FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-32

RELIABLE RESTORATION, LLC,
and CHEYENNE PARTNERS, LLC,
d/b/a CATASTROPHIC
COOPERATIVE,

Petitioners,

v.

PANAMA COMMONS, L.P. and
LANDTECCO CONSULTING, LLC
d/b/a LANDTEC,

Respondents.

Petition for Writ of Certiorari—Original Jurisdiction.

April 1, 2021

PER CURIAM.

Reliable Restoration, LLC, and Cheyenne Partners, LLC (Petitioners) have petitioned this Court for a writ of certiorari quashing the trial court's denial of their motion to stay the underlying lawsuit against Panama Commons, L.P. and Landtecco Consulting, LLC (Respondents). For the foregoing reasons, we find the trial court's denial of the stay constitutes a departure from the essential requirements of the law which would work an irreparable

harm. Therefore, we grant the petition and issue a writ of certiorari quashing the trial court's denial of the motion for a stay.

The underlying dispute between the parties involves two civil suits, one filed in a Georgia trial court by Petitioners against Respondents, and the other filed in the Bay County Circuit Court by Respondents against Petitioners. Petitioners' Georgia suit was filed on March 30, 2019, and service was perfected on April 12, 2019. Subsequently, on April 19, 2019, Respondents filed their Bay County complaint against Petitioners. Both complaints involve the same general dispute.

Petitioners entered into a contract with Respondents to provide hurricane restoration work on a property in Bay County, and both lawsuits allege breach of contract by the other party. Petitioners' Georgia lawsuit alleges that Respondents breached the contract by wrongfully stopping work on the property and withholding payment for work already done. Respondents' Bay County complaint alleges that Petitioners breached the agreement by failing to adequately perform the work. Respondents' complaint also addresses a mechanic's lien filed by Petitioners on the property for the claimed amount owed and alleges that the lien was fraudulently made. Respondents' Bay County complaint sought invalidation of the claims of lien and damages from the allegedly fraudulent filing.

After Respondents filed their complaint, Petitioners filed a motion with the trial court to stay the Bay County complaint pending resolution of the Georgia lawsuit. After a hearing on the motion, the trial court denied the request for a stay. Although the court's order acknowledged that the two cases stemmed from the same dispute and recognized the possibility that the cases might produce conflicting rulings, the order denied Petitioners' request. The trial court reasoned that "under the specific circumstances in this matter, the court concludes that dismissal and/or stay of this action creates the possibility of leaving the [Respondents] without an appropriate forum or adequate remedy to seek relief and redress for their alleged damages."

We review the trial court's interlocutory denial of Petitioners' motion pursuant to our certiorari jurisdiction under the Florida

Constitution. *See* Art. V, § 4(b)(3), Fla. Const.; Fla. R. App. P. 9.030(b)(2)(A). This Court has previously described the required analysis as follows:

> To obtain a writ of certiorari, the petitioner must establish (1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case (3) that cannot be corrected on postjudgment appeal. The latter two elements—which are often collectively referred to as irreparable harm—are jurisdictional and must be considered first.

Fla. Fish & Wildlife Conservation Comm'n v. Jeffrey, 178 So. 3d 460, 464 (Fla. 1st DCA 2015) (internal marks and citations omitted). The possibility of inconsistent rulings amongst different courts adjudicating related lawsuits is the primary danger created by allowing the lawsuits to proceed simultaneously. This is a harm which is material to the suit, and there is no possibility of remedying inconsistent rulings on appeal. Accordingly, certiorari jurisdiction is properly invoked because the trial court's denial does work an irreparable harm. *See Inphynet Contracting Servs., Inc. v. Matthews*, 196 So. 3d 449, 463 (Fla. 4th DCA 2016); *Spacebox Dover, LLC v. LSREF2 Baron LLC*, 112 So. 3d 751, 752 (Fla. 2d DCA 2013) ("More than once, Florida courts have granted certiorari to quash orders declining to stay cases in favor of prior actions pending in other jurisdictions.") (quoting *Schwartz v. DeLoach*, 453 So. 2d 454, 455 (Fla. 2d DCA 1984)).

