YOU CAN'T FIGHT CITY HALL (UNLESS YOU'RE CRAZY)

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I. INTRODUCTION

This Article is about an employee with the City of St. Petersburg, Florida, who was fired for cause in 2003 and his long, long journey to get his job back and clear his name. It was almost a ten-year journey for both him and I that did not end well. Thus the title, *You Can't Fight City Hall (Unless You're Crazy)*, and I would have to say that my client and I did go half-crazy during this ordeal. Consider this: the case was appealed nine times and my client won the first four appeals.[1] You might ask—*How can you win the first four appeals and lose the case?*—It is a good question and one I ask myself constantly. I also ask myself why I chose to stay in this fight all these years when I was not getting paid. I am not sure. I think it was about justice and zealously representing the interests of my client, but I am not sure. Maybe I am crazy.

If you represent public employees who have been dismissed from employment before a Civil Service Board (the "Board") or other administrative body, two things are usually going to happen and neither of them are good: you are going to lose a lot and you are not going to make a lot of money. First, Boards[2] are made up

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1. City of St. Petersburg v. Meaton, 987 So. 2d 755, 756–57 (Fla. 2d Dist. Ct. App. 2008).

2. In situations where employees are unionized, they have the option of going through the grievance procedure. The final step of that process is arbitration, which can be very expensive and, often, the union will not pick up the tab. *See, e.g.*, *Agreement Between the*

mostly of citizens in the community who volunteer their time.[3] Also, Board members are usually part of management, and they tend to side with management.[4] That is not to say they do not do their jobs or take their obligations seriously. They just tend to favor management, and they tend to believe management's version of events. So, unless you have facts that are clearly egregious, *or you have the law on your side*, you are going to lose most of the time. Second, working people who are fired from their jobs do not have a lot of money to pay lawyers to help them get their jobs back. There is no provision for awarding attorneys' fees to the prevailing party like there is under Title VII[5] of the Florida Civil Rights Act.[6] It is expensive to have legal representation in a civil service hearing. My client Brian Meaton's first hearing lasted fifteen hours.[7] When you add the cost of an appeal on top of that, you are starting to talk about some real money. In fact, most employees cannot afford an appeal. So, if an attorney undertakes the representation of an employee who was terminated from city employment and it

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City of St. Petersburg and the Florida Public Service Union (FPSU): Service Employees International Union (SEIU), WWW.STPETE.ORG 63, http://www.stpete.org/hr/docs/FPSU_BLUE_WHITE_Contract.pdf (last visited Feb. 24, 2018) (stating that an appeal "may be submitted to arbitration" and that "[t]he decision of the arbitrator shall be final and binding upon the aggrieved employee or the Union and the Employer").

3. City of St. Petersburg, *Civil Service Board*, WWW.STPETE.ORG, http://www.stpete.org/boards_and_committees/civil_service_board/index.php (last visited Feb. 11, 2018) (explaining that the Board is comprised of St. Petersburg citizens appointed by the City Council, and that "[t]he board acts as a fact finding body that determines whether management had sufficient cause to discipline employees in cases involving termination, involuntary demotion, or suspension").

4. *See* Robert Farley, *Mayor Wants Grievance Process Changed*, ST. PETE. TIMES (May 13, 2002), http://www.sptimes.com/2002/05/13/NorthPinellas/Mayor_wants_grievance.shtml (stating that in 2002 "[t]he city's grievance committee ha[d] five members, all city employees" and that the mayor claimed the grievance process to be "unfair [and] that employees [couldn't] get an impartial hearing"). *But see City of St. Petersburg, Rules and Regulations of the Personnel Management System*, WWW.STPETE.ORG § 8-7, at 8:5 (June 2015), http://www.stpete.org/city_departments/human_resources/docs/Rules_and_Regulations.pdf ("No person shall be appointed to the Board who holds any salaried office or employment in the City government nor shall any member be eligible for municipal employment while serving on the Board.").

5. 29 C.F.R. § 1614.501(e)(1)(i) (1999) (establishing that the prevailing complainant is presumptively entitled to fees and costs, unless special circumstances render the award unjust, after a finding of discrimination).

6. FLA. STAT. § 760.11(5) (2015) (stating that in a discrimination case brought under the Act, "the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs").

7. Order Granting Pet. for Writ of Cert., Jan. 13, 2005, No. 03-5025AP-88B (noting that "[a]fter a 15-hour hearing, the Board made 19 findings of fact and concluded that there was factual and legal just cause for the City to terminate Meaton" (footnote omitted)).

requires an appeal, he or she will probably have to do it on a pro bono basis.

Before proceeding further, let me briefly outline the law regarding public employees and their due process rights. Public employees who have job protections under applicable statutes, ordinances, or rules—that is, they cannot be dismissed except for cause—have a constitutionally protected property interest in their employment, which means they have a right to notice of the charges against them and they have to be provided an opportunity to be heard.[8] They have a right to a due process hearing where they can confront witnesses and present evidence.[9] The full blown hearing can be post-termination so long as there is some limited notice and an opportunity to respond prior to termination.[10]

Meaton was a City of St. Petersburg employee. As a public employee, Meaton had a constitutionally protected property interest in his job. The issue is this case was not whether Meaton was provided a due process hearing, which he was, but rather whether he was fired for just cause and whether the city was entitled to hearing after hearing once the just cause issue was

8. In the seminal case of *Board of Regents of State Colleges v. Roth*, the Supreme Court established the constitutional safeguards of procedural due process attach "in the area of public employment" when public employees acquire sufficient "property interests" in continued employment. 408 U.S. 564, 576–77 (1972) (using the example of college professors dismissed during the terms of their contract as having an interest "in continued employment that [is] safeguarded by due process"). Such a property interest can be created in different ways. *See, e.g.*, Bishop v. Wood, 426 U.S. 341, 344 (1976) ("A property interest in employment can, of course, be created by ordinance, or by an implied contract. In either case, however, the sufficiency of the claim of entitlement must be decided by reference to state law." (footnotes omitted)).

9. *See* Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 543 (1985) ("We have frequently recognized the severity of depriving a person of the means of livelihood"); Perry v. Sinderman, 408 U.S. 593, 601 (1972) ("A person's interest in a benefit is a 'property' interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing"); *Bd. of Regents*, 401 U.S. at 569–70 ("The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount.").

