IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

SHETEVIA SPIKES,	)	
	)	
Appellant,	)	
v.	)	**CASE NO. 3D24-0482**
	)	**FCHR ORDER NO. 24-016**
COTTAGE COVE OWNER, LLC,	)	**DOAH CASE NO. 23-3858**
ET AL.,	)	**FCHR CASE NO. 202234072**
	)	
Appellee.	)	
_____	)	

APPELLEE'S ANSWER BRIEF

_____

On Administrative Appeal from the Florida Commission on Human Relations

_____

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TABLE OF CONTENTS

Page(s)

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

PRELIMINARY STATEMENT 1

STATEMENT OF THE CASE AND FACTS 2

SUMMARY OF ARGUMENT 4

ARGUMENT 5

I. SPIKES' NOTIONS THAT THE FLORIDA COMMISSION ON HUMAN RIGHTS LACKED STANDING TO ADOPT THE ALJ'S RECOMMENDED ORDER, OR THAT THE ALJ ERRED IN DISMISSING THE PETITION, ARE NOT SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE 5

II. SPIKES' ISSUES ARE UNPRESERVED FOR APPEAL AS THEY WERE NOT RAISED IN THE LOWER TRIBUNAL 7

III. AS THE RECORD ON APPEAL LACKS A TRANSCRIPT OF THE HEARING PROCEEDINGS BELOW, THE RECORD IS INADEQUATE TO DEMONSTRATE REVERSIBLE ERROR 11

CONCLUSION 15

CERTIFICATE OF SERVICE 16

CERTIFICATE OF COMPLIANCE 16

TABLE OF AUTHORITIES

Cases ***Page(s)***

Addison v. Florida Dep't of Revenue,
322 So. 3d 230 (Fla. 1st DCA 2021) 13

Akers v. City of Miami Beach,
745 So. 2d 532 (Fla. 3d DCA 1999) 9

Allied Prop. Group, Inc. v. Micor LLC,
338 So. 3d 1024 (Fla. 3d DCA 2022) 11

Applegate v. Barnett Bank of Tallahassee,
377 So. 2d 1150 (Fla. 1979) 14

Bagarotti v. Reemployment Assistance Appeals Comm'n,
208 So. 3d 1197 (Fla. 3d DCA 2017) 6

Carratelli v. State,
832 So. 2d 850 (Fla. 4th DCA 2002) 10

Cranney v. Cranney,
206 So. 3d 162 (Fla. 2d DCA 2016) 12

Dade Cnty. Sch. Bd. v. Radio Station WQBA,
731 So. 2d 638 (Fla. 1999) 8

DK Arena, Inc. v. EB Acquisitions I, LLC,
112 So. 3d 85 (Fla. 2013) 14

Dober v. Worrell,
401 So. 2d 1322 (Fla. 1981) 8

Florida High Sch. Athletic Ass'n, Inc. v. Johnson,
279 So. 3d 794 (Fla. 3d DCA 2019) 12

Garcia v. Garcia,
958 So. 2d 947 (Fla. 3d DCA 2007) 13

TABLE OF AUTHORITIES

Cases **(CONTINUED)** ***Page(s)***

Garrison v. Garrison,
255 So. 3d 877 (Fla. 4th DCA 2018) 12

Greenberg v. Bekins of South Florida,
337 So. 3d 372 (Fla. 4th DCA 2022)..... 7

Harrell v. State,
894 So. 2d 935 (Fla. 2005)..... 9

Klein v. Estate of Klein,
295 So. 3d 793 (Fla. 4th DCA 2020)..... 10

Lafaille v. Lafaille,
837 So. 2d 601 (Fla. 1st DCA 2003)..... 13

MacDonald v. Dep't of Children and Families,
855 So. 2d 1270 (Fla. 4th DCA 2003)..... 10

Macias v. Dep't of Rev. ex rel. Garcia,
16 So. 3d 985 (Fla. 3d DCA 2009)..... 5, 11

Medina v. State,
310 So. 3d 426 (Fla. 4th DCA 2021) 12

Monacelli v. Gonzalez,
883 So. 2d 361 (Fla. 4th DCA 2004)..... 12

Nat'l Claims Funding Co., LLC v. Sec. First Ins. Co.,
345 So. 3d 915 (Fla. 4th DCA 2022)..... 9

