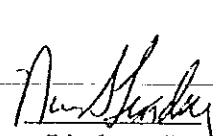
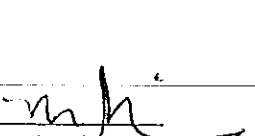
  
Manno Schurr, J.

  
Lindsey, J.

  
Hirsch, J.

NOT FINAL UNTIL TIME EXPIRES  
TO FILE REHEARING MOTION  
AND, IF FILED, DISPOSED OF

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT,  
IN AND FOR, MIAMI DADE  
COUNTY, FLORIDA

MIGUEL A. EXPOSITO

Petitioner,

v.

CITY OF MIAMI,

Respondent.

APPELLATE CASE NO.:  
11-600 AP

FILED FOR RECORD  
2012 JUN 27 AM 10:27  
CLERK, CIRCUIT COURT, 11TH JUDICIAL CIRCUIT  
MIAMI DADE COUNTY, FLA.  
CIVIL #85

Opinion filed June 27, 2012

On appeal from City of Miami City Commission Resolution 11-00834a Affirming the Suspension of Chief of Police Miguel Exposito and Removing Chief of Police Miguel Exposito "Eo Instante".

Steven Wisotsky and Ruben Chavez, for Petitioner.

Julie O. Bru, City Attorney; John A. Greco, Assistant City Attorney, City of Miami Office of the City Attorney, for Respondent.

Before MANNO SCHURR, LINDSEY, and HIRSCH, JJ.

MANNO SCHURR, J.

Miguel A. Exposito petitions this court to issue a Writ of Certiorari and to quash a decision by the City of Miami City Commission (Commission), terminating him as Chief of Police on September 12, 2011. In the alternative, petitioner seeks a Writ of Quo Warranto against the Commission on the ground that the Commission lacked power or authority to oust him from office. We have jurisdiction. Based on the following, we deny the Petitions.

## **THE FACTUAL AND PROCEDURAL HISTORY**

The facts below are essentially undisputed. On August 1, 2011, Petitioner sought approval from City Manager, Johnny Martinez, to demote certain officers in the City of Miami Police Department, and the City Manager agreed to the demotions. On August 4, 2011, when the City Manager realized that Petitioner sought to demote three high-ranking officers from the police department's senior staff (the Command Staff), the City Manager sent an email to the Director of Employee Relations and to the Petitioner to hold off on the demotions until further notice. Petitioner and the City Manager also discussed the matter in person, where the City Manager instructed Petitioner to maintain the status quo and take no action with regard to the command staff officers until Petitioner returned from his upcoming vacation. Notwithstanding the order of the City Manager to hold off on the demotions until further notice, on August 8, 2011, before leaving on his vacation, Petitioner reassigned the three command staff officers.

On September 6, 2011, the City Manager sent two inter-office memorandums, one to Petitioner and the other to the Commission, notifying both that he was suspending Petitioner pursuant to Section 26 of the Charter of the City of Miami ("Section 26") for failing to obey the City Manager's orders with regard to the Command Staff officers. Pursuant to the City Manager's suspension and Section 26, the Commission initiated proceedings on September 9, 2011, to consider whether to terminate or reinstate Petitioner as Chief of Police. The Commission heard argument and testimony until 2:00 am Saturday, September 10, 2011, and reconvened on Monday, September 12, 2011, for closing arguments and deliberations, after which the Commission voted 3-2 to adopt Resolution 11-00834a, affirming the City Manager's suspension and terminated Petitioner as Chief of Police.

This petition for Writ of Certiorari followed.

## **STANDARD OF REVIEW**

It is not the role of the Circuit Court in this proceeding to agree or disagree with the Commission's decision to terminate Petitioner as the City of Miami Chief of Police. First-tier certiorari review of quasi-judicial actions requires a review of the record to determine: (1) whether procedural due process was afforded; (2) whether the "essential requirements of the law" were observed<sup>1</sup>; and (3) whether the findings and judgment are supported by "competent substantial evidence." City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982); see also Dusseau v. Metro. Dade C'ty Bd. Of C'ty Comm'rs, 794 So. 2d 1270, 1274 (Fla. 2001); Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 530 (Fla. 1995). On first-tier certiorari review, a circuit court should not re-weigh the evidence or substitute its judgment for that of the local government authority. Vaillant, at 626; Bd. Of County Com'rs of Brevard County v. Snyder, 627 So. 2d 469, 474 (Fla. 1993); Dusseau, at 1275-76; Florida Power & Light Co. v. City of Dania, 761 So. 2d 1089, 1093 (Fla. 2000); De Groot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957).

