

No. 19-360

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

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System/Sunbelt, Inc., d/b/a
Florida Hospital
Altamonte & d/b/a Florida
Hospital Orlando

October 18, 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.

TABLE OF CONTENTS

	Page
CORPORATE DISCLOSURE STATEMENT	i
TABLE OF CONTENTS.....	ii
APPENDIX.....	ii, iii
TABLE OF AUTHORITIES.....	iv
RESPONDENT'S STATEMENT OF JURISDICTION.....	1
RESPONDENT'S LIST OF DIRECTLY RELATED CASES.....	2
RESPONDENT'S RESTATEMENT OF THE CASE.....	4
ARGUMENT.....	8
CONCLUSION.....	13

APPENDIX

Fifth District Court of Appeal of Florida's Order Denying Various Motions, and barring further pro se filings, dated August 14, 2018.....	App.1
Fifth District Court of Appeal of Florida's Order to show cause why appeal should not be dismissed for failing to file a record on appeal, dated October 1, 2018.....	App. 3

Fifth District Court of Appeal of Florida's Order regarding appeal will be dismissed unless record on appeal is filed, dated October 16, 2018.....	App. 5
Fifth District Court of Appeal of Florida's Order Dismissing Appeal, dated October 23, 2018.....	App. 7
Fifth District Court of Appeal of Florida's Order Denying Rehearing, dated December 6, 2018.....	App. 9
Florida Supreme Court's Order Dismissing Case dated February 27, 2019.....	App. 11

TABLE OF AUTHORITIES

	Page
CASES	
<i>Guam Sasaki Corp. v. Diana's, Inc.</i> , 881 F.2d 713 (9th Cir. 1989).....	9
<i>R. J. Reynolds Tobacco Co. v Kenyon</i> , 882 So. 2d 986, 988—989 (Fla. 2004).....	10
<i>Furman v U.S.</i> , 720 F.2d 263, 264 (2nd Cir. 1983).....	10
<i>Shands Teaching Hosp. v. Miller</i> , 642 So. 2d 48 (Fla. 1st DCA 1994)	12
<i>Archer v. Maddux</i> , 645 So. 2d 544 (Fla. 1st DCA 1994).....	12
<i>Royle v. Florida Hospital-East Orlando</i> , 679 So. 2d 1209 (Fla. 5th DCA 1996).....	12
STATUTES	
Chapter 766, Florida Statutes	12
RULES	
Supreme Court Rule 10.....	1,13
Supreme Court Rule 10(b).....	1
Supreme Court Rule 10(c).....	1
Supreme Court Rule 14(4).....	1
Supreme Court Rule 15(2).....	2
Florida Rule of Appellate Procedure 9.410(a).....	9
Florida Rule of Appellate Procedure 9.330(a).....	10
U.S. Ct. of App. 5th Cir. Rule 47.6.....	10
Fed. R. App. P. 36.....	10
U.S. Ct. 8th Cir. Rule 47B.....	10

**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 ha[ve] 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
LIST OF DIRECTLY RELATED CASES**

Pursuant to Rule 15(2), Respondent Adventist Health System/Sunbelt, Inc., identifies the following directly related cases:

Florida Ninth Judicial Circuit Court in Orange County, Florida, Case Number 2016-CA-010428-O, Frances K. Konieczko, Lawrence W. Konieczko and Laurie F. Konieczko, Plaintiffs, v. Adventist Health System/Sunbelt, Inc., d/b/a Florida Hospital Altamonte, and d/b/a Florida Hospital Orlando, and John Does 1 through 20.

Florida Fifth District Court of Appeal, Case Number 5D18-0049, Frances K. Konieczko, Lawrence W. Konieczko and Laurie F. Konieczko, Petitioners, v. Adventist Health System/Sunbelt, Inc., d/b/a Florida Hospital Altamonte, and d/b/a Florida Hospital Orlando, Respondent.

