
IN THE SUPREME COURT OF FLORIDA

SUPREME COURT CASE NO. SC2024-0652

LOWER TRIBUNAL CASE NO. 2022-CA-1562

ON APPEAL FROM A FINAL BOND VALIDATION JUDGMENT OF
THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY,
FLORIDA

STATE ATTORNEYS FOR THE SECOND, SEVENTH, AND NINTH
JUDICIAL CIRCUITS,

Appellants,

v.

FLORIDA PACE FUNDING AGENCY, et al.,

Appellees.

APPELLANTS' REPLY BRIEF

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ARGUMENT

I. APPELLEES COMMITTED A FRAUD UPON THE COURT BY DEVIATING FROM THE GOVERNANCE OF CHAPTER 75 AND INFLUENCING THE TRIAL COURT TO ADJUDICATE COLLATERAL MATTERS BEYOND THE PROPER SCOPE OF A BOND VALIDATION PROCEEDING AND THE STATE ATTORNEYS' LIMITED REPRESENTATION OF THE STATE VIA CHAPTER 75, FLORIDA STATUTES.

Appellees attempt to veil the Bond Validation Final Judgment's alleged "correctness" under the guise of the fact that "(a)n Assistant State Attorney for the Second Judicial Circuit admittedly 'reviewed (FPFA's) Complaint and appeared at the Final Hearing,' A. 37, 'was provided a copy of the proposed-Final Judgment' before the final hearing, A. 20, 'did not object to its entry,' A. 35, and even said it appeared 'fairly straightforward,'" A.34-35. (FPFA AB, p.6-7; *see also* FortiFi AB, p.18). However, what Appellees conveniently omit to acknowledge is the limited scope of the State Attorneys' representation of the State under Chapter 75, Florida Statutes and the myriad instances wherein Appellees' own conduct improperly influenced the Trial Court to adjudicate collateral matters beyond the scope of the Bond Validation Proceeding warranting relief under Rule 1.540(b)(3) and (4), Florida Rules of Civil Procedure.

“The function of a validation proceeding is merely to settle the basic validity of the securities and the power of the issuing agency to act in the premises.” *State v. Manatee Cnty. Port Auth.*, 171 So. 2d 169, 171 (Fla. 1965). Likewise, a trial court’s jurisdiction in Chapter 75 bond validation proceedings is limited to three elements: (1) determining if a public body has the authority to issue the subject bonds; (2) determining if the purpose of the obligation is legal; and (3) ensuring that the authorization of the obligation complies with the requirements of law. *State v. City of Port Orange*, 650 So. 2d 1, 2 (Fla. 1994). (A.131).

Accordingly, the State Attorneys’ representative during the Bond Validation Proceeding, Assistant State Attorney Eddie Evans of the Second Judicial Circuit, (“ASA Evans”), followed the above elements and the State Attorneys’ statutorily prescribed role under Chapter 75¹. Specifically, section 75.05, Florida Statutes states in pertinent part:

The state attorney shall examine the complaint, and, if it appears or there is reason to believe that it is defective,

¹ In addition to ASA Evans, Assistant State Attorney Phillip Havens, from the Seventh Judicial Circuit, and Assistant State Attorney Kamilah Perry, from the Ninth Judicial Circuit, also participated in the Bond Validation Proceeding.

insufficient, or untrue, or if in the opinion of the state attorney the issuance of the bonds or certificates in question has not been duly authorized, defense shall be made by said state attorney.

§ 75.05, Florida Statutes.

Notably, ASA Evans has participated in in approximately fifty (50) bond validation proceedings on behalf of the State Attorney for the Second Judicial Circuit, (“SAO2”), over the last twenty (20) years. (A.2361:22 – 2362:3). ASA Evans testified that his limited role in bond validation proceedings, including the instant matter, is to file a standard answer expressing SAO2’s knowledge as to the claims and allegations asserted, demanding strict proof thereof, reviewing pleadings, appearing at the bond validation hearing, asking administrative questions, and reviewing the proposed final judgment. (A.2362:4-15). Moreover, ASA Evans unequivocally testified that in bond validation proceedings, he understands that he represents only the State of Florida and not any of its counties, officers, or other entities. (A.2362:16 – 2363:4).

