

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

RESTORATION I OF THE TREASURE COAST,
a/a/o **JAY DAWLEY,**
Petitioner,

v.

FIRST PROTECTIVE INSURANCE COMPANY,
d/b/a **FRONTLINE HOMEOWNERS INSURANCE,**
Respondent.

No. 4D14-2614

[December 17, 2014]

Petition for writ of certiorari to the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Curtis L. Disque, Judge; L.T. Case No. 13-7 AP.

Susan W. Fox of Fox & Loquasto, P.A., Orlando, and Bethany L. Schonscheck of Cohen Battisti, Winter Park, for petitioner.

Keith E. Hope and Phillip J. Sheehe of Sheehe & Associates, P.A., Miami, for respondent.

PER CURIAM.

The petition for second-tier certiorari review is granted. In affirming the county court's dismissal of the action, the circuit court applied the "tipsy coachman" rule and reasoned that the petition should have been dismissed for failure to attach a copy of the insurance policy to the complaint as required under Florida Rule of Civil Procedure 1.130(a). The circuit court's opinion departs from the essential requirements of law and fails to apply the correct law because it does not provide that the dismissal in this situation should be with leave to amend. *Conklin v. Cohen*, 287 So. 2d 56, 60 (Fla. 1973). The circuit court "should have remanded the cause with instructions that the complaint be dismissed with leave to amend so as to allow compliance with the rule." *Id.* The plaintiff did not waive its right to amend as to this ground for dismissal. Accordingly, the petition is granted, and the circuit court's opinion is quashed.

Petition for writ of certiorari granted.

DAMOORGIAN, C.J., LEVINE and CONNER, JJ., concur.

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Not final until disposition of timely filed motion for rehearing.