The 'Essential Requirements of the Law'— When Are They Violated?

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A common law writ of certiorari is a form of extraordinary relief. It cannot be used as a second appeal or as a means of circumventing Florida Rule of Appellate Procedure 9.130, which provides for the immediate appeal of interlocutory orders only in limited circumstances.[1] To obtain a common law writ of certiorari, a petitioner must demonstrate 1) a material injury in the proceedings below that cannot be corrected on post-judgment appeal, and 2) that the injury was caused by a departure from the "essential requirements of the law."[2] This article focuses on the second element, which is utilized not only in the context of nonfinal review of trial court orders, but also when circuit courts review local government rulings and when district courts review circuit court certiorari decisions.[3]

The Florida Supreme Court first articulated the "essential requirements of the law" standard in 1894, when it "endorsed" this standard of the Illinois courts.[4] The standard was expressly adopted as Florida law in 1899.[5] However, as noted in Haines City Community Development v. Heggs, 658 So. 2d 523, 527 (Fla. 1995), notwithstanding its longevity, the Florida courts' application of this standard over the years has been "all over the waterfront." Seeking to clarify the standard in 1983, the Florida Supreme Court explained in Combs v. State, 436 So. 2d 93, 95 (Fla. 1983), that "the district courts of appeal should not be as concerned with the mere existence of legal error as much as with the seriousness of the error." Although courts have "a large degree of discretion" in determining whether a departure from the essential requirements of the law has occurred, they "should exercise this discretion only when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice."[6]

Despite that clarification, courts continued to struggle with the "essential requirements of the law" standard for certiorari review. In Ivey v. Allstate Insurance Co., 774 So. 2d 679 (Fla. 2000), the Florida Supreme Court quashed the Third District's decision granting a writ of certiorari, writing a sharply worded opinion. The court declared that the Third District "merely disagreed with the circuit court's interpretation of the applicable law, which, as explained in Heggs, is an improper basis for common law certiorari."[7] Certiorari review did not permit the district court to engage in a second level of appellate review of a decision issued by the circuit court sitting in its appellate capacity. By conducting such a review, the district court had "expressly created a new category of appellate review never before recognized under Florida law and in express and direct conflict with authority to the contrary."[8]

In its analysis, the Ivey court quoted at length from Judge Altenbernd's opinion in *Stilson v. Allstate Insurance Co*., 692 So. 2d 979, 982-83 (Fla. 2d DCA 1997), which stated that without controlling precedent, there could at most be a misapplication of correct law, not a violation of "a clearly established principle of law."[9] Misapplying the correct law, thus, does not sufficiently depart from the essential requirements of the law to obtain a writ of certiorari. Judge Altenbernd acknowledged that due to this narrow scope of review and the large number of unreported circuit court decisions, "conflicting approaches within the numerous circuits" could evolve, and "there may never be 'clearly established principles of law' governing a wide array of county court issues, including PIP issues."[10] Nonetheless, he concluded that, while tempting, the district court could not exercise certiorari review "simply to provide precedent where precedent is needed."[11]

The Florida Supreme Court agreed, saying the "solution" was not a "second level of appellate review."[12] In its words, the "concept of certiorari review should have a recognized uniformity of application."[13]

In *Allstate Insurance Co. v. Kaklamanos*, 843 So. 2d 885 (Fla. 2003), the Florida Supreme Court reiterated the standard for a departure from the essential requirements of law. Cautioning that a departure from the essential requirements of law is

"something more than a simple legal error," the court said there must be a violation of a "clearly established principle of law resulting in a miscarriage of justice" to warrant certiorari review.[14] These "clearly established principles of law" do not emanate solely from precedential appellate decisions, but rather "can derive from a variety of legal sources, including recent controlling case law, rules of court, statutes, and constitutional law."[15] Thus, "in addition to case law dealing with the same issue of law, an interpretation or application of a statute, a procedural rule, or a constitutional provision may be the basis for granting certiorari review."16 In *State v. Belvin*, 986 So. 2d 516, 526 (Fla. 2008), the court reaffirmed its definition of "clearly established law" from Kaklamanos.

