

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2008

PERRY B. HOELTZELL, M.D., P.A., and **PERRY B. HOELTZELL, M.D.,**
individually,
Appellants,

v.

MARIE ERENSTOFT,
Appellee.

No. 4D07-4186

[June 18, 2008]

KLEIN, J.

We affirm the order granting the motion of the plaintiff in this medical malpractice case to strike the physician's pleadings for failing to comply with the presuit provisions of section 766.206, Florida Statutes (2007). It is undisputed that the physician violated section 766.206(3) in that he did not, in his pro se response to the claim, include an affidavit of an expert witness. In addition, the trial court noted that the plaintiff lost the opportunity to identify additional defendants, prior to the running of the statute of limitations, because of the physician's failure to timely respond.

We deny plaintiff's motion for appellate attorney's fees, grounded on section 766.206(3), which provides in part:

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.

Because fee statutes are strictly construed, *Campbell v. Goldman*, 959 So. 2d 223 (Fla. 2007), and the statute does not authorize appellate fees, we deny plaintiff's motion for appellate attorney's fees. *Rodriguez v. Campbell*, 778 So. 2d 511, 512 (Fla. 4th DCA 2001) (limiting fees under the same statute for trial court work to fees incurred "during the

investigation and evaluation.”)

Affirmed.

STONE and FARMER, JJ., concur.

* * *

Appeal of a non-final order from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Richard D. Eade, Judge; L.T. Case No. 06-20410 (05).

Roberta G. Mandel of Stephens, Lynn, Klein, Lacava, Hoffman & Puya, P.A., Miami, for appellants.

Julie H. Littky-Rubin of Lytal, Reiter, Clark, Fountain & Williams, LLP, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing