

IN THE CIRCUIT COURT OF THE 16th JUDICIAL CIRCUIT OF
THE STATE OF FLORIDA, IN AND FOR MONROE COUNTY,

APPELLATE DIVISION

Case No.: 23-AP-13-P

L.T. Case No. CE21020033

GREGORY SHAWN HURLEY
and PATRICIA C. HURLEY,

Appellants,

v.

MONROE COUNTY, FLORIDA,

Appellee.

_____ /

OPINION

THIS CAUSE comes before the Court upon Gregory and Patricia Hurley's (hereinafter "Appellants"), Notice of Appeal of Final Order entered by Special Magistrate finding Appellants in violation of the Monroe County Code. The Court, having considered the Appellants' Initial Brief, the Answer Brief of Monroe County, Appellants' Reply Brief, pertinent legal authority, and being otherwise fully advised in the premises, finds and orders as follows:

I. BACKGROUND

Appellants are the owners of an unimproved lot in the Rock Harbor Yacht Haven subdivision in Key Largo, Florida (hereinafter the "subject property").

The Monroe County Code Compliance Department received anonymous complaints on February 5, 2021, and again on May 30, 2021, alleging that land clearing was occurring on the subject property without a permit. Monroe County Code Inspector Gintas Zavadzkas went to the subject property on February 5, 2021, and took photographs. County Biologist Eva Korous conducted a site visit on July 27, 2022, and summarized her inspection in a memorandum to the Code Compliance Department. On March 6, 2023, the Code Compliance Department issued a Notice of Violation/Notice of Hearing to the Appellants for the following alleged violations of the Land Development Code: 1) Section 118-11—Environmental Restoration: Unauthorized vegetation removal, placement of fill, and storage of vehicles and other items in a protected area has occurred impacting the natural condition of the lot; and 2) Section 6-100(a)—Permits required for clearing in a protected area.

The Code violation hearing was held on May 25, 2023. At the hearing, the Special Magistrate heard testimony from Michael Roberts, Assistant Director of Environmental Resources for Monroe County, and from Greg Hurley. The Special Magistrate admitted exhibits into evidence and took the matter under advisement.

On June 16, 2023, the Special Magistrate entered a Final Order finding Appellants in violation as charged in the Notice of Violation and ordering fines. In the Final Order, the Special Magistrate included the specific conclusion of law that the code case was initiated prior to changes

to section 125.69, Florida Statutes, and section 162.21, Florida Statutes which bar the initiation of code complaint investigations based on anonymous complaints after July 1, 2021. This appeal of the Special Magistrate's Final Order followed.

II. STANDARD OF REVIEW

Pursuant to section 162.11, Florida Statutes, the Circuit Court sitting in its appellate capacity has jurisdiction to review code enforcement final orders. *Cent. Fla. Invest., Inc. v. Orange Cty.*, 295 So. 3d 292 (Fla. 5th DCA 2019). "Such an appeal 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. When an appeal is taken from the final administrative order of a local enforcement board, the circuit court has plenary appellate review of the record before the enforcement board. *Id.* at 294. "[O]n appeal, all errors below may be corrected; jurisdictional, procedural, and substantive. *Id.* at 295 (quoting *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 526 n. 3 (Fla. 1995)). An appellate court must determine: (1) whether due process was accorded; (2) whether the correct law was applied; and (3) whether the decision is supported by "competent substantial evidence." *Dusseau v. Metropolitan Dade County Board of County Commissioners*, 794 So. 2d 1270, 1274 (Fla. 2001).

II. DISCUSSION

In this case, the Appellants do not allege that due process was not accorded or that the Final Order is not supported by competent substantial evidence; the Appellants argue that the Special Magistrate's Final Order is a departure from the essential requirements of law. Specifically, Appellants claim that the Special Magistrate departed from the essential requirements of law in ruling that the amendments to Florida Statutes sections 125.69, and 162.21 barring the initiation of code complaint investigations based on anonymous complaints did not apply because the code case had already been initiated before the law went into effect.

A circuit court reviewing an agency action looks to whether the agency "applied the correct law," which is synonymous with "observing the essential requirements of law." *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995). In this case, the law at issue is section 125.69(4) (b), and section 162.21(3)(b) Florida Statutes, effective July 1, 2021, which state in relevant part as follows: "A code enforcement officer may not initiate an investigation of a potential violation of a duly enacted code or ordinance by way of an anonymous complaint."

The County argues that the code enforcement investigation in this case was initiated on February 5, 2021, when an anonymous complaint was made, and code enforcement followed up that same day to take pictures of the subject property. At the hearing before the Special Magistrate, photographs taken by the initial inspector and dated February 5, 2021, were admitted into evidence. The Special Magistrate agreed with the

County and ruled that the County had already initiated its investigation before the prohibition of investigating anonymously reported violations took effect on July 1, 2021. The Special Magistrate concluded that the statutes could not be applied retroactively to invalidate investigations lawfully begun prior to the effective date of the restriction on the use of anonymous complaints.

Appellants argue that the Special Magistrate departed from the essential requirements of law by failing to apply the language used in Monroe County Code Section 8-37 which states in relevant part as follows:

Sec. 8-37. - Passage of four years a bar to prosecutions.

(a) All prosecutions before the code compliance special magistrate shall be initiated within four years of the occurrence of the event complained of or be forever barred. For the purpose of this section, the term "initiated" means the filing of a notice of violation, issuance of a notice to appear, or issuance of a civil citation by the code compliance department.

Appellants argue that based on the plain language of this code provision, a code case is "initiated" by the filing of a notice of violation. In this case, the Notice of Violation was issued March 6, 2023, after passage of the amendments precluding anonymous code violation complaints.

Thus, the issue in this case is whether the Special Magistrate applied the correct law to determine when the code investigation was "initiated". The Court finds that the Special Magistrate applied the correct law, and correctly applied the law.

The relevant statutes, state that ["a]code enforcement officer may not *initiate an investigation of a potential violation* of a duly enacted code or

ordinance by way of an anonymous complaint.” §§125.69(4)(b); 162.21(3)(b), Florida Statutes (emphasis added). The language is clear and unambiguous that the act being referenced in these statutes is the initiation of an investigation of a potential violation. When the language of the statute is clear and unambiguous and conveys a clear and definite meaning...the statute must be given its plain and obvious meaning. *English v. State*, 191 So. 3d 448, 450 (Fla. 2016). Based on a plain reading, the statutes refer to the beginning of the investigation into a possible violation, not the filing of a notice of violation.


Appellants’ reliance on the language used in MCC Section 8-37 (now repealed) is misplaced. The definition of “initiate” within MCC Section 8-37, by its plain language only applies to that section. It states, “[f]or the purpose of this section, the term "initiated" means...” The language explicitly does not apply the definition within that section to the rest of the chapter. Further, Section 8-37 only deals with one issue which is in the title of the section: Passage of four years a bar to prosecutions. MCC Section 8-37 does not apply to the prohibition on using anonymous complaints to initiate code proceedings.

In this case, the Special Magistrate applied the correct law—section 125.69(4)(b) and section 162.21(3)(b), Florida Statutes—and correctly determined that the act to be precluded is the initiation of an investigation into a potential violation, which the County began on February 5, 2021, before the law precluding anonymous complaints took effect.

IV. CONCLUSION

For the foregoing reasons, the Final Order of the Special Magistrate is **AFFIRMED.**

DONE AND ORDERED at Key West, Monroe County, Florida this Tuesday,
March 12, 2024

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Judge Timothy Koenig, Circuit Judge
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