

**County Civil Court: APPELLATE PROCEDURE — Jurisdiction.** Petition for writ of certiorari to review trial court order denying motion to transfer and consolidate cases. Petitioner failed to demonstrate that the trial court departed from essential requirements of law resulting in material injury, which is a jurisdictional prerequisite for certiorari review. Petition dismissed. *Greene v. Northwood of Pasco Homeowners Ass'n*, No. 16-CA-235-ES (Fla. 6th Cir. App. Ct. June 6, 2016).

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED**

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY  
APPELLATE DIVISION**

**CHARLES A. GREENE, JR., and  
UNKNOWN SPOUSE OF CHARLES A.  
GREENE, JR., and UNKNOWN TENANTS,  
Petitioners,**

**UCN: 512016CA00235CAAXES  
Lower No: 2013-CC-2815-ES**

**v.**

**NORTHWOOD OF PASCO  
HOMEOWNERS ASSOCIATION, INC.,  
Respondent.**

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Petition for Writ of Certiorari to review  
non-final order of Pasco County Court,

Charles A. Greene, Jr., Esq.,  
for Petitioners.

**ORDER**

Petitioner failed to demonstrate that the trial court departed from the essential requirements of the law which resulted in material injury for the remainder of the trial. The Court therefore lacks jurisdiction to consider the merits of the Petition. The Petition is dismissed.

**STATEMENT OF THE CASE AND FACTS**

Petitioner filed a motion to transfer and consolidate cases in the trial court below, seeking to consolidate two cases filed in Pasco County, alleging the cases involve the same subject matter (Case No. 2013-CC-2815-ES, involves an action by a homeowners association to foreclose a lien; Case No. 2014-CA-2825-ES, involves an action to

foreclose a mortgage on real property owned by Petitioner). Petitioner sought consolidation pursuant to Fla. R. Civ. P. 1.270, alleging the cases involved the same defendant and the same real property, that the causes were interrelated, and that a just, fair and complete resolution of the issues raised in the causes would be accomplished more efficiently by consolidation. Petitioner further alleged a substantial threat of inconsistent results and duplication of judicial efforts if the matters were not consolidated. The trial court denied Petitioner's motion.

Petitioner filed a notice of appeal of the order denying Petitioner's motion to transfer and consolidate cases. This Court issued an order noticing Petitioner that the challenged order was a non-appealable interlocutory order, but permitting Petitioner to seek review by filing a petition for writ of certiorari. See *Y.H. v. F.L.H.*, 784 So. 2d 565, 568 (Fla. 1st DCA 2001). Petitioner filed a Petition for Writ of Certiorari, which is before this Court on review.

### **STANDARD OF REVIEW**

"The decision to consolidate actions ordinarily falls within the sound discretion of the trial court." *Y.H. v. F.L.H.*, 784 So. 2d at 568. "In order to justify granting certiorari relief from pretrial orders, there must be a departure from the essential requirements of law which will cause material injury that cannot be rectified on plenary appeal." *Id.*

### **LAW AND ANALYSIS**

Petitioner contends the issues in the causes below are interrelated, and a just, fair and complete resolution of the issues will be accomplished more efficiently and expeditiously by consolidation. Petitioner alleges the claims both involve foreclosure of the same real property, and therefore there is a direct, substantial threat of inconsistent results and duplication of judicial efforts. Petitioner alleges the "possibility of inconsistent verdicts and the interests of judicial economy outweigh any prejudice which might arise from a delay caused by consolidation of these cases." *U-Haul Co. of Northern Fla., Inc. v. White*, 503 So. 2d 332, 333 (Fla. 1st DCA 1986). Petitioner alleges it is an abuse of discretion to deny consolidation when there is a demonstrated risk of inconsistent

results or duplicative judicial efforts. See *Holiday Inns, Inc. v. Spevak*, 639 So. 2d 1110 (Fla. 1st DCA 1994).

Fla. R. Civ. P. 1.270(a), authorizes consolidation “[w]hen actions involving a common question of law or fact are pending before the court.” Although Petitioner alleges an abuse of discretion by the trial court in denying the motion, and further alleges that the standard of review in this matter is de novo, this Court “may review an interlocutory order that is not appealable under Florida Rule of Appellate Procedure 9.130 by petition for certiorari only when the petitioner establishes (1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the trial (3) that cannot be corrected on postjudgment appeal.” *DeLoach v. Aird*, 989 So. 2d 652, 654 (Fla. 2d DCA 2007). “While an order denying a motion to consolidate is reviewable by certiorari, the ruling rests within the sound discretion of the trial court.” *Commercial Carriers Corp. v. Kelley*, 920 So. 2d 739, 740 (Fla. 5th DCA 2006). The “petitioner seeking certiorari relief from a non-final order must still show a departure from the essential requirements of law which results in a material injury that cannot be rectified on final appeal.” *Id.* “A trial court needs to have the flexibility to manage its docket and balance the needs and expectations of the parties before it.” *Id.* Petitioner has failed to allege any facts which would demonstrate the trial court departed from essential requirements of law in denying the motion, or that such departure caused material injury for the remainder of the trial.

“[C]ommon law certiorari is an extraordinary remedy and should not be used to circumvent the interlocutory appeal rule which authorizes appeals from only a few types of non-final orders.” *DeLoach*, 989 So. 2d at 654 (citing *Martin-Johnson, Inc. v. Savage*, 509 So. 2d 1097, 1098 (Fla. 1987)). In order to invoke this Court’s jurisdiction to review the Petition, Petitioner must demonstrate “a departure from the essential requirements of the law . . . resulting in material injury for the remainder of the trial.” *Id.* Absent such a showing, the Court may not exercise jurisdiction over the Petition. See *id.* If the jurisdictional requirements are not met, “then the petition should be dismissed rather than denied.” *Id.* Petitioner relies on *Tommie v. LaChance*, 412 So. 2d 439, 440-41 (Fla. 4th DCA 1982), for the allegation that failure to consolidate was a departure from

essential requirements of law and will cause material injury which cannot be corrected on post-judgment appeal. However, Petitioner has not alleged facts similar to those in *Tommie* which would demonstrate the trial court departed from essential requirements of law resulting in material injury in this matter. Absent such a showing, the Court lacks jurisdiction to consider the Petition. See *DeLoach*, 989 So. 2d at 654. The Petition is therefore dismissed.

### **CONCLUSION**

Petitioner has failed to allege facts sufficient to demonstrate the trial court departed from essential requirements of law resulting in material injury. The Court therefore lacks jurisdiction to consider the Petition. The Petition is dismissed.

It is ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is hereby DISMISSED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 6 day of June, 2016.

Original order entered on June 6, 2016, by Circuit Judges Susan Barthle, Kimberly Campbell and Daniel D. Diskey.