IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION: AG
CASE NO.: 50-2021-CA-002564-XXXX-MB

ZENAIDA MARTINEZ,
Plaintiff/Petitioner
vs.
CITY OF LANTANA FLORIDA,
CITY OF LANTANA CODE ENFORCEMENT DEPARTMENT,
SPECIAL MAGISTRATE OF THE LANTANA CODE ENFORCEMENT,
Defendant/Respondents.

_____/

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE came before the Court on the City of Lantana's ("Defendant" or "the City") Motion for Summary Judgment and Incorporated Memorandum of Law ("Motion") filed on May 1, 2023 against Zenaida "Sandy" Martinez ("Plaintiff" or "Homeowner") (DE# 70). The Court having reviewed the court file, including all documents referenced by the parties in connection with the Motion, having heard the argument of counsel and being otherwise fully advised in the premises, herein orders and adjudges that the Motion is granted for the reasons set forth below.

FACTUAL BACKGROUND

The instant matter stems from three separate violations of the Code of Ordinances of the Town of Lantana ("Code") by Plaintiff. Plaintiff is the sole owner of the subject property, which is located at 102 West Ocean Avenue in Lantana, Florida ("Property" or "the Home"). Plaintiff resides in the Home with several family members including her sister, her mother, and three adult children. Beginning in August of 2013, Plaintiff was found in violation of Section 6-30 of the

Code at a Code Enforcement Hearing that she did not attend. (DE#70 Amended Complaint, Ex. B.) Specifically, the Property was found to have cracks in the driveway in violation of the Code.

Plaintiff was assessed a fine of $75 per each day that the Property was in noncompliance, the fine would continue accruing until Plaintiff contacted the Code Enforcement Department to re-inspect the property. (*Id.*) The Property was found in compliance 215 days later on February 24, 2014, resulting in $16,125 in fees. (*Id.*, Ex. B and E.) In May of 2015, Plaintiff was again found in violation of Section 6-30 of the Code, this time for a broken fence that was damaged in a storm. (DE#70 Amended Complaint, Ex. C.) She was assessed with a fine of $125 a day that, again, would continue to run until Plaintiff contacted code enforcement to re-inspect the Property and it was found in compliance. (*Id.*)

The Property was found in compliance 379 days later on May 11, 2016, resulting in $47,375 in fees. (*Id.*, Ex. C and E). Finally, in July of 2019, Plaintiff was found in violation of Section 6-30 (a-3) of the Code for partially parking cars on the grass of the Property, and assessed a fine of $250 a day until Plaintiff contacted code enforcement to re-inspect the property and it was found in compliance. (DE#70 Amended Complaint, Ex. D). The property was found in compliance on June 16, 2020, resulting in $98,500 in fees. (*Id.,* EX. D and E). In total, the City fined Plaintiff $165,250 for her repeated violations of the Code. *See* Compl., ¶ 67.

Unable to pay the fines, on August 20, 2020, the City offered Plaintiff a settlement of $25,000 to be paid by December 18, 2020, or else the original fines would be reinstated. (DE#70 Amended Complaint, Ex. G). Plaintiff was unable to pay the settlement and thus, the original fines were reinstated. *See* Compl., ¶¶ 69-73.

Now, in this independent cause of action, Plaintiff seeks to collaterally attack the fines on constitutional grounds. Plaintiff argues that the fines are unconstitutional violations pursuant to Article 1 Section 17 of the Florida's Constitution prohibition against excessive fines and a due process violation pursuant to Article 1 Section 9.

