

**Administrative:** CODE ENFORCEMENT – Due Process – Court must defer to interpretation of City Ordinance by Special Magistrate for City Code Enforcement Board when it is within the range of possible interpretations and is a permissible one. Special Magistrate's decision was not clearly erroneous when he concluded that the retired fire truck is a commercial truck under the Ordinance. Petitioner waived his argument that the Ordinance is unconstitutionally vague. Claim that Ordinance is unconstitutional as applied to Petitioner could not be raised for the first time on appeal. No violation of due process – decision affirmed. Patrick Alonso v. City of Seminole, FL Code Enforcement Bd., No. 14-000024AP-88A (Fla. 6th Cir. App. Ct. December 9, 2014).

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED,  
DETERMINED**

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

**PATRICK ALONSO,  
Appellant,**

**Case No.: 14-000024AP-88A  
UCN: 522014AP000024XXXXCI**

**v.**

**CITY OF SEMINOLE, FLORIDA,  
CODE ENFORCEMENT BOARD,  
Appellee.**

\_\_\_\_\_ /

Opinion Filed \_\_\_\_\_

Appeal from decision of  
Code Enforcement Board,  
City of Seminole, Florida

Jenny M. Thomas, Esq.  
Attorney for Appellant

John Elias, Esq.  
Attorney for Appellee

**PER CURIAM.**

Patrick Alonso appeals the February 12, 2014, "Findings of Fact and Order" of the Special Magistrate for the City of Seminole, Florida, Code Enforcement Board.<sup>1</sup> Upon consideration of the Initial Brief, the record on appeal, and applicable law, this Court dispensed with oral argument pursuant to Florida Rule of Appellate Procedure 9.320. We affirm.

### **Statement of Case**

The evidence in the record demonstrates that Mr. Alonso owns a 1975 Ward LaFrance pumper truck that had been a New York Volunteer Fire Department vehicle. The fire truck has been parked in front of Mr. Alonso's residence in the City of Seminole in a semi-circular driveway.

On December 26, 2013, Mr. Alonso received a "Notice of Violation" of the City of Seminole Code of Ordinances, section 39-52(b), for parking the fire truck overnight on single-family zoned property.<sup>2</sup> The Ordinance states:

#### **Sec. 39-52. - Overnight parking within the public rights-of-way.**

(a) Overnight parking of recreational vehicles, vessels, watercraft, trailers, commercial motor vehicles, cargo vehicles rated in excess of three-quarter ton carrying capacity, truck tractors, or semi-trailers within the public rights-of-way that serve single-family, duplex and triplex uses is prohibited. Overnight is defined as the time period between the hours of 10:00 p.m. and 7:00 a.m. The city manager, or his designee, is authorized to administer a no-fee permit process for the issuance of temporary parking permits for recreational vehicles, for such time period as determined by the city council.

(b) Overnight parking of commercial trucks or cargo vehicles rated in excess of three-quarter ton or of truck tractors is prohibited in residential districts.

(Emphasis added). Section 320.01(25), Florida Statutes (2013), defines "commercial motor vehicle:"

(25) "Commercial motor vehicle" means any vehicle which is not owned or operated by a governmental entity, which uses special fuel or motor fuel on the public highways, and which has a gross vehicle weight of 26,001 pounds or more, or has three or more axles regardless of weight, or is used in combination when the weight of such combination exceeds 26,001 pounds gross vehicle weight. . . .

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<sup>1</sup> On November 17, 2014, this Court relinquished jurisdiction to the Special Magistrate to correct a scrivener's error. The "Amended Findings of Fact and Order" was entered on November 25, 2014, correcting the error.

<sup>2</sup> The "Notice of Violation" also informed Mr. Alonso of alleged violations of City of Seminole Code of Ordinances, section 39-53(b) and (c)(8). These alleged violations are not the subject of this appeal.

(Emphasis added). Section 320.01 regarding weight of vehicles defines the following terms:

(6) "Net weight" means the actual scale weight in pounds with complete catalog equipment.

(7) "Gross weight" means the net weight of a motor vehicle in pounds plus the weight of the load carried by it.

On January 16, 2014, a hearing was conducted before the Special Magistrate on the alleged violation of Ordinance section 39-52(b). Testimony was presented that the fire truck is not owned or operated by a municipality, but is Mr. Alonso's personal vehicle. Mr. Alonso stated that he drives the fire truck on the public streets and uses it as "a normal vehicle" when he transports his son from school, drives to the grocery store, or drives to football and baseball games.

