IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISON

CASE NO.: 15-00256 CA-08

MICHAEL A. PIZZI, JR., and
MARY COLLINS,

Plaintiffs,

V.

TOWN OF MIAMI LAKES, FLORIDA,
WAYNE SLATON, and MARJORIE
TEJEDA-CASTILLO, in her official
Capacity as TOWN CLERK, TOWN
OF MIAMI LAKES, FLORIDA

Defendants,
_____/

FINAL DECLARATORY JUDGMENT FOR PLAINTIFF

ORDER DENYING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

The citizens of the Town of Miami Lakes have elected two mayors—at different times. This Court finds that plaintiff, Michael Pizzi, does not have an adequate remedy at law and is entitled to declaratory judgment.

History of Case

The plaintiff, Michael Pizzi, Jr. was elected Mayor of the Town of Miami Lakes in November, 2012 for a four year term, which expires in 2016. Defendant, Wayne Slaton was later elected in October, 2013. In their pleadings, defendants admit that Mr. Slaton was elected for the unexpired term of Michael Pizzi, until 2016, not for a new four year term.

In August, 2013, Mr. Pizzi was charged criminally in Federal Court. Gov. Rick Scott immediately suspended him from office. The Governor's executive order No. 13-217, signed on August 6, 2013 reads:

> Section 2. Michael Pizzi is prohibited from performing any official act, duty, or function of public office; from receiving any pay or allowance; and from being entitled to any of the emoluments or privileges of public office during the period of this suspension, which period shall be from today, until a further Executive Order is issued, or as otherwise provided by law.

On August 13, 2013, before Mr. Pizzi was even indicted, the Miami Lakes Town Council scheduled a special election for October, 2013. Mr. Wayne Slaton won that election, only 62 days after the arrest of Mr. Pizzi. Eventually, Mr. Pizzi was found not guilty of the federal charges in August, 2014.

Immediately after his acquittal of all charges, the Governor refused to revoke Mr. Pizzi's suspension, which resulted in Mr. Pizzi filing a petition for writ of *mandamus* at the Florida Supreme Court. On December 22, 2014, the Supreme Court agreed with Mr. Pizzi and directed the Governor to revoke his earlier executive order of suspension.

> ...upon acquittal of criminal charges, the governing statute states that the Governor has a mandatory duty to revoke the order that authorized the municipal officer's suspension. Sec.112.51(6),Fla.Stat.(2013).
>
> However, because we believe that the Governor will fully comply with this order, by forthwith revoking Executive Order Number 2013-217, we withhold issuance of the writ until January 2, 2015.

Well, the Governor complied, but not fully.

On December 22, 2014, the Governor issued Executive Order 14-327, which reads:

> Section 1. Executive Order 13-217, which authorized Pizzi's suspension, is hereby revoked.

Section 2 of the Order states that the Governor:

> ...does not reinstate Michael Pizzi to the office of Mayor of the Town of Miami Lakes, Florida.

This Court finds that Section 2 is in direct contravention of the order of the Supreme Court of Florida. Once the earlier order of suspension was revoked, (which suspension would cease "until a further Executive Order is issued, or as otherwise provided by law"), then all of the terms of that revocation ceased to exist.

Mr. Pizzi reclaimed his mayoral seat from the Town, but the Town took the position that Mr. Wayne Slaton was elected Mayor and should remain as such. Immediately upon the revocation of the suspension, the Town may have begun the process of accepting Mr. Pizzi back as Mayor, but then the Town revoked its welcome and decided that Mr. Slaton should be the Mayor until November, 2016.

Mr. Pizzi filed this case, a multi-count complaint, for declaratory and injunctive relief, writs of *quo warranto*, *mandamus,* and ouster. The relief requested in all counts is the same: that the plaintiff, Mr. Michael Pizzi, the Mayor elected until 2016, should be reinstated to complete his term. Plaintiff, Mary Collins, is a resident and voter in the Town of Miami Lakes.

The defendants, Mr. Wayne Slaton and the Town of Miami Lakes, filed respective motions to dismiss. The Court denied the motions to dismiss, but issued an order to show cause on the *quo warranto* count. The plaintiff withdrew Count IV, estoppel. The Court dismissed the Clerk of the Town, who represented to the Court that the Clerk would abide by all orders of this Court, and appellate rulings.

