

Supreme Court of Florida

Nos. 86,178;
86,201.

CENTRAL FLORIDA REGIONAL HOSPITAL, INC.,

Petitioner,

vs.

PAUL WAGER, et al.,

Respondents.

DAVID C. MOWERE, etc., et al.,

Petitioners,

vs.

PAUL WAGER, et al.,

Respondents.

[April 11, 1996]

PER CURIAM.

We have for review a decision of the Fifth District passing upon the following question certified to be of great public importance:

DOES AN ADMINISTRATIVE HEARING OFFICER HAVE EXCLUSIVE JURISDICTION TO DETERMINE WHETHER AN INJURY SUFFERED BY A NEWBORN INFANT DOES OR DOES NOT CONSTITUTE A "BIRTH-RELATED NEUROLOGICAL INJURY" WITHIN THE MEANING OF THE FLORIDA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION PLAN, SECTIONS 766.301-.316, FLORIDA STATUTES (1993), SO THAT A CIRCUIT COURT IN A MEDICAL MALPRACTICE ACTION SPECIFICALLY ALLEGING AN INJURY OUTSIDE THE COVERAGE OF THE PLAN MUST AUTOMATICALLY ABATE THAT ACTION WHEN THE PLAN'S IMMUNITY IS RAISED AS AN AFFIRMATIVE DEFENSE PENDING A DETERMINATION BY THE HEARING OFFICER AS TO THE EXACT NATURE OF THE INFANT'S INJURY?

See Central Florida Regional Hospital, Inc. v. Wager, 656 So. 2d 491, 493-94 (Fla. 5th DCA 1995). We have jurisdiction. Art. V, § 3(b)(4), Fla. Const. Since we have already answered the identical question in the negative in Florida Birth-Related Neurological Injury Compensation Ass'n v. McKaughan, 21 Fla. L. Weekly S91 (Fla. Feb. 29, 1996), the district court decision is approved.

It is so ordered.

GRIMES, C.J., and OVERTON, SHAW, KOGAN, HARDING, WELLS and ANSTEAD, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Two Consolidated Cases:
Applications for Review of the Decisions of the District Court of
Appeal - Certified Great Public Importance
Fifth District - Case Nos. 94-2138 & 94-2139

(Seminole County)

Michael C. Mattson and Pamela R. Kittrell of Cooney, Haliczzer,
Mattson, Lance, Blackburn, Pettis & Richards, P.A., Fort
Lauderdale, Florida, on behalf of Central Florida Regional
Hospital, Inc., d/b/a Central Florida Regional Hospital; and
Hector A. More and Gregory A. Fencik of Taraska, Grower &
Ketcham, P.A., Orlando, Florida, on behalf of David C. Mowere,
M.D., David C. Mowere, M.D., P.A., Mid-Florida OB-GYN Specialist
and Phillips, Ravelo & Mowere, M.D., P.A.,

for Petitioners

Nolan Carter of the Law Offices of Nolan Carter, P.A., Orlando,
Florida, on behalf of Paul Wager and Wendy Wager, as Personal
Representatives of the Estate of Henry Paul Wager, III, a
deceased minor,

for Respondents

Bruce Culpepper and William E. Whitney of Pennington & Haben,
P.A., Tallahassee, Florida,

for Florida Birth-Related Neurological Injury
Compensation Association, Amicus Curiae