

loan transaction and, by extension, the foreclosure action. Because these claims bear a logical relationship to OGI Capital's foreclosure complaint, they are compulsory and not permissive. As such, the counterclaim dismissal order was nonfinal and nonappealable, and the Appellants were free to move for reconsideration of that order at any time prior to the entry of final judgment. Accordingly, to the extent the trial court denied the Appellants' motion for reconsideration based on the mistaken belief that their claims were permissive rather than compulsory, it erred. On remand, the trial court should revisit the Appellants' motion for reconsideration in order to determine whether any relief is warranted.³

Reversed and remanded.

NORTHCUTT and KELLY, JJ.,
Concur.



1

Excellent JEAN-GILLES, Appellant,

v.

STATE of Florida, Appellee.

No. 2D21-2738

District Court of Appeal of Florida,
Second District.

December 8, 2021

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Manatee County; Frederick P. Mercurio, Judge.

3. We express no opinion as to merits of the Appellants' motion for reconsideration or the propriety of the trial court's decision to dis-

PER CURIAM.

Affirmed. *See Rochester v. State*, 140 So. 3d 973 (Fla. 2014); *State v. Drawdy*, 136 So. 3d 1209 (Fla. 2014); *State v. Meshell*, 2 So. 3d 132 (Fla. 2009); *Melvin v. State*, 645 So. 2d 448 (Fla. 1994); *Coughlin v. State*, 932 So. 2d 1224 (Fla. 2d DCA 2006) (en banc); *Shortridge v. State*, 884 So. 2d 321 (Fla. 2d DCA 2004); *Adams v. State*, 901 So. 2d 275 (Fla. 5th DCA 2005); *Paul v. State*, 830 So. 2d 953 (Fla. 5th DCA 2002).

NORTHCUTT, LUCAS, and
STARGEL, JJ., Concur.



2

William KOVACS, Petitioner,

v.

Tai WILLIAMS, Respondent.

Case No. 5D21-1099

District Court of Appeal of Florida,
Fifth District.

Opinion filed December 10, 2021

Background: Plaintiff brought personal-injury action against defendant, alleging injuries from a motor-vehicle accident. The Circuit Court, 18th Judicial Circuit, Brevard County, Dale Curtis Jacobus, J., granted plaintiff's motion to amend his complaint to seek punitive damages. Defendant petitioned for certiorari review.

Holdings: The District Court of Appeal held that trial court's failure to make affirmative finding that plaintiff made a rea-

miss the counterclaims and third-party complaint in the first instance.

sonable showing by evidence to support punitive-damages claim precluded trial court from authorizing plaintiff to assert claim.

Petition granted, order quashed, and remanded; conflict with 302 So. 3d 1021 certified.

1. Certiorari \Leftrightarrow 5(1), 27

To obtain a writ of certiorari, there must exist (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 post-judgment appeal.

2. Certiorari \Leftrightarrow 17

The prospect of intrusive financial discovery following a trial court's authorization for an amendment to add a claim for punitive damages is the irreparable injury required for appellate court's exercise of certiorari jurisdiction.

3. Pleading \Leftrightarrow 250

Failure of trial court to make an affirmative finding that the plaintiff made a reasonable showing by evidence in the record that would provide a reasonable basis for recovery of punitive damages precluded trial court from authorizing plaintiff to assert punitive-damages claim in personal-injury action arising from automobile accident, even though trial court identified gross negligence as basis for recovery of such damages, where identification of theory of recovery did not amount to the requisite affirmative finding about the evidence presented. Fla. Stat. Ann. § 768.72(1).

1. "[T]o obtain a writ of certiorari, there must exist '(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 v. Fleetwood Homes of Fla., Inc.*, 889 So. 2d 812, 822 (Fla. 2004) (*Bd. of Regents v. Snyder*, 826 So. 2d 382, 387 (Fla. 2d DCA 2002)). "The prospect of intrusive

Petition for Certiorari Review of Order from the Circuit Court for Brevard County, Dale Curtis Jacobus, Judge. LT Case No. 2019-CA-039425

Kimberly K. Berman and Holly M. Hamilton, of Marshall Dennehey Warner Coleman & Goggin, Fort Lauderdale, for Petitioner.

Brian J. Lee, of Morgan & Morgan, Jacksonville, for Respondent.

PER CURIAM.

[1, 2] Petitioner William Kovacs seeks certiorari review of an order granting Respondent Tai Williams' motion to amend his complaint to add a claim for punitive damages ("Punitive Damages Order"). Petitioner argues that the Punitive Damages Order departs from the essential requirements of law because the trial court failed to make an affirmative finding required by our precedent when it granted Respondent's motion.¹ If we were writing on a blank slate, we would disagree with Petitioner, since there is no operative statute or rule requiring the trial court to make an affirmative finding. Bound by precedent though, we grant the petition, quash the Punitive Damages Order, and remand for further proceedings. We also certify conflict with the First District Court of Appeal's decision in *Watt v. Lo*, 302 So. 3d 1021 (Fla. 1st DCA 2020).

The underlying case arises from a motor vehicle accident that occurred on May 4,

financial discovery following a trial court's authorization for an amendment to add a claim for punitive damages is the irreparable injury . . . required for this Court's exercise of its certiorari jurisdiction." *Cat Cay Yacht Club, Inc. v. Diaz*, 264 So. 3d 1071, 1076 (Fla. 3d DCA 2019). Petitioner's argument, and our analysis, focuses on the first prong.

