defensive doctrine rather than a cause of action." Meyer v. Meyer, 25 So. 3d 39, 43 (Fla. 2d DCA 2009) (quoting Agency for Health Care Admin. v. MIED, Inc., 869 So. 2d 13, 20 (Fla. 1st DCA 2004)).

action before the circuit court was for declaratory relief pursuant to chapter 86, Florida Statutes. We note that the Declaratory Judgment Act⁴ specifically calls for its liberal construction, § 86.101, Fla. Stat. (2011), and dictates that the availability of another remedy does not preclude a declaratory judgment. § 86.111, Fla. Stat. Thus we are called upon to decide whether the circuit court could hear the case for a declaratory action.

Legal Framework

This court has previously addressed the standard of review on a motion to dismiss in an action for a declaratory judgment:

When ruling on a motion to dismiss for failure to state a cause of action, the trial court must accept the material allegations as true and is bound to a consideration of the allegations found within the four corners of the complaint. Thus, the question of whether a complaint states a cause of action is one of law and the standard of review is de novo.

A complaint for declaratory judgment should not be dismissed if the plaintiff established the existence of a justiciable controversy cognizable under the Declaratory Judgment Act, chapter 86, Florida Statutes (2007).

Murphy v. Bay Colony Prop. Owners Ass'n, 12 So. 3d 924, 926 (Fla. 2d DCA 2009)

(citations omitted).⁵ Specifically, the complaint must allege that

there is a bona fide dispute between the parties and that the moving party has a justiciable question as to the existence or non-existence of some right[or] status, . . . or as to some fact upon which the existence of such right[or] status . . . does or may de[p]end, that plaintiff is in doubt as to the right[or] status, . . . and that there is a bona fide, actual, present need for the declaration.

⁴See generally ch. 86, Fla. Stat. (2011). The law creating the Act only refers to the Act as such in its preamble, and there is therefore no reference to the "Declaratory Judgment Act" in the Florida statutes. Ch. 21820, Laws of Fla. (1943).

⁵The Act has not since been amended.

Smith v. City of Fort Myers, 898 So. 2d 1177, 1178 (Fla. 2d DCA 2005) (emphases added) (quoting Bell v. Associated Indeps., Inc., 143 So. 2d 904, 908 (Fla. 2d DCA 1962)). Where a complaint for declaratory action meets these requirements it should not be dismissed for failure to state a cause of action. Id.; see also Murphy, 12 So. 3d at 926.

In determining why this case is appropriate for declaratory relief, a historical account is instructive. The first supreme court case that fully considered the Declaratory Judgment Act states:

Viewed in its proper perspective, the . . . Act is nothing more than a legislative attempt to extend procedural remedies to comprehend relief in cases where technical or social advances have tended to obscure or place in doubt one's rights, immunities, status or privileges. It should be construed with this objective in view There is no reason whatever why the highway to justice should be strewn with hurdles and pitfalls that make one who secures it wonder if the "game is worth the candle."

Ready v. Safeway Rock Co., 24 So. 2d 808, 809 (Fla. 1946). Justice Brown agreed:

I was impressed with the apparently almost unlimited scope of the [A]ct, and was reminded of the words of one of Shakespeare's characters who said: "Give me a charter as wide as the wind, to blow on whom I please." [sic] However, upon further study of the statute I became convinced of its usefulness if properly construed

Id. at 810 (Brown, J., concurring specially). We determine that the complaint stated a facially sufficient claim for declaratory relief, and if that were the only question, it would end the matter. In this case, Angelo's has a dispute with the County over which legal framework applies to its permit for a landfill. Angelo's seeks a determination whether it has a vested right to proceed merely with a conditional use permit or whether the subsequent changes to the LDC, requiring a comprehensive plan land use amendment,

apply. Without such a determination, Angelo's must risk having made a significant investment in seeking the conditional use permit only to learn the expense was wasted by the need for a comprehensive plan amendment. For these reasons, and because the determination is a complex one, we conclude that this case is a quintessential one for declaratory relief.