Thus, tracking the three elements that composed the Trial Court’s limited jurisdiction in the Bond Validation Proceeding, ASA Evans explained that when reviewing the Complaint, his limited

focus was on its basic validity, that is: (1) whether the entity has the authority to issue the bonds; (2) whether or not the entity meets the public interest criteria by making the proper advertisements and publications; and (3) whether or not the entity pledges “the full faith and credit of the taxing authority” with the bonds being “paid back by projects as opposed to tax payers being on the hook for it.” (A.2362:5-16). Nonetheless, in so examining the Complaint, to ASA Evans and the State Attorneys it appeared to be “pretty standard” in its representations and they never had reason to believe that it was “defective, insufficient, or untrue” until well after the Bond Validation Final Judgment was entered. (A.2363:23 – 2364:10).

Not until after the time passed to appeal the Bond Validation Final Judgment did Appellees’ misrepresentations to the State Attorneys come to light along with their improper deviation from the governance of Chapter 75 to influence the Trial Court to adjudicate collateral matters in the Bond Validation Final Judgment. (A.142, 1745, 1956-57, 1966). Accordingly, as several separate lawsuits ensued between Appellees and several of the 64 counties and tax collectors that were not notified of the Bond Validation Proceeding, Appellees fraud, misconduct, and misrepresentations became clear

and necessitated the filing of Movants' Rule 1.540(b) Motions, which demanded that the Trial Court vacate the collateral portions of the Bond Validation Final Judgment that "purport to determine the rights and authorities of the Counties and Tax Collectors." (A.162, 1983).

Here, the October 6, 2022, Bond Validation Final Judgment went beyond validating FPFA's authority to issue bonds for PACE improvements under section 163.08 Fla. Stat., thereby exceeding the scope of a Chapter 75 bond validation proceeding, and unlawfully adjudicated collateral matters by ruling that:

- (1) no county can require FPFA to enter into an interlocal agreement ("ILA") prior to FPFA operating a PACE program in such county's jurisdiction;
- (2) no county can adopt resolutions or ordinances under its home rule authority prohibiting or regulating the operation of PACE programs in their jurisdiction; and
- (3) no tax collector has discretion to ensure compliance with section 197.3632, Florida Statutes, and other law with respect to such tax collector's collection of PACE assessments levied by FPFA.

(A.1952-1953).

Trial courts lack jurisdiction under Chapter 75 to decide these types of collateral issues that do not go "directly to the power to issue the securities and the validity of the proceedings relating thereto."

State v. City of Miami, 103 So. 2d 185, 188 (Fla. 1958) (finding that trial court lacked jurisdiction and stating that bond validation statute did not give the trial court power to bring other parties into the proceedings); *Keys Citizens For Responsible Gov't, Inc. v. Florida Keys Aqueduct Auth.*, 795 So. 2d 940, 945 (Fla. 2001) (finding 'the interested parties' to the collateral issue were not parties to the bond validation action and thus the trial court had no jurisdiction to decide the collateral issue in the proceeding. (A.1954-1955).

Based on the foregoing discussion of the State Attorneys' limited representation of the State via Chapter 75, it is clear that the above-referenced collateral matters do not fall within the intent and purpose of the State Attorneys' statutory role. This is especially true here, where Appellees intentionally misrepresented to the Trial Court and the State Attorneys that these collateral issues were "Black Letter Law" when in fact they are extremely controversial and have statewide impact on Florida's Counties and Tax Collectors, who were given no meaningful opportunity to participate in the Bond Validation Proceeding until after the time to appeal passed and the true impact and intent of the Complaint was realized.

Again, the role of the State Attorneys and the scope of their review in bond validation proceedings is extremely limited and the Order Denying State Attorneys' Relief goes too far in the power it assigns to the State Attorney of the Second Judicial Circuit. To wit, the Order Denying State Attorneys' Relief inaccurately asserts that:

The State Attorney for the Second Circuit is deemed to represent the entire state by operation of law when the proceeds of the bonds to be issued will be expended statewide. See ¶ 75.02, Fla. Stat.

(A.37). In doing so, the Trial Court paints with too broad a brush and fails to give proper weight to Appellees' misconduct and fraud. While the State Attorney for the Second Judicial Circuit is specifically designated for service of and responding to bond validation complaints on behalf of the State, per §§ 75.05, 75.06, and 163.01(7)(e)(4), Fla. Stat., the State Attorney for the Second Judicial Circuit does not represent any other State Attorney, County, Tax Collector, or other entity. Thus, while the State Attorney for the Second Judicial Circuit is the representative of the State of Florida, his scope of review does not properly extend to matters outside of and collateral to the three (3) core issues explained by ASA Evans. In

reviewing the Complaint and representing the State in this limited manner, ASA Evans testified:

I'm not a bond lawyer ... I'm a criminal prosecutor. You know, whether or not the collection method was not something I thought was pertinent to the extent that it did conclude the full faith and credit of the project would pay for itself, that taxpayers and tax collectors or other or counties and, those interactions was something that never dawned on me and has never been an issue, has never come up, and I frankly did not consider them material, and I took Mr. Lawson at this word that whatever he said that he collected was Black Letter Law.

