

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC09-1255

(Lower Tribunal Case No. 3D08-1064)

MIAMI-DADE COUNTY,

Petitioner,

v.

RENE MIGUEL VALDES,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM A DECISION OF THE
THIRD DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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Statement of the Case and of the Facts

The Respondent, Rene Miguel Valdes (“Mr. Valdes” or the “Respondent”), responds to Petitioner’s, Miami-Dade County (the “County”), Jurisdictional Brief of Petitioner in connection with the Petition for Discretionary Review from a Decision of the Third District Court of Appeal rendered on January 21, 2009. The decision by the Third District Court of Appeal denied second-tier certiorari.

Mr. Valdes’ parcel is surrounded to the north, northeast, and west by either RU-2 zoned districts with variances allowing RU-5A (semi-professional office district) uses or RU-1 (single family residential) zoned parcels with an RU-5A variance. *Opinion, 4-5, Rothenberg, J. (dissenting)*. The Miami-Dade County Board of County Commissioners (the “Board”) denied Mr. Valdes’ application for a zoning change from RU-1 (single family use) to RU-5A (semi-professional office district), or, alternatively, a use variance to allow an RU-5A use of his RU-1 zoned parcel. *Id.* at 4. This decision effectively affirmed the decision of the Metropolitan Dade County Zoning Appeals Board 10. On March 31, 2008, the circuit court, sitting in its appellate capacity, quashed the Board’s decision. *Opinion, 4, Rothenberg, J. (dissenting)*.

The County sought a second-tier certiorari review of the circuit court decision, and on January 21, 2009, the Third District Court of Appeal (the “Third District”) denied the second-tier certiorari review based on a failure to find a

departure from the essential requirements of law resulting in miscarriage of justice. *Opinion 2-3*. The County then filed a motion for rehearing or rehearing en banc, which was duly denied by the Third District (*Gersten, C.J., Schwartz, Senior Judge, Cortiñas, Ramirez, Wells, Shepherd, Suarez, Lagoa, and Salter, JJ., concur*). *Appendix, 2*. The County subsequently filed to invoke the discretionary jurisdiction of the Florida Supreme Court, and filed a Jurisdictional Brief of Petitioner on July 16, 2009. This Jurisdictional Brief of Respondent follows.

Summary of Argument

The opinion by the Third District Court of Appeal (the “Opinion”) found that there was no departure from the essential requirements of law resulting in a miscarriage of justice, which would merit a second-tier certiorari review in the present case. The Opinion is not in conflict with the decision in *Dornbach v. Holley*, 854 So. 2d 211 (Fla. 2d DCA 2002) because the Opinion does not contradict the express language of Section 419.001, Fla. Stat. (2009). The Opinion is based on the particular and specific circumstances surrounding the Respondent’s home.

Further, the public policy supporting the enactment of Section 419.001, Fla. Stat., is to “protect such group homes from local zoning ordinances that would exclude them from the traditional single-family neighborhood.” *Dornbach*, 854 So. 2d at 212. The Opinion fails to obstruct or hinder this legislative intent or any action deriving therefrom; it simply states that the group home has merely

contributed to the increase in vehicular and human traffic in the area. There are numerous factors which have contributed to the transformation in character of the neighborhood, including commercial uses directly or immediately to the north and west of the property in question, as well as the expansion of the road in front of the property to a four-lane thoroughfare.

Argument

I. THE THIRD DISTRICT COURT OF APPEAL’S DECISION IS NOT IN CONFLICT WITH *DORNBACH V. HOLLEY* BECAUSE THE CASES ARE FACTUALLY DISTINCT.

