

DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

Ruffenach v. Ocwen Loan Services, LLC

257 So. 3d 541 (Fla. 5th DCA 2018) · No. 5D18-469 · Decided October 1, 2018

SUMMARY

The Florida Fifth District Court of Appeal addressed a petition for writ of mandamus challenging the striking of a demand for a jury trial. The court granted rehearing and clarified that the order was non-final and non-appealable and was not subject to mandamus review. It denied the petition, explaining that any error in interpreting the contractual jury-trial waiver could be addressed after a final judgment.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fifth District
WRITING FOR THE COURT	Per Curiam; Cohen, C.J.; Eisnaugle, J.; Harris, J.
JURISDICTION	Florida
DECIDED	October 1, 2018
DOCKET	5D18-469
DISPOSITION	writ_denied
PROCEDURAL POSTURE	After the circuit court struck Ruffenach's demand for a jury trial, he petitioned for a writ of mandamus. The district court treated the petition as one for certiorari and denied it by order. On rehearing, the court granted the motions for rehearing, clarification, and written opinion, but denied mandamus.
STANDARD OF REVIEW	The court concluded that the order striking the jury-trial demand was nonfinal and nonappealable and was not reviewable by mandamus or certiorari.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Charles J. Ruffenach v. Ocwen Loan Services, LLC

TOPICS

- writ of certiorari
- appellate jurisdiction
- final judgment rule
- appellate procedure
- contract interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether an order striking a demand for a jury trial is reviewable by certiorari.
2. Whether mandamus may be used to review an allegedly erroneous judicial decision striking a jury-trial demand.
3. Whether *Department of Natural Resources v. Estech, Inc.* supported mandamus review of the order.

HOLDINGS

1. An order striking a demand for a jury trial is a nonfinal, nonappealable order that is not reviewable by certiorari.
2. Mandamus is unavailable to review an allegedly erroneous judicial decision; it is limited to compelling performance of a specific, imperative ministerial duty.
3. *Department of Natural Resources v. Estech, Inc.* did not support mandamus review and is no longer good law in light of *Jaye*.

KEY QUOTATIONS

“Mandamus was designed to compel the performance of a specific, imperative ministerial duty, not to review allegedly erroneous judicial decisions.” (at 542)

“The appellate landscape has changed dramatically from the days of common law writs.” (at 542)

FACTUAL BACKGROUND

The lower court struck Charles Ruffenach's demand for a jury trial after interpreting a contract containing a clause waiving the right to a jury trial. Ruffenach sought appellate relief before trial through a petition for writ of mandamus. The appellate court determined that the challenged order did not provide a basis for extraordinary-writ relief.

PROCEDURAL HISTORY

The Circuit Court for Brevard County struck Ruffenach's demand for a jury trial based on its interpretation of a contract clause waiving the right to a jury trial. Ruffenach sought mandamus relief in the Fifth District. The appellate court initially treated the petition as a certiorari petition and denied it; on rehearing, it issued this opinion and again denied relief.

DISPOSITION

writ_denied

CASES CITED

- *Jaye v. Royal Saxon, Inc.*, 720 So. 2d 214, 215 (Fla. 1998)

- *Migliore v. City of Lauderhill*, 415 So. 2d 62, 63 (Fla. 4th DCA 1982), *aff'd*, 431 So. 2d 986 (Fla. 1983)
- *Department of Natural Resources v. Estech, Inc.*, 515 So. 2d 758, 759 n.2 (Fla. 2d DCA 1987)

OPINION

PER CURIAM.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT
NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED CHARLES J. RUFFENACH Petitioner, v. Case Nos. 5D18-
469 OCWEN LOAN SERVICES, LLC, Respondent. _____/
Opinion filed October 5, 2018 Appeal from the Circuit Court for Brevard County, Lisa Davidson,
Judge.

Nicholas A. Vidoni, of Watson, Soileau, DeLeo & Burgett, P.A., Cocoa, for Petitioner. Michael R. Esposito and Michelle M. Gervais, of Blank Rome LLP, Tampa, for Respondent. COHEN, C.J.
ON MOTION FOR REHEARING After the lower court struck Charles Ruffenach's demand for a jury trial, Ruffenach filed a petition for writ of mandamus seeking redress. This Court treated the petition as one for writ of certiorari and denied it by order.

In response, Ruffenach filed a lengthy motion for rehearing, rehearing en banc, clarification, certification, and/or written opinion. He was not entirely without justification. In his motion, Ruffenach correctly presents that he did not seek relief under certiorari review because the law clearly provides that the striking of a demand for jury trial is not reviewable by certiorari.

Jaye v. Royal Saxon, Inc., 720 So. 2d 214, 215 (Fla. 1998). The merits panel was well aware of the case law and reviewed the relief sought as it was fashioned. The final order should have reflected that. However, our review led us to the same conclusion: the lower court's decision to strike the request for a jury trial is a non-appealable, non-final order not subject to mandamus review.

Mandamus was designed to compel the performance of a specific, imperative ministerial duty, not to review allegedly erroneous judicial decisions. *Migliore v. City of Lauderhill*, 415 So. 2d 62, 63 (Fla. 4th DCA 1982), *aff'd*, 431 So. 2d 986 (Fla. 1983). Contrary to Ruffenach's argument, no other district court of appeal has held otherwise. Ruffenach's reliance on a footnote in *Department of Natural Resources v. Estech, Inc.*, 515 So.

2d 758, 759 n.2 (Fla. 2d DCA 1987), is misplaced. *Estech*, which also addressed a challenge to the striking of a demand for a jury trial, was decided in the context of a petition for writ of certiorari, and in light of the Florida Supreme Court's decision in *Jaye*, is no longer good law. Further, citation to a footnote speculating as to whether mandamus would have been a proper vehicle for the challenge hardly constitutes authority for that proposition.

The appellate landscape has changed dramatically from the days of common law writs. We now primarily look to the Florida Constitution and the appellate rules for a determination of jurisdiction. Neither provides a basis for relief from the order entered below.

The lower court's ruling interpreted the language of a contract containing a clause 2 waiving the right to a trial by jury. If the lower court erred in its interpretation, and if Ruffenach does not prevail following trial and entry of a final judgment, his remedy will follow.

Accordingly, we grant the motion for rehearing, motion for clarification, and motion for written opinion. We deny the petition for mandamus. EISNAUGLE and HARRIS, JJ., concur. 3