

**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 MOTION FOR REHEARING AND
MOTION FOR REHEARING EN BANC**

Respondent, CITY OF TARPON SPRINGS, FLORIDA (the "City"), by and through its undersigned counsel, responds to the Petitioner's Motion for Rehearing and Motion for Rehearing En Banc dated July 6, 2022 (the "Motion"). The City respectfully requests the Motion 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

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 a Petition pursuant to Fla. R. App. P. 9.100 (d). Petitioner contended that he believed the foregoing proceedings to be "newsworthy," so attempted to record the May 2, 2022 hearing. (Petition at p. 3).

5. Petitioner alleged that, though the court did not enter a written order addressing the matter, the presiding judge directed him

¹Refers to City's Supplemental Appendix filed with its Response to Petition dated June 13, 2022.

to stop recording and erase what had already been recorded. (Petition at p. 4).

6. The City responded to the Petition on June 13, 2022, arguing that Petitioner had not followed the procedures set forth by the circuit court's applicable administrative order to allow recordation of proceedings.

7. This Court denied the Petition on June 21, 2022 without prejudice to Petitioner's seeking permission to record future proceedings consistent with the applicable circuit court administrative order.

8. Thereafter, Petitioner failed to file an Amended Complaint in the time allotted by the circuit court, electing instead to file a motion for reconsideration of its order granting the motion to dismiss for failure to join an indispensable party and a motion to enlarge time to file an amended complaint.

9. Petitioner's motion for reconsideration was denied by the circuit court on June 27, 2022. (See Exhibit "A," attached hereto).

10. On the same day, the circuit court denied the motion for enlargement of time. Because the Petitioner did not file an amended complaint within the time allotted by the circuit court, and because

Petitioner did not demonstrate excusable neglect for such failure, the circuit court dismissed the action with prejudice. (See Exhibit "B," attached hereto).

11. Accordingly, there is no pending circuit court case for which reconsideration of the Court's June 21 Order would be appropriate and, if there were, the Motion does not meet the standard to warrant reconsideration.

12. For the reasons stated herein, the City respectfully requests that the Motion be denied.

ARGUMENT

First, the Motion should be denied first because there is no presently pending circuit court proceeding, so the question of whether and how such proceedings can be recorded is moot. Even if the question were not moot, the Court's disposition of the Petition explicitly preserved the Petitioner's ability to seek permission to record future proceedings in accordance with the applicable administrative order.

Second, the Motion should be denied because it fails to state with particularity the points of law or fact that the Court has overlooked or misapprehended. Further, the Motion raises a new

issue—the constitutionality of the circuit court’s administrative order—not previously raised in the proceeding. The raising of new issues is explicitly prohibited by Fla. R. App. P. 9.330 (2) (A), and it does not carve out any exceptions for facts or law that litigants were not aware of, such as the existence or impact of the administrative order.

Finally, *en banc* review is not warranted because the issue is not of exceptional importance, and it is not necessary to maintain uniformity in the Court’s decisions. The Court merely indicated that there is a process for recording court proceedings as set forth by the Sixth Circuit’s administrative order and indicated that Petitioner remains able to utilize that process in the future proceedings.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of July, 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.

FBN: 0025859

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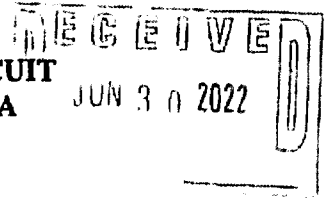
jay@cityattorneys.legal

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*Attorney for The City of Tarpon Springs,
Florida*

EXHIBIT A

IN THE CIRCUIT COURT IN THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA
CIVIL DIVISION



CLAY G. COLSON,

Plaintiff,

vs.

Case No.: 21-005793-CI

THE CITY OF TARPON SPRINGS, FLORIDA,

Defendant.

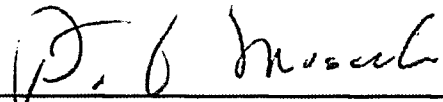
ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

THIS CAUSE came before the Court on Plaintiff's Motion for Reconsideration of Order Granting Defendant City of Tarpon Springs' Motion to Dismiss for Failure to Join Indispensable Parties. The Court has reviewed the motion and is otherwise fully advised in the premises. It is, therefore:

ORDERED AND ADJUDGED that Plaintiff's Motion is DENIED.

DONE and ORDERED in Clearwater, Pinellas County, Florida this 27 day of June,

2022.



Honorable Patricia A. Muscarella
Circuit Court Judge

cc: Jay Daigneault, Esq.
Shane Costello, Esq.
Clay G. Colson, *pro se*

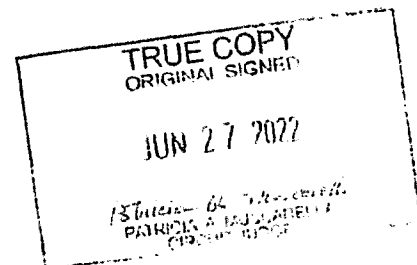


EXHIBIT B

RECEIVED
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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA
CIVIL DIVISION

CLAY G. COLSON,
Plaintiff,

REF: 21-005793-CI-7
UCN: 522021CA005793XXCICI

-vs-

CITY OF TARPON SPRINGS,
FLORIDA,
Defendant.

ORDER DENYING PLAINTIFF'S MOTION TO ENLARGE TIME TO
FILE AN AMENDED COMPLAINT

THIS MATTER came before the Court on Plaintiff's Motion to Enlarge Time to File an Amended Complaint filed June 8, 2022. The Court having reviewed the record, the applicable law and being fully advised in the premises, makes the following findings of fact and conclusions of law:

1. A hearing was held May 2, 2022 on Defendant's Motion to Dismiss for Failure to Join Indispensable Parties.
2. The Court granted Defendant's Motion and directed Petitioner to file an amended complaint within thirty (30) days from the date of the hearing and that failure to file the amended complaint within that time period would result in a dismissal of the case with prejudice.
3. Plaintiff did not file an amended complaint within thirty days, which was June 1, 2022.
4. On June 8, 2022, Plaintiff filed a Motion to Enlarge Time to File an Amended Complaint.

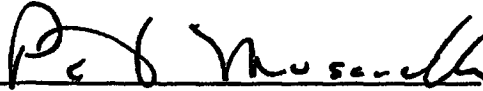
5. Pursuant to Florida Rule of Civil Procedure 1.090(b)(1)(B), Plaintiff has failed to show that his failure to meet the Court's deadline was the result of excusable neglect.

Accordingly, it is

ORDERED AND ADJUDGED that Plaintiff's Motion to Enlarge Time to File an Amended Complaint is **DENIED**. It is further

ORDERED AND ADJUDGED that this action is dismissed with prejudice as Plaintiff failed to file an amended complaint within the time period ordered by this Court.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida this 27 day of June, 2022.


PATRICIA A. MUSCARELLA
Circuit Judge

Copies to:

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