

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

CASE NO: 1D21-1524
L.T. NO: 2019-CA-1417

KIMBERLE WEEKS,

Appellant,

v.

DEPARTMENT OF LEGAL AFFAIRS,

Appellee.

On Appeal from the Circuit Court for the Second Judicial Circuit, in and for
Leon County, Florida

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

On June 18, 2019, Appellee, the Department of Legal Affairs (Department) filed a Complaint for Recovery of Attorney's Fees and Costs against Appellant Kimberle Weeks (Complaint). (R. 13-16). The Complaint was filed pursuant to section 112.317(7), Florida Statutes which requires the Department to bring a civil action when an award of attorney's fees and costs entered by the Florida Commission for Ethics (Commission) is not paid. A summary of both the administrative proceedings that led to filing of the Complaint and the procedural history in the circuit court are discussed below.

The Administrative Proceedings

On December 13, 2017, the Commission entered a Final Order Determining Costs and Attorney's Fees (Final Order) stating:

Kimberle B. Weeks filed a complaint with the Commission against Albert J. Hadeed, a public officer or employee, with a malicious intent to injure the reputation of Hadeed by filing a complaint with knowledge that the complaint contained one or more false allegations or with reckless disregard for whether the complaint contained one or more false allegation of fact material to a violation of Part III, Chapter 112, Florida Statutes; and finds that Weeks is liable for costs plus reasonable attorney fees incurred in proving entitlement to and the amount of costs and fees, in the total amount of \$60,682.40.

(R. 790). The Final Order was entered following a final hearing before the Division of Administrative Hearings (DOAH) which recommended entry of a final order granting an award of \$60,682.40 in attorney's fees and costs against Ms. Weeks. (R. 773-774)

Ms. Weeks appealed the Final Order to this Court and raised several of the same issues that she raised throughout the lower court proceedings and in her Initial Brief in this matter. For instance, in her 2018 Initial Brief, she argued that the ethics complaint filed against Mr. Hadeed was legally insufficient and did not warrant an investigation, that she was entitled to qualified immunity because the ethics complaint was filed in her official capacity as Supervisor of Elections, that she did not make a materially false statement, that the amount of the attorney's fee award was in error, and that she should have been allowed to appear telephonically at the final hearing before DOAH. See Appellant's Initial Brief, Case No. 1D18-0211 (Fla. 1st DCA 6/21/2018).

Upon review, this Court affirmed the Final Order on about November 19, 2018. See *Weeks v. Hadeed*, 259 So.3d 76 (1st DCA 2018). Ms. Weeks sought certification to the Florida Supreme Court which was denied on or about December 20, 2018. See *Weeks v. Hadeed*, Case No. 1D18-211, Denial of Certification of Cause to Supreme Court (Fla. 1st DCA 12/20/2018).

Circuit Court Proceedings

Following resolution of the appeal, Ms. Weeks failed to pay the attorney's fee and costs award. As a result, the Department filed the Complaint seeking to recover the award. See Fla. Stat. 112.317(7) (stating the Department "shall bring a civil action ... to recover the amount of such costs and fees awarded by the Commission."). (R.13). Therefore, the issue before the lower court was simple: whether Ms. Weeks had paid any of the attorney's fees and costs awarded by the Commission. Despite this, Ms. Weeks has continued to argue the merits of the underlying proceedings in an attempt to get several more bites at the proverbial apple.

On October 30, 2019, Ms. Weeks filed a Response to Complaint for Recovery of Attorney's Fees and Costs. (R. 81). That document requested a dismissal of the Complaint and a transfer of venue to Flagler County. However, at a February 18, 2020 hearing, Ms. Weeks stated that the response was not a motion to transfer venue or a motion to dismiss and requested for the document to be stricken from the record to enable her to file another response to the Complaint. (R. 323-324). Based on Ms. Weeks' request, the October 30, 2019 response was stricken from the record. *Id.* Ms. Weeks then filed a Motion to Dismiss on August 5, 2020. (R. 347). That Motion to Dismiss was denied on August 10, 2020 and Ms. Weeks was

ordered to file an answer by September 9, 2020. (R. 646). Ms. Weeks filed several motions requesting an extension of time to file an answer. (R. 648; 674). The court granted Ms. Weeks's request and extended the deadline to October 15, 2020 and noted that given the multiple requests for continuances made by Ms. Weeks, no more requests for additional time would be granted. (R. 700). Ms. Weeks then filed another request for extension of time to file an answer. (R. 705). That request was filed after the October 15 deadline to file an answer and was denied. (R. 712). Ms. Weeks ultimately failed to file an answer to the Complaint.

