

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

CASE NO.: CVA1 10-09
Lower Court Case Nos.: 2008-MO-2299,
2009-MO-84 and 2009-MO-501

HENRY MCCONE,
Appellant,

v.

CITY OF ORLANDO,
Appellee.

Appeal from the County Court,
For Orange County,
Earnest Deloach, Jr., Hearing Officer.

Henry McCone, Pro Se,
for Appellant.

Kimberly Laskoff, Esquire,
for Appellee.

Before POWELL, LEBLANC, J. KEST, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING IN PART AND REVERSING IN PART TRIAL COURT

Appellant Henry McCone timely appeals from three separate final orders finding Appellant guilty of failing to pay three expired parking meter tickets and imposing fines and court costs. The Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A). The Court dispenses with oral argument pursuant to Florida Rule of Appellate Procedure 9.320. After carefully reviewing the briefs, the record on appeal, and the applicable legal authorities, the Court affirms in part and reverses in part.

Our review in this type of proceeding is limited to whether due process was afforded, whether the essential requirements of the law have been observed, and whether there is competent substantial evidence to support the hearing officer's decision. See *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624 (Fla. 1982).

We restate the cardinal issue as follows: whether there is competent substantial evidence to support the finding of guilt in all three cases, and if so, whether there was an abuse of discretion in imposing fines and court costs in each case.

Case No. 2008-MO-2299

The facts revealed by the record indicate that Appellant had a valid city parking permit but when he parked his vehicle in a city metered parking lot, he failed to place his permit tag hanger on the rearview mirror and he did not put any money in the meter. A citation for parking at an expired metered was issued to Appellant. Appellant did not pay the citation. Instead, he went to the Orlando Parking Bureau and requested a hearing after declining the City's offer to reduce the amount of the fine. The hearing was conducted and concluded with a finding of guilt. Rehearing was denied as to all three cases.¹

Section 39.45, City of Orlando Code of Ordinances, provides in pertinent part:

It shall be unlawful for any vehicle to be placed or remain parked in any metered parking space beyond the time period allowed by the deposit of legal tender or an approved device. The parking meter shall indicate expiration of time and, in that event, such vehicle shall be considered parked overtime and a citation may be issued.

¹ The Court believes that the effect of granting a rehearing in a case such as this is as follows: If there are evidence exhibits properly admitted in the original hearing, the hearing officer may consider them at the rehearing. If there is a transcript of the original hearing, the hearing officer may consider the admissible and proper testimony, motions, objections, rulings, etc. But the hearing officer must announce on the record of the rehearing what he/she is considering so that the parties know and can respond. Of course, the parties can present the original or new witnesses and evidence at the rehearing. Nothing like this was done in these cases.

At rehearing, Appellant's hang tag permit was entered into evidence and the instructions on it were read into the record by the hearing officer as follows:

Permit. This is a permit parking program. This is number 348. The Court will take notice that Permit number 348 has been offered as an Exhibit by the defendant. The front of it says, City of Orlando Permit Parking Program designates the permit number. Directions on the back say this side faces vehicle interior, so it – it advises the holder how to display it. We care. Please remember to buckle up. Place on rearview mirror while parked with this side of permit face interior of the vehicle. Again, failure to do so may result in the issuance of a parking violation notice. Remove before driving. And then gives us the phone and fax number to the parking division, all of which will be entered and noticed by the Court.²

The hearing officer ruled that where a permit holder parks in a metered space in a City of Orlando lot, does not display his permit hanger as instructed, and receives a ticket, it is discretionary under the ordinance as to whether a fine should be imposed. The hearing officer reasoned that since Appellant deliberately chose not to display his permit tag or put money in the meter, a fine should be imposed in the instant case.

The Court agrees with the hearing officer and finds that his decision is supported by competent substantial evidence and that the essential requirements of the law have been observed.

Case No. 2009-MO-000084 and 2009-MO-000501

The Court agrees with Appellant that there is not competent substantial evidence to support the hearing officer's finding of guilt as to Case No. 2009-MO-000084 and Case No. 2009-MO-000501. In fact, there appears to be no record evidence at all to support the findings.

The only reference to these two cases appears in the transcript as follows:

Hearing Officer: Okay. So that being said, the Court – lets see, we're on 2 – 2299. The Court

² Trial Transcript at 92:18-93:3, June 5, 2009.

adjudicates you guilty as to 2299. I don't know what the fine was. The fine is \$37 when it's past due. So it's \$37 plus 18 is the – are the court costs, so I guess that's what, \$55? \$55 total. Let me just make – now, on case number 84, that's from Officer – it's the same officer – Officer Silva, you wrote that one as well.

Officer Silva: [no verbal response]
Hearing Officer: So your testimony is going to be the same – is your defense going to be the same?
Defendant: [no verbal response]
Hearing Officer: Okay. The Court is going to go ahead and adjudicate you guilty on that one. Again, \$55 with fine and – and – and fees. Now, let's take a look at the last one, 501. You've really – I've already really allowed you to testify; because there was no objection as to hearsay, as to the contents of the email with Mr. Zolers.³

...
Hearing Officer: State's met its burden. The fine is \$37, costs are \$18; total due is \$55 on all three citations.⁴

We find Appellant's other points to be without merit.

Based on the foregoing, the trial court's final order is **AFFIRMED** as to Case No. 2008-MO-002299-O and **REVERSED AND REMANDED** as to Case No. 2009-MO-000084 and Case No. 2009-MO-000501.

DONE and ORDERED at Orlando, Florida this ___12___ day __November_____, 2010.

/s/
JANET C. THORPE
Circuit Judge

/s/
ROM W. POWELL
Senior Circuit Judge

/s/
REGINALD WHITEHEAD
Circuit Judge

³ Trial Transcript at 103:24-104:13, June 5, 2009.

⁴ Trial Transcript at 109:20-21, June 5, 2009.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished via U.S. mail on this 12 day of November, 2010, to the following: **Henry McCone**, Post Office Box 551908, Orlando, Florida 32855 and **Kimberly Laskoff, Esquire**, City of Orlando, Post Office Box 913, Orlando, Florida 32802-0913.

_____/s/_____
Judicial Assistant