

**Petition for Writ of Certiorari to Review Quasi-Judicial Action of Agencies, Boards and Commissions of Local Government:** ADMINISTRATIVE – The City’s trespass warning appeal process provided Petitioner procedural due process. Petitioner had notice of the reason she was issued the trespass warning, and the City’s post-deprivation process provided Petitioner a meaningful opportunity to be heard. There was competent substantial evidence to support the Hearing Master’s finding that Petitioner was properly issued a trespass warning pursuant to City of St. Petersburg City Code Section 20-30. Petition denied. Ledger v. City of St. Petersburg, No. 13-000007AP-88B (Fla. 6th Cir. App. Ct. July 25, 2014).

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
APPELLATE DIVISION**

**KIM LEDGER,**  
Petitioner,

vs.

Ref. No.: 13000007AP-88B  
UCN: 522013AP000007XXXXCV

**CITY OF ST. PETERSBURG,**  
Respondent.

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**ORDER AND OPINION**

On December 6, 2012, Petitioner was arrested for being in Williams Park after 11:00 p.m. in violation of St. Petersburg City Code Section 21-40. Section 21-40 is titled “Park opening and closing times,” and states: “No person shall enter or remain upon Park Property at any time during which the Park is closed except pursuant to a permit issued by the POD (person officially designated) or unless permission has been given by the POD.” The ordinance goes on to state that Williams Park is closed from 11:00 p.m. each night until 30 minutes before sunrise the following day. Because Petitioner was in violation of a City ordinance while in a City park, she was also issued a trespass warning banning her from Williams Park for a year pursuant to St. Petersburg City Code Section 20-30. Section 20-30 is the City’s trespass ordinance and states:

When no other City employee or official having control over a City facility, building, or outdoor area, including municipal parks, is present, a Police Officer is authorized to issue a trespass warning to any individual who violates any City ordinance or State law which was committed while on or within a City facility, building, or outdoor area, including municipal parks, (but excluding rights-of-way), for the specific property where the violation occurred.

Petitioner appealed the trespass warning, and after a hearing at which Petitioner testified, called witnesses, and presented evidence before a Hearing Master, her appeal was denied. Petitioner seeks review of the Hearing Master's order finding that the trespass warning was properly issued.

### **Standard of Review**

Petitions for writ of certiorari are reviewed by this court to determine: (1) whether procedural due process was accorded; (2) whether the essential requirements of the law have been observed; and (3) whether the administrative findings and judgment were supported by competent substantial evidence. *See City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). In her petition, Petitioner contends that she was not accorded procedural due process, and that the Hearing Master's findings were not supported by competent substantial evidence.

### **Issues**

Petitioner asserts several reasons why she believes she was denied due process. Petitioner contends that the Hearing Master failed to make factual findings; that there was a lack of specific criteria in Section 20-30 for the Hearing Master to use in determining if the trespass warning was properly issued; that there was a lack of criteria in Section 20-30 for determining the duration of the trespass ban; that Petitioner had no notice of the specific law that had been violated to cause the issuance of the trespass warning; and that the City failed to provide Petitioner with a pre-deprivation hearing. Petitioner also contends that there was no competent substantial evidence to support the Hearing Master's decision that Petitioner's trespass warning was properly issued.

### **Analysis**

#### *Failure to Make Findings of Fact*

Petitioner contends that, because the final order denying her appeal was in the form of a standardized order sheet, the Hearing Master failed to make detailed findings of fact. This argument fails for two reasons. First, the City was not required to make explicit findings of fact. *Board of County Com'rs of Brevard County v. Snyder*, 627 So. 2d 469, 476 (Fla. 1993). Second, while on a standard order form, the Hearing Master's final order contains numerous findings of fact. Specifically, that Petitioner was provided a copy of the trespass warning form and advised of her right to an appeal; that Petitioner was properly issued a trespass warning pursuant to City Code Section 20-30, based on violating Section 21-40 of the St. Petersburg City Code; and that there was clear and convincing evidence that Petitioner violated Section 20-30 of the Code. In addition to the explicit findings of fact on the order form, there is a lengthy record, including the complete transcript

of the hearing, for this court to review in determining whether the Hearing Master's decision was based on competent substantial evidence.

*Lack of Standards in Section 20-30*

Petitioner next argues that she was not provided due process because Section 20-30 lacks adequate standards for determining when a violation of that section has occurred. First, the Court notes that a petition for writ of certiorari is an improper method to challenge the constitutionality of an ordinance.<sup>1</sup> While Petitioner expressly states in her reply brief that she is not asking this court to declare Section 20-30 unconstitutional, that is essentially the argument Petitioner makes when she asserts that Section 20-30 lacks adequate standards to determine when that section has been violated. Petitioner attempts to avoid directly challenging the constitutionality of the ordinance by couching her argument that there is a lack of standards in the ordinance as a denial of procedural due process. Specifically, Petitioner argues that:

The lack of standards in Section 20-30 denied Petitioner a meaningful opportunity to be heard because there is no guidance for the Hearing Master (or police officers) to follow in deciding whether a trespass warning is “properly issued pursuant to the criteria of this section.” Likewise, there are no standards for the Hearing Master (or police officers) to use to guide their discretion in determining the proper duration for a trespass warning.

