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HUMAN RELATIONS DIVISION

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DIVISION OF
ADMINISTRATIVE
HEARINGS

TELEPHONE: 727 893-7345 FAX: 727 892-5064

May 27, 2005

Judge Susan B. Harrell
Division of Administrative Hearings
The Desoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

RE: ROBIN MOFFITT v. STERLING HEALTHCARE, INC. f/k/a PRIME HEALTH
SERVICES and GRACE NURSING CENTER, INC.
Case Number: PC2001088/15GA10089/
DOAH Case No: 04-2302

LPS
CLOS

Dear Judge Harrell:

Enclosed is a copy of the Petition for Writ of Certiorari that was filed by the Respondent in the above referenced matter. If you require any additional information, please do not hesitate to contact me at either (727) 893-7358 or at 893-7345.

Sincerely,

Stephanie N. Rugg
Stephanie N. Rugg
Human Relations Hearing Clerk

enclosure
cc: file

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

FILED
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DIVISION OF
ADMINISTRATIVE
PETITIONS

STERLING HEALTHCARE, INC.,
f/k/a PRIME HEALTH SERVICES
AND GRACEWOOD NURSING
CENTER, INC.,

Petitioner,

vs.

ROBIN MOFFITT,

Respondent.

Cir. Ct. Case No.:

No: PC2001088

EEOC No. 15GA10089

DOAH No. 04-2302

PETITION FOR WRIT OF CERTIORARI

Petitioner, STERLING HEALTHCARE, INC., f/k/a PRIME HEALTH SERVICES AND GRACEWOOD NURSING CENTER, INC. (“STERLING”), by and through undersigned counsel, petitions this Court to issue a Writ of Certiorari to quash the order of the City of St. Petersburg Human Relations Review Board (“BOARD”) dated April 22, 2005. By that order, the BOARD reversed and remanded the Administrative Law Judge’s Summary Recommended Order of Dismissal. For the reasons that follow, STERLING requests this Court quash the BOARD’S order.

A. JURISDICTION

Jurisdiction is conferred upon this Court to entertain this petition pursuant to Rule 9.030(c)(2), Rule 9.100(c)(2), and Rule 9.100(f)(2) of the Florida Rules of Appellate Procedure and Article V, Section 5(b) of the Florida Constitution (1968). Rule 9.030(c)(2) provides: “The certiorari jurisdiction of circuit courts may be sought to review non-final orders of lower tribunals other than as prescribed by rule 9.130.” Rule 9.100(c)(2) provides that a petition to review quasi-judicial action of agencies, boards, and commissions of local government, which action is not directly appealable under any other provision of general law is subject to review by certiorari. The Florida Constitution also provides a basis for review. Article V, Section 5(b) states:

The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition, and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action prescribed by general law.

It is a well established principle of Florida law that certiorari is the traditional proceeding by which to obtain review of orders, judgments, and decrees of an inferior tribunal, including an administrative board such as a county civil service board. *Powell v. Civil Service Board of Escambia County*, 154 So.2d 917 (Fla. 1st DCA

1963). Certiorari is a discretionary writ bringing up for review by an appellate court the record of an inferior tribunal or agency in a judicial or quasi-judicial proceeding and is available to obtain review in situations when no other method of appeal is available. *DeGroot v. Sheffield*, 95 So.2d 912 (Fla. 1957); *See also Dade County v. Carmichael*, 165 So.2d 227 (Fla. 3d DCA 1964); *Bloomfield v. Mayo*, 119 So.2d 417 (Fla. 1st DCA 1960)(holding that common-law certiorari is limited only to review of judicial or quasi-judicial orders of administrative boards, bodies, or officers). Certiorari is the only proper remedy to review actions of courts, boards, or officers exercising judicial or quasi-judicial functions. *Florida Motor Lines v. Railroad Commissioners*, 129 So. 876 (Fla. 1930).

