IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO. 95,217

CHARLES DUSSEAU, ALBERT ARMADA, JUNE BURKE, JOSEPH BURKE, CHRISTINE HARRIS and BURTON HARRIS,

Petitioners,

v.

METROPOLITAN DADE COUNTY and UNIVERSITY BAPTIST CHURCH, INC.,

Respondents.

CORRECTED BRIEF ON JURISDICTION OF RESPONDENT UNIVERSITY BAPTIST CHURCH, INC.

ON DISCRETIONARY REVIEW FROM THE
THIRD DISTRICT COURT OF APPEAL

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CERTIFICATE OF TYPE SIZE AND STYLE

The type size and style used in this brief is "CG Times," 14 point.

INTRODUCTION

In an unexceptional decision that faithfully applies this Court's decision in *Haines City Community Development v. Heggs,* 658 So. 2d 523 (Fla. 1995), the Third District quashed a wayward decision of the circuit court which overstepped the carefully-drawn bounds of first-level certiorari review. The decision of the Third District, attached as an appendix, evinces no decisional conflict with pronouncements of the Court with respect to second-level certiorari review.

Because this Court presently is reviewing a decision of the Fourth District in *City of Dania v. Florida Power & Light Company,* 718 So. 2d 813 (Fla. 4th DCA 1998), *review granted,* Case No. 93,940 (Fla. Dec. 29, 1998), petitioners are attempting to shoehorn their application into the pending review proceeding in that case. This artifice is doomed to failure. Regardless of how the Court might decide *City of Dania*, a circuit court's decision can never be immune from second-level certiorari in the district court, and by any standard the utterly erroneous decision of the circuit court in this case cannot stand.

STATEMENT OF THE CASE AND FACTS

University Baptist Church (UBC) applied for a special exception to the Miami-Dade County Commission to permit the construction of a sanctuary, fellowship hall, Sunday school and administrative offices on approximately 20 acres of land owned by the church in Miami-Dade County. (App. at 1).[1] The

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[1] Improperly, petitioners have included in their appendix and cited to recitations in the *circuit court's* decision. Juris. Brief at 3. The only facts relevant to the Court's jurisdictional ruling, however, are those within the four corners of the *district court's* decision. *Reaves v. State,* 485 So. 2d 829, 830 n.3 (Fla. 1986). Consistent with *Reaves,* UBC has limited its fact statement to those facts that appear on the face of the Third District's decision.

County's zoning and planning staff found that the church project is compatible with the existing neighborhood, consistent with the County's master plan, and in compliance with the County's zoning code. *Id.* *All* County departments recommended approval of the special exception. *Id.* at 3.

UBC's presentation to the Commission explained that all reviewing county agencies had approved the application, and included

> evidence that indicated that the project complied with or exceeded the Miami-Dade County Code, was consistent with the Comprehensive Development Master Plan, and was compatible with the surrounding area. Other experts also testified in support of the project, including the project architect, an independent real estate appraiser, and a traffic engineer. Finally, UBC's pastor and other clergy also testified in support of the application.

(App. at 3).

In opposition, petitioners' counsel "stated that the neighbors are not opposed to a church, but that they just 'want a simple church.'" (App. at 3). Experts presented by petitioners, including a land planner and a traffic engineer, also testified in opposition to the project, as did individual neighbors. *Id.* at 3-4. Rejecting the opposition testimony, the Commission approved the application by a 7-2 vote and imposed 21 conditions on the approval (which UBC accepted). *Id.* at 4.

Petitioners sought certiorari review in the circuit court. (App. at 4). The circuit court, in a 2-1 ruling, reversed the Commission's approval of the UBC project. *Id.*

On second-level certiorari, the Third District held that the circuit court had reweighed the evidence in violation of the constraints imposed on an appellate court, and thereby had departed from the essential requirements of law:

> We find that the circuit court departed from the essential requirements of law when it reweighed evidence and completely ignored evidence that supported the Commission's ruling. . . . [T]he Commission's ruling was supported by competent substantial evidence — the recommendations of the Zoning and Planning Departments, and the testimony of the project architect, an independent real estate appraiser, and a traffic engineer. Accordingly, we grant the petition.

