FILED
SID J. WHITE
OCT 5 1994
CLERK, SUPREME COURT
By ______
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER 83,149

ALLSTATE INSURANCE COMPANY,

Petitioner,

vs.

JOYCE LANGSTON, on behalf of
the minor child, SHANARD LANGSTON,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE FOURTH DISTRICT COURT OF APPEAL
CASE NUMBER 93-2354

ANSWER BRIEF OF RESPONDENT ON THE MERITS

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SUMMARY OF ARGUMENT

The Petitioner failed to prove that it would suffer material injury of an irreparable nature by the production of the requested documents, and therefore, the Fourth District Court of Appeal was correct in denying, in part, the Writ of Certiorari. Contrary to the Petitioner's assertions, the Fourth District Court of Appeal did not create new law in its decision in Allstate Insurance Company v. Langston, 627 So. 2d 1178 (Fla. 4th DCA 1993). Nor is the decision in conflict with Florida Rule of Civil Procedure 1.280(b)(1) or other appellate decisions. The Fourth District Court of Appeal merely followed the law as developed by this Court and the decisions of other District Courts. Specifically, the Fourth District Court of Appeal held that for the Petitioner to be successful in the granting of an extraordinary remedy of certiorari, it had to show that the disclosure of the requested documents "[might] reasonably cause material injury of an irreparable nature." Id. See also Martin-Johnson, Inc. v. Savage, 509 So. 2d 1097, 1100 (Fla. 1987); Brooks v. Owens, 97 So. 2d 693 (Fla. 1957) (where there is no full, adequate and complete remedy by appeal after final judgment, certiorari is proper where court acted without and in excess of jurisdiction, or order does not conform to essential requirements of law and may cause material injury). The Petitioner failed to sustain that burden, and therefore, the Fourth District Court of Appeal properly denied the request for certiorari.

The crux of the Petitioner's Brief is that the production of

irrelevant evidence creates a material injury of an irreparable nature, and thus, the granting of certiorari would have been proper in the instant case. In the Petitioner's Initial Brief, the Petitioner attempts to divert attention away from the standard for determining whether certiorari is proper by discussing the relevant/irrelevant nature of the requested documents. However, while it is true that only relevant evidence should be admissible in the trial court, whether evidence is admissible is not the focus of the Court in a certiorari proceeding. Specifically, the focus in certiorari proceedings is on whether the moving party has demonstrated irreparable injury. If the moving party is unable to prove irreparable injury, an interlocutory appeal is not permitted under the Rules of Appellate Procedure and the only remedy is to bring a plenary appeal of the final judgment.

In conclusion, it seems clear that the Fourth District Court of Appeal followed established legal precedent in denying, in part, the Petitioner's request for certiorari. To have done otherwise would have meant ignoring the procedural requisites of appeals, in favor of just "getting to the issues." The Petitioner failed to sustain its burden in its request for certiorari, and therefore, cannot continue to argue that the relevancy of those documents should be controlling. That is simply not the issue.

ARGUMENT

THE PETITIONER FAILED TO PROVE THAT IT WOULD SUFFER MATERIAL INJURY OF AN IRREPARABLE NATURE BY THE PRODUCTION OF THE REQUESTED DOCUMENTS, AND THEREFORE, THE FOURTH DISTRICT COURT OF APPEAL WAS CORRECT IN DENYING, IN PART, THE WRIT OF CERTIORARI.

The Petitioner failed to prove that it would suffer material injury of an irreparable nature by the production of the requested documents, and therefore, the Fourth District Court of Appeal was correct in denying, in part, the Writ of Certiorari. Contrary to the Petitioner's assertions, the Fourth District Court of Appeal did not create new law in its decision in Allstate Insurance Company v. Langston, 627 So. 2d 1178 (Fla. 4th DCA 1993). Nor is the decision in conflict with Florida Rule of Civil Procedure 1.280(b)(1) or other appellate decisions. The Fourth District Court of Appeal merely followed the law as developed by this Court and the decisions of other District Courts. Specifically, the Fourth District Court of Appeal held that for the Petitioner to be successful in the granting of an extraordinary remedy of certiorari, it had to show that the disclosure of the requested documents "[might] reasonably cause material injury of an irreparable nature." Id. See also Martin-Johnson, Inc. v. Savage, 509 So. 2d 1097, 1100 (Fla. 1987); Brooks v. Owens, 97 So. 2d 693 (Fla. 1957) (where there is no full, adequate and complete remedy by appeal after final judgment, certiorari is proper where court acted without and in excess of jurisdiction, or order does not conform to essential requirements of law and may cause material injury). The Petitioner failed to sustain that burden, and

therefore, the Fourth District Court of Appeal properly denied the request for certiorari.[1]

The crux of the Petitioner's Brief is that the production of irrelevant evidence creates a material injury of an irreparable nature, and thus, the granting of certiorari would have been proper in the instant case. In the Petitioner's Initial Brief, the Petitioner attempts to divert attention away from the standard for determining whether certiorari is proper by discussing the relevant/irrelevant nature of the requested documents. However, while it is true that only relevant evidence should be admissible in the trial court, whether evidence is admissible is not the focus of the Court in a certiorari proceeding. Specifically, the focus in certiorari proceedings is on whether the moving party has demonstrated irreparable injury.[2] If the moving party is unable to prove irreparable injury, an interlocutory appeal is not permitted under the Rules of Appellate Procedure and the only remedy is to bring a plenary appeal of the final judgment.