The Department filed a Motion for Summary Judgment on February 17, 2021. (R. 730-7345). The Motion sought entry of a final judgment on the basis that there was no material dispute of fact as Ms. Weeks failed to file an answer or assert any defenses, including any defense of payment. *Id.* The motion indicated that Mr. Hadeed assigned his recovery of any attorney's fees and costs to the Flagler County Board of County Commissioners (Board of Commissioners). Summary judgment evidence was also provided in the form of two declarations, one from Mr. Hadeed, and one from a representative at Board of Commissioners stating that Ms. Weeks had not paid any of the attorney's fees and costs. (R. 793-796).

On April 6, 2021, Ms. Weeks filed a response to the Motion for Summary Judgment which was subsequently amended on April 7, 2021. (R. 825; 862). Ms. Weeks failed to provide any evidence to rebut the evidence of nonpayment and following a hearing on the merits, the lower court entered a Final Summary Judgment against Ms. Weeks in the amount of \$60,682.40 plus prejudgment interest in the sum of \$12,288.15.

SUMMARY OF THE ARGUMENT

The trial court's orders in this case should be upheld. The trial court correctly denied Ms. Weeks' Motion to Dismiss as she failed to raise a proper ground for dismissal or transfer of venue and the claim was not barred by statute of limitations. The trial court properly denied Ms. Week's motion for substitution of counsel as the Final Order found Ms. Weeks, in her individual capacity, liable for the attorney's fees and costs. The trial court correctly entered a Final Summary Judgment as there was no dispute of material fact. There was uncontroverted summary judgment evidence that Ms. Weeks had not paid any of the attorney's fees and costs award.

STANDARD OF REVIEW

The standard of review for pure questions of law is de novo. *Sosa v. Safeway Premium Fin. Co.*, 73 So. 3d 91, 102 (Fla. 2011). The standard of review for factual findings are whether they are supported by competent,

substantial evidence or are clearly erroneous. *Suncoast Home Improvements, Inc. v. Robichaud*, 106 So. 3d 969, 971 (Fla. 2nd DCA. 2013). The issues presented here are questions of law, therefore the de novo standard should be applied. See *Tiger Point Golf and Country Club v. Hippie*, 977 So. 2d 608 (Fla. 1st DCA 2007) (ruling on motion for summary judgment is subject to de novo review); *White v. Syfrett*, 955 So. 2d 1110 (Fla. 1st DCA 2006) (ruling on motion to dismiss is subject to de novo review).

ARGUMENT

I. The Lower Court Properly Denied the Motion to Dismiss

Ms. Weeks asserts that her Motion to Dismiss should have been granted because: 1) the Complaint is an improper strategic lawsuit against public participation (also referred to as a “SLAPP lawsuit”); 2) she was denied her Fourteenth Amendment due process rights, and: (3) because the attorney fee award was inflated. (I.B. 4).

First, the Department did not file a SLAPP lawsuit against Ms. Weeks. Section 768.295, Florida Statutes, which prohibits the filing of such lawsuits, states in pertinent part:

A person or governmental entity in this state may not file or cause to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or

entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue, or right to peacefully assemble, to instruct representatives of government, or to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

Fla. Stat. § 768.295(3). The Complaint filed in the lower court is not without merit and was not filed because Ms. Weeks exercised her right to free speech. To the contrary, it was filed because the Department had a statutory obligation to do so. The Complaint was filed pursuant to section 112.317(7), Florida Statutes entitled "Penalties" which states:

In any case in which the commission determines that a person has filed a complaint against a public officer or employee with a malicious intent to injure the reputation of such officer or employee by filing the complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation of this part, the complainant shall be liable for costs plus reasonable attorney fees incurred in the defense of the person complained against, including the costs and reasonable attorney fees incurred in proving entitlement to and the amount of costs and fees. If the complainant fails to pay such costs and fees voluntarily within 30 days following such finding by the commission, the commission shall forward such information to the Department of Legal Affairs, which shall bring a civil action in a court of competent jurisdiction to recover the amount of

such costs and fees awarded by the commission.

