



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.

- **ADOPTION—TERMINATION OF PARENTAL RIGHTS—WAIVER—PUTATIVE FATHER.** An unmarried putative father who was properly notified of an adoption waived his parental rights by failing to timely register his paternity with Florida’s Putative Father Registry. For an unmarried biological father to preserve his parental rights when the unmarried mother seeks to give the child up for adoption before birth, he must fully comply with the statutory requirements set forth in § 63.062(3)(a), Florida Statutes. If the adoption entity serves the notice of adoption on the putative father, he has 30 days to file the required paperwork. And if he fails to do so within those 30 days, “the court shall enter a default judgment” and he “shall be deemed to have waived any claim of rights to the child.” *IN RE: The Matter of the Termination of Parental Rights for the Proposed Adoption of a Child: BABY M. Circuit Court, Seventeenth Judicial Circuit in and for Broward County. Filed September 9, 2025. Full Text at Circuit Courts-Original Section, page 287a.*
- **CRIMINAL LAW—POSSESSION OF MARIJUANA—MEDICAL MARIJUANA.** A defendant failed to meet all the requirements of the exception to the general prohibition to the possession of marijuana for qualified patients who possess a medical marijuana card. Although the defendant was a qualified patient who purchased the permitted amount of marijuana from a treatment center, defendant did not keep the marijuana in its original packaging as required by the exception. *STATE v. BARTLEY. County Court, Second Judicial Circuit in and for Wakulla County. Filed November 13, 2024. Full Text at County Courts Section, page 298b.*

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FLW SUPPLEMENT

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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:

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CIRCUIT COURTS—APPELLATE

Counties—Code enforcement—Unpermitted construction—On appeal of county code enforcement board order finding property owner in violation of county code for building structure without permits and approved inspections, review is limited to record before enforcement board—Argument regarding land patent that allegedly grants owner ability to prohibit government entry onto property is stricken where no copy of land patent was submitted into record below—Search and seizure—Code enforcement officers were authorized to travel down road on which property was located and conduct visual inspections from road, although road was privately maintained, where nursery open to the public was located at entrance to road and there was no gate or “no trespassing” sign preventing public access to road—Code enforcement inspections from roadway do not constitute searches under Fourth Amendment, and officers were not required to obtain consent or warrants prior to inspections—Code enforcement officers’ entry onto property for purpose of posting notice of violation did not violate Fourth Amendment—No merit to argument that code enforcement officers committed trespass by entering onto property where there is no evidence that any officer was adjudicated guilty of any trespass offense—Right to Farm Act—Argument that Right to Farm Act precludes enforcement of county code fails—Being farmer does not exempt property owner from complying with local laws and ordinances, land at issue was zoned residential rather than agricultural, and arguments about Act were not raised below—Argument that evidence from inspections should be suppressed as fruit of poisonous tree fails because inspections conducted from road open to public did not violate Fourth Amendment—Finally, owner failed to submit proper transcript of proceedings before the board or proper statement of facts in lieu of transcript to support claim that code enforcement board committed reversible error

JOEL THOMPSON, Appellant, v. LEON COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, Appellee. Circuit Court, 2nd Judicial Circuit (Appellate) in and for Leon County. Case No. 2025 AP 4. September 12, 2025. Angela C. Dempsey, Judge. Counsel: Joel Thompson, Pro se, Appellant. Sarah May Swartz, Assistant County Attorney, Tallahassee, for Appellee.

ORDER DENYING APPEAL FROM LEON COUNTY CODE ENFORCEMENT BOARD

THIS CAUSE comes before the Court on Appellant Joel Thompson’s appeal of the final order of the Leon County Code Enforcement Board, filed on March 28, 2025. The Court, having reviewed the written submissions of Appellant Joel Thompson and Appellee Leon County as well as the record of the proceedings below, finds as follows:

This is an appeal from a Code Enforcement Board Order, pursuant to Section 162.11, Florida Statutes, and Florida Rules of Appellate Procedure 9.030 (c)(1)(C), finding the owner of record for the property at issue (referred to as “Owner” or “Respondent”), located at 144 Thompson Circle, in violation of Chapter 5, Section 5-1.05, Leon County Code of Laws, by maintaining a structure without permits and approved inspections on the Property, and Chapter 10, Section 10-6.202(b), Leon County Code of Laws, by maintaining, erecting, moving, adding to, or structurally altering a building or other structure without the required approved inspections. (Supp. App. at 54). Pursuant to section 162.11, Florida Statutes, “[s]uch an appeal. . . shall be limited to appellate review of the record created before the enforcement board.” Having considered the record created before the Leon County Code Enforcement Board (“CEB”), the Court accepts Appellee’s statement of facts as set forth below.

On July 16, 2024, the County received a complaint alleging a code violation involving work completed on a structure without the

required permits and approved inspections. (Supp. App. at 3, 53). The Property is located along Thompson Circle, a privately owned and privately maintained road. (Supp. App. at 4, 5). However, neither Respondent nor Appellant Thompson are listed as the owner of the roadway of Thompson Circle. (See Supp. App. at 5). Thompson Circle is a U-shaped road which intersects with Meridian Road. (Supp. App. at 5, 9, 10, 11, 12, 19, 47).

On July 17, 2024, Appellant Thompson advised County staff that he did not believe staff had legal access to the roadway. (Supp. App. at 3, 4, and 5). Staff asked Thompson to produce documentation to establish ownership of the roadway. (*Id.*) Through the date of the CEB Hearing, no documentation was produced. (*Id.*)

On July 25, 2024, a code compliance officer conducted an inspection of the Property from the roadway of Thompson Circle. (Supp. App. at 3). From the roadway, the officer observed construction work was completed on a structure without the required permits and inspections required by the Leon County Code of Laws.¹ (*Id.*) During this inspection on July 25, 2024, the roadway was open, there was no gate or wall, and there was not a “No Trespassing” sign. (Supp. App. at 3, 9, 38, 39, 53).

On September 3, 2024, County staff searched the County’s database which revealed no permit was issued for the construction work that was observed at the Property. (Supp. App. at 4). Also on September 3, 2024, a code enforcement officer conducted a second inspection of the Property from the roadway of Thompson Circle. (Supp. App. at 4, 30, 31). Again, there was not a “No Trespassing” sign at the juncture of Meridian Road and Thompson Circle. (*Id.*) Following procedure as set forth in section 162.12, Florida Statutes, and Chapter 6, Section 6-36, Leon County Code of Laws, the code enforcement officer attempted to post a Notice of Violation at the Property. (*Id.*) However, Thompson prohibited the code enforcement officer from posting the notice on the Property and refused to accept personal service of the notice. (Supp. App. at 30-32).

Subsequent follow-up inspections of the Property were conducted on October 10, 2024, October 29, 2024, December 3, 2024, January 7, 2025, and January 30, 2025, to see if there was any change to the nature of the violation. (Supp. App. at 4, 5, 30). At the times of these inspections there were still no “No Trespassing” signs present. (Supp. App. at 4, 5, 10, 11, 12, 40, 41, 42). Photographs presented at the CEB Hearing demarcate the work that was conducted on the structures without permits, supporting the finding of the violations of the Leon County Code of Laws. (Supp. App. at 37-46). Moreover, photographs taken by county personnel of the intersection of Thompson Circle and Meridian Road show that a nursery business is operated and held open to the public. (Supp. App. at 5, 39, 40, 42).

The Court notes that Thompson submitted several photographs as part of his Appendix. (App. at 32). He also submitted an undated photograph of the juncture of Thompson Circle at Meridian Road that shows the presence of a posted “No Trespassing” sign. (Supp. App. at 52). However, Appellant Thompson’s photographs were not admitted into the record below, and will not be considered by this Court.

Thompson asserts that county staff trespassed onto “his property.” (Br. at 4). On January 30, 2025, Leon County Sheriff Deputies responded to a call for service and assisted a code enforcement officer by serving CEB Hearing Notice paperwork on Thompson who is designated as the person to receive service for Respondent. (Supp. App. at 33-35). The Sheriff deputy “explained to [Thompson] that the roadway, although a private road, was not exclusively his road and he could only issue a [trespass warning] for his residence/property.” (Supp. App. at 35). At which point, a trespass warning was issued for

the code enforcement officer for the Property. (App. at 27-28). Further, clarification was made with the General Counsel of the Leon County Sheriff's Office that the area from which the code enforcement officer received a trespass warning was for 144 Thompson Circle (the Property), not the roadway of Thompson Circle. (Supp. App. at 34). The Court once again notes that the trespass warning (App. at 26-29) was not admitted into the record below and will not be considered.

Appellant Thompson's Statement of Facts includes allegations outside of the record of the proceedings below. For example, references to Thompson's genealogy, a U.S. land patent, that a county employee named David Graham entered Thompson's property on July 16, 2024, and a second county employee (Jason Pye) entered Thompson's Property on July 25, 2024, and trespassed, are outside the record. No such evidence was admitted into the record at the CEB Hearing or is properly included within the Appendices and therefore is outside the record for this Court's consideration. Appellate review is limited to the record created before the enforcement board. § 162.11, Fla. Stat.; *Thornber v. City of Fort Walton Beach*, 534 So. 2d 754, 755 (Fla. 1st DCA 1988) (confining appellate review to the record on appeal); *MGM of W. Florida, LLC v. Manatee Cnty.*, 406 So. 3d 351, 353-54 (Fla. 2d DCA 2025) [50 Fla. L. Weekly D560a].

This is a plenary appeal, and the usual standard of review applies—competent, substantial evidence for issues of fact and de novo for questions of law. *City of Gainesville v. Communications Workers of Am., Local No. 3170*, 371 So. 3d 938, 941 (Fla. 1st DCA 2022) [47 Fla. L. Weekly D710b]; Philip J. Padovano, Florida Appellate Practice § 19:6 (2021). Fundamentally, “a decision of the lower tribunal is presumed to be correct. The [appellant] has the burden of overcoming this presumption by demonstrating that the lower tribunal committed reversible error. In the absence of a showing, the presumption of correctness will require the appellate court to affirm the decision.” Philip J. Padovano, Florida Appellate Practice § 12:2, 19:2 (2021) (citing *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979)).

I. Land Patent Not in Record and the County May Conduct Visual Inspections from a Public Road

Appellant initially argues that there is a land patent, which grants him “exclusive ownership rights” including the ability to prohibit government entry onto the subject property. (Br. at 5). However, no copy of any purported land patent was submitted into the record below or presented to the Court in the Appendix. Therefore, this argument is stricken and will not be considered by the Court. *See Ullah v. State*, 679 So. 2d 1242, 1244 (Fla. 1st DCA 1996) [21 Fla. L. Weekly D2006a]; *Thornber v. City of Fort Walton Beach*, 534 So. 2d 754 (Fla. 1st DCA 1988).

A. Thompson Circle is held open for public use

As the Code Enforcement Board properly determined, the code enforcement officers were authorized to conduct the visual inspections of the Property from the road. (Supp. App. at 53, ¶3). Chapter 16, Section 16-26, of the Leon County Code of Laws, defines “road” as “a privately-owned way open to travel by the public, including, but not limited to, a street, highway, or alley. . . . If such privately-owned way does not directly connect to a publicly-maintained way, then the term “road” shall include any connecting privately-owned way leading to a connection with a publicly-maintained way, as in the case of a private subdivision.” It is undisputed that Thompson Circle is a privately owned and maintained road. (Supp. App. at 5). However, this uncontroverted fact is not singularly determinative. *See Mattingly v. State*, 41 So. 3d 1020, 1022 (Fla. 5th DCA 2010) [35 Fla. L. Weekly D1774b] (“Whether a street is considered to be open to public use is usually a question of fact.”).

Here, the record shows that the road was open to the public and, therefore, code enforcement officers were authorized to conduct their visual inspections therefrom. (Supp. App. at 5, 53). There is a nurseway at the entrance of Thompson Circle, which is held open to the public. (Supp. App. at 5, 9, 10, 12, 39, 40, 42). There is no gate preventing access to Thompson Circle, and there were no “No Trespassing” signs present or posted at the juncture of the U-shaped Thompson Circle abutting Meridian Road and, while privately maintained, Thompson Circle appeared to be held open for public use. *See Mattingly*, 41 So. 3d at 1021-22 (finding record support that road was open to public use where road had no stop signs, no street lights, no private property signs, and there was a bar on a nearby road); *United States v. Gardner*, No. 3:09-CR-238-J-25JRK, 2010 WL 11519311, at *15 (M.D. Fla. Apr. 14, 2010), report and recommendation adopted, No. 3:09-CR-238-J-25JRK, 2010 WL 11519357 (M.D. Fla. May 3, 2010), affd, 444 Fed. Appx. 361 (11th Cir. 2011) (establishing that the posting of “No Trespassing” signs on privately owned roads or parking lots does “not transform the parking lot [or roadway] into one that is not open to the public,” when the public is free to come and go). *Cf. Galston v. State*, 943 So. 2d 968, 968-87 (Fla. 5th DCA 2006) [31 Fla. L. Weekly D3089a] (reversing conviction of driving without a license when officer followed defendant onto privately owned fish hatchery property with posted signs indicating the property was closed to the public during a construction project and witness testimony that the road was closed to public use). (Supp. App. at 3-5, 9, 10, 12, 39, 40, 42). County staff requested documentation from Thompson, the purported representative of Respondent, about ownership of the roadway and the Property, but Thompson never provided such documentation to staff. (Supp. App. at 3-5).

Based on the above, competent, substantial evidence shows that Thompson Circle was open to public use and the County's code enforcement officers were authorized to travel down the road from which to conduct their inspection of the Property.

B. Code enforcement inspections from the roadway do not constitute a search under the Fourth Amendment

Code enforcement officers may conduct inspections of property when the “observations [are] made from vantage points accessible to the public of code violations exposed to the plain view. . . .” *Singhal v. City of Wilton Manors*, No. 06-61653-C1V, 2006 WL 8433166, at *3 (S.D. Fla. Dec. 14, 2006) (citing *Katz v. United States*, 389 U.S. 347, 361 (1967) (concurrency)). Such visual inspections from these public vantage points are not protected by the Fourth Amendment to the U.S. Constitution (Fourth Amendment). *Id.*; see Amend. IV, U.S. Const.²

These visual inspections do not constitute a search under the Fourth Amendment under which a warrant or an exception to the need for a warrant apply. A “search” does not occur unless the individual asserting Fourth Amendment rights has a constitutionally protected reasonable expectation of privacy in the searched object.” *Singhal*, 2006 WL 8433166, at *2 (citing *Kyllo v. United States*, 533 U.S. 27, 27 (2001) [14 Fla. L. Weekly Fed. S329a]; *California v. Ciraolo*, 476 U.S. 207, 211 (1986)).

The competent, substantial evidence in the record before the CEB and now before this Court demonstrates that the code enforcement officers conducted the visual inspections of the Property from the roadway of Thompson Circle. (Supp. App. at 3-5, 9, 11, 30-31, 38, 41). The photographs taken by the code enforcement officers show that the structure and the subsequent additions to the structure were plainly visible from the vantage point of Thompson Circle. (Supp. App. at 9, 11, 38, 41).

C. Code enforcement officers are permitted to post notices on property without running afoul of the Fourth Amendment

Section 162.12(2)(b)(1), Florida Statutes, authorizes a code enforcement officer to issue citations by leaving the notice at the property upon which the violation exists. § 162.12(2)(b)(1), Fla. Stat. (2024). Courts have held that entry onto property for the purpose of posting a notice of violation of a code does not violate the Fourth Amendment because such an entry is not for the purpose of investigating or “finding something.” *Singhal*, 2006 WL 8433166, at *2,3 (citing *Widgren v. Maple Grove Twp.*, 429 F.3d 575, 580-81 (6th Cir. 2005); *Artes-Roy v. City of Aspen*, 31 F.3d 958, 962 (10th Cir. 1994)).

II. Leon County Code Enforcement Officers Did Not Trespass

A. County Code Enforcement Officers’ Inspections Were Valid and Lawful

Appellant Thompson’s argument that code enforcement officers must always obtain consent or a warrant before conducting an inspection is incorrect. As discussed above, code enforcement officers may conduct inspections of property when the “observations made from vantage points accessible to the public of code violations exposed to the plain view.” *Singhal*, 2006 WL 8433166, at *3 (citing *Katz*, 389 U.S. at 361). Moreover, these visual inspections do not constitute a search under the Fourth Amendment under which a warrant or even an exception to the need for a warrant apply. *Id.* The evidence in the record before this Court demonstrates that the code enforcement officers conducted visual inspections of the Property from the roadway of Thompson Circle. (Supp. App. at 3-5, 9, 11, 30-31, 38, 41). The photographs taken by the code enforcement officers show that the structure and the subsequent unpermitted additions to the structures were plainly visible from the vantage point of Thompson Circle. (Supp. App. at 9, 11, 38, 41). Accordingly, no consent or warrant were required to be obtained in this ease.

B. No Florida Statutes Were Violated, and No Criminal Trespass Occurred

Appellant Thompson’s argument and reliance upon sections 810.08 and 810.09, Florida Statutes, is misplaced. These statutes outline crimes which would be prosecuted by the State Attorney. The record shows no evidence submitted to the CEB that a code enforcement officer committed a trespass, nor is there any evidence that a code enforcement officer was adjudicated guilty of any such offense. While Appellant Thompson’s Appendix contains several items related to trespassing, these documents were not entered into evidence at the code enforcement board hearing and will not be considered by this Court. (See App. at 18-20, A1-A5, 21-24, 25-27, 32). The Court also notes that code enforcement officers are permitted to post notices on a property where a violation has been found. § 162.12, Fla. Stat. For these reasons, Appellant Thompson’s argument fails.

III. Florida’s Right to Farm Act Does Not Preclude Enforcement of the Leon County Code of Laws

Appellant Thompson raises for the first time in his Brief that he is actively farming the Property under the Florida Right to Farm Act. He argues that the Right to Farm Act prohibits the County from enforcing the LCC against him as well as increases “legal violations” for trespassing.³ These arguments fail.

“Being a farmer, standing alone, does not exempt one from complying with local ordinances and permitting requirements.” *Rodriguez v. Miami-Dade Cnty.*, No. 2022-13-AP-01, 2024 WL 1228943, at *4 (Fla. 11th Cir. Ct. Mar. 20, 2024) [32 Fla. L. Weekly Supp. 5a] (affirming a lower tribunal’s determination that the appellant violated the county’s ordinance when he burned on the property without a permit, and determining there was no record evidence below presented by the appellant as to how the Florida Right

to Farm Act somehow preempted the county’s ordinance). Further, the evidence presented at the CEB hearing and properly made a part of the record below is that the Leon County Property Appraiser has classified the property use as “Miscellaneous Residential,” not Agricultural. (Supp. App. at 20). This is competent, substantial evidence in support of the CEB’s Order. Additionally, these arguments were not raised at the CEB hearing. Therefore, consideration of any additional evidence or argument is beyond the scope of what is reviewable by this Court on appeal. See *Ullah*, 679 So. 2d at 1244 (“[A]n appellate court may not consider matters outside the record, and when a party refers to such matters in its brief, it is proper for the court to strike same.”); *Thomber*, 534 So. 2d at 755-756 (stating it is inappropriate to inject matters into appellate proceedings which were not before the lower tribunal).

IV. The County’s Inspections Were Lawful and Did Not Result in Obtaining “Fruit of the Poisonous Tree”

Appellant Thompson argues that the inspections of the Property were unlawful and the County conducted an allegedly illegal search, thus the evidence should be suppressed under *Mapp v. Ohio*, 367 U.S. 643 (1961). This argument fails. As previously addressed above, the County’s use of Thompson Circle was authorized as it is a road open to the public. *Mattingly*, 41 So. 3d at 1021. (Supp. App. at 5, 9, 10, 12, 39, 40, 42). Further, as previously discussed, a visual inspection conducted within the roadway from where the public can plainly view the subject property, even if a fence is present, is not a search that triggers the Fourth Amendment or requires a warrant. *Singhal*, 2006 WL 8433166, at *3. A code enforcement officer is permitted to post notices on the subject property pursuant to section 162.12, Florida Statutes. *Singhal*, 2006 WL 8433166, at *2, 3. Notwithstanding Thompson’s assertions, the County’s code enforcement officer did not commit a trespass on the Property. (Supp. App. 3-5, 34-35). Based on the foregoing, there was no trespass, no unlawful search, and no fruit of the poisonous tree warranting suppression.

