

Florida Third DCA Reverses Circuit Court on Second-Tier Certiorari, Holding that the Payment of Compulsory Fines does not Moot the Issue in the Underlying Decision

In February 2018, Petitioner purchased a property in Big Pine Key, Florida that was previously damaged by Hurricane Irma. After a Monroe County (the “County”) inspection, the property was declared unsafe, and Petitioner was ordered to demolish the building or seek the proper permits to bring the structure up to code. Petitioner applied for a building permit and submitted sealed building plans, seeking approval to repair the damaged property. While the application was pending, Petitioner received notice of five code violations from the Monroe County Code Enforcement Department. The notice set a date before a special magistrate—neither Petitioner nor his attorney appeared.

The magistrate entered a final order which: “(1) assessed a \$100.00 fine for each violation; (2) required compliance on or before August 26, 2019; and (3) provided further fines if compliance was not achieved by that date.” Just over two months later, Petitioner’s building permit was issued. Eight months later, Petitioner was advised of a lien against his property due to a failure to cure the violations or pay the fines. The daily fines, after accruing for 247 days, totaled \$123,500.00. Petitioner appealed the special magistrate’s final order and paid all outstanding fines.

Later in the day, after Petitioner paid off the fines, the circuit court reversed the portion of the special magistrate’s order which imposed the fines and the lien. The County moved for a rehearing, arguing that Petitioner’s voluntary payment of the fine prior to the court’s determination mooted the appeal. The circuit court agreed, and Petitioner subsequently sought second-tier certiorari review.

The Third DCA, upon review, was limited to determining whether the court afforded procedural due process and applied the correct law. The Third DCA found that the circuit court failed to apply the correct law—it is clearly established law that the payment of fines to avoid substantial penalties is generally considered involuntary or compulsory. Involuntary or compulsory payments are recoverable. Because Petitioner’s payments were recoverable, this case represented an actual controversy and was not moot. Thus, the Third DCA quashed the opinion of the circuit court for both a violation of due process and a failure to apply the correct law.