

Supreme Court of Florida

No. SC13-1493

IN RE: AMENDMENTS TO FLORIDA RULE OF APPELLATE PROCEDURE 9.130.

[November 13, 2014]

PER CURIAM.

We have for consideration the out-of-cycle report of proposed amendments to Florida Rule of Appellate Procedure 9.130 (Proceedings to Review Non-Final Orders and Specified Final Orders), filed by The Florida Bar's Appellate Court Rules Committee (Committee). See Fla. R. Jud. Admin. 2.140(f). We have jurisdiction. See art. V, § 2(a), Fla. Const. As discussed below, we adopt the amendment to rule 9.130(a)(3)(C)(x) as proposed by the Committee; but we modify the proposed amendment to rule 9.130(a)(3)(C)(xi) to authorize appeals of nonfinal orders that determine, as a matter of law, that a party is not entitled to sovereign immunity.

BACKGROUND

The Committee proposes amendments to rule 9.130 in response to a request by the Court in Keck v. Eminisor, 104 So. 3d 359 (Fla. 2012). In Keck, the Court requested that the Committee “submit a proposed narrow amendment to rule 9.130 addressing the rule change mandated by [that] decision,” id. at 366, allowing for interlocutory review “where an individual defendant who claims immunity under [section] 768.28(9)(a)[, Florida Statutes,] is denied that immunity and the issue turns on a matter of law.” Id. at 369. In the concurring opinion, a majority of the Court further recommended that the Committee “undertake a comprehensive review of whether the categories of non-final orders in rule 9.130(a)(3) should be expanded to include the denial of any claim of immunity where the question presented is solely a question of law.” Id. at 370 (Pariante, J., concurring with an opinion in which Lewis, Labarga, and Perry, JJ., concur).

The Committee submitted the proposals without publishing them for comment. The Board of Governors of The Florida Bar unanimously approved the proposals. After the proposals were filed, the Court published them for comment. The Court received no comments.

AMENDMENTS

Rule 9.130(a)(3) (Applicability) specifies the types of nonfinal orders that can be appealed to the district courts. We add a new subdivision (a)(3)(C)(x), as proposed by the Committee, to authorize appeals from nonfinal orders which

determine “that, as a matter of law, a party is not entitled to immunity under section 768.28(9), Florida Statutes.” Additionally, the Committee proposes adding new subdivision (a)(3)(C)(xi) to authorize appeals from nonfinal orders which determine that, as a matter of law, a party is not entitled to any immunity from suit not otherwise addressed in this rule. However, because we have concerns that claims pertaining to immunity as a whole may be too broad, we modify the Committee’s proposal to authorize appeals from nonfinal orders which determine, as a matter of law, that a party is not entitled to sovereign immunity.

CONCLUSION

Accordingly, we amend Florida Rule of Appellate Procedure 9.130 as reflected in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The amendments shall become effective January 1, 2015, at 12:01 a.m.

It is so ordered.

LABARGA, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, POLSTON,
and PERRY, JJ., concur.

**THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE
EFFECTIVE DATE OF THESE AMENDMENTS.**

Original Proceedings – Florida Rules of Appellate Procedure

Wendy S. Loquasto, Chair, Appellate Court Rules Committee, Fox & Loquasto P.A., Tallahassee, Florida, Eduardo I. Sanchez, Past Chair, Appellate Court Rules Committee, Miami, Florida, John F. Harkness, Jr., Executive Director, and Heather Savage Telfer, Bar Staff Liaison, The Florida Bar, Tallahassee, Florida,

for Petitioner

APPENDIX

RULE 9.130. PROCEEDINGS TO REVIEW NON-FINAL ORDERS AND SPECIFIED FINAL ORDERS

(a) Applicability.

(1) – (2) [No Change]

(3) Appeals to the district courts of appeal of non-final orders are limited to those that

(A) – (B) [No Change]

(C) determine

(i) – (vii) [No Change]

(viii) that a governmental entity has taken action that has inordinately burdened real property within the meaning of section 70.001(6)(a), Florida Statutes; ~~or~~

(ix) the issue of forum non conveniens;

(x) that, as a matter of law, a party is not entitled to immunity under section 768.28(9), Florida Statutes; or

(xi) that, as a matter of law, a party is not entitled to sovereign immunity.

(D) [No Change]

(4) – (6) [No Change]

(b) - (h) [No Change]

Committee Notes

1977 - 2008 Amendments. [No Change]