To the extent Appellant Thompson relies on *Camara v. Mun. Court of City & Cnty. of San Francisco*, 387 U.S. 523 (1967), it is factually inapplicable to this case. In *Camara*, the Court reversed a lower court’s ruling and held that a California code section that permitted health inspectors to inspect inside a person’s residence without a warrant violated the Fourth Amendment. *Camara*, 387 U.S. at 534, 540. Here, the code enforcement inspectors travelled down a road held open to the public. The roadway lacked fences, gates, and there were no “No Trespassing” signs at the time the inspectors traversed it. (Supp. App. at 3-5, 9-12, 39-42). The visual inspections were conducted from the public roadway. (Supp. App. at 3-5, 9, 11, 34-35, 38, 41). There was no misconduct that violated the Fourth Amendment. The competent, substantial evidence in the record below demonstrates that the inspections of the Property were lawful.

V. No Proper Transcript Provided

In an appeal filed in accordance with Florida Rule of Appellate Procedure 9.110, such as this one, the record is to be prepared in accordance with Rule 9.200. Fla. R. App. P. 9.110(e). Florida Rule of Appellate Procedure 9.200 provides that “the record must consist of all documents filed in the lower tribunal. . . and any transcript(s) of proceedings filed in the lower tribunal. . . .” Fla. R. App. P. 9.200(a)(1). Further, Rule 9.200(b) is replete with references to “the approved court reporter, civil court reporter or approved transcriptionist.” Such reporters and transcriptionist are defined, in part, as meeting “the court’s certification, training, and other qualifications” for either court reporting or transcribing proceedings. Fla. R. Gen. Prac. & Jud. Admin. 2.535(a)(1)-(3). Transcripts must be in a uniform format, including the size of the paper, no less than 25 lines per page which are consecutively numbered and double-spaced,

specific font size depending on the type of font but no larger than 12-point, and identification of the speaker, among others. Fla. R. Gen. Prac. & Jud. Admin. 2.535(f)(1), (2)(D). Admittedly, “[d]eviation from these standards is not grounds for limited use of transcripts in court proceedings.” Fla. R. Gen. Prac. & Jud. Admin. 2.535(f)(3).

Here, Appellant Thompson included in his Appendix a document entitled “Joel Thompson’s Board Transcript.” (App. 28-31). However, this purported transcript fails to comport with any requirements of Florida Rule of General Practice and Judicial Administration 2.535. See Fla. R. Gen. Prac. & Jud. Admin. 2.535. The transcriptionist is not identified. (App. 28-31). The pages and lines are unnumbered. *Id.* The speakers are not identified. *Id.* The proceeding itself is not identified. *Id.* This format constitutes more than mere “deviation,” but rather fails to serve in any capacity as a transcript of the proceedings below.

Under Florida Rule of Appellate Procedure 9.200(b)(5), “[i]f no report of the proceedings was made, or if the transcript is unavailable, a party may prepare a statement of the evidence or proceedings from the best available means, including the party’s recollection.” “The statement must be served on all other parties, who may serve objections or proposed amendments to it within 15 days of service.” Fla. R. App. P. 9.200(b)(5). Here, Appellant Thompson failed to prepare a statement of the evidence and failed to follow the procedure as outlined in this Rule.

Thompson has the burden to submit to the appellate court a record adequate to support the appeal that demonstrates reversible error. *Bei v. Harper*, 475 So. 2d 912, 914 (Fla. 2d DCA 1985) (citing *Wright v. Wright*, 431 So. 2d 177 (Fla. 5th DCA 1983)); *Thurman v. Davis*, 321 So. 3d 341, 344 (Fla. 1st DCA 2021) [46 Fla. L. Weekly D1190a] (relying upon *JP Morgan Chase Bank v. Combee*, 883 So. 2d 330, 331 (Fla. 1st DCA 2004) [29 Fla. L. Weekly D1985b] (citing *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979); and *Lafaille v. Lafaille*, 837 So. 2d 601, 604 (Fla. 1st DCA 2003) [28 Fla. L. Weekly D494d]). A fundamental principle of appellate review is that “a trial court’s findings and judgment come to a reviewing court with a presumption of correctness, and cannot be disturbed absent a record demonstrating reversible error.” *Thurman*, 321 So. 3d at 343-44 (citing *Combee*, 883 So. 2d at 331 (citing *Applegate*, 377 So. 2d at 1152; *Lafaille*, 837 So. 2d at 604)). Appellant Thompson’s failure to provide either a proper transcript or proper substitute, such as a stipulated statement of the facts, defeats an appellate court’s ability to review either the factual or legal basis for the lower tribunal’s decision. See *Klette v. Klette*, 785 So. 2d 562, 563 (Fla. 1st DCA 2001) [26 Fla. L. Weekly D901f]. Accordingly, Appellant Thompson has failed to submit either a proper transcript or proper statement of facts as a substitute. Accordingly, Thompson failed to demonstrate reversible error on the part of the Code Enforcement Board. **BASED ON THE FOREGOING**, it is

ORDERED AND ADJUDGED that Appellant’s Appeal is hereby **DENIED**. The Code Enforcement Board Order finding the Ella Thompson Estate in violation of the Leon County Code is hereby **AFFIRMED**. The Clerk of Court shall close the court file.

¹The subject violation consists of work completed on the structures that is separate from structures which were allowed to be present on the property under the two prior conditional use permits. (Supp. App. at 5, 8, 9, 11, 13-16, 25-29). Thompson does not dispute the finding of the violations of the Leon County Code of Laws in this appeal.

²Thompson does not allege a violation of Article I, Section 12 of the Florida Constitution.

³The Court notes that Appellant Thompson fails to cite any legal authority to support his conclusory assertion that trespassing onto agricultural land increases legal penalties.

* * *

Counties—Ethics Commission—Failure to disclose gift—Frivolous or groundless complaints—Sanctions—Attorney’s fees—County ethics commission departed from essential requirements of law in awarding attorney’s fees as sanction for filing frivolous complaint against mayoral candidate, and its ruling was not supported by competent substantial evidence—There is nothing in record to support conclusion that complaint alleging failure to file gift disclosure was frivolous or made in bad faith—Complainant’s argument regarding interpretation of gift disclosure law was not outside realm of reasonableness—Neither fact that complainant was elections attorney nor fact that Florida Ethics Commission dismissed same complaint renders complaint frivolous—Amount of fee award was not supported by competent substantial evidence where no affidavit or testimony was presented to support claim for fees incurred in litigating entitlement to fees

JUAN-CARLOS PLANAS, Appellant, v. MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST, Appellee. Circuit Court, 11th Judicial Circuit (Appellate) in and for Miami-Dade County. Case No. 2024-51 AP 01. September 9, 2025. On Appeal from an administrative decision by the Miami-Dade County Commission on Ethics and Public Trust. Counsel: Juan-Carlos Planas, Pro se, Appellant. Loressa M. Felix, Staff Attorney, Miami-Dade Commission on Ethics and Public Trust, for Appellee.

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

(TRAWICK, Judge.) This appeal, brought by Appellant, Juan-Carlos Planas (“Appellant”) against Appellee, the Miami-Dade County Commission on Ethics and Public Trust (“Commission”), seeks review of the Commission’s order awarding attorney’s fees to Michael Gongora, Esq., as a sanction for what the Commission deemed to be a frivolous complaint.

Facts

On September 25, 2023, Planas filed a sworn Complaint against Mr. Gongora, a candidate for Mayor of Miami Beach. The complaint alleged that Gongora had failed to properly file a gift disclosure as required by law.¹ On November 8, 2023, the Commission voted to dismiss the Complaint against Mr. Gongora for lack of legal sufficiency pursuant to Article LXXVIII, Section 2-1074 of the Miami-Dade County Code and Rule 4.2(a) of the Miami-Dade County Commission on Ethics Rules of Procedure. The Commission subsequently issued its Public Report and Final Order dismissing the complaint on November 21, 2023.² On December 20, 2023, Mr. Gongora filed his Verified Petition with the Commission seeking fees and costs, alleging that the Complaint filed by Planas was filed in bad faith. On May 15, 2024, the Commission held a hearing on Gongora’s Motion for fees. Planas asserted that the Complaint was filed in good faith. The Commission heard the arguments of both parties regarding entitlement and voted to grant the petition. In doing so, the Commission failed to consider the factual accuracy or the legal plausibility of the allegations in the complaint. Instead, the Commission found that because Planas was an election attorney, he should have known that the law did not require Gongora to file a gift disclosure. Further, the Commission found that Planas had a duty to disclose that the Florida Ethics Commission had already dismissed the complaint under consideration by the County Commission.³

On July 10, 2024, the Commission held a hearing regarding the amount of fees and costs to be awarded. Prior to the hearing, Mr. Gongora attached a list of attorney’s fees associated with litigating entitlement to fees totaling \$4,760 (which was over four times the amount charged for responding to the Ethics Complaint). These claimed attorney’s fees were not accompanied by an affidavit or any signed document provided by Mr. Gongora’s attorney, nor was there sufficient evidence supporting the accuracy or reasonableness of the fees.

The Commission ultimately found that Mr. Gongora was entitled to an award of fees that included the litigation regarding the entitle-

ment of fees and voted to award \$5,675.00 to Mr. Gongora. This amount consisted of the \$915.00 for fees charged to respond to the Ethics Complaint and \$4,760.00 for additional fees charged to litigate the issue of entitlement to attorney's fees. However, the Commission made no findings of fact on the accuracy and reasonableness of the requested fees.

Analysis

The Commission is granted authority to deem a complaint frivolous pursuant to Section 2-1074(t) of the Miami-Dade County Code, titled "Frivolous or groundless complaints," which states in pertinent part:

Sec. 2-1074. - Procedure on complaint of violation or request for advisory opinion within Ethics Commission's jurisdiction.

(t) Frivolous or groundless complaints. In any case in which the Ethics Commission determines that the complaining party filed a frivolous or groundless complaint as defined in Section 57.105, Florida Statutes, the Ethics Commission shall order the complaining party to pay any costs and attorney's fees incurred by the Ethics Commission and/or the alleged violator. The determination by the Ethics Commission regarding whether a complaint is frivolous or groundless shall be deemed conclusive. The County Commission or any city commission may pay any attorney's fees and costs incurred by a respondent when the Ethics Commission finds either no probable cause to believe that a violation has been committed or that no violation has been committed.

Id.

Section 57.105 of the Florida Statutes, states as follows, in pertinent part:

57.105. Attorney's fee; sanctions for raising unsupported claims or defenses; exceptions; service of motions; damages for delay of litigation

(1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

- (a) Was not supported by the material facts necessary to establish the claim or defense; or
- (b) Would not be supported by the application of then existing law to those material facts.

* * *

(5) In administrative proceedings under chapter 120, an administrative law judge shall award a reasonable attorney's fee and damages to be paid to the prevailing party in equal amounts by the losing party and a losing party's attorney or qualified representative in the same manner and upon the same basis as provided in subsections (1)-(4). Such award shall be a final order subject to judicial review pursuant to s. 120.68. If the losing party is an agency as defined in s. 120.52(1), the award to the prevailing party shall be against and paid by the agency. A voluntary dismissal by a nonprevailing party does not divest the administrative law judge of jurisdiction to make the award described in this subsection.

(6) The provisions of this section are supplemental to other sanctions or remedies available under law or under court rules.

Id.

"Section 57.105 must be applied with restraint to ensure that it serves its intended purpose of discouraging baseless claims without casting 'a chilling effect on use of the courts.'" *MacAlister v. Bevis Const., Inc.*, 164 So. 3d 773 (Fla. 2d DCA 2015) [40 Fla. L. Weekly D1228a] (quoting *Swan Landing Dev., LLC v. First Tenn. Bank Nat'l Ass'n*, 97 So. 3d 326, 328 (Fla. 2d DCA 2012) [37 Fla. L. Weekly

D2225a]); *see also Minto PBLH, LLC v. 1000 Friends of Fla. Inc.*, 228 So. 3d 147, 149 (Fla. 4th DCA 2017) [42 Fla. L. Weekly D2223a] (explaining that although the plaintiffs raised "tenuous" claims, when "there is an arguable basis in law and fact for a party's claim, a trial court may not sanction that party under section 57.105").

"To award fees under the statute, the trial court must find that the action was 'frivolous' or so devoid of merit both on the facts and the law as to be completely untenable." *Chue v. Lehman*, 21 So. 3d 890, 891-92 (Fla. 4th DCA 2009) [34 Fla. L. Weekly D2263a] (quoting *Murphy v. WISU Props., Ltd.*, 895 So. 2d 1088, 1093-94 (Fla. 3d DCA 2004) [29 Fla. L. Weekly D2444a]). "Moreover, that finding 'must be based upon substantial competent evidence presented to the court at the hearing on attorney's fees or otherwise before the court and in the trial court record.'" *Yakovonis v. Dolphin Petroleum, Inc.*, 934 So. 2d 615, 618 (Fla. 4th DCA 2006) [31 Fla. L. Weekly D1978a] (quoting *Weatherby Assocs., Inc. v. Ballack*, 783 So. 2d 1138, 1141 (Fla. 4th DCA 2001) [26 Fla. L. Weekly D873a]). "Where the party reasonably believes the factual basis for its claim exists, it is entitled to proceed with its claims and seek to prove those facts. If attempts to prove those facts are fruitless, that is still not cause for sanctions where the party's initial belief was well-founded." *Tr. Mortg., LLC v. Ferlanti*, 193 So. 3d 997 (Fla. 4th DCA 2016) [41 Fla. L. Weekly D1290b].

Based upon our review of the law, hearing transcripts, and the record in this case, this Court finds that the Commission failed to observe the essential requirements of the law and that the Commission's ruling was not supported by competent, substantial evidence. We find nothing in the record to support a conclusion that the Complaint at issue was frivolous or made in bad faith within the ambit of Section 2-1074(t) of the Miami-Dade County Code, which incorporates Section 57.105 of the Florida Statutes and interpretative case law. Even though the Commission may have disagreed with the interpretation of the provision made by Planas in the complaint, that did not render the argument frivolous.⁴ Planas did what attorneys do every day—argue interpretations of applicable law. His arguments were not outside the realm of reasonableness.⁵ Furthermore, neither the fact that Planas is an elections attorney nor that the Florida Ethics Commission dismissed the complaint, changes our conclusion. While we agree that it would have been appropriate for Planas to disclose the Florida Ethics Commission's decision to the Appellee, such a failure to disclose does not indicate that the arguments made in the complaint were frivolous or made in bad faith.

Finally, the amount of the attorney's fees award was not supported by competent, substantial evidence. No affidavits or testimony are present in the record to support the award of the supplemental fees claimed by Gongora.

Accordingly, the decision below is hereby **QUASHED**. This matter is **REMANDED** to the Commission for further proceedings consistent with this opinion. (DE LA O and ARECES, R., JJ., concur.)

⁴The complaint alleged that candidates for Miami Beach Mayor were required to file a "Form 9" quarterly gift disclosure upon qualifying to run for office. During the third quarter of the campaign period, Gongora allegedly received a benefit by attending an upscale restaurant event complete with musical performances by well-known performers. When asked by the Miami Herald who had paid for him to attend the event, Gongora allegedly responded that he did not have to disclose that. The complaint asserted that Gongora was required to report this "gift," which he failed to do in violation of campaign finance law.

⁵The Commission relied upon Section 2-11.1(e)(5) of the Miami-Dade Code (the Miami-Dade Ethics Code). That provision reads

Disclosure. Any person included in the term defined in subsection (b)(1) through (b)(6) shall disclose as provided herein any gift, or series of gifts from any one person or entity, having a value in excess of one hundred dollars (\$100.00). Said disclosure shall be made by filing a copy of the disclosure form required by Chapter 112, Florida Statutes, for "local officers" with the Clerk of the Board of County Commissioner simultaneously with the filing of the form with the Secretary of State.

Subsections (b)(1) through (b)(6) include commissioners, autonomous personnel,

quasi-judicial personnel, advisory personnel, departmental personnel, and employees. In reaching their decision, the Commission found that Gongora was not one of the persons required by this provision to file gift disclosures. Mayoral candidates were not included within the listed definitions. However, the Commission apparently relied upon an interpretation of this provision given by their general counsel in a memo dated October 27, 2023. In that memo, the general counsel stated at footnote 1 “A candidate that qualifies for the office of Miami Beach Mayor is required to report gifts on a Form 9 as of the date that the candidate qualifies for office,” citing Section 112.3148(2)(d), Florida Statutes.

While the Commission made it clear that they did not enforce the requirements of the Florida Ethics Code, their decision was in harmony with the previous finding of the Florida Commission on Ethics.

³In their order dismissing the complaint filed by Planas, the Florida Ethics Commission interpreted Section 112.3148(8), Florida Statutes. That section reads:

Each reporting individual or procurement employee shall file a statement with the Commission on Ethics not later than the last day of each calendar quarter, for the previous calendar quarter, containing a list of gifts which he or she believes to be in excess of \$100 in value, if any, accepted by him or her, for which compensation was not provided by the donee to the donor within 90 days of receipt of the gift to reduce the value to \$100 or less. . . .

In considering whether the term “reporting individual” applied to Gongora, the Florida Ethics Commission applied the definition contained in Section 112.3148(2)(d):

“Reporting individual” means any individual, including a candidate upon qualifying, who is required by law, pursuant to s. 8, Art. II of the State Constitution or s. 112.3145, to file full or limited public disclosure of his or her financial interests or any individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

⁴The Miami-Dade Commission on Ethics Rules of Procedure states: “This rule is not intended to deter or otherwise discourage the rights of persons to file complaints with the Ethics Commission.” Arguably, that is exactly the impact of the finding of frivolousness made by the Commission here. While the discretion given the Commission by this procedural rule is broad, like Section 2-1074(t) of the Miami-Dade Code, this procedural rule incorporates the definition of Section 57.105 of the Florida Statutes.

⁵Indeed, in our review of Section 112.3148(2)(d), Florida Statutes, the provision relied upon by the Florida Ethics Commission, a plausible argument can be made that the term “Reporting individual,” i.e., those individuals required to report gifts, can be read more expansively than the interpretation rendered by that commission. See Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 132-33 (2012) (Presumption of Nonexclusive “Include” Canon: “The verb ‘to include’ introduces examples, not an exhaustive list.”). Despite the County Commission’s seeming reliance only on the County Ethics Code provision, it gave great weight to the State Ethics Committee decision in making its determination here. For example, the Commission’s general counsel referenced the interpretation given by the State Commission in her memo about who was required to report a gift (see the discussion above in Footnote 2). Further, the State Commission’s decision was the topic of much discussion during the attorney’s fee hearing before the Commission. Quite tellingly, Planas’ failure to disclose the State Commission decision was one of the primary bases for the County Commission’s finding of frivolousness. If the State Commission’s decision and interpretation of State law had nothing to do with the County Commission’s decision, why would the failure to disclose matter?

* * *

Municipal corporations—Code enforcement—Nonconforming use—Boat docking—Board of code enforcement erred in fining landowner for docking boat that exceeded maximum size permitted under current town code enacted in 2011 where owner has docked boats on his property that exceeded or would have exceeded maximum size permitted under current code since 1996 and is permitted to continue nonconforming use—Board erred in finding that landowner abandoned or discontinued nonconforming use when his boat was stored offsite during protracted insurance claim after it was stolen and vandalized where board never made finding that discontinued use/abandonment was voluntary

NICOLAS ESTRELLA, Appellant, v. VILLAGE OF KEY BISCAIYNE, Appellee. Circuit Court, 11th Judicial Circuit (Appellate) in and for Miami-Dade County. Case No. 2025-6-AP-01. September 5, 2025. On Appeal from a Final Order of the Village of Key Biscayne Board of Code Enforcement. Counsel: T. Neal McAliley and David A. Karp., Carlton Fields, P.A., for Appellant. Laura K. Wendell and Jose L. Arango, Weiss Serota Helfman Cole & Bierman, P.L., for Appellee.

