

**IN THE CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT,
LAKE COUNTY, FLORIDA
APPELLATE DIVISION**

CITY OF LEESBURG,

Appellant,

v.

**APPELLATE CASE NO.: 2023-AP-05
L.T. CASE NO.: 2023030121**

JIMMY GRIFFITH and JESSICA SCOTT,

Appellees.

Opinion filed on January 4, 2024.

Appeal from City of Leesburg Code Enforcement
Special Magistrate Kimberly A. Schulte
In and For the City of Leesburg, Lake County, Florida

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OPINION

Eineman, T., J.

The City of Leesburg appeals Special Magistrate Kimberly A. Schulte's Order of Enforcement, wherein Magistrate Schulte found that Xavier Darian Demetri Scott ("Scott") did not violate section 15-16, City of Leesburg, Code of Ordinances, by residing at 2105 Butler Street,

Leesburg, Florida 34748. Because Special Magistrate Schulte exceeded the authority granted to her by the City of Leesburg, Code of Ordinances, by making such finding, we reverse.

Appellees Jimmy Giffith and Jessica Scott were provided notice that Scott had registered his permanent address as 2104 Butler Street, Appellees' property, in violation of section 15-16, City of Leesburg, Code of Ordinances¹. Appellees were advised that if Scott failed to leave the residence, a hearing on the violation would be held before the Special Magistrate. Appellees and Scott failed to appear at the hearing. At the hearing, Magistrate Schulte was advised that after the violation notice was provided, Scott re-registered his address as 2105 Butler Street, which is the address Scott was residing at the time of his convictions. Magistrate Schulte questioned whether Scott violated section 15-16, City of Leesburg, Code of Ordinances, by residing at 2105 Butler Street, even though such violation was not noticed for the hearing. Magistrate Schulte found (1) Scott violated section 15-16, City of Leesburg, Code of Ordinances, by registering his address as 2104 Butler Street and (2) Scott did not violate said section by residing at 2105 Butler Street.

Special masters designated by the city commission have the authority to hold hearings and assess fines against violators of the city codes and ordinances. Section 2-66, City of Leesburg, Code of Ordinances. Proceedings before the special masters shall be initiated by the code enforcement officers. Section 2-70(a), City of Leesburg, Code of Ordinances. "The special master

¹ Section 15-16(b)(1), City of Leesburg, Code of Ordinances, states

It is unlawful for any sexual offender to establish a permanent residence or a temporary residence in the City of Leesburg within two thousand five hundred (2,500) feet of any school, daycare center, public park or public playground, or public library, including any school, daycare center, public park or public playground, or public library, located outside the municipal limits of the City of Leesburg but within two thousand five hundred (2,500) feet of a residence located within those municipal limits. It shall also be unlawful for any owner of residential real property knowingly to lease or rent to a sexual offender who intends to establish a permanent or temporary residence within two thousand five hundred (2,500) feet of any school, daycare center, public park or public playground, or public library, or knowingly to permit any sexual offender to establish a temporary or permanent residence within two thousand five hundred (2,500) feet of any school, daycare center, public park or public playground, or public library, as a member of the household of the owner's named tenant(s).

shall not have the power to initiate proceedings.” *Id.* If a code enforcement officer finds a violation has occurred, the officer shall notify the violator and provide a reasonable time to correct the violation. Section 2-70(b), City of Leesburg, Code of Ordinances. If the violation continues beyond the date specified, a hearing shall be scheduled before the special master with notice served on the violator. *Id.* After the hearing, the special master shall issue findings of fact, based on the evidence, and conclusions of law and issue an order. Section 2-71(d), City of Leesburg, Code of Ordinances.

Here, the code enforcement officer initiated proceedings against Appellees regarding 2104 Butler Street only. At the hearing, Magistrate Schulte focused on a potential violation of 2105 Butler Street, even though a potential violation at 2105 Butler Street was neither initiated by the code enforcement officer nor noticed for hearing on that date. Magistrate Schulte exceeded the authority granted to her by the City of Leesburg, Code of Ordinances, by doing so² and violated Appellees procedural due process rights³. Accordingly, we REVERSE in part as to Magistrate Schulte’s finding that Scott did not violate section 15-16 of City of Leesburg, Code of Ordinances by residing at 2105 Butler Street, Leesburg, Florida 34748, only.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

TATTI, A., TAKAC, M., J.J., concur.

² See *Gutierrez v. Village of Pinecrest*, 29 Fla. L. Weekly Supp. 163a (Fla. 11th Cir. May 21, 2021).

³ See *Coonan v. Code Enforcement Board of the City of Miami*, 2 Fla. L. Weekly 402b (Fla. 11th Cir. September 2, 1994).