

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

MELISSA NEWMONS,

Petitioner,

v.

ORANGE COUNTY, FLORIDA,

Respondent.

CASE NO.: 2018-CA-4578-O

2019-CA-4639-O

2019-CA-8683-O

SERGIO GUARNIZO,

Petitioner,

v.

ORANGE COUNTY, FLORIDA,

Respondent.

VIRGILIA ZABALA,

Petitioner,

v.

ORANGE COUNTY, FLORIDA,

Respondent.

Petitions for Writ of Certiorari from
Final Orders of the Orange County
Animal Services Classification Committee.

Marcy I. LaHart, Esq.,
Attorney for Petitioners.

Adolphus Thompson, Esq.,
Attorney for Respondent.

Before YOUNG, ROCHE, and HIGBEE, JJ.

PER CURIAM.

Petitioners in these cases¹ seek a writ of certiorari pursuant to Article V, § (5)(b), of the Florida Constitution and Rule 9.100 (c), Florida Rules of Appellate Procedure, to review final orders of the Orange County Animal Services Classification Committee upholding determinations which classified Petitioners' dogs as dangerous under § 767.12(3), Florida Statutes, and Section 5-32, of the Orange County Code. Petitioners request this Court to enter an order quashing the underlying final orders and requiring Respondent to refund any fees collected in connection with the dangerous dog classifications.² We have jurisdiction based on § 767.12(4), Fla. Stat.

RELEVANT FACTS

The Petitioners in these consolidated cases each received a letter from the Orange County Animal Services Division ("Animal Services") titled "Notice of Initial Determination and Sufficient Cause Finding." These letters notified Petitioners that Animal Services had conducted an investigation into an incident involving their pet dogs and had determined there was sufficient cause to classify the dogs as "dangerous" based on the definition of section 767.11(1)(a), Florida Statutes. The letters stated that, pursuant to Chapter 767 of the Florida Statutes, Petitioners had seven days to request a hearing in writing regarding the classification, penalty, or both.

In each case, counsel for Petitioners responded to letters with a written request for a hearing that included a "preliminary list of witnesses." In response to the requests for a hearing,

¹ The three Petitions here were designated to "travel together" by an order of this Court entered on August 29, 2019.

² We note that the specific request for an order requiring Respondent to issue a refund of fees related to the classification was made only in 2019-CA-4639-O and 2019-CA-8683-O. The Petition in 2018-CA-4578-O only requests the court to quash the final order and makes no request for a refund of fees.

Animal Services sent Petitioners a letter indicating that the Division Manager would “conduct an administrative hearing to consider the initial determination.”

In at least one of the consolidated cases, counsel for Petitioners engaged in email correspondence with the Division Manager and other division staff regarding the nature of the administrative hearings to be held. In one email, the Division Manager provided a “brief overview” of the administrative hearing process. He explained that while witnesses would be provided “an opportunity to provide their prospective to event [sic]” there would be “no cross examination.” He further explained that there would be two steps for appellate review “ultimately ending in court for a de novo hearing.”

The Division Manager then conducted administrative hearings in each of these cases. At the hearings, counsel for Petitioners raised, among other issues, that Orange County ordinance “provides that a hearing like this is to be held in front [of] a classification committee” and that the Division Manager’s powers, established by county ordinance, made no mention of a power to hold such administrative hearings. The hearings contained testimony regarding Animal Services’ investigation into the dogs, as well as testimony from witnesses. There was no cross examination allowed at the hearings.

After the administrative hearings, the Division Manager sent letters to Petitioners which summarized the conclusions he had reached based on the evidence at the hearings. In each case the Division Manager upheld the “Initial Determination of ‘Dangerous.’” The letters further advised Petitioners that both parties had the “right to appeal my determination and request a hearing before the Animal Services Classification Committee (“the Classification Committee”).”

In response to these post-hearing letters, counsel for Petitioners submitted detailed written requests for a hearing before the Classification Committee. The requests included a list of

witnesses and alleged that the Division Manager had failed to comply with the requirements of sections 767.11(1)(a) and 767.12, Florida Statutes, as well as the related Orange County ordinances. Specifically, the requests asserted that the earlier hearings should have been held before the Classification Committee and that the Division Manager did not have jurisdiction to conduct those hearings.

Animal Services responded to Petitioners' request by sending letters setting a date and time for hearings before the Classification Committee. The hearings primarily consisted of the Classification Committee reviewing the records that had been compiled by Animal Services, apparently containing the investigations, as well as the administrative hearings which had been conducted by the Division Manager. Petitioners were not allowed to offer any new evidence or witness testimony in these "appellate hearings." The result of these hearings was the issuance of final orders containing "findings of fact" and "conclusions of law" each of which upheld the Division Manager's initial determination and notified Petitioners of their right to appeal to this Court.

