

IN THE SUPREME COURT OF FLORIDA

64,381

CASE NO.

Fourth District Case Nos.

82-1984
82-2085.

FILED

NEIL J. KARLIN, M.D. and
FLORIDA PATIENT'S COMPENSATION FUND,

OCT 20 1983

Petitioners,

SID J. WHITE
CLERK SUPREME COURT

vs.

By _____
Chief Deputy Clerk

DONNA DENSON and JOSEPH DENSON,

Respondents.

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

PETITIONERS'
BRIEF ON JURISDICTION

Attorneys for Petitioners

Richard B. Collins
PERKINS & COLLINS
702 Lewis State Bank Building
Tallahassee, Florida 32301
(904) 224-3511

Talbot D'Alemberte
Samuel J. Dubbin
Jeffrey B. Crockett
STEEL HECTOR & DAVIS
1400 Southeast Bank Building
Miami, Florida 33131
(305) 577-2800

IN THE SUPREME COURT OF FLORIDA

CASE NO.

Fourth District Case Nos.

82-1984

82-2085

NEIL J. KARLIN, M.D. and
FLORIDA PATIENT'S COMPENSATION FUND,

Petitioners,

vs.

DONNA DENSON and JOSEPH DENSON,

Respondents.

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

PETITIONERS'
BRIEF ON JURISDICTION

Attorneys for Petitioners

Richard B. Collins
PERKINS & COLLINS
702 Lewis State Bank Building
Tallahassee, Florida 32301
(904) 224-3511

Talbot D'Alemberte
Samuel J. Dubbin
Jeffrey B. Crockett
STEEL HECTOR & DAVIS
1400 Southeast Bank Building
Miami, Florida 33131
(305) 577-2800

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS.	1
ARGUMENT	3
THIS COURT HAS DISCRETIONARY JURISDICTION OVER THE ISSUES RAISED IN THIS PETITION	
CONCLUSION	5
CERTIFICATE OF SERVICE	6
APPENDIX	End of Brief

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE(S)</u>
<u>Davis v. North Shore Hospital</u> , Third District Court of Appeal Case No. 82-1392, Opinion filed October 11, 1983	4
<u>Florida Medical Center, Inc. v. Von Stetina</u> , 8 Fla. L. W. 2038 (Fla. 4th DCA Case Nos. 82-1332, 82-1341, 82-1597, 82-1686, 82-1992, 82-2070, 82-2078, Opinion filed August 10, 1983), <u>on appeal Florida Patient's Compensation Fund v. Von Stetina</u> , Supreme Court Case No. 64,251	2, 3, 4
<u>Matthews v. Pohlman</u> , First District Court of Appeal Case No. AR-398.	4
<u>Young v. Altenhaus</u> , Third District Court of Appeal Case No. 82-1761, Opinion filed October 11, 1983.	4
 <u>CONSTITUTIONAL AND STATUTORY AUTHORITIES</u>	
Florida Constitution, Article V, Section 3(b)(1)	3
Florida Statutes Section 768.56 (1981)	2, 3, 4, 5
Florida Rule of Civil Procedure 9.310	2
Florida Rule of Civil Procedure 9.340	2

IN THE SUPREME COURT OF FLORIDA

CASE NO.

Fourth District Case Nos.

82-1984

82-2085

NEIL J. KARLIN, M.D. and
FLORIDA PATIENT'S COMPENSATION FUND,

Petitioners,

vs.

DONNA DENSON and JOSEPH DENSON,

Respondents.

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

PETITIONERS'
BRIEF ON JURISDICTION

STATEMENT OF THE CASE AND FACTS

This case arose out of a medical malpractice action filed by the respondents, Donna Denson and Joseph Denson, against the petitioners, Neil J. Karlin, M.D. and the Florida Patient's Compensation Fund (Fund). The jury returned a verdict for the plaintiffs and on September 2, 1983, the Trial Court entered Amended Final Judgments of \$100,000.00

against Dr. Karlin and \$400,000.00 against the Fund. The defendants appealed these judgments, which the Fourth District Court of Appeal affirmed. Case No. 82-1984. The defendants have not sought review of that decision in this Court.

On September 8, 1982, the trial court entered its Order Taxing Attorney's Fees against both defendants of \$185,000.00. That order implicitly upheld the constitutionality of the statute authorizing attorney's fees, section 768.56, Florida Statutes (1981). The defendants appealed that order on the ground that the statute is unconstitutional. Case No. 82-2085.

