



1 APPEARANCES:

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4 KATHERINE HENRY, ESQUIRE  
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On Behalf of the Plaintiffs

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ABRAHAM C. MCKINNON, ESQUIRE  
595 West Granada Boulevard, Suite A  
Ormond Beach, Florida 32174

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On Behalf of the Defendant

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SHANNON GREEN, RPR

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## P R O C E E D I N G S

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2 THE COURT: Good morning. So I'm not  
3 going to shortchange the 15 minutes. This is  
4 2023-30711-CICI, Henry and Henry versus the  
5 City of Ormond Beach, Florida. And good  
6 morning. You are Mr. -- Ms. Henry and  
7 Mr. Henry, Mr. McKinnon?

8 MR. HENRY: Yes, ma'am.

9 THE COURT: Okay. So we set this  
10 status -- well, we set this to kind of get  
11 the lay of the land on where we are on this  
12 administrative appeal and the request for the  
13 stay, which was filed in our court, so it is  
14 the -- it's --

15 Ms. Henry, it's your request for a stay.  
16 And then I ordered a response from the City  
17 so we'll start there. I've seen the record  
18 of appeal has been filed in accordance with  
19 the -- the -- with 162.11, which is the  
20 statute that provides for appeals from code  
21 enforcement agencies, so the appeal is  
22 proceeding, I think, in due course. So  
23 just -- if you could argue to me, or present  
24 to me, why you feel that you should have  
25 sought relief for a stay here versus in front

1 of the City.

2 MS. HENRY: Do you need me to approach  
3 or --

4 THE COURT: I'm comfortable wherever you  
5 are. As long as Ms. Green can hear you, I'm  
6 good.

7 THE COURT STENOGRAPHER: I can.

8 THE COURT: Okay. Perfect.

9 MS. HENRY: Yes. Thank you, Your Honor.  
10 Do you want -- you said, do you want me to  
11 stand?

12 THE COURT: Oh, no. Absolutely --  
13 however you're comfortable.

14 MS. HENRY: Yes, Your Honor. As far as  
15 specifically on the question why I presented  
16 a request to you versus the Special  
17 Magistrate, I actually did file with the  
18 Special Magistrate on March 24th. I have  
19 been served the -- a copy -- the Orders on  
20 March 8th. And then by March 24th, I had  
21 served through the court your -- the Motion  
22 for Relief Order and a Motion for Stay.

23 THE COURT: Okay.

24 MS. HENRY: And I know that everybody,  
25 all five parties, including the Special

1 Magistrate received the email because of the  
2 email program, I submitted that as part of  
3 the evidence to this Court, but no one  
4 responded at all. Not even to say the final  
5 has been received because there's no court  
6 filing system, so --

7 THE COURT: So -- so your position is  
8 that you sought relief for -- for a stay at  
9 -- in front of the agency, we'll just call it  
10 that, the City, under the appellate rule and  
11 no action was taken on that so therefore you  
12 sought the relief up here?

13 MS. HENRY: Yes.

14 THE COURT: I'm just talking on the  
15 stay.

16 MS. HENRY: Yeah. Well, it was just --  
17 it was the same -- it was all together as  
18 one. It was the same as when I presented it  
19 to this level. I just wanted to be clear  
20 that it was the same request. There was  
21 nothing new that I was asking of this Court  
22 that I didn't ask of the lower court. I  
23 just -- I still to this day haven't gotten  
24 any kind of response.

25 THE COURT: Okay.

1 MS. HENRY: There's no Final Order  
2 granting --

3 THE COURT: Okay. Let me hear from  
4 Mr. McKinnon on that. Thank you.  
5 Mr. McKinnon?

6 MR. MCKINNON: Your Honor, we understand  
7 that she did request it. I think as part of  
8 this proceeding, I think this Court now has  
9 jurisdiction in terms of whether or not a  
10 stay was --

11 THE COURT: That's where I was curious,  
12 because I read not the -- it's a direct  
13 appeal of a administration action from the  
14 code, so under 162.11 that's the direct  
15 appeal authority. So tell me, and -- and I'm  
16 not -- I'm just -- in -- in 9.190(3), it says  
17 that a party seeking a state administrative  
18 action not governed by the APA, which is what  
19 we have, shall file the motion in the lower  
20 court, and you can have -- of the lower  
21 tribunal, which would be your code board,  
22 which would have continuing jurisdiction just  
23 for that purpose. So I just want to make  
24 sure procedurally we're all on the same page.

