Florida Law Review

Volume 57 | Issue 2 Article 5

April 2005

Compensating for Canker: A Sore Subject for Florida's Citrus Growers: Haire v. Florida Department of Agriculture & Consumer Services, 870 So. 2d 774 (Fla. 2004)

Charles T. Douglas Jr.

COMPENSATING FOR CANKER: A SORE SUBJECT FOR FLORIDA'S CITRUS GROWERS

Haire v. Florida Department of Agriculture & Consumer Services, 870 So. 2d 774 (Fla. 2004)

Charles T. Douglas, Jr.[*]

Florida's citrus canker law[1] (the Canker Law) requires the State to destroy healthy-appearing citrus trees that are within a 1900-foot radius of an infected tree.[2] The Florida Legislature enacted this eradication program

---

* For my family, whose encouragement and support never wavers.

1. FLA. STAT. § 581.184 (2004).

2. Subsection 581.184(2)(a) states, in relevant part, that "[t]he department shall remove and destroy all infected citrus trees and all citrus trees exposed to infection." Because the statute defines citrus trees "exposed to infection" as those located within 1900 feet of an infected tree, § 581.184(1)(b), the statute has become a fount of constitutional controversy.

The originally mandated buffer radius was 125 feet from an infected tree, but that distance proved ineffective. Haire v. Fla. Dep't of Agric. & Consumer Servs., 870 So. 2d 774, 778 (Fla. 2004). Consequently, the State commissioned a study led by Dr. Timothy Gottwald, a United States Department of Agriculture plant pathologist. *Id.* at 778-79 & n.2. He found that "a 1900-foot removal radius [was] reasonably necessary to effectively eradicate citrus canker in Florida." Answer Brief on the Merits for Respondent at 10, *Haire*, 870 So. 2d 774. The Citrus Canker Technical Advisory Task Force voted unanimously to recommend that the State Department of Agriculture and Consumer Services adopt the findings of Dr. Gottwald's study to help prevent the spread of citrus canker. *Haire*, 870 So. 2d at 779.

Citrus canker is particularly "virulent," State v. Mid-Florida Growers, Inc., 505 So. 2d 592, 595 (Fla. 2d DCA 1987), and is caused by a bacterial pathogen called *Xanthomonas axonopodis* pv. *citri*. that attacks citrus trees through "wounds and natural openings called stomata." H.L. CHAMBERLAIN ET AL., CROP ALERT: A CITRUS CANKER FACT SHEET FOR HOMEOWNERS, *available at* http://edis.ifas.ufl.edu/PP116 [hereinafter CROP ALERT]. Citrus canker, while not harmful to humans, *Haire*, 870 So. 2d at 778, is highly contagious to other citrus trees and is spread by people, animals, overhead irrigation, and wind-driven rain. CROP ALERT, *supra*. The relative ease with which canker spreads "affects *all types of citrus*, including oranges, sour oranges, grapefruit, tangerines, lemons and limes." CITRUS CANKER: THE THREAT TO FLORIDA AGRICULTURE, *at* http://www.doacs.state.fl.us/pi/canker/faqs.htm (last visited Feb. 12, 2005). A canker-infested tree will dwindle in health until it either produces no fruit at all, *id.*, or worse, succumbs to the disease and dies. *Haire*, 870 So. 2d at 778.

Because hurricanes are among the most extreme agents of wind-driven rain, the Florida Department of Agriculture and Consumer Services is presently studying the extent to which recent Hurricanes Charley, Frances, and Jeanne have exacerbated the spread of citrus canker. Telephone Interview with Denise Feiber, Spokesperson, Florida Department of Agriculture and Consumer Services (Sept. 30, 2004).

