

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC15-67
L.T. Case No. 5D14-759

EILEEN HERNANDEZ, M.D. and WOMEN'S CARE FLORIDA, LLC d/b/a
PARTNERS IN WOMEN'S HEALTHCARE,

Petitioners,

vs.

LUALHATI CRESPO and JOSE CRESPO,

Respondents.

ON DISCRETIONARY REVIEW OF AN OPINION
OF THE FIFTH DISTRICT COURT OF APPEAL

PETITIONERS' BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Petitioners/Defendants, EILEEN HERNANDEZ, M.D. and WOMEN'S CARE FLORIDA, LLC d/b/a PARTNERS IN WOMEN'S HEALTHCARE, pursuant to Florida Rules of Appellate Procedure 9.030(a)(2)(A)(vi) and 9.120(d), file this brief in support of their notice invoking the Court's "certified conflict" jurisdiction under Article V, section 3(b)(4) of the Florida Constitution.

In an opinion reversing an order of the trial court compelling binding arbitration pursuant to the arbitration agreement under review, the Fifth District "certif[ied] conflict with the decision of the Second District Court of Appeal in *Santiago v. Baker*, 135 So. 3d 569 (Fla. 2d DCA 2014)." (Op. p.2).¹ The Fifth District held that "[t]he agreement at issue violates the public policy pronounced by the Legislature in the Medical Malpractice act, chapter 766, Florida Statutes (2012), by failing to adopt the necessary statutory provisions." (Op. p.1). As alleged support for its holding, the Fifth District cited this Court's opinion in *Frank v. Bowers*, 116 So. 3d 1240, 1248 (Fla. 2013). (Op. pp.1-2).

Bowers, however, narrowly confined its holding to the specific facts and agreement before it and confirmed that contractual arbitration agreements are not prohibited and may co-exist with the statutory arbitration scheme under Chapter 766. *Id.* at 1249-50 ("[O]ur decision here is fact-specific pertaining only to the

¹Unless otherwise noted, all emphasis has been supplied by counsel.

particular agreement before us and does not prohibit all arbitration agreements under the [Medical Malpractice Act]."

SUMMARY OF ARGUMENT

This Court has "certified conflict" jurisdiction per se under article V, section 3(b)(4) of the Florida Constitution as the Fifth District has expressly certified conflict with the Second District's opinion in *Santiago v. Baker*, 135 So. 3d 569 (Fla. 2d DCA 2014). Because the contractual arbitration issues and public policy concerns are fundamental and far-reaching, the Court should assume jurisdiction to resolve the certified conflict.

ARGUMENT

I. THIS COURT HAS "CERTIFIED CONFLICT" JURISDICTION PER SE BECAUSE THE FIFTH DISTRICT CERTIFIED CONFLICT WITH AN OPINION OF THE SECOND DISTRICT AS TO WHETHER THE ARBITRATION AGREEMENT AT ISSUE VIOLATES THE PUBLIC POLICY PRONOUNCED IN THE MEDICAL MALPRACTICE ACT, CHAPTER 766.

This case involves important and broad-reaching issues pertaining to the fundamental right to contract and whether private arbitration agreements between Florida health care providers and their patients are against public policy.

In *Santiago v. Baker*, 135 So. 3d 569 (Fla. 2d DCA 2014), the Second District expressly held that the Women's Care Florida arbitration agreement at issue does not violate Florida's public policy reflected in the medical malpractice statutes (Chapter 766). *Id.* at 570-71. The Second District distinguished this

Court's decision in *Frank v. Bowers*, 116 So. 3d 1240 (Fla. 2013) and noted that "nothing in *Bowers* 'impede[s] the general enforceability of agreements to arbitrate.'" 135 So. 3d at 571.

In contrast, the Fifth District below held that the same defendant's arbitration agreement violated the public policy pronounced by the Legislature in the Medical Malpractice Act. (Op. p.1). Accordingly, the Fifth District certified conflict with the Second District's decision in *Santiago*. (Op. p.2).

Because the Fifth District expressly "certified conflict" and indicated the decision upon which the conflict is based, this Court has "jurisdiction per se" and should accept the case to resolve the conflict. *See State v. Vickery*, 961 So. 2d 309, 311-12 (Fla. 2007) ("[D]istrict court opinions accepted [for review as certified conflict cases under article V, section 3(b)(4) of the Florida Constitution]...almost uniformly meet two requirements: they use the word 'certify' or some variation of the root word 'certif.-' in connection with the word 'conflict;' and, they indicate a decision from another district court upon which the conflict is based.' * * * [A] certification of conflict provides us with jurisdiction per se.").²

