

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

FITZMARTIN INVESTMENTS, LLC,
AS TRUSTEE OF THE ORANGE
COUNTY ELMSTONE 8028 LAND
TRUST,

APPELLATE CASE NO. 2017-CV-95-A-O
Lower Case No. 2014-CC-000736-O

Appellant,

vs.

DAZRINE FORBES and
WOODSTONE PROPERTY
OWNERS ASSOCIATION, INC.,
a Florida not-for-profit corporation,

Appellees.

_____/

Appeal from the Order of
Faye L. Allen,
Orange County Judge.

Bryant H. Dunivan Jr., Esq.,
Attorney for Appellant.

Sarah Webner, Esq.,
Brian Moran, Esq.,
James Gustino, Esq., &
Attorneys for Appellee, Woodstone.

T. W. Ackert, Esq. &
K. J. Pribell, Esq.,
Attorneys for Appellee, Dazrine Forbes.

Before MYERS JR., LEBLANC, WHITE, JJ.

PER CURIAM.

The Appellant, Fitzmartin Investments, appeals from the trial court's "Order Vacating Judgment and Sale and Granting Other Relief" entered July 20, 2017. This Court determines that it does not have jurisdiction to consider Appellant's claims as an appeal from a non-final order.

See Shell v. Foulkes, 19 So. 3d 438 (Fla. 4th DCA 2009) (finding a lack of jurisdiction under the appellate rules and general law for circuit courts to review non-final orders). In response to this Court's "Order Directing Appellant to Show Cause Why Appeal Should Not Be Dismissed for Lack of Jurisdiction," Appellant submitted no general law as a basis for interlocutory appellate jurisdiction beyond the general jurisdictional statute of Fla. Stat. 26.012.

However, this court may construe an improper appeal as a petition for writ of certiorari. Fla. R. App. P. 9.040(c). In order to grant certiorari to review an interlocutory order the Appellant must establish three elements: "(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 correct on post-judgment appeal." *Citizens Property Ins. Corp. v. San Perdid Ass'n, Inc.*, 104 So. 3d 344, 351 (Fla. 2012). This analysis necessarily begins with the jurisdictional requirement that the last two elements (lasting material injury and no remedy via plenary appeal) are established. *Id.*

We determine that this case involves no harm which could not be corrected in a post-judgment appeal. Accordingly, petition for writ of certiorari is **DENIED**.

In addition, Appellee has filed a number of Motions for Attorney Fees in connection with this appeal including a motion requesting fees under Fla. R. App. P. 9.400 on September 1, 2017, amended October 23, 2017, as well as three distinct Motions for Attorney fees as sanctions under Fla. R. App. P. 9.410 on September 19, 2017; September 25, 2017; and November 2, 2017. Each of these Motions for Attorney Fees is **DENIED**.

DONE AND ORDERED in Orlando, Orange County, Florida this ___ day of _____
2019.

DONALD A. MYERS, JR.
Presiding Circuit Judge

LEBLANC and WHITE, JJ., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Opinion has been furnished on this ____ day of _____ 2019, to **Judge Faye L. Allen**, 425 N. Orange Avenue, Orlando, FL 32801; **Bryant H. Dunivan, Jr., Esq.**, Owen & Dunivan, PLLC, 615 W. DeLeon Street, Tampa, FL 33603 at bdunivan@owendunivan.com; **Sarah Webner, Esq.**, Wonsetler & Webner, P.A., 860 N. Orange Avenue, Suite 135, Orlando, FL 32801 at sarah@kepalaw.com; **Brian Moran, Esq.**, Moran Kidd Lyons & Johnson, P.A., P.O. Box 472, Orlando, FL 32802 at bmoran@morankid.com; **Kevin Jon Pribell, Esq., TW Ackert, Esq.**, TW Ackert, P.A., 430 N. Mills Avenue, Suite 1, Orlando, FL 32803 at kevin@pribellrealestate.com; **Laura Whiteside, Esq.**, Hicks Whiteside, P.A., Terra Corporate Center, 14906 Winding Creek Ct, Suite 102D, Tampa, FL 33613 at lwhiteside@hwlaw.attorney.

Judicial Assistant