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IN THE SUPREME COURT OF FLORIDA

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DOCTORS' HOSPITAL OF SOUTH MIAMI, LTD. d/b/a LARKIN GENERAL HOSPITAL,

Appellant,

-vs-

JOSEPH OVADIA, M.D.,

Appellee.

CASE NO. 78,727

CRH PROPERTIES d/b/a CORAL REEF HOSPITAL,

Appellant,

-vs-

JOSEPH OVADIA, M.D.,

Appellee.

CASE NO. 78,861

WALTER JONES, M.D.,

Appellant,

-vs-

JOSEPH OVADIA, M.D.,

Appellee.

CASE NO. 78,862

CONSOLIDATED BRIEF OF APPELLEE, JOSEPH OVADIA, M.D.

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STATEMENT OF CASE AND FACTS

Introduction

These are consolidated appeals seeking review of a decision rendered by the District Court of Appeal, Third District of Florida. This district court of appeal below followed and applied decisions of other district courts of appeal and reversed dismissals of cases pending in the trial court. The dismissal in each trial court case was based upon the failure of a physician to post a bond pursuant to Florida Statutes Sections 395.0115(8)(b) and 766.101(6)(b) as a condition precedent to the maintenance of a legal action

against hospitals and others. The cases were consolidated in the court below because each addressed the fundamental issue concerning the validity and propriety of the statutory bonding requirement.

The Appellant in Case No. 78,727, DOCTORS' HOSPITAL OF SOUTH MIAMI, LTD. d/b/a LARKIN GENERAL HOSPITAL, was an appellee in the district court of appeal and a defendant in the trial court. Such Appellant will be referred to in this brief as "LARKIN." The Appellant in Case No. 78,861, CRH PROPERTIES d/b/a CORAL REEF HOSPITAL, a Florida General Partnership, was an appellee in the district court of appeal and also a defendant at the trial court level. Such Appellant will be referred to in this brief as "CORAL REEF." The Appellant in Case No. 78,862, WALTER JONES, M.D., was the third appellee in the lower appellate court and also a defendant at the trial court level. The final party will be referred to herein as "JONES." The Appellee, JOSEPH OVADIA, M.D., was the appellant in each of the cases consolidated in the District Court of Appeal, Third District, and was the plaintiff in the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida in each case. JOSEPH OVADIA, M.D. will be referred to herein as "OVADIA."

The following symbols will be used in this brief:

"R" -- Record-on-Appeal.

All emphasis is supplied by counsel unless otherwise indicated.

Case and Facts

LARKIN -- Case No. 78,727

OVADIA initiated an action against LARKIN seeking damages and injunctive relief in connection with a hospital/staff physician dispute (R. 1-93). LARKIN responded to the litigation and demanded that a bond be provided by OVADIA pursuant to Florida Statutes Section **395.0115(5)**(b)**(1987)** [now Section 395.0115(8)(b)(1989)] **(R. 106-107).** The trial court rejected OVADIA'S constitutional challenges to the bonding requirement and ordered that he post a bond or security in the amount of $35,000 as a condition precedent for his entry into the judicial system and for the prosecution of the action **(R. 125-126).** OVADIA could not proceed until he had paid the price established by the trial court and the action was abated until a bond or security was provided and submitted **(R. 125-126).**

In response to the order requiring the bond, OVADIA sought certiorari review in the District Court of Appeal, Third District, which was assigned Case No. 89-2352, which was an earlier appellate proceeding. After the proceeding in connection with the requested certiorari had been fully brief and full oral arguments had been presented, the lower appellate court dismissed the petition for a writ of certiorari specifically without prejudice to OVADIA to present the issues on appeal from a final order dismissing the action.

