

No. 18-7190

IN THE SUPREME COURT OF THE UNITED STATES

ZACHARY Q. WICKS
Petitioner,
v.

JON H. RADNOTHY, ET AL.
Respondents.

On Petition for a Writ of Certiorari to
the Florida Fifth District Court of Appeal

RESPONDENTS' BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

**RESPONDENTS' APPENDIX TO BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI**

RESP. APP. #1

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY, FLORIDA
CIVIL DIVISION**

CASE NUMBER:
35-2016-CA-000260-AXXX-XX
061741

ZACHARY Q. WICKS,

Plaintiff,

DEMAND FOR JURY TRIAL

vs.

**JON H. RADNOTHY, DO,
VICTORIA HENRIQUEZ, PA-C,
and RADNOTHY PERRY ORTHOPAEDIC CENTER, PA,
a Florida Corporation,**

Defendants.

COMPLAINT FOR MEDICAL MALPRACTICE DAMAGES

Plaintiff, **ZACHARY Q. WICKS**, files suit against Defendants, **JON H. RADNOTHY, DO, VICTORIA HENRIQUEZ, PA-C, and RADNOTHY PERRY ORTHOPAEDIC CENTER, PA**, a Florida Corporation, and alleges the following:

PARTIES, JURISDICTION, AND VENUE

Parties

1. Plaintiff, **ZACHARY Q. WICKS** (hereinafter "Plaintiff"), at all relevant times is a resident of Umatilla, Lake County, Florida.
2. Defendant, **JON H. RADNOTHY, DO**, at all relevant times is a physician licensed to practice medicine in the State of Florida and regularly engages in the practice of medicine in Tavares, Lake County, Florida.

3. Defendant, **VICTORIA HENRIQUEZ, PA-C**, at all relevant times is a Physician Assistant Certified, licensed to practice medicine in the State of Florida and regularly engaged in the practice of medicine in Tavares, Lake County, Florida.

4. Defendant, **RADNOTHY PERRY ORTHOPAEDIC CENTER, PA**, is a Florida Corporation with its principle corporate office located at 2051 Mayo Drive, Tavares, Florida 32778 and is organized under the laws of Florida.

Jurisdiction and Venue

5. This Court is vested with jurisdiction over the Defendants because the Defendants engage(d) in the practice of medicine and conduct business within the State of Florida and in this county.

6. Plaintiff has suffered damages in excess of \$15,000.00.

7. Venue for this action is proper in Lake County under Florida Statutes 47.011 because the significant acts or omissions of negligence arose in this county and the Defendants' principle place of business is in this county.

8. All conditions precedent to this action have been performed, have occurred, or have been waived.

FACTS COMMON TO ALL COUNTS

9. Defendant, **JON H. RADNOTHY, DO**, is the President, Director, and Registered Agent of Defendant, **RADNOTHY PERRY ORTHOPAEDIC CENTER, PA**.

10. Defendant, **JON H. RADNOTHY, DO**, is employed by Defendant, **RADNOTHY PERRY ORTHOPAEDIC CENTER, PA**.

11. Defendant, **VICTORIA HENRIQUEZ, PA-C**, was employed by Defendant, **RADNOTHY PERRY ORTHOPAEDIC CENTER, PA** at all relevant times.

12. On November 27, 2013, Plaintiff was involved in a motorcycle versus automobile accident. Plaintiff suffered multiple traumatic injuries to his left lower extremity from the high energy impact of his motorcycle colliding with the automobile.

13. Plaintiff was subsequently transported by ambulance to Florida Hospital Deland where Stephen Coltharp, MD provided medical treatment for his injuries in the Emergency Department. X-rays did not reveal an acute fracture to Plaintiff's left knee or left ankle. Plaintiff and family were advised of the possibility that a left ankle fracture or internal soft tissue injuries may not be seen on the initial x-rays. Plaintiff was instructed to follow-up with an orthopedic physician in two weeks for suture removal and to obtain an MRI scan to ascertain the possible presence of fracture or internal soft tissue injuries to his left ankle.

14. On December 11, 2013 and January 8, 2014, Defendant, **VICTORIA HENRIQUEZ, PA-C**, provided medical services to Plaintiff at Defendant, **RADNOTHY PERRY ORTHOPAEDIC CENTER, PA**. Defendant was acting as an employee of Defendant, **RADNOTHY PERRY ORTHOPAEDIC CENTER, PA** and was providing medical services to the Plaintiff within the scope of that employment. Plaintiff and mother requested an order for an MRI scan on both dates, denied by Defendant, **VICTORIA HENRIQUEZ, PA-C**.

15. Plaintiff diligently followed the instructions of Defendant, **VICTORIA HENRIQUEZ, PA-C**, attempting to ambulate in a CAM boot and attending seven physical therapy sessions. Regardless, Plaintiff continued to have inability to bend his left ankle and severe difficulty with weightbearing and ambulation on his left lower extremity.

16. On February 7, 2014, Plaintiff was examined by Danielle Francis, PA-C at Defendant, **RADNOTHY PERRY ORTHOPAEDIC CENTER, PA**. Plaintiff and mother insisted on obtaining an MRI scan of Plaintiff's left ankle and an order was written for this by Ms. Francis.

17. Plaintiff underwent an MRI scan of his left ankle on February 12, 2014 at Florida Hospital Waterman.

18. On February 14, 2014, Plaintiff obtained the MRI scan on disc and a copy of the radiologist's report from Florida Hospital Waterman Radiology Department. Per the

radiologist's report, the MRI scan demonstrated a "minimally displaced minimally impacted talar neck fracture".

19. Upon receiving the radiologist's report on February 14, 2014, Danielle Francis, PA-C contacted Plaintiff's mother and informed her that Plaintiff must immediately discontinue ambulation and weightbearing on his left lower extremity.

20. On February 17, 2014, Defendant, **JON H. RADNOTHY, DO**, provided medical services to Plaintiff at Defendant, **RADNOTHY PERRY ORTHOPAEDIC CENTER, PA**. Defendant was acting as an employee of Defendant, **RADNOTHY PERRY ORTHOPAEDIC CENTER, PA** and was providing medical services to the Plaintiff within the scope of that employment. Defendant, **JON H. RADNOTHY, DO**, advised Plaintiff to weightbear and ambulate as tolerated and to continue with physical therapy at Defendant, **RADNOTHY PERRY ORTHOPAEDIC CENTER, PA**. Defendant, **JON H. RADNOTHY, DO**, also advised Plaintiff and dictated in the office visit report, "**I do not think he should consider any type of surgical intervention unless symptoms persist for a good 9 months after surgery.**" (It is deemed that "surgery" was intended to be "injury", however, Defendant must corroborate this assumption). Regarding the MRI scan, Defendant, **JON H. RADNOTHY, DO**, also dictated, "**Only the report was reviewed. The images were not available. Please see the report for full details of this study.**"

21. On February 26, 2014, Plaintiff presented to physical therapy at Defendant, **RADNOTHY PERRY ORTHOPAEDIC CENTER, PA**. The physical therapist, Mark Hamm, consulted with Defendant, **JON H. RADNOTHY, DO**, regarding the specific therapy ordered for Plaintiff. Mr. Hamm subsequently informed Plaintiff and mother that Defendant, **JON H. RADNOTHY, DO**, ordered an aggressive physical therapy program with concentration on forcing Plaintiff's left ankle into dorsiflexion.

22. Defendants, **JON H. RADNOTHY, DO** and **VICTORIA HENRIQUEZ, PA-C**, owed a duty to Plaintiff to evaluate, diagnose and treat Plaintiff's injuries within an acceptable standard of medical care, that level of care which the average, prudent, similarly qualified practitioner in a given community would practice and provide under the same or similar circumstances.

23. Defendant, **RADNOTHY PERRY ORTHOPEDIC CENTER, PA**, owed a duty to Plaintiff to employ, properly supervise, train, and monitor its employees and to ensure that its employees complied with the applicable standard of medical care and provided medical services at a level of care which the average, prudent, similarly qualified practitioner in a given community would practice and provide under the same or similar circumstances.

24. On March 28, 2014, Plaintiff was evaluated by orthopedic trauma specialist, Benjamin Miller, MD, who informed Plaintiff and mother of the extreme seriousness of Plaintiff's fracture and explained the cause of Plaintiff's inability to bend his left ankle. Dr. Miller referred Plaintiff to Steven Choung, MD, an orthopedic sports medicine/foot and ankle specialist.

25. On April 7, 2014, Plaintiff was evaluated by Steven Choung, MD. A CT scan was ordered and subsequently performed on April 16, 2014 at Florida Hospital Waterman. The CT scan was compared to the MRI scan performed on February 12, 2014. The "Impression" dictated on the radiologist's report was: 1. Redemonstration of a comminuted fracture of the talus with minimal interval healing. There is no significant change, displacement or angulation from the prior exam. 2. The subtalar joints appear preserved. 3. Osteopenia suggestive of reflex sympathetic dystrophy.

26. Steven Choung, MD recommended surgical intervention to remove the "bony block" created by the impacted and rotated talar neck fracture fragment in an effort to provide Plaintiff with increased range of motion upon bending his left ankle. A more invasive procedure to correct the impaction and rotation of the talar neck fracture fragment was considered, however, it was felt that such a procedure at this juncture would subject Plaintiff to an unacceptable and extremely high risk for developing avascular necrosis. The talar exostectomy, with tibial exostectomy, was performed on June 11, 2014 by Dr. Choung. This surgical procedure resulted in Plaintiff achieving increased range of motion upon bending his left ankle.

27. Plaintiff continues with a permanent partial impairment of his left ankle function, in addition to other deficits and chronic symptoms that have and will progressively worsen over time. These include, but are not limited to, increased probability for early and more severe left ankle arthritis, pain and swelling, and permanent functional limitation with walking distances, standing for extended periods of time, and walking on uneven terrain. Activities, such as

running, jumping, hopping, squatting, climbing ladders, etc. are extremely difficult or impossible for Plaintiff to perform. This functional limitation has severely and adversely affected Plaintiff's enjoyment and quality of life. Plaintiff has also suffered significant limitations in his employment and career opportunities.