Ozyesilpinar v. Reach PLC,
365 So. 3d 453 (Fla. 3d DCA 2023)..... 8

P.D.K., Inc. v. Madeline,
291 So. 3d 134 (Fla. 4th DCA 2020)..... 10

TABLE OF AUTHORITIES

Cases **(CONTINUED)** ***Page(s)***

Rodriguez v. State,
609 So. 2d 493 (Fla. 1992) 9

Romero v. Midland Funding, LLC,
358 So. 3d 806 (Fla. 3d DCA 2023) 7

Stark v. State Farm Florida Ins. Co.,
95 So. 3d 285 (Fla. 4th DCA 2012) 9

Sunset Harbour Condo. Ass'n v. Robbins,
914 So. 2d 925 (Fla. 2005) 8, 11

Tillman v. State,
471 So. 2d 32 (Fla. 1985) 7, 8

Tramontana v. Bank of New York Mellon,
230 So. 3d 601 (Fla. 2d DCA 2017) 13

U.S. Blood Bank, Inc. v. Agency for Workforce Innovation,
85 So.3d 1139 (Fla. 3d DCA 2012) 6

Veronica Aguilar v. Melvin Ocana,
3D23-2279, 2024 WL 3049420 (Fla. 3d DCA June 19, 2024) 13

Versace v. Uruven, LLC,
348 So. 3d 610 (Fla. 4th DCA 2022) 14

Zarate v. Deutsche Bank Nat. Tr.,
81 So. 3d 556 (Fla. 3d DCA 2012) 11

Statutes

§ 120.68(10), Fla. Stat. 5 n.3

PRELIMINARY STATEMENT

Appellant, Shetevia Spikes ("Spikes"), was the "Petitioner" below before the Florida Commission on Human Relations ("FCHR"), and the Appellee hereto, Cottage Cove Owner, LLC ("Cove"), was "Respondent." Cove, a residential landlord, served its tenant, Spikes, a Non-Renewal Notice on January 10, 2022, noting Cove had elected not to renew the Apartment Lease Contract (R 169), and instructing Spikes to vacate the premises upon the expiration of her Lease Agreement, March 6, 2024. On March 2, 2022, Spikes signed a Notice to Vacate the unit indicating that she would vacate the premises on or before March 7, 2022 (R 172). Spikes filed a complaint with FCHR (R 9-13), which later entered a Final Order Dismissing Spikes' Petition (R 83-85).

The record on appeal contains no transcript of the proceedings. Citations to documents in the record on appeal are indicated, in this Answer Brief, by the symbol "R," followed by pertinent page number(s), together encased in parentheses. *E.g.*: "(R 1)." References to Appellant's Initial Brief are indicated by the symbol "IB," followed by pertinent page numbers, and together encased within parentheses. *E.g.*: "(IB 1)." As the record on appeal contains no transcript, no testimony is cited.

STATEMENT OF THE CASE AND FACTS

Spikes' Statement of the Case and Facts is argumentative, inaccurate, fails to apply the required appellate presumptions, and makes no citation to the record on appeal, requiring Cove to make the ensuing corrections or additions, with citations to the record on appeal.

This appeal arises from the Florida Commission on Human Rights' ("FCHR's") Final Order Dismissing Spikes' Petition for Relief (R 83-85).

On April 1, 2021, Appellant, Shetevia Spikes ("Spikes"), signed an Apartment Lease Contract with Appellee, Cottage Cove Owner, LLC ("Cove"), commencing March 7, 2021, and ending March 6, 2022 (R 134). Cove (a residential landlord) served Spikes (its tenant) with a Notice electing not to renew the lease and, later, a Notice to Vacate the unit was signed by Spikes. Spikes filed a Housing Discrimination Complaint with FCHR (R 9-13), claiming that Cove had represented to her that an apartment unit was not available based on her race, and allegedly represented to prospective renters of another race that an apartment unit was available (R 9-13). FCHR went on to make a determination of "No Cause" (R 16-17; 22-27).

The ALJ held a hearing and entered a Recommended Order of no cause (R 64-82)--though the record is devoid of any hearing transcript. FCHR then entered a Final Order Dismissing the Petition (R 83-85),

As Spikes' "Statement of the Case and Facts" makes factual assertions without any citation to the record (IB 2-6), Cove objects to any such assertions unless actually supported by the record on appeal.