The defendants filed motions for summary judgment, and answers and affirmative defenses, in addition to their response to the writ proceeding. The plaintiff filed a motion for summary judgment. This Court held a hearing on all motions, and on the petition for writ of *quo warranto* on March 18, 2015.

Quo warranto and ouster

The complaint asks that this Court grant plaintiff's request for a writ of *quo warranto* and judgment of ouster against Mr. Slaton. In general, courts have no inherent power to determine election contests. *McPherson v. Flynn,* 397 So. 2d 665, 667 (Fla. 1981). Except for the limited application of *quo warranto,* there is no right to contest any public election in court, because such a contest is political in nature, and is, therefore, outside the scope of judicial review. *Id.*

"*Quo Warranto* is a writ of inquiry through which a court [may determine] the validity of a party's claim that an individual is exercising a public office *illegally*." *Fouts v. Bolay*, 795 So. 2d 1116, 1117 (Fla. 5th DCA 2001)·(emphasis added). Section 80.01 et. seq., Florida Statutes (2014) authorizes the pursuit of *quo warranto* relief, but only if the petitioner "not only demonstrates by his allegations and proof that [the] respondent *was not elected*, but that [the petitioner] himself was the candidate lawfully chosen by the voters for office in dispute. *Id.* Mr. Pizzi was not a candidate in the October election. It is uncontested that Mr. Slaton won the special election in October 2013, nor do these parties contest that Mr. Pizzi was suspended by the Governor at the time of the special election. This Court finds that the facts in this case do not meet the standard for *quo warranto*. Mr. Slaton did not become Mayor illegally.

This Court therefore, denies Mr. Pizzi's petition for writ of *quo warranto* and corresponding judgment of ouster.

Declaratory action

The Florida Declaratory Judgment Act is remedial in nature and should be broadly construed. *Dept. of Environmental Protection v. Garcia*, 99 So. 3d 539, 544 (Fla. 3d DCA 2011). A party seeking declaratory relief must not only show that he or she is in doubt as to the existence or nonexistence of some right or status, but also that there is a *bona fide*, actual, present and practical need for the declaration. *Id.*

Here, the parties are in dispute as to the proper interpretation of the city charter relative to state statute and how it should be applied to the facts in this case. The interpretation of a statute is a purely legal matter. *Stock Building Supply of Florida, Inc.*

v. Soares Da Costa Construction Services, LLC., 76 So. 3d 313, 316 (Fla. 3d DCA 2012). A review of a statute must commence with the plain meaning of the actual language contained therein. *Diamond Aircraft Industries, Inc. v. Horowich,* 107 So. 3d 362, 367 (Fla. 2013). The plain language of the statute gives effect to legislative intent. *Id.* The rules of statutory construction and interpretation are also applicable to municipal ordinances and to the provisions of a city charter. *Great Outdoors Trading, Inc. v. City of High Springs,* 550 So. 2d 483, 485 (Fla. 1st DCA 1989).

Sec.112.51 Fla.Stat.

This case requires a careful review of Sec. 112.51 Fla. Stat. (2013). A plain reading of the statute, in its totality, shows that if an elected official is indicted, two things ought to happen: a suspension by the Governor, pending resolution of the charges, <u>and</u> a reinstatement of the official if the judicial process absolves him or her of the charges. Here, the Governor suspended Mr. Michael Pizzi but did not reinstate him. In the meantime, the Town had elected Mr. Wayne Slaton to the Mayor's position, who has not vacated the position upon acquittal of Mr. Pizzi. The Court first considers Sec. 112.51, Fla. Stat. (2013): §112.51(2), Fla. Stat. (2013) provides as follows:

> Whenever any elected or appointed municipal official is arrested for a felony or for a misdemeanor related to the duties of office or is indicted or informed against for the commission of a federal felony or misdemeanor or state felony or misdemeanor, the Governor has the power to suspend such municipal official from office.