CAUSES OF ACTION

COUNT I

Negligence – Re: Victoria Henriquez, PA-C

28. The Plaintiff repeats and realleges each and every fact and allegation contained in the preceding paragraphs 1 through 27 of this Complaint as if set forth in full herein.
29. On December 11, 2013, Defendant, **VICTORIA HENRIQUEZ, PA-C**, owed a duty to Plaintiff to evaluate, diagnose and treat Plaintiff's injuries within an acceptable standard of medical care. Defendant was negligent and breached the prevailing professional standard of care by failing to completely assess a high force injury that had immediate ecchymosis indicating the likelihood of a fracture or ligamentous injury and by failing to order an MRI or CT scan. Defendant instructed Plaintiff to begin weight-bearing without making a diagnosis in a suspicious high force injury. This is contraindicated and high-risk to potentially worsen the injury.
30. On January 8, 2014, Defendant, **VICTORIA HENRIQUEZ, PA-C**, owed a duty to Plaintiff to evaluate, diagnose and treat Plaintiff's injuries within an acceptable standard of medical care. Defendant was negligent and breached the prevailing professional standard of care by again failing to completely assess Plaintiff's extremely limited left ankle range of motion and inability to weight-bear, symptoms that again raise a high suspicion for either a fracture or a tendon/ligament injury, and by failing to order an MRI or CT scan that was clearly indicated. Defendant instructed Plaintiff to attend physical therapy which was contraindicated with Plaintiff's clinical presentation and symptomatology. Forced weight-bearing and physical therapy are high-risk to potentially worsen the injury.

31. Defendant, **VICTORIA HENRIQUEZ, PA-C**, deviated from the acceptable standard of medical care and this deviation was the direct and proximate cause of further physical injury to the Plaintiff and was the direct and proximate cause of carefully deliberated, irreversible and permanent damage to Plaintiff.

COUNT II

Negligence – Re: Jon H. Radnothy, DO

32. The Plaintiff repeats and realleges each and every fact and allegation contained in the preceding paragraphs 1 through 31 of this Complaint as if set forth in full herein.

33. Defendant, **JON H. RADNOTHY, DO**, President of Defendant, **RADNOTHY PERRY ORTHOPAEDIC CENTER, PA**, and supervising physician of Defendant, **VICTORIA HENRIQUEZ, PA-C**, owed a duty to Plaintiff to appropriately review the accuracy of the diagnosis rendered and the treatment prescribed by Defendant, **VICTORIA HENRIQUEZ, PA-C**, employee of Defendants, **JON H. RADNOTHY, DO** and **RADNOTHY PERRY ORTHOPAEDIC CENTER, PA**. Defendant, **JON H. RADNOTHY, DO**, was negligent and breached the prevailing professional standard of care by failing to appropriately supervise the medical services rendered to Plaintiff by Defendant, **VICTORIA HENRIQUEZ, PA-C**.

34. Defendant, **JON H. RADNOTHY, DO**, owed a duty to Plaintiff to evaluate, diagnose and treat Plaintiff's injuries within an acceptable standard of medical care. Defendant was negligent and breached the prevailing professional standard of care by failing to appropriately review the accuracy of the diagnosis rendered and the treatment prescribed by Defendant, **VICTORIA HENRIQUEZ, PA-C**. Defendant was negligent and breached the prevailing professional standard of care by failing to completely assess Plaintiff's high force left ankle injury, by failing to consider all differential diagnoses for Plaintiff's left ankle injury, and by failing to order an MRI or CT scan to further evaluate that injury while Plaintiff was receiving medical services rendered by Defendant, **VICTORIA HENRIQUEZ, PA-C**. Weight-bearing and physical therapy were contraindicated and high-risk to potentially worsen the injury.

35. On February 17, 2014, Defendant **JON H. RADNOTHY, DO**, was negligent and breached the prevailing professional standard of care by failing to review the MRI films prior to

evaluating Plaintiff and by failing to diagnose, advise of available treatment options, and treat Plaintiff appropriately for the displaced talar neck fracture. Defendant's recommendation of continued physical therapy with forced left ankle dorsiflexion was contraindicated secondary to the position of the fracture fragments and high-risk to potentially worsen the injury.

36. Defendant, **JON H. RADNOTHY, DO**, was negligent and breached the prevailing professional standard of care by attempting to conceal the severity of Plaintiff's injury and causing further delay in Plaintiff obtaining necessary and appropriate treatment for his displaced talar neck fracture. Defendant's recommendation and advisement against surgical intervention for Plaintiff's injury constituted an atrocious offense against Plaintiff and demonstrated blatant disregard for Plaintiff's health and well-being.

37. Defendant, **JON H. RADNOTHY, DO**, deviated from the acceptable standard of medical care and this deviation was the direct and proximate cause of further physical injury to the Plaintiff and was the direct and proximate cause of carefully deliberated, irreversible and permanent damage to Plaintiff.

COUNT III

Negligence – Re: Radnothy Perry Orthopaedic Center, PA

38. The Plaintiff repeats and realleges each and every fact and allegation contained in the preceding paragraphs 1 through 37 of this Complaint as if set forth in full herein.

39. At all relevant times, Defendants, **JON H. RADNOTHY, DO**, and **VICTORIA HENRIQUEZ, PA-C**, were employed by Defendant, **RADNOTHY PERRY ORTHOPAEDIC CENTER, PA**, and they were acting within the scope of their employment. Defendant, **RADNOTHY PERRY ORTHOPAEDIC CENTER, PA**, is responsible for their employees' breach of the prevailing professional standard of care and the resulting physical injury suffered by the Plaintiff.

40. Defendant, **RADNOTHY PERRY ORTHOPAEDIC CENTER, PA**, deviated from the acceptable standard of medical care and this deviation was the direct and proximate cause of

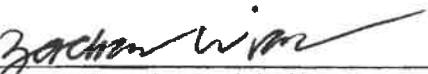
further physical injury to the Plaintiff and was the direct and proximate cause of carefully deliberated, irreversible and permanent damage to Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the entry of a judgment against Defendants as follows:

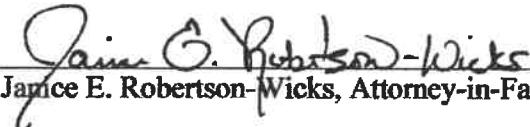
1. That the Court award Plaintiff judgment against Defendants in such monetary amount as shall be determined to fully and fairly compensate Plaintiff for all general, special, incidental and consequential damages occurred, or to be incurred, by Plaintiff as the direct and proximate result of the Defendants' acts and omissions of negligence. These include, but are not limited to, reduction in quality of life and inability to enjoy previous physical activities; physical pain and suffering, both past and future, which will progressively worsen over time; medical and medical related expenses, both past and future; emotional distress, both past and future; pharmaceutical expenses, both past and future; loss of wages and earning potential, both past and future; loss of potential career options, both past and future; and other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances;
2. That the Court award Plaintiff the costs incurred in prosecuting this action;
3. That the Court award Plaintiff the opportunity to amend or modify the provisions of this Complaint as necessary or appropriate after additional or further discovery is completed in this matter, and after all appropriate parties have been served; and
4. That the Court award such other and further relief as it deems necessary and appropriate in the circumstances.

Respectfully submitted,



Zachary Q. Wicks, Plaintiff

P.O. Box 2004
Umatilla, FL 32784
(352) 350-7197



Janice E. Robertson-Wicks, Attorney-in-Fact

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing complaint was served by hand delivery on the Attorney of Record for all named defendants:

KEVIN T. O'HARA
Attorney At Law

BEYTIN, MC LAUGHGLIN, MC LAUGHLIN, O'HARA, BOCCHINO & BOLIN
1063 Maitland Center Commons Blvd.
Maitland, Florida 32751

(407) 622-6725
(407) 849-1060

DATED: October 11, 2016



Zachary Q. Wicks, Plaintiff



Janice E. Robertson-Wicks, Attorney-In-Fact
P.O. Box 2004
Umatilla, FL 32784
(352) 350-7197

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA

Case No.: 35-2016-CA-001741-A

Division:

ZACHARY Q. WICKS,

Plaintiff,

vs.

JON H. RADNOTHY, DO;
VICTORIA HENRIQUEZ, PA-C;
and RADNOTHY PERRY ORTHOPAEDIC CENTER, PA

Defendants.

AFFIDAVIT OF MERIT

I hereby certify that a reasonable investigation of the facts contained in the foregoing Complaint was conducted and there has been determination that a reasonable basis exists to support the claim of medical malpractice against the named Defendants. The Expert Witness Affidavit submitted with the Notice of Intent to Initiate Litigation For Medical Malpractice is attached hereto.

Zachary Wicks
Zachary Q. Wicks, Plaintiff

Janice E. Robertson-Wicks
Janice E. Robertson-Wicks, Attorney-In-Fact

P.O. Box 2004
Umatilla, Florida 32784

(352) 350-7197

EXPERT WITNESS AFFIDAVIT

RE: Zachary Wicks
DOB: 12/30/93
SSN: 589-39-7145

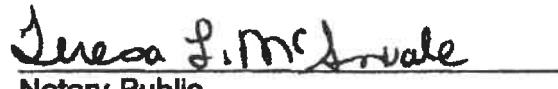
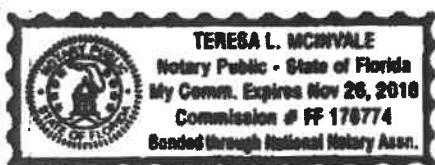
I, Diana D. Carr, M.D., certify that I have reviewed the medical records of Zachary Wicks and provided my expert medical opinion in the report attached hereto. The specific medical records reviewed are listed in my report.

It is my expert medical opinion, within a reasonable degree of medical probability, that the treatment of Zachary Wicks by Jon Radnothy, D.O. and Victoria Henriquez, PA-C breached the prevailing professional standard of care and this breach resulted in further harm and/or injury to Zachary. Therefore, I find that a reasonable basis exists to support a claim for medical negligence and/or medical malpractice and to initiate medical negligence/malpractice litigation.

I, Diana D. Carr, M.D., certify that my expert medical opinion has not been disqualified in any court of any jurisdiction. I also certify that I have not been found guilty of fraud or perjury in any court of any jurisdiction. I further certify that I have not been charged with any criminal offense in any jurisdiction and I have not received any disciplinary action by the Florida Department of Health, any specialty board, or any other licensing agency.


Diana D. Carr, M.D.

The foregoing instrument was acknowledged before me this 8 day of February, 2016, by Diana D. Carr, M.D., who is personally known to me.


Teresa L. McInvale
Notary Public

RESP. APP. #2

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA

ZACHARY Q. WICKS,

Plaintiffs,

CASE NO: 35-2016-CA-001741

vs.

JON H. RADNOTHY, DO,
VICTORIA HENRIQUEZ, PA-C, and
RADNOTHY PERRY ORTHOPAEDIC
CENTER, PA, a Florida Corporation

Defendants.