After the District Court of Appeal, Third District, declined to take action through the certiorari mechanism, upon return to the trial court, OVADIA filed his affidavit and that of an insurance agent in which it was set forth that OVADIA was unable to post $35,000 in liquid assets that were absolutely necessary to collateralize a bond, and such full collateralization was required as a condition precedent to obtaining a bond that the court had ordered (R. 185-186, 197-200). Notwithstanding the inability of OVADIA to financially secure the bond and notwithstanding his constitutional challenges, the trial court proceeded to enter an order dismissing OVADIA'S action because he failed to post the bond that the court had imposed upon him pursuant to statutory provisions (R. 214). OVADIA timely filed his appeal and sought review of the dismissal through the mechanism of filing a direct appeal (R. 205). The appellate proceeding was consolidated with similar actions involving CORAL REEF and JONES, which proceeded to produce the decision of the District Court of Appeal, Third District, now under review before this Court.

On page 3 LARKIN sets forth a quotation by the circuit court Judge that has absolutely no factual predicate in any Record and no predicate in any fact whatsoever. The quotation makes reference to providing a bond without full collateralization, but such is a non-existent condition. Bonding companies simply do not post bonds in the South

Florida community for individuals without full collateral, as demonstrated in this Record. A statement that cash is not required and only a bond is necessary, truly misses the point and demonstrates a total lack of understanding of the business fact in the community. A bonding company simply will not post a bond without the necessary collateral, and, therefore, the liquid collateral is a condition precedent to securing a bond, Thus, the term "bond" is an imaginary concept under these circumstances because cash collateral is required.

The statement on page 4 by LARKIN attempting to attribute certain factual statements to OVADIA'S trial counsel is absolutely incorrect and is a total misinterpretation and misstatement. OVADIA'S trial attorney did not recognize that there would not need to be cash collateral. To the contrary, the statement itself reflects that the bond concept in the present case is similar to that involved with supersedeas bonds in that a premium for the bond is required. Further, OVADIA'S trial counsel stated, "...there is a requirement of collateral". Such directly advised the trial court of the collateralization requirement of full cash collateral, and such is totally consistent with the affidavits submitted to the court.

OVADIA also filed a legal action against CORAL REEF (R. 1-47) in connection with its improper actions in imposing sanctions upon him. The litigation produced a requirement that OVADIA post a bond in the amount of $20,000 as a condition precedent to presenting the merits of the controversy (R. 254-255). The action was stayed pending a decision of the District Court of Appeal, Third District, in the certiorari proceeding assigned Case No. 89-2452 (R. 163). When the district court of appeal declined to address the case under a certiorari proceeding, which was specifically without prejudice, OVADIA proceeded to file the affidavits and insurance agent material in the trial court demonstrating his inability to financially comply with the bonding requirements (R. 164-169, 182-184). Thereafter, the action against CORAL REEF was dismissed because OVADIA had not posted a bond (R. 267) and for no other reason whatsoever. OVADIA timely sought appellate relief in the District Court of Appeal, Third District (R. 262).

The purported statement of case and facts set forth by CORAL REEF is outrageous for an appellate presentation based upon the current status of the litigation. CORAL REEF fills its brief with scandalous matters that were never addressed in these legal proceedings as opposed to the secret clandestine activities of the hospital itself. There is no "overwhelming evidence" of anything in connection with the

factual matters in this litigation, and to present such statements to this Court when the only issue is whether a bonding requirement is a valid condition precedent to seeking judicial redress, leaves much to be desired from the appellate perspective.

In a similar manner, the purported "factual statement" of a "luxurious lifestyle" related to OVADIA is a total distortion. CORAL REEF makes references to the Record which is to a deposition of OVADIA filed in the action. The most important factor is that CORAL REEF does not present factual information, but only "distorted" perceptions. The following economic statements must be addressed:

(a) CORAL REEF presents alleged evidence of earnings, but conveniently fails to advise this Court that such are for years prior to the present time and during the period of time before OVADIA encountered problems with CORAL REEF and was severed from a hospital relationship. The Record in this case demonstrates that such financial information refers to a period of time when a relationship existed that was terminated in 1988 (Depo. OVADIA 6-7). The actual fact in this case is that OVADIA'S 1989 income dropped to the $60,000 after losing his livelihood (T. Hearing 05/04/90 at 20)(R. Vol. IV);

