Volume 33, Number 11, March 31, 2026

FLORIDA LAW WEEKLY FLW SUPPLEMENT

A PUBLICATION OF JUDICIAL AND ADMINISTRATIVE RESEARCH ASSOCIATES, INC.

Pages 453-486

Reports of Decisions of:

THE CIRCUIT COURTS OF FLORIDA
THE COUNTY COURTS OF FLORIDA
and
Miscellaneous Proceedings of Other Public Agencies

Readers are invited to submit for publication any decisions of these courts and any reports from other public bodies which are not generally reported and which would, because of the issues involved, be of interest to the legal community.

SUMMARIES

Summaries of selected opinions or orders published in this issue.

- **LICENSING—DRIVER'S LICENSE—SUSPENSION—REFUSAL TO SUBMIT TO BREATH, BLOOD, OR URINE TEST—EVIDENCE. A hearing officer could consider an unsigned and unsworn arrest report submitted by a law enforcement officer where the officer swore under oath to the truth of the documents at the hearing. The hearing officer's decision to uphold the petitioner's driver license suspensions was supported by competent substantial evidence and there was no departure from the essential requirements of the law.** *ALLEN v. DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES. Circuit Court, Second Judicial Circuit (Appellate) in and for Leon County. Filed December 12, 2025. Full Text at Circuit Courts-Appellate Section, page 453a.*

- **JURISDICTION—NON-RESIDENTS. Social media statements published by non-resident defendants about non-resident plaintiffs do not satisfy the elements for the court's exercise of personal jurisdiction, even if the statements were read by someone in Florida. The plaintiffs failed to come forward with evidence that the non-resident defendants had purposefully availed themselves of the privilege of conducting activities within Florida and that the exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice.** *TATE v. DOE. Circuit Court, Fifteenth Judicial Circuit in and for Palm Beach County. Filed December 26, 2025. Full Text at Circuit Courts-Original Section, page 473a.*

FLW SUPPLEMENT (ISSN10684050) is published monthly by Judicial and Administrative Research Associates, Incorporated, 1327 North Adams Street, Tallahassee, FL 32303. All rights reserved. Subscription price is $300 per year plus tax. Internet subscription available at www.FloridaLawWeekly.com. Periodical postage paid at Tallahassee, FL. POSTMASTER: Send address changes to FLW Supplement, P.O. Box 4284, Tallahassee, FL 32315. Telephone (800) 351-0917; Fax (850) 222-7938. E-mail: staff@FloridaLawWeekly.com

FLW SUPPLEMENT

CASES REPORTED.

FLW Supplement includes reports of decisions of Florida circuit and county courts, and miscellaneous reports of the proceedings of other public agencies. Sections are divided as follows:

CIRCUIT COURT - APPELLATE	Opinions in those cases in which circuit courts were reviewing decisions of county courts or administrative agencies.
CIRCUIT COURT - ORIGINAL	Opinions in those cases in which circuit courts were acting as trial courts.
COUNTY COURTS	County court opinions.
MISCELLANEOUS	Other proceedings.

Subject Matter Index and Tables

Page prefixes in the subject matter index and tables identify the courts in the following manner:

10CIR 25	**Circuit Court - Appellate** (**Bold** type) (10th Circuit, page 25)
20CIR 10	Circuit Court - Original (20th Circuit, page 10)
CO	County Court
M	Miscellaneous Reports

Bold denotes decision by circuit court in its appellate capacity.

TABLE OF CASES (continued)

* * *

TABLE OF STATUTES CONSTRUED

Florida Statutes and Rules of Procedure construed in opinions reported in this issue.

* * *

TABLE OF CASES TREATED

Case Treated / In Opinion At

TABLE OF CASES TREATED (continued)

* * *

Volume 33, Number 11
March 31, 2026
Cite as 33 Fla. L. Weekly Supp. ___

CIRCUIT COURTS—APPELLATE

Licensing—Driver's license—Suspension—Refusal to submit to breath, blood, or urine test—Evidence—Unsigned and unsworn arrest report—No merit to argument that hearing officer's decision upholding license suspension is not based on competent substantial evidence because arrest report was not signed or sworn where officer swore to truth of documents under oath at hearing

LUKE ALLEN, Petitioner, v. DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Circuit Court, 2nd Judicial Circuit (Appellate) in and for Leon County. Case No. 2025 AP 7. December 12, 2025. Counsel: Lee Meadows, for Petitioner. Kathy Jimenez-Morales, Chief Counsel, DHSMV, for Respondent.

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

(ANGELA C. DEMPSEY, J.) **THIS CAUSE** is before the Court on Petitioner's Petition for Writ of Certiorari, filed on September 19, 2025. Petitioner seeks certiorari review of Respondent's final order suspending his driving privileges for refusal to submit to a breath, blood, or urine test under Section 322.2615 of the Florida Statutes. This Court has jurisdiction pursuant to Article V, section 5(b), Florida Constitution, Florida Rule of Appellate Procedure 9.030(c), sections 322.2615(13) and 322.31, Florida Statutes. This Court reviewed the Petition, Appendix, the Response to Petition for Writ of Certiorari and Petitioner's Reply and Notice of Supplemental Authority. Based on a review of these filings and Florida law, this Court finds as follows:

1. On January 31, 2025, Petitioner was arrested by the Florida State University Police Department for DUI, and his license was subsequently suspended. Petitioner requested a formal administrative hearing, which took place on August 14, 2025. The hearing officer sustained the suspension, finding there was probable cause that Petitioner was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances; Petitioner refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer, subsequent to a lawful arrest; and that Petitioner was told that if he refused to submit to such test his privilege to operate a motor vehicle would be suspended for a period of 1 year or in the case of a second or subsequent refusal for a period of 18 months. The hearing officer found that all elements necessary to sustain the suspension for refusal to submit to a breath, blood, or urine test under Section 322.2615 of the Florida Statutes were supported by a preponderance of the evidence.

2. A circuit court's review of an administrative agency decision is limited to the following standard of review: (1) whether procedural due process was accorded, (2) whether the essential requirements of law were observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So.2d 624, 626 (Fla. 1982). Further, it is axiomatic that where substantial competent evidence supports the findings and conclusions of the administrative agency and the record discloses neither an abuse of discretion nor a violation of law by the agency, [a] court should not overturn the agency's determination. *Cohen v. School Board of Dade County, Florida*, 450 So. 2d 1238, 1241 (Fla. 3d DCA 1984); *Campbell v. Vetter*, 392 So. 2d 6 (Fla. 4th DCA 1980), *pet. for review denied*, 399 So. 2d 1140 (Fla. 1981).

3. The Petitioner argues that the hearing officer's decision to uphold the suspension is not based on competent substantial evidence because the arrest report is not an affidavit. According to Petitioner the arrest report is unsigned and unsworn.

4. Courts have held that the provisions of Florida Administrative Code Rule 15A-6.013(2), allows hearing officers to consider affidavits from law enforcement, even if unsworn. *Bloom v. Dep't of Highway Safety & Motor Vehicles*, 18 Fla. L. Weekly Supp. 10a (Fla. 6th Cir. Ct. Nov. 3, 2010). Furthermore, section 322.2615(2)(b) Florida Statutes, provides that materials that are submitted by law enforcement are to be considered self-authenticating. In the instant matter, the record reveals that Officer Smith submitted a four-page arrest report and several citations, which were entered into evidence by the hearing officer. In the top section of the narrative in the second page of the arrest report, Officer Smith states: "The undersigned certifies and swears that he/she has just and reasonable grounds to believe, and does believe that the above named Defendant on Wednesday January 31st 25, at approximately 2:20, did the following violation of law:". On the last page of the officer's arrest report, Officer Smith electronically signed the report as the arresting officer and dated it January 31, 2025.

5. As provided in Section 322.2615(6)(b), Fla. Stat., the hearing officer administered an oath to Officer Smith before taking his testimony and afterward, the officer swore under oath or affirmed that all of the statements provided by him in the documents are true and correct. Officer Smith testified that he completed a probable cause affidavit that consisted of four pages and that everything was accurate in the report. Though the officer did not specifically say that he was swearing to the truth of the arrest report, because he submitted the arrest report and several citations, clearly the hearing officer understood that the officer was swearing to the statements in the arrest report. Moreover, by swearing to the truth of the information in the documents, Officer Smith exposed himself to a charge of perjury if he made a false declaration in his report. "An affidavit is by definition a statement in writing under an oath administered by a duly authorized person." *Crain v. State*, 914 So. 2d 1015, 1019 (Fla. 5th DCA 2005) [30 Fla. L. Weekly D2607a] (quoting *Youngker v. State*, 215 So. 2d 318, 321 (Fla. 4th DCA 1968) (citing *Black's Law Dictionary*, (4th ed.)). "An oath is an unequivocal act, before an officer authorized to administer oaths, by which the person knowingly attests to the truth of a statement and assumes the obligations of an oath." *State v. Johnston*, 553 So. 2d 730, 733 (Fla. 2d DCA 1989) (citations omitted); see *also Youngker*, 215 So. 2d at 321 ("An oath may be undertaken by any unequivocal act in the presence of an officer authorized to administer oaths by which the declarant knowingly attests the truth of a statement and assumes the obligation of an oath.") (citation omitted).

6. Accordingly, because Officer Smith swore under oath at the hearing to the truth of the documents, the argument that the suspension should not have been upheld fails on merits. Based on the foregoing this Court concludes that the Department's decision to uphold the Petitioner's driver license suspension is supported by competent substantial evidence and that there was no departure from the essential requirements of the law.

ACCORDINGLY, it is hereby **ORDERED** and **ADJUDGED** that Petitioner's Petition for Writ of Certiorari is **DENIED**.

* * *

Licensing—Driver's license—Permanent revocation—DUI manslaughter conviction that represents subsequent DUI-related conviction—Evidence—Driving record—Department was entitled to rely on reports of convictions by other states under Driver License Compact, and reporting state was under no duty to submit certified court documents to home state to prove truth of its conviction reports—Argument that hearing officer should not have recognized previous forfeiture of bail on South Carolina DUI charge as prior DUI conviction because that forfeiture was vacated and South Carolina law only recognizes unvacated forfeitures as convictions fails—Licensee did not present evidence that forfeiture was actually vacated and merely presented facts leading to his own "educated guess" regarding vacation—Petition for writ of certiorari denied

MARK GLENN HAMMELMAN, Plaintiff, v. DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Defendant. Circuit Court, 2nd Judicial Circuit (Appellate) in and for Gadsden County. Case No. 20-2024-CA-000196-AXXX-CX. May 15, 2024. Counsel: Kathy Jimenez-Morales, Chief Counsel, DHSMV, for Defendant.

ORDER ON PETITION FOR CERTIORARI

(DAVID FRANK, J.) This cause came before the Court on petition for certiorari, and the Court having reviewed the papers filed in support and opposition and the court file, and being otherwise fully advised in the premises, finds

I. Procedural History and Facts

Petitioner Mark Hammelman filed a petition for a writ of certiorari directed to the Florida Department of Highway Safety and Motor Vehicles, Division of Driver Licenses (hereinafter "Department"), to set aside the final agency action entered February 20, 2024, that upheld the permanent revocation of his driving privilege.

This court has original jurisdiction to review the subject final agency action pursuant to Florida Statute 322.31 and Florida Rules of Appellate Procedure 9.030(c)(2) and 9.100(f).

Mr. Hammelman's certified driving record shows that he resides in Gadsden County. He also confirmed this at the beginning of the administrative review hearing.

"On first-tier certiorari review of agency action, a circuit court must determine: (1) whether procedural due process was accorded; (2) whether the essential requirements of the law were observed; and (3) whether the administrative findings and judgment were supported by competent, substantial evidence. *Broward Cnty. v. G.B.V. Int'l, Ltd.*, 787 So.2d 838, 843 (Fla.2001) [26 Fla. L. Weekly S389a]." *State, Dept. of Highway Safety & Motor Vehicles v. Hartzog*, 148 So.3d 816, 817 (Fla. 1st DCA 2014) [39 Fla. L. Weekly D2128a].

Mr. Hammelman's certified driving record shows that he was convicted of DUI Manslaughter in Gadsden County, Florida in 2002. His license was permanently revoked pursuant to Florida Statute 322.26, which provides that the Department shall revoke the license or driving privilege of any person upon receiving a record of such person's conviction of "DUI manslaughter where the conviction represents a subsequent DUI-related conviction." The Department is treating the DUI Manslaughter as a subsequent DUI-related conviction because there is an entry on Mr. Hammelman's driving record for a prior DUI from South Carolina in 1995, which is designated Citation No. 7834. This renders Mr. Hammelman ineligible for any kind of hardship license or work permit.

An administrative review hearing was held on January 17, 2024, before Hearing Officer Kathryn Bischoff. The Department introduced into evidence an uncertified copy of Petitioner's driving record and the record of conviction for the DUI Manslaughter. Petitioner introduced a certified copy of the driving record into evidence and his record requests and correspondence with the Department. No testimony was presented.

The driving record shows that the permanent revocation in 2002 was based on violations 6 and 8. Violation 8 is the DUI Manslaughter, and the driving record shows that the disposition was guilty. Petitioner does not dispute this conviction. Violation 6 is the South Carolina DUI from 1995. The driving record states that the "disposition was bond estreature." The driving record also shows that South Carolina revoked Petitioner's license for one year in that case. The reason for the revocation is not stated, and there is no mention of a guilty plea, adjudication of guilt, or conviction anywhere on the driving record for the South Carolina DUI. Petitioner's correspondence exhibit included a letter from the Department confirming that it did not have the South Carolina citation.

On February 20, 2024, the hearing officer entered a final agency order upholding the license revocation. The hearing officer reasoned that the driving record, which is self-authenticating evidence of the convictions, shows that petitioner's license was revoked for one year based on the South Carolina DUI, and then permanently revoked in 2002 based on the DUI manslaughter in Gadsden County "and the prior South Carolina DUI revocation."

In his initial brief, petitioner mostly argued that a bond forfeiture is not a "conviction." The respondent answered with authorities that extend to bond forfeitures the same status as convictions for the present purposes. Petitioner then conceded the role of bond forfeiture in his reply, where he stated as follows:

> The only authority for counting a forfeiture of bail in another state as a conviction comes from §322.24, which provides as follows: The department is authorized to suspend or revoke the license of any resident of this state, upon receiving notice of the conviction of such person in another state or foreign country of an offense therein which, if committed in this state, would be grounds for the suspension or revocation of his or her license. §322.24, Fla. Stat. (2023). Citing this provision, the court in Capers held that it is the law of the other state that governs whether a forfeiture of bail counts as a conviction or not. Capers, 362 So. 2d at 132. Only if it does can the Department use the forfeiture of bail as justification for revoking the driver's license under Florida law. The Department then relies on the definition of conviction in §56-1-10 of the South Carolina Code of Laws as authority for treating Petitioner's bond estreature as the equivalent of a DUI conviction. However, that the Department did not quote the statute verbatim in its response nor include this statute in the appendix along with the others. This is because a key word was omitted that is dispositive of this case. Section 56-1-10 defines conviction as follows: "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nobo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated. §56-1-10(11), S.C. Code of Laws (2023) (emphasis added). ***Thus, to be counted as a conviction under South Carolina law, a forfeiture of bail must be unvacated***. (Emphasis added).

In the end, the basket containing all of petitioner's eggs is his argument that the bond forfeiture record entry could have been vacated, and that it is the Department's burden to show it was not.

II. Analysis

The driving record itself, along with all abstracts of court records of convictions received by the Department, are admissible in evidence. Fla. Stat. 322.201 (2023).

"Moreover, to the extent the driving record is alleged to be inaccurate, the Petitioner needs to show some evidence (such as a certified court record showing no conviction occurred after the citation was issued) that would 'show cause why his or her license should not be revoked.' §322.27(5)(a), Fla. Stat. The Department was

entitled to rely upon the reports of convictions by other states under the Driver License Compact, and the reporting state is under no duty to submit certified court documents to the home state to prove the truth of its conviction reports. § 322.201, Fla. Stat." *Daniel Sage McKinnon v. State Department of Highway Safety And Motor Vehicles*, 28 Fla. L. Weekly Supp. 201a (Fla. 13th Jud. Ct. 2020).

"[A [p]etitioner [has] the burden to show cause why his driving privilege should not have been permanently revoked." *Id*; See also *Kerry R. Roberts v. State of Florida, Department of Highway Safety and Motor Vehicles*, 28 Fla. L. Weekly Supp. 178a (Fla. 2nd Jud. Ct. 2020); *James Maples, III v. State of Florida, Department of Highway Safety and Motor Vehicles*, 31 Fla. L. Weekly Supp. 177a (Fla. 2nd Jud. Ct. 2023); *Marcelo Matias v. State of Florida, Department of Highway Safety and Motor Vehicles*, 28 Fla. L. Weekly Supp. 365c (Fla. 2nd Jud. Ct. 2020).

"The purpose of the hearing is not to simply challenge the truthfulness of the driving record . . . the purpose of the show cause hearing is to present evidence showing why the record is inaccurate." *Midgett v. Dep't of Highway Safety & Motor Vehicles*, 16 Fla. L. Weekly Supp. 795b (Fla. 4th Jud. Ct. 2009).

"Bare legal challenges to the sufficiency of the Department's records (specifically, records received by the Department from clerks of court and the licensing authorities in other states), fails to satisfy the evidentiary burden of proving the record is inaccurate." *Maples,* 31 Fla. L. Weekly Supp. 177a (citation omitted).

"Illegible or missing citations do not warrant invalidation of the order sustaining the permanent revocation of [ ] driving privilege or its reinstatement. *Mikell v. Department of Highway Safety and Motor Vehicles*, 11 Fla. L. Weekly Supp. 683a (Fla. 2nd Jud. Ct. 2004).

Petitioner surmises that his forfeiture must have been vacated, even though the record does not say that, because of several assumptions. Specifically, he states in his reply:

> The revocation should have remained in place for a full year. However, the driving record further shows that the requirements associated with this sanction were completed on December 21, 1995, less than two months after the notice was sent out. . . . This means Petitioner was eligible to get his license reinstated, which ***could only have happened*** if the one-year revocation imposed because of the bond forfeiture was set aside. (emphasis added).

The Cambridge Dictionary defines an "educated guess" as, "a guess that is made using judgment and a particular level of knowledge and is therefore more likely to be correct." Petitioner's guess may be educated, but it is still a guess, and he has not produced evidence. Petitioner did not present any evidence establishing any error, mistake, or any other evidence indicating that the revocation of his license was incorrect.

III. Conclusion

The Court finds that the administrative findings and judgment are supported by competent substantial evidence. Additionally, this Court finds that the Hearing Officer accorded petitioner procedural due process and observed the essential requirements of the law in upholding the revocation of the driving privilege. For the reasons discussed above, petitioner has not carried his burden for a writ of certiorari to issue. It is therefore

ORDERED and ADJUDGED that the petition is DENIED.

* * *

Traffic infractions—Appeals—Limited record on appeal requires affirmance of lower tribunal's decision where decision was not erroneous on its face and appellate court's determination hinges upon review of evidence presented below

ATTILA MAKRANCZY, Appellant, v. STATE OF FLORIDA, FLORIDA HIGHWAY PATROL, Appellee. Circuit Court, 4th Judicial Circuit (Appellate) in and for Duval County. Case No. 16-2025-AP-000007. Division AP-A. December 11, 2025. Counsel: Attila Makranczy, Pro se, Appellant. Linsey Sims-Bohnenstiehl, Assistant General Counsel, DHSMV, for Appellee.

(PER CURIAM.) Appellant challenges a citation for failing to wear a seat belt in violation of section 316.614(4)(b), Florida Statutes. Because the lower tribunal's decision is not erroneous on its face and this Court's determination hinges upon a review of the evidence presented below, the limited record before this Court requires that the judgment be **AFFIRMED**. *See In re Guardianship of Read*, 555 So. 2d 869, 871 (Fla. 2d DCA 1989) ("Where there is no record of the testimony of witnesses or of evidentiary rulings and where a statement of the record has not been prepared, a judgment which is not fundamentally erroneous on its face must be affirmed."). (ANDERSON, BLAZS, and DEARING, JJ., concur.)

* * *

Licensing—Driver's license—Suspension—Driving under influence—Evidence—Breath test affidavit—Affidavit that includes timely inspection date is, by itself, presumptive proof of results of breath test—No merit to argument that affidavit was inadmissible because last agency inspection report was not submitted into evidence—Licensee failed to make sufficient showing to raise questions as to maintenance of breath testing machine or reliability and validity of results so as to shift burden to Department of Highway Safety and Motor Vehicles to provide additional proof concerning accuracy, maintenance, or inspection of machine—Petition for writ of certiorari denied

ZACHARY JEFFREY CHRISTOFFERSON, Petitioner, v. STATE OF FLORIDA, DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Circuit Court, 10th Judicial Circuit (Appellate) in and for Polk County. Case No. 2021CA-001349. Section 30. May 20, 2022.

ORDER ON PETITIONER'S
AMENDED PETITION FOR WRIT OF CERTIORARI

(ELLEN S. MASTERS, J.) This matter came before the Court on Petitioner's *Amended Petition for Writ of Certiorari* (hereinafter "Petition"), filed on September 15, 2021; Respondent's *Response to Petition for Writ of Certiorari* filed on November 24, 2021; and Petitioner's *Reply to Department's Response to Petition for Writ of Certiorari*, filed on December 27, 2021. Petitioner seeks review of the *Findings of Fact, Conclusions of Law and Decision* issued by The Florida Department of Highway Safety and Motor Vehicles (hereinafter "the Department") on April 8, 2021. This Court has jurisdiction. *See* Fla. R. App. P. 9.030(c).

Findings of Fact

The Petitioner sought an administrative hearing before the Florida Department of Highway Safety and Motor Vehicles' Bureau of Administrative Reviews to challenge the lawfulness of his driver's license suspension on February 24, 2021. The administrative hearing was held on March 30, 2021. The following exhibits were admitted into evidence by Hearing Officer James S. Garbett, Jr. (hereinafter "Hearing Officer"):

DDL1—Florida DUI Uniform Traffic Citation (AE6MD8E)
DDL2-Florida DUI Uniform Traffic Citation (AE6MD9E)
DDL3-Florida DUI Uniform Traffic Citation (AE6L8GE)
DDL4-Florida DUI Uniform Traffic Citation (AE6L8IE)
DDL5—Lakeland Police Department (LPD) Affidavit
DDL6—Breath Alcohol Test Affidavit
DDL7—LPD DUI Packet
DDL8—LPD General Offense Report
DDL9—Florida Traffic Crash Report
DDL10—Request for Reimbursement of Investigative Costs

Petitioner's counsel objected to the Breath Alcohol Test Affidavit (DDL6) being entered into evidence because there was no agency

inspection report to show the most recent inspection of the breath testing instrument. Petitioner's counsel also made two oral motions. The first motion requested that the Hearing Officer invalidate Petitioner's suspension because without an agency inspection report there was no evidence that the breath testing instrument was properly maintained. The second motion requested that the Hearing Officer invalidate Petitioner's suspension because there was no evidence that the breath testing machine had been inspected during the month of February.

The Hearing Officer overruled Petitioner's objection and denied his two motions. The Hearing Officer's decision is as follows:

> In regard to counsel's agency inspection report objection, motion(s), argument, and evidence provided, for a breath alcohol result to be admissible, DHSMV must establish: (1) that the breath test was performed substantially in accordance with the methods approved by FDLE, with an approved device by a qualified technician; and (2) that the device has been inspected in accordance with FDLE rules to assure its accuracy. See *Department of Highway Safety & Motor Vehicles v. Berne*, 49 So. 3d 779 (Fla. 5th DCA 2010) [35 Fla. L. Weekly D2238e], see also § 316.1932(1)(b)(2), Florida Statute[s]. Once admitted, the affidavit "is presumptive proof of the results of an authorized test to determine alcohol content of the blood or breath." § 316.1935(5), Florida Statute; see also §316.1934(2)(c), Florida Statute[s] (providing that a test result of 0.08 or higher is "prima facie evidence" that the person was impaired). In addition, F.S. § 322.2615(2) requires certain documents supporting the officer's actions. These documents must include "the results of any breath or blood test." This statute does not list an agency inspection report as a requirement.
>
> Further, an affidavit containing the results of any test of a person's blood or breath to determine its alcohol content, as authorized by s. 316.1932 or s. 316.1933, is admissible in evidence under the exception to the hearsay rule in s. 90.803(8) for public records and reports. Such affidavit is admissible without further authentication and is presumptive proof of the results of an authorized test to determine alcohol content of the blood or breath if the affidavit discloses:
>
> (a) The type of test administered, [sic] and the procedures followed;
>
> (b) The time of the collection of the blood or breath sample analyzed;
>
> (c) The numerical results of the test indicating the alcohol content of the blood or breath;
>
> (d) The type and status of any permit issued by the Department of Law Enforcement which was held by the person who performed the test; and
>
> (e) If the test was administered by means of a breath testing instrument, the date of performance of the most recent required maintenance on such instrument.[1]
>
> Here, in the case at hand, the FDLE Breath Alcohol Test Affidavit (DDL#6) was admitted into evidence during the hearing. This affidavit provides the necessary requirements and establishes that the Department substantially complied with the rules, regulations and laws for breath alcohol testing. Further, this affidavit is presumptive proof of impairment and the burden shifts to the licensee to establish noncompliance. See *Department of Highway Safety and Motor Vehicles v. Falcone*, 983 So.2d 755 (Fla. 2d DCA 2008) [33 Fla. L. Weekly D1504a]. See also *Department of Highway Safety and Motor Vehicles v. Mowry*, 794 So.2d 657, 659 (Fla. 5th [sic] DCA 2001) [26 Fla. L. Weekly D1773a]. Further, Petitioner's counsel did not provide any evidence showing that the breath test machine was not in compliance.
>
> Lastly, the last agency inspection dated January 26, 2021 would still be valid for the breath test completed on Petitioner on February 24, 2021. Accordingly, counsel's objection is OVERRULED and both motions to invalidate the suspension are DENIED.

[Petitioner's Appendix, Exhibit 2, p. 4-5]. Thereafter, Petitioner filed this Petition. Additional facts will be included below as necessary.

Standard of Review

When reviewing an administrative proceeding on a petition for writ of certiorari, a circuit court acting in its appellate capacity must determine "whether procedural due process is afforded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence." *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

"The departure from the essential requirements of the law necessary for the issuance of a writ of certiorari is something more than a simple legal error." *Housing Authority of City of Tampa v. Burton*, 874 So. 2d 6, 8 (Fla. 2d DCA 2004) [29 Fla. L. Weekly D1142a] (citing *Ivey v. Allstate Ins. Co.*, 774 So. 2d 679, 682 (Fla. 2000) [25 Fla. L. Weekly S1103a]).

> The required 'departure from the essential requirements of law' means something far beyond legal error. It means an inherent illegality or irregularity, an abuse of judicial power, an act of judicial tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice. The writ of certiorari properly issues to correct essential illegality but not legal error.