LEGAL ANALYSIS AND RULING

Summary Judgment is appropriate when there is no genuine issue of material fact and movants show they are entitled to judgment as a matter of law. Fla. R. Civ. P. 1.510(a) (2021); *Ibarra v. Ross Dress for Less, Inc*., 350 So. 3d 465,467 (Fla. 3d DCA 2022). In applying the rule, a genuine issue of material fact exists when the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Sage v. Pahlavi*, 48 Fla. L. Weekly D575, at *2 (Fla. 4th DCA Mar. 15, 2023). A fact is material if it "may affect the outcome of the case under the applicable substantive law." *Star Cas. Ins. Co. v. Gables Ins. Recovery, Inc.,* 346 So. 3d 1244, 1246 (Fla. 3d DCA 2022). "The existence of *any* competent evidence creating an issue of fact" will not preclude summary judgment. *Lloyd S. Meisels, P.A. v. Dobrofsky*, 341 So. 3d 1131, 1134 (Fla. 4th DCA 2022) (emphasis in original). Under the amended version of Rule 1.510, the moving party may demonstrate the absence of a genuine dispute by reference to materials in the record. Fla. R. Civ. P. 1.510(c)(1). Furthermore, under Florida's new rule, "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007) (*quoted in Ibarra v. Ross Dress for Less, Inc.*, 350 So.3d 465, 468 (Fla. 3rd DCA 2022).

In the instant matter, Plaintiff argues that the fines imposed are unconstitutionally excessive because they are grossly disproportionate to her offense. Specifically, Plaintiff argues that she is not within the class of persons that the ordinance is directed towards, the violations committed were not serious, the violations caused no real harm, and finally, that Defendant imposed the fines without considering her ability to pay. Though Plaintiff attempts to present a mix of as –applied and facial constitutional challenges, at its core, Plaintiffs argument is that the fines imposed by the Defendant are unconstitutional as-applied to her. However, the following analysis will indicate that no genuine dispute of fact exists for two possible reasons. First, because Plaintiff's arguments are procedurally barred, and second, any facial challenges presented are without merit.

1. Plaintiff's arguments are as-applied constitutional challenges that are procedurally barred and should have been heard upon appeal.

A party dissatisfied with a code enforcement board's order has a right to appeal the special magistrate's decision to their encompassing circuit court within thirty (30) days of the final decision's execution. § 162.11 Florida Statutes (2023); *Brevard Cnty. v. Obloy*, 301 So. 3d 1114, 1117 (Fla. 5th DCA 2020). Once that time has passed, the circuit court lacks the procedural jurisdiction to consider a collateral attack upon an order concerning matters that could have been properly raised on appeal. *Brevard Cnty*, 201 So. 3d at 1117.;*Hardin v. Monroe Cnty.*, 64 So. 3d 707, 710 (Fla. 3d DCA 2011). In *Kirby v. City of Archer*, a homeowner attempted to contest factual findings made by the code enforcement board in a subsequent foreclosure action. 790 so. 2d 1214, 1215 (Fla. 1st DCA 2001). He specifically argued that the City's code of ordinances was unconstitutionally applied against him. *Id.* However, the court held that the property owner, having failed to challenge the board's actions at the initial hearing or in a resulting appeal pursuant to § 162.11 .F.S., was now barred from raising disputes with the board's findings in the subsequent

action. "Matters determined in an order which has become final without appeal are not later subject to appellate review." *Kirby, 790* So. 2d at 1215 (quoting *City of Plantation v. Vermut*, 583 So. 2d 393, 394 (Fla. 4th DCA 1991)). In *Innova Inc. Group, LLC v. Village of Key Biscayne*, a property owner who was fined over $2 million in code enforcement violations argued that the fines violated the Eighth Amendment's prohibition against excessive fines. 1:19-CV-22540, 2020 WL 6781821 (S.D. Fla. Nov. 18, 2020). However, the court held that the property owner's argument was nothing more than a collateral attack on a final administrative decision which should have been timely appealed to the appropriate circuit court. *Id.* The Court further stated that the property owner "cannot plead around its failure to timely appeal the Order by couching its claims as constitutional violations." *Id.* At its core, the property owner's argument was simply a challenge to his obligation to pay the fines ordered. *Id.* "It is the facts of the substance of the claims alleged, not the jurisdictional labels attached, that ultimately determine whether a court can hear a claim." *Innova Inv. Group, LLC v. Vill. of Key Biscayne*, 1:19-CV-22540, 2020 WL 6781821 (S.D. Fla. Nov. 18, 2020) (quoting *DeRoy v. Carnival Corp.,* 963 F.3d 1302,1311 (11th Cir. 2020)).