10. *See, e.g.*, *Loudermill*, 470 U.S. at 536 (finding "Loudermill was, by definition, afforded all the process due" as "the post-termination hearing . . . adequately protected Loudermill's liberty interests").

decided as a matter of law.[11] After all, the employee is entitled to a due process hearing, not the employer.[12]

So, what is the appeal process? It is a combination of the rules and regulations of cities and the applicable Rules of Appellate Procedure of the State of Florida. The following is the procedure for when an employee appeals his termination to the Civil Service Board of the City of St. Petersburg. There is a minimal pre-termination hearing where the employee is advised of the charges against him and is invited to respond. A full-blown due process hearing with notice and the opportunity to confront witnesses and to present evidence is provided after the employee is terminated.[13] If the employee believes there is basis for appeal, the only avenue is to file a petition for a writ of certiorari to the circuit court sitting in its appellate capacity.[14]

The decision of a municipal board after a due process hearing has been conducted is the decision of an administrative body acting in a quasi-judicial manner. In Florida, if an individual (or, as in this case, an employee) wants to appeal the quasi-judicial decision of such an agency, the only vehicle the employee can use is common law certiorari.[15] Common law certiorari is an appellate tool that has many, many different functions.[16] The specific type of certiorari we are discussing in this Article is limited to certiorari review of a final decision of a municipal administrative agency.

The Florida Supreme Court has held that certiorari review of a final decision of a municipal administrative agency, because there is no other avenue for appeal, is *as a matter of right*.[17] What

11. CITY OF ST. PETERSBURG, FL., CODE OF ORDINANCES §22-22(a) (Municode through Ordinance No. 317-H, enacted Dec. 14, 2017), *available at* https://www.municode.com/library/fl/st._petersburg/codes/code_of_ordinances?nodeId=PTIISTPECO_CH22PE_ARTIIPEMASY_S22-22CISEBO (stating that "[t]he Board is a fact finding body that determines whether or not just cause existed with respect to the charges brought by management which resulted in certain disciplinary actions").

12. *Id.* § 22-22(j)(1) (establishing that the Board must "hear and review grievances submitted by classified employees resulting from disciplinary actions of demotion, dismissal, or suspension").

13. *Id*.

14. *See* FLA. R. APP. P. 9.030(c)(1)(C) (stating that circuit courts must review administration actions by appeal).

15. Florida Power & Light Co. v. City of Dania, 761 So. 2d 1089, 1092 (Fla. 2000) (explaining that once a local agency has ruled, the party "may seek certiorari review in the court system"). However, review at this first level "is not discretionary but rather is a matter of right." *Id.*

16. *See generally* Tracy E. Leduc, *Certiorari in the Florida District Courts of Appeal*, 33 STETSON L. REV. 107 (2003) (explaining the various functions of common law certiorari).

17. City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982).

that language means, and the parameters of that right are essentially what this Article and Meaton's case are about. The same court that created that *right* also created the concept of first-tier and second-tier certiorari. First-tier certiorari is much broader and much more like a typical appeal than second-tier certiorari.[18] However, even in first-tier certiorari, the circuit court is limited in its review to determining whether the Board's decision is based on competent, substantial evidence, whether procedural due process is provided, and whether the essential requirements of law have been met.[19] And here is the kicker: Florida courts have held that a circuit court, acting in its appellate certiorari capacity, *cannot order affirmative relief*.[20] And to add to the confusion, the Florida Supreme Court has put out language that *seems to say* that, if the appellant wins and an order is entered in appellant's favor, all that order does is negate everything that happened in the proceedings prior to the entry of that order. The language reads:

> When the order is quashed, as it was in this case, it leaves the subject matter, that is, the controversy pending before the tribunal, commission, or administrative authority, as if no order or judgment had been entered and the parties stand upon the pleadings and proof as it existed when the order was made with the rights of all parties to proceed further as they may be advised to protect or obtain the enjoyment of their rights under the law in the same manner and to the same extent which they might have proceeded had the order reviewed not been entered.[21]

What does this language mean in a case like Meaton's?

As stated previously, simply for economic reasons, it is extremely important that an employee get justice swiftly. Employees who already cannot afford a first appeal definitely

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18. *Florida Power & Light Co.*, 761 So. 2d at 1092 (noting "[a]s a practical matter, the circuit court's final ruling in most first-tier cases is conclusive, for second-tier review is extraordinarily limited" (footnote omitted)).

19. Educ. Dev. Ctr., Inc. v. City of West Palm Beach Zoning Bd. of Appeals, 541 So. 2d 106, 108 (Fla. 1989) (quoting *Vaillant*, 419 So. 2d at 626) (noting three discrete components to certiorari review of an administrative agency decision).

20. *See* Tamiami Trail Tours v. R. R. Comm'n, 174 So. 451, 454 (Fla. 1937) (explaining that the circuit court, acting in its appellate capacity, "has no power in exercising its jurisdiction in certiorari to enter a judgment on the merits of the controversy under consideration nor to direct the respondent to enter any particular order or judgment").

21. Broward Cnty. v. G.B.V. Int'l Ltd., 787 So. 2d 838, 844 (Fla. 2001) (quoting *Tamiami Trail Tours*, 174 So. at 454).

cannot afford an appellate court telling them, after deciding in their favor, that all they get is the right to start all over again. What is that old saying, "justice delayed is justice denied"?[22] But it is not just about affordability. An appeal to the circuit court by certiorari takes about a year. The employer—in Meaton's case, the City—has the right to then file a second certiorari appeal (second-tier certiorari, a more limited review) to the district court of appeal, which takes another year. So, if an employee's only remedy is to start over again, he has to put on his case again two years after he was terminated. Witnesses may have left employment by then and may be reluctant to testify for a variety of reasons. A co-employee may have been willing to risk retaliation to testify for a terminated employee he recently worked with on a daily basis, especially when he believed that employee was treated unfairly. But two years later, that desire to right the wrong is gone. Oftentimes, courts do not consider the practical side of the decisions they make. Finding for an employee but remanding a case back to the Board is not justice. It is a violation of that employee's due process rights.[23]

All of these considerations were at play in Meaton's case. It is fair to say that all of these considerations were at play on steroids in Meaton's case.

II. CITY OF ST. PETERSBURG V. MEATON: *THE LONG LEGAL SAGA*

At the time of his termination from employment with the City, Meaton was a ten-year employee.[24]

22. While there are conflicting accounts of who first noted this legal maxim, the quote is often attributed to one of two men: William E. Gladstone, the late nineteenth century British Statesman and Prime Minister, or to William Penn in the form "to delay justice is injustice."

23. West v. Bd. of Cnty. Comm'rs, Monroe Cnty., 373 So. 2d 83, 87 (Fla. 3d Dist. Ct. App. 1979) (holding that "the hearing in a dismissal from employment case must be held within a reasonable time after discharge" and that to hold otherwise is equivalent to permit the employee "to sit in limbo ad infinitum awaiting a valid determination as to whether he has a job or not").

24. Order Granting Pet. for Writ of Cert., Jan. 13, 2005, No. 03-5025P-88B (explaining that "Meaton was employed with the City in the Water Resources Department as a Plant Operator II for approximately 10 years at the time of his termination").

