

IN THE SUPREME COURT OF FLORIDA

FILED

S/D J. WHITE

SEP 12 1984 ✓

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk *pl*

FLORIDA PATIENT'S COMPENSATION
FUND,

Petitioner,

vs.

CASE NO: 65,736

JOSEPH TILLMAN, et al.,

Respondents.

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

RESPONDENT, ST. MARY'S, INITIAL BRIEF ON JURISDICTION

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STATE OF FLORIDA
DEPARTMENT OF REVENUE
TALLAHASSEE, FLORIDA

STATEMENT OF THE CASE AND FACTS

The Petitioner's Notice To Invoke Discretionary Jurisdiction was served on the 9th day of August, 1984. At the time of the service of the Notice To Invoke Discretionary Jurisdiction, the Respondent, St. Mary's Hospital, had filed its timely Motion For Rehearing in the District Court. (App. 1). Likewise, the Respondent, Bruce Waxman, M.D., had filed a Motion For Extension Of Time to file a Petition For Rehearing which was granted by the Court on August 1, 1984. (App. 2). Thereafter, the Respondent, Bruce Waxman, M.D., did file his Petition For Rehearing on the 16th day of August, 1984. (App. 3).

ARGUMENT

Rule 9.120(b) provides that the jurisdiction of the Supreme Court shall be invoked by filing a Notice with the Clerk of the District Court of Appeal within thirty (30) days of the rendition of the Order to be reviewed. Rule 9.020 provides that rendition is the filing of a signed written Order with the Clerk of the lower tribunal. It also provides, however, that when there has been filed a authorized and timely Motion For New Trial or Rehearing, the Order shall not be deemed rendered until the disposition of such Motion. It therefore appears axiomatic that there has not been an Order rendered by the District Court since there are pending timely Motions For Rehearing.

It should also be pointed out that the Petitioner's liability, if any, is dependent upon the finding of responsibility on behalf of the health care provider, St. Mary's Hospital. Thus, prior to a rendition of an Order finding such responsibility on behalf of the health care provider this matter is premature.

CONCLUSION

For the foregoing reasons, the Respondent, St. Mary's Hospital, would suggest to the Court that the current Petition is premature in that there has not been a rendition of a Final Order by the District Court of Appeal, Fourth District.

DATED this 10th day of September, 1984.

Respectfully submitted,

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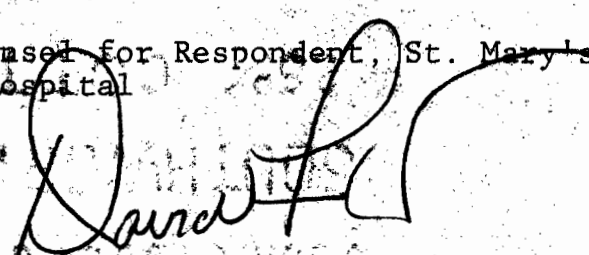
BY: 
DAVID F. CROW, ESQUIRE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief On Jurisdiction was furnished by mail this 10th day of September, 1984 to: STUART E. KOCHA, ESQUIRE, Post Office Box 1427, West Palm Beach, Fl. 33402; EDNA CARUSO, ATTORNEY, 1615 Forum Place, Suite 4-B, West Palm Beach, Fl. 33401; ROBERT M. KLEIN, ESQUIRE, One Biscayne Tower, Suite 2400, Miami, Fl. 33131; FRED HAZOURI, ESQUIRE, Post Office Box 3466, West Palm Beach, Fl. 33402; MICHAEL DAVIS, ESQUIRE, Post Office Box 2966, West Palm Beach, Fl. 33402; L. MARTIN FLANIGAN, ESQUIRE, Post Office Drawer E, West Palm Beach, Fl. 33402; and RICHARD B. COLLINS, ESQUIRE, Post Office Drawer 5286, Tallahassee, Fl. 32314.

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