

DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

Superior Fence & Rail of North Florida, Inc. v. Lucas

35 So. 3d 104 (Fla. 5th DCA 2010) · No. 5D09-4213 · Decided May 14, 2010

SUMMARY

The Fifth District Court of Appeal of Florida affirmed the denial of Superior Fence & Rail of North Florida, Inc. and Christopher Johnson's motion to intervene in a landlord-tenant dispute. The court held that denial of a motion to intervene is reviewable by plenary appeal, not certiorari, and receded from contrary prior decisions.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fifth District
WRITING FOR THE COURT	Per Curiam; Monaco, C.J.; Griffin, J.; Sawaya, J.; Palmer, J.; Orfinger, J.; Torpy, J.; Lawson, J.; Evander, J.; Cohen, J.; Jacobus, J.
JURISDICTION	Florida
DECIDED	May 14, 2010
DOCKET	5D09-4213
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioners sought certiorari review of an order denying their motion to intervene in a landlord-tenant dispute. The court treated the petition as a direct appeal of a final order and affirmed.
STANDARD OF REVIEW	The allowance of intervention is reviewed for abuse of discretion. The order denying intervention is reviewable by plenary appeal.
PRECEDENTIAL VALUE	Published, en banc decision of the Florida Fifth District Court of Appeal; precedential within the court's jurisdiction.
PARTIES	Superior Fence & Rail of North Florida, Inc., Christopher Johnson v. James O. Lucas, III, Dorothea Y. Lucas

TOPICS

- intervention
- appellate jurisdiction
- writ of certiorari
- appellate procedure
- landlord tenant

PRACTICE AREAS

- civil procedure
- appellate procedure
- landlord-tenant law

QUESTIONS PRESENTED

1. Whether the denial of a motion to intervene is reviewable by certiorari or by plenary appeal.
2. Whether Superior Fence and Christopher Johnson had a direct and immediate legal interest sufficient to permit intervention in the landlord-tenant litigation.

HOLDINGS

1. An order denying a motion to intervene is appealable as a matter of right by plenary appeal because it constitutes a final determination of the proceeding as to the parties seeking to intervene.
2. Intervention is appropriate only when the proposed intervenor has a direct and immediate interest in the litigation such that the intervenor will gain or lose by the direct legal operation and effect of the judgment. Superior Fence and Johnson did not possess such an interest.

KEY QUOTATIONS

“We believe that an order denying a motion to intervene is appealable as a matter of right, by plenary appeal, because the order constitutes a final determination of the proceeding as to the parties seeking to intervene.” (105)

“We recede from our prior case law holding that the denial of a motion to intervene is reviewable by certiorari. Instead, we hold that the denial of a motion to intervene is reviewable by appeal.” (105)

FACTUAL BACKGROUND

The underlying proceeding was a landlord-tenant dispute. Superior Fence & Rail of North Florida, Inc. and Christopher Johnson sought to intervene, but the trial court determined that they lacked a direct and immediate legal interest in the litigation. The district court reviewed the record and found no error in that determination.

PROCEDURAL HISTORY

The trial court denied Superior Fence and Christopher Johnson's motion to intervene. They sought certiorari review in the district court of appeal. The district court treated the matter as a plenary appeal because the order finally determined the proceeding as to the proposed intervenors, and affirmed the denial.

DISPOSITION

affirmed

CASES CITED

- In re S.N.W., 912 So. 2d 368, 370 (Fla. 2d DCA 2005)
- Allstate Ins. Co. v. Johnson, 483 So. 2d 524, 525 (Fla. 5th DCA 1986)
- Harbor Specialty Ins. Co. v. Schwartz, 932 So. 2d 383, 386 (Fla. 2d DCA 2006)
- Union Cent. Life Ins. Co. v. Carlisle, 593 So. 2d 505, 507 (Fla. 1992)
- In re J.S., 404 So. 2d 1144 (Fla. 5th DCA 1981)

