

265 So.3d 706

District Court of Appeal of Florida, First District.

[LEON COUNTY, Florida](#), Petitioner,

v.

LAKESHORE GARDENS HOMEOWNERS' ASSOCIATION, INC., a Florida Not for Profit Corporation; Lakeshore Gardens Homeowners' Association, Inc., a Florida Not for Profit Corporation, as the Representative for the Class of All Lot Owners of Lakeshore Gardens, as Per Plat Thereof Recorded in Plat Book 12, Page 2, of the Official Records of Leon County, Florida; Leon County Tax Collector; and [Leon County Property Appraiser](#), Respondents.

No. 1D18-2703

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February 28, 2019**Synopsis**

Background: County sought writ of certiorari seeking review of circuit court's nonfinal order granting motion by homeowner's association to dismiss its petition in eminent domain.

[Holding:] The District Court of Appeal held that dismissal of county's petition departed from essential requirements of law and caused material injury to county.

Petition granted.

West Headnotes (3)

[1] Eminent Domain Defendants**Eminent Domain** Review on certiorari

Circuit court's dismissal of county's petition for eminent domain filed against homeowner's association, but which did not name individual homeowners, departed from essential requirements of law and

caused material injury to county from which there would be no adequate remedy on appeal as required for certiorari relief, although general directives governing civil practice and procedure suggested naming individual homeowners who were affected as indispensable parties, where all homeowners had interest in common area affected by action, statute provided that homeowner's association may defend actions in eminent domain, and rule of civil procedure permitted homeowner's association to institute, maintain, settle, or appeal actions in its name concerning matters of common interest to all members. [Fla. Stat. Ann. §§ 73.021\(4\), 720.303\(1\); Fla. R. Civ. P. 1.221.](#)

[Cases that cite this headnote](#)**[2] Certiorari** Existence of Remedy by Appeal or Writ of Error**Certiorari** Particular proceedings in civil actions

Before a court may grant certiorari relief from the denial of a motion to dismiss, the petitioner must establish the following three elements: (1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case (3) that cannot be corrected on postjudgment appeal.

[Cases that cite this headnote](#)**[3] Certiorari** Existence of Remedy by Appeal or Writ of Error**Certiorari** Particular proceedings in civil actions

Two of the three elements that a petitioner must establish before a court may grant certiorari relief from the denial of a motion to dismiss, namely material injury for remainder of case and no appeal or direct method of review of proceeding, are jurisdictional and must be analyzed before the court may even

consider the first element, departure from essential requirements of the law.

Cases that cite this headnote

***707** Petition for Writ of Certiorari—Original Jurisdiction.

Attorneys and Law Firms

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Opinion

Per Curiam.

Leon County has filed a petition for writ of certiorari in this Court seeking review of the circuit court's nonfinal order granting the motion to dismiss its Petition in Eminent Domain filed by Lakeshore Gardens Homeowners' Association, Inc. Through its petition filed below, Leon County sought to exercise its eminent domain authority over certain common area property in the Lakeshore Gardens neighborhood for use as an easement. The neighborhood reportedly has more than 100 property owners, all of which have an interest in the common area.

The circuit court dismissed the petition on the basis it was reliant only upon [Florida Rule of Civil Procedure 1.221](#) in naming the homeowners association rather than joining, as indispensable parties, each individual property owner as specified in [section 73.021, Florida Statutes](#). In granting the association's motion to dismiss, the circuit court ruled that while the homeowners association contended “it does not have authority to act on behalf of the homeowners ... at this stage of the proceedings, it is more significant that the [petition] contain[ed] no allegations that the Association has the needed legal authority.”

***708** Accordingly, the circuit court granted Leon County twenty days to submit an amended petition, presumably to list “[t]he names, places of residence, legal disabilities, if any, and interests in the property of all owners ...” in the

affected area, as prescribed by [section 73.021\(4\), Florida Statutes](#).

