



KeyCite Yellow Flag - Negative Treatment

Called into Doubt by [Central Florida Investments, Inc. v. Orange County](#),
Fla.App. 5 Dist., November 7, 2019

794 So.2d 1270

Supreme Court of Florida.

Charles DUSSEAU, et al., Petitioners,

v.

METROPOLITAN DADE COUNTY BOARD OF
COUNTY COMMISSIONERS, et al., Respondents.

No. SC95217.

I

May 17, 2001.

Synopsis

Neighbors petitioned for writ of certiorari after county commission approved church's application for special exception and unusual use approval allowing church construction project in area zoned for single family estates. The Circuit Court, Dade County, Appellate Division, reversed approval. Church and commission sought writ of certiorari quashing that decision. The District Court of Appeal granted petition, [725 So.2d 1169](#). On application for review, the Supreme Court, [Shaw, J.](#), held that circuit court applied wrong standard in reversing commission's decision.

District Court of Appeal's decision approved in part and quashed in part.

[Pariente, J.](#), issued concurring opinion in which [Anstead](#) and [Lewis, JJ.](#), concurred.

West Headnotes (9)

- [1] **Zoning and Planning** Public interest or welfare

Zoning and Planning Presumptions and burden of proof

Once a petitioner seeking a permitted special exception meets the initial burden of showing that his application met the statutory criteria for granting such exceptions, the party opposing the application must show by competent substantial

evidence that the proposed exception did not meet such standards and was, in fact, adverse to the public interest.

- [2] **Zoning and Planning** Weight and sufficiency of evidence

In order for the agency to deny a permitted special exception application, the party opposing the application must show by competent substantial evidence that the proposed exception does not meet the published criteria.

- [3] **Zoning and Planning** Certiorari

Once the local agency has ruled on the special exception application, a party may seek certiorari review in circuit court, i.e., "first-tier" certiorari review.

[2 Cases that cite this headnote](#)

- [4] **Zoning and Planning** Nature and Form of Remedy

Zoning and Planning Variances and exceptions

First-tier review of local agency's ruling on special exception application is not discretionary but rather is matter of right and is akin in many respects to plenary appeal; court must review record and determine, inter alia, whether agency decision is supported by competent substantial evidence, which is tantamount to legally sufficient evidence.

[5 Cases that cite this headnote](#)

- [5] **Zoning and Planning** Further Review

Once circuit court has reviewed local agency's ruling on special exception application, party may seek certiorari review of the circuit court decision in district court, i.e., "second-tier" certiorari review; review at this level is circumscribed and is similar in scope to true common law certiorari review.

[11 Cases that cite this headnote](#)

[6] **Administrative Law and Procedure** 🔑 Scope and Standards of Further Review

Where full review of administrative action is given in circuit court as matter of right, one appealing circuit court's judgment is not entitled to second full review in district court: in such circumstances, circuit court must determine (1) whether procedural due process is accorded, (2) whether essential requirements of law have been observed, and (3) whether administrative findings and judgment are supported by competent substantial evidence; district court, upon review of circuit court's judgment, then determines whether circuit court (1) afforded procedural due process and (2) applied correct law. *U.S.C.A. Const.Amend. 14*.

30 Cases that cite this headnote

[7] **Administrative Law and Procedure** 🔑 Findings; evidence

Where full review of administrative action is given in circuit court as matter of right, district court on second-tier certiorari review may not review record to determine whether agency decision is supported by competent substantial evidence.

25 Cases that cite this headnote

[8] **Zoning and Planning** 🔑 Variances and exceptions

Circuit court applied wrong standard in reversing county commission's approval of church's application for special exception and unusual use approval allowing church construction project in area zoned for single family estates; instead of simply reviewing commission's decision to determine whether it was supported by competent substantial evidence, court also reviewed decision to determine whether it was opposed by competent substantial evidence, and circuit court then substituted its judgment for that of commission as to relative weight of conflicting evidence.

