APPENDIX A

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-4566

JENNIFER VAN BERGEN a/k/a
Gwendolyn Stone,

Appellant,

v.

SCOTT KOPPEL,

Appellee.

On appeal from the Circuit Court for Alachua County.
Monica J. Brasington, Judge.

February 9, 2021

PER CURIAM.

AFFIRMED.

B.L. THOMAS, WINOKUR, and TANENBAUM, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Jennifer Van Bergen a/k/a Gwendolyn Stone, pro se, Appellant.

Jami M. Kimbrell, Joseph E. Brooks, and Olivia M. Brooks of Brooks Law, Tallahassee, for Appellee.

APPENDIX B

DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850)488-6151

March 18, 2021

CASE NO.: 1D19-4566
L.T. No.: 2017-CA-3433

Jennifer Van Bergen a/k/a Gwendolyn Stone	v.	Scott Koppel
Appellant / Petitioner(s),		Appellee / Respondent(s)

BY ORDER OF THE COURT:

Appellant's amended motion docketed February 23, 2021, for written opinion and certification is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

Jami M. Kimbrell
Olivia Brooks
Joseph E. Brooks
Jennifer Van Bergen

th

KRISTINA SAMUELS, CLERK

DISTRICT COURT OF APPEAL * STATE OF FLORIDA * SAT CITO SI RECTE FIRST DISTRICT

APPENDIX C

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IN THE CIRCUIT COURT FOR
THE EIGHTH JUDICIAL CIRCUIT,
IN AND FOR ALACHUA COUNTY, FLORIDA

Jennifer Van Bergen,
Plaintiff,

v.

Scott Koppel,
Defendant. Case No.: 01-2017-CA-3433
_____/

ORDER DENYING MOTIONS FOR RELIEF FROM JUDGMENT PURSUANT TO RULE 1.540

This matter comes before the court on a mandate issued by the First District Court of Appeal for the State of Florida on September 20, 2019. The mandate required this court to hold an evidentiary hearing on the colorable claim plaintiff alleged in her motions for relief from judgment pursuant to Florida Rule of Civil Procedure 1.540(b) regarding whether she timely received the Order Granting Motion for Summary Judgment and whether she had an opportunity to seek a timely appeal.

A hearing was held on this issue November 19, 2019 at which time the plaintiff appeared as did counsel for the defendant. [1] Upon consideration of the evidence, argument of the parties and a review of the court file, the court finds as follows:

1. Defendant filed a motion for summary judgment and a hearing was held on the motion on April 23, 2018.

2. The Order Granting Motion for Summary Judgment was rendered on May 1, 2018 (by a prior judge).

[1] The Court notes that at the scheduled hearing, the Court authorized the pro se Plaintiff additional time (through November 19, 2019 at 5:00pm) to file supplemental case law, at her request. The Court did not request, nor authorize, the filing of additional evidence subsequent to the hearing and has not considered any subsequently filed documents, such as Affidavits, etc.

3. The court's judicial assistant served a copy of the order to the plaintiff through the efiling portal.

4. Plaintiff testified that she heard the judge grant Defendant's motion on summary judgment on the date of the hearing. Plaintiff further testified that she did not receive a copy of the order that was served to her through the efiling portal.

5. Subsequently, Plaintiff had a friend check the docket for her and the order was discovered. Plaintiff's testimony on the timing of the discovery of the existence of the order was vague.

6. Plaintiff testified that it took her "a few days" to draft her motion for reconsideration of the order granting summary judgment, which she filed on May 15, 2018.

7. On the evidence presented, the court is unable to determine exactly how the error regarding the service of the order through the efiling portal occurred and whether or not the failure was due to user error (Plaintiff's failure to adequately complete her email registration through the portal) or due to some technical error with the Court's service system.

8. However, it is clear to the Court that Plaintiff had actual notice of the order a few days before May 15, 2018. The date by which plaintiff was required to file a timely notice of appeal on the order granting summary judgment was May 31, 2018. Thus, Plaintiff had more than sixteen days to file a notice of appeal.

9. "A party can seek relief under rule 1.540(b) when he or she does not receive a copy of an order entered by the court until after the time for filing an appeal has expired." *Waters v. Childers*, 198 So.3d 1007, 1008 (Fla. 1st DCA 2016); *see also Leichester Trust v. Federal Nat. Mortg. Ass'n*, 184 So.3d 1187, 1190 (Fla. 2d DCA 2015) (stating order to vacate should be granted where "inability to file a timely notice of appeal was due to the actions or inactions of the trial court[.]").