25 Okay. So can you talk to me about that,

1 and was there a denial of it below that  
2 I'm --

3 MR. MCKINNON: I'm not aware of anything  
4 other than what's in the record so I don't  
5 see any denial.

6 THE COURT: Okay.

7 MR. MCKINNON: As far as I can tell,  
8 that matter has not been resolved by the  
9 lower court. I think I read it maybe  
10 similarly to the Court that that's a  
11 requirement when you first file the doc a  
12 requirement that prohibits the Court from  
13 entertaining the motion after that's been  
14 done, so --

15 THE COURT: After it's been ruled upon.  
16 So I think she -- I think if it were denied,  
17 then certainly that portion of the -- of the  
18 denial could be reviewed by me, because I did  
19 a little bit of research. Because  
20 procedurally -- and, Ms. Henry, these appeals  
21 from code enforcement kind of can go in  
22 different directions in terms of how the --  
23 if it's an extraordinary writ or a direct  
24 appeal, and this, to me, is a direct appeal,  
25 and the record's been filed so we're waiting

1 on briefing from the appellant and we go from  
2 there.

3 So I just wanted to bring us all together  
4 to discuss the stay, so let's talk about it a  
5 little more pragmatically. What's the City's  
6 position on -- on that?

7 MR. MCKINNON: The City's position -- we  
8 don't have an objection to the stay.

9 THE COURT: Okay.

10 MR. MCKINNON: We would ask that it be  
11 subject to bond, as the rule states. I think  
12 it's under 9.310, subsection -- well, it's  
13 actually under A where it talks about a stay  
14 pending the condition on posting a writ of  
15 sufficient bond, and it goes and discuss what  
16 that bond would look like and the conditions  
17 of those bonds.

18 And the reason that being is obviously  
19 these include monetary fines. Those fines,  
20 Your Honor, include -- well, it's -- one  
21 thought is the way that they are set up,  
22 there's -- there's -- there was a monetary  
23 fine of a hundred dollars in one of the  
24 violations. These are a combination of three  
25 separate violations, Your Honor.

1 THE COURT: Okay.

2 MR. MCKINNON: And they're all on appeal  
3 in this one big court action.

4 THE COURT: Right.

5 MR. MCKINNON: There is a -- costs  
6 awarded to the City of twenty-three fifty-six  
7 in all three, which totals \$70.68. And then  
8 you've got -- what you have is compliance  
9 fines of \$25 a day per violation, which is  
10 basically \$75 a day beginning on March 28th,  
11 2023.

12 Your Honor, I was -- I think it's an  
13 ambitious, I'll just call it that, an  
14 ambitious time frame would be 180 days by the  
15 time the briefs are filed, you've got an  
16 answer brief, you've got a reply brief, and  
17 then set it for arguments and make a ruling.  
18 If you just used that as a time frame,  
19 Your Honor, it's -- the bond would be  
20 \$13,670.68. And so the city would have no  
21 objection to a stay pending that --  
22 conditioned upon a bond, and of course if the  
23 appellants are successful, they'd get their  
24 money. If the City is successful, then those  
25 -- it would be released to the City, so --

1           THE COURT: I guess -- well, let me  
2 double back, Mr. McKinnon. In 9.190, this is  
3 -- you don't disagree that this is the  
4 appellate rule that permits the direct appeal  
5 as Ms. Henry has filed.