In Martin-Johnson, Inc. v. Savage, 509 So. 2d 1097, 1100 (Fla. 1987), this Court delineated the test for the proper use of certiorari. Specifically, this Court opined that "common law certiorari is an extraordinary remedy." Id. at 1098. Furthermore,

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[1] The Petitioner's Brief goes beyond the scope of this appeal and includes what it characterizes as "harassment discovery". The Plaintiff's discovery request was narrow in scope requesting procedural memos, claims manuals, and standards for investigating and processing of claims.

[2] Interestingly, the Petitioner admitted that it could not prove irreparable injury. [Petitioner's Brief at 26].

this Court referred to the Advisory Committee note to the 1977 Revision of the Florida Appellate Rules, and quoted:

> [I]t is extremely rare that erroneous interlocutory rulings can be corrected by resort to common law certiorari. It is anticipated that since the most urgent interlocutory orders are appealable under this rule, there will be very few cases where common law certiorari will provide relief.

Id. at 1098-99. [citation omitted]. Therefore, although it is clear that certiorari is the proper vehicle by which a Petitioner can attempt relief from an erroneous discovery order, it should only be granted where an appeal "after final judgment is unlikely to [provide] an adequate remedy because once discovery is wrongfully gained, the complaining party is beyond relief." Id.

To prevail, the Petitioner must show that the harm which might result from the requested discovery is the "type of 'irreparable harm' contemplated by the standard of review for certiorari." Id. Basically, in these types of proceedings, "an order may be quashed only for certain fundamental errors." Id. Not every erroneous discovery order creates certiorari jurisdiction, as adequate redress by plenary appeal from a final judgment is available.

As with the requested discovery in the Martin-Johnson case, the Petitioners in the instant case have failed to demonstrate that material injury of an irreparable nature would be created by the production of the requested discovery. First, contrary to the Petitioner's assertions, the Fourth District Court of Appeal did not find that the requested documents were completely irrelevant. The language used by the Fourth District Court of Appeal was simply: "We do agree that from the face of the request that the

documents sought in paragraphs 3, 4 and 5, consisting of internal procedural memos, claims manuals and standards for proper investigation of claims, appear irrelevant to a lawsuit involving a claim for uninsured motorist benefits where no claim of bad faith or unfair claim practices has been made." Langston. [emphasis added]. Therefore, the Petitioner's continued characterization of the language used by the Fourth District Court of Appeal is misleading.

Furthermore, the Petitioner mischaracterized the holding of East Colonial Refuse Service, Inc. v. Velocci, 416 So. 2d 1276 (Fla. 5th DCA 1982), by claiming that the court had "presumed" harm where irrelevant discovery had been ordered to be produced. In East Colonial, the Fifth District Court of Appeal simply held that discovery "must be relevant to the subject matter of the case and be admissible or reasonably calculated to lead to admissible evidence in the case." Id. at 1277. The case was further decided on the theory of privileged information, and that the requested documents did not have to be produced because of the existence of a privilege. Specifically, the requesting party was seeking a customer list that constituted a "trade secret." Id. at 1278. Not only did the Fifth District not hold that the information was completely irrelevant, but "left the door open," so to speak, for the requesting party to submit an additional request if it could be shown that there existed a right to the accounting. Id. Nonetheless, nowhere in the opinion does it suggest that there existed a presumption of harm in irrelevant information.

In the instant case, the Petitioner had originally objected to the discovery requests as irrelevant. Langston. The trial court obviously overruled that objection, as it ordered the Petitioner to provide the requested documents. On appeal, for the Petitioner to succeed in a request for certiorari, it was the Petitioner's burden to show that compliance with the trial court's order would result in "material injury or an irreparable nature." The Petitioner failed to sustain that burden. In its most simple terms, the Fourth District Court of Appeal's holding was that the Petitioner must sustain this burden to succeed in a request for certiorari, regardless of whether the requested documents were relevant. Unfortunately, the Petitioner in its Initial Brief is confusing two (2) distinct arguments. Before the courts can consider the merits of the relevancy argument, the Petitioner must prove that it is entitled to certiorari by proving material injury of an irreparable nature. After that burden has been sustained, the courts can consider the second issue of whether the requested information was relevant to the underlying causes of action. If the Petitioner cannot sustain its burden in certiorari, its only remedy under the Rules of Appellate Procedure is to conduct a plenary appeal after final judgment has been entered.

