

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-845

PEOPLE'S TRUST INSURANCE
COMPANY,

Petitioner,

v.

THEODORE R. FOSTER,

Respondent.

Petition for Writ of Certiorari—Original Jurisdiction.

January 26, 2022

OSTERHAUS, J.

People's Trust Insurance Company seeks a writ of certiorari to quash an order compelling discovery of certain underwriting manuals in effect when it issued or renewed Theodore Foster's homeowners' policy. We deny the petition because People's Trust has not shown a departure from the essential requirements of law.

Foster filed a breach of contract suit in circuit court alleging that People's Trust failed to pay his insurance claim after a water pipe in his home leaked and caused damage to his property. People's Trust asserted in its answer that the loss was excluded from coverage because Foster's pipe damage predated the policy's inception. In seeking discovery as part of his breach of contract

case, Foster requested, among other things, the insurer's underwriting manual(s) in effect at the time of issuance or renewal of his policy. When People's Trust objected to turning over any manuals, Foster sought to compel their production. After a hearing, the transcript of which was not provided here, the court granted Foster's motion. People's Trust then filed the instant petition to avoid producing its manual(s).

Certiorari petitions seeking relief from discovery orders face a high hurdle. See *McCloud v. Tackett*, 308 So. 3d 687, 688-89 (Fla. 1st DCA 2020) (describing relief as "extremely rare"). To be entitled to certiorari relief, petitioner must show as a jurisdictional matter that it stands to suffer "material injury for the remainder of the case that cannot be corrected on appeal." See *Dodgen v. Grijalva*, ___ So. 3d ___, 46 Fla. L. Weekly S293, 2021 WL 4782479 *3 (Fla. Oct. 14, 2021) (quoting *Paton v. GEICO Gen. Ins. Co.*, 190 So. 3d 1047, 1052 (Fla. 2016)). If this jurisdictional threshold is met, relief is only available if the error a petitioner complains about involves "a clearly established principle of law," rather than just a "simple" legal error. *Dodgen*, 2021 WL 4782479 at *3 (quoting *Allstate Ins. Co. v. Kaklamanos*, 843 So. 2d 885, 889 (Fla. 2003)).

In this case, we recognize the long history of courts accepting jurisdiction on insurance-discovery disputes like this one. The Florida Supreme Court and district courts have repeatedly quashed erroneous discovery orders on certiorari, for example, where insurers erroneously have been ordered to turn over sensitive business materials that are irrelevant or prematurely sought. See, e.g., *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 95 (Fla. 1995) (quashing a district court decision to the extent that it permitted possibly irrelevant discovery); *State Farm Fla. Ins. Co. v. Hill*, 314 So. 3d 466, 468 (Fla. 3d DCA 2020) (quashing orders that permitted discovery of insurers' claims handling policies, practices, procedures, manuals or guidelines as premature); *Gen. Star Indem. Co.*, 93 So. 3d 501, 502-03 (Fla. 3d DCA 2012) (quashing order requiring production of premature bad faith discovery); *State Farm Mut. Auto Ins. Co. v. Cook*, 744 So. 2d 567, 568 (Fla. 2d DCA 1999) (finding that the plaintiff was not entitled to materials relevant to bad faith claim).

People's Trust argues that this case, too, presents an order that requires quashing. It asserts that the circuit court's order allowing discovery of its underwriting manual(s) is *categorically* prohibited in breach of contract cases, like this one, until and unless bad faith litigation commences. But this sweeping characterization of the cases isn't correct. *See, e.g., American Integrity Ins. Co. of Florida v. Venable*, 324 So. 3d 999 (Fla. 1st DCA 2021) (denying certiorari as to the trial court's order compelling discovery of an underwriting manual); *Avatar Prop. & Cas. Ins. Co. v. Simmons*, 298 So. 3d 1252 (Fla. 5th DCA 2020) (rejecting a categorical claim of an underwriting file privilege). Although courts in a number of cases have quashed the premature discovery of insurers' business practices, claims files, underwriting files, underwriting manuals, and the like in breach of contract actions, there is no categorical legal rule prohibiting discovery of underwriting manuals in breach of contract cases, especially if they are relevant.

Here, Foster claims that some scope-of-inspection-related information in Peoples Trust's underwriting manual(s) may be relevant to contesting the insurer's affirmative defense that Foster's pipe damage predated the inception of his policy. On this record, we have no basis for rejecting the merits of Foster's assertion that the underwriting manual(s) are relevant. Without a transcript from the circuit court hearing below, or perhaps a privilege log describing the insurer's documents, we have no definitive basis upon which to quash the circuit court's discovery order. Petitioner has not shown a violation of a clearly established principle of law. Also, because there is no evidence that Petitioner presented its alternative trade secrets-based argument to the circuit court, we have no cause for quashing the order on that basis. *See U.S. Bank Nat'l Ass'n. v. Trnumn*, 247 So. 3d 567, 571 (Fla. 1st DCA 2018) (“[A] petitioner cannot raise in a petition for writ of certiorari a ground that was not raised below.”).

Accordingly, we deny the petition for writ of certiorari.

WINOKUR and LONG, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Patrick M. Chidnese, of Bickford & Chidnese, LLP, Tampa; Daniel J. Maher, of Cole, Scott, & Kissane P.A., Miami; Brett R. Frankel, and Alexander S. Beck, of People's Trust Insurance Company, Deerfield Beach, for Petitioner.

Mark A. Nation, The Nation Law Firm, Longwood, for Respondent.