

Hornsleth v. McCloud, 337 So.3d 518 (Fla. 2d DCA April 20, 2022)

Second DCA Finds Trial Court Followed Essential Requirements of the Law in Response to Eviction Moratorium Challenge

On April 20, 2022, the Second DCA denied a landlord’s petition concerning the residential eviction moratorium implemented by the United States Center for Disease Control (“CDC”). Petitioners Poul Hornsleth and April Caldwell Hornsleth, as trustees for the Hornsleth Revocable Living Trust (collectively, “Hornsleths”), sought a writ of mandamus declaring the CDC’s residential eviction moratorium unconstitutional and ordering the trial court to lift the stay on an eviction proceeding and enter an order against the Hornsleths’ tenant.

The Second DCA treated the Hornsleths’ petition for writ of mandamus as a petition for certiorari, since the issues in the case reached beyond a clear legal right to the performance of a clear legal and ministerial duty. Thus, the Second DCA limited its review to whether the lower court departed from the essential requirements of the law, resulting in material injury that cannot be corrected on a post-judgment appeal.

The Second DCA first noted that the CDC’s eviction moratorium did not prevent the eviction of tenants for reasons other than the nonpayment of rent. If the Hornsleths’ had amended their complaint to seek eviction on the grounds that the lease had expired, then the moratorium would not prevent such an eviction action. However, the Hornsleths sought to evict their tenant solely on the basis of nonpayment of rent, which falls squarely within what is prevented by the moratorium. The Second DCA further noted that although the Supreme Court effectively ended the CDC’s eviction moratorium as of August 26, 2021, it was still in effect at the time the trial court entered its order. Because the Hornsleths’ sole basis for eviction was the nonpayment of rent, and because the moratorium was still in effect at the time of the trial court’s decision, there was no departure from the essential requirements in denying the Hornsleths’ motion to lift the stay.