Haines City Community Dev. v. Heggs, 658 So. 2d 523, 527 (Fla. 1995) [20 Fla. L. Weekly S318a] (quoting *Jones v. State*, 477 So. 2d 566, 569 (Fla. 1985)). "A ruling constitutes a departure from the essential requirements of [the] law when it amounts to 'a violation of a clearly established principle of law resulting in a miscarriage of justice.' " *Department of Highway Safety and Motor Vehicles v. Hofer*, 5 So. 3d 766 (Fla. 2d DCA 2009) [34 Fla. L. Weekly D583a] (quoting *Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So. 2d 195, 199 (Fla. 2003) [28 Fla. L. Weekly S717a] (quoting *Tedder v. Fla. Parole Comm'n*, 842 So. 2d 1022, 1024 (Fla. 1st DCA 2003) [28 Fla. L. Weekly D1005a])).

As for whether the administrative findings and judgment are supported by competent substantial evidence:

> The court must review the record to assess the evidentiary support for the agency's decision. Evidence contrary to the agency's decision is outside the scope of the inquiry at this point, for the reviewing court above all cannot reweigh the 'pros and cons' of conflicting evidence. While contrary evidence may be relevant to the wisdom of the decision, it is irrelevant to the lawfulness of the decision. As long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and the court's job is ended.

Dusseau v. Metropolitan Dade County Board of County Commissioners, 794 So. 2d 1270, 1276 (Fla. 2001) [26 Fla. L. Weekly S329a].

Analysis and Conclusions

Petitioner requests that the Court address the following issue: "Whether the Department departed from the essential requirements of law by failing to invalidate the Petitioner's suspension because there was no monthly Agency Inspection submitted into evidence to prove the breath test machine was properly maintained and in proper working order in accordance with the Administrative Rules and Florida Implied Consent Law." Petitioner cites *Dep't of Highway Safety & Motor Vehicles v. Falcone*, 983 So. 2d 755 (Fla. 2d DCA 2008) [33 Fla. L. Weekly D1504a], as requiring the Department to submit an agency inspection report before a breath test affidavit is admissible.

Falcone was an appeal from the circuit court acting in its appellate capacity. "The circuit court found that the Department failed to comply with . . . [§ 316.1934(5)(e), Florida Statutes], because there was no evidence establishing the date of the most recent required

maintenance on the intoxilyzer at issue. . ." *Id.* at 756. Section 316.1934(5), Florida Statutes, provides:

> An affidavit containing the results of any test of a person's blood or breath to determine its alcohol content, as authorized by s. *316.1932* or s. *316.1933,* is admissible in evidence under the exception to the hearsay rule in s. *90.803(8)* for public records and reports. Such affidavit is admissible without further authentication and is presumptive proof of the results of an authorized test to determine alcohol content of the blood or breath if the affidavit discloses:
>
> (a) The type of test administered and the procedures followed;
>
> (b) The time of the collection of the blood or breath sample analyzed;
>
> (c) The numerical results of the test indicating the alcohol content of the blood or breath;
>
> (d) The type and status of any permit issued by the Department of Law Enforcement which was held by the person who performed the test; and
>
> (e) If the test was administered by means of a breath testing instrument, the date of performance of the most recent required maintenance on such instrument.

The *Falcone* court disagreed with the circuit court but held that "it was the Department's burden to *prove* that the requirements of section 316.1934(5) were met *before* the affidavit was admissible in evidence." [emphasis added] *See id*. at 757. *Falcone* further stated that "the Department met the requirements of section 316.1934(5) by *providing documentation* establishing the date of performance of the most recent required maintenance on the intoxilyzer." *Id.* at 757. [emphasis added.] The court then listed the three documents submitted by the Department and discussed each in the opinion. The Second District Court of Appeals discussed its conclusion in *Yankey v. Department of Highway Safety and Motor Vehicles*, 6 So. 3d 633, 638 n.4. (Fla. 2d DCA 2009) [34 Fla. L. Weekly D418a], where the court stated that in *Falcone*, "we concluded that although the Department was required to present evidence of the most recent breath test instrument inspection, it had done so by providing an agency inspection report."

The Department counters that law enforcement is required to submit the breath test affidavit, which is self-authenticating. The Department contends that law enforcement *may* submit the most recent agency inspection report but is not *required* to submit such a report for the breath test affidavit to be admissible. The Department also cites *Falcone* as authority for its position and states that "[t]the *Falcone* court explicitly held that the breath alcohol test affidavit, by itself and without further authentication, is presumptive proof of the results obtained if it discloses all information required by § 316.1934(5), Fla. Stat." (Respondent's *Response* at 13).

The Department also cites *Department of Highway Safety and Motor Vehicles v. Mowry*, 794 So. 2d 657 (Fla. 5th DCA 2001) [26 Fla. L. Weekly D1773a], as authority for its position. The issue in *Mowry* was whether the Department was required to provide evidence that the monthly maintenance test was conducted in compliance with rule 11D-8.0035, Florida Administrative Code, which requires maintenance tests to use an alcohol reference solution from an approved source. Based on the plain language of §316.1934(5), *Mowry* found that there was no such requirement on the Department to prove compliance. *Mowry* found that the breath test result affidavit "in the instant case" had all the information required by the statute. *See id.* at 659. The record evidence in *Mowry* included, among other documents, the July 9, 1999 and August 25, 1999 agency inspection reports and a Department inspection report. *See id.* at 660, n.1.

The *Falcone* court determined that "the Department met the requirements of section 316.1934(5) by providing documentation *establishing* the date of performance of the most recent required maintenance on the intoxilyzer." *Falcone* at 757. [emphasis added].

However, *Falcone* approved the argument "that it was Falcone's burden to first show that the intoxilyzer was either inaccurate or not properly maintained, and if Falcone had made such a showing, then the burden would have shifted to the Department to prove that the intoxilyer machine was in compliance with the applicable rules." *Id.* at 756-57.

Clearly, the *Falcone* and *Yankey* decisions encourage the Department to provide an agency inspection report or other comparable report. However, these decisions do not specifically state that the Department can meet its initial burden if the Department submits only a date of the agency inspection but not the report. Here, the Department submitted the breath alcohol test affidavit which sets forth a timely date of the last agency inspection.

After analyzing the statute and *Falcone* and *Mowry*, the Court opines that the law is not crystal clear that a supporting document is or is not required when the affidavit provides a timely date of the last agency inspection. Because *Falcone* implies that the Department could meet its initial burden under section 316.1934(5) by disclosing the information required by the statute and because providing a timely date of the agency inspection has been defined as substantial compliance with the law concerning maintenance and inspection, this Court concludes that the breath alcohol test affidavit, with the timely inspection date included, by itself is presumptive proof of the results obtained. Specifically, the Court concludes that the Department did initially disclose all of information required by § 316.1934(5) thereby meeting the Department's initial burden.

While the Petitioner filed two motions, orally objected to the affidavit, and argued that additional information should be presented, this Court cannot find that this argument is the necessary proof or requisite showing that sufficiently raises a question as to the maintenance of the intoxilyzer or the reliability or validity of the results. The Court notes that counsel for Petitioner questioned a law enforcement witness who acknowledged that he maintained a distance from the breath test operator during the breath test procedure to avoid any radiofrequency interference from the officer's equipment. (T-45) Still, this Court finds no testimony or evidence in the record that this Court could deem a showing that the instrument was not properly used, maintained, or inaccurate. Therefore, the testimony and argument presented by the Petitioner is not sufficient to shift the burden to the Department in order to require that the Department provide proof, in addition to the information provided on the affidavit, concerning the accuracy, maintenance, or inspection of the intoxilyzer.

The Petitioner also complains that the Petitioner is unable to subpoena the Agency Inspector because the Department would obstruct his ability to subpoena him or her. The Court is unable to rule upon this claim because the record does not indicate that the Petitioner made an effort to subpoena an Agency Inspector or that such effort was thwarted by the Department.

Accordingly, based on the record before the Court, and for the reasons stated herein, the Petitioner's *Amended Petition for Writ of Certiorari*, filed on September 15, 2021, should be and the same is hereby **DENIED.**

---

[1]Missing citation to §316.1934(5), Florida Statutes.

* * *

Counties—Code enforcement—Hearings—Ex parte communications—Hearing officer departed from essential requirements of law by engaging in lengthy ex parte conversation with property owner and witness about matter that ultimately formed basis for hearing officer's ruling in favor of property owner—Decision is quashed

MIAMI-DADE COUNTY, Appellant, v. SINITA JOSEPH, Appellee. Circuit Court, 11th Judicial Circuit (Appellate) in and for Miami-Dade County. Case No. 2025-2 AP

01. January 9, 2026. On Appeal from an administrative decision by a Miami-Dade Code Enforcement Hearing Officer. Counsel: Geraldine Bonzon-Keenan, Miami-Dade County Attorney, and Cristina Rabionet, Assistant County Attorney, for Appellant. Sinita Joseph, Pro se, Appellee.

(Before TRAWICK, DE LA O, and ARECES, R., JJ.)

(TRAWICK, J.) This appeal, brought by Appellant, Miami-Dade County against Appellee, Sinita Joseph, seeks review of the Miami-Dade Code Enforcement Hearing Officer's Order entitled "Findings of Fact and Conclusions of Law" dated December 4, 2024, reversing Citation No. 2024-P049592. Based upon our review of the law, hearing transcripts, and the record in this case, this Court finds that the hearing officer failed to observe the essential requirements of the law due to impermissible ex-parte communications with a party.

Miami-Dade County Department Building Code Enforcement issued a Notice of Violation against the Appellee's residential property for the "failure to obtain required building permit(s) prior to commencing work on: 'dura fence'." The notice of violation did not specify where on the property the violation was found. Prior to receiving this notice, the property owners had a legally permitted cement wall with picket bars and picket-style front gate which were both previously approved by the County.

Upon receiving the notice, Appellee submitted a permit application for the "dura fence" that was installed along the side of their property, which was inspected and approved by the County. However, the permit did not apply to the metal panels that were attached to the permitted front gate and wall.

On April 1, 2024, a building code enforcement inspector conducted another inspection of the subject property. The code enforcement inspector issued Citation No. P049592 (the "Citation") for failure to cure the code enforcement violation for the metal panels attached to other previously permitted structures on the property.

After receiving the citation, the Appellee requested an administrative hearing. During the administrative hearing, the Building Code Enforcement Department's representatives requested a recess to leave the room and gather additional records. 50:15-50:19; 51:7. While the Code Enforcement Department representatives were absent from the room, the hearing officer, Appellee, and a witness proceeded to engage in *ex parte* communications about the case. 51:8-62:14. Instead of informing the Appellee and the witness that such communications were improper, the hearing officer engaged in a lengthy conversation about whether the Department assisted Appellee in correcting the alleged violation. This issue was ultimately the basis for the hearing officer's ruling. The *ex-parte* conversation spanned about twelve pages of the hearing transcript. The conversation only appeared to stop when the Department representatives returned to the hearing room.

Ex parte communications constitute a departure from the essential requirements of the law. *See Rho-Sigma, Inc. v. Int'l Control & Measurements, Corp.*, 691 So. 2d 16, 17 (Fla. 3d DCA 1997) [22 Fla. L. Weekly D791d] (holding that "the trial court departed from the essential requirements of the law by engaging in *ex parte* communications regarding the pending case" because this "placed into question the impartiality of the trial judge which must be beyond question to ensure the guaranty of a fair trial"). *See also Rose v. State*, 601 So. 2d 1181, 1183 (Fla. 1992).

Given the nature and extent of the *ex-parte* communication involving the hearing officer in this case, there was a departure from the essential requirements of law. Accordingly, the decision below is hereby QUASHED. This matter is REMANDED for proceedings consistent with this opinion. It is advisable that any such proceedings be conducted by another hearing officer.[1] (DE LA O and ARECES, R., JJ., concur.)

[1]While there was no cross appeal, the Court is troubled by the lack of detail on the notice of violation, as evident in the record and adequately noted by the hearing officer, which did not match the detail indicated on the citation. It is reasonable to conclude that the lack of detail in the notice of violation created confusion that existed from the onset of the code enforcement case. This confusion about what the violation entailed permeated the hearing itself. Even though the Appellant argued that a violation still existed at the time of the hearing, the transcript reveals that the Appellee and the hearing officer may still have been unclear as to which violations were still pending and what exactly needed to be done to cure them. This may have deprived the Appellee of procedural due process. Should the County go forward with additional proceedings, this issue should be addressed by the hearing officer.

* * *

Municipal corporations—Zoning—Code enforcement—Short-term rentals in residential zone—Order finding owner violated code by engaging in short-term rentals was not supported by competent substantial evidence where evidence shows listing of property on internet website but does not show that property was actually rented—Finding that any short-term rentals were irreparable or irreversible is also not supported

102 NE 50 HOLDINGS, LLC, Appellant, v. THE CITY OF MIAMI, Appellee. Circuit Court, 11th Judicial Circuit (Appellate) in and for Miami-Dade County. Case No. 2025-3-AP-01. January 20, 2026. On Appeal from a Final Administrative Order entered by the City of Miami Code Enforcement Board. Counsel: Marko Cerenko, for Appellant. George K. Wysong, III and Marguerite C. Snyder, for Appellee.

(Before TRAWICK, DE LA O, and ARECES, R., JJ.)

OPINION

(ARECES, R.,) Appellant, 102 NE 50 Holdings, LLC ("Appellant"), appeals from a Final Administrative Order entered by the City of Miami Code Enforcement Board ("Appellee" or "the Board"), which found that Appellant violated the zoning code by engaging in short-term rentals of his real property. Appellant contends the Board erred because it rendered a decision that was unsupported by competent and substantial evidence. This Court agrees.

When this Court reviews a final administrative order, it must determine (1) whether procedural due process was afforded, (2) whether the essential requirements of the law were observed, and (3) whether the administrative findings were supported by competent substantial evidence. *Haines City Cmty. Dev. v. Heggs,* 658 So. 2d 523, 530 (Fla. 1995) [20 Fla. L. Weekly S318a].

In this case, there was no evidence that Appellant had engaged in the short-term rental of his property. Appellee's witness had never seen the property rented out to anyone—short term, or otherwise. Additionally, there was evidence that Appellant resided in the property. The mere fact that the property may have been listed on an internet website as having been available for rent is an insufficient basis upon which to find that the property had *actually* been rented on a short-term basis.[1]

Most troubling, however, was the Board's finding that these short-term rentals, of which there was no evidence, were irreparable or irreversible. It would appear that *even if* the Property had been improperly rented on a short-term basis in violation of the zoning code, the issue could be easily fixed by ceasing to rent out the property on a short-term basis.

The Board's findings were not supported by competent and substantial evidence. Accordingly, the Final Administrative Order is REVERSED. (TRAWICK and DE LA O, JJ., concur.)

[1]Though not binding, this Court finds the following two cases persuasive: *Canton v. Hillsborough Cnty.,* 30 Fla. L. Weekly Supp. 603a (Fla. 13th Cir. Ct. Jan. 15, 2022) and *Griffin v. City of Fort Pierce,* 26 Fla. L. Weekly Supp. 356a (Fla. 19th Cir. Ct. Aug. 29, 2017). As in *Canton* and *Griffin,* there is no evidence that the property at issue in this case was ever *actually* rented—on a short-term basis or otherwise.

* * *

NILDA RODRIGUEZ, Surviving Wife of RAMON RODRIGUEZ, Deceased, and Wife NILDA RODRIGUEZ, Appellant, v. THE CITY OF MIAMI, Appellee. 11th

Judicial Circuit (Appellate) in and for Miami-Dade County. Case No. 2024-47-AP-01. January 26, 2026. An appeal from the City Of Miami, Florida Code Enforcement Board. Counsel: Ramon Rodriguez, for Appellant. Eric J. Eves, for Appellee.

(Before TRAWICK, ARECES, R., and DE LA O, JJ.)

OPINION

(PER CURIAM.) Affirmed. The City of Miami Code Enforcement Board observed the essential requirements of the law, afforded due process, and its decision is supported by competent substantial evidence. *See City of Deerfield Beach v. Vaillant,* 419 So. 2d 624 (Fla. 1982).

* * *

Counties—Zoning—Rezoning—Denial of application—Appeals—Certiorari—Due process—Bias—To inform determination of petitioner's procedural due process claim, court may consider transcript of hearing at which board of commissioners rejected recommendation of special magistrate acting under Florida Land Use and Environmental Dispute Resolution Act—Transcript is relevant because it tends to prove or disprove alleged bias of commissioner in original board hearing regarding rezoning—Consideration of transcript does not conflict with or nullify court's prior ruling that certiorari relief was not available because proceedings under FLUEDRA and the board's rejection of special magistrate's recommendation do not create a new judicial cause of action—Commissioner's comments at hearing on magistrate's recommendation that he was "opposed to this from the beginning" and awaits his "turn" to build a case evinces predisposition and advocacy against rezoning application, demonstrating that applicants were not afforded a neutral decision-maker in original rezoning hearing—After consideration of various remedial approaches for cases involving bias of a single member of a multi-member board participating and voting in quasi-judicial proceedings, the court adopts automatic invalidation approach—Automatic invalidation approach is the strongest in upholding policy of promoting public confidence in fairness of quasi-judicial board proceedings—Petition is granted and ordinance is quashed

JASON REARDON and JOY REARDON, Petitioners, v. DESOTO COUNTY, FLORIDA, a political subdivision of the State of Florida, Respondent. Circuit Court, 12th Judicial Circuit (Appellate) in and for Desoto County. Case No. 2023-CA-430. October 29, 2025.

ORDER ON PETITION FOR WRIT OF CERTIORARI

(DON T. HALL, J.) **THIS CAUSE** came before the Court on Petitioners, Jason Reardon and Joy Reardon's, petition for writ of certiorari filed June 22, 2023, Respondent, Desoto County's ("County"), response filed May 10, 2024, and Petitioners' reply filed June 10, 2024. Petitioners seek relief from an ordinance denying their rezoning application adopted by Respondent on February 22, 2022, following a quasi-judicial hearing held by the Desoto County Board of County Commissioners ("Board"), and filed with the Board's Clerk on March 8, 2022.[1] Petitioners request this Court issue a writ of certiorari quashing the ordinance. The Court has jurisdiction. *See Lee County v. Sunbelt Equities, II, Ltd. Partnership*, 619 So. 2d 996 (Fla. 2d DCA 1993); Article V, Sec. 5(b), Florida Constitution and Rules 9.030(c)(3) and 9.100(f), Fla. R. App. P. The Court has considered the filings of the parties, the record, and is otherwise advised in the premises.

Background

Petitioners own a 5.45-acre parcel of land in unincorporated Desoto County zoned Agrigultural-5 (A-5) and Residential Multi Family-6 (RMF-6) located at 6502 SW Massachusetts Street (the "Property"). In 2020, County staff granted Petitioners a one-year temporary use permit to operate an equipment and construction materials storage and staging area for electric utility crews. Initially the Property was leased to Volt, a contractor that assists Florida Power & Light maintain electric service. Shortly before the first temporary use permit was to expire, the County changed its process to require Board approval for temporary use permits. On October 1, 2021, Petitioners filed their application to rezone the Property from A-5 and RMF-6 to Planned Unit Development (PUD) with a concept development plan for the equipment and construction materials storage and staging area.

After reviewing Petitioners' application, the County's Development Department issued a report recommending that the County's Planning Commission recommend to the Board approval of the rezone application with specified conditions. After a public hearing held February 1, 2022, the Planning Commission nevertheless voted 6-1 to deny the application. A public hearing before the Board followed on February 22, 2022. The Board denied the application by a vote of 4-1.

Rather than immediately seek review of the denial in this Court, Petitioners followed the dispute resolution process set forth in § 70.51, Florida Statutes, the Florida Land Use and Environmental Dispute Resolution Act ("FLUEDRA"). The Board initially dismissed Petitioners' request, but this Court granted a writ of mandamus directing the County to participate in the FLUEDRA process. The FLUEDRA process resulted in a Special Magistrate's recommendation that the Board approve the rezoning application subject to conditions in addition to those previously recommended by the County's Development Department.

On May 23, 2023, the Board conducted a public hearing to consider the Special Magistrate's recommendation. After a presentation by Petitioners and receiving testimony for and against the application, the Board approved a resolution rejecting the recommendation by a vote of 3-2.

On June 22, 2023, Petitioners filed their petition for writ of certiorari to review both the Board's March 8, 2022, denial of the rezoning application and its May 23, 2023, rejection of the Special Magistrate's recommendation. The County moved to dismiss the petition, arguing it was untimely as to the rezoning denial and that the FLUEDRA process does not give rise to a new cause of action when a local government rejects a Special Magistrate's recommendation. As previously referenced, by order rendered April 10, 2024, the Court denied the motion regarding the Board's denial of the rezoning application but dismissed the petition as it relates to the Board's rejection of the Special Magistrate's recommendation.

Standard of Review

On certiorari review, the Court is only required to determine (1) whether procedural due process was afforded, (2) whether the Board observed the essential requirements of the law, and (3) whether the administrative findings and judgment were supported by competent substantial evidence. *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995) [20 Fla. L. Weekly S318a]. In the present case, Petitioners argue they were denied procedural due process based on the bias of one of the Board members and the Board's denial of the rezoning application was not supported by competent substantial evidence. Petitioners do not claim the Board departed from the essential requirements of the law.

The Court cannot reweigh the evidence or substitute its own judgment for that of the Board. *Heggs*, 658 So. 2d at 530; *Wal-Mart Stores East L.P. v. Town of Davie*, 977 So. 2d 636, 638 (Fla. 4th DCA 2008) [33 Fla. L. Weekly D482a] ("a circuit court is only to review whether competent substantial evidence existed for a lower tribunal's decision; it must not reweigh or consider the credibility of the evidence presented to the tribunal"); *Lee County v. Sunbelt Equities, II, Ltd. Partnership*, 619 So. 2d 996, 1003 (Fla. 2d DCA 1993) (determining whether the agency's findings are supported by competent substantial evidence "involves a purely legal question:

whether the record contains the necessary quantum of evidence. The circuit court is not permitted to go farther and reweigh that evidence (*e.g.*, where there may be conflicts in the evidence), or to substitute its judgment about what should be done for that of the administrative agency"). If the Court determines the Board observed the essential requirements of the law and there was *any* competent substantial evidence in the record below to support its decision, then the Court must deny the petition for writ of certiorari, even if the Court would have reached a different conclusion. *See City of Ft. Lauderdale v. Multidyne*, 567 So. 2d 955, 957 (Fla. 4th DCA 1990).

Competent evidence is evidence sufficiently relevant and material to the ultimate determination "that a reasonable mind would accept it as adequate to support the conclusion reached." *DeGroot v. Sheffield,* 95 So.2d 912, 916 (Fla.1957). Substantial evidence is evidence that provides a factual basis from which a fact at issue may reasonably be inferred. *Id.; Metropolitan Dade County v. Blumenthal,* 675 So.2d 598, 608 (Fla. 3rd DCA 1995) [20 Fla. L. Weekly D1445c]; *see also Pollard v. Palm Beach County,* 560 So.2d 1358, 1359-60 (Fla. 4th DCA 1990) ("evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the 'substantial' evidence should also be 'competent.' ").

The Florida Supreme Court expounded on a circuit court's proper application of the competent substantial evidence standard in *Dusseau v. Metropolitan Dade County Bd. of County Com'rs*, 794 So. 2d 1270, 1275-1276 (Fla. 2001) [26 Fla. L. Weekly S329a]:

> We reiterate that the 'competent substantial evidence' standard cannot be used by a reviewing court as a mechanism for exerting covert control over the policy determinations and factual findings of the local agency. Rather, this standard requires the reviewing court to defer to the agency's superior technical expertise and special vantage point in such matters. The issue before the court is not whether the agency's decision is the 'best' decision or the 'right' decision or even a 'wise' decision, for these are technical and policy-based determinations properly within the purview of the agency. The circuit court has no training or experience-and is inherently unsuited-to sit as a roving 'super agency' with plenary oversight in such matters.
>
> The sole issue before the court on first-tier certiorari review is whether the agency's decision is lawful. The court's task vis-a-vis the third prong of *Vaillant* is simple: The court must review the record to assess the evidentiary support for the agency's decision. Evidence contrary to the agency's decision is outside the scope of the inquiry at this point, for the reviewing court above all cannot reweigh the 'pros and cons' of conflicting evidence. While contrary evidence may be relevant to the wisdom of the decision, it is irrelevant to the lawfulness of the decision. As long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and the court's job is ended.

In applying the competent substantial evidence standard, the circuit court is limited to the record as it existed when the local government reached its quasi-judicial decision. *Vichich v. Department of Highway Safety and Motor Vehicles*, 799 So. 2d 1069, 1073 (Fla. 2d DCA 2001) [26 Fla. L. Weekly D2290a] (circuit court's determination of whether competent substantial evidence supported agency's administrative findings is limited to materials furnished to and reviewed by the lower tribunal in advance of the administrative action to be reviewed by the court); *St. Johns County v. Smith*, 766 So. 2d 1097, 1100 (Fla. 5th DCA 2000) [25 Fla. L. Weekly D1887b] (circuit court in certiorari proceeding was limited to the record made in the zoning hearing under review); *Dade County v. Marca*, 328 So. 2d 183 (Fla. 1976) (in certiorari proceeding, reviewing court's consideration shall be confined strictly and solely to the record of proceedings by the agency or board on which the questioned order is based).

The foundations of procedural due process are notice and an opportunity to be heard. "Due process is satisfied where the notice and opportunity to be heard are 'granted at a meaningful time and in a meaningful manner.' " *A & S Entertainment, LLC v. Florida Dept. of Revenue*, 282 So. 3d 905, 908 (Fla. 3rd DCA 2019) [44 Fla. L. Weekly D2341b] (quoting *Armstrong v. Manzo,* 380 U.S. 545, 552 (1965). "The proceeding must be 'essentially fair.' " *Seiden v. Adams*, 150 So. 3d 1215, 1219 (Fla. 4th DCA 2014) [39 Fla. L. Weekly D2409a]. A component of due process in a quasi-judicial proceeding is an impartial decision maker. S*ee Miami-Dade County v. City of Miami*, 315 So. 3d 115 (Fla. 3rd DCA 2020) [46 Fla. L. Weekly D19a] (an impartial decision maker is a basic constituent of minimum due process required during quasi-judicial proceedings); *Cherry Communications, Inc. v. Deason,* 652 So.2d 803 (Fla.1995) [20 Fla. L. Weekly S179a] (while administrative proceedings need not match the judicial model, an impartial decision maker is a basic component of minimum due process); *Charlotte County v. IMC-Phosphates Co.,* 824 So.2d 298 (Fla. 1st DCA 2002) [27 Fla. L. Weekly D1917d] (an impartial decision maker is a basic component of minimum due process in an administrative proceeding).

With the foregoing standards in mind, the Court addresses the Petitioners' claims.

Due Process

Petitioners contend their right to procedural due process was violated because one of the five Board members, Commissioner Elton Langford, had predetermined from the beginning to vote against their rezoning application and "resented the fact that the law required him to look at competent, substantial evidence rather than the subjective, unsubstantiated opinions and feelings of the constituents who voted him into office."[2] In support, Petitioners cite Commissioner Langford's comments during the May 23, 2023, hearing to consider the Special Magistrate's recommendation for resolving the dispute, which occurred after the Board's February 22, 2022, denial of the rezoning application.

