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

ANTHONY PHUONG,

Appellant,

v. Case No. 5D20-539

SHERIFF JOHN MINA, IN HIS OFFICIAL CAPACITY AS SHERIFF OF ORANGE COUNTY, FLORIDA, YEHUDA GREEN, AND JOHN DOE,

Appellees.
_____/

Opinion filed December 31, 2020

Nonfinal Appeal from the Circuit Court for Orange County,
Keith A. Carsten, Judge.

Walter A. Ketcham and Brian F. Moes, of Grower, Ketchum, Eide, Telan & Meltz, P.A., Orlando, for Appellant.

Mark C. Elliott, of Mark Elliott Law, Orlando, and Nicholas A. Shannin and Carol B. Shannin, of Shannin Law Firm, P.A., Orlando, for Appellee John Doe.

No Appearance for Remaining Appellees.

PER CURIAM.

Anthony Phuong appeals the trial court's nonfinal order denying his motion to dismiss the amended complaint filed against him by Appellee, John Doe. Phuong argued

below that the amended complaint should be dismissed because he was immune from suit under section 768.28(9), Florida Statutes (2018). Phuong also asserted that three of the counts alleged against him failed to state a cause of action upon which relief could be granted.

We have jurisdiction under Florida Rule of Appellate Procedure 9.130(a)(3)(F)(ii) to review a nonfinal order that denies a motion that asserts entitlement to immunity under section 768.28(9), Florida Statutes. We affirm, without further discussion, the trial court's order denying Phuong's motion to dismiss based on this statutory immunity.

However, we lack jurisdiction to review a nonfinal order denying a motion to dismiss for failure to state a cause of action because it is not one of the enumerated orders under rule 9.130 for which an interlocutory appeal is permitted as a matter of right. *See Peavy v. Parrish*, 385 So. 2d 1034, 1035 (Fla. 4th DCA 1980) (recognizing that an order denying a motion to dismiss for failure to state a cause of action is a nonfinal order from which no appeal under rule 9.130 is permitted). The fact that the trial court's present order contains one ruling that is immediately reviewable does not mean that the separate denial of the motion to dismiss for failure to state a cause of action in the same order also becomes reviewable. *See RD & G Leasing, Inc. v. Stebnicki*, 626 So. 2d 1002, 1003 (Fla. 3d DCA 1993) (holding that an order denying a motion to dismiss that contains one ruling that is subject to interlocutory appeal under rule 9.130 does not mean that any other ruling contained in the same written order "tags along" and is therefore also reviewable).

Lastly, we conclude that the aspect of the order denying Phuong's motion to dismiss for failure to state a cause of action is not of such an extraordinary nature as to justify certiorari review.

AFFIRMED in part; DISMISSED in part.

EVANDER, C.J., COHEN and LAMBERT, JJ., concur.