

Third District Court of Appeal

State of Florida

Opinion filed September 11, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-0816
Lower Tribunal No. 19-22

City of Miami Beach,
Petitioner,

vs.

Beach Blitz, Co.,
Respondent.

A Writ of Certiorari to the Circuit Court for Miami-Dade County, Appellate Division, Ivonne Cuesta, Carlos Guzman, and Oscar Rodriguez-Fonts, Judges.

Carlton Fields, P.A., and Richard J. Ovelmen, Enrique D. Arana, Todd M. Fuller and Scott E. Byers, for petitioner.

Saul Ewing Arnstein & Lehr LLP and Phillip M. Hudson, III and Hilda Piloto, for respondent.

Before **SALTER, FERNANDEZ and LINDSEY, JJ.**

SALTER, J.

The City of Miami Beach (“City”) petitions for a writ of (second-tier) certiorari quashing an unelaborated order of dismissal by the appellate division of the circuit court of Miami-Dade County. That order dismissed the City’s petition for a writ of (first-tier) certiorari taken from the City’s Board of Adjustment’s (“BOA’s”) decision reversing the City Planning Director’s determination regarding the allegedly unlicensed operation of the respondent’s (“Beach Blitz’s”) package liquor store. We grant the petition and quash the order, concluding that the appellate division panel’s summary dismissal was a departure from the essential requirements of law.

Procedural Background

The underlying dispute is whether Beach Blitz’s liquor store is a “legally established nonconforming use” under the City’s Code of Ordinances (“City Code”). In May 2018, Beach Blitz formally requested from the Planning Director a determination that the store was a legal nonconforming use. Shortly thereafter, the Planning Director determined the property does not fulfill the necessary criteria for a legal nonconforming use under the City Code. Beach Blitz appealed that determination to the BOA.

Following an evidentiary hearing, the BOA reversed the Planning Director’s determination. In its final administrative order, the BOA explained:

The [BOA] . . . finds, based on the information and documentation presented to the [BOA], and based on the argument of counsel and

testimony of the parties, that with regard to the request to reverse the decision of the Planning Director regarding the legal non-conforming status of the package liquor store, [Beach Blitz's] appeal is hereby GRANTED, and the decision of the Planning Director is hereby REVERSED.

As a result of the BOA's reversal, the City sought certiorari review in the circuit court appellate division, complaining the BOA "departed from the essential requirements of the law in reversing the Planning Director's determination that Beach Blitz was not a lawful nonconforming use." In response, Beach Blitz filed a motion to dismiss, seeking "a summar[y] deni[al] as [the City] fail[ed] to establish a departure from the essential requirements of law." Following these submissions, the circuit court appellate division issued an unelaborated order granting Beach Blitz's motion to dismiss the City's petition.¹

The City's second-tier certiorari petition was then timely filed in this Court.

Analysis

In its present petition, the City advances two arguments: (1) "[T]he Florida Rules of Appellate Procedure do not authorize the dismissal of a petition on the

¹ Beach Blitz's motion sought, in the alternative, to expedite briefing and resolution of the circuit court certiorari proceeding. The circuit court appellate division initially granted that motion without specifying whether it was dismissing or expediting the petition case. The following day, the appellate division issued an order to show cause and directed the filing of a response and reply. The order to show cause was docketed, however, as a dismissal closing the case. The City filed a motion for clarification; on June 3, 2019, the appellate division entered the form order challenged now, purporting to grant the City's motion for clarification, but granting Beach Blitz's motion to dismiss without further elaboration.

merits on the motion of a respondent”; and (2) “[T]he Planning Director correctly applied the applicable law in determining that Beach Blitz was not a legal nonconforming use.” The City’s first argument has merit, but for the reasons which follow, we decline to consider the City’s second argument.

The BOA’s review of determinations made by an administrative official charged with the enforcement of zoning ordinances is quasi-judicial in nature. When the BOA rules on an application, the parties may twice seek review in the court system, as explained in Miami-Dade County v. Omnipoint Holdings, Inc., 863 So. 2d 195, 198-99 (Fla. 2003). See also City of Deerfield Beach v. Vaillant, 419 So. 2d 624 (Fla. 1982).