6           MR. MCKINNON: That's correct.

7           THE COURT: So I have to read that  
8 together with -- I'm just trying to see if I  
9 read these two together, is 9.310, the state  
10 pending review, is that -- apply to 9.190.  
11 So I was trying to -- to sort that out a  
12 little bit. I'm pretty good on these  
13 appellate rules, but -- so I was just trying  
14 to figure out if the bond provision -- I've  
15 never had -- I've never seen the government  
16 agencies seek a bond when there's been a code  
17 enforcement lien being put on it. I just  
18 haven't seen it, and I do these a lot with  
19 the County of Volusia. So if you have a case  
20 that says 9.310 applies to it on judicial  
21 review on the direct appeal under 162.11, I  
22 couldn't find one.

23           MR. MCKINNON: Okay.

24           THE COURT: Okay. So that is why I was  
25 curious is that if I was missing something, I

1 would -- I would love to hear that. So I'm  
2 not --

3 So, Ms. Henry, let me double back to you.  
4 So the City is not objecting to a stay  
5 provided that the record on appeal has been  
6 filed. So your thought, so to speak, is  
7 running for the filing of your initial brief.  
8 And so I think the City's position, as long  
9 as the appeal is -- they're not requesting it  
10 be expedited, but that it be done in  
11 accordance with the time frames of the  
12 appellate rules, that we resolve the appeal  
13 and then that would -- then either I'll rule  
14 in your favor or not, which would spring the  
15 imposition of the fines if you're  
16 unsuccessful. And I don't know the merits of  
17 it at all, so I wouldn't until I read the --  
18 then look at the record and read your brief  
19 and read the City's. So does that make  
20 sense to you?

21 MS. HENRY: I think so. I -- In terms  
22 of some of the questions you had just posed,  
23 I wanted to make sure to mention one of the  
24 rules that I cited just in case there was any  
25 -- if you were still looking at it. It was

1           just the -- under the Rules of Civil  
2           Procedure 2.215(f) that the Magistrate has a  
3           duty to rule upon and announce and order a  
4           judgment and reasonable time and I just -- I  
5           didn't know we where we were, and I just  
6           wanted to make sure --

7           THE COURT: That -- that plainly  
8           applies. I'm hearing really the City is not  
9           objecting so we can reduce that here. But  
10          you have sought an appeal so the -- the  
11          appellate rules at this juncture I think  
12          would be more appropriate for me to look at,  
13          which I have been looking at. But the City  
14          has indicated they are not going to object to  
15          a stay of the payment of the fines pending  
16          the resolution of the appeal.

17          MS. HENRY: Okay. There's also the  
18          issue -- in my emergency motion I wasn't just  
19          asking for that to be stayed. I was asking  
20          for the stay for all of the other pieces,  
21          such as they're really trying to use this as  
22          takings case to come and physically take our  
23          property, our pavers, our shipping  
24          containers, and our privacy fence. So that  
25          was -- was clearly a legally voided Order,

1 but I was asking for the stay as it applies  
2 to that as well so they can't literally come  
3 and rip everything out while we're --

4 THE COURT: Mr. McKinnon, the stay --  
5 the stay is global. That would mean the City  
6 can take no action until the appeal is  
7 resolved.

8 MS. HENRY: Okay.

9 THE COURT: Okay. The other portion of  
10 your motion regarding the indispensable  
11 parties or any -- I wasn't quite sure what  
12 legal basis you sought to meet, but the  
13 parties are established. It's the -- it's  
14 you and -- and the -- the City agency, so for  
15 purpose of the appeal, we have an appellant,  
16 which is you and your husband, and the  
17 appellants, sorry. And the appellee, which  
18 is the City. There's no provision in the  
19 appellate rules to add an additional party.  
20 It's -- it's encompassed, and it goes up that  
21 way. So to that portion of your motion, I  
22 didn't understand what -- what basis you  
23 thought you would be entitled to add a party  
24 to your appeal.

25 MS. HENRY: I put all of those court

1 rules in, so I guess if I -- if I could ask  
2 the question. It seemed to me that chapter  
3 one and chapter two applied in this case for  
4 the court rules based on their  
5 (unintelligible) provisions that I cited, and  
6 so my question then was related to something  
7 that the City brought up saying that those  
8 two chapters don't apply to this proceeding.  
9 If they do, the reason why I bring that up,  
10 is because there's compulsory counterclaim  
11 provisions in there of the same transaction  
12 or occurrence.

