

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-3032

L. T.,

Petitioner,

v.

STATE OF FLORIDA and T.J.T.,

Respondents.

Petition for Writ of Prohibition—Original Jurisdiction.

April 17, 2020

M.K. THOMAS, J.

L.T., a juvenile crime victim, petitions this Court for a writ of prohibition claiming the trial court violated her rights under Article I, section 16, of the Florida Constitution, (Marsy's Law). She argues the trial court acted in excess of its jurisdiction by failing to provide her with required notice and conducting, in her absence, proceedings in the juvenile defendant's criminal case. Because the substance of L.T.'s petition seeks remedial relief from the effects of the trial court's past action, as opposed to prospective relief in the form of cessation of the proceedings, the petition is treated as a writ of certiorari and is, hereby, denied. *See Fla. R. App. P. 9.040(c).*

Facts

L.T., a minor child, reported being the victim of molestation by the juvenile defendant, T.J.T. Subsequently, a warrant was issued for T.J.T.'s arrest and confinement in secure detention pending a full detention hearing. An investigator from the Sheriff's Office notified the victim's mother of the impending arrest and later confirmed that T.J.T. was in custody. At the detention hearing—despite the argument of the State Attorney's Office and the Department of Juvenile Justice (DJJ) that continued secure detention was appropriate—T.J.T. was released and placed on home detention for twenty-one days. L.T.'s Mother did not receive notice of the First Appearance and detention hearing but DJJ notified her of T.J.T.'s release to home detention.¹

Thereafter, L.T.'s Mother, acting on L.T.'s behalf, filed a Notice of Appearance in T.J.T.'s pending criminal case.² The Notice of Appearance announced L.T.'s Mother would act as L.T.'s legal counsel but also directed “that copies of all future pleadings, papers, and communications be directed to” her. A month later, a Notice of Appearance was filed by a second attorney appearing on behalf of L.T., with the same instructions. Subsequently, the attorneys for L.T., notified the State and defense counsel, through various motions and pleadings, of L.T.'s intent to exercise her rights under Marsy's Law and her contention that her rights had been violated. L.T. filed a “Victim's Motion to Set Aside or Vacate Void Orders or Proceedings,” arguing that the State's failure to notify her of the juvenile defendant's first appearance and detention hearing rendered the proceeding void as a matter of law and required that the detention order be vacated and new detention conditions imposed.

¹ L.T.'s Mother and the State were in contact after the detention hearing, and the Mother was provided details. A Victim Notification Letter was sent to L.T.'s Mother advising of victim rights, offering a victim's advocate, and providing the advocate's contact information. A Victim Impact Statement was attached to the letter which L.T.'s Mother completed and returned.

² L.T.'s Mother is an attorney licensed in Florida.

Counsel for T.J.T. moved to strike the Notices of Appearance and other motions filed by L.T.'s attorneys reasoning that, because L.T. was not a party to the criminal case, she lacked standing to request such relief. During this time, email exchanges and communications were ongoing between the State Attorney's office and L.T.'s attorneys regarding the status of the criminal case. Subsequently, L.T. filed motions to strike a notice of deposition, for protective order, and for sanctions. The motions asserted that T.J.T.'s counsel had not made a good faith effort to coordinate or communicate with L.T.'s attorneys before scheduling discovery and requested a protective order regarding the deposition of L.T.'s Mother because she was not an eyewitness to the alleged criminal acts. L.T. also argued:

[The trial court] should find that where the victim is a minor child and the parents/guardians of that minor child are not the accused perpetrator(s), there exists a parent-child privilege and confidentiality, *akin to a spousal privilege*, which shields the parent/guardian from being compelled to testify about communications made by the child in confidence to his or her parents.

(Emphasis in original.) L.T. moved for sanctions against T.J.T.'s counsel, claiming he acted in bad faith by moving to strike her motions and serving L.T.'s Mother with a subpoena for deposition by process server rather than by electronic means even though the defendant had indicated he intended to enter a plea. T.J.T.'s counsel delivered a proposed plea form to the prosecution and sent L.T.'s attorneys a formal letter providing notification that T.J.T. intended to enter a no contest plea at the upcoming hearing.

