326 So.3d 840
District Court of Appeal of Florida, Second District.

DEAN WISH, LLC, Appellant,
v.
LEE COUNTY, Florida, Appellee.

No. 2D19-4843
|
October 6, 2021

Synopsis

Background: Developer brought action against county under Bert J. Harris, Jr., Private Property Rights Protection Act, seeking damages for county's denial of request for administrative increase in standard maximum residential density and permit for more dwelling units. The Circuit Court, 20th Judicial Circuit, Lee County, Leigh F. Hayes, J., granted county summary judgment. Company appealed.

Holdings: After granting motion for clarification, the District Court of Appeal, LaRose, J., held that:

as matter of first impression, having sold the property during the lawsuit, developer was no longer a "property owner" entitled to relief under the Act, and

the summary judgment was not a judicial taking.

Affirmed; question certified.

Black, J., filed a dissenting opinion.

Procedural Posture(s): Motion for Clarification; On Appeal; Motion for Summary Judgment.

***842** Appeal from the Circuit Court for Lee County; Leigh F. Hayes, Judge.

Attorneys and Law Firms

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Jay J. Bartlett and Jeffrey L. Hinds of Bartlett Loeb Hinds & Thompson, P.A., Tampa; and Richard Wm. Wesch, Lee County Attorney, Fort Myers, for Appellee.

BY ORDER OF THE COURT:

Upon consideration of appellant's motion for clarification, appellee's response, and the parties' supplemental briefing:

IT IS ORDERED that the motion for clarification is granted to the extent that the opinion dated April 7, 2021, is withdrawn and the attached opinion is substituted therefor.

No further motions will be entertained.

Opinion

LaROSE, Judge.

"Many high-stakes cases turn on ... narrow linguistic questions." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 141 (1st ed. 2012). This is such a case.

Dean Wish, LLC, challenges the final summary judgment rejecting its claim under the Bert J. Harris, Jr., Private Property Rights Protection Act, ***843** section 70.001, Florida Statutes (2016) (the Act). *See* Fla. R. App. P. 9.030(b)(1)(A) (providing this court's jurisdiction over appeals from final orders). The claimant must be the legal title holder to be entitled to relief under the Act. Because Dean Wish no longer holds legal title to the property at issue, we affirm.[1]

I. Background

Starting some forty years ago, Edward Dean and others began buying contiguous[2] parcels of land on Pine Island in Lee County, Florida, "for farming and eventual sale for residences." Much of the land was zoned for agricultural use and included a "Rural" future land use designation that allowed a residential density of one dwelling unit per acre (1 du/1 acre) under the Lee County Comprehensive Plan. The remaining land was designated as either "Outlying Suburban" or "Wetlands" future use.

In 2003, Lee County changed the "Rural" designation to "Coastal Rural," a designation that decreased density to

one dwelling unit per every ten acres (1 du/10 acres). At the time, Mr. Dean, along with other individuals and entities, had accumulated about fifty-five parcels, comprised of about 640 acres. Mr. Dean and another entity sued Lee County in November 2006 under the Act, based upon the alleged inordinate burden the "Coastal Rural" designation imposed upon the land. *See* § 70.001. The trial court dismissed the lawsuit because the claim was not ripe; the density reduction had not yet been applied to the allegedly affected landowners.

The land changed hands many times over the years. Ultimately, in 2010, Mr. Dean and Gary Wishnatzki formed Dean Wish. The company bought the fifty-five parcels. Then on May 18, 2015, Dean Wish submitted a development application to Lee County. Dean Wish sought an administrative increase in the standard maximum density for the "Coastal Rural" lands and for a permit for 336 dwelling units over its 640 acres (about 1 du/1.9 acres). *See* Lee County, Fla., Land Dev. Code ch. 33, art. III, div. 5, §§ 33-1051, 33-1052 (2015). Dean Wish included all of its parcels in its application, although the requested density increase was for the "Coastal Rural" lands.

In November 2015, Lee County's Zoning Division responded that it was not authorized to administratively approve the application. It suggested that Dean Wish "submit an application for a planned development consistent with the Land Development Code or an appropriate amendment to the Lee Plan." Then, in 2016, Lee County amended the Plan, setting the density of the "Coastal Rural" lands to one dwelling unit per 2.7 acres (1 du/2.7 acres).

Dean Wish presented Lee County with its notice of claim under the Act in August 2016. It also submitted an appraisal asserting a monetary loss exceeding $9 million. Dean Wish rejected a settlement offer from Lee County. It sued Lee County the following January.

Lee County moved to dismiss the lawsuit. Dean Wish filed an amended complaint. Lee County, again, moved to dismiss. It argued that Dean Wish failed to provide a valid presuit appraisal because the appraisal included parcels not subject to the "Coastal Rural" density reduction and not directly impacted by government action. Lee County relied on ***844** *Turkali v. City of Safety Harbor*, 93 So. 3d 493 (Fla. 2d DCA 2012). Dean Wish responded that Lee County and the Act required it to include all fifty-five parcels because it owned all of the contiguous property and all the parcels were part of the single 336-unit development plan. *See* § 70.001(3)(g) ("The term 'real property' means land and includes any appurtenances and improvements to the land, including any other relevant real property in which the property owner has a relevant interest. The term includes only parcels that are the subject of and directly impacted by the action of a governmental entity.").

The trial court rejected Lee County's position, finding *Turkali* inapposite because it "dealt with an owner 'bundling' his property with those of other owners in order to present a claim." *See Turkali*, 93 So. 3d at 495. The trial court found the appraisal valid because it included only property that Dean Wish owned, and Dean Wish only alleged damages stemming from "the loss in residential density of [its] Rural/Coastal Rural property." The trial court denied Lee County's motion without prejudice "to raise the issue upon presentation of additional countervailing evidence by subsequent motion for summary judgment, or at trial."

Lee County raised the appraisal issue in a subsequent summary judgment motion. Dean Wish—citing section 70.001(3)—countered that, as the trial court had previously ruled, it owns all the parcels and was not seeking damages for non-Coastal Rural parcels. Dean Wish maintained that the issue remained a fact question inappropriate for summary judgment.

Several months later, Dean Wish sold the property "as is" at auction. Seemingly, the auction was necessary due to lack of market interest, litigation costs, and Mr. Dean's retirement, increasing age, and medical expenses. The sales contract specified that Dean Wish retained all rights to monetary relief in the pending lawsuit. A corrective warranty deed provided that Dean Wish conveyed title subject to

> [a]ny award or payment of compensation made by Lee County in the Circuit Court action of *Dean Wish, LLC v. Lee County*, Case No. 17-CA-000061 and any orders of the Court in relation thereto, in accordance with Section 70.001(7), Fla. Stat. (2018); *provided any such order or settlement is limited to monetary compensation* and shall not result in the modification of any property rights or entitlements, including future land use designations, as such rights and entitlements to the landowner existed on the date of [the initial warranty deed].