(A.2374:12-24).

Thus, in his experience, ASA Evans had no reason to doubt the representations of FPFA's former counsel that the remainder of the Complaint was comprised of "Black Letter Law" within the Trial Court's jurisdiction and understood that conducting such a review was never a consideration for the State Attorneys because of their limited role. (A.2380:21-24).

ASA Evans testified that during the Bond Validation Hearing, counsel for FPFA used the term "Black Letter Law" to describe the issue of whether or not the Counties have authority to require an interlocal agreement before FPFA operates in their jurisdiction. (A.2365:22 - 2366:12). But, whether or not the Counties have

authority to require an interlocal agreement before FPFA operates in their jurisdiction is not the kind of issue that the State Attorneys normally look for when reviewing bond validation claims. (A.2367:19 – 2368:8).

In reality, FPFA failed to operate with candor to the Trial Court and the State Attorneys by not disclosing its collateral attack on the Counties' and Tax Collectors' authority as to "existing resolutions, ordinances, interlocal agreements, and other actions of the Counties' regulating or prohibiting operation of FPFA's PACE program in their jurisdictions per Chapter 163 and constitutional home rule authority." (A.160). Rather, FPFA repeatedly made false assertions of "Black Letter Law" along with vague statements concerning the exercise of its authority to operate independently throughout the state in accordance with 'general law.'" *Id.* Thus, because FPFA's true agenda was not reviewed beyond the limited scope of the State Attorneys' role, the Counties, Tax Collectors, and State Attorneys properly challenged the collateral matters addressed in the Bond Validation Final Judgment via their Rule 1.540(b) Motions. *See City of Gainesville v. State*, 366 So. 2d 1164, 1166 (Fla. 1979) "(holding bond validation proceedings 'do not ... 'put at rest' collateral

questions that were somehow brought into the proceedings but need not and should not have been brought in" and such issues can be raised by proper parties in proper separate proceedings)." (A.1679-1680).

Appellees nonetheless dismiss the State Attorneys' objection to representing the Counties, Tax Collectors, other State Attorneys, and other entities because they fail to acknowledge the Trial Court's improper ruling on collateral matters that required the meaningful involvement of the Counties and Tax Collectors from which Appellees sought to influence. (FortiFi AB, p.52). Also, to be clear, despite Appellees' contention that Florida's State Attorneys represent the State "often, outside of their respective counties," Appellees rely on authority that specifically addresses special assignments from the Governor, which are rare and outside the normal scope and duty of the State Attorneys. *See Austin v. State ex rel Christian*, 310 So. 2d 289, 292 (Fla. 1975). (FortiFi AB, p.52).

Appellees likewise contend that the State Attorneys are on a "quest to defend the rights of parties they claim not to represent." (FortiFi AB, p.54-55). Despite this contention, Appellees refuse to acknowledge that their misrepresentations and omissions to the

State Attorneys resulted in preventing the Counties and Tax Collectors from any meaningful involvement in the Bond Validation Proceeding and this was done on purpose. Once the State Attorneys, Counties, and Tax Collectors understood what Appellees covertly accomplished in the Trial Court, their interests naturally aligned to attack the Bond Validation Final Judgment via their Rule 1.540 Motions.

Here, the State Attorney's claim for relief via Rule 1.540(b)(3) detailed FPFA's above-referenced multiple false representations regarding the collateral issues addressed in the Bond Validation Final Judgment. (A.1979-1980). Moreover, the State Attorneys contended that these representations were material because FPFA effectively denied the counties, tax collectors, and non-party State Attorneys an opportunity to be heard and present objections to FPFA's effort to use the Bond Validation Proceeding to adjudicate collateral issues against them. (A.1980).