Florida has suffered three outbreaks of citrus canker since the turn of the twentieth century, none lasting longer than twenty-three years. CROP ALERT, *supra*. The last and present outbreak of citrus canker began in 1995 near the Miami International Airport. *Haire*, 870 So. 2d at 778. Since 1995, canker has been detected in sixteen counties. Div. of Plant Indus., Fla. Dep't of Agric.

to thwart the spread of canker and to protect Florida's second largest industry, which generates an estimated annual revenue of nine billion dollars.[3] Petitioner challenged the statute, alleging that it violated the Fifth Amendment's prohibition against taking private property without just compensation.[4] The trial court held that the Canker Law was unconstitutional.[5] Respondent appealed the decision, and the Fourth District Court of Appeal reversed, holding that the Canker Law *was* constitutional and violated neither substantive nor procedural due process.[6] The Florida Supreme Court accepted jurisdiction[7] and affirmed the decision of the appellate court. Refraining from a detailed discussion of the common law doctrine of nuisance, the court HELD, that the Florida Legislature could prevent the spread of citrus canker by requiring the State to destroy both diseased and seemingly healthy citrus trees.[8]

The Fifth Amendment's Compensation Clause provides that "private property [shall not] be taken for public use, without just compensation."[9] Florida's Compensation Clause is similar. It states that "[n]o private property shall be taken except for a public purpose and with full compensation."[10] However, courts historically have not offered compensation for those cases involving actual necessity.[11]

Corneal v. State Plant Board[12] was the first case to consider whether Florida was constitutionally required to provide compensation for destroying healthy trees within a certain radius of an infected and contagious tree.[13] The disease at issue in *Corneal* was "spreading decline,"

& Consumer Servs., *Report on Citrus Canker Eradication Program in Florida: Recent Activity 22 May 2004-27 August 2004*, at 2, *available at* http://www.doacs.state.fl.us/canker/cankerflorida.pdf.

3. *See* FLA. STAT. § 581.184(5) (2004); Press Release, Florida Department of Agriculture and Consumer Services, Florida Agriculture Department Announces Belle Isle Public Availability Session on Citrus Canker (Oct. 27, 2004), *available at* http://www.doacs.state.fl.us/press/2004/10272004.html.

4. Fla. Dep't of Agric. & Consumer Servs. v. Haire, 836 So. 2d 1040, 1044-45 (Fla. 4th DCA 2003).

5. *See id.* at 1043.

6. *Id.*

7. Haire v. Fla. Dep't of Agric. & Consumer Servs., 842 So. 2d 844, 844 (Fla. 2003).

8. Haire v. Fla. Dep't of Agric. & Consumer Servs., 870 So. 2d 744, 777 (Fla. 2004).

9. U.S. CONST. amend. V.

10. FLA. CONST. art. X, § 6.

11. *See, e.g.*, Bowditch v. Boston, 101 U.S. 16 (1880) (reaffirming the common law right to destroy property in cases of actual necessity). Examples of actual necessity include demolishing a building to stop a conflagration and taking flour to prevent it from falling into enemy hands. *See, e.g., id.*; Respublica v. Sparhawk, 1 U.S. 357 (Pa. 1788).

12. 95 So. 2d 1 (Fla. 1957).

13. *Id.* at 4-5.

a slow moving disease carried by a burrowing nematode.[14] The court held that while the Plant Board validly exercised its police power in destroying the owners' healthy trees to prevent the spread of disease,[15] the owners were entitled to compensation.[16]

Thirty-one years after *Corneal*, the Florida Supreme Court considered a different disease, citrus canker, in *Department of Agriculture & Consumer Services v. Mid-Florida Growers, Inc.*[17] The respondents, two nursery operators, had purchased budwood and budeyes from a supplier on whose premises citrus canker was later detected.[18] Even though the respondents' entire stock tested negative for citrus canker, the Department destroyed nearly 300,000 of their trees and budwood.[19] The respondents filed an inverse condemnation suit, arguing that the State could not destroy healthy citrus trees or budwood to slow the spread of citrus canker without providing compensation.[20]

At trial, the court found that the Department's actions constituted a taking requiring just compensation.[21] The district court and the Florida Supreme Court affirmed.[22] Casting the Department's actions as an attempt to confer a public benefit, the Florida Supreme Court concluded that a taking occurred when the Department, properly acting under its police power, destroyed healthy trees.[23] Thus, the owners were entitled to compensation.[24]

The Florida Supreme Court's protection of healthy trees did not last long. Less than three years after *Mid-Florida Growers*, the Florida Supreme Court considered *Department of Agriculture & Consumer Services v. Polk*, a case again involving citrus canker.[25] There, the Department destroyed over half a million of Richard Polk's citrus trees to

---

14. *Id.* at 2, 5.

15. *Id.* at 4, 6.