(Emphasis added.)

Following the sale, Lee County filed another summary judgment motion, arguing that Dean Wish could not maintain the lawsuit because the Act required Dean Wish to maintain ownership of the property "until conclusion of the case." Dean Wish responded that the operative time for measuring ownership was when Lee County imposed the inordinate burden on its property.

The trial court granted Lee County's motion. The trial court agreed that Dean Wish was no longer the "property owner" as defined under section 70.001(3)(f) of the Act, as "the person who holds legal title to the real property."[3] The trial court observed:

> ***845** The [Act] utilizes the present indefinite tense ("holds legal title") in demarcating who is a proper [claimant]. It does not use the past tense ("held legal title") or the past perfect tense ("had held legal title"). As a result, the plain language of the [Act] requires a [claimant] to be the current legal title holder of the property that is the subject of a Bert Harris claim in order to avail itself of the remedies offered by the [Act].

The trial court also relied on *Turkali*, finding that Dean Wish's inclusion of nonimpacted parcels in its appraisal invalidated its claim. The trial court subsequently entered its final judgment, from which Dean Wish appeals.

II. Discussion

We limit our discussion to the first issue framed by Dean Wish: "[M]ay a [claimant] maintain an action under [the Act] where the [claimant] owned the property when it commenced the action but was forced to sell the property prior to trial while reserving the right to collect compensation?" This is an issue of first impression. Dean Wish argues that the Act's plain language requires that a claimant "need only own the property when the government imposes the burden" and that, therefore, the trial court violated the plain language and improperly relied on the rules of statutory construction to frustrate legislative intent. Dean Wish asserts that the trial court's interpretation creates an unreasonable restraint on alienation and amounts to a judicial taking. Dean Wish further asserts that even if the trial court's interpretation were correct, there is still a disputed fact question of whether it remains the "property owner" with legal title based on the corrected warranty deed.

Lee County contends that the trial court was correct: the Act's plain language "affords recovery only to the 'property owner' as defined in the Act, which requires the claimant to retain legal title to the subject property until the case is concluded." Lee County also argues that Dean Wish's post hoc retention of rights to money does not amount to an equitable or legal title for it to be a "property owner" under the Act.

We review the order granting summary judgment and issues involving statutory interpretation de novo. *Bair v. City of Clearwater*, 196 So. 3d 577, 581 (Fla. 2d DCA 2016). "Summary judgment is properly entered only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id.* (citing *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000)). "[O]nce the moving party has submitted evidence entitling it to relief, '[i]t is not enough for the opposing party merely to assert that an issue [of fact] does exist.' " *Cong. Park Office Condos II, LLC v. First-Citizens Bank & Tr. Co.*, 105 So. 3d 602, 610 (Fla. 4th DCA 2013) (second and third alterations in original) (quoting *Landers v. Milton*, 370 So. 2d 368, 370 (Fla. 1979)). "Rather, it is incumbent upon [the opposing party] to come forward with competent evidence revealing a genuine issue of fact[.]" *Id.* (alterations in original) (quoting *Fla. Bar v. Mogil*, 763 So. 2d 303, 307 (Fla. 2000)).

To interpret a statute, we examine primarily the statute's plain language. *Bair*, 196 So. 3d at 581 (citing *J.W. v. Dep't of Child. & Fam. Servs.*, 816 So. 2d 1261, 1263 (Fla. 2d DCA 2002)). "If the statute is clear and unambiguous, we need not resort to rules of statutory interpretation; rather, we give the statute 'its plain and obvious meaning.' " *Id.* (quoting *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)). We "endeavor[ ] to give effect to every word of a statute so that no word is construed as 'mere surplusage.' " ***846** *Hardee County v. FINR II, Inc.*, 221 So. 3d 1162, 1165 (Fla. 2017) (quoting *Heart of Adoptions, Inc. v. J.A.*, 963 So. 2d 189, 198 (Fla. 2007)). We review the tense used in the statute, *see, e.g.*, *Dep't of Revenue ex rel. Salyer v. Vobroucek*, 259 So. 3d 228, 231 (Fla. 2d DCA 2018) (applying the statute's plain language, including the use of present tense, to conclude that the trial court had jurisdiction under the statute over the child support dispute), and definitions in the statute or

dictionary, *see License Acquisitions, LLC v. Debary Real Estate Holdings, LLC*, 155 So. 3d 1137, 1144 (Fla. 2014) (explaining that when the legislature fails to define a term, "it is appropriate to refer to dictionary definitions in order to ascertain the plain meaning of the statutory provisions at issue" (citing *Greenfield v. Daniels*, 51 So. 3d 421, 426 (Fla. 2010))).

Unremarkably, statutes "are presumed to be grammatical in their composition. They are *not* presumed to be unlettered. Judges rightly presume, for example, that legislators understand subject-verb agreement, noun-pronoun concord, the difference between the nominative and accusative cases, and the principles of correct English word-choice." Scalia & Garner, *supra*, at 140. Any statement suggesting "that grammatical usage is some category of indication separate from textual meaning ... is quite wrong." *Id.* at 141.

Section 70.001(2) provides: "When a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief ... as provided in this section." The "property owner" is "the person who holds legal title to the real property that is the subject of and directly impacted by the action of a governmental entity." § 70.001(3)(f). The Act also permits an award of attorney fees and compensation to the prevailing "property owner." *See* § 70.001(6) (providing that the trial court shall award a "prevailing property owner the costs and a reasonable attorney fee" and "impanel a jury to determine the total amount of compensation to the property owner for the loss in value due to the inordinate burden to the real property").

These provisions are clear and unambiguous. The Act requires one to be the "property owner" to be eligible for statutory relief. § 70.001(2). And the Act plainly defines the term "property owner" as "the person who *holds* legal title to the [impacted] real property." § 70.001(3)(f) (emphasis added).

The trial court properly recognized that the Act utilizes the present indefinite tense to determine the proper claimant. The present indefinite tense is the same as the simple present tense. *See Tenses in Writing*, Ask Betty, https://depts.washington.edu/engl/askbetty/tenses.php (last visited Mar. 12, 2021). The simple present tense of "holds" communicates that the person currently holds legal title to the impacted property. *See* Mary Barnard Ray, *Finding the Perfect Tense*, Wis. Law., Apr. 1999, at 28 (providing that the simple present tense communicates current actions and habitual actions that still occur); Robert C. Farrell, *Why Grammar Matters: Conjugating Verbs in Modern Legal Opinions*, 40 Loy. U. Chi. L.J. 1, 19 (2008) (same); *see also Koehn v. Delta Outsource Grp., Inc.*, 939 F.3d 863, 865 (7th Cir. 2019) ("After all, the simple present-tense verb 'is' also implies 'current,' doesn't it?"); *Sherley v. Sebelius*, 644 F.3d 388, 394 (D.C. Cir. 2011) ("The use of the present tense in a statute strongly suggests it does not extend to past actions.").

