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

WILLIAM C. PRESCOTT and
PATRICIA K. PRESCOTT,
Appellants,

Case No.: 19-000017AP-88A
UCN: 522019AP000017XXXXCI

v.

CITY OF DUNEDIN, FLORIDA,
Appellee.
_____/

Opinion Filed _____

Appeal from decisions of,
Code Enforcement Board
City of Dunedin, Florida

Christopher G. Krampert, Esq.
Attorney for Appellants,

Jay Daigneault, Esq.
Attorney for Appellee

PER CURIAM.

Appellants, William and Patricia Prescott, appeal the "Order Denying Reduction of Fine," rendered by the City of Dunedin Code Enforcement Board. Upon review of the briefs, the record on appeal, and the applicable case law, this Court dispensed with oral argument pursuant to Florida Rule of Appellate Procedure 9.320. We affirm.

STATEMENT OF FACTS

Appellants are owners of a single family residence at 949 Lake Drive in Dunedin. Appellants, however, do not reside at the address, and at all relevant times in this matter, the

property was unoccupied. Appellants have previously had contact with the City's Code Enforcement Department concerning the yard at the property. On August 14, 2016, Mr. Prescott sent this email to the Code Enforcement Inspector ("Inspector"):

> This is to let you know that I've trimmed the azalea hedge in front of my house at 949 Lake Drive in Dunedin.
>
> Please let me know whether it satisfies the terms of the citation you sent me.
>
> Also, my new address in Tallahassee is 1177 Old Fort Drive, 32301.

On February 15, 2018, a Code Enforcement Inspector ("Inspector") for the City of Dunedin ("City") issued a "Notice of Violation" citing Appellants for violating the City Code of Ordinances. On March 14, the City sent Appellants a "Notice of Hearing" via certified mail, to the address listed with the tax assessment office; it was returned as undeliverable. On April 3, the City's Code Enforcement Board ("Board") held a hearing and found Appellants in violation of the Code and gave them until April 22 to come into compliance. The Board's order and the notice for the compliance hearing were both sent via certified mail to the same address as before and again were returned as undeliverable. At the May 1 hearing, the Board accepted the Inspector's Affidavit of Non-Compliance and imposed a daily fine until the property was brought into compliance. According to Appellants, in August, the City Attorney sent a letter to them at the property's address, demanding payment in the amount of $35,000, and, in September, the City Attorney sent another demand letter to Appellants after discovering they also owned property in Tallahassee. Appellants received the letter sent to the Tallahassee address, allegedly getting notice of the violations and subsequent proceedings for the first time. Appellants corrected the property violations, and the property was deemed to be in compliance in November. Appellants then submitted a Fine Reduction Request. A hearing was held in February 2019, and the Board denied the request. Thereafter, Appellant filed a notice of appeal challenging the final order.

STANDARD OF REVIEW

When the circuit court in its appellate capacity reviews a final order of local governmental administrative action, "three questions are asked: whether due process was afforded, whether the administrative body applied the correct law, and whether its findings are supported by competent substantial evidence." *Lee County v. Sunbelt Equities, II, Ltd. P'ship*, 619 So. 2d 996, 1003 (Fla. 2d DCA 1993). Section 162.11, Florida Statutes, authorizes an aggrieved party to appeal a final administrative order to the circuit court. The appeal is "limited to appellate review of the record created before the enforcement board." *Id.*

ANALYSIS

Appellants raise three due process issues on appeal. Appellants' first argument is that the Board failed to apply the correct law when it neglected to use its "inherent authority to vacate, and then re-enter, an order to permit a timely appeal in the event some circumstance beyond the party's control prohibited appeal." Appellants cite mostly cases concerning agencies operating under the Administrative Procedure Act. In those, the courts have held that the agency has the ability to reissue an order when "egregious circumstances . . . prevent a litigant from timely filing an appeal." *W.T. Holding, Inc. v. State Agency for Health Care Admin.*, 682 So. 2d 1224, 1225 (Fla. 4th DCA 1996) (quoting *Millinger v. Broward County Mental Health Div. & Risk Management*, 672 So. 2d 24, 27 (Fla.1996)). In the only code enforcement case, *Ciolli v. City of Palm Bay*, the Fifth District Court of Appeal considered an appeal from the entry of a final summary judgment foreclosing a code enforcement board lien. 59 So. 3d 295, 298 (Fla. 5th DCA 2011). Similar to the instant case, the home owner claimed no notice of the code enforcement hearing. The court discussed how "[t]he Florida Supreme Court has opined that a due process violation likely occurs where an administrative order is entered but never actually provided to the litigants, and the 30–day period

to file a timely appeal then passed." *Id.* (citing *Millinger*, 672 So. 2d at 27). The court determined that "the City was required to show that it had complied with the statutory notice requirements," and that it had failed to do so.

