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Courts -- Appeals from Administrative Boards

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would likely be adversely affected if law enforcement agents were subject to liability . . . for simple negligence in the performance of their duties. . . ."²⁴ More cogent weight was given to this rationale than to the opposing theory²⁵ which adopts the belief that citizens should be given greater protection against the irresponsible institution of civil or criminal proceedings. The court refused to extend the field of liability for the careless performance of an officer in causing the issuance of an arrest warrant from an *intentional* tort action (malicious prosecution) to an *unintentional* tort action (negligence).²⁶

The court deserves commendation for its determination that law enforcement officers require protection and immunity from liability in negligence for improperly causing the issuance of an arrest warrant.²⁷ This decision reduces the officer's apprehension of constant law suits and increases his efficiency.²⁸ The fear that responsible, capable men would not accept public office because of the threat of personal liability is also diminished.²⁹ To expand the field of liability to *unintentional* tort would seriously cripple the effective administration of public safety against crime.

STANTON S. KAPLAN

COURTS — APPEALS FROM ADMINISTRATIVE BOARDS

The appellees applied to the Pinellas County Water and Navigation Control Authority for a permit to fill certain submerged lands. The appellants excepted to a ruling in favor of the appellees, and an appeal was taken to the circuit court which affirmed the order of the County Authority. The appellants thereupon appealed to the district court of appeal which ruled that it did not have authority to entertain the appeal as such but would treat it as a petition for certiorari. Upon review by the Florida Supreme Court, *held*, the circuit court sat as a "trial court" for purposes of the constitutional provision giving district courts of appeal

amounts to no more than saying that no one shall be found liable for instituting a criminal prosecution unless . . . he acted without probable cause and with malice." (*Negligent* arrest was not at issue in this case).

24. See note 22 *supra* at 105.

25. In *Melvin v. Pence*, 76 U.S. App. D.C. 154, 159, 130 F.2d 423, 428 (1942), an action by a private detective against private citizens for instigating the revocation of the plaintiff's license, the court stated that "While members of the public should be careful not to make unfounded charges of criminal conduct, it is better that some charges be made than that persons having the knowledge of the commission of a crime or reasonable ground for believing it has been committed shall be deterred from reporting it to the proper officials by fear of civil liability for doing so."

26. See note 22 *supra* at 105.

27. See note 22 *supra* at 104.

28. Keefe, *Personal Tort Liability of Administrative Officials*, 12 FORDHAM L. REV. 130 (1943).

29. *Ibid.*

jurisdiction of appeals from "trial courts." *State v. Furen*, 118 So.2d 6 (Fla. 1960).

Article V, Section 5(3), of the Florida Constitution provides for appeal as a matter of right from "trial courts" to the court of appeal of the district in which the trial court sits.¹ Thus, the crux of the instant case was the construction of the term "trial court" as found in the constitutional provision.

With the exception of certain specified limitations, the district courts of appeal were intended to be final appellate courts rather than intermediate appellate courts.² Thus, it seems established that such courts have no jurisdiction over appeals³ from decisions of the circuit courts sitting as *appellate courts*, but may only review such matters by certiorari.⁴ A difference of opinion has arisen among the district courts of appeal as to when the circuit court sits as a trial court and when it sits as an appellate court.⁵ The supreme court effectively clouded the water in *Codomo v. Shaw*⁶ where the court said in referring to an attempted review by the circuit court of a final order of the Florida Real Estate Commission: ". . . the constitution provided for final appellate jurisdiction in

1. FLA. CONST. art. V, § 5(3): "Appeals from trial courts in each appellate district, and from final orders or decrees of county judges' courts pertaining to probate matters or to estates and interests of minors or incompetents, may be taken to the court of appeal of such district, as a matter of right, from all final judgments or decrees except those from which appeals may be taken direct to the supreme court or to a circuit court . . ."

