

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-2068

THE HONORABLE JODY PHILLIPS,
as Clerk of Court of Duval
County, Florida,

Appellant,

v.

PRITCHETT TRUCKING, INC., a
Florida corporation, K.T.
CARTER CONTRACTING, INC., a
Florida corporation, T.D.
FARRELL CONSTRUCTION, INC., a
Foreign corporation, and
TRAVELERS CASUALTY & SURETY
COMPANY OF AMERICA, a Foreign
corporation,

Appellees.

On appeal from the Circuit Court for Duval County.
Gary L. Wilkinson, Judge.

October 6, 2021

WINOKUR, J.

The Clerk of Court of Duval County (the “Clerk”) appeals a final judgment granting mandamus and declaratory relief to Pritchett Trucking, Inc. We affirm.

Pritchett Trucking (“Pritchett”) supplied limerock materials and related trucking services to a construction project located on property owned by Costco in Duval County. Pritchett alleged it had not been paid \$118,288.83 for its services and its last day of furnishing services was January 26, 2018.

Pritchett sought to record a claim of lien on the property in accordance with section 713.08(5), Florida Statutes, which requires a lienor to record its lien within ninety days of its last day of furnishing services to the project, April 26, 2018, in this case. Pritchett delivered a claim of lien and check to the Clerk by certified mail and the Clerk received it on April 23, 2018. The Clerk, however, did not record the lien until April 30, 2018, after the ninety-day period set forth in section 718.08(5) expired. Pritchett sought the issuance of a writ of mandamus, compelling the Clerk to record its lien to reflect recordation as of April 23, 2018, and declaratory judgment regarding the recordation date. The trial court granted relief.

Where the trial court’s adjudication of a mandamus petition turns upon statutory interpretation, the standard of review is *de novo*. *Bd. of Cnty. Comm’rs Broward Cnty. Fla. v. Parrish*, 154 So. 3d 412, 417 (Fla. 4th DCA 2014). “In order to be entitled to a writ of mandamus the petitioner must have a clear legal right to the requested relief, the respondent must have an indisputable legal duty to perform the requested action, and the petitioner must have no other adequate remedy available.” *Huffman v. State*, 813 So. 2d 10, 11 (Fla. 2000). A writ of mandamus is the appropriate remedy for compelling a governmental official to perform a ministerial duty that involves no discretion. *See Smith v. State*, 696 So. 2d 814 (Fla. 2d DCA 1997).

Section 28.222(3), Florida Statutes, provides that “[t]he clerk of the circuit court shall record . . . instruments presented to him or her for recording, upon payment of the service charges prescribed by law.” “Although there is no fixed construction of the word ‘shall,’ it is normally meant to be mandatory in nature.” *S. R. v. State*, 346 So. 2d 1018, 1019 (Fla. 1977). In the performance of his duties as the court’s record keeper, the clerk is a ministerial officer of the court devoid of discretion. *Times Pub. Co. v. Ake*, 645

So. 2d 1003, 1005 (Fla. 2d DCA 1994), *approved*, 660 So. 2d 255 (Fla. 1995). Pritchett contends that “upon payment” means that the Clerk is required to record instruments at the time payment is made. As the trial court noted, “upon” means “at a prescribed point in time” or “incidental to a specified point in time or order of action.” *See, e.g., Pelegrini v. Principi*, 18 Vet. App. 112, 119 (2004) (holding that the term “upon” when used in the phrase “upon receipt” means “on the occasion of, at the time of, or immediately thereafter” (citing Webster’s College Dictionary 1465 (Random House 1992))). Accordingly, mandamus is appropriate when the Clerk fails to carry out the statutory duty of recording an instrument upon payment as the Clerk did in this case.

We reject the Clerk’s contention that section 695.11, Florida Statutes, supports reversal. Section 695.11 provides that a document is deemed to have been officially accepted by the clerk of court and officially recorded when the clerk affixes the register number that is required under section 28.222. The Clerk conflates the issues of *when* an instrument is *required to be recorded*, which is addressed by section 28.222(3), and when an instrument is *deemed recorded*, which is addressed by section 695.11. Here, there were seven days between when the duty to record arose and when the duty was carried out, which was not “upon payment.”

Finding no error in the judgment below, it is AFFIRMED.

ROWE, C.J., and LEWIS, J., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Loree L. French, Senior Assistant General Counsel, and Craig D. Feiser, Assistant General Counsel, City of Jacksonville, Office of General Counsel, Jacksonville, for Appellant; Fred W. Baggett and M. Hope Keating of Greenberg Traurig, P.A., Tallahassee, for Amicus Curiae Florida Association of Court Clerks.

Mark C. Bryan of Lippes & Bryan, P.A., Ponte Vedra, for Pritchett Trucking, Inc.; Don Niesen and Ryan Sullivan of Niesen, Price, Worthy, Campo, P.A., Gainesville, for Appellee K.T. Carter Contracting, Inc.; Jonathon D. Pressley and J.D. Humphries, III of Smith Gambrell & Russell, LLP, Jacksonville, for Appellees T.D. Farrell Construction, Inc. and Travelers Casualty & Surety Company of America; Barry Kalmanson of Barry Kalmanson P.A., Maitland, for Amici Curiae NACM Services Corp. d/b/a ZoomLien and National Association of Credit Management of Florida, Inc. d/b/a NACM South Atlantic.