

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

PP TRANSITION, LP f/k/a PALMS OF)
PASADENA HOSPITAL, LP d/b/a)
PALMS OF PASADENA HOSPITAL,)
)
Petitioner,)
)
v.)
)
SHARON and RANDALL MUNSON,)
)
Respondents.)
_____)

Case No. 2D17-136

Opinion filed December 13, 2017.

Petition for Writ of Certiorari to the
Circuit Court for Pinellas County;
Pamela A.M. Campbell, Judge.

Thomas Saieva and Lesley Ann Stine of
La Cava & Jacobson, P.A., Tampa, and
Dinah Stein of Hicks, Porter, Ebenfeld
& Stein, P.A., Miami, for Petitioner.

Roy D. Wasson of Wasson & Associates,
Chartered, Miami, and Marjorie Chalfant
of The Nurse Attorney, P.A., University
Park, for Respondents.

PER CURIAM.

PP Transition, LP is the defendant in a medical malpractice action brought
by Sharon and Randall Munson based on the care Ms. Munson received from the

nursing staff at a hospital PP Transition operates. It petitions our court for a writ of certiorari from an order denying its motion to dismiss based on the Munsons' alleged noncompliance with the presuit investigation requirements applicable to medical malpractice cases under chapter 766, Florida Statutes (2013). We grant the petition.

As a part of their attempt to comply with the requirements of chapter 766, the Munsons submitted the affidavit of a California-licensed neurologist who expressed an opinion on the nursing standard of care in Florida. See § 766.203(2) (requiring a medical malpractice claimant to submit a medical expert opinion to corroborate reasonable grounds to support the claim). PP Transition filed a motion to dismiss for failure to plead a claim or for an evidentiary hearing on the Munsons' compliance with chapter 766, in which it argued—among other things—that the California-based witness was ineligible to offer an opinion on the standard of care applicable to nurses in Florida. See § 766.206(1), (2). After a nonevidentiary hearing, the trial court denied the motion. It gave no explanation for its ruling either on the record or in the subsequent written order denying the motion.

PP Transition's motion required the trial court to "determine" whether the Munsons complied with chapter 766. See § 766.206(1); Martin Mem'l Med. Ctr., Inc. v. Herber, 984 So. 2d 661, 663 (Fla. 4th DCA 2008); Duffy v. Brooker, 614 So. 2d 539, 544-45 (Fla. 1st DCA 1993), abrogated on other grounds by Archer v. Maddux, 645 So. 2d 544 (Fla. 1st DCA 1994); cf. Holden v. Bober, 39 So. 3d 396, 400 (Fla. 2d DCA 2010) ("The circuit court must then determine whether the opposing party complied with the reasonable investigation requirements of sections 766.201 to 766.212."). At a minimum, that required the trial court make an express finding as to the Munsons' compliance with the presuit requirements. See Martin Mem'l, 984 So. 2d at 663

(granting certiorari where trial court denied a motion to dismiss but "did not determine whether plaintiff conducted a good faith investigation[] or reach a conclusion on whether there was a reasonable basis for the claim"). Here, the court summarily denied PP Transition's motion without making any findings as to the Munsons' compliance with chapter 766. This effected a denial of the procedural safeguards of chapter 766 for which certiorari relief is appropriate. See Williams v. Oken, 62 So. 3d 1129, 1134 (Fla. 2011) ("Florida courts have permitted certiorari review to determine whether the defendant was afforded the proper process through procedural compliance with the statutory requirements."); Rell v. McCulla, 101 So. 3d 878, 880-81 (Fla. 2d DCA 2012) ("[W]here a plaintiff in a medical malpractice action has failed to satisfy the presuit notice requirements set forth in section 766.203(2), the defendant in such an action would suffer a material injury that could not be remedied in a postjudgment appeal if the action was allowed to proceed.").

For these reasons, which render PP Transition's other asserted grounds for certiorari relief moot, we grant PP Transition's petition and quash the order below.

Petition granted; order quashed.

LaROSE, C.J., and VILLANTI and SALARIO, JJ., Concur.