

**IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA**

CLAY G. COLSON,

Appellant/Petitioner,

v.

CASE NO. 2D22-1756

L.T. No.: 21-005793-CI

THE CITY OF TARPON SPRINGS, et al.

Appellees/Respondents.

**RESPONDENT CITY OF TARPON SPRINGS'
RESPONSE TO PETITIONER'S PETITION**

Respondent, CITY OF TARPON SPRINGS, FLORIDA (the "City"), by and through its undersigned counsel, responds to the Petitioner's Petition pursuant to this Court's Order dated June 2, 2022. The City respectfully requests the Petition be denied and, in support thereof, states as follows:

1. On December 9, 2021, Petitioner filed a Complaint seeking declaratory relief and a permanent injunction alleging that the City's approval of two development orders occurred in violation of the City's Comprehensive Plan. (Supp. Appx. at 1).¹

¹Refers to City's Supplemental Appendix filed contemporaneously herewith.

2. On January 25, 2022, the City filed a Motion to Dismiss for Failure to Join Indispensable Parties and, on March 3, 2022, the proposed developer of the project at issue filed a Motion to Intervene in the case. (Supp. Appx. at 2, 3). The Motions were noticed for hearing on May 2, 2022. (Supp. Appx. at 4, 5).

3. The circuit court held a hearing on the Motions as scheduled on May 2, 2022. In its written order dated May 9, 2022, the court granted the City's motion and gave Petitioner thirty (30) days from the date of the hearing to amend his Complaint. (Supp. App. At 6).

4. On May 31, 2022, Petitioner filed the instant Petition pursuant to Fla. R. App. P. 9.100 (d). Petitioner contends that he believed the proceedings to be "newsworthy," so attempted to record the May 2, 2022 hearing. (Petition at p. 3).

5. Petitioner alleges that, though the court did not enter a written order addressing the matter, the presiding judge directed him to stop recording and erase what had already been recorded. (Petition at p. 4).

6. Petitioner has not provided the Court with a transcript of the proceedings as of the time of this filing, though he has been directed to do so by order dated June 2, 2022.

7. Moreover, the Petition does not appear to seek relief relative to the May 2, 2022 hearing, and instead seeks an order compelling the circuit court judge to allow him to make audio or video recordings of all proceedings in the case moving forward.

8. For the reasons stated herein, the City respectfully requests that the Petition be denied.

ARGUMENT

Fla. R. App. P. 9.100 (d) requires the Court to review on an expedited basis an order “excluding the press or public from, or granting the press or public access to” any proceeding. Still, it is well settled that an appellate court must make judgments based on the official record before it. The appellant has the duty to demonstrate reversible error in the order or judgment appealed based on the record and the law applicable thereto. If the appellant fails to do so, the appellate court has no alternative but to enter an order of affirmance. Gordon v. Burke, 429 So. 2d 36, 37 (Fla. 2d DCA 1983) (citing Gilson v. Murphy, Fearnley & Yawn, Inc., 151 So.2d 447 (Fla.

2d DCA 1963)). In the instant case, and as of the time of this filing, the Petitioner has not supplied a sufficient record which this Court can review. Accordingly, the Petition must be denied.

Presuming that Petitioner timely files a transcript of the proceedings from May 2, 2022, the Court will find that the Petition must be denied substantively as well. The oral pronouncement of the presiding judge concerning Petitioner's attempt to record the hearing did not exclude the press or public from the proceeding or any part of it as is required to seek review under Fla. R. App. P. 9.100 (d).

Further, according to Petitioner, Fla. R. Jud. Admin. 2.450 requires judges to "allow recording of judicial proceedings." Petitioner misstates the scope and application of the rule as an immutable, concrete standard. Rule 2.450 (a) states as follows:

(a) Electronic and Still Photography Allowed. ***Subject at all times to the authority of the presiding judge*** to: (i) control the conduct of proceedings before the court; (ii) ensure decorum and prevent distractions; and (iii) ensure the fair administration of justice in the pending cause, ***electronic media and still photography coverage of public judicial proceedings in the appellate and trial courts of this state shall be allowed*** in accordance with the following standards of conduct and technology promulgated by the Supreme Court of Florida.

Fla. R. Jud. Admin. 2.450 (a) (emphases supplied).

By their terms, neither Fla. R. Jud. Admin. 2.450 nor Fla. R. App. P. 9.100 (d) apply to parties to judicial proceedings and instead are directed to the media or the public. At the outset, Fla. R. Jud. Admin. 2.450 is directed to “electronic media” and “still photography” “**coverage**” of public proceedings. The rule then establishes standards for equipment and personnel, sound and light, and location which are to be utilized for purposes of electronic media and still photography coverage. The rule concludes by providing for appellate review pursuant to Fla. R. App. P. 9.100 (d) of an order “excluding the electronic media from access to any proceeding. . .” Nothing in the rule supports the proposition that the Petitioner, who is a party to the proceeding and was present for the hearing, is or should be permitted to vindicate the rights of members of the media or the public.

Because Petitioner is not a member of the media, this matter is governed instead by Fla. R. Jud. Admin. 2.451, which governs the

use of electronic devices by jurors and others.² Concerning “others,” the use of electronic devices is subject “at all times to the authority of the presiding judge” to control the conduct of the proceedings, ensure decorum and prevent distractions, and ensure the fair administration of justice. Fla. R. Jud. Admin. 2.451 (c). The use of such devices is within the discretion of the presiding judge and is not made explicitly subject to appeal.