Within the last few months, the Florida Supreme Court again sought to clarify the meaning of "essential requirements of the law" in *Custer Medical Center v. United Automobile Insurance Co* ., 35 Fla. L. Weekly S640 (Fla. Nov. 4, 2010). As in *Ivey*, the court quashed a Third District decision granting a writ of certiorari, again writing a sharply worded opinion for misapprehending the certiorari standard. Relying on *Heggs, Combs, Ivey* , and *Kaklamanos*, the court emphasized that certiorari is only available to "correct grievous errors that, for a variety of reasons, are not otherwise effectively subject to review."[17] Upon certiorari review, the subject matter of an action is "not to be reinvestigated, tried, and determined upon the merits."[18]

Moreover, as the Supreme Court explained, "a circuit court appellate decision made according to the forms of law and the rules prescribed for rendering it, although it may be erroneous in its conclusion as to what the law is as applied to facts, is not a departure from the essential requirements of law remediable by certiorari."[19] The court further reminded the district courts that, as a jurisdictional prerequisite, they must "set forth a sufficient correct legal basis and analysis" to indicate how the circuit court's decision departed from the essential requirements of the law.[20]

Applying the standard articulated by the Supreme Court for a departure from the essential requirements of law, the district courts have granted certiorari to remedy holdings that are contrary to on-point controlling authorities, both legislative and judicial. In *United Automobile Insurance Co. v. Merkle* , 32 So. 3d 159, 162 (Fla. 4th DCA 2010), for example, the Fourth District granted certiorari after determining that the circuit court had failed to apply a Florida Supreme Court decision that should have controlled the outcome. Likewise, in *DND Mail Corp. v. Andgen Properties* , LLC, 28 So. 3d 111, 113 (Fla. 4th DCA 2010), the court granted certiorari because the circuit court "applied the wrong law" when it failed to recognize that the Florida Rules of Civil Procedure permitted the trial court to reconsider and vacate its own default judgment *sua sponte*. At least one recent district court decision, *United Automobile Insurance Co. v. Seffar* , 37 So. 3d 379, 380-81 (Fla. 3d DCA 2010), even concluded that improper reliance on a distinguishable legal principle — despite the absence of a controlling principle — departed from the essential requirements of law.

Conversely, the district courts have denied certiorari when the circuit court applied the correct law, regardless of whether the circuit court reached the correct result. In denying a certiorari petition in *Pharmcore, Inc. v. City of Hallandale Beach* , 946 So. 2d 550 (Fla. 4th DCA 2006), the Fourth District explained that "[s]econd-tier review is not available to review the application of the correct law to the facts" and, thus, that "[a]pplying the correct law incorrectly to the facts of the case does not warrant certiorari review."[21] Indeed, as demonstrated through *Pistone v. City of Palm Bay* , 944 So. 2d 537, 537 (Fla. 5th DCA 2006), because the courts have understood *Heggs* to equate the "essential requirements of the law" with applying the correct law, an inability to demonstrate flaws in the legal underpinnings of a decision will result in denial of the certiorari petition.

The difficulty for the district courts in applying the "correct law" standard often has been in determining whether an authority controls a particular situation. The First District, writing through Judge Webster, granted a certiorari petition in *Harris v. Florida Parole Commission* , 917 So. 2d 217, 217 (Fla. 1st DCA 2005), upon concluding that the court was bound by a "substantively identical" First District decision. Judge Thomas dissented because he did not believe that the earlier decision controlled. He explained that "although the recited facts of *Merritt* appear to also contain similar evidence, apparently the [c]ommission did not rely on such evidence, and this court's holding in *Merritt* did not rely on such evidence. Thus, *Merritt* is distinguishable, as it relies on a legal principle that is not applicable here."[22]