16. *Id.* at 7 (holding that the owners were entitled to "at least, the loss of profits sustained by the owner whose healthy trees [were] destroyed under the compulsory program").

17. 521 So. 2d 101, 102 (Fla. 1988).

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.* at 102, 105.

23. *Id.* at 103, 105.

24. *Id.* at 105. In a pointed dissent, however, Chief Justice McDonald criticized the majority's characterization of the Department's actions as conferring a public benefit. *Id.* (McDonald, C.J., dissenting). He would have chosen to explain the eradication efforts as preventing a public harm. *Id.* (McDonald, C.J., dissenting). The distinction, while seemingly obscure, is critically important because the former often requires compensation while the latter often does not. *See id.* at 103 ("Although this factor alone may not be conclusive, we have previously recognized that if a regulation creates a public benefit it is more likely that there is a taking.").

25. 568 So. 2d 35, 37 (Fla. 1990); *id.* at 44 (McDonald, J., concurring specially).

prevent the spread of canker.[26] Polk sued, alleging that the State had taken his property and that he was entitled to compensation.[27]

Viewing the suit as an inverse condemnation claim, the trial court held that the Department's eradication of healthy trees outside the 125-foot radius exposure area constituted a taking; however, the trial court determined that destroying both the infected trees and also those within 125 feet of infected trees did not equate to a taking requiring compensation.[28] In upholding the trial court's decision,[29] the Florida Supreme Court held that the State's destruction of diseased trees and those trees within 125 feet[30] of the diseased trees was not a taking.[31] As a result, the only trees for which Polk could receive compensation were those outside of the 125-foot radius.[32]

The instant court considered essentially the same issue as that in *Polk*, but it analyzed the substantive due process grounds for challenging the Canker Law.[33] While *Corneal* and *Mid-Florida Growers* considered whether the State could constitutionally exercise its police power to destroy both diseased trees and those within a legislatively determined exposure zone, *Haire* established the necessary threshold that the State must meet in exercising that power. When offering compensation under a statute for the destruction of trees, the State need only show that the legislation is reasonably related to a legitimate public purpose.[34] Conversely, if the State offers no compensation, it must prove that the statute was narrowly tailored and that the threat being addressed was

---

26. *Id.* at 37-38.

27. *Id.* at 38.

28. *Id.*

29. *Id.* at 43.

30. The Fourth District Court of Appeal explained that, as a result of a study conducted in Argentina, this radius was adopted in the 1980s to help stymie the unbridled spread of canker. Fla. Dep't of Agric. & Consumer Servs. v. Haire, 836 So. 2d 1040, 1044 (Fla. 4th DCA 2003). Later, as a result of the Gottwald Study, *see supra* note 2, the Legislature expanded that radius to its present distance of 1900 feet. Haire v. Fla. Dep't of Agric. & Consumer Servs., 870 So. 2d 774, 779 (Fla. 2004).

31. *Polk*, 568 So. 2d at 43.

32. *Id.*

33. *Haire*, 870 So. 2d at 777-78. At issue was

> whether the State, through the Department of Agriculture and Consumer Services (Department), [was] acting within permissible constitutional boundaries by destroying privately owned citrus trees that [were] within 1900 feet of a tree infected with citrus canker, even though the destroyed trees show[ed] no outward signs of infection and appear[ed] healthy.

Id. at 777.

34. *See id.* at 784.

"imminently dangerous."[35] Recognizing the compensable destruction of trees as properly within the State's police power,[36] the instant court determined that the appropriate standard of review for upholding the Canker Law is a reasonable relationship test.[37] It found that the Canker Law merited this relaxed standard because it provided for compensation.[38]

Yet, determining whether the Canker Law is rationally related to a legitimate public purpose that compels compensation is premature and ultimately unnecessary.[39] Instead, the court could resolve the issue more cleanly by first examining whether the trees infected with citrus canker and those within the legislatively mandated 1900-foot radius are a nuisance. If the court were to rule in the affirmative, the analysis essentially would end with this answer because purging a nuisance requires no compensation.[40]

Identifying a nuisance requires a court to consider the "circumstances and the locality" because a "nuisance may be merely a right thing in the wrong place,—like a pig in the parlor instead of the barnyard."[41] This theory, under which no compensation is required, is based on the notion that an individual ought not be able to use his property in a fashion that is harmful to others.[42] In the preceding century, courts and legislatures have found, and not offered compensation for, numerous examples of nuisances, including cedar trees infected with cedar rust,[43] brothels,[44] and fire hazards.[45] However, no Florida court has definitively characterized healthy-appearing citrus trees that are in proximity to trees actually infected with canker as a nuisance.

