IN THE SUPREME COURT OF FLORIDA

MARIA ISABEL GIRALDO
and JUAN GONZALO VILLA,
as co-personal representatives of
the estate of JUAN L. VILLA,

Petitioners,

v.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.

Case No.: SC17-297

L.T. Case Nos.: 1D16-0392
15-4423MTR

ON REVIEW FROM THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

PETITIONERS' JURISDICTIONAL BRIEF

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STATEMENT OF THE CASE AND FACTS

The conflict in this case involves the inconsistent interpretation of Florida's Medicaid statute, section 409.910(17)(b). Specifically, the First and Second District Courts of Appeal have issued directly conflicting decisions regarding what portion of a Medicaid recipient's tort settlement Florida's Agency for Health Care Administration ("AHCA") may recover as reimbursement when Medicaid has paid for injuries arising from the tort. The District Courts agree that the statute authorizes AHCA to recover the portion of the tort settlement designated as compensation for medical expenses that have already been incurred. The conflict, which has been certified by the Second District, is over whether AHCA can also recover reimbursement for its past payments from the portion of the settlement intended as compensation for future (not yet incurred) medical expenses – or whether that portion is a property right protected by federal Medicaid law and AHCA is therefore prohibited from recovering it.

Juan Villa was gravely injured in an ATV accident, resulting in paralysis. A.1/*Giraldo v. Agency for Health Care Administration*, 208 So. 3d 244, 245 (Fla. 1st DCA 2017). Thereafter, he sued multiple defendants in a product liability action. A.3/*245. He then entered into a settlement agreement with one of those parties; his counsel promptly notified AHCA of that settlement. A.3-4/*246.

AHCA then asserted a lien against the settlement, pursuant to section

409.910, Florida Statutes. A.4/*246. More specifically, subsection (11)(f) contains a mathematical formula that calculates the portion AHCA may recover from a Medicaid recipient's tort settlement as reimbursement for payments AHCA has made on the recipient's behalf (it amounts to approximately one-third of the settlement). *Id.*; § 409.910(11)(f), Fla. Stat. (2015).

The subsection (11)(f) statutory formula is not absolute though. At subsection (17)(b), the same statute allows the Medicaid recipient to file a petition with Florida's Division of Administrative Hearings ("DOAH") and ask an Administrative Law Judge ("ALJ") to determine whether "a lesser portion of the total recovery [settlement, verdict, etc.] should be allocated as reimbursement for past and future medical expenses than that amount calculated by the agency pursuant to the formula set forth in paragraph (11)(f)." A.6/*247; A.9/*248-49; § 409.910(17)(b), Fla. Stat. (2015).

Pursuant to subsection (17)(b), Juan sought a hearing at DOAH and asked the ALJ to determine that AHCA was limited to recovering the amount the parties had allocated to past medical expenses, as opposed to the amount calculated by the statutory formula. A.4/*246. Specifically, the case had settled for 4% of its total value, so the parties had allocated 4% of the total medical bills as the portion of the settlement intended to compensate for Juan's past medical expenses. A.3 n.4/*246

n.4. Juan was asking that AHCA be limited to recovering this past-medical-expenses portion of the settlement. *Id.*

The ALJ determined that, as a matter of law, AHCA was not limited to recovering only the portion of the settlement intended to compensate Juan for his past medical expenses. A.6/*247. The ALJ then found that AHCA was entitled to recover the full value of its lien amount. *Id.*

The First District affirmed. The First District disregarded a holding from the Fifth District that said AHCA was limited to recovering only the past-medical-expenses portion of a settlement. A.14-15/*251. The First District instead held that AHCA has the "right to secure reimbursement ... from not only that portion of the settlement allocated for past medical expenses but also from that portion of the settlement intended as compensation for future medical expenses." A.8/*248.

Shortly after the First District's opinion in this case, the Second District made the conflict express. The Second District noted that the Fifth District, in the case disregarded by the First District here, had held that AHCA is limited to recovering the "portion of the Medicaid recipient's third-party recovery representing compensation for past medical expenses," and the Second District chose to align itself with that view. *Willoughby v. Agency for Health Care Admin.*, -- So. 3d --, 2017 WL 945532, at *5 (Fla. 2d DCA Mar. 10, 2017), quoting *Davis v. Roberts*, 130 So. 3d 264, 270 (Fla. 5th DCA 2013). Judge LaRose, writing for

the court, said the Second District "respectfully disagree[d]" with the First District and held that AHCA is limited to recovering only "that portion of a settlement allocable to past medical expenses." *Willoughby*, 2017 WL 945532, at *5. After citing multiple decisions by Florida's ALJs (and cases from around the country) that have reached conclusions that also conflict with the First District on the issue, the Second District certified the conflict. *Id.* at *6-7.