The Ordinance Does Not Govern This Action

We must also determine whether the circuit court was bound to apply the County's ordinance in this case. For the reasons that follow, we conclude it was not.

The ordinance governing vested rights determinations reads in pertinent part, "[t]he criteria and procedures set forth in this section are an administrative remedy that shall be exhausted: (a) prior to filing any claim or action against the county, for damages or injunctive relief" Pasco County, Fla., Land Development Code § 109.1 (2011) (emphasis added). Angelo's argues this provision conflicts with the circuit courts' original, exclusive jurisdiction over cases in equity, pursuant to section 26.012(2)(c), Florida Statutes (2011), a general law.⁶ However, we construe the ordinance to apply only to damages and injunctions and not to declaratory actions, because of its plain language and because the ordinance must be construed in harmony with general law in order to preserve its constitutionality.

⁶A general law is one that "operates universally throughout the state, uniformly upon subjects as they may exist throughout the state, or uniformly within a permissible classification." Dep't of Bus. Regulation v. Classic Mile, Inc., 541 So. 2d 1155, 1157 (Fla. 1989). A special law, in Florida, includes local laws. Art. X, § 12(g), Fla. Const. A special law "is one relating to, or designed to operate upon, particular persons or things . . . [A] local law is one relating to, or designed to operate only in, a specifically indicated part of the State" Classic Mile, 541 So. 2d at 1157 (quoting State ex rel. Landis v. Harris, 163 So. 237, 240 (Fla. 1934)).

Municipal ordinances are subject to the same rules of construction as are state statutes. Rose v. Town of Hillsboro Beach, 216 So. 2d 258 (Fla. 4th DCA 1968). Rose also stands for the substantive proposition that courts . . . must give to a statute (or ordinance) the plain and ordinary meaning of the words employed by the legislative body (here the City Council).

Rinker Materials Corp. v. City of N. Miami, 286 So. 2d 552, 553-54 (Fla. 1973) (citation omitted). Noncharter counties, like charter counties, are endowed with broad home rule powers. See art. VIII, § 1(f), Fla. Const; § 125.011(1), Fla. Stat. (2011). However, the same provision of our constitution allowing for county home rule also circumscribes that home rule power by limiting the counties' authority to enact ordinances to those that do not conflict with general law. Art. VIII, § 1(f), Fla. Const.; § 125.01(1)(h), Fla. Stat. ("The . . . county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to: . . . [e]stablish[ing], coordinat[ing], and enforc[ing] zoning" (emphasis added)).⁷ With this limitation in mind, we hold that when construing a county ordinance, we must do so in such a way so as not to conflict with general law in order to preserve the ordinance. See Fla. Dep't of Revenue v. City of Gainesville, 918 So. 2d 250, 256 (Fla. 2005) (applying the same rationale to a statute).

To the extent the ordinance attempts to prevent a circuit court from granting relief attending its declaratory judgment, the ordinance would conflict with various general laws, rendering it unconstitutional. See Shands Teaching Hosp. & Clinics, Inc. v. Mercury Ins. Co., 97 So. 3d 204, 211 (Fla. 2012). Section 26.012,

⁷The fact that Pasco County is a noncharter county rather than a charter county does not affect this case. The constitution makes no distinction between charter and noncharter counties' powers regarding general laws, only special laws. Compare art. VIII, § 1(f), Fla. Const., with art. VIII § 1(g), Fla. Const.

