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

JEFFREY JAMES and
EDGERRIN JAMES,

Appellants,

v.

ORANGE COUNTY, FLORIDA,

Appellee.
_____/

CASE NO.: 2015-CV-000096-A-O

Appeal from Special Magistrate,
for Orange County, Florida,
Stephanie Melia.

Mark E. NeJame, Esquire,
for Appellants.

Andrea Azuka Adibe, Assistant County Attorney,
for Appellee.

Before TYNAN, JORDAN, and TRAVER, J.J.

PER CURIAM.

FINAL ORDER AND OPINION AFFIRMING SPECIAL MAGISTRATE

Appellants, Jeffrey James and Edgerrin James ("Appellants"), timely appeal the Special Magistrate's "Findings of Fact, Conclusions of law and Order," entered on July 31, 2015, in favor of Appellee, Orange County, Florida. This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument. Fla. R. App. P. 9.320.

Facts and Procedural History

Appellants own 4200 South Hiawassee Road in Orlando, Florida 32835. The property is zoned a Rural County Estate ("RCE") and subject to restrictions regarding the use of rural, residential property. For RCE zoned property, a special exception is required when owners seek to engage in outdoor recreational use.

On July 1, 2015, the Orange County Code Enforcement Division ("Code Enforcement") sent both Appellants a "Code Violation Notice" and "Code Violation Compliance Schedule," which informed Appellants that they needed to either obtain special exception approval or cease outdoor recreational use "including Edgerrin James Training Summer Camp, on RCE property." The notice and compliance schedule charged Appellants with violating sections 38-3, 38-74, 38-77, and 38-79 (132) of the Orange County Code and instructed them to correct the violation by July 8, 2015. When no corrective efforts were made, Code Enforcement Officer Steve Marconi issued a Statement of Violation and Notice of Hearing. The hearing occurred on July 29, 2015, and revealed the following relevant evidence:

In 2013, Code Enforcement issued a violation notice to Appellants for allegedly hosting a youth summer camp on the subject property sponsored by Appellant Edgerrin James's non-profit organization, the Edgerrin James Foundation. After a hearing, the Special Magistrate found that the alleged activities occurred and that they violated the County Code. The following year, Appellant Jeffrey James filed an application for a special exception to conduct a summer camp on the property. In Jeffrey's application, he specifically requested "a special exception for outdoor recreational use to continue offering two community events, and a youth summer camp program." He continued that, "the Youth Summer Camp lasts for 8 weeks starting in the 3rd week of June and ending the 1st week in August." The camp was to service 100-200 youth

between the ages of 6-18. Before it was considered and adjudicated, however, Jeffrey withdrew the application.

Given the subsequent history of outdoor recreational activity on Appellants' property, and suspecting that Appellants would again host a summer camp, on June 15, 2015, Chief Inspector Kurt Fasnacht conducted an on-site inspection of 4200 Hiawassee Road. According to Mr. Fasnacht, during his inspection, he observed a table with adults checking children into what appeared to be a summer camp; children wearing matching t-shirts with Edgerrin James Foundation printed on them; adults wearing similar Edgerrin James Foundation t-shirts with the word "crew" printed on the back; adult-supervised sports drills and activities taking place; as well as approximately twenty vehicles parked on the property. Mr. Fasnacht testified that he spoke with an adult on the property, Sandra Henry, who indicated that children from her non-profit organization, called the Reach Back Foundation, were attending the summer-long festivities on the James property. According to Fasnacht, the outdoor use he observed on June 15, 2015 was above and beyond typical residential use.

Officer Steve Marconi testified that he observed an advertisement for the Edgerrin James Youth Football Camp on a local high school website, which advertised a free summer camp occurring at the James property.

Kattia Patterson, owner of a residential property that abuts Appellants' property, indicated that she hears "coaches yelling" and "a lot of chanting" during the summer months. Children do drills, and coaches use whistles "all afternoon, all summer long, every summer." Ms. Patterson further testified that the activity occurring on the James property prevents her and her children from using their outdoor pool to escape the summer heat. According to Ms. Patterson, a real estate agent, the activities on the James property had a very negative impact on

the values of surrounding properties. She indicated that she planned to sell her home soon and had an ethical duty to disclose what goes on at the James property each summer to any perspective buyer.

