

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-2294

CHARITO MELVIN,

Petitioner,

v.

PROGRESSIVE SELECT
INSURANCE COMPANY, PAUL
RICCI, and THE ESTATE OF
JOSEPH RICCI,

Respondents.

Petition for Writ of Prohibition—Original Jurisdiction.

October 6, 2021

PER CURIAM.

Charito Melvin seeks a writ of prohibition to prevent the trial judge from continuing to preside in the litigation below. However, Melvin did not file a motion to disqualify with the trial court first, as required by rule. *See* Fla. R. Gen. Prac. & Jud. Admin. 2.330. A facially sufficient motion for disqualification and an erroneous denial of that motion must be pleaded as a basis to grant prohibition relief. *Cf. Bundy v. Rudd*, 366 So. 2d 440, 442 (Fla. 1978) (“Once a basis for disqualification has been established, prohibition is both an appropriate and necessary remedy.”). In an original proceeding for prohibition, we do not resolve disputed

issues of fact; we consider only whether the motion for disqualification (filed with the trial court) was legally sufficient and whether the order denying the motion was correct. *See Bay Bank & Tr. Co. v. Lewis*, 634 So. 2d 672, 678 (Fla. 1st DCA 1994). *See also Kline v. JRD Mgmt. Corp.*, 165 So. 3d 812, 813 (Fla. 1st DCA 2015) (“In determining whether a motion to disqualify is legally sufficient, the appellate court reviews the motion’s allegations under a *de novo* standard.”).

A writ of prohibition “is meant to be very narrow in scope, to be employed with great caution and utilized only in emergencies,” and it is available as relief only “when it is shown that a lower court is without jurisdiction or attempting to act in excess of jurisdiction.” *English v. McCrary*, 348 So. 2d 293, 296 (Fla. 1977). Absent a motion to disqualify and a trial court order denying it, there is nothing that could give rise to doubt about the trial court’s jurisdiction. *Cf. Brown v. Rowe*, 118 So. 9, 10 (Fla. 1928) (treating legally sufficient and supported allegations of disqualification, filed with the trial judge, as depriving the judge of authority to preside in the case); *see Bay Bank*, 634 So. 2d at 678 (explaining that the purpose of prohibition in this context “is to determine, not whether the judicial or quasi-judicial officer involved should be disqualified for bias or other reasons, but whether such an officer has exceeded the jurisdiction of the office *by denying a clearly valid motion for disqualification*” (emphasis supplied)).

Melvin’s failure to plead an adverse ruling by the trial court on a motion to disqualify the judge presiding in his case renders his petition fatally flawed on its face.

DISMISSED.

RAY, JAY, and TANENBAUM, JJ., concur.

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

Charito Melvin, pro se, Petitioner.

No appearance for Respondents.