/

DEFENDANTS, JON H. RADNOTHY, DO, VICTORIA HENRIQUEZ, PA-C
and RADNOTHY PERRY ORTHOPAEDIC CENTER, PA'S
MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendants, JON H. RADNOTHY, DO, VICTORIA HENRIQUEZ, PA-C and RADNOTHY PERRY ORTHOPAEDIC CENTER, PA'S move to dismiss Plaintiff's Complaint and in support thereof would state as follows:

1. Plaintiff's Complaint fails to set forth in a short and plain statement of ultimate facts as opposed to legal conclusions that Plaintiff is entitled to recovery in this matter. Plaintiff has failed to set forth short and plain statements of ultimate fact as opposed to conclusions that there was a duty, breach of duty and damages caused by any said breach of duty.
2. Plaintiff's Complaint has not been brought timely pursuant to the requirements of Florida Statute Section 95.11. Plaintiff's Complaint, on its face, indicates that the diagnosis, care and treatment complained of in his matter occurred beginning on December 11, 2013 and extended through February of 2014. Review of the court file and the four corners of the

Complaint indicates that this matter was not the subject of an automatic extension of the statute of limitations. Further, Plaintiff's Complaint was filed on or about October 21, 2016.

3. Florida Statute Section 95.11 requires that any action for professional negligence of a health care provider be brought within two years of the date of the incident or the date that any alleged negligence was known or should have been known. Plaintiff in his Complaint has alleged specific dates that he alleges by conclusion negligent conduct on the part of defendants. As the court can see on the four corners of the document these dates alleged are beyond the two year statute of limitations as outlined by Florida Statute Section 95.11.

4. Lastly, plaintiff is required pursuant to Florida Statute Section 766 to serve upon these defendants a valid Notice of Intent to initiate litigation accompanied by an affidavit of a licensed health care provider indicating that there are reasonable grounds to believe that a claim of negligence exists. Plaintiff has failed to meet the necessary pre-requisite requirements of compliance with Florida Statute Section 766 and, therefore, Plaintiff's Complaint as filed should be dismissed.

WHEREFORE, these Defendants would move that this court enter an order dismissing Plaintiff's Complaint for the reasons set forth above.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via the Florida Courts E-Filing Portal and via U.S. Mail this 7th day of November, 2016 to: **Zachary Q. Wicks, P.O. Box 2004, Umatilla, FL 32784** and **Janice E. Robertson-Wicks, P.O. Box 2004, Umatilla, FL 32784**.

/s/ Kevin T. O'Hara
KEVIN T. O'HARA, ESQUIRE
Florida Bar No.: 0613479
**Beytin, McLaughlin, McLaughlin,
O'Hara, Bocchino & Bolin, P.A.**
1063 Maitland Center Commons Blvd.

Maitland, FL 32751
Phone: (407) 622-6725
Fax: (407) 622-6741
Attorneys for Defendants,
JON H. RADNOTHY, DO, VICTORIA
HENRIQUEZ, PA-C and RADNOTHY
PERRY ORTHOPAEDIC CENTER, PA
Primary e-mail address: jrh@law-fla.com
Secondary e-mail address: sa@law-fla.com

RESP. APP. #3

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA

ZACHARY Q. WICKS,

Plaintiffs,

CASE NO: 35-2016-CA-001741

vs.

JON H. RADNOTHY, DO,
VICTORIA HENRIQUEZ, PA-C, and
RADNOTHY PERRY ORTHOPAEDIC
CENTER, PA, a Florida Corporation

Defendants.

/

DEFENDANTS, JON H. RADNOTHY, DO, VICTORIA HENRIQUEZ, PA-C
and RADNOTHY PERRY ORTHOPAEDIC CENTER, PA'S
AMENDED MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendants, JON H. RADNOTHY, DO, VICTORIA HENRIQUEZ, PA-C and RADNOTHY PERRY ORTHOPAEDIC CENTER, PA'S move to dismiss Plaintiff's Complaint and in support thereof would state as follows:

1. Plaintiff's Complaint fails to set forth in a short and plain statement of ultimate facts as opposed to legal conclusions that Plaintiff is entitled to recovery in this matter. Plaintiff has failed to set forth short and plain statements of ultimate fact as opposed to conclusions that there was a duty, breach of duty and damages caused by any said breach of duty.

2. Plaintiff's Complaint has not been brought timely pursuant to the requirements of Florida Statute Section 95.11. Plaintiff's Complaint, on its face, indicates that the diagnosis, care and treatment complained of in his matter occurred beginning on December 11, 2013 and extended through February of 2014. Review of the court file and the four corners of the

Complaint indicates that this matter was not the subject of an automatic extension of the statute of limitations. Further, Plaintiff's Complaint was filed on or about October 11, 2016.

3. Florida Statute Section 95.11 requires that any action for professional negligence of a health care provider be brought within two years of the date of the incident or the date that any alleged negligence was known or should have been known. Plaintiff in his Complaint has alleged specific dates that he alleges by conclusion negligent conduct on the part of defendants. As the court can see on the four corners of the document these dates alleged are beyond the two year statute of limitations as outlined by Florida Statute Section 95.11.

4. Lastly, plaintiff is required pursuant to Florida Statute Section 766 to serve upon these defendants a valid Notice of Intent to initiate litigation accompanied by an affidavit of a licensed health care provider indicating that there are reasonable grounds to believe that a claim of negligence exists. Plaintiff has failed to meet the necessary pre-requisite requirements of compliance with Florida Statute Section 766 and, therefore, Plaintiff's Complaint as filed should be dismissed.

WHEREFORE, these Defendants would move that this court enter an order dismissing Plaintiff's Complaint for the reasons set forth above.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via the Florida Courts E-Filing Portal and via U.S. Mail this 8th day of November, 2016 to: **Zachary Q. Wicks, P.O. Box 2004, Umatilla, FL 32784** and **Janice E. Robertson-Wicks, P.O. Box 2004, Umatilla, FL 32784**.

/s/ Kevin T. O'Hara
KEVIN T. O'HARA, ESQUIRE
Florida Bar No.: 0613479
**Beytin, McLaughlin, McLaughlin,
O'Hara, Bocchino & Bolin, P.A.**
1063 Maitland Center Commons Blvd.

Maitland, FL 32751
Phone: (407) 622-6725
Fax: (407) 622-6741
Attorneys for Defendants,
JON H. RADNOTHY, DO, VICTORIA
HENRIQUEZ, PA-C and RADNOTHY
PERRY ORTHOPAEDIC CENTER, PA
Primary e-mail address: jrh@law-fla.com
Secondary e-mail address: sa@law-fla.com

RESP. APP. #4

1 IN THE CIRCUIT COURT OF THE
2 FIFTH JUDICIAL CIRCUIT, IN
3 AND FOR LAKE COUNTY, FLORIDA

4 CASE NO: 35-2016-CA-001741

5 ZACHARY Q. WICKS,

6 Plaintiff,

7 vs.

8 JON H. RADNOTHY, DO,
9 VICTORIA HENRIQUEZ, PA-C, and
10 RADNOTHY PERRY ORTHOPAEDIC
11 CENTER, P.A., a Florida corporation,

12 Defendants.

13 _____ /
14 HEARING BEFORE: THE HONORABLE MARK HILL
15 DATE: WEDNESDAY, JANUARY 18, 2017
16 TIME: 3:32 P.M. - 3:51 P.M.
17 LOCATION: 550 WEST MAIN STREET
18 SUITE 10
19 TAVARES, FLORIDA 32778
20
21 REPORTED BY: LISA SHUMAN, RPR
22 COURT REPORTER AND
23 NOTARY PUBLIC
24
25

1 A P P E A R A N C E S:

2 JANICE E. ROBERTSON-WICKS
3 40551 West First Avenue
Umatilla, Florida 32784
Jrobertson232@comcast.net

4 APPEARING ON BEHALF OF THE PLAINTIFF

5
6 REBECCA L. WILLIAMSON, ESQUIRE
7 OF: Beytin, McLaughlin, McLaughlin, O'Hara,
Bocchino & Bolin, P.A.
8 1063 Maitland Center Commons Boulevard
Maitland, Florida 32751
9 rlw@law-fla.com

10 APPEARING ON BEHALF OF THE DEFENDANTS

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

PROCEEDINGS

THE COURT: Ma'am, you're up.

MS. WILLIAMSON: Your Honor, again, my name is Rebecca Williamson. I'm here on behalf of Dr. Radnothy, his P.A., Ms. Henriquez and the center that they work for. Actually, I have a copy of the complaint (document tendered).

THE COURT: Thank you.

MS. WILLIAMSON: We're here on behalf of my clients' motion to dismiss. In brief summation, Your Honor, without getting into the meat of the facts here, we're here on -- basically, Mr. Wicks, who -- he's here today -- was unfortunately involved in a motorcycle accident. And that is what brought him to the care and treatment of my clients. So the allegations stem from -- and you'll see that in the complaint -- they stem from improper workup, improper assessment, failing to order proper tests. One of the tests that's mentioned specifically in the complaint a couple of times is an MRI that should have been ordered.

To give a timeline here, Your Honor, we have -- the motorcycle accident was November -- the end of November 2013. The care and treatment

1 of my clients began December 11th, 2013 through
2 February of 2014. The complaint was filed October
3 11th of 2016. I'm here specifically on a motion
4 to dismiss pursuant to Florida Statute 95.11,
5 which I have a copy of.

6 THE COURT: I've read it.

7 MS. WILLIAMSON: I'm sure you're familiar
8 with it, the two-year medical negligence claim.
9 Given the years that I just mentioned. In
10 Plaintiff's complaint, specifically paragraph 14,
11 it's noted that an MRI was requested and insisted
12 upon on December 11th, 2013 and January 8th, 2014.
13 This MRI was eventually done on February 7th of
14 2014. And as you'll see in paragraph 19 of
15 Plaintiff's complaint, it states that that
16 February 7th MRI was read on February 14th by
17 another P.A. not named in this case.

18 And that P.A. told Mr. Wicks, as well as
19 his mother, to immediately discontinue ambulation
20 and weight bearing on Mr. Wicks's left lower
21 extremity, which was the extremity injured in the
22 motorcycle accident.

23 THE COURT: Yeah.

24 MS. WILLIAMSON: Further, Your Honor,
25 Paragraph 21 of Plaintiff's complaint states that

1 on February 26th, 2014 a physical therapist by the
2 name of Mark Hamm (ph) -- again, not named in
3 this, Your Honor -- informed Plaintiff, as well as
4 his mother, that my client ordered aggressive
5 physical therapy -- an aggressive physical therapy
6 program.

7 So, again, looking back at the complaint,
8 the allegations are improper assessment, improper
9 workup. So just given the dates provided in
10 Plaintiff's own complaint, he insisted on the MRI.
11 The two aggressive physical therapy treatments,
12 pursuant to 95.11, they should have known that
13 there was a potential for improper medical
14 negligence, yet the complaint wasn't filed until
15 October 11th of 2016. So clearly, past the two
16 years statute of limitations.

