

Fla. Fish and Wildlife Conservation Commn. v. Daws, 1D16-4839, 2018 WL 3911472 (Fla. 1st Dist. App. Aug. 16, 2018)

First DCA Holds Sovereign Immunity Would Bar FWC from Owing Duty to Stop Trespassers

In *Florida Fish and Wildlife Conservation Commission v. Daws*, the Florida Fish and Wildlife Conservation Commission appealed an order granting a temporary injunction requiring the FWC to stop deer hunters and their dogs from trespassing onto the Daws' private property. The appellees live in an inholding—private lands that are either partially or completely surrounded by public lands—located in the middle of the Blackwater State Forest. Deer dog hunters would occasionally leave public lands and trespass onto the appellee's private property. Since the FWC regulates hunting on public lands, the property owners frequently complained to the FWC. The Daws argued that the trespasses were so serious they rose to the level of inverse condemnation and constituted a nuisance because they were being deprived of their right to the quiet enjoyment of their property. The FWC claimed the separation of powers doctrine and sovereign immunity barred the nuisance claims because the FWC owed no duty of care to the appellees and because authorizing hunting is a discretionary decision.

The trial court agreed with the Daws and the FWC appealed to the First DCA. The First DCA agreed with the FWC and held that they owe no duty to stop third parties acting in violation of the rules and state laws from trespassing onto private property, and even if the FWC did owe a duty of care to prevent party trespass, sovereign immunity would bar the nuisance claims because the regulation of hunting is a purely discretionary function.

The dissent provided a compelling argument in favor of the Daws and concluded they did make a legally sufficient takings claim. According to the United States Supreme Court decision from *Arkansas Game and Fish Commn. v. U.S.*, the Daws' takings claim could have only be successful if they alleged either: (1) a permanent or temporary occupation of their land or (2) that the government enacted a regulation or imposed a condition that completely deprived them of all economically beneficial use of their land.

The majority agreed that a temporary taking was a valid claim and that the government-sanctioned actions occurring outside the Daws' property gave rise to interference with the enjoyment and use of their land but they did not agree that the Daws' were denied "substantially all economically beneficial or productive use of their land." They characterized the trespasses upon the Daws' property as "sporadic, transitory and fleeting." The trial court however, noted that the FWC-approved deer-dog hunting days amounts to 12.1% of the year. While the trespasses may have been transitory, the dissent concluded that the culmination of the trespasses amounted to a temporary occupation of land and the property owners should be compensated for that occupation. Despite these arguments, the First DCA reversed and remanded.