IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CASE NO. 4D12-4325

SHERYL STECKLER, in her Official capacity as Inspector General of Palm Beach County, Florida,

Appellant,

vs.

TOWN OF GULF STREAM, VILLAGE OF TEQUESTA, CITY OF RIVIERA BEACH, TOWN OF JUPITER, CITY OF DELRAY BEACH, TOWN OF PALM BEACH SHORES, TOWN OF MANALAPAN, TOWN OF MAGNONIA PARK, CITY OF PALM BEACH GARDENS, TOWN OF HIGHLAND BEACH, TOWN OF LAKE PARK, CITY OF WEST PALM BEACH, TOWN OF OCEAN RIDGE, CITY OF BOCA RATON, municipal Corporations of the State of Florida,

Appellees/Plaintiffs,

PALM BEACH COUNTY, a political subdivision,

Appellee/Defendant, and

SHARON R. BOCK, in her Official capacity as the Clerk & Comptroller of Palm Beach County, Florida,

Appellee/Intervenor.

Inspector General's Motion for Rehearing or Clarification

SHERYL STECKLER, in her official capacity as Inspector GENERAL OF PALM BEACH COUNTY (the IG), pursuant to Rule 9.330, Florida Rules of Appellate Procedure, moves this Honorable Court

for rehearing or for clarification and respectfully requests a written opinion, and states:

Background

1. On March 28, 2013, this Court issued an Order affirming, per curiam and without opinion, an order of the circuit court which had denied the IG's Motion to Intervene in a case in which the subject is the mandatory requirements in the County Charter and IG Ordinance pertaining to the IG's funding.

2. Neither the circuit court order denying intervention, nor this Court's PCA affirmance of that decision, provided any explanation.

3. Arguments advanced for denying the IG's right to intervene in the case included:

a. That the IG lacks "the capacity to sue," which this Court has defined as "an absence of legal disability which would deprive a party of the right to come into court." *Keehn v. Mackey*, 420 So. 2d 398, 400 (Fla. 4th DCA 1982).

b. That the IG lacks standing to be a party to the case challenging provisions in the County Charter and the County's IG Ordinance which establish her minimum funding, and the procedures for providing the IG additional or supplemental funding in any year. In *Keehn v. Mackey*, id., this Court explained standing as "sufficient interest in

the outcome of litigation to warrant the court's consideration of its position."

c. That, even if the IG has both the capacity to sue and standing, and even if the case places the IG's material interests directly at risk so that the IG would be a "necessary" or "essential" party, the circuit court still had discretion to deny the IG's Motion to Intervene because the IG, along with her Motion to Intervene, had requested that the circuit court allow her to file pleadings that the IG's opponents claimed was an attempt to inject "new and complex" issues into the case.

Rehearing

4. This is a case of first impression. Palm Beach County appears to be the first in Florida where the citizens voted to require, in their Charter, an independent inspector general to conduct "independent oversight" of their local governmental operations. The Appellee BOCC, having presented to the voters the question of whether the county should have "an independent inspector general" (ballot question) with the responsibility to provide "independent oversight of" local government operations (resulting charter provision); and having adopted an Ordinance which provides the inspector general the right to "exercise any of the powers contained in this article upon his or her own

initiative," require the production of records and testimony, issue subpoenas, and enforce those subpoenas in court, has now opted to dispute the legality of the entire scheme.

The IG respectfully submits that, in its decision, this Honorable Court has overlooked or misapprehended the full impact of Art. I §9, Fla. Const. (Due Process) and Art. VIII §1(g), Fla. Const. (Home Rule), which mandate that the IG's Motion to Intervene be granted and that the Order of the circuit court be reversed.

Clarification

The trial court opted to deny the IG's motion to intervene without explanation. This Court's per curiam affirmance of that Order, also without explanation, has the effect of denying the IG of the right to request a review by the Florida Supreme Court.

I express a belief, based upon a reasoned and studied professional judgment, that a written opinion will provide a legitimate basis for Supreme Court review because:

a. The IG asserts that her right to due process of law under Art. I §9, Fla. Const. mandates that her Motion to Intervene be granted. The IG also submits that any argument relied on by this Court for its decision to the contrary (capacity, standing, or a request to insert "new and complex" issues), if explained in writing, is likely to be within the

Supreme Court's jurisdiction for discretionary review of decisions which "expressly construe a provision of the state . . . constitution." Fla. R. App. P. 9.120(2)(A)(ii).

b. The IG asserted that, as an adult natural person who is not even alleged to have a legal disability, she has the capacity to sue ("the right to come into court" *Keehn v. Mackey*, supra). If this Honorable Court has decided to the contrary, its written opinion setting out its rationale and explaining why the IG's right to due process of law under Art. I §9, Fla. Const. does not require the opposite result is likely to be within the Supreme Court's jurisdiction for discretionary review of decisions which "expressly construe a provision of the state . . . constitution." Fla. R. App. P. 9.120(2)(A)(ii). Moreover, because there is no precedent for such a ruling, the matter is likely to be of interest to the Supreme Court.

c. The IG asserted that she has standing to be a party to a case challenging Charter and Ordinance provisions which establish her minimum funding and the procedures for providing additional or supplemental funding in any year. The IG also asserted that she is a "necessary party" because, as to each of the claims in the complaint, she stands to be materially impacted, and as to some of the claims she would be the only party financially impacted.