## **LEGAL ANALYSIS**

### **Essential Requirements of Law**

Petitioner argues that his termination was improper because the City Manager did not have cause to suspend him under Section 26 and that the Commission departed from the essential requirements of law by affirming the City Manager's suspension and terminating him as Chief of Police.

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<sup>1</sup>Applying the correct law is synonymous with observing the essential requirements of law. Dusseau v. Metro. Dade C'ty Bd. of C'ty Comm'rs, 794 So. 2d 1270, 1274 (Fla. 2001); Haines City Comm'ty Dev. v. Heggs, 658 So. 2d 523, 530 (Fla. 1995).

Specifically, Petitioner contends he was suspended and terminated for disregarding the City Manager's directive not to demote three command staff officers. However, Petitioner argues that he did not demote the officers as defined by Section 40-61 of the City Code, and therefore did not disobey the City Manager's order and that his actions were within his discretion and control.

However, both the City Charter and the City Code are replete with provisions that clearly establish the City Manager's authority over the Chief of Police, and that the Chief of Police's powers and duties are subject to the supervision and control of the City Manager in all matters. See Charter of the City of Miami, §§ 15, 16, 20; Code of the City of Miami, Florida §§ 42-2, 42-3. These provisions confirm that the City Manager's instructions to Petitioner regarding the command staff officers were clothed with the authority described in Section 26 of the City Charter.

Respondent correctly argues that the definition of "demotion" found in Section 40-61 does not apply to unclassified employees such as the command staff officers and asserts that a more general definition of demotion is applicable, where a demotion is evidenced by a decrease in pay, responsibility, supervisory duties, or prestige.<sup>2</sup> Petitioner's argument regarding the definition of "demotion" is irrelevant, given that the City Manager instructed Petitioner to "maintain the status quo" regarding the three Command Staff officers, and Petitioner acted in direct contravention to that instruction by reassigning the officers.

Therefore, this Court finds that, the Commission's decision to affirm the suspension and termination of the Petitioner as the Chief of Police complied with the essential requirements of the law.

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<sup>2</sup> See Sharp v. City of Houston, 165 F.3d 923 (5th Cir. 1999); Hooks v. Diamond Crystal Specialty Foods, Inc., 997 F.2d 793 (10th Cir. 1993); Crady v. Liberty National Bank & Trust Co., 993 F.2d 132 (7th Cir. 1993).

### Competent Substantial Evidence

“Competent substantial evidence is ‘such evidence as will establish a substantial basis of fact from which the fact at issue can reasonably be inferred (or) . . . such relevant evidence as a reasonable mind would accept as adequate to support a conclusion’.” Duval Util. Co. v. Florida Pub. Serv. Comm’n, 380 So. 2d 1028, 1031 (Fla. 1980) (quoting De Groot v. Sheffield, 95 So. 2d 912, 916 (Fla.1957)). Vaillant, at 626. Even if there is conflicting evidence, the Commission’s decision must be upheld if supported by competent substantial evidence. See City of Miami v. Walsh, 139 So. 2d 165 (Fla. 3d DCA 1962). This Appellate Court’s role is not to reweigh evidence presented to the Commission or substitute its judgment for that of the Commission, but rather to determine whether the Commission’s decision is supported by competent substantial evidence.

Petitioner asserts that, because he did not “demote” the officers of his command staff, there is a lack of substantial competent evidence to support his firing. Irrespective of whether the Petitioner demoted the command staff officers the record contains competent substantial evidence for the Commission to have reasonably concluded that Petitioner disobeyed the City Manager’s order not to take action regarding the command staff officers.

This evidence includes, but is not limited to the City Manager’s instructions to Petitioner, both by e-mail and orally, to maintain the status quo until he returned from vacation, the Petitioner’s own email notifying the City Manager of his actions to reassign the officers, testimony from the City Manager, and testimony of the three command staff officers regarding the effect of Petitioner’s actions. Accordingly, this Court finds that the Resolution adopted by the Commission is supported by competent substantial evidence.

### Procedural Due Process

In support of his claim that he was denied procedural due process and in support of his request for a relief Petitioner contends the Commission failed to abide by the time restrictions contained in Section 26, which states in pertinent part:

**If [the police chief] be so suspended the city manager shall forthwith certify the fact, together with the cause of suspension, to the commission who within five (5) days from the date of receipt of such notice, shall proceed to hear such charges and render judgment thereon, which judgment shall be final.**

See Charter of the City of Miami, § 26 (2001).