A. First Appeal: Judge Demers

The Board had a policy at that time that allowed only the City to submit findings of fact to the Board.[25] The City's proposed Order accused Meaton of being disparaging, disrespectful, confrontational, and making false representations.[26] The Civil Service Board upheld the City's decision to terminate Meaton but removed the City's findings of Meaton's disparaging, disrespectful, confrontational conduct, and false representations from the City's proposed Order.[27] That action on the Board's part was very significant to the circuit judge, Judge David Demers, who heard Meaton's certiorari appeal from the decision of the Board.[28] He determined, *as a matter of law*, that the findings of fact of the Board did not contain competent, substantial evidence to support the Board's finding of "just cause."[29] Judge Demers' decision was appealed to the Second District Court of Appeals by way of second-tier certiorari, and the writ was denied.[30] That was just the beginning.

If Judge Demers felt he had the power to order affirmative relief, he would have done so, but he did not do this.[31] Instead, he felt compelled to remand the case back to the Board and cited *Broward County v. G.B.V. International, Ltd.*[32] When it came before the Board, the City, citing *G.B.V. International* and the specific language referenced above, argued that it was entitled to a new hearing since the Order was quashed, meaning it was "as if

25. *Id.* (suggesting that "it would be a better procedure to allow the opposing party the opportunity to submit its own order for consideration before the Board utilizes an order prepared by the City"). That policy was changed as a result of Meaton's appeal.

26. *Id.*

27. *Id.*

28. *Id.* ("Importantly, the Board, as the finder of fact charged with resolving conflicts in the evidence and weighing the credibility of the witnesses, could have found that Meaton had been disrespectful and confrontational, or had made disparaging or false remarks, but did not." (footnote omitted)).

29. *Id.* ("[T]he Court finds that the Order must be quashed, as there is not competent substantial evidence to support the Board's decision.").

30. *See* City of St. Petersburg v. Meaton, 987 So. 2d 755, 758 (Fla. 2d Dist. Ct. App. 2008) (denying the City's Petition for second-tier certiorari).

31. *See* Order Granting Pet. for Writ of Cert. n.24, Jan. 13, 2005, No. 03-5025AP-88B (stating "[t]he Court notes that unlawful deprivation of employment, a protected property interest, may compel only one remedy, reinstatement with back pay"); *see also id.* ("The Court declines to directly order reinstatement with back pay, as it is not quashing the Order based on procedural due process grounds.").

32. *Id.* (citing 787 So. 2d 838 (Fla. 2001)).

no order had been entered."[33] "Poof!" Two years of litigation disappeared as if it never happened. The City even went so far as to hire outside counsel from Tampa to advise the Board.[34] Of course, he told them the same thing—the "Poof!" story.[35] The Board decided to give the City what it wanted—a new hearing.[36] I immediately went back to the circuit court requesting a Writ of Mandamus, asking the court to instruct the Board to perform the non-discretionary function of reinstating my client with back pay since Judge Demers had ruled as a matter of law that there was not just cause to terminate his employment.[37]

B. Second Appeal: Judge Williams

This time I got a different judge, Judge Amy Williams. Judge Williams denied the Writ of Mandamus, but she ruled that the City could not have a new hearing.[38] A new hearing would violate Meaton's due process rights.[39] Judge Williams further held that the Board was bound by the findings of fact from the original hearing.[40] However, she stated that the new Board[41] could listen to the tapes of the first hearing and if they found additional facts they could add them in—or they could simply reinstate Mr. Meaton.[42] That Order was never appealed.

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33. Order Granting Pet. for Writ of Cert., May 29, 2007, No. 06-0053AP-88B.

34. *Id.* at n.3 (noting that "the City hired outside counsel to represent and advise the Board").

35. *Id.* (noting that the "Board was advised, by outside counsel, that it was only bound by the specific words contained in the findings of facts [of the Board's original order] . . . but that it was free to make additional findings of fact, including findings that were specifically deleted by the previous Board in its final decision" (footnote omitted)).

36. Order Den. Pet. for Mandamus ¶ 1, Mar. 24, 2006, No. 05-8204-CI-19 (explaining that after the City's Petition for Writ of Certiorari was denied, the Board "voted to rehear the entire case").

37. *Id.* ¶ 1.

38. *Id.* ¶¶ 2, 6.

39. *See id.* ¶ 2 (explaining "[i]t is the opinion of this court that Petitioner's constitutional due process rights would be violated if the Board attempted to hold another hearing and took additional evidence to determine if the cause existed for his termination from employment").

40. *Id.* ¶ 3.

41. *See* Order Granting Pet. for Writ of Cert., May 29, 2007, No. 06-0053AP-88B (noting that at the time of the denial of the Writ of Mandamus by Judge Williams, "the Board was composed of completely different members than the Board that originally considered Meaton's termination").

42. *See* Order Den. Pet. for Mandamus ¶¶ 4–5, Mar. 24, 2006, No. 05-8204-CI-19 (finding that "[t]he Board, if it chooses to do so, can listen to the tapes of the original hearing . . . and, if it hears additional facts within those tapes, . . . it can supplement those findings").

So, the case went back to the Board again. And the Board decided to listen to the tapes.[43] The Tampa lawyer, who was still advising the Board at that time, told them that they could put back in some of the language that was removed by the original Board from the City's proposed Order—the language that stated Meaton was deceitful, disparaging, disrespectful, and confrontational.[44] The new Board listened to the approximately ten-hour-long tape, including the previously-removed language, and decided to once again uphold Meaton's termination.[45]

By this time, I was like a dog gnawing on a bone. I could not let this go if my life depended on it (well, maybe I would have let it go if my life depended on it). I filed a Writ of Certiorari to the circuit court once again.[46]

C. Third Appeal: The Three-Judge Panel

This time, we got a three-judge panel that included Judge Demers.[47] A year later, the circuit court held that the Board could not make findings of fact about such things as a person's credibility and demeanor by listening to tapes.[48] The court stated, as it did in the original appeal, that it could not order reinstatement because this review was by certiorari.[49] However, the court went on to state that litigation had to stop sometime and that the City should not be entitled to hearing after hearing:[50]

> Importantly, though, in footnote 24, [of the first *Meaton* decision] the Court stated: "The Court notes that unlawful deprivation of employment, a protected property interest, may compel only one remedy, reinstatement with back pay." The footnote follows the reasoning of *City of Kissimmee v. Grice*,

43. Order Granting Pet. for Writ of Cert., May 29, 2007, No. 06-0053AP-88B.

44. *Id.*

45. *Id.* ("Over Meaton's objection, the new Board proceeded to listen to the tapes, approximately 9 to 10 hours long, of the original proceeding and . . . conclud[ed] that there was just cause to terminate Meaton.").

46. *Id.*

47. The three-judge panel consisted of Judge Demers, Judge Peter Ramsberger, and Judge Anthony Rondolino. *Id.*

48. *Id.* (holding that it was "impossible for an entirely different Board to conduct a meaningful review of Meaton's termination by listening to hours of previously taped hearings, without observing the demeanor of the witnesses and being able to determine the witnesses' credibility first-hand").