Nearby property owners also chimed in, claiming that they hear whistling, chanting, and what sounds like dozens of children performing sporting drills. According to Appellants' neighbors, during the summer months, there was never any peace and tranquility. Appellants' festivities would often times continue into the evening because some of the children would stay overnight on the property.

In January 2015, Jim Feller purchased property abutting Appellants' and testified that, before the summer months, the property was calm and quiet. Mr. Feller works from home, and as summer approached, he was unable to open the windows of his home due to the noise coming from the James property. He heard children yelling and whistles blowing all day long. He testified that "50 or 70" cars would drive onto the James property on a daily basis, causing dirt to come onto his property and cover his pool furniture. According to Mr. Feller, the festivities on the James property "impacted [his] family and [his] dogs and cats."

Linda Goodarzi, another nearby property owner, indicated that Appellants would frequently blast music while the children were on the property, and sometimes, this would continue late into the evening. To avoid hearing the music, which often contained profanity, Ms. Goodarzi would have to wear headphones inside her home. Ms. Goodarzi's property sits along the lake, and she has a clear view of what occurs on the James property. What she observed in the summer of 2015 was outdoor activity that was advertised, organized, and structured.

Appellant Jeffrey James told the Special Magistrate a different story. He claimed that there was no summer camp or outdoor recreational use of the property. Rather, he and

Appellant, Edgerrin James, were merely hosting their large family and friends. Because the family is athletic, Appellants would lead workouts every day for approximately 30 to 40 child family members and friends. According to Jeffrey, there was no dress code, and any adults wearing shirts with the word, "crew" on the back must have been wearing old t-shirts that the family had made over the years or from a one-day camp that the Edgerrin James Foundation hosted in South Florida that summer. Jeffrey denied that there were public advertisements of a free summer camp taking place in Orlando. According to Jeffrey, any flyers or advertisements were old information over which he had no control. As to Mr. Fasnacht's testimony that he observed adults at a table who appeared to be checking-in or registering children for a summer camp, Jeffrey denied that there was any kind of check-in or registration during Mr. Fasnacht's visit, or ever.

Jeffrey continued that, he "[n]ever operated a camp" on the property and does not wish to run a camp. He applied in 2014 for a special exception because he was confused about the requirements. He denied that any activity occurring on the property is or ever was a summer camp. Rather, Jeffrey explained, the James family is very "organized." Appellants host family and friends each day during the summer to engage in group workouts. Although there was a set time when workouts would start, there were no trainers, counselors, or coaches on the property, just "family members" who have "played either high school football, . . . tennis, ran track," or are parents.

Wayne Freeman, a James family friend, testified that, on June 15, 2015, there was an Edgerrin James Foundation t-shirt administered to the children on the property and that there were adult "crew members" to supervise the children. Contrary to Jeffrey's testimony, Mr. Freeman indicated that there was a check-in table at which adults would account for each child in

attendance. Mr. Freeman, however, insisted that the check-in table was not a form of camp registration; rather, it was a way for Appellants to keep track of who was present because crew members were responsible for each child in attendance.

In addition to the vast testimony offered in support of the County's case, the Special Magistrate received and considered a copy of the online flyer advertisement to which Officer Marconi referred. The flyer advertised a "free youth football camp" sponsored by the Edgerrin James Foundation that was to occur every Monday through Thursday from June 15 – July 30, 2015.[1]

Also included with the record before the Special Magistrate were two news articles, one from 2012 and another from 2015. The 2012 article, entitled, "Life After the NFL: Edgerrin James Finds Meaning as Father, Mentor," described Edgerrin as a hero to local children: "James entertains, coaches and mentors more than 100 underprivileged children for eight weeks every summer. . . . the camp is open to any kid. It's free." The article went on to indicate that, at the summer camp, "[t]here are more kids than blades of grass. The holes are bigger than some of the campers. Yet, it's a 30-yard by 30-yard pigskin paradise" where "campers call the counselors uncle." The article described how Edgerrin was a father-figure to so many children; according to Edgerrin, who was purportedly interviewed for the article, the children "never want to leave and some of them don't." Indeed, many of the children "bunk up at The Property," and "[o]nce camp starts they must stay outside until sundown."[2]

The 2015 article, entitled, "Edgerrin James Returns Home to Mentor Kids at Youth Camp," depicted a similar situation. It described the "seven-week summer camp" at Appellants' property as the Edgerrin James Foundation's "biggest effort of the year," hosting "more than 100

[1] There was no year printed on the flyer; however, the advertised start and end dates of the camp correspond with Monday, June 15, 2015 and Thursday, July 30, 2015.
[2] Appellant Edgerrin James was not present at the hearing to offer testimony.

kids in Orlando. The kids spend four days a week at the property James bought, and they have a cookout every Sunday. And it's all free. Everyone who works for the charity, including many of James [sic] relatives, is a volunteer, and the foundation subsists through donations and sponsorships."

