

Third District Court of Appeal

State of Florida, July Term, A.D. 2011

Opinion filed October 19, 2011.

Not final until disposition of timely filed motion for rehearing.

No. 3D11-1419

Lower Tribunal No. 09-420

**A. Carlo Guadagno, D.C., P.A., d/b/a West Kendall Chiropractic
Center (a/a/o Ines Patino),**
Petitioner,

vs.

United Automobile Insurance Company,
Respondent.

A Writ of Certiorari to the Circuit Court for Miami-Dade County, Leon M. Firtel, Julio E. Jimenez and Milton Hirsch, Judges.

Marlene S. Reiss, for petitioner.

Lara J. Edelstein, for respondent.

Before SHEPHERD and EMAS, JJ., and SCHWARTZ, Senior Judge.

EMAS, J.

Upon review of the petition and the response, this Court grants the petition for writ of certiorari and quashes the circuit court's order denying West Kendall Chiropractic Center's motion for appellate attorney's fees. Respondent concedes, and we agree, that the circuit court, acting in its appellate capacity, should have awarded petitioner appellate attorney's fees, pursuant to section 627.428(1), Florida Statutes (1982), conditioned upon petitioner prevailing in the underlying proceedings. The failure to do so was a departure from the essential requirements of law. See Ramirez v. United Auto. Ins. Co., 67 So. 3d 1174 (Fla. 3d DCA 2011); Comprehensive Health Center, LLC v. United Auto. Ins. Co., No. 3D10-1705 (Fla. 3d DCA July 20, 2011); Allstate Insurance Company v. De La Fe, 647 So. 2d 965 (Fla. 3d DCA 1994).

The order denying motion for appellate attorney's fees is quashed and this cause is remanded to the circuit court for entry of an order conditionally granting petitioner's motion for appellate attorney's fees.

Petition granted.