49. *Id.*

50. *Id.*

> wherein the Fifth District Court of Appeal found that the circuit appellate court had exceeded its certiorari review authority in directing the City of Kissimmee to reinstate Grice with back pay. However, the Fifth District concluded with the observation, "It seems, however, that as a practical matter the quashing of the order of termination would lead to the same result as that required by the court's order."
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> Accordingly, the Court finds that the City departed from the essential requirements of law in holding another hearing.[51]

D. Fourth Appeal: Judge Canady

The City, of course, as it had done after the first decision of the circuit court, appealed the decision to the Second District Court of Appeal, using the vehicle of second-tier certiorari.[52] The City lost again.[53] However, in losing (for the fourth time), the City got an opinion—an opinion that became the worm that turned this case around.

Judge Canady wrote the opinion for the court.[54] In upholding the circuit court's decision, Judge Canady went on to state, in reference to the circuit court's statements about the Board having hearing after hearing: "Our denial of the City's petition should, however, not be understood as manifesting our approval of the circuit court's comments about the appropriateness of further proceedings before the Board."[55] Then he cited the often-cited language from *Tamiami Trail Tours, Inc.*[56] and *G.B.V. International*[57]—the language that created what I call the "Poof! Theory"—and concluded, "[i]n the series of proceedings that have followed in the train of Meaton's discharge, the circuit court has more than once issued pronouncements concerning the course of future proceedings. These pronouncements are nothing more than dicta."[58]

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51. *Id.* (internal citations omitted).
52. City of St. Petersburg v. Meaton, 987 So. 2d 755, 756 (Fla. 2d Dist. Ct. App. 2008).
53. *Id.* at 758 (denying the City's certiorari petition).
54. *Id.* at 756.
55. *Id.* at 758.
56. Tamiami Trail Tours v. R.R. Comm'n, 174 So. 451, 454 (Fla. 1937) (holding that when an order denying certiorari is quashed, "it leaves the subject matter . . . as if no order or judgment had been entered and the parties stand upon the pleadings and proof as it existed when the order was made").
57. Broward Cnty. v. G.B.V. Int'l, Ltd., 787 So. 2d 838, 844 (Fla. 2001).
58. *Meaton*, 987 So. 2d at 758.

Were the circuit court's pronouncements dicta? The circuit court, in its three-judge opinion (third appeal), had cited *West v. Board of County Commissioners, Monroe County*[59] and *City of Kissimmee v. Grice*[60] for the proposition that if an employee is fired unlawfully, the only remedy is reinstatement with back pay; so holding another hearing was a departure from the essential requirements of law.[61] That does not sound like *dicta*.[62] However, Judge Canady's statements *after* upholding the decision of the circuit court were clearly *dicta*, and I also believe they were an incorrect assessment of the law. Unfortunately, that mistake was neither the first nor the last in this case.

After Judge Canady's opinion, which upheld the decision of the circuit court but stated that the City was allowed to have still another hearing, Meaton had been fired for five years. The concept of him getting justice through the legal system was becoming a sad joke. Four appeals won, five years passed, and Meaton's only right was to go back and start all over! So say we all! Well, not all of us. At least not Meaton and me. The craziness was starting to set in. It seemed like it was not just the City we were fighting. It was the system.

E. Fifth Appeal: Hail Mary

What to do next in this crazy world of certiorari appeal from municipal boards? Even though my client and I had won in the appellate court, it was a pyrrhic victory. We then decided to appeal our 'victory' to the Florida Supreme Court. This appeal was really a "Hail Mary" because it was a request for discretionary review based on conflict certiorari, and it was very unlikely that the Supreme Court would take jurisdiction. It was worth a shot, however.

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59. 373 So. 2d 83 (Fla. 3d Dist. Ct. App. 1979).

60. 669 So. 2d 307 (Fla. 5th Dist. Ct. App. 1996).

61. Order Granting Pet. for Writ of Cert., May 29, 2007, No. 06-0053AP-88B (noting that in both cases the only remedy after the court found for the employee was to reinstate the employee with back pay).

62. In fact, the holdings in *West* and *Loudermill*, that a hearing has to be held "at a meaningful time" support the conclusion that another hearing two years after Meaton was terminated was a departure from the essential requirements of law because it violated the Due Process Clause of the United States Constitution. *See* Armstrong v. Manzo, 380 U.S. 545, 552 (1965) (explaining that "[a] fundamental requirement of due process is 'the opportunity to be heard.' It is an opportunity which must be granted at a meaningful time and in a meaningful manner." (internal citations omitted)).

The Supreme Court did not accept jurisdiction of the case.[63] Now what do we do? Do we take note of our scars, gather up our arms, and quietly and dignifiedly withdraw from the field of battle? Did I not tell you that we were crazy? Wait a minute, we had won all four appeals! Around this time, we were six years down the road with no witnesses and nobody who cared. But we had won the right—to do what? To have yet another hearing before the Board? The lone voice of the Third District in *West* was ringing in my ear: "Every formulation of the constitutional entitlement to a fair hearing includes the requirement that the hearing be held '*at a meaningful time*.'"[64] Why was nobody listening?

I went back over the case, piece by piece. Judge Demers had held in the first *Meaton* decision that the City, as a matter of law, had not established just cause for Meaton's termination.[65] Judge Williams had held in the Mandamus hearing that the City could not have another hearing; that it would violate Meaton's due process rights; that the City was bound by the original Board's findings of fact; but that the City could listen to the tapes and add additional findings if it so desired.[66] That Order was never appealed so it was a Final Order. Then, the City went back to the Board and convinced them to listen to approximately ten hours of tape and to find from listening to the tape that Meaton was disparaging, disrespectful, confrontational, and that he had made false representations.[67] The City lost that issue on appeal.[68]

What was left of the case? Well, looking at it from the middle—the Mandamus Order that was never appealed—the City could not have another hearing; they were bound by the findings of fact of the original Board, which Judge Demers ruled did not constitute just cause as a matter of law; and they had exhausted the one right Judge Williams had given them—listening to the tapes—and had lost that on appeal. Are you confused? Apparently, the courts were as well. But I saw out of this maze a Law of the Case argument. In other words, combining the first *Meaton* decision, which was upheld on appeal, with the Mandamus Order, *which was never appealed*, and the second *Meaton* decision—which shot down the

63. Meaton v. City of St. Petersburg, 3 So. 3d 1247 (Fla. 2009).
64. *West*, 373 So. 2d at 87 (emphasis added) (quoting *Armstrong*, 380 U.S. at 552).
65. Order Granting Pet. for Writ of Cert., Jan. 13, 2005, No. 03-5025AP-88B.
66. Order Den. Pet. for Mandamus ¶¶ 2–4, Mar. 24, 2006, No. 05-8204-CI-19.
67. Order Granting Pet. for Writ of Cert., May 29, 2007, No. 06-0053AP-88B.
68. *Id.*

listening to the tapes part of the Mandamus Order and was upheld on appeal—*there was nothing left to do in the case*! The City was bound by the original Board's findings of fact and could not have another hearing.

