

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR FLAGLER COUNTY, FLORIDA

JAY SWEATT, DAWN SWEATT,
Owners of Two-Year-Old Labrador Dog
Named BACCHUS,

Appellant,

CASE NO.: 2017-CA-000117
Division 49: Judge Scott C. DuPont

v.

FLAGLER COUNTY BOARD OF
COUNTY COMMISSIONERS,

Appellee.

**ORDER DENYING APPELLEE'S MOTION FOR REHEARING OR
RECONSIDERATION**

THIS MATTER came before the Court consideration of Appellee Flagler County Board of County Commissioners ("the County")'s Motion for Rehearing or Reconsideration, filed on April 20, 2017. The Court, having reviewed the motion, and being fully advised in the premises, hereby finds as follows:

Procedural History from the Record

This case is an appeal of an Adjudicatory Order entered by the Flagler County Board of County Commissioners ("the County"), rendered September 21, 2015, in case number C-3260115. The Order designated Bacchus, a dog owned by Appellants Jay and Dawn Sweatt ("the Sweatts"), to be a dangerous dog, pursuant to section 767.11(1)(a), Florida Statutes, and section 5-67, Flagler County Code of Ordinances. The County found that on July 5, 2015 Bacchus aggressively bit, attacked, endangered, and inflicted severe injury on R.W., an eight-year-old child, who was not unlawfully on the Sweatts' property.

The Court has jurisdiction to consider this appeal pursuant to Section 767.12(4), Florida Statutes (2017), and Florida Rule of Appellate Procedure 9.030(c)(1)(C).

On April 11, 2017, the Court entered an Order On Proceedings, finding the Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(C). The Order on Proceedings clarified that the procedure found in Rule 9.110 would be followed, and it set out a timeline for Answer and Reply Briefs.

The County filed the Motion for Rehearing or Reconsideration on April 20, 2017. The County asserts that section 767.12, Florida Statutes (2016) is ambiguous; therefore, it urges the Court to consider the legislative intent that any appeal be by petition for certiorari, citing to legislative staff analyses on the 2016 amendment to the bill. The County suggests that the Court's jurisdiction over the matter is found in Rule 9.030(c)(3), granting the Court original jurisdiction to hear writs of common law certiorari.

The Court finds no ambiguity in the statute. The statute clearly and plainly provides that the Court has the authority to review the administrative decision as an appeal. Section 767.12(4), Florida Statutes (2016) states, in pertinent part:

The owner may appeal the classification, penalty, or both to the circuit court in accordance with the Florida Rules of Appellate Procedure after receipt of the final order.

If the meaning of the statute is clear, the Court can go no further than applying the language of the statute. *GTC, Inc. v. Edgar*, 967 So. 2d 781, 785 (Fla. 2007).

Here, the Court finds no intention to confer certiorari review. Where the Legislature intends to have an appeal by certiorari, the Legislature states such intent in the statute. *See, e.g.*, § 322.31, Fla. Stat. (establishing statutory certiorari review: “[t]he final orders and ruling so the

[DMVHS] where in any person is denied a license... shall be reviewable in the manner and within the time provided by the Florida Rules of Appellate Procedure only by a writ of certiorari issued by the circuit court in the county wherein such person shall reside.”); § 333.11, Fla. Stat. (establishing certiorari review for review of airport zoning board). Where no appeal is mentioned by statute, appeal is by common law writ of certiorari by right. *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). Section 767.12(4), Florida Statutes (2016) provides for appellate review.

Review “as provided by general law” under Rule 9.030(c)(1)(C) differs from review by common law certiorari under Rule 9.030(c)(3) in at least four ways:

- (1) common law certiorari is generally available only where no direct appellate process is provided by law, such as described in *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957);
- (2) as opposed to an appeal that is taken as a matter of right, common law certiorari is entirely discretionary, and only if a petition for writ of certiorari demonstrates a preliminary basis for relief will the court direct a respondent to respond, pursuant to Fla. R. App. P. 9.100(h);
- (3) the scope of review by common law certiorari is traditionally limited and much narrower (although this Court finds, consistent with the caselaw below, that the same scope of review applies whether the review is by appeal or by certiorari for quasi-judicial administrative decisions); and
- (4) common law certiorari will never confer jurisdiction to review purely legislative action, unlike a review by appeal that the Legislature specifically allows through a general law.

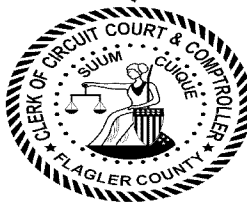
G-W Dev. Corp. v. Village of N. Palm Beach Zoning Bd. of Adjustment, 317 So. 2d 828, 830-31 (Fla. 4th DCA 1975); *see also, Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 526 n.3 (Fla. 1995) (citing *G-W Dev. Corp.*).


Generally, with its appellate jurisdiction over administrative action provided by general law, the circuit court may correct any errors below, including jurisdictional, procedural, or substantive, and it may modify, reverse, remand with directions, or affirm the lower decision. *Osborn v. Bd. of County Comm'rs*, 937 So. 2d 1119, 1120 (Fla. 3d DCA 2006). When reviewing a petition for certiorari, the circuit court has authority only to grant certiorari review and quash the lower court order. *Gulf Oil Realty Co. v. Windhover Ass'n, Inc.*, 403 So. 2d 476, 478 (Fla. 5th DCA 1981).

As for the scope of review, the Fourth DCA explained that: “[i]n reviewing an order of a municipal or county agency by appeal or by certiorari the circuit court determines whether the appellant or petitioner was afforded procedural due process, whether the agency observed the essential requirements of the law, and whether the decision is supported by substantial competent evidence.” *Tomeu v. Palm Beach County*, 430 So. 2d 601, 602-03 (Fla. 4th DCA 1983) (emphasis added). The Court agrees with the finding in *Tomeu*.

Therefore, it is ORDERED AND ADJUDGED that Appellant’s Motion for Rehearing or Reconsideration is DENIED.

DONE and ORDERED in Chambers at Kim C. Hammond Justice Center, Bunnell, Flagler County, Florida this 3rd day of August, 2017.




SCOTT C. DUPONT
CIRCUIT JUDGE

Copies:
Appellant
Appellee