Arguments on Appeal

Appellants make three arguments. First, they claim that the Special Magistrate's findings were based on facts predating the alleged violation and are barred by the res judicata doctrine because they concern claims that were or could have been raised and decided in the 2013 proceeding. Second, Appellants assert that the Special Magistrate's findings were not supported by competent, substantial evidence. Third, Appellants contend that section 38-79 (132) of the Orange County Code is unconstitutional because it arbitrarily and unreasonably restricts the use of their private property.

Orange County counters that the Special Magistrate's findings were based upon facts concerning new and additional code violations that occurred in 2015 and that are not barred by res judicata; that the findings were based on competent, substantial evidence; and that the constitutional challenge is improperly pled or raised on appeal such that it should be dismissed by this Court.

We agree with Orange County that the Special Magistrate's findings were based upon properly considered, competent, and substantial evidence that was not barred by res judicata, and that ultimately, the Special Magistrate's judgment should be upheld. We disagree with the County, however, as to whether Appellants' constitutional claim was properly raised in this Court on appeal. As explained below, we hold that Appellants' constitutional claim was properly raised, but that Appellants' constitutional challenge fails on the merits.

Standard of Review

Our review of the subject final administrative order is limited to the record created before the Special Magistrate and the following three considerations: (1) whether Appellants received procedural due process; (2) whether the special magistrate observed the essential requirements of the law; and (3) whether competent, substantial evidence supports the special magistrate's findings and judgment. § 162.11, Fla. Stat. (2015); *Broward County v. G.B.V. Intern., Ltd.*, 787 So. 2d 838, 843 (Fla. 2001).

Analysis

I. Res Judicata

Appellants maintain that, because evidence of previously alleged violations was presented to the Special Magistrate at the subject hearing, such was "inadmissible, irrelevant, and barred by res judicata." According to Appellants, any facts pertaining to events that allegedly occurred on their property prior to the 2013 case should not have been considered and any such consideration somehow warrants reversal of the Special Magistrate's decision.

"Res judicata bars relitigation of claims that were or should have been raised in the original action." *Hicks v. Hoagland*, 953 So. 2d 695, 698 (Fla. 5th DCA 2007). Generally, once a petitioner has had his day in court regarding an issue, a subsequent court will not reexamine such issue except for appeals of right. *Id.* "'For res judicata to apply, there must be four identities: (1) identity of thing sued for, (2) identity of cause of action, (3) identity of persons and parties to the action, and (4) identity of quality or capacity of persons for or against whom the claim is made.'" *Id.* (quoting *Burns v. DaimlerChrysler Corp.*, 914 So. 2d 451, 453 (Fla. 4th DCA 2005)). However, "the principles of res judicata do not always neatly fit within the scope of administrative proceedings" because they usually involve dynamic and evolving factual

scenarios rendering res judicata often inapplicable. *Thomson v. Dep't of Envtl. Regulation*, 511 So. 2d 989, 991 (Fla. 1987). Hence, "the doctrine of res judicata or estoppel by judgment is one which should be applied in zoning cases with great caution." *City of Miami Beach v. Prevatt*, 97 So. 2d 473, 477 (Fla. 1957). As the *Thomson* Court explained:

> "Courts normally apply law to past facts which remain static-where res judicata operates at its best-but agencies often work with fluid facts and shifting policies. The regularized procedure of courts conduces to application of the doctrine of res judicata; administrative procedures are often summary, parties are sometimes unrepresented by counsel, and permitting a second consideration of the same question may frequently be supported by other similar reasons which are inapplicable to judicial proceedings. The finality of unappealed judgments of courts is ordinarily well understood in advance, whereas statutory provisions often implicitly deny finality or fail to make clear whether or when administrative action should be considered binding."

