

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

RICHARD ANTHONY MOHLER,

Petitioner,

v.

KATRINA ELLIOTT,

Respondent.

No. 2D21-2276

January 14, 2022

Petition for Writ of Certiorari to the Circuit Court for Hillsborough County; Rex Barbas, Judge.

Sharon C. Degan and Sebastian C. Mejia of Kubicki Draper, Orlando, for Petitioner.

Matthew S. Mudano, Tampa, for Respondent.

BLACK, Judge.

Richard Mohler seeks certiorari review of a partial final summary judgment rendered in favor of Katrina Elliott. The judgment addresses only certain medical bills—awarding damages

and permitting execution thereon—and was entered on a motion for partial summary judgment and without prejudice to any other damages that a jury might award Ms. Elliott following trial. We grant the petition for writ of certiorari and quash the partial final summary judgment.

Despite Ms. Elliott's argument otherwise, this order is not an appealable nonfinal partial final judgment under Florida Rule of Appellate Procedure 9.110(k). The issue of damages, including the damages awarded in the order on review, remains in dispute; therefore, the order does not "dispose[] of a separate and distinct cause of action that is not interdependent with other pleaded claims." Fla. R. App. P. 9.110(k). There is ample definitive case law supporting this conclusion. *See, e.g., Gator Boring & Trenching, Inc. v. Westra Constr. Corp.*, 210 So. 3d 175, 180-81 (Fla. 2d DCA 2016); *Fla. Ins. Guar. Ass'n v. Murphy*, 162 So. 3d 1049, 1050 (Fla. 2d DCA 2015); *E. Ave., LLC v. Insignia Bank*, 136 So. 3d 659, 661 (Fla. 2d DCA 2014); *Kratos Holdings, LLC v. Direct Invs. Int'l, LLC*, 323 So. 3d 334, 336 (Fla. 3d DCA 2021). However, "certiorari review is available to review the form of an order, if not its underlying merits,

insofar as it permits execution prior to rendition of an appealable final judgment." *E. Ave.*, 136 So. 3d at 664.

By authorizing execution "at a time when [petitioner] has no appellate remedy and therefore cannot protect [his] assets by filing a supersedeas bond," the partial final summary judgment subjects the petitioner to a material injury that has no appellate remedy. *See id.* at 665. It therefore satisfies the two jurisdictional prongs of the certiorari standard. *See Gov't Emps. Ins. v. Arreola*, 231 So. 3d 508, 512 (Fla. 2d DCA 2017) ("Geico has satisfied the jurisdictional prongs in this case because the partial judgment subjects it 'to execution at a time when it has no appellate remedy and therefore cannot protect its assets by filing a supersedeas bond.' " (quoting *E. Ave.*, 136 So. 3d at 665)); *Murphy*, 162 So. 3d at 1051 ("Here, the jurisdictional prongs are satisfied because while the [appellees] may seek execution of the judgment, [the appellant] may not obtain review until the trial court renders a final order.").

Having established jurisdiction, we next consider whether there has been a departure from the requirements of law. *See Gator Boring*, 210 So. 3d at 184. Like the jurisdictional question, there is

ample case law addressing the departure prong of certiorari review in this context. This court and others have repeatedly held that "allowing execution on the judgment prior to entry of a final, appealable order is a departure from the essential requirements of law." *Murphy*, 162 So. 3d at 1051 (citing *E. Ave.*, 136 So. 3d at 665); *see also Integrale Invs., LLC v. Hoffman*, 210 So. 3d 251, 251 (Fla. 2d DCA 2017) ("Because the order is a nonfinal, nonappealable order but authorizes execution, it departs from the essential requirements of law." (citing *E. Ave.*, 136 So. 3d at 665)); *Williamson v. Banta*, 22 So. 3d 152, 152 (Fla. 1st DCA 2009) ("[T]he trial court's inclusion of the execution language departed from the essential requirements of the law and caused a material injury that cannot be remedied on appellate review."). As succinctly stated by the Third District, "[c]ourts have consistently found that an order resolving only part of a civil lawsuit by requiring a party to make an interim payment while leaving intertwined factual matters unresolved presents the type of irreparable harm and departure from the essential requirements of the law remediable" on certiorari

review. *People's Tr. Ins. Co. v. Gonzalez*, 318 So. 3d 583, 583 (Fla. 3d DCA 2021).

Petition for writ of certiorari granted; order quashed.

LUCAS and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.