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

OPINION

(ARECES, R.) Appellant, Nicolas Estrella (the “Appellant”), contends the Board of Code Enforcement for the Village of Key

Biscayne (the “Appellee”) erred when it fined him for docking a boat on his property that exceeded the maximum size permitted under Appellee’s Code. This Court agrees.

This case is not complicated.

Appellee’s Code prohibits anyone from docking a boat that is 10% longer (or more) than the length of the dock. Specifically, the Code provides,

No watercraft shall extend beyond the end of a dock perpendicular to a bulkhead by more than 10% of the length of the perpendicular dock.

Village of Key Biscayne Code § 30-100(f)(4)(b).

Appellee’s Code, however, also permits a landowner to continue to use his/her land in a manner that does not conform with a new land use regulation, so long as the landowner does not abandon or discontinue the non-conforming use. The Code states,

Nonconforming Use. A lawful Nonconforming Use may be continued, although such Use does not conform to the Regulations of the applicable zoning district. Any such Use shall only be changed to a permitted Use. A Nonconforming Use shall not be expanded. If such Nonconforming Use is discontinued for a period of six months, any further Use of said Building or land shall be in conformity with the Regulations of the applicable zoning district.

Id. at § 30-30(1).

Additionally, Florida courts have routinely held that a landowner’s intent to abandon or discontinue is relevant in determining whether the use has been actually abandoned. See e.g. *Hobbs v. Dept. of Transportation*, 831 So. 2d 745, 748 (Fla. 5th DCA 2002) [27 Fla. L. Weekly D2469a] (“Generally, temporary cessation of a nonconforming use does not operate to effect abandonment of the nonconforming use. Instead, abandonment occurs when the landowner ‘intentionally and voluntarily foregoes further non-conforming use of the property.’”).

The landowner’s intent, moreover, is relevant to determining abandonment *regardless* of whether there is an ordinance, like the one at issue in this case, that provides that discontinued use for a period exceeding 6 months constitutes abandonment. See e.g. *Crandon v. State ex. rel. Uricho*, 28 So. 2d 159 (Fla. 1946).

In this case, most, if not all, of the material facts appear to be undisputed.

Since at least 1996, Appellant has docked very large boats on his property. These boats have ranged in size from 85 feet to 66 feet. Appellant’s current boat is 78 feet in length. All of Appellant’s boats, including his current boat, have, or would have, exceeded the maximum size permitted under Appellee’s present Code.

The 10% restriction at issue was not enacted until 2011—some 15 years after Appellant began using the property to dock larger boats.

Sometime prior to the enactment of the 10% restriction, Appellant’s boat was stolen, partially sunk, recovered in a vandalized state, and became, thereafter, the subject of a protracted insurance claim which required the boat to be stored elsewhere.

During the time Appellant’s boat was off-site, Appellant purchased the submerged land below the dock so that he, at least in part, could continue to dock large boats at his property.

Closely following the conclusion of the insurance claim, Appellant purchased and docked a new boat which also exceeded the 10% restriction. Appellant kept that boat at his property for over ten years.

Appellant then bought the instant boat, which measures 78 feet in length, and docked it at his property. The instant boat’s length, like *all* of Appellant’s previous boats, also exceeds the 10% restriction.

Notwithstanding these undisputed facts, Appellee failed to consider, and make findings concerning, whether Appellant had *intentionally* abandoned his real property right. Instead, Appellee’s board members focused on the *involuntary* period of non-use and the

relative size of Appellant’s past and present boats.

Worse, on multiple occasions, Appellant was prevented from even eliciting facts that would tend to show Appellant possessed a lawful non-conforming use that preceded the passage of the Ordinance under which Appellant was cited. Specifically, the Chair said, in part,

I don’t want this type of questioning. . . We are dealing with today. We are not dealing with 1990.

R. at 8:1-5.

I don’t want to go down this trip through memory lane.

R. at 9.

I’m dealing with today. I don’t want to deal with 2008, 11, 1999. Please deal with today.

R. at 10.

Once again, today there is a boat that is 80 feet long, which is more than ten percent of what he should have. I mean can we please just stick to that. I mean I don’t want a history lesson here.

R. at 16:18-22.

I want to deal with this with today, today, today, not with what happened ten years ago, five years ago or whatever.

R. at 17:3-5.

Appellee’s focus on “today, today, today” had the effect of ignoring Appellant’s property rights—property rights that could not be taken away through the mere passage of the 10% restriction in 2011.

Even when Appellee’s City Attorney explained the law to Appellee and urged the Board to listen to Appellant’s defense, Appellee continued to apply the law incorrectly. Rather than focus on whether Appellant had voluntarily abandoned his property right, Appellee focused solely on whether there was some period of time in which there was a break in Appellant’s non-conforming use without regard to *voluntary* abandonment. *See e.g.* R. 21:16. The Chair, for example, ruled as follows,

Well, I’m going based *only* on the civil violation notice, and the only thing in front of us is the fact that it’s the code Section 30-100(f)(4)(b) and it says no watercraft shall extend beyond the end of the dock perpendicular to the bulkhead by more than ten percent. That is what I’m basing my decision on.

R. 70:8-14 (emphasis added).

A second Board Member, Ms. Llorente, “agree[d] with that,” and provided no further findings.

A third Board Member, Mr. Chavarria, looked solely to the *size* of the boats that Appellant had owned in the past and believed, incorrectly, that Appellant’s constitutional right to use his real property was tied to a specific boat, or, alternatively, to boats of a specific size. Specifically, Mr. Chavarria sided against Appellant because,

“Our role here is to just stick to the facts and do what the code says it is against. . . I see that in 2015 there was a 66 foot boat there. So it changed in the use, the nonconforming use according to the code that I am reading right now. This should be the rule in terms of what the size of this. Once they stop using the boat, stop using the dock for the 80 foot, 81 foot Azimut that was in 2009, there was more than six months. And, in fact, he never came back to put the same size. He put a smaller one. So the change to a bigger size comes right now. So I make a motion that he is not in compliance.”

R. 69:18-70:7

Following their findings, the City Attorney encouraged the Board to make a ruling on the “affirmative defense” that Appellant maintained a lawful non-conforming use. The City Attorney made the following recommendation,

I would recommend then the board make a finding one way or the other on whether or not Section 30-30 applies as an affirmative defense to the violation for whatever reason. Whether it’s—I think

you said some point of lapse of discontinued use or just by the change of boats.

R. 71:7-13.

The Chair then stated she didn’t think Appellant could claim a lawful, non-conforming use because “he then went and bought a 66 foot. So he was more in compliance than what his other boat was.”

R. 71:17-19.

The Board never made a finding that Appellant’s discontinued use was voluntary and to the extent they based their decision on the relative size of Appellant’s boats, their decision was not in line with the law. Appellant’s use of his real property is not co-extensive with the use of a particular boat, or even with boats of a particular size.

While Appellant’s use of his real property may not be unlimited, this Court need not decide the outer boundary of any purported limitation. On the facts before us, we find that Appellant has the right to use his real property in the same manner he has since the 1990’s—specifically, to dock boats, including the instant boat, that exceed Appellee’s 10% restriction.¹

In summary, Appellee failed to apply the correct law and rendered a decision that was not supported by competent, substantial evidence.

For the aforementioned reasons, the decision by Appellee’s Board of Code Enforcement is quashed. This matter is hereby remanded to the Board for further proceedings consistent with this opinion. (TRAWICK and DE LA O, JJ., CONCUR.)

¹This is particularly true where there was no evidence of any detriment to person or property in the record below. The Chair speculated that *if* “everyone” had boats and *if* everyone’s boats were “big,” it would be difficult to “maneuver these big boats.” R.29:11-19. There was no evidence to support this speculative concern. No one testified as to any issues concerning maneuverability or navigability. On the contrary, the only witness who testified about the navigability of this area testified that Appellant’s boat did not present any issues. Additionally, and contrary to Appellee’s contention, the mere complaint from a neighbor without more is, as a matter of law, an insufficient basis upon which to find a detriment to person or property. Property rights are not so easily dispensed with.

* * *

Licensing—Driver’s license—Suspension—Obtaining license by fraud—Licensee’s address—Finding that licensee used false address when renewing his license was not supported by competent substantial evidence—Documentary evidence relied upon by Department of Highway Safety and Motor Vehicles at hearing, including critical evidence of power company bill in name of former partner of licensee’s wife, were not included in appellate record; and, even in absence of any documentary evidence of licensee’s address, there could be no fraud where un rebutted evidence showed that licensee lived where he claimed—Hearing officer failed to comply with essential requirements of law because specific wording of Section 322.27(1)(d), requiring that licensee “knowingly” obtain a driver’s license by fraud or misrepresentation, was not met

JEAN FLEURIME, Petitioner, v. STATE OF FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Circuit Court, 11th Judicial Circuit (Appellate) in and for Miami-Dade County. Case No. 2025-49-AP-01. September 18, 2025. On a Petition for Writ of Certiorari from a Final Administrative Action of the State of Florida Department of Highway Safety and Motor Vehicles. Counsel: John R. Sutton, Sutton Pomares Law Group, P.A., for Petitioner.

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

OPINION

(DE LAO, J.) Petitioner, Jean Fleurime (“Petitioner”), filed a Writ of Certiorari contending the Hearing Officer below erred in determining that Petitioner knowingly committed fraud in obtaining his driver’s license renewal. Petitioner’s Writ of Certiorari is GRANTED.

Factual Background

The facts of the case are simple. Petitioner represents that he has lived in Florida since 2012 and has held a valid CDL (commercial driver’s license) for the past ten years. Petitioner’s employer, Keyes

Sanitary Services, mandates that he renew his driver’s license every year.

On July 25, 2024, Petitioner married Juveisy Vazquez and moved into his new marital home at 875 NW 10 Street, Florida City, Florida. Because he was married, Petitioner was in the process of changing his address on both his driver’s license and his FPL bill. Petitioner and his wife also consolidated their leased premises.

Petitioner’s wife paid the bills, and the FPL account was under her name. Petitioner’s wife added Petitioner’s name to the FPL bill and removed her former significant other, Cedrick Lester, from the bill. Mr. Lester explained in his sworn statement that he gave Petitioner’s wife permission to transfer the bill to her new address (where she lived with Petitioner). The Court notes that because the FPL account was in Petitioner’s wife’s name, only she would be authorized to make changes to the account as the account holder.

On April 7, 2025, an administrative hearing was held in front of a State of Florida Department of Highway Safety and Motor Vehicles (“Department”) hearing officer. At the beginning of the hearing, the Hearing Officer stated that the purpose of the hearing was to determine if Petitioner knowingly committed fraud. The State’s exhibits at the hearing included two fraud files, FPL and Xfinity bills, a document from the Dade County Federal Credit Union, and an uncertified transcript for internal use.¹ Petitioner did not submit any exhibits at the hearing, but instead submitted eight exhibits as part of his Emergency Petition for Certiorari.² On April 21, 2025, the Hearing Officer’s Final Order found that there was competent substantial evidence to find that the Petitioner’s driving privilege was properly suspended by the Department due to fraud. On May 15, 2025, Petitioner filed a Petition for Writ of Certiorari.

On a petition for writ of certiorari, this Court must determine “(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.” *Miami-Dade Cnty. v. Omnipoint Holdings, Inc.*, 863 So. 2d 195, 199 (Fla. 2003) [28 Fla. L. Weekly S717a]. In this case, the Department failed to follow the essential requirements of law and made a decision unsupported by competent substantial evidence.³

Discussion

Competent substantial evidence

“Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred.” *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). “Competent, substantial evidence must be reasonable and logical.” *Wiggins v. Fla. Dep’t of Highway Safety and Motor Vehicles*, 209 So. 3d 1165, 1173 (Fla. 2017) [42 Fla. L. Weekly S85a].

The Department’s exhibits from the hearing were not included in the record. Therefore, the critical piece of evidence—an alleged FPL bill with the name of Mr. Lester (Petitioner’s wife’s former significant other) is also not in the record before this Court. Accordingly, it is impossible to follow the hearing transcript where the hearing officer refers to the various State’s exhibits which were entered into the record. Consequently, we find there was a lack of competent substantial evidence.

Moreover, the un rebutted evidence is that Petitioner did in fact live where he claimed to live. Even assuming he could not produce FPL or other documentary evidence, if the Petitioner lived where he claimed, there can be no fraud as a matter of law. It is black-letter law that fraud requires a *false* statement of material fact. See *Bailey v. Covington*, 317 So. 3d 1223, 1227 (Fla. 3d DCA 2021) [46 Fla. L. Weekly D776a]; *Pritchard v. Levin*, 305 So. 3d 628, 630 (Fla. 3d DCA 2020) [45 Fla. L. Weekly D1015c]; *Susan Fixel, Inc. v. Rosenthal & Rosenthal, Inc.*, 842 So. 2d 204, 209 (Fla. 3d DCA 2003) [28 Fla. L. Weekly D847a].

Essential Requirements of Law

Having found that there was a lack of competent substantial evidence, we now turn to the essential requirements of the law. In *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995) [20 Fla. L. Weekly S318a], the Supreme Court held that “applied the correct law” is synonymous with “observing the essential requirements of law.” Further, to warrant relief, there must be “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.” *Id.* at 527. (citation omitted).

Section 322.27(1)(d), Fla. Stat. (2024) provides, in relevant part, that:

(1) Notwithstanding any provisions to the contrary in chapter 120, the department may suspend the license or identification card of any person without preliminary hearing upon a showing of its records or other sufficient evidence that the licensee or cardholder:

(d) Has permitted an unlawful or fraudulent use of the license or identification card or **has knowingly been a party to the obtaining of a license or identification card by fraud** or misrepresentation or to the display, or representation as one’s own, of a driver license or identification card not issued to him or her. This section does not include the provisions of s. 322.32(1);

(emphasis added).

Section 322.27(a)(d) requires that the element of “knowingly” be met. The hearing officer explained to the Petitioner that Mr. Lester’s name was listed on the FPL account. Mr. Lester explained in his sworn statement that he gave Petitioner’s wife permission to transfer the FPL bill to her new address (where she lived with Petitioner). There is, thus, a reasonable explanation as to why the Department had an FPL bill which was not in Petitioner’s name.

Moreover, because the statement was true, Petitioner did live at the address on the FP&L bill, he cannot be found to have “knowingly” obtained a driver’s license by fraud or misrepresentation.

This Court finds that the Hearing Officer failed to follow the essential requirements of law because the specific wording of Section 322.27(1)(d), Fla. Stat. was not met. Further, the Order was not supported by competent substantial evidence.

Accordingly, the Petition for Writ of Certiorari is **GRANTED**. The Final Order of the Hearing Officer rendered on April 21, 2025, is hereby **QUASHED**. (TRAWICK and ARECES, R., JJ., concur.)

¹Appellee was directed to file an answer brief and failed to do so. Therefore, the Court precluded Appellee from participating in oral argument.

²After Petitioner filed a Petition for Writ of Certiorari, he filed an Emergency Petition. Attached to the Emergency Petition were the following documents: copies of Petitioner’s driver’s licenses from various years (Exh. 1); Petitioner’s application for temporary protected status (Exh. 2); the marriage certificate of the parties (Exh. 3); a notarized document from Mr. Lester (Exh. 4); Petitioner’s current FPL bill with his name on it (Exh. 5); a Residential lease and Addendum to the lease with Petitioner and his wife’s name on it (Exh. 6); a letter from Petitioner’s employer (Exh. 7); and the Department’s Final Order (Exh. 8).

³Petitioner did not argue the procedural due process part of the standard.

* * *

Licensing—Driver’s license—Suspension—Driving under influence—Lawfulness of arrest—Actual physical control of motor vehicle—Officer had probable cause to believe that licensee was in actual physical control of vehicle where licensee exited café and entered driver’s seat of vehicle, licensee was observed seated in driver’s seat, licensee was sole vehicle occupant, licensee stated to officer that she was sober and was going to her boyfriend’s house, and licensee’s ability to roll down window indicated that vehicle was operating

EVA AGERBRINK, Petitioner, v. DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Circuit Court, 15th Judicial Circuit (Appellate) in and for Palm Beach County, Appellate Civil Division AY. Case No. 50-2025-CA-

001479-XXXX-MB. September 12, 2025. Petition from the Department of Highway Safety and Motor Vehicles Hearing Officer. Counsel: Ari S. Goldberg, West Palm Beach, for Petitioner. Linsey Sims-Bohnenstiehl, DHSMV, Tampa, for Respondent.

(PER CURIAM.) Petitioner, Eva Agerbrink (“Petitioner”), seeks review of a quasi-judicial “Findings of Fact, Conclusions of Law and Decision” (“Final Order”) entered by the Department of Highway Safety and Motor Vehicles (the “DHSMV”) Hearing Officer, Alicia Bacon, which affirmed the order of suspension of Petitioner’s driving privilege. Specifically, Petitioner disputes whether law enforcement officers had probable cause to believe that Petitioner was driving or in actual physical control of a vehicle. We disagree and deny the Petition for Writ of Certiorari.

We note that “the hearing officer is not required to determine that Petitioner was in actual physical control of the vehicle; rather, the hearing officer must determine only whether law enforcement had probable cause to believe petitioner was in actual physical control of the vehicle at the time of arrest under section 322.2615(7)(b).” *Dep’t of Highway Safety & Motor Vehicles v. Prue*, 701 So. 2d 637, 638 (Fla. 2d DCA 1997) [22 Fla. L. Weekly D2610b]. The Court may consider a combination of factors when deciding whether an individual was in actual physical control of a vehicle including the vehicle’s location, the location of the vehicle’s keys, the location of the individual to the vehicle, the vehicle’s operability, the orientation of the driver within the front seat, and the presence of circumstantial evidence indicating actual physical control. *See Jones v. State*, 510 So. 2d 1147, 1149 (Fla. 1st DCA 1987); *Griffin v. State*, 457 So. 2d 1070, 1071 (Fla. 2d DCA 1984); *Baltrus v. State*, 571 So. 2d 75 (Fla. 4th DCA 1990); *State v. Boynton*, 556 So. 2d 428, 429-30 (Fla. 4th DCA 1989). Additionally, probable cause may be based on circumstantial evidence and common sense inferences coupled with the law enforcement officer’s general knowledge, training, and experience. *State, Dept. of Highway Safety & Motor Vehicles v. Whitley*, 846 So. 2d 1163, 1165-66 (Fla. 5th DCA 2003) [28 Fla. L. Weekly D1090a] (citations omitted).

In the instant case, we consider, Petitioner’s seated presence in the driver’s seat, sole occupancy of the vehicle, actions in exiting the café and entering the driver’s seat of her vehicle, and Petitioner’s statements that she was sober and was going to her boyfriend’s house. We also note that Officer Gerity asked Petitioner to roll down the window of her 2019 Mercedes 4dr SUV indicating that the vehicle was on. The above evidence taken together is competent substantial evidence of the law enforcement’s finding of probable cause of actual physical control of the vehicle. *See City of Fort Lauderdale v. Multidyne Med. Waste Mgmt., Inc.*, 567 So. 2d 955, 957 (Fla. 4th DCA 1990); *Dep’t of Highway Safety & Motor Vehicles v. Allen*, 539 So. 2d 20, 21 (Fla. 5th DCA 1989) (holding that the limits of certiorari review of Department of Highway Safety and Motor Vehicles ruling were exceeded where judge reweighed the evidence and came to a different factual conclusion than that of the administrative body). Therefore, the Petition for Writ of Certiorari is **DENIED**. (COATES and DIGANGI, JJ. concur. SHULL, J. dissents with opinion.)

(SHULL, J., dissenting.) At issue here is the Department of Highway Safety and Motor Vehicles (the “DHSMV”) hearing officer’s affirmation of the order of suspension of the Petitioner’s driving privileges. Specifically, Petitioner argues that the hearing officer’s decision is not supported by competent substantial evidence that the officers had probable cause to believe Petitioner had actual physical control of the vehicle.