Petitioner argues that the language set forth in Section 26 requires the Commission to hear charges and render judgment within five days of receiving notice of a suspension from the City Manager. Petitioner claims that Bryan v. Landis, 142 So.2d 650 (Fla.1932), supports his interpretation of Section 26, and further contends that the Florida Supreme Court affirmed the issuance of a writ of quo warranto where the City of Miami did not comply with the “five-day rule”. *Id.* However, the Bryan court only held that Section 26 is the proper method under the City Charter to remove the Chief of Police, and affirmed the writ of quo warranto because the City of Miami removed the Chief of Police without complying with Section 26. *Id.* The Bryan court did not discuss the application of the “five-day rule” and is therefore inapposite to Petitioner’s position on this issue. *Id.*

Respondent argues the five-day requirement in Section 26 only requires the Commission to begin proceedings regarding the suspension within five days of receiving notice of a suspension

from the City Manager, and argues that Petitioner's suggested interpretation leads to an unreasonable and illogical construction of the City Charter, which must be rejected.<sup>3</sup>

Florida courts customarily give judicial deference to the interpretation of a statute or ordinance by the body responsible for its administration, and will not overturn that interpretation unless it is clearly erroneous. See e.g. Pan Am. World Airways, Inc. v. Florida Pub. Serv. Com'n, 427 So. 2d 716, 719 (Fla. 1983); Atl. Shores Resort, LLC v. 507 S. St. Corp., 937 So. 2d 1239, 1245 (Fla. 3d DCA 2006); Paloumbis v. City of Miami Beach, 840 So. 2d 297, 298-99 (Fla. 3d DCA 2003). By affording judicial deference to the Commission's interpretation of its own Charter, this Court cannot find that the Commission's interpretation of Section 26, or its final action to render judgment on Monday, September 12, 2011, was unreasonable.

Furthermore, when determining the timeliness of an act, when the last day falls on a Saturday, Sunday, or holiday, the period of time is generally extended to the following day that is not a Saturday, Sunday, or holiday. See Fla. R. Civ. P. 1.090(a). Thus, even if this Court applied Petitioner's interpretation, the Commission's decision to render judgment on Monday, September 12, 2011, would still fall within the generally accepted computation of time for rendering a decision. Accordingly, the Court finds that the Commission afforded Petitioner procedural due process and finds no basis in which to grant Petitioner's request for relief.

### **CONCLUSION**

Based on the foregoing analysis, this Court finds that the City of Miami City Commission afforded Petitioner procedural due process, and that the City Commission's decision to affirm the

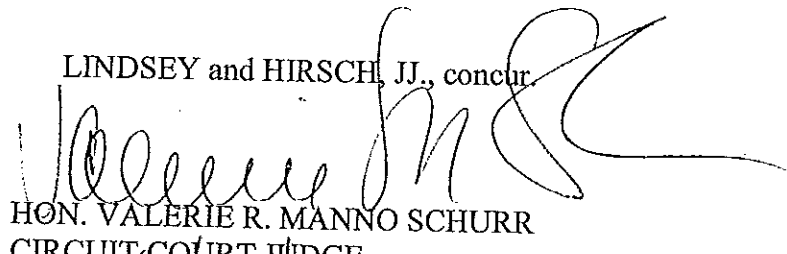
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<sup>3</sup> Respondent cites to City of Boca Raton v. Gidman, 440 So. 2d 1277, 1281 (Fla. 1983) ("No literal interpretation should be given that leads to an unreasonable or ridiculous conclusion or to a purpose not designated by the lawmakers.")

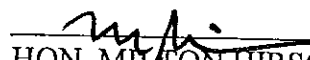
suspension and to terminate Petitioner as Chief of Police complied with the essential requirements of law and was supported by competent substantial evidence.

THEREFORE, Miguel A. Exposito's Petitions for Writ of Certiorari and Writ of Quo Warranto are hereby **DENIED**, and the decision of the City of Miami City Commission is hereby **AFFIRMED**.

LINDSEY and HIRSCH JJ., concur.

  
HON. VALERIE R. MANNO SCHURR  
CIRCUIT COURT JUDGE  
Date: 6/26/12

  
HON. NORMA S. LINDSEY  
CIRCUIT COURT JUDGE  
Date: 6-26-12

  
HON. MILTON HIRSCH  
CIRCUIT COURT JUDGE  
Date: 06/26/2012