(App. at 4-5) (citations omitted).

ARGUMENT

In *Haines City,* the Court reaffirmed the second-level certiorari standard of *City of Deerfield Beach v. Vaillant,* 419 So. 2d 624 (Fla. 1982). 658 So. 2d at 529-31. It also undertook to define the contours of a departure from the essential requirements of law by addressing its decisions in *Combs v. State,* 436 So. 2d 93 (Fla. 1983), and *Education Development Center, Inc. v. West Palm Beach Zoning Board of Appeals,* 541 So. 2d 106 (Fla. 1989) (hereinafter *EDC*).

In *Combs,* the Court had endorsed the "departure from the essential requirements of law" standard for second-level certiorari, emphasizing that the district courts should exercise their discretion to grant certiorari "only when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice." 436 So. 2d at 95-96. In *EDC*, the Court had quashed a district court's reversal of a circuit court's ruling in a zoning case because, in contravention of *Vaillant*, "[t]he district court of appeal simply disagreed with the circuit court's evaluation of the evidence." 541 So. 2d at 108-09. In *Haines City*, the Court pointed out that both *EDC* and *Combs* enforce the controlling principle that "certiorari should not be used to grant a second appeal." 658 So. 2d at 526.

GREENBERG TRAURIG

The distinction between first-level and second-level certiorari review, as refined in *Haines City*, narrows the three-part standard of review applicable in the circuit courts to effectively eliminate the substantial competent evidence component in the district courts, and limit the inquiry there

> to whether the circuit court afforded procedural due process and . . . applied the correct law . . . .

658 So. 2d at 530. Even a cursory examination of the Third District's decision in this case reflects the court's utter fidelity to this limited standard of review.

The decision of the Third District reflects that the court ***did not*** reweigh the evidence to find error in the circuit court's decision, in contrast to the errant district court in *EDC*. Rather, in noting that competing evidence was presented to the Commission, the Third District held that ***the circuit court***, by reweighing the evidence, had departed from the essential requirements of law. (App. at 4-5). It is beyond dispute (as petitioners note[2]) that a circuit court on first-level certiorari review is constrained by *Haines City* to look only to whether competent evidence exists in the record to support the decision of an administrative tribunal; a circuit court may not reweigh the evidence presented to the lower tribunal. The Third District correctly held that the circuit court violated these standards by focusing on the testimony presented by the petitioners and expert witnesses, and by completely ignoring evidence that supported the administrative tribunal's ruling. (App. at 4). No decisional conflict is created by a district court's decision that ***applies*** the *Haines City* standard, in the course of determining that a circuit court has failed to adhere to the *Haines City* constraints.

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[2] Juris. Brief at 7-9.

Petitioners attempt to invoke the Court's jurisdiction by advancing two fallacious propositions. The first is that the Third District "simply disagreed" with the circuit court's evaluation of the record evidence and granted UBC a second appeal by "reconsidering *the same evidence*" which the circuit court considered.[3] This imaginative reinvention of the Third District's decision is conclusively refuted on the face of the court's opinion:

> [I]n finding that the Commission's ruling was not supported by competent substantial evidence, the circuit court primarily focused on the testimony presented by the neighbors' attorney and their expert witnesses.
>
> We find that the circuit court departed from the essential requirements of law *when it reweighed evidence and completely ignored evidence that supported the Commission's ruling* . . . .

(App. at 4-5) (citation omitted; emphasis supplied).[4] Petitioners' assertion that

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3 Juris. Brief at 7-8 (original emphasis).