F. Sixth Appeal: The Declaratory Judgment Action

Armed with this logic and nothing else, my client and I decided to file a declaratory judgment action in the circuit court. It was an understatement to say we were unsure of our rights. But we had a legal argument—the Law of the Case—and it was a good one. Our judge for this cause of action was Judge Williams, who authored the original Mandamus Order.[69] She disposed of the case rather quickly on a Motion to Dismiss, stating: "Since this case has already been decided by the Sixth Circuit Appellate division and the Second District Court of Appeal, the Plaintiff may not use the declaratory action to attack those judgments. The Plaintiff has an administrative remedy before the Civil Service Board."[70]

Let me see if I can restate these two sentences in non-legalese without banging my head against the wall. The judge who originally ruled in 2006, *three years after my client was fired*, that Meaton's constitutional due process rights would be violated if the Board attempted to hold another hearing, ruled in 2011, *five years later and eight years after my client was fired*, that my client had an administrative remedy before the Board! Admit it: as you read this, you are going a little crazy too!

Ever the optimist, I saw a silver lining in this decision. I had a direct right of appeal to the Second District. And, even better, I could go to the appellate court with a recent decision *of theirs* that would necessitate a decision in my client's favor once and for all. Oh, I was so insane—and naive too.

G. Eighth Appeal: Back to the District Court

In 2011, the Second District had decided the case of *City National Bank of Florida v. City of Tampa*.[71] In that case, the court, citing *Dougherty ex rel. Eisenberg v. City of Miami*,[72] stated, "a

69. Order Granting Defs.' Mot. to Dismiss 2, Mar. 9, 2011, No. 09-10636-CI-19.
70. *Id.*
71. 67 So. 3d 293 (Fla. 2d Dist. Ct. App. 2011).
72. 23 So. 3d 156 (Fla. 3d Dist. Ct. App. 2009).

decision by a circuit court, sitting in its [certiorari] appellate capacity, becomes the Law of the Case on issues which were necessarily presented and decided in the prior action."[73]

In both *City National Bank of Florida* and *Dougherty*, the appeal to the circuit court was by first-tier certiorari.[74] Thus, Judge Demers' ruling that the Board's findings of fact did not constitute substantial, competent evidence as a matter of law, established the Law of the Case, and Meaton should have been reinstated. There is no other interpretation that makes sense and that is exactly what Judge Demers said in footnote twenty-four of his opinion.

Apparently, I did not need to go through the tortured reasoning of what all three decisions did to the case and that there was nothing left. All I needed to do was point to the first 2005 opinion of Judge Demers, which decided all the issues, and say that it was the Law of the Case as the Court explained it in *City National Bank of Florida*. I was ecstatic. Rarely does one have such a stroke of good luck. Judge Williams's Order dismissing the declaratory judgment action was issued on March 9, 2011, and *City National Bank of Florida* was decided on April 6, 2011.

The worm had turned again—or maybe not.

We had oral arguments in the Second District on the appeal, and it seemed to go well, except for one question asked by Judge LaRose: "Why did you choose a declaratory judgment action?" My answer: "What other vehicle did I have?" I had exhausted every avenue only to be told time and time again—"your remedy is another hearing before the Board." Apparently, I didn't answer the question right because we received a Per Curiam Affirmed ("PCA") about two weeks later. The problem with a PCA is that you never know why the court affirmed because it does not write an opinion. But in my mind, I thought it had to do with the declaratory judgment action. After all, Judge Williams' ruling had been that a declaratory judgment action was not appropriate.[75]

My client and I had another decision to make. Do we continue this charade and go back to the Board once again, or do we just give it up? I had absolutely no confidence that we would get anywhere with the Board. We had no witnesses (we eventually found one), the evidence was stale, and almost ten years had

73. *City Nat'l Bank of Fla.*, 67 So. 3d at 299.
74. *Id.* at 299–300.
75. Order Den. Pet. for Mandamus ¶ 1, Mar. 24, 2006, No. 05-8204-CI-19.

passed. But if we went through the Board hearing and the certiorari appellate process once again, the impediment to winning that may have been caused by using the vehicle of declaratory judgment would be eliminated. We had come this far. What was another two years when you are insane? We decided to proceed.

H. Ninth Appeal: Back to (a New) Three-Judge Panel

The City spared no expense in this third hearing—nine and a half years after Meaton was fired. Can you believe that? It boggles the mind that this is where the court system had put us simply because we refused to give up—a Civil Service hearing nine and a half years after the fact. The City flew in the former Department Director from Tallahassee. They flew in the former Plant Manager from out of state. They brought in the retired Labor Relations Manager. The only person they did not produce was Meaton's former direct supervisor, Mr. Sadowski. An investigation conducted by Human Resources substantiated that Mr. Sadowski made inappropriate and offensive racial remarks, was disparaging to his employees, used threats of violence to settle disputes among employees.[76] Needless to say, the City did not want him within a hundred miles of the hearing room. As I said, however, we did find one retired employee. It was a lovely dog and pony show, and at the end the new Board found in the City's favor.[77] The findings of fact of the original Board, that heard the evidence right after Meaton was fired and took out all the disparaging language from the City's proposed Order, were a distant memory.

I made sure that I objected to the hearing on the record and asserted that the Law of the Case precluded this hearing from taking place. Then we were off to circuit court once again. In a ruling dated May 22, 2014, eleven years after Meaton's termination, three new circuit judges, in a six-page opinion, ruled that Meaton's due process rights were not violated by a hearing

76. *See generally* Investigative Report from Mirella Murphy James, Attorney, to Tish Elston, First Deputy City Mayor/City Administrator, City of St. Petersburg, *Investigation of Northeast Wastewater Treatment Facility* (Sept. 5, 2001) (copy on file with *Stetson Law Review*). Meaton's former direct supervisor "exhibited favoritism toward some employees, displayed a lack of respect toward other[ ] employees, and engaged in inappropriate banter in the workplace, some of which may have had racial overtones." *Id.* at 1. The direct supervisor had also been investigated for allegations of sexual harassment. *Id.* at 1, n.1.

77. Meaton v. City of St. Petersburg, Case No. 12-08-B, at 4 (Civil Serv. Bd. of St. Petersburg, Feb. 11, 2013).

nine and a half years after his termination.[78] The Board was simply complying with both Judge Canady's opinion and Judge Williams's subsequent Order granting the City's Motion To Dismiss.[79] This three-judge panel found "meritless" the argument that Judge Demers's original opinion dated January 13, 2005, holding that the findings of fact of the Board, as a matter of law did not constitute just cause to terminate Meaton, established the law of the case.[80] The court quoted Judge Canady's opinion extensively but never mentioned the decision of the Second District in *City National Bank of Florida*. The final step in this long ordeal was a second-tier certiorari appeal to the Second District that was denied without opinion.