§112.51(3), Fla. Stat. reads as follows:

> (3) The suspension of such official by the Governor ***creates a temporary vacancy in such office during the suspension. Any temporary vacancy in the office created by suspension of an official under the provisions of this section shall be filled by a temporary appointment to such office for the period of the suspension. Such temporary appointment shall be made in the same manner and by the same authority by which a permanent vacancy in such office is provided by law.*** If no provision for filling a permanent in such office is provided by law, the temporary appointment shall be made by the Governor. (emphasis added)

Finally, §112.51(6), Fla. Stat. reads as follows:

> If the municipal official is acquitted or found not guilty or is otherwise cleared of all charges which were the basis of his arrest, indictment, or information by reason of which he or she was suspended under the provisions of this section, ***then the Governor shall forthwith revoke the suspension and restore such municipal official to office***; and the official shall be entitled to be paid full back pay and such other emoluments or allowances to which he or she would have been entitled to for the full period of time of the suspension. If, during the suspension, the term of office of the municipal official expires and a successor is either appointed or elected, such back pay, emoluments, or allowances shall only be paid for the duration of the term of office during which the municipal official was suspended under the provisions of this section, and he or she shall not be reinstated.

In this case, the term of office of Mr. Pizzi would not have expired until the end of 2016. Contrary to the Town's position, Mr. Pizzi's term never expired, it does not expire until 2016. The clear intent of Sec. 112 is to provide for a <u>temporary</u> suspension of the indicted official; and, the reinstatement of that official upon absolution. All of the words of the statute unequivocally state that after an elected official has had his day in Court, and won, that official returns to office, resumes the duties of office, with the original title,

back pay, and benefits. (The Town acknowledged entitlement to back pay until October, 2013, the election of Mayor Slaton).

Under a plain reading of the statute, this Court, therefore, finds that Mr. Pizzi's suspension created a *temporary vacancy* in the Mayor's office. Furthermore, the election of Mr. Slaton to the Mayor's office created a *temporary appointment*, despite the fact that the appointment was filled *in the same manner and by the same authority by which a permanent vacancy in such office is provided by law (i.e. the special election).* This Court finds that the defendants' position that the October, 2013 special election created a permanent appointment to the Mayor's office pursuant to its Town Charter, is in direct conflict with §112.51(6), Fla. Stat., and is, therefore, impermissible under state law.

Town Charter

The Court next considers the Charter of the Town of Miami Lakes. Section 2.5(B)(iv) provides that:

Section 2.5(b)(iv) of the Miami Lakes' Charter reads as follows:

> If the Mayor's position becomes vacant and six months or more remain in the unexpired term, *a special election shall be held for the election of a new Mayor within 90 calendar days following the occurrence of the vacancy.* Pending the election, the office of Mayor shall be filled by the Vice-Mayor. The Council shall then appoint a new Vice-Mayor. No temporary Council appointment shall be made. (emphasis added)

The defendants' argument is a circular one: they argue that the Charter declares the term expired if the Mayor's position is vacant-- that the position became vacant upon

the election of Mayor Slaton. The defendants have also failed to articulate what the result would have been if the Mayor had been disabled by illness, but returned within 90 days of the disability, but after a new Mayor had been elected.

The defendants argue that the framers of the Charter used the word "new Mayor" in order to create a mechanism that would automatically end the term of the suspended Mayor in favor of the stability of a newly elected Mayor. This Court disagrees.

The interpretation of a statute, municipal code, or charter requires a "common sense" approach in order to give effect to its intent. *School Board of Palm Beach County v. Survivors Charter School, Inc.,* 3 So. 3d 1220, 1235 (Fla. 2009). The defendants argue that this Court should find that the words "new Mayor" from the Charter should be interpreted to mean that: a new Mayor, elected from a special election, shall become permanent, and the previously suspended Mayor's term shall expire. This Court finds that interpretation to go beyond the plain wording and meaning of the Charter. Instead, this Court finds that sections 2.5(b)(iii) and (iv) of the Charter provide a bifurcated mechanism of how a Mayor's position shall be filled due to a triggering event, such as Mr. Pizzi's suspension.

