

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF
FLORIDA, IN AND FOR LAKE COUNTY

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CLERK OF CIRCUIT
AND COUNTY COURT
LAKE COUNTY
FLORIDA

LEONARD B JOHNSON,
PETITIONER,

VS.

CASE NO.: # 35-2019-CA-000811-AXXX-XX

CITY OF TAVARES FLORIDA,
RESPONDENT.

ORDER DENYING PETITIONER'S AMENDED PETITION FOR WRIT OF CERTIORARI

THIS CAUSE came before the Court for a hearing on December 21, 2020, upon Petitioner's Amended Petition for Writ of Certiorari filed on October 22, 2019. The Court, having reviewed the file, consulted relevant authority, and now being otherwise fully advised in the premises, finds as follows:

PROCEDURAL HISTORY

On October 22, 2019, Petitioner filed the Amended Petition for Writ of Certiorari. On April 17, 2020, the City filed a Response. On May 15, 2020, Petitioner filed a Reply to Response.

On June 11, 2020, this Court rendered an Order directing Petitioner to provide a supplemental filing expounding upon this Court's jurisdiction to hear this matter. On July 15, 2020, Petitioner filed in response to that Order the Supplemental Brief on Jurisdiction. On August 21, 2020, Respondent filed the Supplemental Response Brief on Jurisdiction.

FACTS

Petitioner owns real property located within the municipal boundaries of the City of Tavares. The real property was voluntarily annexed in 1994.

On March 8, 2018, Petitioner submitted a Contraction Petition to the City pursuant to the requirements of section 171.051(2), Florida Statutes (2018).

On March 15, 2019, the City rendered the “Response to Petition to be Excluded from Municipal Boundaries” (the “Final Order”) rejecting Petitioner’s Contraction Petition. The rejection was based on the property being ineligible for contraction because the property continued to meet the requirements for annexation. *See* §§ 171.043 and 171.052.

Petitioner alleges that the City departed from the essential requirements of law when the City failed to initiate contraction proceedings. Petitioner argues that initiating contraction proceedings was the City’s only available course of action after the City did not comply with the time limit prescribed in section 171.051(2) for rejection of the Contraction Petition.

Petitioner further argues that the City violated Petitioner’s due process rights by failing to convene a public hearing to address Petitioner’s Contraction Petition.

Petitioner seeks relief in the form of an order quashing the Final Order with instructions to institute contraction proceedings as required by section 171.051(1), and award of attorney’s fees and costs.

ANALYSIS

Statutory Certiorari Jurisdiction under Section 171.081(1)

This Court has subject matter jurisdiction to conduct certiorari review through application of section 171.081(1). *See* Fla. Att’y Gen. Op. 2007-38 (2007).

Essential Requirements of Law

The City did not depart from the essential requirements of law by failing to initiate contraction proceedings. Petitioner is correct that “the City was required by law to either timely reject the Petitioner’s Contraction Petition within six (6) months of its filing or initiate

contraction proceedings pursuant to Section 171.051(1), Florida Statutes.” (Compl. 13.) However, Petitioner reads into section 171.051(2) an additional requirement that is not present in the plain language. According to Petitioner, section 171.051(2) requires a municipality to initiate contraction procedures pursuant to 171.051(1) if that municipality fails to timely reject a contraction petition. The plain language presents an “either/or” situation, but it does not mandate that if no action is timely taken (in violation of the statute), then contraction proceedings must be initiated. Section 171.051(2) is silent as to the repercussions a municipality would face for willfully failing to fulfill the clear legal duty created by the statute.

Even if Plaintiff’s reading of the statute were accepted, the City did not depart from the essential requirements of the law. Per section 171.051(2), after the City failed to timely reject the Contraction Petition, the City under Plaintiff’s theory was then required to initiate contraction procedures under section 171.051(1). *See* § 171.051(2). Under section 171.051(1), the City would propose the contraction ordinance, and then proceed to the next step outlined in section 171.051(3). Among other requirements, the City would be required to advertise in a local newspaper and “include a statement of findings to show that the area to be excluded fails to meet the criteria of s. 171.043” § 171.051(3). The City could not meet this requirement.

In the Final Order, the City explicitly stated that the area does meet the criteria for annexation found in section 171.043. (See App. Ex. 5.) The Contraction Petition was denied based on that conclusion. (See *id.*) The Amended Petition does not challenge the City’s conclusion as being unsupported by competent, substantial evidence. As a result, the City’s conclusion is not an issue reviewable by this Court, and the conclusion is accepted as true. *See Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So. 2d 195, 200 (Fla. 2003). Since the area does meet the criteria for annexation found in section 171.043, the City could proceed with contraction procedures only by

publishing either a false or incomplete statutorily-required advertisement. Thus, the City's failure to initiate contraction procedures was not a departure from the essential requirements of the law.

Procedural Due Process

The City did not deny Petitioner procedural due process by failing to hold a public hearing on the Contraction Petition. The public hearing occurs as a result of following section 171.051(3). The City could not complete the requirements of section 171.051(3) as explained above. There is no statutory requirement that a contraction petition be discussed at a public hearing. To the contrary, the statute specifically states that the public hearing is required only after the hearing has been advertised in a local newspaper, and the hearing is to address an ordinance proposed by the City—not a petition. *See* § 171.051(3)-(4). Furthermore, the advertisement must contain “a statement of findings to show that the area to be excluded fails to meet the criteria of s. 171.043” § 171.051(3). The logical conclusion is that a public hearing is required only after a contraction petition has been approved and converted to a proposed ordinance by the City.

CONCLUSION

Petitioner is not entitled to relief.

Therefore, it is hereby:

ORDERED AND ADJUDGED that Petitioner's *Amended Petition for Writ of Certiorari* filed on October 22, 2019, is **DENIED**.

DONE AND ORDERED in Chambers at Tavares, Lake County, Florida, this 4 of February, 2021.



G. RICHARD SINGELTARY
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies hereof have been furnished to the addressees listed below this ___ of February, 2021.

Stephanie Brionez, Counsel for Respondent, at stephj@bblawfl.com, kahlees@bblawfl.com

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