Testimony was presented that the fire truck has a water tank that holds 900 gallons and it was agreed that water weighs eight pounds per gallon. The weight of the water the fire truck is capable of carrying is 7,200 pounds. The Magistrate found that the "gross weight" of the fire truck is 27,930 (20,730 the net weight + 7,200 the weight of the load carried by it). See § 320.01(7), Fla. Stat. The Special Magistrate concluded that the fire truck meets the definition of a "commercial motor vehicle" and a "commercial truck" (e.g. gross vehicle weight of 26,001+ pounds). See § 320.01(25), Fla. Stat.

In the "Amended Findings of Fact and Order" the Special Magistrate found, ordered, and adjudged that Mr. Alonso and the fire truck

at the above-mentioned location, are hereby found to be in violation of Section 39-52(b) of the City of Seminole Code of Ordinances, in that on all dates up through the Hearing conditions existed on the property of having a privately owned fire truck that is classified as a commercial vehicle impermissibly being parked overnight on the property of a single family zoned (RL) property, to the extent of being in violation of Section 39-52(b) of the City of Seminole Code of Ordinances.

Mr. Alonso was given sixty days to remedy the violation.

### **Standard of Review**

When the circuit court in its appellate capacity reviews local governmental administrative action, there is a three-part standard of review: (1) whether procedural due process was accorded; (2) whether the essential requirements of law have been observed; and (3) whether the findings and judgment are supported by competent, substantial evidence. Lee County v. Sunbelt Equities, II, Ltd. P'ship, 619 So. 2d 996, 1003 (Fla. 2d DCA 1993). The circuit court is not entitled to make separate findings of fact or to reweigh the evidence. Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 529 (Fla. 1995).

### **Argument on Appeal**

Mr. Alonso raises four points of error on appeal:

**1. "The plain meaning of City of Seminole Ordinance 39-52 prohibits overnight parking within public rights of way and is inapplicable to parking of a vehicle within a semi-circle driveway of a private residence."**

In the Initial Brief, Mr. Alonso questions whether the plain meaning of Ordinance section 39-52(b) only applies to parking on public property and does not apply to private property. He questions whether only City of Seminole Code Ordinance section 39-53 deals with parking on private property.

Ordinance section 39-52(b) states: "Overnight parking of commercial trucks or cargo vehicles rated in excess of three-quarter ton or of truck tractors is prohibited in residential districts." On its face the restriction on overnight parking by commercial vehicles is not limited to public rights-of-way. Any other restriction on parking on private property that may be imposed by City of Seminole Code Ordinance section 39-53 is not relevant to this matter.

The Special Magistrate's finding that Ordinance section 39-52(b) applies to the overnight parking of commercial vehicles on private property in a residential district is not a departure from the essential requirements of law.

**2. "The Special Magistrate erred in his finding that the 1975 Ward LaFrance Pumper is a 'commercial vehicle' under state law as it is registered as an antique personal use vehicle not commercial and not requiring a commercial driver's license or registration."**

In the "Findings of Fact and Order" the Special Magistrate found that Ordinance section 39-53(c)(8) defines "commercial motor vehicle" as being "those vehicles as

defined by State Law." The definitions of "gross weight" in section 320.01(7) and the definition of "commercial motor vehicle" in section 320.01(25) were relied upon by the Special Magistrate in evaluating whether the fire truck met the definition of a commercial truck under Ordinance section 39-53(b).

For the first time on appeal, Mr. Alonso asserts that the Special Magistrate should have used the definition of "gross vehicle weight" found in section 320.01(12), Florida Statutes, for "heavy trucks." This argument was not presented below has been waived. However, the Court notes that the definition of a "heavy truck" in section 320.01(10), does not appear to encompass the fire truck at issue.

The definition of "commercial motor vehicle," in section 320.01(25) would include a "commercial truck" not operated by a governmental entity that has a gross vehicle weight of 26,001 or more. Although Mr. Alonso testified that he did not intend to fill the water tank, the Special Magistrate calculated the gross weight of the fire truck by taking the empty, net weight and adding the weight of the load it had the capability of carrying. The Special Magistrate concluded that the "gross weight" of the fire truck is 27,930.

In support of his argument that the fire truck is not a commercial vehicle, Mr. Alonso directs this Court to the Florida Vehicle Registration admitted into evidence that specifically states the "net weight" of the fire truck is 20,730. The Registration also states that the "GVW" is 20,730. Mr. Alonso asserts this evidence conclusively demonstrates that the gross vehicle weight is 20,730. He also points to the Certificate of Title to the fire truck that does not identify it as a commercial vehicle, but indicates that the fire truck is for private use.

The registration of the fire truck as a private vehicle by the State of Florida and the fact that Mr. Alonso is not required to hold a commercial driver's license is not dispositive of the issue of whether the fire truck meets the requirements to be classified as a commercial vehicle for purposes of the City of Seminole Ordinances. See Rigo v. City of St. Petersburg, Fla., 13 Fla. L. Weekly Supp. 776a (Fla. 6th Cir. App. Ct. April 25, 2006).

