

Third District Court of Appeal

State of Florida

Opinion filed July 8, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-136
Lower Tribunal No. 07-15687

Marcia Stivelman,
Petitioner,

vs.

Jacques Claudio Stivelman,
Respondent.

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

Lorenzen Law, and Dirk Lorenzen, for petitioner.

Nancy A. Hass, P.A., and Nancy A. Hass (Fort Lauderdale), for respondent.

Before EMAS, C.J., and HENDON and LOBREE, JJ.

HENDON, J.

Marcia Stivelman (“Former Wife”), seeks a writ of certiorari in order to quash the December 17, 2019 order granting certain third parties’ motions for protective orders and sanctions. As the Former Wife has not shown any irreparable harm resulting from the orders, we dismiss the petition for certiorari.

In response to the former husband’s petition for a downward modification of his monthly alimony obligation, the Former Wife responded with a counter-petition seeking an upward modification of alimony. The parties agreed to set the trial for December 2019, and the hearing on the parties’ pending unresolved motions was set for November 2019. The Former Wife then subpoenaed various documents and extensive records from certain corporate third parties, i.e., Township Plaza Holdings, LLC, S2 Township Partners LLC, S2 Sunny Isles Capital Group, LLC, S2 Downtown, LLC, S2 Development LLC, and Mark Schmulian (collectively “Third Parties”), in an effort to obtain information regarding income that the former husband might have received from these entities. The Former Wife sought to show that the former husband had more assets than had been disclosed in the 2007 marital dissolution agreement by proving that he might have additional sources of income. The Third Parties, through their counsel, filed motions to quash the Former Wife’s subpoenas duces tecum and moved for protective orders. At the motion hearing, the Third Parties’ counsel argued that the Former Wife’s request for documents was overbroad and not narrowly tailored to obtain appropriate information. Further, the

Third Parties' counsel stated that the Third Parties did not have any documents or records that would show any source of equity or income to the Former Husband that had not already been produced by the Former Husband, or that he had offered to produce. The record showed that the Former Wife had not contacted the Third Parties' counsel about the records she wanted, nor had the former husband refused to cooperate or disclose additional records.

The trial court granted the Third Parties' motion for a protective order and sustained all of the Third Parties' objections to the production of documents. The trial court ruled that the Former Wife was not entitled to any of the documents requested in her subpoenas duces tecum. The court ordered the Former Wife to first seek any records that needed to be produced from the former husband.

Despite the trial court's protective order, and just days before the trial was set to commence, the Former Wife issued trial subpoenas to the Third Parties for substantially similar or identical documents to those previously subpoenaed for the Third Parties' depositions. The trial subpoenas further requested that the Third Parties bring the exact records that the trial court previously ruled would not have to be provided by the Third Parties to the Former Wife. Once again, the Third Parties argued to the trial court that the Former Wife was attempting to engage in discovery that had already been restricted by order of the trial court, amounting to meritless litigation. The Third Parties sought another protective order to limit their testimony

at the trial, as well as an order imposing sanctions against the Former Wife in the form of attorney's fees and costs, for having to defend against her conduct that went contrary to the prior court orders. At the hearing on December 17, 2019, the parties agreed to abate all further discovery until further order of the trial court. The trial court granted the Third Parties' motions for protective orders, motions in limine, and the motion for sanctions. In the order imposing sanctions against the Former Wife, the court awarded the Third Parties' attorney's fees in the amount of \$850.00, which represented two (2) hours of their attorney's time for having to bring and prosecute their motion. In response, the Former Wife filed this petition for Writ of Certiorari, seeking to quash the trial court's December 17, 2019 Order.

In seeking the extraordinary relief of certiorari, a petitioner must establish, "(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." Nader v. Fla. Dep't of Highway Safety & Motor Vehicles, 87 So. 3d 712, 721 (Fla. 2012); see also Fla. Power & Light Co. v. Cook, 277 So. 3d 263, 264 (Fla. 3d DCA 2019).

The Former Wife has not shown that the protective orders will cause her irreparable harm or that the trial court's decision to modify an alimony award could not be corrected on appeal. The record shows that the Former Wife has attempted to circumvent the trial court's orders regarding the documents she seeks from the Third

Parties, that she has delayed the proceedings, and that she has not sought the specific and narrowly tailored discovery from the former husband as she was instructed to do by the trial court. Absent irreparable harm, that is, a material injury in the proceedings that cannot be corrected on appeal, this Court is without certiorari jurisdiction. Id. We therefore dismiss the petition for certiorari.

Petition dismissed.