

IN THE SUPREME COURT OF FLORIDA

CASE NO. 64,251

Fourth District Case Nos.

82-1686
82-1992
82-1993
82-2070
82-2078

FLORIDA PATIENT'S COMPENSATION
FUND,

Petitioner,

vs.

SUSAN ANN VON STETINA, by and
through her parents, legal
guardians and next friends,
MARY VON STETINA and LEO VON
STETINA,

Respondents.

FILED

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ON PETITION FOR DISCRETIONARY REVIEW OF A
DECISION OF THE DISTRICT COURT OF APPEAL OF
FLORIDA, FOURTH DISTRICT

PETITIONER'S
BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Fourth District Case Nos. 82-1686, 82-1992, 82-1993, 82-2070,
and 82-2078, along with the matters appealed in Supreme Court Case No.
64,237, all arose out of a medical malpractice action brought on
behalf of Susan Ann Von Stetina by her parents, Mary Von Stetina and
Leo Von Stetina, against the Florida Medical Center, Inc., d/b/a
Florida Medical Center, and the Florida Patient's Compensation Fund.
The jury in that case found negligence by Florida Medical Center and
awarded damages of more than \$12 million. This judgment in itself was

significant, as the highest medical malpractice award ever recorded in Florida. The importance of the Von Stetina case, however, only began with the \$12 million plus verdict.

Trial Court's Constitutional Holdings

The trial court in Von Stetina found two Florida statutes unconstitutional. The trial judge held that the \$12 million judgment was the joint and several liability of Florida Medical Center and the Florida Patient's Compensation Fund, because the trial judge concluded that section 768.54(2)(b), Florida Statutes, which provides that the Fund member, in this case Florida Medical Center, will only be liable for the first \$100,000.00 of a claim arising during the member's participation in the Fund, was invalid.*/

The trial court also held, in response to a motion from Plaintiff, that the Florida Patient's Compensation Fund was liable for the entire \$12 million in a lump sum, and that the subsection of the same statute which provided that the Florida Patient's Compensation Fund could only satisfy judgments by payment of a maximum of \$100,000.00 per year, or as the payments were needed, section 768.54(3)(e)3, was unconstitutional.

These two constitutional holdings, the question of interpretation of the "limitation of liability" issue, and the issues of the validity of the basic liability and damages verdict are among the issues before this Court in Case No. 64,237, appealed to this Court by Notice of Appeal filed by the Florida Patient's Compensation Fund on

*/ The trial judge also interpreted the statute, contrary to its terms, as calling for joint and several liability of the Fund and the Fund Member. Petitioner has also sought discretionary review of this interpretation question, in which the Fourth District expressly disagreed with the Third District's decision in Mercy Hospital, Inc. v. Menendez, 371 So.2d 1077 (Fla. 3d DCA 1979), cert. denied, 383 So.2d 1198 (Fla. 1980). Copies of the Notice to Invoke Discretionary Review filed by the Florida Medical Center (A. 33), and the Fund's Joinder in it (A. 35), are attached in the Appendix to this brief.

September 9, 1983, and joined in by Florida Medical Center shortly thereafter. Copies of both the Notice of Appeal, (A. 20), and the joinder in it, (A. 25), are in the attached Appendix to this brief.

Trial Court's Actions on Attorney's Fees

Acting on different post-trial motions, the trial judge expressly upheld the validity of section 768.56, the statute which authorizes the award of a reasonable attorney's fee in medical malpractice actions. The trial judge found that \$4.4 million was a reasonable attorney's fee within the meaning of this statute, and awarded that amount to the Plaintiff.

Decision of the Fourth District Court of Appeal

All these matters traveled to the Fourth District Court of Appeal via eight Notices of Appeal. The matters were briefed in three separate groups: (1) validity of liability and damage judgments; constitutionality of Fund member limitation of liability; and constitutionality of Fund Statute's payout requirements; (2) constitutionality of the attorney's fee statute, section 768.56; and (3) reasonableness of the attorney's fee awarded, assuming the statute was constitutional. The Fourth District affirmed the trial court on all issues in brief numbers 1 and 2, but found that \$1.5 million was the maximum "reasonable attorney's fee" the law would allow. The issues in Briefs numbered (2) and (3) before the Fourth District are the issues raised by this petition.

