Vickery v. City of Pensacola, No. 1D19-4344, 2022 WL 480742 (Fla. 1st DCA Feb. 16, 2022)

First DCA Interprets Tree Removal Statute and Holds that Local Governments are Unable to Challenge Sufficiency of Documentation Required under the Statute

Section 163.045(1), Florida Statutes, authorizes residential property owners to remove trees from their property without interference from local governments if the owners obtain documentation from an International Society of Arboriculture ("ISA")-certified arborist or Florida licensed landscape architect indicating that the trees present a danger to persons or property. Larry and Ellen Vickery (the "Vickerys") planned to remove a tree from their property and had their builder inform the City of Pensacola (the "City"). The builder attached a letter from an ISA-certified arborist opining that the "location of the tree puts homes and the occupants at risk of severe damage and safety" when the tree falls. The City filed an action for declaratory judgment seeking a determination that the statute did not prohibit the City from enforcing the local code provisions requiring the Vickerys to obtain a permit to remove the tree. The City argued the statute's use of the terms "documentation" and "danger" were ambiguous and the Vickerys' documentation was insufficient and based upon arbitrary and subjective standards.

The trial court granted the temporary injunction, which the Vickerys moved to dissolve. During the hearing on the motion, a landscape architect testified that those in his profession are not bound by written guidelines, that they use their own discretion to determine how to assess the danger of a tree, and that he would not typically prepare a written report of the danger. However, after the hearing, the court denied the Vickerys' motion and they filed an appeal.

On appeal, the Vickerys argued that the trial court ignored the plain meaning of the statute. The City countered that the statute is ambiguous and the trial court correctly interpreted it to require arborists and landscape architects to follow set guidelines and does not bar the City from enforcing municipal protection of trees. The First DCA found the terms "documentation" and "danger" to be unambiguous and turned to the plain meaning of the statute. The statute explicitly prohibits local governments from "requir[ing] a notice, application, approval, permit, fee, or mitigation . . . for the removal of a tree" once an ISA-certified arborist or a Florida-licensed landscape architect has provided a residential property owner with written evidence indicating that the tree presents a risk of harm. The First DCA held that if property owners have not met these conditions, they are subject to local rules. However, the statute does not empower a local government to challenge the sufficiency of the documentation either before or after tree removal if all conditions are met. The First DCA stated that challenges to the sufficiency of the documentation would render the statute meaningless. Pursuant to the testimony from the landscape architect at the hearing, there are no industry standards for landscape architects to follow so the Legislature's presumptive knowledge of this would indicate that the Legislature did not intend to impose specific standards. Additionally, the City argued that the statute did not apply to the Vickerys because they did not yet reside on the land. The First DCA held that "residential property" is property zoned for residential use or, in areas that have no zoning, property used for the same purposes as property zoned for residential use. To hold otherwise would impermissibly limit the statute and disregard the common use of the term "residential property."