University of Miami Law Review

Volume 2 | Number 4 Article 9

6-1-1948

Administrative Law -- Review, On Appeal, of Dismissal from Civil Service

It is a cardinal rule of construction that the testator's intention must fail if there is an irreconcilable conflict between that intention and established laws or public policy; the Florida Supreme Court has repeatedly asserted this view, qualifying that other cardinal rule of construction that the intent of the testator is to prevail.[16]

For it to be consistent with its own precedents, it is to be concluded that the court must have omitted the two material facts of time solely for the purpose of limiting the scope of the controversy. An alternative conclusion fails to note the grain of the court's prior decisions.[17]

Packer v. Packer, 179 Pa. St. 580, 36 A. 344, 57 Am. St. Rep. 615 (1897); Barker v. Hinton, 62 W. Va. 639, 59 S. E. 614, 13 Ann. Cas. 1150 and note (1907). Either view is sound on principle. Again, reference should be had first to legislative intent.

16 "The cardinal rule in the interpretation of wills, to which all other rules must bend, is that the intention of the testator shall prevail, provided that it is consistent with the rules of law." Floyd v. Smith, 59 Fla. 485, 51 So. 537, 37 L.R.A. (N.S.) 651, 138 Am. St. Rep. 133, 21 Ann. Cas. 318 (1910). Apparently, then, whether or not the testator intended to make a valid disposition is not too material; the question is as to what provision the testator intended to make. Once the court finds that intention, it will then proceed to determine whether the provisions in which that intention is expressed are valid in the light of the pertinent statutes and public policy.

17 *Idem.* And see Lee, *Is the Rule in Shelley's Case Abolished As To Wills?*, 25 Mich. L. R. 215. Is the poin tmade that since the Rule in Shelley's Case overrides the testator's intention, a statute abolishing the rule should do so similarly?

ADMINISTRATIVE LAW—REVIEW, ON APPEAL, OF DISMISSAL FROM CIVIL SERVICE

The Florida Courts, in their consideration of the case of Kennett v. Barber,[1] have established a precedent which, commenced in the case of Hammond v. Curry,[2] stands out as contrary to the well established principles of administrative law, and will probably result in the consideration by Florida courts of many cases and appeals which would meet with summary dismissal in the majority of jurisdictions. The Circuit Court, in the Barber case, granted a petition for a peremptory

1 31 So. 2d 44 (Fla., 1947).

2 153 Fla. 245, 14 So. 2d 390 (1943).

writ of mandamus against the City of Miami Beach, directing the reinstatement of complainant, a city fireman, who had been dismissed for conduct unbecoming a city employee.[3] The dismissal of Barber had previously been sustained by the Personnel Board, created and acting under the authority of a special act of the Florida Legislature.[4] On the appeal of the city from the decision of the Circuit Court, the Supreme Court allowed a review de novo, where a writ of certiorari would have sufficed to permit a review of the record; and reversed the decision of the lower court, on the grounds that the evidence justified the dismissal and that the courts should not interfere with the action of city authorities in removing an employee when the record disclosed nothing more than orderly attempt to enforce a reasonable standard of conduct on the part of city employees. In thus considering, on appeal, the facts and the merits of the case, the court established what may be an unfortunate precedent while arriving at a just and equitable decision.

Laws of Florida, Special Acts of 1937, Chapter 18696, created a civil service system for certain officers and employees of the City of Miami Beach, Florida, with Section 9, of the above-named Chapter, specifically providing that, in cases of dismissal, the findings of the Personnel Board shall be conclusive. Sections 174.11 and 174.16, Florida Statutes of 1941, further provide for appeals to Civil Service Boards by discharged or suspended employees; but there is no statutory provision which allows an appeal to the judiciary from the decision of the Board. However, such decisions have been reviewed by courts in this and other states for the purpose of looking into the jurisdiction of the board, or for fraud, bad faith, or a judgment absolutely void on its face.

The Florida Supreme Court has stated in earlier cases[5] that a removal of a city employee, if made in compliance with the terms of the city charter, is not subject to review by the courts; although the jurisdictional facts of proper notice and service of charges on defendant may be inquired into by the courts. The court has recently ruled[6] that an order or decision of a Civil Service Board is administrative or ministerial, not judicial, and cannot be reviewed by the courts.

It has been frequently held in other jurisdictions that removals for cause will not be reviewed provided the removal is made in good faith

[3] A city fireman, employed by the City of Miami Beach, under classified service regulations was discharged by the City Manager and the Fire Chief for conduct unbecoming to a city employee in that . . . " . . . you were drunk and you did then and there grab and twist the arm of your pregnant wife and threw her to the ground and you did . . . etc."

[4] Laws of Florida, Special Acts of 1937, Vol. 2 C. 18696.

[5] Bryan v. Landis, 106 Fla. 19, 142 So. 650 (1932); Bauder v. Markle, 107 Fla. 742, 142 So. 822 (1932).

[6] Arnold et al. v. State ex rel. Mallison, 147 Fla. 324, 2 So. 2d 874 (1941).

and the essential formalities of the removal proceedings are observed. In some respects, the Civil Service Boards may be considered to be invested with the powers of a judicial tribunal with power to hear and determine charges against officers, and the courts will not set up their judgment against that of the Board and issue a mandamus to reinstate such officer.[7] The legislative creation of a right of appeal from the quasi-judicial act of an administrative tribunal has even been described as an unconstitutional endeavor to foist non-judicial functions on the courts.[8] The federal courts have hesitated to go this far; but have held that the action of the head of a department in removing an employee from the Federal Civil Service on the ground of inefficiency is beyond the review of the court on mandamus in the absence of some specific statutory provision to the contrary.[9]

It is to be hoped that the Florida Supreme Court, in considering future appeals, which undoubtedly will arise as a result of their decision in the Barber case, will return to reasoning so ably expounded by Justice Buford in his dissenting opinion in Hammond v. Curry; and thus eliminate the unnecessary consideration of such appeals by an already overworked judiciary.

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[7] 10 Am. Juris. 935 Sec. 14 *et seq.* *See* Souder v. Philadelphia, 305 Pa. 1, 156 A. 245 (1931), 77 ALR 610.

[8] Re Harold Fredericks et al., Appts., 285 Mich. 262, 280 N. W. 464 (1938), 125 ALR 259; City of Aurora v. Schoeberlien, 230 Ill. 496, 82 N. E. 860 (1907).

[9] *See* Keim v. U. S., 177 U. S. 290 (1900).