

# **Third District Court of Appeal**

## **State of Florida**

Opinion filed August 7, 2019.  
Not final until disposition of timely filed motion for rehearing.

---

No. 3D19-366  
Lower Tribunal No. 17-217

---

**State Farm Mutual Automobile Insurance Company,**  
Petitioner,

vs.

**Caribbean Rehabilitation Center, Inc., etc.,**  
Respondent.

A Writ of Certiorari to the Circuit Court for Miami-Dade County, Appellate Division, Cristina Miranda, Lourdes Simon and Andrea R. Wolfson, Judges.

Cole, Scott & Kissane, P.A., Thomas L. Hunker and Susette Gruebele (Plantation), for petitioner.

Todd Landau, P.A., and Todd Landau (Hallandale Beach), for respondent.

Before EMAS, C.J., and FERNANDEZ, and LINDSEY, JJ.

FERNANDEZ, J.

State Farm Mutual Automobile Insurance Company (“State Farm”) seeks a writ of certiorari quashing the decision of the Appellate Division of the Circuit Court of the Eleventh Judicial Circuit denying its motion for appellate attorney’s fees pursuant to section 768.79, Florida Statutes (2019). After prevailing and having been awarded attorney’s fees in the trial court, State Farm likewise prevailed on appeal in the Circuit Court of the Eleventh Judicial Circuit, sitting in its appellate capacity; however, State Farm’s motion for appellate attorney’s fees pursuant to 768.79, was denied without elaboration.

We have held that the Circuit Court, sitting in its appellate capacity, departs from the essential requirements of law when it denies a motion for appellate attorney’s fees under identical circumstances. See United Auto. Ins. Co. v. Virga, 116 So. 3d 1288, 1290 (Fla. 3d DCA 2013) (“[T]he circuit court, acting in its appellate capacity, should have awarded United appellate attorney's fees, pursuant to section 768.79. The failure to do so was a departure from the essential requirements of law.”); Motter Roofing, Inc. v. Leibowitz, 833 So. 2d 788, 789 (Fla. 3d DCA 2002) (“[T]he circuit court, sitting in its appellate capacity, departed from the essential requirements of law by denying the petitioner's request for appellate attorney's fees.”). In so doing, the Circuit Court violated procedural due process, resulting in a miscarriage of justice. Allstate Ins. Co. v. Kaklamanos, 843 So. 2d 885, 889 (Fla. 2003). Based on the trial court’s determination of petitioner’s

entitlement to attorney's fees under section 768.79, the circuit court departed from the essential requirements of law in not conditionally granting State Farm's motion for appellate attorney's fees based on the same statute.

Order quashed and cause remanded for further proceedings.