Third District Court of Appeal

State of Florida

Opinion filed December 18, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1259
Lower Tribunal No. 11-090

Richard T. Alger, et al.,
Petitioners,

vs.

United States of America, et al.,
Respondents.

On Petition for Writ of Certiorari from to the Circuit Court for Miami-Dade County, Appellate Division, Jacqueline Hogan Scola, George A. Sarduy, and Lisa S. Walsh, Judges.

Lehtinen Schultz, PLLC, and Amanda Quirke Hand, for petitioners.

Ariana Fajardo Orshan, United States Attorney, and Daniel Matzkin, Assistant United States Attorney; Weiss Serota Helfman Cole & Bierman, P.L., Laura K. Wendell, and James E. White, for respondents.

Before FERNANDEZ, MILLER, and GORDO, JJ.

MILLER, J.

Petitioners, Richard T. Alger, John L. Alger, and Alger Farms, Inc., seek second-tier certiorari relief from an opinion rendered by the appellate division of the circuit court of Miami-Dade County. In its decision, at the urging of respondent, the United States of America (the "United States"), the lower court quashed City of Homestead Resolution R2011-01-10 (the "Resolution"), which granted petitioners certain vested property rights in their land. Petitioners contend second-tier certiorari relief is warranted, as the court erroneously endowed the United States with standing to seek redress from the Resolution. For the reasons set forth below, we deny the petition.

FACTS AND BACKGROUND

For more than fifty years, petitioners have owned approximately two hundred and fifty acres of undeveloped land in Miami-Dade County. The property is located southwest of the Homestead Air Reserve Base (the "HARB") and within an area designated by the Department of Defense as an "accident potential zone."[1]

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[1] Under the Department of Defense's Air Installation Compatible Use Zone Study for the HARB, the United States Air Force ("USAF") military airfield analysis

> determined that the areas immediately beyond the ends of runways and along the approach and departure flight paths have the highest potential for aircraft accidents. Based on this analysis, USAF developed three zones that have a relative potential for accidents: clear zones (CZs) and [accident potential zones] APZs I and II.
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> Each end of a runway has a CZ that starts at the runway threshold and extends outward 3,000 feet with a width of 3,000 feet. Of the three

In 1991, the City of Homestead (the "City") adopted the Homestead Comprehensive Airport Zoning Ordinance (the "1991 Ordinance"), restricting residential development on tracts of land located in the vicinity of the HARB. Less than five years later, petitioners' property was annexed to the City. In 2001, the City enacted an amendment to the Future Land Use Element of the City's Comprehensive Plan. As a result, petitioners' land was both designated for agricultural use and subject to the 1991 Ordinance.

In 2008, the City passed two resolutions, adopting the 2007 Homestead Air Reserve Base Joint Land Use Study and the 2007 Air Installation Compatible Use Zone Study. Both examinations were commissioned to evaluate the impact of community growth on the viability of the HARB's continued mission. The City determined the latter study should serve "as a planning guide and tool to be

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> safety zones, the CZ has the highest potential for accidents . . . APZ 1 extends outward from each CZ an additional 5,000 feet with a width of 3,000 feet. This area has a significant, though reduced, accident potential. APZ II extends from the outer end of APZ I an additional 7,000 feet with a width of 3,000 feet. This area has a lesser, but still measurable, potential for accidents. While the aircraft accident potential in APZ I and II does not necessarily warrant acquisition by [the Air Force Reserve Command], land use planning and controls are strongly encouraged for the protection of the public.

Headquarters Air Force Reserve Command, Air Installation Compatible Use Zone Study for Homestead Air Reserve Base, Florida 3-1 (2007).

considered in any future modifications and amendments to the City Code of Ordinances."

In late-2010, the City enacted the Homestead Airport Zoning Ordinance (the "2010 Ordinance"), pursuant to section 333.03, Florida Statutes. City of Homestead, Fl., Rev. Ordinance 2010-09-25 (Sept. 22, 2010); see § 333.03(1)(a), Fla. Stat. (2019) ("Every political subdivision having an airport hazard area within its territorial limits shall adopt, administer, and enforce, under the police power and in the manner and upon the conditions prescribed in this section, airport protection zoning regulations for such airport hazard area."). The 2010 Ordinance explicitly recognized that the "HARB serves a critical role in military, special operations, drug enforcement and interdiction, training, and hurricane response." Thus, consistent with the goal of the previously conducted studies, it was intended to establish standards designed to promote compatible civilian use, while preserving "the utility and capacity" of the HARB.

The 2010 Ordinance delineated certain land use limitations by zone, grounded upon the existing potential for air traffic accidents. Petitioners' land falls within the accident potential zone 1 ("APZ1"), an area demarcated by the HARB officials as one with "significant potential for accidents, thereby, [requiring] extra protection." Consequently, the 2010 Ordinance restricts residential development on their property.

Nonetheless, those land owners holding "vested rights," acquired through a "governmental act of development approval," granted prior to the adoption of the 2010 Ordinance, and demonstrating detrimental and reasonable reliance on said approval, are exempted from the use restrictions.[2] City of Homestead, Fl., Rev. Ordinance 2010-09-25 (Sept. 22, 2010).

In November 2010, petitioners sought a declaration by the City Council of their vested rights to secure their "participat[ion] in the Purchase of Development Rights program." The City Council held "a quasi-judicial, evidentiary public hearing" on the application, wherein the HARB representatives voiced their opposition. Id. Despite a staff recommendation to the contrary, the City passed the Resolution, declaring petitioners held vested rights.

Thereafter, the United States, as the proprietor of the HARB, filed a petition for writ of certiorari in the Eleventh Judicial Circuit Appellate Division, contending the quasi-judicial decision was not supported by competent, substantial evidence. It further argued quashal of the Resolution was warranted, as, in enacting the Resolution, the City failed to adhere to the essential requirements of law.

[2] In order to comply with section 1.9 of the 2010 Ordinance, which outlines the vested rights procedure, the City Council is required to "enter a written decision specifying the reasons for its decision to either grant or deny a finding of vested rights."

The circuit court quashed the Resolution, finding it "fail[ed] to describe the scope and extent of the vested rights that were approved . . . [Further], the resolution [did] not specify the reasons for [the City Council's] decision, other than making a general statement that the determination criteria of [s]ection 1.9 of the [2010] Ordinance were met." The instant petition ensued.

STANDARD OF REVIEW

"As a practical matter, the circuit court's final ruling in most first-tier cases is conclusive, for second-tier review is extraordinarily" narrow. Fla. Power & Light Co. v. City of Dania, 761 So. 2d 1089, 1092 (Fla. 2000). Our "'inquiry is limited to whether the circuit court afforded procedural due process and whether the circuit court applied the correct law,' or, as otherwise stated, departed from the essential requirements of law." Custer Med. Ctr. v. United Auto. Ins. Co., 62 So. 3d 1086, 1092 (Fla. 2010) (quoting Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 530 (Fla. 1995)); see Nader v. Fla. Dep't of Highway Safety & Motor Vehicles, 87 So. 3d 712, 725 (Fla. 2012) ("[T]he district court must determine whether the decision of the circuit court . . . is a departure from the essential requirements of law resulting in a miscarriage of justice.").

LEGAL ANALYSIS

The sole issue before us is whether the circuit court departed from the essential requirements of law in determining that the United States possessed standing to

obtain relief from the Resolution.[3] "Clearly established law can be derived not only from case law dealing with the same issue of law, but also from 'an interpretation or application of a statute, a procedural rule, or a constitution provision.'" State Dep't of Highway Safety & Motor Vehicles v. Edenfield, 58 So. 3d 904, 906 (Fla. 1st DCA 2011) (quoting Allstate Ins. Co. v. Kaklamanos, 843 So. 2d 885, 890 (Fla. 2003)). However, when established jurisprudence provides no controlling precedent, certiorari relief is unwarranted as "[w]ithout such controlling precedent, [a district court] cannot conclude that [a circuit court] violated a 'clearly established principle of law.'" Ivey v. Allstate Ins. Co., 774 So. 2d 679, 682 (Fla. 2000).

In the instant case, the circuit court initially acknowledged sources of constitutional and statutory authority vesting the United States with the broad power to assemble and maintain the armed forces.[4] See Art. I, § 8, U.S. Const.; Art. II, §

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[3] Petitioners concede due process was afforded below. Further, despite the United States' active opposition to the Resolution, no challenge to standing was raised in the initial quasi-judicial tribunal. "When a party seeks certiorari review . . . of a decision of an administrative body acting in a quasi-judicial capacity, the trial court is bound by the facts and evidence presented to the administrative body, and the issue of standing is waived if it was not raised before the administrative body." York v. Athens Coll. of Ministry, Inc., 821 S.E.2d 120, 123 (Ga. Ct. App. 2018) (citation omitted); see also Krivanek v. Take Back Tampa Political Comm., 625 So. 2d 840 (Fla. 1993) (finding the failure to raise standing generally results in waiver); 3 Fla. Jur. 2d Appellate Review § 501 (2019) ("[T]he reviewing court's consideration in certiorari cases is to be confined strictly and solely to the record of the proceedings by the agency or board on which the questioned order is based.").

[4] The relevant constitutional provisions codify the ideal that "[t]he power of regulating the militia, and of commanding its services in times of insurrection and invasion are natural incidents to the duties of superintending the common defense,

2, U.S. Const.; 10 U.S.C. §8062; 10 U.S.C. §401; 32 C.F.R. 256. It then examined the interrelationship between the United States' and the City's land use planning, the proximity of the HARB's boundaries to the property at issue in the Resolution, and the trend in the law to extend standing in land use cases even well-beyond "those who own contiguous property." Ruegg v. Bd. of Cty. Comm'rs, 573 P.2d 740, 742 (Or. Ct. App. 1978). The court ultimately determined that high-density residential development on land located adjacent to the HARB and within the accident potential zone was forecasted to deter base operations and heighten the risk of aircraft accidents. Accordingly, it concluded the United States had "a legally recognizable right which [was] adversely affected" by the Resolution. Citizens Growth Mgmt. Coal. of W. Palm Beach, Inc. v. City of W. Palm Beach, Inc., 450 So. 2d 204, 208 (Fla. 1984).

