

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED  
IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
APPELLATE DIVISION**

STAVROS D. TSALICKIS,  
Appellant,

v.

CITY OF TARPON SPRINGS  
CODE ENFORCEMENT BOARD,  
Appellee.

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Ref. No.: 16-000024-AP-88B  
UCN: 522016AP000024XXXXCI

**ORDER AND OPINION**

Appellant appeals the Findings of Fact, Conclusions of Law, and Order (“final order”) of Appellee, the City of Tarpon Springs Code Enforcement Board (“Board”), that found Appellant in violation of sections 8-40 and 133.02 of the Tarpon Springs Code of Ordinances (“Code”). Appellant contends that he was deprived of due process when his pre-hearing motion for continuance was denied and that the Board’s final order was not supported by competent substantial evidence and did not comply with the essential requirements of law because it did not consider certain evidence. For the reasons set forth below, the Board’s final order is affirmed.

**Facts and Procedural History**

On February 5, 2016, Appellant received a City of Tarpon Springs Code Enforcement notice informing him that his residential property was in violation of Code sections 8-40, Duty of Maintenance of Private Property, and 133.02, Applicability and Maintenance of Trees for All Properties within the City. The notice gave Appellant until April 12, 2016, to correct the violations and informed Appellant that a Board hearing on the violations was set for April 14, 2016. On March 12, 2016, the code enforcement inspector for Tarpon Springs, Officer Gassen, conducted a re-inspection of Appellant’s property and noted that the code violations, a “dilapidated” shed “in poor condition” that was a “nuisance and a safety hazard” and a “dead tree . . . intruding on the dilapidated shed” with vines growing onto it, had not yet been corrected. On March 15, 2016, Appellant was sent a Notice of Hearing, which advised him that the violations were not corrected as of the re-inspection on March 12. The Notice re-informed Appellant that he needed to correct the violations by April 12, 2016, and that a Board hearing on the violations was going to be held on April 14, 2016. On April 2, 2016, Officer Gassen posted the Notice of

Hearing at Appellant's property and at City Hall. After the April 14, 2016 Board hearing, the Board entered the final order on appeal, which finds that because Appellant's "shed is in poor condition and the dead tree needs to be removed," Appellant is in violation of sections 8-40 and 133.02. The final order required Appellant to comply with those sections by June 8, 2016, and scheduled a hearing for July 14, 2016, to assess Appellant's compliance. Thereafter, Appellant filed the instant appeal.

### **Standard of Review**

"Where a party is entitled as a matter of right to seek review in the circuit court from administrative action, the circuit court must determine whether procedural due process is accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence." *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

### **Discussion**

The Board's finding that Appellant violated section 8-40, Duty of Maintenance of Private Property, is supported by competent substantial evidence. Section 8-40 establishes that "[n]o person owning, leading, operating, occupying or having control of any premises within the city shall maintain, keep or permit any nuisance, as defined in . . . § 8-41, affecting the citizens of the city." A finding of the existence of any condition under section 8-41 is sufficient to constitute a public nuisance under section 8-40. § 8-41, Code. "Buildings or other structures which are . . . in such a dilapidated condition that they are unfit for human habitation, [or] are kept in an unsanitary condition that they are a menace to the nearby properties" are considered such a nuisance. *Id.* at (d). Here, the record reflects that Officer Gassen's inspection report and photographs indicate that the shed was dilapidated, in poor condition, a nuisance, and a safety hazard. Thus, the Board's finding in the final order that Appellant is in violation of section 8-40 because the shed is in poor condition is supported by competent substantial evidence.

The Board's finding that Appellant violated section 133.02, Applicability and Maintenance of Trees for all Properties within the City, is also supported by competent substantial evidence. Section 133.02 establishes that, except for certain provisions not applicable here, "[o]wners of private property are responsible for the maintenance of trees on private property and in abutting rights-of-way." § 133.02(B), Code. "Trees shall be maintained by the owner, tenant or their agent in good condition so as to present a healthy, neat and orderly

appearance. All plant materials shall be maintained free from physical damage or injury arising from lack of water, chemical exposure, insects, disease, blight or other cause.” *Id.* at (C). Here, Officer Gassen’s inspection reports and testimony, which indicated that the tree at issue was dead, covered in vines, and intruding on the shed, were presented to the Board. Appellant presented conflicting evidence that the tree was alive and bearing fruit, but infected with an incurable citrus greening disease.

Appellant contends that the Board’s finding that the tree was dead in spite of Appellant’s evidence is a departure from the essential requirements of law. However, the Board is entitled to weigh testimony and other evidence regarding the condition of the tree in reaching its determination that Appellant is in violation of section 133.02. It is not within the appellate court’s purview to reweigh that evidence. *See A & A Elec. Servs., Inc. v. Jurado*, 198 So. 3d 37, 42 (Fla. 2d DCA 2015) (“[W]e recognize that the trial court, as the finder of fact, had the authority to resolve factual disputes and that we do not have the authority to revisit the trial court’s resolution of factual disputes.”); *see also Markham v. Fogg*, 458 So. 2d 1122, 1126 (Fla. 1984) (holding that it is error to reverse a trial court’s finding of fact merely because there is conflicting evidence if there is competent substantial evidence to support the finding). Thus, the Board’s finding that the condition of Appellant’s tree is in violation of section 133.02 is supported by competent substantial evidence and complies with the essential requirements of law.

Appellant’s contention that a pre-hearing request for continuance of the hearing was improperly denied is without merit since he failed to preserve this issue and there is no fundamental error on the face of the final order. “Generally, if a claim is not raised in the trial court, it will not be considered on appeal.” *Dade Cnty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644 (Fla. 1999). However, the appellate court may consider theories for the first time on appeal if fundamental error is present in the order on appeal. *Stevens v. Allegro Leasing, Inc.*, 562 So. 2d 380, 381 (Fla. 4th DCA 1990). Fundamental error “is error which goes to the foundation of the case or goes to the merits of the cause of action.” *Id.* “The denial of due process rights, including the opportunity to be heard, to testify, and to present evidence, is fundamental error.” *Weiser v. Weiser*, 132 So. 3d 309, 311 (Fla. 4th DCA 2014). Here, on appeal, Appellant raises for the first time his pre-hearing motion for continuance, which was based on an unidentified arborist being unavailable to testify at the April 14 hearing. Appellant

alleges that he made a pre-hearing motion for continuance to a "Board secretary" and never received a call back from Officer Gassen, whose inaction "in effect denied the continuance." The April 12 transcript does not reflect that Appellant raised the issue of the motion for continuance to the Board at the hearing. Furthermore, there is no fundamental error here. Therefore, Appellant was accorded procedural due process as he received notice of the specified violations and hearing date two months prior to the hearing at which he had a chance to fully present his testimony and evidence.

### **Conclusion**

Because the final order is supported by competent substantial evidence, the essential requirements of law have been observed, and Appellant was accorded due process, it is

**ORDERED AND ADJUDGED** that the Findings of Fact, Conclusions of Law, and Order is hereby **AFFIRMED**.

**DONE AND ORDERED** in Chambers at St. Petersburg, Pinellas County, Florida, this  
9 day of November, 2016.

Original Order entered on November 9, 2016, by Circuit Judges Amy M. Williams, Pamela A.M. Campbell, and Thomas Ramsberger.

#### **COPIES FURNISHED TO:**

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