

**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**

OKSANA DENORIO,

Appellant,

Case No.: 22-000014-AP

Lower Tribunal No.: CEB 21-0145

vs.

CITY OF SAFETY HARBOR,

Appellee.

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Opinion filed: 7/19/23

**PER CURIAM.**

**ORDER AND OPINION**

**THIS MATTER** is before the Court to review a final order rendered by the Code Enforcement Board of Appellee, CITY OF SAFETY HARBOR ("the City") finding that Appellant, OKSANA DENORIO ("Denorio") had failed to timely comply with a code violation order and assessing fines against Denorio. Denorio filed her Initial Brief on December 2, 2022. The City filed an Answer Brief ("Response") on April 3, 2023. Denorio filed her Reply Brief ("Reply") on May 15, 2023. Having considered the briefs, the case file, the

applicable law, and being otherwise fully advised in the premises, the Court hereby **FINDS** as follows:

### **I. Jurisdiction**

This Court has jurisdiction over the instant appeal pursuant to article V, section 5(b), Florida Constitution; section 162.11, Florida Statutes (2022); and Florida Rule of Appellate Procedure 9.030(c)(1)(C).

### **II. Relevant Facts and Procedural History**

This dispute began when Denorio received citations for violating chapter 5, section 5.2(8) of the City of Safety Harbor Code of Ordinances pertaining to property owned by Denorio at 3360 Harbor Hill Parkway, Safety Harbor, FL 34695 ("Property"). The citation indicated that a concrete retention wall on the Property was found to be in severe disrepair and violated the aforementioned ordinance. On November 17, 2021, the City conducted an initial hearing and entered an order finding Denorio in violation of the aforementioned ordinance ("Violation Order"). Denorio was originally given until February 15, 2022 to bring the structure into compliance.

A second hearing occurred on March 16, 2022. Following the hearing, the City entered its Order Finding Non-Compliance with

Previous Board Order and Extending Compliance Date ("Second Order"), which extended the compliance deadline to April 15, 2022.<sup>1</sup>

A third hearing occurred on July 20, 2022 ("Final Hearing").

Denorio's Appendix contains a Notice of Hearing dated July 8, 2022 for the Final Hearing, which states, in pertinent part:

As you were previously notified, after an initial evidentiary hearing on November 17, 2021 and a Non Compliance hearing on March 16, 2022, the City of Safety Harbor Code Enforcement Board issued an Order finding a violation of Section 5.26 (8) of the City of Safety Harbor Code of Ordinances on your property located at 1360 Harbor Hills Pkwy. Safety Harbor, Florida. This Order was previously provided to you. City of Safety Harbor Code Enforcement staff conducted a re-inspection of the property and determined that the violation identified in the Order was not corrected on or before the second date set for compliance in the Order (April 15, 2022).

THEREFORE, YOU ARE HEREBY FORMALLY NOTIFIED that at 6:30 p.m. on the 20th day of July 2022, ***there will be an in-person public hearing for this case before the Safety Harbor Code Enforcement Board regarding non-compliance, which may result in your being ordered to pay of fine[.]***

Denorio's App. at 25 (emphasis added).

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<sup>1</sup> Denorio did not appeal the Violation Order or the Second Order.

Following the Final Hearing, the City entered its Order Imposing Penalty/Lien ("Penalty Order"), which states, in pertinent part:

That this cause came on for Public Hearing before this Board on the 17th day of November, 2021 after due notice to the Respondents, James Denorio and Oksana Denorio, at which time the Board heard testimony under oath, received evidence and issued its Findings of Fact and Conclusions of Law and thereafter issued its Order which was furnished to the Respondent.

That the Order required the Respondent to take certain corrective action by a time certain, or pay a fine thereafter in the amount of \$150.00 per day for failure to comply, and on the 20th day of July, 2022, the Board heard testimony under oath and received evidence that the Respondent had not complied within the time frame ordered by the Code Enforcement Board, and it is

ORDERED that the Respondent pay to the City of Safety Harbor a fine in the amount of \$150.00 per day for each day the violation exists and continues past the 15th day of April, 2022, the date set for compliance, and an additional \$410.00 for costs associated with processing the case.

Denorio's App. at 72-73. Thereafter, Denorio initiated a timely appeal of the Penalty Order on August 19, 2022. Denorio acknowledges that the Violation Order and the Second Order are not at issue in this

appeal. See Denorio's Reply at 3 ("Appellant's sole issue on appeal is the sufficiency of the required fact findings in the Order on appeal"). Thus, the only contention raised by Denorio in this appeal is whether the Penalty Order violated her procedural due process rights due to insufficient findings of fact in the order.

