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IN THE SUPREME COURT OF FLORIDA

UNIVERSITY OF FLORIDA
BOARD OF TRUSTEES; and
SHANDS TEACHING HOSPITAL
AND CLINICS, d/b/a SHANDS
HOSPITAL,

Petitioners,

v.

LAURIE CARMODY,

Respondent.
_____/

Case No. SC22-68
L.T. Case Nos. 1D21-0634
2019-CA-1827

APPENDIX TO PETITIONERS' BRIEF ON JURISDICTION

On Review From A Decision Of The
First District Court of Appeal

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 28, 2022, a true and correct copy of the foregoing was furnished via the Florida Courts E-Portal System and a copy was served electronically upon the following counsel of record:

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FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-634

UNIVERSITY OF FLORIDA BOARD
OF TRUSTEES; and SHANDS
TEACHING HOSPITAL AND
CLINICS, d/b/a SHANDS
HOSPITAL,

Petitioners,

v.

LAURIE CARMODY,

Respondent.

Petition for Writ of Certiorari—Original Jurisdiction.

November 10, 2021

OSTERHAUS, J.

Petitioners University of Florida Board of Trustees and Shands Hospital seek certiorari relief arguing that Laurie Carmody failed to comply with the presuit medical expert-corroboration requirement of the Medical Malpractice Act. *See* § 766.203(2), Fla. Stat. (2016). Petitioners assert that the trial court should have dismissed Carmody's medical malpractice lawsuit because her medical doctor expert was unqualified to address the standard of care applicable to the certified nurse practitioner who rendered care in Carmody's case. This Court lacks jurisdiction, however, to address the merits of Petitioners' argument because Petitioners have not demonstrated irreparable harm. We therefore dismiss the petition.

A petitioner seeking certiorari relief after the denial of a motion to dismiss "must demonstrate a departure from the essential requirements of the law that would result in irreparable harm that could not be corrected on direct appeal." *Shands Jacksonville Med. Ctr., Inc. v. Pusha*, 254 So. 3d 1076, 1080 (Fla. 1st DCA 2018) (citing *Williams v. Oken*, 62 So. 3d 1129, 1132 (Fla. 2011)). The irreparable harm element is "jurisdictional and must be analyzed before the court may even consider" whether the trial court departed from the essential requirements of law. *Williams*, 62 So. 3d at 1132. If the threshold jurisdictional requirement of irreparable injury is not met, then the inquiry ends there. *Id.* at 1132–33. Lacking a showing of irreparable harm a petition must be dismissed.

Generally speaking, certiorari review is an inappropriate means of challenging a trial court's denial of a motion to dismiss. *Williams*, 62 So. 3d at 1133–34. But Florida's courts have recognized exceptions to this rule with respect to the medical malpractice-presuit requirements of chapter 766—a law designed to avoid meritless claims. *Id.* In *Williams*, the Florida Supreme Court concluded that certiorari relief is available to address procedural omissions in presuit-related cases where a defendant isn't afforded "proper process through procedural compliance with the statutory requirements." *Id.* at 1134–36 (discussing *Globe Newspaper Co. v. King*, 658 So. 2d 518 (Fla. 1995), and other cases). Conversely, the Court held that a petition should have been dismissed where the defendant received proper process and its certiorari argument merely involved whether the trial court erred in ruling on the qualifications of an expert who had corroborated a medical negligence claim. *Williams*, 62 So. 3d at 1137 (concluding that "whether the trial court erred in finding [the doctor] was a qualified expert under the statute . . . is insufficient to merit certiorari review"); *see also DeSantis v. Fla. Educ. Ass'n*, 313 So. 3d 151, 154 (Fla. 1st DCA 2020) (deducing from *Williams* that "a mere erroneous ruling that results from that process cannot establish the jurisdictionally necessary irreparable harm"); *Sellers v. Anstett*, 304 So. 3d 821 (Fla. 1st DCA 2020) (citing *Williams* and dismissing a petition involving a medical expert's qualifications).

In this case, Respondent complied with the presuit procedural steps necessary to go forward with her medical negligence claim, including filing a corroborating medical expert opinion under § 766.203(2). *See Pusha*, 254 So. 3d at 1081 (recognizing the requirement to submit an expert opinion supporting the claim). Section 766.203(2) specifically requires: "Corroboration of reasonable grounds to initiate medical negligence litigation shall be provided by the claimant's submission of a verified written medical expert opinion from a medical expert as defined in s. 766.202(6) . . . which statement shall corroborate reasonable grounds to support the claim of medical negligence." Petitioners challenged the qualifications of Carmody's medical expert to opine about the standard of care applicable to the certified nurse practitioner's treatment of Carmody. *See* § 766.102(5)–(6), Fla. Stat. (establishing specific criteria to qualify to give expert testimony regarding the applicable professional standard of care). In response, the trial court held an evidentiary hearing, understood its gatekeeping role under the statute, and ultimately ruled that Carmody's expert and the corroborating affidavit satisfied the requirements of the Medical Malpractice Act. In doing so, the trial court complied with the procedural requirements of the law. *Cf. Watt v. Lo*, 302 So. 3d 1021, 1025 (Fla. 1st DCA 2020) (holding that the trial court satisfied procedural requirements in allowing a plaintiff to add a punitive damages claim because it heard the evidence, understood its gatekeeping function, and made the determination required by law).

Now on certiorari review, Petitioners don't argue that a process-related deficiency occurred, but that the court erred and should have dismissed the case because the corroborating expert wasn't qualified. *Williams* applies directly to certiorari petitions making this argument. And it concluded that certiorari review is not available to review arguably erroneous rulings on the qualifications of medical-expert affiants under chapter 766 (as opposed to reviewable process-compliance issues). *Williams*, 62 So. 3d at 1137. Seeing no light between the analysis in *Williams* and the situation presented here, we must dismiss the petition.

We understand Petitioners' argument that *Williams* was issued prior to the current version of the statute that sets more restrictive medical qualification standards for persons giving

expert testimony about the applicable standard of care. *Compare* § 766.102(5), Fla. Stat. (2011) with § 766.102(5), Fla. Stat. (2016). But these qualification changes did not displace the certiorari principles set forth in *Williams* restricting appellate courts from reviewing the expert-qualification decisions of trial courts on certiorari. Irrespective of whether past or current qualification standards are at play, the core issue remains that appellate courts lack certiorari jurisdiction to address non-procedural disputes concerning the qualifications of claim-corroborating experts.

Finally, we recognize that our decision to follow *Williams* here conflicts with the course taken in more recent cases by the Second and Fifth District Courts of Appeal, which evaluated the merits of medical expert-qualification rulings on certiorari and granted relief. *See Clare v. Lynch,* 220 So. 3d 1258 (Fla. 2d DCA 2017); *Riggenbach v. Rhodes*, 267 So. 3d 551 (Fla. 5th DCA 2019). These opinions do not wrestle with *Williams*, in which the Florida Supreme Court rejected certiorari review and an opinion of this court granting relief under similar circumstances. *See Oken v. Williams*, 23 So. 3d 140 (Fla. 1st DCA 2009) (quashed in *Williams*, 62 So. 3d at 1137). Taking our cue from *Williams* this time, we dismiss the petition and certify conflict with these other district court cases.

PETITION DISMISSED; CONFLICT CERTIFIED.

ROWE, C.J., and WINOKUR, J., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Christine R. Davis from Carlton Fields, P.A., Tallahassee, for Petitioners.

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