4 The Third District completed its analysis by noting that the favorable recommendations of the county's professional staff, and the other evidence presented by UBC, satisfied the legal standard for competent substantial evidence. (App. at 5). No possible claim of decisional conflict can arise from that observation, for opinions of a local government's professional staff unquestionably constitute substantial competent evidence. *E.g., Metropolitan Dade County v. Fuller,* 515 So. 2d 1312, 1314 (Fla. 3d DCA 1987); *Hillsborough County Board of County Commissioners v. Longo,* 505 So. 2d 470, 471 (Fla. 2d DCA 1987). A circuit court oversteps its bounds in reweighing such evidence, however, whether the administrative tribunal has *accepted* or *rejected* the opinions of professional staff. *EDC*, 541 So. 2d at 108-09; *Metropolitan Dade County v. Section 11 Property Corp.,* 719 So. 2d 1204, 1205 (Fla. 3d DCA 1998).

the Third District somehow *reweighed* the evidence before the Commission is mere flummery.[5]

Respect for the *Haines City* limitation on second-level certiorari review was only one grounding for the Third District's decision. Its decision was also compelled by its prior *en banc* decision in *Metropolitan Dade County v. Blumenthal,* 675 So. 2d 598 (Fla. 3d DCA), *review dismissed,* 680 So. 2d 421 (Fla. 1996), where the County Commission had denied an application for rezoning which was supported by the opinions of professional staff and opposed by neighboring homeowners. On first-level certiorari review, the circuit court had quashed the Commission's denial of the rezoning based on a finding that testimony in opposition to the project was insufficient to support the denial. On review, the Third District found that the opposition evidence had provided "an eminently reasonable basis" for the Commission's ruling although the developer had also presented "perfectly reasonable arguments" that, if accepted by the Commission, would have provided a factual basis in the record for approval of the project. 675 So. 2d at 605-06.

The court thus held that the circuit court had departed from its proper role as a reviewing court.

> Could the County Commission have made a different determination on these same facts? Of course it could . . . .

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[5] In *City of Dania*, the Fourth District extensively re-examined the evidence and disagreed with the circuit court's conclusion as to whether substantial competent evidence existed. The court then held that "the circuit court appears to have substituted its evaluation of the evidence for that of the City. . . ." 718 So. 2d 817. No such re-examination of evidence occurred here. Petitioners do not suggest that a district court must stand idly by when a circuit court *reweighs* evidence submitted to an administrative tribunal.

> The point is that when the facts are such as to give the County Commission a choice between alternatives, it is up to the County Commission to make that choice — not the circuit court. The circuit court's role is restricted to ascertaining whether there is substantial competent evidence to support the decision actually made here — the disapproval of the developer's application.

675 So. 2d at 606 (citations omitted).

Citing precedent from the other district courts of appeal, *e.g., City of Fort Lauderdale v. Multidyne Medical Waste Management, Inc.,* 567 So. 2d 955 (Fla. 4th DCA 1990), *review denied,* 581 So. 2d 165 (Fla. 1991), the Third District held that its second-level certiorari jurisdiction permits correction of a circuit court's erroneous reweighing of the evidence on initial certiorari review:

> All the district courts that have addressed this scope of review issue are in accord that where the circuit court applies an incorrect legal standard and erroneously determines that a zoning decision is not supported by substantial competent evidence, or where the record is clear that the court has impermissibly reweighed the evidence, then the lower court has departed from the essential requirements of law and certiorari is available to the aggrieved party.

Id. at 608-09 (citations omitted). This standard, the Third District held, is completely consistent with this Court's *Haines City* decision. *Blumenthal*, 675 So. 2d at 610 ("the issues presented by these petitions . . . fall within this Court's scope of discretionary review as outlined in the Florida Supreme Court's recent opinion" in *Haines City*).