The lacking transcript of any hearing limits this Court's review to the face of the Order appealed.[1] That Order states on its face: "We find the Administrative Law Judge's findings of fact to be supported by competent and substantial evidence. We adopt the Administrative Law Judge's findings of fact" (R 84). The ALJ's findings of fact thus control--including her adopted finding that "[t]he greater weight of the evidence does not show that Respondent affirmatively misrepresented to Petitioner, on January 4, 2022, or any other time, that a unit in Cottage Cove was not available for rent" (R 84).

[1] *See, e.g., Medina v. State*, 310 So. 3d 426, 427 (Fla. 4th DCA 2021).

SUMMARY OF THE ARGUMENT

I. Spikes' idea that the Florida Commission on Human Rights lacked standing to adopt the Administrative Law Judge's findings of fact and Recommended Order, or that the Administrative Law Judge "erred" when she dismissed Spikes' Petition, are unsupported by competent substantial evidence in the record, requiring affirmance on appeal.

II. The issues Spikes raises--for the first time on appeal--are unpreserved for appellate review, as the issues raised on appeal are not the issues raised or discussed in the lower tribunal and are thus waived.

III. As the record lacks any transcript of the hearing proceedings at the Florida Division of Administrative Hearings ("DOAH"), the record on appeal is inadequate in this case to demonstrate any reversible error.

For the foregoing reasons and the reasons set forth with greater particularity in the Argument section of this brief, this Court should affirm the Final Order Dismissing Spikes' Petition aptly entered herein.

ARGUMENT

Point I

SPIKES' NOTIONS THAT THE FLORIDA COMMISSION ON HUMAN RIGHTS LACKED STANDING TO ADOPT THE ALJ'S RECOMMENDED ORDER, OR THAT THE ALJ ERRED IN DISMISSING THE PETITION, ARE NOT SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE

Standard of Review

Spikes' idea the standard of review is *de novo* (IB 9) is mistaken. Because "[t]he administrative law judge's decision has the presumption of correctness in appellate proceedings and the burden is on the *appellant* to demonstrate error," *Macias v. Dep't of Rev. ex rel. Garcia*, 16 So. 3d 985, 986 (Fla. 3d DCA 2009) (emphasis added), an appellate court should not reverse the ALJ's findings where the ALJ's findings are supported by competent substantial evidence in the record. *Id.;*[2]

[2] Significantly, section 120.68(10), Florida Statutes (2023), provides:

> If an administrative law judge's final order depends on any fact found by the administrative law judge, the court shall not substitute its judgment for that of the administrative law judge as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside the final order of the administrative law judge or remand the case to the administrative law judge, if it finds that the final order depends on any finding of fact that is not supported by *competent substantial evidence in the record* of the proceeding.

Section 120.68(10), Florida Statutes (2023) (emphasis added).

Bagarotti v. Reemployment Assistance Appeals Comm'n, 208 So.3d 1197, 1199 (Fla. 3d DCA 2017) ("An administrative hearing officer's findings of fact may not be disturbed by a reviewing court [on appeal] if those findings are supported by competent, substantial evidence."); *U.S. Blood Bank, Inc. v. Agency for Workforce Innovation*, 85 So.3d 1139, 1142 (Fla. 3d DCA 2012) ("In an appeal from final administrative action, this Court reviews the agency's findings of fact to determine whether they are supported by competent, substantial evidence in the record.").

Merits

Though the first point stated in the Initial Brief's Table of Contents is whether FCHR had standing to adopt the ALJ's Recommended Order (IB 2), the Argument section of Spikes' Initial Brief differs markedly. Rather than any "standing," Spike argues that "The petitioner's whole investigation was carried out in an unfair and unjust manner, which led to a Final Order that incorrectly dismissed the petition for relief" (IB 10).

But no competent substantial evidence supports Spikes' *ipse dixit* that the *investigation* proceeded in an unfair or unjust manner, and nothing in the record shows Spikes objected to, raised, or discussed any unfairness or injustice in the course of FCHR's investigation itself. Indeed, the record contains no competent substantial evidence capable

of overcoming the ALJ's factual findings, which are presumed correct on appeal. *Bagarotti*, 208 So. 3d at 1199 ("An administrative hearing officer's findings of fact may not be disturbed by a reviewing court if those findings are supported by competent, substantial evidence.").

As the record on appeal here lacks competent substantial evidence to support Spikes' idea that the ALJ improperly entered the Final Order Dismissing her Petition for Relief, this Court should affirm that ruling.