Petitioner's argument, to the extent that it can be read as anything other than an attack on the constitutionality of Section 20-30, lacks merit. Section 20-30 allows issuance of a trespass warning for “any violation of any City ordinance, rule or regulation, or State law or lawful directive of a City employee or official which violation was committed while on or within a City facility, building, or

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<sup>1</sup> See *Nostimo, Inc., v. City of Clearwater*, 594 So. 2d 779, 782 (Fla. 2nd DCA 1992) (“Certiorari review may only properly consider the procedural due process afforded. The substantive due process arguments presented here must be determined in a declaratory action”) (“However, this action was a proceeding to challenge not only the application of the code section, but also its very validity or constitutionality. Review of a zoning denial on these grounds is properly brought as a declaratory action.”); *Hirt v. Polk County*, 578 So. 2d 415, 417 (Fla. 2nd DCA 1991) (“First, as to the nature of Hirt's challenge, he acknowledges that he is *not* contesting the validity or applicability of the underlying ordinance. If he were, the proper method of review would be injunctive relief.”) (emphasis in original); *Nannie Lee's Strawberry Mansion v. City of Melbourne*, 877 So. 2d 793 (Fla. 5th DCA 2004). (Landowners were required to bring any constitutional challenges to zoning ordinance approving developer's site plan in an original declaratory judgment action or other equitable circuit court proceeding, and could not raise such challenges in a certiorari proceeding).

outdoor area, including municipal parks, (but excluding rights-of-way), for the specific property where the violation occurred.” Because a trespass warning can be issued for a violation of any City ordinance, rule, or lawful directive pursuant to Section 20-30, Petitioner argues that there is a lack of guidance for the Hearing Master to determine if Petitioner actually violated this section. This argument is without merit. Although the ordinance may be broad, it is clear what constitutes a violation of the section, i.e., any violation of any City ordinance committed within a City facility. The use of “any violation” is not so broad that the Hearing Master could not determine if a violation had occurred. *See State v. Brake*, 796 So. 2d 522, 528 (Fla. 2001) (finding that the term “for other than a lawful purpose” was not unconstitutionally vague or overbroad). The Hearing Master could properly determine that Petitioner was properly issued a trespass warning for being present in Williams Park past 11:00 p.m. in violation of Section 21-40.

#### *Lack of Criteria in Section 20-30 for Determining Duration of Trespass Ban*

Petitioner next argues that the ordinance is unclear about the standards for determining the duration of a trespass warning. Again, it appears that Petitioner is attempting to improperly challenge the constitutionality of the ordinance via petition for writ of certiorari, but once again, to the extent that Petitioner’s argument can be read as anything other than an attack on the constitutionality of Section 20-30, it lacks merit. Section 20-30 states that for a first violation, an individual may be issued a trespass warning for a period not to exceed one year. For a subsequent violation, an individual may be issued a trespass warning for a period not to exceed two years. The lengths of time for which an individual’s trespass warning may remain in effect are clear from the ordinance, and Petitioner’s warning was within the guidelines provided by the ordinance. *See generally Florida Real Estate Commission v. Webb*, 367 So. 2d 201 (Fla. 1978) (explaining that so long as penalty imposed by administrative agency was within permissible range of statutory law, appellate court had no authority to review penalty unless agency findings were reversed in part.)

#### *No Notice of the Specific Ordinance That Was Violated*

Petitioner asserts that the City failed to provide her with adequate notice of the reason she was issued the trespass warning. Section 20-30 authorizes issuance of trespass warnings for violating any City ordinance, rule or regulation, but the trespass warning form issued to Petitioner did not specify the specific rule or ordinance that was violated. Because the warning form did not indicate what the specific violation that led to the issuance of the trespass warning was, Petitioner argues that she was prejudiced in her ability to prepare a defense. This argument is disingenuous, as it is

abundantly clear from the record that Petitioner knew that the reason she was issued a trespass warning was for being in Williams Park after it had closed.

At the hearing, Petitioner's defense centered on ascertaining the exact time that Petitioner was in the park when Officer Carr made contact with her. The detailed line of questioning, including how Officer Carr could be certain of the exact time he made contact with Petitioner, is evidence that Petitioner was aware that she was issued the trespass warning for being in the park after hours. The hearing transcript also makes it clear that Officer Carr told Petitioner the reason why he was issuing the warning, and at that time Petitioner knew she was in violation of Section 21-40 for being in the park after 11:00 p.m. Finally, Petitioner's counsel, who represented several other individuals who were issued trespass warnings during the same incident as Petitioner, introduced numerous exhibits during the hearing. These exhibits included an arrest report showing that Petitioner was arrested for being in the park past 11:00 p.m., as well as an incident report detailing the entire incident and the specific violation that led to the issuance of the trespass warning. In light of the record, it is simply not believable that Petitioner did not have notice of the reason why she was issued the trespass warning.

#### *Pre-deprivation Hearing*

Petitioner asserts that the City's failure to provide her with a pre-deprivation process to challenge her trespass warning violated her procedural due process rights. Courts have recognized that "where the State must act quickly, or where it would be impractical to provide pre-deprivation process, post-deprivation process satisfies the requirements of the Due Process Clause." *Gilbert v. Homer*, 520 U.S. 924 (1997). Furthermore, "when prompt post-deprivation review is available for correction of administrative error, we have generally required no more than that pre-deprivation procedures used be designed to provide a reasonably reliable basis for concluding the facts justifying the official action are as a responsible government official warrants them to be." *Mackey v. Montrym*, 443 U.S. 1, 13 (1979).

In the instant case, it would have been impractical to provide any type of meaningful pre-deprivation hearing. Petitioner, along with several others, was issued a trespass warning for being in Williams Park after it closed at 11:00 p.m., well past the close of regular City business hours. Additionally, the City had to act quickly to put an end to the illegal activity occurring at the park and assure a safe and orderly environment on the public property. However, even if it is impractical to provide a pre-deprivation hearing, the City must provide some post-deprivation procedure to satisfy

the requirements of the Due Process Clause. *Catron et al. v. City of St. Petersburg*, 658 F.3d 1260, 1268 (11th Cir. 2011).

Determining whether Petitioner was afforded procedural due process requires the balancing of three factors:

(1) The private interest that will be affected by the official action; (2) the risk of erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute safeguards; and (3) the government's interest including the function involved and the fiscal and administrative burden that the additional or substitute procedural requirement would entail.

*Mathews v. Eldridge*, 424 U.S. 319 (1976).

Petitioner certainly has a private liberty interest in lawfully being present in City parks open to the public. *See Catron* 658 F. 3d at 1267. The City's interest in discouraging unlawful activity and maintaining a safe and orderly environment on its property is substantial, as is the burden that any additional, pre-deprivation requirements would entail. *Id.* Considering the last Mathews element, the risk of erroneous deprivation through the procedures used and the probable value of any additional safeguards, the Court finds that this element weighs heavily in favor of the City. The City's ordinance provides alleged violators with a full appeal hearing before a Hearing Master within 30 days of appealing the trespass warning. The appellant has the right to attend with an attorney, the right to testify, to call witnesses, to cross examine witnesses, and to present evidence. Copies of documents in the City's control which are intended to be used at the hearing shall be made available upon request to the appellant at no cost. The appellant can also seek review of the Hearing Master's decision by filing a petition for writ of certiorari with the circuit court, as was done in this case. Considering the prompt and extensive nature of the post-deprivation proceedings afforded, it is hard to see what value, if any, additional procedural safeguards might add. Accordingly, the City's procedures afforded Petitioner procedural due process.

#### *Competent Substantial Evidence*

Petitioner contends that the testimony before the Hearing Master was contradictory and confusing, and did not amount to clear and convincing evidence that she was in violation of Section 21-40.<sup>2</sup> Clear and convincing evidence "must be credible; the memories of the witnesses must be

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<sup>2</sup> Petitioner also argues for the first time in her petition for writ of certiorari that the Hearing Master should have been required to find that Petitioner intentionally remained in the park past close in order to have been properly issued a trespass warning. This argument was not raised in the proceedings below, and thus will not be addressed here other than stating that this argument lacks merit. *See Thompson v. State*, No. 13-00022APNO (Fla. 6th Cir. App. Ct. November 25, 2013).

clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy.” *Fla. Dep’t of Children & Families v. F.L.*, 880 So. 2d 602, 614 n.7 (Fla. 2004) (Cantero, J., specially concurring). “Where the trial court’s findings that the evidence is clear and convincing are supported by competent substantial evidence, and the appellate court cannot say that no one could reasonably find such evidence to be clear and convincing, the finding will not be set aside on appellate review.” *N.L. v. Dep’t of Children & Family Servs.*, 843 So. 2d 996, 999 (Fla. 1st DCA 2003). On certiorari review, this court may not reweigh the evidence heard by the Hearing Master. *Broward County v. G.B.V. Intern., Ltd.*, 787 So. 2d 838, (Fla. 2001). There was testimony presented at the hearing that Officer Carr made contact with Petitioner while she was still in the park after 11:00 p.m., and that Petitioner had stated that she was angry at herself for not having left. From this testimony, the Hearing Master could conclude without hesitancy that Petitioner’s trespass warning was properly issued. Accordingly, the Hearing Master’s finding that there was clear and convincing evidence that the trespass warning was properly issued was supported by competent substantial evidence.

### Conclusion

Because Petitioner was afforded procedural due process, and the Hearing Master’s decision was supported by competent substantial evidence, the petition for writ of certiorari must be DENIED.

Accordingly, it is

**ORDERED AND ADJUDGED** that the petition for writ of certiorari is DENIED.

**DONE AND ORDERED** in Chambers at St. Petersburg, Pinellas County, Florida, on this

\_\_\_\_\_ day of \_\_\_\_\_ 2014.

Original order entered on July 25, 2014, by Circuit Judges Amy M. Williams, Jack Day, and Pamela A.M. Campbell.

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