The Act does not use a tense or terms that allows a claimant, who held legal title in the past, when the lawsuit was filed or when the property was burdened, to obtain ***847** relief. *Cf. Winston Labs v. Sebelius*, No. 09 C 4572, 2009 WL 8631071, at *6 (N.D. Ill. Dec. 11, 2009) ("Congress specifically defined the term 'affiliate' in the text of the [Federal Food, Drug and Cosmetic Act (FDCA)] employing a present sense definition. If Congress intended the term 'affiliate' to include dissolved, defunct or previously existing corporate entities, Congress could have included such a definition of 'affiliate' in the text of the FDCA."). In fact, the Act continues to use the term "property owner" to outline the trial court's procedures to determine compensation and fees. *See* § 70.001(6)(a)-(c). Put simply, the Act's plain language requires a claimant to be the current legal title holder of the impacted property to obtain the available remedies. *Cf. Osborne v. Dumoulin*, 55 So. 3d 577, 588 (Fla. 2011) ("We agree that use of the present tense of the verbs in section 222.25(4)[, Florida Statutes (2007),] narrows the relevant time that a debtor receives the benefits of the [constitutional] homestead exemption to the period when the debtor asserts the personal property exemption.").

Inserting the pertinent part of the definition into subsection 2, as Dean Wish desires, does not refute this conclusion: "When a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, [the person who holds legal title to the real property] is entitled to relief ... as provided in this section." *See* § 70.001(2), (3)(f). We recognize that the Act requires the person who holds legal title to wait to seek Bert Harris relief until the governmental entity has burdened the property. However, the continued use of "property owner"—that is defined with the present tense—communicates that the property owner must continue to hold legal title to the property at all stages of the litigation. *See* § 70.001(6); *cf. Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 59, 108 S.Ct. 376, 98 L.Ed.2d 306 (1987) ("One of the most striking indicia of the prospective orientation of the citizen suit is the pervasive use of the present tense throughout § 505 [of the Clean Water Act, also known as

the Federal Water Pollution Control Act, 33 U.S.C. § 1365(a)].... [T]he present tense strongly suggests: the harm sought to be addressed by the citizen suit lies in the present or the future, not in the past."); *Osborne*, 55 So. 3d at 588 (agreeing that the present tense of the verbs in the statute narrowed the time period that the debtor received the homestead exemption benefits).

It is noteworthy that the legislature used the present perfect tense for the requirement that the governmental entity's action "has inordinately burdened" the property. *See generally Soc'y for Clinical & Med. Hair Removal, Inc. v. Dep't of Health*, 183 So. 3d 1138, 1145 (Fla. 1st DCA 2015) (explaining that the present perfect tense "can be used to indicate 'action that was started in the past and has been recently completed *or* [action that] is continuing up to the present time' " (alteration in original) (citing William A. Sabin, *The Gregg Reference Manual*, ¶ 1033, at 272 (10th ed. 2005))). The legislature's use of the different tenses reflects its knowledge of "the significance and meaning of the language it employed." *See Barrett v. United States*, 423 U.S. 212, 217, 96 S.Ct. 498, 46 L.Ed.2d 450 (1976) (reasoning that "Congress knew the significance and meaning of the language it employed" where it used different tenses in the same statute); Alena Farber, *Venue, Then or Now?: Interpreting the Patent Venue Statute*, 33 Harv. J.L. & Tech. 693, 706 (2020) ("The Supreme Court has held that Congress's use of the present and present perfect tenses in one statute 'is significant ***848** and demonstrates that Congress carefully distinguished between present status and a past event.' It is notable that Congress chose to refer to the place of business in the present tense because 'Congress could have phrased its requirement in language that looked to the past ... but it did not choose this readily available option.' " (footnotes omitted)).

We now turn to application of the Act's plain language to the facts before us. Dean Wish is not the legal title holder of the parcels. It divested itself of legal title while the lawsuit was pending. *See generally McCoy v. Love*, 382 So. 2d 647, 649 (Fla. 1979) ("Where all the essential legal requisites of a deed are present, it conveys legal title."). Dean Wish never disputed the validity of the corrective deed. Dean Wish's retention of its right to monetary damages did not equate to a retention of the legal title to the property. *Cf. Anderson v. Aetna Cas. & Sur. Co.*, 443 So. 2d 404, 404-05 (Fla. 4th DCA 1984) ("[T]he policy defined 'owner' as one who holds *legal* title to the uninsured vehicle. Under the facts before us now, the insured had a beneficial interest in the vehicle but he did not hold *legal* title to the vehicle at the time of the accident.... Thus, the trial court erred in applying the PIP exclusion because the insured did not have legal title to the vehicle." (footnote omitted)).

Dean Wish's attempt to claim that there is a disputed fact question over whether it still held *legal* title is not genuine. *Cf. Vale v. Palm Beach County*, 259 So. 3d 951, 953 (Fla. 4th DCA 2018) (rejecting plaintiffs' argument that the county impacted their properties by allowing the redevelopment of a golf course within the same planned unit development because plaintiffs were not "property owners" under the Act where "it [was] undisputed that plaintiffs [did] not hold legal title to the former golf course").

Although not critical to our decision, we note that the corrective deed may have given Dean Wish rights, if any, in the chose of action. *Cf. Caulk v. Orange County*, 661 So. 2d 932, 933-34 (Fla. 5th DCA 1995) (discussing the circumstances in which a seller conveyed a deed with the reservation of rights to condemnation proceeds). Its purported retention of entitlement to damages does not seem to us to limit the scope of the legal title conveyed to the purchaser. Dean Wish was no longer a "property owner" and not "entitled to relief." *See* § 70.001(3)(f); *cf. Allstate Ins. Co. v. Morgan*, 870 So. 2d 2, 4 (Fla. 2d DCA 2003) ("Morgan was entitled to PIP benefits only if she was an 'injured person' as defined in paragraph 3(a)(ii) of the PIP section definitions. She was not, because she was not riding in an 'insured motor vehicle' as that phrase was specifically defined in paragraph 4 of the PIP section definitions.").

