PRACTICE & PROCEDURE

Practice & Procedure: Appellate

City of Jacksonville Beach v. Car Spa, Incorporated,
772 S.2d 630 (Fla. Dist. App. 1st 2000)

What judicial standard should a circuit court apply when reviewing a zoning-agency action? A court may not reweigh evidence presented at an agency hearing, but instead must review the entire record to determine whether the agency decision was supported by competent, substantial evidence.

Car Spa filed an application with the Jacksonville Beach Planning Commission to obtain "a conditional use permit for a 'car wash and automotive service and gasoline service facility.'" *Car Spa, Inc.*, 772 S.2d at 631. After a public hearing, the Commission denied the permit. "Car Spa filed a petition for writ of certiorari in the circuit court, alleging that . . . there was 'no substantial or competent evidence . . . that the conditional use would be contrary to the public interest.'" *Id.* The circuit court quashed the Commission's denial of the permit. The First District reversed the circuit court's judgment as being contrary to the proper standard for review established by *City of Deerfield Beach v. Vaillant*, 419 S.2d 624 (Fla. 1982).

In *Vaillant*, the Florida Supreme Court mandated a three-prong test for courts to use when reviewing agency actions. Courts must ensure that agencies (1) follow procedural due process, (2) observe the essential requirements of the law, and (3) determine whether administrative findings are supported by substantial evidence. *Id*. at 626. Essentially, the First District found that the circuit court applied the wrong law by reweighing the evidence. "[W]hether [the court] would have reached a different conclusion from that of the agency had it been sitting as the trier of fact is irrelevant, provided that the record contains competent substantial evidence supporting the decision actually reached by the agency." *Id*.

"[T]he circuit court considered only portions of the record, and reweighed the evidence, [thus] substituting its judgment for

the" Commission's. *Id*. More specifically, the court rejected lay and expert testimony presented at the agency hearing. This type of review was improper under governing law. *Florida Power & Light Co. v. City of Dania*, 761 S.2d 1089 (Fla. 2000).

RESEARCH REFERENCES

- Joni Armstrong Coffey, *Practical Aspects of Quasi-judicial Hearings: Basic Tools and Recent Fine-tuning*, 30 Stetson L. Rev. 931 (2001).
- Eugene McQuillin, *The Law of Municipal Corporations* vol. 2A, §§ 10.36, 10.37 (Dennis Jensen & Gail O'Gradney eds., 3d ed., Clark Boardman Callaghan 1996).

Carol Cole McCrory

Practice & Procedure: Evidence

Monroe County v. McCormick,
752 S.2d 1239 (Fla. Dist. App. 3d 2000)

BACKGROUND

Joan McCormick is a property owner in Monroe County, and as a result of McCormick's code violations, the Monroe County Code Enforcement Board (County) issued an order imposing daily fines upon McCormick. To place a code-enforcement lien upon McCormick's property, the County recorded its order in the Monroe County Public Records, as required by Florida Statutes Section 162.09(3). The County's recording secretary, who served as records custodian, certified and submitted a copy of the order for recording. This copy was subsequently returned to the County bearing the pertinent recording data, but was neither signed nor sealed by the Court Clerk or his deputy.

Thereafter, the County sued to foreclose its lien against McCormick's property. During the foreclosure proceedings, the County attempted to enter the enforcement order into evidence as a self-authenticating document. However, the trial court excluded the order from evidence and entered judgment for McCormick. The trial court said the order failed to meet the self-authentication requirements of Florida Statutes Section 90.902, because it was not signed by the Court Clerk. The Third District Court of Appeal reversed and held that the order was admissible. The court agreed that the order would not satisfy the self-authentica-

tion requirements if it were used by the County to prove that the document had been duly recorded because it lacked the Court Clerk's signature. However, the court said that the order was signed by the County's records custodian, thus making it a self-authenticating document for the purpose of proving that the fines were imposed, which is a required step in the foreclosure process.

ANALYSIS

Upon remand, the trial court ordered the County to pay McCormick a sum for attorney's fees plus statutory interest. The County argued that it should have been granted a set-off based upon its enforcement lien against McCormick's property. However, McCormick argued that such a set-off was improper because the lien was attached to her "homestead," and a county is precluded from foreclosing a lien on homestead property. As the Third District Court explained, this argument must fail. A duly-recorded lien arising under Section 162.09(3) may be enforced "in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator." Fla. Stat. § 162.09(3) (2000). Further, courts have held that a lien remains valid although it is unenforceable against an owner's homestead property. *Miskin v. City of Fort Lauderdale*, 661 S.2d 415, 416 (Fla. Dist. App. 3d 1995). Therefore, although this lien could not be foreclosed on McCormick's homestead property, it was enforceable against her personal property, including her judgment for attorney's fees. As a result, the County was permitted to set-off McCormick's award of attorney's fees defensively by the amount due under the lien.