511 So. 2d at 991 (quoting K. Davis, Administrative Law Treatise, § 18.01, at 545-46 (1958)).

Just as the *Thomson* Court predicted, the circumstances in this case warranted the Special Magistrate's consideration of any and all evidence relevant to the alleged July 2015 code violation, even if it concerned events that occurred prior to the 2013 proceeding. *Id.* Although the record before the Special Magistrate included testimony and literature that discussed pre-2013 conduct which may or may not have been addressed during the prior proceedings, it also included related new facts and new conduct. Any evidence pertaining to events that occurred on the property in the past gave context to the Code Enforcement Division's involvement and was relevant to the Special Magistrate's determination of the amount to fine Appellants after finding code violations.[3] *See* § 11-37(b), Orange County Code.[4]

[3] Even if evidence pertaining to events that occurred prior to the 2013 proceeding were barred by res judicata, we conclude that there is substantial and competent evidence to support the Special Magistrate's findings without such evidence.

[4] Section 11-37(b) provides in pertinent part:

> A fine imposed pursuant to this section shall not exceed one thousand dollars ($1,000.00) per day for a first violation and shall not exceed five thousand dollars ($5,000.00) per day for a repeat violation and, in addition, the code enforcement board or special master may impose additional fines to cover all costs incurred by the county in enforcing its codes and include all costs of repairs

II. Sufficiency of the Evidence

Next, Appellants maintain that the Special Magistrate's findings were not based on substantial and competent evidence. Substantial, competent evidence is "evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred" and that "a reasonable mind would accept as adequate to support a conclusion." *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). According to Appellants, the evidence presented to the Special Magistrate was based upon public opinion and speculation from surrounding property owners regarding what Appellants were doing on their property, rather than upon substantial and competent evidence of their activities on the property. Appellants rely upon the Fourth District Court of Appeal's opinion in *City of Apopka v. Orange County*, 299 So. 2d 657 (1974) to support this assertion.

In *City of Apopka*, the District Court of Appeal reversed the circuit court's denial of certiorari for review of the denial of an application for a special exception to construct an airport because, in doing so, the Board of County Commissioners relied solely upon the "laymen's opinions" of neighborhood residents that were "unsubstantiated by any competent facts" rather than upon factual evidence regarding "how the construction and operation of the proposed airport would affect the public." *Id.* at 660. Appellants maintain that, like the Apopka residents, their neighbors' testimony included mere complaints about the noise level and dirt allegedly coming from the property rather than concrete facts about what was actually taking place. According to Appellants, they have a large family and a large group of friends who gather in an

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pursuant to subsection 11-37(a). However, if the code enforcement board or special master finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed fifteen thousand dollars ($15,000.00) per violation. In determining the amount of the fine, if any, the code enforcement board or special master shall consider the following factors:

(1) The gravity of the violation;
(2) Any actions taken by the violator to correct the violation; and
(3) Any previous violations committed by the violator.

organized fashion on the large parcel of property regularly throughout the summer. They urge us to conclude that the neighbors' comments and observations are mere speculation and insufficient to support the Special Magistrate's findings of code violations.

Although Appellants are correct that "generalized statements" or opinions regarding land use should be disregarded, "relevant fact-based statements" should be considered. *City of Hialeah Gardens v. Miami-Dade Charter Foundation, Inc.*, 857 So. 2d 202, 204 (Fla. 3d DCA 2003). Here, Appellants fail to account for the substantial testimony regarding what was actually observed on the property in 2015; what was advertised to be occurring on the property in 2015; and what was reflected in the newspaper regarding the events that were to occur on the property in 2015. The Special Magistrate heard testimony from Chief Inspector Fasnacht, who personally visited the property and observed a check-in table; children and adults wearing Edgerrin James Foundation t-shirts; approximately twenty vehicles parked on the property; and adult-supervised sporting drills underway. Mr. Fasnacht also spoke with Sandra Henry, who was not a James family member and who indicated that children from her non-profit organization were attending the festivities over the summer months of 2015 at the James property. The online advertisement corroborated Mr. Fasnacht's testimony, as did the 2015 newspaper article that described the festivities as a free summer camp open to any child, not just Appellants' family and friends.

