

**SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

Case No. 6D2025-2413
Lower Tribunal No. 2024-CA-002218

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Appellant,

v.

ALEAH A. HOLMS,

Appellee.

Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Collier County.
Lauren L. Brodie, Judge.

October 2, 2026

KAMOUTSAS, J.

Progressive Michigan Insurance Company appeals a nonfinal Order Denying Exceptions and Approving the General Magistrate's Status Report and Recommended Order pursuant to Florida Rule of Appellate Procedure 9.130(a)(3)(C)(i). However, as explained below, we dismiss this appeal for lack of jurisdiction because the order on appeal does not determine personal jurisdiction.

The relevant procedural history is as follows. Aleah Holms filed a complaint and in response, Progressive filed an answer and affirmative defenses, which concededly did not raise the affirmative defense of lack of personal jurisdiction.

Progressive then moved for leave to amend its answer to include this affirmative defense and filed a proposed amended answer raising lack of personal jurisdiction. Progressive also moved to dismiss count II of Holms's complaint for lack of personal jurisdiction. The trial court granted Progressive's motion for leave to amend and accepted its proposed amended answer and affirmative defenses as filed. Holms moved to strike portions of Progressive's amended pleading with respect to the lack of personal jurisdiction as an affirmative defense. The trial court referred Progressive's still-pending motion to dismiss and Holms's motion to strike to a general magistrate under rule 1.490.

After a hearing, the magistrate entered a recommended order, which stated:

Defendant had the option to raise a lack of personal jurisdiction defense either in a pre-answer motion or the answer. *See Gannon v. Cuckler*, 281 So. 3d 587, 593 (Fla. 2d DCA 2019). If the defense is not joined in the pre-answer motion it may not be asserted in a subsequent motion . . . any defense not asserted in a pre-answer motion or the answer is waived. *Id.*

Defendant, Progressive Michigan Insurance Company failed to assert a Fla. R. Civ. P. 1.140(b)(2) motion to dismiss at the outset of the action and instead elected to raise personal jurisdiction as an affirmative defense in its amended answer which superseded its original answer. The current motion to dismiss was filed after the filing of the initial answer and the amended answer, and therefore, the defense of personal jurisdiction cannot be raised in the current motion.

The recommended order concluded that "Plaintiff's Motion to Strike Portions of Progressive Michigan Insurance Company's Lack of Personal Jurisdiction as an Affirmative Defense is DENIED [and] Progressive Michigan's Motion to Dismiss Count II of Complaint for Lack of Personal Jurisdiction is DENIED." After a hearing

on Progressive’s exceptions to the recommended order, the trial court entered the order on review denying Progressive’s exceptions and approving the recommended order.

Jurisdiction is a threshold matter. *Progressive Marathon Ins. v. Rivera*, 430 So. 3d 367, 368 (Fla. 6th DCA 2026); Art. V, § 4 (b)(1), Fla. Const. (“District courts of appeal . . . may review interlocutory orders in such cases to the extent provided by rules adopted by the supreme court.”); Fla. R. App. P. 9.030(b)(1)(B) (“District courts of appeal shall review, by appeal . . . nonfinal orders as prescribed by rule 9.130.”). Appellant asserts appellate jurisdiction based on rule 9.130(a)(3)(C)(i), which authorizes this Court’s review of non-final orders, but such review is “limited to those that . . . determine . . . the jurisdiction of the person.” We have recently recognized that “[t]he rule requires that an interlocutory order on appeal must actually adjudicate and determine the personal jurisdiction issue.” *Rivera*, 430 So. 3d at 368 (quoting *Torres v. SBE Hotel Grp., LLC*, 403 So. 3d 883, 885 (Fla. 3d DCA 2023)).

The Florida Supreme Court has said, “Webster’s Third New International Dictionary, Unabridged, defines ‘determine’ as, among other things, ‘to fix conclusively or authoritatively,’ ‘to settle a question or controversy about,’ and to ‘decide by judicial sentence.’” *Doctor’s Hosp. of Hollywood, Inc. v. Madison*, 411 So. 2d 190, 191 (Fla. 1982).

Substantively, the order on appeal, which approves the findings of the recommended order, does not settle a question and does not fix conclusively or authoritatively or decide by judicial sentence as to the issue of personal jurisdiction with respect to Progressive, nor does it find that Progressive waived the defense. Appellant seeks to convince this Court that the order has by *operation* determined the issue of personal jurisdiction, and therefore, the appeal falls within the orbit of our jurisdiction. But on its face, that is not what the order did, nor are we allowed to expand the scope of our jurisdiction. *See* Art. V, § 4 (b)(1), Fla. Const.; *Dexx Med. Indus., CA v. Fitesa Naotecidos S.A.*, 346 So. 3d 1215, 1217 (Fla. 3d DCA 2022) (“A plain reading of rule 9.130(a)(3)(C)(i) demonstrates ‘the requirement that we are to construe narrowly the categories of non-final orders subject to interlocutory appeal.’” (quoting *Citizens Prop. Ins. v. Calonge*, 246 So. 3d 447, 450 (Fla. 3d DCA 2018))). It follows that this Court lacks jurisdiction over this appeal.

DISMISSED.

NARDELLA and GANNAM, JJ., concur.

Joye B. Walford, Michael C. Clarke and Paz A. Garcia Griego, of Kubicki Draper, P.A., Tampa, for Appellant.

Stephen G. Edlund, of Sawgrass Law, PLLC, Bradenton, for Appellee.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING
AND DISPOSITION THEREOF IF TIMELY FILED