Petitioner contends that the record lacks competent substantial evidence demonstrating that the arresting officers had probable cause to believe that petitioner had actual physical control of the vehicle due to a lack of evidence in the record regarding the location of Petitioner’s car keys. Where were the keys or the fob to start the vehicle? Also, whether the vehicle’s engine was on, and the way in which she was seated in the vehicle is an unknown. Petitioner also contends that the location of the vehicle parked in a legal spot does not support a finding of probable cause of actual physical control. Actual physical control of a vehicle means the driver “must be physically in or on the vehicle and have the capability to operate the vehicle, regardless of whether [the driver] is actually operating the vehicle at the time.” *Deluce v. Dep’t of Highway Safety & Motor Vehicles*, 22 Fla. L. Weekly Supp. 890a (Fla. 15th Cir. Ct. Feb. 26, 2015) (quoting Fla. Std. Jury Instr. (Crim.) 28.1). Florida appellate courts have considered a combination of factors when deciding whether an individual may be in actual physical control of a vehicle including the vehicle’s location, the location of the vehicle’s keys, the location of the individual to the vehicle, the vehicle’s operability, the orientation of the driver within the front seat, and the presence of circumstantial evidence indicating actual physical control. *See Jones v. State*, 510 So. 2d 1147, 1149 (Fla. 1st DCA 1987); *Griffin v. State*, 457 So. 2d 1070, 1071 (Fla. 2d DCA 1984); *Baltrus v. State*, 571 So. 2d 75, 76 (Fla. 4th DCA 1990); *State v. Boynton*, 556 So. 2d 428, 429-30 (Fla. 4th DCA 1989).

There is no competent substantial evidence demonstrating that the arresting officers had probable cause to believe that Petitioner had actual physical control of the vehicle. *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957) (holding that competent substantial evidence is defined as such relevant evidence as a reasonable mind would accept as adequate to support the conclusion reached). In the instant case, there was no evidence presented of where Petitioner’s keys were located. Additionally, there was no evidence presented that Petitioner’s vehicle was on or operable. Finally, the location of the vehicle, parked in a legal parking spot, does not support the finding of probable cause of actual physical control. The remaining evidence that Petitioner was seated in the front seat of the vehicle and that she stated she was going to her boyfriend’s house, without more, does not rise to competent substantial evidence to support a finding of probable cause of actual physical control. Therefore, for the foregoing reasons, I would grant the Petition for Certiorari and quash the DHSMV’s order sustaining Petitioner’s driver’s license suspension.

* * *

Municipal corporations—Zoning—Special exceptions—Certiorari challenge to city commission’s denial of special exception to allow storage of empty waste haulers and roll-off containers used to transport industrial waste in I-2 industrial zone is granted—Commission did not violate procedural due process by failing to make express factual findings in original final order—Commission acted without jurisdiction in issuing corrected final order that changed original order’s determination that petitioner satisfied all criteria of land development code to finding that petitioner did not satisfy those criteria where corrected order was issued after appellate proceedings had been initiated—Further, commission denied petitioner procedural due process by changing key finding without affording opportunity to be heard—Commission’s denial of exception was arbitrary and capricious and departed from essential requirements of law where land code mandated approval of exception when all criteria are met, as was found in original final order—Request to relinquish jurisdiction to permit entry of corrected order is denied where city has not filed proper motion and has not identified ministerial error, but instead seeks to reverse express factual finding and remove language central to petitioner’s argument—Court cannot order city to grant exception but quashes both original and corrected orders

BANNER YARD NW 55TH COURT, LLC, Petitioner, v. CITY COMMISSION OF THE CITY OF TAMARAC, Respondent. Circuit Court, 17th Judicial Circuit (Appellate) in and for Broward County. Case No. CACE24-016397. September 17,

2025. Petition for Writ of Certiorari for review of a decision rendered by the City Commission of the City of Tamarac, Case Number 2-Z-24. Counsel: Kyle B. Teal and Maria D. Corghi, Miami, for Petitioner. Hans Ottinot, for Respondent.

FINAL ORDER

GRANTING PETITION FOR WRIT OF CERTIORARI

(*PER CURIAM*.) Having carefully considered the Petition and its Appendix, Responses, and the applicable law, the Petition for Writ of Certiorari is hereby **GRANTED**. The Original Final Order filed October 17, 2024, and the Corrected Order dated October 14, 2024, and filed November 18, 2024 are hereby **QUASHED** for the reasons stated below.

Background

On October 14, 2024, the City Commission of the City of Tamarac (the “Respondent”) held a public hearing to address a special exception application submitted by Banner Yard NW 55th Court, LLC (“Petitioner”). Petitioner sought approval to store empty waste haulers and roll-off containers used to transport industrial waste on property located in an 1-2 (industrial) zoning district. Pursuant to section 10-3.2 of the Land Development Code (“LDC”), such use is permitted within Broward County’s M-3 Intense Manufacturing and Industrial District, but only upon approval of a special exception by Respondent. In rendering its decision, Respondent is required to apply the criteria outlined in section 10-5.4(G)(4)(a-j) of the LDC. Following the hearing, Respondent denied the special exception and issued its Original Final Order.

On November 14, 2024, Petitioner filed its original petition seeking a Writ of Certiorari. In response, Respondent issued a Corrected Order that was signed October 14, 2024, and filed November 18, 2024. On December 16, 2024, Petitioner filed a separate Petition for Writ of Certiorari challenging the Corrected Order, and the Court reviews both Orders herein.

Legal Standard

Certiorari jurisdiction is proper to review quasi-judicial decisions. *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995) [20 Fla. L. Weekly S318a]. A Petition for Writ of Certiorari seeking review of the decision of an administrative agency is strictly limited to consideration of whether (1) the parties were afforded procedural due process, (2) the essential requirements of the law were observed, and (3) the administrative findings and judgment are supported by competent, substantial evidence. *Id.*, citing *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

Analysis

Upon careful review of the record, the Court finds Respondent violated Petitioner’s procedural due process guarantees, and failed to observe the essential requirements of the law.

a. Jurisdiction

The Court finds that it has jurisdiction to review the instant quasi-judicial action through a Petition for Writ of Certiorari, pursuant to Florida Rule of Appellate Procedure 9.030(c)(2), 9.030(c)(1)(C), and 9.100(c).

Respondent argues that this Court lacks certiorari jurisdiction, asserting that Petitioner’s claim is more appropriately brought as a *de novo* action under Florida Statutes section 163.3215, based on an alleged inconsistency between the denial of the special exception and the recommended approval by the City’s Comprehensive Plan. *See Stranahan House, Inc. v. City of Fort Lauderdale*, 967 So. 2d 1121, 1125-26 (Fla. 4th DCA 2007) [32 Fla. L. Weekly D2702a] (holding that consistency issues must be brought through a separate statutory cause of action, not by certiorari). However, the Court finds that Petitioner has not raised a consistency challenge within the meaning of section 163.3215, Fla. Stat. While the Petition references the Comprehensive Plan as part of the factual background, the legal

arguments presented fall squarely within the scope of certiorari review. *See Haines City Cmty. Dev. v. Heggs*, 658 So.2d 523, 530 (Fla. 1995) [20 Fla. L. Weekly S318a].

Accordingly, the Court finds that Petitioner properly invoked this Court’s certiorari jurisdiction by alleging procedural due process violations, a departure from the essential requirements of the law, and a lack of competent, substantial evidence. Jurisdiction is therefore proper.

b. Procedural Due Process

Petitioner raises two relevant issues on appeal concerning due process. The first issue is whether the Original Final Order required express factual findings to support Respondent’s denial of the special exception. Procedural due process requires that affected landowners receive “notice of the hearing and an opportunity to be heard.” *Seiden v. Adams*, 150 So.3d 1215, 1219 (Fla. 4th DCA 2014) [39 Fla. L. Weekly D2409a]. However, quasi-judicial boards are not required to make express factual findings supporting their decision. *See Town of Manalapan v. Gyongyosi*, 828 So. 2d 1029, 1032 (Fla. 4th DCA) [27 Fla. L. Weekly D1992a] (upheld that while such an explanation may be useful, the board will not be required to make a finding of fact). As such, it is not a legal requirement to make specific factual findings under certiorari review, and Respondent did not violate procedural due process as to the Original Final Order.

Petitioner’s second claim challenges the validity of the Corrected Final Order signed October 14, 2024, and filed November 18, 2024.¹ Petitioner contends that Respondent lacked jurisdiction to substantively alter its original order. As a result, Petitioner was denied notice and a meaningful opportunity to be heard.

It is undisputed that administrative agencies have the inherent authority to correct orders that contain clerical errors or inadvertent mistakes. *See Smull v. Town of Jupiter*, 854 So. 2d 780 (Fla. 5th DCA 2003) [28 Fla. L. Weekly D2064a]; *see also Taylor v. Dept. of Prof. Reg. Bd. Medical Examiners*, 520 So. 2d 557 (Fla. 1988). However, this authority exists only before the time to appeal lapses or before an appellate proceeding commences. *Id.*; *see also Fla. R. App. P. 9.100(c)(1)* (stating that the time to initiate an appeal lapses thirty days after the rendition of the order). Once an appeal is commenced, the agency is divested of jurisdiction absent formal relinquishment by the reviewing court. *See Fonseca v. Taverna Imps. Inc.*, 193 So. 3d 92, 94 (Fla. 3d DCA 2016) [41 Fla. L. Weekly D1186b]. Moreover, even where jurisdiction is proper, the power to correct does not extend to substantive modifications made without due process. *See Taylor*, 520 So.2d 557; *see also Dept. of Rev. ex. Rel. Williams v. Annis*, 159 So. 3d 263 (Fla. 2d DCA 2015) [40 Fla. L. Weekly D565b] (affirming that while a trial court may correct clerical mistakes, it may not make substantive changes that alter the outcome).

The record reflects that Respondent issued the Corrected Order after Petitioner had initiated appellate proceedings. In doing so, Respondent altered its original express determination that Petitioner satisfied all criteria under section 10-5.4(G)(4) of the LDC to a finding that Petitioner did not satisfy those criteria. Although the ultimate denial of the application remained unchanged, this revision directly contradicted the original factual findings without allowing Petitioner the opportunity to object or be heard. Accordingly, because the Corrected Order was issued after appellate proceedings had commenced, Respondent acted without jurisdiction. Further, by changing a key factual finding without affording an opportunity to be heard, Respondent denied Petitioner procedural due process. As such, the Corrected Final Order is quashed as it failed to afford procedural due process.

c. Essential Requirements of the Law

A departure from the essential requirements of the law requires

something more than a simple legal error or a disagreement with how the lower tribunal interpreted the law. *Ivey v. Allstate Ins. Co.*, 774 So. 2d 679 (Fla. 2000) [25 Fla. L. Weekly S1103a]. Rather, departure occurs when the tribunal applies the completely wrong law or the decision is arbitrary and capricious. *See Haines City Community Development v. Heggs*, 658 So. 2d 523, 527 (Fla. 1995) [20 Fla. L. Weekly S318a] (explaining that a departure occurs when it exceeds mere legal error and reflects inherent illegality, abuse of power, or disregard of controlling procedural requirements). Petitioner asserts, and this Court agrees, that Respondent’s decision was arbitrary and capricious.

According to section 10-5.4(G)(4)(a-j), a special exception application *shall* be approved if the applicant satisfies all the criteria by competent, substantial evidence. In the Original Final Order, Respondent expressly found that Petitioner satisfied all required criteria. Despite Respondent’s express findings, they denied the application. This decision directly contradicts the plain language of the city’s land development code, which mandates approval when all criteria are met. Respondent has not justified their decision, relying solely on the assertion that the Corrected Order controls and supersedes the factual findings in the Original Final Order, an argument this Court rejects. Further, and as stated above, the Corrected Final Order was a violation of Petitioner’s procedural due process. Therefore, this Court finds that Respondent’s denial was arbitrary and capricious, departing from the essential requirements of the law.

d. Requests for Relief

Respondent requests that the Court relinquish jurisdiction to permit entry of the Corrected Order. *See Fla. R. App. P. 9.600(b)*. However, courts “grant motions to relinquish jurisdiction sparingly and usually

for the accomplishment of ministerial matters,” *McNulty v. BankUnited*, 140 So. 3d 1041, 1042 (Fla. 3d DCA 2014) [39 Fla. L. Weekly D1134a]. Notably, Respondent neither filed a proper motion nor identified a ministerial error. Instead, Respondent seeks to reverse an express factual finding and remove language central to Petitioner’s argument. The act is not ministerial, but one involving judgment and discretion. Accordingly, the request to relinquish jurisdiction is denied.

As one form of relief, Petitioner requests, through the use of a Petition for Writ of Certiorari, that the Court order Respondent to grant Petitioner’s special exception. This Court does not have the authority under a Writ of Certiorari “to direct the town to any particular course of action.” *Town of Manalapan v. Gyongyosi*, 828 So. 2d 1029, 1034 (Fla. 4th DCA 2002) [27 Fla. L. Weekly D1992a]. Therefore, as the Court cannot direct Respondent to act in any way, this type of relief is **DENIED**.

Accordingly, it is hereby **ORDERED** that the Petition for Writ of Certiorari is **GRANTED**. Both the Final Order filed October 17, 2024, and the Corrected Order signed October 14, 2024, and filed November 18, 2024, are both hereby **QUASHED**. Further, Respondent’s request to relinquish jurisdiction is **DENIED**. (J. BOWMAN, E. CARBUCCIA, and A. SIEGEL, JJ., concur.)

¹An order is rendered when it is both signed and filed with the clerk of the court. *See Smull v. Town of Jupiter*, 854 So. 2d 780, 783 (Fla. 4th DCA 2003) [28 Fla. L. Weekly D2064a]; *see also Siegers Seed Co. v. Williams Farm P’ship*, 13 So. 3d 1230 (Fla. 2d DCA 2009) [34 Fla. L. Weekly D1789a] (holding that an agency order is not rendered until it is signed and filed with the agency clerk). Accordingly, although the Corrected Order was signed on October 14, 2024, it was not rendered until it was filed with the clerk on November 18, 2024.

* * *

Criminal law—Post conviction relief—Juror bias—Timeliness of motion—Successive motion—Motion for post conviction relief alleging juror bias filed 20 years after judgment and sentence became final is untimely and barred by laches—Moreover, standalone claim of juror misconduct is procedurally barred from collateral attack—Assuming defendant has satisfied first prong to prevail on claim of standalone juror misconduct by establishing that juror made false statement, there are no good faith record-based allegations that juror was actually biased against defendant—Defendant who engages in juror investigation decades after trial, not to secure new trial but to be set free since new trial is no longer possible, does not have clean hands that equity requires—Motion denied—Discussion of laches in context of rule 3.850 proceedings—Discussion of post conviction juror investigations

STATE OF FLORIDA, Plaintiff, v. EVENS FAUSTIN, Defendant. Circuit Court, 11th Judicial Circuit in and for Miami-Dade County, Criminal Division. Case No. F99-10769. September 9, 2025. Milton Hirsch, Judge.

ORDER ON DEFENDANT'S SUCCESSIVE POST-CONVICTION MOTION

I. Introduction

In 1999, the European Union introduced the now-familiar “Euro” as its unit of currency. In 1999, the “Y2K” scare had everyone worrying that the world’s computers would have the digital equivalent of a nervous breakdown on January 1, 2000. In 1999 the Nickelodeon cable network premiered a children’s show with the unlikely name of SpongeBob SquarePants. And in 1999 Evens Faustin was charged with the serious felonies for which, in due course, he would be convicted and sentenced.

Mr. Faustin’s litigation biography from and after that time is followed only with some difficulty. Court archives so ancient are, understandably, faded and damaged. So far as appears, Mr. Faustin’s conviction was affirmed in 2003, *see Faustin v. State*, 848 So. 2d 325 (Fla. 3d DCA 2003) (table). The following year the appellate court reversed a trial court order denying a motion for correction of sentence for jail-time credit, *see Faustin v. State*, 880 So. 2d 1291 (Fla. 3d DCA 2004) [29 Fla. L. Weekly D2041b],¹ and Mr. Faustin got the benefit of the sentencing correction. Mr. Faustin filed a *pro se* motion for post-conviction relief pursuant to Fla. R. Crim. P. 3.850 which was denied, and the denial was affirmed on appeal. *Faustin v. State*, 932 So. 2d 202 (Fla. 3d DCA 2006) (table). Subsequent post-conviction motions pursuant to Rule 3.850 were filed on Mr. Faustin’s behalf by counsel, which motions were denied; and, again, the denials were affirmed on appeal. *See Faustin v. State*, 3 So. 3d 1262 (Fla. 3d DCA 2009) (table)² and *Faustin v. State*, 151 So. 3d 1255 (Fla. 3d DCA 2014) (table). The motion at bar appears to be Mr. Faustin’s fourth motion brought under Rule 3.850.³

But successiveness, although a sufficient basis for denial, is not what is most troubling about the motion at bar. The motion is brought by attorney Brian D. Savy and his colleagues, “Covert Ops Jury Investigations, LLC.” The Savy/“Covert Ops” team is not unknown to this court. In *State v. Pierre*, 2025 WL 2093699 (Fla. Cir. Ct. 2025) [33 Fla. L. Weekly Supp. 192a], I made the following findings:

[A]ttorney Bryan D. Savy . . . apparently has a very close connection to a business calling itself “Covert Ops Jury Investigations, LLC.” That company’s very elaborate website, adorned with military imagery evocative of the *Rambo* movies, announces (among a great many other things) that, “We have completed 105 investigations, and uncovered at least one biased juror on every jury. We are 100% successful because we do not stop searching until we find that biased juror.” *See* <https://juryinvestigations.com/jury-investigations> (visited July 10, 2025). More particularly:

To find the biased jurors, we search hundreds of public records, looking for information that indicates they intentionally concealed their true self during the voir dire, to improve their chances of being selected for the jury. We research the jurors, their family and friends, and everyone associated with the case (accusers/victims and their friends/family, law enforcement, witnesses, all courtroom personnel, etc.). To our knowledge, we are the only company who performs this unique service. Our mission is to find potential juror bias, so you can get back in the courthouse, and have a second chance to be free again!

Id. And then in large, capitalized, colored font: WANT US TO FIND OUT IF ANY OF YOUR JURORS WERE GUILTY OF MISCONDUCT? CLICK HERE! *Id.*

The website includes a disclaimer that “Covert Ops Jury Investigations, LLC” is “not a licensed private investigation company, nor are we licensed private investigators or attorneys, but we work closely with them.” *Id.* Mr. Savy’s name appears several times in the website as having represented persons who retained “Covert Ops Jury Investigations, LLC.”

Pierre at 1-2. The post-conviction motion in *Pierre* was denied as untimely under Rule 3.850, barred by laches, and successive. In my order denying the motion, I attempted to make clear my very serious concerns regarding “Covert Ops Jury Investigation’s” practice of slashing and burning through the privacy of jurors, and of jurors’ family members, years and even decades after those jurors completed their jury service. Undaunted by the concerns expressed in the *Pierre* order, however, Mr. Savy and “Covert Ops Jury Investigations” have filed the motion at bar. It is the product of the same practices that were roundly condemned in the *Pierre* order, and it is fraught with the same insufficiencies that resulted in denial in the *Pierre* order.

II. Analysis

“But surely, it cannot be deemed a denial of justice, that a man shall not be permitted to try his case two or three times over.”

—*Wiscart v. D’Auchy*, 3 U.S. (3 Dall.) 320, 328 (1796) (Ellsworth, C. J.)

Common sense and legal scholarship alike teach that if a man has had his trial and his appeal; if that man has filed not one but a series of meritless post-conviction claims, all of them denied; and if a quarter-century has passed since the time that man committed the crimes for which he was sentenced; that his litigation ought to be at an end.

Both the individual criminal defendant and society have an interest in insuring that there will at some point be the certainty that comes with an end to litigation, and that attention will ultimately be focused not on whether a conviction was free from error but rather on whether the prisoner can be restored to a useful place in the community.