Point II

SPIKES' ISSUES ARE UNPRESERVED FOR APPEAL AS THEY WERE NOT RAISED IN THE LOWER TRIBUNAL

Standard of Review

"[T]o be preserved for further review by a higher court, an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved." *Greenberg v. Bekins of South Florida,* 337 So. 3d 372, 375 (Fla. 4th DCA 2022) (quoting *Tillman v. State*, 471 So. 2d 32 (Fla. 1985)); *Romero v. Midland Funding, LLC*, 358 So. 3d 806, 809–10 (Fla. 3d DCA 2023) ("In order to be preserved for further review by a higher court, an issue must be presented to the lower court and the specific legal argument or ground

to be argued on appeal or review must be part of that presentation if it is to be considered preserved.") (quoting *Sunset Harbour Condo. Ass'n v. Robbins*, 914 So. 2d 925, 928 (Fla. 2005) (quoting *Tillman v. State*, 471 So. 2d 32, 35 (Fla. 1985))); *Ozyesilpinar v. Reach PLC*, 365 So. 3d 453 (Fla. 3d DCA 2023) (affirming dismissal of landlord's defamation action against potential renter for renter's allegations that landlord made racist statements to renter, and concluding, "Appellant did not raise this issue below in the trial court, and has waived it for purposes of this appeal.") (citing *Dade Cnty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638 (Fla. 1999); *Dober v. Worrell*, 401 So. 2d 1322 (Fla. 1981)).

Merits

Spikes argues--for the first time on appeal--that FCHR lacked "lawful standing[ ] to adopt[ ] the Recommended Order issued by the Administrative Law Judge" (IB 2). But nowhere in the Final Order or record on appeal is there any inkling Spikes raised or discussed FCHR's "standing," or lack thereof, in response to the Administrative Law Judge's Recommended Order. Though FCHR and the ALJ invited Spikes to file Exceptions to the Recommended Order (R 62, 82), the Final Order itself noted that "no Exceptions to the Recommended Order were filed" (R 84).

"In order for an argument to be cognizable on appeal, it must be *the*

specific contention asserted as legal ground for the objection, exception, or motion below." *Harrell v. State*, 894 So. 2d 935, 940 (Fla. 2005). "[T]he specific legal ground upon which a claim is based must be raised at trial and a claim different than that will not be heard on appeal," *Rodriguez v. State,* 609 So. 2d 493, 499 (Fla. 1992), as "[a]n appellate court 'should not ordinarily decide issues not ruled on by the trial court in the first instance.'" *Nat'l Claims Funding Co., LLC v. Sec. First Ins. Co.*, 345 So. 3d 915, 919 (Fla. 4th DCA 2022) (citing *Stark v. State Farm Florida Ins. Co.*, 95 So. 3d 285, 289 n.4 (Fla. 4th DCA 2012) (quoting *Akers v. City of Miami Beach*, 745 So. 2d 532, 532 (Fla. 3d DCA 1999))).

"The purpose of this rule is to place[] the trial judge on notice that error may have been committed, *and provide[] him an opportunity to correct it at an early stage of the proceedings*." *Harrell*, 894 So. 2d at 940. "The sole exception to the [foregoing] rule is for fundamental error," *id.*--which Spikes has neither raised nor discussed in her Initial Brief.

Spikes' Initial Brief fails to carry the appellant's burden of showing reversible error on appeal, as there is no evidence that Spikes ever objected to, raised, or discussed, in the trial court, whether FCHR had standing to adopt the ALJ's Recommended Order. Spikes has, thus, failed to preserve any such issue for consideration on appellate review.

In short, as Spikes did not raise or discuss below issues presented on appeal, she obtained no ruling from the trial court for appellate review. *Klein v. Estate of Klein*, 295 So. 3d 793, 800 (Fla. 4th DCA 2020) ("A party must … 'obtain a ruling from the trial court in order to preserve an issue for appellate review.'") (quoting *MacDonald v. Dep't of Children and Families*, 855 So. 2d 1270, 1271 (Fla. 4th DCA 2003)); *see also, P.D.K., Inc. v. Madeline*, 291 So. 3d 134, 136 (Fla. 4th DCA 2020) ("To preserve an issue for appeal, a party must obtain a ruling …") (citing *Carratelli v. State*, 832 So. 2d 850, 856 (Fla. 4th DCA 2002)).