[1] We grant Leon County's petition for writ of certiorari. Despite the general directions in [section 73.021\(4\)](#) for naming indispensable parties, [section 720.303\(1\), Florida Statutes](#), provides in relevant part that “the [homeowners] association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members ... [and] may defend actions in eminent domain or bring inverse condemnation actions.” (Emphasis added.) In like manner, [rule 1.221](#) expressly permits a homeowners association to “institute, maintain, settle, or appeal actions or hearings in its name on behalf of all association members concerning matters of common interest to the members, including, but not limited to: ... (6) defense of actions in eminent domain or prosecution of inverse condemnation actions.” Because, to date, Florida's appellate courts have not addressed the propriety of naming the homeowners association as the sole party representing the class of homeowners under the statute and rule just cited, we turn to the decisions of the Second District in [Tedeschi v. Surf Side Tower Condominium Ass'n](#), 35 So.3d 915 (Fla. 2d DCA 2010), and the Third District in [Trintec Construction Inc. v. Countryside Village Condominium Ass'n](#), 992 So.2d 277 (Fla. 3d DCA 2008). Both [Tedeschi](#) and [Trintec Construction](#) addressed the issue as it relates to condominium associations in the context of petitions for writs of certiorari and both held that [rule 1.221](#) authorizes a plaintiff to name only the condominium association, rather than having to name all the condominium unit owners as indispensable parties. We apply the logic expressed in [Tedeschi](#) and [Trintec Construction](#) to reach the same conclusion in the instant case.

[2] [3] As a preliminary matter,

[b]efore a court may grant certiorari relief from the denial of a motion to dismiss, the petitioner must establish the following three elements: “(1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case (3) that cannot be corrected on postjudgment appeal.”

[Williams v. Oken](#), 62 So.3d 1129, 1132 (Fla. 2011) (quoting [Reeves v. Fleetwood Homes of Fla., Inc.](#), 889 So.2d 812, 822 (Fla. 2004) (quoting [Bd. of Regents v. Snyder](#), 826 So.2d 382, 387 (Fla. 2d DCA 2002))). “The last two elements

are jurisdictional and must be analyzed before the court may even consider the first element.” *Id.*

In *Tedeschi*, the Second District held that by failing to acknowledge the provisions of rule 1.221, “[t]he circuit court departed from the essential requirements of the law by requiring the [petitioners/plaintiffs] to include the more than eighty other members of the condominium association in their lawsuit” 35 So.3d at 919. Significantly, it went on to find that the circuit court’s order improperly requiring the petitioners/plaintiffs “to file their complaint against over eighty additional defendants, [] would cause a material injury for the remainder of the proceedings for which there is no adequate remedy on appeal.” *Id.* at 920 (citing *Trintec Constr., Inc.*, 992 So.2d at 280). The Second District expressed its logic in the following discussion of case law, including *Trintec Construction*:

*709 In *Parkway Bank v. Fort Myers Armature Works, Inc.*, 658 So.2d 646, 649-50 (Fla. 2d DCA 1995), this court noted that where the issues to be resolved address procedures designed to avoid litigation, those issues can be reviewed by certiorari. For example, “an order dispensing with a statutorily mandated presuit procedure, which is a condition precedent to a legal proceeding,” is reviewable by certiorari “because the purpose of the presuit screening is to avoid the filing of the lawsuit in the first instance.” *Id.* at 649. In *Parkway Bank*, this court further noted that limited certiorari review was permitted to consider cases involving “the statutory procedures for amending a complaint to allege punitive damages because those safeguards cannot be remedied postjudgment.” *Id.*

In *Trintec Construction, Inc.*, 992 So.2d at 280, the court concluded that “the cost and delay inherent in identifying, pleading against, and serving a multitude of owners (and then substituting a new owner for a predecessor during the pendency of the case as units are

sold or otherwise transferred) would be substantial.” See also *Mantis v. Hinckley*, 547 So.2d 292, 293 (Fla. 4th DCA 1989) (concluding that circuit court erred in denying motion to dismiss where mortgagee failed to join a dissolution receiver as an indispensable party, and therefore, the petitioners established the circuit court departed from the essential requirements of law and there was a lack of an adequate remedy on appeal).

Id. at 919-20 (emphasis added).

We perceive no legal impediment to applying the rationales expressed in *Tedeschi* and *Trintec Construction* to cases involving homeowners associations. Accordingly, in the present case, we conclude that by dismissing Leon County’s petition for failure to join indispensable parties—namely, all one hundred or more of the property owners—the circuit court departed from the essential requirements of the law by failing to apply Section 720.303(1) and rule 1.221, which would permit Lakeshore Homeowners’ Association, Inc., to be named as the proper party to defend against an eminent domain proceeding on behalf of the individual homeowners. Moreover, as in *Tedeschi* and *Trintec Construction*, we hold the circuit court’s action in dismissing Leon County’s petition for failure to join indispensable parties caused a material injury to Leon County for which there would be no adequate remedy on appeal.

Consequently, for the reasons expressed, we grant Leon County’s petition for writ of certiorari and quash the order of the circuit court.

Ray, Kelsey, and Jay, JJ., concur.

All Citations

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