26 Cases that cite this headnote

[9] **Zoning and Planning** 🔑 Determination and Disposition

While District Court of Appeal correctly determined that circuit court departed from essential requirements of law when it reweighed evidence and completely ignored evidence that supported county commission's approval of church's application for special exception and unusual use approval, District Court erred by reviewing evidence and determining that commission's ruling was supported by competent substantial evidence, as latter ruling usurped first-tier certiorari jurisdiction of circuit court.

9 Cases that cite this headnote

Attorneys and Law Firms

*1272 *Jeffrey S. Bass* of Shubin & Bass, P.A., Miami, FL, for Petitioners.

Robert A. Ginsburg, Miami Dade County Attorney, and *Augusto E. Maxwell*, Assistant County Attorney; and *Arthur J. England, Jr.*, and *Elliot H. Scherker* of Greenberg Traurig, P.A., Miami, FL, for Respondents.

Opinion

SHAW, J.

We have for review  *Metropolitan Dade County v. Dusseau*, 725 So.2d 1169 (Fla. 3d DCA 1998), based on conflict with  *Education Development Center, Inc. v. City of West Palm Beach*, 541 So.2d 106 (Fla.1989). We have jurisdiction. *See art. V, § 3(b)(3), Fla. Const.* We approve in part and quash in part the decision in *Dusseau* as explained herein.

I. FACTS

University Baptist Church owns 19.7 acres of land in Miami Dade County on which it seeks to build a large new church. The district is zoned for single-family one-acre estates, but churches are a permitted special exception. The project is

opposed by Charles Dusseau and other local homeowners, who want just “a simple church.” After exhaustive review, the project ultimately was approved by the following local agencies: the Zoning and Planning Department; the Department of Environmental Resources Management; the Public Works Department; the Water and Sewer Authority; the Fire Department; the Metro Dade Transit Agency; the School Board; the Solid Waste Department; the Parks Department; the Public Safety Department; and the Aviation Department. In spite of these approvals, the Zoning Appeals Board denied the application.

The County Commission heard testimony from both sides at a lengthy hearing and approved the project by a nine-to-two vote. The circuit court reversed, by a two-to-one vote. The court issued an eight-page majority opinion assessing the evidence presented by both sides and concluding as follows:

As there was no competent substantial evidence that the church met the criteria for a special exception and there was competent substantial evidence that the church did not meet the code criteria for the grant of a special exception, certiorari is hereby granted and the decision of the Metropolitan Dade County Board *1273 of County Commissioners is hereby reversed.

Dusseau v. Board of County Commissioners, No. 97–115–AP, slip op. at 8 (Fla. 11th Cir.Ct. May 22, 1998).

The district court granted certiorari and quashed the circuit court decision, ruling as follows:

The circuit court's majority opinion correctly states that “[i]n order to sustain the action of the Commission, upon review by certiorari in the circuit court it must be shown that there was competent substantial evidence presented to the Commission to support its ruling.” ... However, in 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. Further, a review of the evidence clearly demonstrates that the 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.

 *Dusseau*, 725 So.2d at 1171 (citation omitted). This Court granted review based on conflict with  *Education Development Center v. City of West Palm Beach*, 541 So.2d 106 (Fla.1989), wherein the Court set forth the appropriate standards governing certiorari review.

II. THE APPLICABLE LAW

[1] [2] This Court recently addressed this issue in  *Florida Power & Light Co. v. City of Dania*, 761 So.2d 1089 (Fla.2000), wherein the Court set forth the applicable law governing an application for a special exception:

This Court in *Irvine v. Duval County Planning Commission*, 495 So.2d 167 (Fla.1986), delineated the allocation of burdens in a special exception proceeding:

[O]nce the petitioner met the initial burden of showing that his application met the statutory criteria for granting such exceptions, “the burden was upon the [opposing party] to *demonstrate*, by *competent substantial evidence* presented at the hearing and made a part of the record, that the [special] exception requested by petitioner did not meet such standards and was, in fact, adverse to the public interest.”