The County responds that portions of Petitioners' appendix corresponding to events that occurred *after* the February 22, 2022, rezoning denial (particularly the transcript of the May 23, 2023, hearing), should not be considered by the Court since they were not part of the record before the Board on February 22, 2022, and are irrelevant. The County contends the Court's consideration of these latter documents would conflict with and nullify the Cour's order of April 10, 2024, which dismissed Petitioners' certiorari petition as it relates to the Board's May 23, 2023, rejection of the Special Magistrate's recommendation. The County further argues that one individual commissioner does not speak for or decide matters that come before a full county commission. Finally, the County argues review of the transcript of the February 22, 2022, hearing shows no evidence of any bias or prejudice by Commissioner Langford against Petitioners or their rezoning application.

In reply, Petitioners analogize the timing of Commissioner Langford's comments to the post-judgment, after-the-fact discovery of juror or judicial bias which can be remedied and argue that the Court may consider Commissioner Langford's May 23, 2023, comments in determining whether procedural due process was afforded at the February 22, 2022, hearing. Citing foreign case authority, Petitioners further argue that the demonstrated bias of one member of a quasi-judicial board is sufficient to deprive the complaining party of an impartial decision maker and constitutes a denial of due process.

The Court first examines the issue of whether Commissioner Langford's May 23, 2023, comments may be considered in determining whether Petitioners were denied due process during the February

22, 2022, hearing. As a preliminary observation, neither party has provided the Court legal authority answering the precise question of whether a circuit court on certiorari review may consider post-hearing comments by a member of a lower tribunal to determine whether the tribunal afforded a party procedural due process. The question appears to be a matter of first impression in Florida.

Petitions for certiorari to review quasi-judicial decisions of local government boards are governed by Fla. R. App. P. Rules 9.100 and 9.190. Rule 9.100(g) governs the content of a petition for writ of certiorari, requiring petitions to "be accompanied by an appendix as prescribed by rule 9.220,. . ." Rule 9.190 governs judicial review of administrative action. Rule 9.190(c)(1) limits the record in such proceedings to "materials furnished to and reviewed by the lower tribunal in advance of the administrative action to be reviewed by the court." The committee notes to Rule 190 state "[t]he intent of this statement is to avoid the inclusion of extraneous materials in the record that were never reviewed by the lower tribunal."

The function and content of appendices is governed by Fla. R. App. P. Rule 9.220, which states in pertinent part:

> **(a) Purpose.** The purpose of an appendix is to permit the parties to prepare and transmit copies of those portions of the record deemed necessary to an understanding of the issues presented. It may be served with any petition, brief, motion, response, or reply but shall be served as otherwise required by these rules.
>
> . . .
>
> **(b) Contents.** The appendix shall contain a coversheet, an index, a certificate of service, and a conformed copy of the opinion or order to be reviewed and may contain any other portions of the record and other authorities. ...

Certiorari is a form of appellate review. The rules that limit the appendix to materials presented to the lower tribunal are in keeping with that function. The circuit court "performs a 'review'; it does not sit as a trial court to consider new evidence or make additional findings." *Vichich v. Dep't of Highway Safety & Motor Vehicles*, 799 So. 2d 1069, 1073 (Fla. 2d DCA 2001) [26 Fla. L. Weekly D2290a].

The review of the circuit court is to determine (1) whether procedural due process was afforded, (2) whether the lower tribunal applied the correct law, and (3) whether the administrative findings and judgment were supported by competent substantial evidence. The second and third prongs of this standard of review pertain to materials received and considered by the lower tribunal, such as testimony, codes or ordinances, and legal argument. By contrast, the procedural due process analysis pertains to the conduct of the lower tribunal or the procedures it employs in reaching its' administrative determination. That is, the subject of the procedural due process analysis is the lower tribunal *itself* and not something submitted to it for consideration and placement in the record. This distinction tends to favor Petitioners' argument.

A party's claim that a quasi-judicial proceeding lacks an impartial decision maker may arise before or during the actual hearing. For example, in *Seminole Entertainment, Inc. v. City of Casselberry*, 811 So. 2d 693 (Fla. 5th DCA 2001) [26 Fla. L. Weekly D2822a] (*Seminole Entertainment I*), the City of Casselberry served Rachel's, an adult entertainment establishment operated by Seminole Entertainment, with a notice of intent to revoke its license because the company was permitting illegal activities on its premises. After a hearing date was set, Rachel's moved to disqualify the city commission for bias. The motion to disqualify was denied and the city revoked Rachel's license. Rachel's filed a complaint in circuit court seeking a temporary and permanent injunction and declaratory relief and a separate action for certiorari review. The temporary injunction was denied and Rachel's appealed.

On appeal, Rachel's argued it had been denied procedural due process at the license revocation hearing. According to Rachel's, the mayor of Casselberry, who presided over the hearing and ruled on legal objections to evidence, had run for office on a platform against Rachel's. Virtually all objections raised by Rachel's counsel were overruled. Significantly, the court found the mayor improperly limited cross-examination of the city's principal investigative witness because the investigation was ongoing. Rachel's also alleged the city manager, acting as the prosecutor, had consulted with commission members about illegal activities at Rachel's and one commissioner had participated in an undercover investigation of Rachel's by the Casselberry police.

The court concluded Rachel's established more than mere political bias or an unfriendly political atmosphere. Rather, the evidentiary rulings by the mayor reflected a bias so pervasive "as to render the proceedings violative of the basic fairness component of due process." 811 So.2d at 697. The court directed the circuit judge to enter a temporary injunction in Rachel's favor pending resolution of Rachel's separate certiorari proceeding.[3] *See also Charlotte County v. IMC-Phosphates Company*, 824 So. 2d 298 (Fla. 1st DCA 2002) [27 Fla. L. Weekly D1917d] (Department of Environmental Protection secretary's public statement regarding propriety of forthcoming issuance of mining permit following administrative law judge's recommendation to issue permit warranted disqualification of secretary from further proceedings reviewing recommended order).

The rule of preservation applies to certiorari proceedings. A certiorari petitioner's procedural due process claim must be preserved to be addressed by a reviewing circuit court. *See Miami-Dade County v. City of Miami*, 2024 WL 1599231 *3 (Fla. Cir. Ct. App. April 12, 2024) [31 Fla. L. Weekly Supp. 567a]. Considering the appellate character of certiorari, this rule makes sense. A party cannot pocket a bias objection, wait and see if a tribunal's ruling will be favorable, and then complain of bias if it is not.

But what of the party who learns after an unsuccessful quasi-judicial proceeding that the lower tribunal was arguably not an impartial decision maker? An action for declaratory and injunctive relief against enforcement of the quasi-judicial decision are not available remedies. *See Seminole Entertainment, Inc. v. City of Casselberry*, 813 So. 2d at fn 1 (*Rachel's II*) (Corporation had no right to initiate independent action to enjoin city commission's revocation of adult entertainment license, in light of corporation's adequate remedy at law to review the propriety of city commission's action through certiorari in its original proceeding). If the party is limited to only relying upon material presented to the lower tribunal, then in such instance the right to procedural due process becomes the proverbial right without a remedy. "[T]he existence of a right implies a remedy. It has been said 'a right without a remedy is a ghost in the law and difficult to grasp.' " *Dade County v. Certain Lands*, 247 So. 2d 787, 790 (Fla. 3rd DCA 1971) (county liens for waste collection charges held enforceable by foreclosure in rem where enabling legislation did not require recordation of liens for validity).

To address this issue, Petitioners analogize the after-the-fact discovery of a board member's alleged bias to the post-trial discovery of judicial bias or bias of a juror. Their cited case authority relating to judicial bias, *Williams v. State*, 160 So. 3d 541 (Fla. 4th DCA 2015) [40 Fla. L. Weekly D773a], is inapposite since there the trial judge's stray from his role as neutral arbiter appears in the record of the defendant's jury trial.

Closer to the situation in the present case is Petitioners' cited case regarding juror misconduct, *Roberts ex rel. Estate of Roberts v. Tejada*, 814 So. 2d 334 (Fla. 2002) [27 Fla. L. Weekly S158a], where the Florida Supreme Court held that trial counsel, so as later to be able to challenge juror nondisclosure of material information, is not required to conduct an investigation of the venire during the trial to

satisfy the due diligence prong of the test for determining whether a juror's nondisclosure of information during voir dire warrants a new trial. The case was remanded through the district court of appeal to the trial court for an evidentiary hearing reconsidering the materiality of nondisclosed juror information. 814 So. 2d at 345-46. Likewise, in *Marshall v. State*, 854 So. 2d 1235 (Fla. 2003) [28 Fla. L. Weekly S461a] the court remanded to the trial court for an evidentiary hearing defendant's postconviction jury misconduct claim that some jurors told racial jokes about the defendant, announced during the guilt phase that they were going to vote for a guilty verdict and life sentence because they wanted the defendant to return to prison to kill more black inmates, and that some jurors read and discussed outside articles concerning the trial.

Juror misconduct claims bear some similarity to Petitioners' procedural due process claim in that the alleged conduct, discovered after-the-fact, can impact the fairness of the proceeding. However, unlike a certiorari proceeding, a complaining party's attempt to remedy jury misconduct begins in the trial court or lower tribunal where it occurred. Under the first-tier certiorari standard of review, the remedy for a claimed violation of procedural due process by the lower tribunal is in the circuit court. As an appellate proceeding, certiorari is unsuited to development of the evidentiary record necessary to evaluate a claim based on after-the-fact information that the lower tribunal was biased. The circuit court would not make additional findings of fact or remand the case to the lower tribunal for an evidentiary hearing as with a juror misconduct claim. Thus, analogizing Petitioners' procedural due process claim to a juror misconduct claim is helpful but not a complete fit.

A unique aspect of this case, in combination with the foregoing considerations, convinces the Court that it should consider Commissioner Langford's May 23, 2023, comments in determining whether procedural due process was afforded at the February 22, 2022, hearing. The May 23, 2023, hearing was reported by a verbatim court reporter.[4] The dilemma of building an evidentiary record to evaluate on certiorari review an after-the-fact procedural due process claim is not present because the comments at issue were made in a public setting and reported verbatim. The claim of bias is not based on hearsay or disputed documents, nor is there need for credibility determinations by the Court. This unique circumstance permits an unfiltered evaluation of the comments at issue.

The County's arguments for excluding the transcript of the May 23, 2023, hearing from consideration are unconvincing. The County argues the transcript is irrelevant because it was not part of the record before the Board during the February 22, 2022, hearing. Relevant evidence is evidence having a logical tendency to prove or disprove a fact which is of consequence to the outcome of a case. *See Wright v. State*, 19 So. 3d 277 (Fla. 2009) [34 Fla. L. Weekly S497a]. As discussed further below, the May 23, 2023, transcript is relevant because it tends to prove or disprove bias that may have influenced the Board's decision to deny Petitioners' rezoning application.

The County further contends consideration of the May 23, 2023, hearing transcript would conflict with and nullify the Court's order of April 10, 2024, which dismissed Petitioners' certiorari petition as it relates to the Board's May 23, 2023, rejection of the Special Magistrate's recommendation. The County's reliance on the April 10, 2024, order is misplaced. The order simply found that certiorari relief was not available because proceedings under FLUEDRA, and a board's rejection of a Special Magistrate's recommendation, do not create a new judicial cause of action. The Court's consideration of the May 23, 2023, hearing transcript to inform determination of Petitioners' procedural due process claim does not conflict with and nullify the April 10, 2024, order.

The Court next examines the legal standard for determining whether bias in a quasi-judicial proceeding constitutes a deprivation of procedural due process. Case law recognizes that even though the due process afforded to a party in a quasi-judicial hearing is not the same as afforded to a party in a judicial hearing, "[a]n impartial decisionmaker is a basic constituent of minimum due process," *Ridgewood Props., Inc. v. Dep't of Cmty. Affairs,* 562 So.2d 322, 323 (Fla.1990), *quoting Megill v. Board of Regents,* 541 F.2d 1073, 1079 (5th Cir. 1976), and "[a] litigant is entitled to have confidence that the hearing officer before whom he or she appears is acting impartially as a fact-finder." *Dept. of Highway Safety and Motor Vehicles v. Griffin*, 909 So. 2d 538, 543 (Fla. 4th DCA 2005) [30 Fla. L. Weekly D2065a]. Because quasi-judicial officers, such as county commissioners, are politically elected, political bias and adverse political philosophies are inevitable and do not in and of themselves render the decision maker partial. *Seminole Entertainment I*, 811 So. 2d at 696. However, a quasi-judicial officer "should be judicial in attitude and demeanor and free from prejudgment and from zeal for or against the [applicant]." *Id.* (quoting *9 McQuillen Municipal Corporations*, § 26.89 (3rd Ed.)). As discussed earlier, the court in *Seminole Entertainment I* found the presence of bias so pervasive as to violate procedural due process.

A survey of several cases illustrates that the boundary between permissible and impermissible bias in quasi-judicial proceedings depends upon the circumstances of the case and the nature of the decision maker. In *Seiden v. Adams*, 150 So. 3d 1215 (Fla. 4th DCA 2014) [39 Fla. L. Weekly D2409a], the court reviewed a teacher's appeal from a final administrative order of the employer school board terminating his employment. After the school superintendent charged the teacher with misconduct, the teacher requested a hearing. The underlying facts involved the teacher's response to the behavior of a special needs student, which caused an escalation of the incident. Rather than refer the matter to an administrative law judge, the school board elected to hold the hearing.[5] The teacher moved to disqualify the school board, arguing (1) he was teaching "out-of-field" and the school board failed to notify parents or require him to gain certification; and (2) the school board failed to report him upon learning of the incident and therefore he has a well-grounded fear that the school board would focus on their own interest, thereby depriving him of a fair adjudicator. *Id.* at 1217. The school board denied the motion, conducted the hearing, and terminated the teacher.

On appeal, the teacher argued that comments made by some of the school board members infected the hearing, depriving him of procedural due process.[6] During the hearing three school board members disclosed they had special needs children in school with one stating that the case was "extremely personal" and that he had wanted to recuse himself but could not.

The court first noted that although the school board was sitting in its quasi-judicial capacity by acting as the hearing officer, this did not make the body into a judicial body controlled by strict rules of evidence and procedure. The court next described the parameters of procedural due process and disqualification of board members in the administrative setting:

> A due process violation is not triggered by the fact that the School Board employed Seiden and the Superintendent investigated and evaluated his conduct. In *Koehler v. Florida Real Estate Commission,* 390 So.2d 711, 711 (Fla.1980), the Florida Supreme Court applied the due process analysis of *Withrow v. Larkin,* 421 U.S. 35, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975), and held that a due process violation does not arise in an administrative disciplinary proceeding merely because an agency has 'investigative and prosecutorial functions as well as its final adjudicative function.' 'Mere familiarity with the facts of a case gained by an agency in the performance of its statutory role does not' disqualify a Board member who later sits in judgment. *Hortonville*

> *Joint Sch. Dist. No. 1 v. Hortonville Educ. Ass'n,* 426 U.S. 482, 493, 96 S.Ct. 2308, 49 L.Ed.2d 1 (1976); *Koehler,* 390 So.2d at 713. 'Nor is a decisionmaker disqualified simply because he has taken a position, even in public, on a policy issue related to the dispute, in the absence of a showing that he is not 'capable of judging a particular controversy fairly on the basis of its own circumstances.' *Hortonville,* 426 U.S. at 493, 96 S.Ct. 2308 (quoting *United States v. Morgan,* 313 U.S. 409, 421, 61 S.Ct. 999, 85 L.Ed. 1429 (1941)).
>
> Section 120.665, Florida Statutes (2013), sets the legal parameters for the Board members' participation in the hearing requested by an employee pursuant to section 1012.33(6)(a). That section provides that an individual 'may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding.' § 120.665(1), Fla. Stat. (2013). As the First District has recognized, the 'standards for disqualifying an agency head differ from the standards for disqualifying a judge' "because 'agency heads have significantly different functions and duties than do judges.' *Bay Bank & Trust Co. v. Lewis,* 634 So.2d 672, 679 (Fla. 1st DCA 1994). Under the statute, disqualification is required where 'the facts alleged would prompt a reasonably prudent person to fear that they will not obtain a fair and impartial hearing.' *Charlotte Cnty. v. IMC-Phosphates Co.,* 824 So.2d 298, 300 (Fla. 1st DCA 2002) [27 Fla. L. Weekly D1917d]. Put differently, the 'test for disqualification has been succinctly stated as being whether 'a disinterested observer may conclude that the (agency) has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it.' *Cinderella Career & Finishing Sch., Inc. v. Fed. Trade Comm'n,* 425 F.2d 583, 591 (D.C.Cir. 1970) (quoting *Gilligan, Will & Co. v. SEC,* 267 F.2d 461, 469 (2d Cir. 1959)). Given the 'presumption of honesty and integrity in those serving as adjudicators,' *Koehler,* 390 So.2d at 713 (quoting *Withrow,* 421 U.S. at 47, 95 S.Ct. 1456), the mere appearance of bias that might disqualify a judge will not require disqualification of Board members acting in an adjudicative capacity.

Id. at 1219-20.

The court applied the foregoing standards to the record and found an absence of egregious conduct by the school board amounting to a violation of procedural due process. There was no prejudgment, personal, or pecuniary bias. The court observed:

> The grounds of the motion for recusal, which derived from the employment relationship, were not the extreme conflict of interest that would disable the agency from evaluating the employee's conduct. Similar to any agency's familiarity with matters within its purview, the Board members' personal experience with special needs children did not rise to the level that requires disqualification. Like many elected officials in a public forum, the Board members were inclined to think out loud. School Board procedures did not provide for secret deliberations like a jury in a court of law, and elected officials can be expected to explain their votes to deflect political pushback.

Id. at 1220. Although not a certiorari case, the reasoning of *Seiden* informs the Court's decision in the present case.

Bias claims in the certiorari setting are sometimes litigated in the arena of administrative suspensions of driver's licenses by the Department of Highway Safety and Motor Vehicles ("DHSMV"). Suspension may arise from a motorist's driving with an unlawful alcohol level or for refusal to submit to a breath, blood, or urine lest. If the motorist elects, a formal hearing to review the suspension is held before a hearing officer appointed by DHSMV. A typical bias claim is that a hearing officer acted in the dual role of a prosecutor and judge, violating the motorist's right to a fair and impartial hearing. *See Dep't of Highway Safety and Motor Vehicles v. Clay*, 152 So. 3d 1259, 1260 (Fla. 5th DCA 2014) [40 Fla. L. Weekly D51c] (Cohen, J., concurring specially) ("I write separately to express concern about an apparent fundamental unfairness in these administrative proceedings. The transcripts reflect that at least some hearing officers exhibit a palpable predisposition. This is improper. Whether a proceeding is administrative or judicial, the parties are entitled to an impartial arbiter, and the record in this case—and in many that we see on appeal—does not reflect that. A neutral arbiter is the linchpin of due process and the foundation upon which the system of justice is built.").

Similarly, in *Dep't of Highway Safety and Motor Vehicles v. Griffin*, 909 So. 2d 538 (Fla. 4th DCA 2005) [30 Fla. L. Weekly D2065a] the court on second-tier certiorari review found that the circuit court correctly ruled that a motorist's due process rights were violated where the hearing officer acted as an advocate for DHSMV during a license suspension review hearing. There a sheriff's deputy testified during the hearing that an Intoxilyzer registration certificate he had been subpoenaed to bring to the hearing was not in his possession because he had provided it to the hearing officer's staff at an earlier date. The hearing officer determined the certificate should have been part of the record and announced her intent to look for the document and have it entered on the record. Over objection that she was acting as an advocate for DHSMV, the hearing officer recessed the hearing for approximately ten minutes to locate the document and returned to enter it into the record. The hearing officer denied the motion for disqualification. Although the motorist's counsel was allowed an opportunity to cross-examine the deputy about the certificate, the circuit court and the Fourth District Court of Appeal reasoned the hearing officer's actions demonstrated a departure from her neutral role as magistrate because she afforded DHSMV ah opportunity to correct a defect in the record evidence of her own accord. *Id.* at 542.

Closer to the present case is the opinion of the 15th Judicial Circuit Court in *2600 N Ocean, LLC v. City of Boca Raton*, 28 Fla. L. Weekly Supp. 595a (15th Cir. Ct., September 16, 2020) in which a property owner sought certiorari review of a city council's denial of a variance application to build a residential duplex on undeveloped land seaward of a coastal construction control line. The city council consisted of the mayor and four other councilmembers. Before its presentation at the hearing, the property owner moved to disqualify the mayor and two other councilmembers based on their prior statements showing a bias against oceanfront construction. The mayor had created a campaign video in which he promised he would not approve any oceanfront construction "based on the environmental evidence that exists." While the property owner's application was pending, the two other councilmembers responded to correspondence from city residents about the application. One responded, "I want to reassure you that I have no intention of granting any variances seaward of the Coastal Construction Control Line." The second councilmember wrote, "I promise you I am not in favor of building on this sensitive precious land and will do all I can to prevent this from happening." The mayor and the two councilmembers declined to disqualify themselves and the city council ultimately denied the variance application.[7]

In its review, the circuit court acknowledged that while the due process afforded a party in a quasi-judicial hearing is not the same as that afforded a party in a full judicial hearing, an impartial decision maker is a basic component of minimum due process. The court further recognized that expressions of political bias and adverse political philosophies by a politically elected quasi-judicial officer do not necessarily render the decision maker partial. The court found the mayor's statement in the campaign video permissible because it expressed a general political stance on an issue. By contrast, the statements of the other two councilmembers evidenced impermissible prejudgment of the property owner's application because their comments specifically addressed the application. The circuit court granted the certiorari petition, quashed the city council's decision, and

ruled that the property owner is entitled to another hearing on the variance application without participation of the two disqualified councilmembers.

What emerges from the foregoing case law is a standard for evaluating the level of bias permissible in quasi-judicial proceedings before politically elected boards that is less rigorous, and thus more forgiving, than the standard applicable to hearing officers and judges. All decision makers must present themselves as impartial by not prejudging or advocating for one party over another, but members of politically elected boards acting in a quasi-judicial role have more freedom to express political bias or adverse political philosophies than do hearing officers or judges.

The Court next considers Commissioner Langford's comments in light of the foregoing standards. As a preliminary matter, review of the transcript of the February 22, 2022, hearing does not reveal statements supporting Petitioners' procedural due process claim.[8] As chair of the Board at that time, Commissioner Langford ably ran the meeting, giving Petitioners, County staff, and participating witnesses ample opportunity to present their views on the rezoning application. Commissioner Langford's deliberative comments[9] likewise do not evidence prejudgment or bias against Petitioners or their rezoning application. The Board denied the rezoning application by a vote of 4-1.

During the proceedings of May 23, 2023, the Board considered the recommendations of the Special Magistrate for resolving the land use dispute between Petitioners and the County. After careful review of the transcript of those proceedings the Court finds that certain comments of Commissioner Langford, in the context more fully explained below, show that he prejudged the outcome of the Board's consideration of Petitioners' rezoning application.[10]

The relationship between the February 22, 2022, hearing and the May 23, 2023, hearing is somewhat complicated and provides context for the Court's ruling. The earlier hearing was the Petitioners' opportunity to present their legal argument and evidence in support of their rezoning application, which included Petitioners' description of their operations on the Property and the testimony of the County's Development Director, June Fisher, who stated that she recommended approval of the application, with specified conditions, because it was compliant with both the future land use provisions of the County's comprehensive plan and the County's Land Development code. Several County residents testified in opposition to the rezoning application. After the Board denied the application, Petitioners sought to use the FLUEDRA process to resolve the dispute. The County initially dismissed the FLUEDRA proceeding but this Court compelled its participation after Petitioners filed for mandamus relief.

The FLUEDRA proceedings resulted in the Special Magistrate's recommendations considered by the Board on May 23, 2023. Notably, FLUEDRA simply provides that within 45 days after the governmental entity receives the Special Magistrate's recommendations it shall accept, modify, or reject the recommendations but it does not specify the mechanism—legislative, quasi-judicial, or executive action—for such consideration.[11]

In the present case, the Board treated its task as quasi-judicial in nature.[12] After Development Director Fisher summarized the Special Magistrate's recommendations, Petitioners' new attorney, Michael Whitt, presented Petitioners' position on the recommendations. Mr. Whitt also presented the testimony of Petitioners' planner, Alexis Crespo. Ms. Crespo began her testimony by describing how Petitioners' proposed use of the Property under the Special Magistrate's recommendations would be compatible with both the County's comprehensive plan and neighboring land uses.[13]

Ms. Crespo's testimony then turned to a discussion of why Petitioners' original rezoning application complied with the County's criteria for rezoning even though the Board, through Ordinance 2022-03, found that it did not.[14] As Ms. Crespo began to address the first criterion, County Attorney Donald Conn raised a point of order that the purpose of the proceeding is to determine whether the Board is comfortable with the Special Magistrate's recommendations. Mr. Conn asked that Ms. Crespo not discuss the criteria for rezoning as applied to the Property.[15] Thereafter ensued a debate between Mr. Whitt and Mr. Conn over whether the Borad should permit Ms. Crespo's testimony regarding the rezoning criteria and the Board's earlier denial of Petitioners' application. The Board ultimately allowed Ms. Crespo's testimony.[16]

After Ms. Crespo concluded her testimony, Mr. Whitt sought to question Ms. Fisher. In response, Mr. Conn reminded Chairperson Judy Schaefer of the Board's practice of not permitting applicants or the general public to direct questions to staff. Commissioner Langford intervened with the following exchange:

> COMMISSIONER LANGFORD: I'm just—what—whatever—whatever—I don't mean to go against you [Mr. Conn] by no means. You know I stand behind you a hundred percent and will till the bitter end, but I—just go on and let this—he's building his case. *So let him build his case, and when he gets done, then—then it's my turn.*
>
> MR. CONN: Okay.
>
> COMMISSIONER LANGFORD: All right? Let's get it over with.[17]
>
> (Emphasis added)

Mr. Whitt was permitted to question Ms. Fisher, who testified that the rezoning application under the Special Magistrate's recommendations was consistent with the County's comprehensive plan and Land Development regulations.[18] After eliciting testimony from Petitioner Joy Reardon, Mr. Whitt concluded his presentation with a discussion of the legal standard for competent substantial evidence and why the neighbors' testimony at the February 22, 2022, hearing did not qualify as such.[19] Before closing the hearing, the Board and Petitioners discussed proposed modifications to the Special Magistrate's recommendations.

After the hearing was closed, Chairperson Schaefer inquired whether any Board member wished to discuss anything, drawing the following response from Commissioner Langford:[20]

> COMMISSIONER LANGFORD: I think Mr. Reardon's attorney—I'm sorry, I forgot your name, but I know we got it on the record. But we started out here today putting this all on record just in case it was to hit the brick wall and not go the way that the Reardons wanted it to; so I want to set some things straight for the record myself.
>
> *I've been opposed to this from the beginning*, and I want to give a little background on myself for the record, that I've been a property appraiser. I worked in the Property Appraiser's Office here in Desoto County for eight years. I've been sitting up here at the Board of County Commissioners for four terms. I'm on my fifth term now. And it seems like here lately any time this Board of County Commissioners tells somebody no, we wind up in dispute resolution. And dispute resolution, to me, is—in my opinion, if we're discussing money or something that we can come to terms on, it may be a little different; but when this Board makes a decision, we're elected by the people that I was told today that I'm not to listen to because they're not substantial, competent witnesses. They're just saying hearsay or their thoughts on their minds or whatever, but these are the people that I serve. I'm elected by these people. And when the Board of County Commissioners can't sit up here and make a decision, and every decision we make, if it's not exactly what somebody wants, then we wind up—and we wind up somebody throwing a dispute resolution at us. We've got another one staring us down the eye here probably very shortly.[21] (Emphasis added)

Commissioner Lanford then commented on the history of the Petitioners' rezoning request:

When this come before this Board in 2020 or whenever it was, when the Reardons asked to have a temporary use—and remember the word "temporary." Temporary, that means short-term. Ain't nothing about temporary means long-term unless they've changed the definition of it. So it was a temporary use permit.

