3D2024-0366

In the District Court of Appeal of Florida
Third District

BONNIE D. BOLTON,

Petitioner,

v.

CITY OF CORAL GABLES
and CENTURY CRYSTAL GROUP, LLC,

Respondents.

FROM THE ELEVENTH JUDICIAL CIRCUIT, MIAMI-DADE COUNTY, FLORIDA
APPELLATE DIVISION
CASE NO. 2023-24-AP-01

CORAL GABLES CITY COMMISSION
CASE NO. 2022-014

CITY OF CORAL GABLES' OPPOSITION TO BONNIE D. BOLTON'S MOTION FOR REHEARING AND WRITTEN OPINION

Respectfully submitted,
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I. INTRODUCTION

The City of Coral Gables ("City") opposes Bonnie D. Bolton's ("Bolton") Motion for Rehearing and/or Written Opinion ("Motion"). The Motion is improper as a matter of law, as it merely advances re-argument of matters that Bolton failed to preserve below. The Motion must be denied.

II. ARGUMENT

According to Bolton, a rehearing and/or written opinion is warranted because the Court *may* have overlooked that the Respondents purportedly relied on evidence not in the record, and *perhaps* deviated from precedent. (Mot. 4-10.) What Bolton fails to understand is that she cannot obtain any relief premised on an argument that she failed to preserve, much less relief based on a repetition of that long-ago waived argument.

More specifically, Bolton raised the "evidence not in the record" issue for the first time in a purported motion to strike (D.E. 19) that she belatedly filed in the Eleventh Judicial Circuit more than six months after her petition for first-tier certiorari relief. (D.E. 1.) In other words, Bolton failed to preserve the issue via a timely objection during the City's Historic Preservation Board's underlying hearing, when Mr. Warren Adams, Historic Preservation Officer, provided the testimony that Bolton contends references an article that purportedly contradicts what Mr. Adams said. (A. 0303-0328, 0600-626.)

Bolton also failed to raise the issue before the City Commission when it heard the matter in an appellate capacity, even though she was represented by counsel. (A. 0584-85, 0889-0978.) And, as noted, she failed to raise the issue in her petition in the Eleventh Judicial Circuit. (D.E. 1.)

Accordingly, what Bolton wants is to revive an issue waived long ago. That is not within the scope of a second-tier certiorari proceeding, much less within the scope of a motion for rehearing or written opinion following a per curiam affirmance. In fact, this Court has cautioned against filings of Bolton's type. *Yeyille v. Speigel*, 383 So. 3d 89 (Fla. 3d DCA 2023) ("[Movant] fails to show how this Court's per curiam affirmance conflicts with prior precedent . . . . [He] cites to various case law . . . but does not 'state with particularity' how this Court's opinion conflicts with any of that precedent. [He] also merely reasserts the arguments raised in his briefs. A motion for rehearing is not an open invitation for an unhappy litigant or attorney to reargue the same points previously presented . . . . [Movant] also asserts the Court should issue a written opinion [but] fails to even assert how this Court's opinion conflicts with or deviates from prior precedent."); *Blake v. Am. Sales & Mgmt. Org. LLC*, 319 So. 3d 648 (Fla. 3d DCA 2021) ("Although there may be instances where motions for rehearing are appropriate after the issuance of what is commonly referred to as a PCA, such instances are

rare and are most often limited to occasions when a relevant decision of the Supreme Court or another District Court of Appeal is rendered after briefing and oral argument and not considered by the court. Generally, these motions are considered improper because a motion for rehearing cannot direct the court to matters overlooked if no written opinion has been published.") (ellipsis and brackets omitted) (quoting *McDonnell v. Sanford Airport Auth.*, 200 So. 3d 83, 85 (Fla. 5th DCA 2015)); Fla. R. App. P. 9.330(a)(2)(A),(D) ("A motion for rehearing shall state with particularity the points of law or fact that, in the opinion of the movant, the court has overlooked or misapprehended in its order or decision. . . . A motion for written opinion shall set forth the reasons that the party believes that a written opinion would provide . . . an explanation for an apparent deviation from prior precedent . . . .").

III. CONCLUSION

Bolton has wasted enough judicial resources. She merely rehashes a previously waived argument and suggests—*without identifying how*—this Court erred in its determination to issue a per curiam affirmance. The Motion is procedurally and substantively improper and must be denied.

CERTIFICATE OF SERVICE

I hereby certify that along with this filing on July 2, 2024, a copy of this document is being served on all counsel of record via the Court's e-filing system.

CERTIFICATE OF COMPLIANCE

I certify that this response complies with Florida Rule of Appellate Procedure 9.210(a)(2), on computer generated briefs. It is in Arial 14-point font and has 665 words.

s/Eric Hernandez
Eric A. Hernandez