

Third District Court of Appeal

State of Florida

Opinion filed September 30, 2026.
Not final until disposition of timely filed motion for rehearing.

No. 3D26-0819
Lower Tribunal No. 22-13391-CA-01

Marlon Berrouet, et al.,
Petitioners,

vs.

NM Auction General Partnership, et al.,
Respondents.

On Petition for Writ of Certiorari from the Circuit Court for Miami-Dade County, Spencer Eig, Judge.

Ramon M. Rodriguez, P.A., and Ramon M. Rodriguez, for petitioners.

McGivney Kluger Clark & Intoccia, P.C., and Jay Steven Warner and Travis Mehler (Coral Springs), for respondents Gabrita 125th, Inc., and NM Auction General Partnership.

Before FERNANDEZ, MILLER and BOKOR, JJ.

BOKOR, J.

Marlon Berrouet and Rose Carline Romain petition for certiorari review of an order entered by the trial court striking Berrouet and Romain's expert witnesses for late disclosure in violation of an order setting a trial date and pretrial deadlines. But the petitioners can't show irreparable harm. We therefore dismiss the petition.

I.

Berrouet sued NM Auction General Partnership and Gabrita 125th Inc., for injuries sustained as result of a slip and fall accident in 2018 at a commercial building located in Miami, Florida. Romain, Berrouet's wife, brought a loss of consortium claim. On July 2, 2025, the trial court issued a pretrial scheduling order setting the date of trial for December 15, 2025, and requiring disclosure of experts by October 16, 2025. Berrouet and Romain filed their disclosure 11 days late, on October 27, 2025. NM Auction and Gabrita moved to strike the late disclosed witnesses or continue the trial, claiming prejudice from the late disclosure. At a hearing on the motion, the trial court explained that it had to strictly enforce trial deadlines and, finding prejudice would result from the late filing, struck the expert witnesses. The trial court also ended up continuing the trial until August 2, 2026, based on a separate motion to continue, but the non-treating experts remained stricken.

This petition for writ of certiorari followed.

II.

To show entitlement to certiorari relief, a petitioner must establish “(1) a material injury in the proceedings that cannot be corrected on appeal (sometimes referred to as irreparable harm); and (2) a departure from the essential requirements of the law.” Schaeffer v. Medic, 394 So. 3d 128, 131 (Fla. 3d DCA 2024) (quotation omitted). Absent a showing of “irreparable harm, the court must dismiss the petition for lack of jurisdiction.” Damsky v. Univ. of Miami, 152 So. 3d 789, 792 (Fla. 3d DCA 2014).

III.

The trial court striking the expert witnesses, disclosed 11 days late, for purported prejudice while ultimately continuing the trial seems to be a head scratcher. But we need not—and can’t—attempt to unravel the mystery here on certiorari review. This is because the petitioners can’t meet their burden to show irreparable harm, depriving us of jurisdiction. And we write to clarify exactly why that is so.

The exclusion of Berrouet and Romain’s non-treating expert witnesses can be corrected, as appropriate, on plenary appeal. As this court explained in dismissing a similar petition based on similar circumstances, “[a]lthough [the petitioner] argues the evidence is material and critical to his case, he has not shown that he will be prevented from making a proffer of the

evidence.” Aguilar v. Leal, 426 So. 3d 1277, 1278 (Fla. 3d DCA 2026) (citing Baptist Hosp. of Miami, Inc. v. Llauro, 399 So. 3d 1206, 1206 (Fla. 3d DCA 2024) (“The exclusion of Baptist’s proffered evidence, if erroneous, can be remedied on appeal after the trial court issues a final judgment. . . . Accordingly, there is no irreparable harm. Thus, we are compelled to dismiss the instant petition.”)).

Petition dismissed.