Third District Court of Appeal

State of Florida

Opinion filed July 22, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1954
Lower Tribunal No. 18-21933

City of Miami Beach, Florida,
Appellant,

vs.

Natalie Nichols,
Appellee.

An appeal from a nonfinal order from the Circuit Court for Miami-Dade County, Michael A. Hanzman, Judge.

Raul Aguila, City Attorney, and Aleksandr Boksner, Chief Deputy City Attorney; and Carlton Fields, P.A., and Richard J. Ovelmen, Enrique D. Arana, Scott E. Byers, and Rachel A. Oostendorp; and Jean K. Olin, for appellant.

Van de Bogart Law P.A., and Joseph S. Van de Bogart (Fort Lauderdale); and Goldwater Institute, and Matthew R. Miller (Phoenix, AZ), for appellee.

Before FERNANDEZ, LINDSEY, and MILLER, JJ.

MILLER, J.

Appellant, the City of Miami Beach, challenges a nonfinal order granting injunctive relief in favor of appellee, Natalie Nichols. We have jurisdiction. See Fla. R. App. P. 9.130(a)(3)(B). The issue presented by the parties on appeal is whether the City, having created an alternate code enforcement system pursuant to the authority of section 162.03, Florida Statutes (2019), may lawfully levy fines against certain property code violators in excess of those authorized under the Local Government Code Enforcement Boards Act. See §§ 162.01-.13, Fla. Stat. Concluding the City is bound to impose fines within the statutorily prescribed limits, we affirm the reasoned decision under review.

PROCEDURAL HISTORY

In 2010, the City enacted Miami Beach Code section 142-1111 (the "Ordinance"), prohibiting short-term rentals of apartment units or townhomes in specified zoning districts located within its boundaries.[1] Property owners found in violation are subject to substantial mandatory fines, administered by special masters, under the City's "alternate code enforcement system." Miami Beach, Fla., Code § 30-2. The alternate code enforcement system was expressly adopted pursuant to the authority of Chapter 162, Florida Statutes. Id. ("The city creates, pursuant to F.S. ch. 162, an alternate code enforcement system.").

[1] The Ordinance further forbids certain advertising of the same.

Nichols, the owner of two properties purportedly subject to regulation by the Ordinance, filed suit below, alleging the Ordinance conflicted with the Local Government Code Enforcement Boards Act (the "Act") and asserting various constitutional challenges. Before reaching the constitutional issues, the lower tribunal found the Ordinance violated the Act and granted injunctive relief. The instant appeal ensued.

STANDARD OF REVIEW

"The interpretation of a statute is a purely legal matter and therefore subject to the de novo standard of review." Kephart v. Hadi, 932 So. 2d 1086, 1089 (Fla. 2006) (citations omitted).

LEGAL ANALYSIS

Chapter 162, Florida Statutes, "is divided into two parts, both of which authorize proceedings for code enforcement." Sarasota Cty. v. Nat'l City Bank of Cleveland, 902 So. 2d 233, 235 (Fla. 2d DCA 2005). Part I, entitled the "Local Government Code Enforcement Boards Act," allows a county or municipality to adopt an administrative code enforcement system. Id. at 233; see also § 162.03(2), Fla. Stat. Part II provides for supplemental methods of enforcement within the judicial system. § 162.21(8), Fla. Stat.

Under the Act, a city may enforce its code through an administrative process by designating either a code enforcement board or special master, or both, to preside

over enforcement proceedings. § 162.03(2), Fla. Stat. However, in this administrative setting, the amounts of fines that may be imposed are strictly limited by two statutory provisions.

The first, section 162.09(2)(a), Florida Statutes, establishes the following baseline fines for all cities:

> A fine imposed pursuant to this section shall not exceed $250 per day for a first violation and shall not exceed $500 per day for a repeat violation, and, in addition, may include all costs of repairs . . . However, if a code enforcement board finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed $5,000 per violation.

The second, section 162.09(2)(d), Florida Statutes, allows the more populous cities of our state to impose heightened fines:

> A county or a municipality having a population equal to or greater than 50,000 may adopt, by a vote of at least a majority plus one of the entire governing body of the county or municipality, an ordinance that gives code enforcement boards or special magistrates, or both, authority to impose fines in excess of the limits set forth in paragraph (a).

Even the enhanced fines, however, are capped. The fines "shall not exceed $1,000 per day per violation for the first violation, $5,000 per day per violation for a repeat violation, and up to $15,000 per violation if the code enforcement board or special magistrate finds the violation to be irreparable or irreversible in nature." § 162.09(2)(d), Fla. Stat.

The City adopted an alternate code enforcement system, as authorized by the Act. See Miami Beach, Fla., Code § 30-2; § 162.03(2), Fla. Stat. Nevertheless,

violators of the City's short-term rental Ordinance are subject to escalating mandatory administrative fines vastly exceeding the statutory caps. Indeed, the Ordinance prescribes penalties of $20,000.00 for the first offense, $40,000.00 for the second, $60,000.00 for the third, $80,000.00 for the fourth, and $100,000.00 for each subsequent offense. Miami Beach, Fla., Code § 142-1111(e)(1)(A)-(E).[2]

"Municipal ordinances are inferior in stature and subordinate to the laws of the state. Accordingly, an ordinance must not conflict with any controlling provision of a state statute." Rinzler v. Carson, 262 So. 2d 661, 668 (Fla. 1972). Hence, "[a] municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden." Id. (citations omitted).

