

NOT FINAL UNTIL TIME EXPIRES  
TO FILE REHEARING MOTION  
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
JANUARY TERM, A.D. 2004

CITY OF MIAMI,

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Petitioner,

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vs.

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CASE NO. 3D02-2690

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LOWER TRIBUNAL NO.01-161AP

GAYLE SINOPOLI,

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Respondent.

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Opinion filed February 11, 2004.

A Writ of Certiorari to the Circuit Court for Miami-Dade County, Appellate Division, Leslie B. Rothenberg, and Stanford Blake, Judges.

Alejandro Vilarello, City Attorney; Robert S. Glazier, for petitioner.

Judson L. Cohen, for respondents.

Before GERSTEN, RAMIREZ, and WELLS, JJ.

WELLS, Judge.

In this petition for writ of certiorari, the City of Miami challenges a decision of the circuit court appellate division that found the City's vehicle impoundment ordinances unconstitutional. For the following reasons, we grant the petition.

The City impounded Respondent Gayle Sinopoli's car under

sections 42-120 through 42-125 of the City of Miami Code. Respondent Sinopoli challenged the impoundment in an administrative proceeding. After losing before the hearing officer, Sinopoli appealed to the circuit court appellate division on the sole basis that the vehicle impoundment ordinances were unconstitutional. The circuit court agreed, finding that sections 42-120 through 42-125 of the City of Miami Code violated the eighth amendment of the United States Constitution.

The City files this petition for writ of certiorari claiming that the circuit court departed from the essential requirements of the law and denied the City due process by declaring the ordinances unconstitutional. We agree. Respondent Sinopoli could not challenge the constitutionality of the ordinances on appeal to the circuit court. Miami-Dade Co. v. Omnipoint Holdings, Inc., 28 Fla. L. Weekly S717 (Fla. Sept. 25, 2003) (finding that "a petition seeking certiorari review is not the proper procedural vehicle to challenge the constitutionality of a statute or ordinance"). Instead, the constitutionality of the ordinances must be determined in original proceedings before the circuit court. Id.

Accordingly, we grant the petition for writ of certiorari, quash the decision of the circuit court appellate division, and remand this cause to the circuit court for a determination consistent with this court's recent opinion in City of Miami v. Wellman, No. 01-3050 (Fla. 3d DCA Feb. 4, 2004).