

412 So.2d 943

District Court of Appeal of Florida, Third District.

GM DRUG COMPANY, a Florida corporation d/b/a Federal Discount, George F. Knox, Jr., in his official capacity as City Attorney of the City of Miami of the State of Florida; Laura McCarthy; Mark Matthes; J. Robert Stobs; Frank J. Hathaway; Nicholas H. Morley, individual citizens and residents of Dade County; Laura McCarthy, Inc., Wimbledon Racquet Club; Stob Bros. Construction Co.; Industrial Traffic Consultants, Inc., and Morley Realty, Inc., Florida corporations, Appellants,

v.

Alvin J. TAYLOR, in his official capacity as Secretary, State of Florida Department of Health and Rehabilitative Services, Max B. Rothman, in his official capacity as District Administrator, State of Florida Department of Health and Rehabilitative Services, District Eleven, and George Goldbloom and Emanuel Edelstein d/b/a MG Investment, a partnership, Appellees.

No. 81-1307. | April 20, 1982.

An action was filed seeking injunctive relief to abate an alleged nuisance. The Circuit Court, Dade County, Jack M. Turner, J., dismissed the action. Appeal was taken. The District Court of Appeal, Baskin, J., held that where the injury complained of was overcrowding in a shopping plaza caused by lines of food stamp applicants, the cause should not have been dismissed without affording leave to amend.

Reversed and remanded for further proceedings.

West Headnotes (1)

[1] Pretrial Procedure Amendment or Pleading Over

In action seeking injunctive relief to abate alleged nuisance based on injury in form of overcrowding of shopping plaza caused by lines of food stamp applicants, cause should not have been dismissed without affording plaintiffs leave

to amend. West's F.S.A. §§ 60.05(1); 823.05; West's F.S.A. Rules Civ.Proc., Rule 1.190.

Cases that cite this headnote

Attorneys and Law Firms

*943 Sparber, Shevin, Rosen, Shapo & Heilbronner and David A. Gunter and Jeffrey M. Weissman, Miami, for appellants.

Leonard Helfand, Miami, Richard, Lichterman & Scher and Herbert Lichterman, Miami Beach, for appellees.

Before BASKIN, FERGUSON and JORGENSON, JJ.

Opinion

BASKIN, Judge.

We reverse the trial court's dismissal of appellants' action seeking injunctive relief to abate an alleged nuisance maintained by appellees. The injury complained of is overcrowding in a shopping plaza caused by lines of food stamp applicants. An injunction was requested pursuant to section 60.05(1),¹ Florida Statutes (1979) and section 823.05,² Florida Statutes (1979).

¹ Section 60.05(1) states: "(A)ny citizen of the county may sue ... to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists.

² Section 823.05 states: "(W)hoever shall ... maintain, own or lease any building ... which tends to annoy the community ... shall be deemed guilty of maintaining a nuisance ... and the building ... and contents are declared a nuisance."

We hold that the cause should not have been dismissed without affording appellants leave to amend. See *Quinlan v. Mott*, 375 So.2d 589 (Fla. 5th DCA 1979); *Osborne v. Delta Maintenance and Welding, Inc.*, 365 So.2d 425 (Fla. 2d DCA 1978); *Lopez v. La Fuente*, 343 So.2d 930 (Fla. 3d DCA 1977); Fla.R.Civ.Proc. 1.190. Cf. *Shamhart v. Morrison Cafeteria Co.*, 159 Fla. 629, 32 So.2d 727 (Fla.1947) (plaintiff successfully demonstrated elements of nuisance; dismissal reversed).

Reversed and remanded for further proceedings.

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