IN THE THIRTEENTH JUDICIAL CIRCUIT FOR THE STATE OF FLORIDA
CIVIL APPELLATE DIVISION

LAWRANCE PROPERTIES, LLC,
Petitioner,

vs.

HILLSBOROUGH COUNTY,
Respondent.
_____/

Circuit Case No.: 20-CA-8479
Division: X

L.T. Case No.: CE 18005494

On review of a decision of the Code Enforcement Special Magistrate for Hillsborough County, Florida.

APPELLATE OPINION

Appellant Lawrance Properties, LLC ("Lawrance") appeals a decision of the Code Enforcement Special Magistrate ("special magistrate") vacating a stay pending appeal, which restarted the running of a daily fine for existing code violations, and which made the fines retroactive to the date the stay was originally imposed. Lawrance contends the special magistrate lacked jurisdiction to vacate the stay during the pendency of the appeal and subsequent writ proceeding in the District Court of Appeal. Because there is no automatic stay in appeals, much less in certiorari proceedings, and the rules of appellate procedure afford lower tribunals the jurisdiction to impose, modify, and vacate stays pending appeal, neither a mandate nor an appellate decision is required for a lower tribunal's exercise of jurisdiction over a stay. Lawrance is correct, however, that the special magistrate's determination to make the unfrozen fines retroactive to the date they were originally frozen is error because it had the effect of rendering the stay a nullity.

CASE HISTORY

This dispute has a long, contentious, and at times, circuitous litigation history. Lawrance operated a farm stand, which has been referred to as an "ag-stand." Ag-stands of 150 square feet or fewer are not regulated by the county. Typically, these are limited to selling products grown or harvested from the farm. In this case, the subject ag-stand is a significantly more substantial 3000+ square-foot building with refrigeration cases. The structure contains for

sale a number of items that are not products of the farm on which it sits. When neighbors complained about accumulations of junk, trash, debris, and other nuisances from the property, the structure came to code enforcement's attention.

On April 20, 2018, the county issued its first notice of violation related to Lawrance's operation of the so-called ag-stand. The citation issued because the structure had been constructed without proper site plan approval, conditional use approval, and permitting. The notice directed Lawrance to obtain proper approvals or remove the structure, but he did not. A final notice issued on May 31, 2018. The notice advised Lawrance that a fine would be imposed for further noncompliance. Lawrance still did not comply. Instead, Lawrance attempted to show that the property should be considered greenbelted (agricultural), which, by law, would exempt him from further regulation by the county. Because the property was not formally designated as greenbelt, the special magistrate issued an order imposing a fine on September 17, 2018. It afforded Lawrance until November 13, 2018 to comply or face a daily $200.00 fine. Lawrance appealed the order to the circuit court.[1]

On November 26, 2018, code enforcement notified Lawrance that the property remained in noncompliance with the special magistrate's September 17, 2018 Order. Therefore, a $200.00 per day fine began. Lawrance contested the finding of noncompliance, and on February 8, 2019 a hearing was held. At the hearing, Lawrance continued to argue the property's alleged greenbelt status, which was still being considered in a proceeding before the value adjustment board (informally referred to as the VAB). By this time, Lawrance had accrued substantial fines. Since the property's alleged greenbelt status was under consideration in another administrative proceeding, the special magistrate continued the hearing, and in an order dated February 11, 2019, froze any further imposition of the fines. Because the VAB did not immediately make its determination as to the property's greenbelt status, the code enforcement matter was continued several times.

The special magistrate took the matter up again on July 19, 2019. At the time of the hearing, the VAB's determination was final. The conclusions the VAB reached were that a) the farm stand was an integral part of the farming operation; and b) that the property under the farm stand was not greenbelted.

[1] Several filings were consolidated into the appeal, which became case no. 19-CA-8634. It is unnecessary to discuss the procedural details involved to determine the issues in this appeal, but it is worth noting that the multiple filings delayed the appeal's resolution.