After ten years of fighting, we went out with barely a whimper.

III. ANALYSIS

Why write about this issue? It is one case. An employee lost his job. So what? He can get another one and, of course, he did. Most employees don't have due process rights. Why is this even important? This issue is important because it potentially affects every public employee with due process rights in the state of Florida. This exact situation has happened and can continue to happen anywhere in the state. The *Grice c*ase is an example of that.[81] As mentioned earlier in this Article, the Supreme Court of the United States has issued quite a few opinions on the due process rights of public employees. Apparently, that Court thinks it is an important subject.

Also, this procedural certiorari jujitsu happened to me before in a totally different context—a pension case.[82] And that's just me—one attorney in one city in this state. There are cases of all kinds where the appeal from a municipal agency is to the circuit court on a petition for writ of certiorari—where the game of procedural certiorari jujitsu can be played.

78. Order Den. Pet. for Writ of Cert., May 22, 2014, No. 13-000020AP-88A.
79. *Id.*
80. *Id.*
81. City of Kissimmee v. Grice, 669 So. 2d 307, 308 (Fla. 5th Dist. Ct. App. 1996).
82. Order Granting Am. Pet. for Cert., Mar. 20, 2009, No. 09-000010AP-88B.

A. Melvinia Horne: Another Example of How Certiorari Review Affects Employees' Rights

I represented an employee of the City of St. Petersburg, Melvinia Horne, who was fired for being physically unable to perform her job.[83] Melvinia Horne was a secretary, and after sixteen years of working for the City, she had developed nerve problems in her hands and wrists.[84] She had two workers' compensation claims arising out of her condition during her tenure at the City, which had been accepted and paid by the City.[85] Her two treating physicians opined that her disability was work related.[86] She applied for a service-connected disability.[87]

The Pension Board for the City was composed of employees, and citizens including the Human Resources Director, Gary Cornwell. In anticipation of Horne's claim coming before the Board, the Board passed a policy stating that repetitive-type injuries were not accidents and, therefore, not service-connected because the pension plan required service-connected disabilities to be caused by accidents.[88] The City Attorney's office advised the Pension Board that they had the authority to enact such a policy if they so desired.[89] However, the issue of repetitive trauma being an accident had been decided by the First District Court of Appeal in 1980 in *Festa v. Teleflex*.[90] The City Attorneys advised the Board that pension law was different. The Board awarded my client a non-service-connected disability pension, and I appealed the decision.[91] The *Meaton* case was going on at the time so I already knew what a successful certiorari appeal would get me—the right

83. *Id.*
84. *Id.*
85. *Id.* at n.2.
86. Order Granting Am. Pet. for Cert., Mar. 20, 2009, No. 09-000010AP-88B.
87. *Id.*
88. *Id.* ("On May 10, 2006, the Board adopted a Resolution establishing that 'repetitive trauma injuries do not meet the criteria for service-connected Disability Retirement as defined in Section 22-132(c)(1) of the St. Petersburg City Code.'").
89. *Id.* (explaining that Assistant City Attorneys advised the Board "that the decision of whether a repetitive trauma is an acceptable basis for accidental service-connected disability is within the discretion of the Board").
90. Festa v. Teleflex, Inc., 382 So. 2d 122, 124 (Fla. 1st Dist. Ct. App. 1980) ("Festa was daily subjected to repeated trauma; the twisting and turning action of the wrists over a prolonged period, which produced the disability. The medical testimony established the requisite causal connection, and the nature of the work exposed Festa to more than the ordinary hazard confronting people generally. His injury was compensable.").
91. Order Granting Am. Pet. for Cert., Mar. 20, 2009, No. 09-000010AP-88B.

to go back to the Pension Board. Instead, I filed a direct appeal, arguing that I was challenging a policy—the non-service connected disability policy for repetitive trauma injuries. Judge Williams was, once again, my judge in the circuit court, and she ruled that my only vehicle for appeal, policy or no policy, was by certiorari.[92] This was important because if I could have attacked the policy, I could have had it stricken, and I could ask for affirmative relief. Simply appealing my client's case, even if I were successful, would not change the policy. As I write this Article, I do not know if the policy on repetitive trauma cases being non-service-connected still exists or not.

In any event, I won the appeal. A three-judge panel of the circuit court found that the Pension Board departed from the essential requirements of law.[93] It was an easy appeal. The facts and the law were on my side. However, the circuit court could not order affirmative relief, so the case went back to the Pension Board. The Board had hired an attorney from Miami to handle the appeal.[94] When the case came back to the Board on remand, he advised them (just like the Tampa attorney the City hired in the *Meaton* case) that the decision to award a service-connected disability or not was totally up to them, because the circuit court had simply quashed the previous Order.[95] There it was again. The "Poof! Theory." The Board began to vote. The vote was two for and two against when it came to Gary Cornwell, the Human Resources Director. Human Resources, Cornwell's department, handled all employment decisions in the City and he had been living with the *Meaton* case for about five years by that time. I do not think he wanted another case like that on his plate. He looked directly at me, and I said to him, "you know I am not going to drop this." I do not know if my words had an impact on him or not, but he voted to give Horne a service-connected disability pension. If he had not,

92. *Id.* at n.4.

93. Order Granting Am. Pet. for Cert., Mar. 20, 2009, No. 09-000010AP-88B.

94. *See id.* (showing that Robert Sugarman, Esq., from Coral Gables, was the attorney for the City of St. Petersburg). It is amazing how taxpayers' money is spent.

95. *See id.* at n.4 (Judge Williams stating "This Court has no power when exercising its jurisdiction in certiorari to enter a judgment on the merits of the controversy under consideration or to direct the respondent to enter any particular order or judgment. When the petition is granted, the subject matter of the controversy remains pending before the administrative authority as if no order had been entered. The parties' pleadings and proof and their rights remain as they existed when the challenged order was originally entered and as if this Court's order granting certiorari had not been entered." (internal citations omitted)).

Horne's journey would have taken her down the same path as Meaton—the path of procedural certiorari jujitsu.

It should never have come to that point. The case should never have gone back to the Pension Board for any reason other than to have the board perform the ministerial function of awarding the pension the circuit court said Horne deserved.

B. The Irony of Certiorari Review: *Vaillant*

The ironic thing about this whole story is that the concept of first-tier and second-tier certiorari originated because the Florida Supreme Court wanted to put an end to hearing after hearing in a public employee termination case.[96] "*You're kidding me*," you say. "*You're making this stuff up*," you say! I kid you not.

