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Appeals court rules Collier Clerk has legal right to invest interest

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Originally published 03:45 p.m., February 4, 2009

Updated 03:45 p.m., February 4, 2009

A state appeals court chided Collier County commissioners for their erroneous interpretation of a simply worded law, ruling that it clearly gives Clerk of Circuit Courts Dwight Brock the right to invest interest from county funds he controls and use it to operate his office.

The unanimous ruling last week by the Second District Court of Appeal has statewide implications and ends an expensive seven-year court battle over millions of dollars between the Board of County Commissioners and Brock. In its strongly worded, precedent-setting decision, the three-judge panel called the law, which controls circuit clerks statewide, "clear and unambiguous."

"The County cites no statutory or other authority that convinces us that the statute means anything other than what it plainly says, which is that the interest is income to the clerk," DCA Judge Patricia Kelly wrote in her ruling, which also was signed by DCA judges Chris Altenbernd and Nelly Khouzam.

"In arguing that we should affirm the trial court, the county asks us to read the statute in a manner that the language simply will not bear," Kelly wrote, noting the statute is "clear and unambiguous" and "conveys a definite meaning" — that the interest belongs to the clerk's office.

County attorneys even acknowledge they understood the law, Kelly wrote, because their arguments "consist largely of attacks on its validity" and ask the appeals court to declare the law's meaning.

The county's attorneys, Ted Tripp of Fort Myers and Assistant County Attorney Jacqueline Hubbard, did not return calls or e-mails seeking comment. County Attorney Jeff Klatzkow said only, "We're reviewing our options" and that he will discuss it with the board Tuesday.

Over the years, commissioners have attacked Brock, with Commissioner Fred Coyle accusing him of wanting to "launder the money," while Commissioner Tom Henning questioned the expensive legal fight, calling it one over money and power.

On Monday, Henning branded it a battle of personalities waged by County Manager Jim Mudd, who had asked the state to investigate Brock's office.

"It makes the other question moot," Henning said of the remaining count in Brock's lawsuit, whether he is a fee officer or budget officer, which affects what Brock can keep for his operations. "There's no need to continue this fight when we could be working together to serve the public."

Brock's attorney, Tom Grady, now a state representative, said he was pleased with the quick decision in a case that has gone through five judges. He called the success of any appeal "extraordinarily unlikely."

"We've thought that the law was clear all along, but we had trouble convincing everyone of that," Grady said. "Count 3 was really the heart of the lawsuit. Count 3 was an effort by the county commissioners to take over control of the money. They just flat-out lost, period."

Grady said he offered to avoid expensive, lengthy litigation by seeking an opinion from the state attorney

general, but county officials refused. "This cost taxpayers additional money in litigation," Grady said, adding that more than \$2 million in county taxpayer money has been spent by both sides in battles with Brock and the losing side will have to pay attorney fees.

Due to a judge's order, the county and Brock were splitting the funds while awaiting a ruling.

The ruling involves one count, but made a second count moot, in which Brock objected to an injunction requiring him to give the county the interest income. Although it leaves the top count, whether he's a fee officer or a budget officer, the ruling noted the law places no restrictions on how the money is spent.

The ruling reverses a June 18 decision by Circuit Judge Jack Lundy of Glades County, who sided with commissioners' arguments that interest earned on county funds invested by Brock did not belong to his office and could not be used without authorization by the Board of County Commissioners. By law, Brock invests county money that's not used for operations.

Commissioners had said it was never their intent to allow Brock to have the interest when they settled his 2002 lawsuit, while Brock argued the settlement and state law both gave him the right to use it. Brock's attorney argued to have Lundy removed after an outburst from the bench; Lundy made the ruling after he recused himself.

The appellate court questioned why a clarification was needed for a simple statute:

The clerk of the circuit court in each county shall invest county funds in excess of those required to meet expenses as provided in (section) 218.415. ... Except for interest earned on moneys deposited in the registry of the court, all interest accruing from moneys deposited shall be deemed income of the office of the clerk of the circuit court investing such moneys and shall be deposited in the same account as the other fees and commissions of the clerk's office."

In her three-page ruling, Kelly wrote that the statute's "plain language" provides that interest earned on money invested by the clerk is income belonging to that office and shall be deposited in the same account as the clerk's other fees and commissions.

The law doesn't impose any restrictions on how the clerk might use the income, Kelly wrote, and the county hasn't cited any law or authority saying otherwise. The ruling sends the case back to Circuit Court for a ruling in Brock's favor.

County commissioners have been fighting Brock for years and in September, they voted to pay an external accounting firm, Rachlin LLP, \$25,000 to determine if he was following their direction. Henning questioned that expenditure and Brock called it a waste of taxpayers' money. Copies of records Rachlin requested total \$18,000 so far.

A year earlier, commissioners passed an ordinance stating that Brock didn't have the right to take interest out of county accounts and use it for his office's operations. Commissioners said it clarified Brock's 2002 settlement, while Brock's lawyer said it reneged on it.

In 2002, commissioners praised Brock for finding a way to get them more money for needed road construction projects. But Hubbard said there was never any intent for him to keep the money. Every year, Brock gives back money he doesn't spend, an amount that has grown from \$1.9 million in 2001 to more than \$35 million in 2007 and \$24.38 million last fiscal year due to a decreased rate of return and other factors.

The decision Friday was argued in December and Grady sought an expedited decision. The other lawsuit, in which Brock is appealing a judge's ruling that prevents him from auditing county spending after money has been spent, was argued in May before another panel; Grady expects a decision any day.

Brock has argued the Florida Constitution gives him the power to audit all county accounts, divisions and departments, their spending and to investigate money he believes the county is hiding. County officials sued,

saying the constitution only gives him the authority to audit spending before it occurs and he has no right to look for money not controlled by him. Circuit Court Judge Michael McHugh of Charlotte County ruled against Brock in August 2007.

The fight began when Brock sued county government and two Ochopee fire employees in 2004 and 2005 over a secret account involving \$21,000 in grant money he says was hidden from him and should have been turned over.

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