NOT FINAL UNTIL DISPOSITION
OF TIMELY-FILED MOTION FOR
REHEARING OR CLARIFICATION

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE
COUNTY, FLORIDA

APPELLATE CASE NO.: 2021-47-AP-01

ALAIN FERZLI and
TANYA FERZLI,
Appellant,

LOWER TRIBUNAL NO: 2020-R031200

v.

MIAMI DADE COUNTY,
Appellee.
_____/

Opinion filed: June 1, 2022.

Appeal from an Order of a Hearing Officer for Miami-Dade County, Department of Code Enforcement

Heidi M. Mehaffey, for Appellants.

Abigail Price-Williams, County Attorney and Christopher J. Wahl, Assistant County Attorney, for Appellee.

Before: TRAWICK, WALSH and SANTOVENIA, JJ.

WALSH, J.

Alain and Tanya Ferzli appeal two orders designating their dog Bailey as an "aggressive dog" following a Miami-Dade County Code Enforcement hearing. The hearing officer determined that an initial "aggressive dog" determination was correctly issued in accordance with the provisions of 5-C.2(B) of the Code of Miami-Dade County. (App. at pp. 1-2). On appeal,[1] the Ferzlis argue that their due process rights were abridged and that the orders departed from the essential requirements of law.

**Background**

On June 7, 2021, the County issued the Ferzlis a citation under section 5-22 of Miami-Dade County Code for "Dog severely injured or kills domestic animal, red-tan Doberman Pinscher." (App. 03) Also on June 7, 2021, the County issued the Ferzlis a letter advising them as follows:

> June 7, 2021
>
> Alain Ferzli
> Tanya Ferzli
> 441 Gerona Ave
> Coral Gables, FL 33146
>
> On April 1, 2020, a complaint was filed with the Miami-Dade Animal Services Department regarding your dog "Bailey". The Department was requested to investigate whether or not your dog should be

[1] We treat this Petition for Certiorari as an appeal. Section 767.12(4), Fla. Stat., states: "Upon a dangerous dog classification and penalty becoming final after a hearing or by operation of law pursuant to subsection (3), the animal control authority shall provide a written final order to the owner by registered mail, certified hand delivery or service. The owner may appeal the classification, penalty, or both, to the circuit court in accordance with the Florida Rules of Appellate Procedure after receipt of the final order." (emphasis supplied).

> declared aggressive pursuant to Section 5-23.1(b) of the Code of Miami-Dade County. The purpose of this letter is to issue the findings of the investigation conducted by the Animal Services Department and the Department's decision as to whether or not a preliminary determination of "aggressive dog" should be entered in this case.
>
> In making a preliminary determination as to whether or not a dog should be declared aggressive, a preponderance of evidence must support the fact that a violation of Section 5-23.1(b) occurred. After reviewing the case file, I have determined the violation did occur.
>
> **5-23.1(b): when unprovoked and while off the owners property, severely injures or kills a domestic animal**
>
> If you do not agree with this determination, you may request an appeal hearing by sending a written request to Investigator G. Boyett of the Animal Services Department, 3599 NW 79 Avenue, Doral, Florida 33122. Your request must be received within seven (7) calendar days of receipt of this letter.

The Ferzlis timely filed a request for an appeal hearing. The following evidence was presented.

The Ferzlis own a Doberman pinscher named Bailey. On March 27, 2020, Bailey escaped the Ferzlis' house, ran "full speed" from 250 to 300 yards away toward the street where a neighbor, Ms. Goodman, was standing with her two leashed dogs. (App. At p. 51) Bailey bit Mrs. Goodman's standard poodle Roxie on the rear end and would not let go. The Ferzlis' son ran to assist but was not able to pull the two dogs apart. Mrs. Ferzli then ran over and was able to pull Bailey off Mrs. Goodman's poodle. Ms. Goodman testified that her poodle Roxie sustained a deep puncture wound on her rear, and another on her leg. *Id.* Roxie was

immediately taken to the veterinarian. A veterinarian bill submitted in evidence noted "p was attacked – puncture wound on thigh," "two adjacent small lacerations," and "staples were placed." (App. At p. 29). Photographs depicting the wounds were admitted. *Id.* at p. 53.

Bailey's owner, Mrs. Ferzli, testified that Bailey was always friendly to people and animals, including her own four children, and never had any issues with aggression before. (App. at pp. 70-73) Mrs. Ferzli testified that she and her son chased Bailey when she ran toward Mrs. Goodman, and Bailey jumped on Roxie's back. Mrs. Ferzli never saw Bailey bite Roxie and thought that Bailey's claw rather than her teeth could have punctured Roxie's rear leg. (App. At pp. 78-80) Mrs. Goodman testified in contrast that Mrs. Ferzli was not present when the bite occurred. According to Mrs. Goodman, Bailey jumped on Roxie's back, and "sunk her teeth into the back of her. And that's where that puncture wound came from." *Id.* at p. 89.

The Ferzlis also admitted their dog trainer's report, opining that Bailey was not an aggressive dog, as well as letters attesting to Bailey's gentle character.

The hearing officer clarified that the Department was only seeking designation of Bailey as an "aggressive dog," rather than a "dangerous dog" designation which could result in removal:

> HEARING OFFICER: Just for clarification Mr. Boyett, we're not seeking destruction of the animal, you're just seeking a designation this morning, correct?
> MR. BOYETT: Correct. This is just an aggressive designation.
> HEARING OFFICER: Okay, understood.