If the remaining term of the vacant position is less than six months, then section 2.5(b)(iii) of the Charter provides that the position is to be filled by appointment. Otherwise, if the remaining term is more than six months, then section 2.5(b)(iv) provides that the position must be filled in a special election. This Court finds that nothing in the language of the Charter explicitly attempts to nullify the balance of a suspended mayor's term.

This Court notes that all parties acknowledge that when Mr. Slaton was elected, his term was only meant to last *for the remainder of Mr. Pizzi's 2012 – 2016 term*, assuming Mr. Pizzi would never return to office if convicted. This stipulation further confirms that Mr. Pizzi's term never expired. Indeed, if Miami Lakes and Mr. Slaton wanted to make a stronger argument that Mr. Pizzi's term expired as a result of the special election, then Mr. Slaton's term in office should have started a new four year term.

Even if this Court were to accept defendants' interpretation of the Charter, such interpretation would still be subject to scrutiny, as it would conflict with state law. In Florida, a municipality has broad authority to craft its charter and enact ordinances under its municipal home rules powers. Art.VIII.§2(b).Fla.Const. Section 166.021, Fla. Stat. (2013) of the Municipal Home Rules Powers Act states in part:

> (1) As provided in s.2(b), Art. VIII of the State Constitution, municipalities … may exercise any power for municipal purposes, except when expressly prohibited by law.
>
> …
>
> (3) [T]he legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state legislature may act, except:
>
> …
>
> (c) Any subject expressly preempted to state or county government by the constitution or by general law;

The paramount law of a municipality is its charter (just as the State Constitution is the charter of the State of Florida), and the charter gives the municipality all the power it possesses. *Burns v. Tondreau,* 139 So. 3d 481, 484 (Fla. 3d DCA 2014). However, a municipality may not legislate on any subject which has been preempted to the State. *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006). A municipality also

may not enact its local laws in a manner inconsistent with the general or special laws of the State. *Santa Rosa County v. Gulf Power Company*, 635 So. 2d 96, 99 (Fla. 1st DCA 1994). This Court finds section 2.5(b)(iv) of the Charter of Miami Lakes, if interpreted in a manner as proposed by defendants, would be in direct conflict with Sec. 112.51 et. seq. Fla. Stat. (2013).

This Court further notes that defendants' argument that its Town Charter, which the Town believes governs its ability to fill the temporary vacancy of a municipal official who was suspended by the Governor, on a permanent basis, could have unpredictable and inconsistent results. For example, if defendants' position is adopted by any random municipality statewide (i.e. its charter can terminate a temporary suspension), then a municipal officer from that municipality, who is suspended by the Governor under §112.51(3), Fla. Stat., could not rely on §112.51(6), Fla. Stat. to be restored to office should he or she be found not guilty, or is acquitted.

This Court need not look too far to find a nearby municipality for a completely different result on whether a suspended municipal official was allowed to return to office, since that city did not have language in its charter that would have prevented that suspended official from returning to office. *e.g., see Spence-Jones v. Dunn*, 118 So. 3d 261 (Fla. 3d DCA 2013) which held that a commissioner, upon obligatory restoration to office by the Governor pursuant to §112.51(6) Fla. Stat., was term limited, even though the commissioner was suspended during her second term.

Mandamus at Supreme Court

Defendants argue that the Florida Supreme Court's Order, issued on December 22, 2014 supports their position that Mr. Pizzi's term expired and that Mr. Slaton is now

the new, permanent Mayor of Miami Lakes. This Court disagrees.

Mr. Pizzi's petition for writ of *mandamus* was filed with the Supreme Court to force the Governor to revoke Executive Order 13-217, which suspended him in August, 2013. *Pizzi v. Scott,* SC14-1634. The following is an excerpt from the Governor's response to Mr. Pizzi's petition for writ of *mandamus*, explaining why the Governor believed the Executive Order in question need not be revoked:

