

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

DORIAN CHILDS,

Petitioner,

v.

LETICIA CRUZ-CHILDS,

Respondent.

No. 2D22-787

December 28, 2022

Appeal from the Circuit Court for Hillsborough County; Jared E. Smith,
Judge.

Shamika T. Askew of the Law Office of Shamika T. Askew, Brandon, for
Petitioner.

Robert J. Kennedy of the Law Firm of Robert J. Kennedy, P.A., Ft. Myers,
for Respondent.

SILBERMAN, Judge.

Dorian Childs (the Former Husband) petitions for a writ of certiorari quashing the trial court's order compelling him to submit to a psychological evaluation. We conclude that the trial court did not depart from the essential requirements of the law when it required the Former Husband to submit to a psychological evaluation. However, as Leticia

Cruz-Childs (the Former Wife) concedes, the trial court failed to specify the time, place, manner, conditions, and scope of the psychological evaluation and failed to establish the person or persons by whom the interview is to be made. Thus, we are compelled to grant the petition in part so that the trial court may enter an order that complies with Florida Family Law Rule of Procedure 12.360(a)(1)(B).

Appellate courts may only grant certiorari relief when a petitioner establishes that a trial court's order departs from the essential requirements of the law resulting in material injury that cannot be remedied on appeal. *Cranney v. Coronado*, 920 So. 2d 132, 133 (Fla. 2d DCA 2006). "An order compelling a psychological examination is reviewable by certiorari because the alleged harm will not be remediable on appeal." *Ludwigsen v. Ludwigsen*, 313 So. 3d 709, 712 (Fla. 2d DCA 2020) (citing *Vo v. Bui*, 680 So. 2d 601, 601 (Fla. 2d DCA 1996)).

Rule 12.360(a)(1) and (2) provides that a "party may request any other party to submit to . . . examination by a qualified expert when the condition that is the subject of the requested examination is in controversy" and that "[a]n examination under this rule is authorized only when the party submitting the request has good cause for the examination." Appellate courts will look "to both the record and factual findings made in the order under review to determine whether the 'in controversy' and 'good cause' requirements have been established." *Ludwigsen*, 313 So. 3d at 712. The Former Husband argues that the order compelling him to submit to a psychological examination departs from the essential requirements of the law because the Former Wife failed to establish that his mental condition was "in controversy" and because the trial court found "good cause" without sufficient evidence to support that finding. We disagree.

The trial court conducted an evidentiary hearing on the Former Wife's verified motion for psychological evaluation of the Former Husband, at which both parties testified. At the conclusion of the hearing, the trial court summarized the evidence, which we need not detail here, and determined that the Former Husband's mental health is at issue and that a mental health evaluation is appropriate. The court later rendered a written order again summarizing the evidence and making specific findings and found that the Former Husband's mental health affects the parties' child and the Former Husband's parenting of the child. Because the record and the court's factual findings support the conclusion that the "in controversy" and "good cause" requirements have been met, we conclude that the trial court did not depart from the essential requirements of the law when it ordered the Former Husband to submit to a psychological evaluation.

However, pursuant to rule 12.360(a)(1)(B), an order compelling an examination by a qualified expert for a condition that is not physical "must specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made." Open-ended orders that fail to "provide specific directives regarding the psychological evaluation depart[] from the essential requirements of law." *Ludwigsen*, 313 So. 3d at 713 (quoting *Oldham v. Greene*, 263 So. 3d 807, 814 (Fla. 1st DCA 2018)). "[A]n order that fails to identify the length of examination, the type of testing to be performed, or even whether the testing is limited to routine psychological methods is deficient." *Id.*

Here, the order granting the Former Wife's verified motion for psychological evaluation directs the parties to "attempt to agree to a psychological evaluator." The trial court noted that, should the parties be unable to agree, "each Party shall submit the names and background

for 3 qualified candidates to the Court and the Court shall decide." Although the order specifies that the costs of the psychological evaluation should be equally divided between the parties, it is silent as to the time, place, manner, conditions, and scope of the psychological evaluation and fails to establish the person or persons by whom the interview is to be made. See Fla. Fam. L. R. P. 12.360(a)(1)(B).

Because the trial court's order departs from the essential requirements of the law, we grant the petition in part and quash the order in part so that the trial court may enter an order that complies with rule 12.360(a)(1)(B). See *Ludwigsen*, 313 So. 3d at 714; see also *Oldham*, 263 So. 3d at 814 (quashing an order compelling a psychological evaluation and reiterating that such an order must provide sufficient parameters regarding the examination); *Manubens v. Manubens*, 198 So. 3d 1072, 1075 (Fla. 5th DCA 2016) ("[T]he failure of an order to specify the manner, conditions, and scope of an examination effectively gives the psychologist 'carte blanche' to perform any type of psychological inquiry, testing, and analysis, and, as such, an open-ended order departs from the essential requirements of the law, resulting in a miscarriage of justice.").

Petition denied in part and granted in part; order quashed in part.

VILLANTI and LaROSE, JJ., Concur.

Opinion subject to revision prior to official publication.