STATE PREEMPTION

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***GLA & Associates, Inc. v. City of Boca Raton*,**
855 So. 2d 278 (Fla. 4th Dist. App. 2003)

Collateral estoppel prevents parties in privity from relitigating previously adjudicated issues. Implied preemption does not exist where Florida Statutes provide that state law may not contravene a municipal ordinance.

FACTS AND PROCEDURAL HISTORY

GLA and Associates, Inc., was to construct two walkways and lower the height of a sand dune on some property. GLA applied to the Florida Department of Environmental Protection (DEP) for a permit to construct on the seward side of the State coastal control line. The DEP granted GLA a permit on the condition that GLA "obtain any applicable license or permits which may be required by federal, state, county, or municipal law." *GLA and Assocs., Inc.*, 855 So. 2d at 280 (emphasis added). However, this property was also lcoated within the City of Boca Raton.

Subsequently, GLA began construction without seeking further approval from the City. As GLA began contouring the sand dune to a lower level, the City cited GLA for violating its city ordinance, Boca Raton, Florida, Code of Ordinances Section 28-1556(3). That Section provided, *inter alia*, that no person may construct a structure or excavate the soil of the CCL.

GLA responded by applying to the City for approval of the project and retained the right to challenge the City ordinance. The City denied GLA's request for approval, and GLA filed suit. GLA claimed that Florida Statutes Chapter 161 preempted the City ordinance. GLA also asserted that the City ordinance "included no standards to guide the City in granting variances to the setback." *Id.* at 281.

The circuit court found in favor of the City, holding that GLA was collaterally estopped from litigation because its predecessor in title, Booties, Inc., had lost similar litigation asserting that Section 28-1556 was preempted by Florida Statutes Chapter 161. Further, the court found that the City Code "provided sufficient

criteria for the consideration of variance applications requested under [S]ection 28-1556 to pass constitutional muster." *Id.*

GLA appealed the circuit court's holding to the Fourth District Court of Appeal. The DEP filed an amicus brief with the court in support of the City and the position that Florida law did not preempt it's ordinance. The Fourth District issued an opinion and denied motions for rehearing. Subsequently, the court withdrew its previous opinion and substituted this opinion affirming the circuit court's holding.

ANALYSIS

The Fourth District Court of Appeal first addressed the issue of collateral estoppel. The court found that collateral estoppel "Prevents identical parties from relitigating the same issues that have already been decided." *Id*. (quoting *Dept. of Health & Rehab. Servs. v. B.J.M.*, 656 So. 2d 906, 910 (Fla. 1995)). The court also found that GLA was in privity with Booties, and that Booties had unsuccessfully litigated "identical issues" questioning whether State law preempted Section 28-1556. *Id*. at 282. Accordingly, the Fourth District held that GLA was collaterally estopped from relitigating the resolved issue of whether State law preempted Section 28-1556.

Further, the Fourth District noted that, even if collateral estoppel did not apply, GLA could argue only implied preemption. The court found that Florida Statues Section 161.053(5)(b) prevented the DEP from contravening certain municipal ordinances that were more strict in limiting CCL development. Further, the DEP's amicus brief supported this conclusion. The court also distinguished precedent and found no caselaw supporting the position that the City ordinance preempted State law.

SIGNIFICANCE

In *GLA*, the Fourth District determined that the doctrine of collateral estoppel prevents successor parties from relitigating issues raised by a party in privity when the issues have been previously adjudicated. The court also found that implied preemption does not exist when a statute provides that State law may not contravene municipal ordinances. Finally, the Fourth District looked to the City's entire ordinance chapter to find criteria by which to consider variance applications when the applicable sec-

tion expressly permits the use of criteria found within the chapter.

RESEARCH REFERENCES

- 32A Fla. Jur 2d *Judgment and Decrees* § 185 (2003).
- Eugene McQuillin, *The Law of Municipal Corporations* vol. 4.13 (Dennis Jensen & Gail A. O'Gradney eds., 3d rev. ed., CBC 1996 & Supp. 2003).

Jason M. Bard