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

LIFESTREAM BEHAVORIAL CENTER, INC.,

Petitioner,

v. Case No. 5D21-884

JOHN ALLERTON AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JOHN ZACHARY ALLERTON,

Respondent.

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Opinion filed September 24, 2021

Petition for Certiorari Review of Order from the Circuit Court for Lake County, Cary Frank Rada, Judge.

Michael R. D'Lugo, of Wicker Smith O'Hara McCoy & Ford, P.A., Orlando, for Petitioner.

Andrew A. Harris, and Grace Mackey Streicher, of Harris Appeals P.A., Palm Beach Gardens, and Michael J. Brevda, of Senior Justice Law Center, Boca Raton, for Respondent.

HARRIS, J.

John Allerton as personal representative of the Estate of John Zachary Allerton (the "Estate") filed a two-count complaint against Lifestream Behavioral Center, Inc. ("Lifestream"). The complaint alleged that the decedent, John Zachary Allerton, was admitted to Lifestream's facility, that he suffered from a mental illness, that during his admission he was a suicide risk, that he should have been under constant visual observation to ensure he did not commit suicide, and that in contravention of those orders, the decedent was allowed unsupervised access to an unlocked bathroom where he was eventually found hanging.

The Estate sued Lifestream, alleging that the decedent wrongfully died as a direct and proximate result of Lifestream's negligence. Lifestream moved to dismiss the complaint arguing that the suit was actually a medical malpractice complaint because, in essence, the observation and evaluation at issue were medical diagnosis, treatment, and care. As a result, the Estate should have complied with several presuit requirements, including investigation and notice. Because the Estate had not done so, Lifestream asked the trial court to dismiss or stay the complaint. In ruling on the motion to dismiss, the court determined that as pled, the complaint's counts sounded in general negligence rather than medical malpractice and denied

Lifestream's motion to dismiss. Lifestream now petitions this Court for certiorari relief, seeking to have the trial court's order quashed.

"An appellate court may grant a petition for certiorari only where the petitioner demonstrates (1) a departure from the essential requirements of the law (2) resulting in material injury for the remainder of the case (3) that cannot be remedied on post-judgment appeal." Cohen v. D.R. Horton, Inc., 121 So. 3d 1121, 1124 (Fla. 5th DCA 2013) (citing Reeves v. Fleetwood Homes of Fla., Inc., 889 So. 2d 812, 822 (Fla. 2004)). The first element, a departure from the essential requirements of the law, must be more than simple legal error. Rather, it should constitute a failure to afford due process or an error so fundamental that it voids a judgment or results in a miscarriage of justice. See Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 529–31 (Fla. 1995) (summarizing jurisprudence on certiorari review).

We agree with the trial court that, in its current form, the Estate's complaint sounds in general negligence rather than medical malpractice. "[A] complaint's allegations govern the analysis." Mark E. Pomper, M.D., P.A. v. Ferraro, 206 So. 3d 728, 732 (Fla. 4th DCA 2016) "[A]ny 'doubt' as to whether a claim is for ordinary negligence or medical malpractice should be 'generally resolved in favor of the claimant.'" Nat'l Deaf Acad., LLC, v. Townes, 242 So. 3d 303, 309 (Fla. 2018) (quoting J.B. v. Sacred Heart Hosp.

of Pensacola, 635 So. 2d 945, 947 (Fla. 1994)); see also Feifer v. Galen of Fla., Inc., 685 So. 2d 882, 885 (Fla. 2d DCA 1996). The court's denial of Lifestream's motion to dismiss therefore cannot be deemed a departure from the essential requirements of the law.

We deny the petition for certiorari. In doing so, however, as our sister court did in McManus v. Gomez, 276 So. 3d 1005 (Fla. 2d DCA 2019), we note that our decision rests solely on the four corners of the complaint and that "our opinion should not be read to foreclose a later challenge should the case morph into one grounded in medical negligence." McManus, 276 So. 3d at 1010 (citations omitted).

PETITION DENIED.

TRAVER and NARDELLA, JJ., concur.