(b) the home in which OVADIA lives was purchased before the present controversy erupted and he lost his employment. CORAL REEF does not indicate or suggest the equity in the

home, but merely states a purchase price that has absolutely nothing to do with available liquid assets;

(c) CORAL REEF seeks to impress the Court with the type of motor vehicle operated by OVADIA, but does not even give the year of the motor vehicle and fails to advise the Court that such is a leased vehicle. The Record demonstrates that OVADIA had no choice but to maintain the leased vehicle for five years with the lease being entered into before the controversy erupted and at a time he was actively involved in his original orthopaedic practice (Depo. OVADIA 9);

(d) CORAL REEF makes reference to boat ownership, but ignores the type of boat; fails to advise the Court that it has been and remains disabled; and finally, that such had been purchased long before the conflict and controversy arose which produced this litigation (Depo. OVADIA 13);

(e) reference to a "yacht and country club" is laughable. The facility referred to years ago does not even exist in this community and is now a housing development on the location. Such was provided from a prior medical association before this litigation was even thought of (Depo. OVADIA 13).

The deposition testimony of OVADIA very clearly demonstrates that he had made contact with an individual specializing in bonds at Lon Worth Crow Insurance Agency located in Coral Gables, Florida. All attempts by OVADIA to obtain a bond were unsuccessful. The letter from the bonding

agent demonstrated that OVADIA did not have sufficient collateral to obtain bonding that had been required by the judicial system (Depo. OVADIA 25).

JONES -- Case No. 78,862

OVADIA initiated a separate action against JONES based upon allegations of defamation and slander in connection with the involvement of JONES in the CORAL REEF staff physician/ hospital dispute. JONES also responded with a motion to require the posting of bond pursuant to Florida Statutes Sections 395.0115(8)(b) and 766.101(6)(b). The trial court entered its order requiring a bond or other security in the initial amount of $20,000 (R. 35-36).

OVADIA had been unable to post a previous $35,000 and $20,000 bond, and the additional $20,000 was no easier. When OVADIA was unable to satisfy the requirement, JONES requested a dismissal and by order dated March 6, 1991, the final action by OVADIA was dismissed for the failure to comply with the bonding requirements (R. 37-38, 44).

All of the actions were consolidated in the District Court of Appeal, Third District, and produced the consolidated decision on September 17, 1991. The District Court of Appeal, Third District, agreed with decisions rendered by both the District Court of Appeal, Fourth District, and the District Court of Appeal, First District. The court below held that the bond or other security requirement infringed upon the right of access to the judicial system and was

constitutionally infirm. The dismissals were reversed and the actions remanded for further proceedings.

SUMMARY OF ARGUMENT

A judicial system that is accessible to only those having large cash reserves for collateral falls far short of that envisioned by our founding fathers. The bonding requirement places an impermissible burden upon access to the judicial system and must be heavily scrutinized. There are no standards for a determination of bonding requirements, nor is there any type of protection against the limitless and undefined parameters that may be generated differently depending upon the areas involved.

The bonding requirement not only denies access to the judicial system, but it also tramples long standing constitutional concepts of equal protection and due process. Florida has consistently rejected similar monetary conditions precedent as have the courts of other jurisdictions.

ISSUE INVOLVED ON APPEAL

WHETHER FLORIDA STATUTES SECTION 395.0115(8)(b) AND 766.101(6)(b) ARE FACIALLY UNCONSTITUTIONAL OR AS APPLIED BY ATTEMPTING TO REQUIRE THE POSTING OF A BOND OR SECURITY AS A CONDITION PRECEDENT TO CONDUCTING LITIGATION IN THE COURTS OF THE STATE OF FLORIDA?

ARGUMENT

FLORIDA STATUTES SECTION 395.0115(8)(b) AND 766.101(6)(b) ARE FACIALLY UNCONSTITUTIONAL AND AS APPLIED BY ATTEMPTING TO REQUIRE THE POSTING OF A BOND OR SECURITY AS A CONDITION PRECEDENT TO CONDUCTING LITIGATION IN THE COURTS OF THE STATE OF FLORIDA.