This is required by the right to due process of law under Art. I §9, Fla. Const.

The IG further asserted that under applicable Florida Supreme Court case law, including *Everette v. Fla. Dept of Children and Families*, 961 So. 2d 270, 273 (Fla. 2007), "Necessary parties must be made parties in a legal action."

The IG also asserted that under another line of Florida Supreme Court cases (including *Santa Rosa County v. Admin. Commission*, 661 So. 2d 1190, 1192-1193 (Fla. 1995)), it is not even within the constitutional powers of a circuit court to rule in a declaratory judgment action unless there are "antagonistic" interests actually before the court, and unless all "antagonistic" interests are before the court.

If this Honorable Court has decided to the contrary, its written opinion setting out its rationale is likely to be within the Supreme Court's jurisdiction for discretionary review of: decisions which "expressly construe a provision of the state . . . constitution" (Fla. R. App. P. 9.120(2)(A)(ii)) and of decisions which "expressly and directly conflict with a decision of . . . the supreme court on the same question of law" (Fla. R. App. P. 9.120(2)(A)(iv)). Any opinion of such significance is likely to be of interest to the Supreme Court.

The Appellee Board of County Commissioners (BOCC) has argued that there is no legal authority for any party besides the BOCC to ever have standing to defend any county charter or ordinance provision, and that Charter and Ordinance provisions which would place another party in a position to have standing must be illegal. They provided no case law to support this assertion. In response, the IG argued that it was the citizens of Palm Beach County who mandated the establishment of an IG with sufficient independence to perform the duties set out in the Charter and Ordinance in the manner provided in those laws, and that was well within their authority under Art. VIII §1(g), Fla. Const. (Home Rule). If this Honorable Court has decided to the contrary, its written opinion setting out its rationale is likely to be within the Supreme Court's jurisdiction for discretionary review of: decisions which "expressly construe a provision of the state . . . constitution." Fla. R. App. P. 9.120(2)(A)(ii). Because this issue would be both precedential and of statewide significance, it is likely to be of interest to the Supreme Court.

e. The IG's opponents argued that, even if the IG has capacity to sue and is a "necessary party" to the circuit court proceedings, the trial court had discretion to deny

the IG's motion to intervene because the IG requested permission to file pleadings that her opponents claimed was an attempt to inject "new and complex" issues. In response, the IG maintains that the pleadings which she requested permission to file were merely pleadings that any properly named defendant could have filed without objection. The IG also maintained that, even if she had requested permission to introduce issues that were "new and complex," the denial of a "necessary party's intervention for that reason would be without precedent and would violate the IG's right to due process of law under Art. I §9, Fla. Const.

If this Honorable Court has decided to the contrary, its written opinion setting out its rationale is likely to be within the Supreme Court's jurisdiction for discretionary review of decisions which "expressly construe a provision of the state . . . constitution." Fla. R. App. P. 9.120(2)(A)(ii). Because such an opinion would directly impact due process rights of intervenors in the future, and would be without precedent, it is likely to be of interest to the Supreme Court.

Further, it is requested that this Honorable Court explain in its opinion whether and how such a result can be reconciled with:

1) The Florida Supreme Court's ruling in *Everette v. Fla. Dept of Children and Families*, 961 So. 2d 270, 273 (Fla. 2007) that "Necessary parties must be made parties in a legal action," and

2) The Supreme Court's explanation of the required procedure for considering motions to intervene as explained *Union Cent. Life Ins. Co. v. Carlisle*, 593 So. 2d 505, 507 (Fla. 1992), which the Clerk in her own motion to intervene summarized premise:

> "The intervention standard involves a two step analysis: the court must determine the interest is appropriate to support intervention, and (2) the court must determine the parameters of intervention." (R-90)

If this Honorable Court's decision on this issue cannot be reconciled with these rulings, the written opinion may be within the Supreme Court's jurisdiction for discretionary review of decisions which "expressly and directly conflict with a decision of . . . the supreme court on the same question of law." Fla. R. App. P. 9.120(2)(A)(iv).

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WHEREFORE, the Inspector General respectfully requests that this Honorable Court grant a rehearing in this matter or issue a written opinion setting out the reasons for its decision.

Respectfully submitted this 11th day of April, 2013,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Inspector General's Motion for Rehearing or Clarification has been provided by email this 11th day of April, 2013, to those on the attached service list.

CERTIFICATE OF E-FILING

I HEREBY CERTIFY that a copy of the foregoing Inspector General's Motion for Rehearing or Clarification has been e-filed this 11th day of April, 2013, pursuant to the requirements of Administrative Order No. 2011-1.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this Inspector General's Motion for Rehearing or Clarification is Courier New 12-point font, in compliance with Fla. R. App. P. 9.210(a)(2).

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