(App. At p. 62)

Analysis

Appellate review of quasi-judicial proceedings in the circuit court is governed by well-established standards: (1) whether due process was afforded; (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. *Miami Dade County v. Omnipoint Holdings*, 863 So. 2d 195, 198 (Fla. 2003). Here, the Appellants do not challenge that competent substantial evidence supports the orders on appeal.

The Appellants first argue that the citation issued erroneously notified them of a pending "dangerous dog" designation under section 5-22 of the Miami-Dade Code, rather than an "aggressive dog" designation under section 5-23.1 of the Code. They claim that this error violated their due process rights and is a departure from the essential requirements of law. "A quasi-judicial hearing generally meets basic due process requirements if the parties are provided notice of the hearing and an opportunity to be heard." *Jennings v. Dade County*, 589 So. 2d 1337, 1340

(Fla. 3d DCA 1991). Further, "the parties must be able to present evidence, cross-examine witnesses, and be informed of all the facts..." *Id.*

Here, the Ferzlis received due process. As an initial matter, there was no error in issuing a citation under section 5-22. Section 5-22(c) provides that a responsible person shall be liable when "[h]is or her dog, when unprovoked and while off the responsible party's property, attacks or bites a domestic animal." Bailey, while unprovoked and off her property, bit a domestic animal. The citation was correctly issued under section 5-22, and the Department may hold such a dog owner liable under 5-22(c)(2).

Even if the reference to 5-22 or a dangerous dog designation was in error, this alleged error did not confuse or mislead the Ferzlis. The original citation which referred to section 5-22, Miami-Dade Code was accompanied by a letter, issued the same day, which explicitly informed the Ferzlis that Bailey was designated an aggressive dog under section 5-23.1(b), of the Miami-Dade Code. The letter set forth the facts upon which the code enforcement investigator made his determination and explained to the Ferzlis how to request an evidentiary appeal hearing. The Ferzlis followed the instructions in the letter and timely requested a hearing. Moreover, during the hearing, the hearing officer clarified that the Department was seeking an aggressive dog designation not a dangerous dog

designation. (App. at p. 62) Therefore, Appellants were not confused or misled in fact.

Further, as the code enforcement officer explained at the hearing, the two sections addressing designation of dogs work in tandem. Section 5-22 contains definitions applicable to section 5-23.1. *See* §5-22(b) (defining terms "unprovoked" and "serious injury" applicable to section 5-23.1(b) "aggressive dog" claims). And the Department employs section 5-22, not section 5-23.1, to issue a citation for both aggressive and dangerous dogs that bite a domestic animal. *See* § 5-22(c) (providing that responsible party is liable for a dog which, while unprovoked and off property, bites a domestic animal).

Moreover, there was no prejudice to the Appellants. The "aggressive dog" designation sought under section 5-23.1(b) is less severe than a "dangerous dog" designation under section 5-22. A dog deemed "dangerous" may be removed and euthanized, but an "aggressive" dog may not be removed unless the aggression is repeated.

Finally, the Appellants' argument that they have suffered a "forfeiture" is without basis in the record. Nothing in the orders entered work a forfeiture of their right of ownership of their dog. Because there was no confusion on the part of the Ferzlis, because the actual code provision was sent in writing in a letter to the

Ferzlis, and because no prejudice ensued as a result of citing section 5-22, we find no due process violation and affirm on this issue.

The Ferzlis next argue that their due process rights were violated, and the essential requirements of law not followed because the code enforcement officer was permitted to act as a prosecutor by advising on the mechanics of the code and by making relevance arguments at the hearing. We find no merit to these arguments. First, there was no objection to the enforcement officer making legal or factual arguments at the hearing. Thus, this issue is unpreserved and waived. "[I]n order to obtain appellate review, alleged errors relied upon for reversal must be raised clearly, concisely and separately as points on appeal." *Singer v. Borbua*, 497 So. 2d 279, 281 (Fla. 3d DCA 1986); *Apesteguy v. Keglevich*, 319 So. 3d 150, 155 (Fla. 3d DCA 2021). Having failed to make such arguments below, they are deemed waived on appeal.

Further, the code investigator is the County's representative at the hearing. There is nothing wrong with a litigant in code enforcement proceedings making evidentiary objections, arguments based on the Code or arguments on weighing evidence. In fact, section 8-CC(j) of the Miami-Dade Code of Ordinances preserves due process rights of both parties at an enforcement hearing. Precluding the enforcement officer from making such arguments would have therefore been error. The authority cited by the Appellants in support of their argument, *Cherry*

*Commun., Inc. v. Deason*, 652 So. 2d 803 (Fla. 1995), is inapposite. In *Cherry*, a staff attorney, following a hearing, was permitted to have ex parte communications advising the Commission how to decide an issue, a clear violation of the opposing litigant's due process rights. No such violation occurred here. All statements and arguments by the code investigator were made on the record. Finally, the arguments made by the code investigator did no harm here. Whether or not Bailey was docile and obedient with her trainer or with other people had no bearing on whether her behavior met the definition of an aggressive dog under the ordinance. We therefore affirm on this issue as well.

The decision below is AFFIRMED. The Appellant's motion to return costs is DENIED.

TRAWICK and SANTOVENIA, J.J. concur.

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