NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

SIESTA KEY ASSOCIATION OF SARASOTA, INC. and DAVID N. PATTON, Appellants, v. CITY OF SARASOTA and LIDO KEY RESIDENTS ASSOCIATION, INC., Appellees.	)	Case No. 2D19-3833

Opinion filed April 14, 2021.

Appeal from the Circuit Court for Sarasota County; Andrea W. McHugh, Judge.

D. Kent Safriet and Kristen C. Diot of Hopping Green and Sams, P.A., Tallahassee, for Appellants.

Kevin S. Hennessy and Nicole J. Poot of Lewis, Longman, & Walker, P.A., St. Petersburg, for Appellee Lido Key Residents Association, Inc.; and John R. Herin, Jr. of Fox Rothschild, LLP, Miami, for Appellee City of Sarasota.

LaROSE, Judge.

Siesta Key Association of Sarasota, Inc., and association member, David N. Patton (collectively, SKA), appeal the trial court's dismissal of count one of their second amended complaint seeking injunctive relief under Florida's Environmental

Protection Act of 1971, as codified in section 403.412, Florida Statutes (2018). We have jurisdiction. See Fla. R. App. P. 9.030(b)(1)(A). The trial court correctly determined that SKA could not maintain an action under section 403.412 because the City of Sarasota (City) conducted its operations pursuant to a valid permit. Thus, we affirm.

I. Background

Lido Key's shoreline has eroded over the decades. In response, the City and the U.S. Army Corps of Engineers (Corps) applied for a joint coastal permit (JCP) to authorize a beach restoration project (Project). Their application contemplated the dredging and using of sand from Big Sarasota Pass, a waterway between Lido Key and Siesta Key, to restore Lido Key's shoreline. The Florida Department of Environmental Protection (DEP) granted the JCP.

The JCP authorized dredging in Big Sarasota Pass, including on sovereign submerged lands held by the Board of Trustees of the Internal Improvement Trust Fund. The JCP noted that it did "not eliminate the necessity to obtain any other applicable licenses or permits that may be required by federal, state, local or special district laws and regulations."

SKA sued to enjoin the City from moving forward with the Project. SKA alleged that the Project did not comply with the Sarasota County Comprehensive Plan and needed county approval. See § 403.412(2)(a)(2) (authorizing "any political subdivision or municipality of the state, or a citizen of the state [to] maintain an action for injunctive relief against . . . [a]ny person, natural or corporate, or governmental agency or authority to enjoin such persons, agencies, or authorities from violating any laws, rules, or regulations for the protection of the air, water, and other natural resources of

the state"). The City moved to dismiss the complaint. Lido Key Residents Association, Inc. (the Association), intervened in support of the City. Sarasota County was never a party to the lawsuit.[1]

The trial court held the case in abeyance pending the conclusion of SKA's administrative challenge of the JCP. DEP's final administrative order approved the Project. No one appealed that order.

The City and the Association again moved to dismiss. The trial court dismissed SKA's complaint, without prejudice, reasoning that the county's Comprehensive Plan did not qualify as a law, rule, or regulation subject to section 403.412, and that the JCP "appears to preclude" SKA's lawsuit. See § 403.412(2)(e) ("No action pursuant to this section may be maintained if the person (natural or corporate) or governmental agency or authority charged with pollution, impairment, or destruction of the air, water, or other natural resources of the state is acting or conducting operations pursuant to currently valid permit or certificate covering such operations, issued by the appropriate governmental authorities or agencies, and is complying with the requirements of said permits or certificates.").

---

[1]SKA states on appeal that it did not assert that the Corps was required to obtain a permit from Sarasota County. SKA also does not dispute that the Corps is not subject to suit in state court. See generally Pickett v. Off. of Disability Adjudication & Rev., No. 3:08 CV 2553, 2009 WL 1661954, at *4 (N.D. Ohio June 15, 2009) ("A state court lacks jurisdiction over a claim against a federal agency unless Congress waives sovereign immunity."); see, e.g., Operation of the Mo. River Sys. Litig. v. U.S. Dep't of the Army, 418 F.3d 915, 920 (8th Cir. 2005) ("The [Clean Water Act's] preservation of sovereign immunity where the Corps' authority to maintain navigation would be affected and the principles of preemption preclude the enforcement of North Dakota's state water-quality standards against the Corps' releases of water from Lake Sakakawea.").

SKA filed a second amended complaint seeking injunctive relief under section 403.412 in count one and a writ of mandamus in count two.[2] In count one, SKA acknowledged that the DEP issued a JCP authorizing the Project. But, SKA alleged that the Project included dredging within Sarasota County. SKA alleged that the City violated section 54-653(4)(a) of the Code of Ordinances of Sarasota County by failing to obtain a dredging permit from the Sarasota County Water and Navigational Control Authority (WNCA). The City and the Association moved to dismiss the second amended complaint. The trial court dismissed count one:

> As explained in the prior order of dismissal, relief under § 403.412, Fla. Stat. is barred because the City obtained a valid permit from the appropriate issuing agency. The Court finds that no amendment to a [Florida Environmental Protection Act] action, pursuant to § 403.412, Fla. Stat., can cure the statutory prohibition against a lawsuit due to the City's valid permit.