The Reardons explained to us that they had just signed a five-year contract. We was going to put them in a bind because they had just signed a five-year contract for this next temporary use that they were asking for. So this Board, instead of just saying no, that's the end of it, that's the end of the deal, we said no, we'll give you till January the 1st to get it figured out. So that was roughly about six months, if I remember right. I may be off. It could have been in August when we heard that. I can't remember exactly, but we give them time to get done what they needed done.

I don't think this Board—if you go back and look on the record, I don't think this Board ever said no but go apply for a zoning change, because *I wouldn't have approved it if they come to us to begin with, and I wouldn't approve it afterward*.[22] (Emphasis added)

Commissioner Langford next denied any animosity, hatred, or dislike of the Petitioners, pointing to the Board's recent approval of Petitioners" development plan for a different property. He then addressed his view on Petitioners' use of the Property compared to the purpose of a temporary use permit:

And I believe—I may be wrong, and I can research this through County staff and back through the public record, but I believe when this temporary use was—was asked for to begin with, it was strictly for outdoor storage of trucks and for poles and other little necessities that they have there. I don't think it was set up to be running a commercial business out of, doing work—which Mr. Reardon does. He worked on those vehicles over there. I'm not sure he changed the oil and all that, but I know that he worked on those vehicles at that site. They built a barn—Mr. Reardon said that they hadn't had a code violation but I think they did on that one, if I remember right.

MS. REARDON: No, we didn't.

COMMISSIONER LANGFORD: No? Okay, she's shaking her head no.

But the barn was built there, and under a temporary use permit it was in agriculture so you can build an ag barn, but you still need to pull a permit. I don't know that a permit was ever pulled for it.

MS. READDON: We did.

COMMISSIONER LANGFORD: And the shell, I'm not sure that—I'm not sure about the shell on that deal neither because a temporary use permit, the way I understand it as a County Commissioner, is when these jobs come available to these high-line guys that do this type of work for a living, they need somewhere to park their stuff. And normally we allow it in an A5 or an A10 area because it's a temporary use. It's not for 10 years; it's not for 15; it's not for 20. *Nor does a temporary use permit blatantly give you the right to automatically be able to apply for a zoning change, and the County Commissioners have to give you that zoning change because they had given you a temporary use permit to put that there.* That's not—that's not what it's for. A temporary use permit is exactly what it says, a temporary use permit for a temporary situation to help somebody or to help the community or to help us get out of a bind, if we're in a bind, or to help somebody like FPL or whoever.[23] (Emphasis added)

In reference to whether the rezoning would constitute a grant of special privilege to an individual owner (Factor 13 listed in Ordinance No. 2022-03), Commissioner Langford stated:

Whether it would—whether the proposed change would constitute a grant of special privilege to an individual owner? Yes, it does, very much so does. He took a piece of ag land, got a temporary use permit on it. *Now he's trying to run it down the County's throat because we didn't approve his—his zoning change. Well, you should because—because I have a temporary use permit there, and we've been doing it there. No, that's not the way it is.*

I know individuals in this town that's had businesses that they got started, that they outgrew the place they're at. The first thing they had to do was had to move and to find a piece of property that was zoned properly and buy it.[24] (Emphasis added)

After the hearing was closed, no other commissioner commented about Petitioners' application or the Special Magistrate's recommendations. By a vote of 3-2, the Board rejected the Special Magistrate's recommendations.

Commissioner Langford's comments show a mixture of permissible political or policy viewpoint (as in *Seiden)* and problematic prejudgment of the rezoning application (as in *IMC-Phosphates Co.* and *2600 N Ocean, LLC*). Although he disfavors the FLUEDRA process as a way of resolving land use issues between local government and property owners, Commissioner Langford is free to hold and express that view. However, his being "opposed to this from the beginning" evidences a predisposition against the rezoning application at least partially based on the expressed belief that Petitioners approached the matter as if they were entitled to the rezone because the County had previously approved a temporary use permit for the use. Because of this prejudgment, Petitioners were not afforded the neutral decision maker required by procedural due process.

In fairness to Commissioner Langford, it appears much of his expressed frustration with FLUEDRA and Petitioners' approach to their use of the Property was prompted by Mr. Whitt's effort to build an appellate record for the February 22, 2022, denial of the rezoning application in addition to his presentation on the Special Magistrate's recommendations. In effect, the May 23, 2023, proceeding was partially treated as if it were a rehearing on Petitioners' rezoning application (it was not). Nevertheless, a statement that a board member has a "turn" to "build a case" once the applicant's counsel is done building his tilts toward advocacy and away from the role of neutral decision maker.

The Court next addresses whether a finding that one member of a multi-member tribunal was not the impartial decision maker required by procedural due process taints the tribunal's decision to the extent that it must be quashed. The County argues that one county commissioner does not decide matters before a full county commission and although one commissioner may be persuasive in expressing his or her views on a matter, each commissioner independently casts a vote. In the present case, Petitioners' rezoning application was denied by a 4-1 vote of the Board.

Petitioners reply that the bias of one member of a quasi-judicial board is sufficient to deprive the complaining party of an impartial decision maker, constituting a denial of procedural due process that voids the decision. Petitioners cite foreign case authority for this proposition.

Once again, this case presents a matter of first impression. The Court's independent research has not revealed any Florida case directly deciding whether the participation of one partial member of a multi-member board voids a quasi-judicial decision of the board. When a question has not been previously decided by a Florida court, the decisions of a court of another state may be considered. *Tonkovich v. South Florida Citrus Industries, Inc.*, 185 So. 2d 710, 715 (Fla. 2d DCA 1966) ("Absent any Florida case directly in (sic) point, we may look elsewhere for persuasive authority").

Courts of other jurisdictions that have addressed this issue have established three remedial approaches when a board member who should have been disqualified participates in a quasi-judicial board decision.[25] First, some cases use a prejudice test, holding that if the decision would have passed without the "disqualified" member's vote, the member's participation and voting will not invalidate the result. If the member's vote is the deciding vote, the result will be

invalidated. A minority of states follow this rule.[26]

A second group of cases invalidates the decision of a board when a member who should have been disqualified participates and votes, regardless of whether the member's vote was the deciding vote. These cases focus on the difficulty of determining the "disqualified" member's influence on other board members and the demeaning effect upon the public's perception of the fairness of board proceedings. A majority of states use this automatic invalidation approach.[27]

A small group of states employ a multi-factor balancing test first articulated by the Alaska Supreme Court in *Griswold v. City of Homer*, 925 P. 2d 1015, 1029 (Alaska 1996):

> Initially the court must determine whether a member with a disqualifying interest cast the decisive vote. If so, the ordinance must be invalidated. *Carney,* 785 P.2d at 549. If the ordinance would have passed without the vote of the conflicted member, the court should examine the following three factors: (1) whether the member disclosed the interest or the other council members were fully aware of it; (2) the extent of the member's participation in the decision; and (3) the magnitude of the member's interest. The first two factors squarely bear on the accuracy of the council's decision. All three factors directly relate to any appearance of impropriety.
>
> If the interest is undisclosed, the ordinance will generally be invalid; it can stand only if the magnitude of the member's interest, and the extent of his or her participation, are minimal. If the interest is disclosed, the ordinance will be valid unless the member's interest and participation are so great as to create an intolerable appearance of impropriety.

This balancing approach was adopted by Colorado and Idaho in *Sohocki v. Colorado Air Quality Control Commission*, 12 P. 3d 274, 279 (Colo. App. 1999) and *Floyd v. Board of Commissioners of Bonneville County*, 52 P. 3d 863, 871 (Idaho 2002).

Federal courts that have considered the legal effect of the participation of one "disqualified" member of a multi-member adjudicatory panel uniformly hold to the automatic invalidation rule.[28] In *Williams v. Pennsylvania*, 136 S.Ct. 1899 (2016) [26 Fla. L. Weekly Fed. S224a], the Supreme Court concluded that Pennsylvania Supreme Court Chief Justice Ronald Castille should have recused himself from participating in a capital appeal after previously authorizing prosecutors to seek the death penalty against the petitioner while serving as District Attorney. The Pennsylvania Supreme Court's decision was a 6-0 unanimous dismissal, so Castille's vote was not dispositive. The *Williams* majority had "little trouble" concluding that Castille's participation was "a structural error even if the judge in question did not cast a deciding vote." *Id.* at 1909. The court cited two principles for its ruling. First, because judicial deliberations are generally confidential, inquiring as to whether a conflicted judge affected a panel (and if so, to what degree) is neither practical nor productive. Second, "[b]oth the appearance and reality of impartial justice are necessary to the public legitimacy" of the court's work and the rule of law. *Id.* The court reasoned that

> [t]he fact that the interested judge's vote was not dispositive may mean only that the judge was successful in persuading most members of the court to accept his or her position. That outcome does not lessen the unfairness to the affected party. (citation omitted)
>
> A multimember court must not have its guarantee of neutrality undermined, for the appearance of bias demeans the reputation and integrity not just of one jurist, but of the larger institution of which he or she is a part. An insistence on the appearance of neutrality is not some artificial attempt to mask imperfection in the judicial process, but rather an essential means of ensuring the reality of a fair adjudication. Both the appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself. When the objective risk of actual bias on the part of a judge rises to an unconstitutional level, the failure to recuse cannot be deemed harmless.

Id. at 1909. Although *Williams* involves a conflicted judge, the principles expressed inform a court's review of a claim that one member of a quasi-judicial board was biased against a party. *See ExxonMobil Research & Engineering Company v. NLRB*, 132 F. 4th at 348 (*Williams* principles applied to NLRB proceedings); *Pascal v. City of Pittsburgh Board of Adjustment*, 259 A. 3d at 392-94 (*Williams* principles applied to zoning board of adjustment) (Wecht, J., concurring).

Of these three approaches, the Court finds the balancing test is the least suited to certiorari review of a quasi-judicial board's determination. If the "disqualified" member is not the decisive vote, this approach requires a factual inquiry into the degree of influence exerted upon other board members by that member. The necessary discovery for this post-hearing inquiry is not available in the certiorari setting.

The prejudice test has the advantage of being easy to administer since it simply involves counting votes of a board to determine whether a "disqualified" member's vote was decisive or harmless. This approach, however, totally discounts any role of the member in influencing the deliberation and votes of the other board members. This seems contrary to human experience. As noted in *Williams*, the fact that the member's vote was not dispositive may only mean that the member was successful in persuading most members to accept his or her position. Further, this approach places little importance on the policy of promoting public confidence in the fairness of quai-judicial board proceedings.

The automatic invalidation test favored by the federal courts and the majority of states to address the issue, while also easy to administer, has the potential of thwarting board decisions which in fact are not the result of influence by a "disqualified" board member. This approach, however, is the strongest in upholding the policy of promoting the public's confidence in the fairness of quasi-judicial board proceedings.

Upon careful consideration of the foregoing approaches, the Court adopts the rule of automatic invalidation when a "disqualified" member of a multi-member board participates and votes in a quasi-judicial proceeding. The Court finds persuasive the Supreme Court's reasoning in *Williams* and the other cited federal cases emphasizing the preeminence of promoting public confidence in the fairness of judicial and quasi-judicial proceedings over other considerations, such as how to measure the influence of one board member upon the others or the risk of thwarting board decisions which in fact are not the result of the member's influence.

In the present case, Petitioners' rezoning application was denied by a 4-1 vote, with Commissioner Langford voting for denial. Having prejudged against approval of the application, his participation and vote under the automatic invalidation rule invalidates the Board's decision. Because Petitioners were not afforded procedural due process in the form of an impartial decision maker, the Court does not address their competent substantial evidence claim. The petition for writ of certiorari is **GRANTED** and Desoto County Ordinance No. 2022-03 is **QUASHED**. Petitioners are entitled to a new hearing on their rezoning application without the participation of Commissioner Langford.

---

[1]*See* Ordinance No. 2002-03 at Appendix p. 301. By order rendered April 10, 2024, the Court determined that the petition for writ of certiorari was timely filed.

[2]Petition for certiorari, p. 20.

[3]Seminole Entertainment did not ultimately prevail on this procedural due process claim because it was raised on second-tier certiorari review before the Fifth District Court of Appeal rather than on first-tier certiorari review before the circuit court. *See Seminole Entertainment, Inc. v. City of Casselberry*, 813 So. 2d 186 (Fla. 5th DCA 2002) [27 Fla. L. Weekly D682a] (*Rachel's II*).

[4]The complete transcript of the May 23, 2023, hearing is at Appendix pp. 546-647.

[5]In Florida, the school board is an "agency" for purposes of the Administrative Act, chapter 120, Florida Statues. *Seiden v. Adams*, 150 So. 3d at 1218. Although *Seiden* is an appeal from agency action rather than a certiorari proceeding, its discussion of procedural due process principles is applicable to the present case.

[6]Although the court held the teacher failed to preserve for appellate review the bias issue based on school board member comments, it nevertheless found the comments were not the type of egregious conduct identified by courts as requiring recusal. *Seiden v. Adams*, 150 So. 3d at 1220.

[7]The opinion does not disclose the number of votes for or against the application.

[8]The complete transcript of the February 22, 2022, hearing is at Appendix pp. 308-385.

[9]*See* Appendix pp. 378-383.

[10]The complete transcript of the May 23, 2023, proceeding is at Appendix pp. 546-647.

[11]*See* § 70.51(21), Fla. Stat.

[12]*See* Appendix pp. 549-51.

[13]*See* Appendix, pp. 566-72.

[14]Ordinance No. 2022-03 found Petitioners' application did not comply with nine of fifteen criterion for rezoning approval established by Section 20-1498, Desoto County Code of Ordinances. *See* Appendix, pp. 302-03.

[15]*See* Appendix, pp. 572-73.

[16]*See* Appendix, pp. 573-78.

[17]*See* Appendix, p. 586.

[18]*See* Appendix, pp. 587-88.

[19]*See* Appendix, pp. 596-601.

[20]Commissioner Langford's comments span from page 634 to 643 of the Appendix.

[21]*See* Appendix, pp. 634-35.

[22]*See* Appendix, pp. 636-37.

[23]*See* Appendix, pp. 637-39.

[24]*See* Appendix, pp. 640-41.

[25]Many of the foreign cases involve a board member with a disqualifying conflict of interest, either disclosed or undisclosed, who participates in a quasi-judicial determination of the board. In the present case, Commissioner Langford had no conflict of interest, and the discussion of such cases does not imply otherwise. Nonetheless, the rationale of these cases informs the Court's decision.

[26]**Connecticut:** *Murach v. Planning and Zoning Commission of City of New London*, 491 A. 2d 1058 (Conn. 1985).
Hawaii: *Waikiki Resort Hotel, Inc. v. City and County of Honolulu*, 624 P. 2d 1353 (1981) (collecting cases).
Idaho: *Floyd v. Board of Commissioners of Bonneville County*, 52 P. 3d 863 (2002) and *Eacret v. Bonner County*, 86 P. 3d 494 (2004).
Kansas: *Anderson v. City of Parsons*, 496 P. 2d 1333 (1972).
Minnesota: *Singewald v. Minneapolis Gas Company*, 142 N.W. 2d 739 (1966).
Mississippi: *Friedhof v. City of Biloxi*, 97 So. 2d 742 (1957).
North Dakota: *Klindt v. Pembina County Water Resource Board*, 697 N.W. 2d 339 (N.D. 2005).
Sluth Dakota: *In re Conditional User Permit No. 13-08*, 835 N.W. 2d 836 (S.D. 2014).

[27]**California:** *Petrovich Development Company, LLC v. City of Sacramento* (2020) 48 Cal. App. 5th 963.
Delaware: *Sullivan v. Mayor of Town of Elsmere*, 23 A. 3d 128 (Del. 2011).
Illinois: *Danko v. City of Harvey Pension Bd.*, 608 N.E. 2d 333 (Ill. App. 1 Dist. 1992).
Indiana: *In re Change to Established Water Level of Lake of the Woods in Marshall County*, 822 N.E. 2d 1032 (Ind. Ct. App. 2005).
Iowa: *Wilson v. Iowa City*, 165 N.W. 2d 813 (1969).
Missouri: *state ex rel. Brown v. City of Ofallon*, 728 S.W. 2d 595 (Mo. App. 1987).
New Hampshire: *Appeal of City of Keene*, 693 A. 2d 412 (N.H. 1997).
New Jersey: *Wyzykowski v. Rizas*, 626 A. 2d 406 (1993).
New York: *1616 Second Avenue Restaurant, Inc. v. New York State Liquor Authority*, 550 N.E. 2d 910 (N.Y. App. 1990).
Oregon: *Boughan v. Board of Engineering Examiners*, 611 P. 2d 670 (Ore. App. 1980).
Pennsylvania: *Pascal v. City of Pittsburgh Zoning Board of Adjustment*, 259 A. 3d 375 (Pa. 2021).
Rhode Island: *Barbara Realty Company v. Zoning Board of Review of the City of Cranston*, 128 A. 2d 342 (R.I. 1957).
Washington: *Buell v. City of Bremerton*, 495 P. 2d 1358 (1972).
Wisconsin: *Marris v. City of Cedarburg*, 498 N.W. 2d 842 (1993).

[28]*See ExxonMobil Research & Engineering Company v. NLRB*, 132 F. 4th 337 (5th Cir. 2025) (NLRB was well within its discretion to vacate its prior decision due to participation of NLRB member with a disqualifying financial conflict of interest and rehear unfair labor practices case with newly construed panel, even though member was not dispositive to forming a majority opinion; decision to vacate promoted public confidence in NLRB's ability to issue decisions that are not tainted by ethical or financial conflicts); *Stivers v. Pierce*, 71 F. 3d 732 (9th Cir. 1995) (where one member of a tribunal is actually biased or circumstances create appearance that one member is biased, the proceedings violate due process; plaintiff need not demonstrate that biased member's vote was decisive or that his views influenced those of other members); *Hicks v. City of Watonga, Oklahoma*, 942 F. 2d 737 (10th Cir. 1991) (Even if only single member of tribunal which discharged public employee was biased against him, employee may still have valid due process claim if tribunal member was biased at time of casting dismissal vote; presence of single biased member taints entire tribunal and affects employee's due process right); *Antoniu v. SEC,* 877 F.2d 721 (8th Cir. 1989), *cert. denied,* 110 S.Ct. 1296 (1990) (due process violated when commissioner who had made statements indicating prejudgment of case participated in SEC proceedings against securities violator); " 'Litigants are entitled to an impartial tribunal whether it consists of one man or twenty and there is no way which we know of whereby the influence of one upon the others can be quantitatively measured.' " *Cinderella Career and Finishing Schools, Inc. v. F.T.C.,* 425 F.2d 583, 592 (D.C.Cir. 1970) (quoting *Berkshire Employees Ass'n of Berkshire Knitting Mills v. NLRB,* 121 F.2d 235, 239 (3d Cir. 1941)).

* * *

Municipal corporations—Code enforcement—Noise ordinance—Fines—Special magistrate's order imposing two $5,000 fines for noise violations occurring within single day exceeded $5,000 per day per violation fine limit for repeat violations allowed by section 162.09(2)(d)

BLUE MARTINI BOCA, LLC, Appellant, v. CITY OF BOCA RATON, Appellee. Circuit Court, 15th Judicial Circuit (Appellate) in and for Palm Beach County, Division Civil AY. Case No. 50-2018-CA-003563-XXXX-MB. April 16, 2019. Appeal from the Order of Harry Hipler, Special Magistrate of the City of Boca Raton. Counsel: Scott J. Topolski, Boca Raton, for Appellant. Christopher R. Fernandez and Thomas J. Collery, Boca Raton, for Appellee.

(PER CURIAM.) Appellant, Blue Martini Boca, LLC ("Blue Martini"), appeals an "Order Imposing Fine Repeat Violation" ("Order") by a special magistrate of the City of Boca Raton, Florida, issued on February 21, 2018. In the Order, the special magistrate found in favor of the City of Boca Raton ("the City"), imposing $45,000.00 in fines against Blue Martini as a repeat violator of section 10-55 of the City Code, which prohibits "excessive or unusually loud" noise. On appeal, Blue Martini asserts the special magistrate misapplied the law, and that the special magistrate's Order is not based on competent, substantial evidence. We disagree with Blue Martini's argument with respect to eight of the nine fines imposed in the Order, and affirm the special magistrate's Order as to those fines without further comment. However, we find that one of the nine fines the special magistrate assessed against Blue Martini as a repeat violator of section 10-55 of the City Code constitutes a departure from the essential requirements of the law.[1]

Upon review of an administrative action, the circuit court is limited to a three-pronged determination: (1) "whether procedural due process is accorded," (2) "whether the essential requirements of the law have been observed," and (3) "whether the administrative findings and judgment are supported by competent substantial evidence." *City of Deerfield Beach v. Vaillant,* 419 So. 2d 624, 626 (Fla. 1982). As Blue Martini made no procedural due process argument, we focus solely on whether the special magistrate observed the essential requirements of the law in his Order, and, if so, whether the Order imposing fines for repeat violations was based on competent, substantial evidence.

"Failure to observe the essential requirements of law means failure to accord due process of law within the contemplation of the Constitution, or the commission of an error so fundamental in character as to fatally infect the judgment and render it void." *Haines City Cmty. Dev. v. Heggs,* 658 So. 2d 523, 527 (Fla. 1995) [20 Fla. L. Weekly S318a] (internal citations and quotations omitted). "A departure from the essential requirements of law is synonymous with the failure to apply the correct law." *United Auto. Ins. Co. v. Peter F. Merkle, M.D., P.A.,* 32 So. 3d 159, 161 (Fla. 4th DCA 2010) [35 Fla. L. Weekly D620a] (citing *State v. Belvin,* 986 So. 2d 516, 525 (Fla. 2008) [33 Fla. L. Weekly S279a]).

Under section 162.09, Florida Statutes, the fines imposed by a special magistrate cannot exceed "$5,000.00 per day per violation for

a repeat violation." § 162.09(2)(d), Fla. Stat. (2018). Here, the special magistrate imposed two $5,000.00 fines for repeat violations that took place on January 17, 2018; one at approximately 10:00 p.m., and the other at approximately 11:10 p.m. Because the special magistrate exceeded the $5,000.00 statutory daily maximum for repeat violators, we find the special magistrate departed from the essential requirements of the law by imposing a second $5,000.00 fine for this date.

Accordingly, we **AFFIRM** the special magistrate's "Order Imposing Fine Repeat Violation" with respect to eight (8) of the nine (9) fines. However, because we find the second $5,000.00 fine assessed for January 17, 2018, exceeded the statutory daily maximum contained in section 162.09(2)(d), Florida Statutes, we find the special magistrate departed from the essential requirements of the law with respect to the imposition of that fine. We therefore **REVERSE** the special magistrate's second $5,000.00 fine imposed for January 17, 2018, leaving Blue Martini with a total amount of $40,000.00 in fines. (SMALL, GOODMAN, and J. KEYSER, JJ., concur.)

---

[1]Although Blue Martini does not directly argue that the $10,000.00 total fine amount assessed for violations that took place on January 17, 2018 exceeds the daily maximum allowed by law, we find such an argument intertwined with Blue Martini's position that the special magistrate departed from the essential requirements of law, and therefore find the issue sufficiently raised for our review.

* * *

Volume 33, Number 11
March 31, 2026
Cite as 33 Fla. L. Weekly Supp. ____

CIRCUIT COURTS—ORIGINAL

Torts—Personal injury—Damages—Past medical expenses—On reconsideration, trial court acknowledges that it erred in entering directed verdict in favor of defendants on issue of whether plaintiff provided sufficient proof of past medical expenses—Plaintiff met his burden on past expenses by entering medical bills into evidence and associating bills with treatment of medical providers that testified to his relevant injuries—Determining whether bills were reasonable and necessary was domain of jury, which determined that they were—Defendants' motion for new trial is denied—Court has now determined that bills were properly submitted to jury, and argument that medical bills may have tainted jury's decision on amount of other damages fails—No merit to argument that new trial is required because plaintiff presented a deposition testimony of expert at trial from discovery deposition, rather than from a second deposition that was somehow specially designated as a " trial deposition"—Argument that new trial is warranted because plaintiff's counsel did not accurately recount juror's answers during *Melbourne* colloquy on race-neutral reason for peremptory strike fails where defendants did not object on that basis at time of colloquy—No merit to argument that defendants were prejudiced by jury panel member's extremely short, unsolicited comment on increase in insurance rates during jury selection process

ROOSEVELT TRAVIS, JR., Plaintiff, v. ACME BARRICADES L.C., et al., Defendants. Circuit Court, 2nd Judicial Circuit in and for Gadsden County. Case No. 23-CA-275. November 19, 2025. David Frank, Judge. Counsel: Hubert Brown, Brown and Brown Attorneys at Law, P.A., Tallahassee, for Plaintiff. Scott Shelton, Cole, Scott & Kissane, P.A., Orlando, for Defendants.

ORDER GRANTING PLAINTIFF'S MOTION TO RESTORE AWARD FOR PAST MEDICAL EXPENSES AND DENYING DEFENDANT'S MOTION FOR NEW TRIAL

This cause came before the Court for hearing on November 13, 2025 on plaintiff's motion to restore award for past medical expenses (for reconsideration / rehearing of directed verdict) and defendant's motion for new trial, and the Court having reviewed the motions with trial transcript exhibits, responses to the motions, and separately filed transcript volumes, heard argument of counsel, and being otherwise fully advised in the premises, finds

The Court has a solid recollection of this trial. In addition to considering the exhibits submitted by and arguments of the parties, the Court is relying upon its own personal observations and judgment of the credibility of witnesses and the weight of their testimony.

I. Defendant's Motion for Directed Verdict on Plaintiff's Past Medical Expenses

At the close of plaintiff's case at trial, the defendants moved for directed verdict regarding past medical expenses. Although there was some confusion over exhibits and the stipulations as to authenticity, etc., that had to be sorted out, the disputed issue was whether the plaintiff had presented enough evidence on the necessity and reasonableness of the medical expenses to go to the jury. Court found that the evidence was sufficient to go to the jury and denied the motion. Past medical bills were eventually admitted into evidence and sent back with the jury for consideration. At the close of defendant's case, defendant again moved for directed verdict on past medical expenses. The Court considered the additional argument provided by the parties and reserved on its ruling. After the verdict was returned, the Court issued its ruling on the reserved motion granting directed verdict on past medical expenses, which were subtracted from the dollar amount of the verdict.

After considering the detailed and comprehensive arguments presented at the hearing, the Court now agrees with plaintiff that the Court's initial ruling was the correct ruling, that defendant's motion for directed verdict on past medical expenses should be denied.

