IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

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

BREVARD COUNTY AND
BREVARD COUNTY FIRE RESCUE,

Appellants,

v. Case No. 5D19-2153

ERIC OBLOY, AMANDA OBLOY,
AND OBLOY FAMILY RANCH, CORP.,

Appellees.

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Opinion filed August 14, 2020

Nonfinal Appeal from the Circuit
Court for Brevard County,
David E. Silverman, Judge.

Alexander Esseesse, of Office of the Brevard County Attorney, Viera, for Appellants.

A. Michael Bross, of A. Michael Bross, P.A., Melbourne, for Appellees.

EDWARDS, J.

Appellants Brevard County and Brevard County Fire Rescue ("Appellants") appeal the circuit court's orders granting an injunction in favor of Appellees Eric Obloy, Amanda Obloy, and Obloy Family Ranch, Corp. ("Appellees"). Appellants issued citations and then pursued enforcement proceedings to address Appellees' violations of building and

fire codes with regard to Appellees' property, including certain tourist cabins. The special magistrate presiding over that litigation ruled in favor of Appellants. Appellees could have, but chose not to appeal the magistrate's rulings and resulting fines. Instead, they abandoned their appellate rights and commenced an action seeking to enjoin Appellants from enforcing the magistrate's orders. Appellants correctly argue that the trial court lacked procedural jurisdiction to entertain Appellees' injunction action, as it was an inappropriate collateral attack attempting to serve as a substitute for the plenary appeal which Appellees waived. Furthermore, the existence of the right to appeal provided Appellees with an adequate remedy at law, which eliminated the basis for affording injunctive relief. Accordingly, we reverse, quash the injunction and related orders, and remand with instructions to dismiss Appellees' complaint with prejudice.

CODE ENFORCEMENT PROCEEDINGS

Appellees were operating certain cabins on their property for public accommodations for tourists. Appellants asserted that such use conflicted with the property's zoning, that modifications to the cabins had been completed without proper permitting, and that the non-complying cabins had fire safety and other public health concerns. Appellees were cited for violations of various sections of the Brevard County Code. When those issues were not resolved voluntarily by Appellees, code enforcement proceedings were commenced before a Brevard County Code Enforcement special magistrate who held a hearing during which documentary and testimonial evidence was received. The special magistrate ordered the parties to file briefs setting forth their legal arguments.

Thereafter, on November 27, 2018, the special magistrate issued its order finding that Appellees had violated the following provisions of Brevard County's Code in the following manners: (1) Section 62-1334: Unpermitted uses within an Agricultural Residential Zone Classification (AU); (2) Section 22-278(c): Failure to obtain required permits; and (3) Section 62-1945.2: Failure to comply with conditional use requirements for resort dwellings. The special magistrate ruled that Appellees must: (1) cease publicly advertising the rental cabins on the property; (2) obtain permits for the cabins or utilize them for agricultural purposes; and (3) cease renting the cabins on the property due to location requirements. The special magistrate ordered Appellees to bring the property into code compliance by December 2, 2018, or fines in the amount of $100 per day were set to accrue starting on December 3, 2018, which fines would become liens on the property. Appellees did not appeal the special magistrate's November 27, 2018 order, even though it specifically advised Appellees of the right to appeal the order to the circuit court within thirty days.

A second code enforcement case was commenced against Appellees for their use of the cabins as hotel/motel rooms and specifically concerning alleged life safety hazard violations, such as lacking fire alarms, emergency lights, sprinkler systems, certified fire extinguishers, and so forth. The special magistrate held a hearing in April 2019, during which documentary and testimonial evidence was received. Appellees' counsel requested, and was given, the opportunity to submit a brief regarding application of the Florida Fire Prevention Code to Appellees' cabins; however, no such brief was filed. On May 7, 2019, the special magistrate issued its order finding that the cabins were subject to and had to comply with the provisions of the Florida Fire Prevention Code as they were

Class 3 farm buildings being used as lodging accommodations by members of the public. The special magistrate further ruled that the cabins were non-compliant and constituted a threat to public health and safety. The special magistrate's order prohibited Appellees from allowing the cabins to be occupied unless and until they were officially deemed safe and compliant. The special magistrate ordered Appellees to bring their property (cabins and a wedding barn) into compliance within ten days or face fines of $1,000 per day. Appellees did not appeal that May 7, 2019 order despite the right to appeal to the circuit court within thirty days being spelled out in the order.