Irreparable harm established, we must determine whether the trial court's denial of Petitioners' request for a stay constitutes a departure from the essential requirements of the law under the circumstances. It is well-established that in instances where co-sovereigns both maintain jurisdiction regarding a single dispute, principles of comity dictate that the court in which jurisdiction first attaches should be given priority regarding adjudication of its case. *See Siegel v. Siegel*, 575 So. 2d 1267, 1271 (Fla. 1991) (addressing related cases ongoing in different states and agreeing that a stay of the later action will ordinarily be required absent circumstances indicating the possibility of delay in adjudicating the earlier action, or other "factors or circumstances which would also warrant a denial of stay by the trial court."); *OPKO Health, Inc. v.*

Lipsius, 279 So. 3d 787, 791 (Fla. 3rd DCA 2019), *review denied*, No. SC19-1752, 2020 WL 789085 (Fla. Feb. 18, 2020) ("Comity principles dictate that where a state and federal court have concurrent jurisdiction over the same parties or privies and the same subject matter, the tribunal where jurisdiction first attaches retains jurisdiction.") (internal marks and citations omitted); *Robeson v. Melton*, 52 So. 3d 676, 679 (Fla. 4th DCA 2009); *Pilevsky v. Morgans Hotel Grp. Mgmt., LLC*, 961 So. 2d 1032, 1035 (Fla. 3rd DCA 2007); *Fla. Crushed Stone Co. v. Travelers Indem. Co.*, 632 So. 2d 217, 220 (Fla. 5th DCA 1994) (ruling that a trial court's refusal to stay a subsequent state action in deference to an earlier federal one was an abuse of discretion).

The initial question we address is whether the lawsuits are substantially similar; if they are, a stay is required in favor of the earlier action. *See OPKO Health, Inc.*, 279 So. 3d at 791. It is "the central issues in both actions" which determine whether they are substantially similar so that comity would require a stay in the later filed action. *Pilevsky*, 961 So. 2d at 1035. The specific causes of action and remedies available need not be identical, *id.* (quoting *Florida Crushed Stone Co.*, 632 So. 2d at 220); nor must the exact same parties be named between the two suits. *See Robeson*, 52 So. 3d at 679. Where the two actions "involve a single set of facts" such that "resolution of the one case will resolve many of the issues involved in the subsequently filed case," the cases are substantially similar and comity principles will apply. *Pilevsky*, 961 So. 2d at 1035 (quoting *Florida Crushed Stone Co.*, 632 So. 2d at 220).

Respondents argue that the cases are not substantially similar because the remedy they seek in Bay County—that being, adjudication of the lien issue—is not available in the Georgia case. But the validity of the liens in the Bay County case—along with any applicable damages based on any claim wrongfully filed—will likely still depend on the same factual issues which will be considered in the Georgia case. Put differently, both lawsuits boil down to the question of who wronged whom during the execution of the contract. There is little question that the progression of the Georgia case will likely resolve the issues raised in the

subsequently filed Bay County case. This renders the cases substantially similar.[1]

Respondents also argue that their Bay County suit enjoys priority under a comity analysis, even if the suits are substantially similar. They reason that the jurisdiction of the Georgia court did not "attach" in Petitioners' suit before the Bay County Circuit Court's jurisdiction attached. Central to Respondents' argument is the claim that Petitioners' Georgia suit attempts to foreclose on the property which is at the center of the contract being disputed. Nothing in the record supports that Petitioners' Georgia complaint seeks to foreclose on the property. The Georgia suit claims breach of contract and other attendant equitable claims and only seeks money damages. Because Petitioners' Georgia suit does not seek to affect the title to the Bay County property, the property is not "in litigation" in the Georgia suit. *See Greene v. A.G.B.B. Hotels, Inc.*, 505 So. 2d 666, 667 (Fla. 5th DCA 1987). That said, Respondents' argument that the jurisdiction of the Georgia court had not attached is without merit. As in *Spacebox*, this case "involves the principle of priority, a matter of comity in which a court in its discretion may stay a pending matter because a substantially similar case is pending in another state's court, which first acquired jurisdiction." 112 So. 3d at 752 (citing *In re Guardianship of Morrison*, 972 So. 2d 905, 908 (Fla. 2d DCA 2007)).