Florida Fifth District Court of Appeal, Case Number 5D18-0936, Frances K. Konieczko, Lawrence W. Konieczko and Laurie F. Konieczko, Petitioners, v. Adventist Health System/Sunbelt, Inc., d/b/a Florida Hospital Altamonte, and d/b/a Florida Hospital Orlando, Respondent.

Florida Fifth District Court of Appeal, Case Number 5D18-1904, Frances K. Konieczko, Lawrence W. Konieczko and Laurie F. Konieczko,

Petitioners, v. Adventist Health System/Sunbelt, Inc., d/b/a Florida Hospital Altamonte, and d/b/a Florida Hospital Orlando, Respondent.

Supreme Court of Florida, Case Number SC18-1744, Frances K. Konieczko, Lawrence W. Konieczko and Laurie F. Konieczko, Petitioners, v. Adventist Health System/Sunbelt, Inc., d/b/a Florida Hospital Altamonte, and d/b/a Florida Hospital Orlando, Respondent.

Supreme Court of Florida, Case Number SC18-1993, Frances K. Konieczko, Lawrence W. Konieczko and Laurie F. Konieczko, Petitioners, v. Adventist Health System/Sunbelt, Inc., d/b/a Florida Hospital Altamonte, and d/b/a Florida Hospital Orlando, Respondent.

Supreme Court of the United States, Case Number 18-1041, Frances K. Konieczko, Lawrence W. Konieczko and Laurie F. Konieczko, Petitioners, v. Adventist Health System/Sunbelt, Inc., d/b/a Florida Hospital Altamonte, and d/b/a Florida Hospital Orlando, Respondent.

RESPONDENT'S RESTATEMENT OF THE CASE

The primary issue is whether the Florida Supreme Court may decline to exercise discretionary review of an unelaborated Florida District Court of Appeal's decision dismissing Petitioners' appeal (because Petitioners' failed to comply with the Florida Rules of Appellate Procedure and the Orders of the Florida Fifth District Court of Appeal).

On December 1, 2016, Petitioners Frances K. Konieczko, Lawrence W. Konieczko and Laurie F. Konieczko filed a Pro Se Complaint (as case number 2016-CA-010428-O) in the Circuit Court of the Ninth Judicial Circuit of Orange County, Florida. Petitioners' Complaint asserted various tort theories against Respondent and John Does 1-20, and these theories relate to medical care provided to William Konieczko at Florida Hospital Altamonte.

On April 19, 2017, Respondent, Adventist Health System/Sunbelt, Inc. d/b/a Florida Hospital Altamonte and d/b/a Florida Hospital Orlando timely filed a Motion to Dismiss. The Motion to Dismiss primarily argued that the Petitioners' Complaint was substantively a claim for medical malpractice which should be dismissed with prejudice under Florida law. Respondent argued that a dismissal with prejudice was

appropriate, because Petitioners failed to comply with the Florida statutory medical malpractice presuit requirements before the Florida 4 year medical malpractice statute of repose expired. Further, as the statute of repose had expired, amending the complaint was futile.

On November 6, 2017, Circuit Judge Bob LeBlanc issued an Order on Defendant's Motion to Dismiss, which Granted the Motion with Prejudice. On November 28, 2017, Judge LeBlanc issued an Order Denying Plaintiffs/Petitioners' Motion for Rehearing of the Dismissal with Prejudice. On December 28, 2017, Petitioners filed a Notice of Appeal (to the Florida Fifth District Court of Appeal) of primarily the Order granting the Motion to Dismiss with Prejudice. This appeal was case number 5D18-0049.

On April 11, 2018, Judge LeBlanc issued a Final Order of Dismissal of the Case with Prejudice. On April 13, 2018, the Florida Fifth District Court of Appeal issued an Order allowing Appellants/Plaintiffs' Appeal to proceed as the lower court had now rendered a final appealable order.

