

Administrative: CODE ENFORCEMENT— Due Process— Motion for rehearing or motion for reconsideration of final order of code enforcement board is not authorized by rules or Section 162.11, Fla. Stat. (2014), and should have been stricken. Only an authorized motion can suspend rendition of a final order. Section 162.11 requires notice of appeal to be filed within thirty days of execution of the final order, not from the date of service/ mailing or from the date of defendant's receipt of order. Petitioner's notice of appeal was untimely – Appeal dismissed. John Fisher v. Pinellas County, Florida, Code Enforcement Board, No. 14-000056AP-88A (Fla. 6th Cir. App. Ct. Sept. 8, 2014).

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

JOHN SCOTT FISHER,
Appellant,

**Case No.: 14-000056AP-88A
UCN: 522014AP000056XXXXAP**

v.

**PINELLAS COUNTY, FLORIDA
CODE ENFORCEMENT BOARD,**
Appellee.

ORDER DISMISSING APPEAL

THIS CAUSE came before the Court sua sponte for consideration of Appellant, John Scott Fisher's, "Notice of Appeal" filed on August 18, 2014. Upon review of the court file and applicable law, the Court finds as follows:

Procedural History

On June 9, 2014, the "Order Assessing An Administrative Fine Until Compliance Is Achieved" was executed by the Pinellas County Code Enforcement Special Magistrate in Pinellas County, Florida v. Fisher, Case No. CM13-00220. The order contains the statement: "**Appeals:** Any aggrieved party may appeal this order to the Circuit Court. An appeal must be filed within thirty (30) days of the execution of this order."

Rather than filing a timely notice of appeal with the circuit court, a document dated July 9, 2014, entitled "Request for Rehearing" was supplied to the Code

Enforcement Board by Mr. Fisher. The motion was treated as a motion for rehearing or reconsideration of the prior final order and on July 15, 2014, the "Order Denying Motion for Rehearing or Reconsideration" was executed by the Special Magistrate.

Mr. Fisher filed a Notice of Appeal with the circuit court on August 18, 2014, seeking to appeal the "Order Denying Motion for Rehearing or Reconsideration" and "the previously entered Order Assessing An Administrative Fine Until Compliance Is Achieved." Attached to the Notice of Appeal is a copy of an envelope postmarked July 17, 2014, addressed to Mr. Fisher from Pinellas County Code Enforcement #929.

The Notice of Appeal was filed with the Clerk of Court seventy days after the execution of the "Order Assessing An Administrative Fine Until Compliance Is Achieved" and thirty-four days after the execution of the "Order Denying Motion for Rehearing or Reconsideration."

Analysis

Section 162.11, Florida Statutes (2014), governs appeals from final orders of a municipal or county code enforcement board and states:

An aggrieved party, including the local governing body, may appeal a final administrative order of an enforcement board to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board. An appeal shall be filed within 30 days of the execution of the order to be appealed.

There is no rule or statutory provision authorizing a motion for rehearing or a motion for reconsideration of a final order of a code enforcement board.

Even had the motion for rehearing been authorized, it was untimely and thus was a nullity that should have been stricken by the Special Master. See Fla. R. Civ. P. 1.530(b); see Reid v. Cooper, 955 So. 2d 31, 32 (Fla. 3d DCA 2007).

A motion can suspend rendition of an order only if the motion is authorized under the rules governing the proceeding in which the order was entered. City of Palm Bay v. Palm Bay Greens, LLC, 969 So. 2d 1187, 1190 (Fla. 5th DCA 2007); Fla. R. App. P. 9.020(i). Mr. Fisher's unauthorized motion for rehearing did not toll the time for filing the notice of appeal of the final "Order Assessing An Administrative Fine Until Compliance Is Achieved" executed on June 9, 2014. See Palm Bay Greens, 969 So. 2d at 1190.

The notice of appeal from the final order was required to have been filed on or

before July 9, 2014; thirty days after the execution of the final order. The August 18, 2014, Notice of Appeal from the final order is untimely. The appeal of the final "Order Assessing An Administrative Fine Until Compliance Is Achieved" is dismissed.

An unauthorized motion for reconsideration is a nullity that could have been stricken. However, the Special Magistrate treated the untimely, unauthorized motion for rehearing as a motion for reconsideration that was denied on July 15, 2014. As noted above, section 162.11 directs that an appeal shall be filed within thirty days of the execution of the order to be appealed, not from the date of service/ mailing or from the date of receipt of the order by a defendant. In order to be timely, Mr. Fisher was required to file the notice of appeal on or before Thursday, August 14, 2014; thirty days after the execution of the order. The August 18, 2014, Notice of Appeal from the denial of the motion for rehearing or reconsideration is untimely. The appeal of the "Order Denying Motion for Rehearing or Reconsideration" is dismissed.

Accordingly, it is

ORDERED AND ADJUDGED that the appeal in case number 14-000056AP-88A is **DISMISSED**.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida, on this ____ day of _____, 2014.

LINDA R. ALLAN
Circuit Judge, Appellate Division

JOHN A. SCHAEFER
Circuit Judge, Appellate Division

JACK R. ST. ARNOLD
Circuit Judge, Appellate Division

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