Because the cases are substantially similar, comity requires that the latter case be stayed in favor of the case where jurisdiction first attached. Because service was perfected in the *in personam* Georgia action prior to the filing of the Bay County case, jurisdiction first attached there. The Georgia case has priority, and nothing in the record indicates the possibility of delay in the earlier

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[1] Respondents cite *Cuneo v. Conseco Services, LLC*, in support of their argument; however, Petitioners correctly note that *Cuneo* is distinguishable. 899 So. 2d 1139 (Fla. 3rd DCA 2005). *Cuneo* involves two suits which address separate individual transactions. *Id.* at 1141. Thus, the subject matter of each lawsuit—and the underlying factual issues—were distinct from each other. The same cannot be said here, where the underlying issues in each suit are the same.

action or any other possible exceptional circumstances which would warrant denying the stay. *See Siegel*, 575 So. 2d at 1271. Thus, the trial court's denial of the stay was a departure from the well-established, essential requirements of the law of comity.

The foregoing considered, we grant the petition and quash the trial court's denial of Petitioners' motion to stay Respondents' Bay County case.[2]

GRANTED.

KELSEY and M.K. THOMAS, JJ., concur; TANENBAUM, J., dissents with opinion.

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

TANENBAUM, J., dissenting.

This case does not involve a direct appeal of a non-final order. We have before us a petition for *extraordinary* and immediate interlocutory relief. To justify our exercise of this jurisdiction, the petitioners devote about one sentence to this threshold question. They rest their jurisdictional claim on the suggestion that if the trial court's denial of a stay is not quashed, irreparable harm will flow from the parties' having to litigate in two lawsuits simultaneously, which the petitioners contend *could* lead to

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[2] Petitioners' request that this Court's writ include specific instructions to the lower court to enter a stay is denied. This Court has "no jurisdiction to compel the trial court to institute a complete stay since this issue arose under the principles of certiorari." *Inphynet Contracting Serv., Inc. v. Matthews*, 196 So. 3d 449, 465 (Fla. 4th DCA 2016) (citing *Broward Cty. v. G.B.V. Int'l Ltd.*, 787 So. 2d 838, 844 n.18 (Fla. 2001)).

inconsistent outcomes. This speculative claim—based on no constitutional or statutory right whatsoever—fails to support jurisdiction. Even if we put the jurisdictional concern aside, though, the petition still should fail on the merits because the trial court had discretion to deny the stay, and its exercise of that discretion did not depart from the essential requirements of law. We should either dismiss or deny the petition. There surely is no legal basis to grant relief.

The Florida Constitution gives the supreme court exclusive authority to establish the categories of non-final orders that can be directly reviewed by a district court of appeal. *See* Art. V, § 4(b)(1), Fla. Const. (establishing the jurisdiction of district courts to review interlocutory orders by appeal "to the extent provided by rules adopted by the supreme court"). The supreme court exercises this authority from time to time by modifying Florida Rule of Appellate Procedure 9.130(a)(3), which reflects the court's policy choices as to which types of non-final orders may be appealed to the district courts. *See Citizens Prop. Ins. Corp. v. San Perdido Ass'n, Inc.*, 104 So. 3d 344, 348 (Fla. 2012) ("In delineating which categories of non-final orders are appealable to the district courts, this Court makes policy determinations . . . and then weighs the importance of having interlocutory review in light of potential drawbacks, such as increased appellate workload and concomitant delay in the resolution of the case."); *id.* (noting that "the categories of non-final orders that are appealable have been carefully created" based on those policy considerations).

To guard against circumvention of its constitutional authority in this regard, the supreme court has severely cabined the district courts' jurisdiction to otherwise review by common-law certiorari those types of non-final orders *not* listed in rule 9.130. *See Martin-Johnson, Inc. v. Savage*, 509 So. 2d 1097, 1098 (Fla. 1987) ("We emphasize, first of all, that common law certiorari is an extraordinary remedy and should not be used to circumvent the interlocutory appeal rule which authorizes appeal from only a few types of non-final orders."). The supreme court describes common-law certiorari as "a special mechanism" that "functions as a safety net" by giving the appellate court "the prerogative to reach down and halt a miscarriage of justice where no other remedy exists." *Broward County v. G.B.V. Int'l, Ltd.*, 787 So. 2d 838, 842 (Fla.

