

288 So.3d 714  
District Court of Appeal of Florida, Fourth District.

Randolph SAPP, Petitioner,

v.

Monica OLIVARES, individually, and as Personal Representative of the Estate of [Alberto Olivares](#), and Publix Super Markets, Inc., Respondents.  
Publix Super Markets, Inc., Petitioner,

v.

Monica Olivares, individually, and as Personal Representative of the Estate of [Alberto Olivares](#), and Randolph Sapp, Respondents.

No. 4D19-2190, No. 19-2201

[January 8, 2020]

#### Synopsis

**Background:** Deceased motorist's spouse, individually and as personal representative of motorist's estate, moved for leave to amend the complaint to add punitive damages in wrongful death action against truck driver and his employer arising from fatal automobile crash. The Circuit Court, 17th Judicial Circuit, Broward County, [William W. Haury, J.](#), granted leave to amend. Defendants petitioned for certiorari review.

The District Court of Appeal held that it did not have certiorari jurisdiction to review trial judge's order granting leave to amend.

Petition dismissed.

**Procedural Posture(s):** Petition for Writ of Certiorari; Motion to Amend the Complaint.

\*715 Petitions for writ of certiorari to the Circuit Court for the Seventeenth Judicial Circuit, Broward County; [William W. Haury, Jr.](#), Judge; L.T. Case No. CACE18-006314.

#### Attorneys and Law Firms

[Cindy J. Mishcon](#) of Lewis Brisbois Bisgaard & Smith LLP, Fort Lauderdale, for petitioner Randolph Sapp.

[Edward G. Guedes](#), [Richard B. Rosengarten](#), and [Eric S. Kay](#) of Weiss Serota Helfman Cole & Bierman, P.L.,

Coral Gables, for Petitioner Publix Supermarkets, Inc.

[Raymond Valori](#), [Michael Freedland](#) and [Melissa Gunion](#) of Freedland Harwin Valori, P.L., Fort Lauderdale, and Kara Rockenbach Link and [Daniel M. Schwarz](#) of Link & Rockenbach, P.A., for respondent Monica Olivares, individually, and as Personal Representative of the Estate of Alberto Olivares.

#### Opinion

Per Curiam.

Petitioners, Publix Supermarkets and Raymond Sapp, both seek certiorari review of an order granting plaintiff's motion to amend to seek punitive damages in this wrongful death cause of action. [Section 768.72\(1\), Florida Statutes \(2018\)](#), allows for the amendment of a civil action to state a claim for punitive damages when "there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages." Petitioners contend that the evidence presented was insufficient to make a "reasonable showing by evidence" that punitive damages may be recovered and that the court failed to explain how its limited findings were sufficient to justify a claim for punitive damages.

In *Globe Newspaper Co. v. King*, 658 So. 2d 518, 519 (Fla. 1995), our supreme court held that:

appellate courts do have certiorari jurisdiction to review whether a trial judge has conformed with the procedural requirements of [section 768.72](#), but do not have certiorari jurisdiction to review a decision of a trial judge granting leave to amend a complaint to include a claim for punitive damages when the trial judge has followed the procedural requirements of [section 768.72](#). Certiorari is not available to review a determination that there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages.

In this case, we conclude that the procedural requirements of the statute were followed. See \*716 *Event Depot Corp. v. Frank*, 269 So. 3d 559, 561-62 (Fla. 4th DCA 2019) (requiring three procedural steps: attachment of the proposed amended complaint to the motion to amend; service of the proffer or other evidence to support the punitive damage claim; and an affirmative finding by the trial court that the plaintiff made a reasonable showing by evidence to support a punitive damage claim). As we are bound by *Globe*, we cannot review the petitioners' claims addressing the sufficiency of the evidence or the reasonableness of the trial court's determination.<sup>1</sup>

*The petitions are therefore dismissed.*

Warner, May And Ciklin, JJ., Concur.

#### All Citations

288 So.3d 714, 45 Fla. L. Weekly D81

#### Footnotes

<sup>1</sup> We do note that several appellate courts and individual judges have questioned the continued efficacy of *Globe* in modern litigation and suggested an amendment to Florida Rule of Appellate Procedure 9.130 to permit non-final appeals of orders on motions to amend to add a punitive damage claim. See *Event Depot Corp.*, 269 So. 3d at 563-65 (Kuntz, J., concurring specially); *Osechas v. Arcila*, 271 So. 3d 65, 66 (Fla. 3d DCA 2019) (Scales, J., specially concurring); *Levin v. Pritchard*, 258 So. 3d 545, 548 n.4 (Fla. 3d DCA 2018); *TRG Desert Inn Venture, Ltd. v. Berezovsky*, 194 So. 3d 516, 520 n.5 (Fla. 3d DCA 2016).