IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

WILLIAM F. HORD, JONATHAN BUSH & JOHN LEE,

Petitioners,

v.

LARRY ASHLEY, individually and in his Official capacity as SHERIFF OF OKALOOSA COUNTY & WESTERN SURETY COMPANY, as surety of Larry Ashley, in his official capacity as SHERIFF OF OKALOOSA COUNTY,

Respondents.

Case No. 1D19-0561

L.T. Case No.: 2018-CA-003509 F

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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The Personnel Standards and Review Board for the Okaloosa County Sheriff's Department ("the Board") no longer exists. The legislature made a policy decision in 2011 to repeal the Special Act creating the Board and did not include a savings provision in the repeal. Despite this, the Sheriff argues in response to the petition that the circuit court could, in effect, recreate the now-defunct board out of whole cloth and grant it the very powers that the legislature saw fit to take away. Because no Florida law supports the circuit court's unprecedented action—which defies common sense and basic notions of constitutional law—the petition should be granted.

The Sheriff's response raises essentially three arguments in his efforts to defend the trial court's actions: (1) that the Petitioners requested review by the Board in their complaints; (2) that the trial court's decision to resurrect the Board fell within its authority to grant "supplemental relief" under the Declaratory Judgment Act; and (3) that no binding precedent precludes the actions taken by the circuit court. These arguments provide no valid justification for the trial court's order.

I. Petitioners withdrew their request for Board review once the Special Act creating the Board was repealed

The Sheriff first notes that the Petitioners demanded a hearing before the Board in their original and amended complaints, so "Petitioners were provided what they asked for." *Response at 1*. The record demonstrates otherwise.

While it is true that Petitioners demanded a hearing before the Board in their original and amended complaints, they did so because they filed their pleadings *before* repeal of the Special Act. Indeed, the Amended Complaint, which was served June 24, 2011 (ironically, the same day the Governor signed the bill repealing the Special Act), specifically alleged that the Special Act "was in force at all times material to this action, at the time of filing of this lawsuit and at the time of this Amended Complaint" and further alleged that the repeal would not take effect "until at least July 2, 2011." *App. 24*. Thus, Petitioners requested a hearing before the Board in their pleadings because, at the time of the pleadings, that was the *only* procedure available to them by law. And even under the Amended Complaint, there remained a window of time (albeit brief) for the Board to conduct a hearing.

Once the repeal took effect on July 2, 2011, however, that procedure was no longer a legally available remedy, and Petitioners never again requested it. To the contrary, because the Board no longer existed, Petitioners objected the first time

that the Sheriff asked the Court to reconstitute the Board after the repeal and continued to object at every step in the process. *E.g.*, *App. 19-21, 31-33*.

II. The trial court's discretionary powers under the Declaratory Judgment Act do not permit it to ignore the legislature's repeal of the Special Act

The crux of the Sheriff's argument is that the circuit court's order fell within "the substantial authority provided to the circuit court in the declaratory judgment to address Petitioners' procedural due process rights and to provide 'necessary and proper' supplemental relief." *Response at 10*. They argue that circuit courts are empowered to grant broad "supplemental relief" in a declaratory judgment action, and suggest that the "reconstitution of the Board fell within the court's authority to grant declaratory relief." *Response at 1*.

The problem with the Sheriff's argument is that it ignores the limitations imposed by the legislature on a circuit court's authority to grant supplemental relief. Under the Declaratory Judgment Act, a request for supplemental relief "shall be by motion to the court *having jurisdiction to grant relief*." § 86.061, Fla. Stat. (emphasis added). Not surprisingly, therefore, a trial court can only grant supplemental relief within its jurisdiction. Thus, the Sheriff's argument begs, rather than answers, the question.

Tellingly, the Sheriff does not cite a single case from anywhere in the country holding that a trial court possessed jurisdiction to recreate an administrative body and process that the legislature has seen fit to repeal. The lack

of authority is not surprising since it has been established law for more than 150 years that a statute, once repealed, is a nullity. *See Cnty. of Seminole v. City of Lake Mary*, 347 So. 2d 674, 675 (Fla. 4th DCA 1977) ("[s]ince Section 120.31 has been repealed, it is a nullity"); *see also Ex Parte McCardle*, 74 U.S. 506, 514 (1868) ("the general rule ... [has been] that when an act of the legislature is repealed, it must be considered, except as to transactions past and closed, as if it never existed") (quotations omitted).

The primary case relied upon by the Sheriff, *Metro. Dade Cnty. v. Sokolowski*, 439 So. 2d 932 (Fla. 3d DCA 1983), does nothing to advance his argument. The district court in *Sokolowski* (correctly) concluded that police officers who had been suspended or demoted had a property interest in their public employment and, thus, had a due process right to a prompt hearing as provided for by Code of Metropolitan Dade County. *Id*. at 934. The distinction between the facts here and in *Sokolowski*, of course, is that the appeals process in *Sokolowski* that the officers demanded—and the district court ordered—*still existed*. The remedy ordered by the trial court here had been abolished years earlier by the legislature—ironically, at the Sheriff's own request.

