FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-2633

GOVERNOR RON DESANTIS; FLORIDA COMMISSIONER OF EDUCATION RICHARD CORCORAN; STATE OF FLORIDA DEPARTMENT OF EDUCATION; and the STATE BOARD OF EDUCATION,

Petitioners,

v.

FLORIDA EDUCATION ASSOCIATION; STEFANIE BETH MILLER; LADARA ROYAL; MINDY FESTGE; VICTORIA DUBLINOHENJES; ANDRES HENJES; NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC.; and NAACP FLORIDA STATE CONFERENCE,

Respondents.

No. 1D20-2634

GOVERNOR RON DESANTIS; ANDY TUCK, Chair of the State Board of Education; STATE BOARD OF EDUCATION; FLORIDA COMMISSIONER OF EDUCATION RICHARD CORCORAN; STATE OF FLORIDA DEPARTMENT OF EDUCATION; and JACOB OLIVA, Chancellor, Division of Public Schools,

Petitioners,

v.

MONIQUE BELLEFLEUR, individually and on behalf of D.B. Jr., M.B., and D.B.; KATHRYN HAMMOND; ASHLEY MONROE; and JAMES LIS,

Respondents.

Petition for Writ of Certiorari—Original Jurisdiction.

December 21, 2020

TANENBAUM, J.

The Governor and several state agencies and agency heads petition this court for relief through certiorari. They ask us to quash the trial court's orders denying their motions to dismiss filed

in two cases. In those motions, the petitioners argued, essentially, that the respondents lacked standing, that their complaints failed to state legally cognizable causes of action for declaratory relief, and that the respondents raised non-justiciable political questions. We lack jurisdiction to proceed.

Certiorari ultimately is discretionary relief, but before we have authority to order a response or otherwise proceed on the merits of these petitions, we must satisfy ourselves that the petitions plead a basis for jurisdiction—that the petitioners stand to suffer a significant harm that cannot adequately be corrected in a later, plenary direct appeal. *See Citizens Prop. Ins. Corp. v. San Perdido Ass'n, Inc.*, 104 So. 3d 344, 351 (Fla. 2012) ("[B]efore certiorari can be used to review non-final orders, the appellate court must focus on the threshold jurisdictional question: whether there is a material injury that cannot be corrected on appeal, otherwise termed as irreparable harm."); *Jaye v. Royal Saxon, Inc.*, 720 So. 2d 214, 215 (Fla. 1998) ("[I]t is settled law that, as a condition precedent to invoking a district court's certiorari jurisdiction, the petitioning party must establish that it has suffered an irreparable harm that cannot be remedied on direct appeal."); *see also Williams v. Oken*, 62 So. 3d 1129, 1132 (Fla. 2011) (summarizing jurisdictional elements, which "must be analyzed before the court may even consider the" merits of the petition).

In making this threshold jurisdictional assessment, we note that certiorari is extraordinary relief, and it may "not be used to circumvent the interlocutory appeal rule which authorizes appeal from only a few types of non-final orders." *Martin-Johnson, Inc. v. Savage*, 509 So. 2d 1097, 1098 (Fla. 1987). "Generally, all other appellate review is postponed until the matter is concluded in the trial court." *Id.* Florida judicial policy limits common law certiorari review so as to avoid "piecemeal review of nonfinal trial court orders [that] will impede the orderly administration of justice." *Jaye*, 720 So. 2d at 215. Following on this principle, "[o]rdinarily, orders on motions to strike or dismiss claims do not qualify for review by certiorari." *Martin-Johnson*, 509 So. 2d at 1099; *see also Williams*, 62 So. 3d at 1134 ("It is generally inappropriate to review a trial court's denial of a motion to dismiss."); *Hotel*

Roosevelt Co. v. Hill, 196 So. 2d 233, 233 (Fla. 1st DCA 1967) (denying petition for certiorari because there was no jurisdiction to review denial of motion to dismiss complaint).

