

**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**

PETER Z. PASTOR,  
Appellant,  
v.

Ref. No.: 17-000018-AP-88B  
UCN: 522017AP000018XXXXCI

CITY OF SOUTH PASADENA, FLORIDA,  
Appellee.

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**ORDER AND OPINION**

Appellant, Peter Z. Pastor, appeals the Findings of Fact, Conclusions of Law, and Order (“final order”) entered by the Code Enforcement Special Magistrate of the City of South Pasadena, finding Appellant non-compliant with the Special Magistrate’s prior ruling requiring code enforcement violations to be remedied and imposing fines for that non-compliance. For the reasons set forth below, the final order is affirmed in part, reversed in part, and remanded.

**Facts and Procedural History**

On February 8, 2017, Appellee, the City of South Pasadena, Florida (“City”), issued a Notice of Violation to Appellant. The Notice informed Appellant that a residential property owned by him was in violation of Section 143-2 (B, C, D, J, M) and Section 103-2 (A, B) of the Code of Ordinances of the City (“Code”). The Notice described the violations as:

- Accumulation of building/construction related materials and debris (pavers, tools, dirt, pallets etc). [sic] with no active building permit on record
- Accumulation of stagnant water in partially dismantled pool, causing public health hazard
- Front fencing in disrepair, posing a threat to public safety.

The Notice also described “Required Action,” which included:

- Remove all debris from front set back including dirt, tools, machinery, trash, and other debris outlined in the ordinances above.
- Mend/repair fencing to comply with the ordinance outlined above
- Address standing water issue created by disrepair of pool

The Notice provided Appellant ten calendar days, or until February 20, 2017, to achieve compliance. It informed Appellant that failure to timely correct the violations would result in the code enforcement officer requesting a hearing before the City’s Code Enforcement Special

Magistrate, who “may assess penalties[,] including a fine of up to \$250.00 per day for each day the violation continues to exist after the above compliance date.”

Appellant failed to achieve compliance with the Notice by the deadline. Accordingly, on March 22, 2017, the Code Enforcement Special Magistrate held a hearing, finding Appellant to be in violation of all of the Code sections enumerated in the Notice, specifically Section 143-2 (B, C, D, J, M) and Section 103-2 (A, B). The Special Magistrate ordered Appellant to come into compliance within seven days of the hearing. Appellant did not appeal the order from this first hearing.

On April 10, 2017, the Special Magistrate held a return hearing to determine Appellant’s compliance with the March 22, 2017 ruling and potentially assess fines. At the return hearing, the Special Magistrate again found Appellant in violation of the same Code sections. The order described the non-compliant conditions as: “accumulation of building materials and debris with no active permit, accumulation of stagnant water in pool, [and] fence around pool does not meet code.”<sup>1</sup> The order did not find the physical structure of the pool to be a non-compliant condition; it was silent as to the pool structure. The order imposed a fine in the amount of \$200.00 “to run daily from [March 29, 2017] and . . . continue to accrue until [Appellant] comes into compliance or until judgment is rendered in a suit filed pursuant to section 162.09 Florida Statutes, whichever occurs first.” This second order entered after the return hearing is the final order subject to 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).

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<sup>1</sup> The Court notes with concern that the portion of the form order that actually pertains to whether Appellant has been found to be compliant or non-compliant is conspicuously blank. It appears as follows:

“The Special Magistrate hereby issues its Order as follows: . . . 2. Respondent is adjudicated \_\_\_\_\_ In Violation of Section(s) \_\_\_\_\_  
\_\_\_\_\_ In compliance of/with all Code sections, as cited, except as follows: \_\_\_\_\_.”

## Discussion

City Code Section 103-2 (“Wall or fence required around swimming pools”) requires that every outdoor swimming pool shall be completely surrounded by a fence or wall of a certain height with certain size openings or gaps. § 103-2A, Code. It also requires that all fence gates have a self-closing and self-latching device attached at a certain height on the fence. *Id.* at § 103-2B.

City Code Section 143-2, entitled “Certain nuisances enumerated,” prohibits, *inter alia*: B. accumulation of certain debris; C. “[a]ny condition which provides harborage for rats, mice, snakes and other vermin;” D. any dilapidated or unfit building or structure; J. “[a]ny accumulation of stagnant water permitted or maintained on any lot or piece of ground in which mosquitoes or other insects are likely to breed;” and M. “[a]ny worn-out, scrapped, partially dismantled, nonoperative, unusable or discarded materials or objects. . . or other items of junk.”

