Florida Department of Agriculture and Consumer Services v. Dolliver, 283 So. 3d 953 (Fla. 2d DCA 2019).

Second DCA Holds That Florida Department of Agriculture Was Required to Pay a $14 Million Judgment Against the Department Due to a 2003 Taking

In 2003, homeowners of Lee County sued the Florida Department of Agriculture and Consumer Services ("the Department") for inverse condemnation when the Department removed 33,957 healthy citrus trees in an effort to eliminate citrus canker. In 2014, the trial court decided in favor of the Lee County homeowners, awarding them over $14 million. When the Department did not pay, the homeowners requested an appropriation from the Florida legislature, which was granted. However, after one of the Department commissioners stated that the judgments were still being appealed in court, the governor vetoed the appropriation. The homeowners responded to this by filing a petition for writ of mandamus or to declare Fla. Stat. § 11.066(3)-(4) unconstitutional—statutes that limited when judgments were required to be paid by the state and its agencies.

The trial court determined first that the homeowners had met the necessary elements for a writ of mandamus, but that the court was unable to issue a writ of mandamus according to Fla. Stat. § 11.066(3)-(4). Next, the trial court analyzed the constitutionality of those statutes and determined that they were unconstitutional, thus issuing a writ of mandamus ordering the Department to pay the 2014 judgment. The Department appealed this decision.

On appeal, the Department made five arguments: (1) the Department lacked the ability to pay the judgment; (2) the constitutional challenges to the Florida statutes were not ripe; (3) the trial court erred in deciding that Fla. Stat. § 11.066(3)-(4) is unconstitutional; (4) the writ infringes upon the legislature's power to appropriate funds; and (5) the trial court erred in stating it would consider issuing a writ of execution against the Department's property if it did not comply with the writ of mandamus.

The appellate court rejected all of the Department's arguments on appeal. First, the Court noted that the Department had not actually shown an inability to pay, and in addition, had not taken basic steps to request an appropriation to pay the judgments.

Second, the Court deemed the statute's constitutionality question ripe, referencing a Florida 4th DCA case but not discussing its reasoning.

Third, the court reiterated that Fla. Stat. § 11.066(3)-(4) is unconstitutional and emphasized two of the four reasons that trial court used in its reasoning—(1) that the statute unconstitutionally restricted the homeowner's ability to receive full compensation for the taking, and (2) the statute violated the separation of powers between the legislative branch and the judicial branch by attempting to limit judicial power.

Fourth, the claim that the writ violated the separation of powers doctrine was rejected by the court; citing to a Florida Supreme Court case from 2008, the appellate court confirmed that a "writ of mandamus is an appropriate enforcement mechanism for a judgment against a government entity."

Fifth, and last, the Court swiftly rejected the claim that the writ of execution being threatened if the Department did not comply with the writ of mandamus was in error. The Court noted that the lower court had indicated this action would not be taken without notice and a hearing to decide if any property of the Department would be subject to a writ of execution. The Court affirmed the lower court's ruling that the Florida statutes were unconstitutional and instructed the Department to pay the "constitutionally-guaranteed full compensation" that was ordered back in 2014.