Sanders v. United States, 373 U.S. 1, 24-25 (1963) (Harlan, J., dissenting). This is sometimes termed the “doctrine of finality,” and its applicability is at its apex in connection with post-conviction claims. The Florida Supreme Court has said so time and again in post-conviction cases.

The importance of finality in any justice system, including the criminal justice system, cannot be understated. It has long been recognized that, for several reasons, litigation must, at some point, come to an end. In terms of the availability of judicial resources, cases must eventually become final simply to allow effective appellate review of other cases. There is no evidence that subsequent collateral review is generally better than contemporaneous appellate review for ensuring that a conviction or sentence is just. Moreover, an absence of finality causes a cloud of tentativeness over the criminal justice system, benefitting neither the person convicted nor society as a whole.

Witt v. State, 387 So. 2d 922, 925 (Fla. 1980) (post-conviction case). See also *Swafford v. State*, 679 So. 2d 736, 740 (Fla. 1996) [21 Fla. L. Weekly S304a] (post-conviction case) (Harding, J., concurring) (“The doctrine of finality is a necessary and strong thread that runs through the fabric of our judicial system. Without finality, the affairs of a free society and the rights of its citizens would be severely jeopardized. . . . [T]he doctrine of finality should be given great deference and should be an important consideration in determining whether a proceeding will be reopened or overturned”); *id.* at 742 (Wells, J., concurring in part and dissenting in part) (“finality . . . [is] fundamental to the integrity of our judicial system”). See also *Dettle v. State*, 395 So. 3d 1054, 1057 (Fla. 2024) [49 Fla. L. Weekly S263a] (citing *Teague v. Lane*, 489 U.S. 288, 309 (1989)).

Apart from the need for finality—apart from the need for all litigation to come to an end at some point—there is the cruel unfairness of asking the court system to produce reliable trial (actually, retrial) results at a remove of years or even decades from the events that must be tried. “The longer the delay, the less the reliability of the determination of any factual issue giving rise to the [collateral] attack. It is chimerical to suppose that police officers can remember what warnings they gave a particular suspect ten years ago . . . [A]lthough successful attack . . . entitles the prisoner . . . to a retrial, a long delay makes this a matter of theory only,” Henry J. Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. Chi. L. Rev. 142, 147 (1970) (footnote omitted).

Ranged against these and like-kind considerations are the practices of Attorney Savy and “Covert Ops Jury Investigations.” In this case, as in the *Pierre* case, a defendant who had his day in the trial court, had his day in the appellate court, and had his many days in the post-conviction court, moves to vacate a conviction more than two decades old. His judgment and sentence should have come to a point of repose long ago. He does not, because he cannot, claim that he was falsely convicted and is actually innocent. He does not, because he cannot, claim that his trial lawyer failed him, or that his appellate lawyers failed him, or that the judiciary somehow failed him. Although he purports to demand a retrial, he knows full well that, as Judge Friendly wrote, for the State to attempt to prosecute him after so long a “delay makes this a matter of theory only.” In this case as in the *Pierre* case, and indeed as it claims on its website to do in all its cases, “Covert Ops Jury Investigations” has burrowed into the private lives of jurors (or of persons it thinks were jurors) who sat on Mr. Faustin’s long-ago trial and, as if this were a child’s game, come up crying, “Gotcha!”

The criminal justice system, for all its imperfections, is not a child’s game. And it has mechanisms and procedures that enable it to protect itself against those who act as if it were.

A. The present motion is untimely

Subject to exceptions inapplicable here, a motion brought pursuant to Rule 3.850 must be filed within two years of the date when the judgment and sentence to which the motion is directed became final. Rule 3.850(b), Fla. R. Crim. P. As discussed *supra* at 1, Mr. Faustin’s judgment and sentence became final in 2003. The time provided by rule during which he could have filed a post-conviction motion should have expired in 2005, although it appears, *see supra* at 2, that he, or lawyers on his behalf, filed post-conviction motions long after that time. Be that as it may, by any parsing of the rule, Mr. Faustin is well outside the allotted period for filing post-conviction claims.

Apart from its untimeliness under the governing rule, the present motion is barred by laches. Collateral attacks on criminal convictions brought pursuant to Rule 3.850 are civil claims, heard by criminal courts in the exercise of their ancillary jurisdiction. *State v. Weeks*, 166 So. 2d 892, 893, 894-95 (Fla. 1964); *Grange v. State*, 199 So. 3d 440, 442 (Fla. 4th DCA 2016) [41 Fla. L. Weekly D1976a]. As such, the

civil-law doctrine of laches is applicable to such claims. *McCray v. State*, 699 So. 2d 1366, 1368 (Fla. 1997) [22 Fla. L. Weekly S627a]; *Xiques v. Dugger*, 571 So. 2d 3 (Fla. 2d DCA 1990). And it is applicable separate and apart from the two-year time limitation imposed by Rule 3.850. “[L]aches is not, like limitation, a mere matter of time; but principally a question of the inequity of permitting the claim to be enforced.” *Homberg v. Armbrecht*, 327 U.S. 392, 396 (1964). “[T]he doctrine of laches has been applied to bar a collateral relief proceeding when, from the face of the petition, it is obvious that the state has been manifestly prejudiced and no reason for an extraordinary delay has been provided.” *McCray*, 699 So. 2d at 1368. See also *Wright v. State*, 711 So.2d 66, 68 (Fla. 3d DCA 1998) [23 Fla. L. Weekly D851d]; *Hurtado v. Singletary*, 708 So. 2d 974, 975 (Fla. 3d DCA 1998) [23 Fla. L. Weekly D766a].

The predicate for laches is amply present here. The motion at bar asks this court to vacate the judgment and sentence imposed. If the court were to do so, it would be impossible—as Judge Friendly’s article, excerpted *supra* at 5, makes clear—to set this matter for retrial at this late date. Court records and evidence have been abandoned long ago. Witnesses have died, forgotten, moved away. See, e.g., *Wright*, 711 So. 2d at 68 (defendant’s “lack of due diligence is apparent in that he did not bring this claim until 24 years” had passed); *Hurtado*, 708 So. 2d at 975 (delay of eight years “is unreasonable” and “the prejudice is obvious”). But that’s the point, isn’t it? Mr. Faustin, his post-conviction counsel, and those who have wallowed through the most private details of persons who may or may not have been Mr. Faustin’s jurors, don’t want a retrial. They want a get-out-of-jail-free card. That is precisely the sort of unfair prejudice to the State that the doctrine of laches is intended to prohibit.

B. The present motion is both successive and procedurally barred

When an initial motion for post-conviction relief raises a claim cognizable under Rule 3.850, and a subsequent motion is filed raising additional grounds, the defendant “must state legitimate reasons why the facts in support of his present claim were not known and could not have been known at the time of the filing of the first motion.” *Pinder v. State*, 42 So. 3d 335, 337 (Fla. 3d DCA 2010) [35 Fla. L. Weekly D1882b] (citing *Christopher v. State*, 489 So. 2d 22, 24 (Fla. 1986)). The defendant is required to justify “the failure to raise the asserted issues in the first motion.” *McKenley v. State*, 937 So. 2d 223, 225 (Fla. 3d DCA 2006) [31 Fla. L. Weekly D2278a]. Otherwise, the successive motion constitutes an abuse of process and may be dismissed. *Owen v. Crosby*, 854 So. 2d 182, 187 (Fla. 2003) [28 Fla. L. Weekly S615a]. “A motion may be dismissed as improperly successive if it fails to allege new or different grounds for relief, and the prior determination of insufficiency was made on the merits of the claim.” *Greene v. State*, 200 So. 3d 102, 103 (Fla. 5th DCA 2015) [40 Fla. L. Weekly D2751a]. The necessity for strict application of the rule against successive claims was explained by the Fourth District as follows:

The procedural bars that prohibit the filing of untimely and successive post-conviction motions are critical to the proper administration of justice. . . . Were the courts of this state filled with stale, repetitive, and successive post-conviction motions raising claims in a piecemeal fashion, then justice for those raising timely, legitimate claims would be delayed and may ultimately be denied. For these reasons, a defendant seeking to bring an untimely or successive post-conviction motion must meet strict requirements for establishing the narrow exceptions to these procedural bars.

Erlsten v. State, 78 So. 3d 60, 61 (Fla. 4th DCA 2012) [37 Fla. L. Weekly D175a].

Rule 3.850(h)(2) provides:

A second or successive motion is an extraordinary pleading. Accord-

ingly, a court may dismiss a second or successive motion if the court finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the defendant or the attorney to assert those grounds in a prior motion constituted an abuse of the procedure or there was no good cause for the failure of the defendant or defendant's counsel to have asserted those grounds in a prior motion.

This language is expressly intended to provide post-conviction “judges with an expedited route and procedure to summarily dismiss or deny many second or successive Rule 3.850 motions without having to substantively address the merits of the motion.” *Woodrum v. State*, 359 So. 3d 1263, 1264 (Fla. 5th DCA 2023) [48 Fla. L. Weekly D885c] (Lambert, C.J., concurring). That “expedited route and procedure” is tailor-made for the pleading at bar. As noted *supra* at 2, this appears to be the fourth motion pursuant to Rule 3.850 that has been filed on Mr. Faustin's behalf in this case. His pleading is successive, and denied as such.

The present motion is also procedurally barred. Rule 3.850 “does not authorize relief based on grounds that could have or should have been raised at trial and, if properly preserved, on direct appeal of the judgment and sentence.” Fla. R. Crim. P. 3.850(c)(7); Fla. Stat. § 924.051(8) (“It is the intent of the Legislature that all terms and conditions of . . . collateral review be strictly enforced, including the application of procedural bars”). See *Parker v. State*, 611 So. 2d 1224, 1226 (Fla. 1992) (“We have repeatedly said that a motion under Rule 3.850 cannot be used for a second appeal to consider issues that either were raised in the initial appeal or could have been raised in that appeal”); *Mikenas v. State*, 460 So. 2d 359 (Fla. 1985); *Dunn v. State*, 282 So. 3d 899, 902 (Fla. 1st DCA 2019) [44 Fla. L. Weekly D2262a] (“[C]laims of trial court error are not cognizable in a motion for post-conviction relief. . . . Those claims must be raised on direct appeal”); *Austin v. State*, 160 So. 2d 730 (Fla. 2d DCA 1964).

In his present motion, Mr. Faustin asserts what he terms a “standalone” claim of juror misconduct. His sole allegation is that a juror gave inaccurate information in response to questions put to her in jury *voir dire* and thus, by serving on the jury, deprived him (as he sees it) of that fair and impartial jury to which he is entitled by both the Sixth Amendment to the United States Constitution and Art. I § 16 of the Florida Constitution. Again, this is a “standalone” claim; Faustin does *not* allege ineffective assistance of trial counsel.⁴ But claims of deprivation of fair trial rights, unlike claims of ineffective assistance of trial counsel, are properly brought on direct appeal. They are procedurally barred from collateral attack. *Winters v. State*, 347 So. 3d 526, 527 (Fla. 5th DCA 2022) [47 Fla. L. Weekly D1904a] (“a [post-conviction] claim for relief based on juror misconduct . . . is procedurally barred because, on the face of the motion, it raises a claim that could have been brought on direct appeal”).

To these obvious problems of gross untimeliness, successiveness, and procedural bar, post-conviction counsel and “Covert Ops Jury Investigations” have a ready response, applicable not only to this case but to any case in which they ever appear. In their view, the point at which clocks start running and legal obligations are triggered is the point at which they submit their findings to their client. See, e.g., *Defendant's Motion for Post-Conviction Relief*²¹ (“Defendant was not required to bring this issue on direct appeal, and it is timely, because the defendant discovered Juror Bolanos's misconduct on or about August 26, 2024, when he received the report from [Covert Ops] Jury Investigations”). According to post-conviction counsel and “Covert Ops Jury Investigations,” nothing that happened prior to the date “when [a defendant] received the report from [Covert Ops] Jury Investigations” matters. The two-year time period set forth in Rule 3.850(b) and sedulously enforced against all post-conviction claim-

ants? In the view of post-conviction counsel and “Covert Ops Jury Investigations,” it is simply inapplicable to them, or applicable only from and after the time they share the fruits of their investigation with their client. The obligation, set out with unmistakable clarity in Rule 3.850(h), to raise all viable post-conviction claims in one motion, and not in an unending series of motions that “stretch out to the crack of doom,” Wm. Shakespeare, *MacBeth*, Act IV sc. 1? Again, not at all applicable to motions filed by Mr. Savy and his colleagues. The procedural bar strictly providing “that a motion under Rule 3.850 cannot be used for a second appeal to consider issues that either were raised in the initial appeal or could have been raised in that appeal,” see *Parker v. State*, *supra*? Binding on all other Florida litigants, perhaps, but certainly not on those represented by Mr. Savy and “Covert Ops Jury Investigations.”

In support of this insupportable proposition the motion at bar cites *Williams v. Taylor*, 529 U.S. 420 (2000) and *Sallie v. Humphrey*, 2013 LW 4011009 (M.D. Ga. 2013). See *Defendant's Motion for Post-Conviction Relief*²¹. *Williams* deals with procedural bars confronted by a federal habeas court hearing a claim under 28 U.S.C. § 2254, and is thus entirely inapplicable here. “The question in this case is whether 28 U.S.C. § 2254(e)(2) . . . as amended by the Antiterrorism and Effective Death Penalty Act of 1996 . . . bars the evidentiary hearing petitioner seeks.” *Williams*, 529 at 424. And even if *Williams* were applicable, it has been superceded in substantial part if not entirely by *Shinn v. Ramirez*, 596 U.S. 366 (2022) [29 Fla. L. Weekly Fed. S279a].

The petitioner in *Sallie v. Humphrey* had been convicted in state court in Georgia and sentenced to death. *Sallie* at 1. No sooner had the trial concluded than defense counsel, and the trial court, became concerned about juror misconduct. “The trial court's and counsel's attention returned to [Juror] Dawson immediately after the trial.” *Id.* at 2. Apparently there was reason to believe that Juror Dawson and another juror were have an affair during the trial. As a result, “[s]hortly after the trial, Sallie's attorneys interviewed all twelve jurors,” including Juror Dawson. *Id.* So far as appears, however, there was no application for relief directed to the trial court; and on appeal, Sallie's lawyers argued only that Dawson's religious beliefs should have disqualified her from sitting on the jury. *Id.*

After affirmance on appeal, Sallie timely filed a post-conviction motion alleging juror misconduct of a variety of forms, including “false or misleading answers in *voir dire*.” *Id.* at 3. An evidentiary hearing was had, which appeared to focus principally on the illicit romantic relationship between jurors. In a superceding post-conviction petition, however, Sallie's attorney included research into court records which indicated that Juror Dawson had given false and incomplete answers in her *voir dire*.

All well and good. But the issues before the federal district court in *Sallie* were whether Sallie had exhausted his state-court claim of juror misconduct as a condition precedent to the exercise of federal habeas jurisdiction; and if not, whether the unexhausted claim was procedurally defaulted in federal court. *Id.* at 6, 8. Those issues, of course, bear not at all on the adjudication of the present motion in Florida state court. For what it's worth (and it isn't worth very much): the court determined that Sallie failed to exhaust his claim that Juror Dawson had given “dishonest responses on *voir dire* when he did nothing more than generally allege in his state *habeas* petitions that unidentified jurors were biased and provided false or misleading responses.” *Id.* at 7. The court chose to treat the unexhausted claim as procedurally barred, *id.* at 9, and denied Sallie's motion for a stay in order to return to state court to exhaust his claims. *Id.* at 1. See also *Sallie v. Humphrey*, 2016 WL 6897790 (M.D. Ga. 2016).

None of this bears in the remotest degree upon the motion now

before me. None of this supports in the remotest degree the propositions for which the motion cites it.

C. The motion is insufficiently pleaded

In support of his claim of juror misconduct, Mr. Faustin quite properly cites to *Martin v. State*, 322 So. 3d 25 (Fla. 2021) [46 Fla. L. Weekly S101a]. According to “*Martin*, to prevail on a standalone post-conviction claim of juror misconduct for failing to provide information during *voir dire*, the defendant must establish two prongs: first, that the juror failed ‘to answer honestly a material question on *voir dire*’ . . . and second, that the juror was actually biased against the defendant.” *Boyd v. State*, 324 So. 3d 908, 914 (Fla. 2021) [46 Fla. L. Weekly S124a].

I assume *arguendo* for purposes of the present order that Mr. Faustin has sufficiently pleaded the first prong, *viz.*, that a juror gave inaccurate or incomplete answers in her *voir dire*. But as all experienced judges and lawyers recognize, there are a great many reasons why a venireperson may give an inaccurate or incomplete answer, very few of them having to do with animus toward the defendant. For those lawyers who live for the exhilaration of cross-examination or closing argument, jury *voir dire* may be a banal, even a boring, exercise. But jurors are visitors to the criminal justice system, and reluctant visitors at that. Seated among a roomful of strangers, prodded with marginally intelligible questions by a judge and lawyers, in what is to them “the very torrent, tempest, and (as I may say)/whirlwind” of *voir dire*, Wm. Shakespeare, *Hamlet*, Act III sc. 2, jurors may misspeak through negligence, nervousness, forgetfulness, misunderstanding, a sense of shame in addressing matters of personal or family history—or out of a willful desire to mislead. The law recognizes as much. If “a juror withheld personal information for some reason other than to conceal a bias or prejudice—to avoid embarrassment, for example—a post-conviction juror misconduct claim based on concealment of information during *voir dire* will fail.” *Martin*, 322 So. 3d at 35.

It follows that pleading the second prong required by *Martin* is no small feat. The pleader must allege—in good faith, and consistently with the record, *see, e.g., Nixon v. State*, 2025 WL 14232 (Fla. 3d DCA 2025) [50 Fla. L. Weekly D100a]—that the answers given by the demised venireperson were not merely untrue, not merely willfully untrue, but willfully untrue and given with a desire to prejudice the defendant’s right to a fair and impartial jury. This is sometimes termed “actual bias” or “bias in fact.” Where such “actual bias” or “bias in fact” is insufficiently pleaded (or, as here, not pleaded at all), summary denial of a post-conviction motion is proper. “[S]ummary denial was proper because Boyd’s allegations of . . . actual bias are legally insufficient to state a claim.” *Boyd*, 324 So. 3d at 915.

The motion at bar, and the exhibits attached to it, are directed to the first prong of *Martin*. They seek to show that a juror made false statements. But there are no good-faith, record-based allegations—in truth there are no allegations at all, other than merely conclusory ones—regarding the second prong. Admittedly, such allegations are always difficult to make. That is as it should be. If unsupported speculation about the reason a venireperson misspoke in his or her answers a quarter century ago is a sufficient basis to interrogate that juror, perhaps even to vacate the judgment to which that juror was a party, then no juror has ever completed his jury service and no judgment is ever final. Perhaps for that reason, the law requires that prior to demanding that a juror return to court and answer questions under oath about the *voir dire* to which he was subjected years ago, prior to vacating the verdict resulting from that juror’s service, the moving party be required to make good-faith *prima facie* allegations that the juror’s answers on *voir dire* were inaccurate or incomplete, not out of inadvertence, neglect, embarrassment, or the like, but with a

deliberate intent to compromise the defendant’s right to a fair trial. Absent such good-faith *prima facie* allegations—absent facially sufficient allegations “that the juror was actually biased against the defendant,” *Boyd*, 324 So. 3d at 914—the motion at bar is insufficiently pleaded.

In *United States v. Lazzaro*, 2023 WL 5703193 (D. Minn. 2023), the defendant, immediately after being convicted, hired “Covert Ops Jury Investigations.”⁵ He was provided with a report containing the following information, on the basis of which he moved for a new trial:

1. Juror 5 did not disclose that one of her cousins and one of her husband’s cousins are police officers.
2. Juror 10 did not disclose that his sister volunteers with an organization that provides support to survivors of rape and domestic violence. The report also speculates, based on a Facebook post, that Juror 10’s sister may herself be a survivor of domestic violence, something that (if true) Juror 10 did not disclose.
3. Juror 17 did not disclose that her brother was arrested and sentenced for a crime related to domestic violence.
4. Juror 34 did not disclose that his sister-in-law and aunt have both worked for organizations that provide services to victims of sexual assault
5. Juror 45 did not disclose that her sister and daughter both have criminal records and that she has negative views of former President Trump and Supreme Court Justice Brett Kavanaugh. Juror 45 also posted on Facebook (after the trial concluded) that she was one of the lucky 12 to be picked for the Anton Lazzaro federal child sex trafficking case.”