Irvine, 495 So.2d at 167 (emphasis added). In order for the agency to deny a permitted special exception application, the party opposing the application (i.e., either the agency itself or a third party) must show by competent substantial evidence that the proposed exception does not meet the published criteria.

 *Florida Power & Light*, 761 So.2d at 1091–92.

[3] [4] [5] [6] This Court in *Florida Power & Light* further explained that once a local agency has ruled on an application for a special exception, the parties may seek review under the two-tiered certiorari system:

 *Florida Power & Light*, 761 So.2d at 1092.

[7] Although first- and second-tier certiorari review are similar in several respects, they are dissimilar in a key respect:

Once the local agency has ruled on the application, the parties may seek review in the court system, twice. First, a party may seek certiorari review in circuit court, i.e., “first-tier” certiorari review. Although termed “certiorari” review, review at this level is not discretionary but rather is a matter of ***1274** right and is akin in many respects to a plenary appeal. The court must review the record and determine *inter alia* whether the agency decision is supported by competent substantial evidence. Competent substantial evidence is tantamount to legally sufficient evidence. In contrast to the *Irvine* “competent substantial evidence” standard of proof, which the agency must apply at the fact-finding level, this first-tier “competent substantial evidence” standard is a standard of *review*, which the reviewing court must apply. Next, a party may seek certiorari review of the circuit court decision in the district court, i.e., “second-tier” certiorari review. Review at this level is circumscribed and is similar in scope to true common law certiorari review. As a practical matter, the circuit court's final ruling in most first-tier cases is conclusive, for second-tier review is extraordinarily limited.

The Court later compared the two *Vaillant* standards and concluded that they are similar in several respects: The first prongs of both standards (i.e., the due process prongs) are the same, and the second prongs (i.e., the “essential requirements of the law” and “applied the correct law” prongs) also are equivalent. However, the Court noted a key difference: The third prong in the circuit court standard (i.e., the “competent substantial evidence” prong) is absent from the district court standard. Thus, the district court on second-tier certiorari review may *not* review the record to determine whether the agency decision is supported by competent substantial evidence.

These two standards of certiorari review were clarified by this Court in  *City of Deerfield Beach v. Vaillant*, 419 So.2d 624 (Fla.1982):

 *Florida Power & Light*, 761 So.2d at 1092–93 (footnotes omitted).

We hold that where full review of administrative action is given in the circuit court as a matter of right, one appealing the circuit court's judgment is not entitled to a second full review in the district court. Where a party is entitled as a matter of right to seek review in the circuit court from administrative action, the circuit court must determine [1] whether procedural due process is accorded, [2] whether the essential requirements of the law have been observed, and [3] *whether the administrative findings and judgment are supported by competent substantial evidence*. The district court, upon review of the circuit court's judgment, then determines whether the circuit court [1] afforded procedural due process and [2] applied the correct law.

 *Vaillant*, 419 So.2d at 626 (emphasis added).

III. THE PRESENT CASE

[8] As noted above, although numerous local agencies recommended approval of the church's application, the Zoning Appeals Board denied the application. The Commission then conducted a lengthy hearing and approved the application. At the circuit court level, the court reviewed the record evidence on both sides and reversed the Commission's decision based on the following rationale: “[T]here was no competent substantial evidence that the church met the criteria for a special exception and there was competent substantial evidence that the church did not meet the ***1275** code criteria for the grant of a special exception.” This was error.

Although the circuit court phrased its reversal in terms of “competent substantial evidence,” the plain language of its order shows that the court in fact reweighed the evidence, at length. Instead of simply reviewing the Commission's decision to determine whether it was *supported* by competent substantial evidence, the court also reviewed the decision to determine whether it was *opposed* by competent substantial evidence. The circuit court then substituted its judgment for that of the Commission as to the relative weight of the conflicting evidence. The circuit court thus usurped the fact-finding authority of the agency.