A very recent case that the Court did not consider initially, *Young v. Panera, LLC*, No. 8:22-CV-2894-MSS-CPT, 2025 WL 2410615, at 3-4 (M.D. Fla. Aug. 20, 2025), is very instructive on this issue. The *Young* court provided the following analysis:

> Relevant to several of Plaintiffs' arguments is what Florida law requires a personal injury plaintiff to prove to establish the reasonableness of his or her medical expenses. In Florida, a plaintiff may recover the reasonable value of his medical expenses resulting from a defendant's negligence. Thus, in a personal injury lawsuit, the plaintiff has the burden to prove the reasonableness and necessity of medical expenses. The plaintiff may achieve this through expert witness testimony, his or her own lay testimony, or a combination of both. To establish a prima facie claim for the recovery of past medical expenses, a plaintiff must establish that he incurred medical expenses, that the incurrence of these medical expenses was necessary, and that the particular medical expenses claimed were reasonably related to injuries related to the subject accident.
>
> Although Florida requires "something more" than evidence of the amount of a medical bill to prove reasonableness, the "something more" is not evidence that justifie[s] the amount expended but rather evidence that tie[s] the incurrence of the expense to the subject accident. In Roman, the defendant argued that the plaintiff did not fully establish the reasonableness of the medical expenses because he failed to provide specific evidence of the reasonableness of the dollar amounts charged by the various medical providers. The Florida Second District Court of Appeal rejected this argument. Testimony from the plaintiff and his treating physicians along with [a] medical bill summary established that [the plaintiff] incurred damages he was responsible to repay and that the expenses were for necessary treatment for injuries reasonably related to the instant accident. Accordingly, the district court concluded the plaintiff presented prima facie evidence of the damages element of his negligence claim.
>
> Likewise, in *Walerowicz*, the Florida Fourth District Court of Appeal concluded that the plaintiff's testimony, the testimony of one of her treating doctors, and the introduction of her medical bills linked the medical treatments she received to the injury resulting from the defendant's negligence. This evidence was sufficient to establish the reasonableness and necessity of the medical expenses. Thus, the evidence was sufficient for the plaintiff to survive the defendant's motion for a directed verdict and post-trial motions for a new trial and for judgment as a matter of law.
>
> Panera contends that Plaintiffs may only recover damages for past medical expenses if those expenses are reasonable in amount. However, the Plaintiffs' burden to prove the reasonableness and necessity of the medical bills does not require proof of the reasonableness of the dollar amount charged.

Young at 3-4.; see also *Roman v. Sos*, 393 So.3d 1263, 1267 (Fla. 2d DCA 2024) [49 Fla. L. Weekly D1852a], citing *Walerowicz v. Armand-Hosang*, 248 So.3d 140, 145 (Fla. 4th DCA 2018) [43 Fla. L. Weekly D1165a], which the Court relied upon for its initial ruling.

Similarly, the present plaintiff met his burden by entering the medical bills into evidence and associating the bills with the treatment of the various medical professionals that addressed the relevant injuries, through the testimony of those providers along with the plaintiff's testimony. *See* discussion and citations to the transcript in plaintiff's brief.

Deciding whether the medical bills were reasonable and necessary was the domain of the jury. The defendants were given ample opportunity to cross-examine and impeach plaintiff's witnesses, to

bring their own witnesses, and to argue on closing, as it did, that they were not sufficient.

II. Defendant's Motion for New Trial

As our Supreme Court advised, when considering a motion for new trial:

> A jury's verdict should not be lightly set aside. Our constitution says that the right of trial by jury must remain inviolate. It has long been well settled in this jurisdiction that where the jury has been properly instructed by the Court and the evidence is conflicting, and the case is one in which a jury of reasonable men could have found the verdict rendered on the evidence submitted to them, a new trial should not be granted. While the legal effect of the evidence is a question of law for the court, the jury is the trier of the facts, and conflicts in the evidence are for the jury to decide. The power of the trial court to grant a motion for new trial should be exercised cautiously, and only after a careful consideration of all the evidence in its most favorable aspect to the party in whose favor the verdict was rendered. *Wolkowsky v. Goodkind*, 153 Fla. 267, 14 So. 2d 398, 402 (1943).

Hernandez v. Mishali, 319 So.3d 753, 759 (Fla. 3d DCA 2021) [46 Fla. L. Weekly D1016b].

"The deference the law grants a trial court granting a motion for new trial based on the manifest weight of the evidence does not, however, grant it a license to operate 'as a super-juror by disregarding a jury's verdict simply because the judge would have rendered a different one had it been the judge's choice to make.' " *Valenty v. Saraiva*, No. 2D18-4002, 2020 WL 1162454, at *3 (Fla. 2d DCA Mar. 11, 2020) [45 Fla. L. Weekly D563a].

"Thus, a trial court should grant a new trial 'if the jury has been deceived as to the force and credibility of the evidence or has been influenced by considerations outside the record.' 'In making this decision, the trial judge must necessarily consider the credibility of the witnesses along with the weight of all of the other evidence.' 'Not every verdict which raises a judicial eyebrow should shock the judicial conscience.' " *Hashmi-Alikhan v. Staples*, 241 So.3d 264 (Fla. 5th DCA 2018) [43 Fla. L. Weekly D685a] (citations omitted).

A. The Jury's Verdict Was Tainted by Consideration of Past Medical Expenses

Defendants first contend that a new trial should be granted because medical bills that never should have been considered by the jury were admitted into evidence and went back with the jury for consideration. The argument is that such high dollar medical bills would certainly and improperly influence the jurors' decision on the other categories of damages such as past and future pain and suffering.

However, the Court has now ruled that the medical bills were properly submitted to and considered by the jury, so this argument fails.

B. Discovery Versus Trial Depositions

Defendants' next argument needs little attention as it is wholly without merit. Defendants contend that a party may not present the deposition testimony of an expert at trial, subject to valid objections, unless the expert was "unavailable" and the deposition was a second deposition, somehow specially designated a "trial deposition," taken subsequent to the "discovery deposition."

Although parties may take the time and expense to conduct a second "trial deposition" to fine tune an expert's testimony for trial, it has never been required by any authority whatsoever. Every day, all across this state, parties take the "discovery deposition" of their opponent's expert, or even their own, and then designate portions of the deposition to be played or read at trial, subject to valid objections. Notices of depositions, again, every day, across this state, always say, as they did here, that they will be used for trial and other purposes. *But they do not have to do so*. Let's look at the rules:

> RULE 1.330. USE OF DEPOSITIONS IN COURT PROCEEDINGS
>
> (a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice of it so far as admissible under the rules of evidence applied as though the witness were then present and testifying in accordance with any of the following provisions:
>
> . . .
>
> (3) ***The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:*** (A) that the witness is dead; (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; ***or (F) the witness is an expert or skilled witness.***
>
> RULE 1.390. DEPOSITIONS OF EXPERT WITNESSES
>
> (b) Procedure. The testimony of an expert or skilled witness may be taken at any time before the trial in accordance with the rules for taking depositions and may be used at trial, regardless of the place of residence of the witness or whether the witness is within the distance prescribed by rule 1.330(a)(3). **No special form of notice need be given that the deposition will be used for trial**.

The case cited by defendants, *Friedman v. Friedman*, 764 So.2d 754 (Fla. 2d DCA 2000) [25 Fla. L. Weekly D1641a], is strikingly distinguishable. "There, the trial court had admitted the deposition of a non-party witness as substantive evidence pursuant to Rule 1.330(a)(1), even though the witness's unavailability had apparently not been proven, because it found the deposition was permitted under the evidence code as "former testimony" under section 90.803(22), even though it was taken as a discovery deposition in the same proceeding." *Castaneda ex rel. Cardona v. Redlands Christian Migrant Ass'n, Inc.*, 884 So.2d 1087, 1092 (Fla. 4th DCA 2004) [29 Fla. L. Weekly D2346a]

C. An Improper Peremptory Strike

Defendants' third argument also needs little attention and is without merit. Defendants contend that a party explaining a race neutral reason for a peremptory strike as part of the *Melbourne* colloquy must accurately recount the juror's answers. That is true. However, to use this alleged defect, the party challenging the strike *must object on that basis at the time of the colloquy*:

> The same is true in the context of preservation of Melbourne claims. It is the objecting party's obligation to place the trial court on notice of the basis for the challenge and create a record supporting that objection. *Dorsey v. State*, 868 So. 2d 1192, 1197 (Fla. 2003) [28 Fla. L. Weekly S858a]; *Rimmer v. State*, 825 So. 2d 304, 320-21 (Fla. 2002) [27 Fla. L. Weekly S633a]. Indeed, in *Floyd v. State*, 569 So. 2d 1225, 1229 (Fla. 1990) (emphasis added), we held that "[i]f the explanation is challenged by opposing counsel," the strike opponent "must place the court on notice" to preserve a claim of racial discrimination for appellate review. We stated:
>
> It is the state's obligation [as the proponent of the strike] to advance a facially race-neutral reason that is supported in the record. If the explanation is challenged by opposing counsel, the trial court must review the record to establish record support for the reason advanced. ***However, when the state asserts a fact as existing in the record, the trial court cannot be faulted for assuming it is so when defense counsel is silent and the assertion remains unchallenged.***

Once the state has proffered a facially race-neutral reason, a defendant must place the court on notice that he or she contests the factual existence of the reason. *Id*. (emphasis added).

State v. Johnson, 295 So. 3d 710, 714 (Fla. 2020) [45 Fla. L. Weekly S161a] (emphasis added).

Defendants never really established that plaintiff's counsel's recitation of the juror's answers were so factually incorrect (by a review of the record) that it eviscerated the proffered reason. But even if they had, "defense counsel [was] silent and the assertion remain[ed] unchallenged."

D. The Discussion of Insurance During Jury Selection Prejudiced Defendants

Finally, defendants' last argument also requires little attention. Defendants contend that the unprovoked, short discussion of insurance rates during jury selection "unfairly prejudiced [defendant] ACME."

Not so. The comment came from a panel member without any solicitation or provocation by plaintiff's counsel. The concern the panel member expressed centered on the possibility of insurance rates increasing. There was no discussion of defendant ACME's liability insurance; whether it existed or didn't, or the amount. And the whole discussion was extremely short and handled well by plaintiff's counsel who had a right to follow up.

Accordingly, it is ORDERED and ADJUDGED that

1. Plaintiff's motion for reconsideration of the Court's ruling on defendants' motion for directed verdict on medical expenses is GRANTED. That motion for directed verdict is DENIED. Plaintiff will promptly submit an amended final judgment that reflects the medical expenses awarded by the jury.

2. Defendants' motion for new trial is DENIED for the reasons stated above.

* * *

Criminal law—Prisoners—Habeas corpus ad prosequendum—Petition for writ of habeas corpus ad prosequendum to compel state to transport petitioning inmate from correctional facility to county jail where he would be available for proceedings to resolve pending criminal charge and to transport him back to correctional facility is granted—Discussion of continuing viability and use of writ

KENNETH WAYNE TAYLOR, DC # 899177, Petitioner, v. STATE OF FLORIDA, Respondent. Circuit Court, 2nd Judicial Circuit in and for Liberty County. Case No. 2026 CA 1. January 16, 2026. David Frank, Judge. Counsel: Kenneth W. Taylor, Pro se, Petitioner. Second Judicial Circuit State Attorney, Tallahassee, for Respondent.

ORDER GRANTING AND TRANSFERRING PETITION

THIS CAUSE comes before the Court on petitioner's "Petition for Writ of Habeas Corpus Ad Prosequendum," filed on January 9, 2026. Petitioner seeks to compel the respondent to transport him from the Graceville Correctional Facility to Liberty County where he would be incarcerated in county jail to be available for proceedings to resolve a criminal charge for violation of community control allegedly pending there and then transported back.

The origins of the great writ of habeas corpus go back to British common law and the signing of the Magna Carta in England in 1215, which guaranteed freedom from unlawful imprisonment.[1] It was secured as a right by both the United States Constitution and the Florida Constitution.[2]

"The writ of habeas corpus is a high prerogative writ of ancient origin designed to obtain immediate relief from unlawful imprisonment without sufficient legal reasons. Essentially, it is a writ of inquiry and is issued to test the reasons or grounds of restraint and detention. The writ is venerated by all free and liberty loving people and recognized as a fundamental guaranty and protection of their right of liberty. The great writ has its origins in antiquity and its parameters have been shaped by suffering and deprivation. It is more than a privilege with which free men are endowed by constitutional mandate; it is a writ of ancient right. [H]istorically, habeas corpus is a high prerogative writ. It is as old as the common law itself and is an integral part of our own democratic process." *Henry v. Santana*, 62 So.3d 1122, 1127 (Fla. 2011) [36 Fla. L. Weekly S191a], citing *Santana v. Henry*, 12 So.3d 843, 844-45 (Fla. 1st DCA 2009) [34 Fla. L. Weekly D1098a] (citations omitted).

Writs of habeas corpus ad prosequendum have a more specific purpose and procedure, although they, ". . .similarly guard against indefinite detention, as they provide a framework for ensuring comity between dueling prosecuting authorities. See *Carbo v. United States*, 364 U.S. 611, 621, 81 S.Ct. 338, 5 L.Ed.2d 329 (1961)." *Hernandez v. State*, 420 So.3d 1138, 1140-41 (Fla. 3d DCA 2025) [50 Fla. L. Weekly D2153b]. "Habeas corpus ad prosequendum is '[a] writ used in criminal cases to bring before a court a prisoner to be tried on charges other than those for which the prisoner is currently being confined.' Habeas Corpus, Black's Law Dictionary (12th ed. 2024). In Florida, the writ appears to be most commonly issued by a Florida court to a warden of a federal penitentiary to cause a defendant to be brought before, and to face state charges pending in the issuing court. See, e.g., *Hoskins v. State*, 221 So. 2d 447, 448-49 (Fla. 1st DCA 1969). If the writ is honored, the prisoner is "loaned" from the jurisdiction where the prisoner is being held to the jurisdiction where the prisoner faces pending charges." *Hernandez*, 420 So.3d at 1139. The writ would cause only a temporary physical transfer of a petitioner and not his or her release.

There is no express, specific federal or Florida constitutional provision pertaining to writs of habeas corpus ad prosequendum. Some have argued, ". . .that the writ of habeas corpus ad prosequendum long ago fell into disuse, and has been replaced by an alias capias warrant or a bench warrant as the appropriate process to bring a person to court. See *State ex rel. Deeb v. Fabisinski*, 111 Fla. 454, 152 So. 207, 210 (1933)." *Hernandez*, 420 So.3d at 1139.

It is fair to say that they have "fallen into disuse," given the role of today's capias and bench warrant, but the argument that they have been abolished has not stood the test of time. The *Hernandez* court held, "We find no indication in the law, however, that the writ has been abolished, so as to prevent the State from applying for one or the County Court from issuing one. We decline Petitioner's invitation to determine in this case that the writ has been abolished in Florida. See, e.g., *State v. Gazda*, 257 So. 2d 242, 243 (Fla. 1971); see also *Peralta-Mejia v. State*, No. 3D25-1719, 420 So.3d 1092 (Fla. 3d DCA Sept. 18, 2025) [50 Fla. L. Weekly D2077b] (denying defendant's petition for writ of prohibition seeking to prohibit the circuit court from entering a writ of habeas corpus ad prosequendum)." *Hernandez* 420 So.3d at 1140; *see also Hoskins v. State*, 221 So.2d 447 (Fla. 1st DCA 1969) and *Wainwright v. Gillis*, 166 So.2d 770, 771 (Fla. 1st DCA 1964).

Also, as the *Hernandez* court reminded us, ". . .section 900.03(2) [Florida Statutes] [provides] the necessary authorization for [trial courts] . . . to issue a writ of habeas corpus ad pro sequendum.[3] *Hernandez*, 420 So.3d at 1140.

However, not having been abolished does not mean that the writ is appropriate here. First, it is the prosecuting entity that files a petition for the writ, not the accused. *Peralta-Mejia v. State*, 420 So.3d 1092, 1094 (Fla. 3d DCA 2025) [50 Fla. L. Weekly D2077b] (the State of Florida filed a petition for writ of habeas corpus ad prosequendum in the circuit court); *State v. Gazda*, 257 So.2d 242, 243 (Fla. 1971) (the State petitioned for and obtained a Writ of Habeas Corpus Ad Prosequendum in order to have respondent returned from the federal prison).

There is a related procedure, ". . .that one who is held in custody by another sovereign and who is also accused of a crime in this state, as a result of which a detainer warrant has been lodged against the accused, has the constitutional right to demand that Florida initiate the procedure available to it to secure the return of the accused here for a speedy trial.' *Smith v. State*, 273 So.2d 787, 788 (Fla. 1st DCA 1972), citing *Dickey v. Circuit Court, Gadsden County, Quincy, Florida*, 200 So.2d 521 (Fla.1967). The present petition does not seek return from another sovereign state.

Perhaps the proper course would be to deem the petition for Ad Prosequendum writ a petition for writ of mandamus and order the prosecuting authority to pursue the Ad Prosequendum. But that seems like form over substance, silliness over logic.

Instead, this Court will grant the petition and transfer the case to the two pending criminal cases in Liberty County (10-CF-23 and 10-CF-24) for that court's consideration of a transport order to transport petitioner to Liberty County to resolve the two pending charges and then return him to Graceville.

Accordingly, it is ORDERED and ADJUDGED that

The petition is GRANTED and TRANSFERRED to Liberty County circuit criminal cases 10-CF-23 and 10-CF-24. After the transfer, this civil case can be closed.

---

[1]"The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the 4th day of July, 1776, are declared to be of force in this state; provided, the said statutes and common law be not inconsistent with the Constitution and laws of the United States and the acts of the Legislature of this state." Fla. Stat. 2.01 (2025).

[2]"The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." Article I, Section 9, Clause 2, U.S. Constitution. "The writ of habeas corpus shall be grantable of right, freely and without cost. It shall be returnable without delay, and shall never be suspended unless, in case of rebellion or invasion, suspension is essential to the public safety." Article I, Section 13, Florida Constitution.

[3]Florida Statute 900.03 provides: Courts vested with criminal jurisdiction; process.—

(1) Original jurisdiction in criminal cases is vested in the circuit courts and county courts.

(2) Courts having criminal jurisdiction may issue writs and process necessary to the exercise of the criminal jurisdiction and the writs and process shall have effect through the state.

* * *

Torts—Trial—Continuance—Good cause—Fact that progressive treatment for known injuries requires surgery is not good cause for continuance—Fact that plaintiff now has medical procedure scheduled to take place during trial term is good cause

DOMINQUE CARGILE, Plaintiff, v. MARICELA VERDIN, Defendant. Circuit Court, 2nd Judicial Circuit in and for Gadsden County. Case No. 20-2024-CA-000431-AXXX-CX. November 24, 2025. David Frank, Judge. Counsel: William A. Kempner, Morgan and Morgan, Tallahassee, for Plaintiff. Jessica M. Bowen, Heath and Rasky, P.A., Tallahassee, for Defendant.

ORDER GRANTING IN PART JOINT MOTION FOR CONTINUANCE

THIS CAUSE came before the Court upon the Joint Motion for Continuance filed November 21, 2025. The Court having reviewed the papers filed in support and being otherwise fully advised in the premises, finds

In the final days, the parties ask for a continuance of the December 8, 2025 jury trial because of, ". . .an unfortunate and unforeseen development in Plaintiff's treatment, and a substantial change in circumstances in the nature and severity of Plaintiff's medical condition."

But was it "unforseen?" The parties also state: "On November 14, 2025, the Plaintiff's spine surgeon ***recommended moving forward with the previously recommended tubular lumbar discectorny*** with possible interbody fusion and ION Facet screws at I-4-1,5 at the earliest date possible."

The parties misconstrue the appellate case they rely upon. *Semmer v. Johnson*, 634 So. 2d 1123, 1124 (Fla. 2d DCA 1994) does not stand for the proposition that a plaintiff's progressive treatment for alleged relevant injuries in a personal injury negligence case supercedes a trial court's mandated active case management obligations. See *Winter Park Hosp., LLC v. On Target Staffing, LLC*, 419 So.3d 306, 315-16 (Fla. 6th DCA 2025) [50 Fla. L. Weekly D2047a] ("The supreme court has expressed the importance of enhanced case management 'in order to deliver justice in a timely, cost-efficient, and accountable manner while maintaining due process.' Since 2021, the supreme court has required trial judges to comply with 'detailed procedure[s]' for case management. Deadlines 'must be strictly enforced' in that process. In light of this, a trial judge's duty to afford litigants due process plainly does not require—or for that matter, even permit—a trial judge to abdicate control of the case to any litigant." Citations omitted).

Semmer deals with *undisclosed testimony at trial:*

> We agree with Judge Warner's recent pronouncement in *Grau v. Branham*, 626 So.2d 1059, 1061 (Fla. 4th DCA 1993), that in all but the most exceptional cases "the lawyers have a right to expect that once a trial commences, discovery and examinations must cease." We find that view consistent with the guiding principle underlying the rules of discovery—that all relevant facts should be obtainable by the litigants in advance of a proceeding so as to "render surprise at the trial a practical impossibility." *Bowen v. Manuel*, 144 So.2d 341, 343 (Fla. 2d DCA 1962); *see also, Binger v. King Pest Control*, 401 So.2d 1310 (Fla. 1981). Even though the rules do not compel a party to supplement completed pretrial responses to discovery, *see* Florida Rule of Civil Procedure 1.280(e), our courts have shown little tolerance for a party's mid-trial disclosure of substantial changes in the nature and severity of a litigant's medical condition. *See, e.g., Grau v. Branham; Office Depot, Inc. v. Miller*, 584 So.2d 587 (Fla. 4th DCA 1991); *Colonnell v. Mitchels*, 317 So.2d 799 (Fla. 2d DCA 1975).

The *Semmer* situation was a classic *Binger* issue—one party being prejudiced by the undisclosed evidence of another. The situation presented by the parties here is equal knowledge on both parts, not a surprise to one over the other.

A plaintiff must decide when to file a lawsuit. Part of that determination is whether a client's injuries are ripe for suit. The fact that progressive treatment of known injuries can take a different course, or require surgery at some point, is not good cause for a continuance. To the contrary, the proper response is for the parties to have their experts address future medical needs, as is done in courts every day across this state.

If this were the only reason, the motion would be easily denied. However, the fact that the plaintiff now has a medical procedure scheduled to take place during the trial term, is good cause. (The Court gives the parties the benefit of the doubt that the procedure is critical to the plaintiff's health and must be done now, although such was not stated in the motion).

The parties ask the Court to, "remove this case from the trial docket commencing, December 8, 2025, and continue the trial of this matter until noticed by either party." That is not the way this works. It will be reset to a prompt date *by the court*.

Accordingly, it is ORDERED and ADJUDGED that the motion is GRANTED IN PART. The trial of this case is continued to the very next trial term, March 13, 2026. A separate order resetting will be issued. **Absent extraordinary cause, there will be no more continuances.**

* * *

Jurisdiction—Non-residents—Service of process—Civil procedure—Fictitious pleadings—In Florida, filing of "John Doe" complaint, without more, is insufficient to commence action against real party—Fact that non-resident defendants who have no other contact with Florida published statements on social media does not satisfy elements for exercise of personal jurisdiction even if statements were read by someone in Florida—Substituted service of process on defendants is defective where plaintiffs failed to meet requirements of sections 48.161(1)-(2) or 48.181(4)—Motions to dismiss and quash service are granted

TRISTAN TATE, an individual and ANDREW TATE, an individual, Plaintiffs, v. JOHN DOE, a/k/a @CrayonMurders, et al., Defendants. Circuit Court, 15th Judicial Circuit in and for Palm Beach County. Case No. 50-2025-CA-002559-XXX-AMB. December 26, 2025. G. Joseph Curley, Jr., Judge. Counsel: Thomas Maniotis, Equity Legal, Miami, for Plaintiffs. Bradly Silverman, Hamilton Miller & Birthisel, Miami, for Eleanor Gaetan, Defendant. Christopher Hopkins, Hopkins P.A., West Palm Beach, for Does, Nathan Livingston, and Jury, Defendants.

ORDER ON DECEMBER 4, 2025, SPECIAL SET HEARING

THIS MATTER, having come before the Court at a Special Set Hearing on December 4, 2025 on the following Motions:

1. Plaintiffs' Omnibus Motion for Order to Disclose User and Account Identification Information for Purposes of Identifying True Name of Party Defendant to Litigation and Motion to Order Defendant, @CrayonMurders (and others purportedly represented) to Disclose Identity for Service of Process and Oppositions to Objection of Crayon Murders (DE 136);

2. Defendant John Doe a/k/a @CrayonMurders' Motion to Dismiss, Motion to Quash Improper Service on Secretary of State, Opposition to Plaintiff's Motion for Extension of Time to Effectuate Service of Process, and Opposition to Motion to Strike (DE 138);

3. Defendant Jury's Verified Motion to Quash Service of Process and/or Motion to Dismiss for Lack of Jurisdiction (DE 141);

4. Three "Doe" Defendants' Motion to Dismiss and/or Motion to Quash Improper Service on the Secretary of State (DE 143);

5. Defendant Nathan Livingstone's Motion to Quash Service of Process and Motion to Dismiss (and Supplement) (DE 163 and DE 190); and

6. Defendant Eleanor K. Gaetan's Motion to Dismiss Amended Complaint for Improper Service of Process and Lack of Jurisdiction (DE 173);

and the Court, having reviewed the motions, the responses and replies, as applicable, and having heard argument of counsel and being fully advised of the premises, it is hereby:

ORDERED and ADJUDGED that:

1. The parties' Motions can be reduced to three issues: (i) whether the Plaintiffs may sue "John Doe" Defendants; (ii) whether there is personal jurisdiction over the moving Defendants; and (iii) whether service on the moving defendants was proper.

2. For the reasons set forth in this Order, the Court determines that (i) Florida law does not permit Plaintiffs to sue "John Doe" Defendants; (ii) dismissal without prejudice is warranted for a lack of personal jurisdiction over the moving Defendants; and (iii) service on the moving Defendants was improper and is hereby quashed.

Plaintiffs Cannot Sue "Doe" Defendants

3. The Court agrees with the moving "Doe" Defendants that Plaintiffs may not sue "John Doe" defendants. See *Gilliam v. Smart*, 809 So. 29 905 (Fla. 1st DCA 2002) [27 Fla. L. Weekly D622a] (filing of a "John Doe" complaint does not commence an action); *Liebman v. Miami-Dade Co. Code Compliance Office, et al.*, 54 So. 3d 1043 (Fla. 3d DCA 2011) [36 Fla. L. Weekly D299c] ("In the absence of a statute authorizing such a procedure, the filing of a "John Doe" complaint is not sufficient to commence an action. . .").

4 . The Plaintiffs' reliance on federal court authority is unavailing. See *Vielma v. Gruler et al.*, 808 F. App'x 872, 2020 WL 1672778 (11th Cir. (Fla.) April 6, 2020) ("Plaintiffs have failed to heed the court's repeated warnings that fictitious-party pleading was prohibited" and "[a]s a general matter, fictitious-party pleading is not permitted in federal court"); *Quad International, Inc. v. John Doe*, 2013 WL 718448 (S.D.AL. Jan. 7, 2013)("Despite the court's order, plaintiff has not addressed binding Circuit precedent concerning fictitious party practice nor shown how the proposed exception fits within the framework established by such precedent.")