The cases that Dean Wish relies upon do not convince us otherwise.[4] For example, the First District in *City of Jacksonville v. Coffield*, 18 So. 3d 589, 593-94 (Fla. 1st DCA 2009), assumed that the original property owner and the subsequent holder of the legal title were "entitled to an adjudication of their rights under the Act" where the original property owner and the subsequent title holder were alter egos and parties to the lawsuit. The court did not decide the question at issue here, which is whether the original property owner was ineligible for any relief under ***849** the Act where he no longer held legal title to the property. *Id.*

We do not dispute that "Florida public policy disfavors unreasonable restrictions on the free alienability of property." *Webster v. Ocean Reef Cmty. Ass'n*, 994 So. 2d 367, 370 (Fla. 3d DCA 2008). But again, because the Act is unambiguous, we may not depart from its plain and natural meaning by considering public policy.[5] *See generally Bd. of Comm'rs of Leon Cnty. v. State*, 96 Fla. 495, 118 So. 313, 317-18 (1928) ("Where the language of a statute is ambiguous or doubtful in meaning, the courts may well look to the purpose and policy of the statute to

elucidate and explain the meaning of the language used, but it is a well-settled principle of construction that, so long as the language used is unambiguous, a departure from its plain and natural meaning is not justified by any consideration of its consequences or of public policy. It is also well settled that, where a statute is incomplete or defective because the case in question was not foreseen or contemplated, it is beyond the province of the courts to supply the omission, even though, as a result, the statute appears unfair, impolitic, or a complete nullity."). It is not our place to add language or alter the Act to resolve any perceived inconsistency with public policy concerning the free alienability of property. *See Fitts v. Furst*, 283 So. 3d 833, 841 (Fla. 2d DCA 2019) (explaining that the remedy for shortcomings in a statute "lies with the legislature, not the courts" (quoting *Mitchell v. Higgs*, 61 So. 3d 1152, 1156 (Fla. 3d DCA 2011))).

Because the trial court correctly interpreted the Act's plain language, Dean Wish's argument about a judicial taking also fails. Claims under the Act are for government actions that do not amount to constitutional takings. *See* § 70.001(1) ("The [l]egislature recognizes that some laws, regulations, and ordinances of the state and political entities in the state, as applied, may inordinately burden, restrict, or limit private property rights without amounting to a taking under the State Constitution or the United States Constitution. The [l]egislature determine[d] that there is an important state interest in protecting the interests of private property owners from such inordinate burdens. Therefore, it is the intent of the [l]egislature that, as a separate and distinct cause of action from the law of takings, the [l]egislature herein provides for relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state, as applied, unfairly affects real property."); § 70.001(9) ("This section provides a cause of action for governmental actions that may not rise to the level of a taking under the State Constitution or the United States Constitution."). In effect, the legislature created and defined a limited right that did not previously exist. *See Brevard County v. Stack*, 932 So. 2d 1258, 1261 (Fla. 5th DCA 2006) ("The [l]egislature determined that there was an important state interest in protecting private property owners from these burdens, and provided relief in the [Bert Harris Act] by establishing a new cause of action, where none previously existed."). Because the Act's plain language does not extend the statutorily-created right to a person who does not hold legal title to the property, the trial court did not take an "established" right; the court's action is not a judicial taking. *Cf. Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.*, 560 U.S. 702, 715, 130 S.Ct. 2592, 177 L.Ed.2d 184 (2010) ("If a legislature ***850** *or a court* declares that what was once an established right of private property no longer exists, it has taken that property, no less than if the State had physically appropriated it or destroyed its value by regulation.").

III. The 2021 Amendment

Shortly after we issued our first opinion in this case, *see Dean Wish, LLC v. Lee County*, —— So. 3d ——, 46 Fla. L. Weekly D762, 2021 WL 1277973 (Fla. 2d DCA Apr. 7, 2021), the legislature approved several amendments to section 70.001. *See* ch. 2021-51, §§ 9, 65, Laws of Fla.; ch. 2021-203, §§ 1, 5, Laws of Fla. Dean Wish notified this court of the amendment and stated it would not object to supplemental briefing.

For our purposes, the amendment to subsection (2) added that "[a] property owner entitled to relief under this section retains such entitlement to pursue the claim if the property owner filed a claim under subsection (4) but subsequently relinquishes title to the subject real property before the claim reaches a final resolution." Ch. 2021-203, § 1, Laws of Fla. Notably, the legislature did not change the definition of property owner in section 70.001(3)(f), the section at issue before us. *See id.* at §§ 1-5. The Governor approved the amendments on June 29, 2021. *Id.* at § 5. Amended subsection (2) took effect on October 1, 2021. *Id.* at § 5. Obviously, the amended subsection (2), upon its effective date, expands the class of persons who may pursue a claim under the Act. *Id.* at §§ 1-5.

Because this is the parties' case, we asked them to assess the impact, if any, that the amendment may have on this case. In its supplemental briefing, Dean Wish characterizes the amendment as a legislative clarification of existing law. Lee County disagrees; it argues further that the amendment is a substantive revision that applies prospectively starting October 1, 2021.

Courts may look to a statutory amendment as clarification of the legislature's "intent behind the prior version of the statute." *Leftwich v. Fla. Dep't of Corr.*, 148 So. 3d 79, 83-84 (Fla. 2014); *see also Dadeland Depot, Inc. v. St. Paul Fire & Marine Ins.*, 945 So. 2d 1216, 1230 (Fla. 2006) ("Based on the foregoing, it may be within this Court's discretion to look to the [l]egislature's recent amendment of section 624.155[, Florida Statutes,] to assist in construing the term 'insured' but we have most recently refused to do so."). However, the supreme court has cautioned that "[s]ubsequent legislatures, in the guise of 'clarification,' cannot nullify retroactively what a prior

legislature clearly intended." *Kaisner v. Kolb*, 543 So. 2d 732, 738 (Fla. 1989) (citing art. I, § 10, Fla. Const.). We are bound to a statute's clear language. *See Savona v. Prudential Ins. Co. of Am.*, 648 So. 2d 705, 707 (Fla. 1995) ("Because the language of the statute is clear, we do not look beyond it to discern legislative intent." (first citing *City of Miami Beach v. Galbut*, 626 So. 2d 192 (Fla. 1993); then citing *In re McCollam*, 612 So. 2d 572, 573 (Fla. 1993); then citing *Streeter v. Sullivan*, 509 So. 2d 268, 271 (Fla. 1987); and then citing *Holly*, 450 So. 2d at 219)); *Fla. Retail Fed'n, Inc. v. City of Coral Gables*, 282 So. 3d 889, 895-96 (Fla. 3d DCA 2019) ("There is no need to resort to rules of statutory construction because the statutory text is clear."), *review denied*, No. SC19-1798, 2020 WL 710303 (Fla. Feb. 12, 2020).