Lazzaro at 1. The standard for obtaining a new trial based on juror misconduct or prejudice in the Eighth Circuit, although not phrased in the same language used in the Florida cases, conveys essentially the same idea. A defendant must allege: (1) that a juror or jurors answered questions during *voir dire* dishonestly, not just inaccurately; (2) that the juror was, or jurors were, motivated by partiality; and (3) that the truth, if known, would have supported striking the juror or jurors for cause. *Id.* at 3 (citing *United States v. Tucker*, 137 F. 3d 1016, 1026 (8th Cir. 1998)). The court in *Lazzaro* focused, as I do here, on the insufficiency of the pleading as to the crucial second prong: Assuming that a juror spoke inaccurately; even assuming that a juror spoke dishonestly; is there a basis upon which to claim that the juror was motivated by partiality? The court concluded that *Lazzaro*’s pleading did not “warrant an evidentiary hearing, much less a new trial.” *Lazzaro* at 3. Nothing in the pleading provided a basis to conclude “that the inaccuracy was due to a juror’s bias—rather than, say, to the fact that the juror had a lapse of memory or attention, or was nervous, or misunderstood the question, or honestly believed that someone was not ‘close’ to him or her as the court defined that term.” *Id.* (internal parenthesis omitted).

Assuming for the sake of argument that a juror who served on Mr. Faustin’s trial misspoke in *voir dire*, we have no record basis to know why she misspoke and no reason to believe that she did so out of prejudice or partiality against Faustin. That being the case, there is here, as there was in *Lazzaro*, absolutely nothing to “warrant an evidentiary hearing, much less a new trial.”⁶ The post-conviction claim is insufficiently pleaded.

D. The motion is barred by principles of equity

Rule 3.850 is the child of *habeas corpus*, and “*habeas corpus* has traditionally been regarded as governed by equitable principles. *United States ex rel. Smith v. Baldi*, 344 U.S. 561, 573 (Frankfurter, J., dissenting). Among them is the principle that a suitor’s conduct in relation to the matter at hand may disentitle him to the relief he seeks.” *Fay v. Noia*, 372 U.S. 391, 438 (1963).

There is a threshold distinction to be drawn here. It is the distinction between an investigation undertaken at or about the time of trial

into the lives of persons who are about to be, or are in the process of being, selected as jurors, *see, e.g., Sallie v. Humphrey, supra; Lazzaro, supra*; and an investigation undertaken decades after the fact into the lives of persons who may have served as jurors, as in the present case and in *Pierre, supra*. Undeniably, a trial litigant who wants to hire “Covert Ops Jury Investigations” for the purpose of conducting research during jury selection into each of the persons on his venire, so that he can better exercise his challenges, is perfectly entitled to do so.⁷ That is a very different thing, a diametrically different thing, from what happened in this case.

In this case, as in *Pierre*, jurors completed their jury service decades ago and were discharged with the sincere thanks of the court. They believed, because they had every right to believe, that their obligation to the justice system was, from and after that time, a thing of the past. As I wrote in the *Pierre* case:

It was a maxim at common law that a juror is incompetent to impeach the verdict. This principle is carried forward into contemporary Florida law. *See* Fla. Stat. § 90.607(2)(b) (“Upon an inquiry into the validity of a verdict . . . a juror is not competent to testify as to any matter which essentially inheres in the verdict”). No doubt the principal reason for the rule is the importance of finality of verdicts. But there is a secondary reason, also vital: the sanctity of jury service. Jurors are entitled to know that when their jury service is completed, the criminal justice system will let them go in peace. It will not pepper them endlessly with questions, demands, inquiries. If that is not the case—if a juror, having completed his service, is subject to being probed and pestered, harassed and hectorred, perhaps for years, perhaps for decades—then the sanctity of jury service exists no more, and no sensible, fair-minded person will want to perform the duty of jury service.

What, then, would a sensible, fair-minded venireperson think if he or she were to read the chilling language on “Covert Ops’s” website? Its message is clear: Serve as a juror, if you dare—but know that if you return a verdict displeasing to “Covert Ops” and its clientele, “Covert Ops” will pursue you as endlessly, as relentlessly, as callously as Javert pursued Jean Valjean. And not just you: your loved ones as well; your children, if necessary. Live as long as you may, you will never outlive the shadow of your jury service. Decades from now, a lawyer bolstered by the facts, or the misimpressions, that “Covert Ops” has scavenged from public records—and from that ratsbane of fact-finding, social media—may demand a hearing at which you will be placed under oath and asked if you committed the crime of perjury when you omitted to mention some obscure incident, long since lost to memory, from the life of a distant relative.

Pierre, supra, at 6-7 (fn. omitted). As noted *supra*, “a suitor’s conduct in relation to the matter at hand may disentitle him to the relief he seeks.” *Fay v. Noia*, 372 U.S. at 438. He who seeks equity must come with clean hands. *See, e.g., Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co.*, 324 U.S. 806, 814 (1945). In this case as in *Pierre*, a convicted criminal lay in wait for years, for decades, then retained “Covert Ops Jury Investigations” to set aside his judgment and sentence by invading and laying waste to the privacy of those who dutifully served on his jury, as well as to the privacy of their family members. *Defendant’s Motion for Post-Conviction Relief* 14-20 details the assault on privacy in which “Covert Ops Jury Investigations” engaged. Marriage records, birth records, social media records,⁸ all manner of records belonging to relatives near to and very distant from the juror who was being targeted were obtained and sifted. Of course the juror, no doubt having put her jury service of two decades ago out of her mind, had no reason to know or to suspect that prying eyes were probing the intimate details of her life and her family relationships. Still less did the juror’s relatives have reason to know or reason to suspect that they, too, were subject to such invasive scrutiny.

A great judge once described the “right of privacy, a right to a private enclave where [one] may lead a private life” as “the hallmark of our democracy.” *United States v. Grunewald*, 233 F.2d 556, 581-82 (2nd Cir. 1956) (Frank, J., dissenting). Did jurors, by serving on Faustin’s jury, forfeit that right for all time? Did their forfeiture encompass the rights of their family members as well?

And now post-conviction counsel wants a hearing at which he will, if permitted, ask a former juror to account in detail for her answers given in *voir dire* at a time when the Euro was a brand-new unit of currency, the “Y2K” panic had just passed, and children were first making friends with SpongeBob Squarepants. He will, if permitted, confront her with minutia regarding the behavior of her relatives, close and distant. He will, if permitted, accuse her of deceit, accuse her of acting willfully, even viciously, to deprive Mr. Faustin—a man of whom she knew nothing before she served as a juror—of a fair trial.

Whatever this is, it is not the clean hands that equity requires. “In equity as in mechanics action and reaction are equal and opposite. The equity that one asks one must be ready to concede.” *Graf v. Hope Building Corp.*, 171 N.E. 884, 889 (N.Y. 1930) (Cardozo, J., dissenting).

The judges of this State stand ready night and day to vindicate the rights of an innocent defendant falsely convicted. *See, e.g., Gusow v. State*, 6 So. 3d 699, 700 (Fla. 4th DCA 2009) [34 Fla. L. Weekly D676b] (Gross, C. J.) (A claim “that an innocent person was unjustly convicted of a crime [is] always a proper subject of post-conviction relief”). But Mr. Faustin does not, because he cannot, assert his innocence. And in truth he does not seek a new trial. His post-conviction counsel knows full well that a new trial at this late date would be an impossibility. What Faustin seeks is simply to walk away, free and uncondemned for the crimes he committed. His means to that end are the pillaging of the privacy of those who did their civic duty by serving on his jury long long ago. Equity rejects both his end and his means. “Conduct subject to . . . reproach does not receive from equity a healing benediction.” *Meinhard v. Salmon*, 164 N.E. 545, 548. (N.Y. 1928) (Cardozo, J.).

Defendant’s Motion for Post-Conviction Relief is respectfully denied. This is a final order. The movant has 30 days in which to appeal. Fla. R. Crim. P. 3.850(k). In the event of an appeal, the Clerk of Court is directed to append to this order the motion at bar and all prior pleadings referenced in this order for transmission to the appellate court. Fla. R. Crim. P. 3.850(f)(5). No motion for rehearing will be entertained. Fla. R. Crim. P. 3.850(j).

¹In the motion at bar, counsel gives the citation for the 2004 appellate decision as “840 So. 2d 1291,” *see Defendant’s Motion for Post-Conviction Relief* 3 at ¶7. The correct volume number is 880.

²In the motion at bar, counsel at one point gives the date for this appellate decision as 2006, *see Defendant’s Motion for Post-Conviction Relief* 4 at ¶9; and at another point as 2009, *id.* 4 at ¶10. The correct date is 2009.

³And for that reason should have been, but was not, captioned, “Second or Successive Motion for Post-Conviction Relief.” *See* Fla. R. Crim. P. 3.850(h)(1).

⁴The decision not to raise a claim of ineffective assistance is clearly a tactical one on the part of Mr. Faustin’s post-conviction counsel. Counsel and “Covert Ops Jury Investigations” need to be able to allege in any case in which they file untimely post-conviction pleadings that the information they claim to have garnered is information that *only* they—with their unique and unexampled techniques for ravaging the privacy of those who may have served as jurors long long ago—could unearth. (Recall their website: “To our knowledge, we are the only company who performs this unique service.”) This, in their view, enables them to argue that their otherwise-grossly-untimely pleadings are not untimely. If others—trial counsel, appellate counsel, post-conviction counsel acting within the two-year window provided by Rule 3.850(b)—could have ravaged juror privacy in the same way and come up with the same information but failed through ineffective representation to do so, then the motion at bar, and all like-kind motions that are the work product of “Covert Ops Jury Investigations” are certainly untimely, and perhaps procedurally barred.

⁵So far as I have been able to determine, this is the only published opinion referencing the work of “Covert Ops Jury Investigations.” In *Ward v. State*, 356 So. 3d

782 (Fla. 1st DCA 2022), the First District affirmed without opinion the denial of a 3.850 claim that appears to have been much like the one at bar, *viz.*, a claim brought by “Covert Ops Jury Investigations” long after the time provided for in the rule. In the absence of a published opinion, however, it is impossible to be certain about the particulars of the case.

⁶Unlike *Lazzaro*, the claim of juror misconduct in this case was made, not immediately after trial and before imposition of sentence, but twenty-plus years after trial and sentence. The value of an evidentiary hearing in such circumstances is all but nil, because the likelihood that the juror in question will remember the answers she gave on her *voir dire*, and her reasons for those answers, is all but nil. And apart from the purposelessness of such a hearing, there is the unfairness of such a hearing—the unfairness of dragging someone into court to be prodded and picked at for answers she gave in *voir dire* back at the dawn of this millennium.

⁷Lawyers will never cease to search for the magic incantation that will unravel the riddle of jury selection. Phillip Corboy, who practiced principally in Chicago, is remembered as one of the greatest personal-injury trial lawyers of all time. See https://en.wikipedia.org/wiki/Philip_H._Corboy (visited August 27, 2025). Legend has it that Mr. Corboy knew a Chicago cabbie who had been driving for years, and that Corboy routinely paid the cab driver to sit with him during jury selection. If a venireperson gave his name and the neighborhood in which he lived, the cabbie could, with remarkable accuracy, posit the venireperson’s religious and political affiliation and his views about many issues of the day.

On that basis Mr. Corboy exercised his challenges. Or so legend has it.

⁸In *United States v. Shipp*, 392 F. Supp. 3d 300, 308 (E.D.N.Y. 2019), the court described social media accounts as providing, “a single window through which almost every detail of a person’s life is visible.”

* * *

Torts—Counties—Workers’ compensation—Exclusive remedy—Exceptions—Virtual-certainty standard—Sovereign immunity—Action by county employee who was injured when water filtration system in county building exploded alleging that county was liable, despite workers’ compensation exclusiveness-of-liability provision, because acts and omissions of county made it virtually certain that plaintiff would be injured—County is shielded from liability under doctrine of sovereign immunity—Florida’s partial waiver of sovereign immunity does not extend to acts or omissions committed in manner that exhibits wanton and willful disregard for human rights, safety, or property—No merit to argument that county waived sovereign immunity by relying on workers’ compensation statute—Plaintiff’s claim against county is not saved by “unrelated works” provision of section 440.11, which provides that immunity does not apply to a fellow employee if the injured employee and the fellow employee “are assigned primarily to unrelated works” within the company or entity because plaintiff did not allege that fellow employee performing unrelated work was responsible for his injuries—Question of sovereign immunity is appropriate to consider on motion to dismiss where there is no factual issue that needs to be resolved—Dismissal with prejudice is warranted where it is clear from face of complaint that sovereign immunity shields county from plaintiff’s allegations—Derivative claim for loss of consortium is also dismissed

LUIS GUADAMUZ, et al., Plaintiffs, v. HAYWARD INDUSTRIES INC., et al., Defendant. Circuit Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2017-008238-CA-01. Section CA10. October 21, 2021. Peter R. Lopez, Judge. Counsel: Gary M. Carman, GrayRobinson, P.A., Miami, for Plaintiff. Richard Schevis, Assistant County Attorney, Miami-Dade County Attorney’s Office, Miami, for Defendant.

ORDER GRANTING MIAMI-DADE COUNTY’S MOTION TO DISMISS

THIS MATTER is before the Court on Defendant Miami-Dade County’s motion to dismiss counts 12 and 13 of the Plaintiffs’ Amendment of the Third Amended Complaint by Interlineation. The Court heard argument from the parties, via a Zoom hearing, on September 21, 2021. The Court has reviewed the operative complaint, the parties’ arguments, and the relevant legal authorities. For the reasons set forth below, the Court grants the County’s motion to dismiss and dismisses counts 12 and 13 of the operative complaint

with prejudice.

BACKGROUND

This lawsuit arises from an accident that occurred at the Richard E. Gerstein Justice Building in Miami, Florida. (See 3d Am. Compl. ¶¶ 9, 14.) The Plaintiff, Luis Guadamuz, was performing maintenance on the building’s water filtration system, located in the basement parking garage. (*Id.* at ¶ 15.) Guadamuz was about 20 feet away from the system when it exploded. (*Id.* at ¶ 16.) Guadamuz suffered injuries to his left eye, face, torso, and legs due to pieces from the water filtration system striking him in the explosion. (*Id.* at ¶¶ 17, 19.)

LEGAL STANDARDS

Motion to Dismiss

To survive a motion to dismiss, a complaint must allege a *prima facie* case. *Alvarez v. E & A Produce Corp.*, 708 So. 2d 997, 999-1000 (Fla. 3d DCA 1998) [23 Fla. L. Weekly D814c]. Dismissal is required where it appears from a reading of the complaint that the plaintiff would not be entitled to recovery even if they proved each and every allegation. *Thompkins v. Metro. Dade County*, 345 So. 2d 1090, 1091 (Fla. 3d DCA 1977). While sovereign immunity is an affirmative defense, a plaintiff cannot escape the consequences of an affirmative defense where the facts supporting that defense appear within the four corners of the complaint. See *Grove Isle Ass’n, Inc. v. Grove Isle Assocs., LLLP*, 137 So. 3d 1081, 1089 (Fla. 3d DCA 2014) [39 Fla. L. Weekly D648a]. Moreover, dismissal of a complaint with prejudice is appropriate where the application of sovereign immunity is clear on the face of the complaint. See *Storm v. Town of Ponce Inlet*, 866 So. 2d 713 (Fla. 5th DCA 2004) [29 Fla. L. Weekly D137a] (affirming a dismissal based on sovereign immunity); *Neumann v. Davis Water and Waste Inc.*, 433 So. 2d 559, 561 (Fla. 2d DCA 1983) (affirming an order dismissing a complaint based on sovereign immunity).

Workers’ Compensation

Under Florida law, when an employee is injured on the job his exclusive remedy against his employer is for workers’ compensation benefits. § 440.11(1), Fla. Stat. (2015) (“The liability of an employer [for workers’ compensation benefits] shall be exclusive and in place of all other liability . . .”). There is an exception to this exclusiveness-of-liability provision. The exception is triggered if an employer “engaged in conduct that the employer knew, based on prior similar accidents or on explicit warnings specifically identifying a known danger, was virtually certain to result in injury or death to the employee, and the employee was not aware of the risk because the danger was not apparent and the employer deliberately concealed or misrepresented the danger so as to prevent the employee from exercising informed judgment about whether to perform the work.” *Id.* This threshold is known as the *virtual-certainty* standard.

Sovereign Immunity

The general rule in Florida is that a person may not sue the government unless the government consents to be sued. *City of Ft. Laud. v. Israel*, 178 So. 3d 444, 446 (Fla. 4th DCA 2015) [40 Fla. L. Weekly D2325a] (“Sovereign immunity is the privilege of the sovereign not to be sued without its consent.”), *review denied*, 2016 WL 1719081 (Fla. 2016). The Florida legislature has partially waived sovereign immunity in tort actions “for any act for which a private person under similar circumstances would be held liable.” *Henderson v. Bowden*, 737 So. 2d 532, 534-35 (Fla. 1999) [24 Fla. L. Weekly S325a] (citing Art. X, § 13, Fla. Const. & § 768.28, Fla. Stat. (1995)). The waiver of sovereign immunity must be strictly construed. See *Spangler v. Fla. Turnpike Auth.*, 106 So. 2d 421, 424 (Fla. 1958); see also *Am. Home Assur. Co. v. Nat’l R.R. Passenger Corp.*, 908 So. 2d 459, 472-473 (Fla. 2005) [30 Fla. L. Weekly S516a].

Under the partial-waiver-of-sovereign-immunity statute, “[t]he

exclusive remedy for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions . . . shall be by action against the governmental entity . . . unless such act or omission was committed . . . in a manner exhibiting wanton and willful disregard of human rights, safety, or property.” § 768.28(9), Fla. Stat. (2015). “The state or its subdivisions shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting . . . in a manner exhibiting wanton and willful disregard of human rights, safety, or property.” *Id.*

ANALYSIS

Guadamuz’s Third Amended Complaint by Interlineation alleges that his employer, Miami-Dade County, is liable despite the usual workers’ compensation exclusiveness-of-liability provision. He does so by asserting that based on Miami-Dade County’s acts and omissions, it was virtually certain that he would be injured as he was due to the water filtration system at the Gerstein Justice Building exploding. Specifically, Guadamuz alleges the following:

- the County acted “without any concern for the safety of [Guadamuz]”;
- that because of the County’s actions “it was an absolute certainty” that Guadamuz would suffer “serious injury”;
- that the County ignored warnings “in a reckless fashion”;
- that the County was “grossly negligent” and exhibited a “total disregard for [Guadamuz’s] life, health, and safety”;
- that the County “recklessly disregarded” warnings;
- that the “County’s conduct was flagrant and was grossly negligent in a complete disregard for the safety of . . . [Guadamuz]”;
- that the County’s actions were “certain to result in injury and or death”; and
- that the County’s actions were “so reckless and wanton in care that it constituted a conscious disregard or indifference to the life, safety or rights of persons exposed to its conduct.”

(Am. of 3d Am. Compl. ¶¶ 123, 130, 133, 137, & 139).

The County argues that by alleging that the County’s actions were “certain to result in injury and or death,” by alleging that the actions were “so reckless and wanton in care that it constituted a conscious disregard or indifference to the life, safety or rights of persons exposed to its conduct,” Guadamuz has framed the case outside the scope of Miami-Dade County’s liability under Florida’s partial-waiver-of-sovereign-immunity statute, § 768.28(9). The County points out that Guadamuz’s allegations aver an “act or omission [that] was committed . . . in a manner exhibiting wanton and willful disregard of human rights, safety, or property,” § 768.28(9), Fla. Stat. (2015). Accepting these allegations as true—which the Court must for the purpose of this motion to dismiss—the County contends that it is shielded from liability under the doctrine of sovereign immunity. *See Town of Gulf Stream v. Palm Beach County*, 206 So. 3d 721, 725 (Fla. 4th DCA 2016) [42 Fla. L. Weekly D3a] (“Under Florida law, sovereign immunity is the rule, rather than the exception. Any waiver of sovereign immunity must be clear and unequivocal.”). Miami-Dade County maintains that its sovereign immunity has not been waived for the type of allegations that Guadamuz asserts against the County.