2018. On November 6, 2020, Respondent moved for leave to amend his complaint to add a claim for punitive damages alleging that the Petitioner rear-ended the Respondent's vehicle while intoxicated and then left the scene of the accident before exchanging information.

To assert a claim for punitive damages, Respondent must meet the requirements of section 768.72(1), Florida Statutes (2020). This statute provides:

In any civil action, no claim for punitive damages shall be permitted unless 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 damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure.

After a hearing was held on Respondent's motion, the trial court entered the Punitive Damages Order without finding that Respondent carried his burden under section 768.72(1). That is, the trial court did not state for the record or in the Punitive Damages Order that Respondent made a "reasonable showing by evidence," which would provide a "reasonable basis for recovering of such damages." Because the alleged error is procedural, this Court has jurisdiction to review the Petitioner's request. *Globe Newspaper Co. v. King*, 658 So. 2d 518, 520 (Fla. 1995); *Life Care Ctrs. of Am., Inc. v. Croft*, 299 So. 3d 588, 590 (Fla. 2d DCA 2020).

To support the proposition that the trial court was required to make an affirmative finding, either orally or in the Punitive Damages Order, Petitioner cites this Court's opinion in *Varnedore v. Copeland*, 210 So. 3d 741, 747–48 (Fla. 5th DCA 2017), as well as opinions from the Second, Third, and Fourth District Court of Appeal. In *Varnedore*, the trial court made

several errors in granting a motion for leave to amend to add a claim for punitive damages. One of the errors held by our Court to be a basis for reversal was the trial court's failure to comply with section 768.72(1), which our Court found required a trial court to "make an affirmative finding that [the] plaintiff has made a reasonable showing by evidence which would provide a reasonable evidentiary basis for recovering [punitive] damages." *Id.* at 748 (internal quotations omitted).

Like the trial court in *Varnedore*, the trial court here made no express or affirmative finding in the unelaborated Punitive Damages Order. We find that the trial court also failed to make the required affirmative finding during the hearing. The closest the trial court came to meeting the requirements of *Varnedore* is when it identified the theory of recovery, stating that "[i]t's gross negligence, that's what I'm basing it on."

Our decision in *Varnedore* does not require the trial court to identify the theory of recovery. Rather, it requires the trial court to make an affirmative finding about the evidence presented. *Id.* at 744–45. Our Court stated that "the trial court, serving as a gatekeeper, is required to make an *affirmative finding* that plaintiff has made a 'reasonable showing by evidence,' which would provide a 'reasonable evidentiary basis for recovering such damages' if the motion to amend is granted." *Id.* at 747–48 (emphasis added).

[3] Accordingly, since this Court previously determined in *Varnedore* that an affirmative finding about the evidence presented is required, the trial court's failure to include any such finding, either orally or in the written order, constitutes a departure from the essential requirements of the law that will result in irreparable harm to Petitioner. Therefore, we grant the peti-

tion, quash the order under review, and remand for further proceedings. We also certify conflict with the First District Court of Appeal's decision in *Watt v. Lo*, 302 So. 3d 1021,1023 (Fla. 1st DCA 2020), wherein the First District held that there is no statutory requirement for the trial court to make express or affirmative findings when determining whether a reasonable evidentiary basis for recovery of punitive damages exists.

GRANT PETITION; CONFLICT CERTIFIED.

EISNAUGLE, HARRIS and NARDELLA, JJ., concur.



Robert J. SANCHEZ and Carrie Sanchez, Appellants,

v.

COUNTY OF VOLUSIA, Appellee.

Case No. 5D21-209

District Court of Appeal of Florida,
Fifth District.

Opinion filed December 10, 2021

Background: County sought to foreclose code enforcement liens assessed against property owners' real property. Property owners filed amended counterclaim asserting causes of action for alleged constitutional rights violations under § 1983 and trespass. The Circuit Court, 7th Judicial Circuit, Volusia County, Randell H. Rowe, J., dismissed property owners' amended counterclaim with prejudice and granted county's motion for summary judgment. Property owners appealed.

Holdings: The District Court of Appeal held that trial court abused its discretion in dismissing with prejudice four of five counts in property owners' amended counterclaim alleging violations of § 1983.

Affirmed in part, reversed in part, and remanded with directions.

Sasso, J., concurred in part, dissented in part, and filed opinion.

1. Appeal and Error ¶3200

Standard of review of an order dismissing a complaint with prejudice is de novo.

2. Pretrial Procedure ¶695

Trial court abused its discretion in dismissing with prejudice four of five counts in property owners' amended counterclaim alleging violations of § 1983, without granting at least one more opportunity to amend, in county's action to foreclose code enforcement liens assessed against owners' real property; it was not clear that property owners' causes of action under § 1983 could never have been sufficiently alleged against county, in light of what property owners claimed to have been a significant deprivation of their constitutional rights, action had not progressed to point where privilege in amending pleading decreased such that trial court had discretion to dismiss with prejudice, and property owners had not abused the privilege to amend counterclaim. 42 U.S.C.A. § 1983.

3. Pretrial Procedure ¶695

As an action progresses, the privilege in amending a pleading decreases to the point that a trial court does not abuse its discretion in dismissing the action with prejudice.