Because the Act's language before us is clear, we need not look at the 2021 amendment to discern a prior legislative intent. Indeed, precedent urges caution. *See Dadeland Depot, Inc.*, 945 So. 2d at 1230 (recognizing that the Florida Supreme ***851** Court has "been reluctant to look at subsequent amendments to determine legislative intent when the language of a statute is clear and unambiguous"); *compare Savona*, 648 So. 2d at 707 (refusing to address recent "amendments due to [the court's] conclusion that the statute has a plain and discernible meaning"), *and Acad. for Positive Learning, Inc. v. Sch. Bd. of Palm Beach Cnty.*, 315 So. 3d 675, 684 (Fla. 4th DCA 2021) (en banc) (refusing to determine the effects of a recent amendment and "simply interpret[ing] the [earlier] version of [the statute] as written"), *with D & T Props., Inc. v. Marina Grande Assocs.*, 985 So. 2d 43, 48 (Fla. 4th DCA 2008) (reasoning the amendment "did not nullify the plain language of earlier legislation" where "[t]he legislation clarified an ambiguity in earlier legislation").

The dissent characterizes the amendment as a clarification of existing law that entitles Dean Wish to prevail. Interestingly, our dissenting colleague joined our prior opinion and, presumably, agreed that the language before us was clear. *See Dean Wish, LLC*, —— So. 3d ——, 46 Fla. L. Weekly D762. The dissent does not now claim otherwise. Rather, the dissent relies solely on the recent controversy rule to conclude that we must consider the amendment a clarification of prior legislative intent. *See generally Madison at Soho II Condo. Ass'n v. Devo Acquisition Enters.*, 198 So. 3d 1111, 1116 (Fla. 2d DCA 2016) ("When the legislature amends a statute shortly after controversy has arisen over its interpretation, the amendment can be considered an interpretation of the original law, not a substantive change." (quoting *Essex Ins. v. Integrated Drainage Sols., Inc.*, 124 So. 3d 947, 952 (Fla. 2d DCA 2013))).

The dissent's analysis is flawed. First and foremost, we are not compelled to apply the recent controversy rule to unambiguous statutes. *See Dadeland Depot, Inc.*, 945 So. 2d at 1230; *Savona*, 648 So. 2d at 707; *Acad. for Positive Learning, Inc.*, 315 So. 3d at 684. We must be careful not to permit the 2021 amendment, "in the guise of 'clarification,' " to nullify the Act's plain language simply because the legislature adopted an amendment with remarkable haste. *Kaisner*, 543 So. 2d at 738; *see Savona*, 648 So. 2d at 707; *D & T Props., Inc.*, 985 So. 2d at 48.

Moreover, unlike the amendment addressed in *Madison at Soho*, the 2021 amendment does not state that it was a clarification of existing law. *See* ch. 2021-203, §§ 1-5, Laws of Fla.; *see also Madison at Soho*, 198 So. 3d at 1115, 1117 (quoting section 718.116(3), Florida Statutes (2015), for "[t]he preceding sentence is intended to clarify existing law," and reasoning that "[t]he clear legislative directives, coupled with the close temporal proximity of the amendment to [a recent case], leave no room for any ... reasonable conclusion" other than the amendment was a clarification of legislative intent in response to a recent controversy). Nor did the legislature provide that the amendment applied retroactively. *See* ch. 2021-203, §§ 1-5, Laws of Fla.; *Essex Ins.*, 124 So. 3d at 952 (reasoning that the amendment was an interpretation of the original law where the legislature amended the statute quickly after the controversy arose "and, by providing that the amended provisions apply retroactively [to 1988], [the legislature] clarified that it had intended since 1988 that chapter 627 did not apply to surplus lines carriers").[6]

***852** The dissent's position is tied solely to the timing of the amendment. Yet, we are compelled to observe that the amendment before us is not explained in a legislative staff analysis, nor is there a record of debate or hearing in the Senate. We are also quick to note, however, that the House sponsor stated during the House floor debate that the amendment was a "clarification." Yet, she subsequently stated that she could not speak on any cases or current arguments; she also recognized that the amendment was not expressly retroactive. *See* Florida House of Representatives, *House in Session*, flsenate.gov, https://www.flsenate.gov/media/VideoPlayer?EventID=1_2usodgs8 -202104281030&Redirect=true (last visited Aug. 3, 2021) (relevant discussion begins at approximately time marker 8:41:00). Our initial opinion warranted no mention by her. Some House members disagreed that the amendment was a clarification. This hardly provides consensus. And, at the end of the day, the legislature did not add language to the amendment to state it was a clarification of existing law as it has done with other statutes, like the one in *Madison at Soho*. *See id.*;

ch. 2021-203, §§ 1-5, Laws of Fla.; *Madison at Soho*, 198 So. 3d at 1117.

We cannot accept that the limited legislative debate is instructive, much less decisive, as to whether the 2021 amendment was a clarification. *See Aetna Cas. & Sur. Co. v. Huntington Nat'l Bank*, 609 So. 2d 1315, 1317 (Fla. 1992) (rejecting the legislative debate as evidence of legislative intent because "legislative intent must be determined primarily from the language of the statute"). Relying on the scant legislative record is but a search for friends in the crowd that reveals only an acquaintance. *See Conroy v. Aniskoff*, 507 U.S. 511, 519, 113 S.Ct. 1562, 123 L.Ed.2d 229 (1993) (Scalia, J., concurring) ("Judge Harold Leventhal used to describe the use of legislative history as the equivalent of entering a crowded cocktail party and looking over the heads of the guests for one's friends.").

Further, the length of time in which the Act has been in effect weighs against exercising our discretion to use the 2021 amendment to interpret the prior meaning of the Act's provision. *See generally Macchione v. State*, 123 So. 3d 114, 116-17 (Fla. 5th DCA 2013) ("There are factors the courts apply when determining whether a statutory amendment is a clarification of existing law that may be applied retroactively. They include: whether the amendment responds to a recent controversy; the span of time between enactment of the original statute and the amendment; and the contents of the title of the bill containing the amendment.").

The pertinent parts of the Act remained largely unchanged for twenty-six years. *See* ch. 95-181, §§ 1, 6, Laws of Fla. (defining property owner as "the person who holds legal title to the real property at issue"). Unquestionably, the makeup of the legislature has changed in that more than a quarter century. We are reluctant to conclude that the 2021 legislature was clarifying the original intent of a twenty-six-year-old statute. *See State Farm Mut. Auto. Ins. v. Laforet*, 658 So. 2d 55, 62 (Fla. 1995) ("It would be absurd, however, to consider legislation enacted more than ten years after the original act as a clarification of original intent; the membership of the 1992 legislature substantially differed from that of the 1982 legislature.").

