

JS

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

BOARD OF COUNTY
COMMISSIONERS,
ESCAMBIA COUNTY, FLORIDA,

Appellant,

v.

Case No.: 2010-AP-0014
L.T. Case No.: 2009-CO-25935

ERTLE BRITT,

Appellee.

APPEALS DIVISION
FILED & RECORDED

2010 OCT -4 P 2:47

ERIN LEE MAGAHA
CLERK OF CIRCUIT COURT
ESCAMBIA COUNTY, FL

OPINION ON APPEAL

The appellant appeals an order by the trial court rendered on December 8, 2009, which dismissed an infraction. The appellee was charged in the lower tribunal with violating a county ordinance by conducting "illegal burning." The trial court dismissed the infraction on the ground that the applicable ordinance may only be enforced through criminal prosecution. The Court has jurisdiction. City of Marco Island v. Dumas, 13 So. 3d 108 (Fla. 2d DCA 2009).

Although an answer brief was due within twenty days of March 30, 2010, pursuant to rule 9.210(f), Florida Rules of Appellate Procedure, the

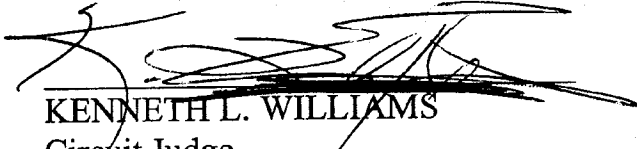
Case: 2010 AP 000001
00021863690
Dkt: OPINION Pg#:

appellee has failed to file an answer brief. Therefore, the Court will proceed without the benefit of an answer brief.

The Escambia County Code of Ordinances provides for a civil citation procedure. See Chapter 30, Article III, Escambia County Code of Ordinances. This procedure was adopted pursuant to chapter 162, Florida Statutes. Pursuant to section 162.21(8), Florida Statutes, “[t]he provisions of this section are *additional and supplemental* means of enforcing county or municipal codes or ordinances and may be used for the enforcement of any code or ordinance, or for the enforcement of all codes and ordinances. Nothing contained in this section shall prohibit a county or municipality from enforcing its codes or ordinances by any other means” (emphasis added). The Escambia County Ordinances provide that the citation procedure “is intended to provide a *supplemental* means of assuring compliance with the county’s codes and ordinances.” Section 30-61, Escambia County Code of Ordinance (emphasis added). The County may enforce the illegal burning ordinance by issuing a civil citation and is not prohibited from doing so simply because the same conduct may *also* be punished in a criminal prosecution.

Accordingly, the order under review is hereby REVERSED and REMANDED for further proceedings consistent with this opinion.

DONE and ORDERED in Chambers, Escambia County, Pensacola,
Florida, on this 30th day of September, 2010.


KENNETH L. WILLIAMS
Circuit Judge

KLW/lcw

Copies furnished to:

(PE)
9-30-10

✓ Ryan E. Ross, Assistant County Attorney
221 Palafox Place, Suite 430
Pensacola, FL 32502
Attorney for Appellant

✓ Ertle Britt
5916 Running Iron Dr.
Pensacola, FL 32570
Appellee