In *City of Deerfield Beach v. Vaillant*,[97] the facts are essentially the same as the *Meaton* case except for one very important fact, which seems to have been overlooked by every court that has reviewed this case. Here are the facts in *Vaillant* as summarized by the Supreme Court:

> Michael Vaillant was terminated as the superintendent of the Deerfield Beach Wastewater Treatment Plant by the city manager. He appealed to the Civil Service Board of the City of Deerfield Beach which, after hearing, voted to uphold his termination. He then petitioned the circuit court for review of the board's action by certiorari. After examining the entire record "including hundreds of pages of proceedings and testimony taken and given before the Board," the circuit court granted Vaillant's petition, reversed the board's decision, and ordered Vaillant reinstated.[98]

This is like one of those situations where two seemingly identical pictures are presented to you and you have to look at them closely to find what is different. Do you see the difference between *Vaillant* and *Meaton*? First, the similarities: Vaillant and Meaton are public employees. They were both terminated. They both appealed to the Board and lost. They both then appealed by

96. *See* City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982) (finding that there should not be multiple repetitive reviews and second review of a case should become more limited in scope).

97. *Id.* at 624.

98. *Id.* at 625.

certiorari to the circuit court and won. Here is the difference. It is coming into view. I know you see it! I have been talking about it for many years but nobody seems to see it—there it is! The circuit court "granted Vaillant's petition, reversed the [B]oard's decision, *and ordered Vaillant reinstated*."[99] In Meaton's case, Judge Demers, citing the later decision in *G.B.V. International*, stated that the court could not order affirmative relief.[100]

Vaillant went to the Florida Supreme Court because the City of Deerfield Beach felt that it was entitled to another plenary appeal before the Fourth District Court of Appeal.[101] And the City had a pretty good argument: Article V, Section 4(b)(1) of the Florida Constitution, which states in pertinent part, "'District courts of appeal shall have jurisdiction to hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts, including those entered on review of administrative action, not directly appealable to . . . a circuit court.'"[102]

The Supreme Court went on to say, quoting the Fourth District, "'[C]ommon sense dictates that no one enjoys three full repetitive reviews to, 1. a civil service board[,] 2. a circuit court[, or] 3. a district court of appeal.'"[103] The Court then held that certiorari review to the circuit court was *an appeal as a matter of right*.[104] Thus, the language of Article V, Section 4(b)(1) relating to "'administrative action, not directly appealable to . . . a circuit court'"[105] did not apply. In other words, the Supreme Court made certiorari appeals from municipal board appeals as a matter of right specifically *to limit the number of full repetitive reviews* the City could have because *common sense dictated it!*

That language is very similar in tone and intent to the following language by the circuit court in the second *Meaton* appeal:

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99. *Id.* (emphasis added).

100. Order Granting Pet. for Writ of Cert., Jan. 13, 2005, No. 03-5025AP-88B. In retrospect, I always felt that if I had filed a Motion for Rehearing before Judge Demers and pointed out the specific facts in *Vaillant*, I could have convinced him to order affirmative relief in the form of reinstatement with back pay.

101. *Vaillant*, 419 So. 2d at 625–26.

102. *Id.* at 626 (quoting FLA. CONST. art. V, § 4(b)(1)).

103. *Id.* (quoting the appellate court below in *City of Deerfield Beach v. Vaillant*, 399 So. 2d 1045, 1047 (Fla. 4th Dist. Ct. App. 1981).

104. *Id.*

105. *Id.* (quoting FLA. CONST. art. V, § 4(b)(1)) (finding that once there has been a full review in a circuit court from an administrative proceeding, the district court does not need to provide a second full review).

> The City had the opportunity to try its case and to demonstrate, by a preponderance of the evidence, that Meaton had committed the cited offenses to support his termination. The first Board listened to days of testimony and considered numerous exhibits before entering its Order. As this Court painstakingly set forth in its Order Granting Petition, there simply was not competent substantial evidence in the record to support the Board's decision. While this Court's hands are tied in the sense that it cannot directly order that Meaton be reinstated with back pay, it is inconceivable that the City gets the proverbial "second bite at the apple."[106]

In my opinion, because Vaillant was reinstated by the circuit court and that action was upheld by the Fourth District and the Supreme Court, *Vaillant* stands for the proposition that certiorari review of administrative actions from municipalities is a matter of right and is the same as an appeal. Thus, the circuit court can order affirmative relief. That is an interpretation that aligns with the procedural history of the case and it makes sense. With that interpretation, employees are not hanging out in limbo for ten years because their case keeps getting sent back to the Board. County employees have a direct right of appeal because they fall under the Florida Administrative Procedure Act.[107] Why should there be a difference between the appellate rights of county employees and city employees?

The Law of the Case doctrine as set out in *City National Bank of Florida*, in effect, does the same thing, but it is not as clear-cut. I hate to point it out for the umpteenth time, but it did not help Meaton. After Judge Demers's first Order in 2005, if *City National Bank of Florida* had been decided and had made clear what the law was, then the Board should only have had the ministerial function of reinstating Meaton with back pay as Judge Demers suggested in footnote twenty-four of the Order.[108] Even if the Law of the Case, for some strange reason unknown to me, did not apply to Judge Demers's first Order, it should have applied after the second certiorari Order in 2007. By that time, Judge Demers had ruled in *Meaton I*[109] that there was no competent substantial evidence as a matter of law; Judge Williams had ruled that the

106. Order Granting Pet. for Writ of Cert., May 29, 2007, No. 06-0053AP-88B.
107. FLA. STAT. §§ 120.50–120.81 (2017) (affecting all public employees).
108. Order Granting Pet. for Writ of Cert. n.24, Jan. 13, 2005, No. 03-5025AP-88B.
109. Order Granting Pet. for Writ of Cert., Jan. 13, 2005, No. 03-5025AP-88B.

Board could not conduct another hearing since it would violate Meaton's due process rights; and her idea that the Board could listen to tapes and make further findings was shot down by the circuit court in *Meaton II*.[110] If those Orders had any meaning at all, there was literally nothing left to decide.

We lost this case because of the *dicta* in Judge Canady's opinion. The idea as expressed by Judge Canady that the City could have as many hearings as it wanted, is in direct conflict with the holding in *Vaillant*.[111] It is also inconsistent with the Law of the Case doctrine in certiorari proceedings as set out in *Dougherty* and *City National Bank of Florida*.[112]

How do you square the holdings in *Vaillant*, *Dougherty*, and *City National Bank of Florida* with the language in *G.B.V. International* and *Tamiami Trail Tours*, the language quoted by Judge Canady, and the language that deterred Judge Demers from ordering affirmative relief?