The Fourth District Court of Appeal affirmed the trial court. The Court expressly upheld the validity of section 768.56 upon authority of its decision in Florida Medical Center, Inc. v. Von Stetina, 8 Fla. L. W. 2038 (Fla. 4th DCA Case Nos. 82-1332, 82-1341, 82-1597, 82-1686, 82-1993, 82-2070, and 82-2078, Opinion filed August 10, 1983) on September 7, 1983. See Appendix (hereinafter "A.") at 1. It is this decision which the defendant/petitioners seek to have reviewed in this Court.

On September 20, 1983, the defendants moved to stay the issuance of the Fourth District's mandate pursuant to Rules 9.340 and 9.310, Florida Rules of Appellate Procedure. The Fourth District granted the motion for stay on October 3, 1983. (A. 4).

The petitioners timely filed their Notice to Invoke the Discretionary Jurisdiction of this Court on October 6, 1983. (A. 2).

ARGUMENT

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

This Court has jurisdiction in its discretion over the issues raised in this petition 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, the Fourth District expressly declared section 768.56, Florida Statutes (1981) valid. (A. 1).

This Court should exercise its discretion to review the constitutional decision below. The Fourth District upheld the statute without discussion, solely by citing its opinion in Florida Medical Center, Inc. v. Von Stetina, 8 Fla. L. W. 2038 (Fla. 4th DCA Case Nos. 82-1332, 82-1341, 82-1597, 82-1992, 82-2070, 82-2078, Opinion filed August 10, 1983), in which it expressly upheld the constitutionality of section 768.56 against broad-based constitutional challenges.

The Von Stetina case is now before this Supreme Court. See Florida Patient's Compensation Fund, et al. v. Susan Ann Von Stetina, et al., Supreme Court Case No. 64,237. That appeal presents several significant issues, including the constitutionality of section 768.56. For

the same reasons the appellants sought Supreme Court review of the Fourth District's ruling on section 768.56 in Von Stetina, the petitioners here seek review of the Fourth District decision below which relies in full on Von Stetina.

The petitioners moved to stay the entry of the order on mandate in the Fourth District. The basis of the motion was that the constitutionality of the attorney's fee statute was before the Supreme Court in Von Stetina. The Fourth District granted the motion and stayed the mandate, apparently recognizing that final disposition of the attorney's fee award should await the Supreme Court decision in Von Stetina. (A. 4).

Finally, this Court should note that the constitutionality of section 768.56 is being raised throughout the state. Courts are reaching wildly divergent views on the question. The Third District Court of Appeal recently reversed the Dade County Circuit Court in Davis v. North Shore Hospital, Case No. 82-1392, opinion filed October 11, 1983. See also Young v. Altenhaus, Third District Court of Appeal Case No. 82-1761, Opinion filed October 11, 1983. The issue is set for oral argument before the First District Court of Appeal on October 18, 1983 in Matthews v. Pohlman, Case No. AR-398 (circuit court held statute unconstitutional). This Court can therefore see that this petition

raises important questions of constitutional and practical dimension to health care providers and consumers in Florida.

CONCLUSION

The petitioners respectfully urge this Court to exercise its discretion to assume jurisdiction and decide the constitutionality of the Medical Malpractice Attorney's Fee Statute, section 768.56, Florida Statutes (1981), as it pertains to this case.

Respectfully submitted,

Attorneys for Petitioners

Richard B. Collins
PERKINS & COLLINS
702 Lewis State Bank Building
Tallahassee, Florida 32301
(904) 224-3511

Talbot D'Alemberte
Samuel J. Dubbin
Jeffrey B. Crockett
STEEL HECTOR & DAVIS
1400 Southeast Bank Building
Miami, Florida 33131
(305) 577-2800

By: _____

Samuel J. Dubbin

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Petitioners' Brief on Jurisdiction was served by mail this 17th day of October, 1983 to Joe N. Unger, Esq., 606 Concord Building, 66 West Flagler Street, Miami, Florida 33130; Milton Kelner, Esq., Kelner and Kelner, 2215 AmeriFirst Building, One S.E. Third Avenue, Miami, Florida 33131; David E. Stone, Esq., 1401 West Flagler Street, Suite 201, Miami, Florida 33135; and to John S. Neely, Jr., Esq., P.O. Box 7028, Fort Lauderdale, Florida 33304.

By: Samuel J. Dublin