At the motion hearing, the State, T.J.T., and L.T. were present and represented by counsel. L.T. objected to the State's release of the Child Protection Team (CPT) interview video and records without giving L.T. an opportunity to be heard. She argued that the video was of L.T. describing the molestation but that L.T. had no opportunity to be heard or even view the actual contents of the video which failed to protect confidential and privileged information from being released. The State responded that under Marsy's Law the release of discovery material required by statute, is not an event for which L.T. would be entitled to notice and to

proceed as the victim suggested would require the court to completely revamp the criminal justice system. The trial court overruled L.T.'s objection to the release of the CPT video, finding that even if L.T. had been consulted, the defense had an absolute right to the material in discovery.

The trial court granted T.J.T.'s motions to strike the Notices of Appearance³ filed by L.T. and entered an order finding "there is no express language contained in [Marsy's Law] that allows the victim or the victim's representative to file a Notice of Appearance on behalf of the victim and become a party to criminal proceedings."

The trial court then proceeded to conduct the plea colloquy. The trial court allowed input from the attorneys for L.T. who objected to T.J.T.'s no contest plea, arguing that it was "necessary if we're going to take this from the standpoint that juveniles are different and that this has to be rehabilitative for [defendant], that he has to acknowledge the harm that he caused." Over L.T.'s objection, the trial court accepted the no contest plea and imposed, nunc pro tunc, additional conditions on T.J.T.'s detention, including a no contact order. The trial court scheduled a sentencing hearing and ordered DJJ to consult with L.T.'s attorneys regarding preparation of the predisposition report. The trial court also ordered the State to allow L.T.'s attorneys to "review the file and discoverable material that was turned over to the defense" and to have access to the Presentence Investigation Report. L.T. then filed a writ of prohibition with this Court, claiming her rights under Marsy's Law were violated.

Marsy's Law

Following passage of Amendment 6 in November 2018, Marsy's Law became part of the Florida Constitution, creating a Bill of Rights for crime victims and their families. *See* Art. I,

³ The State joined T.J.T.'s motion to strike the Notices of Appearance filed by L.T. The State expressed concern that becoming a noticed party to the case gave L.T. unfettered access to potentially confidential case materials and that L.T., as a victim, did not have party of record status in the criminal proceeding.

§ 16(b), Fla. Const. Marsy's Law is recognized and enforced "throughout the criminal and juvenile justice systems for crime victims, and [ensures] that crime victims' rights are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents[.]" *Id.*

Marsy's Law requires that the following rights be given to every victim beginning at the time of his or her victimization:

- (1) The right to due process and to be treated with fairness and respect for the victim's dignity.
- (2) The right to be free from intimidation, harassment, and abuse.
- (3) The right, within the judicial process, to be reasonably protected from the accused and any person acting on behalf of the accused
- (4) The right to have the safety and welfare of the victim and the victim's family considered when setting bail, including setting pretrial release conditions that protect the safety and welfare of the victim and the victim's family.
- (5) The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim.

Art. I, § 16(b)(1)-(5), Fla. Const.

In addition, victims may elect to exercise the following rights, which are available upon request:

- a. The right to reasonable, accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, including, but not limited to, trial, plea, sentencing, or adjudication, even if the victim will be a witness at the proceeding, notwithstanding any rule to the contrary. A victim shall also be provided reasonable, accurate, and timely notice of any release or escape of the

defendant or delinquent, and any proceeding during which a right of the victim is implicated.

b. The right to be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.

c. The right to confer with the prosecuting attorney concerning any plea agreements, participation in pretrial diversion programs, release, restitution, sentencing, or any other disposition of the case.

d. The right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any presentence investigation or compiling any presentence investigation report, and to have any such information considered in any sentencing recommendations submitted to the court.

e. The right to receive a copy of any presentence report, and any other report or record relevant to the exercise of a victim's right, except for such portions made confidential or exempt by law.

f. The right to be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.

g. The right to be informed of all postconviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. . . .

h. The right to be informed of clemency and expungement procedures, to provide information to the governor, the

court, any clemency board, and other authority in these procedures, and to have that information considered before a clemency or expungement decision is made; and to be notified of such decision in advance of any release of the offender.

Art. I, § 16(b)(6)a.-h., Fla. Const.

Constitutional and statutory provisions granting victim's rights address a concern that the criminal justice system is overtly defendant-focused and that victims and their families are being alienated. These provisions call for a careful balance of the rights of the defendant and those of the victim and/or the victim's family without impacting the basic constitutional foundations of the criminal justice system.

Here, L.T. contends that Marsy's Law guarantees to victims the same rights and protections afforded to the juvenile defendant. She reasons that by striking the Notices of Appearance filed by her attorneys and failing to enforce her rights in the criminal case, the trial court acted in excess of its jurisdiction. Furthermore, because she was not notified of the first appearance and the detention hearing and, thus, was not present, the prior orders on detention are unlawful. Accordingly, she seeks prohibition until her rights are fully recognized.