Consistent with these rules, the Sixth Judicial Circuit Court has adopted Administrative Order No. 2008-076 PA/PI-CIR. (Supp. App. at 7). The Administrative Order provides that no device capable of taking pictures or capturing sound may be operated inside a courtroom ***without prior approval of the presiding judge***. Then, it separates those seeking prior approval for the use of such devices into two categories: “professional journalists,” as that term is defined in the AO, and those not meeting the definition of “professional journalists.” If one is not a professional journalist, then one may present a request seeking prior approval to operate a device capable of taking pictures or capturing sound to the presiding judge or the

²The Committee Note to Rule 2.451 observes that its subdivision (c), addressed to use of electronic devices by “others,” parallels Fla. R. Jud. Admin. 2.450 (a) “regarding the use of electronic devices ***by the media***.”

court's public information officer "as far in advance of the scheduled proceeding as circumstances permit."

The record in this case does and cannot demonstrate that any such request was made by Petitioner in advance of the May 2, 2022 hearing. Further, had such a request to capture audio been made by the Petitioner, the circumstances permitted it to be made well in advance of the hearing. The Notice of Hearing on the City's Motion was issued on March 7, 2022, giving Petitioner almost two months to submit such a request. He did not do so.

In sum, Petitioner has not provided the Court with a sufficient record upon which it may conduct a review and, in the event he does, has failed to demonstrate that the circuit court excluded any member of the press or public from the May 2, 2022, hearing. Insofar as the Petition requests the circuit court be compelled to allow Petitioner to make audio/video recordings in the future and, presuming both that the Court has the power to issue such relief as this case is postured and is inclined to do so, the City requests that Petitioner be compelled to follow the requirements of the Florida Rules of Judicial Administrative and the administrative orders of the Sixth Judicial Circuit Court.

WHEREFORE, the City respectfully requests the Petition be denied, along with such other relief as the Court finds appropriate under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of June, 2022 a true and correct copy of the foregoing was filed with the Clerk of the Circuit Court using the ECF system and sent via U.S. Regular mail to Clay G. Colson, Pro Se, 4318 Joy Drive, Land O Lakes, FL 34637.

/s/ Jay Daigneault
Jay Daigneault, Esq.
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Florida*

**IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA**

CLAY COLSON,

Appellant/Petitioner,

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Case No: 2D22-1756

L.T. No.: 21-005793-CI

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**RESPONDENT CITY OF TARPON SPRINGS'
SUPPLEMENTAL APPENDIX**

INDEX TO SUPPLEMENTAL APPENDIX

1. Complaint filed December 9, 2021.
2. City's Motion to Dismiss for Failure to Join Indispensable Parties filed January 25, 2022.
3. Intervenor's Motion to Intervene filed March 7, 2022.
4. City's Notice of Hearing dated March 7, 2022.
5. Intervenor's Cross-Notice of Telephonic Hearing dated March 16, 2022.
6. Order Granting Defendant City of Tarpon Springs' Motion to Dismiss for Failure to Join Indispensable Parties signed May 9, 2022.

7. Sixth Judicial Circuit Administrative Order 2008-076
PA/PI-CIR.

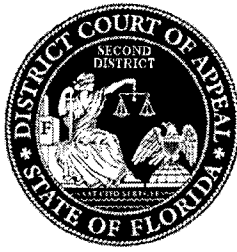
Respectfully submitted,

/s/ Jay Daigneault
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*Attorney for The City of Tarpon Springs,
Florida*

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DISTRICT COURT OF APPEAL

SECOND DISTRICT

Post Office Box 327

LAKELAND, FLORIDA 33802

(863)940-6060

ACKNOWLEDGMENT OF NEW CASE

DATE: June 01, 2022

STYLE: CLAY G. COLSON

v. THE CITY OF TARPON SPRINGS,
ET AL

2DCA#: 2D22-1756

The Second District Court of Appeal has received the PETITION reflecting a filing date of June 1, 2022.

The county of origin is Pinellas.

The lower tribunal case number provided is 21-005793-CI.

The filing fee is: Waived.

Case Type: Petition to Review Orders Excluding the Press or Public Civil

The Second District Court of Appeal's case number must be utilized on all pleadings and correspondence filed in this cause. Moreover, ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

Please review and comply with any handouts enclosed with this acknowledgment.

cc: JAY DAIGNEAULT, ESQ. CLAY G. COLSON
KEN BURKE, CLERK

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

June 01, 2022

CASE NO.: 2D22-1756

L.T. No.: 21-005793-CI

CLAY G. COLSON

v.

THE CITY OF TARPON SPRINGS,
ET AL

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

The affidavit of insolvency and accompanying motion filed in this original proceeding persuade this court that petitioner is insolvent, and petitioner is accordingly declared insolvent within the meaning of chapter 57, Florida Statutes, for purposes of the filing fee associated with this petition. This determination is subject to rebuttal by respondent within twenty days.

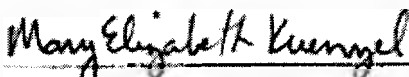
I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

JAY DAIGNEAULT, ESQ.
KEN BURKE, CLERK

CLAY G. COLSON

vh



Mary Elizabeth Kuenzel
Clerk



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

June 02, 2022

CASE NO.: 2D22-1756

L.T. No.: 21-005793-CI

CLAY G. COLSON

v. THE CITY OF TARPON SPRINGS,
ET AL

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Within 10 days, petitioner shall supplement the appendix with either a written order or a transcript of the trial judge's oral pronouncement. Respondent, The City of Tarpon Springs, shall serve a response to the petition within 10 days.

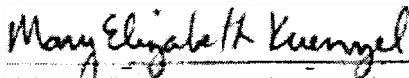
I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

JAY DAIGNEAULT, ESQ.
HON. PATRICIA A. MUSCARELLA

CLAY G. COLSON
KEN BURKE, CLERK

td



Mary Elizabeth Kuenzel
Clerk