ARGUMENT

I. THIS COURT HAS JURISDICTION OVER THE ISSUES RAISED IN THIS PETITION

The Court Has Jurisdiction As Part of Appeal Previously Filed.

This Court has appellate jurisdiction over the entire decision of the Fourth District Court of Appeal, which resolved all

the issues before it in one opinion. Although it is only the holdings of unconstitutionality which give petitioner an appeal of right, this Court's jurisdiction extends to the whole case, and every matter in the Fourth District's opinion. See Seaboard Airline Railroad Company v. Branham, 104 So.2d 356, 358 (Fla. 1958). The issues raised in this brief are therefore already in this Court's jurisdiction by virtue of the notice of appeal previously filed.

The Issues Come Within This Court's
Discretionary Jurisdiction As Well

Ordinarily, there would be no reason to seek discretionary review of the issues raised in this petition in such circumstances, but in this case it is desirable for this Court to separately examine the issues raised by the petition, a copy of which is reprinted in the Appendix (A. 27).

The notice, in which Florida Medical Center has joined (A. 31), only addresses the second and third sets of issues argued in the Fourth District, i.e., those issues concerning the validity and application of the medical malpractice attorney's fee statute, section 768.56, Fla.Stat.

This Court has jurisdiction in its discretion over the issues in Case No. 82-1686, by virtue of Article V, Section 3(b)(1), of the Florida Constitution. On the face of the opinion, a conformed copy of which is attached hereto (A. 1-19), the Fourth District expressly declared section 768.56 valid. See Opinion at 12-14 (A. 12-14).

Issues concerning the determination of a "reasonable attorney's fee" under section 768.56 are also raised in the Fund's Notice to Invoke Discretionary Jurisdiction. These issues should be considered together with this Court's analysis of the constitutionality

of the attorney's fee statute. If Florida law provides no guidelines for determination of a "reasonable attorney's fee", and the matter is left to the subjective choice of a judge or court, section 768.56 is subject to an additional constitutional objection, namely, that it is void for vagueness and unconstitutional as a denial of due process to the party assessed the fee.*/

II. REASONS FOR ACCEPTING JURISDICTION

While this Court has jurisdiction to separately consider the issues raised by each of these cases, it may or may not choose to do so. The decision "is a matter solely for this Court in the exercise of its sound judicial discretion to determine." Zirin v. Charles Pfizer & Co., 128 So.2d 594, 597 (Fla. 1961). Appellants submit that the issues raised by the Fund's Notice to Invoke Discretionary Jurisdiction would appropriately be considered separately from the other issues in the appeal.

Since the constitutional issues which give the Court appellate jurisdiction are a matter of immediate urgency, cast great uncertainty on the Florida Patient's Compensation Fund, its operation, and the protection given its members, there is a need to speedily resolve those issues.**/ Under the analysis of the Fourth District,

*/ The Court also has jurisdiction over the issues as part of the notice of appeal filed from the entire decision of the Fourth District (this Court's Case No. 64,237) this Court may view this Brief on Jurisdiction as a Motion for Bifurcated Consideration of the issues raised in the Notice of Appeal earlier filed by the Fund, and joined in by Florida Medical Center (A. 20).

**/ The same can be said of the issues raised in the Hospital's Notice to Invoke Discretionary Jurisdiction (A. 33), which should probably be consolidated with the issues in the appeal of right. Normally this Court would not consider the constitutionality of a statute before the issue of its interpretation was resolved.

judgments or settlements which the Fund has entered into may be called into question. Moreover, numerous cases are pending in which the Florida Patient's Compensation Fund is a defendant, and in which the issues of the protection given a Fund member and the Fund statute's payout requirements will face trial courts. Will the Fund member be jointly and severally liable for the full verdict, despite his purchase of protection from the Fund? Does the Fund pay future damages in a lump sum or, instead, as they are incurred over time, as the Florida statutes require? The lower courts need settled answers to these questions.