Writ of Prohibition

Prohibition is the process by which a superior court stops an inferior court from acting in excess of its own jurisdiction, or from usurping jurisdiction from another tribunal over matters not within its jurisdiction to hear and determine. *State ex rel. Turner v. Earle*, 295 So. 2d 609, 611 (Fla. 1974). Prohibition may not be used to remove from a lower court the power to hear and determine the question of its own jurisdiction or to challenge a lower court's jurisdiction where its existence depends on controverted facts within the inferior court's jurisdiction to determine. *Mandico v. Taos Const., Inc.*, 605 So. 2d 850, 854 (Fla. 1992). Prohibition is not a corrective writ and cannot be used to reverse an order already entered. *See English v. McCrary*, 348 So. 2d 293, 297 (Fla. 1977). It is an extraordinary writ, applicable only in emergency circumstances. *Mandico*, 605 So. 2d at 854; *English*, 348 So. 2d at

296. Because of the extraordinary nature of the writ, it should be employed with “great caution,” and only where other legal remedies are inapplicable or inadequate. *State ex rel. Turner*, 295 So. 2d at 611. In other words, “prohibition will be invoked only in emergency cases to forestall an impending present injury where person seeking writ has no other appropriate and adequate legal remedy.” *English*, 348 So. 2d at 297.

L.T.’s petition seeks two forms of relief: 1) that the trial court be prohibited from exercising jurisdiction; and 2) that the trial court be prevented from taking further action or conducting hearings or proceedings, including sentencing, until her rights are “fully recognized, including her right to have the attorney of her choice represent her.” She contends prohibition is appropriate as no other adequate legal remedy exists.

However, at oral argument L.T. conceded that she is not seeking prohibition of the remaining sentencing proceedings; instead, she requests the proceedings continue but in a manner which comports with her perceived right of participation. She acknowledges the trial court’s jurisdiction to hear the sentencing proceedings generally and argues only that the court, in this case, has erred in its exercise of that jurisdiction. Because the substance of L.T.’s petition targets an alleged error by the trial court in exercising its jurisdiction and because the remedy sought is not the prospective prohibition of further proceedings, the petition is improperly brought as a writ of prohibition.

Having concluded that L.T. seeks an improper remedy, we must now determine whether another remedy exists. *See Fla. R. App. P. 9.040(c)*. L.T. argues the trial court erred in striking the Notices of Appearance filed by her attorneys, and that the case may only proceed once that error is rectified. In short, L.T. requests that we quash the trial court’s order striking the Notices of Appearance. Because the substance of the petition seeks remedial relief from the effects of the trial court’s past action, as opposed to prospective relief in the form of cessation of the proceedings, we treat the petition as one for writ of certiorari. *See Fla. R. App. P. 9.040(c); Byrd v. S. Prestressed Concrete, Inc.*, 928 So. 2d 455, 457 (Fla. 1st DCA 2006).

Writ of Certiorari

For a petition for writ of certiorari to be granted, L.T. must show: 1) the trial court departed from the essential requirements of law; 2) resulting in a material injury that will affect the remainder of the proceeding; 3) which cannot be corrected by any other means. *See Reeves v. Fleetwood Homes of Fla., Inc.*, 889 So. 2d 812, 822 (Fla. 2004); *Lender Processing Servs., Inc. v. Arch Ins. Co.*, 183 So. 3d 1052, 1058 (Fla. 1st DCA 2015).

L.T. argues the trial court departed from the essential requirements of Marsy's Law by striking the Notices of Appearance and denying her discovery motions, which she believes are paramount to her participation and the enforcement of her rights as a victim. However, L.T.'s petition is less than clear regarding the specific provisions of Marsy's Law she claims the trial court has violated, and the only written order addressed by the petition strikes the Notices of Appearance filed by her attorneys.

The State argued below, and the trial court agreed, that the specific Notices of Appearance and subsequent pleadings filed by L.T.'s attorneys demand recognition of L.T. as a party of record to the criminal case. This is further supported by L.T.'s petition which declares that the striking of the Notices of Appearance forecloses any participation by L.T. in the criminal case. Thus, the distinction between standing and party status is necessary.