“First-tier” review requires the circuit court to determine “(1) whether procedural due process is accorded, (2) whether the essential requirements of the law have been observed, and (3) whether the administrative findings and judgment are supported by competent substantial evidence.” Miami-Dade Cty., 863 So. 2d at 199 (citations omitted). In other words, petitioners are “entitled to consideration of whether the administrative agency followed its laws and regulations, and whether the agency’s findings are supported by competent substantial evidence.” Osborn v. Bd. of Cty. Comm'rs, 937 So. 2d 1119, 1120 (Fla. 3d DCA 2006).

“Second-tier” certiorari review may then be pursued in this Court. See Miami-Dade Cty., 863 So. 2d at 199. This Court’s review, however, is much more limited

in such a case: we consider only whether the circuit court “(1) afforded procedural due process, and (2) applied the correct law.” Id.

Applying these principles to the circuit court appellate division’s order granting Beach Blitz’s motion to dismiss, we have already noted that the order did not address any of the claims raised by the City in its first-tier petition. Instead of determining whether the City was afforded procedural due process, whether the essential requirements of law were observed, and whether the BOA’s findings were supported by substantial competent evidence, the appellate division simply dismissed the petition. This ruling amounted to “a violation of a clearly established principle of law resulting in a miscarriage of justice” and thus, constituted a departure from the essential requirements of law. Id. (citations omitted).

We also find persuasive our sibling district courts’ decisions in Bush v. City of Mexico Beach, 71 So. 3d 147 (Fla. 1st DCA 2011), and Brasota Mortgage Co. v. Town of Longboat Key, 865 So. 2d 638 (Fla. 2d DCA 2004).

In Bush, the petitioners sought second-tier review of the circuit court’s order dismissing their first-tier petition, in which they challenged the City of Mexico Beach’s denial of their lot-splitting application. 71 So. 3d at 148-49. The First District granted certiorari relief because the circuit court “did not address the substantial due process issues raised” in the petition and thus, “did not engage in the three-prong review required” by the Florida Supreme Court. Id. at 148. According

to the First District, the circuit court's failure to engage in the three-prong review "constituted a violation of a clearly established principle of law resulting in a miscarriage of justice and, therefore, a departure from the essential requirements of law." Id. (internal quotation marks and citations omitted).

Similarly, in Brasota Mortgage, the petitioner sought second-tier review of the circuit court's order dismissing its first-tier petition, in which the petitioner sought review of the planning and zoning board's denial of its request for approval of a subdivision plat. 865 So. 2d at 639-40. In its dismissal order, the circuit court concluded that "the Petitioner has failed to demonstrate a preliminary basis for relief," citing to Florida Rule of Appellate Procedure 9.100(h) and two decisions that set forth the standard of review in second-tier certiorari proceedings. Id. at 640. Because the circuit court order did not set forth reasons for the dismissal, other than a conclusory sentence and citations to inapplicable authority, the Second District granted the second-tier petition. Id. The Second District held the circuit court "did not apply the correct law" when it failed to analyze the petition under the three-prong standard of review set forth by the Florida Supreme Court. Id.

In the present case, because the circuit court appellate division did not address the claims raised in the City's petition under the three-prong review required by the Florida Supreme Court, the circuit court departed from the essential requirements of the law and the dismissal order must be quashed.

That said, however, the parties have expended considerable effort here arguing the merits of whether Beach Blitz’s liquor store is a “lawful nonconforming use” under the City Code. The parties fail to discern the difference between the standard of review applicable to the circuit court and this Court. More specifically, “[o]nce the district court determine[s]—from the face of the circuit court order—that the circuit court ha[s] applied the wrong law, the job of the district court [h]as ended.” Fla. Power & Light Co. v. City of Dania, 761 So. 2d 1089, 1093 (Fla. 2000). If this Court were to address the merits of the petition, including those arguments pertaining to the Planning Director and the BOA, it would “usurp the first-tier certiorari jurisdiction of the circuit court.” Id. Instead, this Court quashes the unelaborated dismissal order, so that the circuit court appellate division can apply the three-prong standard of review as directed by the Florida Supreme Court.

The City’s petition is granted and the order quashed.²

² As is our normal practice in such cases, we withhold the formal issuance of a writ, trusting that the appellate division will comply with the required first-tier review of the City’s circuit court petition.