Plaintiffs Lack Personal Jurisdiction Over Moving Defendants

I. Factual Background

5. Plaintiffs Andrew and Tristan Tate reside in Romania (Amended Complaint, paragraph 1).

6. Defendants Gaeton, Jury, and Livingstone filed supporting affidavits denying the Plaintiffs' allegations relating to the exercise of personal jurisdiction over them, and affirmatively stating that:

a. Defendant Gaeton is a resident of Washington, D.C., who has never resided in Florida, is not licensed or registered to do business in the State of Florida, does not own or hold any real or personal property in Florida, does not maintain an office or residence or operate a business in the State of Florida, and otherwise has no contacts with the State of Florida.

b. Defendant Jury is a UK citizen and resident who has never visited nor been a resident of Florida; has never been employed, conducted business, or maintained an office in Florida; has no property or bank accounts in Florida; and has never paid taxes in Florida.

c. Defendant Livingstone is an Australian citizen and resident who has never been a resident of Florida; has never been employed, conducted business, or maintained an office in Florida; has no property or bank accounts in Florida; and has never paid taxes in Florida.

7. In their Amended Complaint, Plaintiffs allege that Defendants Gaeton, Jury, and Livingstone published statements on social media which were directed into and read by persons inside of Florida.

8. Plaintiffs did not file affidavits or evidence disputing the affidavits of Gaeton, Jury, and Livingstone or otherwise supporting the jurisdictional allegations in the Amended Complaint.

II. Legal Standard

9. Rule 1.140 of the Florida Rules of Civil Procedure requires a complainant to sufficiently allege a prima facie case, including pleading the basis of the court's exercise of jurisdiction in the matter. See Order Granting Defendant Mary Doe's Motion to Dismiss for Lack of Personal Jurisdiction, *Tristan and Andrew Tate v. Mary Doe et al.*, Case No. 50-2023-CA-011904-XXXX-MB (Fla. 15th Cir. Ct. Nov. 27, 2024); *Continental Baking Co. v. Vincent*, 634 So. 2d 242, 244 (Fla. 5th DCA 1994).

10. The Florida Supreme Court has established a two-prong analysis for a court to consider when evaluating whether personal jurisdiction is proper. First, the court asks whether Florida's long-arm statute is satisfied such that the exercise of personal jurisdiction over the Plaintiffs' claims against the Defendant is proper. *Venetian Salami Co. v. Parthenais*, 554 So. 2d 449 (Fla. 1989). Second, the court asks whether the defendant has minimum contacts with Florida such that the exercise of jurisdiction would comport with "traditional notions of fair play and substantial justice" under *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

11. The first prong of the analysis is statutory and is governed by section 48.193, Florida Statutes. The second prong is constitutional and is controlled by United States Supreme Court precedent interpreting the Due Process Clause and imposes a more restrictive requirement.

c 12. "In the context of a motion to dismiss for lack of personal jurisdiction in which no evidentiary hearing is held, the plaintiff bears the burden of establishing a prima facie case of jurisdiction over the movant, nonresident defendant." *Morris v. SSE, Inc.*, 843 F.2d 489, 492 (11th Cir. 1988). The Court must accept as true all facts alleged in the Complaint only if they are not controverted by the facts in the defendant's affidavit.

13. Where defendants file affidavits showing a lack of jurisdiction, the burden shifts back to plaintiffs to show by affidavit the basis for jurisdiction. *OSI Indus., Inc. v. Carter*, 834 So. 2d 362, 364 (Fla. 5th DCA 2003) [28 Fla. L. Weekly D201a].

14. Where a defendant's affidavit "does fully dispute the jurisdictional allegations in the plaintiff's complaint, the burden shifts back to the plaintiff to prove by affidavit or other sworn proof that a basis for long-arm jurisdiction exists." *Hilltopper Holding Corp. v. Est. of Cutchin ex rel. Engle*, 955 So. 2d 598 (Fla. 2d DCA 2007) [32 Fla. L. Weekly D674b]. "If the plaintiff fails to come forward with sworn proof to refute the allegations in the defendant's affidavit and to prove jurisdiction, the defendant's motion to dismiss must be granted." *Id.*

III. Legal Analysis

15. In support of their personal jurisdiction arguments in their various Motions, moving Defendants Gaeton, Jury, and Livingstone filed affidavits disputing any basis for the Court's exercise of personal jurisdiction over Plaintiffs' claims against them.

16. Plaintiffs failed to file any affidavit or declaration as required in support of their showing that this Court has jurisdiction over their claims against Defendants Gaeton, Jury, and Livingstone, relying solely on the allegations made in their Amended Complaint.

17. Even if Plaintiffs had come forward with evidence, they would have to establish all three elements as stated in *Estes v. Rodin*, 259 So. 3d 183 (Fla. 3d DCA 2018) [43 Fla. L. Weekly D2313a]:

> a. whether the plaintiff's claims "arise out of or relate to" at least one of the defendant's contacts with the forum;
>
> b. whether the nonresident defendant "purposefully availed" himself of the privilege of conducting activities within the forum state, thus invoking the benefit of the forum state's laws; and
>
> c. whether the exercise of personal jurisdiction comports with "traditional notions of fair play and substantial justice."

Id. at 192 (citation omitted).

18. In this case, Plaintiffs argued the first element but did not sufficiently plead or present evidence to make the requisite findings for the second and third elements.

19. The Court finds, based upon the evidence presented, that Defendants Gaeton, Jury, and Livingstone did not purposefully avail themselves of the privileges of conducting activities within Florida and that the exercise of personal jurisdiction over these Defendants would offend traditional notions of fair play and substantial justice.

20. The Court concludes that social media statements published by non-resident Defendants Gaeton, Jury, and Livingstone about the non-resident Plaintiffs, even if read by someone in Florida, alone, does not satisfy the second and third *Estes* elements.

SERVICE ON MOVING DEFENDANTS IS QUASHED

21. Relative to service of process under § 48.161, Florida Statutes, due process requires strict compliance with the statutory requirements. *Monaco v. Nealon*, 810 So. 2d 1084 (Fla. 4th DCA 2002) [27 Fla. L. Weekly D649b].

22. Florida Statute, § 48.161 proscribes the method for effecting service of process through the Secretary of State, and provides, in pertinent part, as follows:

> (1) **When authorized by law**, substituted service of process on a nonresident individual or a corporation or other business entity incorporated or formed under the laws of any other state, territory, or commonwealth, or the laws of any foreign country, may be made by sending a copy of the process to the office of the Secretary of State. Such process must be issued in the name of the party to be served, in the care of the Secretary of State, and must be made by personal delivery; by registered mail; by certified mail, return receipt requested; by use of a commercial firm regularly engaged in the business of document or package delivery; or by electronic transmission. Such service is sufficient service on a party that has appointed or is deemed to have appointed the Secretary of State as such party's agent for service of process.
>
> (2) When an individual or a business entity is a nonresident or conceals his, her, or its whereabouts, the party seeking to effectuate service may, **after exercising due diligence to locate and effectuate personal service**, use the substituted service method specified in subsection (1) in connection with any action in which the court has jurisdiction over the individual or business entity.

§48.191(1) & (2), Florida Statutes (emphasis added) [Editor's note: 48.161(1) & (2)]

23. The authorizing statute for effecting substituted service through the Secretary of State on a non-resident who is alleged to be concealing their whereabouts is § 48.181(4), Florida Statutes which provides, in pertinent part, as follows:

> (4) Any individual or foreign business entity that conceals its whereabouts is deemed to have appointed the Secretary of State as its agent on whom all process may be served, **in any action or proceeding against such individual** or foreign business entity, a**rising out of any transaction or operation connected with or incidental to any business or business venture carried on in this state by such individual** or foreign business entity.

§ 48.181(4), Florida Statutes (emphasis added).

24. As to Plaintiffs' attempted substituted service on the moving "John Doe" Defendants by serving the Secretary of State, Plaintiffs did not include the actual names of the "John Doe" Defendants, did not send a copy of the process to any physical address; have not sufficiently set forth the party's concealment of whereabouts; and have not sufficiently established that they have exercised due diligence to locate and effectuate personal service. As such, as to the "John Doe" Defendants, Plaintiffs do not meet the requirements of § 48.161(1)-(2), Florida Statutes

25. As to Plaintiffs attempted substituted service Florida law is clear that "[t]o support substituted service of process on a defendant the complaint must allege the jurisdictional requirements prescribed by statute." *Wiggam v. Bamford*, 562 So. 2d 389 (Fla. 4th DCA 1990)(*quoting Drake v. Scharlau,* 353 So.2d 961, 964 (Fla. 2d DCA 1978)).

26. The Amended Complaint does not include allegations that Defendants Gaeton or Livingstone concealed their whereabouts or that the causes of action against them arose out of any transaction or operation connected or incidental any business conducted in Florida by either Defendant. Likewise, Plaintiffs have not sufficiently established that they have exercised due diligence to locate and effectuate personal service. Accordingly, as to Defendants Gaeton and Livingstone, Plaintiffs do not meet the requirements of § 48.161(1)-(2), Florida Statutes or §48.181, Florida Statutes, and have not established that they are entitled to serve either of these defendants through the Secretary of State.

27. Defendant Jury had sought to quash service but was personally served thereafter and withdrew that portion of his motion.

CONCLUSION

28. Plaintiffs' Omnibus Motion for Order to Disclose User and Account Identification Information for Purposes of Identifying True Name of Party Defendant to Litigation and Motion to Order Defendant, @CrayonMurders (and others purportedly represented) to Disclose Identity for Service of Process and Oppositions to Objection of Crayon Murders is hereby **DENIED**. This Motion is denied because the court lacks jurisdiction over the Defendants.

29. Defendant John Doe a/k/a @CrayonMurders' Motion to Dismiss, Motion to Quash Improper Service on Secretary of State, Opposition to Plaintiff's Motion for Extension of Time to Effectuate Service of Process, and Opposition to Motion to Strike is hereby **GRANTED**.

30. Jury's Verified Motion to Quash Service of Process and/or Motion to Dismiss for Lack of Jurisdiction is hereby **GRANTED** (as to dismissal).

31. Three "Doe" Defendants' Motion to Dismiss and/or Motion to Quash Improper Service on the Secretary of State is hereby **GRANTED**.

32. Defendant Nathan Livingstone's Motion to Quash Service of Process and Motion to Dismiss is hereby **GRANTED**.

33. Defendant Eleanor K. Gaetan's Motion to Dismiss Amended Complaint for Improper Service of Process and Lack of Jurisdiction is hereby **GRANTED**.

34. The granting of the Defendants' motions is **WITHOUT PREJUDICE**.

35. The Plaintiffs have twenty (20) days to amend their complaint. Any amendment shall name actual defendants and be supported by a good-faith, fact-based basis for personal jurisdiction. Service of process shall occur consistent with this Order and applicable law.

36. Plaintiffs then have sixty (60) days from the date of the filing of any amended Complaint to either affect service of process on Defendants.

* * *

Insurance—Property—Insured's action against insurer—Conditions precedent—Presuit notice—Statement in presuit notice filed by attorney that "notice will be transmitted to the Claimant upon submission" does not satisfy statutory requirement that notice provided by attorney must state with specificity that copy of notice was provided to claimant—Case dismissed without prejudice

BRIAN LONG and MICHELE JORDAN, Plaintiffs, v. AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA, Defendant. Circuit Court, 15th Judicial Circuit in and for Palm Beach County. Case No. 502025CA006334. November 7, 2025. Reid P. Scott, Judge. Counsel: Alexander J. Zatik, Vishio, Watkins and Forry, PLLC, Naples, for Plaintiffs. Gregory P. Hengber, Goldstein Law Group, Plantation, for Defendant.

ORDER GRANTING DEFENDANT'S AMENDED MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO COMPLY WITH SECTION 627.70152(3), FLORIDA STATUTES AND DEFENDANT'S MOTION TO STAY

THIS CAUSE, having come before the Court for hearing on November 6, 2025, upon Order Granting Defendant's Amended Motion To Dismiss Plaintiff's Complaint For Failure To Comply With Section 627.70152(3), Florida Statutes ("Motion to Dismiss") and Defendant's Motion to Stay, and the Court having reviewed the Motions, heard arguments of counsel and being otherwise fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED:

1. Defendant's Motion to Dismiss is hereby **GRANTED**.

2. Section 627.70152(3)(a), Florida Statutes, provides that as a condition precedent to filing suit under property insurance policy, a claimant must submit a written notice of intent to initiate litigation that complies with various requirements. Section 627.70152(5), Florida Statutes provides that the Court "must dismiss without prejudice any claimant's suit relating to a claim for which a notice of intent to initiate litigation was not given as required by this section."

3. The statute requires compliance given the language in Section 627.70152(3)(a)'s providing that the presuit notice is a "condition precedent to filing suit under a property insurance policy" and "must state with specificity" certain information required thereunder and the absence of any statutory language allowing substantial compliance.

4. While counsel for Plaintiffs submitted a presuit notice prior to filing this action, the notice failed to comply with the requirement under section 627.70152(3)(a).

5. Section 627.70152(3)(a)3 provides, in pertinent part, that if the presuit notice is "provided by an attorney or other representative" the notice ***"must state with specificity"*** . . . "that a copy of the notice ***was*** provided to the claimant." (Emphasis added).

6. Plaintiffs' notice provided by the attorney was submitted on Form DFS-10-1600 titled "Property Insurance Notice of Intent to Initiate Litigation" created by the Florida Department of Financial Services ("DFS Notice Form"). The "Attorney" section of the DFS Notice Form includes the statement "* Pursuant to Section 627.70152, Florida Statutes, the Attorney filing this Notice must provide a copy of this Notice to the Claimant. The Claimant's email address is a required field as this Notice ***will be*** transmitted to the Claimant upon submission." (Emphasis added).

7. Although Plaintiffs' DFS Notice form submitted included Plaintiffs' purported email address upon the notice's submission through the Department of Financial Services' online portal, the notice did not otherwise state that "a copy of the notice ***was*** provided to the claimant". (Emphasis added).

8. As such, despite the contention of counsel for the Plaintiffs that the statement in the DFS Notice Form that "this Notice ***will be*** transmitted to the Claimant upon submission", this Court finds that this does not satisfy or obviate the requirement of subsection (3)(a)3 that Plaintiff's counsel ***"must state with specificity"*** . . . "that a copy of the notice ***was*** provided to the claimant" because the DFS Notice Form states that "this Notice ***will be*** transmitted to the Claimant upon submission."

9. Interpreting a statute's plain language requires "review [of] the tense used in the statute." *Dean Wish, LLC v. Lee Cnty.*, 326 So. 3d 840, 846 (Fla. 2d DCA 2021) [46 Fla. L. Weekly D2173a], *rev. denied,* SC21-1529, 2022 WL 852956 (Fla. Mar. 23, 2022).

10. Accordingly, because Plaintiffs' presuit notice failed to comply with subsection 627.70152(3)(a)3, Florida Statutes, Amended Defendant's Motion to Dismiss is hereby **GRANTED** and the case is **DISMISSED WITHOUT PREJUDICE** pursuant to section 627.70152(5), Florida Statutes.

11. Defendant's Motion to Stay is moot.

* * *

Volume 33, Number 11
March 31, 2026
Cite as 33 Fla. L. Weekly Supp. ____

COUNTY COURTS

Insurance—Personal injury protection—Coverage—Affirmative defenses—Accord and satisfaction—Affidavits supporting insurer's motion for summary judgment on statutory accord and satisfaction defense are untimely where affidavits were filed months after filing of motion—In absence of any supporting evidence apart from inadmissible affidavits, insurer's motion is denied and medical provider's opposing motion is granted—Even if affidavits were timely filed, they are insufficient to carry insurer's burden on defense where instrument that litigation adjuster alleges was tendered and from which payment was obtained was made payable to law firm, not provider, and there is no admissible evidence establishing that law firm represented provider—Affidavit of law firm employee is insufficient to establish representation of provider where averments in affidavit are stated in qualified manner, affidavit refers to documents not attached thereto, and insurer failed to provide notice that it would rely on employee's affidavit in advance of hearing—Further, insurer failed to meet burden to prove that instrument or accompanying written communication contained conspicuous statement to effect that it was tendered as full satisfaction of claim, and instrument itself reflects that it does not cover all dates of service at issue

HEALTH PROFESSIONAL SERVICES, INC., a/a/o Alexander Gallosa, Plaintiff, v. ASCENDANT COMMERCIAL INSURANCE, INC., Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2021-005532-CC-26. Section SD03. October 16, 2025. Lissette De la Rosa, Judge. Counsel: Majid Vossoughi, Majid Vossoughi, P.A., Miami, for Plaintiff. Susan Steakley, Carabotta Steakley, PLLC, Miami, for Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT RE: ACCORD AND SATISFACTION AND ORDER DENYING DEFENDANT'S AMENDED MOTION FOR FINAL SUMMARY JUDGMENT AS TO ACCORD AND SATISFACTION

THIS CAUSE came before the Court on September 24, 2025 on (i) Defendant's Amended Motion for Final Summary Judgment Re: Accord and Satisfaction ("Defendant's Motion for Summary Judgment") (index # 74) and (ii) Plaintiff's Motion for Summary Judgment as to Defendant's Accord and Satisfaction Affirmative Defense ("Plaintiff's Motion for Summary Judgment") (index # 91).

The parties were represented by counsel at the hearing who presented arguments to the Court. Susan Steakley, Esq. appeared on behalf of the Defendant, and Majid Vossoughi, Esq. appeared on behalf of the Plaintiff.

The Court having reviewed the matter, the relevant legal authorities, the entire Court file, and having heard argument from counsel and being otherwise fully advised in the premises, hereby makes the following factual findings and conclusions of law, and enters this Order DENYING Defendant's Motion for Summary Judgment and GRANTING Plaintiff's Motion for Summary Judgment, for the reasons set forth below.

BACKGROUND & FACTUAL FINDINGS

-

-

On March 11, 2021, Plaintiff filed the instant suit against Defendant for unpaid personal injury protection ("PIP") benefits.

On April 15, 2021, Defendant served its Answer and Affirmative Defenses to Plaintiff's Complaint (index # 12) and raised statutory "Accord and Satisfaction" pursuant to Fla. Stat. 673.3111 as its defense to payment of the Plaintiff's claim.[1]

(Defendant's Motion for Summary Judgment)

On February 4, 2025, Defendant filed its Motion for Summary Judgment (index # 74). Defendant's motion asserts that Defendant received bills from Plaintiff for dates of service August 22, 2017 through October 27, 2017 and argues that there has been a statutory "Accord and Satisfaction" pursuant to *Fla. Stat. 673.3111* as to all of these dates of service.

At the time of filing its Motion for Summary Judgment, Defendant did not serve any supporting affidavits or other admissible summary judgment record evidence setting forth the Defendant's supporting factual position as was otherwise required by *Fla. R. Civ. P. 1.510(c).* Instead, Defendant's Motion for Summary Judgment merely attaches unauthenticated and inadmissible hearsay documents to its unsupported motion.

Defendant's Motion for Summary Judgment does not argue that its instrument (i.e. full & final check dated November 22, 2019) or a letter enclosing and/or accompanying the instrument contained a conspicuous statement that same was tendered as full satisfaction of Plaintiff's claim. Instead, Defendant's Motion for Summary Judgment relies upon and argues that a purported "proposal letter" and/or correspondence dated November 6, 2019 addressed to a law firm, as opposed to its own instrument, meets the requisite elements of *Fla. Stat. 673.3111* to establish an "Accord and Satisfaction".

(Plaintiff's Motion for Summary Judgment)

On July 1, 2025, Plaintiff filed its Motion for Summary Judgment (index # 91), as well as a Declaration of Records Custodian (index # 87) in support, and same also reflects that Plaintiff rendered treatment for dates of service August 22, 2017 through October 27, 2017. Plaintiff's Motion for Summary Judgment argues that Defendant failed to present any admissible evidence sufficient to meet its burden of establishing its statutory "Accord and Satisfaction" defense.

Plaintiff's motion argues that the unauthenticated and inadmissible hearsay documents relied upon by Defendant in support of its defense do not constitute admissible summary judgment evidence. Plaintiff's motion further argues that Defendant failed to proffer any evidence establishing the representation and/or authority of the law firm to whom Defendant purportedly issued its "full & final" payment.

Notwithstanding these evidentiary defects, Plaintiff's motion also argues that Plaintiff's bill for date of service October 27, 2017 could not have been discharged by a statutory "Accord and Satisfaction" under *Fla. Stat. 673.3111* since the instrument issued by Defendant states, on its face, that the amounts tendered are "***Full and final***" only for "***Dates of Service: From 8/22/2017 To 10/16/2017***", which plainly does not include date of service October 27, 2017.

On July 3, 2025, both Plaintiff and Defendant noticed a hearing before the Court on their respective summary judgment motions for September 15, 2025 (index # 94 & 96). The hearing was later rescheduled by the Court to occur on September 24, 2025.[2]

(Defendant's Affidavits)

On July 3, 2025, Defendant—for the first time and some five (5) months *after* the filing of its Motion for Summary Judgment—served an affidavit of its Litigation Adjuster, Christopher Garcia ("Affidavit of Christopher Garcia") (index # 94).

On July 24, 2025, Defendant—for the first time and nearly six (6) months *after* the filing of its Motion for Summary Judgment—served an affidavit of Yadira Delgado, an alleged employee of the law firm to whom Defendant issued payment ("Affidavit of Yadira Delgado") (index # 100).

On August 15, 2025, Plaintiff filed its Notice of Objection and Motion to Strike Affidavit of Christopher Garcia as Untimely and in Violation of Fla. R. Civ. P. 1.510 (index # 107), and Notice of Objection and Motion to Strike Affidavit of Yadira Delgado as Untimely and in Violation of Fla. R. Civ. P. 1.510 (index # 108).

On September 7, 2025, Plaintiff filed its Objection and Memorandum of Law in Opposition to Defendant's Untimely Affidavits (index # 109).

On September 16, 2025, Defendant filed its Response to Plaintiff's Objection and Memorandum of Law in Opposition to Defendant's Untimely Affidavits (index # 119).

LEGAL ANALYSIS

-

Federal Summary Judgment Standard Adopted in Florida

-

Florida has adopted the federal summary judgment standard within amended Fla. R. Civ. P. 1.510. *See*, *In re: Amendments to Florida Rule of Civil Procedure 1.510*, 317 So.3d 72 (Fla. 2021) [46 Fla. L. Weekly S95a]. Summary judgment is not a "disfavored procedural shortcut" but rather "an integral part" of the Rules. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

The moving party is entitled to entry of summary judgment if it "shows that there is no genuine dispute as to any material fact and [it] is entitled to judgment as a matter of law." *Fla. R. Civ. P. 1.510(a)*.

As stated in the seminal case of *Celotex*, "the plain language of [the Rule] *mandates* the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to any material fact,' since *a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.*" 477 U.S. at 322-23 (emphasis added).

The nonmoving party "must present affirmative evidence in order to defeat a properly supported motion for summary judgment". *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986). A "scintilla" of evidence is "insufficient" to avoid summary judgment and "if the evidence is merely colorable, or is not significantly probative, summary judgment may be granted". *Id*. at 249-52.

"Summary judgment is not a dress rehearsal or practice run; it is the put up or shut up moment in a lawsuit, when a party must show what evidence it has" in support of its claim. *Steen v. Myers,* 486 F.3d 1017, 1022 (7th Cir. 2007); *see also*, *Forsythe v. Ticor Title Ins. Co.*, Case No. 2:08 cv 337, Dist. Court, ND Indiana, June 28, 2010).

DEFENDANT'S STATUTORY "ACCORD AND SATISFACTION" DEFENSE FAILS AS A MATTER OF LAW

Defendant has the burden of proving each element of its defense. *Custer Med. v. United Auto. Ins. Co.*, 62 So.3d 1086 (Fla. 2010) [35 Fla. L. Weekly S640a]; *State Farm v. Curran*, 135 So.3d 1071 (Fla. 2014) [39 Fla. L. Weekly S122a]; *Hess v. Philip Morris USA, Inc.*, 175 So.3d 687, 695 (Fla. 2015) [40 Fla. L. Weekly S188a] ("[t]he defendant has the burden to prove an affirmative defense"); *United Auto. Ins. Co. v. G & O Rehab. Ctr. Inc.*, 347 So.3d 492, 497 (Fla. 3d DCA 2022) [47 Fla. L. Weekly D1877b] (same); *Watson Clinic, LLP v. Verzosa, M.D.*, 816 So.2d 832 (Fla. 2nd DCA 2002) [27 Fla. L. Weekly D1231b] (defendant asserting an affirmative defense is required to prove all elements of that defense).

Pursuant to *Fla. Stat. 673.3111*, Defendant was required to present admissible evidence establishing each of the following elements essential to maintain its statutory "Accord and Satisfaction" defense:

> (i) that Defendant made a good faith tender of an instrument to Plaintiff ("First Element");
>
> (ii) that the amount of Plaintiff's claim was unliquidated or subject to a bona fide dispute ("Second Element");
>
> (iii) that Plaintiff obtained payment of the instrument ("Third Element"); and
>
> (iv) that the "instrument" or "an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim" ("Fourth Element").

To prevail at summary judgment on its statutory "Accord and Satisfaction" defense under *Fla. Stat. 673.3111*, Defendant was required to timely present admissible evidence establishing each element of the defense. *Fla. R. Civ. P. 1.510(c)(4)* ("[a]n affidavit or declaration used to support or oppose a motion must . . . set out facts that would be *admissible in evidence"*) (emphasis added); *see also*, *Macuba v. Deboer*, 193 F.3d 1316 (11th Cir. 1999) (holding that a court cannot consider inadmissible hearsay when ruling on a motion for summary judgment); *Winskunas v. Birnbaum*, 23 F.3d 1264 (7th Cir. 1994) (affirming entry of summary judgment against party whose supporting affidavit was premised upon inadmissible hearsay).

The law is clear that any factual assertions made or relied upon by the Defendant that are not supported by admissible summary judgment evidence within the record before the Court, do not create a material issue of fact. *Weinstock v. Columbia University*, 224 F.3d 33, 41 (2d Cir. 2000) ("unsupported allegations do not create a material issue of fact"); *see also*, *State v. Thompson*, 852 So.2d 877, 888 (Fla. 2d DCA 2003) [28 Fla. L. Weekly D1807b] ("argument of counsel is not evidence").

(Affidavits of Christopher Garcia & Yadira Delgado are Untimely and Cannot be Considered in Support of Defendant's Motion for Summary Judgment)

Fla. R. Civ. P. 1.510(c)(1) provides:

> (1) *Supporting Factual Positions.* A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
>
> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials;

Fla. R. Civ. P. 1.510(c)(5) in turn provides:

> (5) *Timing for Supporting Factual Positions*. At the time of filing a motion for summary judgment, the movant must also serve the movant's supporting factual position as provided in subdivision (1) above.

The plain language of the rule mandates a moving party to serve its supporting factual position, including any supporting affidavits, "*at the time of filing*" the motion for summary judgment.