The petitioners fail to allege an adequate basis for certiorari jurisdiction in these two cases. On the face of the petitions, we find nothing that distinguishes these cases from the typical declaratory judgment action against a state officer or agency that challenges the constitutionality of a statute or state action. Invariably, a motion to dismiss ensues in such a case. Oftentimes, the motion will fail, and the sued state officer or agency must litigate and defend against the asserted claim, just as a private defendant must do in a private right suit. Frustrating as this might be, the time and expense of defending a case, in the face of a denial of dismissal that the defendant fervently believes is erroneous, is not the type of harm that can support certiorari. *Cf. Jaye*, 720 So. 2d at 215; *Citizens Prop. Ins. Corp.*, 104 So. 3d at 355 (rejecting argument that "continuation of defending a lawsuit," by itself, is sufficient to establish the irreparable harm necessary to support jurisdiction); *id.* at 356 ("[E]quating the defense of a lawsuit with the type of irreparable harm necessary for the threshold decision to invoke certiorari has the potential to eviscerate any limitations on the use of this common law writ, which has always been narrowly applied."); *see also Martin-Johnson*, 509 So. 2d at 1099–1100 (noting that even discovery following erroneous denial of a motion to dismiss is not necessarily irreparable harm; distinguishing between merely erroneous discovery orders and those that violate fundamental rights, *i.e.* an order that would require disclosure of protected information).

The petitioners cannot point to any statutorily mandated procedure that was denied them, which perhaps *would* support the jurisdictional claim of irreparable harm. As a counterexample, the supreme court recognizes that such irreparable harm could stem from a trial court's failure to follow the procedural requirements found in section 768.72, Florida Statutes, regarding the addition of a punitive damages claim. *See Globe Newspaper Co. v. King*, 658 So. 2d 518, 519 (Fla. 1995). At the same time, a trial court's erroneous ruling on the allowance of such a claim would not be a basis for irreparable harm, provided those procedural

requirements were followed. *See id.* Likewise, the supreme court recognizes "an exception to the general rule—that certiorari review is inappropriate to review the denial of a motion to dismiss—[to] permit certiorari review when the presuit requirements of a medical malpractice statute are at issue." *Williams*, 62 So. 3d at 1133. But if the trial court follows "the essential process guaranteed by law," like those statutorily guaranteed presuit requirements mentioned above, a mere erroneous ruling that results from that process cannot establish the jurisdictionally necessary irreparable harm. *Id.* at 1136–37 (quotation and citation omitted). The trial court's rejection of the petitioners' political question and pleading deficiency arguments, without more, cannot establish the harm required for certiorari jurisdiction.*

We must also point out that the petitioners have an adequate remedy at law, which is another reason we lack jurisdiction. The State "has only those rights of appeal as are expressly conferred by statute. Substantive rights conferred by law can neither be diminished nor enlarged by procedural rules adopted by" the supreme court. *Ramos v. State*, 505 So. 2d 418, 421 (Fla. 1987) (specifically addressing criminal appeals). In civil appeals generally, the Legislature allows for the denial of a motion to dismiss to be raised as legal error as part of "any appeal from the final judgment or order in the action." § 59.06(1)(b), Fla. Stat. The issues that the petitioners raise in their motions to dismiss can be fully addressed as part of any plenary appeal taken after final orders are rendered in the two cases.

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* The petitioners' suggestion that the COVID-19 situation could support certiorari jurisdiction is unavailing. *Cf. Roman Catholic Diocese of Brooklyn v. Cuomo*, No. 20A87, slip op. (U.S. Nov. 25, 2020) (Gorsuch, J., concurring) ("Even if the Constitution has taken a holiday during this pandemic, it cannot become a sabbatical.").

At this point—on these petitions—though, we lack jurisdiction to consider the merits of the arguments raised or to grant any relief.

DISMISSED.

LEWIS and JAY, JJ., concur.

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

Joseph W. Jacquot, Raymond F. Treadwell, and Joshua E. Pratt, Executive Office of the Governor, Tallahassee; Matthew H. Mears, Judy Bone, and Jamie M. Braun, Florida Department of Education, Tallahassee; and Kenneth B. Bell, David M. Wells, Lauren V. Purdy, and Nathan W. Hill of Gunster, Yoakley & Stewart, P.A., Tallahassee, for Petitioners.

Kendall B. Coffey, Josefina M. Aguila, and Scott A. Hiaasen of Coffey Burlington, P.L., Miami; Lucia Piva, Mark Richard, and Kathleen M. Phillips of Phillips, Richard & Rind, P.A., Miami; Ronald G. Meyer of Meyer, Brooks, Blohm & Hearn, P.A., Tallahassee; Kimberly C. Menchion, Florida Education Association, Tallahassee; Katherine E. Giddings and Kristen M. Fiore of Akerman LLP, Tallahassee; Gerald B. Cope, Jr. of Akerman LLP, Miami; Ryan D. O'Connor of Akerman LLP, Orlando; Jacob V. Stuart of Jacob V. Stuart, P.A., Orlando; William J. Wieland, II of Wieland & DeLattre, P.A., Orlando, for Respondents.