Nevertheless, one should not hastily conclude that the healthy trees could not be described as a nuisance. Indeed, the Florida Legislature authorized the Department of Agriculture to declare citrus canker and "*any*

---

35. *Id.* at 782, 784.

36. *Id.* at 782 ("[T]here is no question that the protection of the citrus industry is a legitimate objective for the use of the State's police power.").

37. *Id.* at 786.

38. *Id.* at 784.

39. The Florida Supreme Court in *Polk* found that the trial court was correct to consider "whether Polk's nursery constituted a nuisance or imminent public danger because of the presence of a bacterial disease. If the court had found Polk's nursery to be a nuisance or imminent public danger, no taking would have occurred and no compensation would be required." Dep't of Agric. & Consumer Servs. v. Polk, 568 So. 2d 35, 39 n.2 (Fla. 1990).

40. *Id.* (explaining that abating a nuisance does not require compensation); *see* Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470, 491 (1987).

41. Vill. of Euclid v. Ambler Realty Co., 272 U.S. 365, 388 (1926).

42. *Keystone Bituminous Coal Ass'n*, 480 U.S. at 491 & n.20.

43. *See* Miller v. Schoene, 276 U.S. 272, 279-80 (1928).

44. *See Keystone Bituminous Coal Ass'n*, 480 U.S. at 492 n.22 (citing Kuban v. McGimsey, 605 P.2d 623, 627 (Nev. 1980)).

45. *See id.* (citing Eno v. City of Burlington, 209 A.2d 499 (Vt. 1965)).

other regulated article capable of transporting or harboring citrus canker" a nuisance.[46] The United States Supreme Court in *Lucas v. South Carolina Coastal Council*[47] warned, however, that simply because a legislature announces that something is a nuisance does not automatically make it a nuisance.[48] The Court remanded the case for South Carolina to determine whether the State's nuisance and property law would support a nuisance designation.[49]

Though not expressly stated, several reasons suggest that Florida's common law would support a nuisance label for citrus canker itself and for those healthy-appearing trees within 1900 feet of an infected tree that are potential carriers of the "virulent" disease.[50] Initially, while *Corneal* required compensation for destroying healthy trees,[51] that case involved "spreading decline," a slow moving subterranean disease.[52] Citrus canker, however, is imminently dangerous because it proliferates by means of wind-driven rain, humans, and machinery.[53] As no known cure exists, once a tree becomes infected, it will steadily decline and potentially succumb to the disease and die.[54]

This distinction is what makes the holding of *Mid-Florida Growers* particularly surprising. A possible explanation, however, lies in the court's reliance on earlier "spreading decline" cases.[55] But even *Corneal* implied that if there *were* an immediate menace to the trees in a neighboring grove, destroying a healthy tree would not require compensation.[56] Moreover, *Polk* (considering citrus canker, not "spreading decline") revisited the issue first raised three decades earlier in *Corneal*: whether compensation

---

46. FLA. ADMIN. CODE ANN. r. 5B-58.001(3) (2004) (emphasis added) (citing FLA. STAT. § 581.031(6) (2004)).

47. 505 U.S. 1003 (1992).

48. Specifically, *Lucas* required that "South Carolina . . . do more than proffer the legislature's declaration that the uses Lucas desires are inconsistent with the public interest, or the conclusory assertion that they violate a common-law maxim such as *sic utere tuo ut alienum non laedas*." *Id.* at 1031. A legislative codification of something as a nuisance (for which no compensation is given) must have been previously recognized as such under the state's property and nuisance law. *Id.* at 1029-30; *see also* Julia Patterson Forrester, *Bankruptcy Takings*, 51 FLA. L. REV. 851, 865 (1999) (highlighting *Lucas*'s nuisance exception to categorical takings).

49. *Lucas*, 505 U.S. at 1031.

50. *See supra* note 2.

51. Corneal v. State Plant Bd., 95 So. 2d 1, 6-7 (Fla. 1957).

52. *Id.* at 2, 5.