The language penned by the circuit court conforms with the legal standing necessary to "challenge the zoning action or inaction" of a municipality, as articulated within the seminal case of Renard v. Dade County, 261 So. 2d 832 (Fla. 1972). Rinker Materials Corp. v. Metro. Dade Cty., 528 So. 2d 904, 906 (Fla. 3d

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and of watching over the internal peace." The Federalist No. 29 (Alexander Hamilton); see Art. I, § 8, U.S. Const. ("The Congress shall have [p]ower . . . [t]o provide for organizing, arming, and disciplining, the Militia."); Art. II, § 2, U.S. Const. ("The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual service of the United States.").

DCA 1987) (reiterating Renard's continued vitality); see Renard, 261 So. 2d at 837 ("An aggrieved or adversely affected person having standing to sue is a person who has a legally recognizable interest which is or will be affected by the action of the zoning authority in question.").[5] Conceding that Renard controls, but relying upon Matheson v. Miami-Dade County, 258 So. 3d 516 (Fla. 3d DCA 2018), petitioners urge us to review the issue of standing de novo and, essentially, reexamine the factual underpinnings of the circuit court decision.

In Matheson, a landowner challenged the decision of a local municipality to circumvent the competitive bidding process by filing original actions for writ of mandamus and declaratory and injunctive relief in the circuit court. The trial court dismissed the action and the landowner initiated a direct appeal. We affirmed,

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[5] Consistent with this standard, under section 163.3215(2), Florida Statutes (2019), an "aggrieved or adversely affected party" may "enforce local comprehensive plans through development orders." The statute defines the term "aggrieved or adversely affected party" as follows:

> any person or local government that will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large but must exceed in degree the general interest in community good shared by all persons.

§ 163.3215(2), Fla. Stat.

applying a de novo standard of review, and concluding that the landowner lacked standing.

Here, we find ourselves in an inapposite procedural posture, as petitioners challenge the decision of the circuit court acting in its appellate capacity. Hence, we are merely charged with "halt[ing] the miscarriage of justice, [and] nothing more." Broward Cty. v. G.B.V. Int'l, Ltd., 787 So. 2d 838, 844 (Fla. 2001), Thus, we remain constrained by the aforecited "two-pronged review," and decline to expand the scope of the same. Id. at 845; see Custer Med. Ctr., 62 So. 3d at 1093 ("[A] circuit court appellate decision made according to the forms of law and the rules prescribed for rendering it, *although it may be erroneous in its conclusion* as to what the law is as applied to facts, is *not* a departure from the essential requirements of law remediable by certiorari."); Haines City Cmty. Dev., 658 So. 2d at 526 n.3 ("[T]he scope of review by common-law certiorari is traditionally limited and much narrower than the scope of review on appeal. That is, on appeal, all errors below may be corrected: jurisdictional, procedural, and substantive; and judgments below may be modified, reversed, remanded with directions, or affirmed.").

Accordingly, as the circuit court indisputably afforded due process and applied the correct recitation of law, consistently and faithfully adhering to basic, timeless principles of judicial restraint, we conclude that certiorari relief is improvident. See Amanda Peters, The Meaning, Measure, and Misuse of Standards

of Review, 13 Lewis & Clark L. Rev. 233, 235 (2009) ("When used properly, standards of review require appellate judges to exercise self-restraint and in so doing, act to create a more respected and consistent body of appellate law and a more efficient judicial system."); Pauline T. Kim, Lower Court Discretion, 82 N.Y.U. L. Rev. 383, 418 (2007) ("[R]eviewing courts [must] exercise self-restraint in the use of their . . . power."); see also Hous. Auth. of the City of Tampa v. Burton, 874 So. 2d 6, 9 (Fla. 2d DCA 2004) ("Unlike application of incorrect law, misapplication of correct law by a circuit court sitting in its appellate capacity generally does not constitute a violation of clearly established law resulting in a miscarriage of justice.") (citation omitted); Manatee Cty. v. City of Bradenton, 828 So. 2d 1083, 1084 (Fla. 2d DCA 2002) (As petitioner failed to demonstrate "that the circuit court applied the wrong law, but rather argued that it misapplied the correct law, the petition for writ of certiorari [was] denied.") (citation omitted); Save Brickell Ave., Inc. v. City of Miami, 393 So. 2d 1197, 1198 (Fla. 3d DCA 1981) ("[Petitioner] is an 'affected . . . citizen' which has standing to attack the enactment in question on the ground, which was asserted below, that it is void or invalid because the 'required notice was not given.'") (second alteration in original) (quoting Renard, 261 So. 2d at 838).

Petition denied.