

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

DEBORAH L. BLAKE,
Appellant,

vs.

UCN: 522015AP000013XXXXCI
Ref. No.: 15-0013AP-88B

CITY OF GULFPORT,
Appellee.

ORDER AND OPINION

Appellant challenges the Final Administrative Order upholding a violation for running a red light in the City of Gulfport. For the reasons set forth below, the decision of the Hearing Officer is reversed.

Facts and Procedural History

In October 2014, Appellant received a notice of violation for a red light camera infraction from American Traffic Solutions, Inc. ("ATS"), a private for-profit vendor providing red light camera services to the City. At an administrative hearing on January 22, 2015, the violation was upheld. Appellant filed the instant appeal asserting that the final order upholding her violation should be overturned because Florida Statutes section 316.0083(1)(a) and *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA. 2014) *review denied*, 168 So. 3d 224 (Fla. 2015), prevent the City from delegating police powers to a private vendor.

Standard of Review

Under Florida Statutes section 162.11, an appeal to the circuit court "shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board." *Sarasota Cnty. v. Bow Point on Gulf Condo. Developers, LLC*, 974 So. 2d

431, 433 n.3 (Fla. 2d DCA 2007). 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 administrative agency's 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).

Discussion

The Fourth District Court of Appeal held that a city cannot “delegate police power by entering into a contract that allows a private vendor to screen data and decide whether a [red light] violation has occurred before sending that data to a traffic infraction enforcement officer (“TIEO”) to use as the basis for authorizing a citation.” *Arem*, 154 So. 3d at 361. The contract in *Arem* stated:

The Vendor [ATS] shall make the initial determination that the image meets the requirements of the Ordinance and this Agreement, and is otherwise sufficient to enable the City to meet its burden of Demonstrat[ing] a violation of the Ordinance. If the Vendor determines that the standards are not met, the image shall not be processed any further.

Id. at 364-365.

The court determined that “the contract requires ATS to send images and information regarding the violation to the TIEO *only* if ATS determines in its sole discretion that certain standards have been met, and ATS may withhold sending information if it determines that those standards were not met.” *Id.* at 365 (emphasis in original).

Similarly, the applicable contract section for the City of Gulfport states:

ATS shall act as Customer’s agent for the limited purpose of making an initial determination of whether Recorded Images should be forwarded to the Traffic Infraction Enforcement Officer to determine whether a Violation has

occurred and shall not forward for processing those Recorded Images that clearly fail to establish the occurrence of a Violation.

Although worded differently, the contract still gives ATS “unfettered discretion to decide which images are sent to the TIEO, and which ones are not.” *Id.*

During testimony, the Hearing Officer asked Gulfport police officer Sergeant Vandenberg if “[t]he videos that [ATS] feel violate the law come back to Gulfport or do all videos come back to Gulfport?” Sergeant Vandenberg stated that the City receives “[a]ll videos that are *deemed to be a violation*.” He tried to explain by alleging that “they send us all videos because if there wasn’t a violation there wouldn’t be a video to start with.” His third attempt averred that “all videos taken by those cameras *that capture violations* are sent to us.” Finally, he said that “if that camera triggers and takes a *violation* photo, they put the packet together and they give it to us.” (emphasis added).

The Hearing Officer concluded that the City of Gulfport did not improperly delegate police powers to ATS. He reasoned that “just because ATS sends a video to the City, the City makes the determination if a violation took place, not ATS. The [Fourth] District Court of Appeal is saying that if some other person than a law enforcement officer makes that determination, that is a violation of the law. Gulfport makes that determination.” We disagree. Competent substantial evidence does not support the Hearing Officer’s conclusion. When ATS makes an initial determination of whether a violation occurred, that is an improper delegation of police powers. The Fourth District Court of Appeal explained:

Only in the event that ATS determines that a violation has taken place is that information sent to the City. Although the City may have some input into who eventually is prosecuted, that decision is wholly dependent upon the vendor’s initial determination. Under these circumstances, it cannot be said that this is the legal equivalent of a TIEO issuing the citation, especially when it is the third-

party vendor that controls what information is, or is not, made available for the officer's consideration.

Id. at 365.

Conclusion

Considering the language of the contract, the testimony of the police officer, and the controlling principles defined in *City of Hollywood v. Arem*, competent substantial evidence does not support the Hearing Officer's decision. Accordingly, it is

ORDERED AND ADJUDGED that:

1. The Final Administrative Order is REVERSED.
2. Appellee's Motion to Stay Pending Resolution of Related Appeal is DENIED.

DONE AND ORDERED in Chambers, at St. Petersburg, Pinellas County, Florida on this 2nd day of December 2015.

Original Order entered on December 2, 2015, by Circuit Judges Jack Day, Pamela A.M. Campbell, and Peter Ramsberger.

Copies furnished to:

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