IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 82,692

THIRD DISTRICT COURT OF
APPEAL NO. 92-2234

CARLOS ROJAS,

Petitioner,

vs.

RYDER TRUCK RENTAL, INC., and
WILLIE J. McCRAY,

Respondents.
_____/

PETITIONER'S REPLY BRIEF

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PREFACE

COMES NOW PETITIONER CARLOS ROJAS (hereinafter referred to as **"ROJAS"**), and files this Reply Brief in response and rebuttal to Respondents' (hereinafter **"RYDER"**) Brief on the Merits. All emphasis is added unless otherwise noted.

ARGUMENT IN RESPONSE AND REBUTTAL

Argument A.1. of RYDER'S Brief on the Merits was not raised at the trial court or at the Third District Court of Appeal. As such, it is barred from being raised at this time. ROJAS' Motion to Strike has been previously filed with this court and contains all the relevant supporting authorities.

It is interesting to note that with one hand RYDER wants to lay new arguments on its table, while with the other hand RYDER attempts to deny ROJAS this same privilege. In its Argument A.4., RYDER contends that ROJAS waived his right to present Mass. Gen. L., ch. 45, to this court because it was not argued below. It seems that RYDER wants to have its cake and eat it too.

In point of fact, ROJAS raised Mass. Gen. L., ch. 45, during Oral Argument in front of the Third District Court of Appeal. At no time during Oral Argument did RYDER object to

its introduction. Consequently, RYDER waived its right to object to its use at a later date.

RYDER erroneously argues that Fla. Stat., Sect. 455.241 is not applicable in the instant case. As support for this argument, RYDER highlights that part of the statute which carves out an exception to the confidential nature of medical records, i.e., the records can be released if the patient gives written authorization (see page 6 of RYDER's Brief on the Merits). Based on this portion of the statute, RYDER concludes that it is entitled to the records because it obtained a court ordered release from ROJAS.

RYDER's argument dances around the real issue. The question before this court is not whether ROJAS' medical providers can release the records upon written authorization but, rather, whether RYDER is entitled to the authorizations at all!

It is obvious that medical records are sensitive, privileged documents that fall under the auspices of Fla. Stat., Sect. 455.241. Both the trial court and the Third District Court of Appeal recognized this when they required ROJAS to sign medical releases. If the information was not material governed by Fla. Stat., Sect. 455.241, then why require the releases?

RYDER attempts to distinguish this case from the 2d DCA

decision in Johnston v. Donnelly, 581 So.2d 909 (Fla. 2d DCA 1991). RYDER contends that the present case is distinguishable because the Johnston case involved a "blanket" release, while in this case RYDER is seeking a "specific" release. In its Brief on the Merits, RYDER fails to explain what is meant by the term "blanket". RYDER has failed to explain the difference between the releases requested in this case and in the releases requested in this case and in Johnston. RYDER has not offered into the record a copy of the Release which was the subject of concern in the Johnston case. In point of fact, we know almost nothing about the scope and depth of the releases requested in Johnston. What we do know is that the Respondent in Johnston attempted to obtain the medical records from the Petitioner's Canadian physicians who treated Petitioner before the accident, Johnston, p. 909. In the instant case, RYDER's release requests all of ROJAS' medical records, both before and after the accident. Additionally, the RYDER authorization cites a non-inclusive "laundry list" of the types of records requested:

> "..Reports, charts, files, correspondence, notes, memoranda, radiology studies of any kind or nature, test findings, statements, billings, treatment of any kind or nature, including all psychological and psychiatric records for CARLOS E. ROJAS.."
>
> (See, Respondents' Brief on the Merits, p. A-10).

Certainly, the release requested in the instant case is all-encompassing. It is not limited in time, type or scope.

RYDER attempts to distinguish the instant case from Franklin v. Nationwide Mut.Fire Ins.Co., 566 So.2d 529 (Fla. 1st DCA 1990), by arguing that the Franklin decision only stands for the proposition that the court cannot order ex-parte communications between defense counsel and plaintiff's physicians. In fact, the Franklin case is indistinguishable from the present case. The court in Franklin was presented with a release which permitted the defendants to obtain medical records as well as ex-parte communications. In rendering their decision, the justices in Franklin quashed the lower court's order in total. If the court in Franklin only objected to that part of the lower court's order granting ex-parte communications, they would have only quashed that part of the lower court's order.

Whether or not Fla. Stat., Sect. 455.241, is applicable in this case is not important. What is of consequence is whether a litigant in a civil action can stomp "willy nilly" over those discovery tools carefully crafted by this court and fine tuned due to many years of use by litigants in Florida. The wholesale execution of medical releases is not a recognized discovery tool. RYDER had an abundance of

recognized tools available for its use. Specifically, those rules relating to requests for production as well as depositions. Not once during the pendency of the subject lawsuit did RYDER utilize the Florida Rules of Civil Procedure in an attempt to obtain the medical records. In Reinhardt v. Northside Motors, Inc., 479 So.2d 240 (Fla. 4th DCA 1985), the court pointed out that until a litigant exhausts the discovery procedures provided by the Florida Rules of Civil Procedure, it is not proper to conduct discovery via "medical releases".

All other arguments presented by RYDER in its Brief on the Merits have been responded to by ROJAS in Petitioner's Initial Brief. No additional argument is necessary.

CONCLUSION

WHEREFORE, for the above-cited reasons, Petitioner ROJAS requests that this court quash the trial court's order requiring ROJAS to execute and deliver the medical releases to RYDER.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the above and foregoing was mailed this 21st day of January, 1994, to: Michael J. Murphy, Esq., GAEBE, MURPHY, MULLEN & ANTONELLI, Attorneys for Respondents, 420 South Dixie Highway, 3rd Floor, Coral Gables, Florida, 33146; Jeffrey Fox, Esq., Co-Counsel for Petitioner, 11900 Biscayne Boulevard, Suite 808, North Miami, Florida, 33181; Scott Mager, Esq., Attorney for Amicus Curie, 7th Floor Barnett Bank Tower, One East Broward Boulevard, Ft. Lauderdale, Florida, 33301.

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