2001). While it is discretionary and an appellate stopgap, the "writ never was intended to redress mere legal error, for common law certiorari—above all—is an extraordinary remedy, not a second appeal." *Id.* Certainly, "the writ of certiorari cannot be used simply because strong policy reasons support interlocutory review." *Citizens Prop.*, 104 So. 3d at 353.

The supreme court in turn requires that a district court closely consider, as a threshold matter, the harm that will be suffered by a petitioner if the court does not intervene immediately. That harm must be irreparable, such that it cannot be corrected on direct appeal later; if there is no irreparable harm, there is no jurisdiction. *See id.* at 351 (explaining that "before certiorari can be used to review non-final orders, the appellate court must focus on the threshold jurisdictional question: whether there is a material injury that cannot be corrected on appeal, otherwise termed as irreparable harm"); *cf. Chambers v. St. Johns County*, 114 So. 526, 527 (Fla. 1927) ("The proceedings complained of do not show such vital irregularity with irremediable injury to the petitioners as to justify the issuing of a writ of certiorari.").

Because common-law certiorari is a special mechanism used only for the prevention of an imminent miscarriage of justice, a claimed harm does not support jurisdiction unless it is rooted in a substantive right. Illustration of this point can be found in a few scenarios where the supreme court and this court have indicated certiorari jurisdiction does exist. *See Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995) (explaining that certiorari jurisdiction extends to protecting rights from infringement by unwarranted disclosure of "'cat out of the bag' material" or of privileged material, trade secrets, work product, or information about a confidential informant); *Antico v. Sindt Trucking, Inc.*, 148 So. 3d 163, 165 (Fla. 1st DCA 2014) (finding that "irreparable harm can be presumed where a discovery order compels production of matters implicating privacy rights" (citing *Rasmussen v. S. Fla. Blood Serv., Inc.,* 500 So.2d 533, 536–37 (Fla. 1987))). No equivalent cognizable right is at play in this case.

The petitioners instead stake their lone claim of harm* on their contention that the trial court erroneously refused to show comity and defer to the Georgia action, which was filed just a few weeks before the Florida action was filed. There is a problem with this. Comity is not a matter of right; it is a matter of courtesy. "Comity" describes an action taken out of respect or deference to another court. *See Hartford Accident & Indem. Co. v. City of Thomasville, Ga.*, 130 So. 7, 8 (Fla. 1930) ("The rule of judicial comity has reference to the principle in accordance with which the courts of one state or jurisdiction will give effect to the laws and judicial decisions of another state, *not as a matter of obligation*, but out of deference and respect." (emphasis supplied)); *cf. Siegel v. Siegel*, 575 So. 2d 1267, 1272 (Fla. 1991) (noting that the "principle of priority" does not apply "between sovereign jurisdictions as a

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* Because the petitioners devote so little space to this jurisdictional question, the nature and scope of the harm that they claim is not entirely clear. They seem to claim that their only harm is the *risk* that they *may* suffer from inconsistent outcomes in the two suits sometime in the future. Such undefined, contingent, prospective harm is not the same as the imminent or ongoing irreparable harm that district courts are limited to preventing or halting through certiorari. However, any complaint they have about being forced to litigate the two suits at the same time also fails as a jurisdictional basis. *See Rodriguez v. Miami-Dade County*, 117 So. 3d 400, 405 (Fla. 2013) ("reiterat[ing] that the continuation of litigation and any ensuing costs, time, and effort in defending such litigation does not constitute irreparable harm" and "use of certiorari review is improper in such an instance"); *Citizens Prop.*, 104 So. 3d at 353–54 (rejecting "needless litigation costs" and continued defense of a lawsuit as irreparable harm that could support certiorari jurisdiction); *see also DeSantis v. Florida Educ. Ass'n*, 46 Fla. L. Weekly D5 (Fla. 1st DCA Dec. 21, 2020) (explaining that jurisdiction to consider certiorari relief cannot be based on the time and expense exhausted on litigating in a case that the petitioner "fervently believes is erroneous"); *AVCO Corp. v. Neff*, 30 So. 3d 597, 601 (Fla. 1st DCA 2010) ("We have repeatedly declined to grant certiorari review to orders that petitioners claim will cause irreparable harm due to payment of unnecessary litigation and defense expenses.").

matter of duty," and that instead, "[a]s a matter of comity," a trial court may exercise its discretion and stay the proceeding before it in favor of the proceeding in the other state (citation omitted)). Neither the constitution nor any statute of course requires comity. For that matter, there is no guarantee against inconsistency (or the *risk* of such inconsistency) in judgments from courts of two different sovereigns, either. The right that the petitioners seek to vindicate here, as well as its source, remains unknown. The trial court's exercise of its discretion *not* to accord comity to another sovereign's court, then, does not implicate a substantive right of the petitioners and does not threaten the imminent harm necessary to establish certiorari jurisdiction.

