

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Shuffler v. Bascom Palmer Eye Institute

478 So. 2d 418 (Fla. 3d DCA 1985) · Decided November 5, 1985

SUMMARY

The Florida Third District Court of Appeal granted a petition for certiorari and quashed an order striking the plaintiff’s demand for a jury trial. The court held that amending the complaint to seek damages exceeding the county court’s jurisdictional limit and transferring the case to circuit court created a new action in which the plaintiff timely demanded a jury trial.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Florida
DECIDED	November 5, 1985
DISPOSITION	quashed
PROCEDURAL POSTURE	Original petition for a writ of certiorari seeking review of a trial court order striking the plaintiff's demand for a jury trial.
STANDARD OF REVIEW	Certiorari review is available when the challenged trial court order constitutes a departure from the essential requirements of law.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Henderson Shuffler v. Bascom Palmer Eye Institute

TOPICS

- writ of certiorari
- civil procedure
- appellate procedure
- preservation of error

PRACTICE AREAS

- Civil procedure
- Appellate procedure

QUESTIONS PRESENTED

1. Whether a plaintiff who waived a jury trial in a county court action may make a timely jury demand when the complaint is amended to allege damages exceeding the county court's jurisdictional limit and the action is transferred to circuit court.

2. Whether striking the timely jury demand constituted a departure from the essential requirements of law warranting certiorari relief.

HOLDINGS

1. When a complaint is amended with leave of court to allege damages exceeding the county court's jurisdictional limit and the action is transferred to circuit court, the cause becomes a new action, allowing the plaintiff to make a timely jury demand with the amended complaint under Florida Rule of Civil Procedure 1.430(b), even if the plaintiff previously waived a jury in the county court action.
2. The district court may grant certiorari to review a trial court order striking a jury demand when the order departs from the essential requirements of law.

KEY QUOTATIONS

“Although the plaintiff Shuffler waived his right to a jury trial in the county court action he filed below when he failed to file a timely demand for same under Fla.R.Civ.P. 1.430(b), the cause became a new action when the complaint was amended, with leave of court, to allege damages in excess of the jurisdictional limit of the county court” (478 So. 2d at 418)

“The petition for a writ of certiorari is granted, the order under review is quashed, and the cause is remanded to the trial court with directions to reinstate the subject demand for a jury trial.” (478 So. 2d at 418)

FACTUAL BACKGROUND

Shuffler failed to timely demand a jury trial in his original county court action. After the complaint was amended with leave of court to allege damages exceeding the county court's jurisdictional limit, the case became a new circuit court action. Shuffler timely demanded a jury trial with the amended complaint, but the trial court struck the demand.

PROCEDURAL HISTORY

Shuffler initially filed an action in county court and waived a jury trial by failing to make a timely demand. With leave of court, he amended the complaint to allege damages exceeding the county court's jurisdictional limit, and the action was transferred to circuit court. Shuffler filed a timely jury demand with the amended complaint, but the trial court struck it. The Third District granted certiorari, quashed the order, and remanded with directions to reinstate the demand.

DISPOSITION

quashed

REMAND INSTRUCTIONS

The cause was remanded to the trial court with directions to reinstate the subject demand for a jury trial.

CASES CITED

- Valiante v. Allstate Insurance Co., 462 So. 2d 590 (Fla. 2d DCA 1985)
- Magram v. Raffel, 443 So. 2d 396 (Fla. 3d DCA 1984)
- Spring v. Ronel Refining, Inc., 421 So. 2d 46 (Fla. 3d DCA 1982)
- Hollywood, Inc. v. City of Hollywood, 321 So. 2d 65 (Fla. 1975)

OPINION

PER CURIAM.

PER CURIAM. This is an original petition for a writ of certiorari seeking review of a trial court order striking the plaintiff/petitioner Henderson Shuffler's demand for a jury trial filed below. We have jurisdiction to entertain this petition if the trial court's order constitutes a departure from essential requirements of law. Valiante v. Allstate Insurance Co., 462 So.2d 590 (Fla.

2d DCA 1985); Magram v. Raffel, 443 So.2d 396 (Fla. 3d DCA 1984); Spring v. Ronel Refining, Inc., 421 So.2d 46 (Fla. 3d DCA 1982); Art. V, § 4(b)(3), Fla. Const. We conclude that the petition for certiorari should be granted and the order under review quashed, upon a holding that it was a departure from the essential requirements of law to strike the demand for jury trial herein.

Although the plaintiff Shuffler waived his right to a jury trial in the county court action he filed below when he failed to file a timely demand for same under Fla.R.Civ.P. 1.430(b), the cause became a new action when the complaint was amended, with leave of court, to allege damages in excess of the jurisdictional limit of the county court, see § 34.01(l)(c)2, Fla. Stat. (1983), and the action was transferred to the circuit court.

At that point, the plaintiff Shuffler properly filed a timely demand for a jury trial along with his amended complaint pursuant to Fla.R. Civ.P. 1.430(b) in the new circuit court action. In our view, the trial court erred in thereafter striking this timely demand. See Hollywood, Inc. v. City of Hollywood, 321 So.2d 65 (Fla.1975).

The petition for a writ of certiorari is granted, the order under review is quashed, and the cause is remanded to the trial court with directions to reinstate the subject demand for a jury trial. It is so ordered.