During the appeal Petitioners filed a litany of motions which ultimately resulted in the Fifth District Court of Appeal issuing an Order on August 14, 2018 stating: "... ORDERED that Appellants are hereby prohibited from filing any further pro se motions or

papers in this case, other than the Initial Brief and Reply Brief. The Clerk is hereby ORDERED to reject any pro se motions or papers filed herein that are not signed by an attorney. The Initial Brief shall be served within 30 days of the date hereof. A Reply Brief may also be timely filed, but no other pro se motions or papers are permitted. Finally, the filing of any unauthorized motions or papers in the future will not stay the deadlines previously set by this Court. Failure to file the Initial Brief in a timely manner may result in a dismissal without further notice." (App. 1).

On October 1, 2018, the Florida Fifth District Court of Appeal issued an Order stating: "ORDERED, sua sponte, that Appellant shall file with this Court and show cause, on or before ten days from the date hereof, why the above-styled appeal should not be dismissed for failure to file a record on appeal in the cause." (App. 3).

On October 16, 2018, the Florida Fifth District Court of Appeal issued an Order stating: "ORDERED that Appellants' October 11, 2018, "Motion with Objections," responding to this Court's October 1, 2018, show cause order has been considered and the request to discharge show cause order is denied at this time. As indicated, the Record on Appeal is past due. It is therefore ORDERED that Appellants shall have the record on appeal filed by Friday October 19, 2018. Failure to comply will result in a dismissal without

further notice.” (App. 5).

On October 23, 2018, the Florida Fifth District Court of Appeal issued an Order stating: “In as much as Appellants have failed to comply [with] the Florida Rules of Appellate Procedure and the Orders of this Court, it is Ordered that the above-styled cause is hereby dismissed. (App. 7). On December 6, 2018, the Florida Fifth District Court of Appeal entered an Order Denying Petitioners’ Motion for Rehearing. (App. 5).

On February 27, 2019, the Florida Supreme Court in case number SC18-1993 dismissed Petitioners’ request for discretionary review of the Florida Fifth District Court of Appeal’s Order dismissing Petitioners’ appeal. The Florida Supreme Court stated that: “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.” (App. 11).

Thereafter this appeal ensued.

ARGUMENT

Petitioners have 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 (1) the Florida Fifth District Court of Appeal dismissing Petitioners' Appeal (because Petitioners failed to comply with the Court's rules and orders), and (2) the Florida Supreme Court's order declining discretionary review of the Florida Fifth District Court of Appeal's decision. These orders involve uniquely Florida substantive and procedural law.

The Florida Courts' orders do not show any infringement of Petitioners' rights under the U.S. Constitution. In fact, the course of this litigation shows that Petitioners have had many opportunities to present their arguments to the Florida Courts. In fact, Petitioners have litigated this Florida 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, two appeals to the Florida Supreme Court, and one previous Petition to the Supreme Court of the United States (which was denied). The history of this case shows Petitioners have been given

opportunities to be heard on their Florida tort claims. Nevertheless, Petitioners have failed to clearly articulate how the Florida Courts' Orders in Petitioners' Appendix violate their Constitutional rights or present a federal question for this Court to consider.

As far as the Florida Fifth District Court of Appeal's order dismissing Petitioners' appeal, courts have the discretion to dismiss cases and appeals when a party fails to comply with the court's rules and orders. *Guam Sasaki Corp. v. Diana's, Inc.*, 881 F.2d 713 (9th Cir. 1989) (noting that trial and appellate courts have inherent authority and discretion to dismiss cases and appeals when a party fails to comply with the court's rules and orders). In addition, Florida Rule of Appellate Procedure 9.410(a) allows the Florida Fifth District Court of Appeal to dismiss Petitioners' appeal for failing to comply with the Florida Rules of Appellate Procedure. In this case, the Florida Fifth District Court of Appeal gave Petitioners opportunities to comply with the Court's orders and rules, but Petitioners failed to comply.

As far as the Florida Supreme Court's order denying discretionary review of the Florida Fifth District Court of Appeal's order dismissing Petitioners' appeal, the Florida Supreme Court stated that it lacked jurisdiction to review an unelaborated decision from a district court of appeal

that was 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, the Florida Supreme Court. Further, the Florida Supreme Court cited case law in support of its decision, and it was appropriate for the Florida Fifth District Court of appeal to dismiss Petitioners' appeal without a written opinion or elaborated decision. 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.