Again, this all points to our lack of jurisdiction. The proper disposition is dismissal. Even if there were jurisdiction, though, the petition still should be denied on the merits, because the trial court did not violate any clearly established principle of law. There is not a single decision of the supreme court or this court that the trial court ran afoul of. A stay in a case like this is by no means mandatory. In fact, the trial court had the discretion to deny the stay and allow both cases to proceed at the same time, if it determined there was a good reason for doing so. *Cf. Siegel*, 575 So. 2d at 1272 (explaining that a trial court is not *required* to "stay proceedings when prior proceedings involving the same issues and parties are pending before a court in another state," although "that *ordinarily* [] should be the result"). According to the supreme court, denial of a stay may "be justified upon a showing of the prospects for undue delay in the disposition of a prior action," and "[t]here may be *additional factors or circumstances* which would also warrant a denial of stay by the trial court." *Id.* (emphasis supplied). In turn, the trial court here did exactly what it was supposed to do. It acknowledged its authority to grant a stay based on the principle of comity; understood that the stay ordinarily should be granted; considered the reasons for and against the stay; and explained in a written order the specific circumstances that justified denial of the stay.

The trial court expressed its particular concern about the fact that the Florida litigation involved property located within its jurisdiction in Bay County. It factored into its consideration the point that the claims of lien on the property had been transferred

to bonds. The trial court determined that denial of a stay still was justified because the Bay County clerk of court held the bonds, and the trial court reasoned that the jurisdiction that *it*—and not a Georgia court—had over the clerk would be necessary if the bonds need to be modified or discharged, or proceeds disbursed. The trial court considered and weighed other factors relevant to whether a stay in favor of the Georgia forum was appropriate, and it concluded that the risk of the respondents being left either without a proper forum or without an adequate remedy justified denial of the stay. There simply was nothing legally wrong with the trial court's approach to the discretionary question before it in this case. Rather than quashing the trial court's order, we ought to be commending this type of thoughtful and detailed reasoning in support of an exercise of discretion.

Indeed, that another trial court might reasonably come out the other way on the same facts does not mean the trial court's exercise of discretion here was a departure from the essential requirements of law. *Cf. ITT-Cmty. Dev. Corp. v. Halifax Paving, Inc.*, 350 So. 2d 116, 117–18 (Fla. 1st DCA 1977) (concluding that the trial court did not "depart from the essential requirements of law" when it denied a motion to stay in favor of a previously filed federal suit, because "a Florida trial court has power to weigh the circumstances for and against a stay"). Moreover, that another district court of appeal reached a different conclusion (on certiorari, no less) regarding similar circumstances, does not support a conclusion by *this* court that the trial court, which is within *our* jurisdiction, committed an error so egregious or manifestly unjust as to support certiorari relief. *See Mills v. State*, 46 Fla. L. Weekly D74 (Fla. 1st DCA Dec. 31, 2020) (Tanenbaum, J., concurring) (observing that, in the context of a certiorari petition, to characterize a trial court's failure to follow a decision of another district court as a departure from the essential requirements of law "would be to impermissibly subordinate this court to the decisions of other districts").

This court lacks the legal authority to grant relief on this petition. On the one hand, we lack jurisdiction because there is no imminent danger of irreparable harm to the petitioners; no right of theirs will be violated in the absence of the stay. On the other, the trial court exercised discretion here in a manner expressly

permitted by the supreme court, so the trial court did not violate any clearly established principle of law. Either way, the petitioners should take nothing in this extraordinary proceeding. I dissent.

William S. Henry of Burke Blue, Panama City, for Petitioners.

Roy D. Wasson of Wasson & Associates, Miami; and Robert M. Roselli and Daniel Melrose of Roselli & Associates, P.A., Fort Lauderdale, for Respondents.