

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

**Patrick John McGinley and Law
Office of Patrick John McGinley, P.A.,**

CASE NO.: 2015-CA-9630-O

Petitioners,

v.

Christie Lou Mitchell,

Respondent.

_____ /

Petition for Writ of Certiorari from an
Order transferring the case to the
Circuit Civil Division, County Court in
and for Orange County, Florida,
Andrew L. Cameron, County Court Judge.

Patrick John McGinley, Esq., pro se,
for Petitioners.

Christie L. Mitchell, Esq., pro se,
for Respondent.

Before LUBET, H. RODRIGUEZ, and S. KEST, J.J.

PER CURIAM.

FINAL ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

Petitioners Patrick John McGinley (“McGinley”) and Law Office of Patrick John McGinley (“Law Firm”) seek a writ of certiorari or prohibition preventing the county court from proceeding against it and quashing the trial court’s order transferring the case to the Circuit Civil division. This Court has jurisdiction. Art. V, § 5(b), Fla. Const.; Fla. R. App. P. 9.030(c)(3). Because the county court lost jurisdiction after the Plaintiff filed a notice of voluntary dismissal, the petition is granted and the Court quashes the order transferring the case.

On March 13, 2014, McGinley Real Estate Development Company, LLC (“McRED”) filed a complaint for summary procedure to recover possession of commercial real estate from Christie Lou Mitchell. Eight days later, Mitchell filed one document containing a motion to dismiss, a motion to disqualify opposing counsel, an answer and affirmative defenses, a third-party complaint, and a motion to transfer. The third-party complaint portion of the document contains claims against McGinley and the Law Firm, alleging breach of an agreement to enter into a partnership, conversion, tortious interference with a contractual relationship, fraudulent misrepresentation, and injunctive relief to enforce a non-competition agreement. Service of process of this document was not made on McGinley or the Law Firm, and McRED was not named as a party to the third-party complaint. Mitchell alleges in the motion to transfer section of the document that McGinley and the Law Firm are McRED’s alter egos and that she filed the third-party complaint in response to McRED’s complaint. Mitchell asked the county court to transfer the entire case to the circuit court because the claims in her third-party complaint exceed the county court’s jurisdiction.

On June 2, 2014, McRED filed a notice of voluntary dismissal. One month later, the county court granted the motion to transfer the case to the Circuit Civil division, and the Clerk of Court transferred the case. This is the order McGinley and the Law Firm ask this Court to quash in their “Petition for Writ of Certiorari or, in the alternative, Petition for Writ of Prohibition.”

On a petition for writ of certiorari, the petitioner must demonstrate that the trial court departed from the essential requirements of the law, and the departure causes a material injury that cannot be remedied on appeal. *Royal Marble, Inc. v. Innovative Flooring & Stonecrafters of SWF, Inc.*, 932 So. 2d 221, 222 (Fla. 2d DCA 2005); *Phoenix Walls, Inc. v. Liberty Pasadena, LLC*, 980 So. 2d 1286, 1289 (Fla. 2d DCA 2008).

McGinley and the Law Firm argue that the county court did not have jurisdiction to grant the motion to transfer the case to the Circuit Civil division because McRED previously filed a notice of voluntary dismissal.

Under Florida Rule of Civil Procedure 1.420(a)(1), a plaintiff may dismiss its action without a court order if it does so before trial or before a hearing on a motion for summary judgment. A court order is needed to dismiss the case if the defendant served a counterclaim before the plaintiff served the notice of dismissal. Fla. R. Civ. P. 1.420(a)(2).

“The voluntary dismissal serves to terminate the litigation, to instantaneously divest the court of its jurisdiction to enter or entertain further orders that would otherwise dispose of the case on the merits, and to preclude revival of the original action.” *Pino v. Bank of N.Y.*, 121 So. 3d 23, 32 (Fla. 2013). Voluntary dismissals under Rule 1.420 are final acts that dispense with the trial court’s jurisdiction of the dismissed case. *Id.* A voluntary dismissal removes the court’s “power to enter an order” *Id.* (quoting *Randle–E. Ambulance Serv., Inc. v. Vasta*, 360 So. 2d 68, 69 (Fla. 1978)). *See also Katke v. Bersche*, 161 So. 3d 574, 576 (Fla. 5th DCA 2014) (once trial court accepts voluntary dismissal, it loses subject matter jurisdiction).

In *Layne Dredging Co. v. Regus, Inc.*, 622 So. 2d 7, 7 (Fla. 2d DCA 1993), the plaintiff sued several defendants. One defendant filed a motion to plead a crossclaim against another defendant. *Id.* Before the court ruled on the motion, the plaintiff voluntarily dismissed the complaint. *Id.* After this, the trial court allowed the crossclaim to be filed. *Id.* The Second District quashed the orders entered after the voluntary dismissal, stating that any liability one defendant owed another through a crossclaim “was nullified at the moment when [the plaintiff] accomplished the voluntary termination of its lawsuit.” *Id.* at 8. The court rejected the reliance on

cases permitting the survival of counterclaims after a notice of voluntary dismissal, noting that counterclaims are not extinguished by voluntary dismissals under Rule 1.420(a)(2). *Id.*

Just like cross claims, third-party complaints are also not listed in Rule 1.420 as precluding a voluntary dismissal without a court order. The third-party complaint did not ask for any relief against McRED, the plaintiff in this case, and there was no service of process of the third-party complaint on McGinley and the Law Firm. Because a notice of voluntary dismissal instantaneously deprives the trial court of jurisdiction, and there does not appear to be any Florida law holding that a third-party complaint survives a notice of voluntary dismissal, the county court did not have jurisdiction to order the case transferred to the Circuit Civil division.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that McGinley and the Law Firm's "Petition for Writ of Certiorari or, in the alternative, Petition for Writ of Prohibition" is **GRANTED**, and the Order Granting Motion to Transfer Pursuant to Rule 1.170(j), entered on July 8, 2015, is **QUASHED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 1st day of June, 2016.

/S/ _____
MARC L. LUBET
Presiding Circuit Judge

H. RODRIGUEZ and S. KEST, J.J., concur.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Order has been furnished to: **The Honorable Andrew L. Cameron, Orange County Judge**, Orange County Courthouse, 425 N. Orange Ave., Orlando, FL 32801; **Patrick John McGinley, Esq.**, Law Office of Patrick John McGinley, P.A., 2265 Lee Road #100, Winter Park, FL 32789; and **Christie L. Mitchell, Esq.**, THE CLM Law Firm, P.A., 4700 Millenia Blvd., Suite 175, Orlando, FL 32839, on this 1st day of June, 2016.

/S/ _____
Judicial Assistant