IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION: AY

GEICO GENERAL INSURANCE COMPANY,
Petitioner,

v.

ANDY'S AUTO BODY & PAINT, LLC, a/a/o ALBERTO MARTINEZ,
Respondent.
_____/

CASE NO.: 50-2020-CA-003318-XXXX-MB
L.T. NO.: 50-2018-SC-013392-XXXX-SB
(Consolidated w/: 50-2020-CA-003320-XXXX-MB
50-2020-CA-003322-XXXX-MB
50-2020-CA-003368-XXXX-MB
50-2020-CA-003407-XXXX-MB
50-2020-CA-003411-XXXX-MB
50-2020-CA-003422-XXXX-MB)

Opinion filed: May 24, 2021

Petition for Writ of Certiorari from County Court in and for Palm Beach County, Florida; Judge Reginald Corlew

For Petitioner:
Lindsey R. Trowell, Esq.
Smith, Gambrell & Russell, LLP
50 North Laura Street, Suite 2600
Jacksonville, FL 32202
jaxpleadings@sgrlaw.com
ltrowell@sgrlaw.com

For Respondent:
David B. Pakula, Esq.
David B. Pakula, P.A.
12301 Taft Street, Suite 200
Pembroke Pines, FL 33026
david@pakulalawfirm.com
info@pakulalawfirm.com

Chris Kasper, Esq.
Ovadia Law Group, P.A.
4800 North Federal Highway, Suite D204
Boca Raton, FL 33431
service@wesetthestandards.com

PER CURIAM.

In these seven consolidated cases, Petitioner GEICO General Insurance Company ("GEICO") seeks review of a nonfinal order entered by the trial court extending the time Respondent has to accept GEICO's proposal for settlement pursuant to section 768.79, Florida

Statutes and Florida Rule of Civil Procedure 1.442.[1] Respondent requested that the county court extend the time that it could accept the proposal for settlement until thirty days after it had completed discovery. Several months passed between the filing of the motion and a hearing on the motion, but the county court ultimately granted the motion. Since the lower court's order effectively gave Respondent an indefinite period of time in which to accept the proposal, we must grant the instant Petition to correct this departure from the essential requirements of law.

Certiorari review of a nonfinal order is an "extraordinary remedy" that cannot be used to circumvent rule 9.130—which allows for interlocutory appeals of certain nonfinal orders. *Reeves v. Fleetwood Homes of Fla., Inc.*, 889 So. 2d 812, 822 (Fla. 2004) (quoting *Martin-Johnson, Inc. v. Savage*, 509 So. 2d 1097, 1098 (Fla. 1987)). To obtain a writ of certiorari in such an instance, the petitioner must demonstrate that there was "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." *Reeves*, 889 So. 2d at 822 (quoting *Bd. of Regents v. Snyder*, 826 So. 2d 382, 387 (Fla. 2d DCA 2002)). The last two elements, which are sometimes combined into one single "irreparable harm" element, are jurisdictional and must be considered first. *Fla. Fish & Wildlife Conservation Comm'n v. Jeffrey*, 178 So. 3d 460, 464 (Fla. 1st DCA 2015). We agree with GEICO that the Court has jurisdiction since extending the period of time to accept a proposal for settlement placed GEICO at an inherent tactical advantage—an injury that "cannot be redressed in a court of law." *K.G. v. Fla. Dep't of Children & Families*, 66 So. 3d 366, 368 (Fla. 1st DCA 2011).

[1] Prior to May 21, 2021, there were thirty-four (34) individual cases that were consolidated. All of the consolidated cases concerned the same order rendered by the county court with the same attorneys representing both GEICO and the various respondents. Twenty-seven (27) of those cases have since been dismissed pursuant to a settlement agreement between GEICO and most of the respondents.

In order to grant the instant Petition, the Court must determine whether or not the lower court's order departed from the essential requirements of law. The issue before us concerns the interplay between rule 1.090, which governs extensions or enlargements of time, and rule 1.442, which concerns proposals for settlement. These two rules were explored in depth by the Florida Supreme Court in *Koppel v. Ochoa*, 243 So. 3d 886 (Fla. 2018). In *Koppel*, the court reviewed a certified conflict between the district courts of appeal about whether filing a motion for extension of time pursuant to rule 1.090 automatically tolls the thirty-day deadline set by statute to accept a proposal for settlement. *See id.* at 887–88. After review, our supreme court held that rules 1.090 and 1.442 did not "allow additional time to accept [a proposal for settlement] by simply filing the motion to enlarge," and that to hold otherwise "would appear to provide an automatic period of enlargement and see[m] to undermine the rule as it is currently written." *Id.* at 892. Notably, the *Koppel* court affirmed that courts could still allow for enlargements of time to accept a proposal for settlement, but that the failure to rule on the motion within the initial thirty days would not cause that time limit to toll until the court held a hearing or issued an order. *Id.* at 892–93; *Three Lions Constr., Inc. v. Namm Grp., Inc.*, 183 So. 3d 1119, 1119–20 (Fla. 3d DCA 2015).