RESEARCH REFERENCES

- Eugene McQuillin, *The Law of Municipal Corporations* vol. 13, § 37.190 (3d ed., Clark Boardman Callaghan 1997).
- Eugene McQuillin, *The Law of Municipal Corporations* vol. 14, § 38.163 (3d ed., West 1998).

Eric Jonathan Partlow

Practice & Procedure: Filing

McDowell v. School Board of Leon County,
765 S.2d 804 (Fla. Dist. App. 1st 2000)

Typically, an aggrieved person alleging discrimination must file a civil suit within one year after the Florida Commission on Human Relations determines that there is "reasonable cause" to believe that a violation has occurred. If the Commission never determines "reasonable cause" exists, the aggrieved party must file her civil suit within one and one-half years of the date she originally filed the complaint with the Commission. The question presented in this case is whether the courts should apply the one-year, or the one and one-half year, statute of limitations in those cases in which the Commission determines "reasonable cause," but fails to do so within the statutorily mandated 180-day period.

When the Commission makes a determination of "reasonable cause," the one-year statute of limitations is applicable, regardless of the 180-day time-period, so long as the determination is made within one and one-half years of the complaint being filed.

FACTS AND PROCEDURAL HISTORY

Betty McDowell filed a complaint of discrimination with the Commission alleging that her employer, the School Board of Leon County, engaged in a discriminatory and unlawful employment practice. More than one year after McDowell filed her complaint, the Commission issued a notice of determination, finding that an unlawful employment practice had occurred. The notice informed McDowell of her right to bring a civil action, and explained that she must file the suit within one year of the date of determination. Relying upon this notice, McDowell commenced a civil action against the School Board less than one year after the Commission determined that she had "reasonable cause," but more than two years after she originally filed the complaint.

The School Board argued that the pertinent statute of limitations, as interpreted by the courts, barred McDowell's action. The trial court agreed, and held that because McDowell filed her civil action more than two years after she filed her initial complaint with the Commission, her action was barred by the statute of limitations. For the reasons expressed below, the appellate court reversed.

LEGAL ANALYSIS

Whether McDowell filed the action in a timely manner is determined largely by statute. Florida Statutes Section 760.11(1) authorizes an aggrieved person to file a discrimination complaint with the Florida Commission on Human Relations. The Commission is then required to determine within 180 days whether there is "reasonable cause" to believe that a violation has occurred. Fla. Stat. § 760.11(3) (1993). After the Commission makes a determination of "reasonable cause," the aggrieved party has no more than one year to commence a civil action against the defendant(s). *Id*. at § 760.11(5). Together, these statutes clearly provide for a one-year statute of limitations in cases where the Commission makes a timely determination of "reasonable cause" (within 180 days).

A different situation arises when the Commission fails to make a timely determination of cause. The statutes provide that, after the 180-day period, if the Commission has not yet made a determination of cause, the aggrieved party *may* proceed as if the Commission had. *Id*. § 760.11(8). Courts interpreting Subsection (8) have concluded that, when the Commission *completely* fails to make a determination of cause, the aggrieved party *must* file an action within one and one-half years of the date the original complaint was filed, or be barred from bringing suit. *Joshua v. City of Gainesville*, 734 S.2d 1068 (Fla. Dist. App. 1st 1999), *rev'd*, 768 S.2d 432 (Fla. 2000); *Milano v. Moldmaster, Inc.*, 703 S.2d 1093 (Fla. Dist. App. 4th 1997). Courts applying the one and one-half year limitation rule (*Milano-Joshua* Rule) have essentially read the word "may" in Subsection (8) as "must." Under this rule, the one-year statute of limitations begins to toll immediately upon the expiration of the 180-day period, provided the Commission has not yet made a determination of cause.

A new question arises, as in the present case, when the Commission makes a determination of cause, but fails to do so within the statutorily mandated 180-day period. Should the courts apply the one-year, or the one and one-half year limitation rule to this situation?

In the present case, the court explained that it would have to apply the *Milano-Joshua* Rule if it were applicable to the facts. However, the court concluded that this case was distinguishable from those applying the *Milano-Joshua* Rule. In those cases, the Commission never made any determination of cause, whereas here, the Commission actually issued the required determination,

although after the 180-day deadline. This court held that it would not extend the *Milano-Joshua* Rule to govern cases in which the Commission makes a determination of cause within the one and one-half year limitations period established by *Milano-Joshua*. Instead, in cases in which the Commission makes a determination of cause within one and one-half years of the complaint, although after the 180-day period, the aggrieved party will have one year from the date of the Commission's determination within which to file a civil action.

RESEARCH REFERENCE

- Kenneth M. Curtin, *Administrative Pitfalls of Litigating under the Florida Civil Rights Act*, 13 St. Thomas L. Rev. 523 (2001).

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