Moreover, the Special Magistrate heard testimony from neighbors who claimed to hear whistles, chanting, and screaming on the property. Ms. Goodarzi testified that she had a full view of the property from her home and observed that the activities occurring on the property were organized and reflective of a summer camp. The evidence collectively supports the Special Magistrate's finding that there was a summer camp or similarly inappropriate outdoor recreational use of Appellants' property. Regardless of the identity of the individuals on the

property—whether they were family members, friends, or members of the general public—the evidence supports a finding of outdoor recreational use beyond ordinary, residential use.

III. Constitutional Challenge

Lastly, Appellants contend that section 38-79 (132) of the Orange County Code is so "arbitrary and unreasonable," that it deprives them of their rights to free use of their private property. The County does not address the merits of Appellants' constitutional challenge, but rather, maintains that we cannot address the merits of the claim because "a petition seeking certiorari review is not the proper procedural vehicle to challenge the constitutionality of a statute or ordinance." *Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So. 2d 195, 199 (Fla. 2003). The County's reliance upon *Omnipoint Holdings*, however, is misplaced. That case concerned second-tier certiorari review and not a circuit court's jurisdiction over constitutional claims asserted for the first time during an appeal as of right of an administrative decision. *Id.* Indeed, contrary to the County's assertions, "constitutional claims . . . are properly cognizable on an appeal to the circuit court from a final order of an enforcement board taken pursuant to Section 162.11, Florida Statutes." *Holiday Isle Resort & Marina Assoc. v. Monroe County*, 582 So. 2d 721, 721-22 (Fla. 3d DCA 1991). See also *Wilson v. County of Orange*, 881 So. 2d 625, 632 (Fla. 5th DCA 2004) (citing *Holiday Isle Resort & Marina Associates*, to support the proposition that, "[s]ection 162.11, Florida Statutes, provides for an appeal of CEB [Code Enforcement Board] final orders, which has been held to be the proper forum to address constitutional claims.").

Turning to the merits of Appellants' constitutional claim, "[i]t is fundamental that one may not be deprived of his property without due process of law, but it is also well established that he may be restricted in the use of it when that is necessary to the common good." *City of*

Miami Beach v. Ocean & Inland Co., 3 So. 2d 364, 366 (Fla. 1941). "Such restrictions must find their basis in the safety, health, morals or general welfare of the community." *Id.* "The question is only whether a rational relationship exists between the ordinance and a conceivable legitimate governmental objective. If the question is at least debatable, there is no substantive due process violation." *WCI Communities, Inc. v. City of Coral Springs*, 885 So. 2d 912, 914 (Fla. 4th DCA 2004) (internal citation omitted). According to Appellants, section 38-79 (132) of the Orange County Code restricting outdoor recreational use on their property does not concern the safety, health, morals, or general welfare of the community and thus, is unconstitutional. We disagree.

"It is well-settled that permissible bases for land use restrictions include concern about the effect of the proposed development on traffic, on congestion, on surrounding property values, on demand for city services, and on other aspects of the general welfare." *Id.* at 915. Outdoor recreational activities surely affect traffic, congestion, and property values in the area surrounding their location. Outdoor recreational activities bring many people, which in turn brings increased traffic and congestion, along with disturbances to the aesthetic outlook of the surrounding community and its maintenance. Here, Ms. Patterson, a neighbor and real estate agent, testified about the ramifications that the outdoor recreational use of Appellants' property had on the neighboring property values and on the obligations of sellers to prospective purchasers. Other witnesses testified about the dirt and noise emanating from Appellants' property as well as the heavy congestion that the events on the property caused. Contrary to Appellants' assertions, their property was subject only to reasonable restrictions that did not deprive them of their constitutionally guaranteed property rights.

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Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Special Magistrate's "Findings of Fact, Conclusion of Law and Order," entered on July 31, 2015, is **AFFIRMED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 22nd day of February, 2016.

/S/
GREG A. TYNAN
Presiding Circuit Judge

JORDAN and TRAVER, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to Special Magistrate, Stephanie Melia, at Orange County Administration Center, 201 South Rosalind Avenue, Orlando, Florida 32802; Mark E. NeJame, Esq., *Counsel for Appellants*, at 189 South Orange Avenue, Suite 1800, Orlando, Florida 32801; and Andrea Azuka Adibe, Esq., *Counsel for Appellee*, at Orange County Administrative Center, 201 South Rosalind Avenue, Third Floor, P.O. Box 1393, Orlando, Florida, 32802-1393, on this 22nd day of February, 2016.

/S/
Judicial Assistant