

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
IN AND FOR THE FOURTH DISTRICT
P.O. BOX A, WEST PALM BEACH, FL 33402

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FILED
SID J. WHITE

JUL 25 1990

CERT. SUPREME COURT
Deputy Clerk

SCHOOL BOARD OF PALM BEACH,
COUNTY, FLORIDA,

DOCKET NO. 90-1892

Plaintiff,

vs.

JACKIE WINCHESTER,
Supervisor of Elections,

Appellee(s),

RECORDED
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CLERK
DISTRICT COURT OF APPEAL
4TH DISTRICT

On Appeal from the Fifteenth Judicial Circuit
in and for Palm Beach County, Florida

AMICUS CURIAE BRIEF
on behalf of the Chamber of Commerce
of the Palm Beaches, Inc.

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CLERK DISTRICT COURT OF APPEAL
FOURTH DISTRICT

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STATEMENT OF CASE

This action for declaratory relief was initiated by the SCHOOL BOARD OF PALM BEACH COUNTY ("SCHOOL BOARD"), and arose directly from the recent Florida Supreme Court case of Kane v. Robbins, 556 S0.2d 1381 (Fla. 1989).

In 1971, the Legislature passed an enabling act (the "1971 Act") which permitted Palm Beach County, following referendum approval, to conduct nonpartisan elections of the SCHOOL BOARD. Such a referendum was in fact passed, and SCHOOL BOARD members have been selected in nonpartisan electins since that time.

In the Kane decision, however, the Florida Supreme Court ruled that a similar, but different, statute concerning the Martin County School District was unconstitutional. The SCHOOL BOARD was uncertain as to the application of the Kane ruling upon "home rule" counties, such as Palm Beach, and, accordingly, filed the instant action for declaratory relief. JACKIE WINCHESTER ("WINCHESTER"), the Supervisor of Elections, essentially took no position in the proceedings.

The Chamber of Commerce of the Palm Beaches, Inc. ("Chamber") was subsequently granted leave to appear in the action as amicus curiae, file memoranda in support of the SCHOOL BOARD's position, and participate in oral argument. On July 12, 1990, the trial court struck down the nonpartisan elections of SCHOOL BOARD members as unconstitutional. The instant emergency appeal ensued.

ARGUMENT

- I. THE COURT HAS JURISDICTION UNDER RULE 9.030(b)(1) TO REVIEW THE TRIAL COURT'S ORDER OF JULY 12, 1990, AS AMENDED ON JULY 16, 1990, SINCE IT TOTALLY DISPOSES OF THE CASE.

Under Rule 9.030(b) of the Florida Rules of Appellate Procedure, this Court has jurisdiction to review, by appeal:

- (A) final orders by trial courts not directly reviewable by the Supreme Court or a circuit court[.]

For purposes of this Rule, an order of the circuit court is deemed "final" and subject to appellate review when it "totally disposes of the case as to a party or parties." Let's Help Florida v. DHS Films, Inc., 392 So.2d 915 (Fla. 3rd DCA 1980). The test to be applied by the appellate court is "whether the case is disposed of by the order and whether a question remains open for judicial determination" (Prime Orlando Properties, Inc. v. Department of Business Regulation, 502 So.2d 456, 459 [Fla. 1st DCA 1986]) or, alternatively, "whether the order appealed constitutes an end to the judicial labor in the trial court, and nothing further remains to be done to terminate the dispute between the parties directly affected." Miami-Dade Water and Sewer Authority v. Metropolitan Dade County, 469 So.2d 813, 814 (Fla. 3rd DCA 1985).

In the instant case, the trial court has fully and

finally disposed of the only issues in the case: (1) the constitutional validity of the legislative act enabling nonpartisan school board elections in Palm Beach County; (2) the status of the present school board members; and (3) the method in which future school board elections must be conducted. Indeed, short of a reservation of jurisdiction "to grant such supplemental relief as may be necessary" (Trial Court's July 12, 1990 Order on Plaintiff's Complaint for Declaratory Relief at 2), there is virtually nothing further for the trial court to consider, as the judicial labor has ended.