Florida Statutes Section 395.0115(8)(b) provides a bonding or security condition precedent for access to the judicial system for staff members or physicians seeking to adjudicate their rights. The statute provides:

> (b) As a condition of any staff member or physician bringing any action against any person or entity that initiated, participated in, was a witness in, or conducted any review as authorized by this section and **before** any responsive pleading is due, the staff member or physician shall post a bond or other security, as set by the court having jurisdiction of the action, in an amount sufficient to pay the costs and attorney's fees.

Florida Statutes Section 766.101(6)(b) is almost identical. The citizens of this state have been guaranteed the right to free access to the judicial system to seek redress for injury. Such access is to be free from unreasonable burdens and restrictions and certainly without a condition precedent that a party be wealthy to satisfy financial criteria before having the right to speak to the judicial system. The Florida Constitution very clearly provides in Article I, Section 21:

> Access to Courts. -- The courts shall be open to every person for redress of any injury, and justice shall be administered without fail, denial or delay.

It is abundantly and absolutely clear that any attempt to place restrictions upon access to our judicial system must be interpreted and construed in favor of the right to access as opposed to denial. See Lehmann v. Cloniger, 295 So.2d 344 (Fla. 1st DCA 1974). The constitutional provision may not guarantee that a particular remedy is available at all times, but it does, most assuredly, guarantee the citizens of this state at least the opportunity to present the wrongs inflicted upon them in a court of law.

It is respectfully submitted that the posting of a bond as required in the three separate cases under review as a condition precedent to presenting one's legal right is an improper, illegal and unconstitutional economic burden placed upon OVADIA. It is suggested that when a system operates on a premise that one must have significant assets in bond form to participate in the legal system, we do not have a truly responsive judicial mechanism but merely a system that protects special interests in connection with wrongs inflicted upon individuals.

The courts of this state have not hesitated to strike down legislation that operates to defeat access to the judicial system. For example, in G.B.B. Investments, Inc. v. Hinterkopf, 343 So.2d 899 (Fla. 3d DCA 1977), the court analyzed the imposition of a monetary condition precedent to the enforcement of rights in connection with a mortgage foreclosure action. In G.B.B. the trial court had es-

tablished a monetary condition precedent in connection with a counter-claim in a mortgage foreclosure action. The court analyzed that the constitutional right to access to the judicial system finds its history rooted in the Magna Charta and has been an important part of every Florida Constitution since the 1800s. The G.B.B. court recognized that financial preconditions have been generally disapproved when related to matters other than court-related filing fees in a nominal amount.

It is truly ironic that under the circumstances in the present case the defendants are permitted to destroy the economic basis for the individual seeking redress, but such individual is prohibited from protecting his rights without such economic basis. Justice is not, and should not be, for sale and is not for only the wealthy physicians or those entrenched in hospital institutions. Even though one may not be the member of the "right club" of physicians, such individual is still entitled to access to the judicial system in this state.

The statutory scheme under review very clearly demonstrates that the bonding or security requirement plays absolutely no part in whether the claim or matter to be presented to the court is valid or invalid. The process has absolutely no relationship whatsoever to the merits of any controversy or any attempt to diffuse a non-meritorious claim at an early stage. The courts of this state have very clearly held that

any actions taken by the legislature which may place impermissible burdens upon one's access to the judicial system are to be heavily scrutinized. Pinellas County Department Consumer Affairs v. Castle, 392 So.2d 1292 (Fla. 1980); Aldana v. Holub, 381 So.2d 231 (Fla. 1980); Shav v. First Federal of Miami, Inc., 429 So.2d 64 (Fla. 3d DCA 1983). Strict scrutiny is applied because the potential for misuse and abuse is so critical to the fundamental right of access to the judicial resolution of disputes.