Additionally, an as-applied constitutional challenge is an argument that while the law is constitutional on its face, it is nevertheless unconstitutionally applied as to the specific case or party. *Hall v. State,* 319 So. 3d 691, 693 (Fla. 3d DCA 2021). To properly preserve an as-applied constitutional challenge a defendant must timely raise the issue for the trial court's consideration. *Reese v. State, Dept. of Transp.*, 743 So. 2d 1227, 1229 (Fla. 4th DCA 1999); *Hughbanks v. State*, 190 So. 3d 1122, 1123 (Fla. 2d DCA 2016).

Here, Plaintiff's arguments are nothing more than collateral attacks on the Code Enforcement Board's final decisions. Plaintiff contends that fines are excessive and harsh in light of the offense, imposed without consideration of her ability to pay, and that her violations cause

no harm. In summary, the basis of Plaintiff's argument is that the Code was unconstitutionally applied to her. As stated above, "it is the facts of the substance of the claims alleged, not the jurisdictional labels attached, that ultimately determine whether a court can hear a claim." *Deroy*, 963 F.3d at 1311. However, Plaintiff failed to present *any* arguments at the many Code Enforcement Hearings her property was the subject of, and failed to appeal the final decision within thirty (30) days of its execution. Additionally, a finding of proper notice was made at each hearing, and though Plaintiff does not challenge that fact, she also does not provide any explanation for why she was absent for every hearing, which occurred over a span of years. (DE#70 Amended Complaint, Ex. B,C, D.) The record clearly indicates that Plaintiff failed to present any arguments at the multiple code enforcement hearings she had notice of, and failed to appeal the board's final decision, thus, her claim is procedurally barred and there is no genuine dispute of material fact.

2. Plaintiff's facial constitutional challenges are without merit.

As previously explained, Plaintiff did not raise any issues at the code enforcement hearings for the court's consideration, or timely appeal the board's final decisions. However, a "constitutional challenge to the facial validity of a statute can be presented for the first time on appeal under the fundamental error exception" *Reese,* 743 So. 2d at 1229; *Lamore v. State*, 983 So. 2d 665, 668 (Fla. 5th DCA 2008); *Sanford v. Rubin*, 237 So. 2d 134, 137 (Fla. 1970) ("Constitutional issues, other than those constituting fundamental error, are waived unless timely raised.") A fundamental error is an error that "goes to the heart of the case or goes to the merits of the cause of action … the error must amount to a denial of due process." *B.T. v. Dep't of Children & Families*, 300 So. 3d 1273, 1281 (Fla. 1st DCA 2020). Thus, the only challenges that this Court could properly entertain would be those related to a facial constitutional challenge, which would amount to a denial of due process. To assert a successful facial challenge, the party must "establish

that no set of circumstances exist under which the act would be valid." *Hall v. State*, 319 So. 3d 691, 693 (Fla. 3d DCA 2021) (quoting *Pinnacle House, Grp., LLC v. Fla. Hous. Fin. Corp.,* 239 So. 3d 722, 724 (Fla. 3d DCA 2007). A sole hypothetical indicating how a statute could be facially unconstitutional on its face is insufficient to render the statute unconstitutional on its face. *Patronis v. United Ins. Co. of Am.*, 299 So. 3d 1152, 1156 (Fla. 1st DCA 2020).

In the instant matter, Plaintiff first argues that the city's imposition of fines totaling over $165,000 and its disregard of her individual circumstances to pay the fines violate the Excessive Fines Clause of the Florida Constitution. Second, Plaintiff contends that the due process clause prohibits the imposition of fines, which are irrational, oppressive, arbitrary, unreasonable, and discriminatory, and that Chapter 162 Florida Statutes, violates due process because it establishes limitless fines that led to the specific fines at issue. Compl. ¶¶. 95-109.