17 While we're before you, Your Honor, there's
18 an interesting -- I know Ms. Wicks introduced
19 herself. She is, in fact, mother-and-son
20 relationship to the client. She does have a
21 durable Power of Attorney, which I'm sure you've
22 seen -- I apologize, I didn't bring an extra copy
23 (document tendered).

24 MS. WICKS: I have extra copies of
25 everything.

1 THE COURT: Okay.

2 MS. WILLIAMSON: Mr. Wicks, Your Honor, has

3 a date of birth of December 30th, 1993. Only

4 reason I mention that is that he's not a minor.

5 So this case is being brought by his mother under

6 an alleged authority pursuant to Power of

7 Attorney. I'll be honest with you, this is

8 something that we haven't dealt with at my firm,

9 so I had to do a little bit of research on it.

10 Pursuant to Florida Statute 709.2, 201,

11 basically sets forth the authority of an agent

12 under the Power of Attorney (document tendered).

13 Specifically looking at subsection 3A.

14 Notwithstanding the provisions of this section, an

15 agent -- agent being Ms. Wicks, Your Honor,

16 principal in the context of the Power of Attorney

17 being Mr. Wicks -- an agent may not perform duties

18 under a contract that requires the exercise of

19 personal services to the principal. I don't know

20 if a contract exists between them. Even if it

21 does not, I would classify the services -- legal

22 services as falling under personal services that

23 are not meant to be afforded under the Power of

24 Attorney.

25 I think, Your Honor, at this time, even if

1 we aren't running into issues here with the Power
2 of Attorney, we may down the road as Ms. Wicks has
3 mentioned multiple times throughout the complaint,
4 she's going to be a key witness in this case.

5 In the event you don't agree with my 95.11
6 argument, I think I would suggest to the Court to
7 grant the motion to dismiss and allow Mr. Wicks
8 and his mother to obtain proper legal
9 representation for issues that we may experience
10 down the road.

11 THE COURT: Okay. And you also made an
12 argument concerning lack of placing the Defendants
13 on notice through a letter under 766, notice of
14 intent to initiate litigation in a timely manner.

15 MS. WILLIAMSON: This is timely manner,
16 Your Honor. Again, I'm referring to the medical
17 negligence statute. As well as these are things,
18 since we're in presuit, you don't go before a
19 judge. So we've had this Power of Attorney issue
20 since the beginning. Again, it was one of those
21 situations of who do we tell this to, so that's
22 why I wanted to bring that up to you today.

23 THE COURT: Okay. Are you finished?

24 MS. WILLIAMSON: Yes, Your Honor. Thank
25 you.

1 THE COURT: And Ms. Robertson Wicks, you're
2 up.

3 MS. WICKS: Okay. Zachary is present, he
4 is actually representing himself.

5 THE COURT: Okay.

6 MS. WICKS: He has only vested in me --

7 THE COURT: Since he's representing
8 himself, then he has to talk.

9 MS. WICKS: Well, I'm the one that's done
10 the paperwork for him because I'm the one that
11 understands. And if you look at the Power of
12 Attorney, under the business interest, it clearly
13 states that he has given me the authority to act
14 for him regarding any legal matters in which there
15 would be anything due and owing to him.

16 THE COURT: Uh-huh.

17 MS. WICKS: If we could have gotten an
18 attorney, we would have an attorney.

19 THE COURT: Let me ask you a question,
20 ma'am. Most respectfully, why don't you have an
21 attorney?

22 MS. WICKS: Nobody felt that the case was
23 worthy. It's not a multiple-million-dollar suit.

24 THE COURT: Okay. Sorry to interrupt you.
25 Go ahead.

1 MS. WICKS: I'm sorry, forgot your name.

2 MS. WILLIAMSON: Rebecca Williamson.

3 MS. WICKS: Ms. Williamson made several
4 errors in -- in her explanation of the facts.

5 Zachary was involved in an accident on November
6 27th of 2013 and saw Ms. Henriquez, I believe,
7 December 11th of 2013, the first time. And she
8 made mention of the fact that an MRI was
9 requested, that was based on the fact that the
10 emergency room physician had recommended it.

11 She felt that it wasn't necessary. We
12 continued with her recommendation for treatment
13 until after two months Zachary wasn't getting any
14 better and at that point we insisted on the MRI.
15 The MRI was actually performed on February 12th,
16 results were rendered on --

17 THE COURT: February 12th of what year?

18 MS. WICKS: 2014. The results were
19 rendered on February 14th that there was a
20 fracture.

21 THE COURT: Okay.

22 MS. WICKS: That would be the absolute
23 earliest that anyone could construe that he would
24 have been on notice that there had been negligence
25 or anything else. We contend that it was actually

1 April 7th when he saw Dr. Steven Chung, the
2 surgeon, who went ahead and repaired his ankle as
3 best as possible to give him function.

4 When he saw Dr. Radnothy on February 17th,
5 Dr. Radnothy attempted to conceal the actual
6 circumstances of the situation, played it off like
7 it was no big deal. I have a copy of that report
8 if you'd like to see it.

9 THE COURT: No, ma'am. But thank you for
10 asking.

11 MS. WICKS: And told him to continue with
12 physical therapy and set him up to be seen by the
13 physical therapist in his office, Mr. Hamm, who
14 Ms. Williamson mentioned. Who went and spoke with
15 Mr. (sic) Radnothy and came back and stated that
16 he had recommended an aggressive physical therapy.

17 THE COURT: And when -- what date did you
18 say the physician actually diagnosed him with a
19 fracture?

20 MS. WICKS: February 17th of 2014. Now,
21 when we come to the issue of 95.11, granted that's
22 two years. There is an -- if she reviewed the
23 chart, there is a purchase of a 90-day extension
24 that was purchased on February 12th of 2016.
25 Again, two days prior to the --

1 THE COURT: When you say purchase, tell me
2 about that.

3 MS. WICKS: The 90-day extension that you
4 can purchase for \$42 at the clerk's office. It
5 gives you the 90 days plus the 60, per Statute
6 766.1042. That gives 150 days after the end of
7 the presuit 90-day tolling of the Statute of
8 Limitations. And doing the math, October 11th,
9 when the suit was actually filed, was day number
10 139. So the litigation was filed in a timely
11 manner.

12 THE COURT: What about the presuit notice
13 requirement?

14 MS. WICKS: Presuit notice requirement was
15 sent on February 24th. I don't have a copy for
16 you, but I'll be more than happy to provide you
17 with a copy (document tendered).

18 THE COURT: No, if you -- did you see it?

19 MS. WILLIAMSON: May I?

20 MS. WICKS: Along with that --

21 THE COURT: It's not attached to the
22 complaint, as far as I can tell.

23 MS. WICKS: Correct. I was only aware that
24 the affidavit of the expert witness who rendered
25 the medical opinion for the presuit that there was

1 a -- there was grounds for the medical negligence.

2 THE COURT: What's the name of the person
3 that's the presuit expert?

4 MS. WICKS: Diane Carr (ph). And they
5 received a copy of that -- that report, which was
6 an in-depth report. I have correspondence from
7 Attorney O'Hara dated March 21st of 2016 after he
8 received the presuit notice. Multiple questions
9 that were asked and things that he wanted,
10 documents that he wanted. Everything was complied
11 with.

12 On the other hand, though, in the presuit
13 notice, things were asked for and they were not
14 rendered to us until June 21st of 2016. The end
15 of the presuit 90-day notice was on May 25th. So
16 for an entire month, they did not provide us with
17 any of the documentation or records that we asked
18 for.

19 Their medical expert didn't even address
20 the actual issues noted in the presuit notice. I
21 have a copy of the affidavit, but it's not a
22 verified written medical opinion, that
23 corroborated no grounds for negligence.

24 THE COURT: All right. Next question I
25 have. What case law do you have that would

1 provide 709.2201, authority of the agent, allows
2 you to practice law on behalf of your son, or
3 anybody else for that matter? Supposing he wasn't
4 your son, he was just another individual --

5 MS. WICKS: I wouldn't be here.

6 THE COURT: Well, maybe you wouldn't be.
7 But the fact that he's your son makes -- what's
8 the -- what's the difference?

9 MS. WICKS: I'm doing this purely because
10 he's my son.

11 THE COURT: Okay.

12 MS. WICKS: I'm not receiving any funds,
13 there's no --

14 THE COURT: I understand. But what makes
15 him any different than any other citizen?

16 MS. WICKS: He's my son.

17 THE COURT: I know. But that's -- legally,
18 there's no difference between a son and your
19 next-door neighbor.

20 MS. WICKS: Okay. I'm simply speaking with
21 regards to the paperwork that has been put
22 together. He's very capable of answering
23 questions.

24 THE COURT: Very well then.

25 MS. WICKS: And if he doesn't like

1 something that I say or doesn't agree with
2 something I say he --

3 THE COURT: Okay. Then --

4 MS. WICKS: -- can definitely --

5 THE COURT: Then I suggest that he carry on
6 from this point forward.

7 MS. WICKS: That would be an extreme unfair
8 hardship because he has not had a chance to review
9 everything I put together.

10 THE COURT: So that means he hasn't done
11 anything on this lawsuit. You've entirely
12 negotiated this lawsuit and prepared the lawsuit
13 and filed the lawsuit on his behalf.

14 MS. WICKS: Every document has been signed
15 by him, counter signed by me as the one preparing
16 the documents.

17 THE COURT: What we're going to do in the
18 abundance of caution is follow your suggestion.
19 When we finish this hearing, I want you to both go
20 out and schedule another day to have a hearing on
21 the same matters that we discussed today, on the
22 motions to dismiss. And the arguments that are
23 contained in your motion and give you a chance to
24 hire a lawyer. Or he's going to represent
25 himself. He has a choice. So you're going to

1 have plenty of time to hire a lawyer to represent
2 you that's licensed within the state of Florida,
3 to represent him or he's more than happy -- I'm
4 more than happy to permit him -- under the law,
5 he's entitled to represent himself. But he's
6 going to have to represent himself.

7 MS. WICKS: Will he be allowed to represent
8 himself with my assistance?

9 THE COURT: As long as you don't say a word
10 during the course of the hearing.

11 MS. WICKS: Would I be able to confer with
12 him regarding --

13 THE COURT: I'm not going to -- I'm not
14 here to give you legal advice. I'm just telling
15 you that you can sit in here, but you have to keep
16 quiet.