DISCUSSION

Standard of Review

This Court reviews quasi-judicial actions of county boards by writ of certiorari. In this context, the Court's certiorari review involves a three prong test, looking at whether (1) due process was afforded, (2) the essential requirements of the law were observed, and (3) the administrative findings and judgment were supported by competent, substantial evidence. *Wiggins v. Fla Dep't of High. Saf. & Motor Vehs.*, 209 So. 3d 1165, 1170 (Fla. 2017). The departure from the essential requirements of the law necessary for granting a writ of certiorari is

something more than “a simple legal error.” *See Dept. of Highway Safety and Motor Vehicles v. Morrical*, 262 So. 3d 865 (Fla. 5th DCA 2019).

State Law Regarding Dangerous Dog Classifications

The process for classifying an individual’s dog as “dangerous” has been laid out by the Florida Legislature in Chapter 767 of the Florida Statutes. Specifically, section 767.12, Florida Statutes, provides the general process for dangerous dog classifications. This section describes a step-by-step process beginning with 1) an investigation, 2) an “initial determination” that there is sufficient cause for the dangerous classification, 3) a requirement to afford the dog owner an “opportunity for a hearing prior to making a final determination,” and, finally, 4) a final order and right to “appeal the classification, penalty, or both, to the circuit court.” The statute also requires the “local governing authority” to establish procedures for the contemplated hearing and appeal processes. *Id.*

County Code Regarding Dangerous Dog Classifications

In accordance with the state statute, Orange County has adopted its own process for the classification of dangerous dogs in Chapter 5, Article II of its Code of Ordinances. Section 5-32, deals specifically with “classification of dogs as dangerous or potentially dangerous.” This section empowers Animals Services to investigate incidents involving any dog that may be dangerous, and empowers the Division Manager, to make “an initial determination as to whether there is sufficient cause to classify the dog as dangerous or potentially dangerous.” The ordinance further explains that “if the owner decides to appeal the initial determination . . . they may request a hearing before the Animal Services Classification Committee to show cause why such dog should not be declared dangerous or potentially dangerous.” The Code provides that the owner must make a “written hearing request” which must “briefly state the grounds” and “list the

names and addresses of any witnesses the owner intends to call at the hearing.” This is the first and only reference to any hearing related to the dangerous dog classification in the County Code and it specifically requires the Division Manager to refer a “timely written request for a hearing” to the Classification Committee.

Departure from the Essential Requirements of Law

The record in this case reflects that Respondent has employed a mixed approach to compliance with the state statute and the county ordinance. However, this mixed approach amounts to a departure from the essential requirements of the law for the reasons described below.

Nowhere in the County Code is there any reference to a power of the Division Manager to preside over an administrative hearing with respect to dangerous dog classifications. Respondent concedes as much when it argues that although “the hearing the Division Manager conducts prior to the Animal Classification Committee is not explicitly provided for in the Orange County Code, it is in conformity with Fla. Stat. 767.12(3).” Respondent relies solely on the language of the state statute to support the Division Manager’s authority to preside over an administrative hearing. However, as described above, the statute specifically requires the “local governing authority” to establish procedures for the contemplated hearing. The County Code complies with this requirement in section 5-32(c) where it describes a hearing before the Classification Committee, not the Division Manager. This presents a question regarding whether the County Code’s provision for a hearing before the Classification Committee deprives the Division Manager of any authority to conduct a dangerous dog hearing under the statute. We conclude that it does.

Respondent's suggestion is that the County Code's described hearing before the Classification Committee is appellate in nature and, therefore, is not a one-to-one match for the hearing required by the statute. Respondent refers to the administrative hearing before the Division Manager as "an actual hearing . . . where evidence can be presented by parties." Respondent states that this "hearing affords dog owners an opportunity to actually present their case" by having witnesses, petitioner testimony, and presentation of evidence and arguments. Respondent contrasts this type of administrative hearing with the "appellate style hearing" before the Classification Committee "where the committee only reviews the record of the previous hearing." Accordingly, Respondent suggests that the fact the County Code provides for this "appellate" hearing does not deprive the Division Manager of the authority to hold an "actual hearing" based solely on the statute.

Respondent points to several parts of the County Code to support its position that the hearing before the Classification Committee is "appellate" in nature. First is the use of the word "appeal" in Section 5-32³ of the County Code, as well as in the definition for the Classification Committee in Section 5-29.⁴ However, the use of the term *appeal* in these instances can be interpreted as a potentially misleading description of the fact that the hearing before the Classification Committee is requested only after there has been an initial determination made by the Division Manager. It is not clear that the term "appeal" is being used in the strict sense as a term of art. The fact that it is used in conjunction with "hearings," which are not commonplace in genuine appellate proceedings, tends to support the interpretation of an "appeal" in a more general sense.

³ "If the owner decides to *appeal* the initial determination of dangerous . . . they may request a hearing before the animal services classification committee..."