"Any litigant must demonstrate that he or she has standing to invoke the power of the court to determine the merits of an issue." *Vaughan v. First Union Nat'l Bank of Fla.*, 740 So. 2d 1216, 1217 (Fla. 2d DCA 1999). Standing requires only a "legally cognizable interest," which would be affected by the outcome of the litigation. *Weiss v. Johansen*, 898 So. 2d 1009, 1011 (Fla. 4th DCA 2005). L.T. submits, and we agree, that Marsy's Law clearly sets forth a crime victim's "legally cognizable interest," as follows:

The victim, the retained attorney of the victim, a lawful representative of the victim, or the office of the state attorney upon request of the victim, may assert and seek enforcement of the rights enumerated in this section and

any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right. The court or other authority with jurisdiction shall act promptly on such a request, affording a remedy by due course of law for the violation of any right. The reasons for any decision regarding the disposition of a victim's right shall be clearly stated on the record.

Art. I, § 16(c), Fla. Const.

Establishing a victim's legally cognizable interest in a criminal proceeding does not also automatically entitle a victim to party of record status. Nonparties are routinely granted standing in a criminal setting for the limited purpose of asserting and protecting specific rights. *See Wanner v. State*, 746 So. 2d 478, 479 (Fla. 2d DCA 1999) (Suntrust bank granted standing, as a victim of grand theft, for restitution in a criminal proceeding); *Miami Herald Pub. Co. v. Lewis*, 426 So. 2d 1, 4 (Fla. 1982) (holding that news media, even though not party to litigation, has standing to question validity of order restricting publicity because its ability to gather news is directly impaired or curtailed). While standing and party status are not synonymous terms, the inherent differences do not necessarily equate to inequity regarding participation in legal proceedings.

L.T. argues that the trial court's act of striking her Notices of Appearance prohibits her participation in the criminal proceeding and forecloses any available remedy for recognition and enforcement of her rights as a victim. However, transcripts of the proceedings readily dispel this contention. Despite the striking of the Notices of Appearance, L.T. was afforded the right to meaningful participation in the criminal proceeding.

Here, the Notices of Appearance filed by L.T.'s attorneys are not the generic notices announcing legal representation of a party. The Notices go many steps further by demanding in the juvenile defendant's criminal case "that copies of all future pleadings, papers, and communications be directed to" them. Likewise, L.T.'s filing of a motion for protective order and for sanctions requested penalties against T.J.T.'s attorney because he "did not serve on

undersigned counsel or co-counsel for the Victim . . . a Notice of Plea.” L.T. further asserted in motions that T.J.T.’s counsel “refuses to serve any documents upon the undersigned through the Courts e-service portal or by email.” This language tracks the filing and service rules governing parties in a criminal case. See Fla. R. Crim. Pro. 3.030(a); Fla. R. Jud. Admin. 2.516. The language and demands of the Notices and motions filed by L.T. improperly presumed that she was to be regarded as a party of record in the criminal case. After all, the appearance of a lawyer on behalf of an individual or entity may not presuppose party status. Florida Rule of Judicial Administration 2.505(e)(1) details that an attorney may appear in a proceeding, “by serving and filing, on behalf of a *party*, the *party’s* first pleading or paper in the proceeding.” (emphasis added). The plain language of Rule 2.505 (e)(1) requires party status as a precondition to the filing of a Notice of Appearance.⁴

Addressing a similar issue, this Court construed the prior version of Article I, section 16(b), of the Florida Constitution and found that the victim’s rights provided for did not “permit victims or their families to actively participate in the conduct of the trial by sitting at counsel table or being introduced to the jury.” *Hall v. State*, 579 So. 2d 329, 331 (Fla. 1st DCA 1991). Similarly, the Fourth District in *Barnett v. Antonacci*, 122 So. 3d 400, 404-06 (Fla. 4th DCA 2013), “harmonized” a victim’s right to notice and participation under section 16 with the separation of powers provision of the Florida Constitution, by concluding that a prosecutor’s decision to file charges or to discontinue prosecution is not a “stage” of a criminal proceeding within the meaning of section 16. See Art. II, § 3, Fla. Const. (separation of powers provision). Rather, the Fourth District determined that section 16 contemplates in-court hearings before a judge as the forum for exercising the rights provided in that section, which include a right to be “informed” of, to be “present,” and to be “heard” at court hearings pertaining to a criminal case. *Barnett*, 122 So. 3d at 405-06. The trial court’s denial of the victim’s writ of mandamus was

⁴ Rules of Judicial Administration apply to criminal proceedings. See *Merck v. State*, 216 So. 3d 1285 (Fla. 2017); *Suggs v. State*, 152 So. 3d 471 (Fla. 2014).

affirmed as the victim failed to show that the State Attorney violated a “clear legal right.” *Id.* at 406.