GEICO argues that two errors occurred below. First, GEICO claims that the lower court erred in granting the motion without a showing of excusable neglect. Second, GEICO argues that, even if Respondent did not need to show excusable neglect, there was no good cause to grant the motion to enlarge time. We do not agree with GEICO's first argument because the language of rule 1.090 only requires a showing of excusable neglect when a motion to enlarge time is served "after the expiration of the specified period." Fla. R. Civ. P. 1.090(b)(1)(B); *see also Koppel*, 243 So. 3d at 892 ("Rule 1.090 allows for the time period set forth in rule 1.442 to be enlarged . . . [a]fter the time period has expired, the trial court still has discretion to enlarge the time period if

the moving party can demonstrate excusable neglect in addition to cause.") (emphasis added). So long as the initial motion to enlarge time is filed within thirty days of the proposal for settlement being served, the moving party does not need to show excusable neglect. *But cf. Three Lions*, 183 So. 3d at 1119–20 (noting that once the acceptance period for a proposal for settlement has expired the offeror can avail itself to section 768.69, even if a motion for extension of time was timely filed but still pending).

However, we concur that good cause cannot be shown because no good cause can ever be shown to justify an indefinite extension of time. In its motion for extension of time, Respondent requested that the county court "[grant] Plaintiff an extension to thirty days after discovery is complete to accept Defendant's Proposal for Settlement." By granting an extension of time with an indefinite end date, GEICO was placed at an extreme disadvantage because it neutered the purpose of section 768.69 and rule 1.442: to encourage settlements. *See* § 768.79(1), Fla. Stat. (establishing that an offer not accepted within thirty days constitutes a rejection that could entitle the offeror to recover costs and fees). Any extension of time to accept an offer tendered in a proposal for settlement "would put the defendant at a disadvantage since the value of a settlement is likely to vary as litigation progresses." *Kennard v. Forcht*, 495 So. 2d 924, 925 (Fla. 4th DCA 1986) (citing *Staffend v. Lake Cent. Airlines*, 47 F.R.D. 218, 220 (N.D. Ohio 1969)).

We agree with GEICO's assertion that an indefinite extension of time materially prejudices the non-moving party and that "a court could not in fairness grant that extension no matter what the good cause was." *Pineda v. Am. Plastics Tech., Inc.*, No. 12-CV-21145, 2014 WL 1946686, at *9 (S.D. Fla. May 15, 2014). *See also Davis v. Post Univ., Inc.*, 497 F. Supp. 3d 1252, 1268–69 (S.D. Fla. 2019) (holding that good cause could not be established to extend time until "after class certification is decided" as it would create an indefinite extension that would "shift all of the risk"

to the defendant and deprive it of the benefit of the rule); *Wallert v. Atlan*, No. 14 Civ. 4099, 2015 WL 518563, at *2 (S.D.N.Y. Feb. 5, 2015) (rejecting the plaintiff's attempt to extend the time to accept a settlement proposal "until the close of discovery" because of the litigation costs that would be imposed on both parties).[2] While we hold that good cause can never be shown to grant an indefinite extension of time to accept a proposal for settlement, we also note that the trial court still has broad discretion to extend the time period to accept under rule 1.442 so long as the defendant proposes a discrete and definite period of time in its motion. We also echo the warning of the *Koppel* court that the moving party assumes the risk of having their acceptance become untimely if their motion is not heard within thirty days of the proposal for settlement being served. *See Koppel*, 243 So. 3d at 892–93; *Three Lions*, 183 So. 3d at 1119–20.

Accordingly, GEICO's Petition for Writ of Certiorari is **GRANTED**. We hereby **QUASH** the county court's February 19, 2020 order and **REMAND** for further proceedings consistent with this opinion. In addition, GEICO's "Motion for Appellate Attorney's Fees" is provisionally **GRANTED** so long as GEICO can demonstrate its strict compliance with section 768.79, Florida Statutes. *See Metro. Dade Cnty. v. Cerezo*, 774 So. 2d 1, 1 (Fla. 3d DCA 1996); *Schmidt v. Fortner*, 629 So. 2d 1036, 1043 n.10 (Fla. 4th DCA 1993).

SCHER, KERNER, and WILLIS, JJ., concur.

[2] Federal Rule of Civil Procedure 68 and rule 1.442 are parallel provisions and so federal cases interpreting rule 68 are instructive to our analysis of rule 1.442. *See Kennard*, 495 So. 2d at 925.