

No. 18-1041

IN THE
Supreme Court of the United States

FRANCES K. KONIECZKO, LAWRENCE W. KONIECZKO &
LAURIE F. KONIECZKO,

Petitioners,

v.

ADVENTIST HEALTH SYSTEM/SUNBELT, INC. d/b/a
FLORIDA HOSPITAL ALTAMONTE & d/b/a
FLORIDA HOSPITAL ORLANDO,

Respondent.

**On Petition for a Writ of Certiorari to the
Florida Supreme Court**

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

CHRISTIAN P. TROWBRIDGE

Counsel of Record

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Counsel for Respondent,

Adventist Health

System / Sunbelt, Inc.,

d / b / a Florida Hospital

Altamonte & d / b / a Florida

Hospital Orlando

March 11, 2019

CORPORATE DISCLOSURE STATEMENT

Adventist Health System Sunbelt Healthcare Corporation d/b/a Adventist Health System is the only parent corporation of Adventist Health System/Sunbelt, Inc. There is no publicly held company owning 10% or more of the corporation's stock.

RESPONDENT'S STATEMENT OF JURISDICTION

Respondent Adventist Health System/Sunbelt, Inc., contends there is no compelling reason for this Court to grant a Writ of Certiorari pursuant to Supreme Court Rule 10. For example, the decisions of the Ninth Judicial Circuit Court of Florida, the Fifth District Court of Appeal of Florida, and the Florida Supreme Court do not decide an important federal question. Alternatively, the Florida Courts in their Order have not “decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.” See Supreme Court Rule 10(b). Further, the Florida Courts have not decided “an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.” See Supreme Court Rule 10(c). Petitioners have also failed to present any erroneous factual findings or the misapplication of a properly stated rule of law. See Supreme Court Rule 10. Finally, Petitioners have failed to “present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration . . .” See Supreme Court Rule 14(4).

RESPONDENT'S RESTATEMENT OF THE CASE

The primary issue is whether the Florida Supreme Court may properly decline to exercise discretionary review of an unelaborated Florida district court of appeal's decision denying Petitioners' Petition for Writ of Mandamus (directed to the Ninth Judicial Circuit Court's Order refusing to reassign Petitioners' circuit court case to a different judge). Alternatively, the

issue may be whether the Fifth District Court of Appeal of Florida may properly deny Petitioners' Petition and Amended Petition for Writ of Mandamus.

On December 1, 2016, Petitioners Frances K. Konieczko, Lawrence W. Konieczko and Laurie F. Konieczko filed a Pro Se Complaint in the Circuit Court of the Ninth Judicial Circuit of Orange County, Florida. Petitioners' Complaint asserted various tort theories against Respondent and these theories relate to medical care provided to William Konieczko at Florida Hospital Altamonte.

On May 8, 2018, Circuit Judge Frederick J. Lauten executed an Order Denying [Petitioners'] Motion for Chief Judge Frederick Lauten to Issue an Order to Reassign this Case to a Different Judge. This Order was filed on May 11, 2018. (App. 1). Petitioners then pursued a Petition for Writ of Mandamus with the Fifth District Court of Appeal of Florida. On September 7, 2018, the Fifth District Court of Appeal of Florida entered an Order Denying Petitioners' Petition for Writ of Mandamus filed on June 12, 2018, and Petitioners' Amended Petition filed on August 29, 2018. (App. 2).

Petitioners thereafter sought discretionary review with the Florida Supreme Court. On October 23, 2018, the Florida Supreme Court dismissed Petitioners' appeal for lack of jurisdiction to review an unelaborated decision from a district court of appeal. (App. 3).

This appeal ensued.

ARGUMENT

Petitioners have failed to include accurate and complete copies of the Florida Courts' Orders in their Appendix. Instead, Petitioners have created excerpts of the Orders and placed the excerpts in their Appendix. See Petitioners' Appendix in comparison with Respondent's Appendix.

Petitioners have also failed to present any true federal question or conflict between Florida Courts and a Federal Court on a federal question. The Orders that Petitioners reference in their Petition concern the Chief Judge of the Florida Circuit Court refusing to assign Petitioners' case to a different judge and Petitioners' unsuccessful appellate efforts to get that decision reversed. Florida law in Florida Rule of Judicial Administration 2.160 and chapter 38, Florida Statutes provide a mechanism for Petitioners to seek disqualification of a judge. Filing a Motion asking the Chief Circuit judge to assign the case to a different judge is not the appropriate mechanism for Petitioners to get their case assigned to a different judge. Outside of the above Florida Rule and Statutes concerning Motions for Disqualification, there appears to be no basis for Petitioners to request or require that the Chief Circuit judge assign the case to a different judge. For these reasons and probably others, the Fifth District Court of Appeal denied Petitioners' Petition and Amended Petition for Writ of Mandamus.

More importantly, the actions of the Florida Courts do not show any infringement of Petitioners' rights under the U.S. Constitution. Petitioners have litigated this tort case in the Circuit Court, participated in two Circuit Court hearings, filed many documents and motions, and pursued three different appeals to the Florida Fifth District Court of Appeal and two

different appeals to the Florida Supreme Court. Thus, Petitioners have been given opportunities to be heard on their various claims, and Petitioners have failed to clearly articulate how the Florida Courts' Orders in the Appendix violate their Constitutional rights or present a federal question for this Court to consider.