It has been unequivocally established by Section 419.001, Fla. Stat. (2009), that a community residential home is permissible in a single-family zoned area without approval by the local government. In the case relied on by the Petitioner, the Second District Court of Appeal reversed a permanent injunction preventing the Appellants from utilizing their property as a group home. *Dornbach*, 854 So. 2d at 212. In this particular case, the Respondents were alleging that establishing a group home on the property violated the restrictive covenants of the subdivision, which limited the use of the lots therein “exclusively for single-family, private residence purposes.” *Id.*

In the case at hand, conversely, it is not the contention of the Third District Court of Appeal that the group home located to the south of the Respondent’s property is in violation of an RU-1(single family residential) zoning, nor that it is a commercial property. The Opinion expressly separates the commercial property

from the group home.¹ The Opinion is in conformity with Section 419.001, Fla. Stat., as it does not treat the group home as commercial with respect to the law or ordinances. It merely acknowledges the realities of the Respondent's individual circumstances, namely that the Respondent's home has two commercial properties to the north and west and a group home to the south. *See Jurisdictional Brief of Petitioner, 1.*

These unique circumstances have created an increase in both human and vehicular traffic, and expansion of the road to a four-lane thoroughfare in front of the Respondent's home. *See Opinion, 2.* Additionally, the characteristics of the uses abutting Respondent's property to the north and south have resulted in the Respondent's home being bounded on either side by parking lots. Finally, the use directly in front of the Respondent's home, a day care, has further increased traffic and noise in the once solely single-family residential neighborhood.

As a result, the decision by the Second District Court of Appeal in *Dornbach* was a matter of strict statutory compliance, rather than statutory interpretation, resulting in the reversal of the injunction. In contrast, the decision by the Third District Court of Appeal was a matter of the statutory interpretation in light of the legal consequences affecting a particular parcel due to the drastic changes in the characteristic of the neighborhood.

¹The opinion states that the Respondent's property was "effectively surrounded by a busy thoroughfare, commercial property, **and a group home...**" *Opinion, 2* (*emphasis added*).

II. THE DECISION BY THE THIRD DISTRICT COURT OF APPEAL NEITHER DISRUPTS THE LEGISLATIVE INTENT OF SECTION 419.001, FLORIDA STATUTES, NOR INTERFERES WITH ANY ACT OF LEGISLATURE.

The legislative intent behind the enactment of the Section 419.001, Fla. Stat., was to “protect such group homes from local zoning ordinances that would exclude them from the traditional single-family neighborhood.” *Dornbach*, 854 So. 2d at 212. The decision by the Third District Court of Appeal does not hinder the establishment of a community residential home in a single-family residential neighborhood, and, therefore, does not strike down an act of Legislature, nor substitute its judgment for that of same. It simply allowed a resident of a once wholly single-family residential neighborhood to utilize his property in conformity with, and not to the detriment of, his surrounding neighbors and characteristic of the neighborhood.

Further, the Opinion fails to deem the group home as a commercial use. The court states only that the group home has merely contributed to the legal consequences affecting the Respondent’s home, depriving same from the beneficial use as a residential home. *See Opinion, 2.*

Finally, the decision poses no threat to the integrity and clarity of the statute as written. The decision does not find that the group home to the south of the Respondent’s property is impermissible, but rather considers the circumstances and

facts of the Respondent's particular case and finds that there is no departure from the essential requirements of law, especially to grant a second-tier certiorari review.

Opinion, 2-3.

Conclusion

The Opinion is not in conflict with previous decisions by the Second District Court of Appeal, because this case reflects specific circumstances affecting a uniquely situated parcel. Further, the Opinion fails to depart or contradict the legislative intent of Section 419.001, Fla. Stat., because it does not hinder the establishment of a community residential home in a single-family neighborhood. As a result, this Court should deny jurisdiction of this matter, and affirm the decision below.

Respectfully submitted,

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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via Federal Express, to the Florida Supreme Court and to: R.A. Cuevas, Jr., Miami-Dade County Attorney and John McInnis, Assistant County Attorney, Stephan P. Clark Center, 111 N.W. 1st Street, Suite 2810, Miami, Florida 33128, on this 5th day of August, 2009.

Javier L. Gonzalez, Esq.
Attorney for Respondent

Certificate of Compliance

The undersigned counsel certifies that this brief has been generated in Times New Roman, 14-point font, and complies with the requirements set forth in Rule 9.210(a), Fla. R. App. P.

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