SUMMARY OF THE ARGUMENT

This Court should grant jurisdiction to resolve the decisional conflict regarding the interpretation of section 409.910; specifically, what portions of a Medicaid recipient's settlement the statute authorizes AHCA to recover. The obvious conflict, which the Second District has explicitly recognized, results in Florida's ALJs having inconsistent direction on the law they are to follow when adjudicating a Medicaid recipient's claims. As the Second District's opinion reflects, even before the appellate conflict, Florida's ALJs were inconsistent in their rulings regarding what portions of a tort settlement AHCA could recover. Such unequal application of the law must be remedied so it is not repeated.

Moreover, the consequences of ALJs making an incorrect choice about what law to follow has implications beyond the disparate treatment of similarly situated Medicaid recipients. Compliance with federal law is a mandatory pre-requisite for federal funding. But, if the ALJs enforce a statutory interpretation that is in

conflict with federal law, then Florida's federal funding for its Medicaid program could be in jeopardy. *NB ex rel. Peacock v. D.C.*, 794 F.3d 31, 35 (D.C. Cir. 2015) (noting that states electing to participate in Medicaid "must comply with conditions imposed by federal law" or lose their federal funding).

Put simply, resolution of the conflict is necessary both to ensure uniformity and to prevent an unintended consequence with far-reaching ramifications.

ARGUMENT

I. The First District's decision expressly and directly conflicts with decisions of the Second and Fifth District Courts of Appeal.

The constitutional basis for this Court to exercise its jurisdiction is straightforward. Article V, section 3(b)(3), of the Florida Constitution provides that the Supreme Court "[m]ay review any decision of a district court of appeal ... that expressly and directly conflicts with a decision of another district court of appeal ... on the same question of law."

Both the First and Second Districts recently addressed the legal issue of whether AHCA is authorized to recover as reimbursement, under section 409.910, the portion of a Medicaid recipient's tort settlement that represents compensation for future (not yet incurred) medical care. And the two courts reached diametrically opposing conclusions. In the instant case, the First District held that AHCA can recover from a Medicaid recipient's settlement "not only the portion of the settlement allocated for past medical expenses but also from that portion of the

settlement intended as compensation for future medical expenses." A.8/*248; A.16-17/*251 (noting that courts outside Florida have held the other way but "we choose…to align ourselves with…those courts which have held that a state agency may secure payment from both past and future recoveries for medical expenses").

A few weeks later, the Second District certified direct conflict with the instant case. *Willoughby*, 2017 WL 945532, at *7. Judge LaRose could not have been clearer about the Second District's reason for certifying the conflict, stating that the court "disagree[d] with our sister district" and that the First District had "misinterpret[ed]" the law. *Id.* at *5. The Second District then held that section 409.910 must be read to limit AHCA to recovering only "that portion of a settlement allocated to past medical expenses." *Id.* (It also noted that the Fifth District had reached the same conclusion. *Id.*, citing *Davis*, 130 So. 3d at 269.)

These holdings are irreconcilable. Indeed, it is for that exact reason that the Second District certified the conflict. Because the First District's conclusion in this case expressly and directly conflicts with the Second and Fifth Districts' conclusions in *Willoughby* and *Davis*, under article V, section 3(b)(3), this Court has discretionary jurisdiction and should review the First District's decision.

II. This Court should exercise its discretion to decide this important issue, which threatens not only uniformity in decisions, but also federal funding.

The decisional conflict created by the First District's opinion will have far-reaching ramifications. First, there is the obvious problem for Florida's ALJs. The

Second and Fifth Districts have interpreted the law as being "clear" that AHCA is limited to seeking reimbursement from only that portion of the settlement that represents compensation for past medical expenses. *Davis*, 130 So. 3d at 269; *Willoughby*, 2017 WL 945532, at *6. The First District says there is no such prohibition. A.8-17/*248-52. Pursuant to section 409.910(17)(b), when a Medicaid recipient seeks an ALJ's determination of the amount AHCA can recover from his settlement, these cases are in clear and fundamental conflict.

Even before the appellate conflict, ALJs were reaching inconsistent legal conclusions. This case is an example of an ALJ concluding that AHCA could recover its past payments from both the past and future medical expenses portion of a Medicaid recipient's settlement. In another case pending before this Court (but stayed pending the outcome here), *Mobley v. AHCA*, SC17-403, the ALJ reached the same conclusion. Yet the *Willoughby* decision cites to several ALJ opinions concluding that AHCA could recover its past payments from only the past-medical-expenses portion of a settlement. 2017 WL 945532, at *6. These examples are but the tip of the iceberg – ALJs see many similar cases. This Court should weigh in so that the law is applied uniformly to all AHCA lien challenges.