17 MS. WICKS: Okay.

18 MS. WILLIAMSON: Your Honor, I think it's
19 fairly clear that Ms. Wicks would still be
20 producing most of these documents, her son signing
21 them or not, just assuming that's --

22 THE COURT: Well, I'll give her every
23 opportunity to -- I don't want his lawsuit to be
24 in jeopardy because something's run afoul. She's
25 already admitted that the presuit wasn't timely.

1 MS. WICKS: Yes, it was. The presuit most
2 definitely was timely.

3 THE COURT: That's your opinion. We'll
4 have to see. That's why we're going to have
5 another hearing.

6 Okay. Mr. Bailiff -- we're going to
7 continue the hearing, Madam.

8 MS. WILLIAMSON: Your Honor, what would be
9 a reasonable amount of time for him to -- do you
10 plan on maybe obtaining counsel?

11 THE COURT: Well, we'll just give time. If
12 he shows up without counsel, he'll have to on
13 bareback, he's going to be on his own. Okay.
14 Sharon? Schedule a 30-minute hearing on this case
15 whenever it's available. And, ma'am, once you get
16 the date, I want you to send out the notice of
17 hearing.

18 MS. WILLIAMSON: Okay.

19 THE COURT: Okay. On the same issues that
20 were discussed today.

21 MS. WILLIAMSON: I will. Thank you.

22 THE COURT: May 2nd, 3:30.

23 THE COURT: Is that all right with you,
24 Ma'am?

25 MS. WILLIAMSON: I apologize, Your Honor,

1 my calendar's on my phone. I have a habit of
2 turning it off. Mind if I turn it on?

3 THE COURT: Go ahead. I just want to check
4 with you, Ma'am.

5 MS. WICKS: That would be fine.

6 THE COURT: You sure? Okay. How about
7 you, sir?

8 MR. WICKS: Yeah, that's fine.

9 MS. WILLIAMSON: That's fine, Your Honor.

10 THE COURT: Okay. The only ruling I'm
11 making today is that this Power of Attorney, the
12 authority of the agent under the statute that this
13 nice lady has recited into the record, does not
14 give her the power, nor the authority, to
15 represent her son, or anybody else for that
16 matter, in a lawsuit within the state of Florida.
17 Because she's not licensed to practice law in the
18 state of Florida. And that should do it.

19 MS. WILLIAMSON: Thank you, Your Honor. I
20 appreciate it.

21 THE COURT: Thank you, ma'am.

22 (Proceedings concluded at 3:51 p.m.)

23 - - - - -

24

25

C E R T I F I C A T E

3 STATE OF FLORIDA)
4 COUNTY OF ORANGE)

6 I, LISA SHUMAN, Registered Professional
7 Reporter and Notary Public, certify that I was
8 authorized to and did stenographically report the
9 foregoing proceedings and that the transcript is a true
10 and complete record of my stenographic notes.

11

12 DATED this 25th day of January, 2017.

13

14

15

16

17

18

19

20

21

22

23

24

25

Lin Shunman

LISA SHUMAN, RPR
Notary Public-State of Florida
My Commission No. FF904525
Expires: 09/01/19

RESP. APP. #5

ZACHARY Q. WICKS vs JON H. RADNOTHY, D.O.
HONORABLE MARK J. HILL on 05/02/2017

1 IN THE CIRCUIT COURT OF THE
2 FIFTH JUDICIAL CIRCUIT IN AND
FOR LAKE COUNTY, FLORIDA.

3 CASE NO.: 35-2016-CA-001741

4

ZACHARY O. WICKS.

5

Plaintiff,

6

JON H. RADNOTHY, D.O.,
VICTORIA HENRIQUEZ, PA-C, and
RADNOTHY PERRY ORTHOPAEDIC
CENTER, P.A., a Florida
corporation,

10 Defendants.

11

12

HEARING BEFORE THE HONORABLE MARK J. HILL

15 DATE TAKEN: May 2, 2017

16 TIME: Beginning at 3:30 p.m.
Concluding at 3:45 p.m.

20 REPORTED BY: Susan L. Davis, F.P.R.,
21 and Notary Public, State of
Florida at Large

22

23

24

24

25

1 APPEARANCES :

2

3

4

5

6 ZACHARY Q. WICKS
7 JANICE E. ROBERTSON-WICKS
8 40551 West 1st Avenue
Umatilla FL 32784-8056
352.350.7197
Jrobertson232@comcast.net

9

10 APPEARING PRO SE.

11

12

13 PAUL A. NUGENT, ESQ.
14 Beytin, McLaughlin, McLaughlin,
O'Hara, Bocchino & Bolin P.A.
15 1063 Maitland Center Commons Boulevard
Maitland, Florida 32751
407.622.6725
pan@law-fla.com

16

17 APPEARING ON BEHALF OF THE DEFENDANTS.

18

19

20

21

22

23

24

25

PROCEEDINGS

THE COURT: We are here on 2016-CA-1741. The style of the case is Wicks v. Radnothy, et al. Date of the filing was October of 2016.

Sir, we are here on a motion and if you want to go ahead, go right ahead.

MR. NUGENT: Yes, Your Honor, I wasn't, I wasn't here for the last hearing. One of the attorneys in my office that was here, she's in a trial right now.

THE COURT: When was the last hearing we had here, sir? It was approximately January 18th?

MR. WICKS: That sounds about right.

THE COURT: January 18th, in fact. I just looked it up on the computer.

MR. NUGENT: Actually, I don't know if you need this, Judge, or not, but that's a copy of an actual transcript of that hearing. So I didn't realize that was typed up, and I found that as I was in the office this morning coming in, so.

THE COURT: Yeah. I remember the hearing quite well. It was January 18th at 3:32 p.m.

MR. NUGENT: Yes, sir.

THE COURT: Some of the --

MR. NUGENT: And I know that, I think --

1 Ms. Wicks, was it you or your son that called the
2 office yesterday?

3 MRS. WICKS: I called and then I faxed over a
4 request.

5 MR. NUGENT: Oh, let me see. I don't know if
6 I saw that.

7 (Judge Hill handed Mr. Nugent a document.)

8 MRS. WICKS: I faxed that to your office also,
9 sir, or I believe I did.

10 MR. NUGENT: I don't think I got that, but,
11 Your Honor, it's my understanding, I guess there's
12 a couple of law firms still looking at the case. I
13 mean, out of an abundance of caution, the reason I
14 couldn't agree to this is because I think the Court
15 wanted us to set that hearing, but I'm not against
16 giving them some additional time on that, to get an
17 attorney, if that's the --

18 THE COURT: Well, they have had since
19 January 18th. That's three and a half months.

20 MR. NUGENT: Yes.

21 MRS. WICKS: May I address the Court,
22 Your Honor?

23 THE COURT: No, ma'am, because you're not a
24 party to this action. He is (indicating), so.

25 MR. NUGENT: Well, in light of that, Judge, I

1 didn't realize it was that amount of time, but I
2 guess we'll just then proceed, Judge.

3 THE COURT: I think so.

4 MR. NUGENT: We don't need to rehash some of
5 the old arguments, but this is a case that was
6 filed in October of 2016. The actual injury
7 occurred back in the fall of 2014. And by reading
8 the complaint, there are allegations of negligence
9 dealing from December of 2013 through February of
10 2014.

11 In February of 2014 is when they were notified
12 of the MRI results which showed that there was a
13 fracture. Mr. Wicks was proceeding with treatment,
14 saying they were requesting an MRI. They felt
15 something more was wrong with the ankle. It turns
16 out that the MRI did reveal that there was a
17 fracture. And that's when we contend that they
18 knew or should have known the negligence.

19 And then subsequently with the lawsuit, there
20 was a 90-day period, but subsequent to the
21 lawsuit -- I mean, subsequent to that they filed a
22 lawsuit in October of 2016, which was beyond the
23 two-year timeframe of limitations.

24 THE COURT: And they had a lawyer at the time?

25 MR. NUGENT: They didn't.

1 THE COURT: They didn't? Who filed it on
2 their behalf?

3 MR. NUGENT: It was Ms. Wicks that did the
4 notice of intent, and they also filed a lawsuit.

5 THE COURT: Okay.

6 MR. NUGENT: So it could be an argument for a
7 different day, but there also could be the argument
8 that it's not even a valid notice because it was, I
9 think the argument was before, and I think Your
10 Honor agreed, at least according to the transcript,
11 that the whole agency principal thing, you can't
12 perform contracts for personal services for that.

13 And that's when I think you told the Wicks
14 that Mr. Wicks needs to represent himself and --
15 needs to present himself and not his mother as his
16 attorney in fact.

17 THE COURT: I think we went through that in
18 some detail at the January 18th hearing, and I
19 suggested at the January 18th hearing that they
20 needed to get a lawyer, that she could not
21 represent him.

22 MR. NUGENT: Yes, sir.

23 THE COURT: Or he needed to get a lawyer.
24 And, sir, have you got a lawyer?

25 MR. WICKS: Not at this moment, no.

1 THE COURT: How many lawyers have you seen
2 since January 18th?

3 MR. WICKS: 10 to 15.

4 THE COURT: 10 to 15. And what did they all
5 say?

6 MR. WICKS: That there's not enough -- most of
7 them said there's not enough time.

8 THE COURT: Uh-huh. And there's your answer
9 of how many they have seen and no one is
10 representing them. That's a clue.

11 MR. NUGENT: Yes, sir.

12 THE COURT: So.

13 MRS. WICKS: Excuse me, Your Honor. Could we
14 please readdress the --

15 THE COURT: You can't -- you're not here,
16 you're not here to represent anybody. He's here to
17 represent himself. You have had three and a half
18 months to get a lawyer.

19 (Mr. Wicks handed a document to Judge Hill.)

20 THE COURT: Sir, I repeat, do you have a
21 lawyer representing you?

22 MR. WICKS: As of right now, no.

23 THE COURT: I'm more than happy to let you
24 represent yourself like I told you, you could do in
25 January of this year.

1 Do you wish to represent yourself today and
2 argue this motion that's before the Court?

3 (Mr. Wicks handed another document to
4 Judge Hill.)