### **III.e Analysis**

#### **A.e Standard of Review**

A circuit court's review of an administrative proceeding is limited to a three-prong analysis: 1) whether procedural due process was afforded; 2) whether the essential requirements of the law have been observed; and 3) 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); see also *City of Venice v. Gwynn*, 76 So. 3d 401, 404 (Fla. 2d DCA 2011). An appeal initiated under section 162.11 "shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board." § 162.11, Fla. Stat. The instant Petition only raises issues of procedural due process, and thus the Court need not address the second two prongs on review.

## **B. Procedural Due Process**

Due process is a flexible concept and requires only that the proceeding be essentially fair. *Abdool v. Bondi*, 141 So. 3d 529, 544 (Fla. 2014). The quality of due process required in a quasi-judicial hearing is not the same as a full judicial hearing. *Lee Cnty. v. Sunbelt Equities, II, Ltd. P'ship*, 619 So. 2d 996, 1002 (Fla. 2d DCA 1993). Quasi-judicial proceedings are not controlled by strict rules of evidence and procedure. *Id.* A quasi-judicial hearing generally meets basic due process requirements if the parties are provided notice of the hearing and an opportunity to be heard. *Id.*; *see also Dep't of Highway Safety & Motor Vehicles v. Hofer*, 5 So. 3d 766, 771 (Fla. 2d DCA 2009) (stating “[p]rocedural due process requires both fair notice and a real opportunity to be heard at a meaningful time and in a meaningful manner”).

The right to be heard includes the right to meaningfully introduce evidence, cross-examine witnesses, and be heard on questions of law. *Green Emerald Homes, LLC v. 21st Mortgage Corp.*, 300 So. 3d 698, 704 (Fla. 2d DCA 2019). A participant in a quasi-judicial proceeding is clearly entitled to some measure of due process, but the issue of what process is due depends on the function of the

proceeding as well as the nature of the interests affected. *Carillon Cmty. Residential v. Seminole Cnty.*, 45 So. 3d 7, 10 (Fla. 5th DCA 2010) (citing *Water Servs. Corp. v. Robinson*, 856 So. 2d 1035, 1039 (Fla. 5th DCA 2003)).

Denorio's only contention on appeal is that the Penalty Order violates her procedural due process rights because it contains insufficient findings of fact. Specifically, Denorio argues that the Penalty Order failed to include any finding of fact as to whether Denorio had control over the concrete retaining wall that was the subject of the code violation dispute between the parties. In support of this argument, Denorio points to section 162.07(4), Florida Statutes (2022) which states, in pertinent part: "At the conclusion of the hearing, the enforcement board shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted herein."

Denorio claims that the City disregarded evidence she presented at the Final Hearing which indicated that the retaining wall in question was created by the neighboring lots (or their predecessors) for the sole benefit of the neighboring lots, and therefore she did not have control over the subject retaining wall. Initial Br. at 2. The first

issue with Denorio's argument is that this Court cannot independently assess whether such information was in fact presented at the hearing due to Denorio's failure to provide a transcript of the proceedings. The Notice of Hearing for the Final Hearing explicitly indicated that it was Denorio's responsibility to obtain a court reporter to transcribe the proceedings. Denorio's App. at 26. It is well established that the party seeking appellate review has the burden of providing the court with an adequate record of the proceedings in the lower tribunal. *Kass Shuler, P.A. v. Barchard*, 120 So. 3d 165, 168 (Fla. 2d DCA 2013) (citations omitted); *see also* Fla. R. App. P. 9.190(c)(4). Denorio argues that "[t]here is no indication [in the Penalty Order] of what evidence was reviewed [at the hearing], what specific violation was not rectified, or—most relevantly—whether the argument raised by [Denorio] was even considered." Initial Br. at 4. However, Denorio bore the burden of transcribing the proceedings below, and her failure to do so is the primary reason such information is not available on appellate review.