In sum, in order to be entitled to appellate review of the issues Spikes' Initial Brief raises for the first time on appeal, Spikes would have had to have first raised any such issues within the Petition itself or at the trial on the merits--and then obtain a ruling on her objection.

As Spikes never raised, discussed, or obtained a ruling upon the issues presented here, those issues are unpreserved for appeal. Spikes' failure to raise, discuss, or obtain a ruling in the lower tribunal on issues she raises for the first time in the present appeal, requires affirmance.[3]

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[3] *See also Ritchie v. State*, 344 So. 3d 369 (Fla. 2022) (failure to properly preserve an issue also precludes application of harmless error analysis), *reh'g denied*, SC20-1422, 2022 WL 3593821 (Fla. Aug. 23, 2022), and *certiorari denied sub nom. Ritchie v. Florida,* 143 S.Ct. 1005 (2023).

Point III

AS THE RECORD ON APPEAL LACKS A TRANSCRIPT OF THE HEARING PROCEEDINGS BELOW, THE RECORD IS INADEQUATE TO DEMONSTRATE REVERSIBLE ERROR

Standard of Review

Where the record on appeal after an administrative hearing in which the ALJ is charged with fact-finding, contains no trial transcript, affirmance is required. *Macias v. Dep't of Rev. ex rel. Garcia*, 16 So. 3d 985, 986 (Fla. 3d DCA 2009) ("Macias has failed to provide transcripts of the administrative proceedings, which this Court must have in order to determine whether the administrative law judge abused his discretion. Therefore, we affirm as Macias cannot demonstrate error."); *Zarate v. Deutsche Bank Nat. Tr.*, 81 So. 3d 556, 557 (Fla. 3d DCA 2012) ("An appellant has the burden to present a record that will overcome the presumption of the correctness of the [lower tribunal's] findings.").

In short, as Florida's Third District Court of Appeal has observed: "A party cannot raise an issue before this [appellate] court in the first instance." *Allied Prop. Group, Inc. v. Micor LLC*, 338 So. 3d 1024, 1026 (Fla. 3d DCA 2022) (citing *Sunset Harbour Condo. Ass'n v. Robbins*, 914 So. 2d 925 (Fla. 2005) ("As a general rule, it is not appropriate for a party to raise an issue for the first time on appeal.") (citations omitted)).

Merits

As the record on appeal in this case contains no hearing transcript, this Court's appellate review is limited to the face of the judgment itself:

> [B]ecause we do not have a transcript of the proceedings below, we cannot resolve the underlying factual issues in order to determine whether the trial court's judgment … is without evidentiary support. *See Applegate v. Barnett Bank of Tallahass*ee, 377 So. 2d 1150, 1152 (Fla. 1979). Thus, we must affirm on this issue unless [appellant] can demonstrate "that the error complained of has resulted in a miscarriage of justice." *Esaw v. Esaw*, 965 So.2d 1261, 1265 (Fla. 2d DCA 2007) (quoting § 59.041, Fla. Stat. (2004)). *In the absence of a transcript, we will only reverse where the error appears on the face of the judgment.*

Cranney v. Cranney, 206 So. 3d 162, 164 (Fla. 2d DCA 2016) (emphasis added) (citing *Monacelli v. Gonzalez*, 883 So. 2d 361, 362 (Fla. 4th DCA 2004)); *see also Medina v. State*, 310 So. 3d 426, 427 (Fla. 4th DCA 2021) ("Because there is no transcript of the final hearing, our review is also limited to errors appearing on the face of the trial court's order."); *Garrison v. Garrison*, 255 So. 3d 877 (Fla. 4th DCA 2018) ("Failure to provide a trial transcript on appeal will usually result in an affirmance."); *Florida High Sch. Athletic Ass'n, Inc. v. Johnson*, 279 So. 3d 794, 797 (Fla. 3d DCA 2019) ("Because, however, we do not have the benefit of a hearing transcript, we are unable to determine either whether the factual determinations made by the trial court at the evidentiary hearing are

supported by competent, substantial evidence, or whether the trial court committed legal error .."') (citing *Garcia v. Garcia*, 958 So. 2d 947, 949 (Fla. 3d DCA 2007) (citing *Applegate*)). Saliently, the same is true here.