53. For a complete explanation of the importance of this distinction, see *Denney v. Conner*, 462 So. 2d 534, 536 (Fla. 1st DCA 1985); CROP ALERT, *supra* note 2.

54. *See supra* note 2.

55. *See* Dep't of Agric. & Consumer Servs. v. Polk, 568 So. 2d 35, 44 (1990) (McDonald, J., concurring specially) (citing State Plant Bd. v. Smith, 110 So. 2d 401 (Fla. 1959); *Corneal*, 95 So. 2d 1).

56. *Corneal*, 95 So. 2d at 6.

is due when the State, acting pursuant to its police power, destroys healthy citrus trees to help thwart the spread of disease.[57] Recognizing the serious threat posed by citrus canker, *Polk* answered with an authoritative no.[58]

Further, a Florida Supreme Court case, decided shortly after *Corneal*, held that summary destruction of citrus trees would be permissible where the threat was imminent that a disease would spread to a neighboring grove.[59] Citrus canker epitomizes such an imminent threat.[60] *Miller v. Schoene*[61] similarly upheld a Virginia statute that did not require compensation to property owners whose cedar trees within a two-mile radius of apple orchards were destroyed to prevent the spread of cedar rust.[62]

Lastly, destroying healthy citrus trees within a 1900-foot radius of an infected tree is equivalent to demolishing houses near a fire to prevent a conflagration.[63] At common law, a state could destroy both real and

---

57. *Polk*, 568 So. 2d at 38-39.

58. *Id. at* 43.

59. *Smith*, 110 So. 2d at 408. The court stated:

> The citrus disease here involved—spreading decline caused by a burrowing nematode—is not carried by the wind or by insects from grove to grove . . . . The only possible reason for the *summary* destruction of the healthy trees would be the imminent danger of the spread of the disease from an infested to a non-infested grove.

Id.

60. *See supra* note 2; *see generally* Haire v. Fla. Dep't of Agric. & Consumer Servs., 870 So. 2d 774, 778 (explaining the dangers associated with allowing canker to blossom out of control).

61. 276 U.S. 272 (1928).

62. *Id.* at 277-78, 280-81. The Supreme Court considered the constitutionality of Virginia's Cedar Rust Act, which required destruction of cedar trees to save apple orchards. *Id.* at 277-78. The statute at issue declared as a public nuisance "any red cedar tree which is *or may be* the source or 'host plant' of the communicable plant disease known as cedar rust . . . within a radius of two miles of an apple orchard." *Id.* (emphasis added) (quoting VA. CODE §§ 885-93 (1924)). Florida's Canker law is similar to Virginia's Cedar Rust Act in that both diseased and potentially diseased trees are subject to eradication. FLA. STAT. § 581.184(1)(b), (2)(a) (2004). In Virginia, however, neither the statute nor "the judgment of the court" provided the cedar tree owners any compensation for the value of the destroyed trees. *Miller*, 276 U.S. at 277. In concluding that no other means were available to control the spread of cedar rust and in finding that jobs and dollars would be saved by preserving the apple orchards, the Court held that the Legislature acted within its constitutional limits. *Id.* at 278-80. Specifically, the Court declared that "the state does not exceed its constitutional powers by deciding upon the destruction of one class of property in order to save another which, in the judgment of the legislature, is of greater value to the public." *Id.* at 279.

63. *Smith* explains:

> When, in the exercise of the police power, the State through its agents destroys diseased cattle, unwholesome meats, decayed fruit or fish, infected clothing,

personal property, without compensation, to stop a fire.[64] Likewise, citrus canker is akin to a raging fire that can be prevented by destroying healthy trees within a 1900-foot radius of a diseased tree.[65] This means of halting citrus canker's spread should not require compensation.[66] Indeed, Florida's statute providing compensation for trees removed under the eradication program[67] "gives as a bounty that . . . could not have been claimed before."[68]

The issue of destroying citrus trees to prevent the spread of canker is a delicate one,[69] and labeling a valuable (either financially or sentimentally) citrus tree as a nuisance is neither pleasing to the ear nor kind to the wallet. On one hand is the Florida citrus grower who must destroy many valuable trees when required to do so under the Canker Law. On the other is the citrus grower whose only hope of not having his groves destroyed by neighboring diseased trees is state intervention. The courts' consideration for those who have suffered the Canker Law's wrath is at least encouraging,[70]

> obscene books or pictures, *or buildings in the path of a conflagration*, it is clear that the constitutional requirement of "just compensation" does not compel the State to reimburse the owner whose property is destroyed.

