

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

JAMES D. SHELLEY and
BARBARA E. SHELLEY

CASE NO.: 2020-CV-23-A-O

Appellants,

v.

ORANGE COUNTY, FLORIDA,

Appellee.

_____ /

GPITA, LLC,

CASE NO.: 2020-CV-25-A-O

Appellant,

v.

ORANGE COUNTY, FLORIDA,

Appellee.

_____ /

SHELLEY'S SEPTIC TANK, INC.,

CASE NO.: 2020-CV-26-A-O

Appellant,

v.

ORANGE COUNTY, FLORIDA,

Appellee.

_____ /

Appeal from the Code Enforcement Board,
in and for Orange County, Florida,
Yvette Rodriguez Brown, Special Magistrate.

Rebecca E. Rhoden, Esq., and
Jonathan Huels, Esq., of
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.,
for Appellants.

Adolphus A. Thompson, Esq., of
Orange County Attorney's Office,
for Appellee.

Before STROWBRIDGE, HARRIS, and CALDERON, J.J.

PER CURIAM.

James D. Shelley and Barbara E. Shelley, GPITA, LLC, and Shelley's Septic Tank, Inc., collectively "the appellants," timely filed notices of appeal seeking review of three separate but related Orange County Code Enforcement Special Magistrate's "Findings of Fact, Conclusions of Law and Order[s]" pertaining to violations of the Orange County Code ("the Code"). We affirm the three orders below. We write only to address the appellants' argument, consistent in all three of these appeals, that this Court must vacate and reverse the orders because the special magistrate below failed to consider the three factors enumerated in section 11-37(b) of the Code in imposing a fine against the appellants.¹

The appealed orders of the special magistrate found code violations by the appellants, issued directions to achieve compliance, and tentatively set fines if the appellants did not comply with those directions. The hearing that resulted in the orders at issue was conducted pursuant to section 11-35 of the Code. Under section 11-35(f),

At the conclusion of the hearing, the code enforcement board or special magistrate shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted by this chapter. ... The order by the code enforcement board or special magistrate may include a notice that it must

¹ A comparable provision is included in the Florida Statutes at Section 162.09(2)(b).

be complied with by a specified date, and that a fine may be imposed, as provided and under the conditions specified in section 11-34(d), the cost of repairs may be included along with the fine if the order is not complied with by such date, and include a statement that any person aggrieved by the order who was a party below may appeal in accordance with the procedures shown in this chapter...

No actual fine has yet to be imposed related to the violations in these cases, and the phrase setting the fine amount in the appealed orders can be read to simply be a notice that unless there was compliance, a fine would be imposed in the future and \$250.00 is the maximum amount which could be imposed. It is not, as the appellants contend, the actual imposition of a fine. That has yet to be done, if it is to be done, by a separate order of the special magistrate. To do that, the special magistrate's orders state that

[u]pon expiration of the time for compliance stated herein, accrual of any fine hereunder and upon presentation of an Affidavit of Non-Compliance from the Code Enforcement Officer, the Special Magistrate is authorized to enter an Order Imposing Fine and Creating Lien and County may record this Order in the Public Records as provided in Section 162.09, F.S.

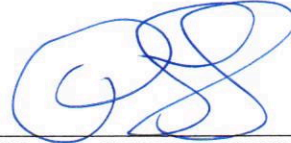
Section 11-37 of the Code, cited by the appellants as controlling in this case, concerns the proceedings for orders imposing fines and liens after a previous order of the code enforcement board or special master has not been complied with by the date set in the initial order. Therefore, section 11-37 provides procedures related to the future "Order[s] Imposing Fine and Creating Lien[s]," which were referred to in the special magistrate's violation orders appealed by the appellants, not the violation orders themselves. *See also Massey v. Charlotte County*, 842 So. 2d 142, 145 n.1 (Fla. 2d DCA 2003) (court noted that consideration of the three factors applied to the issuance of a lien order).

The orders actually imposing fines and liens, if they have since been entered, have not been appealed to this Court. Therefore, under our interpretation of the Code, we find the appellants'

argument related to the consideration of the section 11-37(b) factors is not yet ripe for our consideration.

AFFIRMED.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 31st day of March, 2023.



PATRICIA L. STROWBRIDGE
Presiding Circuit Judge

HARRIS and CALDERON, J.J., concur.