Even if the correct controlling legal authority is identified by the lower tribunal, failure to accurately interpret the controlling statute or rule can amount to a departure from the essential requirements of the law. The district courts have based statutory constructions on express statutory language, as well as on legislative history and comparisons to similar statutes. For example, in *Lee v. Department of Highway Safety & Motor Vehicles* , 4 So. 3d 754, 757-58 (Fla. 1st DCA 2009), the First District concluded that the circuit court and administrative hearing officer had misread the clear language of F.S. §322.2615

in improperly denying petitioner's request to subpoena breathalyzer inspectors. By contrast, in *Mastay v. McDonough*, 928 So. 2d 512, 514-15 (Fla. 1st DCA 2006), the First District analyzed both the legislative history and related statutes before concluding that the applicable statute permitted prisoners to earn incentive gain-time during service of a mandatory sentence.

The district courts have also recognized a departure from the essential requirements of the law when a circuit court, as the lower reviewing court, engages in an improper review. In *Clay County v. Kendale Land Development, Inc.* , 969 So. 2d 1177, 1181 (Fla. 1st DCA 2007), the district court granted certiorari because the circuit court had exceeded the allowable scope of its first-tier certiorari review. Rather than merely determining whether competent substantial evidence supported the administrative findings and judgment, the circuit court conducted an independent review of the record and, upon concluding that competent substantial evidence supported a different conclusion, fashioned a new remedy.[23] Since the clearly established scope of first-tier certiorari review does not permit a determination of whether the evidence can support a conclusion other than the one rendered, the court departed from the essential requirements of the law by undertaking such a review.[24]

All of the district court certiorari decisions addressed above pertain to application of the correct law. The ability to remedy violations of clearly established legal principles is well established. In a decision quoted with approval by the Supreme Court in *Heggs*, Judge Wigginton, writing for the First District Court of Appeal, observed that:

It seems to be the settled law of this state that the duty of a court to apply to admitted facts a correct principle of law is such a fundamental and essential element of the judicial process that a litigant cannot be said to have had the remedy by due course of law, guaranteed by [the Florida Constitution], if the judge fails or refuses to perform that duty.[25]

What if, however, the lower tribunal's ruling applies the correct law, but is not supported by the evidence? Is that a failure to follow the essential requirements of the law? Maybe.

In *Dresner v. City of Tallahassee*, 164 So. 2d 208 (Fla. 1964), while speaking in the context of district court review of a circuit court decision entered in its appellate capacity, the Florida Supreme Court explained that common law certiorari can be used to examine a complete lack of factual support for a lower court's decision:

Florida has consistently held that an adverse judgment reached in the face of a total lack of evidence constitutes a deviation from the essential requirements of the law. When such a judgment is not otherwise reviewable by appeal, it may be reached by a common law writ of certiorari issued by the appropriate court. The scope of review is limited to an exploration of the record to ascertain whether supporting evidence is totally lacking. It will not be expanded by the reviewing court to attempt a re-evaluation of the probative weight of the evidence.[26]

Thereafter, and again in the context of district court certiorari review of a circuit court's decision, the Second District held in *Newman v. State*, 174 So. 2d 479 (Fla. 2d DCA 1965), that, on certiorari review, questions of the weight of evidence cannot be considered, but "the entire absence of essential evidence with resulting material injury may be ground for quashing a judgment on certiorari."27 As the court put it, "[a] judgment that has no competent substantial evidence to support it cannot and should not stand; and an affirmance of that judgment is such a departure from the essential requirements of law as to require this court, in the exercise of its ancient power to issue the common-law writ of certiorari, to quash the order of affirmance."[28]

Recent common law certiorari decisions have quashed trial court orders based on a lack of competent substantial evidence. In *Marshalls of MA, Inc. v. Minsal* , 932 So. 2d 444 (Fla. 3d DCA 2006), for example, the court clarified the proper legal standard for discovery of work product and quashed a trial court decision ordering disclosures over work product objections.29 The court held that substantial competent evidence showed the materials at issue were work product under the proper legal standard, and no competent evidence showed otherwise.[30]