10. The situations described in the above cases do not exist in this case. Here, the court's action did not prevent Plaintiff from filing a timely notice of appeal by May 31, 2018. Plaintiff had the ability to file pleadings or notices, shown by the fact that between the time she learned of the order and the time to file an appeal, she filed a lengthy (27 page) motion for reconsideration. Plaintiff did not provide any testimony regarding how the failure to learn of the order until a few days before May 15, 2018 prevented her from filing a notice of appeal by May 31, 2018. *See Larkin v. Buranosky*, 25 So.3d 685 (Fla. 4th DCA 2010) (motion to vacate pursuant to rule 1.540(b) correctly denied where the underlying circumstances included the fact that the party had at least two weeks left to file a notice of appeal after learning of the existence of the final judgment). Therefore, plaintiff has not established that the order of summary judgment should be vacated under rule 1.540(b) and the motion should be denied. It is therefore,

ORDERED AND ADJUDGED

Plaintiff's Motions for Relief from Judgment are Denied.

DONE AND ORDERED in Chambers at the Alachua County Family & Civil Justice Center, Gainesville, Florida on Monday, December 16, 2019.

01-2017-CA-003433 12/16/2019 12:27:24 PM

Monica Brasington, Circuit Judge
01-2017-CA-003433 12/16/2019 12:27:24 PM

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies have been furnished by U.S. Mail or via filing with the Florida Courts E-Filing Portal on Monday, December 16, 2019.

JENNIFER VAN BERGEN

621 SE 73RD TERR
GAINESVILLE, FL 32641

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01-2017-CA-003433 12/16/2019 01:28:56 PM

Ruby Dunaway, Judical Assistant
01-2017-CA-003433 12/16/2019 01:28:56 PM

APPENDIX D

Filing # 71463289 E-Filed 05/01/2018 10:27:14 AM

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT IN AND FOR ALACHUA COUNTY FLORIDA

JENNIFER VAN BERGEN,
Plaintiff,
v. **Case No.: 2017-CA-3433**
SCOTT KOPPEL, D.P.M.

Defendant.
_____/

ORDER GRANTING MOTION FOR FINAL SUMMARY JUDGMENT

THIS CAUSE having come before the Court for consideration on the Defendant's Motion for Final Summary Judgment and this Court being otherwise fully advised in the premises, it is hereby **ORDERED AND ADJUDGED**:

1. Final Summary Judgment is **GRANTED** as to Defendant, SCOTT KOPPEL, DPM.
2. Plaintiff, Jennifer Van Bergen, shall take nothing by this action, and shall go hence without day.

DONE AND ORDERED this Tuesday, May 1, 2018, Alachua County, Florida.

01-2017-CA-003433 05/01/2018 09:40:22 AM

Donna M. Keim, Circuit Judge
01-2017-CA-003433 05/01/2018 09:40:22 AM

Copies to the following parties on the Tuesday, May 1, 2018 by E-Portal:

Joseph E. Brooks
Jami M. Kimbrell
Brooks Law
jeb@brookslawyers.net; tlc@brookslawyers.net; jmk@brookslawyers.net

Jennifer Van Bergen
jennifer.vanbergen@gmail.com

01-2017-CA-003433 05/01/2018 10:26:21 AM

Theresa Hall, Judicial Assistant
01-2017-CA-003433 05/01/2018 10:26:21 AM

APPENDIX E
Constitutional And Statutory Provisions Involved

United States Constitution

5th Amendment
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

14th Amendment
No State shall make or enforce any law which shall abridge the privileges or immunities of citizens 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.

Florida Statutes

Florida Stat. § 766.102 (3)(b)
(b) The existence of a medical injury does not create any inference or presumption of negligence against a health care provider, and the claimant must maintain the burden of proving that an injury was proximately caused by a breach of the prevailing professional standard of care by the health care provider. Any records, policies, or testimony of an insurer's reimbursement policies or reimbursement determination regarding the care provided to the plaintiff is not admissible as evidence in any medical negligence action. However, the discovery of the presence of a foreign body, such as a sponge, clamp, forceps, surgical needle, or other paraphernalia commonly used in surgical, examination, or diagnostic procedures, shall be prima facie evidence of negligence on the part of the health care provider.