B. STATEMENT OF THE CASE AND FACTS

The underlying action involves allegations by Respondent, Robin Moffitt (MOFFITT) against STERLING pursuant to Title VII of the Civil Rights Act (1964), Chapter 70 of the Pinellas County Code of Ordinances, and Section 15-45 of the St. Petersburg City Code for unlawful employment practices, including sexual harassment and retaliation based on an alleged incident that occurred in February of 2001. (A.167-170). A Complaint was filed by MOFFITT against STERLING with the City of St. Petersburg Community Affairs Department Human Relations Division on May 18, 2004. (A.167-170).

The Complaint was assigned to the Administrative Law Judge (ALJ) pursuant to a contract between Pinellas County and the Division of Administrative Hearings (DOAH). (A.41, 102-104). Although the alleged violations fall under Chapter 70 of the Pinellas County Code, the procedures for the administrative hearing are those contained in Section 15-45 of the St. Petersburg City Code. (A. 102). STERLING filed a Motion for Summary Final Order on August 16, 2004 based on the fact that MOFFITT'S claims against STERLING are time barred by the applicable limitations periods set forth in Chapter 70 of the Pinellas County Code of Ordinances, Title VII of the Civil Rights Act (1964), and Chapter 15, Human Rights, of the City of St. Petersburg's municipal ordinances. (A. 105-111). Because the alleged sexual harassment and retaliatory conduct took place in February of 2001, but the Complaint in this matter was not filed until May 18, 2004, more than three years after the alleged wrongful conduct, STERLING argued that MOFFITT'S Complaint far exceeds all limitations periods found in the city, county, and federal codes and laws upon which MOFFITT'S claim is based. (A. 105-111). STERLING filed an Amended Motion for Summary Final Order on August 16, 2004. (A. 95-101). The City of St. Petersburg filed a Response to STERLING'S Motion for Summary Final Order August 27, 2004. (A. 92-94). STERLING filed its Reply to the City of St. Petersburg's Response to STERLING'S Motion for Summary Final Order on August

30, 2004. (A. 63-91).

On September 21, 2004, STERLING'S Motion for Summary Final Order came before and was considered by the ALJ. (A.2). The ALJ issued a Summary Recommended Order of Dismissal on September 21, 2004, recommending that the City of St. Petersburg enter a Final Order dismissing the Complaint against Respondents filed on May 18, 2004 and provided detailed factual and legal findings to support its conclusion that MOFFITT'S Complaint is time-barred. (A.2, 50-62). MOFFITT filed "exceptions" to the Recommended Order of the ALJ to the BOARD on October 19, 2004, and the matter was subsequently set for hearing before the BOARD. (A. 49).

On March 4, 2005, the hearing was conducted before the BOARD in this matter to hear the Respondent's exceptions to the ALJ'S Summary Recommended Order of Dismissal. (A.2, 4-46). The BOARD did not conduct an evidentiary hearing. (A. 8). At the hearing, MOFFITT did not present any specific exceptions to the ALJ'S recommended order. (A. 10-13).¹ MOFFITT did not address any exceptions to the ALJ'S recommended order, and provided no basis for the BOARD to overrule the ALJ'S recommended order. (A. 4-46).

Based on the transcript of the hearing, it is apparent that the BOARD members

¹ The purpose of the exceptions is to find fault with the recommended order.

were unclear as to what specific issue the hearing was to address, its authority to make a decision and the reasons for the ALJ'S recommended order. On one occasion, a BOARD member stated, "Well, the judge did not get into the merits of the case, but reading the case, the merits need to be addressed. The only way that can be done is, we have to reverse the judge's decision so that the case can be heard." (A. 25). The BOARD'S own legal advisor, Assistant City Attorney, Jeannine Williams, even pointed out to the BOARD before they made the decision to reverse the ALJ'S recommended order:

I just want to make a point that the basis of the judge's recommended order is not a 15-versus-30-day thing. I don't know if some of the members of the board are quite understanding that. The basis of the order of the judge was based on the time guidelines of the investigation. (A. 27).