Similarly, recent common law certiorari decisions involving involuntary commitments turned on a lack of evidence to support the trial court's findings and conclusions. In *In re Commitment of Reilly*, 970 So. 2d 453, 455 (Fla. 2d DCA 2007) (quoting *M.H. v. State*, 901 So. 2d 197, 200 (Fla. 4th DCA 2005)), the Second District explained that "'[w]here competent, substantial evidence does not support the trial court's finding regarding competency or involuntary commitment, the trial court has departed from the essential requirements of the law.'"[31] The Fifth District likewise stated in *Department of Children and Families v. C.R.C.* , 867 So. 2d 592, 594 (Fla. 5th DCA 2004), that "[t]he findings are not supported by the written reports of the examiners and the order departs from the essential requirements of the law by ordering commitment pursuant to section 985.223 without competent substantial evidence to support the finding of mental illness or retardation."

Importantly, however, each of these decisions involved more than a mere lack of evidence. In *Marshalls*, the court examined the law surrounding work product and clarified the applicable standards before turning to the evidence in the case.[32] In the commitment cases, Florida's statutes and procedural rules require certain fact-finding to support a commitment order and, consistent with *Kaklamanos*, these cases could be read to find departures from clearly established law with regard to those fact-finding requirements.

Indeed, to maintain the extraordinary nature of certiorari review, Florida courts appear disinclined to review factual evidence in certiorari proceedings. For instance, as seen in *Globe Newspaper Co. v. King* , 658 So. 2d 518, 520 (Fla. 1995), certiorari can be used to determine whether a trial court conducted the evidentiary inquiry required by statute before a punitive damages claim may be pled, but certiorari review is not broad enough to encompass review of the sufficiency of the evidence if the required proceeding is held.

Another relevant limitation on certiorari review of factual evidence may be derived from decisions addressing second-tier certiorari review of local administrative decisions. In general, such decisions are initially reviewed by a circuit court through a petition for writ of certiorari. This writ is not the common law writ.[33] Instead, as explained in *Florida Power & Light Co. v. City of Dania*, 761 So. 2d 1089, 1092 (Fla. 2000), the circuit court conducts three inquiries: 1) whether procedural due process was afforded; 2) whether the essential requirements of the law were observed; and 3) whether the administrative findings and judgment were supported by competent substantial evidence. The circuit court's decision to grant or deny the petition may then be reviewed by a district court of appeal, again by certiorari petition.[34] The district court, by contrast, conducts only the first two of the circuit court's three inquiries: 1)whether the circuit court afforded procedural due process; and 2) whether the circuit court observed the essential requirements of the law.[35]

As this narrowing of the issues reviewed suggests, the district court of appeal is not permitted to examine whether the original decision was supported by competent substantial evidence.[36] Instead, as the Florida Supreme Court has explained in *Florida Power & Light* , the circuit court's ruling on first-tier review is essentially like a plenary appeal, and is most often conclusive, while second-tier review "is similar in scope to true common law certiorari review" and is "extraordinarily limited."[37] Recent decisions concerning second-tier certiorari review, such as *Niehaus v. Big Ben's Tree Service, Inc.* , 982 So. 2d 1253, 1254 (Fla. 1st DCA 2008), have held that the district court accepts factual findings as conclusive, unless the trial court departed from essential procedural requirements during the fact-finding process.

Current Florida case law has not yet explored how, if at all, the elimination of sufficiency-of-the-evidence review in second-tier certiorari proceedings relates to the scope of review in a first-tier common law certiorari proceeding. An argument can be made that the limited second-tier review, which the Supreme Court has said to be "similar in scope to true common law certiorari review," demonstrates that a lower court's use of findings unsupported by the evidence does not amount to a departure from the essential requirements of law for purposes of common law certiorari review. We know, however, that the Supreme Court does not reverse itself sub silentio.[38] As such, its prior decisions regarding common law certiorari in this context, such as *Dresner v. City of Tallahassee*, 164 So. 2d 208 (Fla. 1964), apparently remain good law.

