IN THE SUPREME COURT OF FLORIDA

Case No. 64,252

FLORIDA MEDICAL CENTER, INC. d/b/a FLORIDA MEDICAL CENTER,

Petitioner,

vs.

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

Respondents.

PETITIONER'S BRIEF ON JURISDICTION

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INTRODUCTION

This aspect of this case is currently before this Court pursuant to notice to invoke discretionary jurisdiction pursuant to Rule 9.030(a)(2)(A)(iv), Fla.R.App.P. This petition, concerning the constitutionality of the liability limitation provisions of the Florida Medical Malpractice Reform Act is a partial but critical portion of a much broader picture, involving also the constitutionality of various other provisions relating to the fundamental operation of the FLORIDA PATIENT'S COMPENSATION FUND. These additional constitutional issues are being brought before this Court by various parties in this and other proceedings under this Court's appellate and discretionary jurisdiction.

The petitioner, FLORIDA MEDICAL CENTER, INC. d/b/a FLORIDA MEDICAL CENTER HOSPITAL was the Defendant in the trial court and an appellant in the District Court of Appeal, Fourth District. Joining with this Petitioner is the FLORIDA PATIENT's COMPENSATION FUND, also a Defendant/Appellant. The Plaintiffs/Appellees/ Respondents are SUSAN ANN VON STETINA, by and through her parents, legal guardians and next friends, MARY VON STETINA and LEO VON STETINA. In this brief, the parties will be referred to as Petitioner or Respondent collectively.

In this brief, the symbol "A" shall stand for the Appendix accompanying this brief and all emphasis in quotations is furnished by counsel.

Based upon the reasons and authorities hereinafter contained, it is respectfully submitted that this Court has and should

exercise its discretionary jurisdiction to review the direct conflict which exists between the District Courts of Appeal and upon consideration of the merits, should quash the decision sought to be reviewed.

STATEMENT OF CASE AND FACTS

The case sub judice began as a medical malpractice action against Petitioners. After one of the largest personal injury verdicts in the history of Florida, it took on broader implications and importance by virtue of various post-trial orders entered by the Circuit Court and subsequently affirmed by the District Court of Appeal. For purposes of this brief, all applicable facts and procedural history surrounding the case are found on the face of the decision sought to be reviewed. (A 1-19). While this jurisdictional brief is limited in scope, and will not therefore discuss either the merits or jurisdictional questions related to companion proceedings, it is suggested that the instant proceedings must be considered in light of the totality of the case and its devastating and unsettling effect on the entire statutory scheme devised by the Legislature in the Medical Malpractice Reform Act of 1975.

Section 768.54(2)(b), Fla.Stat., as it existed at the time of the rendition of the jury verdict and final judgment in the case at bar provided that:

> "A health care provider shall not be liable for an amount in excess of $100,000.00 per claim. . . ." upon compliance with specified conditions.

Those conditions were met in the case sub judice but upon application to the trial court for the bargained-for protection of Section 768.54, the Petitioner was rebuffed and the trial court declared the section to be unconstitutional. As a result, final judgment was rendered against Petitioner in the full multi-million dollar amount of the verdict. Millions of dollars in attorney's fees were also assessed against Petitioner under Sec. 768.56, Fla.Stat.

This decision, inter alia, was appealed to the District Court of Appeal, Fourth District, which held in pertinent part:

> "Section 768.54(2)(b) provides that:
> 'a health care provider shall not be liable for an amount in excess of $100,000.00 per claim. . . .' The hospital argues that the reasons advanced by the trial court as the basis for the entry of a judgment in the full amount of the verdict is tantamount to glossing over the express language of the statute, thus directly conflicting with Mercy Hospital, Inc. v. Menendez, 371 So.2d 1077 (Fla. 3d DCA 197), cert.den., 383 So.2d 1198 (Fla. 1980), wherein the court stated:
>
> 'The provision in the statute [768.54(2)(b)] is one of limitation of judgment upon the performance of conditions specified.'
>
> Id. at 371 So.2d 1079. The hospital also contends that the trial court erred when it concluded that this section of the statute is unconstitutional because it constitutes an infringement upon the inherent authority of the court to enforce its judgment.

> In Mercy Hospital, Inc., supra., the principal question before the Third District Court was whether a defendant health care provider is required to plead the medical malpractice reform act in order to receive the benefits of the limtation or whether it is sufficient to show compliance with the statute in limitation of judgment after the entry of a jury verdict. The court held that the plaintiffs had the burden of making the Fund a party to the suit where recovery is sought in excess of $100,000.00, and that upon the plaintiffs' failure to make the Fund a party, the trial court may within the time allowed, upon proper motion pursuant to Florida Rule of Civil Procedure 1.530, enter an order for the limitation of the judgment in accordance with Section 768.54(2)(b), Florida Statutes (1977). We must respectfully disagree with our sister court. We believe the trial court, in the case now before us, properly decided that, 'The statute imposes no substantive limitation upon plaintiffs' right to judgment in the full amount of her damages,' and that the statute merely prevents collection of the judgments except on the terms proscribed therein.
>
> While both our sister court and the hospital conclude that the intent of the statute is to limit judgments, such a conclusion is not supported by the statute. . . ." (A 8-9).

In other words, both the trial court and the Fourth District concluded that Section 768.54(2)(b) was a nullity and could not be construed in the manner postulated by the Third District. In so rejecting the Third District's alternative construction, the Fourth District over-reached as a matter of statutory construction,

expressly rejecting proffered construction of the statute which would have rendered it both reasonable and constitutional. In the decision sub judice, the District Court was at least frank enough to recognize that its decision conflicted with the decision of the District Court of Appeal, Third District, in Mercy Hospital and so stated on the face of the decision.

