

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Turcotte v. City of Coconut Creek

88 So. 3d 296 (Fla. Dist. Ct. App. 2012) · Decided April 18, 2012

SUMMARY

The Florida Fourth District Court of Appeal affirmed summary judgment for the City of Coconut Creek and other appellees. The court held that res judicata barred the appellants' declaratory and injunctive claims because the same issues had previously been raised and rejected in a certiorari proceeding concerning an amendment to a development of regional impact development order.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Polen; Hazouri; Levine
JURISDICTION	Florida
DECIDED	April 18, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appellants appealed an order granting summary judgment to the City of Coconut Creek and Seminole Properties II, Inc. after the trial court denied their claims for declaratory and injunctive relief challenging a city ordinance. The appeal followed an earlier certiorari proceeding involving the same issues.
STANDARD OF REVIEW	The opinion applied res judicata to determine whether the appeal was barred; it did not expressly state a separate standard of review for summary judgment.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Turcotte v. City of Coconut Creek, Seminole Properties II, Inc.

TOPICS

res judicata

writ of certiorari

summary judgment

municipal law

zoning

PRACTICE AREAS

civil procedure

appellate procedure

municipal law

land use

administrative law

QUESTIONS PRESENTED

1. Whether res judicata barred appellants from challenging the ordinance in an appeal from summary judgment when the same issues had previously been raised and decided on the merits in a certiorari proceeding.
2. Whether the ordinance's expansion of the permitted-use definition to include a hotel constituted a substantial deviation under section 380.06(19)(b), Florida Statutes (2005).

HOLDINGS

1. Res judicata barred appellants from relitigating issues that had been raised and considered on the merits in the prior certiorari proceeding.
2. The ordinance, which expanded the definition of a permitted use to include a hotel, did not constitute a substantial deviation under section 380.06(19)(b), Florida Statutes (2005).

KEY QUOTATIONS

“The circuit court correctly applied section 380.06(19)(b), Florida Statutes (2005), when it determined that the subject ordinance, which simply expanded the definition of a permitted use to include a hotel, did not constitute a substantial deviation under the statute.” (88 So. 3d at 296)

“res judicata bars this appeal, as our prior decision “clearly shows that the issue was considered by the court on the merits and relief was denied.”” (88 So. 3d at 296)

FACTUAL BACKGROUND

The City of Coconut Creek enacted an ordinance approving an amendment to a development of regional impact development order. The amendment expanded the definition of a permitted use to include a hotel. Appellants challenged the ordinance through both a complaint seeking declaratory and injunctive relief and a simultaneous petition for writ of certiorari, raising the same issues in both proceedings.

PROCEDURAL HISTORY

Appellants filed a complaint for declaratory judgment and injunctive relief challenging an ordinance approving an amendment to a development of regional impact development order. Simultaneously, they filed a petition for writ of certiorari raising the same issues. The trial court denied the certiorari petition, and the appellate court also denied relief, concluding that the ordinance did not constitute a substantial deviation under section 380.06(19)(b), Florida Statutes (2005). The trial court later granted summary judgment for appellees, and the appellate court affirmed because res judicata barred relitigation of the issues decided in the prior certiorari proceeding.

DISPOSITION

affirmed

CASES CITED

- Topps v. State, 865 So. 2d 1253, 1258 (Fla. 2004)

- *Seminole Entm't, Inc. v. City of Casselberry*, 866 So. 2d 1242 (Fla. 5th DCA 2004)
- *Lake Rosa v. Bd. of Cnty. Comm'rs*, 911 So. 2d 206 (Fla. 5th DCA 2005)
- *Treister v. City of Miami*, 575 So. 2d 218 (Fla. 3d DCA 1991)
- *Rhyne v. City of Wilton Manors*, 392 So. 2d 992 (Fla. 4th DCA 1981)

OPINION

PER CURIAM.

PER CURIAM. Appellants appeal an order granting summary judgment in favor of appellees. Appellants sought to challenge the validity of an ordinance enacted by the City approving an amendment to a development of regional impact (DRI) development order. Appellants filed a complaint for declaratory judgment and injunctive relief. At the same time appellants filed their complaint, they also filed a petition for writ of certiorari, raising the same issues.

The trial court denied the petition for writ of certiorari, as did our court. In our order of denial, we stated: The circuit court correctly applied section 380.06(19)(b), Florida Statutes (2005), when it determined that the subject ordinance, which simply expanded the definition of a permitted use to include a hotel, did not constitute a substantial deviation under the statute.

We find that the issues raised in this appeal were previously raised and considered by this court in the prior certiorari proceeding. We thus conclude that *res judicata* bars this appeal, as our prior decision “clearly shows that the issue was considered by the court on the merits and relief was denied.” *Topps v. State*, 865 So.2d 1253, 1258 (Fla.2004). See also *Seminole Entm’t, Inc. v. City of Casselberry*, 866 So.2d 1242 (Fla.

5th DCA 2004) (holding that issues examined and rejected in a prior certiorari proceeding could not be raised again on appeal from an order granting summary judgment); *Lake Rosa v. Bd. of Cnty. Comm’rs*, 911 So.2d 206 (Fla. 5th DCA 2005) (affirming ruling that trial court’s findings in companion certio-rari case were *res judicata* and barred suit for injunctive and declaratory relief); *Treister v. City of Miami*, 575 So.2d 218 (Fla.

3d DCA 1991) (affirming entry of summary judgment for the city on the basis that the prior certiorari proceeding was *res judicata* of the issues raised in the original action); *Rhyne v. City of Wilton Manors*, 392 So.2d 992 (Fla. 4th DCA 1981) (holding that appellants could not maintain an action seeking simultaneous certiorari and equitable relief, nor could they seek equitable relief after maintaining a certiorari proceeding).

Affirmed. POLEN, HAZOURI and LEVINE, JJ., concur.