Since Defendant's Affidavit of Christopher Garcia and Affidavit of Yadira Delgado were both served for the first time several months *after* the filing of Defendant's Motion for Summary Judgment, same are untimely under the plain language of *Fla. R. Civ. P, 1.510(c)(5)* and will not be considered by the Court in support of Defendant's motion. *See*, *Suarez v. Space Coast Credit Union*, 150 So.3d 1246 (Fla. 3DCA 2014) [39 Fla. L. Weekly D2416a] ("[a]ppellee's affidavit in support of its motion for summary judgment was untimely and, therefore, should not have been considered by the trial court"); *Tucker v. LNV Corp*., 363 So.3d 1095 (Fla. 4DCA 2023) [48 Fla. L. Weekly D1064b] ("summary judgment based on untimely summary

judgment evidence upon which the movant relies is subject to reversal"); *State Farm Mut. Auto. Ins. Co. v. Advanced X-Ray Analysis, Inc.*, 368 So.3d 1049 (Fla. 3d DCA 2023) [48 Fla. L. Weekly D1555a] ("It is far-fetched to argue a trial court abused its discretion by enforcing the plain language of a rule of civil procedure promulgated to place practitioners and courts on notice of what is required. These rules are not advisory and are meant to provide time limits to raise arguments and present evidence in order to prevent gamesmanship").[3]

Without the untimely affidavits, Defendant's Motion for Summary Judgment is devoid of any factual basis in support and same is therefore DENIED.[4]

Regardless, even if the Defendant had timely filed its supporting affidavits, this Court would still find that same are insufficient to carry the Defendant's burden on its statutory "Accord and Satisfaction" affirmative defense for the reasons set forth below.

(Affidavits of Christopher Garcia & Yadira Delgado Fail to Create a Genuine Issue of Fact in Opposition to Plaintiff's Motion for Summary Judgment)

As contemplated by *Celotex*, if the Defendant fails to establish any essential element of its defense, then Plaintiff is entitled to entry of summary judgment in its favor as there has been more than adequate time for discovery and litigation in this four (4) year old PIP case.

Affidavit of Christopher Garcia

The Affidavit of Christopher Garcia attempts to establish that (i) the Defendant made a good faith tender of an instrument to *Plaintiff* ("First Element") and that (ii) *Plaintiff* obtained payment of the instrument ("Second Element").

Since the instrument issued by the Defendant in this case was not made payable to the *Plaintiff* directly, Defendant attempts to establish these two elements by arguing its instrument was made payable to, and obtained by, a *law firm* that allegedly represented Plaintiff.

As a result, Defendant was required by binding decisional precedent to also present admissible summary judgment evidence establishing the alleged representation and authority of the law firm. *See e.g.*, *Health and Wellness Evolution Co. (Earl Esperon) v. Infinity Auto Ins. Co.*, 394 So.3d 712 (Fla. 3d DCA 2024) [49 Fla. L. Weekly D1324b] (reversing judgment in favor of insurer on defense where insurer relied upon letter from a third-party law firm to establish representation but failed to establish any hearsay exception for the letter); *Health Professional Services, Inc. (Eberto Perez) v. Progressive Select Ins. Co.*, No. 18-001835 CC 26 (Fla. 11th Jud. Cir., Miami-Dade Cty. Ct., J. De La Rosa, Oct. 4, 2024) [33 Fla. L. Weekly Supp. 438a] (citing to *Health and Wellness* and finding that since a law firm letter "is not the Defendant's business record and no hearsay exception has been satisfied by the Defendant for its admission into evidence, the purported [law firm] letter is inadmissible hearsay"); *Nehleber v. Anzalone*, 345 So.2d 822 (Fla. 4th DCA 1977) ("[t]he mere employment of an attorney does not of itself give the attorney the implied or apparent authority to compromise his client's cause of action"); *Ponce v. U-Haul Co. of Fla.*, 979 So.2d 380 (Fla. 4th DCA 2008) [33 Fla. L. Weekly D1050a] (same); *Evans v. Diaz*, 365 So.3d 1176 (Fla. 4th DCA 2023) [48 Fla. L. Weekly D1391a] (same); *DeJour v. Coral Springs KGB, Inc.*, 293 So.3d 502 (Fla. 4th DCA 2020) [45 Fla. L. Weekly D776a] ("the burden was on the moving party (the defendant) to prove that DeJour's attorney 'had a clear and unequivocal grant of authority' from DeJour to settle on his behalf. . . [b]ecause the defendant failed to meet its burden, this court is 'required to reverse' ").

The Affidavit of Christopher Garcia (Defendant's Litigation Adjuster) does not, and could not, provide record evidence of the law firm's representation and authority. Accordingly, even if this Court were to consider the Affidavit of Christopher Garcia in opposition to Plaintiff's Motion for Summary Judgment, same would still be insufficient to meet Defendant's burden.

Affidavit of Yadira Delgado

In an attempt to cure the evidentiary defect as to representation and authority of the alleged law firm, Defendant sought to rely upon the Affidavit of Yadira Delgado. However, the problems with Defendants argument regarding this affidavit are multifold.

First, the factual averments within the Affidavit of Yadira Delgado are stated in a qualified manner as same are made "*[t]o the best of my knowledge and belief*" (index # 100, ¶ 10).

"An affidavit the statements of which are alleged on information and belief is, by the weight of authority, insufficient in any instance where one is required to make affidavit as to the substantive truth of facts stated, and not merely as to good faith." *Hahn v. Frederick,* 66 So.2d 823 (Fla. 1953).

Stated otherwise, a "qualified" affidavit cannot be considered as sworn testimony and/or evidence at all. *See e.g.*, *Hall v. Byington*, 421 So.2d 817 (Fla. 4th DCA 1982) (holding that there was no sworn testimony in the record since the attorney's oath stated that the allegations were "true and correct to the best of his knowledge and belief"); *Scott v. State*, 464 So.2d 1171 (Fla. 1985) ("[t]he trial court correctly held that Scott's verification was not an oath . . . because of the qualifying language contained therein"); *Barton v. Circuit Court*, 659 So.2d 1262 (Fla. 4th DCA 1995) [20 Fla. L. Weekly D1956e] ("[a] verification which states that the information contained therein is true 'to the best of [the affiant's] knowledge' is insufficient because it is qualified, not positive"); *David and Dash, Inc. v. Capitol Fixture & Construction Corp.*, 292 So.2d 381 (Fla. 3d DCA 1974) (applying holding of *Hahn* in rejecting supporting affidavits as insufficient).[5]

This rule applies with equal force in the context of summary judgment motions. *P & T Electric Co. v. Spadea*, 227 So.2d 234 (Fla. 4th DCA 1969) ("The allegations in the affidavit are stated to be true according to the best knowledge, information and belief of the affiant . . . Consequently, the affidavit . . . was insufficient to create a genuine issue of fact").

Accordingly, the Affidavit of Yadira Delgado does not constitute record evidence that can be considered by the Court at summary judgment since its averments are qualified and not stated in a positive manner.

Next, the Affidavit of Yadira Delgado repeatedly refers to the purported "proposal letter" and/or correspondence dated November 6, 2019 that is relied upon by the Defendant. However, the affidavit impermissibly fails to attach the document it refers to and upon which its averments are premised. *See*, *Bifulco v. State Farm*, 693 So. 2d 707 (Fla. 4th DCA 1997) [22 Fla. L. Weekly D1325a] (only sworn documents *attached* to an appropriate affidavit can be considered at summary judgment).

Finally, Defendant never identified, either in a written response or other notice of any kind, that the Affidavit of Yadira Delgado would be relied upon by the Defendant in opposition to the Plaintiff's Motion for Summary Judgment. *See e.g.*, *State Farm Mutual Ins. Co. v. Figler*, 189 So.3d 970 (Fla. 4th DCA 2016) [41 Fla. L. Weekly D805b] ("if the movant or opposing party, at the hearing on the motion, tries to rely on record evidence in the court file that is not identified in advance of the hearing as being in support of, or in opposition to, the motion, the motion or defense to the motion should properly be denied").

In light of the foregoing, the Court finds that the Affidavit of Yadira Delgado fails to create a genuine issue of material fact as same concerns Defendant's "Accord and Satisfaction" defense.

Since neither the affidavit of Christopher Garcia nor Yadira

Delgado are sufficient to create a genuine issue of fact, Plaintiff is entitled to summary judgment in its favor as a matter of law. Indeed, under *Celotex*, Defendant's "failure of proof concerning an essential element of [its] case necessarily renders all other facts immaterial" and Plaintiff is " 'entitled to a judgment as a matter of law' because [Defendant] has failed to make a sufficient showing on an essential element of [its] case".[6]

(Setting Aside Any Evidentiary Issues, Defendant's Statutory "Accord & Satisfaction" Fails as a Matter of Law since Defendant has Failed to Establish the "Fourth Element" of its Defense)

Notwithstanding any evidentiary issues, the Court finds that Defendant has also failed to meet its burden as same concerns the "Fourth Element" of its statutory "Accord and Satisfaction" defense—to wit, that the "instrument" or "an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim".

Defendant's Own Full & Final Instrument Reflects that Date of Service 10/27/17 was Not Discharged by an "Accord and Satisfaction"

Defendant's instrument dated November 22, 2019 states, on its face, that the amounts tendered by Defendant are "***Full and final***" only for "***Dates of Service: From 8/22/2017 To 10/16/2017***".

It is undisputed that Plaintiff rendered treatment and billed for dates of service August 22, 2017 through October 27, 2017. Accordingly, it is undisputed that the dates of service reflected on the face of Defendant's own full & final instrument do not include date of service October 27, 2017.

Defendant's argument that *all* dates of service rendered by the Plaintiff, including October 27, 2017, were nonetheless discharged by this instrument would require this Court to wholly ignore the plain language of the instrument itself. But *Fla. Stat. 673.3111* does not permit this Court to ignore the instrument's unambiguous text and it cannot judicially create an "Accord and Satisfaction" as to dates of service not included within the instrument.

Stated otherwise, the Defendant cannot be permitted to essentially "run and hide" from the language of its very own instrument.

Accordingly, based upon the text of Defendant's own instrument, the Court finds that Plaintiff's bill for date of service October 27, 2017 was not discharged by a statutory "Accord and Satisfaction" under *Fla. Stat. 673.3111* and that Defendant's defense fails as a matter of law.

There is No Record that Defendant Sent a Conspicuous "Accompanying Written Communication" Enclosing its Instrument

As an alternative to the instrument itself, the "Fourth Element" of *Fla. Stat. 673.3111* can be satisfied by presenting evidence that an "*accompanying* written communication contained a conspicuous statement to the effect that the *instrument* was tendered as full satisfaction of the claim".

This Court must give the term "accompanying" as used in *Fla. Stat. 673.3111* its plain and ordinary meaning. *Southeastern Fisheries v. Dep't of Natural Resources*, 453 So.2d 1351, 1353 (Fla. 1984) ("[w]here a statute does not specifically define words of common usage, such words must be given their plain and ordinary meaning"). The most common dictionary definition of the term "accompanying" is "*provided or occurring at the same time as something else*". *Oxford Dictionary*; *see also*, *Collins Dictionary* ("provided at the same time as something else as an extra or addition"); *Cambridge Dictionary* ("to go with someone or to be provided or exist at the same time as something"). This definition is likewise consistent with the plain text of the statute since the "accompanying written communication" must simultaneously refer to the "instrument" (check) itself.

Defendant has not alleged, and there is nothing in the record before this Court to establish, that the Defendant sent an "accompanying written communication" enclosing the instrument at issue in this case. *Cf. Wootton v. Iron Acquisitions*, 338 So.3d 425 (Fla. 2d DCA 2022) [47 Fla. L. Weekly D965a] (no accord and satisfaction where neither check nor letter *enclosing* same contained a conspicuous statement); *St. Croix Lane v. St. Croix at Pelican*, 144 So.3d 639 (Fla. 2d DCA 2014) [39 Fla. L. Weekly D1679b] (accord and satisfaction where party sent an accompanying letter with a conspicuous statement *enclosing* the check); *Brucato v. Ezenia!, Inc.*, 351 F. Supp. 2d 464, 469 (E.D. Va. 2004) (same).

Accordingly, Defendant has failed to the establish the "Fourth Element" of its statutory "Accord and Satisfaction" defense by presenting evidence that an "*accompanying* written communication contained a conspicuous statement to the effect that the *instrument* was tendered as full satisfaction of the claim".

Defendant nonetheless attempts to muddy the clear text of its own instrument by relying upon a purported "proposal letter" and/or correspondence dated November 6, 2019 addressed to the law firm since same contains language regarding "*all* dates of service".[7]

Defendant's argument would not only require this Court to ignore the plain text of its own full & final instrument, but also to proceed under a different statute—*Fla. Stat. 725.05* governing accord and satisfaction of liquidated and/or undisputed debts—that is both unpled[8] and entirely inapplicable[9] to the facts of this case.

Binding decisional precedent in *Berman v. US Financial Acceptance Corp.*, 669 So.2d 1116 (Fla. 4th DCA 1996)[10] [21 Fla. L. Weekly D719b] makes clear that the Defendant's argument and reliance upon the purported "proposal letter" and/or correspondence dated November 6, 20219 to establish its statutory "Accord and Satisfaction" defense is devoid of merit:

> The appellant argues that section 673.3111, Accord and Satisfaction, enacted after section 725.05, changes the interpretation of section 725.05. We disagree. Section 673.3111 deals with accord and satisfaction by use of instrument. "Instrument" is defined in section 673.1041(2), Florida Statutes (1993), as a negotiable instrument. *The memorandum of agreement in this case which constitutes the release is not a negotiable instrument within the meaning of section 673.1041(2), and thus section 673.3111 does not apply to its terms. Additionally, section 725.05 deals with liquidated debts, whereas section 673.3111 deals with disputed debts.*

Based on the foregoing, the Court finds that Defendant's statutory "Accord and Satisfaction" affirmative defense fails as a matter of law and Plaintiff is entitled to entry of summary judgment in its favor.

CONCLUSION

Accordingly, based on this Court's analysis set forth above, it is

ORDERED AND ADJUDGED that Plaintiff's Motion for Summary Judgment as to Defendant's Accord and Satisfaction Affirmative Defense is hereby GRANTED and Defendant's Amended Motion for Final Summary Judgment Re: Accord and Satisfaction is DENIED.

The Court having separately entered Orders granting summary judgment in favor of Plaintiff on the issues of reasonableness, relatedness, and medical necessity, and there being no other issues or defenses for the Court's disposition in this case, the Plaintiff is hereby instructed to confer with defense counsel and submit a proposed Final Judgment in Favor of Plaintiff within five (5) days reflecting the fee schedule amounts owed Plaintiff for the Court's consideration, reserving jurisdiction to determine and award counsel for Plaintiff's attorney's fees and costs.

[1]Defendant's Answer and Affirmative Defense originally also pled "defective demand" letter as an additional affirmative defense, but this defense was withdrawn by the Defendant on May 28, 2021 (index # 34).

[2]At the hearing, Defendant argued that Plaintiff's *notice* of hearing was somehow premature as same was served two (2) days after the filing of Plaintiff's Motion for Summary Judgment. However, Defendant is mistaken as the *hearing* itself was scheduled to occur on a date more than fifty (50) days after service of the motion in compliance with the requirement of *Fla. R. Civ. P. 1.510(c)(6)*.

[3]The Court is cognizant that these cases all addressed prior versions of Rule 1.510 with differing timing provisions and requirements for the submission of evidence. However, their consistent holding that the timely submission of summary judgment evidence is mandatory and of paramount importance remains applicable today.

[4]At the hearing, Defendant invited the Court to nonetheless consider the untimely affidavits in support of Defendant's Motion for Summary Judgment citing to *Fla. R. Civ. P. 1.510(c)(3)* which provides that "[t]he court need consider only the cited materials, but it may consider other materials in the record". The Court must respectfully decline the Defendant's invitation. Indeed, "[a]lthough the trial court is permitted to consider other materials in the record when ruling on a motion for summary judgment, *it is not required to do so*". *Lloyd S. Meisels, P.A. v. Dobrofsky*, 341 So.3d 1131 (Fla. 4th DCA 2022) [47 Fla. L. Weekly D1239a]. More importantly, if the Court were to use the provision of *Fla. R. Civ. P. 1.510(c)(3)* to consider a party's *untimely* filed affidavits, then the mandatory timing requirements of *Fla. R. Civ. P. 1.510(c)(5)* would be rendered a meaningless nullity. This Court does not believe that our Supreme Court intended the general language of *Fla. R. Civ. P. 1.510(c)(3)* to effectively subsume and/or eradicate the specific timing requirements established under *Fla. R. Civ. P. 1.510(c)(5)* when it adopted the rule (the exception cannot swallow the rule).

[5]*See also, British Aviation Ins. Co. v. Menut*, 511 So.2d 425 (Fla. 4th DCA 1987) (since "the essential allegations of the affidavit presented to the trial court in support of these claims were based upon the information and belief of the affiant . . . [t]he affidavit did not furnish a sufficient evidentiary basis to establish fraud or to be probative of the substantive truth of the facts stated"); *In Re Rivas*, 377 B.R. 423 (Bankr. Court, S.D. Florida 2007) [21 Fla. L. Weekly Fed. B152a] ("an affidavit on 'belief and information' is insufficient to establish the facts alleged"); *Automatic Radio Mfg. Co. v. Hazeltine Research, Inc.,* 339 U.S. 827 (1950) ("there is nothing available in the record to support the averment, since the affidavit in support thereof was made upon information and belief"); *Tingley Systems, Inc. v. Bay State HMO Management, Inc.,* 833 F. Supp. 882 (U.S. Dist. Ct., M.D. Florida, Tampa Division 1993) ("an affidavit based on information and belief is insufficient"); *Mengore v. State*, 718 So.2d 368 (Fla. 4th DCA 1998) [23 Fla. L. Weekly D2223c] (denial of motion affirmed where "the factual allegations in his memorandum of law contained a defective verification clause in which he said that the statements were 'true and correct to the best of my knowledge and belief' "); *Raybon v. Burnette*, 135 So.2d 228 (Fla. 2d DCA 1961) ("the affidavit of the plaintiff with respect to the prior case was supported only by the two citizens' affidavits containing conclusions based upon information and belief" and accordingly "the motion is clearly insufficient").

[6]At the hearing, Defendant argued that Plaintiff's Motion for Summary Judgment should be denied since the *Plaintiff* did not come forth with any affidavits in support of its motion. However, Defendant misapprehends that, under *Celotex.* Plaintiff was not required to proffer any affidavits since it is the Defendant who bears the burden of proof as to its "Accord and Satisfaction" defense. Not to mention that Plaintiff did in fact file a Declaration of Records Custodian (index # 87) in support as noted above.

[7]It is undisputed by the parties that this document did not accompanying and/or enclose the instrument at issue and makes no reference to the instrument.

[8]*See e.g.*, *BSP/Port Orange, LLC., v. Water Mill Properties, Inc.*, 969 So.2d 1077 (Fla. 5th DCA 2007) [32 Fla. L. Weekly D2494b], citing *Reina v. Gingerale Corp.,* 472 So.2d 530, 531 (Fla. 3d DCA 1985)) ("[a]t a summary judgment hearing, the court must only consider those issues made by the pleadings"); *Sunbeam Television Corp. v. Mitzel*, 83 So.3d 865 (Fla. 3d DCA 2012) [37 Fla. L. Weekly D183a] ("when a [party] pleads one claim but tries to prove another, it is error for a trial court to allow the [party] to argue the unpled issue"); *Arky, Freed, Stearns et. al. v. Bomar Instrument Corp.*, 537 So.2d 561 (Fla. 1989); *Dober v. Worrell*, 401 So.2d 1322 (Fla. 1981); *Advanced Florida Med. v. Progressive Am. Ins. Co.*, 364 So.3d 1131 (Fla. 6th DCA 2023) [48 Fla. L. Weekly D1078b]; *Meigs v. C.F. Lear*, 191 So.2d 286 (Fla. 1st DCA 1966).

[9]It is undisputed that Plaintiff's claim for PIP benefits at issue in this case is *unliquidated* and/or subject to a bona fide dispute. Since *Fla. Stat. 725.05* only applies to *liquidated* debt, that statute is inapplicable and does not govern the Court's disposition of this matter, even if it had been pled by the Defendant.

[10]At the hearing, Defendant argued that the Court should not consider Plaintiff's arguments regarding the *Berman* case, asserting that same were not timely raised in writing prior to the hearing. However, Plaintiff's Motion for Summary Judgment itself in fact cites to and makes arguments relying upon *Berman* (index # 91, page 17).

* * *

Insurance—Automobile—Windshield repair—Appraisal—Motion to dismiss and compel appraisal granted where policy contains valid appraisal provision, the only dispute is cost of repair, not coverage, and the appraisal process had not been completed at time vehicle owner filed complaint against insurer—Appraisal process had not been completed at time vehicle owner filed suit against insurer where policy's appraisal provision required that owner and insurer each select an appraiser; that these two appraisers select a third appraiser; and that, if the two appraisers were unable to agree on a third appraiser within 30 days, the owner or insurer could petition court to select a third appraiser—Insurer's motion to appoint third appraiser granted—Dismissal without prejudice—Parties to proceed to appraisal

ADAS WINDSHIELD CALIBRATIONS, LLC, a/a/o Alexis Salameh, Plaintiff, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2023-180678-SP-25. Section CC02. May 9, 2024. Miesha S. Darrough, Judge. Counsel: Martin Berger, Berger & Hicks, P.A., for Plaintiff. Angela M. Greenwalt, Gordon Rees Scully Mansukhani, LLP, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AND COMPELLING APPRAISAL AND GRANTING DEFENDANT'S MOTION TO APPOINT THIRD APPRAISER AND DENYING PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S UNTIMELY MOTION TO APPOINT THIRD APPRAISER

THIS MATTER came before the Court on May 2, 2024, on Defendant, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY's (the "Defendant" or "State Farm"), Motion to Dismiss Plaintiff's Complaint and to Compel Appraisal and Defendant's Motion to Appoint Third Appraiser, and Plaintiff, ADAS WINDSHIELD CALIBRATIONS, LLC a/a/o ALEXIS SALAMEH's ("Plaintiff")'s Motion to Strike Defendant's Untimely Motion to Appoint Third Appraiser, and the Court having considered the motions, heard argument of counsel, and being otherwise fully advised in the premises, the Court finds as follows:

1. Defendant's Motion to Dismiss Plaintiff's Complaint and to Compel Appraisal and Defendant's Motion to Appoint Third Appraiser is **GRANTED**. Plaintiff's Motion to Strike Defendant's Untimely Motion to Appoint Third Appraiser is **DENIED.** The subject State Farm policy states in the 6910A Amendatory Endorsement, in relevant part, "[i]f there is a disagreement as to the cost of repair, replacement, or recalibration of glass, an appraisal will be used as the first step toward resolution." Based on the allegations in the Complaint, the only issue in dispute is the cost of repair or replacement and not coverage. There is, therefore, an appraisable issue in this action.

2. The Florida Supreme Court has laid out the factors for determining whether an issue is subject to appraisal: "[w]hen the insurer admits that there is a covered loss, but there is a disagreement on the amount of loss, it is for the appraisers to arrive at the amount to be paid." *Johnson v. Nationwide Mut. Ins. Co.*, 828 So. 2d 1021, 1025 (Fla. 2002) [27 Fla. L. Weekly S779a] (quoting *Gonzalez v. State Farm Fire & Cas. Co*., 805 So. 2d 814, 816-817 (Fla. 3d DCA 2000) [26 Fla. L. Weekly D390a]). When the parties' disagreement concerns the amount and scope of loss, and a written agreement to submit such a dispute to appraisal existed, appraisal is required. *See People's Tr. Ins. Co. v. Fernandez, 46 Fla. L. Weekly D444a, D444 (Fla. 3d DCA Feb. 24, 2021)* (holding that trial court erred in refusing to compel appraisal where insurer conceded coverage and only dispute concerned the amount of loss).

3. Recently, Florida's Second District Court of Appeal in *Progressive Amer. Ins. Co. v. Glassmetics, LLC a/a/o Devan Hammond*, 343 So. 3d 613 (Fla. 2d DCA 2022) [47 Fla. L. Weekly D1106b] ("*Glassmetics*") held that appraisal provisions concern-

ing auto glass repair or replacement were not ambiguous, nor against public policy, do not violate the assignee's rights of access to courts, and are not unenforceable due to a limited amount of procedures and methodological details. *Id.* at 621-626. The *Glassmetics* court reiterated that appraisal is an informal process, which does not entail legal work arising but rather work done within the contract to resolve the dispute. *Id.* at 619. *See also NCI, LLC, f/k/a Auto Glass Store LLC a/a/o Dora Noe v. Progressive Select Ins. Co.*, 350 So. 3d 801 (Fla. 5th DCA 2022) [47 Fla. L. Weekly D2235f] ("*NCI*").

4. In this case, there is no dispute as to coverage, as the allegations of the Complaint show that State Farm has admitted coverage and tendered payment. There is also no dispute that the determination of the amount of loss is governed by State Farm's appraisal provision. Rather, Plaintiff contends that the Motion to Dismiss is deficient because appraisal has already been completed.

5. Plaintiff argues that appraisal has been completed because they named their proposed third appraiser in an email which they attached to their Complaint. The Court does not agree. State Farm's policy provides in pertinent part: "If there is a disagreement as to the cost of repair, replacement, or recalibration of glass, an appraisal will be used as the first step towards resolution. Appraisal will follow the rules and procedures as listed below: (a) The owner and ***we*** each select a competent appraiser and (b) The two appraisers will select a third competent appraiser. If they are unable to agree on a third appraiser within 30 days, then either the owner or ***we*** may petition a court that has jurisdiction to select the third appraiser." This Court finds that the appraisal process has not been completed, since Plaintiff filed suit prior to either party petitioning the Court to select a third appraiser and a third appraiser has not been selected.

6. In its Motion to Strike Defendant's Untimely Motion to Appoint Third Appraiser, Plaintiff argues that (1) Defendant may not petition the Court because the parties are no longer in the appraisal process, (2) Defendant was limited to 30 days to make such a petition and (3) that it is a legal impossibility for either party to petition to appoint a third appraiser as the former is not a recognizable cause of action in the State of Florida. This Court disagrees. As noted in the language referenced above, the appraisal process has not been completed. The 30 days referenced is a condition precedent to petitioning the Court, not an expiration of the condition precedent. Moreover, Florida's Third District Court of Appeal, which is binding on this Court, held that in appointing an umpire pursuant to the appraisal clause, the trial court had authority to select a person with appropriate expertise. *Liberty Mut. Fire Ins. Co. v. Hernandez*, 735 So. 2d 587 (Fla. 3d DCA 1999) [24 Fla. L. Weekly D1535c] ("*Hernandez*"). See also *State Farm Fire and Casualty Co., v. Licea*, 685 So. 2d 1285 (Fla. 1996) [21 Fla. L. Weekly S543a]. Accordingly, this action is disposed of by appellate precedent. Defendant complied with the policy language by filing a motion in this action.

Pursuant to the plain language of the policy, appraisal must be completed prior to Plaintiff filing suit. As such, the Court finds that Defendant's Motion to Dismiss and Compel Appraisal must be GRANTED.

IT IS THEREFORE, ORDERED AND ADJUDGED:

1. Defendant's Motion to Appoint Third Appraiser is **GRANTED.**

2. Plaintiff's Motion to Strike Defendant's Untimely Motion to Appoint Third Appraiser is **DENIED**.

3. The case is **DISMISSED** without Prejudice, and the parties shall proceed to appraisal.

4. The Court appoints Shalom Ziones as the third appraiser in this matter.

* * *

Insurance—Personal injury protection—Declaratory action—Presuit demand letter—Where medical provider failed to file demand letter prior to filing declaratory action seeking both monetary and equitable relief, insurer is entitled to a stay in order to receive and respond to demand letter

MULTI-CARE MEDICAL OF SW FLORIDA, PLLC, a/a/o Erin Houck-Toll, Plaintiff, v. SAFECO INSURANCE COMPANY OF ILLINOIS, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2025-058361-CC-25. Section ND02. October 29, 2025. Natalie Moore, Judge. Counsel: Sean A. Storani, P.L., for Plaintiff. Sean P. Greenwalt, Marshall Dennehey, P.A., Tampa, for Defendant.