The predecessor of the present "access to courts" constitutional provision was applied by this Court in Flood v. State ex rel Home Land Co., 117 So. 385 (Fla. 1928), to invalidate legislation which attempted to impose a financial precondition upon parties in the nature of a supplementary docket fee to be utilized for purposes other than judicial administration. This Court held that the additional financial burden was a direct violation of the constitutional provisions affording access to courts and could not be applied.

The "Access to Courts" concept has been uniformly applied in actions of all types and particularly where financial conditions have been outlined to be imposed as a condition to judicial relief. From McDuffie v. McDuffie, 19 So.2d 511 (Fla. 1944), to the payment of costs in Bower v. Bower, 55 So.2d 797 (Fla. 1951), and the payment of attorneys' fees in Tirone v. Tirone, 327 So.2d 801 (Fla. 3d DCA

1976), the courts of this state have protected access to the judicial system as an absolutely fundamental element of our free society. Just as the pre-appeal payment of costs was invalidated in Bell v. State, 281 So. 2d 361 (Fla. 2d DCA 1973), the pre-litigation advancement of substantial proceeds should suffer a similar fate in these consolidated cases. The requirement that OVADIA must post a bond as a prerequisite to obtaining judicial relief is an obvious and arbitrary restriction upon his right of access to the judicial system.

It is also fundamentally clear that the extent of the restriction is not uniform throughout the state but will be imposed upon individuals in different locations in the state in amounts that may be determined without any criteria provided for such determination. There will be no uniformity in application and the fundamental rights of individuals will suffer an immeasurable impact.

Equal protection and due process concepts are also violated by the pre-litigation bond requirement because there are absolutely no parameters whatsoever within which the trial court must operate or upon which review may be had. The bonding requirements have absolutely no relationship whatsoever as a means of screening non meritorious claims because everyone must post bonds regardless of the merits of any controversy. When the condition is without relationship to a legitimate end or can be applied arbitrarily or

unreasonably without any type of guidelines or limitations whatsoever, fundamental constitutional concepts have been trampled and destroyed contrary to any sense of fairness or our system of justice. ***See*** e.g., State ex rel James v. **Gerrell**, 188 **So. 12** (1939).

It is **absolutely** clear that the State of Florida has already qualified OVADIA to administer his profession in this state and now the legislature is attempting to create a condition precedent that he must pay again to protect his rights through the judicial system. Individuals have earned and paid for their degrees and the opportunity to practice a profession. Any conflict with "select club members" which produces a destruction of staff privileges and then requires the posting of a bond before judicial access can be obtained is contrary to all notions upon which our forefathers founded this country. It is submitted that such concepts are contrary to all fundamental constitutional guidelines. **See e.g.,** Florida State Board of Dentistry v. Mick, 361 So.2d 414 (Fla. 1978). It is respectfully submitted that the inescapable conclusion is that the bonding requirement bears absolutely no reasonable relationship to any permissible legislative objective and it is discriminatory, arbitrary and oppressive with its limitless and undefined application.

The foundation of procedural due process is also being trampled because innocent victims are precluded from a mechanism of protecting property rights within our judicial

system. The logical conclusion is that there simply is no right where there is no remedy to protect such right. This becomes all the more oppressive because the rights of individuals can be trampled by the whims of small groups of economic power operating within a particular community to abuse that which was originally well-intentioned. The motives are not the guiding criteria but the operation must be evaluated within constitutional limitations. It is submitted that the statutory application produces a procedural due process violation that must be addressed. See e.g., Board of Resents v. Roth, 408 U.S. 564 (1972); Mathews v. Eldridge, 424 U.S. 319 (1976); and Perry v. Sindermann, 408 U.S. 593 (1972).

Substantive due process concepts are also violated because the provisions under review have no substantial relationship to the objective sought to be addressed and it is unreasonable, arbitrary and in the nature of a blank check because there are absolutely no standards whatsoever for implementation of amounts as to the bonding or security requirements. It is clear that civil statutes must have standards as determined by the courts of this state and as noted in Anderson v. D'Alembert, 334 So.2d 618 (Fla. 1st DCA 1976), aff'd 349 So.2d 164 (Fla. 1977). The absence of standards places innocent victims in the posture of having bond amounts established into the hundreds of thousands or even millions of dollars without any relief whatsoever and

without any standard whatsoever for the implementation of such amounts. It becomes a bottomless pit and an instrument of abuse.