***853** The dissent also fails to recognize that the amendment is substantive, not merely a clarification.[7] The amendment creates new rights. *See Nunez v. Geico Gen. Ins.*, 117 So. 3d 388, 398 (Fla. 2013) ("We therefore find that the 2012 amendment at issue amounts to a substantive change, not just a legislative clarification, of the PIP statute, especially considering the careful examination that applies in this context and our responsibility to construe the provisions of Florida's No–Fault Act liberally in favor of the insured."); *Knowles v. Beverly Enters.-Fla., Inc.*, 898 So. 2d 1, 6 n.1 (Fla. 2004) (rejecting the recent amendment, in part, because it was a substantial change where the amendment expanded "a personal representative's right to bring a cause of action"). The 2021 amendment did not clarify the definition of property owner that we addressed in our initial opinion. *See Dean Wish, LLC*, —— So. 3d at ——, 46 Fla. L. Weekly at D763-74. Instead, the 2021 amendment expanded relief under the Act to a broader class of persons—i.e., property owners who present a written claim to the governmental entity under subsection (4) and later relinquish title to the property before reaching a final resolution. No such right previously existed. *See* ch. 2021-203, §§ 1-5, Laws of Fla.; *cf. Bair v. City of Clearwater*, 196 So. 3d 577, 581 (Fla. 2d DCA 2016) (explaining that the "Act contains a very narrow waiver of sovereign immunity" that must be strictly construed); *Brevard County*, 932 So. 2d at 1261 (explaining that the legislature provided relief for property owners "in the [Act] by establishing a new cause of action, where none previously existed" (citing § 70.001(1), (9))).

Finally, the amendment does not apply retroactively because the legislature did not express a clear intent to do so. *See* ch. 2021-203, §§ 1-5, Laws of Fla.; *see generally Fla. Ins. Guar. Ass'n v. Devon Neighborhood Ass'n*, 67 So. 3d 187, 194-96 (Fla. 2011) (explaining that the presumption against retroactivity for substantive statutes remains unless there is an express statement of legislative intent for the statute to apply retroactively (quoting *Metropolitan Dade County v. Chase Fed. Hous. Corp.*, 737 So. 2d 494, 500 n.9 (Fla. 1999))). It prospectively enlarges the class of property owners who may assert a claim under the Act.

We conclude that the 2021 amendment is not a clarification of existing law and does not apply retroactively to benefit Dean Wish.

IV. Conclusion

Having sold the property during the lawsuit, Dean Wish was no longer a "property owner" entitled to relief under the Act. *See* § 70.001(2), (3)(f). We therefore affirm the final summary judgment. In doing so, we recognize the legislature's ability to create new substantive rights going forward. But, on the record before us, we must conclude that the amendment is not a clarification of prior law.

We acknowledge the salutary purposes of the Act. *See generally Brevard County*, 932 So. 2d at 1261 ("Where property is inordinately burdened by a regulation, the Act provides relief to the owner. § 70.001(2). It requires the state and its political subdivisions to, inter alia, waive, modify, transfer, purchase or financially compensate the property owner by entering into a settlement agreement providing relief, as enumerated in section 70.001(4)(c). The Act does not affect the inherent power of a governmental entity, but merely requires the government to provide relief, in fairness, to a property ***854** owner."). Nor do we discount the importance of property rights in the state. Therefore, we certify the following question to the Florida Supreme Court as one of great public importance:

> IS THE 2021 AMENDMENT TO SECTION 70.001(2) A CLARIFICATION OF EXISTING LAW SO THAT THE PLAINTIFF MAY MAINTAIN AN ACTION UNDER THE BERT HARRIS ACT WHERE THE PLAINTIFF OWNED THE PROPERTY WHEN THE PLAINTIFF FILED A CLAIM UNDER SUBSECTION (4) BUT WAS DIVESTED OF OWNERSHIP PRIOR TO TRIAL?

See, e.g., *State v. Devoney*, 675 So. 2d 155, 161 (Fla. 5th DCA 1996) (certifying sua sponte a question pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(v)), *approved*, 717 So. 2d 501 (Fla. 1998); *cf.* art. V, § 3(b)(4), Fla. Const. (providing that the Florida Supreme Court "[m]ay review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance"); Fla. R. App. P. 9.030(a)(2)(A)(v) (same).

As we noted earlier, the legislature prospectively amended subsection (2) to permit a "property owner" to pursue a Bert Harris claim "if the property owner ... subsequently relinquishes title to the subject real property before the claim reaches a final resolution." *See* ch. 2021-203, §§ 1, 5, Laws of Fla. We do not know the number of pending cases that could be affected by our decision and not be subject to the amendment. Because the parties have noted at least four other appealed trial court cases "where the continuity of ownership was determinative," we find it appropriate to certify the above question.

Affirmed; question certified.

KHOUZAM, J., Concurs.

BLACK, J., Dissents with opinion.

BLACK, J., dissenting.

As the majority points out, my opinion has changed; in my view, all three of our opinions should change. The legislature has, in response to the recent controversy created by the opinion of this court, clarified section 70.001(2) as to the precise issue before us. We were concerned enough with the immediate enactment of legislation that we took the extraordinary step of sua sponte ordering briefing to address the impact of the legislation on this case. Dean Wish's argument in that briefing is persuasive, and I therefore dissent from the majority's unchanged position. In light of the legislature's clarification of the Bert Harris Act with regard to whether a property owner must hold title at all stages of litigation and by virtue of the fact that this case will not have reached its final resolution by October 1, 2021, I would reverse the order granting final summary judgment in favor of Lee County.

Dean Wish timely filed a motion for clarification following the issuance of the original opinion in this case. While that motion was pending, Dean Wish filed a notice of supplemental authority, bringing to our attention an amendment to the Bert Harris Act which the legislature had passed on April 28, 2021, a mere twenty-one days after this court issued its opinion addressing an issue of first impression. Important to the decision of this court, the amendment adds the following to subsection (2): "A property owner entitled to relief under this section retains such entitlement to pursue the claim if the property owner filed a claim under subsection (4) but subsequently relinquishes title to the subject real property before the claim reaches a final resolution." Ch. 2021-203, § 1, Laws of Fla. Equally as important, the amendment does not alter the definition of ***855** property owner. The language which is central to this case was added to an existing bill on April 28, 2021. Thus, while substantive amendments to the Bert Harris Act had been contemplated by the legislature well before issuance of our opinion, *see* Fla. HB 421, § 1 (2021) (filed January 26, 2021), and the proposed legislation had gone through multiple

amendments by the time our opinion issued, the operative clarifying language was not added to the bill until twenty-one days after the issuance of our opinion, *see* Fla. HB 421, § 1 (2021) (filed April 28, 2021). The legislation as amended and engrossed was then voted upon.