2. FLA. CONST. art. V, § 4(2): "Appeals from district courts of appeal may be taken to the supreme court as a matter of right, only from decisions initially passing upon the validity of a state statute or a federal statute or treaty, or initially construing a controlling provision of the Florida or federal constitution. The supreme court may review by certiorari any decision of a district court of appeal that affects a class of constitutional or state officers, or that passes upon a question certified by the district court of appeal to be of great public interest or that is in direct conflict with a decision of another district court of appeal or of the supreme court on the same point of law, and may issue writs of certiorari to commissions established by law . . ." See *Ansin v. Thurston*, 101 So.2d 808 (Fla. 1958); *Lake v. Lake*, 103 So.2d 639 (Fla. 1958); *Karlin v. City of Miami Beach*, 113 So.2d 551 (Fla. 1959).

3. Appellate jurisdiction which is mandatory as opposed to certiorari jurisdiction which is discretionary with the reviewing court. *Burdines, Inc. v. Drennon*, 97 So.2d 259 (Fla. 1957); *Jacksonville American Pub. Co. v. Jacksonville Paper Co.*, 143 Fla. 835, 197 So. 672 (1940); *State ex rel. Landis v. Simmons*, 104 Fla. 487, 140 So. 187 (1932).

4. *In re Wood's Estate*, 114 So.2d 640 (Fla. App. 1959); *Appeal of Syracuse University*, 105 So.2d 904 (Fla. App. 1958).

5. The following cases indicate that the district courts of appeal have not been uniform in their determination of the status of the circuit courts under the amended Article V even in cases where the circuit courts sat in review of lower courts in the judiciary: *Appeal of Syracuse University*, 105 So.2d 904 (Fla. App. 1958), wherein it was held that the circuit court sat as an appellate court in reviewing a probate court order and thus review by district court could be had by certiorari only; *Rosenblum v. Boss*, 101 So.2d 596 (Fla. App. 1958), wherein it was held that the circuit courts no longer sit as appellate courts for purposes of reviewing decisions of the civil courts of record under the amended Article V of the Florida Constitution; *State v. J.K.*, 104 So.2d 113 (Fla. App. 1958), the court holding that the circuit court sat as an appellate court in reviewing a decision of the juvenile court, a distinct part of the judiciary.

6. 99 So.2d 849, 851 (Fla. 1958). See 32 FLA. B.J. 117 (1958) for a succinct discussion of this case and its effect on review of administrative action.

the circuit courts as to certain specified matters. . . ." It easily can be seen that this statement left substantial doubt as to the status of the circuit court when reviewing the finding of an administrative board.⁷

Since the creation of the district courts of appeal in 1956, the Florida courts have been without concrete authority in the determination of the status of the circuit court in the review of rulings by administrative boards. No comprehensive definition has been enunciated nor have any meaningful guideposts been established. However, in a situation analogous to that of administrative boards, the juvenile courts consistently have been held to be "trial courts" within the meaning of the constitutional provision that district courts shall have appeal as a matter of right from trial courts.⁸ This has allowed appeals from the juvenile courts to by-pass, as a matter of right, the circuit courts in favor of the district courts. If, however, an appeal is taken erroneously to the circuit court, the circuit court has been held to sit as an appellate court and review by the district court of appeal can be had only by certiorari.⁹

The term "trial court," although treated in a specific manner by the constitutional and statutory provisions governing appeal, has never been defined by the Supreme Court of Florida.¹⁰ Thus, we are left with the question whether an administrative proceeding is a "trial court proceeding," with the administrative board being the *court* of first instance. Although administrative proceedings have not been held to constitute a trial as such in this state, nevertheless they have been characterized as quasi-judicial.¹¹ In regard to workmen's compensation proceedings, it seems settled in Florida that such proceedings do not constitute a judicial case.¹² Research fails to indicate a precise characterization by the courts of administrative proceedings other than workmen's compensation.

7. In *Codomo v. Shaw*, 99 So.2d 849 (Fla. 1958) the court decided that under the new constitutional provisions, authority for the statute providing for an appeal to the circuit court from a final order of the Real Estate Commission was removed by elimination of the constitutional provision giving circuit courts jurisdiction of such matters as the legislature might provide, and therefore, appeal would not lie to the circuit court from a final order of the Real Estate Commission, but review could be had by certiorari only.