“[I]f a violation of the codes or ordinances is found, the code enforcement officer shall notify the violator and give him a reasonable time to correct the violation.” *Id.* at § 12-42. If the violation continues “past the time specified for correction, the code enforcement officer shall notify the Code Enforcement Special Magistrate and request a hearing.” *Id.* “If the violation . . . is not corrected by the time specified for correction by the code enforcement officer, the case may be presented to the Code Enforcement Special Magistrate even if the violation has been corrected prior to the Special Magistrate hearing.” *Id.*

The Code gives the Special Magistrate enforcement powers. *Id.* at § 12-22. “The Code Enforcement Special Magistrate, upon notification by a code enforcement officer that an order of the Code Enforcement Special Magistrate has not been complied with by the set time . . . may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the Code Enforcement Special Magistrate for compliance.” *Id.* at § 12-49A. The fine shall not exceed \$250 per day for a first time violator. *Id.* at § 12-49D. In determining the amount of the fine, the Special Magistrate must consider: “(1) [t]he gravity of the violation; (2) [a]ny actions taken by the violator to correct the violation; and (3) [a]ny previous violations committed by the violator.” *Id.* at § 12-50.

Appellant does not dispute that he was notified his property violated Code Section 143-2 (B, C, D, J, M) and Section 103-2 (A, B) through a Notice issued February 8, 2017. Nor does he challenge the final order from the return hearing finding him in violation of Code Section 143-2

(B, C, D, J, M) and Section 103-2 (A, B). Rather, he challenges the length of time afforded to him to come into compliance and the propriety of the fines assessed for these violations.

In addition, Appellant asserts that the Special Magistrate improperly found him in violation for the condition of his pool's physical structure. Indeed, the Notice of Violation and the final order on appeal are silent as to the pool's structure. Because Appellant did not receive notice that the physical structure of the pool itself was a violation, he may not be found non-compliant or assessed fines on this ground at this time. (The City is not precluded from providing proper notice of violation to the property owner in the future regarding the physical structure of the pool, if applicable.)

Although Appellant asserts that the Special Magistrate violated his due process rights by giving him only seven days to come into compliance, Appellant did not challenge the order entered after the first hearing, and since he did not exercise his right to appellate review of that first order, he cannot now challenge the compliance period set forth in it. Even so, the total time afforded Appellant to come into compliance included the time after the Notice of Violation was issued on February 8, 2017, so he had almost two months to come into compliance. This is adequate notice.

Appellant also asserts that the fines assessed are improper. The transcript from the return hearing indicates that as of the hearing, "the pool still contained stagnant water," and that the fence was fixed prior to the return hearing date, but not within seven days of the first hearing. The code enforcement officer, when reading the Affidavit of Noncompliance at the return hearing, only identified the fence and pool as non-compliant and not the debris. The transcript reveals there was no mention of the debris issue at the return hearing.

The fine of \$200 per day began to run as of March 29. Imposition of a fine for the three violations listed was appropriate if the Special Magistrate found they had not been remedied. Thus, the Special Magistrate properly assessed a fine for the stagnant water as that issue still existed at the time of the return hearing. He also properly assessed a fine for the fencing violation, but the transcript reflects that violation was remedied by the date of the return hearing, so it should only run from March 29 to April 10, 2017. However, the Special Magistrate improperly assessed a fine for the debris violation because no evidence regarding it was introduced. Since there was no competent substantial evidence to support the finding that the debris condition was a continuing violation, this portion of the final order is reversed and remanded for more factual findings.

Therefore, the proper accounting of fines results in zero days of fine for the debris condition, 13 days for the fencing condition, and an ongoing fine for the stagnant water condition until Appellant establishes that the stagnant water has been removed. The final order fails to account for the fines attributable to each violation. Upon remand, the lower tribunal shall apportion the \$200.00 per day among the three enumerated violations as discussed herein and assess fines accordingly.<sup>2</sup>

### **Conclusion**

Accordingly, with regard to the debris issue only, we reverse the finding of non-compliance and assessment of fines because they are not supported by competent substantial evidence. We remand for further factual findings as to whether this debris condition was remedied by the date for compliance or the date of the hearing and if not, an assessment of fines as discussed herein. With regard to the fencing, we affirm the finding of non-compliance and the fine, but only from March 29, 2017, until April 10, 2017, for a total fencing fine to be determined upon remand. With regard to the stagnant water issue, we affirm the finding of non-compliance and assessment of fines. Therefore, it is

**ORDERED AND ADJUDGED** that the Findings of Fact, Conclusions of Law, and Order is hereby **AFFIRMED** in part, **REVERSED** in part, and **REMANDED** in part, as discussed more fully above.

**DONE AND ORDERED** in Chambers at St. Petersburg, Pinellas County, Florida, this \_\_\_\_ day of February, 2018.

Original Order entered on February 22, 2018, by Circuit Judges Jack Day, Amy M. Williams, and Thomas Ramsberger.

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<sup>2</sup> The Court notes that since the final order is entirely silent as to apportionment of the daily fine, it seems reasonable to apportion the \$200.00 daily fine in three equal parts, so that 33.3% of the daily fine, or \$66.66 is attributable to each of these three violations.

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