

Supreme Court of Florida

SHANDS TEACHING HOSPITAL AND CLINICS, INC. etc., et al.,
Petitioners,

vs.

JANET LOUISE WARREN,
Respondent.

No. 91,718

CORRECTED OPINION

[October 21, 1999]

HARDING, C.J.

We have for review the decision in Warren v. Shands Teaching Hospital & Clinics, Inc., 680 So. 2d 460 (Fla. 1st DCA 1996), based upon conflict with the Fourth District Court of Appeal's opinion in Stahl v. Evans, 691 So. 2d 1184 (Fla. 4th DCA 1997). We have jurisdiction pursuant to article V, section 3(b)(3) of the Florida Constitution. For the reasons expressed below, we approve the decision in Warren and remand this case to the trial court for proceedings consistent with this opinion.

The conflict in these two cases stems from the interpretation of rule 1.070(j) of the Florida Rules of Civil Procedure. Specifically, the cases are in conflict regarding the standard to be applied when determining whether good cause has been shown for late

service.

In Warren, the First District Court ruled that the issue of good cause for late service should be considered in light of the factors announced in Kozel v. Ostendorf, 629 So. 2d 817 (Fla. 1993), and remanded to the trial court with directions to reconsider in light of Kozel. In Stahl, the Fourth District Court ruled that the Kozel factors are inapplicable to the determination of good cause for late service. While we do not approve the reasoning of the First District Court, we approve the result reached by that court.

In Amendment to Florida Rule of Civil Procedure 1.070(j)–Time Limit for Service, 24 Fla. L. Weekly S109 (Fla. Mar. 4, 1999), this Court recently adopted an amendment to rule 1.070(j). The reasons for this rule change are set out in Amendment to Florida Rule of Civil Procedure 1.070(j) – Time Limit for Service, 720 So. 2d 505 (Fla. 1998).¹ Additionally, in the opinion adopting the rule, we stated that the amended rule shall apply where "just and practicable, to all civil cases pending as of the date of this opinion [Mar. 4, 1999]." Amendment to Florida Rule of Civil Procedure 1.070(j)–Time Limit for Service, 24 Fla. L. Weekly at S109. This case is pending and consequently the new rule applies.

¹ In Amendment to Florida Rule of Civil Procedure 1.070(j)–Time Limit for Service, 720 So. 2d 505 (Fla. 1998), we proposed on our own motion the amendment to rule 1.070(j).

Accordingly, we approve the decision in Warren and remand to the trial court with instructions to apply the new rule.

It is so ordered.

SHAW, WELLS, ANSTEAD and PARIENTE, JJ., and OVERTON and KOGAN, Senior Justices, concur.

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

Application for Review of the Decision of the District Court of Appeal - Certified Direct Conflict of Decisions

First District - Case No. 96-2762

(Alachua County)

A. Russell Bobo and Thomas W. Poulton of Bobo, Spicer, Ciotoli, Fulford, Bocchino, DeBevoise & LeClainche, P.A., Orlando, Florida,

for Petitioners

Maria P. Sperando of Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, Stuart, Florida,

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