AGREED ORDER STAYING CASE AND COMPELLING PRE-SUIT DEMAND LETTER

THIS CAUSE having come before the Court on October 16, 2025, for Respondent's Motion to Stay Litigation and to Compel Statutory Compliance, and the Court, hearing arguments, having reviewed file, the Motion, and being otherwise advised in the premises, it is hereby found:

1. This matter involves a declaratory petition regarding to the proper reimbursement methodology found in Florida's No-Fault Statute Section 627.736 and Respondent's policy.

2. Neither party disputes that a pre-suit demand letter pursuant to Section 627.736(10) Fla. Stat. was not served on the underlying claim prior to the filing of Petitioner's instant Declaratory Petition.

3. Based on the plain reading of Petitioner's Declaratory Petition, Petitioner seeks both monetary and equitable relief. Petitioner's claim to monetary relief is an action for benefits triggering the pre-suit requirements found in Section 627.736(10) Fla. Stat.

4. The Court finds Respondent is entitled to a temporary stay of litigation in order to receive its pre-suit demand letter and respond accordingly within the statutory time frames.

THEREFORE, it is **ORDERED AND ADJUDGED** that:

1. This matter shall be stayed for seventy-five (75) days from the execution date of this Order.

2. The Petitioner is ORDERED to send a pre-suit demand letter for the underlying claim in this instant suit pursuant to the requirements of Section 627.736(10) Fla. Stat. and within the first thirty (30) days of the stay period.

3. All Deadlines pursuant to the Uniform Case Management Order are hereby automatically extended seventy-five (75) days, except for the projected trial date.

4. This stay will automatically lapse at the expiration of the applicable seventy-five (75) day period

* * *

Insurance—Discovery—Documents—Insurer is ordered to supplement production of documents with pdf attachments referenced therein

NOEL A. PINEDA ESPANA, Plaintiff, v. DIRECT GENERAL INSURANCE COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County, Civil Division. Case No. 25-CC-020285. January 19, 2026. Marc S. Makholm, Judge. Counsel: Timothy A. Patrick, Patrick Law Group, P.A., Tampa, for Plaintiff. Teodora Siderova and Marsha Moses, for Defendant.

ORDER

THIS MATTER having come before the court on January 14, 2016 on Defendant's Motion for Protective Order (Doc #103) and other motions. Having reviewed and considered the motions, the supporting memoranda, the relevant materials in the file, the arguments presented by counsel, and the applicable law, and being otherwise fully advised,

the Court finds as follows:

1. On December 14, 2025, this Court entered an Order Granting in Part Plaintiff's Motion to Compel Discovery.

2. Plaintiff's Third Request to Produce requested the following:

> 1. Any and all contractual agreements in effect for the last 2 years between Direct General Insurance Company and/or its parent company, National General Insurance Company & JBA Medical, Inc. which allow JBA Medical, Inc. to perform peer reviews for Direct General.

3. The Court granted Plaintiff's motion as to No.1. Defendant did request an in camera inspection of the documents by the Court prior to production to Plaintiff. Defendant shall produce said document(s) to the Court as soon as possible. However, the court imposes a deadline of December 29, 2025 for Defendant to produce the documents to the Court for in camera inspection.

4. Defendant thereafter timely delivered documentation to the Court for an in camera inspection.

5. The Court has areas of concern with 2 aspects of the delivered documents to the Court by Defendant. The delivered contract has a section titled "Pricing" which directs one to an apparent pdf attachment which states: "Please see link" with an attached icon. The contract also has a section titled "Operation Reports" which directs one to an apparent pdf attachment which states: "Please see link" with an attached icon.

6. Defendant failed to include the pdf attachments to the Court for in camera inspection despite being previously ordered to, which concerns this Court.

7. Defendant is ordered to supplement its previous Court ordered response by submitting the pdf attachments to the Court for an in camera inspection by noon on December 20, 2026.

8. The remainder of Defendant's Motion for Protective Order will be heard on January 27, 2026 at 1:45 PM.

9. All of Plaintiff's Motions in Limine were withdrawn.

10. Defendant's Motion for Leave to Amend Answer and Affirmative Defenses (Doc #113) is **HEREBY DENIED**. As such, Defendant's Answer and Affirmative Defenses (Doc #16) shall control.

11. Defendant's Motion to Strike Plaintiff's Witness and Affiant, Amaurys Fernandez (Doc #112) is abandoned.

* * *

Insurance—Personal injury protection—Attorney's fees—Insured is entitled to award of attorney's fees and costs where insurer did not pay disputed benefits until after suit was filed and settlement was enforced by court

KATIA CABALLERO, Plaintiff, v. DIRECT GENERAL INSURANCE COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County, Civil Division. Case No. 25-CC-005872. Division H. February 12, 2026. James Salvatore Giardina, Judge. Counsel: Timothy A. Patrick, Patrick Law Group, P.A., Tampa; and David Caldevilla, de la Parte, Gilbert, McNamara & Caldevilla, P.A., Tampa, for Plaintiff. Michael Clarke, Marsha Moses, and Teodora Siderova, Kubicki Draper, for Defendant.

ORDER DETERMINING ENTITLEMENT TO ATTORNEY'S FEES AND COSTS

THIS CAUSE came before the Court on *Plaintiff's Motion for Attorney's Fees, Costs, Interest on Fees and Costs from Date of Entitlement, Risk Multiplier, and Taxation of Attorney Fee Expert Costs* [DE 11] and *Plaintiff's Motion to Enforce Settlement Agreement and Motion for Attorney's Fees* [DE 41], together with the parties' memoranda of law and the Court, having heard the arguments of counsel, reviewed the record and applicable law, and being otherwise fully advised in the premises, hereby finds as follows:

FINDINGS OF FACT

1. Plaintiff filed this action seeking declaratory relief pursuant to section 86.121, Florida Statutes, to determine insurance coverage for personal injury protection ("PIP") benefits under Defendant's policy.

2. Defendant paid certain benefits but suspended payment of additional submitted medical charges.

3. After suit was filed, the parties entered into a settlement agreement under which Defendant agreed to pay the outstanding unpaid PIP benefits in accordance with the applicable fee schedules and statutory interest.

4. By prior order, this Court determined that the settlement agreement was valid and binding and granted Plaintiff's motion to enforce the settlement, reserving jurisdiction to determine entitlement to attorney's fees and costs.

5. Defendant thereafter tendered payment of the disputed benefits.

CONCLUSIONS OF LAW

6. In resolving fee entitlement, the Court applies the governing statutes according to their plain and ordinary meaning. The Court's role is limited to applying the law as written, not to expanding or narrowing the Legislature's chosen language based on policy considerations. Where the statutory text is clear, it controls. See *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942 (Fla. 2020) [46 Fla. L. Weekly S9a].

7. Section 86.121(1)(b), Florida Statutes, provides that the Court shall award reasonable attorney's fees to the named insured upon rendition of a declaratory judgment in the insured's favor in an action to determine insurance coverage after a total coverage denial of a claim. The Court gives these terms their ordinary legal meaning and declines to add requirements not expressed in the statute.

8. Florida law recognizes that when an insurer pays disputed benefits after suit is filed, such payment constitutes the functional equivalent of a confession of judgment in favor of the insured. See *Wollard v. Lloyd's & Cos. of Lloyd's*, 439 So. 2d 217 (Fla. 1983); *Ivey v. Allstate Ins. Co.*, 774 So. 2d 679 (Fla. 2000) [25 Fla. L. Weekly S1103a]. A confession of judgment operates as the equivalent of a judgment or rendition for purposes of fee-shifting statutes applicable to insurance coverage litigation.

9. Here, Defendant did not pay the disputed benefits until after this action was filed and the settlement was enforced by the Court. As to those unpaid charges, Defendant provided no coverage or payment prior to suit. Under settled Florida precedent, the post-suit payment constitutes the functional equivalent of a judgment establishing coverage in Plaintiff's favor.

10. Applying section 86.121 as written, and applying the confession-of-judgment doctrine as recognized by controlling precedent, the Court concludes that Plaintiff has obtained the equivalent of a declaratory judgment determining coverage and is therefore entitled to reasonable attorney's fees.

11. Plaintiff is also entitled to recover taxable costs pursuant to section 57.041, Florida Statutes.

Accordingly, it is hereby **ORDERED AND ADJUDGED**:

1. Plaintiff is entitled to an award of reasonable attorney's fees pursuant to section 86.121, Florida Statutes.

2. Plaintiff is entitled to recover taxable costs pursuant to section 57.041, Florida Statutes.

3. The Court reserves jurisdiction to determine the reasonable amount of fees, costs, and any other recoverable items upon further hearing.

* * *

Criminal law—Driving under influence—Search and seizure—Vehicle stop—Traffic infractions—Failure to maintain single lane—State failed to prove that officer had probable cause to stop defendant for failure to maintain single lane where dash cam video is inconsistent with officer's testimony that defendant drifted from lane, nearly striking adjacent vehicle—Use of high beam headlights—State failed to prove that officer had probable cause to stop defendant for use of high beam headlights where there is no evidence that defendant's high beams were illuminated as he came within 300 feet of rear of any vehicle that he was approaching—Further, state presented no evidence that stop was valid based on officer's belief that defendant might have medical condition or be impaired—Motion to suppress is granted

STATE OF FLORIDA, v. CARLTON GEORGE EVANS, Defendant. County Court, 15th Judicial Circuit in and for Palm Beach County, Criminal Division C. Case No. 2025CT004365AXXXMB. January 9, 2026. August A. Bonavita, Judge. Counsel: Eric S. Biles, Assistant State Attorney, State Attorney's Office, West Palm Beach, for State. Joel Mumford, The Ticket Clinic, West Palm Beach, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS

THIS MATTER came before the Court on defendant's Motion to Suppress ("Motion"). The Court held an evidentiary hearing on January 8, 2026. The State presented the testimony of the stopping officer, Palm Beach County Sheriff's Deputy Tyler Camus. Also, by agreement and stipulation, a DVD depicting Camus' dash camera was introduced and published multiple times throughout the hearing. The video records part of the Defendant's driving pattern that Camus relied upon to make the traffic stop. The Court having reviewed the Motion and court file as well as having considered the aforesaid testimony and evidence as well as the argument of the parties and otherwise being fully advised in the premises finds as follows:

1. The defendant is charged with DUI.

2. On March 14, 2025 at approximately 2:30 a.m., Camus, while on patrol, was stopped at a red traffic signal facing westbound on Okeechobee Boulevard at the intersection of Military Trail. The Defendant's vehicle was stopped at the same red traffic signal on Military Trail waiting to turn left heading westbound on Okeechobee Boulevard. Camus testified the Defendant's vehicle's high beams were illuminated.

3. When the turned green, the Defendant proceeded to turn left onto the westbound lane of Okeechobee Boulevard. Thereafter, Camus' light turned green and he likewise proceeded westbound following the Defendant. He eventually caught up to the Defendant's vehicle and followed it for approximately one- to two miles. Camus' dash camera at some point during this time began to record the Defendant's vehicle's driving pattern. Camus testified he observed the vehicle swerve almost striking another vehicle in the adjacent lane. At that point, Camus activated his overhead lights and effectuated a traffic stop. This was recorded on the dash cam video.

DISCUSSION

4. In his Motion, the defendant argues that the stop in this case was improper in that the officer lacked probable cause to believe the defendant committed any traffic infractions. The State responds arguing the stop was valid based on the totality of facts observed by the officer. Also, the State argues the officer had a reasonable suspicion and/or probable cause to stop the vehicle based on a violation s. 316.238, Fla. Stat.[1] For the following reasons, the Court finds the State failed to prove that the stop in this case was proper under the Fourth Amendment.

5. In *Hurd v. State*, 958 So.2d 600, (Fla. 4th DCA 2007) [32 Fla. L. Weekly D1594a], the Fourth District Court of Appeal explained that:

> [T]he stopping of a motorist is reasonable where a police officer has probable cause to believe a traffic violation has occurred. *See Whren v. United States,* 517 U.S. 806, 810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996); *Petrel v. State,* 675 So.2d 1049, 1050 (Fla. 4th DCA 1996) [21 Fla. L. Weekly D1559b]. The test is whether a police officer could have stopped the vehicle for a traffic violation. *Id.*
>
> The constitutional validity of a traffic stop depends on purely objective criteria. *Whren,* 517 U.S. at 813, 116 S.Ct. 1769. The objective test "asks only whether any probable cause for the stop existed," making the subjective knowledge, motivation, or intention of the individual officer involved wholly irrelevant. *Holland v. State*, 696 So.2d 757, 759 (Fla.1997) [22 Fla. L. Weekly S387a].

6. This Court finds the dash camera video is inconsistent with the officer's testimony that the Defendant's vehicle swerved and almost struck another one to the extent the Defendant created a reasonable safety concern. Having repeatedly viewed the video, there is no indication the Defendant drifted from his lane nearly striking the adjacent vehicle. *See e.g., Crooks v. State*, 710 So.2d 1041, 1043 (Fla. 2d DCA 1998) [23 Fla. L. Weekly D1323b] (no basis to stop vehicle for violation of s. 316.089(1) where no evidence to suggest that vehicle's movement created a safety concern); *see also, Hurd*, 958 So.2d at 603.

7. Additionally, the Court finds the State failed to prove that the officer had probable cause to stop the Defendant's vehicle based on a violation of s. 316.238, Fla. Stat. Even if the Defendant had his high beam lights illuminated while stopped at the traffic signal, as Camus testified, the State nonetheless presented no credible evidence that they remained illuminated after turning and heading westbound to the point that his vehicle came "within 300 feet from the rear" of any vehicle that he was approaching. *Id.* As the defense noted, no testimony was adduced to support the State's argument on this point. Further, the dash camera video is unclear at best that the Defendant's high beams were illuminated as he came within 300 feet of the other vehicle.

8. Lastly, the State likewise presented no evidence to suggest that the stop was valid based on the officer's belief the defendant may be having a medical condition or that he may be impaired. *See, Roberts v. State*, 732 So.2d 1127 (Fla. 4th DCA 1999) [24 Fla. L. Weekly D533a]. For these reasons, the Court finds the stop in this case was invalid. Accordingly, the defendant's Motion is GRANTED.

---

[1]**316.238. Use of multiple-beam road-lighting equipment**

(1) Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in s. 316.217, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(a) Whenever the driver of a vehicle approaches an oncoming vehicle within 500 feet, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam, specified in ss. 316.237(1)(b) and 316.430(2)(b) shall be deemed to avoid glare at all times, regardless of road contour and loading.

(b) Whenever the driver of a vehicle approaches another vehicle from the rear within 300 feet, such driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light specified in ss. 316.237(1)(a) and 316.430(2)(a).

(2) A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

* * *

Insurance—Automobile—Windshield repair—Appraisal—Motion to dismiss declaratory action or stay and compel appraisal is denied where complaint challenges ripeness and enforceability of appraisal provision in light of insurer's alleged lack of compliance with policy's post-loss settlement methodology

PRIORITY MOBILE GLASS, a/a/o Samantha Martinez, Plaintiff, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. COINX25036548. Division

62. January 8, 2026. Woody Clermont, Judge. Counsel: Andrew B. Davis-Henrichs and Emilio R. Stillo, Emilio Stillo, P.A.; and Lawrence Kopelman, Lawrence M. Kopelman, P.A., for Plaintiff. Kimberly Lambros, The Post Law Firm, P.A., for Defendant.

ORDER DENYING DEFENDANT'S AMENDED MOTION TO DISMISS OR ALTERNATIVELY MOTION TO STAY AND COMPEL APPRAISAL

THIS CAUSE came before the Court on Defendant's Amended Motion to Dismiss the Amended Complaint, or Alternatively Motion to Stay and Compel Appraisal. The Court has reviewed the motion, the Amended Complaint, the parties' submissions, and the record, and is otherwise fully advised in the premises, finds as follows:

Nature of the Action

Plaintiff's Amended Complaint asserts three counts for declaratory relief pursuant to chapter 86, Florida Statutes. Plaintiff does not seek damages for breach of contract. Instead, Plaintiff seeks judicial determinations regarding the ripeness and enforceability of appraisal, the interpretation of policy provisions governing payment methodology, and the enforceability and internal consistency of the appraisal provision itself.

The pleadings reflect a present and concrete dispute concerning the parties' respective rights and obligations under the insurance policy.

Standard of Review

A motion to dismiss tests the legal sufficiency of the complaint. The Court must accept all well pleaded factual allegations as true and draw all reasonable inferences in favor of the nonmoving party. Dismissal is improper unless the plaintiff can prove no set of facts consistent with the allegations that would entitle it to relief.

Declaratory relief is appropriate where there is a bona fide, actual, present, and practical need for a declaration, and where the parties have adverse interests concerning the interpretation or application of a written instrument. Parties may seek declaratory relief from courts as a matter of law. § 86.101, Fla. Stat. (2025). A party that is "in doubt about its rights under a contract or other instrument may seek a judicial declaration" to determine those rights." *People's Tr. Ins. Co. v. Valentin*, 305 So. 3d 324, 327 (Fla. 3d DCA 2020) [45 Fla. L. Weekly D754b]. "[Q]uestions of fact and disagreements concerning coverage under insurance policies are proper subjects for a declaratory judgment if necessary to a construction of legal rights." *Travelers Ins. Co. v. Emery*, 579 So. 2d 798, 801 (Fla. 1st DCA 1991). It is error to dismiss a complaint when a bona fide need for declaration is satisfied. *See Cintron v. Edison Ins. Co.*, 339 So. 3d 459, 462 (Fla. 2d DCA 2022) [47 Fla. L. Weekly D1079a] (finding a trial court errs when dismissing a complaint where the insureds satisfy all the pleading requirements of whether there is a bona fide need for a declaration).

Justiciable Controversy

Trial courts ordinarily have the discretion to decide the order in which appraisal and coverage determinations are made. *Barbato v. State Farm Fla. Ins. Co.*, 319 So. 3d 96, 97 (Fla. 3d DCA 2021) [46 Fla. L. Weekly D597f]. Analogously, where declaratory counts challenging the enforceability of an appraisal clause exist, courts must enjoy no less power to decide whether to address such arguments in an adjudication of the merits of such counts, or in response to a motion to compel appraisal, before the appraisal can be enforced, as well as to decide whether an evidentiary hearing is warranted. *Cf. Higgins v. State Farm Fire & Cas. Co.*, 894 So. 2d 5, 18 (Fla. 2004) [29 Fla. L. Weekly S533a] (holding declaratory judgment was viable vehicle to try coverage issues, including duty to defend, and recognizing "the trial court's exercise of discretion in allowing the declaratory action to be tried prior to the resolution of the underlying liability action").

The Amended Complaint sufficiently alleges a real and immediate controversy between the parties. Plaintiff alleges uncertainty as to whether Defendant may compel appraisal where Defendant allegedly failed to comply with policy based payment conditions prior to invoking appraisal.

These allegations present a justiciable controversy appropriate for judicial resolution and are not merely a request for an advisory opinion.

Appraisal and Alleged Failure to Comply With Policy Conditions

Defendant contends that appraisal is mandatory and constitutes a condition precedent requiring dismissal or a stay of this action. Plaintiff, however, alleges that appraisal is not ripe because Defendant did not comply with the policy's loss settlement provisions before invoking appraisal. This is significant because the issues before this Court are whether appraisal is ripe and enforceable, and as the party seeking appraisal, State Farm must demonstrate compliance with its post-loss obligations by clear and convincing evidence. *Am. Cap. Assurance Corp. v. Leeward Bay at Tarpon Bay Condo. Ass'n, Inc.*, 306 So. 3d 1238, 1240 (Fla. 2d DCA 2020) [45 Fla. L. Weekly D2463a] (citing *Fla. Ins. Guar. Ass'n v. Hunnewell*, 173 So. 3d 988, 991 (Fla. 2d DCA 2015) [40 Fla. L. Weekly D661a]); *see also State Farm Fla. Ins. Co. v. Hernandez*, 172 So. 3d 473 (Fla. 3d DCA 2015) [40 Fla. L. Weekly D1433a] ("The law in this district is clear and has been for nearly twenty years: the party seeking appraisal must comply with all post-loss obligations before the right to appraisal can be invoked under the contract.").

Specifically, Plaintiff alleges that Defendant created and approved its own internal estimate rather than paying pursuant to a bid or repair estimate approved in accordance with the policy, and that such conduct constitutes a failure to satisfy policy conditions necessary to render appraisal ripe. The obligation to satisfy post-loss conditions is not one-sided, both insurer and insurer must comply. *See People's Tr. Ins. Co. v. Ortega*, 306 So. 3d 280, 284 (Fla. 3d DCA 2020) [45 Fla. L. Weekly D1523a] ("The right to an appraisal is created by the insurance policy and cannot be triggered until both parties . . have complied with their contractual obligations.").

At the pleading stage, these allegations must be accepted as true. Whether Defendant complied with its policy based obligations prior to invoking appraisal presents a legal issue intertwined with factual determinations that cannot be resolved on a motion to dismiss.

Judge Mollica's Prior Order

Plaintiff cites a prior order entered by Judge Mollica in a separate Broward County case involving similar policy language and conduct by Defendant. *Broward Ins. Rec. Cntr. LLC v. State Farm Mut. Auto. Ins. Co.*, No. COINX23026027 (Fla. 17th Jud. Cty. Ct., Jun. 7, 2024). Plaintiff relies on that order as persuasive authority for the proposition that appraisal is not ripe where State Farm creates and approves its own internal estimate rather than complying with the policy's loss settlement methodology.

While the Court recognizes that county court orders are not binding precedent, the Court finds that Plaintiff's reliance on the reasoning expressed in that order is not improper. The cited order addresses similar policy language and raises legal issues concerning appraisal ripeness that are appropriately considered by this Court at a later stage of the proceedings.

At this juncture, the Court does not adopt or reject the conclusions reached in that order. Rather, the Court finds that Plaintiff's reliance on it underscores the existence of a bona fide legal dispute suitable for declaratory relief and not subject to dismissal at the pleading stage.

Appraisal First or Declaratory Relief First

Trial courts ordinarily have the discretion to decide the order in which appraisal and coverage determinations are made. *Barbato v. State Farm Fla. Ins. Co.*, 319 So. 3d 96, 97 (Fla. 3d DCA 2021) [46 Fla. L. Weekly D597f]. That discretion necessarily includes the

authority to determine whether appraisal should proceed before, after, or not at all until threshold legal issues are resolved.

Analogously, where a complaint pleads declaratory counts challenging the ripeness, enforceability, or applicability of an appraisal provision, courts must enjoy no less power to decide whether such issues should be addressed through adjudication of the declaratory claims before appraisal is enforced, or whether those issues should be resolved in connection with a motion to compel appraisal. The Court also retains discretion to determine whether resolution of those issues requires an evidentiary hearing.

This approach is consistent with Florida Supreme Court precedent recognizing declaratory relief as a proper vehicle to resolve threshold legal questions concerning insurance obligations before other contractual mechanisms are enforced. *Cf. Higgins v. State Farm Fire & Cas. Co.*, 894 So. 2d 5, 18 (Fla. 2004) [29 Fla. L. Weekly S533a] (holding declaratory judgment was a viable means to resolve coverage issues, including the duty to defend, and recognizing the trial court's discretion to allow a declaratory action to be tried prior to resolution of related proceedings).

Here, Plaintiff's Amended Complaint places at issue whether appraisal is ripe and enforceable under the policy and the facts alleged. Under the Court's discretionary authority, it is appropriate to permit those declaratory claims to proceed before compelling appraisal. "Because these are challenges targeting the enforceability of the appraisal and other policy provisions themselves, the trial court could not have granted the motion to compel appraisal as to the breach of contract claim without improperly and prematurely adjudicating these issues with regard to the declaratory judgment claims." *People's Tr. Ins. Co. v. Marzouka*, 320 So. 3d 945, 948 (Fla. 3d DCA 2021) [46 Fla. L. Weekly D1155a] (citations omitted); *see also State Farm Fla. Ins. Co. v. Hernandez*, 172 So. 3d 473 (Fla. 3d DCA 2015) [40 Fla. L. Weekly D1433a].

Sufficiency of the Declaratory Counts

Each count of the Amended Complaint alleges uncertainty regarding the parties' rights and obligations under the policy and seeks declarations concerning issues reserved to the Court, including policy interpretation and the enforceability of appraisal.

Whether Plaintiff will ultimately prevail on these claims is not before the Court. The Amended Complaint sufficiently states claims upon which declaratory relief may be granted.

Conclusion

Accepting the well pleaded allegations as true and construing them in the light most favorable to Plaintiff, the Court finds that the Amended Complaint states legally sufficient claims for declaratory relief. Defendant's arguments address the merits of the dispute and are not grounds for dismissal at this stage.

Accordingly, it is **ORDERED** and **ADJUDGED**:

1. Defendant's Amended Motion to Dismiss the Amended Complaint, or Alternatively Motion to Stay and Compel Appraisal, is **DENIED**.

2. Defendant shall file its responsive pleading within 20 days of this Order.

* * *

Insurance—Civil procedure—Dismissal—Failure to prosecute—Case is dismissed for lack of prosecution where medical provider failed to create record activity within one-year period and failed to show good cause—Notice of trial filed outside of one-year period does not preclude dismissal

TRICOCHE FAMILY CHIROPRACTIC, INC., a/a/o Kathleen Stolp Smith, Plaintiff, v. CALIFORNIA CASUALTY INSURANCE COMPANY, Defendant. County Court, 18th Judicial Circuit in and for Brevard County. Case No. 05-2021-SC-014521-XXXX-XX. September 22, 2025. Clarissa Harrell, Judge. Counsel: Michael Salviano, GED Lawyers, LLP, for Plaintiff. Sean P. Greenwalt, Marshall Dennehey, P.A., Tampa, for Defendant.

ORDER OF DISMISSAL

THIS CAUSE having come before the Court on September 17, 2025 for Defendant's Motion for Involuntary Dismissal for Lack of Prosecution, and the Court, hearing arguments, having reviewed file, the Motion, and being otherwise advised in the premises, it is hereby found:

1. Defendant filed its Motion for Involuntary Dismissal for Lack of Prosecution per Florida Rule of Civil Procedure 1.420(e) after no record activity for at least ten months.

2. On June 18, 2025, notice was served for hearing on the lack of prosecution. Plaintiff failed to file any record activity within sixty days of the notice.

3. As no record activity was filed within sixty days of the notice, Plaintiff was required to file a statement of good cause as to why this matter should not be dismissed within five days of the hearing on September 17, 2025.

4. Rule 1.420(e) requires a statement of good cause to be filed within five days of the scheduling hearing if no record activity occurred within sixty days of the notice. While Plaintiff did file a Notice for Trial on September 15, 2025, after the sixty day deadline, no statement of good cause was filed and Plaintiff did not present evidence of good cause at the hearing.

5. Florida Rule of Civil Procedure Rule 1.420(e) states when its requirements are not met that "the action shall be dismissed by the Court."

THEREFORE, it is **ORDERED AND ADJUDGED** that:

1. This matter is administratively dismissed without prejudice per Rule 1.420(e); and

2. The Clerk is directed to close permanently this file.

* * *