

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

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,  
Petitioner,

APPELLATE DIVISION (CIVIL): AY  
CASE NO.: 2013CA010166  
L.T. NO.: 2012SC003713

v.

GOLD COAST CHIROPRACTIC  
CENTER, P.A.,  
Respondent.

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Opinion filed: JUN - 9 2015

Petition for Writ of Certiorari from the County Court in and for Palm Beach County,  
Judge Edward A. Garrison

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PER CURIAM.

The instant case involves a petition for writ of certiorari seeking relief from a trial court order compelling discovery. Petitioner, State Farm Mutual Automobile Insurance

Company, claims the trial court's order causes an undue burden and otherwise requires disclosure of privileged materials. For the reasons set forth below, the Court denies the petition.

### **Background**

Respondent, Gold Coast Chiropractic Center, P.A., served as chiropractor for Beatrice Exil ("Insured") after she was injured in an automobile accident. Insured had an insurance policy with Petitioner and assigned the benefits under this policy to Respondent. Respondent then instituted a claim against Petitioner seeking recovery of benefits under the policy.

As part of discovery regarding this claim, Respondent requested Petitioner produce certain forms and demand letters it received within a two month-window of receiving said forms or letters from Respondent. Petitioner objected to the requests on grounds of undue hardship and privilege. Respondent filed a motion to compel production of these documents on April 11, 2013. The Honorable Edward Garrison held a hearing on this motion, overruled Petitioner's arguments, and granted the motion to compel.

### **Standard of Review**

A non-final order that is not appealable under Florida Rule of Civil Procedure 9.130 is reviewable as a petition for writ of certiorari where the order is "(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." *Bd. of Trustees of Internal Improvement Trust Fund v. Am. Educ. Enters.*, 99 So. 3d 450, 454 (Fla. 2012) (quoting *Reeves v. Fleetwood Homes of Fla., Inc.*, 889 So. 2d 812, 822 (Fla. 2004)). The final two prongs of this test essentially ask whether the essential requirements of the law cause "irreparable harm." *Id.* at 455.

### Analysis and Legal Conclusions

Petitioner raises two arguments in support of its petition for writ of certiorari. First, Petitioner argues the trial court's order creates an undue burden. Second, Petitioner argues the trial court's order requires compulsion of privileged materials.

Petitioner's first argument was expressly presented to the trial court below, which in turn rejected this argument and compelled discovery. A trial court's overruling of an objection that discovery would be overly burdensome will not be an error where the alleged burden is unsupported by record evidence. *Topp Telecom, Inc. v. Atkins*, 763 So. 2d 1197, 1199 (Fla. 4th DCA 2000). When evidence supporting a claim of burden is produced but controverted, resolution of the contested evidence "cannot be addressed on . . . common law certiorari." *Id.* Even when such evidence is uncontroverted, "it is difficult to understand how, even if the order is erroneous, it would rise to the level of irreparable harm." *Id.* To support such a finding, a petitioner would need to show the discovery order "would effectually ruin the objector's business" as opposed to "simply require unwarranted effort and expense." *Id.* at 1200.

Petitioner's undue burden argument must be rejected. As a threshold matter, Petitioner and Respondent dispute both the amount of discovery the trial court's order actually requires along with the amount of resources required to satisfy the order. The burden caused by the discovery order is therefore controverted, rendering resolution of this evidentiary matter by petition for writ of certiorari inappropriate. Even assuming *arguendo* Petitioner's evidence of the burden was uncontroverted, Petitioner has not shown the discovery would cause anything more than "unwarranted effort and expense." Petitioner has failed to establish it is entitled to relief on this point.

Petitioner's second argument claims the required discovery involves turning over privileged materials. Compelling discovery of privileged materials without a showing of good cause is a departure from the essential requirements of law that causes irreparable harm. *State Farm Fla. Ins. Co. v. Aloni*, 101 So. 3d 412, 414-15 (Fla. 4th DCA 2012). A petition for certiorari challenging a discovery order fails to establish irreparable harm, however, when it is "premature and speculative." *Poston v. Wiggins*, 112 So. 3d 783, 786 (Fla. 1st DCA 2013). A petition for certiorari is premature when a party seeks relief from a discovery order prior to a judge's requested *in camera* inspection of any purportedly privileged materials. *Id.*

Petitioner has failed to establish certiorari relief is appropriate on its discovery argument. At the May 21, 2013, hearing on Respondent's motion to compel, the trial court overruled the Petitioner's discovery objections with the following caveat:

[T]he objection is overruled *subject to The Court's redacting and protecting the privileged and proprietary and work product information.*

(emphasis added). Petitioner has not indicated it submitted any of the materials to the trial court and it appears Petitioner instead sought the instant certiorari relief from the trial court's order. Absent a presentation of the materials to the trial court as requested at the hearing, Petitioner's claim of harm is premature and speculative. It is not clear any privileged materials must yet be disclosed and any privileged information could still be protected following the trial court's *in camera* inspection. The trial court was prepared to conduct an *in camera* inspection of the purportedly privileged materials and therefore certiorari relief is inappropriate at this time. Petitioner remains free to submit its materials to the trial court for the inspection the trial court was prepared to conduct on May 21, 2013.

The trial court did not depart from the essential requirements of the law in granting Respondent's motion to compel. Accordingly, the Petition for Writ of Certiorari is **DENIED**. Petitioner's Motion for Appellate Attorney's Fees is **DENIED**.

SASSER, HAFELE, and ARTAU, JJ., concur.