In sum, despite its longevity, and despite repeated efforts by Florida courts to give flesh to the "essential requirements of the law" standard, it remains amorphous. It certainly is not enough to show mere legal error. More is required before legal error will amount to a departure from the essential requirements of law — there must be a grave injustice as a result of that error. Practitioners should understand that this is a stringent standard that reviewing courts take very seriously and insist be satisfied as a condition for relief by common law certiorari.

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1 See Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 526 (Fla. 1995); Martin-Johnson, Inc. v. Savage, 509 So. 2d 1097, 1098-99 (Fla. 1987).

2 See, e.g., Belair v. Drew, 770 So. 2d 1164, 1166 (Fla. 2000); Martin-Johnson, 509 So. 2d at 1099.

3 See Broward Cnty. v. G.B.V. Int'l, Ltd., 787 So. 2d 838, 843 (Fla. 2001).

4 See Heggs, 658 So. 2d at 526.

5 See id.

6 Combs, 436 So. 2d at 96.

7 Ivey, 774 So. 2d at 683.

8 Id. Two justices wrote that jurisdiction should have been discharged as improvidently granted. Id. at 685 (Wells, C.J., and Harding, J., dissenting).

9 Id. at 682 (quoting Stilson, 692 So. 2d at 982-83).

10 Id. at 683 (quoting Stilson, 692 So. 2d at 982-83).

11 Id.

12 Id.

13 Id.

14 Kaklamanos, 843 So. 2d at 889.

15 Id. at 890.

16 Id.

17 Custer, 35 Fla. L. Weekly at S641 (quoting Heggs, 658 So. 2d at 532 n.14) (emphasis in original).

18 Id. (citing Heggs, 658 So. 2d at 525-26) (emphasis in original).

19 Id. at S642 (citing Ivey, 774 So. 2d at 682) (emphasis in original).

20 Id. at S643.

21 Pharmcore, 946 So. 2d at 552; see also Housing Auth. of Tampa v. Burton, 874 So. 2d 6, 9 (Fla. 2d D.C.A. 2004).

22 Harris, 917 So. 2d at 217 (Thomas, J., dissenting).

23 Kendale Land Dev., 969 So. 2d at 1181.

24 Id. (quoting Broward Cnty. v. G.B.V. Int'l, Ltd., 787 So. 2d 838, 845 (Fla. 2001)).

25 State v. Smith, 118 So. 2d 792, 795 (Fla. 1st D.C.A. 1960), quoted in Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 527 (Fla. 1995).

26 Dresner, 164 So. 2d at 211 (emphasis supplied); see also State Beverage Dep't v. Willis, 32 So. 2d 580, 583 (1947) ("[T]he rule is that on certiorari the court will not ordinarily review conflicting testimony, but only such absence of evidence as results in injury sufficient to amount to a departure from the essential requirements of law.").

27 Newman, 174 So. 2d at 481 (emphasis supplied).

28 Id. (quoting Cohen v. State, 99 So. 2d 563, 565 (Fla. 1957)).

29 Marshalls, 932 So. 2d at 446-48

30 Id. at 448-49.

31 Accord Dep't of Children & Families v. Ewell, 949 So. 2d 327, 327 (Fla. 5th D.C.A. 2007); M.H. v. State, 901 So. 2d 197, 200 (Fla. 4th D.C.A. 2005).

32 Marshalls, 932 So. 2d at 446-48.

33 Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 530 (Fla. 1995) (explaining that a circuit court's certiorari review of a local administrative action under Florida Rule of Appellate Procedure 9.030(c)(3) is not truly discretionary common law certiorari because the review is of right).

34 Florida Power & Light, 761 So. 2d at 1092.

35 Id. at 1092-93.

36 Id. at 1093; see also Stranahan House, Inc. v. City of Fort Lauderdale, 967 So. 2d 1121, 1128 (Fla. 4th D.C.A. 2007); County of Volusia v. City of Deltona, 925 So. 2d 340, 343 (Fla. 5th D.C.A. 2006).

37 Id. at 1092.

38 See Puryear v. State, 810 So. 2d 901, 905 (Fla. 2002).