In any event, the reservation of jurisdiction changes neither the final nature of the trial court's ruling nor the appropriateness of appellate review:

When a decree which is otherwise final contains a clause purporting to reserve jurisdiction for the purpose of entering other orders that may be proper, this does not of itself destroy the finality of the decree.

Prime Orlando Prouerties, supra, at 459 (emphasis added).

11. THE TRIAL COURT ERRED IN NOT CONSIDERING THE ALTERNATIVE, NONCONSTITUTIONAL GROUNDS FOR GRANTING DECLARATORY RELIEF TO THE SCHOOL BOARD.

A. The KANE Decision

In the Kane v. Robbins, 556 So.2d 1381 (Fla. 1989) decision, the Board of the Republican Executive Committee of Martin County successfully challenged the constitutionality of a

1976 special act of the legislature ("1976 act") which provided for nonpartisan school board elections in the County. Specifically, the Florida Supreme Court held that 1976 act violated article 111, section 11(a)(1) of the state constitution which provides in part:

SECTION 11. Prohibited special laws.--

- (a) There shall be no special law or general law of local application pertaining to:
 - (1) election, jurisdiction or duties of officers, except officers of municipalities, chartered counties, ~~special districts or local governmental agencies.~~

(Emphasis added.)

The basis of the Kane decision, however, was narrow, as the 1976 act was decided on only two grounds: (i) that members of the school board were "officers" within the contemplation of article 111, Section 11(a); and (ii) that school boards did not fall under the "special district" exception. Because Martin County is not a "home-rule" county, the Florida Supreme Court was never called upon to consider whether school board members fall under the "chartered county" exception of article III, section 11(a).

B. The Instant Action

There are significant differences in this suit, independent of the charter county distinction, which were not present in the Kane case. The instant action does not ~~challenge~~

the constitutionality of the 1971 act. On the contrary, the SCHOOL BOARD has sought to defend the validity of that statute, and WINCHESTER has not opposed the effort. There is no controversy on the question, therefore, since all enactments of the state legislature are already presumed valid. Gulfstream Park Racing Association v. Department of Business Regulation, 441 So.2d 627, 629 (Fla. 1983). The standard for such a challenge, moreover, is the highest the law allows, as a statute will not be declared unconstitutional "unless it is determined to be invalid beyond a reasonable doubt." State v. Kinner, 398 So.2d 1360, 1363 (Fla. 1981) (emphasis added); accord, Bunnel v. State, 452 So.2d 808, 809 (Fla. 1985).

Another distinguishing factor this case has from the Kane decision is that all of the relief requested by the SCHOOL BOARD can be granted without reaching the constitutional question of whether school districts fall under the "charter county" exception of article III, section 11(a):

It is another basic rule of construction that courts should not pass upon the constitutionality of a statute if the case may be disposed of on other grounds.

Freedman v. State Board of Accountancy, 370 So.2d 1168, 1169-1170 (Fla. 4th DCA 1979), citing Singletary v. State, 322 So.2d 551 (Fla. 1975). The Florida Supreme Court lacked such an alternative in Kane, and accordingly, was forced to examine the constitutional questions.

C. Alternative Grounds For Relief

The essential components of the relief sought by the **SCHOOL BOARD** in this lawsuit could have been granted without reaching any constitutional issues. The **SCHOOL BOARD** requested only a declaration that:

- a. the 1971 act is valid;
- b. seven (7) incumbents are serving and holding positions on the **SCHOOL BOARD**;
- c. the election of the **SCHOOL BOARD** members were valid;
- d. the incumbents may serve as members of the **SCHOOL BOARD** until the terms expire; and
- e. future elections shall be conducted in the nonpartisan manner provided in the 1971 act and adopted by referendum.

In essence, the **SCHOOL BOARD** sought only reassurance that it could continue to function in its present form, with its present members, exercising its present authority, and utilizing its present election method. This relief the trial court could have granted without deciding if the 1971 act comports with article 111, section 11(a) of the state constitution.

