

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

NICOLE M. BUSH-RADOMSKI,

Petitioner,

v.

Case No. 5D21-1777  
LT Case No. 2019-CA-000117

OLIVIA ANNE KRISAN  
AND JEFFREY KRISAN,

Respondents.

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Opinion filed November 12, 2021

Petition for Writ of Mandamus,  
Michael G. Takac, Respondent Judge.

Brian J. Lee, of Morgan & Morgan,  
Jacksonville, for Petitioner.

No Appearance for Respondents.

HARRIS, J.

Petitioner, Nicole M. Bush-Radomski, seeks a writ of mandamus from  
this Court, compelling the trial court to set a trial date in her negligence case.

Because the case is procedurally “at issue” under Florida Rule of Civil

Procedure 1.440, upon the filing of Petitioner's Notice for Trial, the court had a mandatory duty to set the case for trial. See Kubera v. Fisher, 483 So. 2d 836 (Fla. 2d DCA 1986). It matters not whether Respondent is ready or whether certain discovery remains to be completed. Once a case is procedurally at issue and noticed for trial, the court must act upon the notice and give the parties a trial date.<sup>1</sup> See Garcia v. Lincare, Inc., 906 So. 2d 1268 (Fla. 5th DCA 2005).

PETITION GRANTED; WRIT ISSUED.

TRAVER and WOZNIAK, JJ., concur.

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<sup>1</sup> As we stated in Garcia:

[W]e emphasize that the trial court has discretion to determine which date is chosen for the trial. In doing so, the court may of course consider such issues as discovery completion, availability of witnesses and counsel, and the court's own schedule. Moreover, the trial court has discretion to grant continuances upon proper showing.

906 So. 2d at 1269.