Next, Petitioners' Petition should be denied as Petitioners have presented substantially the same Questions for Review that Petitioners presented in Supreme Court of the United States Case Number 18-1041. This Court denied that Petition on April 15, 2019 and denied rehearing on June 10, 2019. Petitioners' Petition in Case Number 18-1041 lists the same Question for Review numbers 1, 2, 3, 4 and 5 as are listed in their Petition in this case. The only new Questions for Review in this case are Petitioners' questions 6, 7, 8 and 9. Thus, Petitioners' Petition in this case should be denied as an improper effort at a second motion for rehearing as far as Petitioners' efforts to re-raise issues that this Court previously rejected.

As far as Petitioners' Question for Review number 6, Petitioners' case was essentially and substantively a medical malpractice case that was properly dismissed with prejudice, because Petitioners failed to comply with the Florida statutory medical malpractice presuit requirements before Florida's 4 year statute of repose expired. Thus, a dismissal with prejudice was appropriate as amendment would be futile, because the expiration of

the 4 year statute of repose means that it is too late for Petitioners to comply with the medical malpractice presuit requirements in Chapter 766, Florida Statutes. *See Shands Teaching Hosp. v. Miller*, 642 So. 2d 48 (Fla. 1st DCA 1994) (holding that medical malpractice claimant is required to submit corroborating medical expert opinion in support of claim prior to expiration of statute of limitations); *Archer v. Maddux*, 645 So. 2d 544 (Fla. 1st DCA 1994) (holding that the plaintiff's failure to file a corroborating medical expert opinion prior to the expiration of the statute of limitations justified the dismissal of Plaintiff's complaint with prejudice); *Royle v. Florida Hospital-East Orlando*, 679 So. 2d 1209 (Fla. 5th DCA 1996) (same). Further, as discussed above, the Florida Fifth District Court of Appeal had the discretion to dismiss Petitioners' appeal, and the Florida Supreme Court had the discretion to deny review of the Florida Fifth District Court of Appeal's decision.

Finally, Petitioner's Questions for Review numbers 7, 8 and 9 were not the subject of the orders Petitioners included in their Appendix. Also, Questions for Review numbers 8 and 9 are vague issues that Petitioners raised for the first time in this Petition. Thus, these are additional reasons for this Court to deny Petitioners' Petition.

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,

CHRISTIAN P. TROWBRIDGE

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October 18, 2019

APPENDIX

APPENDIX A

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

Case No. 5D18-0049

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

Appellants,

v.

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

Appellee.

Date: August 14, 2018

BY ORDER OF THE COURT:

ORDERED that Appellants' Motion for Extension of Time, filed August 8, 2018, and amended August 10, 2018, is denied. Appellants' August 9, 2018, "Motion to Chief Justice Jay Cohen to Give Us Important Information . . ." is stricken. Furthermore, it is

ORDERED that Appellants are hereby prohibited from filing any further pro se motions or papers in this case, other than the Initial Brief and Reply Brief. The Clerk is hereby ORDERED to reject any pro se motions or papers filed herein that are not signed by an attorney. The Initial Brief shall be served within 30 days of the date hereof. A Reply Brief may also be

timely filed, but no other pro se motions or papers are permitted. Finally, the filing of any unauthorized motions or papers in the future will not stay the deadlines previously set by this Court. Failure to file the Initial Brief in a timely manner may result in a dismissal without further notice.

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

/s/ Joanne P. Simmons
Joanne P. Simmons, Clerk

[SEAL]

Panel: Judges Palmer, Orfinger, and Wallis

cc:

Christian P. Trowbridge
Lawrence W. Konieczko
Frances K. Konieczko
Laurie W. Konieczko

APPENDIX B

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

Case No. 5D18-0049

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

Appellants,

v.

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

Appellee.