²The fact the Fifth District did not specifically use the word "direct" when certifying conflict with *Santiago* is of no moment. *See J.M. v. Gargett*, 101 So. 3d 352, 353 (Fla. 2012) (assuming jurisdiction under Art. V, §3(b)(4) where Second District "certified conflict" with Fifth District decision [53 So. 3d 1245, 1246]); *Florida Birth-Related Neurological Injury Compensation Ass'n v. Div. of Admin. Hearings*, 955 So. 2d 529, 530 (Fla. 2007) (assuming jurisdiction under Art. V, §3(b)(4) where Second District "certified conflict" with decisions of Fifth, Fourth

This Court should assume jurisdiction and resolve the certified conflict. *See* Anstead, Kogan, Hall & Waters, *The Operation and Jurisdiction of the Supreme Court of Florida*, 29 NOVA L.REV. 431, 530 (2005) ("The policy for accepting such cases, of course, is that the very act of certifying conflict creates confusion or uncertainty in the law that should be resolved by the Court, a view the Court has approved.").

As it currently stands, parties and lower courts that are bound by or decide to follow the Second District's decision in *Santiago* will honor and enforce the arbitration agreement at issue, while the opposite will hold true for parties and courts following the Fifth District's decision below. Although the *Santiago* Court noted that *Frank v. Bowers* does not vitiate the right of private parties to contractually agree to arbitrate, the decision below arguably invalidates all private contractual agreements to arbitrate. Given the ubiquitous presence of arbitration agreements, the conflict may impact many thousands of patients and other residents throughout the State of Florida.

Petitioners submit that the arbitration agreement at issue does not violate the

and Third Districts [871 So. 2d 1062, 1066]); *Dream Boat, Inc. v. Florida Dep't of Revenue*, 911 So. 2d 80, 80 (Fla. 2005) (assuming jurisdiction under Art. V, §3(b)(4) where First District "certifie[d] conflict" with Fourth District decision [921 So. 2d 1, 5]); *Dep't of Law Enforcement v. House*, 678 So. 2d 1284, 1284 (Fla. 1978) (assuming jurisdiction under Art. V, §3(b)(4) where First District in unpublished order "certified conflict" with Fifth District decision).

public policy reflected in the Medical Malpractice Act and is enforceable and fully consistent with the Court's decision in *Bowers*. This Court should approve *Santiago* and disapprove/quash the Fifth District's decision below.

CONCLUSION

Petitioners/Defendants, EILEEN HERNANDEZ, M.D. and WOMEN'S CARE FLORIDA, LLC d/b/a PARTNERS IN WOMEN'S HEALTHCARE, respectfully request that the Court grant review in this case.

Respectfully submitted,

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BY: /s/ Dinah Stein
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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail this **20th** day of **January, 2015**, to: Bryan S. Gowdy, Esq., Jessie L. Harrell, Esq., Creed & Gowdy, P.A., 865 May Street, Jacksonville, FL 32204, jharell@appellatefirm.com; bgowdy@appellatefirms.com; filings@appellatefirm.com and Maria D. Tejedor, Esq., Diez-Arguelles & Tejedor, P.A.,

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CERTIFICATE OF COMPLIANCE

This brief complies with the font requirements of Rule 9.210. It is typed in
Times New Roman 14 point type.

BY: /s/ Dinah Stein
DINAH STEIN
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11-11-11

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

LUALHATI CRESPO AND JOSE CRESPO,

Appellants,

v.

Case No. 5D14-759

EILEEN HERNANDEZ, M.D. AND WOMEN'S
CARE FLORIDA, LLC D/B/A PARTNERS IN
WOMEN'S HEALTHCARE

Appellees.

Opinion filed October 24, 2014

Non Final Appeal from the Circuit Court
for Orange County,
Patricia A. Doherty, Judge.

Jessie L. Harrell and Bryan S. Gowdy, of
Creed & Gowdy, P.A., Jacksonville, for
Appellants.

Thomas E. Dukes, III, and Ruth C.
Osborne, of McEwan, Martinez, & Dukes,
P.A., Orlando, for Appellees.

PER CURIAM.

The arbitration agreement at issue violates the public policy pronounced by the Legislature in the Medical Malpractice Act, chapter 766, Florida Statutes (2012), by failing to adopt the necessary statutory provisions. Franks v. Bowers, 116 So. 3d 1240, 1248 (Fla. 2013) ("Because the Legislature explicitly found that the MMA was necessary to lower the costs of medical care in this State, we find that any contract that seeks to enjoy the benefits of the arbitration provisions under the statutory scheme must

necessarily adopt all of its provisions."). Therefore, we reverse the order rendered by the trial court compelling binding arbitration pursuant to the arbitration agreement under review. We certify conflict with the decision of the Second District Court of Appeal in Santiago v. Baker, 135 So. 3d 569 (Fla. 2d DCA 2014). We remand this case to the trial court for further proceedings.

REVERSED; REMANDED; CONFLICT CERTIFIED.

TORPY, C.J., SAWAYA and LAMBERT, JJ., concur.