

Third District Court of Appeal

State of Florida

Opinion filed June 10, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-708
Lower Tribunal No. 14-15968

Gary Goodenow and Mary Goodenow,
Appellants,

vs.

Nationstar Mortgage, LLC,
Appellee.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Martin Zilber, Judge.

Pomeranz & Associates, P.A., and Mark L. Pomeranz (Hallandale), for appellants.

Akerman LLP, and Nancy M. Wallace (Tallahassee); Akerman LLP, and William P. Heller (Fort Lauderdale), for appellee.

Before SALTER, LOGUE and GORDO, JJ.

PER CURIAM.

Defendants Gary and Mary Goodenow appeal the trial court’s denial of their motion to stay the foreclosure proceedings below. Although the Goodenows couch the appeal as one taken from an order denying an injunction, that is simply not the case. An order denying a motion to stay is different from an order denying an injunction, and, as such, does not invoke this Court’s jurisdiction under Florida Rule of Appellate Procedure 9.130(a)(3)(B). See, e.g., Dep’t of Agric. & Consumer Servs. v. Patchen, 25 So. 3d 1283, 1284 (Fla. 3d DCA 2010). “As such, we treat this appeal as a petition for writ of certiorari.” Learn v. Shackelford, 903 So. 2d 335, 336 (Fla. 2d DCA 2005) (citations omitted).

Certiorari review is available only when the petitioner has demonstrated “(1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case[,] (3) that cannot be corrected on postjudgment appeal.” Bd. of Trs. of Internal Improvement Tr. Fund v. Am. Educ. Enters., LLC, 99 So. 3d 450, 454 (Fla. 2012) (quoting Reeves v. Fleetwood Homes of Fla., Inc., 889 So. 2d 812, 822 (Fla. 2004)). The Goodenows have failed to meet this burden.¹ “Because [the Goodenows] have not alleged that the trial court’s action here has resulted in a

¹ We note that pursuant to Administrative Order SC20-23, the requirement in Florida Rule of Civil Procedure 1.580(a) for the clerk to issue a writ of possession “forthwith” remains suspended. Further, pursuant to Executive Order 20-94, extended until 12:01 a.m. on July 1, 2020, by Executive Order 20-137, any statute providing for a mortgage foreclosure cause of action under Florida law has been suspended and tolled.

material injury to them that cannot be remedied on appeal, we do not have certiorari jurisdiction. We therefore dismiss the petition.” Learn, 903 So. 2d at 336 (internal citations omitted).

Dismissed.