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MANDATE

from

Circuit Court of Duval County, Florida

To: CITY OF JACKSONVILLE

Case No: 16-2023-AP-000010-XXXX-MA

Division: AP-A

On appeal to the Circuit Court of Duval County, Florida, from the judgment of your Court rendered on June 26, 2023 in the action that in your court is captioned:

Order Assessing An Administrative Fine Until Compliance is Achieved

City of Jacksonville vs John S. Winkler, Julius S. Winkler, and Ellen M. Winkler, Case no.: 181256

In the Circuit Court of Duval County, Florida, rendered its opinion and judgment, a copy of which is attached and made part hereof on the date recited therein.

You are hereby directed that if any further proceedings in that action in your Court are required by the judgment of the Circuit Court of Duval County, Florida, such requirements be carried out, and that any further proceedings in that action in your court be in accordance with that judgment.

WITNESS the Honorable Anderson, Guy, and Kalil, Judge of the Circuit Court of Duval County, Florida, at Jacksonville, Florida this the 22nd day of July, 20 24

FILED
JUL 22 2024
DUVAL CLERK OF COURT

JODY PHILLIPS
CLERK OF THE CIRCUIT COURT

By: _____
Deputy Clerk

CC: John S. Winkler
Cherry Shaw Pollock

Filing # 201641414 E-Filed 07/01/2024 07:40:43 AM

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO: 16-2023-AP-000010

DIVISION: AP-A

JOHN S. WINKLER, JULIUS S. WINKLER, AND ELLEN M. WINKLER,
Appellants,

v.

CITY OF JACKSONVILLE,
A Municipal Corporation,
Appellee.
_____/

Appeal from the Special Magistrate, City of Jacksonville, Neighborhoods Department

July 1, 2024

PER CURIAM

John, Julius, and Ellen Winkler challenge an order assessing an administrative fine until compliance is achieved. Ordinarily, this Court reviews the decisions of a local government agency via petition for certiorari. On certiorari review, this Court must apply the following three-part standard of review: (1) whether procedural due process is accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence. Haines City Cnty. Dev. v. Heggs, 658 So. 2d 523, 530 (Fla. 1995) (citing City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 625-26 (Fla. 1982)). However, a party has a statutory right to a plenary appeal of "a final administrative order of an enforcement board to the circuit court." § 162.11, Fla. Stat. (2017). Despite this clear language, many district courts have equated an appeal of such an order with a petition for certiorari.

E.g., Sarasota Cnty. v. Bow Point on Gulf Condo. Devs., LLC, 974 So. 2d 431, 433 n.3 (Fla. 2d DCA 2007). However, the Fifth District Court of Appeal, under which this Court now sits, has held that it is a departure from the essential requirements of the law to equate a plenary appeal taken under section 162.11 with a petition for certiorari. Central Fla. Invs., Inc. v. Orange Cnty., 295 So. 3d 292, 294 (Fla. 5th DCA 2019) ("[I]f CFI had pursued a plenary appeal, the circuit court would have departed from the essential requirements of the law if it provided a more limited review, such as that afforded by first-tier certiorari review.").

Because this is an appeal, and not a petition for certiorari, this Court assumes that a mixed standard of review applies. Accordingly, this Court will defer to the magistrate's factual findings to the extent they are supported by competent, substantial evidence, but will review her legal conclusions *de novo*. See generally Ezer v. Holdack, 358 So. 3d 429, 432 (Fla. 4th DCA 2023) (quoting Batur v. Signature Props. of N.W. Fla., Inc., 903 So. 2d 985, 995 (Fla. 1st DCA 2005)).

Having determined the standard of review, this Court will now address the two arguments raised by the Winklers: (1) Whether the final order complied with section 162, Florida Statutes, as well as the relevant provisions of the Jacksonville Ordinance Code; and (2) Whether the Jacksonville Office of General Counsel can function as "counsel to the Municipal Code Enforcement Board ("MCEB"), litigation counsel to the City of Jacksonville as Petitioner before the MCEB, as Special Magistrates exercising the tribunal authority of the MCEB at enforcement hearings, and as appellate counsel for the MCEB as a City agency."

As to the first issue, this Court cannot reweigh the evidence. At the January 19, 2023, hearing, the special master received competent, substantial evidence that the Winklers had made significant progress remediating *some* portions of the property, but she also received evidence that significant progress had yet to be made on other portions of the property. Based on this evidence,

the special master was authorized to impose a fine until the property came into compliance. As she put it, "It just seems like in six years we would be further along than this."

The Winklers next argue that the special master's order fails to make the specific findings required by Florida statutory law as well as Jacksonville's Ordinance Code. Specifically, the Winklers argue that a special master must find a violation irreparable or irreversible before ordering a violator to pay a fine. Their argument is based on a selective reading of the statute:

> (1) An enforcement board, upon notification by the code inspector that an order of the enforcement board has not been complied with by the set time or upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the enforcement board for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector. In addition, if the violation is a violation described in s. 162.06(4), the enforcement board shall notify the local governing body, which may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the local governing body to make further repairs or to maintain the property and does not create any liability against the local governing body for any damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this part, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, a code enforcement board finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine as specified in paragraph (2)(a).
>
> (2)(a) A fine imposed pursuant to this section shall not exceed $250 per day for a first violation and shall not exceed $500 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (1). However, if a code enforcement board finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed $5,000 per violation.

§ 162.09 (1)-(2), Fla. Stat. (2004).

Under the Winkler's interpretation of the statute, a fine can only be imposed when a violation is incurable, but the statute clearly contemplates the imposition of a fine until a violation is cured. Reading the statute in its entirety, a finding that a violation is irreparable or incurable is

only necessary when the enforcement agency seeks to impose a flat fine of $5,000 or less. Because the Winklers were assessed a fine of fifty dollars per day "*until it's in compliance*," no such finding was necessary. As noted above, the special master did consider the Winklers' prior remedial actions before ordering a fine for noncompliance. Thus, she considered "the gravity of the alleged violation, and actions to correct the alleged violation, and any previous violations."

As to the Winklers' final issue, this Court finds that any conflict of interest was waived by the Winklers' failure to raise this issue previously. Accordingly, the order on review is **AFFIRMED**.[1]

ANDERSON, GUY, AND KALIL, JJ., CONCUR.

Copies to:
John S. Winkler, counsel for Appellants
Cherry Shaw Pollock, counsel for Appellee.

[1] Appellants' "Motion for Sanctions Against Appellee for Failure to Preserve Recordings of Hearings Required by Florida Statutes," filed on November 23, 2023, is **DENIED**. As the City notes in its response, the recordings of prior hearings were maintained according to the City's record retention schedule. Further, recordings of prior hearings were unnecessary for this Court to review the special master's findings at the most recent hearing, which is the subject of this appeal.