

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

ROBERT HEEKIN,

Petitioner,

v.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D10-4565

PETER DEL COL, JOHN M.
MARCHI, INDIVIDUALLY,
CENTER AVENUE
PARTNERSHIP, A FLORIDA
GENERAL PARTNERSHIP,
AND ROY B. SIMPSON, AN
INDIVIDUAL,

Respondents.

/

Opinion filed March 16, 2011.

Petition for Writ of Certiorari – Original Jurisdiction.
Hugh A. Carithers, Judge.

Brian J. Lee of Schuler & Lee, P.A., Jacksonville, for Petitioner.

James W. Middleton of Rogers Towers, P.A., Jacksonville, for Respondents.

MARSTILLER, J.

Robert Heekin seeks certiorari review of a discovery order requiring him to furnish Respondents certain personal financial information. Mr. Heekin was

ordered to deposit \$250,000 into the court registry after the court granted summary judgment to Respondents on their breach of fiduciary duty claim. The nonfinal order entered June 8, 2009, gave Mr. Heekin 30 days to make payment. He did not do so and, as a result, Respondents moved to enforce the order and sought discovery of information concerning Mr. Heekin's finances. He objected to the discovery requests, and at the hearing on Respondents' motion to compel production of financial information and answers to interrogatories, the court advised Mr. Heekin that he may be held in contempt. Mr. Heekin, through counsel, claimed inability to pay the \$250,000.

Certiorari review of an order compelling discovery is appropriate when the order departs from the essential requirements of law, causing irreparable harm that cannot be remedied on plenary appeal. *See Commonwealth Land Title Ins. Co. v. Higgins*, 975 So. 2d 1169, 1176 (Fla. 1st DCA 2008). “[T]he reviewing court must first conduct a jurisdictional analysis to determine whether the petitioner has made a *prima facie* showing of the element of irreparable harm.” *Id.* *See Taylor v. TGI Friday's, Inc.*, 16 So. 3d 312, 313 (Fla. 1st DCA 2009). We deny the petition for writ of certiorari because Mr. Heekin has shown no irreparable harm from the discovery order.

In support of his petition, Mr. Heekin asserts that disclosure of personal information *ipso facto* causes irreparable harm. Indeed, “disclosure of personal

financial information may cause irreparable harm to a person forced to disclose it, *in a case in which the information is not relevant.”* *Friedman v. Heart Inst. of Port St. Lucie, Inc.*, 863 So. 2d 189, 194 (Fla. 2003) (emphasis added) (quoting *Straub v. Matte*, 805 So. 2d 99, 100 (Fla. 4th DCA 2002)). Here, Mr. Heekin’s financial information is relevant because he is under a court order to pay a substantial sum into the court registry, the court is considering holding him in contempt for disobeying the order, and he claims he is unable to pay the amount. Mr. Heekin’s ability to comply with the earlier order is squarely at issue, and the court needs information about his income, assets and liabilities to determine whether contempt is appropriate. Mr. Heekin argues his financial information is not relevant because Respondents have not yet obtained a money judgment against him (in which case he agrees the information would be relevant to enforce the judgment) and because the order granting summary judgment and directing him to deposit \$250,000 into the court registry is “improper on its face.” But he cannot seek to invalidate that order in this appellate proceeding.* Although final judgment is yet to be entered in the underlying breach of fiduciary duty action, the order granting summary judgment is still in force—an order with which Mr. Heekin has failed to comply, thereby making relevant his financial standing, and thus, his financial information.

* We previously dismissed as premature Mr. Heekin’s appeal of that nonfinal order. *See Heekin v. Del Col*, 38 So. 3d 157 (Fla. 1st DCA 2010).

An “order compelling production of relevant financial information cannot be the object of a writ of certiorari because there is no irreparable harm.” *In re Estate of Sauey*, 869 So. 2d 664, 665 (Fla. 4th DCA 2004). Having failed to establish irreparable harm resulting from the discovery order, Mr. Heekin is not entitled to certiorari review of the order.

DENIED.

HAWKES, J., CONCUR; WOLF, J., CONCURS WITH OPINION.

WOLF, J., Concurring.

I concur in the decision to deny the petition for writ of certiorari because there has been no demonstration of a departure from the essential requirements of law.

A petitioner seeking certiorari relief from an order granting discovery is required to demonstrate two circumstances: 1) the order constituted a departure from the essential requirements of law, and 2) production of the material will cause irreparable harm or injury that cannot be remedied on appeal. Commonwealth Land Title Ins. Co. v. Higgins, 975 So. 2d 1169 (Fla. 1st DCA 2008).

The element of departure from the essential requirements of law concerns an examination of whether a legal error has occurred and the seriousness of the error. Wolf Creek Land Dev., Inc. v. Masterpiece Homes, Inc., 942 So. 2d 995 (Fla. 5th DCA 2006). Mere legal error is insufficient to constitute a departure from the essential requirements of law but the error must amount “to ‘a violation of a clearly established principle of law and resulting in a miscarriage of justice.’” Byrd v. S. Prestressed Concrete, Inc., 928 So. 2d 455, 457 (Fla. 1st DCA 2006) (quoting Combs v. State, 436 So. 2d 93, 96 (Fla. 1983)). Examination of the trial court’s legal decision in the instant case regarding the relevancy of the information sought

concerns this first prong. Because I find no error occurred, much less a departure from the essential requirements of law, I concur in the decision to deny the petition.

The second prong concerning irreparable harm has nothing to do with the correctness of the trial court's legal determination but rather the nature of the harm caused by the alleged erroneous legal decision. In the context of certiorari review of an order granting discovery, one must look at the legal reason asserted for not providing the information as well as the exact nature of the information sought to be protected.

For instance, irreparable harm may be demonstrated where it is alleged that the order compelling discovery involves the piercing of an evidentiary privilege. See Fla. E. Coast Ry. L.L.C. v. Jones, 847 So. 2d 1118 (Fla. 1st DCA 2003) (discussing work product privilege); Cruz-Govin v. Torres, 2 So. 2d 393 (Fla. 3d DCA 2010) (discussing medical privilege).

In the instant case, the asserted legal reason for denying discovery is relevance. The legal assertion that material is irrelevant standing alone does not demonstrate irreparable harm. Allstate Ins. Co. v. Langston, 655 So. 2d 91 (Fla. 1995). As stated by the majority, however, an inappropriate determination of relevance may cause irreparable harm depending on the information sought. Thus, inappropriate disclosure of irrelevant personal financial information may cause

irreparable harm. Friedman v. Heart Inst. of Port St. Lucie, Inc., 863 So. 2d 189, 194 (Fla. 2003).

In the instant case, Mr. Heekin sought to protect personal financial information. If there had been a demonstration of a departure of essential requirements of law, the prong of irreparable harm would have been met. See Spry v. Prof'l Employer Plans, 985 So. 2d 1187 (Fla. 1st DCA 2008) (granting certiorari relief from disclosure of irrelevant financial information and recognizing the Florida constitutional protections from inappropriate release of such information). The majority's focus on the correctness of the trial court's ruling has nothing to do with the prong concerning irreparable harm.