

IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

October 29, 2008

CMI, INC. OF KENTUCKY,)	
)	
Petitioner,)	
)	
v.)	Case No. 2D08-2134
)	
JOHN C. FABIAN; CATHERINE MARSH;)	
MORLEY J. PARENT; SARA PENNEY;)	
KENNETH A. BAKER; and STATE OF)	
FLORIDA,)	
)	
Respondents.)	
_____)	

CMI's Motion for Clarification and for a Written Opinion is granted to the extent that the opinion dated August 27, 2008, is withdrawn and the attached opinion is substituted therefor. No further motions for rehearing, rehearing en banc, certification, or clarification will be entertained.

I HEREBY CERTIFY THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL COURT ORDER.

JAMES R. BIRK HOLD, CLERK

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

CMI, INC. OF KENTUCKY,)
)
 Petitioner,)
)
v.)
)
JOHN C. FABIAN; CATHERINE MARSH;)
MORLEY J. PARENT; SARA PENNEY;)
KENNETH A. BAKER; and STATE OF)
FLORIDA,)
)
 Respondents.)
_____)

Case No. 2D08-2134

Opinion filed October 29, 2008.

Petition for Writ of Certiorari to the Circuit Court for the Twelfth Judicial Circuit for Sarasota County; sitting in its appellate capacity.

Michael S. Taaffe and Jarrod Malone of Abel Band, Chartered, Sarasota, for Petitioner.

Robert N. Harrison, Venice, for Respondents John C. Fabian, Catherine Marsh, Morley J. Parent, Sara Penney, and Kenneth A. Baker.

No appearance for State of Florida.

VILLANTI, Judge.

Denied. See Sunset Harbour Condo. Ass'n v. Robbins, 914 So. 2d 925, 928 (Fla. 2005) (holding that to be preserved for appellate review, "an issue must be

presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation" (quoting Tillman v. State, 471 So. 2d 32, 35 (Fla. 1985)); see also N.L.E. v. Dep't of Children & Family Servs. (In re D.G.), 970 So. 2d 486, 489 (Fla. 2d DCA 2007) (" 'Except in cases of fundamental error, appellate courts will not consider an issue that has not been presented to the lower court in a manner that specifically addresses the contentions asserted.' " (quoting State v. Hunton, 699 So. 2d 320, 321 (Fla. 2d DCA 1997))); Miller v. Miller, 709 So. 2d 644, 645 (Fla. 2d DCA 1998) (holding that an appellate court "cannot address on appeal an issue not ruled upon by the [trial] court"); Parlier v. Eagle-Picher Indus., Inc., 622 So. 2d 479, 481 (Fla. 5th DCA 1993) (holding that "issues not timely raised below will not be considered on appeal").

Petition denied.

DAVIS and KHOUZAM, JJ., Concur.