13 THE COURT: So let me -- this -- my  
14 jurisdiction in this matter is purely  
15 appellate, so I am bound by everything that  
16 was done below. So the Florida Rules of  
17 Appellate Procedure are what's binding me and  
18 what control. They don't provide for, and --  
19 and that is not routinely -- let me try it a  
20 different way.

21 When someone's convicted of a crime in the  
22 state of Florida, right, a felony, they have  
23 the right -- a felon, they have the right to  
24 a direct appeal to the appellate court just  
25 down the street. The parties in that case

1 are the state of Florida and the defendant.  
2 Once it gets up to that appellate court, no  
3 other parties can come into the action and  
4 that's what I'm -- so any type of request  
5 that you think that you're entitled to should  
6 have been made below during the hearing, or  
7 raised as part of the proceedings below, and  
8 if those requests were denied, then you can  
9 bring that review to me on appeal. But the  
10 appellate jurisdiction I have is confined to  
11 you and your husband as the appellants, and  
12 the City as the appellee. So a motion to add  
13 parties would not be appropriate under the  
14 appellate rules. There's no appellate  
15 provision that would provide for that unless  
16 they were a party below and they have not  
17 been. Does that make sense? I'm confined to  
18 what the City and you presented below,  
19 meaning in front of the agency.

20 MS. HENRY: Okay.

21 THE COURT: That's it.

22 MS. HENRY: I just want to make sure.

23 Are you saying that the Rules of Civil  
24 Procedure and General Practice don't apply  
25 to -- I just want to make sure I'm

1 approaching it --

2 THE COURT: For purposes of your appeal,  
3 you're -- the appellant is the appellant,  
4 which is you, and the appellee is the  
5 appellee. For you to add another -- request  
6 and add a party here would be beyond the  
7 scope of what I can do on appeal because the  
8 agency below didn't have the opportunity to  
9 consider that, so you can't bring a new  
10 action in front of me as part of an appeal.

11 Is that -- I explained it a different way.  
12 So short answer is, yes, we're on appeal, the  
13 rules of appellate procedure are applicable.  
14 And even under the Rules of Civil Procedure,  
15 I can't grant a request to add a party on a  
16 direct appeal. Okay?

17 MS. HENRY: Okay. So you're not saying  
18 those chapters don't apply, you're saying  
19 that part doesn't apply? I just want to make  
20 sure I'm following --

21 THE COURT: Procedurally, ma'am, you  
22 have sought a direct appeal. The Rules of  
23 Appellate Procedure apply, okay, to your  
24 appeal, to the gut. Now, if you -- if an  
25 issue on your appeal is that the City didn't

1           comply with a Rule of Civil Procedure, that's  
2           different. Does that -- it's -- I'm trying  
3           to explain as best I can.

4           MS. HENRY: I understand why you're  
5           saying that. Adjoining parties is not  
6           applicable to this proceeding?

7           THE COURT: For the appeal purpose.  
8           Exactly.

9           MS. HENRY: Okay. And that's fine. I  
10          thought --

11          THE COURT: But if you -- so let me --  
12          let me explain it one other way and maybe  
13          this will maybe wrap it up a little bit.

14          If you made that request in front of the  
15          agency below during your hearing or during  
16          the proceedings in front of the enforcement  
17          board, and they denied that request, and you  
18          felt that that was improper under the Rules  
19          of Civil Procedure, you could raise that as  
20          an issue in your brief. Does that make  
21          sense?

22          MS. HENRY: Yes, Your Honor, it does.

23          THE COURT: Okay. All right. Okay. I  
24          hope I explained it well. So to the extent  
25          that you've requested the -- you -- there's a

1 request to strike your joinder of claims and  
2 parties. I've kind of addressed it. Is  
3 there anything you want to put on the record  
4 regarding that, Mr. McKinnon?