INJUNCTION PROCEEDINGS

Following the entry of the May 7, 2019 order, Appellees filed a complaint in circuit court seeking to enjoin enforcement of the two orders issued against them by the special magistrate and also seeking money damages. Appellants objected on the basis that the circuit court lacked jurisdiction to entertain such actions as Appellees had waived their available remedy at law when they failed to appeal. Following a hearing, the trial court entered an injunction that, *inter alia*, purported to delay enforcement of the special magistrate's order, permitted Appellees to confer with the county over permissible uses for their property, and allowed them to use the cabins as long as occupancy was limited to six persons per cabin. The circuit court's order also dealt with and delayed the fines imposed by the special magistrate in the two orders discussed above. Appellants moved for rehearing and the trial court held a second hearing and issued a second order: Order Amending Order on [Appellees'] Complaint for Injunctive Relief and Request for Emergency Hearing. The trial court noted that its earlier order had "preserved the status quo while affording [Appellees] an opportunity to challenge" the zoning and use of their

property. The trial court left most of the injunction in place but vacated the injunction with regard to levying and enforcement of fines for violation of any applicable statewide fire code, statute, or regulation.

APPELLATE JURISDICTION

Appellants timely commenced this appeal following the trial court's ruling on its motion for rehearing. This Court's appellate jurisdiction includes review of certain "nonfinal orders as prescribed by rule 9.130." Fla. R. App. P. 9.030(b)(1)(B). The trial court's orders discussed above fall within the category of nonfinal orders which are reviewable by direct appeal "to the district courts of appeal of nonfinal orders . . . that . . . grant, continue, modify, deny, or dissolve injunctions, or refuse to modify or dissolve injunctions." Fla. R. App. P. 9.130(a)(3)(A).

PROCEDURAL JURISDICTION

"Whether a court has subject matter jurisdiction is . . . a question of law reviewed de novo." *Swearingen v. Villa*, 277 So. 3d 778, 780–81 (Fla. 5th DCA 2019). Appellants' contention that the circuit court lacked subject matter jurisdiction to entertain Appellees' complaint for injunctive relief is incorrect. "A court has subject matter jurisdiction when it has the authority to hear and decide the case." *In re Adoption of D.P.P.*, 158 So. 3d 633, 636 (Fla. 5th DCA 2014). As circuit courts deal with cases involving injunctive relief on a regular basis, the trial court did have subject matter jurisdiction.

However, whether the trial court had procedural jurisdiction to entertain this transparent collateral attack on the special magistrate's order is another question. "Although sometimes identified by different terms, procedural jurisdiction simply refers to 'the power of the court over a particular case that is within its subject matter jurisdiction.'"

U.S. Bank Nat'l Ass'n v. Anthony-Irish, 204 So. 3d 57, 60 (Fla. 5th DCA 2016) (quoting *Tobkin v. State*, 777 So. 2d 1160, 1163 (Fla. 4th DCA 2001)). "Flaws in a court's procedural jurisdiction [may] arise in a number of contexts." *Id.* In such instances, "it is clear that the court retains 'subject-matter jurisdiction'—the power to decide matters within a general category of cases—yet the court loses power over the specific dispute." *Id.*

Here, Appellees had an adequate remedy at law to contest the special magistrate's orders by pursuing an appeal to the circuit court. Section 162.11, Florida Statutes (2018), provides for appeals from special magistrate decisions:

> An aggrieved party, including the local governing body, may appeal a final administrative order of an enforcement board [or a special magistrate] to the circuit court. 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. An appeal shall be filed within 30 days of the execution of the order to be appealed.

