

Third District Court of Appeal

State of Florida

Opinion filed March 11, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-995
Lower Tribunal No. 15-6517

Madeline Marriott,
Petitioner,

vs.

Fisher and Davidson, LLP, et al.,
Respondents.

On Petition for Writ of Certiorari from the Circuit Court for Miami-Dade County, Marcia del Rey, Judge.

Samuel C. Cozzo, for petitioner.

Fisher & Davidson, LLP and Sean L. Fisher, for respondents.

Before **SALTER, FERNANDEZ, and LINDSEY, JJ.**

PER CURIAM.

Madeline Marriott (“Marriott”) seeks a writ of certiorari¹ to quash the trial court’s order denying her post judgment motion to discharge a *lis pendens* filed on behalf of her former husband by the former husband’s lawyers, Fisher and Davidson, LLP., (“Davidson”). Davidson represented the former husband in the dissolution of marriage action which concluded as a result of a marital settlement agreement (“MSA”) and final judgment in November of 2015.

The MSA included a provision by which Marriott agreed to allow Davidson to maintain a *lis pendens* on her home until the husband’s attorney’s fees were paid in full. Although the MSA is not a model of clarity on the question of the *lis pendens* and responsibility for attorney’s fees, the question of the propriety of the cloud on the title to Marriott’s residence will have to be resolved in a quiet title/slander of title action filed in a separate proceeding, rather than in this petition for a writ of certiorari, because the only remedy available to this Court is to quash the order denying the motion to discharge the *lis pendens*, which would then leave the *lis pendens* in place. We have no authority to direct the trial court to take any specific action in granting a petition for a writ of certiorari other than to quash the order of

¹ Petitioner sought a writ of certiorari contending that the appropriate procedure for reviewing non-final orders granting or discharging a *lis pendens* is via a certiorari petition. See Bankers Lending Servs., Inc. v. Regents Park Invs., LLC, 225 So. 3d 884, 885 (Fla. 3d DCA 2017); 100 Lincoln Rd. SB, LLC v. Daxan 26 (FL), LLC, 180 So. 3d 134, 136 (Fla. 3d DCA 2015)

which petitioner complains. As the Florida Supreme Court stated in Broward County v. G.B.V. International, Ltd., 787 So. 2d 838 (Fla. 2001):

On certiorari the appellate court only determines whether or not the tribunal or administrative authority whose order or judgment is to be reviewed has in the rendition of such order or judgment departed from the essential requirements of the law and upon that determination either to quash the writ of certiorari or to quash the order reviewed.

When the order is quashed, as it was in this case, it leaves the subject matter, that is, the controversy pending before the tribunal, commission, or administrative authority, as if no order or judgment had been entered and the parties stand upon the pleadings and proof as it existed when the order was made with the rights of all parties to proceed further as they may be advised to protect or obtain the enjoyment of their rights under the law in the same manner and to the same extent which they might have proceeded had the order reviewed not been entered.

The appellate court has no power in exercising its jurisdiction in certiorari to enter a judgment on the merits of the controversy under consideration nor to direct the respondent to enter any particular order or judgment.

Id. at 844 (quoting Tamiami Trail Tours v. Railroad Comm'n, 174 So. 451, 454 (1937)).

In denying the petition we do not, by any means, imply that the *lis pendens* was properly entered or properly extended and leave that determination for another proceeding. We are simply saying that granting the petition under these circumstances would be ineffectual because all that would do is leave the *lis pendens* in place.

Petition for writ of certiorari denied.