5 MR. MCKINNON: No, Your Honor. Thank  
6 you for explaining.

7 THE COURT: Okay. I -- I tried to do my  
8 best on that. So to the extent that I am  
9 going to strike that request, the Motion to  
10 Strike the Joinder of Claims and Parties,  
11 that does not preclude you from raising in  
12 your appellate brief any issue that was  
13 before the enforcement board. So if you've  
14 raised a claim or made an argument to them  
15 that they rejected, that certainly is  
16 something that -- that's what my appellate  
17 job would be to do to review. Okay?

18 MS. HENRY: Okay.

19 THE COURT: So for purposes of the  
20 stay, Mr. McKinnon, if you could do an Order  
21 saying -- delineating that I'm going to deny  
22 their request for what we would call a  
23 supersedeas bond, and I'm going to grant the  
24 Motion to Strike as to the joinder of  
25 parties. If you could reduce that to an

1 Order and let Ms. -- and then send it to Ms.  
2 -- the Henrys.

3 Okay. So really, Mr. and Mrs. Henry, what  
4 I'll be waiting on is the briefing. So  
5 you're -- you're on the clock because the  
6 record has been filed so keep record of your  
7 time on the filing of your initial brief.  
8 The City will have the -- they'll do an  
9 answer brief, and then you have the  
10 opportunity to do a reply brief and just  
11 comply with the page limits and the Rules of  
12 Appellate Procedure.

13 MS. HENRY: Yes, Your Honor.

14 THE COURT: Do you have any other  
15 questions for me?

16 MS. HENRY: Well, I guess my question  
17 about the -- I had raised Florida Statute  
18 70.45 because their proceedings -- their  
19 proceedings shouldn't have commenced before a  
20 response to me was issued. And so as part of  
21 that, in order for me to not sit on my rights  
22 in terms of bringing an appropriate --  
23 because it's about the same thing, it's about  
24 stopping the City action, and it -- it shifts  
25 the burden of proof and what the City has to

1           prove. I just want to make sure I'm doing  
2           what I need to do so that I am not sitting on  
3           my rights, but --

4           THE COURT: Well, you -- you have  
5           appealed everything that you feel that they  
6           didn't do -- you filed an appeal.

7           MS. HENRY: Right.

8           THE COURT: So if you made that argument  
9           in front of the enforcement board, then you  
10          can include that argument in your initial  
11          brief as one of the issues that you want me  
12          to review.

13          MS. HENRY: Okay. Just to clarify what  
14          I was asking as part of my emergency motion  
15          is that they be required to issue that  
16          statutory response because that goes to the  
17          heart of --

18          THE COURT: Once -- once you filed your  
19          appeal, with the exception of the stay,  
20          that's procedural.

21          MS. HENRY: Right.

22          THE COURT: Once you file your appeal,  
23          they're divested of doing anything. You've  
24          brought everything up here to circuit court.  
25          So if that issue regarding timeliness was

1 raised to that -- to the board and they  
2 either didn't rule on it or denied it, then  
3 you have to tell me what they did wrong in  
4 your initial brief so it's of this appeal,  
5 okay? So if it's -- if it was done down  
6 there and you think it was wrong, that they  
7 had an opportunity to consider it and they  
8 didn't or they did it improperly, then those  
9 are the issues you raise in your brief to me,  
10 okay? All right. Any other questions?

11 MS. HENRY: No, Your Honor.

12 THE COURT: All right. I appreciate you  
13 respecting me. Anything else, Mr. McKinnon?  
14 All right. Have a good rest of the day.  
15 Thank you, both.

16 MS. HENRY: Thank you, Your Honor.

17 (Thereupon, the foregoing proceedings were  
18 concluded at 8:35 a.m.)

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1           C E R T I F I C A T E   O F   R E P O R T E R  
2   STATE OF FLORIDA   )  
3   COUNTY OF VOLUSIA   )

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I, Shannon Green, Registered Professional Reporter, DO HEREBY CERTIFY that I was authorized to and did stenographically report the foregoing proceedings; and that the transcript is a true record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 25th day of January, 2024.



\_\_\_\_\_  
Shannon Green, RPR  
Registered Professional Reporter