

IN THE SUPREME COURT OF FLORIDA

CASE NO. 67,092

FILED
JUL 22 1985
CLERK, SUPREME COURT

By _____
Clerk of the Court

STEPHEN B. IRVINE,
Plaintiff, Petitioner

-vs-

DUVAL COUNTY PLANNING COMMISSION
and the CITY OF JACKSONVILLE,

Defendants, Respondents.

* * *

RESPONDENTS' BRIEF ON JURISDICTION

* * *

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Statement of the Case

Petitioner's "Statement of the Case" is inappropriate since it does not limit itself to procedural history of the case. No conflict exists for procedural history, see A-1,2. The symbol "A" refers to Petitioner's Appendix.

Statement of the Facts

Respondent adopts by reference the factual findings of the District Court of Appeal, First District (A - 1 through 9).

Summary of Argument

No conflict exists by and between the opinion of the District Court of Appeal, First District and that of cases cited by Petitioner.

Argument

THIS COURT HAS NO JURISDICTION BECAUSE THE
OPINION OF THE FIRST DISTRICT DOES NOT CONFLICT
WITH OTHER OPINIONS OF THIS COURT OR THAT OF
OTHER COURTS

Common law certiorari is a common-law remedy which issues in the sound discretion of the court to cause the entire record of an inferior tribunal to be brought up in order that it may be determined from the face of that record whether the inferior tribunal has exceeded its jurisdiction or has not proceeded according to the essential requirements of law. City of Lakeland v. Florida Southern College, 405 So.2d 745 (Fla. 2d DCA 1981). Here, there was no question of the jurisdiction of the Circuit Court, so we may be confined to the question of whether the Circuit Court failed to observe the essential requirements of law.

"Failure to observe the essential requirements of law means failure to accord due process of law within the contemplation of the Constitution, or the commission of an error so fundamental in character as to fatally infect the judgment and render it void. State v. Smith, 118 So.2d 792 (Fla. 1st DCA 1960). This is the recognized rule in the state of Florida.

In this case, the Circuit Court had to render its decision on the petition for writ of common-law certiorari based upon the record before it. Petitioner attempted to bring before the court below, on oral argument, a tape recording which had not been made a part of the record, which was not a part of the records of the Commission, and which Respondents had moved to quash (A-1). It was the responsibility of Petitioner to provide a transcript of the proceedings if that was his desire. The rules of the Commission required

only that minutes be made of the proceedings before it, and this was done. The court based its decision upon the record before it in the minutes of the meeting plus the order of the Commission and determined that the Commission did not depart from the essential requirements of law. Now, this Court must make its decision based upon the record before it and, again, there is nothing in the record to signal a departure from the essential requirements of law.

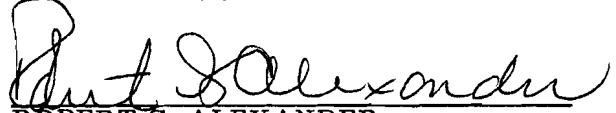
Petitioner's reliance on Cherokee Crushed Stone, Inc. v. City of Miramar, 421 So.2d 684 (Fla. 4th DCA 1982) for the proposition that the Circuit Court should have made a "determination of whether the agency 'supported its findings' by substantial competent evidence" is misplaced. On page 686 of that opinion, the court had taken the view that the circuit court provided an appeal of administrative action, which further provided them with the opportunity to consider their own action as a review by certiorari. City of Deerfield Beach v. Vaillant, 419 So.2d 624 (Fla. 1982) and Tomeu v. Palm Beach County, 430 So.2d 601 (Fla. 4th DCA 1983) also relied upon the proposition that the circuit court sat in review by appeal rather than by certiorari on the administrative action. In fact, in Tomeu, supra, at 603, the court stated that in its certiorari capacity it was not its "function to determine whether the county commission decision is supported by substantial competent evidence." Also, it must be considered that the court there was discussing, not common-law certiorari, but the statutory writ of certiorari.

The lower tribunal appellate court found that there had been no departure from the "essential elements of law" (A-4).

Conclusion

No conflict exists and, accordingly, no discretionary jurisdiction should be invoked.

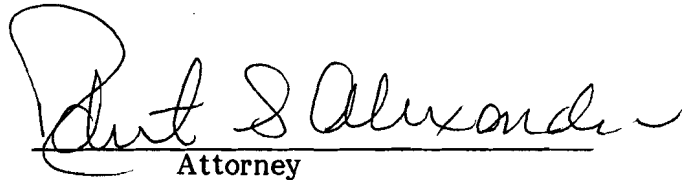
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CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been furnished to Barry A. Bobek, P.A.,
503 East Monroe Street, Jacksonville, FL 32202 and Stephen A. Hould, P.A., 220 East
Forsyth Street, Jacksonville, FL 32202 by U.S. Mail, this 19th day of July, 1985.



Attorney