5 THE COURT: Did you see this? It was just
6 filed.

7 MR. NUGENT: I'm just looking at it right now,
8 Judge.

9 THE COURT: How old are you, sir?

10 MR. WICKS: Right now I am 23 years old.

11 THE COURT: Okay. You would agree that your
12 son is competent, ma'am; is that correct?

13 MRS. WICKS: No, sir.

14 THE COURT: Well, what --

15 MRS. WICKS: By the definition of competent,
16 he is not capable of representing himself.

17 THE COURT: Okay. Have you started a
18 guardianship?

19 MRS. WICKS: By the definition of competent,
20 which is --

21 THE COURT: Has he ever been declared
22 incompetent?

23 MRS. WICKS: There's a difference between
24 incompetent and incapacity. Incompetent simply
25 means he's not capable of --

1 THE COURT: I asked you a question, ma'am.

2 MRS. WICKS: -- performing the task.

3 THE COURT: Have you started a guardianship
4 proceeding?

5 MRS. WICKS: No, sir.

6 THE COURT: So you have no authority to
7 represent him whatsoever because you're not a
8 guardian.

9 MRS. WICKS: I would join him in the suit,
10 Your Honor.

11 THE COURT: Okay. That was filed today.

12 MR. NUGENT: Okay.

13 THE COURT: You need to put a note on there to
14 file it.

15 MR. NUGENT: Oh, sure.

16 THE COURT: So, go ahead with your motion,
17 sir.

18 MR. NUGENT: Your Honor, again, it's our
19 position that this matter has been filed outside of
20 the applicable limitations period given the
21 pleadings as they are on the face of the complaint.
22 It has been more than two years since they knew or
23 should have known that there was -- that Mr. Wicks
24 should have known that there was malpractice in
25 this case.

1 THE COURT: And just so the record is clear,
2 there was a notice just filed within the last two
3 or three minutes, a Notice of Party Joining
4 Plaintiff. It says, "Plaintiff, Zachary Wicks, is
5 hereby joined by Janice Robertson-Wicks as
6 Co-Plaintiffs in this legal action against the
7 Defendants," so forth and so forth. It's signed by
8 Janice Robertson-Wicks and that's how she's usually
9 been signing it, but as Attorney in Fact.

10 Do you have an order for me?

14 THE COURT: Okay. Send me an order.

15 MR. NUGENT: Okay.

16 THE COURT: And then --

17 MRS. WICKS: An order regarding?

20 MRS. WICKS: I have not been able to argue the
21 Statute of Limitations.

22 THE COURT: Well, you can't, because you don't
23 represent him.

24 MRS. WICKS: I'm representing me now.

25 THE COURT: No, you're not.

1 MRS. WICKS: I'm not allowed to join him?

2 THE COURT: No, you're not allowed to join
3 him. What authority do you have to join him in
4 this lawsuit? He's an adult, ma'am.

5 MRS. WICKS: If you'll give me a moment, Your
6 Honor.

7 MR. NUGENT: We would, of course, note an
8 objection to that, Your Honor, her being allowed to
9 join because she has no standing on that. He is an
10 adult, and she has no claim in this case.

11 MRS. WICKS: Florida Rules of Civil Procedure,
12 Rule 1.210, Parties --

13 THE COURT: I have read that, ma'am.

14 MRS. WICKS: It clearly states: Any party
15 with whom or in whose name the contract has been
16 made for, da-da-da-da -- that is not the part.
17 I apologize.

18 All persons having interest in the subject of
19 the action and in obtaining the relief demanded may
20 join as plaintiffs and any person may be made a
21 defendant who has or claims an interest adverse to
22 the plaintiffs.

23 I have an interest in this. I am currently
24 supporting him. He's not capable of supporting
25 himself due to his -- the negligence that created

1 the disability for him.

2 THE COURT: There is no -- I have just asked
3 you, ma'am. Have you been appointed guardian to
4 represent him?

5 MRS. WICKS: I am joining him as a
6 Co-Plaintiff, Your Honor.

7 THE COURT: No, ma'am, you're not, because
8 you're not a guardian of him.

9 If you read the beginning --

10 MRS. WICKS: Florida Rules of Civil
11 Procedure --

12 THE COURT: If you read the beginning, ma'am,
13 it says: Every action may be prosecuted in the
14 name of a real party in interest -- he's the real
15 party in interest -- but a personal representative,
16 which you are not, administrator, which you are
17 not --

18 MRS. WICKS: I am Personal Representative. I
19 have Durable Power of Attorney for him.

20 THE COURT: That doesn't make you his
21 attorney.

22 A guardian, you're not a guardian. You're not
23 the trustee of an express trust. You don't qualify
24 under this, ma'am.

25 Prepare the order, sir, and send it to me.

1 MR. NUGENT: Yes, sir.

2 THE COURT: Take that with you (indicating).

3 MR. NUGENT: Thank you.

4 THE COURT: I'll make sure this gets filed for
5 you, ma'am (indicating). Good luck.

6 Bailiff, show everybody out, please.

7 THE BAILIFF: Yes, sir.

8 MRS. WICKS: May I --

9 THE BAILIFF: No, ma'am. We're done here.

10 MRS. WICKS: I just want to be clear. You're
11 dismissing the case?

12 THE COURT: Yes, ma'am.

13 MRS. WICKS: I will file an appeal.

14 THE COURT: I suggest you get a lawyer to do
15 that.

16 MRS. WICKS: I have done an appeal before.

17 THE COURT: No. I suggest you get a lawyer if
18 you are going to represent him in the appeal.

19 MRS. WICKS: I asked for additional time.

20 THE COURT: Ma'am, you have had three and a
21 half months to get a lawyer.

22 MRS. WICKS: I have made every effort to
23 secure an attorney.

24 THE COURT: Three and a half months to get a
25 lawyer.

1 MRS. WICKS: Okay.

2 THE COURT: Thank you all.

3 MR. NUGENT: Thank you, Your Honor.

4 (The proceedings were concluded at 3:45 p.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

STATE OF FLORIDA:
COUNTY OF LAKE:

I, SUSAN L. DAVIS, Florida Professional Reporter and Notary Public, State of Florida at Large, certify that I was authorized to and did report the foregoing proceedings, and that the transcript, Pages 3 through , is a true and correct record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED this 13th day of May, 2017.



SUSAN L. DAVIS, F.P.R., and NOTARY
PUBLIC, STATE OF FLORIDA

RESP. APP. #6

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA

ZACHARY Q. WICKS,

Plaintiffs,

CASE NO: 35-2016-CA-001741

vs.

JON H. RADNOTHY, DO,
VICTORIA HENRIQUEZ, PA-C, and
RADNOTHY PERRY ORTHOPAEDIC
CENTER, PA, a Florida Corporation

Defendants.

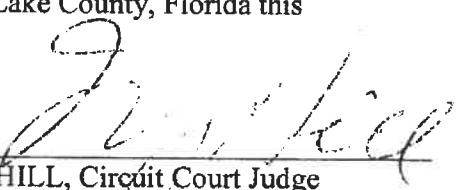
ORDER ON DEFENDANTS, JON H. RADNOTHY, DO, VICTORIA
HENRIQUEZ, PA-C and RADNOTHY PERRY ORTHOPAEDIC CENTER, PA'S
MOTION TO DISMISS

The matter came on for hearing on May 2, 2017 before the Honorable Mark J. Hill,
Circuit Court Judge, Lake County and after the Court was advised as to all arguments for the
parties it is ORDERED and ADJUDGED as follows:

1. Defendants, JON H. RADNOTHY, DO, VICTORIA HENRIQUEZ, PA-C and
RADNOTHY PERRY ORTHOPAEDIC CENTER, PA'S Motion to Dismiss is **Granted with
Prejudice** for failure to timely file a Complaint within the Statute of Limitations pursuant to
Florida Statute Section 95.11.

DONE and ORDERED in Chambers, Tavares, Lake County, Florida this

17 day of May, 2017.


MARK J. HILL, Circuit Court Judge

Conformed Copies to:
Kevin T. O'Hara, Esquire
Mr. Zachary Q. Wicks

RESP. APP. #7

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY, FLORIDA
CIVIL DIVISION

CASE NUMBER: 35-2016-CA-001741

2017 JUN 16 PM 3:48
CLERK OF CIRCUIT
AND COUNTY COURT
LAKE COUNTY
TAVARES FLORIDA

ZACHARY Q. WICKS and)
JANICE E. ROBERTSON-WICKS,)
Plaintiffs/Appellants,

vs.

JON H. RADNOTHY, DO,)
VICTORIA HENRIQUEZ, PA-C,)
and RADNOTHY PERRY ORTHOPAEDIC)
CENTER, PA, a Florida Corporation,)
Defendants/Appellees.

NOTICE OF APPEAL

NOTICE IS GIVEN that Zachary Q. Wicks and Janice E. Robertson-Wicks, Plaintiffs/Appellants, appeal to the Fifth District Court of Appeal, the order of this court rendered May 17, 2017. The nature of the order is a final order on Defendants/Appellees Motion to Dismiss, which was granted with prejudice for failure to timely file a Complaint within the Statute of Limitations pursuant to Florida Statute Section 95.11.



Zachary Q. Wicks, Plaintiff/Appellant

Janice E. Robertson-Wicks
Janice E. Robertson-Wicks, Plaintiff/Appellant

P.O. Box 2004
Umatilla, FL 32784
(352) 350-7197
jrobertson232@comcast.net

I hereby certify that a true and correct copy of the foregoing
has been sent via US mail to Kevin T. O'Hara, Esq. at
1063 Maitland Center Commons Blvd., Maitland, FL 32751,
attorney for defendants/appellees; Judge Mark J. Hill,
550 W. Main St., Tavares, FL 32778, and has been
forwarded to the Fifth District Court of Appeal, 300 S. Beach
St., Daytona Beach, FL 32114, on this 16th day of May 2017.

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA

ZACHARY Q. WICKS,

Plaintiffs,

CASE NO: 35-2016-CA-001741

vs.

JON H. RADNOTHY, DO,
VICTORIA HENRIQUEZ, PA-C, and
RADNOTHY PERRY ORTHOPAEDIC
CENTER, PA, a Florida Corporation

Defendants.

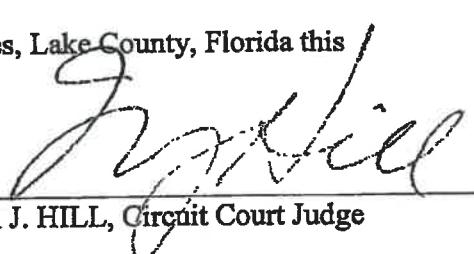
ORDER ON DEFENDANTS, JON H. RADNOTHY, DO, VICTORIA
HENRIQUEZ, PA-C and RADNOTHY PERRY ORTHOPAEDIC CENTER, PA'S
MOTION TO DISMISS

The matter came on for hearing on May 2, 2017 before the Honorable Mark J. Hill,
Circuit Court Judge, Lake County and after the Court was advised as to all arguments for the
parties it is ORDERED and ADJUDGED as follows:

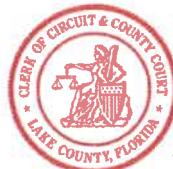
1. Defendants, JON H. RADNOTHY, DO, VICTORIA HENRIQUEZ, PA-C and
RADNOTHY PERRY ORTHOPAEDIC CENTER, PA'S Motion to Dismiss is Granted with
Prejudice for failure to timely file a Complaint within the Statute of Limitations pursuant to
Florida Statute Section 95.11.

