

HOME RULE

Home Rule: State Supremacy

Pleasure II Adult Video, Inc. v. City of Sarasota,
833 So. 2d 185 (Fla. 2d Dist. App. 2002)

The Florida Legislature, and not a municipality, possesses the authority to grant certiorari jurisdiction to circuit courts.

FACTS AND PROCEDURAL HISTORY

The City of Sarasota enacted Ordinance 97-4015 to regulate adult entertainment within its jurisdiction. In accordance with Ordinance 97-4015, Pleasure II Adult Videos, Inc., and North Street News (collectively, the Stores) applied for permits to operate adult-entertainment stores in Sarasota. The Department of Building, Zoning, and Code Enforcement denied the Stores' applications.

Pursuant to Ordinance 97-4015, the Stores petitioned the circuit court for a writ of certiorari to reconsider the permit denial. The circuit court denied the Stores' petition, and the Stores then petitioned the Second District Court of Appeal for a writ of certiorari to quash the lower court's ruling. Before the Second District considered the motion, Sarasota and the Stores reached an agreement. Subsequently, both Sarasota and the Stores filed for a stipulation of dismissal. Even though the Second District recognized that the parties' stipulation rendered its opinion moot, the court found that the issue presented "a matter of great importance and of general public interest that will probably reoccur," and addressed the issue nevertheless. *Pleasure II Adult Video, Inc.*, 833 So. 2d at 186.

ANALYSIS

In deciding *Pleasure II Adult Video, Inc.*, the Second District questioned whether Sarasota's Ordinance could properly "confer certiorari jurisdiction on a circuit court to review the [C]ity's executive decisions." *Id.* at 189-190. Accordingly, the court addressed many reasons why certiorari jurisdiction did not exist in the instant case.

First, the court examined Florida Statutes Sections 26.012(1) and 162.02. Under these Sections, the court determined that a circuit court possessed jurisdiction over “appeals from final administrative orders of local government *code enforcement boards*.” *Id.* at 187 (quoting Fla. Stat. § 26.012(1) (1997)) (emphasis in original). Also, the court found that government code-enforcement boards could impose fines and noncriminal sanctions to enforce codes and ordinances. The court found that the Stores did not seek review based upon an ordinance violation, but instead challenged the City’s refusal to issue a permit. Accordingly, the court found that, pursuant to Sections 26.012(1) and 162.02, the circuit court’s certiorari jurisdiction was not implicated.

Second, the court addressed whether the Florida Constitution permitted statutes governing municipal authority to confer certiorari jurisdiction. Florida Statutes Chapter 176 provides that municipal authorities could regulate buildings and could appoint a board to conduct appeals. That Chapter also provides that an aggrieved party may petition a circuit court for a writ of certiorari. The court then stated that Chapter 166 repealed Chapter 176, but it did so only to the extent that cities’ powers were not abridged.

However, the court found nothing in the language of either Chapter that gave a municipality the authority to confer certiorari jurisdiction. Instead, the court found that only the Legislature had such authority. The court further noted that a municipality’s powers are constrained by constitutional and statutory limitations.

The Florida Constitution specifically “provides that the circuit court shall have jurisdiction of appeals when provided by general law.” *Id.* at 188 (quoting Fla. Const. art. V, § 5(b) (internal quotations omitted)). The court found that “general law” meant an action of the Legislature distinct from a “special law.” *Id.* at 189. Accordingly, the Florida Constitution prohibits municipalities from conferring certiorari jurisdiction by placing that authority solely with the Legislature through enactment of “general law.” Therefore, the court held that a municipality may not confer certiorari jurisdiction.

Finally, the court noted that “no hearing was held,” and without a hearing, a circuit court could not “determine whether the decision [of Sarasota to deny the Stores’ permits] was based on substantial, competent evidence.” *Id.* Therefore, the circuit court had “nothing . . . to review.” *Id.*

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SIGNIFICANCE

Although the court's decision was moot as to the parties involved, *Pleasure II Adult Video, Inc.*, is significant because it clarified that, under Florida constitutional law, the Florida Legislature, and not a municipality, has sole authority to confer certiorari jurisdiction upon a circuit court.

RESEARCH REFERENCES

- 12A Fla. Jur. 2d *Courts and Judges* § 147 (1998 & Supp. 2003).
- Eugene McQuillin, *The Law of Municipal Corporations* vol. 6A, § 24.123.20 (Gail A. O'Gradney & Julie A. Rozwadowski eds., 3d rev. ed., CBC 1997 & Supp. 2003).

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