Because that language is so important to this discussion, it needs to be quoted again:

> When the order is quashed, as it was in this case, it leaves the subject matter, that is, the controversy pending before the tribunal, commission, or administrative authority, as if no order or judgment had been entered and the parties stand upon the pleadings and proof as it existed when the order was made with the rights of all parties to proceed further as they may be advised to protect or obtain the enjoyment of their rights under the law in the same manner and to the same extent which they might have proceeded had the order reviewed not been entered.[113]

110. Order Granting Pet. for Writ of Cert., May 29, 2007, No. 06-0053AP-88B.

111. *Compare* City of St. Petersburg v. Meaton, 987 So. 2d 755, 758 (Fla. 2d Dist. Ct. App. 2008), *with* City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982) (holding that "where full review of administrative action is given in the circuit court as a matter of right, one appealing the circuit court's judgment is not entitled to a second full review in the district court"). That was my argument to the Supreme Court, but it would not accept jurisdiction. Of course, almost right after writing the *Meaton* opinion, Judge Canady was appointed to the Supreme Court by Governor Charlie Crist.

112. *See* Dougherty ex rel. Eisenberg v. City of Miami, 23 So. 3d 156, 157–58 (Fla. 3d Dist. Ct. App. 2009) (accepting the limitations of second-tier judicial review); City Nat'l Bank of Fla. v. City of Tampa, 67 So. 3d 293, 299–300 (Fla. 2d Dist. Ct. App. 2011) (holding that "a decision by a circuit court, sitting in its appellate capacity, becomes the law of the case on issues which were necessarily presented and decided in the prior action").

113. Broward Cnty. v. G.B.V. Int'l, Ltd., 787 So. 2d 838, 844 (Fla. 2001).

Tamiami Trail Tours was decided well before the *Vaillant* decision created first-tier and second-tier certiorari and *G.B.V. International* was a second-tier certiorari case. Rather than attempting to distinguish those cases and the other case cited by Judge Canady as *dicta* in Meaton's fourth appeal, *Tynan v. Department of Highway Safety and Motor Vehicles*, the Fifth District Court of Appeal has already done so.

Recently, in *Department of Highway Safety and Motor Vehicles v. Azbell*,[114] the Petitioner, the Department of Highway Safety and Motor Vehicles, argued that it was entitled to another hearing to attempt to suspend the Respondent's driver's license and cited a number of cases from the Fifth District, argued that it was

> "well settled" that "when a circuit court determines that there has been an evidentiary error in an administrative hearing and/or that there is not substantial competent evidence in the record to support the administrative order, the circuit court is limited to quashing the administrative order and remanding the matter back to Petitioner for further proceedings.[115]

Sound familiar? In response to the cases cited by the Petitioner, the court stated:

> All of these cases involved situations where the merits of the controversy were not reached because one party or the other was denied the right to present pertinent evidence. The instant case involves a simple failure by Petitioner to meet its evidentiary burden. To grant a new hearing in situations like this simply affords Petitioner another bite at the apple and could result in an endless series of hearings until it finally presents sufficient evidence to support suspension.[116]

Another bite at the apple—an endless series of hearings—until it finally presents sufficient evidence to support suspension. It seems that Judge Torpy, who wrote the opinion, was channeling, almost verbatim, the three-judge panel of the circuit court in Meaton's case when it said it would be a departure from the essential requirements of law to give the City a new hearing.

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114. 154 So. 3d 461 (Fla. 5th Dist. Ct. App. 2015).
115. *Id.* at 461–62 (emphasis omitted) (internal citations omitted).
116. *Id.* at 462.

But there is more. The Department of Highway Safety and Motor Vehicles, citing *G.B.V. International*, also argued that the circuit court lacked the authority to take any particular action on remand.[117] Again, sound familiar? The court responded:

> Again, we think Petitioner's reliance on the cited authority is misplaced. *G.B.V. International, Ltd.* addressed the authority of an appellate court on second-tier review. . . . Here, by contrast, the circuit court on first-tier review made the determination that the evidence to support the suspension was lacking. On review, we allowed that decision to stand. After our mandate issued, the circuit court simply enforced its mandate. A reviewing court on first-tier certiorari review has the inherent authority to enforce its mandate.[118]

IV. CONCLUSION

I'm writing this Article because I believe the law of first-tier certiorari needs to be clarified, but that is only part of it. All of these appeals. So many judges. How did this turn out so wrong? Judge Demers had it right in the first appeal and the three-judge panel (which included Judge Demers) had it right in the second go round. Neither group got the fact that they could order affirmative relief in first-tier certiorari, but *Vaillant* wasn't really clarified until the *Azbell* case in 2015 and we will have to see if that clarification holds up. What they did get right from *Vaillant* and now *Azbell*, and what Judge Canady got so wrong in his *dicta* in the fourth *Meaton* appeal, is the fact that the City did not have the right to a second bite at the apple.[119] That was a departure from the essential requirements of law. And the greatest injustice—and maybe this is the main lesson from this tortured experience if there is one—was that once the pendulum started to swing against Meaton after Judge Canady made his pronouncement, nobody wanted to look at this case again objectively. Judge Williams felt

117. *Id.*

118. *Id.* at 462–63 (enforcing the decision made in *G.B.V. International, Ltd.* on circuit courts' authority of first-tier review).

119. *Compare* City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982), *and Azbell*, 154 So. 3d at 462, *with* City of St. Petersburg v. Meaton, 987 So. 2d 755, 758 (Fla. 2d Dist. Ct. App. 2008) (suggesting that the City was entitled to yet another hearing because the circuit court was prohibited from entering a judgment on the merits of the controversy while exercising its jurisdiction in certiorari).

she had to follow Judge Canady's lead.[120] So did the three-judge panel of the circuit court in 2014. And I will never know why the Second District Court of Appeal issued two PCAs, especially after *City National Bank of Florida*.[121] Two PCAs after ten years of litigation! "You lose and we are not even going to tell you why. It's nothing personal." Really? Brian Meaton and Melvinia Horne are real people. It was personal to them. Things turned out well for Melvinia Horne, but she could have just as well gone through the same nightmare as Brian Meaton.

Sometimes the legal system neglects to see the forest for the trees. It is not difficult to see that justice is not served when an employee, who has fought for two years and won his case on appeal, is told that all winning means is that he gets to try his case all over again. It's a cruel joke to tell an employee who has fought and won his case on appeal twice *after five years* that all he gets to do is try it again. I don't even know how to categorize the two PCAs after that.

And then there is this: When the party that is getting all the breaks is a governmental entity (a City) there is a huge perception problem as well. Hence the title of this Article: *You Can't Fight City Hall (Unless You're Crazy)*. People get that.

120. *See* Order Granting Am. Pet. for Cert. n.4, July 22, 2010, No. 09-000010AP-88B (citing Judge Canady's opinion in *Meaton*, 987 So. 2d at 758).

121. 67 So. 3d 293, 299–300 (Fla. 2d Dist. Ct. App. 2011).