

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

KELLY MCFALL AND JOHN MCFALL,

Petitioners,

v.

Case No. 5D19-2275

DONALD A. WELSH,

Respondent.

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Opinion filed October 25, 2019

Petition for Certiorari Review of Order
from the Circuit Court for Seminole County,
Susan Stacy, Judge.

Richard L. Wilson, Orlando, for Petitioners.

Christopher H. Morrison, of Pratt & Morrison,
P.A., Winter Park, for Respondent.

LAMBERT, J.

Kelly McFall and her husband, John McFall, petition this court for a writ of certiorari, asking that we quash an order from the trial court compelling the production of an unredacted copy of their jointly-filed 2017 federal income tax return to the respondent, Donald A. Welsh.¹ Concluding that this order requires the production of the private

¹ Welsh has not filed a response to the petition for writ of certiorari, despite being ordered to do so.

financial information of John McFall, who is not a party to the proceedings below, without an evidentiary showing as to how his financial information is relevant to that litigation, we grant the petition.

The petitioner, Kelly McFall, and the respondent, Donald Welsh, are former spouses. Kelly McFall filed a supplemental petition in the circuit court against Welsh to modify their final judgment of dissolution of marriage as to the child support previously awarded. Welsh responded to the petition and thereafter requested discovery from McFall pertaining to her finances. At issue here, McFall provided to Welsh a copy of the 2017 federal income tax return that she filed jointly with her husband, John McFall; but she redacted from this return any information pertaining to John McFall's finances. Welsh then moved to compel production of an unredacted copy of the tax return. The McFalls objected, asserting that producing the unredacted copy would violate John McFall's right of privacy to his financial information contained in the tax return. The trial court overruled the objection and granted Welsh's motion to compel. The instant petition for certiorari relief followed.

“A petition for certiorari is appropriate to review a discovery order when the ‘order departs from the essential requirements of law, causing material injury to a petitioner throughout the remainder of the proceedings below and effectively leaving no adequate remedy on appeal.’” *Inglis v. Casselberry*, 200 So. 3d 206, 209 (Fla. 2d DCA 2016) (quoting *Winderting Invs., LLC v. Furnell*, 144 So. 3d 598, 601–02 (Fla. 2d DCA 2014)). To that end, “[a]n order compelling production of documents containing private financial information regarding a nonparty is reviewable by certiorari because the nonparty has no

adequate remedy by appeal.” *Id.* (citing *Rowe v. Rodriguez-Schmidt*, 89 So. 3d 1101, 1103 (Fla. 2d DCA 2012); *Borck v. Borck*, 906 So. 2d 1209, 1211 (Fla. 4th DCA 2005)).

In their certiorari petition before this court, the McFalls argue that, absent Welsh establishing an evidentiary basis to show that the unredacted jointly-filed tax return containing John McFall’s financial information is somehow relevant to the underlying litigation, the court order violates John McFall’s constitutional right of privacy under Article I, section 23, of the Florida Constitution.² This section of the Florida Constitution protects the disclosure of financial information of private persons if there is no relevant or compelling reason to require disclosure, *Rowe*, 89 So. 3d at 1103 (quoting *Borck*, 906 So. 2d at 1211), because “personal finances are among those private matters kept secret by most people.” *Woodward v. Berkery*, 714 So. 2d 1027, 1035 (Fla. 4th DCA 1998) (citing *Winfield v. Div. of Pari-Mutuel Wagering*, 477 So. 2d 544, 548 (Fla. 1985)); see also *Mogul v. Mogul*, 730 So. 2d 1287, 1290 (Fla. 5th DCA 1999) (“The financial information of private persons is entitled to protection by this state’s constitutional right of privacy, if there is no relevant or compelling reason to compel disclosure.”) (footnote omitted).

Thus, John McFall, as a nonparty below, has the constitutional right to prevent the disclosure of the 2017 tax return that he jointly filed with his wife unless Welsh can prove that John McFall’s financial information is relevant to the modification of child support litigation between Welsh and Kelly McFall. See *Spry v. Prof’l Emp’r Plans*, 985 So. 2d 1187, 1188–89 (Fla. 1st DCA 2008) (providing that the burden of proving that a person’s

² Article I, section 23, is titled “Right to Privacy.” In pertinent part, it states that “[e]very natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein.”

private financial information is relevant is on the party seeking the information). Because Welsh has not made this showing, we conclude that the McFalls are entitled to certiorari relief because the trial court's order constitutes a departure from the essential requirements of the law. See *Rowe*, 89 So. 3d at 1103 (granting certiorari relief and quashing a nonfinal order compelling a former wife to produce an unredacted copy of a federal income tax return filed jointly with her new husband who was not a party to the underlying litigation between the former wife and her ex-husband to modify the final judgment of dissolution of marriage).

PETITION GRANTED; ORDER QUASHED.

COHEN and GROSSHANS, JJ., concur.