Fla. Stat. § 112.317(7). An Administrative Law Judge (ALJ), following a hearing on the merits, determined Ms. Weeks filed a complaint against a public officer (Mr. Hadeed) with malicious intent to injure his reputation or that otherwise contained false allegations or acted with reckless disregard for whether the complaint contained false allegations and, on this basis, recommended the Commission to enter a Final Order finding Ms. Weeks liable for attorney's fees and costs in the amount of \$60,682.40. (R. 790).

As discussed above, the Final Order was affirmed by this Court and certification to the Florida Supreme Court was denied. Ms. Weeks was then given more than thirty (30) days to make payment and when she failed to do so the matter was referred to the Department who, in accordance with Florida law, filed a Complaint with the lower tribunal to recover the costs and fees awarded by the Commission. (R. 13-16, 67). On this basis, Ms. Weeks' allegation that the Complaint was a SLAPP lawsuit is meritless.

Second, Ms. Weeks raises several due process violations related to the underlying administrative proceedings. For instance, she alleges that the failure to transfer venue to Flagler County, her inability to appear by telephone, and the consolidation of several cases for purposes of hearing all violated her due process rights. To the extent Ms. Weeks raised these

issues on appeal of the Final Order, that Order was affirmed by this Court and is not subject to any further review. Any attempt to re-litigate those issues is improper under the doctrine of res judicata which provides finality to judgments and stability to judicial decisions. See *Fla. Dep't of Transp. v. Juliano*, 801 So. 2d 101, 105 (Fla. 2001). To the extent that Ms. Weeks did not raise these issues, they are waived. See *Woods-Hoskins-Young Co. v. Taylor Dev. Co.*, 122 So. 224, 225 (Fla. 1929) (“The appellate court is necessarily confined to a review of the proceedings of the trial court...[t]he trial court is the only legal evidence of such proceedings”); *Holland v. Cheney Bros.*, 22 So. 3d 648, 650 (Fla. 1st DCA 2009) (“For an issue to be preserved for appeal, it must be presented to the lower court and the specific legal argument or ground to be argued on appeal must be part of that presentation.”). Furthermore, the due process violations related to the probable cause hearing, which occurred prior to the filing of the petition heard by DOAH, have also been waived or resolved on appeal.

Third, Ms. Weeks alleges that the motion to dismiss should have been granted because the attorney fee award was inflated. However, this Court addressed this same argument in the prior appeal and affirmed the Final Order. Further judicial labor on this issue is improper. See *Juliano*, 801 So. 2d at 105.

Additionally, to the extent Ms. Weeks argues that the motion for summary judgment was granted in error because her motion to dismiss contained a “response to the Complaint” that argument is without merit. (I.B. at 4; 17). The court clearly required Ms. Weeks to file an answer to the Complaint after the motion to dismiss was denied. (R. 646). Ms. Weeks clearly understood that she needed to file an answer as she filed several motions seeking an extension of time to file it. (R. 648, 674, 705). Therefore, any argument that the motion for summary judgment improperly stated that she did not file an answer is without merit.

II. The Motion for Substitution of Party was Properly Denied

Ms. Weeks argues that the Motion for Substitution of Party was improperly denied because she filed the ethics complaint in her capacity as the Supervisor of Elections. Specifically, she argues that pursuant to Fla. R. Civ P. 1.260(d)(1), when she left office, her successor should have been automatically substituted as the party of interest. (I.B. at 10).

Ms. Weeks previously unsuccessfully made the argument that the ethics complaint was filed in her official capacity during the administrative proceedings. These arguments were rejected by the Commission in the Final Order. (R. 781, 783, 785). Ms. Weeks further raised the issue on appeal of the Final Order when she claimed that she was entitled to qualified immunity.

See Appellant's Initial Brief, Case No. 1D18-0211 (1st DCA, June 25, 2018). Again, the Final Order was affirmed.

Ms. Weeks' attempt to re-litigate this issue is improper. Furthermore, her arguments are without merit. The Commission found Ms. Weeks liable in her individual capacity and entered an award of fees and costs against her in such capacity. Therefore, the Complaint seeking recovery of the award of such fees was filed against Ms. Weeks in her individual capacity. While the issue has already been litigated and is not subject to additional review by the Court, it should be noted that the duties of a Supervisor of Elections, as provided in Chapter 98, Florida Statutes, does not enumerate filing of ethics complaints as a duty of the Supervisor of Elections. On the foregoing basis, Ms. Weeks' Motion for Substitution of Party was properly denied.