It is respectfully submitted that the bond requirement is as insidious with regard to financial stability as other legislation would be with regard to race or national origin. None of such elements should in any way operate to deny any citizen of this state access to our judicial system to redress wrongs they believe committed. The pre-litigation burdens which extended beyond constitutional tolerance in Aldana v. Holub, 381 So.2d 231 (Fla. 1980), are minor when compared to the price of admission to the judicial system as can be imposed under the bonding statute.

The dissenting opinion by Judge Anstead in Guerrero v. Humana, Inc., 548 So.2d 1187 (Fla. 4th DCA 1989), sounded the death knell for the statute even though it was not adopted by his colleagues at that time. Judge Anstead did not even consider all of the constitutional violations but he noted that our claims of justice ring hollow if we must pay the gate keeper before entering the system. He recognized that property rights will no longer exist if the legislature can simply place financial obstacles in the pursuit of remedies with absolutely no boundaries whatsoever and without any relationship whatsoever to the underlying merits of the dispute.

The District Court of Appeal, Fourth District, has now reversed itself in Community Hospital of the Palm Beaches v. Guerrero, 579 So.2d 304 (Fla. 4th 1991), and adopted the position that Florida Statutes Section 395.0115(8)(b) and Florida Statutes Section 766.101(6)(b), constitute unconstitutional burdens on access to the courts of this state. The District Court of Appeal adopted Judge Anstead's dissenting opinion as a basis for its determination. The bonding requirement is, in unmistakable terms, invalid and cannot be applied in this case. The same result can be found in psychiatric Associates v. Siegel, 567 So.2d 52 (Fla. 1st DCA 1990), which was certified to this Court for further review.

In Sittig v. Tallahassee Memorial Regional Medical Center, Inc., 567 So.2d 486 (Fla. 1st DCA 1990), the court determined that a bonding requirement in the amount of $30,000.00 rendered the subject statute unconstitutional as applied. The court did not go further to even address the claim of facial unconstitutionality but such has now been addressed by two District Courts of Appeal and both have held the legislation to be unconstitutional without reaching all of the constitutional infirmities.

One finds that the law of Florida is not unique and courts across the country have consistently rejected attempts to place financial conditions upon the exercise of judicial rights. For example, in Eastin v. Broomfield, 570 P.2d 744

(Az. 1977), the Arizona Supreme Court sitting en banc struck a legislative attempt at requiring the posting of a $2,000.00 bond before a claimant could proceed with a medical malpractice action. The Arizona court applied the concept that all citizens be afforded an equal opportunity to the courts and an equal opportunity to seek review in striking the legislative requirement. The court found that the imposition of the bond requirement denied access to the judicial system of the state. The same result should be forthcoming in these cases.

The Oklahoma Supreme Court was faced with an attempt to impose a requirement that a party in litigation be required to satisfy a monetary obligation before pursuit of a claim in the court system. The Oklahoma Supreme Court held in Moses v. Hoebel, 646 P.2d 601 (Ok. 1982), that the order which prohibited a party from prosecuting a second action until he had satisfied a court imposed liability to pay legal expenses based upon the termination of an earlier case violated both state and federal constitutional provisions. It is respectfully submitted that the bonding requirement in this case is far more oppressive than that stricken by the court in Oklahoma.

A statute which attempted to require citizens of Louisiana to provide a bond for attorney fees before proceeding with an action against public officials was addressed and reviewed in Detraz v. Fontana, 416 So.2d 1291 (La, 1982). The Detraz court reversed a dismissal for the

failure to post a bond by holding that the legislation was unconstitutional and in direct violation of both state and federal constitutions. The court reasoned that the legislative attempt denied citizens rights of due process and open access to the courts.