It is evident from the record that the BOARD was confused and thought the issue was whether MOFFITT was or may have been 15 days late on another deadline. However, although that issue was briefly addressed by STERLING, that was not the issue before the BOARD, and the 15-day time discrepancy had nothing to do with the ALJ's recommended order to dismiss the Complaint. (A. 50-62). The ALJ based his decision on the fact that there were four separate failures to comply with express deadlines, resulting in this case arriving at DOAH more than three years after the initial Complaint was filed. (A. 57-58). The ALJ specifically found that the three-

year delay was not a minor defect or a “reasonable time” pursuant to Section 15-4(c) of the City’s own Code and the plain and ordinary meaning of that phrase as commonly understood. (A. 57-58).

Nevertheless, the BOARD reversed and remanded the ALJ’S Summary Recommended Order of Dismissal. (A.1-3).

C. NATURE OF RELIEF SOUGHT

Petitioner seeks the issuance of a writ of common law certiorari to quash the BOARD’S order reversing and remanding the Administrative Law Judge’s Summary Recommended Order of Dismissal because the BOARD departed from the essential requirements of the law in that its Final Order was not supported by competent and substantial evidence. *See City of Deerfield Beach v. Vaillant*, 419 So.2d 624 (Fla. 1982); *Keystone Civic Association, Inc. v. Hillsborough County, Florida*, 2005 WL 1095344 (13th Jud. Cir. 2005).

D. ARGUMENT

As stated within section “A” of this Petition, this Court has certiorari jurisdiction to review quasi-judicial action of agencies, boards, and commissions of local government, which action is not directly appealable under any other provision of general law but may be subject to review by certiorari. Fla. R. App. P. 9.100(c)(2). Common law certiorari is the proper remedy to correct a quasi-judicial action of a

board if the board's decision departs from the essential requirements of the law resulting in a material injury that cannot be corrected on post-judgment appeal. A certiorari petition must satisfy three requirements before relief can be granted from an erroneous order. "A petitioner must establish (1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the trial, (3) that cannot be corrected on post-judgment appeal." *Fassy v. Crowley*, 884 So.2d 359, 363 (Fla. 2d DCA 2004), *citing Parkway Bank v. Fort Myers Armature Works, Inc.*, 658 So.2d 646, 648 (Fla. 2d DCA 1995). The last two prongs of the test are jurisdictional, and this Court must conduct a jurisdictional analysis before it is empowered to determine whether the trial court departed from the essential requirements of the law. *Id.* at 649. For that reason, the last two prongs are addressed first, followed by a showing that the BOARD departed from the essential requirements of the law.

I. There is Material Injury Which Can Not Be Remedied by a Post-Judgment Appeal.

Remedy by appeal in this circumstance is inadequate because the decision of the BOARD is not directly appealable under the Florida Rules of Appellate Procedure or any other provision of general law. Fla. R. App. P. 9.100(c)(2) and 9.030. Certiorari is the only proper remedy to review actions of courts, boards, or officers

exercising judicial or quasi-judicial functions. *Florida Motor Lines v. Railroad Commissioners*, 129 So. 876 (Fla. 1930). In this case, without this Court's intervention by writ of certiorari, STERLING has no other method available for obtaining review of the BOARD'S decision. In addition, STERLING has suffered material injury which can not be remedied by a post-judgment appeal.

Once this Court determines that the jurisdictional prongs of the certiorari standard discussed above have been met, the Court must then evaluate the remaining prong of the certiorari standard: whether the error committed by the BOARD constitutes a departure from the essential requirements of the law.

II. The BOARD'S Order Departs from the Essential Requirements of the Law.

Certiorari is limited to those instances in which the lower court did not afford procedural due process or departed from the essential requirements of the law. *Allstate Insurance Co. v. Kaklamanos*, 843 So.2d 855, 889 (Fla. 2003); *Housing Authority of the City of Tampa v. Burton*, 874 So.2d 6, 7 (Fla. 2d DCA 2004). For the Court to find a departure from the essential requirements of the law, there must be a violation of a clearly established principle of law resulting in a miscarriage of justice. *Combs v. State*, 436 So.2d 93, 95-96 (Fla. 1983). A failure to observe the essential requirements of the law has been held synonymous with a failure to apply "the correct

law.” *Haines City Cmty. Dev. v. Heggs*, 658 So.2d 523, 530 (Fla. 1995).

