

DCA  
ALG

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
COLLIER COUNTY, FLORIDA** **APPELLATE ACTION**

**CITY OF MARCO ISLAND,**

**Appellant,**

**vs.**

**Appeal Case No. 07-25AP  
Lower Case No. 07-81MOA**

**DAVID DUMAS,**

**Appellee.**

**January 16, 2009.**

**PER CURIAM.**

Appellee has filed a "Motion to Dismiss Appeal." In his motion, Appellee asserts that Appellant's claim should be dismissed as untimely. The underlying cause on appeal was brought by Appellee to challenge the constitutionality of a local ordinance. The trial court, after conducting an evidentiary hearing, issued an order on October 25, 2007 finding portions of the ordinance unconstitutional. On November 16, 2007, the trial court cautioned Appellant that the October 25, 2007 order was a final order. That same day, Appellant disputed the trial court's assertion that the order was a final order, and proceeded to move to dismiss the underlying code violation charges. The trial court signed an order dismissing those charges on November 26, 2007.

In this appeal, Appellant contends that the October 25, 2007 order was not a final order, and that the final order was that which dismissed the underlying charge on November 26, 2007. As the Notice of Appeal was not filed until December 6, 2007, the question of whether the October 25, 2007 order was a final order becomes the determining factor in whether the appeal is timely or not.

Appellant relies on State v. Calloway, 589 So. 2d 326 (Fla. 5th DCA 1991) to support its argument that the October 25, 2007 order was not a final order. In Calloway, the Fifth District Court of Appeal reviewed two orders: one which had declared a local ordinance unconstitutional and a suppression order. In its per curiam opinion, the Fifth District simply stated in its opening paragraph that the one which had declared a local ordinance unconstitutional was not a final order "because the order merely declare[d] the ordinance unconstitutional." Id. at 327. The

FILED  
COLLIER COUNTY, FLORIDA  
JAN 16 PM 4:11  
CLERK OF COURT  
D.C.

C. LUDWIG  
FILED IN COMPUTER

remainder of the two-page opinion centered upon the suppression order. Id. at 327-28. Appellee argues that Appellant's reliance on Calloway is misguided, distinguishing Calloway from the instant case on the grounds that whereas Calloway was a criminal case, the instant case was not. This Court does not find Calloway to be all that instructive, given the perfunctory analysis recounted in the opinion.

The Florida Supreme Court has held that an order is final when it "adjudicates the merits of the cause and disposes of the action between the parties, leaving no judicial labor to be done except the execution of the judgment." McGurn v. Scott, 596 So. 2d 1042, 1043 (Fla. 1992). The Second District Court of Appeal has held that "[a] judgment is not final where further judicial labor is required or contemplated to end the litigation between the parties." Rollins Fruit Co. Inc. v. Wilson, 923 So. 2d 516, 519 (Fla. 2d DCA 2005). Having carefully reviewed the ten-page October 25, 2007 order, it appears to this Court that it was a final order, as it adjudicated the merits of the cause, leaving no judicial labor to be done. Appellant therefore should have filed its Notice of Appeal within thirty days of that order. As it failed to do so until December 6, 2007, the current appeal is untimely and this Court is without jurisdiction to entertain it further. Accordingly, Appellee's motion is hereby GRANTED, and the appeal is DISMISSED. MONACO, ADAMS, and FULLER, JJ., concur.

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Daniel L. Abbott, Esq., Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.L., 200 East Broward Boulevard, Suite 1900, Fort Lauderdale, Florida 33301; Donald P. Day, Esq., Berry, Day, McFee & Martin., 2670 Airport Road South, Naples, Florida 34112; Appellate Banc, and Court Administration (X), 1700 Monroe Street, Fort Myers, Florida 33901, this

20 day of Jan, ~~2008~~ 2009

DWIGHT E. BROCK  
Clerk of Court

By:

Cheryl Ludwig  
Deputy Clerk