Date: October 01, 2018

BY ORDER OF THE COURT:

ORDERED, *sua sponte*, that Appellant shall file with this Court and show cause, on or before *ten* days from the date hereof, why the above-styled appeal should not be dismissed for failure to file a record on appeal in the cause. The Response shall be filed on or before the deadline identified in this Order, inasmuch as Florida Rule of Judicial Administration 2.514(b) (providing for additional time for mailing in specified circumstances) is inapplicable.

4a

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

/s/ Joanne P. Simmons
Joanne P. Simmons, Clerk

[SEAL]

cc:

Christian P. Trowbridge
Lawrence W. Konieczko
Frances K. Konieczko
Laurie W. Konieczko

APPENDIX C

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

Case No. 5D18-0049

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

Appellants,

v.

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

Appellee.

Date: October 16, 2018

BY ORDER OF THE COURT:

ORDERED that Appellants' October 11, 2018, "Motion with Objections," responding to this Court's October 1, 2018, show cause order has been considered and the request to discharge show cause order is denied at this time. As indicated, the Record on Appeal is past due. It is therefore

ORDERED that Appellants shall have the record on appeal filed by Friday October 19, 2018. Failure to comply will result in a dismissal without further notice.

6a

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

/s/ Joanne P. Simmons
Joanne P. Simmons, Clerk

[SEAL]

Panel: Judges Wallis, Edwards, and Harris

cc:

Christian P. Trowbridge
Lawrence W. Konieczko
Frances K. Konieczko
Laurie W. Konieczko

Orange Cty Circuit Ct Clerk
(2016-CA-10428)

APPENDIX D

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

Case No. 5D18-0049

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

Appellants,

v.

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

Appellee.

Date: October 23, 2018

BY ORDER OF THE COURT:

Inasmuch as Appellants have failed to comply the Florida Rules of Appellate Procedure and the Orders of this Court, it is

ORDERED that the above-styled cause is hereby dismissed.

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

/s/ Joanne P. Simmons
Joanne P. Simmons, Clerk

[SEAL]

Panel: Judges Cohen, Torpy, and Lambert

8a

cc:

Christian P. Trowbridge
Lawrence W. Konieczko
Frances K. Konieczko
Laurie W. Konieczko

APPENDIX E

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

Case No. 5D18-0049

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

Appellants,

v.

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

Appellee.

Date: December 06, 2018

BY ORDER OF THE COURT:

ORDERED that Appellants' "Motion for Rehearing . . . , " filed November 13, 2018, is denied. Further, pursuant to this Court's Order of August 14, 2018, which directed the Clerk to reject any motions or papers filed by Frances K. Konieczko, Lawrence W. Konieczko, or Laurie F. Konieczko, unless signed by a member of The Florida Bar, it is

ORDERED that Appellants' "Motion for Rehearing . . . , " filed November 5, 2018, is hereby rejected and no action will be taken thereon.

10a

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

/s/ Joanne P. Simmons
Joanne P. Simmons, Clerk

[SEAL]

Panel: Judges Cohen, Torpy, and Lambert

cc:

Christian P. Trowbridge
Lawrence W. Konieczko
Frances K. Konieczko
Laurie W. Konieczko

APPENDIX F

SUPREME COURT OF FLORIDA

Case No.: SC18-1993

Lower Tribunal No(s).: 5D18-49;
482016CA010428A001OX

FRANCES K. KONIECZKO, ET AL.

Petitioner(s),

vs.

ADVENTIST HEALTH SYSTEM/SUNBELT, INC., ETC.

Respondent(s).

Wednesday, February 27, 2019

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.

All pending motions are denied as moot.

12a

A True Copy

Test:

/s/ Mark Clayton, Chief Deputy Clerk

for John A. Tomasino
Clerk, Supreme Court

[SEAL]

Served:

Christian Pomeroy Trowbridge
Lawrence W. Konieczko
Frances K. Konieczko
Laurie F. Konieczko
Hon. Tiffany Moore Russell, clerk
Hon. Joanne p. Simmons, clerk
Hon. Robert p. Leblanc, judge
J. Charles Ingram