

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SOUTHWEST FLORIDA WATER)
MANAGEMENT DISTRICT,)
)
Petitioner,)
)
vs.) Case No. 04-2051F
)
AMANDA J. SUGGS, AMBER SUGGS)
AND DEBORAH SUGGS,)
)
Respondent.)
_____)

FINAL ORDER

This matter was set for hearing on July 30, 2004, in Brooksville, Florida. On July 16, 2004, the parties filed a Joint Motion for Telephonic Hearing in Lieu of Evidentiary Hearing stating the parties' belief that it was not necessary to present evidence to establish entitlement to attorney's fees and requesting that the hearing be conducted via telephone to allow the parties to present their legal arguments. The motion was granted, and the telephonic hearing was held on July 30, 2004. Because this case was argued and decided upon the parties' legal arguments, findings of fact are unnecessary.

This case arose from the consolidated cases styled, Southwest Florida Water Management District v. Amanda J. Suggs, Amber Suggs and Deborah Suggs, Case Nos. 03-0787, 03-0788, 03-1128 (DOAH May 20, 2004), in which the final hearing

commenced on May 17, 2004. After argument on pending motions and at the outset of the evidentiary portion of that proceeding, counsel for Respondents announced that they were withdrawing their petitions contesting the Administrative Complaints and Orders that initiated the cases. The undersigned announced to the parties that an Order Closing Files would be entered relinquishing jurisdiction of the cases to the agency, and then closing the record of the hearing.

On May 18, 2004, Respondent Deborah Suggs ("Deborah Suggs" or "Ms. Suggs") filed a "Motion to Relinquish Jurisdiction Pursuant to Section 120.57(1)(i), F.S." The motion stated that during the commencement of the May 17, 2004, hearing, "it became apparent that there was no remaining dispute of material fact" concerning the allegations of the Administrative Complaint and Order and that the only remaining issue was "whether the Respondents could be legally responsible for any of the work by virtue of their property interest in the site." Based on the above, Deborah Suggs moved "that the Administrative Law Judge close his file in this case and remand this matter to [Petitioner] for further proceedings pursuant to Section 120.57(2), F.S." (emphasis added). The underscored language marked the first time that any of the Respondents expressed a desire for an informal proceeding upon the closing of the file of the Division of Administrative Hearings.

On May 19, 2004, Petitioner filed a Response to Deborah Suggs' motion, alleging that the motion should be denied because it is "completely inconsistent with what occurred in open court" on May 17, 2004. Petitioner pointed out that Ms. Suggs' counsel "clearly and unequivocally withdrew her petition for hearing" on May 17, 2004, without the condition that she be granted an informal hearing pursuant to Subsection 120.57(2), Florida Statutes (2003). Petitioner further moved for attorney's fees and costs pursuant to Subsection 120.569(2)(e), Florida Statutes (2003), which provides:

All pleadings, motions, or other papers filed in the proceeding must be signed by the party, the party's attorney, or the party's qualified representative. The signature constitutes a certificate that the person has read the pleading, motion, or other paper and that, based upon reasonable inquiry, it is not interposed for any improper purposes, such as to harass or to cause unnecessary delay, or for frivolous purpose or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the presiding officer shall impose upon the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Petitioner contends that Ms. Suggs' motion is so inconsistent with her representations in open court "that it

could only be for the purpose of harassing, causing unnecessary delay, a frivolous purpose or to needlessly increase the cost of litigation." At the telephonic final hearing held on July 30, 2004, counsel for Petitioner made it clear that fees and costs were sought only in connection with Petitioner's response to Respondent Deborah Suggs' motion, which counsel characterized as a "baseless" motion that nonetheless necessitated a response.

On May 20, 2004, the undersigned entered an Order Closing File stating that "[j]urisdiction of these cases is hereby relinquished to the agency for such further action as may be appropriate." On May 26, 2004, Deborah Suggs filed a response to Petitioner's motion for attorney's fees and a cross-motion for attorney's fees. Ms. Suggs' cross-motion cited no statutory authority for an award of attorney's fees, though at the telephonic final hearing on July 30, 2004, counsel for Ms. Suggs stated that the cross-motion was made pursuant to Subsection 120.569(2)(e), Florida Statutes (2003). The cross-motion states that discovery in the underlying cases revealed to Petitioner that there was no factual or legal basis for charging Ms. Suggs with a violation Chapter 373, Florida Statutes (2003); and, therefore, the continued prosecution of the matter could only have been for an improper purpose. At the final hearing, the undersigned denied the cross-motion because it essentially requested a ruling in Ms. Suggs' favor on the issues in the

underlying cases, despite the fact that she withdrew her petition contesting those issues.

Petitioner's motion for attorney's fees and costs is also denied. Petitioner's motion is premised on the assumption that there was a significant difference between the withdrawal of Ms. Suggs' petition that occurred at the hearing on May 17, 2004, and the "Motion to Relinquish Jurisdiction Pursuant to Section 120.57(1)(i), F.S." filed on May 18, 2004. The distinction, according to Petitioner, is that the former was an unconditional withdrawal, whereas the latter requested the Administrative Law Judge to remand the case to Petitioner for an informal proceeding pursuant to Subsection 120.57(2), Florida Statutes.

The statute cited by Ms. Suggs, Subsection 120.57(1)(i), Florida Statutes, provides:

When, in any proceeding conducted pursuant to this subsection, a dispute of material fact no longer exists, any party may move the administrative law judge to relinquish jurisdiction to the agency. An order relinquishing jurisdiction shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with supporting and opposing affidavits, if any, that no genuine issue as to any material fact exists. If the administrative law judge enters an order relinquishing jurisdiction, the agency may promptly conduct a proceeding pursuant to subsection (2), if appropriate, but the parties may not raise any issues of disputed

fact that could have been raised before the administrative law judge. An order entered by an administrative law judge relinquishing jurisdiction to the agency based upon a determination that no genuine dispute of material fact exists, need not contain findings of fact, conclusions of law, or a recommended disposition or penalty. (Emphasis added)

The underscored language indicates that the decision to grant an informal proceeding pursuant to Subsection 120.57(2), Florida Statutes (2003), is a matter of discretion for the Agency. The Order relinquishing jurisdiction cannot require the Agency to conduct an informal proceeding. The Order's legal effect on the Agency would be the same whether entered pursuant to a withdrawal of Ms. Suggs' petition or pursuant to Ms. Suggs' later-filed motion. There was no need for Petitioner to respond to Ms. Suggs' motion. Any attorney's fees and costs incurred in so responding were voluntarily incurred, and the undersigned cannot conclude that such fees and costs merit recompense pursuant to Subsection 120.569(2)(e), Florida Statutes (2003).

Accordingly, it is

ORDERED that:

1. Petitioner's Motion for Attorney's Fees and Costs is DENIED, Respondent's Cross-Motion for Attorney's Fees is DENIED, and this case is hereby DISMISSED.

2. The file of the Division of Administrative Hearings in the above styled case is hereby CLOSED.

DONE AND ORDERED this 9th day of August, 2004, in
Tallahassee, Leon County, Florida.

Lawrence P. Stevenson

LAWRENCE P. STEVENSON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of August, 2004.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original Notice of Appeal with the agency Clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.