The Washington Supreme Court sitting en banc in Sheffield v. State, 601 P.2d 163 (Wa. 1979), held that a statute requiring citizens to provide a surety bond as a condition precedent to pursuing an action against the state violated constitutional guarantees and could not be applied. Similar provisions were rejected in Beaudreau v. Superior Court of Los Anseles County, 535 P.2d 713 (Ca. 1975), and New v. Arizona Board of Resents, 618 P.2d 238 (Az. 1980).

One finds that attempts to require litigants to post bonds as a condition precedent to seek review have been generally rejected. See e.g., Hamilton Cors. v. Alexander, 290 N.E. 2d 589 (Il. 1972); Brooks v. Small Claims Court, 504 P.2d 1249 (Ca. 1973); Frizzell v. Swafford, 663 P.2d 1125 (Id. 1983); Skoqerson v. McConnell, 664 P.2d 770 (Id. 1983). Attempts to place additional charges upon litigation beyond nominal filing fees have also met with similar death. Crocker v. Finley, 459 N.E. 2d 1346 (Il. 1984); Harrison v. Monroe County, 716 S.W. 2d 263 (Mo. 1986). Attempts to legislate payment of attorneys fees even without bonding requirements have met with no success in the face of constitutional challenges. *See e.g.*, Reed v. Reed, 220 N.W.

2d 199 (Mi. 1974); Williams v. London, 370 So.2d 518 (La. 1979) [concurring opinion].

Several courts in this state have now recognized the infirmity with the bonding requirement. Such reasoning is consistent with American jurisprudence that protects and defends the right of access to the judicial system. Unlimited bonding requirements operate as nothing less than a charge of a price for admission into the system. Todays admission price may be well intentioned but it will result in closing the door to a segment of our population and provide a basis for future restrictions. If we are to maintain a judicial system that is responsive to the needs of its people it must be open to all and afford equal access. It must be realized that the old folk saying that "The road to hell is paved with good intentions," carries a fundamental truth under circumstances similar to this. There may have been good intentions in attempting to address medical matters but when small groups of economic special interests can obtain control of procedures and then be benefitted by an economic wall that prevents individuals in this state from protecting their rights, the good intentions are totally perverted into swords of destruction for those less financially secure. It is submitted that the statute is nothing less than economic blackmail in the form of unlimited bonding and security requirements that will continue to escalate. That which separates our system of government through the independent

judiciary providing access to all will slowly fade if the legislature from year to year may impose financial conditions upon the citizens of this state before they can ask the judiciary to remedy the wrongs that have been inflicted upon them. Justice in this state and in these cases must be administered according to the law books and not according to a party's check book.

It is respectfully submitted that the LARKIN, CORAL REEF, JONES arguments based upon statutory construction and judicial restraint cannot save the improper and illegal concept that they are permitted to destroy one's economic base, and then demand that the individual purchase his way into the judicial system to be heard. The fundamental rights that are being trampled through operation of the bonding requirement will be lost forever if bonding is appropriate under the circumstances in this case. Arguments predicated upon a shifting burden of proof upon OVADIA to establish his claims in the litigation have nothing whatsoever to do with the requirement that he must pay before he can enter the judicial forum to discuss his rights.

It is respectfully submitted that neither LARKIN, CORAL REEF, nor JONES have addressed the numerous decisions rendered across this country which have held statutory provisions requiring a purchase of admission to the judicial system invalid. Confidentiality of information in certain circumstances does not even approach the level of constitu-

tional prohibition that a required monetary guarantee as a condition precedent to access to the judicial branch of our government involves. If the bonding requirement is approved under these circumstances there is nothing to prevent similar bonding requirements for litigation ranging from any type of personal injury claim, from motor vehicle to intentional tort, and then into expanded areas of landlord/tenant disputes, real estate controversies, and other commercial types of litigation that touch every aspect of life.

