

# Third District Court of Appeal

## State of Florida

Opinion filed May 22, 2019.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D19-839  
Lower Tribunal No. 18-1010

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**Steven K. Schwartz, P.A.,**  
Petitioner,

vs.

**Miriam Banks,**  
Respondent.

A Writ of Certiorari to the Circuit Court for Miami-Dade County, Jorge E. Cueto, Judge.

Steven K. Schwartz, P.A., and Steven K. Schwartz, for petitioner.

Miriam Banks, in proper person.

Before LOGUE, SCALES and HENDON, JJ.

SCALES, J.

In the guardianship proceedings below, petitioner Steven K. Schwartz, P.A. (“Schwartz”) has been representing respondent Miriam Banks in her capacity as

plenary guardian of Gerald Banks since June of 2018. On February 18, 2019, Schwartz filed a motion in the lower court seeking to withdraw as counsel for Ms. Banks, citing irreconcilable differences between them. The limited record before us reflects that Ms. Banks consented to the withdrawal. Schwartz set the withdrawal motion for hearing, but, according to Schwartz's petition, the trial court's judicial assistant cancelled the hearing. The trial court has not entered an order either cancelling the hearing or adjudicating Schwartz's withdrawal motion.

Schwartz now seeks in this Court, via certiorari petition, some type of order "remand[ing] the case with directions to the trial court to enter the order of withdrawal."

A district court may exercise certiorari jurisdiction only when the trial court causes a party irreparable harm by entering an order that departs from the essential requirements of law. Walgreen Co. v. Rubin, 229 So. 3d 418, 420-21 (Fla. 3d DCA 2017). Indeed, when a district court grants a certiorari petition, the only relief available is a quashing of the lower court's order. See Broward Cty. v. G.B.V. Int'l, Ltd., 787 So. 2d 838, 843-44 (Fla. 2001). In this instance, absent an order entered below, we lack certiorari jurisdiction to adjudicate Schwartz's petition.

Nonetheless, pursuant to Florida Rule of Appellate Procedure 9.040(c), we exercise our discretion and treat Schwartz's certiorari petition as a petition for a

writ of mandamus. We grant the petition, but trusting that the trial court, in a timely manner, will adjudicate Schwartz's motion to withdraw,<sup>1</sup> we withhold issuance of the writ.

Petition for writ of certiorari treated as petition for writ of mandamus, and granted; issuance of formal writ withheld.

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<sup>1</sup> We express no opinion as to the merits of Schwartz's motion to withdraw.