Florida Statutes, vests exclusive, original jurisdiction of both actions at law (not cognizable in county courts) and cases in equity in the circuit courts. § 26.012(2)(a), (c), Fla. Stat.; Haueter-Herranz v. Romero, 975 So. 2d 511, 514 (Fla. 2d DCA 2008) (discussing the amount-in-controversy element of circuit courts' law jurisdiction); Terex Trailer Corp. v. McIlwain, 579 So. 2d 237, 241 (Fla. 1st DCA 1991) (discussing circuit courts' equity jurisdiction). And of course the Declaratory Judgment Act itself confers jurisdiction in the circuit court which the County cannot contravene. See § 86.011, Fla. Stat.; see also Dep't of Revenue v. Univ. Square, Inc., 336 So. 2d 371 (citing § 26.012, Fla. Stat., and stating "circuit courts retain jurisdiction to determine . . . assessments by way of declaratory judgment actions").⁸

Therefore, in order to avoid a constitutional quandary, we construe the ordinance not to encompass declaratory relief under chapter 86. Angelo's filed a claim for declaratory relief pursuant to section 86.011, and therefore the requirement for exhaustion of administrative remedies in the ordinance is inapplicable to this case.

Conclusion

We determine that the trial court erred by dismissing Angelo's claim as barred by the ordinance's administrative remedies exhaustion requirement. Accordingly, there was nothing preventing the court from exercising its power to issue a declaratory judgment.

Reversed and remanded.

WALLACE, J., Concur.

⁸Under section 86.011, the circuit courts are vested with jurisdiction over declaratory judgments, but it is concurrent with the county courts' jurisdiction "within their respective jurisdictional amounts."

ALTENBERND, J., Concurs specially.

ALTENBERND, Judge, Specially concurring.

I agree that it may be useful to have the trial court fully consider the constitutionality of these local ordinances before this court considers the issue. But it should be clear that we are remanding this case to have the trial court resolve the constitutional issue that we decline to reach in this opinion.

The main substantive issue in this case, as alleged in the second amended complaint, is whether Angelo's has a vested right to have its applications for conditional use permits for a sanitary landfill determined under the comprehensive plan and land development code in effect at the time its applications were filed. In count one of this complaint, Angelo's alleges that Pasco County is equitably estopped from requiring Angelo's to comply with changes in the comprehensive plan and land development code that substantially alter its rights.

It is undisputed that Angelo's would be entitled to bring the action alleged in count one in circuit court in many counties in this state, including several in the Second District. However, Pasco County has enacted ordinances adopting amendments to the land development code that require persons in doubt as to their vested rights to seek an "administrative remedy." As amended, the land development code designates the elected Board of County Commissioners to sit as a quasi-judicial board to determine whether a landowner like Angelo's has vested rights.⁹ According to the amendments, the Board's written order can be appealed only to the local circuit

⁹The filing fee for this proceeding appears to be \$1500, an amount significantly higher than the filing fee in circuit court.

court, and that court is restricted to reviewing the order as if the proceeding were a "first- tier certiorari" proceeding.

Count two of the second amended complaint seeks a declaration that these provisions of the county land development code are unconstitutional for several reasons. It should be obvious that the primary argument is that the amendments to the county ordinances conflict with the proper constitutional jurisdiction of the courts under article V of the Florida Constitution.

Pasco County moved to dismiss the second amended complaint. As to count one, it argued that the circuit court lacked subject matter jurisdiction because Angelo's had not exhausted the above-described administrative remedy. As to count two, in a somewhat circular argument, it claimed that courts have consistently recognized the need to exhaust administrative remedies and that there is no need to examine the constitutionality of this procedure.¹⁰

The order on appeal dismissed count one because Angelo's had not exhausted its administrative remedies and dismissed count two for failure to state a cause of action. In other words, as to count one the circuit court enforced the amendments that Angelo's sought to declare unconstitutional in count two. I agree with the majority that the circuit court erred in explaining that it was dismissing count two for failure to state a cause of action.

Our reversal will allow the parties to present these difficult constitutional issues to the circuit court in a thorough and orderly fashion. Hopefully, the circuit court will prepare an order addressing all of the constitutional theories. It seems obvious that

¹⁰If any district court has ruled on these constitutional issues, the parties have not cited to that case.

this court will only be a way station on the trip to the supreme court to resolve these issues that affect one or more classes of constitutional officers.