It is interesting to note that reference to Kluger v. White, 281 So.2d 1 (Fla. 1973), is made in this litigation, because upon analysis the concepts discussed in Kluger and that involved in the present case are most similar. In Kluger the individual fell into a class of accident victims that had no recourse against anyone because of economic circumstances no insurance coverage had been purchased. Under the circumstances in the present case if OVADIA cannot economically address a bonding requirement, he too is found without any type of access to the judicial system. Upon analysis and discussion, Kluser totally supports the position of OVADIA in this litigation. Fear tactics and arguments cannot be utilized as a substitute for the basic constitutional analysis. This is not an issue of OVADIA'S right to work at a particular hospital, the issue in this case is OVADIA'S right to enter the judicial system without financial preconditions. When the arguments presented by LARKIN/CORAL

REEF/JONES are analyzed, one finds that the underlying theme is that the bonding requirement must be okay because the Florida Legislature adopted the requirement. It is respectfully submitted that the bonding requirement is nothing less than an unreasonable and unconstitutional economic barrier that has absolutely no parameters and can be applied without control to destroy the independent judiciary that demands access for all individuals.

It is respectfully submitted that neither LARKIN, CORAL REEF, nor JONES have provided this Court with decisional authority that would approve the financial condition precedent of bonding. An independent judiciary can exist only if citizens are afforded access for resolution of disputes. Limitations cannot infringe upon access to courts, equal protection, or substantive and procedural due process. The legislation is nothing less than an economic barrier that must fall to the sword of judicial review.

Constitutionality As Applied

OVADIA totally disagrees with the statement of LARKIN, CORAL REEF, and JONES that the decisions upon which the District Court of Appeal, Third District, relied addressed only the unconstitional application of the subject statutory provisions. To the contrary, the court below clearly relied upon Community Hospital of the Palm Beaches, Inc. v. Gurerrero, 579 So.2d 304 (Fla. 4th DCA 1991), and Psychiatric Associates v. Siegel, 567 So.2d 52 (Fla. 1st DCA 1990), which

hold the statutory provisions to be constitutionally infirm. There is not word in either decision that states a holding that the provisions are unconstitutional only as applied. The court below did not make reference to Sittig v. Tallahassee Memorial Regional Medical Center, Inc., 567 So.2d 486 (Fla. 1st DCA 1990), which is the only Florida decision that addresses the constitutional issue as applied. Arguments to the contrary by the Appellants are misdirected and incorrect.

The statements by the attorney representing LARKIN, CORAL REEF, and JONES that OVADIA has the ability to post a bond are nothing more than statements of attorneys and arguments -- as opposed to statements of fact. The factual predicate has been established that OVADIA has been disconnected from his primary source of income being an orthopeadic surgeon due to the actions of these Appellants. The Record is absolutely clear and without conflict that OVADIA does not have the financial base to provide $75,000 in liquid assets to collateralize the bonding requirements that have been imposed upon him. It is respectfully submitted that a statement by a trial judge that "cash is not required" does not establish such as a matter of "fact." Here, there is a total absurdity involved with appellate attorneys arguing and asserting that bonds can be posted without collateral, when it is well known in the appllate community in Dade County that supersedeas bonds cannot be obtained by individuals

without collateralization. Large insurance companies and large corporations that deal in financial markets on a daily basis may be treated differently than individuals. However, there is not one fact of Record in any of these cases to refute the necessity of collateralization to obtain a bond in Dade County, Florida at this time. The decision in this case should be based upon that which actually exists and not some convoluted argument of counsel. LARKIN, CORAL REEF, and JONES, simply do not want to face the music and the direct legal problems that have been created by the bonding requirements. The statute is either valid or invalid, and no amount of doubletalk can change the fundamental legal issue before this Court.

CONCLUSION

Based upon the arguments, authorities, and reasoning set forth herein, the opinion of the District Court of Appeal, Third District, below should be affirmed in all respects.

Respectfully submitted,

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Attorneys for OVADIA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 23rd day of December, 1991, to: Jennifer S. Carroll, Esq., METZGER, SONNEBORN & RUTTER, P.A., Attorneys for Defendant, P.O. Box 024486, West Palm Beach, FL 33402-4486; Sherryll Martens Dunaj, Esq., FOWLER WHITE BURNETT

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