When considering a Petition for Writ of Certiorari, the reviewing court merely examines the record made below to determine whether the lower tribunal had before it competent substantial evidence to support its findings and judgment which also must accord with the essential requirements of the law. *DeGroot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957). “Substantial evidence” is such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. *Id.* The Supreme Court of Florida has stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. *Id.* The Court held it is of the view that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. *Id.* To this extent, the “substantial” evidence should also be “competent”. *Id.*

The BOARD departed from the essential requirements of law because it reversed and remanded the ALJ’S summary recommended order without any factual or legal basis to do so. (A. 1-3). The BOARD determined that it was reversing and remanding this case because there was reasonable cause to believe that the discrimination alleged by MOFFITT did in fact happen, despite the fact that the BOARD was not permitted to address the merits of the case at the hearing. (A.30).

The BOARD was charged only with addressing a procedural dismissal, and the BOARD failed to do so. (A. 30, 1-3). By addressing the merits of the case, rather than the procedural aspect of this case, the BOARD failed to apply the correct law. Such failure to apply the correct law amounted to a departure from the essential requirements of the law. As such, the BOARD'S decision cannot stand and this Court should grant STERLING'S Petition for Writ of Certiorari.

The BOARD never made a determination that it did not agree with the ALJ'S decision that the procedural defects should have resulted in dismissal of this case. (A. 1-3). In fact, upon review of the hearing transcript, it appears that the BOARD either did not read, or simply did not understand the ALJ'S Summary Recommended Order. (A. 4-45, 50-62). On one occasion, a BOARD member stated, "Well, the judge did not get into the merits of the case, but reading the case, the merits need to be addressed. The only way that can be done is, we have to reverse the judge's decision so that the case can be heard." (A. 25). The BOARD'S own legal advisor, Assistant City Attorney, Jeannine Williams, even pointed out to the BOARD before they made the decision to reverse the ALJ'S recommended order:

I just want to make a point that the basis of the judge's recommended order is not a 15-versus-30-day thing. I don't know if some of the members of the board are quite understanding that. The basis of the order of the judge was based on the time guidelines of the investigation. (A. 27).

It is evident from the record that the BOARD was confused and thought the issue was whether MOFFITT was or may have been 15 days late on another deadline. However, although that issue was briefly addressed by STERLING, that was not the issue before the BOARD, and the 15-day time discrepancy had nothing to do with the ALJ's recommended order to dismiss the Complaint. (A. 50-62). The ALJ based his decision on the fact that there were four separate failures to comply with express deadlines, resulting in this case arriving at DOAH more than three years after the initial Complaint was filed. (A. 57-58). The ALJ specifically found that the three-year delay was not a minor defect or a "reasonable time" pursuant to Section 15-4(c) of the City's own Code and the plain and ordinary meaning of that phrase as commonly understood. (A. 57-58). The BOARD'S reversal was not based upon competent substantial evidence, and therefore it departed from the essential requirements of the law.

Quasi-judicial boards do not have the power to ignore, invalidate or declare unenforceable the legislated criteria they utilize in making their quasi-judicial determinations. *Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So.2d 375, 377 (Fla. 3d DCA 2003). Quasi-judicial review boards cannot make decisions based on anything but the local criteria enacted to govern their actions. *Id.* The Complaint filed by MOFFITT was required to be filed within two years of the alleged incident

and it was not. It is undisputed that the alleged incident occurred in February of 2001. (A. 167-170). It is also undisputed that MOFFITT'S Complaint was not filed until May 18, 2004. (A. 167-170). The ALJ agreed with STERLING and found that three years was not a "reasonable time" for investigation under the plain and ordinary meaning of that phrase. (A. 58). The BOARD failed to show and did not even contend that three years was a "reasonable time" for investigation. (A. 1-3). The BOARD departed from the essential requirements of the law, and its decision was not based on competent substantial evidence. As such, this Court is respectfully requested to grant STERLING'S Petition for Writ of Certiorari.