[9] At the district court level, the court ruled as follows: “We find that the circuit court departed from the essential requirements of law when it reweighed evidence and completely ignored evidence that supports the Commission's ruling.”  *Dusseau*, 725 So.2d at 1171. This ruling was proper. The Court in *Florida Power & Light* explained:

Under *Vaillant*, the district court was required to determine whether the circuit court applied the correct law. As noted above, according to the plain language of its order, the circuit court reweighed the evidence and decided anew the merits of the special exception application. The circuit court thus applied the wrong law (i.e., instead of applying the *Vaillant* standard of review, the court reapplied the *Irvine* standard of proof), and this is tantamount to departing from the essential requirements of law (as the district court ruled).

 *Florida Power & Light*, 761 So.2d at 1093.

The district court further stated: “[A] review of the evidence clearly demonstrates that the Commission's ruling was supported by competent substantial evidence....”  *Dusseau*, 725 So.2d at 1171. This ruling was improper. Again, the Court in *Florida Power & Light* explained:

As explained above, second-tier certiorari review differs from first-tier review in one critical respect: The “competent substantial evidence” component has been eliminated. The district court thus was precluded from assessing the record evidence. Once the district court determined—from the face of the circuit court order—that the circuit court had applied the wrong law, the job of the district court was ended. In proceeding to apply the right first-tier law, i.e., in evaluating the record for competent substantial evidence to support the Commission's decision, the district court usurped the jurisdiction of the circuit court.

 *Florida Power & Light*, 761 So.2d at 1093.

IV. CONCLUSION

As in *Florida Power & Light*, we decline to conduct our own review of the present record to determine whether the Commission's decision is supported by competent substantial evidence, “for to do so would perpetuate the district court's error and usurp the first-tier certiorari jurisdiction of the circuit court.”¹ Instead, we return this case to the circuit court and direct that court to apply the three-pronged standard of review set forth in *Vaillant*. Notably, when applying the third prong, the court should review the record to determine simply whether the Commission's decision is *supported* by competent substantial evidence.

We reiterate that the “competent substantial evidence” standard cannot be used by a reviewing court as a mechanism for ***1276** exerting covert control over the policy determinations and factual findings of the local agency. Rather, this standard requires the reviewing court to defer to the agency's superior technical expertise and special vantage point in such matters. The issue before the court is not whether the agency's decision is the “best” decision or the “right” decision or even a “wise” decision, for these are technical and policy-based determinations properly within the purview of

the agency. The circuit court has no training or experience—and is inherently unsuited—to sit as a roving “super agency” with plenary oversight in such matters.

The sole issue before the court on first-tier certiorari review is whether the agency's decision is lawful. The court's task vis-à-vis the third prong of *Vaillant* is simple: The court must review the record to assess the evidentiary support for the agency's decision. Evidence contrary to the agency's decision is outside the scope of the inquiry at this point, for the reviewing court above all cannot reweigh the “pros and cons” of conflicting evidence. While contrary evidence may be relevant to the wisdom of the decision, it is irrelevant to the lawfulness of the decision. As long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and the court's job is ended.

Based on the foregoing, we approve in part and quash in part  *Board of County Commissioners v. Dusseau*, 725 So.2d 1169 (Fla. 3d DCA 1998), as explained herein.

It is so ordered.

WELLS, C.J., and HARDING, ANSTEAD, LEWIS, and QUINCE, JJ., concur.

PARIENTE, J., concurs with an opinion, in which ANSTEAD and LEWIS, JJ., concur.

PARIENTE, J., concurring.

The majority focuses on the standards of appellate review of a zoning decision regarding a special exception, relying on our previous decision in  *Florida Power & Light Co. v. City of Dania*, 761 So.2d 1089 (Fla.2000). See majority op. at 1273–74. I write to make several observations about the nature of that appellate review, given that we begin with the premise that the reviewing court should give deference to the “agency's superior technical expertise and special vantage point.” *Id.* at 1276.

