

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

SUPERIOR AUTO GLASS OF TAMPA BAY, INC. as assignee of
DAVID GILBO and RONALD ROBBINS,

Petitioner,

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Respondent.

No. 2D20-3251

December 8, 2021

Petition for Writ of Certiorari to the Circuit Court for the Thirteenth Judicial Circuit for Hillsborough County, sitting in its appellate capacity.

Raymond T. Elligett, Jr. and Amy S. Farrior of Buell & Elligett, P.A., Tampa; David M. Caldevilla of de la Parte & Gilbert, P.A., Tampa; Anthony T. Prieto of Morgan & Morgan, P.A., Tampa; Christopher P. Calkin and Mike N. Koulianos of The Law Offices of Christopher P. Calkin, P.A., Tampa, for Petitioner.

John P. Marino and Lindsey R. Trowell of Smith Grambrell & Russell, LLP, Jacksonville; Leah Sears of Smith Grambrell & Russell, LLP, Atlanta, Georgia, for Respondent.

ATKINSON, Judge.

Superior Auto Glass of Tampa Bay, Inc., as assignee of David Gilbo and Ronald Robbins, seeks second-tier certiorari review of a decision of the circuit court sitting in its appellate capacity. We grant the petition to the extent that the circuit court departed from the essential requirements of the law by granting Government Employees Insurance Company's (GEICO) motion for attorney's fees only on the condition that GEICO prevail in the underlying proceeding. We deny the petition in all other respects without further comment.

The circuit court's order, in relevant part, states the following: "GEICO's motion for appellate attorney's fees is GRANTED for its appeal of the judgment, conditioned upon its prevailing in the underlying proceeding." GEICO moved for attorney's fees based on the offer of settlement statute, section 768.79, Florida Statutes (2020). The offer of settlement statute requires a party seeking an award of attorney's fees to satisfy a number of requirements independent of prevailing at trial. *See* § 768.79(2), (3), (6)(a), (7)(a) (listing the form, content, and service requirements the offer must meet to qualify as an offer of settlement under the statute and

providing that a trial court may deny a motion for attorney's fees based on an offer that was not made in good faith even if all the other statutory requirements are satisfied).

The circuit court departed from the essential requirements of the law by conditioning GEICO's award of attorney's fees on prevailing at trial instead of on the satisfaction of all the requirements of the offer of settlement statute. *Cf. United Auto. Ins. Co. v. Comprehensive Health Ctr.*, 173 So. 3d 1061, 1069–70 (Fla. 3d DCA 2015) ("[F]ailure . . . to grant an award of appellate fees, *conditioned upon meeting the terms of the offer of judgment statute* . . . is a departure from the essential requirements of the law." (emphasis added) (citing *State Farm Fire & Cas. Co. v. Rembrandt Mobile Diagnostics, Inc.*, 93 So. 3d 1161, 1161 (Fla. 4th DCA 2012))). Thus, we quash the portion of the circuit court's order conditionally granting GEICO's motion for attorney's fees and remand for further proceedings consistent with this opinion.

Petition granted in part and denied in part; order quashed in part; remanded.

VILLANTI, J., Concurs.
KELLY, J., Dissents.

Opinion subject to revision prior to official publication.