

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

Case No. 6D23-584
Lower Tribunal No. 2021-CA-108

ROYAL UNITED PROPERTIES, INC.,

Petitioner,

v.

DERIK C. ROYAL, individually and as Trustee for the DEREK C. ROYAL
DECLARATION TRUST, DATED NOVEMBER 19, 1996,

Respondent.

Petition for Writ of Certiorari from the Circuit Court for Hendry County.
James D. Sloan, Judge.

September 22, 2023

NARDELLA, J.

Royal United Properties, Inc. (“RUP”) and Royal Energy Systems, Inc. (“RES”) (collectively “Petitioners”) petition this Court for a writ of certiorari quashing a non-final order granting Derik Royal’s, individually and as the Trustee of the Derik C. Royal Declaration of Trust (“Respondent”), Motion to Set Aside

Elections.¹ We grant the petition for writ of certiorari and quash the trial court's order.

Three years ago, Respondent filed a one-count complaint, petitioning the trial court for relief from shareholder deadlock pursuant to section 607.1430(1)(b), Florida Statutes. The statute Respondent brought his action under is entitled "Grounds for judicial dissolution." Nevertheless, Respondent argues that he never sought judicial dissolution, but rather judicial division of assets.

In response to the proceeding initiated by Respondent, Petitioners sought to purchase Respondent's interests in RUP and RES by timely filing notices of election, as provided for in section 607.1436(1), Florida Statutes. Although section 607.1436 outlines a process for Petitioners to purchase Respondent's interest, the parties did not progress down this path. Instead, Respondent moved to set aside or modify the elections filed by Petitioners. He argued to the trial court that section 607.1436, which authorizes an "[e]lection to purchase instead of dissolution" "[i]n a proceeding under § 607.1430," is not applicable because he is not seeking dissolution of the corporate entities. Rather, Respondent argued he is seeking an "alternative [] to judicial dissolution" under an entirely different statute, section 607.1434, i.e., an "equitable division" of corporate assets. Agreeing with

¹ This case was transferred from the Second District Court of Appeal to this Court on January 1, 2023.

Respondent, the trial court set aside Petitioners' elections to purchase under section 607.1436. It is that order which is the subject of this petition.

"A non-final order for which no appeal is provided by rule 9.130 may be reviewable by petition for a writ of certiorari, but only in very limited circumstances." *Bd. of Trs. of Internal Improvement Tr. Fund v. Am. Educ. Enters., LLC*, 99 So. 3d 450, 454 (Fla. 2012). Appellate courts may grant a petition for certiorari only when the petitioner establishes "(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 corrected on postjudgment appeal." *Univ. of Fla. Bd. of Trs. v. Carmody*, No. SC2022-0068, 2023 WL 4359498, at *5 (Fla. July 6, 2023). As recently reiterated by the Florida Supreme Court, "[t]he last two prongs together are 'referred to as irreparable harm'" and, as they are jurisdictional, we should analyze the last two prongs first. *Id.*

Accordingly, we begin by addressing irreparable harm to determine if this is one of those rare cases in which certiorari review is appropriate. In 1959, the University of Miami Law Review published an article discussing the problem of deadlock in a closely held corporation. The author of that article, Marvin E. Barkin, aptly observed that, "[w]hen the two sides come to a prolonged disagreement, the result is fairly obvious: the ability of the board to make policy is ended, the stockholders have no ability to elect successors, and the operation of the corporation,

if any, is left in the hands of the officers, removed from the supervision of the stockholders.” Marvin E. Barkin, *Deadlock and Dissolution in Florida Closed Corporations: Litigating and Planning*, 13 U. Miami L. Rev. 395, 395 (1959). According to Respondent’s own verified complaint, that is what has occurred in this case.

In Respondent’s verified complaint seeking “relief for deadlock,” he explained that at an annual meeting more than three years ago the shareholders deadlocked on the election of directors. As a result of the deadlock, Respondent expeditiously sought relief in the trial court by filing a verified complaint within three months’ time which stated that the companies were currently suffering irreparable injury and would continue to suffer in the future. Specifically, Respondent pled that the companies could “no longer conduct their business affairs to the advantage of the shareholders as a result of the deadlock.” Despite his allegations in the complaint, Respondent now urges this Court to dismiss this petition for lack of jurisdiction. We decline and find that Petitioner has demonstrated, based upon a confluence of factors, that an irreparable injury will occur if the trial court’s order is allowed to stand because it ignores the procedural requirements of section 607.1436, which deprives Petitioners of their statutory right to purchase Respondents shares in RUP and RES and indefinitely extends the damaging corporate deadlock.

As argued by Petitioners, the Florida Supreme Court has recognized that in rare instances irreparable injury may exist where statutory procedures are not followed, and it affects a party's substantive legal right. *See Globe Newspaper Co. v. King*, 658 So. 2d 518, 520 (Fla. 1995). The statute at issue in the present case is section 607.1436, Florida Statutes (2020). Section 607.1436 serves as a streamlined solution for breaking a corporate deadlock and states:

(1) In a proceeding under s. 607.1430(1)(b), the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

§ 607.1436(1), Fla. Stat. (2020).

The plain language of section 607.1436 provides the corporation or its shareholders a substantive right to end a deadlock by purchasing a petitioning shareholder's shares and places timelines on the process. Per the statute, an election to purchase must be filed "within 90 days after the filing of the petition under section 607.1430(1)(b)," ² and the parties then have 60 days to reach an agreement as to the fair value and terms of the purchase of the shares. *See* § 607.1436(2), (3), Fla. Stat.

² The trial court, in its discretion, may extend this deadline. § 607.1436(2), Fla. Stat. ("An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of the petition under s. 607.1430(1)(b) or at such later time as the court in its discretion may allow.").

When a purchase election is set aside, as the trial court did here, the dissolution proceeding progresses where it otherwise would have been dismissed, and the petitioning shareholder's rights are determined where the shareholder would otherwise have none. *See* § 607.1436(6), Fla. Stat. (After entry of an order directing purchase “the court shall dismiss the petition to dissolve the corporation under s. 607.1430(1)(b) and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded by the order of the court . . .”).

In the unique context of a corporation paralyzed by a prolonged stalemate, the damage is done when the statutory scheme is ignored, the deadlock is indefinitely extended, and trial court embarks on an alternative proceeding which upends the status quo which would otherwise be required to be maintained until an order directing the purchase of shares is entered. *See* § 607.1436(2), Fla. Stat. (“After an election has been filed by the corporation or one or more shareholders, the proceeding under s. 607.1430(1)(b) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his or her shares . . .”). The streamlined statutory scheme outlined in section 607.1436 cannot be meaningfully enforced post judgment because one of its purposes, which is evident from the text, is to provide Petitioners with a process, within strict time constraints, to quickly end corporate deadlock and take control. *See Escobar v. Olotegui*, 662 So. 2d 1361, 1363

(Fla. 4th DCA 1995) (finding irreparable harm where a statute’s protection would be illusory if petitioner had to wait to appeal until the end of the case). Instead of traveling this path, the trial court chose another, which allows it to, among other things, appoint a receiver, retitle real estate and sell corporate assets. The path the trial court has chosen begins the ringing of a bell which cannot be unrung.

Having found an irreparable injury, we turn to the question of whether Petitioner has demonstrated that that trial court departed from the essential requirements of law. “A departure from the essential requirements of law, alternatively referred to as a violation of clearly established law, can be shown by a misapplication of the plain language in a statute.” *Gonzalez v. State*, 15 So. 3d 37, 39 (Fla. 2d DCA 2009); *see also Hayes v. Monroe Cnty.*, 337 So. 3d 442, 446 (Fla. 3d DCA 2022) (“The failure to apply a controlling legal decision or statute ‘is a classic departure from the essential requirements of the law.’”); *Dep’t of Rev. o/b/o T.H.W. v. D.E.B.*, 312 So. 3d 180, 182 (Fla. 2d DCA 2021) (“A violation of ‘clearly established law’ can come from ‘controlling case law, rules of court, statutes, and constitutional law.’” (quoting *Allstate Ins. Co. v. Kaklamanos*, 843 So. 2d 885, 890 (Fla. 2003))).

Below, Respondent argued, and the trial court agreed, that because Respondent was not seeking dissolution as the remedy for deadlock, but rather alternative relief pursuant to section 607.1434, Florida Statutes, the statutory right

to purchase Respondent's shares under section 607.1436 was not triggered. Petitioners assert that this was a departure from the essential requirements of the law contending that the right under section 607.1436 was triggered once the underlying action was filed pursuant to section 607.1430(1)(b).

Section 607.1436, Florida Statutes (2020), states that “[i]n a proceeding under s. 607.1430(1)(b), the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares.” The parties do not dispute that the underlying action was filed pursuant to section 607.1430(1)(b). Indeed, Respondent's request for alternative relief pursuant to section 607.1434, and the trial court's ability to grant such relief, is dependent upon there being a proceeding under section 607.1430(1)(b). *See* § 607.1434(1), Fla. Stat. (2020) (discussing alternative remedies available “[i]n a proceeding under s. 607.1430 . . . as an alternative to directing the dissolution of the corporation . . .”).

According to the plain language of section 607.1436, the triggering event that gave rise to Petitioners' right to purchase Respondent's shares was Respondent's filing of “a proceeding under s. 607.1430(1)(b).” In accepting Respondent's argument that its selected remedy controls whether Petitioners' right to purchase was triggered, the trial court misapplied the plain language of the statute and departed from the essential requirements of the law.

We do not, by this opinion, address whether Petitioners' right to purchase Respondent's shares is an unconditional right. We acknowledge that section 607.1436(1) states that a notice of election may be set aside if "the court determines that it is equitable to set aside or modify the election," though, we note that no such finding was made by the trial court in its order setting aside the notice of election.

In light of the foregoing, we grant the petition for writ of certiorari and quash the trial court's order granting Derik Royal's, individually and as the Trustee of the Derik C. Royal Declaration of Trust, Motion to Set Aside Elections.

PETITION GRANTED; ORDER QUASHED; CAUSE REMANDED.

STARGEL, J., concurs.

WHITE, J., dissents without opinion.

Maria A. Borland, William J. Judge, Jr., and Mark M. Wall, of Hill, Ward & Henderson, P.A., Tampa, and Chris W. Altenbernd, of Banker Lopez Gassler, P.A., Tampa, for Petitioner.

Hala Sandridge, of Buchanan Ingersoll & Rooney P.C., Tampa, and Joshua A. Hajek and Erica Conklin Baines, of Dentons Cohen & Grigsby P.C., Naples, for Respondent.

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