Smith, 110 So. 2d at 406-07 (emphasis added).

64. *See* Bowditch v. Boston, 101 U.S. 16, 18 (1880).

65. *See supra* note 2 (discussing the Gottwald Study).

66. "Courts have consistently held that a State need not provide compensation when it diminishes or destroys the value of property by . . . abating a public nuisance." Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470, 492 n.22 (1987).

67. FLA. STAT. § 581.1845(1) (2004).

68. *Bowditch*, 101 U.S. at 19.

69. Over this issue, emotions and litigation have arisen. In an article about an interview with John Haire, The Christian Science Monitor included the following:

> The stakes aren't just legal and economic. The issue could complicate Governor Jeb Bush's reelection bid later this year, according to some analysts. Mr. Bush has been an outspoken supporter of the program.
>
> "There are 250,000 people affected by this. Surely 10 percent of them are really mad, so we are talking about 25,000 people who probably aren't going to vote for Jeb Bush," says John Haire.

Warren Richey, *In Florida, a Revolt Against the Citrus Police*, CHRISTIAN SCI. MONITOR, July 23, 2002, at 3.

70. For example, at *Haire*'s conclusion, Justice Pariente offered these empathetic words:

> We recognize that the destruction of noncommercial citrus trees has become an emotionally charged issue for those whose trees are affected. We emphasize that our decision today is not a judgment on the sentimental or economic value these trees have to those who own them. This Court is required to uphold laws passed by the Legislature that meet the requirements of the state and federal constitutions.

and the Florida Legislature seems to have acknowledged the tree owners' loss by providing compensation.[71]

Although some might argue that Florida's compensation scheme offers too little, the inescapable reality is that healthy trees near diseased trees will themselves become diseased if the State does not destroy them all. The State must stop this inevitable domino effect before the entire citrus industry grinds to a halt under a federal quarantine.[72] Unfortunately for many, this leads to the harsh conclusion that healthy but susceptible trees within a 1900-foot radius of an infected tree should be legally characterized as nuisances, requiring no compensation upon their destruction.[73] In short, citrus growers whose trees the State destroys should be grateful for the minimal compensation that the Legislature has heretofore gratuitously agreed to give.[74]

Haire v. Fla. Dep't of Agric. & Consumer Servs., 870 So. 2d 774, 790 (Fla. 2004).

In addition, Justice McDonald acknowledged the State's moral responsibility: "That is not to say, however, that the state has no moral responsibility to those who have suffered losses because of the eradication program. Indeed, such a responsibility is strong in these cases." Dep't of Agric. & Consumer Servs. v. Polk, 568 So. 2d 35, 47 (Fla. 1990) (McDonald, J., concurring specially).

71. FLA. STAT. § 581.1845 (2004).

72. *See* Fla. Dep't of Agric. & Consumer Servs. v. City of Pompano Beach, 792 So. 2d 539, 542 (Fla. 4th DCA 2001) (explaining that if citrus canker is not contained, "a federal quarantine could be placed on the state").

73. The Florida Supreme Court has accepted jurisdiction to hear *Patchen v. Florida Department of Agriculture & Consumer Services*, 829 So. 2d 919 (Fla. 2002), which might conclusively decide whether healthy trees may be destroyed without compensation to prevent the spread of canker. The Third District Court of Appeal

> certif[ied] the following to the Florida Supreme Court as a question of great public importance:
>
> Does the Florida Supreme Court's decision in *Department of Agriculture & Consumer Services v. Polk*, 568 So. 2d 35 (Fla. 1990), which held that the Department's destruction of healthy commercial citrus nursery stock within 125 feet of trees infected with citrus canker did not compel state reimbursement, also apply to the Department's destruction of uninfected, healthy noncommercial, residential citrus trees within 1900 feet of trees infected with citrus canker?

Patchen v. Fla. Dep't of Agric. & Consumer Servs., 817 So. 2d 854, 855-56 (Fla. 3d DCA 2002).

74. FLA. STAT. § 581.1845(1) (2004).