Referencing two discrete passages within Chapter 162, however, the City contends it is authorized to "opt-out" of the fine schedule codified within the Act. The first, section 162.03(2), Florida Statutes, reflects the following:

> A . . . municipality may, by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances.

[2] The special master is expressly divested of any discretion to reduce or waive the applicable penalty. Miami Beach, Fla., Code § 142-1111(e).

The City argues that, by endorsing the adoption of alternate code enforcement systems under section 162.03(2), the legislature vested local governments with the right to adopt penalties exceeding the limits of those authorized in section 162.09(2). We respectfully disagree.

The cited provision is unambiguous. The sole function of our court "is to enforce the statute according to its terms." Dodd v. United States, 545 U.S. 353, 359, 125 S. Ct. 2478, 2483, 162 L. Ed. 2d 343 (2005) (citation omitted). Thus, our analysis "begins with 'the language of the statute[s],'" and because the "statutory language provides a clear answer, it ends there as well." Hughes Aircraft Co. v. Jacobson, 525 U.S. 432, 438, 119 S. Ct. 755, 760, 142 L. Ed. 2d 881 (1999) (citations omitted).

By its plain wording, section 162.03(2) merely authorizes the City to enact an ordinance implementing an alternative code enforcement system, differing from that set forth in detail in the Act. Although it permits the City, under the alternate system, to delegate the task of assessing an appropriate fine to a code enforcement board or special master, it does not authorize administrative monetary penalties in excess of the limits established within section 162.09(2).[3]

[3] Under section 162.09(2)(b), fines may be discretionarily imposed up to the statutory caps, and the administrative authority is charged with considering a variety of factors in assessing a proper fine.

Under our state constitution, "[n]o administrative agency . . . shall impose a sentence of imprisonment, nor shall it impose any other penalty except as provided by law." Art. 1, § 18, Fla. Const. "[T]he phrase 'as provided by law' means as passed 'by an act of the legislature.'" Holzendorf v. Bell, 606 So. 2d 645, 648 (Fla. 1st DCA 1992) (citation omitted).

Here, the administrative body derives its authority to impose fines from the Act. See Annabella Barboza, Code Liens Are Not "Superpriority" Liens: Is It the End of the Debate?, 87 Fla. Bar. J. 28, 28 (2013) ("The enactment of F.S. Ch. 162 responded to the need to implement an administrative enforcement proceeding allowing the imposition of administrative fines by local governments to satisfy the requirements of the Florida Constitution."). Chapter 162 prescribes a maximum fine schedule. Accordingly, even under the alternate enforcement system, the City must abide by the statutory caps.

The second provision the City relies upon, section 162.13, Florida Statutes, provides: "[i]t is the legislative intent of [sections] 162.01-162.12 to provide an additional or supplemental means of obtaining compliance with local codes. Nothing contained in [sections] 162.01-162.12 shall prohibit a local governing body from enforcing its codes by any other means."

This concise language lends itself to a single, readily ascertainable construction. A local government is permitted to enforce its ordinances through

means other than code enforcement boards or by invoking cumulative remedies. For instance, the governing body may pursue enforcement by way of civil action through the county court, or even criminal prosecution. See § 162.22, Fla. Stat.; Goodman v. Cty. Court in Broward Cty., 711 So. 2d 587, 589 (Fla. 4th DCA 1998) ("The creation of the code enforcement board and the assignment to it of the enforcement of housing code violations does not prohibit the City from bringing a charge in county court for a municipal code violation."). Further, relief may be sought through ancillary administrative methods, including interlocal agreement. See § 163.01, Fla. Stat.; Op. Att'y Gen. Fla. 2000-34 (2000) (A small municipality "may enter into an interlocal agreement to have the county code enforcement board enforce the town's codes as an alternate means of code enforcement pursuant to Chapter 162, Florida Statutes."). However, the language does not expand the fines available in the administrative context.

We decline to import an unpenned delegation of authority into the Act. Accordingly, in choosing to pursue administrative enforcement of its Ordinance, the City is dutybound to adhere to the statutorily prescribed caps on fines. Finding no merit in any of the remaining issues before us, we affirm.[4]

[4] "[T]he power of judicial review does not allow courts to revise statutes." Seila Law LLC v. Consumer Fin. Prot. Bureau, No. 19-7, at *29 (U.S. June 29, 2020) (Thomas, J., dissenting in part) (citation omitted). "Instead of determining the meaning of a statute's text, severability involves 'nebulous inquir[ies] into hypothetical [legislative] intent.'" Id. (quoting United States v. Booker, 543 U.S.

Affirmed.

220, 320 n.7, 125 S. Ct. 738, 799 n.7, 160 L. Ed. 2d 621 (2005) (Thomas, J., dissenting in part) (first alteration in original)). As Justice Gorsuch recently stated, "I am doubtful of our authority to rewrite the law in this way." Barr v. Am. Ass'n of Political Consultants, No. 19-631, at *22 (U.S. July 6, 2020) (Gorsuch, J., dissenting in part). Further, it is "hard to see how [the] use of [the] severability doctrine qualifies as a remedy at all: The plaintiff[] ha[s] not . . . sought to have [the fine schedule] severed and stricken." Id.