The Petitioner argues that it "has the fundamental right to maintain the integrity of its entire business operation." [Petitioner's Brief at 25]. However, despite the Petitioner's choice of words, it is unclear how the disclosure of the requested policy manuals would "harm" the Petitioner's business, and

furthermore, how the Petitioner's maintenance of its business rises to a "fundamental right" as envisioned by this Court in Martin-Johnson.[3] Additionally, the Petitioner attempts to characterize the requested documents as an "unlimited expedition" where "the Plaintiff is seeking all standards, procedure manuals, etc. in hopes of discovering something that the Plaintiff can use against the insurance carrier in some later lawsuit".[4] [Petitioner's Brief at 25-26]. These accusations are not supported by the record, and should therefore, not be considered by this Court.

The Petitioner cites to a litany of cases involving petitions for certiorari where the first test applied is whether the discovery is relevant. But Petitioner appears to miss the point of this Court's opinion in Martin-Johnson, wherein this Court opined that the irrelevancy of discovery alone is not a basis for granting certiorari, but the correct standard to be used is whether the disclosure of the materials "may reasonably cause material injury of an irreparable nature." Martin-Johnson at 1100. Furthermore, the Fourth District Court of Appeals did not find that the discovery request was irrelevant. However, even if it had found

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[3] Interestingly, the Petitioner attempts to explain for the first time in its Initial Brief how it will be irreparably harmed by the disclosure of the requested documents. This argument should have been made before the Fourth District Court of Appeal, and the Petitioner's failure to establish material, irreparable injury lead to the Court's decision that certiorari was inappropriate.

[4] In fact, the Petitioner in the very next paragraph admits "the Defendant has absolutely no way of knowing what the Plaintiff plans on doing with this irrelevant material, or how she is going to use it", so how can the Petitioner claim that the Respondent intends to use the documents in other litigation? [Petitioner's Brief at 26].

the discovery request irrelevant, the Court used the appropriate standard established by this Court in Martin-Johnson.

Additionally, this Court, referring to trial court orders on discovery matters, has stated that:

> Even when the order departs from the essential requirements of the law, there are strong reasons militating against certiorari review. For example, the party injured by the erroneous interlocutory order may eventually win the case, mooting the issue, or the order may appear less erroneous or less harmful in light of the development of the case after the order.

Id. at 1100. Therefore, since the Petitioner failed to prove a material injury of an irreparable nature, the Fourth District Court of Appeal was correct in denying certiorari review.

Acceptance of Petitioner's argument, that certiorari should have been granted merely on the basis of relevancy, will work against the established purpose of the Rules of Civil Procedure which is to expedite cases. The harm in accepting the Petitioner's argument is that it will further clog our already overworked court system by the filing of scores of writs of certiorari on trial court orders where no irreparable harm can be demonstrated due to production of discovery material.[5]

In conclusion, it seems clear that the Fourth District Court

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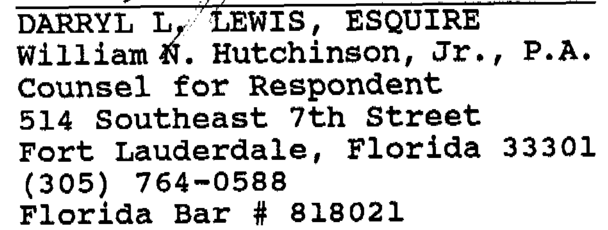
[5] The Petitioner claims that Plaintiff requested "voluminous documents" and that this is a tool to force settlement [Petitioner's Brief at 9]. However, the Fourth District Court of Appeal has maintained that there must be a balancing between the competing interests of the relevancy of the discovery and the burdensomeness of its production, "[w]hether we are talking about a box-full or a boxcar-full of files." McAdoo v. Ogden, 573 So. 2d 1084, 1985 (Fla. 4th DCA 1991). The record is silent as to the volume of procedural memos or the amount of the claims manuals maintained by the Petitioner.

of Appeal followed established legal precedent in denying, in part, the Petitioner's request for certiorari. To have done otherwise would have meant ignoring the procedural requisites of appeals, in favor of just "getting to the issues." The Petitioner failed to sustain its burden in its request for certiorari, and therefore, cannot continue to argue that the relevancy of those documents should be controlling. That is simply not the issue.

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests that this Court affirm the decision of the Fourth District Court of Appeal in all respects.

Respectfully submitted,



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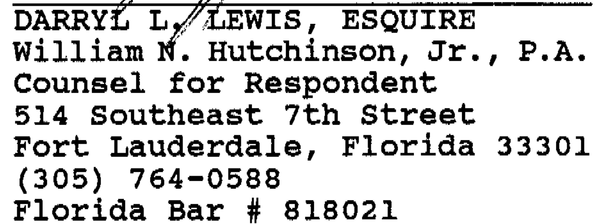
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 4th day of October, 1994, to: RICHARD SHERMAN, ESQUIRE, Counsel for the Petitioner, 1777 South Andrews Avenue, Suite 302, Fort Lauderdale, Florida 33316.



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