⁴ Section 5-29 of the Orange County Code defines the Animal services classification committee to "mean a committee appointed by the board of county commissioners to hear *appeals* regarding the classification of dogs as dangerous."

Next, Orange County Resolution No. 2005-M-17 provides, in relevant part, that the Classification Committee “shall, within five (5) working days of the referral, review each completed investigation and initial classification that is referred to the Committee by the Animal Services Division Manager . . . pursuant to Section 5-32, Orange County Code.” While this resolution establishing the Classification Committee does not make use of the word “appeal,” Respondent contends that the language here confining the Committee to “review” of the “completed investigation and initial classification” is indicative of its appellate nature. However, this interpretation is in direct conflict with the description of the hearing before the Classification Committee.

It is clear that the County Code’s description of the hearing before the Classification Committee is not appellate in nature, as it contemplates the presentation of witnesses. Orange County Code Section 5-32(c) provides that:

If the owner decides to appeal the initial determination of dangerous . . . they may request a hearing before the animal services classification committee to show cause why such dog should not be declared dangerous . . . The request for a hearing must be filed, in writing, with the division manager within seven (7) working days after receipt of written notice of the division manager's determination or action. The written hearing request must briefly state the grounds therefore *and list the names and addresses of any witnesses the owner intends to call at the hearing*. If the division manager receives a timely written request for a hearing regarding a dangerous or potentially dangerous dog classification, he/she shall immediately refer the request, completed investigation, and initial determination to the classification committee. The classification committee shall schedule a hearing to be held not more than twenty-one (21) working days and no sooner than five (5) working days after the division manager's receipt of the request from the owner. (emphasis added).

This description of a hearing, where the owner is permitted to call witnesses, does not read like the sort of “appellate style hearing” described by Respondent. In fact, this language portrays the

hearing before the Classification Committee as the type of “actual hearing” – including witnesses, evidence, and argument – described by Respondent. Accordingly, Respondent’s practice of treating this hearing as a purely appellate review of an existing record is not in accordance with the plain language of section 5-32(c).

There is clear conflict both within the description of the hearing in section 5-32(c), and when compared to the definition of the Classification Committee in section 5-29 and in the 2005 resolution. While this Court will not attempt to determine the intent of the drafters of these ordinances, we must attempt to interpret them in a way that comports with section 767.12, Florida Statutes. We conclude that the use of the word “appeal” is not meant in the strict sense, but rather to merely describe the process by which a dog owner may request a hearing before the Classification Committee to contest the initial determination made by the Division Manager. Further, because the County Code does not provide for any hearing other than the one before the Classification Committee, the Division Manager does not have the authority to preside over an administrative hearing regarding his own initial determination. This interpretation aligns the County Code with the statute by providing the opportunity for a single hearing regarding the initial determination with the only true appeal being to this Court.

CONCLUSION

Based on the absence of any provision of the County Code granting the Division Manager the authority to conduct a hearing, and the fact that the County Code explicitly provides for an “actual hearing,” including witnesses, before the Classification Committee, we conclude that Respondent’s practice of conducting preliminary administrative hearings before the Division Manager and allowing only “appellate style hearings” before the Classification Committee is a departure from the essential requirements of the law. Further, we conclude that future proceedings

conducted in this manner will *ipso facto* be departures from the essential requirements of law and violations of due process.

We **GRANT** the Petition for Writ of Certiorari in 2018-CA-4578-O.⁵

We **GRANT** the Petition for Writ of Certiorari in 2019-CA-4639-O and order Respondent to issue a refund of any fees it collected as a result of the dangerous dog classification.

We **GRANT** the Petition for Writ of Certiorari in 2019-CA-8683-O and order Respondent to issue a refund of any fees it collected as a result of the dangerous dog classification.

Petitioner's "Motion for Appellate Attorney's Fees" as a sanction against Respondent, filed in 2018-CA-4578-O on July 18, 2019 is **DENIED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this _____ day of _____, 2020.

TOM YOUNG
Presiding Circuit Judge

ROCHE and HIGBEE, JJ., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished on this _____ day of _____ 2020, to **Marcy I. LaHart, Esq.**, Marcy I. LaHart, P.A., 207 SE Tusawilla Road, Micanopy, FL 32667 at marcy@floridaanimallawyer.com; **Adolphus A. Thompson, Esq.**, Assistant County Attorney, Orange County Attorney's Office, P.O. Box 1393, Orlando, FL 32802-1393 at Adolphus.Thompson@ocfl.net.

Judicial Assistant

⁵ We determine that this Petition was not mooted by Respondent's rescission of the underlying classification because the "issues are likely to recur." See *Dep't of Health v. Shands Jacksonville Med. Ctr.*, 259 So. 3d 247, 251 (Fla. 1st DCA 2018).