

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

DEAN TASMAN
Petitioner,

CASE NO.: 2006-CA-4542-O
WRIT NO.: 06-45

v.

ORANGE COUNTY, FLORIDA

Respondents.

Petition for Writ of Certiorari

S. Brent Spain, Esquire
Theriaque Vorbeck & Spain
for Petitioner.

Joel D. Prinsell, Deputy County Attorney
Orange County, Florida,
for Respondent

Before EVANS, MacKinnon, and J. KEST, J.J.

PER CURIAM.

FINAL ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

Petitioner Dean Tasman (“Tasman”) timely petitions this Court for a Writ of Certiorari from the May 8, 2006, *Decision of the Board of County Commissioners, Orange County Florida*, regarding Tasman’s application for a Special Exception to convert 921 square feet of his existing residence into an accessory dwelling unit. This Court has jurisdiction pursuant to rule 9.030(c)(3), Florida Rules of Appellate Procedure. We dispense with oral argument.

Factual and Procedural Background

On March 2, 2006, the Orange County Board of Zoning Adjustment (“BZA”) held a public hearing on Tasman’s application for a Special Exception to convert 921 square feet of his residence into an accessory dwelling unit for his father. The BZA found that Tasman’s application met the requirements of the Orange County Code and approved it with the following pertinent condition: “The attached accessory dwelling unit is for [Tasman’s] family use only. No portion of the residence shall be rented out.” (App. Ex. 5 at 1.)

Thereafter, Tasman appealed the “no rental” condition to the Board of County Commissioners (“BOCC”) arguing the condition is not in compliance with section 38-1426 of the Orange County Code. A public hearing was held before the BOCC on April 18, 2006, and it approved the decision of the BZA, including the “no rental” condition, by a unanimous vote. Tasman’s petition followed.

Standard of Review

A circuit court review of a quasi-judicial decision is limited to only a three-part standard of review: (1) whether procedural due process has been accorded; (2) whether the essential requirements of law were observed; and (3) whether the administrative findings and actions were supported by competent, substantial evidence. *Haines City Community Development v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995); *County of Volusia v. City of Deltona, et al.*, 925 So. 2d 340, 343 (Fla. 5th DCA 2006). The circuit court is not entitled to make separate findings of fact or to reweigh the evidence. *Haines City Cmty.*

Dev., 658 So. 2d at 529; *see also Dep't of Highway Safety & Motor Vehicles v. Kurdziel*, 908 So. 2d 607, 609 (Fla. 2d DCA 2005).

Discussion

Tasman argues that the BOCC failed to follow the essential requirements of the law because it failed to follow the plain provisions of section 38-1426, Orange County Code, when it upheld a condition that the accessory dwelling unit could not be rented to a non-relative. Section 38-1426, states, in pertinent part:

38-1426. Accessory dwelling units

. . . (c) (1) An accessory dwelling unit shall be occupied initially only by a relative. For purposes of this section, the term “relative” shall mean a sister, brother, lineal ascendant or lineal descendant of the owner of the lot or parcel on which the primary single-family dwelling unit is located. . .

(2) An accessory dwelling unit may be occupied by a non-relative, provided:

a. The accessory dwelling unit was occupied initially only by a relative and at least three (3) years have passed since the issuance of the certificate of occupancy for the accessory dwelling unit; or

b. The accessory dwelling unit was occupied initially only by a relative, and the relative has died.

By its plain and ordinary meaning, section 38-1426 specially allows the primary owner to rent an accessory dwelling unit to a non-relative after three years have passed or after the relative occupant dies. While courts should defer to a city or county’s interpretation of its own ordinance when it calls for “superior technical expertise and [a] special vantage point,” such is not the case, here. *City of Hialeah Gardens v. Miami-Dade Charter Found., Inc.*, 857 So. 2d 202, 206 (Fla. 3d DCA 2003).

We are not required to and do not defer to an agency's construction or application of a law or ordinance where we are equally capable of reading the ordinance. *Fla. Hosp. v. Agency for Health Care Admin.*, 823 So. 2d 844, 848 (Fla. 1st DCA 2002) (“[A] court need not defer to an agency’s construction or application of a statute if special agency expertise is not required, or if the agency’s interpretation conflicts with the plain and ordinary meaning of the statute.”)

City of Coral Gables Code Enforcement Board v. Tien, 967 So. 2d 963, 966 (Fla. 3d DCA 2007). The “no rental” condition clearly contradicts the plain and ordinary meaning of the ordinance and, therefore, the BOCC failed to follow the essential requirements of the law by imposing it.

Tasman argues that this Court may properly quash just that portion of the BOCC’s decision containing the “no rental” condition. Orange County, on the other hand, argues that this Court is limited to quashing only the entire Decision. The Fifth District Court of Appeal has held that: “[a] court's certiorari review power does not extend to directing that any particular action be taken, *but is limited to quashing the order reviewed.*” *ABG Real Estate Dev. Co. v. St. Johns County*, 608 So.2d 59, 64 (Fla. 5th DCA 1992) (emphasis added). The Florida Supreme Court has also held:

Consistent with the limited purpose of this writ, the Court long ago delineated the narrow range of options that are available to a reviewing court on certiorari review. The role of the reviewing court in such a proceeding is to halt the miscarriage of justice, nothing more:

On certiorari the appellate court only determines whether or not the tribunal or administrative authority whose order or judgment is to be reviewed has in the rendition of such order or judgment departed from the essential requirements of the law and upon that determination either to quash the writ of certiorari or to quash the order reviewed.

When the order is quashed, as it was in this case, it leaves the subject matter, that is, the controversy pending before

the tribunal, commission, or administrative authority, as if no order or judgment had been entered and the parties stand upon the pleadings and proof as it existed when the order was made with the rights of all parties to proceed further as they may be advised to protect or obtain the enjoyment of their rights under the law in the same manner and to the same extent which they might have proceeded had the order reviewed not been entered.

The appellate court has no power in exercising its jurisdiction in certiorari to enter a judgment on the merits of the controversy under consideration nor to direct the respondent to enter any particular order or judgment.

Broward County v. G.B.V. Intern., Ltd., 787 So.2d 838, 843 -844 (Fla. 2001) (*quoting Tamiami Trail Tours v. Railroad Commission*, 174 So. 451, 454 (Fla. 1937) (on rehearing)). Thus, if this Court were to quash only the “no rental” provision of the BOCC’s decision, we would be impermissibly directing the BOCC to enter a particular decision. By quashing the entire Decision we correctly place the parties and the BOCC back in the same position as if a Decision had never been rendered.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that Dean Tasman’s Petition for Writ of Certiorari is **GRANTED**.

1. The May 8, 2006, Decision of the Board of County Commissioners, Orange County, Florida is **QUASHED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this
__18__ day of _____ March _____, 2008.

_____/S/_____
ROBERT M. EVANS
Circuit Court Judge

_____/S/_____
CYNTHIA Z. MACKINNON
Circuit Court Judge

_____/S/_____
JOHN MARSHAL KEST
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. mail, **S. Brent Spain**, Theriaque Vorbeck & Spain, 37 North Orange Avenue, Suite 500, Orlando, Florida 32801; and to **Joel D. Prinsell**, Orange County Attorney's Office, Orange County Administration Center, P.O. Box 1393, Orlando, Florida 32802-1393, on this __18__ day of __March_____, 2008.

_____/S/_____
Judicial Assistant