

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

WILLIAM KOVACS,

Petitioner,

v.

Case No. 5D21-1099
LT Case No. 2019-CA-039425

TAI WILLIAMS,

Respondent.

_____ /

Opinion filed December 10, 2021

Petition for Certiorari Review of Order from
the Circuit Court for Brevard County,
Dale Curtis Jacobus, Judge.

Kimberly K. Berman and Holly M. Hamilton,
of Marshall Dennehey Warner Coleman &
Goggin, Fort Lauderdale, for Petitioner.

Brian J. Lee, of Morgan & Morgan,
Jacksonville, for Respondent.

PER CURIAM.

Petitioner William Kovacs seeks certiorari review of an order granting
Respondent Tai Williams' motion to amend his complaint to add a claim for
punitive damages ("Punitive Damages Order"). Petitioner argues that the

Punitive Damages Order departs from the essential requirements of law because the trial court failed to make an affirmative finding required by our precedent when it granted Respondent's motion.¹ If we were writing on a blank slate, we would disagree with Petitioner, since there is no operative statute or rule requiring the trial court to make an affirmative finding. Bound by precedent though, we grant the petition, quash the Punitive Damages Order, and remand for further proceedings. We also certify conflict with the First District Court of Appeal's decision in *Watt v. Lo*, 302 So. 3d 1021 (Fla. 1st DCA 2020).

The underlying case arises from a motor vehicle accident that occurred on May 4, 2018. On November 6, 2020, Respondent moved for leave to amend his complaint to add a claim for punitive damages alleging that the Petitioner rear-ended the Respondent's vehicle while intoxicated and then left the scene of the accident before exchanging information.

¹ "[T]o obtain a writ of certiorari, there must exist '(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.'" *Reeves v. Fleetwood Homes of Fla., Inc.*, 889 So. 2d 812, 822 (Fla. 2004) (*Bd. of Regents v. Snyder*, 826 So. 2d 382, 387 (Fla. 2d DCA 2002)). "The prospect of intrusive financial discovery following a trial court's authorization for an amendment to add a claim for punitive damages is the irremediable injury . . . required for this Court's exercise of its certiorari jurisdiction." *Cat Cay Yacht Club, Inc. v. Diaz*, 264 So. 3d 1071, 1076 (Fla. 3d DCA 2019). Petitioner's argument, and our analysis, focuses on the first prong.

To assert a claim for punitive damages, Respondent must meet the requirements of section 768.72(1), Florida Statutes (2020). This statute provides:

In any civil action, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure.

After a hearing was held on Respondent's motion, the trial court entered the Punitive Damages Order without finding that Respondent carried his burden under section 768.72(1). That is, the trial court did not state for the record or in the Punitive Damages Order that Respondent made a "reasonable showing by evidence," which would provide a "reasonable basis for recovering of such damages." Because the alleged error is procedural, this Court has jurisdiction to review the Petitioner's request. *Globe Newspaper Co. v. King*, 658 So. 2d 518, 520 (Fla. 1995); *Life Care Ctrs. of Am., Inc. v. Croft*, 299 So. 3d 588, 590 (Fla. 2d DCA 2020).

To support the proposition that the trial court was required to make an affirmative finding, either orally or in the Punitive Damages Order, Petitioner cites this Court's opinion in *Varnedore v. Copeland*, 210 So. 3d 741, 747–48 (Fla. 5th DCA 2017), as well as opinions from the Second, Third, and Fourth

District Court of Appeal. In *Varnedore*, the trial court made several errors in granting a motion for leave to amend to add a claim for punitive damages. One of the errors held by our Court to be a basis for reversal was the trial court's failure to comply with section 768.72(1), which our Court found required a trial court to "make an affirmative finding that [the] plaintiff has made a reasonable showing by evidence which would provide a reasonable evidentiary basis for recovering [punitive] damages." *Id.* at 748 (internal quotations omitted).

Like the trial court in *Varnedore*, the trial court here made no express or affirmative finding in the unelaborated Punitive Damages Order. We find that the trial court also failed to make the required affirmative finding during the hearing. The closest the trial court came to meeting the requirements of *Varnedore* is when it identified the theory of recovery, stating that "[i]t's gross negligence, that's what I'm basing it on."

Our decision in *Varnedore* does not require the trial court to identify the theory of recovery. Rather, it requires the trial court to make an affirmative finding about the evidence presented. *Id.* at 744–45. Our Court stated that "the trial court, serving as a gatekeeper, is required to make an *affirmative finding* that plaintiff has made a 'reasonable showing by evidence,' which

would provide a ‘reasonable evidentiary basis for recovering such damages’ if the motion to amend is granted.” *Id.* at 747-48 (emphasis added).

Accordingly, since this Court previously determined in *Varnedore* that an affirmative finding about the evidence presented is required, the trial court’s failure to include any such finding, either orally or in the written order, constitutes a departure from the essential requirements of the law that will result in irreparable harm to Petitioner. Therefore, we grant the petition, quash the order under review, and remand for further proceedings. We also certify conflict with the First District Court of Appeal’s decision in *Watt v. Lo*, 302 So. 3d 1021,1023 (Fla. 1st DCA 2020), wherein the First District held that there is no statutory requirement for the trial court to make express or affirmative findings when determining whether a reasonable evidentiary basis for recovery of punitive damages exists.

GRANT PETITION; CONFLICT CERTIFIED.

EISNAUGLE, HARRIS and NARDELLA, JJ., concur.