However, even in the absence of an adequate record, this Court must consider if the Penalty Order is fundamentally erroneous on its face. *See, e.g. Quality Holdings of Florida, Inc. v. Selective*

*Investments, IV, LLC*, 25 So. 3d 34, 36 (Fla. 4th DCA 2009) (citation omitted). Stated differently, Denorio's primary argument in this matter is that the Penalty Order is fundamentally erroneous on its face because it contains no finding of fact about who controlled or had possession of the retaining wall at issue in this appeal, and such amounts to a violation of Denorio's due process rights. Although Denorio cites case law which confirms that orders with insufficient findings of fact can violate due process rights, Denorio misconstrues the nature of the due process owed to her specifically for the purpose of the Penalty Order and the hearing which produced it.<sup>2</sup>

At the time of the Final Hearing, the issue of whether Denorio had violated a city ordinance was already decided and stated in the Violation Order. By virtue of the initial hearing conducted on November 17, 2021, Denorio had already been afforded an opportunity to contest whether she could be found in violation of the ordinance, including the issue of whether she had possession or control of the retaining wall in question. Whether the City failed to

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<sup>2</sup> See, e.g. *Borges v. Dep't of Health*, 143 So. 3d 1185, 1187 (Fla. 3d DCA 2014) ("It has been repeatedly held by the courts of this state that in order to assure due process and equal protection of the law, every final order entered by an administrative agency in the exercise of its quasi-judicial functions must contain specific findings of fact upon which its ultimate action is taken" (citation omitted)).

make such a finding of fact when it issued the Violation Order is not before this Court because Denorio failed to appeal the Violation Order. Rather, the purpose and scope of the Final Hearing was to determine whether Denorio had complied with the Violation Order and the Second Order and to assess fines if appropriate. The purpose was not to re-litigate whether the City had made sufficient findings of fact to hold Denorio liable for the ordinance violation in the first place.

Thus, the only question for this Court is whether the City afforded Denorio due process at the Final Hearing and through the subsequent Penalty Order. The record demonstrates that the City sent notice of the hearing to Denorio on or about July 8, 2022. The notice specifically provided that Denorio had failed to bring her property in compliance by the deadline previously set in prior orders. It specifically provided the date, time, and place of the hearing. Furthermore, it identified the nature and purpose of the hearing, namely that "there will be an in-person public hearing for this case before the Safety Harbor Code Enforcement Board regarding non-compliance, which may result in your being ordered to pay of fine[.]” It is also clear from the record that Denorio was present at the Final

Hearing. There is nothing in the record to indicate that Denorio objected to the sufficiency of notice for the Final Hearing in any way. As such, we conclude that the City adequately provided Denorio with notice of the Final Hearing.

Similarly, Denorio does not dispute the adequacy of the hearing conducted by the board on July 20, 2022. There is nothing in the record, and no arguments raised by Denorio, which suggests that Denorio suffered any infringements on her ability to introduce evidence, cross-examine witnesses, be heard on questions of law, or otherwise suffered a violation of procedural due process rights at the hearing. As such, we conclude that the City afforded Denorio a meaningful opportunity to be heard on July 20, 2022. Denorio's sole contention about the Penalty Order's lack of an express finding of fact concerning possession or control of the retaining wall is invalid because such a finding was unnecessary as it was clearly outside the scope of the hearing.

#### **IV. Conclusion**

Denorio has failed to demonstrate that the City violated her procedural due process rights with regard to the Penalty Order and the hearing that preceded the order. In the absence of an adequate

record, there is nothing fundamentally erroneous on the face of the Penalty Order which would otherwise warrant reversal.

Accordingly, it is

**ORDERED and ADJUDGED:**

1. Denorio's appeal is hereby **DENIED**.
2. The City's Order Imposing Penalty/Lien dated July 20, 2022 is hereby **AFFIRMED**.

**DONE and ORDERED** in Chambers, in St. Petersburg, Pinellas County, Florida this 19th day of July, 2023.

Original Order entered on July 19, 2023 by Circuit Judges Thomas M. Ramsberger, Amy M. Williams, and Steve D. Berlin.

Copies furnished to:

**Caitlein J. Jammo, Esq.**

Johnson, Pope, Bokor, Ruppel & Burns, LLP

P.O. Box 1368

Clearwater, FL 33757

caitleinj@jpfirm.com

susanu@jpfirm.com

micheleg@jpfirm.com  
Counsel for Appellant

**Isabella E. Sobel, Esq.**  
**Elizabeth W. Neiberger, Esq.**

Bryant Miller Olive, P.A.

201 N. Franklin St.

Ste. 2700

Tampa, FL 33602

isobel@bmolaw.com

eneiberger@bmolaw.com

nakins@bmolaw.com

cmiller@bmolaw.com

ebutler@bmolaw.com

Counsel for Appellee