Second, this is a circumstance where ALJs applying the wrong statutory interpretation could jeopardize Florida's federal Medicaid funding. The Medicaid program is a cooperative federal and state program providing payment for medical

services to eligible individuals and families. *Ark. Dep't of Health & Human Servs. v. Ahlborn*, 126 S. Ct. 1752, 1758 (2006). States that participate in the Medicaid program are reimbursed by the federal government for a portion of the payments they make to recipients, provided the states meet certain statutory eligibility requirements. *Id.* One of those requirements is that state Medicaid agencies seek reimbursement when a Medicaid recipient recovers for his injuries from a third-party tortfeasor. *See* 42 U.S.C. §1396a(a)(25)(A).

However, federal law also "places express limits on the State's powers to pursue recovery of funds it paid on the recipient's behalf." *Ahlborn*, 126 S. Ct. at 1762. A tort settlement is the property of a Medicaid recipient, and it is protected by the federal Medicaid law's anti-lien provision. *Ahlborn v. Ark. Dep't of Human Servs.*, 397 F.3d 620, 623 (8th Cir. 2005) (noting that the purpose of the anti-lien provision is to "prevent[ ] a State from attaching property of a recipient to reimburse the State for benefits paid under a state Medicaid plan").

In particular, the federal anti-lien provision "prohibits a State from making a claim to any part of a Medicaid beneficiary's tort recovery not 'designated as payments for medical care.'" *Wos v. E.M.A.*, 133 S. Ct. 1391, 1398 (2013), quoting *Ahlborn*, 126 S. Ct. at 1763. (Appellants, following the reasoning of the Second and Fifth Districts, argue that "payments for medical care" means the tort recovery intended as compensation for payments that have already been incurred,

not the portion of the recovery intended as compensation for future medical care.)

To the extent the states' reimbursement statutes conflict with the federal Medicaid statute (by authorizing a greater recovery than what is permitted by federal law), the Supreme Court has made clear that the statutes are preempted by federal law. *Wos*, 133 S. Ct. at 1398; *Ahlborn*, 126 S. Ct. at 1767.

Here, the First District has interpreted what the Florida statute authorizes in one way, while the Second and Fifth Districts have interpreted it another way. Resolving the conflict will not only bring uniformity to the law, and provide clear guidance to ALJs, it could also potentially avoid a circumstance where Florida's federal funding is in jeopardy. *NB ex rel. Peacock*, 794 F.3d at 35 (noting that states electing to participate in Medicaid "must comply with conditions imposed by federal law" or they will lose their federal funding).

We conclude by addressing two practical points. First, we want to be clear that the legal issue that creates the jurisdictional conflict was outcome determinative. No doubt, there were factual, case-specific issues too. There almost always are. But AHCA cannot deny that it is now citing the First District's decision to ALJs as a basis for finding that AHCA can recover from both the past and future medical expense portions of a settlement (and that there are ALJs basing their decisions upon this case). The case-specific issues do not alter the fact that the First District's legal conclusion applies equally to all Medicaid recipients' tort

settlements – and is in direct conflict with the Second District's legal conclusion.

Second, to the extent there might be a temptation to deny or delay review and wait for the certified conflict case itself to appear before this Court, that would not be prudent. It is unclear whether AHCA will seek review in *Willoughby* (AHCA's counsel was candid when we asked). If AHCA does seek review, then this Court can consolidate the petitions for jurisdictional screening, if appropriate, and determine whether the cases should travel together. Waiting for a theoretical future petition deprives not only Juan Villa, but also the Medicaid recipients of this State, of the certainty that comes with the "bird in the hand" of this petition. Subsequent events that may or may not occur are irrelevant to the question of whether this Court has jurisdiction to consider the First District's decision (it does) and whether it should exercise that discretion here (it should).

Put simply, this case is the poster child for why our Constitution provides for conflict jurisdiction. AHCA, Medicaid recipients, and Florida's ALJs need this Court to resolve the conflict so that there can be a consistent application of the statute. Until then, the outcomes of AHCA lien challenges will be in disarray.

CONCLUSION

For the foregoing reasons, this Court should grant review and resolve the conflict regarding the interpretation of what portions of a Medicaid recipient's tort settlement AHCA is authorized to recover under section 409.910.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to Alexander R. Boler (alexander.boler@xerox.com; fltpllegal@xerox.com), Xerox Recovery Services, Inc., 2073 Summit Lake Drive, Suite 300, Tallahassee, Florida 32317 this 5th day of April 2017.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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