Mr. Alonso directs this Court to section 320.08(3), Florida Statutes, discussing the issuance of an "Antique" license plate for the owners of an ancient or antique

firefighting apparatus thirty years old or older "which is used only in exhibitions, parades, or public display . . . ." <sup>3</sup> The issuance of an "Antique" license plate by the State of Florida is not dispositive of the issue of whether the fire truck meets the requirements to be classified as a commercial truck for purposes of the City of Seminole Ordinances. See Rigo, 13 Fla. L. Weekly Supp. 776a.

The Court must defer to the Special Magistrate's interpretation of the City's ordinances; as long as that it is within the range of possible interpretations and is a permissible one. See Duke's Steakhouse Ft. Myers, Inc. v. G5 Properties, LLC, 106 So 3d 12, 15 (Fla. 2d DCA 2013); Collier County Bd. of County Comm'rs v. Fish & Wildlife Conservation Comm'n, 993 So. 2d 69, 72 (Fla. 2d DCA 2008). The Special Magistrate's decision should not be overturned unless clearly erroneous. See Duke's Steakhouse, 106 So. 3d at 16; see also Palm Beach County Canvassing Board v. Harris, 772 So. 2d 1273, 1283 (Fla. 2000)(explaining that courts will defer to an agency's interpretation of statutes and rules the agency is charged with enforcing unless contrary to law); Rigo, 13 Fla. L. Weekly Supp. 776a.

As discussed above, the Special Magistrate concluded that the gross weight of the fire truck is calculated by adding the net weight of the vehicle with the load it is capable of carrying. This is a possible and permissible interpretation of the Ordinance that is not clearly erroneous. The Special Magistrate's finding that the fire truck is a commercial truck under the Ordinance is supported by competent substantial evidence.

**3. "The Ordinance is unconstitutionally vague and is arbitrary, discriminatory and confiscatory as applied to Mr. Alonso's ownership of an antique 1975 Ward LaFrance Pumper."**

Mr. Alonso did not present any argument to the Special Magistrate concerning the constitutionality of the Ordinance.

Mr. Alonso's claim that the Ordinance as applied to him is unconstitutional cannot be raised for the first time on appeal. "A distinction is drawn between

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<sup>3</sup> This Court notes that rather than the fire truck being only used in "exhibitions, parades, or public display," Mr. Alonso testified that he uses the fire truck as "a normal vehicle" when he transports his son from school, drives to the grocery store, or drives to football and baseball games. (Trans. 1/16/14, p. 9). Mr. Alonso's witness, Steven Naeger, testified that Mr. Alonso uses the fire truck "as a vehicle for personal transportation sometimes five, six, seven days a week." (Trans. 1/16/14, p. 6).

challenges to the facial unconstitutionality of a statute and the unconstitutionality of the application of the statute to the facts of a particular case. The former may be raised for the first time on appeal; the latter must first have been raised at the trial level." B.C. v. Department of Children & Families, 864 So 2d 486, 491 (Fla. 5th DCA 2004).

With regard to the claim that the Ordinance is unconstitutionally vague, Mr. Alonso has not presented any argument in the body of in his Initial Brief to support this statement. Therefore, this argument has been waived. See Coolen v. State, 696 So. 2d 738, 742 n. 2 (Fla. 1997) (stating that a failure to fully brief and argue points on appeal "constitutes a waiver of these claims"); Victorino v. State, 23 So. 3d 87, 103 (Fla. 2009)("We have previously stated that '[t]he purpose of an appellate brief is to present arguments in support of the points on appeal.' ").

**4. "Due Process was violated when the hearing was bifurcated and then an order entered without meaningful opportunity to be heard."**

Procedural due process requires both fair notice and a real opportunity to be heard at a meaningful time and in a meaningful manner. Massey v. Charlotte County, 842 So. 2d 142, 146 (Fla. 2d DCA 2003). Mr. Alonso claims his due process rights were violated. However, he admits that he attended the January 16, 2014, hearing and participated in the proceedings. There was no due process violation in the present case.

Further, upon a review of the transcript this Court concludes that the Special Magistrate was not acting as an advocate for the City at the January 16, 2014, hearing as has been claimed by Mr. Alonso.

**Conclusion**

This Court concludes that procedural due process was accorded, the essential requirements of law have been observed, and the Special Magistrate's Amended Findings of Fact and Order is supported by competent, substantial evidence.

Affirmed.

**DONE AND ORDERED** in Chambers in Clearwater, Pinellas County, Florida, this 9th day of December, 2014.

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**LINDA R. ALLAN**  
Circuit Judge, Appellate Division

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**JOHN A. SCHAEFER**  
Circuit Judge, Appellate Division

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**JACK R. ST. ARNOLD**  
Circuit Judge, Appellate Division

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