

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

HOLLY D. MORGAN AND DANIEL E.
SPRINGEN,

Petitioners,

v.

Case No. 5D14-1362

CHRISTOPHER SCOTT HEWITT, AS
PERSONAL REPRESENTATIVE OF THE
ESTATE OF WILBUR HEWITT.

Respondent.

_____ /

Opinion filed November 21, 2014

Petition for Certiorari Review of Decision
from the Circuit Court for Orange County,
Acting in its Appellate Capacity.

Scott A. Smothers and Mark Ingram, of
Smothers Law Firm, P.A., Apopka, for
Petitioners.

Allan C. Draves, of the Law Office of Allan
C. Draves, Orlando, for Respondent.

PER CURIAM.

Petitioners, Holly D. Morgan and Daniel E. Springen, seek second-tier certiorari review of an appellate decision of the circuit court, which dismissed their appeal¹ of a non-

¹ We acknowledge that the circuit court correctly treated Petitioners' appeal as a petition for writ of certiorari, but dismissed it for lack of jurisdiction. See Fla. R. App. P. 9.040(c).

final order granting immediate possession of real property in favor of the Respondent, Christopher Scott Hewitt, as personal representative of the estate of Wilbur Hewitt.² Petitioners have resided on the property for the past five years and claim to have an ownership interest in the property. Under these circumstances, we find the circuit court's clearly erroneous conclusion—that it lacked jurisdiction on the basis that a plenary appeal would provide an adequate remedy for Petitioners—constituted a departure from established law resulting in a miscarriage of justice. See generally Custer Med. Ctr. v. United Auto. Ins. Co., 62 So. 3d 1086 (Fla. 2010). Accordingly, we grant the petition and remand to the circuit court to treat Petitioners' request for review as a petition for writ of certiorari and consider its merits.

PETITION GRANTED.

LAWSON, EVANDER and BERGER, JJ., concur.

² We have jurisdiction to review the matter pursuant to Florida Rule of Appellate Procedure 9.030(b)(2)(B). See also Article V, § 4(b)(3), Fla. Const.