In opposition to the County’s motion, Guadamuz presented three arguments: (1) that the County has waived sovereign immunity by relying upon the workers’ compensation statute; (2) that Guadamuz’s allegations fall under the “unrelated works” provision of Florida Statute § 440.11, which is not limited by § 768.28, when applied to public employees; and (3) a motion for summary judgment is the appropriate vehicle for the County’s arguments—but not a motion to dismiss. Alternatively, if the Court determines that dismissal is appropriate, Guadamuz asks for leave to amend.

Guadamuz’s first argument fails. Guadamuz cites to *Bifulco v. Patient Business & Financial Services, Inc.*, 39 So. 3d 1255, 1258

(Fla. 2010) [35 Fla. L. Weekly S368a] and argues Florida Statutes Chapter 440 contains a waiver of sovereign immunity independent of the waiver contained in § 768.28. But that case dealt with a claim for retaliatory discharge for attempting to claim workers’ compensation benefits. That is not the type of claim Guadamuz is asserting in this case. The *Bifulco* case is not pertinent to this case.

Guadamuz’s next argument—that his allegations fall under the “unrelated works” provision of Florida Statute § 440.11—is also unpersuasive for several reasons. Florida’s Workers’ Compensation Law makes an employer immune from tort liability where the employer provides workers’ compensation benefits to the employee. § 440.11(1), Fla. Stat. (2015). That same immunity applies “to each employee of the employer when such employee is acting in furtherance of the employer’s business,” *i.e.*, the immunity applies to fellow employees. But the immunity does not apply to a fellow employee if the injured employee and the fellow employee “are assigned primarily to unrelated works” within the company or entity. § 440.11(1), Fla. Stat. (2015). This is referred to as the “unrelated works” provision.

The “unrelated works” provision does not save Guadamuz’s claim against Miami-Dade County. First, none of the allegations in the operative complaint assert that a fellow employee, performing work unrelated to Guadamuz’s work, was responsible for his injuries. *See, e.g., Am. of 3d Am. Compl. ¶123* (the County failed to train Guadamuz to use the equipment and chemicals associated with the water filtration system); *and ¶136* (the County purchased water filtration equipment that was not suitable for the intended purpose). But even if Guadamuz could amend his complaint to assert a fellow employee, performing work unrelated to Guadamuz’s work, was responsible for his injuries, his claim would still fail as a matter of law.

Guadamuz’s “unrelated works” argument fails because he has alleged that the acts and omissions of the County—through his fellow employees—were virtually certain to result in serious harm or death. (Am. of 3d Am. Compl. ¶¶ 123, 130, 133, 137, & 139.) Guadamuz argues that the County is liable for the actions of its employees under Florida Statute § 768.28(9). As a general proposition that is correct, but § 768.28(9) does not waive the County’s sovereign immunity for the acts of an employee who exhibits a wanton and willful disregard of human rights, safety, or property—which is precisely what Guadamuz has alleged here.

The County cites to binding precedent supporting its argument. In *Elliott v. Dugger*, an inmate in a state corrections facility put an AIDS-contaminated serum in a corrections officer’s drink. *Elliott v. Dugger*, 579 So. 2d 827, 828 (Fla. 1st DCA 1991). The inmate got the contaminated blood serum from another inmate who was working in the medical laboratory at the corrections facility. *Id.* After drinking the contaminated cocktail, the corrections officer claimed that “he suffered mental anguish, anxiety-related nightmares, depression, insomnia, fatigue and crying spells.” *Id.* The corrections officer sued his employer, the State of Florida. To get around the general rule that a workers’ compensation claim is the exclusive remedy against an employer when an employee is injured on the job, the corrections officer alleged that the laboratory supervisor (also a State employee) “knowingly and wrongfully used inmates in the laboratory . . . and then hid this fact from inspectors.” *Id.*

Analyzing the claim, the court noted that to avoid the exclusiveness-of-liability provision of Florida’s Workers’ Compensation Law, the corrections officer needed to allege that the State’s actions were “virtually certain to result in injury or death.” *Id.* at 830. But since the employer was a governmental entity, sovereign immunity barred the claim because Florida has not waived sovereign immunity where the alleged liability arises from an employee’s actions committed “in a manner exhibiting wanton and willful

disregard of human rights, safety, or property.” § 768.28(9), Fla. Stat. (2015).

The *Elliott* court concluded that the “virtual certainty” standard, which was required to establish liability when workers’ compensation is in effect, directly conflicts with the “wanton and willful” standard, which bars recovery from a governmental entity. *Id.* at 831. In other words, based on the pleading requirements, a governmental employee injured on the job cannot avoid the exclusiveness-of-liability provision of Florida’s Workers’ Compensation Law by alleging that an act or omission was virtually certain to result in injury or death because—by definition—the governmental employer cannot be liable for that type of act or omission. *Id.*; see also *Estate of Smith v. Fla. Dept. of Children & Families*, 34 So. 3d 181, 182 (Fla. 1st DCA 2010) [35 Fla. L. Weekly D1011a] (holding same); see also *Gorham v. Zachry Indus., Inc.*, 105 So. 3d 629, 634 (Fla. 4th DCA 2013) [38 Fla. L. Weekly D183a] (describing the “virtual certainty” standard as being greater than the “wanton” standard); *Vallejos v. Lan Cargo S.A.*, 116 So. 3d 545 (Fla. 3d DCA 2013) [38 Fla. L. Weekly D1360a] (equating the “virtual certainty” standard with an intentional tort). The holding of *Elliott v. Dugger* is that conduct which is virtually certain to cause injury or death necessarily implicates the wanton-and-willful acts exception to state liability contained in Florida Statute § 768.28(9)(a).

Guadamuz’s Amendment of the Third Amended Complaint by Interlineation alleges that the work he was tasked with was virtually certain to result in his injury or death. Accepting these allegations as true, Miami-Dade County is shielded from liability under the doctrine of sovereign immunity because such acts are outside of the scope of Florida’s partial waiver of sovereign immunity, as set forth in Florida Statute § 768.28(9). *Elliott v. Dugger*, 579 So. 2d 827, 831 (Fla. 1st DCA 1991).

Guadamuz argues that the case of *Kite v. Escambia County* refutes the County’s argument. But *Kite* is distinguishable, and contrasting the two cases reveals the appropriate outcome in this case. In *Kite*, a corrections officer was supervising prisoners at a county landfill. *Kite v. Escambia County*, 830 So. 2d 961, 962 (Fla. 1st DCA 2002) [27 Fla. L. Weekly D2547a]. While at the landfill, the corrections officer stepped on a loose tool, fell down an embankment, and was injured. The corrections officer received workers’ compensation, and also filed suit against his employer, Escambia County. *Id.* He alleged that the landfill was “negligently maintained.” *Id.* He did not allege that his injury was virtually certain to occur.

Both *Elliott* and *Kite* involve governmental employers: the Florida Department of Corrections in *Elliott* and Escambia County in *Kite*. But the two cases are not in conflict. Because in *Elliott*, the plaintiff alleged a wanton and willful disregard of human rights; but in *Kite*, the plaintiff alleged simple negligence. Compare *Elliott*, 579 So. 2d at 829-30 with *Kite*, 830 So. 2d at 962.

Next, Guadamuz argues that the County’s sovereign-immunity argument should not be the basis for dismissal because it is an affirmative defense, and an affirmative defense should not justify a motion to dismiss unless the complaint itself conclusively establishes its applicability. (Pls.’ Resp. Br. pp. 4-5 citing *Sierra v. Ass’n Marine Inst’s., Inc.*, 850 So. 2d 582 (Fla. 2d DCA 2003) [28 Fla. L. Weekly D1423a].) In *Sierra* the issue was whether a private corporation who had contracted with the State was entitled to sovereign immunity. *Sierra*, 850 So. 2d at 590. That was a factual question that needed to be resolved and therefore a motion to dismiss was not in order. But here, there is no factual dispute that Miami-Dade County is entitled to sovereign immunity if liability is predicated upon the acts or omissions of its employees that are virtually certain to result in serious injury or death. Unlike in *Sierra*, there is no factual dispute as to whether Florida Statute § 768.28(9) applies to the County. As a result,

this is an appropriate argument to consider at the motion-to-dismiss stage.

Finally, Guadamuz argues that even if the Court grants the County’s motion to dismiss, he should be permitted to amend his complaint. Guadamuz has not presented a proposed amended pleading, as is required. See Fla. R. Civ. P. 1.190(a). Guadamuz has also not articulated how he could amend his complaint to avoid the application of sovereign immunity. This is not a situation where the Plaintiff has not alleged sufficient facts to formulate a claim. Even if Guadamuz were able to prove each and every allegation in the operative complaint, he would still be barred from recovery against Miami-Dade County. Dismissal is appropriate in this context. See *Thompkins v. Metro. Dade County*, 345 So. 2d 1090, 1091 (Fla. 3d DCA 1977). It is clear from the face of the complaint that sovereign immunity shields Miami-Dade County from Guadamuz’s allegations. Under these circumstances, dismissal with prejudice is warranted. See *Storm v. Town of Ponce Inlet*, 866 So. 2d 713, 714, 719 (Fla. 5th DCA 2004) [29 Fla. L. Weekly D137a] (affirming a dismissal based on sovereign immunity); *Neumann v. Davis Water & Waste Inc.*, 433 So. 2d 559, 561 (Fla. 2d DCA 1983) (affirming an order dismissing a complaint based on sovereign immunity).

Miami-Dade County also asks this Court to dismiss count 12, which is a claim for loss of consortium. A loss of consortium claim is a derivative claim. Under Florida law, a derivative claim fails when the claim it derives from fails. See *Metro. Dade County v. Reyes*, 688 So. 2d 311, 313 (Fla. 1996) [21 Fla. L. Weekly S552a] (explaining that a wife’s derivative claim “is barred where the husband’s cause of action has been terminated by an adverse judgment on the merits.”). Having determined that dismissal of count 13 is appropriate, count 12 therefore fails as a matter of law.

CONCLUSION

For the reasons explained above, the Court grants Miami-Dade County’s motion to dismiss counts 12 and 13 of the Plaintiffs’ Amendment of the Third Amended Complaint by Interlineation and dismisses counts 12 and 13 with prejudice.

* * *

Evidence—Pre-trial motions—Court grants unopposed motion in limine to exclude any references to plaintiff’s financial worth or circumstances of plaintiff’s hiring of counsel; any personal attacks on counsel; arguments suggesting case contributes to judicial delay; arguments appealing to conscience of community or urging jurors to send message; and any challenges relating to why certain witnesses were not called to testify

RYAN PERSAUD, Plaintiff, v. GULF COAST AUTO BROKERS, INC., a Florida Corporation, and GROW FINANCIAL CREDIT UNION, a Federal Credit Union, Defendants. Circuit Court, 12th Judicial Circuit in and for Sarasota County, Civil Division. Case No. 2023-CA-006884-NC. September 16, 2025. Hunter W. Carroll, Judge. Counsel: Joshua Feygin, Sue Your Dealer—a Law Firm, Hollywood, for Plaintiff. Hamdee Saif Khader, Tampa, for Gulf Coast Auto Brokers Inc., Defendant. Sammy Hatem Hamed, Tampa, for Grow Financial Credit Union, Defendant.

AGREED ORDER GRANTING PLAINTIFF’S MOTION IN LIMINE (IN PART)

THIS CAUSE came before the Court on Plaintiff’s Motion in Limine. The Court, having reviewed the Motion, the Defendant’s Opposition, and being otherwise fully advised in the premises, and it appearing that the parties have agreed to resolution of certain issues, it is hereby

ORDERED AND ADJUDGED as follows:

1. Plaintiff’s Motion in Limine is **GRANTED** as to the following matters, which were not expressly opposed or addressed in Defendant’s written response:

a. Plaintiff's Financial Worth

Any reference to the wealth or financial condition of Plaintiff is excluded as irrelevant and unduly prejudicial. *Batlemento v. Dove Fountain, Inc.*, 593 So. 2d 234, 241 (Fla. 5th DCA 1991) (generally improper to reference wealth or poverty of a party).

b. Timing of Plaintiff's Hiring of Counsel

Any reference to the time period or circumstances under which Plaintiff retained counsel is excluded. *Watson v. Builders Square, Inc.*, 563 So. 2d 721 (Fla. 4th DCA 1990) (improper to introduce evidence of when counsel was hired).

c. Personal Attacks on Counsel

Any personal attacks on Plaintiff's counsel are excluded. *Allstate Ins. Co. v. Marotta*, 125 So. 3d 956 (Fla. 4th DCA 2013) [38 Fla. L. Weekly D1224d]; *Mercury Ins. Co. v. Moreta*, 957 So. 2d 1242, 1251-52 (Fla. 2d DCA 2007) [32 Fla. L. Weekly D1146b]; *Carnival Corp. v. Pajares*, 972 So. 2d 973 (Fla. 3d DCA 2007) [33 Fla. L. Weekly D65b]; *Sun Supermarkets, Inc. v. Fields*, 568 So. 2d 480 (Fla. 3d DCA 1990); *BellSouth Human Resources Admin., Inc. v. Colatarci*, 641 So. 2d 427 (Fla. 4th DCA 1994).

d. "Crowded Courtrooms" or Court Backlog Arguments

Any reference to "crowded courtrooms," backlog, or suggestion that this case contributes to judicial delay is excluded. *Stokes v. Wet 'n Wild, Inc.*, 523 So. 2d 181 (Fla. 5th DCA 1988).

e. Uncalled Witness Challenges

Any challenge to Plaintiff to explain why certain witnesses did not testify, is excluded. *Riggins v. Mariner Boatworks, Inc.*, 545 So. 2d 430 (Fla. 2d DCA 1989).

f. "Conscience of the Community" or "Send a Message" Arguments

Any argument appealing to the jury's "conscience of the community" or urging jurors to "send a message" is excluded as improper. *Blue Grass Shows, Inc. v. Collins*, 614 So. 2d 626 (Fla. 1st DCA 1993); *Kloster Cruise Ltd. v. Grubbs*, 762 So. 2d 552 (Fla. 3d DCA 2000) [25 Fla. L. Weekly D1550a]; *Murphy v. Murphy*, 622 So. 2d 99 (Fla. 2d DCA 1993); *Airport Rent-A-Car, Inc. v. Lewis*, 701 So. 2d 893 (Fla. 4th DCA 1997) [22 Fla. L. Weekly D2536a].

2. This Order does not affect the Court's separate ruling on those portions of the Motion in Limine that were substantively opposed by Defendant in its written response, which remain pending before the Court.

* * *

Evidence—Pre-trial motions—Motion in limine is granted as to any references to plaintiff's entitlement to attorney's fees, settlement negotiations, and derogatory characterization of expert witnesses—Motion is denied without prejudice as to undisclosed evidence; unpled affirmative defenses; counsel's personal knowledge, opinions or comments on witness credibility; and arguments designed to elicit sympathy

RYAN PERSAUD, Plaintiff, v. GULF COAST AUTO BROKERS, INC., a Florida Corporation, and GROW FINANCIAL CREDIT UNION, a Federal Credit Union, Defendants. Circuit Court, 12th Judicial Circuit in and for Sarasota County, Civil Division. Case No. 2023-CA-006884-NC. September 17, 2025. Hunter W. Carroll, Judge. Counsel: Joshua Feygin, Sue Your Dealer—A Law Firm, Hollywood, for Plaintiff. Hamdee Saif Khader, Tampa, for Gulf Coast Auto Brokers Inc., Defendant. Sammy Hatem Hamed, Tampa, for Grow Financial Credit Union, Defendant.

ORDER ON PLAINTIFF'S MOTION IN LIMINE (DOCKET NO. 111)

THIS CAUSE came before the Court on Plaintiff's Motion in Limine (Docket No. 111). Plaintiff was represented by Joshua Feygin, Esq., and Defendant Gulf Coast Auto Brokers, Inc. was represented by

Hamdee Khader, Esq. The Court, having reviewed the motion, the opposition, and having heard argument of counsel, hereby **ORDERS** and **ADJUDGES** as follows:

1. Plaintiff's Motion in Limine is **GRANTED** as to any reference to Plaintiff's entitlement to attorney's fees.

2. Plaintiff's Motion in Limine is **GRANTED** as to any reference to settlement negotiations, including settlement offers, proposals for settlement, or related discussions. The Court has previously held, after an evidentiary hearing, that no settlement was reached in this case, and any attempt to reintroduce those issues would be improper. Moreover, settlement evidence is inadmissible to prove liability or damages pursuant to section 90.408, Florida Statutes. See *Rubrecht v. Cone Distrib., Inc.*, 95 So. 3d 950 (Fla. 5th DCA 2012) [37 Fla. L. Weekly D1910a].

3. Plaintiff's Motion in Limine is **GRANTED** as to derogatory characterizations by either side of either side's experts. Parties may not refer to the other side's experts as "hired guns," insinuate collusion with counsel, or otherwise suggest perjury or fraud. See *Venning v. Roe*, 616 So. 2d 604 (Fla. 2d DCA 1993). This ruling does not preclude either party from introducing admissible evidence of financial bias consistent with Florida law. See *Vazquez v. Martinez*, 175 So. 3d 372 (Fla. 5th DCA 2015) [40 Fla. L. Weekly D2170a].

4. Plaintiff's Motion in Limine is **DENIED WITHOUT PREJUDICE** as to undisclosed evidence. The Court notes that existing disclosure obligations under the Florida Rules of Civil Procedure will govern, and objections may be raised at trial if undisclosed evidence is offered.

5. Plaintiff's Motion in Limine is **DENIED WITHOUT PREJUDICE** as to unpled affirmative defenses. The Court notes that the pleadings frame the case, and any attempt by either party to rely upon unpled claims or defenses may be addressed by objection at trial.

6. Plaintiff's Motion in Limine is **DENIED WITHOUT PREJUDICE** as to counsel's personal knowledge, personal opinions, or comments on witness credibility. The Court cautions all counsel to avoid violating Rule 4-3.4(e), Rules Regulating The Florida Bar, and makes clear that any such conduct will not be tolerated.

7. Plaintiff's Motion in Limine is **DENIED WITHOUT PREJUDICE** as to arguments or comments designed to elicit sympathy. The Court expects all counsel to follow the law and failure to do so will not be tolerated.

Accordingly, Plaintiff's Motion in Limine (Docket No. 111) is granted in part and denied in part as set forth above.

* * *

Insurance—Homeowners—Coverage—Affirmative defenses—Fraud—Assignee's action against insurer—Directed verdict issued in favor of insured where uncontroverted evidence presented in plaintiff's case-in-chief established that insured engaged in fraudulent conduct related to insurance before and/or after loss—Case law holding that third-party beneficiaries to insurance contracts may be considered innocent when insured is guilty of dishonesty or criminal or fraudulent acts is not applicable where plaintiff is assignee of insured, not third-party beneficiary

REMYFORD RESTORATION SERVICES LLC, d/b/a APEX DISASTER SPECIALISTS, a Florida Limited Liability Company, a/a/o London Rodriguez, Plaintiff, v. US COASTAL PROPERTY & CASUALTY INSURANCE COMPANY, a Florida Corporation, Defendant. Circuit Court, 14th Judicial Circuit in and for Bay County. Case No. 19-3312-CA. May 24, 2022. James J. Goodman, Judge. Counsel: Jay Kovar, Allyson Kovar, and Amber Walley, Kovar Law Group, for Plaintiff. Tanaz Salehi, Donald Lavigne, and Scott Boyer, Salehi, Boyer, Lavigne Lombana, P.A., for Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR DIRECT VERDICT

THIS MATTER was considered upon Defendant's Motion for

Directed Verdict at the close of Plaintiff's case-in-chief After having heard the arguments of counsel, having reviewed all of the evidence submitted by the Plaintiff, and having viewed all evidence and inferences which may be drawn therefrom in the light most favorable to the Plaintiff, and being otherwise fully advised, the Court finds, for the reasons stated on the record at the trial of this action and as explained below, as follows:

BACKGROUND

1. In this case, Plaintiff—Apex Disaster Specialists, under an Assignment of Benefits from homeowner, London Rodriguez, is claiming that Defendant, US Coastal Property & Casualty Insurance Company breached the insurance policy in place between US Coastal and London Rodriguez when US Coastal denied coverage for their claim of damage to London Rodriguez's property.

