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

IRENE PENKARSKI,
Appellant,
v.

Ref. No.: 17-000054-AP-88B
UCN: 522017AP000054XXXXCI

CITY OF TREASURE ISLAND FLORIDA,
Appellee.
_____/

ORDER AND OPINION

Appellant, Irene Penkarski, appeals the Findings of Fact, Conclusions of Law, and Order ("final order") of Appellee, the City of Treasure Island Municipal Code Enforcement Board, that found Appellant in violation of Florida Building Code Section R322.2.2. Appellant contends she was deprived of due process and the essential requirements of law were violated because Appellee was equitably estopped from enforcement of Section R322.2.2, Appellee failed to provide proper notice of the violation and subsequent hearings, and Appellee issued a defective final order. For the reasons set forth below, Appellee's final order is affirmed.

Facts and Procedural History

Appellant owns a residential property in Treasure Island, Florida ("the Property"). On August 15, 2016, Appellee generated a Notice of Violation for the Property that found the Property in violation of Florida Building Code Section R322.2.2 because it had a non-permitted bathroom, kitchen, and washer-dryer on the first floor below flood elevation. (App. p. 15). The Notice of Violation gave Appellant until September 4, 2016, to achieve compliance. The Code Enforcement Inspector sent the Notice of Violation to Appellant via certified mail at the Property address (as were all notifications herein) and posted it at the Property. (App. p. 20). On July 27, 2017, Appellee generated a Notice of Hearing (First Offense), which set the violation for hearing on August 16, 2017. (App. p. 22). The Notice of Hearing was mailed to Appellant on July 29, 2017. (App. p. 25). A Public Notice of the hearing was also posted. (App. p. 26). Appellant did not attend the August 16, 2017 hearing, at which Appellee found the Property not in compliance as of July 27, 2017. Appellant was given a new compliance date of September 16, 2017. (App. p. 27-28). The order from the August 16, 2017 hearing was mailed to Appellant. (App. p. 30).

On September 26, 2017, the Code Enforcement Inspector inspected the Property and found that it was still not in compliance. (App. p. 33). Accordingly, Appellee generated a Notice of Hearing (Return), which set the violation for a return hearing on October 18, 2017. (App. p. 34). On September 26, 2017, the Notice of Hearing was sent to Appellant via certified mail and posted at the Property. (App. p. 37-38). A Public Notice of the hearing was also posted. (App. p. 33). Appellant did not attend the October 18, 2017 hearing at which Appellee entered the final order on appeal. The final order found the Property not in compliance as of September 16, 2017, and issued an ongoing fine of $150.00 per day from September 17, 2017, until the Property is brought into compliance. The final order also contained a certification that a true and correct copy of the order was sent to Appellant via certified mail on October 18, 2017. After the October 18, 2017 final order was entered, 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

Appellant contends that Appellee violated her procedural due process rights by not providing her proper notice of the violation and hearings pursuant to section 162.12, Florida Statutes. Section 162.12, "Notices," provides that all required notices must be sent via "[c]ertified mail, and at the option of the local government return receipt requested, to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database." § 162.12(1)(a), Fla. Stat. In addition to providing notice via certified mail, "at the option of the code enforcement board or the local government, notice may be served by publication or posting, at least 10 days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be, in the case of municipalities, at the primary municipal government office." § 162.12(2)(b), Fla. Stat.

Here, Appellant contends that Appellee "failed to provide Appellant the notice of hearings via certified mail, return receipt required to the address listed in the tax collector's office for tax notices or the address listed in the county property appraiser's database." Appellant further

contends that "Appellee mailed and/or posted the notices to the [subject] property which they knew to be vacant. Further, the Appellee knew that the Appellant was a resident of Canada and would likely not receive the notices if provided to the [subject] Property address."

The record indicates that the mailing address listed in the Pinellas County property appraiser's database for Appellant is indeed the address of the Property itself, and that all notifications were sent by certified mail to the Property address, as well as posted. The original Notice of Violation was posted at the Property, the Notice of Hearing (First Offense) was posted via Public Notice, and the Notice of Hearing (Return) was posted both at the Property and via Public Notice. Thus, Appellee complied with section 162.12, Florida Statutes, by sending all notices to Appellant at the mailing address listed in the property appraiser's database. Despite Appellant's contention, by the plain language of the statute, none of the certified mail notices needed to be sent return receipt requested. *See* § 162.12(1)(a), Fla. Stat. Appellant received proper notice.

Appellant also contends that Appellee was equitably estopped from enforcing the Building Code against the Property because Appellee "implied it would not pursue enforcement." However, this argument was not presented to the lower tribunal and therefore, was not preserved for appellate review. *See generally Worthington Communities, Inc. v. Mejia*, 28 So. 3d 79, 87 (Fla. 2d DCA 2009) ("As a general proposition, for an argument to be preserved for review, 'an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation.'").

Lastly, Appellant contends that her procedural due process rights were violated by the lack of checks or marks on the "fine" portion of the final order.[1] Specifically, Appellant contends that even though "[i]t is clear from the order that a fine is to be imposed in the amount of $150.00 in favor of the City," Appellee's failure to check or mark the blank line next to the daily fine directive

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[1] The pertinent challenged section of the final order appears as follows:

_X_ C) Fine. A fine in the amount of $150.00 is imposed in favor of the City of Treasure Island, FL whose address is 120 - 108th Avenue, Treasure Island, FL 33706-4702 as follows:

____ One-time only;

____ To run daily from _____, 2017 through _____, 2017

____ To run daily from 9-19 ,2017 and will continue to accrue until the Respondent comes into compliance or until judgment is rendered in a suit filed pursuant to section 162.09 Florida Statutes, whichever occurs first.

in the final order renders the final order facially deficient and requires Appellee to hold a new hearing. However, this argument is without merit as checks or marks are not required and the intention of the final order is clear without an additional check or mark on the blank line next to Appellee's directive. *But cf. Peacock v. Ace*, 24 So. 3d 750, 751 (Fla. 2d DCA 2009) (Noting that "the absence of the required findings in the written order renders the order fundamentally erroneous on its face"). Thus, Appellant received proper notice of the directives in the final order.

Conclusion

Because the final order did not deprive Appellant of due process and observed the essential requirements of law, 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 _____ day of _____, 2018.

Original Order entered on August 21, 2018, by Circuit Judges Jack Day, Pamela A.M. Campbell, and Amy M. Williams.

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