§ 162.11, Fla. Stat. (2018); *see also Cent. Fla. Invs., Inc. v. Orange Cty.*, 295 So. 3d 292, 293 (Fla. 5th DCA 2019) ("We agree . . . that section 162.11 . . . provides for a plenary appeal to the circuit court as a matter of right from a final administrative order of an enforcement board."). A party dissatisfied with an enforcement board special magistrate's order can either appeal that order or choose to be bound by it. However, it cannot initiate a collateral attack on that order by commencing a new action in circuit court. Put differently, while the circuit court has appellate jurisdiction to entertain a timely appeal of a special magistrate's order regarding enforcement of building and fire codes, it lacks procedural jurisdiction to otherwise entertain a collateral attack upon that order concerning matters that could have been properly raised on appeal. *See Kirby v. City of Archer*, 790 So. 2d 1214, 1215 (Fla. 1st DCA 2001) ("If [appellant] [wanted to] contest[]

the facts raised by the Code Enforcement Board, he was obligated to present his evidence to the Board at that time. If he then disputed the final order of the Board, his remedy was to file an appeal in the circuit court pursuant to section 162.11 . . . . Having failed to challenge the Board's actions, [appellant] cannot raise factual disputes with the Board's findings in [a] foreclosure action."); *see also Hardin v. Monroe Cty.*, 64 So. 3d 707, 709–10 (Fla. 3d DCA 2011); *Smith v. Willis*, 415 So. 2d 1331, 1334 (Fla. 1st DCA 1982).

Furthermore, injunctions are equitable remedies that are to be sought and granted only when there is no adequate remedy available at law. *See Egan v. City of Miami*, 178 So. 132, 133 (Fla. 1938); *Dragomirecky v. Town of Ponce Inlet*, 882 So. 2d 495, 497 (Fla. 5th DCA 2004). A statutory right to a plenary appeal provides an adequate remedy at law. *See, e.g.*, *Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Provende, Inc.*, 399 So. 2d 1038, 1041 (Fla. 3d DCA 1981). Providing injunctive relief to Appellees disregards the adequate remedy at law, a plenary appeal, that was available to them; therefore, the circuit court reversibly erred in granting the injunction. *Liza Danielle, Inc. v. Jamko, Inc.*, 408 So. 2d 735, 738 (Fla. 3d DCA 1982) ("Lack of an adequate remedy at law is a prerequisite for equitable relief, and furthermore, 'an injunction will not lie where there is a choice between the ordinary processes of law and the injunction, the former being sufficient to furnish the full relief to which the complaining party is entitled.'" (citation omitted)); *Dep't of HRS v. Artis*, 345 So. 2d 1109, 1111 (Fla. 4th DCA 1977) (reversing circuit court's grant of temporary injunction because "there was no irreparable harm and an adequate remedy [at law] existed"). "Although the circuit court has jurisdiction in the sense that the constitution grants it equity jurisdiction and original jurisdiction in cases involving constitutional violations, it lacked the power to issue the injunction because here

there was no need for an equitable remedy and the judicially-created prerequisites were not satisfied." *Provende, Inc.*, 399 So. 2d at 1042.

Accordingly, we hold that the trial court here lacked procedural jurisdiction to entertain Appellees' action for injunctive relief. We reverse, quash the trial court's order and amended order regarding Appellees' complaint for injunctive relief, and direct the trial court to dismiss that action with prejudice. Given the basis for our decision, we need not consider the specific findings and rulings made by the trial court in those orders. The special magistrate's orders remain in full force and effect, given Appellees' failure to pursue an appeal.

REVERSED, ORDERS QUASHED, AND REMANDED WITH INSTRUCTIONS.

EVANDER, C.J., concurs.
SASSO, J., concurs in result without opinion.