The majority explains that the role of the circuit court, as the first-tier reviewing body, is to “review the record to assess the evidentiary support for the agency's decision.” *Id.* I have no difficulty with the notion that the circuit court as a reviewing body should defer to the agency's superior expertise and vantage point. However, I share Judge Zehmer's observations in  *Irvine v. Duval County Planning Commission*, 466

So.2d 357, 366 (Fla. 1st DCA 1985) (Zehmer, J., dissenting), as to the commensurate obligations of the agency to make written findings of fact and the reason for those obligations:

To meet due process requirements, it is necessary that the agency set out detailed facts found from the evidence so that a court authorized to review the matter on certiorari can first determine whether or not the facts found by the agency constitute lawful grounds for its action and, then, determine whether the evidence supports the finding —“Without [detailed findings], the reviewing court would be compelled to grope in the dark and to resort to guesswork as to what facts the Board had found to be true and what facts alleged were not found to be *1277

true.”  *Laney v. Holbrook*, 150 Fla. 622, 8 So.2d [465.] 468 [(Fla.1942)]; *Hickey v. Wells*, 91 So.2d [206.] 210

[(Fla.1957)];  *Powell v. Board of Public Instruction of Levy County*, 229 So.2d [308.] 311–312 [(Fla. 1st DCA 1970)]. It is not sufficient that the cited findings merely be general conclusions in the language of the statute or ordinance because such conclusions provide no way for the court to know on judicial review whether the conclusions have sufficient foundation in findings of fact. *E.g.*, *City of Apopka v. Orange County*, 299 So.2d 657 (Fla. 4th DCA 1974); *McCulley Ford, Inc. v. Calvin*, 308 So.2d 189 [(Fla. 1st DCA 1974)]; *Lynch–Davidson Motors, Inc. v. Calvin*, 308 So.2d 197 (Fla. 1st DCA 1975); *Bill Kelley Chevrolet, Inc. v. Calvin*, 308 So.2d 199 (Fla. 1st DCA 1974). Furthermore, requiring detailed findings of fact is manifestly helpful in assuring that administrative decisions are not the result of improper considerations.

The foregoing essential requirements of due process are now specifically required by chapter 120 and other provisions of Florida Statutes applicable in administrative proceedings.... Even though no statutory or ordinance provision specifically directed the Planning Commission to comply with these well-established rules of administrative law, these rules have their origin in constitutional due process concepts and set the minimum requirements of law applicable to the commission's action in this case. Its failure to apply and faithfully adhere to these administrative principles constituted a departure from the essential requirements of law.

This Court subsequently adopted Judge Zehmer's dissenting opinion concerning the allocations of burdens in a special exception zoning case, but the Court did not discuss Judge Zehmer's observations concerning the necessity of written

findings. See *Irvine v. Duval County Planning Comm'n*, 495 So.2d 167 (Fla.1986).

In this case, although the Commission provided a written resolution reversing the Zoning Appeals Board, the resolution contained no written factual findings. Although the lack of written findings is not fatal to appellate review based on this Court's current precedent, written findings would greatly assist the reviewing court in performing its more limited appellate role. Further, if the reviewing court was able to ascertain how the agency arrived at its decision, it would avoid any temptation on the part of the reviewing court to reweigh the evidence. If the agency's factual findings were legally sufficient to support a given decision and were supported by competent substantial evidence in the record, there would be no necessity for the reviewing court to explore the record to attempt to find what facts do support the agency's decision.

In this case, I would further point out that the circuit court sat in a three-judge panel that produced a reasoned and

detailed majority and dissent. This in turn facilitated the more limited second-tier review of the Third District as well as this Court's review of the Third District's decision. We previously have noted the disparity of the practices among circuits and referred this matter to the Rules of Judicial Administration

Committee for study. See  *Florida Power & Light*, 761 So.2d at 1094. In light of the far-reaching impact of zoning decisions, we should not continue to sanction a statewide system that allows a single circuit judge to have the identical appellate reviewing authority as a three-judge panel and that also requires the district court of appeal to accord the identical deference to the circuit court's decision regardless of whether the decision *1278 was made by a one-judge or three-judge court.

ANSTEAD and LEWIS, JJ., concur.

All Citations

794 So.2d 1270

Footnotes

¹ See  *Florida Power & Light*, 761 So.2d at 1093.