To violate the excessive-fines clause, a fine must be grossly disproportionate to the gravity of the offense. *Riopelle v. Dep't of Fin. Services, Div. of Workers' Comp.,* 907 So. 2d 1220, 1223 (Fla. 1st DCA 2005). Further, fines are excessive when they shock the conscience and are unreasonably harsh or oppressive penalties in proportion to the violations to be redressed. *State v. Jones*, 180 So. 3d 1085, 1089 (Fla. 4th DCA 2015); *State v. Cotton*, 198 So. 3d 737,742 (Fla. 2d DCA 2016). In determining whether a fine is grossly disproportionate a court should consider: (1) whether the defendant falls into the class of persons whom the statute was directed; (2) other penalties authorized; and (3) harm caused by the defendant. *State v. Jones,* 180 So. 3d 1085, 1089 (Fla. 4th DCA 2015). However, substantial deference should be given to the legislature's determination of an appropriate fine. *Riopelle*, 907 So. 2d at 1223. "There is a strong presumption that the amount of a fine is not unconstitutionally excessive if it lies within the range of fines prescribed by the legislature" *Browning v. Angelfish Swim Sch., Inc.*, 1 So. 3d 355, 359 (Fla. 3d

DCA 2009) (quoting *Moustakis v. City of Fort Lauderdale*, 338 Fed. Appx. 820,821 (11th Cir. 2009)).

In *Moustakis*, homeowners were fined $150 a day by the City of Fort Lauderdale for fourteen (14) years. *Id.* Eventually, with the home still not in compliance, the city filed a lien against the homeowners. *Id.* The homeowners sued the city arguing that the $700,000 lien on a house worth $200,000 violated Florida's constitutional protection against excessive fines. *Id.* First, the Eleventh Circuit Court held, that pursuant to Section 162.09 Florida Statutes, a local government may impose a fine for each day a property remains in violation of the local code, provided the fine does not exceed $250 a day for a first violation, and $500 a day for a repeat violation. *Id.* Second, the court found that the fine was not excessive and was in fact, directly proportionate to the offense. *Id.* at 822. The daily fine was within the range prescribed by the code and the homeowners where in violation of the code for fourteen years, thus resulting in the fine of $700,000. *Id.*

Similarly, Plaintiff's argument that the fines imposed violate the excessive fines clause are without merit. First, the total sum of her fines are not grossly disproportionate to her offense. As a homeowner in Lantana, she is within the class of persons to whom the Code is directed; the fines imposed are within the range established by the legislature for these type of infractions; and the fines are proportionate to the harm caused in the sense that the violations have been enduring for a number of years. Second, though the legislature has not set a cap on fines imposed by Chapter 162 Florida Statutes, the fines imposed on Plaintiff were well within the range deemed appropriate by the legislature and substantial deference must be given to its determinations. *Moustakis v. City of Fort Lauderdale*, 338 Fed. Appx. 820, 821 (11th Cir. 2009); *See also Town of Lake Park v. Grimes*, 963 So. 2d 940 (Fla. 4th DCA 2007) (Court upheld fines imposed by town code

enforcement which was three times as much as the value of the property.) Additionally, "a statute is constitutional if it bears a reasonable relationship to a legitimate public purpose and is not discriminatory, arbitrary, or oppressive. " *Goodyear Tire & Rubber Co. v.* Jones, 929 So. 2d 1081,1085 (Fla. 3d DCA 2005). Here, Chapter 162 and the Lantana Code of Ordinances bear a reasonable relationship to a legitimate public purpose by providing guidelines on how various types of property should be maintained and how the law should be enforced. Additionally, though the fines imposed are admittedly high, the code and statute itself are not inherently arbitrary, discriminatory, or oppressive, and Plaintiff has failed to establish that there is no set of circumstances in which the acts would be valid. Thus, this Court finds that Plaintiff failed to raise an issue of fact sufficient to preclude summary judgment.

Accordingly, it is hereby

ORDERED AND ADJUDGED that Defendant's Motion for Summary Judgment is **GRANTED.**

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida.

502021CA002564XXXXMB 04/09/2024
Luis Delgado Circuit Judge

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Luis Delgado
Circuit Judge

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