Florida Stat.§ 766.102 (5) A person may not give expert testimony concerning the prevailing professional standard of care unless the person is a health care provider who holds an active and valid license and conducts a complete review of the pertinent medical records and meets the following criteria:
(a) If the health care provider against whom or on whose behalf the testimony is offered is a specialist, the expert witness must:

1. Specialize in the same specialty as the health care provider against whom or on whose behalf the testimony is offered; and
2. Have devoted professional time during the 3 years immediately preceding the date of the occurrence that is the basis for the action to:
a. The active clinical practice of, or consulting with respect to, the same specialty;
b. Instruction of students in an accredited health professional school or accredited residency or clinical research program in the same specialty; or
c. A clinical research program that is affiliated with an accredited health professional school or accredited residency or clinical research program in the same specialty.
(b) If the health care provider against whom or on whose behalf the testimony is offered is a general practitioner, the expert witness must have devoted professional time during the 5 years immediately preceding the date of the occurrence that is the basis for the action to:
1. The active clinical practice or consultation as a general practitioner;
2. The instruction of students in an accredited health professional school or accredited residency program in the general practice of medicine; or
3. A clinical research program that is affiliated with an accredited medical school or teaching hospital and that is in the general practice of medicine.
(c) If the health care provider against whom or on whose behalf the testimony is offered is a health care provider other than a specialist or a general practitioner, the expert witness must have devoted professional time during the 3 years immediately preceding the date of the occurrence that is the basis for the action to:
1. The active clinical practice of, or consulting with respect to, the same or similar health profession as the health care provider against whom or on whose behalf the testimony is offered;
2. The instruction of students in an accredited health professional school or accredited residency program in the same or similar health profession in which the health care provider against whom or on whose behalf the testimony is offered; or
3. A clinical research program that is affiliated with an accredited medical school or teaching hospital and that is in the same or similar health profession as the health care provider against whom or on whose behalf the testimony is offered.

Florida Stat. § 766.102 (9)(b)(2)(10) -- In any action alleging medical negligence, an expert witness may not testify on a contingency fee basis.

Florida Stat.§766.106(2)
(2) PRESUIT NOTICE.—
(a) After completion of presuit investigation pursuant to s. 766.203(2) and prior to filing a complaint for medical negligence, a claimant shall notify each prospective defendant by certified mail, return receipt requested, of intent to initiate litigation for

medical negligence. Notice to each prospective defendant must include, if available, a list of all known health care providers seen by the claimant for the injuries complained of subsequent to the alleged act of negligence, all known health care providers during the 2-year period prior to the alleged act of negligence who treated or evaluated the claimant, copies of all of the medical records relied upon by the expert in signing the affidavit, and the executed authorization form provided in s. 766.1065.

Florida Stat.§766.201 Legislative findings and intent.—

(1) The Legislature makes the following findings:

(a) Medical malpractice liability insurance premiums have increased dramatically in recent years, resulting in increased medical care costs for most patients and functional unavailability of malpractice insurance for some physicians.

(b) The primary cause of increased medical malpractice liability insurance premiums has been the substantial increase in loss payments to claimants caused by tremendous increases in the amounts of paid claims.

(c) The average cost of a medical negligence claim has escalated in the past decade to the point where it has become imperative to control such cost in the interests of the public need for quality medical services.

(d) The high cost of medical negligence claims in the state can be substantially alleviated by requiring early determination of the merit of claims, by providing for early arbitration of claims, thereby reducing delay and attorney's fees, and by imposing reasonable limitations on damages, while preserving the right of either party to have its case heard by a jury.

(e) The recovery of 100 percent of economic losses constitutes overcompensation because such recovery fails to recognize that such awards are not subject to taxes on economic damages.

(2) It is the intent of the Legislature to provide a plan for prompt resolution of medical negligence claims. Such plan shall consist of two separate components, presuit investigation and arbitration. Presuit investigation shall be mandatory and shall apply to all medical negligence claims and defenses. Arbitration shall be voluntary and shall be available except as specified.

(a) Presuit investigation shall include:

1. Verifiable requirements that reasonable investigation precede both malpractice claims and defenses in order to eliminate frivolous claims and defenses.

2. Medical corroboration procedures.

(b) Arbitration shall provide:

1. Substantial incentives for both claimants and defendants to submit their cases to binding arbitration, thus reducing attorney's fees, litigation costs, and delay.

2. A conditional limitation on noneconomic damages where the defendant concedes willingness to pay economic damages and reasonable attorney's fees.

3. Limitations on the noneconomic damages components of large awards to provide increased predictability of outcome of the claims resolution process for insurer anticipated losses planning, and to facilitate early resolution of medical negligence claims.

Florida Stat.§766.202(6) "Medical expert" means a person duly and regularly engaged in the practice of his or her profession who holds a health care professional degree from a university or college and who meets the requirements of an expert witness as set forth in s. 766.102.