Until such time as the 1971 act is formally challenged, it is deemed valid. Gulfstream Park Racing Association, supra. Should such a future challenge be made and fail, the concerns of the **SCHOOL BOARD** would, obviously, have been unfounded, as the election method of the **SCHOOL BOARD** would be validated. But what would be the effect on the **SCHOOL BOARD's** present actions if a future challenge to the 1971 act were successful?

The answer is found right in the Kane decision, where the

Florida Supreme Court, on Motion for Clarification, rejected as "unfounded" concerns as to the validity of the school board's actions in such circumstances:

Despite the unconstitutionality of [the 1976 act], the validity of the acts of those school board members duly elected in nonpartisan elections cannot be doubted. A de facto officer's acts are as valid and binding upon the public or upon third person as those of an officer de jure.

Kane, supra, at 1385 (emphasis added).

Hence, until such time as a constitutional challenge is successfully brought against the 1971 act, the validity of all of the SCHOOL BOARD's actions continue with the same force and effect as if the 1971 act were found to be valid. And what about the future actions of the SCHOOL BOARD if the 1971 act were later declared unconstitutional? Again, the answer is found in the Kane decision:

[T]he official acts of incumbent school board members shall continue to be valid until such time as new members are duly appointed.

Kane, supra, at 1385 (emphasis added).

Hence, the trial court could have declared, without reaching any constitutionality issue, that:

1. The special act pertaining to Palm Beach County is valid until such time as a constitutional challenge is actually made and ultimately successful.
2. The seven (7) incumbents are now properly serving and holding positions on the SCHOOL BOARD.
3. The previous election of the SCHOOL BOARD members was valid.

4. The incumbents may serve as members of the SCHOOL BOARD until the terms expire, or until they are replaced if a constitutional challenge is ever successfully made.
5. Future elections may be conducted in the nonpartisan manner provided in the 1971 act and adopted by referendum, at least until such time as a constitutional challenge is successfully made.

All of this relief could have been granted to the SCHOOL BOARD without reaching the question of whether or not the 1971 act falls outside the "charter county" exception, and therefore afoul of article 111, section 11(a) of the state constitution. The basis of the relief can be found in Florida Supreme court decisions, including the Kane holding itself, which have held that (i) all enactments of the state legislature are presumed valid; (ii) the authority of the school board members duly elected in nonpartisan elections cannot be doubted, even should the enabling legislation be later found unconstitutional; (iii) a de facto officer's actions are as binding as those of an officer de jure; and (iv) the official acts of incumbent school board members, even after a finding of unconstitutionality of the enabling legislation, shall continue to be valid until such time as new members are appointed.


111. THE TRIAL COURT HAD A DUTY TO AVOID THE CONSTITUTIONAL ISSUE WHERE ALTERNATIVE, NONCONSTITUTIONAL GROUNDS SUPPORTED THE REQUEST FOR DECLARATORY RELIEF.

As a general proposition, "courts endeavor to preserve

statutes and to avoid constitutional issues." State, ex rel. City of Casselberry v. Maaer, 356 So.2d 267, 269 n.6 (Fla. 1978), citing Chiapetta v. Jordan, 16 So.2d 641 (Fla. 1944). Hence, the "fundamental" and "settled" principle of statutory interpretation has emerged that courts should not pass upon the constitutionality of statutes if the case in which the question arises may be effectively disposed of on other grounds. Singletary v. State, 322 So.2d 551, 552 (Fla. 1975); McKibben v. Mallory, 293 So.2d 48, 51 (Fla. 1974).

Indeed, the trial court had the duty to avoid the constitutional issue if the case can be disposed of on other grounds. Victor v. State, 174 So.2d 544, 545 (Fla. 1965). The Kane decision provides such other grounds, as all of the relief which the SCHOOL BOARD could have been effectively granted without reaching any constitutional issue.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Amicus Curiae Brief of the Chamber of Commerce of the Palm Beaches, Inc. has been served on Abbey G. Hairston, Esquire, School Board of Palm Beach County, Florida, 3970 RCA Boulevard, Suite 7010, Palm Beach Gardens, Florida 33410 and Denise Distel, Esquire, Assistant County Attorney, 301 North Olive Avenue, Suite 601, West Palm Beach, Florida 33401, by hand deliver this 18th day of July, 1990.

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