Faced with these seemingly inconsistent positions, the special magistrate denied Lawrance's contest and reaffirmed the original order finding violation and imposing fine.[2] Ostensibly because of the apparent inconsistency within the VAB's determination, the special magistrate suggested that Lawrance appeal the special magistrate's decision. The special magistrate maintained the stay on the fine pending the outcome of the appeal. A written order memorializing the decision was issued July 22, 2019.

Lawrance appealed the July 22, 2019 Order Denying Contest. The appeal was consolidated with the appeal of the April 20, 2018, Order. Although activity in the case continued, the running of fines remained frozen.

The circuit court issued its appellate opinion July 20, 2020.[3] A mandate issued December 20, 2020. Lawrance filed a (second-tier) petition for writ of certiorari in the Second District Court of Appeal seeking review of the circuit court's appellate decision. On October 1, 2020 the special magistrate issued a new notice of hearing for October 7, 2020. Lawrance filed an emergency motion to restrain further action by the special magistrate and for other relief in case no. 19-CA-10333, an ancillary prohibition proceeding that had been denied earlier.[4] Also on October 7, 2020, the County filed a motion to lift the stay, which the circuit court granted the following day. The court's order lifting the stay, as well as denying rehearing and emergency relief, was later affirmed on appeal. [5]

On October 16, 2020, a hearing was held before the special magistrate on the fines. Lawrance's attorney argued that the freeze of the fine could not be altered because an "appeal," which was actually a second tier certiorari proceeding, was pending before the District Court of Appeal and because the circuit court had not yet issued a mandate. The special magistrate determined that a second-tier certiorari does not automatically stay enforcement

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[2] The circuit court, acting in its appellate capacity, determined that even if a *building* is deemed an integral part of a farming operation when the land under it is not used for a bona fide agricultural purposes, the construction of the building is not exempt from regulation. *See Lawrance Properties, LLC, v. Hillsborough County*, 28 Fla. L. Weekly Supp. 470a (Fla 13th Jud. Cir. [Appellate] August 12, 2020), *petition denied* 321 So. 3d 734 (Fla. 2d DCA 2021).
[3] *Lawrance Properties, LLC, v. Hillsborough County*, 28 Fla. L. Weekly Supp. 470a (Fla 13th Jud. Cir. [Appellate] August 12, 2020), *petition denied* 321 So. 3d 734 (Fla. 2d DCA 2021).
[4] Although the petition for writ of prohibition in *Lawrance Properties, LLC, v. Hillsborough County*, case no. 19-CA-10333, had been denied November 4, 2019, the court, for reasons unknown, entered a stay on November 19, 2019, nunc pro tunc to November 12, 2019, which remained undisturbed until the County filed a motion to lift it. An order lifting the stay was entered October 8, 2020.
[5] *Lawrance Properties, LLC, v. Hillsborough County*, 317 So. 3d 100 (Fla. 2d DCA 2021).

proceedings. Moreover, neither the circuit court nor district court had issued a stay. The special magistrate issued an order resuming the fine, and retroactively applied the fines that had been frozen. This appeal followed.

LEGAL ANALYSIS

Decisions of code enforcement boards and magistrates are reviewed on appeal to determine whether the party was afforded due process, whether the decision comports with the essential requirements of law, and whether competent, substantial evidence supports the decision. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

Lawrance first contends that the special magistrate lacked subject matter jurisdiction to enter the October 16, 2020 Order unfreezing the fines because a second tier certiorari petition had been filed in the district court and a mandate had not been issued following the circuit court's appellate decision. Lawrance maintains that jurisdiction resumes in the lower tribunal only upon issuance of a mandate by the appellate court. Generally, that is a correct statement of the law. It is improper for a lower tribunal to interfere with an appellate court's jurisdiction with regard to substantive issues. *Florida Patient's Compensation Fund v. Scherer,* 558 So. 2d 411 (Fla. 1990). Typically, that means there can be no substantive alteration of the final judgment after the court accepts jurisdiction, although clerical errors may be corrected. *State, Dept. of Environmental Regulation v. Apelgren,* 611 So. 2d 72 (Fla 4th DCA 1992). However, Lawrance's argument fails because lower tribunals retain jurisdiction over collateral matters, including the enforcement of a judgment, during the pendency of an appeal. *Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. U.S. Fire Ins. Co.,* 639 So. 3d 606, 608-09 (Fla. 1994)([lower tribunal] always retains jurisdiction to enforce its own orders); *Finklestein v. N. Broward Hosp. Dist.,* 484 So. 2d 1241, 1243 (Fla. 1986) (attorney's fees constitute collateral and independent claim). Jurisdiction over stays is addressed specifically in Florida Rule of Appellate Procedure 9.310.

Lawrance also incorrectly assumes that a stay is automatic for the duration of any appellate proceeding. Whether or not to impose a stay relates to enforcement of the judgment. Unless otherwise provided by general law, enforcement of a final judgment is not automatically stayed pending appeal. Enforcement of the judgment may or may not be stayed at the discretion of the lower tribunal. Fla. R. App. P. 9.310(a) provides that a stay may be lifted or modified because continuing jurisdiction to grant, modify, or deny stays

remains in the lower tribunal. In an administrative proceeding, a party may obtain a stay by filing a motion seeking such relief in the lower tribunal, or, for good cause shown, with the appellate court. *See* Fla. R. App. P.9.190(e). Lawrance could have sought review of the lifting of the stay during the pendency of the appellate proceedings in the district court of appeal. *See* Fla. R. App. P. 9.310(f) (review of orders entered by lower tribunals under this rule shall be by the court on motion.).

Nor did the second tier certiorari petition filed to review the circuit court's appellate decision automatically stay enforcement of the judgment. Petitions for writ of certiorari to review even nonfinal orders do not stay underlying proceedings, including entry of a final judgment. *Spielvogel v. Crown Realty Associates,* 465 So. 2d 532, 533 (Fla. 4th DCA 1984)(*cf.* Fla. R. App. P.9.130(f), which prohibits entry of final judgment during pendency of *appeal* of nonfinal order; there is no such rule regarding certiorari petitions). The judgment here was not only final, but it had been affirmed on appeal. In short, the special magistrate had jurisdiction during the pendency of the second tier certiorari proceeding to vacate the stay on the fine such that a daily fine could resume.

Lawrance next correctly argues that the special magistrate departed from the essential requirements of law when he made the fines retroactive. Making the fines retroactive rendered the freeze a nullity. The amount of the fine should be what had accumulated at the time the fines were frozen, adding what accrued since the freeze, or stay, was lifted, if applicable.

Lawrance finally argues that his due process rights were violated because the notice of hearing did not specify that the issue of re-imposing the fine was to be considered. This issue lacks merit because the record is clear that Lawrance knew the purpose of the hearing and communicated with opposing counsel challenging the re-imposition of the fine in advance of the hearing. Moreover, not only did Lawrance's counsel not object to the hearing on due process grounds, he argued the substantive issue at length. By failing to object, Lawrance waived the issue, precluding the right to raise it for the first time on appeal. *Anderson v. School Bd. of Seminole Cnty.*, 830 So. 2d 952, 953 (Fla. 5th DCA 2002)*; Dober v. Worrell,* 401 So. 2d 1322, 1323-24 (Fla. 1981).

It is therefore ORDERED that the special magistrate's October 16, 2020 Order is AFFIRMED, in part, to the extent it lifts the freeze on the running of the fine. It is FURTHER ORDERED that the Order is REVERSED, in part, to

the extent it imposes liability for fines that accrued during the pendency of the stay. This cause is REMANDED to the special magistrate for proceedings consistent with this opinion.

ORDERED on the date imprinted with the signature below.

Electronically Conformed 1/10/2022
Robin Fuson

By:_____

Robin Fuson, CIRCUIT JUDGE

FUSON, GABBARD, BARTON, SR. JUDGE

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