Finally, both state and federal authorities hold that appellate courts may review and decide appeals without issuing a written opinion in each case. *In R. J. Reynolds Tobacco Co. v Kenyon*, 882 So. 2d 986, 988—989 (Fla. 2004), the Florida Supreme Court notes that while Florida Rule of Appellate Procedure 9.330(a) permits a party to an appeal to request a written opinion as part of a motion for rehearing, nothing in that rule mandates that a Florida district court of appeal must issue a written opinion. The Florida Supreme Court in *R. J. Reynolds Tobacco Co.*, goes on in that opinion to further state that Florida's District Courts have the inherent discretion to determine whether it will issue a written opinion.

Further, various Federal Circuit Courts have specific rules for those circuits which permit the affirmance or enforcement of judgments without opinions after review by appellate courts. U.S. Ct. of App. 5th Cir. Rule 47.6; Fed. R. App. P. 36; U.S. Ct. 8th Cir. Rule 47B. *In Furman v U.S.*, 720 F.2d 263, 264, (2d Cir. 1983), the Second Circuit Court of Appeals states that there is no requirement in law that a federal appellate court's decision be accompanied by a written opinion.

CONCLUSION

Petitioners' Petition for Writ of Certiorari does not invoke this Court's jurisdiction. The Petition does not raise any issue identified in Supreme Court Rule 10 which would conform to the Rules of this Court for jurisdiction over this Writ. Respondent, Adventist Health System/Sunbelt, Inc., d/b/a Florida Hospital Orlando & d/b/a Florida Hospital Altamonte therefore respectfully requests this Court deny Petitioners' Writ of Certiorari.

Respectfully submitted,

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Adventist Health

System / Sunbelt, Inc.,

d / b / a Florida Hospital

Altamonte & d / b / a Florida

Hospital Orlando

March 11, 2019

APPENDIX

IN THE COUNTY COURT
OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY FLORIDA

Case Number: 2016-CA-010428-O

FRANCES K KONIECZKO,
LAWRENCE W. KONIECZKO,
LAURIE F. KONIECZKO,

Plaintiff(s)

VS

FLORIDA HOSPITAL, ALTAMONTE SPRINGS FL,
FLORIDA HOSPITAL, ORLANDO, FL, et al.,

Defendant(s)

**ORDER DENYING MOTION FOR CHIEF JUDGE FREDERICK LAUTEN
TO ISSUE AN ORDER TO REASSIGN THIS CASE TO A DIFFERENT JUDGE**

THIS CAUSE having come on to be heard on the Plaintiff's Motion For Chief Judge Frederick Lauten to Issue an Order to Reassign This Case to a Different Judge it is hereby

ORDERED AND ADJUDGED that the Motion For Chief Judge Frederick Lauten to Issue an Order to Reassign This Case to a Different Judge it is hereby DENIED.

DONE AND ORDERED at Orlando, Orange County, Florida this 8 day of May, 2018.


FREDERICK J. LAUTEN
CIRCUIT JUDGE

Copy furnished to counsel of
Record via ECF

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

FRANCES K. KONIECZKO, LAWRENCE W.
KONIECZKO AND LAURIE F. KONIECZKO,

Petitioners,

v.

CASE NO. 5D18-1904

ADVENTIST HEALTH SYSTEM/SUNBELT, INC.
D/B/A FLORIDA HOSPITAL ALTAMONTE AND
D/B/A FLORIDA HOSPITAL, ORLANDO, FLORIDA,

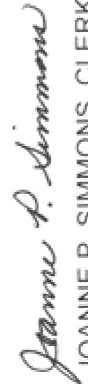

Respondent.

DATE: September 07, 2018

BY ORDER OF THE COURT:

ORDERED that the Petition for Writ of Mandamus, filed June 12, 2018,
and the Amended Petition, filed August 29, 2018, are denied.

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*


JOANNE P. SIMMONS, CLERK


Panel: Judges Orfinger, Torpy, and Edwards

cc:

Christian P. Trowbridge
Laurie W. Konieczko

Lawrence W. Konieczko
Hon. Frederick J. Lauten

Frances K. Konieczko

Supreme Court of Florida

TUESDAY, OCTOBER 23, 2018

CASE NO.: SC18-1744
Lower Tribunal No(s).:
5D18-1904; 482016CA010428A0010X

FRANCES K. KONIECZKO, ET AL. vs. ADVENTIST HEALTH
SYSTEM/SUNBELT, INC., ET AL.

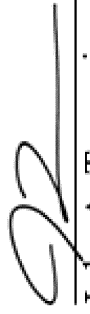
Petitioner(s)

Respondent(s)

This case is hereby dismissed. This Court lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by, this Court. See *Wells v. State*, 132 So. 3d 1110 (Fla. 2014); *Jackson v. State*, 926 So. 2d 1262 (Fla. 2006); *Gandy v. State*, 846 So. 2d 1141 (Fla. 2003); *Stallworth v. Moore*, 827 So. 2d 974 (Fla. 2002); *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987); *Dodi Publ'g Co. v. Editorial Am. S.A.*, 385 So. 2d 1369 (Fla. 1980); *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

No motion for rehearing or reinstatement will be entertained by the Court.

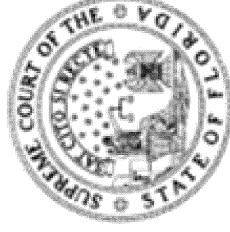
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Test:


John A. Tomasino
Clerk, Supreme Court

td

Served:

J. CHARLES INGRAM
CHRISTIAN P. TROWBRIDGE
LAURIE F. KONIECZKO
LAWRENCE W. KONIECZKO



CASE NO.: SC18-1744
Page Two

FRANCES K. KONIECZKO
HON. FREDERICK J. LAUTEN, CHIEF JUDGE
HON. TIFFANY MOORE RUSSELL, CLERK
HON. JOANNE P. SIMMONS, CLERK