

Third District Court of Appeal

State of Florida

Opinion filed August 21, 2019.
Not final until disposition of timely filed motion for rehearing.

Nos. 3D18-1135 & 3D18-1749
Lower Tribunal No. 18-4924

Alba Varela, Esq.,
Appellant,

vs.

OLA Condominium Association, Inc.,
Appellee.

Appeals from the Circuit Court for Miami-Dade County, Barbara Areces,
Judge.

Alba Varela, P.A., and Alba Varela, for appellant.

Essig Law, P.A., and William G. Essig, for appellee.

Before EMAS, C.J., and SCALES and LINDSEY, JJ.

EMAS, C.J.

OLA Condominium Association subpoenaed nonparty attorney Alba Varela to appear for a deposition in the instant cause. The subpoena further commanded her to produce at that deposition a number of files, records and documents in her possession, custody or control relating to several professional associations or limited liability companies. Varela filed a motion for protective order asserting, *inter alia*, that the subpoena duces tecum sought documents protected by the attorney-client privilege. The Association filed a motion to compel her compliance with the subpoena duces tecum. On April 26, 2018, the trial court denied Varela's motion for protective order, and ordered Varela to appear at deposition within thirty days and to produce at that deposition all documents responsive to OLA Condominium's subpoena. Varela's appeal followed.¹

We hold that the trial court abused its discretion in ordering Varela to produce the subpoenaed documents without first conducting an *in camera* hearing to address

¹ We note that Varela properly sought review through a notice of appeal rather than a petition for certiorari in this case because she is not a party to the litigation below. The order on appeal ended all judicial labor in the case as to Varela and constitutes a final appealable order. See United Servs. Auto. Ass'n v. Law Offices of Herssein and Herssein, P.A., 233 So. 3d 1224, 1230 n. 6 (Fla. 3d DCA 2017); Florida House of Representatives v. Expedia, Inc., 85 So. 3d 517 (Fla. 1st DCA 2012) (noting order compelling discovery which adjudicates the rights of nonparties and otherwise meets the general test of finality is a final appealable order).

Varela's claim of attorney-client privilege.² We reverse both trial court orders³ and remand for the trial court to conduct an *in camera* hearing to determine whether the documents sought by the subpoena duces tecum are in fact protected by the attorney-client privilege, and for further proceedings thereafter.⁴ See Del Carmen Calzon v. Capital Bank, 689 So. 2d 279 (Fla. 3d DCA 1994); Alliant Ins. Servs. Inc. v. Riemer Ins. Grp., 22 So. 3d 779, 781 (Fla. 4th DCA 2009) (holding: "If a party seeks to compel the disclosure of documents that the opposing party claims are protected by attorney-client privilege, the party claiming the privilege is entitled to an in camera review of the documents by the trial court prior to disclosure").

Reversed and remanded with directions.

² To the extent the trial court relied for its ruling upon testimony from a prior hearing at which Varela was neither present nor given notice and an opportunity to be heard, this too was error. See Jade Winds Ass'n, Inc. v. Citibank, N.A., 63 So. 3d 819, 822 (Fla. 3d DCA 2011) (noting: "A basic element of procedural due process is notice and an opportunity to be heard.")

³ Two months after Varela filed her notice of appeal from the trial court's April 26, 2018 order, the trial court rendered a second order, again directing Varela to appear for deposition within thirty days and to produce at that deposition the documents responsive to OLA Condominium's subpoena duces tecum. Varela filed a separate notice of appeal from that order, and we have consolidated these two appeals.

⁴ We offer no opinion on the merits of Varela's asserted claim of privilege or whether any such privilege has been waived.