III. Venue was Proper in Leon County, Florida

Ms. Weeks alleges that the lower court erred by denying her request to change venue. In support thereof, she refers to her request for change of venue filed on October 30, 2019 and indicates that her motion is not in the record. (I.B. at 12). As discussed above, the October 30, 2019 filing was stricken from the record at Ms. Weeks' request. (R. 323-324). Ms. Weeks subsequently filed a motion to dismiss on August 5, 2020. (R. 347). That motion did not clearly challenge venue as to the circuit court action, rather it

challenged venue as to the DOAH action. (R. 364). However, in an abundance of caution, the order denying the motion to dismiss found venue of the circuit court proceedings to be proper in Tallahassee. (R. 646). Despite the court's order, Ms. Weeks did not properly raise the issue in the lower court, therefore it is not proper before this court on appeal. See *Holland*, 22 So.3d at 650.

Even if the issue was properly preserved, venue was in fact proper in Tallahassee. Venue is proper where the defendant resides, where the cause of action accrued or where the property in litigation is located. Fla. Stat. § 47.011. Here, venue is proper in Tallahassee as the place where the cause of action accrued. The ethics complaint filed by Ms. Weeks against Mr. Hadeed that gave rise to the administrative proceedings was filed with the Commission in Tallahassee; the necessary legal work for the proceeding occurred in Tallahassee, the DOAH hearing was held in Tallahassee, and the Final Order awarding fees and costs was entered in Tallahassee.

Ms. Weeks also argues that her due process rights were violated because she was not allowed to appear by telephone during the DOAH hearing. Ms. Weeks raised this issue on appeal of the Final Order. Again, the Order was affirmed and is not subject to further review.

IV. The Final Summary Judgment Properly Entered a Judgment Against Ms. Weeks.

Ms. Weeks argues that the language of the Final Summary Judgment is improper because it states that the Board of Commissioners “shall recover” a certain sum from Ms. Weeks. She alleges that this is improper because the assignment did not authorize the Board of Commissioners to recover from her.

As alleged in the Motion for Summary Judgment, Mr. Hadeed assigned any recovery of attorney’s fees and costs to the Board of Commissioners. (R. at 733, 792). Section 112.317(7), Florida Statutes requires the Department to file a civil action “to recover the...costs and fees awarded by the [C]ommission.” That recovery takes the form of a Final Judgment. Therefore, it is not improper for the Judgment to be in the favor of the Board of Commissioners who are entitled to the recovery by way of assignment.

V. The Claims are not Barred by Statute of Limitations

Ms. Weeks argues that the claims are barred by the statute of limitations because the ethics complaint was filed more than six years prior to entry of the Final Judgment. This argument represents a misunderstanding of the principle of statute of limitations. “Statutes of limitation are designed to prevent unreasonable delay in the enforcement of legal rights. The purpose of setting a fixed time limit on the right to assert a

civil claim is to encourage prompt resolution of controversies and to protect against the risk of injustice.” *Hawkins v. Barnes*, 661 So. 2d 1271, 1272 (Fla. 5th DCA 1995) (citing *Baskerville–Donovan Engineers, Inc. v. Pensacola Executive House Condominium Ass’n, Inc.*, 581 So.2d 1301 (Fla.1991)). Therefore, the statute of limitations requires the action to be filed within in a specified period of time, not for the action to be resolved within a specified period of time.

Here, the Final Order which gave rise to this action, was entered on December 13, 2017. The appeal was resolved on or about January 10, 2019 when the mandate was issued. The Complaint was filed approximately five (5) months later on June 18, 2019 which was within the four (4) year time frame to bring an action. See Fla. Stat. § 95.11. Therefore, the claims were not barred by statute of limitations.

CONCLUSION

For the reasons set forth above, the Final Summary Judgment and other rulings by the lower court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Answer Brief has been furnished by US mail to Appellant Kimberle Weeks, at 3056 CR 305, Bunnell, Florida, 32110, this 30th day of November, 2021.

/s/ Anita J. Patel
Senior Assistant Attorney General

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief contains 3,201 words, and complies with the font and word count limit requirements of Fla. R. App. P. 9.210, this 30th day of November, 2021.

/s/ Anita J. Patel
Senior Assistant Attorney General