Third District Court of Appeal

State of Florida

Opinion filed October 21, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-1262
Lower Tribunal No. 08-861

Gloria Gall, etc.,
Petitioner,

vs.

Philip Morris USA Inc., et al.,
Respondents.

A Case of Original Jurisdiction – Prohibition.

Parafinczuk Wolf Susen, and Justin Parafinczuk, and Austin Carr (Fort Lauderdale); and Burlington & Rockenbach, P.A., and Bard D. Rockenbach (West Palm Beach), for petitioner.

Arnold & Porter LLP, and Geoffrey J. Michael (Washington, DC); and King & Spalding LLP, and Scott M. Edson (Washington, DC), and Chad Peterson (Atlanta, GA), for respondents.

Before LOGUE, MILLER, and LOBREE, JJ.

MILLER, J.

Petitioner, Gloria Gall, seeks a writ of prohibition disqualifying the trial judge from further presiding over her tort action against respondent, Philip Morris USA Inc. In furtherance of the same, Gall relies upon criticism expressed by the judge of certain punitive damages laws applicable to the resolution of her dispute. Concluding the quoted comments are not such "as would form a reasonable basis for [one] to fear that he [or she] would not receive a fair trial," we deny the petition. Eason v. Colbath, 586 So 2d 78, 78 (Fla. 4th DCA 1991) (citation omitted).

Principles of judicial restraint require courts to defer to the broad power of the legislative branch to enact substantive law, in conformity with our State and Federal Constitutions. Those same guiding propositions necessitate strict adherence by the lower tribunal to binding precedent, as established by higher court decisions. See Pardo v. State, 596 So. 2d 665, 666 (Fla. 1992) ("[I]n order to preserve stability and predictability in the law . . . trial courts [are] required to follow holdings of higher courts–District Courts of Appeal.") (citation omitted). Indeed, the prevalent statement that "the courts are not concerned with the wisdom of legislation but only with the legislative power to enact it," evinces the fact that judges are often called upon to—and do—uphold and enforce laws with which they might not be entirely in accord. State ex rel. Sagonias v. Bird, 67 So. 2d 678, 680 (Fla. 1953). Thus, although perhaps ill-advised to express the same, "the fact that a certain statute or

principle of law may run counter to the personal views of a judge does not mean that he [or she] is disqualified to try a case involving such law or principle." Id.

Here, the comments, in context, constitute a statement of philosophy, rather than a stated judicial policy. See State ex rel. Gerstein v. Stedman, 233 So. 2d 142, 144 (Fla. 3d DCA 1970), adopted by 238 So. 2d 615, 616 (Fla. 1970) ("[T]he remark complained of . . . appears more properly to be a statement of the judge's philosophical position rather than his personalized prejudice which would preclude a fair trial to the defendants involved."); Hayes v. State, 686 So. 2d 694, 696 (Fla. 4th DCA 1996) (granting prohibition where the trial court's "comment was more than a statement of personal philosophy"); Torres v. State, 697 So. 2d 175, 176 (Fla. 4th DCA 1997) ("[A]n allegation of 'personal' bias is a proper basis for disqualification; an allegation of 'judicial' bias is not.") (citation omitted). After uttering the offending comments, the trial court affirmatively acknowledged it was bound by the standards set forth in binding appellate decisions. See Torres, 697 So. 2d at 176 ("Significant to the determination [the comment constituted non-disqualifying judicial bias] was the trial judge's preface to his statement that explicitly committed him to the exercise of judicial discretion and the review of each case on its individual merits."). Under these circumstances, we conclude that Gall has failed to allege judicial bias, hence we decline to grant prohibition.

Petition denied.