When an agency's action is founded upon an erroneous interpretation of the law, the court may set that action aside. *International Truck and Engine Corporation v. Capital Truck, Inc.*, 872 So.2d 372, 374 (Fla. 1st DCA 2004). At the hearing before the BOARD, a BOARD member stated:

I so move that we reverse the decision of the ALJ, and the reason is because this case is not being prosecuted as a municipal ordinance violation case. This case is being processed as a complaint of discrimination brought forth under Title VII, Pinellas County Code Chapter 70 and St. Petersburg City Code 15. Therefore, Section 15-49 does not require dismissal of this action.

(A. 35-36). However, that directly contradicts the City's position taken earlier in its Response to STERLING'S Motion for Final Summary Order where it conceded that

the time frames in Section 15-45 of the St. Petersburg City Code were not met. (A. 92-95, 56). As to Section 15-49 of the St. Petersburg City Code, the City's response states:

This case is not being prosecuted as a municipal ordinance violation offense. This case is being processed as a complaint of discrimination brought under Title VII, Pinellas County Code Chapter 70 and St. Petersburg City Code Chapter 15. Therefore, Section 15-49 does not apply to this case and does not require dismissal of this action.

(A. 93-94).

The St. Petersburg City Code sets forth the procedure for processing charges of unlawful discriminatory practices and provides in relevant part:

(a) Filing of Charge. Any person who has been aggrieved by an unlawful discriminatory practice and who wishes to proceed under the provisions of this section must file with the Human Relations Officer, in writing and under oath, a charge of unlawful discriminatory practice within 60 days after the alleged unlawful discriminatory practice occurs.

(b) Processing of the charge, investigation, conciliation and issuance of complaint or notice of dismissal. Within four working days of receipt of an unlawful discriminatory practice charge, the Human Relations Officer shall serve upon the individual charged with a violation, hereinafter referred to as the respondent, a copy of the charge and a written resume setting forth the rights of the parties including but not limited to the right of a fair and full hearing on the matter.

(1) Upon receipt of the charge, the Human Relations Officer shall commence an investigation and the investigation of the charge shall be completed within 60 days.

(2) The respondent may make a written or oral response to the charge at

any time during the investigation.

(A. 156-160). As reiterated by the ALJ, MOFFITT'S March 1, 2001 initial filing with the City of St. Petersburg was clearly within the 60 days of the alleged discriminatory acts. (A. 54-55). However, Section 15-45(b)(1) of the City Code provides that the City's human relations officer must conduct and complete an investigation of the charge within 60 days of the initial filing. In the instant case, the Human Relations officer signed the investigative report on June 2, 2003, two years and three months after the initial filing. (A. 129-138). Finally, the Complaint was filed on May 18, 2004, nearly one year after the investigative report was issued and more than three years after the filing of the initial charges by MOFFITT. (A. 167-170). Section 15-49 of the St. Petersburg City Code also provides for limitations of actions under Article II, Chapter 15 of the City Code as follows:

Section 1-8 of this Code shall not apply to the provisions of this article. The prosecution of any offense committed against or in violation of any provisions of this article shall be commenced within **two years** after the offense shall have been committed. (Emphasis added).

(A. 50-62, 156-160).

The St. Petersburg City Code clearly requires dismissal of this action. Simply stated, MOFFITT'S claims against STERLING are time barred by the applicable limitations periods set forth in Chapter 70 of the Pinellas County Code of Ordinances, Title VII

of the Civil Rights Act (1964), and Chapter 15, Human Rights, of the City of St. Petersburg's municipal ordinances. The ALJ agreed with STERLING that MOFFITT'S claims were time barred. (A. 50-62). The BOARD completely failed to show why MOFFITT'S claims were not time barred and there is no competent substantial evidence to support the BOARD'S decision to reverse and remand the ALJ'S Summary Recommended Order. Because the BOARD'S action was founded upon an erroneous interpretation of law, this Court should set aside that action and grant STERLING'S Petition for Writ of Certiorari.

