

Third District Court of Appeal

State of Florida

Opinion filed July 31, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-506
Lower Tribunal No. 17-25717

Florida Power & Light Company,
Petitioner,

vs.

Larry E. Cook,
Respondent.

On Petition for Writ of Certiorari from the Circuit Court for Miami-Dade County, Jose M. Rodriguez, Judge.

Joseph Ianno, Jr., Charles L. Schlumberger, and Kevin I. C. Donaldson, (Juno Beach), for petitioner.

The Ferraro Law Firm, and Mathew D. Gutierrez and Juan P. Bauta, II, for respondent.

Before **SALTER, LOGUE, and MILLER, JJ.**

LOGUE, J.

Defendant Florida Power & Light Company (“FPL”) petitions this Court for a writ of certiorari to quash two orders denying its motions for protective orders from Plaintiff Larry E. Cook’s first and third notices of taking deposition duces tecum. Because we do not have jurisdiction, we dismiss the petition.

Background

In 2017, Larry E. Cook filed suit against FPL seeking to recover damages under theories of negligence and premises liability for injuries he claimed he incurred as a result of his exposure to asbestos while working in FPL power plants.

On September 20, 2018, Cook served FPL with his first notice of taking deposition duces tecum of a corporate representative. Cook designated thirty-five topic areas for examination, some of which covered information potentially dating back as far as 1925. Cook sought production of “[a]ny and all documents in Defendant’s possession and or control pertaining in any way to the matters listed in paragraph 1 through 35 of this Notice.”

On February 8, 2019, Cook served FPL with his third notice of taking deposition duces tecum of a corporate representative. Cook designated matters relating to “FPL’s responsibility for compliance with asbestos regulations during construction and shutdowns/overhauls and for possession and control of the premises during construction and shutdowns/overhauls” of six specified FPL power plants from 1962 through 1992. In request number four, Cook sought production of

“[a]ny and all documents in your possession and or control pertaining in any way to the matters listed in the designation.”

FPL moved for protective orders from each notice and in support, submitted an affidavit prepared by its senior attorney, stating that compliance and production would require FPL to expend significant time, be voluminous, and would cost millions of dollars. The trial court heard argument on FPL’s motions on February 28, 2019. Cook withdrew the entire duces tecum request of his first notice, and duces tecum request number four of his third notice. The trial court denied both of FPL’s motions. FPL timely filed for a writ of certiorari to review both orders.

Standard of Review

To grant certiorari relief, there must be: “(1) a material injury in the proceedings that cannot be corrected on appeal (sometimes referred to as irreparable harm); and (2) a departure from the essential requirements of the law.” Nader v. Fla. Dep’t of Highway Safety & Motor Vehicles, 87 So. 3d 712, 721 (Fla. 2012).

Analysis

Florida Rule of Civil Procedure 1.280 governs discovery and provides, in pertinent part:

Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Fla. R. Civ. P. 1.280(b).

Florida Rule of Civil Procedure 1.310, governs depositions upon oral examination and provides, in pertinent part:

A party desiring to take the deposition of any person on oral examination must give reasonable notice in writing to every other party to the action.

. . . .

In the notice a party may name as the deponent a public or private corporation . . . and designate with reasonable particularity the matters on which examination is requested. The organization so named must designate one or more officers, directors, or managing agents, or other persons who consent to do so, to testify on its behalf and may state the matters on which each person designated will testify. The persons so designated must testify about matters known or reasonably available to the organization. This subdivision does not preclude taking a deposition by any other procedure authorized in these rules.

Fla. R. Civ. P. 1.310(b)(1) & (6).

As we read the trial court orders, and as the trial court expressly instructed, FPL is required only to designate a corporate representative who is able to testify about matters known or reasonably available to the organization. At this point in time, we are unable to identify, for purposes of Rule 1.310, which matters are known or reasonably available to FPL. Although FPL may have meritorious arguments in favor of a protective order at some later time in the litigation when the record is more developed, the record before us does not reflect that the orders under review amount

to irreparable harm. Absent irreparable harm, that is, a material injury in the proceedings that cannot be corrected on appeal, this Court is without certiorari jurisdiction.

Petition dismissed.