In addition to the foregoing reasons, the Trial Court further committed reversible error in ruling that:

Therefore, the State Attorneys are procedurally barred from seeking post-judgment relief under Florida Rule of Civil Procedure 1.540(b) at this late date. This is because,

Rule 1.540(b) motions cannot serve as a "substitute for appellate review of judicial error." *Curbelo v Ullman*, 571 So. 2d 443, 444 (Fla. 1990) (citation omitted); *see also* § 75.09, Fla. Stat. (providing that when a timely appeal is not filed, a final judgment validating bonds is "*forever conclusive* as to all matters adjudicated against plaintiff and all parties affected thereby" (emphasis added)).

(A.37-38). As detailed in the State Attorneys' Initial Brief, the Trial Court inaccurately found the Rule 1.540 Motions to be procedurally time barred. (State Attorneys Initial Brief, p.23-25). The Trial Court and Appellees inaccurately rely on *Curbello* as controlling authority to deny the relief sought, reasoning that "rule 1.540(b) does not permit reopening a final judgment to revisit "judicial error" that should have been appealed." *Curbelo*, 571 So. 2d at 445. (FPFA AB, p.31).

However, a careful reading of *Curbello* shows that the holding relied on by the Trial Court and Appellees only applies to motions brought via Rule 1.540(b)(1) motions, not Rule 1.540(b)(3) and 1.540(b)(4) motions like those brought by the State Attorneys. *Id.* at 445. Clearly, relief based on judicial error under 1.540(b)(1) is distinguishable from claims for relief based on misrepresentations (1.540(b)(3)) and/or voidness (1.540(b)(4)). Therefore, the State Attorneys' requested relief based on Appellees' fraud,

misrepresentation, and misconduct was not barred, nor was their claim based on voidness for lack of subject matter jurisdiction, personal jurisdiction, and due process.

Similarly, the reliance of the Trial Court and Appellees on section 75.09, Florida Statutes is misplaced. Here, the Orders Denying Relief are a derivative of the Bond Validation Final Judgment, dealing with parties and information that should have been part of the proceedings from the start. In this vein, the fraud, misrepresentations, and misconduct were properly before the Trial Court and warrant reversal of the Orders Denying Relief based on the foregoing. Likewise, Movants' claims for relief under Rule 1.540(b)(4) were properly before the Trial Court because the failure to file an appeal does not preclude post-judgment relief pursuant to Rule 1.540(b)(4) based on voidness. *Rinas v. Rinas*, 847, So. 2d 555, 557 (Fla. 5th DCA 2003) ("Therefore, when a final judgment is void from the outset, the requirement to file an appeal within 30 days of the rendition of the final judgment does not apply."); *Deutsche Bank Nat. Trust Co. v. Patino*, 192 So. 3d 637, 637-38 (Fla. 5th DCA 2016) (granting 1.540(b) motion after judgment became final and despite fact that movant did not appeal judgment). (A.1975-1976).

Accordingly, the State Attorneys' requested relief based on voidness for lack of subject matter jurisdiction, personal jurisdiction, and due process was in fact timely and the Order Denying State Attorneys' Relief must be reversed.

Furthermore, as detailed at length above, Appellees committed a fraud upon the court by deviating from the governance of chapter 75 and influencing the trial court to adjudicate collateral matters beyond the proper scope of the Bond Validation Proceeding and the State Attorneys' limited representation of the State via Chapter 75, Florida Statutes. Consequently, the Order Denying Relief as to State Attorneys must be reversed.

CONCLUSION

Based on the foregoing, Appellants respectfully request that this Court reverse the Trial Court's Orders Denying Relief and hold: (1) that the State Attorney for the Second Judicial Circuit does not represent Florida's nineteen other state attorneys, or its counties, tax collectors, property appraisers, clerks, or any other officer or entity beyond its limited role under Chapter 75; (2) that post-judgment relief under Rule 1.540(b)(3) and (b)(4) was timely and properly sought; and (3) that the collateral matters adjudicated by the Bond

Validation Final Judgment are void for lack of subject matter jurisdiction, personal jurisdiction, and due process.

Respectfully submitted this 22nd day of August, 2024,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served upon all counsel of record via the Court's E-Filing Portal on this 22nd day of August, 2024.

/s/ Arthur I. Jacobs

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the type size and style used in this Reply Brief is double-spaced Bookman Old Style 14-point font in compliance with Rule 9.045(b), Florida Rules of Appellate Procedure, and that this Reply Brief contains 4,000 or less words, pursuant to Rules 9.045(e) and 9.210(a)(2)(B), Florida Rules of Appellate Procedure.

/s/ Arthur I. Jacobs