Moreover, "'the lack of a trial transcript or a proper substitute' forecloses reversal." *Addison v. Florida Dep't of Revenue*, 322 So. 3d 230 (Fla. 1st DCA 2021) (quoting *Lafaille v. Lafaille*, 837 So. 2d 601, 604 (Fla. 1st DCA 2003) (noting a lower tribunal's findings and final judgment "cannot be disturbed absent a record demonstrating reversible error," and observing that, on appeal, the appellant has the burden to present the reviewing court "with an adequate record to support his appeal")).

Indeed, as this Court has most recently reiterated in this regard, the lack of a final hearing transcript requires an appellate court to affirm:

> A trial court's judgment comes to the appellate court cloaked with a presumption of correctness. It is the duty of the appellant to provide a sufficient record [an appeal], including a transcript of proceedings necessary to establish reversible error. In the absence of a sufficient record of the proceedings below, the appellate court is constrained to affirm the judgment on appeal. *See Joseph v. Henry*, 367 So. 3d 1280 (Fla. 3d DCA 2023); *Applegate v. Barnett Bank of Tallahassee,* 377 So. 2d 1150 (Fla. 1979). Discerning no error on the face of the final judgment, we affirm.

Veronica Aguilar v. Melvin Ocana, 3D23-2279, 2024 WL 3049420, at *1 (Fla. 3d DCA June 19, 2024); *see also Tramontana v. Bank of N.Y. Mellon*, 230 So. 3d 601 (Fla. 2d DCA 2017) ("Without a transcript, and in the

absence of fundamental error on its face, an appellate court will affirm a trial court's decision"). As the same is true here, affirmance is proper.

Spikes' allegations on appeal--absent a single record citation or hearing transcript--should trigger the Florida Supreme Court's firm admonition: "Without a record of the trial proceedings, the appellate court cannot properly resolve the underlying factual issues so as to conclude that the trial court's judgment is not supported by the evidence or by an alternative theory," *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979), because, "[w]ithout knowing the factual context, neither can an appellate court reasonably conclude that the trial judge so misconceived the law as to require reversal." *Id.*

As the findings below are presumptively correct, *DK Arena, Inc. v. EB Acquisitions I, LLC*, 112 So. 3d 85, 91 (Fla. 2013), and because, "[w]ithout a record of the trial proceedings, the appellate court cannot properly resolve the underlying factual issues so as to conclude that the trial court's judgment is not supported by the evidence or by an alternative theory," *Applegate*, 377 So. 2d at 1152, affirmance is appropriate. *E.g., Versace v. Uruven, LLC*, 348 So. 3d 610, 614 (Fla. 4th DCA 2022) ("As we have no transcript of the hearing, we are required to accept the trial court's rulings as supported by the evidence and affirm.").

Thus, here, as in each of the above-cited cases, because Spikes has provided no transcript of the proceedings below, this Court should not decide the underlying issues to determine whether the trial court's Final Order has, or lacks, support. *Cranney*, at 164. To the contrary, because "[i]n the absence of a transcript, [this Court] will only reverse where the error appears of the face of the judgment," *id.*, and because no error appears on the face of the Order on appeal (R 83-85), the trial court's Final Order Dismissing Spikes' Petition should be affirmed.

CONCLUSION

I. Because FCHR did, indeed, have standing to adopt the ALJ's Recommended Order and properly entered the Final Order Dismissing Spikes' Petition, and because there is no competent substantial evidence in the record to the contrary, the Final Order herein should be affirmed.

II. As Spikes' failed to raise, in the lower tribunal, issues now raised for the first time on appeal, the Final Order should be affirmed, as the issues raised on appeal must be the same issues raised below.

III. As the record on appeal contains no transcript of the hearing from which to identify any reversible error, this case should be affirmed in keeping with the Florida Supreme Court's opinion in *Applegate*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY a true and correct copy of Appellee's Answer Brief was served upon the *pro se* Appellant, Shetevia Spikes, by email service to modeling_fashion@yahoo.com, and by First Class United States Mail, to 2001 N.W. 133rd St, Miami Florida, 33167, this 24th day of June 2024.

CERTIFICATE OF COMPLIANCE

I CERTIFY this Answer Brief was created using Bookman Old Style 14-pt. font, and that its 4,000 words do not exceed word- or page-limits, excluding the items specifically listed in Fla. R. App. P. 9.210(a)(2)(B).

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