Florida Statutes section 162.12 provides in pertinent part:

> 1) All notices required by this part must be provided to the alleged violator by:
>
> (a) Certified 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. The local government may also provide an additional notice to any other address it may find for the property owner.

Here, Appellee asserts it sent the notices via certified mail to the address listed with the tax collector's office (which complies with the statutory provisions), and Appellants do not dispute that fact. Accordingly, no controlling case law required the City to rescind its order to allow Appellants to appeal.

Next, Appellants contend that the City failed to follow its own Code with regard to notices. Code Sec. 22-84 – "Notices" provides in pertinent part:

> (a) All notices required by this part shall be provided to the alleged violator by:
>
> (1) Certified mail to the address listed in the tax collector's office for tax notices, or to any other address provided by the property owner in writing to the city commission for the purpose of receiving notices.

It is undisputed that Appellants provided the Inspector with a different, valid address, in writing, 18 months prior to the attempted notices. However, the plain language of the Code requires written notice of the address to be used for receiving notices be provided to the City Commission. Here, Appellants simply made reference to a new address at the end of an email to the Inspector during a previous code enforcement issue. Moreover, the Code allows the City to provide the notice to

either the address listed in the tax collector's office (which it did) *or* the address provided by the property owner. Accordingly, this argument is without merit.

Appellants' third argument is that once the City received the Notice of Violation returned as undeliverable, it was not reasonable to continue sending notices to the same addresses, especially since Appellants had provided the City with the correct address. Appellants cite *Jones v. Flowers*, 547 U.S. 220, 225 (2006), which held "that when mailed notice of a tax sale is returned unclaimed, the State must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so." The only Florida cases that apply this case concern tax deed sales, however. Appellants also cite *Little v. D'Aloia*, 759 So. 2d 17 (Fla. 2d DCA 2000), which considered an appeal from a final judgment of foreclosure of a code enforcement lien. In *Little*, the city sent the notice of violation to the Little's current address and to their post office box.[1] *Id.* at 18. The notice sent to the residence was returned as unclaimed, and the notice sent to the post office box was returned because the box number was wrong. *Id.* Importantly, the post office provided the correct box number on the returned notice. *Id.* When the violations were not corrected and the city mailed out the notice of violation, it only sent the notice of hearing to the incorrect post office box number. *Id.* The Second District Court of appeal held:

> We hold that where the City had actual knowledge of the correct mailing address, here, the corrected post office box number or the correct residence address, and failed to provide the notice of hearing to either correct address, it failed to comply with the due process requirements of section 162.12.

Id. at 20.

Appellants contend that *Little* is "binding precedent" that must determine the outcome of this case because just as in that case, here, "[d]espite actual knowledge of the correct address, the

[1] In 1997, the statute read in pertinent part: "All notices required by this part shall be provided to the alleged violator by certified mail, return receipt requested."

City mailed every subsequent notice to the same, incorrect address." *Little*, however, is distinguishable. In *Little*, the post office sent the correct box number to the city less than a month before the city mailed out the notice of hearing. Here, Appellants provided a new address 18 months prior at the end of an email concerning some other code enforcement issue. In the Inspector's written response to the Fine Reduction Request, he stated that "[t]he address previously given to me was in 2016, with no knowledge if this . . . address was still valid. We do not research past addresses, but utilize current tax and property rolls (required by law). The owner has neglected for at least 3 years to update this information with the tax and property appraiser's office as required." In addition, the legislature has amended the statute since the *Little* case to specify how notice should be delivered. Notice must be provided by "[c]ertified mail . . . 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." Accordingly, Appellee provided Appellants with adequate notice because it mailed the notices to the address from the tax collector's office, as required under the current statute.

CONCLUSION

Based on the facts and analysis set forth above, the order of the City of Dunedin Code Enforcement Board is affirmed.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida, this ____ day of _____, 2020.

TRUE COPY

Original Order entered on November 9, 2020, by Circuit Judges Jack R. St. Arnold, Patricia A. Muscarella, and Sherwood Coleman.

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