II. Discussion

SKA argues that the trial court erred because it failed to consider section 403.412(2)(e)'s plain language and did not recognize the distinction between a WNCA permit and the JCP.[3] SKA asserts that it properly pleaded a cause of action under section 403.412 by alleging that section 54-653(4)(a) requires the City to obtain a WNCA permit. The City and the Association contend that SKA could not proceed where the City obtained a valid JCP. The City and the Association further assert that the

---

[2]Count two is not at issue in this appeal.

[3]SKA incorrectly asserts that GLA & Associates v. City of Boca Raton, 855 So. 2d 278 (Fla. 4th DCA 2003), is "directly on point." GLA did not involve section 403.412 or discuss similar statutory language. See id. at 282.

Project does not require a WNCA permit where, as the complaint recites, the dredging "will occur exclusively on State regulated and owned sovereign submerged lands."

We review the trial court's order de novo. See Jensen v. Pinellas County, 293 So. 3d 1076, 1079 (Fla. 2d DCA 2020). Section 403.412(2)(a)(2) allows a citizen of the State to seek injunctive relief to enjoin "[a]ny person, natural or corporate, or governmental agency or authority . . . from violating any laws, rules, or regulations for the protection of the air, water, and other natural resources of the state." However, the statute's plain language precludes such actions where the person or government agency sought to be enjoined "is acting or conducting operations pursuant to [sic] currently valid permit or certificate covering such operations, issued by the appropriate governmental authorities or agencies, and is complying with the requirements of said permits or certificates." § 403.412(2)(e); see generally Bair v. City of Clearwater, 196 So. 3d 577, 581 (Fla. 2d DCA 2016) ("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.' " (quoting Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984))); State v. Sampaio, 291 So. 3d 120, 123 (Fla. 4th DCA 2020) ("It is axiomatic that when construing a statute, a court must first look to the statute's plain language.").

Notably, section 403.412(2)(e) does not require the person or government agency to hold every potentially relevant permit; it only requires the person or government agency to hold and act pursuant to a "valid permit or certificate covering such operations." We cannot extend the terms of section 403.412(2)(e) beyond their plain language. See Sampaio, 291 So. 3d at 123 ("Courts should not construe unambiguous statutes in a manner that would extend, modify, or limit their terms or the

obvious implications as provided by the Legislature." (quoting State v. Chubbuck, 141 So. 3d 1163, 1170 (Fla. 2014))).

In this case, SKA did not claim that the JCP was invalid or that the City failed to comply with its requirements. In fact, SKA admitted in the second amended complaint that the City and the Corps obtained a JCP that authorizes the Project. Accordingly, the trial court correctly ruled that the statute barred SKA's cause of action in count one. See § 403.412(2)(e). We affirm the dismissal.[4]

Affirmed.

BLACK and STARGEL, JJ., Concur.

---

[4]The parties argued below and on appeal whether a county ordinance qualified as an environmental law, rule, or regulation subject to section 403.412. The nomenclatures "are well known to the legislature." Snow v. Ruden, McClosky, Smith, Schuster & Russell, P.A., 896 So. 2d 787, 791 (Fla. 2d DCA 2005). "[T]he legislature is presumed to know the meaning of the words it utilizes and to convey its intent by use of specific terms." Id. (alteration in original) (quoting Brate v. Chulavista Mobile Home Park Owners Ass'n, 559 So. 2d 1190, 1193 (Fla. 2d DCA 1990)).

Section 403.412(2)(a) permits actions to enjoin violations of "any laws, rules, or regulations." Chapter 403 does not define "laws, rules, or regulations" to include an ordinance. The legislature later mentioned "ordinance" as a separate term when it amended section 403.412 during the pendency of this appeal. See ch. 2020-150, § 24, Laws of Fla. (2020); see also § 403.412(9)(a), Fla. Stat. (2020) ("A local government regulation, ordinance, code, rule, comprehensive plan, charter, or any other provision of law may not recognize or grant any legal rights to a plant, an animal, a body of water, or any other part of the natural environment that is not a person or political subdivision as defined in s. 1.01(8) or grant such person or political subdivision any specific rights relating to the natural environment not otherwise authorized in general law or specifically granted in the State Constitution." (emphasis added)).

Because we affirm for another reason, we do not need to decide this dispute in this case. The legislature, however, may find it helpful to indicate whether "any laws, rules, or regulations" includes local ordinances.