

Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

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SILVESTER DAWSON
MARSHAL

July 6, 2020

Honorable Stephanie Williams Ray, Chair
Appellate Court Rules Committee
First District Court of Appeal
2000 Drayton Drive
Tallahassee, FL 32399-0001

Re: Florida Rule of Appellate Procedure 9.130

Dear Judge Ray:

At the direction of the Court, I am writing to you in your capacity as Chair of the Appellate Court Rules Committee to ask your committee to propose rule amendments to provide for the interlocutory appeal of nonfinal orders granting or denying leave to amend a complaint to assert a claim for punitive damages.

As you know, Florida Rule of Appellate Procedure 9.130 outlines procedures for interlocutory appeals of nonfinal orders. It also specifies the nonfinal orders that may be immediately appealed. *See Fla. R. App. P. 9.130(a)(3)*. In its present state, however, rule 9.130(a)(3) does not include an order granting or denying leave to amend a complaint to assert a punitive damages claim in its catalogue of appealable, nonfinal orders. Currently, a party must file a petition for writ of certiorari to seek review of a nonfinal order granting or denying leave to assert a claim for punitive damages. Then, pursuant to *Globe Newspaper Co. v. King*, 658 So. 2d 518 (Fla. 1995), the appellate court's certiorari jurisdiction is limited to reviewing whether the trial judge followed the procedural requirements of section 768.72, Florida Statutes (2019). Therefore, even though

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“[n]o discovery of financial worth shall proceed until after the pleading concerning punitive damages is permitted,” § 768.72(1), Fla. Stat. (2019), there is currently no avenue for the immediate review of the trial court’s statutorily required determination of whether “there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such [punitive] damages,” § 768.72(1), Fla. Stat. *See Sapp v. Olivares*, 288 So. 3d 714, 716 n.1 (Fla. 4th DCA 2020); *TRG Desert Inn Venture, Ltd. v. Berezovsky*, 194 So. 3d 516, 520 n.5 (Fla. 3d DCA 2016).

Please file a report with the committee’s rule proposal with my office by February 1, 2021. The committee should publish the proposed rule amendments for comment before filing the proposal with the Court and address any comments received in the report. If you determine that the committee needs more time to address this matter, please submit a request for extension of time to my office, indicating when the report can be filed.

Thank you in advance for your attention to the Court’s request. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'JAT', with a long horizontal flourish extending to the right.

John A. Tomasino

JAT/dw/sb

cc: Honorable Charles T. Canady, Chief Justice
Honorable Ricky L. Polston
Ms. Krys Godwin, Bar Staff Liaison to App. Court Rules Comm.
Ms. Deborah Meyer, Director of Central Staff