Florida Stat.§766.203 Presuit investigation of medical negligence claims and defenses by prospective parties.—

(1) APPLICATION OF PRESUIT INVESTIGATION.—Presuit investigation of medical negligence claims and defenses pursuant to this section and ss. 766.204-766.206 shall apply to all medical negligence claims and defenses. This shall include:

(a) Rights of action under s. 768.19 and defenses thereto.

(b) Rights of action involving the state or its agencies or subdivisions, or the officers, employees, or agents thereof, pursuant to s. 768.28 and defenses thereto.

(2) PRESUIT INVESTIGATION BY CLAIMANT.—Prior to issuing notification of intent to initiate medical negligence litigation pursuant to s. 766.106, the claimant shall conduct an investigation to ascertain that there are reasonable grounds to believe that:

(a) Any named defendant in the litigation was negligent in the care or treatment of the claimant; and

(b) Such negligence resulted in injury to the claimant.

Corroboration of reasonable grounds to initiate medical negligence litigation shall be provided by the claimant's submission of a verified written medical expert opinion from a medical expert as defined in s. 766.202(6), at the time the notice of intent to initiate litigation is mailed, which statement shall corroborate reasonable grounds to support the claim of medical negligence.

Florida Stat.§766.204 Availability of medical records for presuit investigation of medical negligence claims and defenses; penalty.—

(1) Copies of any medical record relevant to any litigation of a medical negligence claim or defense shall be provided to a claimant or a defendant, or to the attorney thereof, at a reasonable charge within 10 business days of a request for copies, except that an independent special hospital district with taxing authority which owns two or

more hospitals shall have 20 days. It shall not be grounds to refuse copies of such medical records that they are not yet completed or that a medical bill is still owing.

(2) Failure to provide copies of such medical records, or failure to make the charge for copies a reasonable charge, shall constitute evidence of failure of that party to comply with good faith discovery requirements and shall waive the requirement of written medical corroboration by the requesting party.

(3) A hospital shall not be held liable for any civil damages as a result of complying with this section.

Florida Stat.§766.206 Presuit investigation of medical negligence claims and defenses by court.—

(1) After the completion of presuit investigation by the parties pursuant to s. 766.203 and any discovery pursuant to s. 766.106, any party may file a motion in the circuit court requesting the court to determine whether the opposing party's claim or denial rests on a reasonable basis.

(2) If the court finds that the notice of intent to initiate litigation mailed by the claimant does not comply with the reasonable investigation requirements of ss. 766.201-766.212, including a review of the claim and a verified written medical expert opinion by an expert witness as defined in s. 766.202, or that the authorization accompanying the notice of intent required under s. 766.1065 is not completed in good faith by the claimant, the court shall dismiss the claim, and the person who mailed such notice of intent, whether the claimant or the claimant's attorney, is personally liable for all attorney's fees and costs incurred during the investigation and evaluation of the claim, including the reasonable attorney's fees and costs of the defendant or the defendant's insurer.

(3) If the court finds that the response mailed by a defendant rejecting the claim is not in compliance with the reasonable investigation requirements of ss. 766.201-766.212, including a review of the claim and a verified written medical expert opinion by an expert witness as defined in s. 766.202, the court shall strike the defendant's pleading. The person who mailed such response, whether the defendant, the defendant's insurer, or the defendant's attorney, shall be personally liable for all attorney's fees and costs incurred during the investigation and evaluation of the claim, including the reasonable attorney's fees and costs of the claimant.

(4) If the court finds that an attorney for the claimant mailed notice of intent to initiate litigation without reasonable investigation, or filed a medical negligence claim without first mailing such notice of intent which complies with the reasonable investigation requirements, or if the court finds that an attorney for a defendant mailed a response rejecting the claim without reasonable investigation, the court shall submit its finding in the matter to The Florida Bar for disciplinary review of the attorney. Any attorney so reported three or more times within a 5-year period shall be reported to a

circuit grievance committee acting under the jurisdiction of the Supreme Court. If such committee finds probable cause to believe that an attorney has violated this section, such committee shall forward to the Supreme Court a copy of its finding.

(5)(a) If the court finds that the corroborating written medical expert opinion attached to any notice of claim or intent or to any response rejecting a claim lacked reasonable investigation or that the medical expert submitting the opinion did not meet the expert witness qualifications as set forth in s. 766.102(5), the court shall report the medical expert issuing such corroborating opinion to the Division of Medical Quality Assurance or its designee. If such medical expert is not a resident of the state, the division shall forward such report to the disciplining authority of that medical expert.

(b) The court shall refuse to consider the testimony or opinion attached to any notice of intent or to any response rejecting a claim of an expert who has been disqualified three times pursuant to this section.