This court sua sponte ordered supplemental briefing to address the applicability of the amendment to this case. Now, while we correctly grant the motion for clarification based on a jurisdictional misstatement, the majority erroneously adheres to the analysis and conclusion reached before the legislature passed its clarifying amendment. The legislature's amendment to section 70.001(2) changes the central issue of this case. *See Madison at Soho II Condo. Ass'n v. Devo Acquisition Enters.,* 198 So. 3d 1111, 1113 (Fla. 2d DCA 2016) ("The dispositive issue in this appeal is whether this court may utilize the legislature's recent clarifying amendment to a statute, enacted during the pendency of this appeal, to interpret the pre-amended version of that statute."). And while the majority does not acknowledge that the central issue has changed, the importance of the amendment is nonetheless evidenced by the fact that this court sua sponte ordered the parties to brief the issue.[8]

The supreme court has repeatedly "recognized that when 'an amendment to a statute is enacted *soon after controversies as to the interpretation of the original act arise*, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof.' " *Metropolitan Dade County v. Chase Fed. Hous. Corp.*, 737 So. 2d 494, 503 (Fla. 1999) (quoting *Lowry v. Parole & Prob. Comm'n*, 473 So. 2d 1248, 1250 (Fla. 1985)); *see also Leftwich v. Fla. Dep't of Corr.*, 148 So. 3d 79, 83 (Fla. 2014) ("[A] statutory amendment may be relevant to a determination of the intent behind the previous statute.... [I]f the Legislature amends a statute shortly after a controversy arises with respect to the interpretation of the statute, then the amendment may be considered to be a legislative interpretation of the original statute rather than a substantive change to the statute." (citing *Lowry*, 473 So. 2d at 1250)). The language at issue—the addition to subsection (2)—was not proposed until after this court issued its opinion and the legislation amending the Bert Harris Act was passed less than one month later; the change to subsection (2) should be read as a clarification of legislative intent in response to a recent controversy. *See Metropolitan Dade County*, 737 So. 2d at 503; *see also Madison at Soho*, 198 So. 3d at 1117 (noting that the amendment at issue was introduced and passed six months after this court's opinion and concluding "it is clear to us that the legislature amended [the statute] in response to a recent controversy arising out of our construction of that statute"); *Essex Ins. v. Integrated Drainage Sols., Inc.*, 124 So. 3d 947, 952 (Fla. 2d DCA 2013) ("When the legislature amends a statute shortly after controversy has arisen over its interpretation, the amendment can be considered an interpretation ***856** of the original law, not a substantive change."). The amendment to section 70.001(2) is not a substantive change implicating a retroactivity analysis, regardless of whether the other amendments to section 70.001—which were proposed prior to the issuance of our original opinion—are substantive. The issue before us involves interpretation of the original statute.[9]

Where judicial interpretation of legislative intent is quickly followed by legislative action, the legislative action should be considered a clarification of the earlier statute and not a substantive change.[10] The facts of our case fit perfectly within what this court has called the recent controversy rule. *See Madison at Soho*, 198 So. 3d at 1116-17. To support their conclusion that the amendment to section 70.001(2) is not a clarification, the majority ignores the determinative facts of the cases upon which they rely, electing instead to utilize selected quotes out of context. *Kaisner v. Kolb*, 543 So. 2d 732 (Fla. 1989), which is quoted by the majority for the concept of a later legislature "clarifying" the work of a prior legislature, actually addresses the repeal of a statute, or as is quoted, the statute's nullification: "Indeed, it would be absurd to construe the repeal of a statute, even where the legislature purports to make the repealer partially retroactive, as a 'clarification' of original legislative intent. Subsequent legislatures, in the guise of 'clarification,' cannot nullify retroactively what a prior legislature clearly intended." *Id.* at 738 (citing Art. I, § 10, Fla. Const.). There is no nullification in this case, nor does this case address application of a newly enacted "clarification" of one statute to another statute. *See id.* (considering "whether petitioners had a vested interest under section 286.28[, Florida Statutes (1985),] that would be impaired by retroactive application of chapter 87–134[, Laws of Florida,]" which "explicitly characterize[d] itself as a clarification of original legislative intent as to section 768.28[, Florida Statutes (Supp. 1980)]"). Similarly, we are not tasked with addressing the applicability of one statute, whether amended or newly enacted, to another statute. *Cf. State Farm Mut. Auto. Ins. v. Laforet*, 658 So. 2d 55, 56 (Fla. 1995) (addressing whether a newly created subsection of one statute that altered damages available under another statute was a clarification or substantive change). And while *Dadeland Depot, Inc. v. St. Paul Fire & Marine Insurance Co.*, 945 So. 2d 1216 (Fla. 2006), acknowledges the supreme court's "reluctan[ce] to look at subsequent amendments to determine legislative intent

when the language of a statute is clear and unambiguous," it also provides that the court has "the right and duty, in arriving at the correct meaning of a prior statute, to consider subsequent legislation" and that "[s]trict adherence" to the rule that the court is reluctant to consider subsequent legislation when an ***857** amendment is passed long after the original act was made law "has not been followed, *but only when a subsequent amendment is enacted soon after a controversy regarding a statute's interpretation has arisen*." *Id.* at 1230 (emphasis added) (quoting *Parker v. State*, 406 So. 2d 1089, 1092 (Fla. 1981)). *Dadeland Depot*, therefore, acknowledges that the recent controversy rule has a place in interpreting statutes. The majority cites *Macchione v. State*, 123 So. 3d 114, 116-17 (Fla. 5th DCA 2013), for the factors to be considered in determining whether an amendment is a clarification, but it then disregards the first factor, the existence of a recent controversy. If the second factor, the span of time the statute has been in place before the amendment, is determinative—as it appears the majority believes—then the first factor is effectively a nullity. However, unlike the majority here, the *Macchione* court analyzed the first factor: "Our canvass of the pertinent case law revealed no reported decision applying the pre-amendment version of section 836.10[, Florida Statutes (2009),] to electronic communications, so we see no controversy created by the courts." *Id.* at 117. *Macchione*, therefore, does not disregard *Dadeland Depot*'s recognition of the recent controversy rule.

Moreover, the cases relied upon and quoted by the majority are not controlling because they do not involve "recent controversies." The amendments referenced in the opinions were not passed in response to a court's recent interpretation of the statute at issue; that is, the legislatures' actions were not the result of recent court opinions. *See, e.g.*, *Savona v. Prudential Ins. Co. of Am.*, 648 So. 2d 705, 707 (Fla. 1995) (deciding in 1995 that a 1992 amendment, which predated the federal district court's final judgment, need not be considered). As we have acknowledged, the issue presented by Dean Wish is one of first impression; our opinion interpreting "property owners" in the greater context of the Bert Harris Act created the recent controversy to which the legislature has responded.