The BOARD departed from the essential requirements of law in failing to even address the reason for the ALJ'S Recommended Order of Dismissal. The BOARD did not consider the procedural aspect of this case and did not address or even acknowledge the two year limitations period. The BOARD'S error rises to a departure from the essential requirements of the law. Any result other than dismissal of the action as recommended by the ALJ constitutes a departure from the essential requirements of the law.

E. CONCLUSION


The City of St. Petersburg Human Relations Review Board departed from the essential requirements of the law in reversing and remanding the Administrative Law Judge's Summary Recommended Order of Dismissal. Accordingly, this Court is

respectfully requested to grant STERLING'S Petition for Writ of Certiorari and quash the BOARD'S order.

CERTIFICATE OF SERVICE

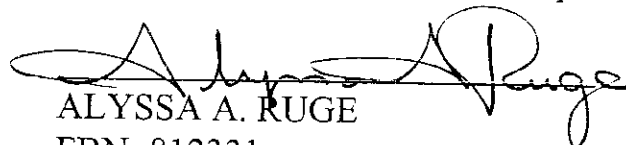
WE HEREBY CERTIFY that a true and correct copy of the foregoing was provided by courier hand-delivery on this 23rd day of May, 2005 to: Robin Moffitt, 2009 San Sebastian Way South, Clearwater, Florida 33763, and Jeannine S. Williams, Esq., 1 Fourth Street North, 10th Floor, St. Petersburg, Florida 33701. A copy of the Petition has been furnished to Susan G. Zemankiewicz, Human Relations Investigative Supervisor pursuant to Florida Rule of Appellate Procedure 9.100(c)(4).

COLE, SCOTT & KISSANE, P.A.
Counsel for Petitioner(s)
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By: 
SCOTT H. JACKMAN
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ALYSSA A. RUGE
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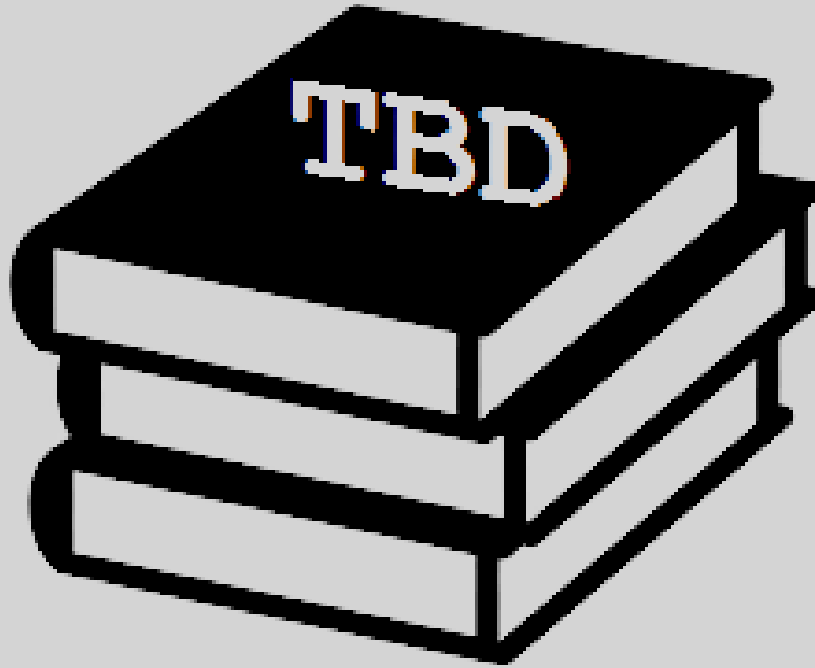
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ALYSSA A. RUGE
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