8. *State v. J.K.*, 104 So.2d 113 (Fla. App. 1958), where the court held that the juvenile court, in committing a minor to a state school for girls on ground that she was a delinquent, acted as a "trial court" within meaning of the constitutional provision defining appellate jurisdiction of district courts of appeal. *In re C.E.S.*, 106 So.2d 610 (Fla. App. 1958), where the juvenile court was held to be a trial court when it sat in determination of whether a minor was a "dependent child" and that the circuit court did not have jurisdiction to determine appeals from the juvenile court.

9. *State v. J.K.*, 104 So.2d 113 (Fla. App. 1958).

10. The court did define in *Darden v. Lines*, 2 Fla. 569, 573 (1849) the term "trial" as: "the examination before a competent tribunal, according to the laws of the land, of the facts put in issue in the cause, for the purpose of determining such issue."

11. *Wilson v. McCoy Mfg. Co.*, 69 So.2d 659 (Fla. 1954); *Frix v. Beck*, 104 So.2d 81 (Fla. App. 1958).

12. *South Atl. S.S. Co. of Del. v. Tutson*, 139 Fla. 405, 190 So. 675 (1939); *Duval Engineering & Contracting Co. v. Johnson*, 154 Fla. 9, 16 So.2d, 290 (1944); *Alcoma Citrus Coop. v. Isom*, 159 Fla. 10, 30 So.2d 528 (1947); *United States Cas. Co. v. Maryland Cas. Co.*, 55 So.2d 741 (Fla. 1951).

The court in the instant case determined that the hearing before the administrative board was not a judicial case, hence the case originated in the circuit court making it a "trial court."¹³ It was the court's position that reason and logic supported this finding since proceedings before boards and commissions are often conducted without court decorum or regard for the rules of evidence. In this regard the court said:

Such proceedings before boards and commissions are so often conducted without regard to proper decorum or observance of the rules for introduction or consideration of evidence that the work of the circuit court consists largely in preparing an intelligent and orderly "case" for review by the appellate court.¹⁴

Hence, the court concluded that the case first entered the established judicial system in the circuit court, and, therefore, the precedent based on appeals from lower courts to the effect that the circuit court sat as an appellate court in review of lower court decisions was inapplicable.¹⁵

The legislative purpose in the creation of the district courts of appeal was to streamline and modernize the appellate system of the state. The number of administrative agencies is enormous. To restrict review from such bodies to the district courts to certiorari would thwart the very purpose of the district courts. Consequently, this determination by the supreme court that the circuit court sits as a trial court in review of administrative rulings, by enlarging the scope of the district court's review as a matter of right, fulfills the purpose for which the district courts were created. The citizen who seeks review of an administrative order now can be sure that review will not end with the circuit court nor will it depend upon certiorari to an overcrowded supreme court.

RAY E. MARCHMAN, JR.

MAINTENANCE AND SUPPORT — FATHER'S LIABILITY TO PROVIDE CHILD WITH COLLEGE EDUCATION

A petition was brought by a divorced mother to increase the amount of child support payable by the divorced father so as to enable the child in the mother's custody to attend college. The lower court granted the increase. Held, *affirmed*: a minor child whose parents are divorced and

13. ". . . where statutory administrative proceedings are had before administrative officers, boards, commissions, or other tribunals, with statutory appeals to the circuit courts, such proceedings do not appear in the judicial department of the state government as a judicial 'case' until they are brought to the circuit court . . ." *State v. Furen*, 118 So.2d 6, 8-9 (Fla. 1960).

14. *State v. Furen*, 118 So.2d 6, 9 (Fla. 1960).

15. Florida Appellate Rule 4.1 which provides that: "All appellate review of the rulings of any commission or board shall be by certiorari as provided by the Florida Appellate Rules" was found to be in conflict with the statutory provision of FLA. STAT. § 475.35 (1959), and thus without effect.