DONE and ORDERED in Chambers, Tavares, Lake County, Florida this

17 day of May, 2017.


MARK J. HILL, Circuit Court Judge

Conformed Copies to:
Kevin T. O'Hara, Esquire
Mr. Zachary Q. Wicks



STATE OF FLORIDA, COUNTY OF LAKE
I HEREBY CERTIFY the above and foregoing
is a true copy of the document filed in this office.
By Neil Kelly, Clerk of Circuit Court
Deputy Clerk John John June 16, 2017
This document may be redacted as required by law.

RESP. APP. #8

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

ZACHARY Q. WICKS AND
JANICE E. ROBERTSON-WICKS,

Appellants,

v.

Case No. 5D17-1897

JON H. RADNOTHY, D.O.,
VICTORIA HENRIQUEZ, PA-C AND
RADNOTHY PERRY ORTHOPAEDIC
CENTER, PA,

Appellees.

/

Decision filed July 3, 2018

Appeal from the Circuit Court
for Lake County,
Mark J. Hill, Judge.

Zachary Q. Wicks and Janice E.
Robertson-Wicks, Umatilla, pro se.

Kevin T. O'Hara, of Beytin, McLaughlin,
McLaughlin, O'Hara, Bocchino & Bolin,
P.A., Maitland, for Appellees.

PER CURIAM.

AFFIRMED.

ORFINGER, TORPY and LAMBERT, JJ., concur.

RESP. APP. #9

RECEIVED, 7/18/2018 4:11 AM, Joanne P. Simmons, Fifth District Court of Appeal

**IN THE DISTRICT COURT OF APPEAL
FOR THE FIFTH DISTRICT, STATE OF FLORIDA**

Case No. 5D17-1897

**ZACHARY Q. WICKS and
JANICE E. ROBERTSON-WICKS,**

Appellants,

vs.

**JON H. RADNOTHY, DO,
VICTORIA HENRIQUEZ, PA-C,
and RADNOTHY PERRY ORTHOPAEDIC CENTER, PA,
a Florida Corporation,**

Appellees.

AMENDED MOTION REQUESTING WRITTEN OPINION,

REHEARING, AND/OR REHEARING EN BANC

ZACHARY Q. WICKS and JANICE E. ROBERTSON-WICKS,

Appellants, respectfully request a written opinion for the Per Curiam Affirmed decision issued by this Honorable Court, pursuant to Fla. R. Civ. P. Rule 9.330.

Appellants believe a written opinion will provide a legitimate basis for Supreme Court review because affirmation of the trial court's dismissal is in direct conflict

with previous decisions on the same matter of law issued by this Honorable Court, the Florida Supreme Court and other Florida District Courts of Appeal.

Based on the following case facts and supporting citations, Appellants respectfully request this Honorable Court grant a rehearing and/or rehearing en banc, pursuant to Fla. R. Civ. P. 9.331. Appellants believe the panel decision is contrary to decisions of this Court, as cited below, and that a consideration by the full Court is necessary to maintain uniformity of decisions in this Court.

CASE FACTS:

1. 11/27/2013 – WICKS suffered the initial traumatic injury (R. 69).
2. 12/11/2013 – WICKS was evaluated and treated by HENRIQUEZ, rendering a diagnosis of left ankle sprain (R. 147).
3. 01/08/2014 – WICKS was evaluated and treated by HENRIQUEZ, rendering a diagnosis of left ankle sprain and flexion contracture (R. 151).
4. 02/17/2014 – WICKS was evaluated and treated by RADNOTHY, rendering a diagnosis of left talus fracture (R. 159) with x-ray interpretation that the talus fracture is healing in satisfactory alignment (R. 159).
5. 03/28/2014 – WICKS was evaluated by Dr. Miller, rendering a diagnosis of closed displaced left talar neck fracture (R. 162).
6. 04/07/2014 – WICKS was evaluated and treated by Dr. Choung, rendering a diagnosis of closed left talar neck fracture malunion (R. 164).

7. 02/08/2016 – Appellants received expert witness affidavit (R. 74-78).
8. 02/10/2016 – Appellants obtained statute of limitations extension (R. 57).
9. 02/25/2016 – All Appellees received Notice of Intent to Initiate Litigation for Medical Malpractice (R. 82-85).
10. 05/27/2016 – Appellants received Appellees’ denial of claim (R. 90-91).
11. 10/11/2016 – Appellants filed Complaint for Medical Malpractice (R. 1-10).
12. 01/18/2017 – Hearing on Appellees’ Motion to Dismiss (R. 108-125).
13. 05/02/2017 – Hearing on Appellees’ Motion to Dismiss (R. 126-140).
14. 05/22/2017 – Order granting Appellees’ Motion to Dismiss with Prejudice (R. 106).
15. 06/16/2017 – Appellants filed Notice of Appeal (R. 104-105, 107).

SUPPORTING FACTS:

On 01/18/2017, Appellees’ counsel testified that the Notice of Intent was timely filed (R. 114: 11-16). Appellants testified that they became aware of the injury caused by Appellees’ negligence on April 7, 2014 (R. 116: 25, R 117: 1).

On 05/02/2017, Appellees’ counsel gave contradictory testimony, stating the Complaint was filed outside the statute of limitations, without supporting evidence (R. 130: 11-23). Appellants’ were denied due process when the trial court denied rebuttal testimony in defense of the statute of limitations and the motions filed in the trial court (R. 133: 1-25, R. 134: 1-25, R. R. 135: 1-10).

If the Notice of Intent was timely filed, per testimony (R. 114: 11-16), then the Complaint was also timely filed. When using either 03/28/2016 or 04/07/2016 as the expiration of the statute of limitations, less than 60 days remained of the original statute of limitations when the Notice of Intent was received by Appellees on 02/25/2016. At the end of the 90 day pre-suit period, 05/25/2016, Appellants had the 60 day filing period and the 90 day extension in which to file the Complaint. Appellants' Complaint was filed on 10/11/2016, day 139. This calculation is in accordance with the Florida Supreme Court analysis of the statutory scheme in *Hankey v. Yarian*, 755 So.2d 93,97 (Fla. 2000).

Taking Appellants' Complaint and testimony into consideration, with the contradictory testimony of Appellees' counsel, a genuine issue of material facts is demonstrated.

Appellants' Complaint clearly alleged concealment by RADNOTHY (R. 8), precluding the trial court from making a determination as a matter of law when the statute of limitations began to run.

CITATIONS:

Florida Farm Bureau General Insurance Company v. Insurance Company of North America, 763 So.2d 429, 433 (2000) – Fifth District Court of Appeal held:

“In reviewing the propriety of an order of dismissal, this court is obligated to consider the allegations in the complaint as true and in the light most favorable to the pleader.”

Rodriguez v. Saenz, 866 So.2d 184 (2004) – Fifth District Court of Appeal held:

“the date of the commencement of the statute of limitations is, under the facts of this case, an issue of fact that should be left to the consideration of a jury. A party moving for summary judgment has the burden of demonstrating that there is no genuine issue as to any material fact, and that the movant is entitled to a judgment as a matter of law. In addition, the movant must overcome any reasonable inferences, doubts and conclusions, all of which are to be liberally construed in favor of the party opposing summary judgment.”

Thomas v. Lopez, 982 So.2d 64, 68 (2008) – Fifth District Court of Appeal held:

“Simply suspecting wrongdoing is not enough” when determining when the statute of limitations accrues.

Tanner v. Hartog, 618 So.2d 177 (1993) – Florida Supreme Court held:

“knowledge of the injury as referred to in the rule as triggering the statute of limitations means not only knowledge of the injury but also knowledge that there is a reasonable possibility that the injury was caused by medical malpractice..... We recognize that our holding will make it harder to decide as a matter of law when the statute begins to run...”

Myklejord v. Morris, 766 So.2d 1160 (2000) – Fifth District Court of Appeal held:

“In such instances, the plaintiff is being actively misled about his or her true condition by the tortfeasor. Conceptually, this intentional withholding of information acts to delay plaintiff’s ability to discover the tortfeasor’s wrongdoing or the nature of the injury itself.”

Bryant v. Adventist Health Systems Sunbelt, Inc., 869 So.2d 681 (2004) – Fifth District Court of Appeal held:

“Nevertheless, concealment or intentional misrepresentation of fact, if proven, would toll the running of the statute. Applying this rule to the instant case requires us to quash the dismissal orders because the second amended complaint clearly raised the issues of concealment and intentional misrepresentation.”

Cunningham v. Lowery, 724 So.2d, 176 (1999) – Fifth District Court of Appeal

“It would be both fair and desirable in order for a physician to claim the benefit of the running of the statute of limitations in a misdiagnosis case from the moment of the correct diagnosis, that the physician who continues to treat the patient be required to disclose to the patient or the patient’s representative the fact of and the possible significance of the misdiagnosis. Had Dr. Lowery done so, the statute clearly would have begun to run from the moment of his disclosure.”

Edelman v. Breed, 836 So.2d 1092, 1093-1094 (2003) – Fifth District Court of

Appeal held:

“the trial court committed reversible error and denied party due process when it directed verdict against party before he presented his case.”

Vollmer v. Key Dev. Props., Inc., 966 So.2d 1022, 1027 (2007) – Second District

Court of Appeal held:

“The constitutional guarantee of due process requires that each litigant be given a full and fair opportunity to be heard. The right to be heard at an evidentiary hearing includes more than simply being allowed to be present and to speak. Instead, the right to be heard includes the right to introduce evidence at a meaningful time and in a meaningful manner. It also includes the opportunity to cross-examine witnesses and to be heard on questions of law. The violation of a litigant’s due process right to be heard requires reversal.”

Beltran v. Kalb, 982 So.2d, 24, 26 (2008) – Third District Court of Appeal

“the trial court denied the appellants due process when it summarily denied the motions without giving them a reasonable opportunity to be heard.”

Appellant’s most respectfully implore this Honorable Court to reconsider the Per Curiam Affirmed decision previously rendered and correct the injustice that has been perpetrated by the lower court’s dismissal of this cause of action.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent to Kevin T. O'Hara , Esquire, 1063 Maitland Center Commons Blvd. Maitland, FL 32751 via e-mail this 18th day of July, 2018.

