

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 2004

	**	
THE PAUL REVERE LIFE	**	
INSURANCE COMPANY,	**	
	**	
Petitioner,	**	
vs.	**	CASE NO. 3D04-1198
SHELLEY KAHN,	**	LOWER
	**	TRIBUNAL NO. 04-114AP
Respondent.	**	

Opinion filed May 26, 2004.

A Writ of Certiorari to the Circuit Court for Miami-Dade
County, Appellate Division.

Shutts & Bowen, LLP., and John E. Meagher, for petitioner.

McLuskey & McDonald, P.A., and John W. McLuskey; and Lauri
Waldman Ross, for respondent.

Before SHEVIN, RAMIREZ, and WELLS, JJ.

RAMIREZ, J.

The Paul Revere Life Insurance Company seeks certiorari review of a decision of the Eleventh Circuit Court's Appellate Division, granting its motion for extension of time only until June 2, 2004, the day when the preparation of the trial transcript will be completed. We find that the circuit court departed from the essential requirements of the law; thus we grant the petition, quash the circuit court order with instructions to grant an extension to June 20, 2004.

This Petition is unopposed. It is fundamentally unfair to require a party to prepare a brief without a transcript. Cf. Trans-Continental Fin. Corp. v. Baxter, 402 So. 2d 1289, 1290 (Fla. 5th DCA 1981). Perhaps the circuit court's order is its response to our decision in United Auto. Ins. Co., v. Total Rehab & Med. Ctr., 29 FLA. L. WEEKLY D331 (Fla. 3d DCA Feb. 4, 2004) (en banc), wherein we held that it was improper to dismiss an appeal without first providing fair warning that the failure to file an initial brief could result in such a sanction. We would like to point out that we based our decision on Florida's long-standing policy in favor of deciding controversies on the merits.

The miserly granting of the unopposed motion for extension of time only until the same day when a transcript is completed in effect forces an appellant to prepare a brief without the benefit of a transcript. This has resulted in additional expense to the

litigants in having to perfect this appeal, the additional cost of paying a filing fee, the additional attorney's time of having to research and draft a petition for certiorari, and the additional judicial labor of granting such a meritorious petition.

We again recognize the appellate division's discretion in the control and management of its own docket, but repeat that this cannot be achieved at the expense of litigants' rights to due process and the essential requirements of law.

Petition granted with directions.