FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-1782

SARA MCCLOUD f/k/a SARA TACKETT, Former Wife,

Petitioner,

v.

JAMES FAIRD TACKETT, Former Husband, and NICOLE CHILDREE, nonparty,

Respondents.

Petition for Writ of Certiorari—Original Jurisdiction.

December 10, 2020

JAY, J.

Petitioner, Sara McCloud, has filed a petition for writ of certiorari in this Court seeking review of the trial court's order granting Nicole Childree's Motion to Quash. Because Petitioner cannot demonstrate material, irreparable harm, we lack jurisdiction over the petition and, therefore, dismiss it.

I.

The underlying action involves the dissolution of the parties' marriage and, more significantly, the time-sharing of the parties' children. Respondent, Dr. James Tackett, filed his Petition for

Dissolution of Marriage on August 16, 2017. Respondent is an emergency room intensive care physician who also works as the medical director for hospital administration. Due to Respondent's demanding work schedule, his live-in fiancée, Nicole Childree, often has served as the communications intermediary between Respondent, his attorneys, and his private investigator.

During the course of the dissolution proceedings, an evidentiary hearing was held, following which the court entered an order awarding majority time-sharing and sole parental responsibility to Respondent, while Petitioner's time-sharing with the children was temporarily restricted to every other weekend on Saturday from 9:00 a.m. until 7:00 p.m., and one two-hour dinnertime visitation per week. Afterwards, Petitioner filed a Notice of Issuing Subpoena for Deposition and Subpoena for Deposition Duces Tecum of Nicole Childree. Petitioner sought production of copies of any communications sent or received by Ms. Childree regarding any matter related to parenting or time-sharing of the parties' children, along with communications regarding Petitioner. The latter request encompassed communications between Ms. Childree and any attorney representing Respondent, or between Ms. Childree and the private investigator employed by Respondent. Petitioner also requested financial documents relating to expenditures made by Respondent and Ms. Childree on behalf of the children.

In response, Ms. Childree's attorney filed her "Nonparty [] Objections to, and Motion to Quash, [] Former Wife Sara McCloud Tackett's Subpoena for Deposition Duces Tecum, and for Protective Order." Following a hearing at which Ms. Childree testified about her custom of passing along to Respondent communications from his attorneys and his investigator, the trial court entered its discovery order that is the subject of the instant petition.

Among other findings and rulings not relevant to the petition, the trial court found, "based on Ms. Childree's testimony and oral pronouncements by the Court at the hearing . . . Ms. Childree is an agent of Former Husband and enjoys an attorney-client privilege." Accordingly, the trial court issued a protective order "relative to any and all communications between Ms. Childree and

Former Husband's attorneys and investigators." Nevertheless, the court further ordered that Childree was to attend her previously scheduled deposition and added that, as to all remaining requests in the subpoena duces tecum, Petitioner could "issue a new subpoena for such requests not subject to the Court's protective orders outlined herein." In short, Petitioner was still entitled under the court's order to request production from Ms. Childree of any nonprivileged information.*

II.

In *CQB, 2010, LLC v. Bank of New York Mellon*, 177 So. 3d 644 (Fla. 1st DCA 2015), this Court acknowledged that a petition seeking certiorari review of an order denying discovery has a "very high jurisdictional threshold." *Id.* at 645. Generally speaking, "[e]ven outside the context of orders denying discovery, certiorari is appropriate only 'when a discovery 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.'" *Id.* (quoting *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995)). But we added:

> In the narrower context of orders denying discovery, *the already "extremely rare" certiorari remedy becomes even rarer*. . . . This Court "has adhered to the view that orders having the effect of denying discovery are almost invariably not reviewable by certiorari because of the absence of irreparable harm."

Id. (emphasis added) (citations omitted). Therefore, we warned: "For a denial of discovery to constitute material, irreparable harm, thus conferring certiorari jurisdiction, the denial must '*effectively*

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* Due to our ruling on jurisdiction, we expressly do not address whether the trial court departed from the essential requirements of the law in deciding that Ms. Childree was "someone reasonably necessary for the transmission of the communication" as intended by section 90.502(1)(c)2., Florida Statutes, for purposes of invoking the attorney-client privilege.

eviscerate[] a party's claim, defense, or counterclaim.'" *Id.* (alteration in original) (emphasis added) (citation omitted).

Stated differently, "'[c]ertiorari is not a general license for appellate courts to closely supervise the day-to-day decision making of trial courts.'" *Owusu v. City of Miami*, 45 Fla. L. Weekly D879, D879 (Fla. 3d DCA Apr. 15, 2020) (quoting *Stockinger v. Zeilberger*, 152 So. 3d 71, 73 (Fla. 3d DCA 2014)). In *Owusu*, the Third District considered a petition for writ of certiorari seeking review of the trial court's order precluding the petitioner from taking a deposition. In addressing its jurisdiction to do so, the Third District emphasized that "'[v]ery few categories of non-final orders qualify for the use of this extraordinary writ.'" *Id.* (alteration in original) (quoting *Citizens Prop. Ins. Corp. v. San Perdido Ass'n*, 104 So. 3d 344, 351-52 (Fla. 2012)). It went on to impress that "'[a]n order that denies discovery normally does not rise to the level of irreparable harm because it can be readily remedied on appeal . . . .'" *Id.* (quoting *Damsky v. Univ. of Miami*, 152 So. 3d 789, 792 (Fla. 3d DCA 2014)). Finding that "[s]uch [was] the case" before it, the Third District dismissed the petition. *Id.*

The same is true here. Petitioner asserts that the court's order denies her the ability to obtain "essential information regarding the relationship between Ms. Childree and the minor children"; Respondent's "true relationship with the minor children"; Respondent's "views regarding [Petitioner's] relationship with the children"; and "the beliefs as to what the nature of [Petitioner's] ongoing relationship with the children should be[.]" But all of these issues may be thoroughly scrutinized when Ms. Childree is deposed. Thus, we can confidently say that the trial court's discovery ruling "does not effectively eviscerate" Petitioner's ability to advance her claims or present her defenses. *CQB*, 177 So. 3d at 646. *Accord Katz v. Riemer*, 45 Fla. L. Weekly D1093 (Fla. 3d DCA May 6, 2020) (dismissing petition for writ of certiorari because petitioner's legal defenses were not eviscerated by the trial court's denial of discovery, quoting *CQB*).

III.

Accordingly, Petitioner has failed to establish irreparable harm. Her petition must be dismissed.

DISMISSED.

ROBERTS and KELSEY, JJ., concur.

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

Jennifer L. Sweeting and Jerry L. Rumph, Jr. of Sweeting and Rumph, P.A., Tallahassee, for Petitioner.

Raymond J. Rafool and Seth J. Rutman of Rafool, LLC, Miami, for Respondent James Faird Tackett, Former Husband.