

Third District Court of Appeal

State of Florida

Opinion filed April 1, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-105
Lower Tribunal No. 19-6602

State Farm Florida Insurance Company,
Petitioner,

vs.

Armando Chirino,
Respondent.

On Petition for Writ of Certiorari from the Circuit Court for Miami-Dade County, Spencer Eig, Judge.

Link & Rockenbach, P.A., and Kara Rockenbach Link and David A. Noel (West Palm Beach); Methe & Rothell, P.A., and Kristi Bergemann Rothell (West Palm Beach), for petitioner.

Diener Law Firm, and Daniel Cruz (Plantation); Law Office of Gray Proctor and Gray Proctor (Richmond, VA), for respondent.

Before LOGUE, LINDSEY, and GORDO, JJ.

LOGUE, J.

State Farm petitions for a writ of certiorari to quash the trial court's decision allowing its insured, Armando Chirino, to make a video and audio recording of State Farm's appraiser's inspection of the insured property for purposes of an appraisal authorized under the policy.

“To grant certiorari relief, there must be: ‘(1) a material injury in the proceedings that cannot be corrected on appeal (sometimes referred to as irreparable harm); and (2) a departure from the essential requirements of the law.’” Florida Power & Light Co. v. Cook, 277 So. 3d 263, 264 (Fla. 3d DCA 2019) (quoting Nader v. Fla. Dep't of Highway Safety & Motor Vehicles, 87 So. 3d 712, 721 (Fla. 2012)).

Among other things, State Farm asserts its appraiser has a right to privacy protected by the Florida Constitution when he visits the insured's home for purposes of conducting the inspection. Art. I, § 23, Fla. Const. (“Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein.”). State Farm argues that irreparable harm exists because its appraiser will lose the benefit of this right if the appraisal visit is recorded. We are not persuaded. Florida's Constitutional right to privacy protects persons from governmental, not private intrusion. Mr. Chirino and his representatives are entitled to be present during the inspection. We therefore do not believe State Farm has shown how the trial court violated the privacy right provided

by Article I, section 23 or otherwise departed from the essential requirements of law in authorizing Mr. Chirino, or someone on his behalf, from openly making such a recording of a legally required inspection in his own home.

State Farm notes that the making of the recording might be unfairly used to harass or intimidate its appraiser. The possibility of such misconduct, which presumably will be remedied by the trial court if it occurs, does not rise to the level of the irreparable harm required for certiorari. Thus, “[a]lthough [the petitioner] may have meritorious arguments in favor of a protective order at some later time in the litigation when the record is more developed, the record before us does not reflect that the orders under review amount to irreparable harm.” Cook, 277 So. 3d at 265. In this regard, the trial court expressly provided in the order that copies of the recordings must be made available to any party upon request.

Petition dismissed.