Thus, faithful to its own precedent in interpreting and applying the *Haines City* standard, the Third District has held in this case that the circuit court indeed

departed from its limited role as an appellate tribunal. There is absolutely no basis for petitioners' characterization of the decision as meaning anything else.[6]

The second argument made by petitioners is equally fallacious: that conflict is created because the Third District's decision "is bereft of any finding that the circuit court applied an incorrect rule of law or that the circuit court opinion resulted in '*a gross miscarriage of justice*' as required by *Haines City*."[7] No expression of such a "finding" is necessary, and the Third District in fact ***did*** hold that the circuit court had applied an incorrect rule of law. Petitioners' argument is nothing more than an attempt to elevate semantics into a grounding for decisional conflict.

The Court's decision in *Haines City* did not impose a formulaic ritual for second-level certiorari. Addressing the phraseology that had been used by the courts to express the limited scope of review on second-level certiorari, the Court equated a departure from the essential requirements of law with "a violation of a clearly established principle of law resulting in a miscarriage of justice" (658 So.

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[6] Petitioners' claim of conflict with *Manatee County v. Kuehnel,* 542 So. 2d 1356 (Fla. 2d DCA), *review denied,* 548 So. 2d 663 (Fla. 1989), and *St. Johns County v. Owings,* 554 So. 2d 535, 536-37 (Fla. 5th DCA 1989), *review denied,* 564 So. 2d 488 (Fla. 1990), see Jurisdictional Brief at 8, is based on the erroneous factual predicate previously discussed in the text, *i.e.,* petitioners' insistence that the Third District reweighed the evidence considered by the circuit court. With that predicate removed, the complete harmony in the precedents is undeniable. Petitioners' claim of a conflict with *Stilson v. Allstate Insurance Company,* 692 So. 2d 979 (Fla. 2d DCA 1997), Jurisdictional Brief at 8-9, is utterly frivolous. In *Stilson,* the court merely declined to grant second-level certiorari review in the absence of controlling precedent on the issue and a circuit court decision which had affirmed the county court without a written opinion. *Id.* at 982-83 & n.3.

[7] Juris. Brief at 7 (original emphasis).

2d at 529), and it harmonized its prior decisions in *Combs* and *EDC* with the observation that the phrase "applied the correct law" is synonymous with "observing the essential requirements of law." 658 So. 2d at 530 (citations omitted). The Court went on to foreclose any argument that a particular incantation is required as a predicate for granting relief on second-level certiorari. 658 So. 2d at 531 ("there is no complete catalog that the court can turn to in resolving a particular case").

Here, the Third District's recitation that the circuit court "departed from the essential requirements of law when it reweighed evidence and completely ignored evidence that supported the Commission's ruling" (App. at 4-5) is not just an application of *Haines City* standards. It shows the court's full and complete understanding of its appropriate role on second-level certiorari. It was not necessary that the court expressly recite that "a miscarriage of justice occurred," because the failure to apply the correct law in and of itself constitutes a miscarriage of justice. *City of Jacksonville v. Taylor,* 721 So. 2d 1212, 1214 (Fla. 1st DCA 1998).

As stated at the outset, petitioners have attempted to shoehorn themselves through the door of the Court's tentative grant of review in *City of Dania*. If the Court ultimately decides to retain *City of Dania*, the review process there will give the Court ample opportunity to make any new pronouncement. Whatever that may be, though, it will assuredly preserve the requirement of second-level certiorari by which the district courts review the first-level certiorari of the circuit courts for errors of law.

That function was performed, within existing standards, by the Third District in this case. The district court's measured application of second-level certiorari here created no conflict of decisions. Consequently, there is no reason

to give the petitioners a *third* level of review as an adjunct to the review tentatively granted in *City of Dania*.

CONCLUSION

UBC respectfully requests that the Court deny discretionary review of the Third District's decision in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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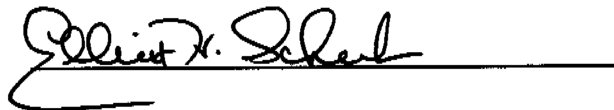

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