/s/ Zachary Q. Wicks

Zachary Q. Wicks
Appellant

/s/ Janice E. Robertson-Wicks

Janice E. Robertson-Wicks
Appellant

P.O. Box 2004
Umatilla, FL 32784
(352) 350-7197

RESP. APP. #10

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

ZACHARY Q. WICKS AND JANICE
E. ROBERTSON-WICKS,

Appellants,

v.

CASE NO. 5D17-1897

JON H. RADNOTHY, D.O., VICTORIA
HENRIQUEZ, PA-C AND RADNOTHY
PERRY ORTHOPAEDIC CENTER, PA,

Appellees.

DATE: August 09, 2018

BY ORDER OF THE COURT:

ORDERED that Appellants' Amended Motion Requesting Written Opinion,
Rehearing and/or Rehearing En Banc, filed July 18, 2018, is denied.

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

Joanne P. Simmons
JOANNE P. SIMMONS, CLERK



Panel: Judges Orfinger, Torpy, and Lambert (acting on panel-directed motion(s))
En Banc Court (acting on en banc motion)

cc:

Kevin T. O'Hara

Zachary Q. Wicks

Janice E. Robertson-Wicks

RESP. APP. #11

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

ZACHARY Q. WICKS and
JANICE E. ROBERTSON-WICKS,
Appellants,

vs.

Case No. 5D17-1897
L.T. Case No. 35-2016-CA-001741

JON H. RADNOTHY, DO,
VICTORIA HENRIQUEZ, PA-C,
and RADNOTHY PERRY ORTHOPAEDIC
CENTER, PA, a Florida Corporation,
Appellees.

**NOTICE TO INVOKE THE
JURISDICTION OF THE SUPREME COURT**

NOTICE IS GIVEN that Appellants, Zachary Q. Wicks and Janice E. Robertson-Wicks, invoke the jurisdiction of the Florida Supreme Court to review the Per Curiam Affirmed decision of this court rendered July 3, 2018 and the order denying Appellants' Amended Motion Requesting Written Opinion, Rehearing, and/or Rehearing En Banc rendered August 9, 2018. The Constitution of the State of Florida Article V Section 3(b)(1) and Florida Rules of Appellate Procedure Rule 9.030(a)(1)(A)(ii) give jurisdiction to the Supreme Court to review these decisions, stating "(The) Supreme Court shall hear appeals....from district courts of appeal declaring invalid a state statute or a provision of the state constitution."

The decisions of the Fifth District Court of Appeal are in violation of:

- (1) Amendment 14 of the Constitution of the United States, "...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
- (2) Article I Section 9 of the Constitution of the State of Florida, "No person shall be deprived of life, liberty, or property without due process of law..."
- (3) Article I Section 21 of the Constitution of the State of Florida, "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."

The dismissal of the medical malpractice case by the circuit court was an error and was clearly in express and direct conflict with decisions made by all Florida Courts of Appeal and the Florida Supreme Court. The decision of the circuit court was appealed to the Fifth District Court of Appeals, the merits of which were very thoroughly presented. In said appeal, Appellants also brought forth the issue of the circuit court having violated Appellants due process rights, blatantly evident in the transcripts of the hearings held in the circuit court.

Therefore, under the Constitution of the State of Florida Article V Section 3(b)(1) and under Florida Rules of Appellate Procedure Rule 9.030(a)(1)(A)(ii), the Fifth District Court of Appeals' Per Curiam Affirmed decision overtly and

implicitly declares Article I Section 9 of the Constitution of the State of Florida to be invalid. As well, the Fifth District Court of Appeals has overtly and implicitly declared Article I Section 21 to be invalid by the Per Curiam Affirmed decision rendered July 3, 2018, further upheld by the Court's denial of Appellant's Motion for a Written Opinion, Rehearing and/or Rehearing En Banc on August 9, 2018. The Per Curiam Affirmed decision of the Fifth District Court of Appeals violates Appellants' right to due process and access to the courts. The circuit court demonstrated discrimination and prejudice towards the pro se Appellants, which was upheld by the Fifth District Court of Appeals.

Respectfully submitted,

/s/ Zachary Q. Wicks
Zachary Q. Wicks, Appellant

/s/ Janice E. Robertson-Wicks
Janice E. Robertson-Wicks, Appellant
P.O. Box 2004
Umatilla, FL 32784
(352) 350-7197
jrobertson232@comcast.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy has been served electronically via e-mail to Kevin T. O'Hara, Esquire, 1063 Maitland Center Commons Blvd., Maitland, FL 32751 on September 7, 2018:

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

ZACHARY Q. WICKS AND
JANICE E. ROBERTSON-WICKS,

Appellants,

v.

Case No. 5D17-1897

JON H. RADNOTHY, D.O.,
VICTORIA HENRIQUEZ, PA-C AND
RADNOTHY PERRY ORTHOPAEDIC
CENTER, PA,

Appellees.

Decision filed July 3, 2018

Appeal from the Circuit Court
for Lake County,
Mark J. Hill, Judge.

Zachary Q. Wicks and Janice E.
Robertson-Wicks, Umatilla, pro se.

Kevin T. O'Hara, of Beytin, McLaughlin,
McLaughlin, O'Hara, Bocchino & Bolin,
P.A., Maitland, for Appellees.

PER CURIAM.

AFFIRMED.

ORFINGER, TORPY and LAMBERT, J.J., concur.

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

ZACHARY Q. WICKS AND JANICE
E. ROBERTSON-WICKS,

Appellants,

v.

CASE NO. 5D17-1897

JON H. RADNOTHY, D.O., VICTORIA
HENRIQUEZ, PA-C AND RADNOTHY
PERRY ORTHOPAEDIC CENTER, PA,

Appellees.

DATE: August 09, 2018

BY ORDER OF THE COURT:

ORDERED that Appellants' Amended Motion Requesting Written Opinion,
Rehearing and/or Rehearing En Banc, filed July 18, 2018, is denied.

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

Joanne P. Simmons
JOANNE P. SIMMONS CLFRK



Panel: Judges Orfinger, Torpy, and Lambert (acting on panel-directed motion(s))
En Banc Court (acting on en banc motion)

CC:

Kevin T. O'Hara

Zachary Q. Wicks

Janice E. Robertson-Wicks

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

ZACHARY Q. WICKS AND
JANICE E. ROBERTSON-WICKS,

Appellants,

v.

Case No. 5D17-1897

JON H. RADNOTHY, D.O.,
VICTORIA HENRIQUEZ, PA-C AND
RADNOTHY PERRY ORTHOPAEDIC
CENTER, PA,

Appellees.

/

Decision filed July 3, 2018

Appeal from the Circuit Court
for Lake County,
Mark J. Hill, Judge.

Zachary Q. Wicks and Janice E.
Robertson-Wicks, pro se.

Kevin T. O'Hara, of Beytin, McLaughlin,
McLaughlin, O'Hara, Bocchino & Bolin,
P.A., Maitland, for Appellees.

PER CURIAM.

AFFIRMED.

ORFINGER, TORPY and LAMBERT, JJ., concur.

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

ZACHARY Q. WICKS AND JANICE
E. ROBERTSON-WICKS,

Appellants,

v.

CASE NO. 5D17-1897

JON H. RADNOTHY, D.O., VICTORIA
HENRIQUEZ, PA-C AND RADNOTHY
PERRY ORTHOPAEDIC CENTER, PA,

Appellees.

DATE: August 09, 2018

BY ORDER OF THE COURT:

ORDERED that Appellants' Amended Motion Requesting Written Opinion,
Rehearing and/or Rehearing En Banc, filed July 18, 2018, is denied.

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

Joanne P. Simmons
JOANNE P. SIMMONS, CLERK



Panel: Judges Orfinger, Torpy, and Lambert (acting on panel-directed motion(s))
En Banc Court (acting on en banc motion)

cc:

Kevin T. O'Hara

Zachary Q. Wicks

Janice E. Robertson-Wicks

5DCA CERTIFICATION

I hereby certify that the foregoing is a true and correct copy of the instrument(s) filed in this office.

Witness my hand and official seal this September 7, 2018.

Joanne P. Simmons, Clerk of the Fifth District Court of Appeal.

By: /s/ Kathy Palmere



JAY P. COHEN
CHIEF JUDGE

THOMAS D. SAWAYA
WILLIAM D. PALMER
RICHARD B. ORFINGER
VINCENT G. TORPY, JR
KERRY I. EVANDER
WENDY W. BERGER
F. RAND WALLIS
BRIAN D. LAMBERT
JAMES A. EDWARDS
ERIC J. EISNAUGLE
JUDGES



JOANNE P. SIMMONS
CLERK

CHARLES R. CRAWFORD
MARSHAL

DISTRICT COURT OF APPEAL
FIFTH DISTRICT
300 SOUTH BEACH STREET
DAYTONA BEACH, FLORIDA 32114
(386) 947-1500 COURT
(386) 255-8600 CLERK

September 7, 2018

Hon. John A. Tomasino, Clerk
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399-1927

Re: Wicks
vs
Radnothy

Appeal No. 5D17-1897
Trial Court No: 35-2016-CA-001741
Trial Court Judge: HON. MARK J. HILL

Dear Hon. Tomasino:

Attached is a certified copy of the Notice invoking the discretionary jurisdiction of the Supreme Court pursuant to Rule 9.120, Florida Rules of Appellate Procedure, along with a copy of this Court's opinion or decision relevant to this case.

- The filing fee prescribed by Section 25.241(3), Florida Statutes, was received by this court and will be forwarded.
- The filing fee prescribed by Section 25.241(3), Florida Statutes, was not received by this Court.
- Petitioner/Appellant has been previously determined insolvent by this Circuit Court or our court.

No filing fee is required because:

- Summary Appeal (Rule 9.141)
- Unemployment Appeals Commission
- Habeas Corpus(Petition- Ineffective Assistance of Counsel Criminal)
- Juvenile case
- Other 35.22(3)

Sincerely,
JOANNE P. SIMMONS, CLERK

By: /s/ Kathy Palmer

Deputy Clerk

Attachments

cc: Zachary Q. Wicks Jamice E. Robertson-Wicks Kevin T. O'Hara Carola J. Manresa
John Tomasino

RESP. APP. #12

Supreme Court of Florida

FRIDAY, SEPTEMBER 14, 2018

CASE NO.: SC18-1533

Lower Tribunal No(s).:

5D17-1897; 352016CA001741AXXXXX

ZACHARY Q. WICKS, ET AL.

vs. JON H. RADNOTHY, 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.

A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court



td

Served:

KEVIN T. O'HARA

JANICE E. ROBERTSON-WICKS

ZACHARY Q. WICKS

HON. GARY J. COONEY, INTERIM CLERK

HON. JOANNE P. SIMMONS, CLERK

HON. MARK JAY HILL