In short, the legislature made a policy decision in 2011 to repeal the administrative remedies provided by the Special Act. Prior to its repeal, the Sheriff could—and, under the plain language of the Special Act, should—have provided

the Petitioners with the hearing they requested. Failing that, the circuit court could have required it. But once the legislature repealed the Special Act, the procedures provided by the Special Act no longer existed, and the circuit court had no authority to second guess the legislature's decision to abolish them. Put simply, a trial court cannot use its equitable powers to act contrary to law.

III. The trial court's order is contrary to controlling Florida law

The Sheriff's final suggestion—that the trial court's order did not violate any clearly established Florida law—is demonstrably wrong. As noted in the petition and argued above, Florida law is crystal clear that, once legislation is repealed without a savings provision, it ceases to exist and cannot be enforced, even under the trial court's equitable powers. Indeed, that has been the law in Florida for more than a century. *See Pensacola A.R. Co. v. State*, 33 So. 985, 986 (Fla. 1903) (holding that "the effect of a repealing statute is to obliterate the statute repealed as completely as if it had never been enacted, except for the purpose of those actions or suits which were commenced, prosecuted, *and concluded* whilst it was an existing law." (emphasis added)).

Curiously, the Sheriff suggests in its response that the most obvious controlling authority—this Court's decision in *Fla. Beverage Corp. v. Div. of Alcoholic Beverages & Tobacco*, 503 So. 2d 396, 399 (Fla. 1st DCA 1987)—supports its argument that the trial court possessed authority to order the parties to

undergo an administrative procedure required by a repealed statute. It does not. This Court in *Florida Beverage* expressly held that "with the repeal of the statute, the administrative mechanism for the resolution of the parties' rights is no longer available." *Id*. at 399. Instead, this Court noted—precisely as Petitioners argued here—that the exclusive remedy following repeal of the statute lay with the courts. *See id*. In short, *Florida Beverage* stands for the proposition that, following repeal of a statute, vested rights created under the statute survive—such as, in this case, the right to be terminated only for cause—but the administrative remedy to enforce the rights does not. *See id*.

While *Florida Beverage* by itself provides controlling authority, it is far from the only Florida case holding that an administrative body may not act once its jurisdiction has been removed by the legislature. For example, in *Gewant v. Fla. Real Estate Comm'n*, 166 So. 2d 230 (Fla. 3d DCA 1964), the Third District granted a petition for writ of certiorari and quashed an order by the Florida Real Estate Commission finding the petitioner guilty of violating the rules concerning advertising and promotional materials. The petitioner argued, and the Third District agreed, that the legislature had passed legislation during the proceedings repealing the statute providing the Commission with jurisdiction over the alleged violations. *See id*. at 233. The Third District noted that, "while the violation charged may have been at all times forbidden by the law, the effect of the repeal of

§ 475.51, Fla. Stat., was to put an end to the authority of the Florida Real Estate Commission to punish for such violations." *Id.*; *see also Blanchard v. City of Pensacola*, 433 So. 2d 610, 611 (Fla. 1st DCA 1983) ("[T]he circuit court was correct, in the judgment now here for review, in holding that Blanchard's right of review did not survive the repeal of the special act creating that remedy"); *cf. Gulf Am. Corp. v. Fla. Land Sales Bd.*, 206 So. 2d 457, 462 (Fla. 2d DCA 1968) (quashing order of Florida Land Sales Board because the Board "had no power to act under the provisions of the statute where the acts of Gulf American Corporation took place before" the effective date of the statute creating the Board).

Here, the circuit court's order upheld the findings of a Board that had no power to act because the legislature had abolished it. And because the legislature saw fit to eliminate the Board, the circuit court lacked the authority to circumvent the legislature and resurrect the Board under the guise of its equitable powers. Thus, the circuit court's order departed from the essential requirements of law.

CONCLUSION

For the foregoing reasons, as well as those stated in the petition, the Court should grant the petition and issue a writ of certiorari quashing the circuit court's order and holding that the circuit court erred by recreating the Board and deferring to the Board's findings of fact.

Respectfully submitted:

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CERTIFICATE OF COMPLYING WITH FONT REQUIREMENTS

I HEREBY CERTIFY that the foregoing has been prepared in Times New Roman 14-point font as required by the Florida Rules of Appellate Procedure.

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I HEREBY CERTIFY a copy of the foregoing Reply was furnished by electronic delivery on this 31st day of May, 2019, to:

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