

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-0538

KINSALE INSURANCE COMPANY,

Petitioner,

v.

IVA MURPHY and LESLEY
MURPHY CARTER, SECURITY
FIRST INSURANCE COMPANY,

Respondents.

Petition for Writ of Certiorari—Original Jurisdiction.

December 23, 2019

B.L. THOMAS, J.

Kinsale Insurance Company seeks a Writ of Certiorari to quash the trial court's order upholding Security First Insurance Company's out-of-state service of process by mail, purportedly requiring Kinsale to produce documents for in camera review. We grant the writ and quash the subpoena.

Iva Murphy and Lesley Murphy Carter suffered water damage to their home, which led them to file a claim with Security First. Plaintiffs contracted with River City Roofing Corporation, a nonparty to the initial breach of contract claim, to help repair their home. Kinsale, also a nonparty to the breach of contract claim, insures River City Roofing Corporation.

Subsequently, Plaintiffs initiated first-party property litigation and filed suit against Security First for breach of contract regarding payment for the alleged damage to their home. During litigation, Security First sought certain documents from Kinsale. Kinsale is an Arkansas legal entity with its principal place of business in Richmond, Virginia.

Security First mailed a subpoena duces tecum without deposition to Kinsale's records custodian in Richmond, Virginia. Kinsale then filed a "Motion to Quash and/or Motion for Protective Order," arguing that Security First's subpoena was improperly served. Before the hearing on the motion, Security First acknowledged that to comply with Virginia law, it was necessary to appoint a commissioner located in that state to issue the subpoena duces tecum. The trial court entered an order denying Kinsale's motion to quash the subpoena.

Certiorari is an extraordinary remedy. *Reeves v. Fleetwood Homes of Florida, Inc.*, 889 So. 2d 812, 822 (Fla. 2004). Nonparties to a cause of action generally lack an adequate remedy on appeal and may be more likely to demonstrate entitlement to certiorari review. *Dep't of Health and Rehabilitative Servs. v. Myers*, 675 So. 2d 700, 701 (Fla. 4th DCA 1996); *Dep't of Corr. v. Grubbs*, 884 So. 2d 1147, 1147 (Fla. 2d DCA 2004). Orders erroneously granting discovery are subject to certiorari review, if they depart from the essential requirements of law and cause material injury throughout the remainder of the proceedings, effectively leaving no adequate remedy on appeal. *See Allstate Ins. Co. v. Boecher*, 733 So. 2d 993, 999 (Fla. 1999).

A Florida subpoena has no force outside the state, absent compliance with another state's requirements for service of process. § 48.011, Fla. Stat. (2018) ("Summons, subpoenas, and other process in civil actions run throughout the state."); *see Ulloa v. CMI, Inc.*, 133 So.3d. 914 (Fla. 2013) (quashing subpoena duces tecum in criminal case when improperly served on corporation located outside territorial boundary of Florida); *see Quest Diagnostics Inc. v. Swaters*, 94 So. 3d 635, 640 (Fla. 4th DCA 2012) (holding party seeking to serve subpoena on nonparty in civil case required to comply with requirements for service of process in state where no party was located). Here, the trial court departed from the essential requirements of law by denying the motion to quash

the subpoena purportedly served by mail on a nonparty located outside the state of Florida which did not comply with Virginia law authorizing such service.

PETITION GRANTED.

OSTERHAUS and WINOKUR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Junaid N. Savani and Sina Bahadoran of Clyde & Co. U.S. LLP, Miami, for Petitioner.

Therese A. Savona of Cole, Scott & Kissane, P.A., Orlando, for Respondents.