

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

CHARLES D. DEER and  
KATHLEEN L. DEER,  
Petitioners,

APPEAL No.: 08-000029AP-88A  
UCN: 522008AP000029XXXXCV

v.

PINELLAS COUNTY,  
Respondent.

\_\_\_\_\_ /

**ORDER DENYING PETITION FOR WRIT OF CERTIORARI**

**THIS CAUSE** came before the Court on Petitioners', Charles D. Deer and Kathleen L. Deer, Petition for Writ of Certiorari. Respondent, Pinellas County, filed their response on December 15, 2008. Upon consideration, this Court finds that the Petition for Writ of Certiorari must be denied as set forth below.

The standard of review for this Court is limited to whether the essential requirements of law were observed, whether the administrative findings and judgment were supported by competent substantial evidence, and whether the Petitioners were afforded procedural due process. Broward County v. G.B.V. Int'l, 787 So. 2d 838, 843 (Fla. 2001).

This appeal stems from the Pinellas County Code Enforcement Special Magistrate's finding that Petitioners were repeat violators of §138-522, Pinellas County Code on April 25, 2008, and remained in violation through the date of the hearing, June 9, 2008. Petitioners contend that the Magistrate Judge's Order departed from the essential requirements of law, and it did not afford them due process of law. Petitioners

did not dispute the competency or extent of the evidence relied upon by the Special Magistrate, and therefore that issue will not be addressed on appeal. The Corrected Order on Repeat Violation Imposing Fine, Lien and Costs dated June 18, 2008 was based on a hearing held on June 9, 2008.

The Special Magistrate made a finding of fact that this was a repeat violation of the Pinellas County Ordinance Code, and imposed a fine, lien and costs. Fla. Stat. §162.04(5) is the controlling authority, and it states that a violation of an ordinance by a person who has been previously found in violation of the same ordinance within the previous (5) five years constitutes a “repeat violation.” Petitioners’ argument claiming “double jeopardy” is subject to the authority of Pinellas County Code §1-8(c), which states that “with respect to violations of this Code that are continuous with respect to time, each day the violations continues is a separate offense.” Therefore, even though the most recent violation may be the same as violations previously adjudicated, the dates of the violations are different and accordingly, the violations are considered to be separate offenses under this Code. The ‘not guilty’ verdict for the condition of the property on February 14, 2007 in Case No. CTG 07-055525 COANO is for a separate and distinct offense. Because they are deemed separate offenses, no relief can be claimed under the principle protecting against double jeopardy.

According to Fla. Stat. § 162.09(1), a Code Enforcement Special Magistrate, “upon finding that a repeat violation has been committed, may order the violator to pay a fine [...] 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.” Fla. Stat. § 162.07(2), states that “[i]f the local governing body prevails

in prosecuting a case before the enforcement board, it shall be entitled to recover all costs incurred in prosecuting the case before the board.”

Therefore, it is the determination of this Court that the Order complied with the essential requirements of the law.

The Petitioners’ Answer to Pinellas County’s Response to Petition for Writ of Certiorari contends that a ‘Notice of Violation’ should have been issued to them, and not a ‘Notice of Hearing’ for their April 25, 2008 violation. Since the Petitioners were cited with the same violation within the prior (5) five years, the code enforcement officer was not required to give Petitioners a reasonable amount of time to correct the problem before the Notice of Hearing was issued. However, Fla. Stat. §162.06(3), clearly states that “if a repeat violation is found, the code inspector *shall notify the violator* but is not required to give the violator a reasonable time to correct the violation. *The code inspector, upon notifying the violator of a repeat violation, shall notify an enforcement board and request a hearing.* The code enforcement board, through its clerical staff, shall schedule a hearing and shall provide notice pursuant to s. 162.12.” [Emphasis Added].

There is nothing in the record to indicate that the Petitioners received any “Notice of Violation” prior to their receipt of the “Notice of Hearing” dated May 21, 2008. The apparent failure to give notification of the violation to the Petitioners before setting a hearing date and issuing a notice of hearing is a due process concern. However, this due process omission is essentially a harmless error because Fla. Stat. §162.06(3) also states that “[t]he case may be presented to the enforcement board even if the repeat violation has been corrected prior to the board hearing, and the notice shall so state. If the repeat violation has been corrected, the code enforcement board retains the right to schedule a hearing to determine costs and impose the payment of reasonable enforcement fees upon

the repeat violator. The repeat violator may choose to waive his or her rights to this hearing and pay said costs as determined by the code enforcement board.”

Therefore, even if Petitioners were properly issued a Notice of the Violation prior to the Notice of Hearing, and even if Petitioners corrected that violation before that hearing date, the Petitioners would still have been liable for the fines, fees and costs.

Therefore, it is,

**ORDERED AND ADJUDGED** that the Petition for Writ of Certiorari is hereby **DENIED**.

**DONE AND ORDERED** in Chambers, at Clearwater, Pinellas County, Florida this 29 day of April, 2009.

Original opinion entered by Circuit Judges Pamela A.M. Campbell, George W. Greer, & John A. Schaefer.

Copies furnished to:

Charles Deer and Kathleen Deer, 12712 98<sup>th</sup> Street, Largo, FL 33773, Petitioners

Jason C Ester, Esquire, Assistant Pinellas County Attorney, 315 Court Street 6<sup>th</sup> Floor, Clearwater, FL 33756, Counsel for Respondent