The Court, in Department of Insurance v. Southeast Volusia Hospital District, ___ So.2d ___, 8 Fla.L.W. S.Ct. 354 (Fla. September 15, 1983), validated the concept of the Patient's Compensation Fund and specifically the terms of the Fund statute, which become a binding contract between Fund members and the Fund when a member joins the Fund.

The opinion in Von Stetina, as the Fourth District, to its credit, anticipated, is contrary at least to the thrust of this Court's opinion in Southeast Volusia. The lower courts will need guidance in the sorting out of the now-again-confused situation of the Patient's Compensation Fund. The Fourth District, within the very four corners of the Von Stetina opinion itself, recognized that this Court would probably decide at least the constitutional issues raised by the opinion "in the near future." Opinion at 8 (A. 8). The Fourth District was correct in its estimate of the importance of the issues in its opinion.

Essentially, therefore, three appeals have been filed in this Court:

No. 64,251 (discretionary) raises (1) the constitutionality of section 768.56 and (2) the standards for determination of a "reasonable attorney's fee" under the statute, if constitutional.

No. 64,252 (discretionary) raises the interpretation of the provision of the Fund statute which on its face limits the primary liability of Fund members.

No. 64,237 (an appeal of right) in addition to all the above issues raises: (1) the constitutionality of the limitation of liability given Fund members; (2) the provisions governing payment of claims by the Fund, and (3) issues of the evidentiary errors affecting the liability and damage judgment.

The constitutional issues threaten the Fund's ability to provide protection to the Florida health care providers who are its members and puts in doubt the legislative device which is intended to provide needed care for patients who have been injured by medical malpractice. These issues should be briefed and argued on an expedited basis.

Petitioner therefore proposes that the Court consider the issues seriatim -- No. 64,252 and No. 64,237 (appeal of right) first, on an expedited basis, and then No. 64,251 in the normal appellate course. When petitioner knows of this Court's resolution of these jurisdictional or judicial management questions, petitioner can begin briefing the matter.

While the issues raised in the Fund's Notice to Invoke Discretionary Jurisdiction present no emergency, there are good reasons for this Court to resolve them. The constitutionality of Section 768.56 is being raised throughout the state. The circuit courts are reaching divergent answers to the constitutionality of the

statute. The question has been argued and submitted to the Third District Court of Appeal. Davis v. North Shore Hospital, Case No. 82-1392. Since it is likely that this Court must ultimately decide the constitutional issue in any case, it may as well be in this case.

The public interest in the \$4.4 million fee awarded in this case shows that there is ample reason for this Court to address the "reasonable attorney's fee" issue. At present, the trial courts in Florida, however conscientious, have had conflicting guidance on the selection of a "reasonable attorney's fee". While some Florida courts have placed great emphasis on the importance of a reasonable hourly rate, e.g., Manatee County v. Harbor Ventures, Inc., 305 So.2d 299 (Fla. 2d DCA 1975), the Fourth District in the instant case refused to be so guided. (Opinion at 17, A. 17). The Fourth District, offered an opportunity to inject some standards into the process, rejected the opportunity and preferred a subjective, standardless, approach which puts the courts in the role of the oracle at Delphi, making the entire process of reasonable fee setting constitutionally dubious.

With the increasing number of statutes or contracts which authorize payment of reasonable attorney's fees to the prevailing party, this Court, in the wise exercise of its power and authority, should enter the fray to dispel constitutional doubts and to provide some guidance to courts and the Florida Bar on the meaning of the "reasonable attorney's fee", particularly in cases where the magnitude of the result obtained in dollar verdict is out of proportion to the time and labor required in obtaining it.

CONCLUSION

This Court has jurisdiction over the issues raised in the Florida Patient's Compensation Fund's Notice to Invoke Discretionary Jurisdiction, and should choose to exercise it if the Court determines, as petitioner urges, that the issues raised in this petition should be considered separately from the numerous other issues in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a correct copy of the foregoing brief and attached Appendix was mailed to the addressees listed on the attached Service List this 23rd day of September, 1983.

By: Talbot D'Alemberte
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