- Grudzinski v. Voyer, 654 So. 2d 675 (Fla. 5th DCA 1995)
- Hart v. Atlantic International Investment Corp., 513 So. 2d 768 (Fla. 5th DCA 1987)
- Vanguard Insurance Co. v. Townsend, 544 So. 2d 1153 (Fla. 5th DCA 1989)
- Allstate Insurance Co. v. Conde, 595 So. 2d 1005 (Fla. 5th DCA 1992)
- J.R. v. R.M., 679 So. 2d 64, 65 n. 1 (Fla. 4th DCA 1996)
- City of Dania v. Broward County, 658 So. 2d 163, 164 (Fla. 4th DCA 1995)
- Citibank N.A. v. Blackhawk Heating & Plumbing Co., 398 So. 2d 984, 986 (Fla. 4th DCA 1981)
- In re J.P., 12 So. 3d 253, 254 (Fla. 2d DCA 2009)

OPINION

SUPERIOR FENCE & RAIL OF NORTH FLORIDA v. Lucas

35 So. 3d 104

PER CURIAM.

35 So. 3d 104 (2010)

SUPERIOR FENCE & RAIL OF NORTH FLORIDA, etc., et al., Petitioners, v. James O. LUCAS, III and Dorothea Y. Lucas, et al., Respondents. No. 5D09-4213. District Court of Appeal of Florida, Fifth District. May 14, 2010. Margaret A. Wharton, of Wharton Law Group, P.A., Oviedo, for Petitioners. Koko Head, of Law Office of Koko Head, P.A., St. Johns, for Respondents.

EN BANC

PER CURIAM. Superior Fence & Rail of North Florida, Inc. and Christopher Johnson seek certiorari review of the trial court's order denying their motion to intervene in a landlord-tenant dispute. As explained hereafter, we treat their petition as a direct appeal of a final order and affirm. See Fla. R.App. P. 9.110(k); In re S.N.W., 912 So. 2d 368, 370 (Fla. 2d DCA 2005). The allowance of intervention is subject to the trial court's discretion. See Allstate Ins. Co. v. Johnson, 483 So. 2d 524, 525 (Fla. 5th DCA 1986). Intervention is appropriate only when the intervenor has a direct and immediate interest in the litigation such that the intervenor "will either gain or lose by the direct legal *105 operation and effect of the judgment." Harbor Specialty Ins. Co. v. Schwartz, 932 So. 2d 383, 386 (Fla. 2d DCA 2006) (quoting Union Cent. Life Ins. Co. v. Carlisle, 593 So. 2d 505, 507 (Fla.1992)). Having carefully reviewed the record, we find no error in the trial judge's determination that Superior and Johnson have no direct and immediate legal interest in the underlying litigation. We take this opportunity to clarify decisional law from this Court regarding whether the denial of a motion to intervene is reviewed by certiorari or appeal. In at least two cases, In re J.S., 404 So. 2d 1144 (Fla. 5th DCA 1981), and Grudzinski v. Voyer, 654 So. 2d 675 (Fla. 5th DCA 1995), we reviewed the denial of a motion to intervene by certiorari. However, in Hart v. Atlantic International Investment Corp., 513 So. 2d 768 (Fla. 5th DCA 1987), and Vanguard Insurance Co. v. Townsend, 544 So. 2d 1153 (Fla. 5th DCA 1989), receded from on other grounds by Allstate Insurance Co. v. Conde, 595 So. 2d 1005 (Fla. 5th DCA 1992), we

reviewed such denials by appeal. We believe that an order denying a motion to intervene is appealable as a matter of right, by plenary appeal, because the order constitutes a final determination of the proceeding as to the parties seeking to intervene. In re S.N.W., 912 So.2d at 370; J.R. v. R.M., 679 So. 2d 64, 65 n. 1 (Fla. 4th DCA 1996); see also City of Dania v. Broward County, 658 So. 2d 163, 164 (Fla. 4th DCA 1995); Citibank N.A. v. Blackhawk Heating & Plumbing Co., 398 So. 2d 984, 986 (Fla. 4th DCA 1981). We recede from our prior case law holding that the denial of a motion to intervene is reviewable by certiorari. Instead, we hold that the denial of a motion to intervene is reviewable by appeal.[1] AFFIRMED. MONACO, C.J., GRIFFIN, SAWAYA, PALMER, ORFINGER, TORPY, LAWSON, EVANDER, COHEN and JACOBUS, JJ., concur.

NOTES

[1] Conversely, an order granting intervention is necessarily interlocutory and can only be reviewed by certiorari. In re J.P., 12 So. 3d 253, 254 (Fla. 2d DCA 2009).