Here, L.T. received notice and was informed of her right to be present at all hearings, aside from the early events of the First Appearance and initial detention hearing. Marsy’s Law provides that the victim’s rights to notice of first appearance are “satisfied by a reasonable attempt by the appropriate agency to notify the victim and convey the victim’s views to the court.” Art. I, § 16(b)(7), Fla. Const. The arresting agency notified L.T.’s Mother of the defendant’s arrest and later the details of the detention hearing. Although L.T. was not informed of the First Appearance and first detention hearing, both the prosecutor and DJJ were present at the hearing and, consistent with L.T.’s wishes, requested that the trial court order secured detention at first appearance.

As to the motions filed by L.T., the first motion sought to set aside and vacate the order on home detention and the order releasing the CPT video to the defense. The second motion sought to strike the notice of depositions, requested a protective order to prevent the court from taking depositions, and requested sanctions for the defense. If L.T. is seeking review of the denial of these motions, then prohibition is not the correct remedy because prohibition is preventative, not corrective. Furthermore, these motions involved pre-adjudicatory issues which are now moot due to the defendant’s no contest plea which was accepted by the trial court.

Marsy’s Law does provide that the victim has “[t]he right to receive a copy of any presentence report, and any other report or record relevant to the exercise of a victim’s right, *except for such portions made confidential or exempt by law.*” Art. I, § 16(b)(6)e., Fla. Const. (emphasis added). However, juvenile records are confidential by law. *See* § 985.04(1)(a), Fla. Stat. Thus, Marsy’s Law did not entitle the victim to confidential documents in the juvenile case especially without specific authorization from the trial court. Therefore, the trial court did not depart from the essential requirements of law by striking L.T.’s Notices of Appearance which requested unrestricted access to the docket in the juvenile defendant’s criminal case.

In summary, the trial court recognized L.T.'s rights as a victim, allowed meaningful participation by her chosen attorneys and granted multiple requests by L.T., including access to file materials and imposition of more stringent conditions on J.T.'s detention. Furthermore, despite striking the Notices of Appearance, the trial court established provisions for the participation of L.T.'s attorneys in the upcoming sentencing procedures and preparation of the pre-sentencing report. Finding no explicit language in "Marsy's Law" which grants to a victim the specific right to party status and all related privileges, we find no clear violation of established law. This opinion should not be misconstrued as declaring that Marsy's Law does not support a victim's filing of some form of notice of election to exercise rights or of legal representation in a criminal proceeding. We conclude only that under these facts, the trial court's order striking L.T.'s Notices of Appearance and denying the discovery motions which demanded specific party status rights and privileges, did not depart from clearly established principles of law.

To accept L.T.'s arguments requires this Court to interpret Marsy's Law as fundamentally altering the criminal proceedings by implication. Such an application is a vast departure from the traditional common law approach to criminal justice and without explicit text directing such a departure, we decline to do so. Here, the trial court carefully conducted the proceedings to achieve a balance between L.T.'s right to meaningful participation in the criminal proceeding and the juvenile defendant's right to a fair trial.

As written, Marsy's Law does not provide procedures to implement and enforce the victim's rights set forth in the law or remedies for failure to recognize those rights. The provisions of Marsy's Law which grant to victims the rights to notice of proceedings, to be present, to be heard, to confer with the prosecuting attorney, among others, are directory in their application and effect. As recognized in other jurisdictions, Marsy's Law does not provide procedures and guidelines as to how its purpose is to be achieved. *See People v. Superior Court (Thompson)*, 154 Cal. App. 3d 319, 321-22 (Cal. Ct. App. 1984). Even if we determined that the trial court departed from clearly established law in violation of L.T.'s victim rights, this Court does

not have the authority to craft rules for implementation of Marsy's Law—a task of the Legislature and rulemaking agencies.

Conclusion

Because L.T. has failed to show a departure from the essential requirements of law, we need not address the additional factors required of a petition for writ of certiorari. For the foregoing reasons and under the specific facts presented, L.T.'s petition, which we treat as one for writ of certiorari, is DENIED.

LEWIS and WINOKUR, JJ., concur.

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

Paul M. Hawkes, Tallahassee; and Pamela C. Marsh of Ausley McMullen, Tallahassee, for Petitioner.

Ashley Moody, Attorney General, and Trisha Meggs Pate, Assistant Attorney General, Tallahassee, for Respondents.