We know that a statute can have both substantive and procedural components, so it is only logical that a statutory amendment can clarify one component while also making substantive changes. *See DeLisle v. Crane Co.*, 258 So. 3d 1219, 1228 (Fla. 2018) ("[A] statute can have both substantive provisions and procedural requirements." (citing *Jackson v. Fla. Dep't of Corr.*, 790 So. 2d 381, 384 (Fla. 2000))). Thus, while there are substantive provisions in the subject amendment, the addition to section 70.001(2) is not one of them. The addition to section 70.001(2) clarifies what has always been the case: ownership at the time the property is burdened is critical to entitlement to relief.

Under the express language of section 70.001(2) as amended, Dean Wish retains its entitlement to pursue its claim against Lee County despite the fact that it sold the property during the pendency of the action. The language authorizes Dean Wish's claim to proceed. Following the issuance of our opinion, the language in subsection (2) was added to an existing bill proposing changes to the Bert Harris Act.

Additionally, and regardless of whether the amendment is a clarification or a substantive change, I dissent because the amendment to subsection (2) unambiguously applies to all property owners whose claims have not yet reached "final resolution." Dean Wish's claim has not reached final resolution, and it is unlikely that it will have reached final resolution by October 1, 2021, the date on which the amendment to subsection (2) takes effect. *Cf. State v. Okafor*, 306 So. 3d 930, 933 (Fla. 2020) ("It is a bedrock principle that 'the judgment of an appellate court, where it ***858** issues a mandate, is a final judgment in the cause.' " (quoting *O.P. Corp. v. Village of North Palm Beach*, 302 So. 2d 130, 131 (Fla. 1974))); *Silvestrone v. Edell*, 721 So. 2d 1173, 1175 n.2 (Fla. 1998) (holding that a final judgment does not become final until "expiration of the time for filing an appeal or postjudgment motions, or, if an appeal is taken, upon the appeal being affirmed and either the expiration of the time for filing motions for rehearing or a denial of the motions for rehearing"); *Wells Fargo Armored Servs. Corp. v. Sunshine Sec. & Detective Agency*, 575 So. 2d 179, 180 (Fla. 1991) ("The law-of-the-case doctrine was meant to apply to matters litigated to finality, not to matters that remain essentially unresolved due to the erroneous ruling of a lower court." (citing *Normandy Beach Props. Corp. v. Adams*, 126 Fla. 844, 171 So. 796, 796 (1937))); *Finality*, Black's Law Dictionary (11th ed. 2019).

The majority states that in its motion for summary judgment Lee County argued "that Dean Wish could not maintain the lawsuit because the Act required Dean Wish to maintain ownership of the property 'until conclusion of the case.' " Given the statutory change, Lee County's argument will be legally incorrect as of October 1, 2021, as the case is unlikely to have reached final resolution. We must not add words to a statute, but we also must not disregard words in a statute. *Advisory Op. to Governor re: Implementation of Amend. 4, The Voting Restoration*

Amend., 288 So. 3d 1070, 1080 (Fla. 2020) ("[J]ust as we do not 'add words' to a constitutional provision, we are similarly 'not at liberty to ... ignore words that were expressly placed there at the time of adoption of the provision.' " (quoting *Pleus v. Crist*, 14 So. 3d 941, 945 (Fla. 2009))). "Every statute must be read as a whole with meaning ascribed to every portion and due regard given to the semantic and contextual interrelationship between its parts." *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992) (quoting *Fleischman v. Dep't of Prof'l Regul.*, 441 So. 2d 1121, 1123 (Fla. 3d DCA 1983)). The majority has failed to consider and give effect to the legislature's "final resolution" language, essentially disregarding it. Thus, although the majority reiterates the requirement that we "endeavor[ ] to give effect to every word of a statute so that no word is construed as 'mere surplusage,' " it has not done so in this case. *See Hardee County v. FINR II, Inc.*, 221 So. 3d 1162, 1165 (Fla. 2017) (quoting *Heart of Adoptions, Inc. v. J.A.*, 963 So. 2d 189, 198 (Fla. 2007)). I therefore also dissent from the majority's decision to foreclose further motions where it ignores the "final resolution" language and has elected not to direct the parties to brief the issue.

For these reasons, I would reverse the order on appeal.

All Citations

326 So.3d 840, 46 Fla. L. Weekly D2173

Footnotes

[1] Based on our disposition, we do not address Dean Wish's second issue on appeal regarding the validity of the appraisal it submitted to Lee County under the Act.

[2] Although the parties, at times, refer to the parcels as contiguous, the record indicates that there is a piece of property unattached to the other property.

[3] The trial court mentioned the rule of statutory interpretation regarding the strict interpretation of the Act in its "Background, Legal Standards, Undisputed Facts" section. *See Bair v. City of Clearwater*, 196 So. 3d 577, 581 (Fla. 2d DCA 2016). But contrary to Dean Wish's assertions in its briefs, the final order reflects that the trial court did not utilize this rule in its analysis.

[4] Although an appellant in *Ocean Concrete, Inc. v. Indian River County, Board of County Commissioners*, 241 So. 3d 181, 185-88 (Fla. 4th DCA 2018), lost ownership over the property to foreclosure during litigation, the Fourth District did not address the issue before us, i.e., the definition of "property owner."

[5] This opinion does not determine whether the Act violates public policy and is an unreasonable restriction on the free alienability of property.

[6] The recent controversy rule and retroactivity are distinct concepts. *See Madison at Soho*, 198 So. 3d at 1116-17. Nevertheless, an amendment's provision for retroactivity may still be an indication of whether the legislature intended the amendment to clarify existing law. *See Essex Ins.*, 124 So. 3d at 952 (interpreting a retroactivity provision as support that the amendment was a clarification).

[7] The parts of the amendment regarding the steps of pursuing a Bert Harris claim may be procedural in nature, but those parts are not pertinent to our disposition.

[8] In that regard, I question the majority's reliance on case law indicating that where a statute is clear and unambiguous there is no need to consider the impact an amendment may have on its interpretation where we ordered the parties to brief the issue despite determining that the statute is clear and unambiguous.

[9] Despite the majority's statement that "the legislature did not change the definition of property owner in section

70.001(3)(f), *the section at issue before us*," it is clear that the definition of property owner is not the only subsection at issue and it cannot be read in isolation. (Emphasis added.) "As the Supreme Court has explained, '[I]t is a "fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." ' " *Advisory Op. to Governor re: Implementation of Amend. 4, The Voting Restoration Amend.*, 288 So. 3d 1070, 1079 (Fla. 2020) (alteration in original) (quoting *Textron Lycoming Reciprocating Engine Div., Avco Corp. v. United Auto., Aerospace, Agric. Implement Workers of Am., Int'l Union*, 523 U.S. 653, 657, 118 S.Ct. 1626, 140 L.Ed.2d 863 (1998)).

10 Indeed, while not determinative, during the House of Representatives floor debate, the bill sponsor referred to the language at issue, the amendment to subsection (2), as a "clarification."

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