

ENVIRONMENT

Environment: Water Rights

Marion County v. Greene,
5 So. 3d 775 (Fla. 5th Dist. App. 2009)

In determining whether to grant an application for a consumptive use permit (CUP), water management districts (districts) are not required to consider whether an applicant has complied with local government ordinances regulating water use.

FACTS AND PROCEDURAL HISTORY

C. Ray Greene (Greene) submitted an application for a CUP with the St. John's River Water Management District (District). Greene requested a CUP in order to extract groundwater from an existing well to use for bottling and distribution as drinking water. Marion County (County) objected to the District's approval of Greene's CUP application, arguing that it would be inconsistent with the public interest. Thereafter, the District published a notice of intent to issue Greene a CUP. In response, the County filed a petition for an administrative hearing.

At the administrative hearing, expert witnesses for Greene testified that his proposed use did not conflict with the criteria in the CUP statutes. Expert witnesses for the County testified that under the County Land Development Code, Greene needed a special use permit (SUP) in order to bottle water, and the County had not issued a SUP to Greene. The Administrative Law Judge (ALJ) concluded Greene's application should be approved and rendered a recommended order to the District. The District approved the order, and the County appealed. The Fifth District Court of Appeal affirmed. The court held that in determining whether to issue a CUP, the District was not required to consider whether Greene obtained a SUP from the County.

ANALYSIS

To obtain a CUP, Florida Statutes Section 373.223(1) requires an applicant to establish the following three prongs: the proposed water use is a reasonable beneficial use; it will not interfere with any presently existing legal uses of water; and it is con-

sistent with the public interest. The County argued that the District could not grant Greene a CUP to bottle water because bottling water required a SUP under the County's Land Development Code, and the County had not issued a SUP to Greene. The Fifth District disagreed, relying on Florida Statutes Section 373.217(3), which provides that for purposes of water-use regulations, a district's authority supersedes a conflicting county ordinance. The court noted that neither Florida Statutes Section 373.217(3) nor the Florida Administrative Code rules that the District adopted required the District to comply with a local government's plan or regulations. Accordingly, the court agreed with the ALJ's finding that a "[d]istrict does not consider whether local government approvals have been obtained prior to issuance of a CUP for purposes of determining whether the application is consistent with the public interest." *Marion Co.*, 5 So. 3d at 779. Thus, the court affirmed the ALJ's decision recommending that the District issue a CUP to Greene.

SIGNIFICANCE

Marion County declares that in determining whether to grant a CUP application, water management districts are not required to consider whether an applicant has complied with local government ordinances regulating water use.

RESEARCH REFERENCE

- 56 Fla. Jur. 2d *Water* § 56 (2008).

Matthew Kahn