NOT FINAL UNTIL DISPOSITION
OF TIMELY-FILED MOTION
FOR REHEARING

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

PEDRO L. ORTEGA,
Appellant,

CASE NO. 2023-25-AP-01

APPELLATE DIVISION

v.

CITY OF MIAMI GARDENS,
Appellee.
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OPINION

Opinion filed: April 25, 2024

Before TRAWICK, SANTOVENIA, and ARECES, R., JJ.

Pedro L. Ortega, *pro se*, as Appellant.

Zachary Stokes, Assistant City Attorney, City Attorney's Office, City of Miami Gardens, Appellee

ARECES, R., J.

Appellant Pedro L. Ortega ("Appellant") appeals a Final Administrative Order that upheld a Code Enforcement violation. Appellant contends this Court should reverse the Final Administrative Order because Appellant was not provided notice of the alleged violation or of the proceedings below. This Court agrees.

Florida law provides a few different ways in which notice to a violator may be given. *See* Fla. Stat. § 162.12(1)(a). Specifically, and most pertinent to the instant case, Florida law allows notice (1) via certified mail "to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database;" (2) by hand delivery; and, (3) by leaving the notice at the violator's usual place of residence with any resident over the age of 15. *Id.*[1]

In this case, there is no record evidence of notice via certified mail to Appellant at the address listed in the county appraiser's database or tax collector's office. Appellee appears to be relying on a USPS Tracking Webpage in support of its contention that notice of the violation was provided via certified mail. The Tracking Webpage, however, is insufficient to demonstrate that Appellant was notified via certified mail for at least three reasons. First, it fails to provide the full address to which delivery was made—listing, instead, only the city, state and zip code. Second, it appears to suggest that whatever was sent via certified mail was delivered to the "original

[1] The record reflects Appellant's place of residence is 18820 N.W. 47 Avenue, Miami Gardens, FL 33055.

sender." Finally, even if the package arrived at its intended destination, the zip code provided is different from Appellant's zip code.

In any event, even if the Tracking Webpage were somehow sufficient to establish statutory notice of the violation, there would still be no record evidence that Appellant was notified via certified mail of the Notice of Hearing. [2]

In addition to the total absence of record evidence that would purport to show notice via certified mail, there is also an absence of record evidence that would tend to show that notice was effectuated by hand delivery, or by otherwise leaving said notice at the violator's usual place of residence with a person over the age of fifteen.

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[2] Appellee twice mentions notice via certified mail and purports to reference two exhibits from the record below—Exhibits 3 and 4. Exhibit 3 and its deficiencies are discussed above. Exhibit 4 does not even contain a certified mail receipt. Exhibit 4 is, instead, a Notice of Intent to Lien, which purports to notify Appellant of a hearing on March 22, 2023. There is, however, no record evidence that Appellant was ever notified via certified mail at any time prior to the Order Imposing Lien/Fine. There is no record evidence of a Certified Mail receipt or even a purported tracking history webpage. If, in fact, Appellant *had* received notice of the hearing via certified mail at any time prior to the hearing, this Court cannot imagine it would have been difficult to prove below.

Appellee, nevertheless, contends it complied with its notice requirements because it posted notice of the violation at 3545 N.W. 205 Street, Miami Gardens, Florida. Appellee misreads the applicable law.

Appellee can, of course, post notice on the violating property. This form of notice, however, is in addition to, and not a substitution for, other *required* forms of notice. *See* Fla. Stat. § 162.12(2) ("*In addition to* providing notice as set forth in subsection (1), at the option of the code enforcement board or the local government, notice may be served by publication or posting, as follows....") (emphasis added); *see also Little v. D'Aloia*, 759 So. 2d 17, 20 (Fla. 2d DCA 2000)("'In addition to' does not mean 'instead of.'").

In summary, Appellant was not provided statutory notice of the alleged violation or the hearing concerning said violation. The Special Master below erred in finding notice had been properly effectuated and Appellant, as a result, was denied the due process of law.

Accordingly, the Order of the Special Master is QUASHED.

TRAWICK and SANTOVENIA, JJ., CONCUR.