> Section 112.051(6) is clear that if Petitioner's term as Mayor expired and a successor was elected by the voters of Miami Lakes during the period of the suspension, he may not be reinstated. ***Whether Mayor Slaton's election was temporary and did not end Petitioner's term (thus requiring reinstatement), or was permanent and ended Petitioner's term (thus prohibiting reinstatement) is controlled by the Town Charter.***
>
> After reviewing the Charter, and in consultation with the Miami Lakes town counsel, it was determined that Mayor Slaton was elected to serve out the term of the office as Petitioner's replacement. Therefore, Petitioner's term ended when Mayor Slaton was elected and assumed office.
>
> ***Because this matter involves an interpretation of the Charter, it is a local issue and the Governor has no further role.*** *To the extent that the Town of Miami Lakes and its Mayor defend the position that, pursuant to Charter, Petitioner's term ended upon the election of Mayor Slaton, those parties may intervene to advocate that position.* ***The Governor will ultimately follow the Court's or more appropriately, a circuit court's interpretation of the Charter in this local matter.*** (emphasis added).

In his response, the Governor conceded that he did not immediately restore Mr. Pizzi to office based on his consultation with the Town of Miami Lakes' counsel who advised the Governor that the Town Charter controlled. The Governor also conceded that the interpretation of the impact of the Town Charter was a *local* issue to be decided by the circuit court, not the Florida Supreme Court. Indeed, when the Florida Supreme

Court issued its Order to Show Cause, it narrowed the scope of its inquiry to why Executive Order 13-217 should not be revoked, pursuant to section 112.51(6), in light of Mr. Pizzi's acquittal on August 14, 2014.

This Court finds that The Florida Supreme Court Order to Show Cause did not make any determination of the Town Charter. The Charter question would have to be decided first at the trial court level. Furthermore, the Florida Supreme Court's Disposition order, issued on December 22, 2014, makes it clear that pursuant to §112.51(6), the Governor "had a mandatory duty to revoke the order that authorized the municipal officer's suspension." Since this Court concludes in this Declaratory Judgment that the Charter of the Town of Miami Lakes does not preempt §112.51(6) Fla.Stat., the Governor was required to revoke Executive Order 13-217 *completely*. This Court finds that the effect of Executive Order 14-237 was to revoke Executive Order 13-217 in its entirety. The Governor lifted Mr. Pizzi's suspension, and Mr. Pizzi should be restored to office. Mr. Michael Pizzi is entitled to resume his duties as Mayor of the Town of Miami Lakes, to perform all official acts, duties or functions of the office of Mayor of Miami Lakes immediately; and, receive all back pay, allowances, benefits, emoluments, or privileges of the office of Mayor.

The defendants argue that all the words of the Supreme Court's orders of September 29 and December, 22, 2014 are holdings by the Court. This Court reviewed both orders carefully, and the responses by the Governor in the *mandamus* proceedings. This Court concludes that the Supreme Court only considered the narrow issue of whether the Governor's suspension should be revoked. Whether the Supreme

Court intended for all of its words to be its holdings, or *dicta*, might be decided by that Court in the future.

The Court reviewed the motions, pleadings memoranda of law and heard argument of counsel.

Upon consideration, the Court finds that:

Sec. 112, Fla. Stat. (2013) preempts the Charter of the Town of Miami Lakes;

The term of Mayor did not expire on Mr. Pizzi's suspension, but created a temporary vacancy. Mr. Michael Pizzi does not have an adequate remedy at law;

Therefore, it is

ORDERED and ADJUDGED:

That the motions for summary judgment of defendants, Mr. Wayne Slaton and the Town of Miami Lakes, are denied. The motion for summary judgment of plaintiffs, Mr. Michael Pizzi and Mary Collins, are granted.

This declaratory judgment is entered on behalf of plaintiff, Mr. Michael Pizzi. Mr. Michael Pizzi is entitled to resume his duties as Mayor of the Town of Miami Lakes, to perform all official acts, duties or functions of the office of Mayor of Miami Lakes immediately; and to receive all back pay, allowances, benefits, emoluments, or privileges of the office of Mayor of Miami Lakes from August 13, 2013 to the present, effective immediately.

However, the Court stays the enforcement of this Order for a thirty day period, pending appellate review.

Done and Ordered in chambers at Miami-Dade County, Florida this 31 day of March, 2015

Gisela Cardonne Ely

MAR 3 1 2015

Circuit Court Judge

Gisela Cardonne Ely

GISELA CARDONNE ELY
CIRCUIT COURT JUDGE

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