ARGUMENT

ISSUE

WHETHER THE DECISION OF THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT, SOUGHT TO BE REVIEWED IS IN DIRECT CONFLICT WITH THE DECISION OF THE THIRD DISTRICT IN MERCY HOSPITAL INC. v. MENENDEZ, SUPRA, and THE DECISION OF THE FIRST DISTRICT IN OWENS v. FLORIDA PATIENT'S COMPENSATION FUND, 428 So.2d 708 (Fla. 1st DCA, 1983) ON THE SAME QUESTION OF LAW?

Article V, Section 3, of the Florida Constitution, provides this Court with discretionary jurisdiction to review by certiorari any decision of a district court of appeal that expressly and directly conflicts with the decision of another district court of appeal or of the Supreme Court on the same question of law. As amended in 1980, this provision effectively halted the liberality with which petitions for writs of certiorari were being granted and readopted earlier decisions of the Supreme Court dealing with conflict certiorari. See, Jenkins v. State, 385 So.2d 1356 (Fla. 1980). Those earlier cases had established two situations which justified the exercise of conflict jurisdiction. On the one hand, decisions could be found in conflict if the decision sought to be reviewed announced a rule of law which conflicted with a rule previously announced by the Supreme Court or another district court. On the other hand, the decision sought to be reviewed could apply a rule of law to produce a different result in a case involving substantially similar facts to those contained in a prior case decided by the Supreme Court for another district court of appeal.

See, e.g., Pinkerton-Hays Lumber Co. v. Polk, 127 So.2d 441 (Fla. 1961); Kincaid v. World Ins. Co., 157 So.2d 517 (Fla. 1963); Nielson v. City of Sarasota, 117 So.2d 731 (Fla. 1960). It is respectfully submitted that the decision sought to be reviewed in the instant case clearly meets the requisites of the former situation, to-wit, the announcement of a rule of law which expressly and directly conflicts with a rule of law previously announced by other district courts of appeal in both Mercy Hospital and Owens. Furthermore, there is at least implicit if not express conflict between the effect of the decision sought to be reviewed and the most recent decision of this Court in Department of Insurance v. Southeast Volusia Hospital District, 8 FLW 354 (Fla., September 15,1983).

The decision of this Court in Southeast Volusia recognized the extreme importance of the entire statutory scheme under attack in the instant case and specifically held:

> "The provisions of the statute plainly satisfy the purpose of the statute, namely, to provide medical malpractice protection for Florida health care providers under terms accepted by the participants."

The Petitioner in the instant case relied upon the clear wording of the statute and took at face value the legislative promise that upon performance of certain conditions precedent, Petitioner would be afforded "protection" by limitation of judgments in malpractice actions. This Petitioner, as well as countless others throughout the state, accepted the legislative directive, performed the conditions precedent and dropped privately available excess liability insurance

which could have provided immediate protection against actions of this type. The "terms accepted by" Petitioner for participation in the legislative scheme included the crucial limitation found in Section 768.54(2)(b)-a limitation destroyed by the trial court and the District Court of Appeal in the instant case.

Direct conflict with Mercy Hospital is obvious if, for no other reason, than the Fourth District's "disagreement" with its sister court. The conflict with Owens is more subtle and provides supplementation to Petitioner's belief that obvious conflict exists. In Owens the First District held that the Florida Patient's Compensation Fund owes an independent obligation to a plaintiff patient and does not owe an obligation by virtue of a third-party beneficiary insurance mechanism. By so holding, and by relying upon Mercy Hospital, the First District recognized and approved the limitation in Section 768.54(2)(b).

That direct conflict exists, is beyond question. That this Court should exercise its discretionary jurisdiction to review this portion of the decision sought to be reviewed (in conjunction with its review of the entire decision), is equally evident. Thousands of heath care providers have relied upon the good faith of the Legislature and have voluntarily joined or failed to opt out of participation in the Florida Patient's Compensation Fund. As a result, they have dropped or failed to purchase excess liability insurance and have paid and are obligated to pay substantial assessments to the Fund which this Court has approved in Southeast Volusia. The decision sought to be reviewed strips away the very protection (i.e., acceptable terms) which Florida health care providers were

told by the Legislature existed under and by virtue of Section 768.54(2)(b). Failure to review the decision in the context of this limitation will result in a major upheaval and exacerbated crisis throughout the health care industry in the State of Florida. Failure to quash the decision sought to be reviewed will render incongruous the result of the decision in Southeast Volusia insofar as it approved and authorized substantial retroactive assessments against health care providers such as the Petitioner. On the one hand, this Court will have told health care providers that they are and will be liable for very substantial assessments as participants in the Florida Patient's Compensation Fund while, on the other hand, the decision of the District Court of Appeal, if left unassailed, will tell those self-same health care providers that they will receive nothing in return for their substantial payments. Such an absurdity cannot be countenanced and this Court must review the decision of the Fourth District and upon consideration of the merits, reject the reasoning of the Fourth District and adopt the reasoning and procedure outlined by the Third District in Mercy Hospital Inc. v. Menendez, supra.

CONCLUSION

Based upon the foregoing reasons and authorities, it is respectfully submitted that this Court has and should exercise discretionary jurisdiction to review the decision of the District Court of Appeal, Fourth District, insofar as that decision is in direct conflict with decisions from the First and Third Districts and in implicit conflict with the decision of this Court in Southeast Volusia. Petitioner further suggests that this entire case should be reviewed by this Court under the various companion proceedings. Upon such review, this Court should quash the decision sought to be reviewed in several respects and, ultimately, the erroneous decisions of the trial court which precipitated these various appeals must be reversed and the cause remanded for a new trial as well as application of proper constitutional construction to the Florida Medical Malpractice Reform Act of 1975.

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 21st day of September 1983 to All Counsel of Record.

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