

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

PHILIP A. BROWNING, JR.,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D04-4213

CITY OF JACKSONVILLE, A  
Municipal Corporation of the State  
of Florida,

Appellee.

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Opinion filed January 24, 2005.

An appeal from the Circuit Court for Duval County.  
Hugh A. Carithers, Judge.

Paul V. Smith of Simon, Smith & Assoc., P.A., Lake City; Alan E. Deserio,  
Brandon, for Appellant.

Stephen D. Busey and Joel Settembrini, Jr. of Smith, Hulsey & Busey,  
Jacksonville; Lee S. Carlin, Jacksonville; William Birchfield and Bruce B.  
Humphrey of Lewis, Longman & Walker, Jacksonville; and Brian L. Rosaler of  
Popkin & Rosaler, Deerfield Beach, for Appellee.

PER CURIAM.

Upon consideration of the appellant's response to the Court's order of  
November 23, 2004, the Court has concluded that the Order Denying Defendant's

Motion for New Trial and Defendant's Amended Motion for New Trial, entered by the lower tribunal on August 18, 2004, is not an appealable order. See Fla. R. App. P. 9.130(a)(4). Accordingly, the appeal is hereby dismissed for lack of jurisdiction and the appellant's motion to consolidate the appeal with appeal number 1D04-4017 is hereby denied as moot.

KAHN, BENTON and PADOVANO, JJ., CONCUR.