2. Defendant denies this allegation and asserts that there is no coverage under the policy for this claim.

3. At the closing of Plaintiff's case-in-chief, Defendant moved for a directed verdict.

DIRECTED VERDICT STANDARD

4. "A motion for directed verdict should be granted only where no view of the evidence, or inferences made therefrom, could support a verdict for the nonmoving party." *James v. City of Tampa*, 193 So. 3d 1040, 1042 (Fla. 2d DCA 2016) [41 Fla. L. Weekly D1383a] (quoting *Sims v. Cristinzio*, 898 So. 2d 1004, 1005-06 (Fla. 2d DCA 2005) [30 Fla. L. Weekly D661a]). Indeed,

[i]n considering a motion for directed verdict, the court must evaluate the testimony in the light most favorable to the nonmoving party and every reasonable inference deduced from the evidence must be indulged in favor of the nonmoving party. If there are conflicts in the evidence or different reasonable inferences that may be drawn from the evidence, the issue is factual and should be submitted to the jury.

Id. (quoting *Sims*, 898 So. 2d at 1005-06).

5. Accordingly, motions for directed verdict must be considered "with "extreme caution, because the granting thereof amounts to a holding that the non-moving party's case is devoid of probative evidence." *Houghton v. Bond*, 680 So. 2d 514, 522 (Fla. 1st DCA 1996) [21 Fla. L. Weekly D1067b]. The Court could not grant such a motion unless, after viewing the evidence in the light most favorable to Plaintiff, it determined that "no reasonable jury" could have rendered a verdict for Plaintiff. *Id.* The Court is obliged to assume that Plaintiff's "evidence, and all reasonable inferences therefrom, are true," and "strictly" construe all inferences of fact in Plaintiff's favor. *Id.* It is this Court's position that applying this rule to the facts in this case justifies entering a directed verdict in favor of Defendant. *E.g.*, *Lindon v. Dalton Hotel Corp.*, 49 So. 3d 299, 303 (Fla. 5th DCA 2010) [35 Fla. L. Weekly D2423a].

ANALYSIS

6. It should be noted that an assignment of benefits is defined as "a transfer of all the interests and rights to the thing assigned." *Dept. of Rev. v. Bank of America*, 752 So. 2d 637 (Fla. 1st DCA 2000) [25 Fla. L. Weekly D118a]; *Rose v. Teitler*, 736 So. 2d 122 (Fla. 4th DCA 1999) [24 Fla. L. Weekly D1465a]. Accordingly, upon the execution of a valid assignment of benefits, the assignee thereafter stands in the shoes of the assignor and has the right to enforce the contract against the original obligor in his own name. *Dove v. McCormick*, 698 So. 2d 585 (Fla. 5th DCA 1997) [22 Fla. L. Weekly D1870a]; *State Farm Fire and Cas. Co. v. Ray*, 556 So. 2d 811 (Fla. 5th DCA 1990). Further, the law is well settled that an assignee "takes [the assignment] with all the burdens to which it is subject in the hands of the assignor." *Shreve Land Co., Inc. v. J & D Financial Corp.*, 421 So. 2d 722 (Fla. 3d DCA 1982).

7. Accordingly, Plaintiff, as the assignee of Ms. Rodriguez, took

the assignment of benefits subject to all claims and defenses that Defendant could assert against Ms. Rodriguez.

8. In this respect, particularly relevant to the issues-at-hand is the following provision of the insurance policy:

Concealment or Fraud:

a. Under Section I—Property Coverages, with respect to any and all "insureds" covered under this policy, we provide no coverage for loss under Section I—Property Coverages if, whether before or after a loss, any one or more "insureds" have:

(1) Intentionally concealed or misrepresented any material fact or circumstances;

(2) Engaged in fraudulent conduct; or

(3) Made material false statements;

relating to this insurance.

9. The uncontroverted evidence presented during Plaintiff's case-in-chief established that Ms. Rodriguez engaged in fraudulent conduct related to the insurance before and/or after the loss reported on May 10, 2019. Indeed, Plaintiff failed to provide any competent evidence disputing the repeated fraudulent acts of Ms. Rodriguez.

10. Instead of providing evidence controverting the fraudulent acts set forth by the insurer's corporate representative, Plaintiff relied on the supreme court's decision in *Everglades Marina Inc. v. American Eastern Development Corp.*, 374 So. 2d 517 (Fla. 1979), and the fifth district court's ruling in *Vasques v. Mercury Casualty Company*, 947 So. 2d 1265 (Fla. 5th DCA 2007) [32 Fla. L. Weekly D363a], and argued that because the greater weight of the evidence showed that Plaintiff neither knew nor participated in any fraudulent conduct nor made any material false statement, which were solely attributable to Ms. Rodriguez, Defendant is not entitled to judgment in its favor based on its defense of fraud.

11. Plaintiff is mistaken in its interpretation of the applicable law. This Court recognizes that *third party beneficiaries* to insurance contracts may be considered innocent when a named insured is guilty of dishonesty, criminal or fraudulent acts. In this context, the supreme court in *Everglades Marina*, held that an innocent *third party beneficiary*, a boat owner, may be permitted to recover from the marina's insurance carrier, despite the finding that the marina's representatives had set the fire to the building. 374 So. 2d at 519. Similarly, the intentional act of one insured under the policy will not necessarily void the policy nor defeat a claim for damages made by an *innocent co-insured* (emphasis added). *See Vasques*, 947 So. 2d at 1269. However, because Plaintiff here is not a *third-party beneficiary*, nor an *innocent insured*, the cases relied upon by Plaintiff in support of its assertions are inapplicable.

12. Instead, as the *assignee* of Ms. Rodriguez, Plaintiff takes the assignment subject to the complete defense of fraud. *See State v. Family Bank of Hallandale*, 667 So. 257, 259 (Fla. 1st DCA 1995) [20 Fla. L. Weekly D1992a]; *see also Tinker v. De Maria Porsche Audi, Inc.*, 459 So. 2d 487, 492 (Fla. 3d DCA 1984). Because it is undisputed that Ms. Rodriguez engaged in fraudulent conduct, this issue does not need to go to the Jury. Therefore, under the unambiguous terms of the insurance policy, Defendant's denial of the May 10, 2019, claim was valid.

13. Accordingly, under pure assignment law, Plaintiff is not entitled to prevail against Defendant.

Therefore, it is

ORDERED AND ADJUDGED that the Defendant's Motion for Directed Verdict is **GRANTED**.

* * *

Adoption—Termination of parental rights—Waiver—Putative father—Notice—Any parental rights of unmarried putative father are waived where putative father was properly notified of adoption petition but failed to timely register his paternity with Florida’s Putative Father Registry and filed unverified response to petition that failed to include plan for care of child, statement that putative father is personally fully able and willing to take responsibility for child, or agreement to court order for child support and contribution of expenses—Motion for default judgment is granted

IN RE: The Matter of the Termination of Parental Rights for the Proposed Adoption of a Child: BABY M. Circuit Court, 17th Judicial Circuit in and for Broward County. Case No. FMCE-25-006911. Family Division 33. September 9, 2025. Johnathan D. Lott, Judge. Counsel: Amy U. Hickman, for Petitioner. Biological Father, Pro se, Respondent.

ORDER GRANTING MOTION FOR DEFAULT JUDGMENT AND WAIVING PARENTAL RIGHTS

A hearing was held on July 31, 2025 on the Adoption Entity’s Motion for Default Judgment Pursuant to §63.062(3) of Florida Statutes. The Adoption Entity and Biological Father were present. For the reasons stated herein, the Motion for Default Judgment is GRANTED and Biological Father’s parental rights are hereby waived.

* * *

After Biological Father learned that his unborn child’s unwed mother intended to give the child up for adoption, he, proceeding pro se, attempted to respond to the petition to waive his parental rights, and participated at the hearing.¹ But unlike most matters in family law, which greatly favor decisions on the merits rather than procedural technicalities, his action in this matter was too little too late. The Florida Legislature has crafted a comprehensive scheme regarding unwed mothers’ ability to give their children up for adoption and regarding putative fathers’ ability to preserve their rights—and, suffice to say, it favors adoption.

Putative fathers² must comply with the requirements set forth in the statute to preserve their parental rights, or else they forfeit them. This Court, bound to enforce the law crafted by the political branches, has no discretion to avoid such forfeiture where the legislature prescribes it.

And that’s exactly what happened here. Biological Father didn’t meet the statutory requirements to preserve his rights. By the time he came to court to try to preserve them, he had already effectively lost them. Default must be entered, and his consent to adoption is accordingly waived.

I. FACTUAL BACKGROUND

The Court makes the following factual findings:

1. This is an adoption action filed pursuant to Chapter 63 of the Florida Statutes (2024). The Adoption Entity initiated this action with the filing of a Petition and Notice of Intended Adoption Plan to the identified unmarried biological father. Pursuant to section 63.062(3), Fla. Stat. because Biological Father was identified as a possible biological father of the Child, BABY M. (“Child”).

2. The Adoption Entity personally served Biological Father with a Summons, Petition and Notice of Intended Adoption Plan, and an Adoption Disclosure on April 16, 2025. Proof of Service was filed with this Court.

3. The Petition and Notice of Intended Adoption Plan complies with the mandates of Sec. 63.062(3), Fla. Stat. and the Florida Supreme Court in *Heart of Adoptions v. J.A.*, 963 So. 2d 189 (Fla. 2007) [32 Fla. L. Weekly S455a].

4. The Petition and Notice of Intended Adoption Plan and the Adoption Disclosure advised Biological Father that he must respond within 30 days of service to assert his interests and establish his right to consent and notice in the Child’s adoption by taking following

actions: 1) register his paternity with the Florida Department of Health, Office of Vital Records, Florida Putative Father Registry; 2) file a Verified Response with this Court in compliance with section 63.062(2)(b); and 3) provide financial support to the Biological Mother . §63.062(2) & (3), Fla. Stat. The Petition and Notice of Intended Adoption Plan specifically stated:

The Verified Response shall be a sworn Affidavit that States:

- a. You are personally fully able and willing to take responsibility for the child;
- b. Sets forth your plans for the care of the child, and
- c. You agree to a court order of child support and a contribution to the payment of living and medical expenses incurred for the mother’s pregnancy and the child’s birth.

Petition and Notice of Intended Adoption Plan, ¶1. Furthermore, the Petition and Notice of Intended Adoption Plan stated in bold font: **“Failure to comply with each of the actions set forth above will be deemed a waiver of any claim that you might have to this Child and any requirement that your consent is necessary to complete the adoption plan or that you receive further notice of this Child’s adoption.”**

5. Biological Father’s complete response was due by May 16, 2025.

6. Biological Father did not timely and completely respond to the Petition and Notice of Intended Adoption Plan as mandated by Florida’s Adoption Act.

7. On April 29, 2025, Biological Father filed a response with this Court which does not meet the mandates of sections 63.062(3) and 63.062(2)(b)2, Fla. Stat. as fully outline in the Petition and Notice of Intended Adoption Plan. The entirety of Biological Father’s response stated,

I [Biological Father] do not wish to terminate my parental rights and I do not agree to any adoption proceeding. I hereby request full parental rights to “[BABY M.]” which is my right as a legal father.

And this is in response to the: NOTICE OF INTENDED ADOPTION PLAN

Biological Father’s response failed to verify under oath, a plan for the care of the Child, that he is personally fully able and willing to take responsibility for the Child, and an agreement to a court order of child support and a contribution of expenses. The response that Biological Father filed with this Court was only a mere expression of his desire to parent.

8. Biological Father did not timely register his paternity with Florida’s Putative Father Registry. The Diligent Search of Florida’s Putative Father Registry dated June 13, 2025 establishes that Biological Father did not timely register with Florida Putative Father Registry.

II. ANALYSIS

A. Statutory Interpretation

“In interpreting statutes, Florida courts follow the ‘supremacy-of-text principle’—namely, the principle that the words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” *Ham v. Portfolio Recovery Associates, LLC*, 308 So. 3d 942, 946 (Fla. 2020) [46 Fla. L. Weekly S9a] (cleaned up). “In interpreting a statute, our task is to give effect to the words that the legislature has employed in the statutory text.” *Lab. Corp. of Am. v. Davis*, 339 So. 3d 318, 323 (Fla. 2022) [47 Fla. L. Weekly S134a]. “Every word employed in a legal text is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it. *Ham*, 308 So. 3d at 946-67 (cleaned up). “We strive to determine the text’s objective meaning through the application of the text to given facts on the basis of how a

reasonable reader, fully competent in the language, would have understood the text at the time it was issued.” *Levy v. Levy*, 326 So. 3d 678, 681 (Fla. 2021) [46 Fla. L. Weekly S287a] (cleaned up).

“Because the plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole,” “judges must exhaust all the textual and structural clues that bear on the meaning of a disputed text.” *Conage v. United States*, 346 So. 3d 594, 598 (Fla. 2022) [47 Fla. L. Weekly S199a] (cleaned up). “Viewed properly as rules of thumb or guides to interpretation, rather than as inflexible rules, the traditional canons of statutory interpretation can aid the interpretive process from beginning to end.” *Id.* “Context is a primary determinant of meaning. . . Under the whole-text canon, proper interpretation requires consideration of ‘the entire text, in view of its structure and of the physical and logical relation of its many parts.’” *Lab. Corp.*, 339 So. 3d at 324.

B. The Florida Adoption Statute and the Responsibilities of Unmarried Biological Fathers

“Adoption was unknown in common law and exists solely by virtue of statute.” *G.S. v. T.B.*, 985 So.2d 978, 982 (Fla. 2008) [33 Fla. L. Weekly S325a]. “The Florida Adoption Act, codified in chapter 63, Florida Statutes, is a comprehensive statutory scheme intended to provide a mechanism ‘to protect and promote the well-being of persons being adopted and their birth and adoptive parents and to provide to all children who can benefit by it a permanent family life.’” *Heart of Adoptions*, 963 So. 2d at 195 (quoting § 63.022(3), Fla. Stat.).³ The Legislature explicitly found that adoptions may have priority over the rights of unmarried fathers:

[T]he interests of the state, the mother, the child, and the adoptive parents described in this chapter outweigh the interest of an unmarried biological father who does not take action in a timely manner to establish and demonstrate a relationship with his child in accordance with the requirements of this chapter. An unmarried biological father has the primary responsibility to protect his rights and **is presumed to know that his child may be adopted without his consent unless he strictly complies** with this chapter and demonstrates a prompt and full commitment to his parental responsibilities.

§ 63.053(2), Fla. Stat. (emphasis added).

Thus “If an unmarried biological father fails to take the actions that are available to him to establish a relationship with his child, his parental interest may be lost entirely, or greatly diminished, by his failure to timely comply with the available legal steps to substantiate a parental interest.” *Id.* § 63.053(1). Further reiterating these themes, “Each parent of a child conceived or born outside of marriage is responsible for his or her actions and [absent exception] is not excused from strict compliance with this chapter based upon any action, statement, or omission of the other parent or a third party.” § 63.063(1), Fla. Stat.

“Accordingly, the Legislature prescribed the actions that an unmarried biological father must take to establish his right to notice of and consent to an adoption.” *Heart of Adoptions*, 963 So. 2d at 196. Those actions are set forth in Section 63.062, Florida Statutes.

Generally, a petition to terminate parental rights pending adoption may only be granted if written consent has been executed by, among others, father. § 63.062(1), Fla. Stat. *But* if the father is an “unmarried biological father,” then his consent is only required for the adoption if “he has acknowledged in writing, signed in the presence of a competent witness, that he is the father of the minor, has filed such acknowledgment with the Office of Vital Statistics of the Department of Health within the required timeframes, and has complied with the requirements of subsection (2).” *Id.* § 63.062(1)(b)5.

In turn, Section 63.062(2) provides that “the consent of an

unmarried biological father shall be necessary only if the unmarried biological father has complied with the requirements of this subsection.” As to children who are 6 months of age or younger, the unmarried biological father must have “demonstrated a full commitment to his parental responsibility” by performing three acts before the mother executes her consent for adoption: (1) filed a notarized claim with the Florida Putative Father Registry; (2) executed a particularized affidavit regarding his plans for care of the child; and (3) provided financial support to the mother during pregnancy. *Id.* § 63.062(2)(b)1-3. These requirements must be complied with: “The mere fact that a father expresses a desire to fulfill his responsibilities towards his child which is unsupported by acts evidencing this intent does not meet the requirements of this section.” *Id.* § 63.062(2)(c).

Further in turn, Section 63.062(3) provides that adoption entity must (generally) serve a notice on a known and locatable unmarried biological father, and the notice must contain information effectively mirroring the requirements described above that are set out in Section 63.062(2). The statute provides if the unmarried biological fails to “timely and properly” file a response with the court and register with the state, “the court shall enter a default judgment” and he “shall be deemed to have waived any claim of rights to the child.” *Id.* § 63.062(3)(a). To avoid entry of a default judgement, the father must, within 30 days of receipt of notice, meet those three Section 63.062(2)(b) requirements that are described above. *See* Section 63.062(3)(a)1.⁴

To summarize: for an unmarried biological father to preserve his rights when the unmarried mother seeks to give the child up for adoption before birth, he must fully comply with three statutory requirements. If the adoption entity serves the notice on him, he has 30 days to do so. And if he fails to do so within those 30 days, “the court shall enter a default judgment” and he “shall be deemed to have waived any claim of rights to the child.” § 63.062(3)(a), Fla. Stat.

C. Default Judgment Is Required

Applying the law above, and taking the facts as set forth above, this is as straightforward case. The Adoption Entity properly noticed the Biological Father. Biological Father did not comply with the Section 63.062(2)(b) requirements within 30 days. Therefore, the Court “shall” enter a default judgment against Biological Father. There’s not much more to it.

Caselaw supports this outcome. For example, in *K.H. v. Children’s Home Soc. of Florida*, 120 So. 3d 104, 107 (Fla. 4th DCA 2013) [38 Fla. L. Weekly D1740a], the Fourth District affirmed the circuit court’s denial of a putative father’s request to set aside a default judgment. The Court succinctly noted that, as in this case, “Once [the father] was served with the Notice of Adoption, he had 30 days to file the required paperwork. He failed to do so.” *Id.* The Court noted “that a putative father, who does not comply with the requirements of section 63.062(2), is deemed to have waived and surrendered any rights in relation to the child.” *Id.* at 107-08 (cleaned up).⁵ *See also Children’s Home Soc’y of Florida v. V. D.*, 188 So. 3d 920, 922 (Fla. 1st DCA 2016) [41 Fla. L. Weekly D771a] (“[T]he adoption statute places time limits on an unmarried biological father’s assertion of parental rights.”); *In Interest of Baby Girl M.*, 231 So. 3d 593 (Fla. 2d DCA 2017) [42 Fla. L. Weekly D2589a] (“Because C.W.M. is an ‘unmarried biological father,’ . . . and he did not file a notarized claim of paternity form with the Florida Putative Father Registry before the mother executed her consent for adoption and the petitioner filed the petition to terminate parental rights, he ‘is deemed to have waived and surrendered any rights in relation to the child, including the right to notice of any judicial proceeding in connection with the adoption of the child, and his consent to the adoption of the child is not required.’”); *D.S. v. J.L.*, 18 So. 3d 1103, 1110 (Fla. 1st DCA 2009) [34

Fla. L. Weekly D1618a] (“[These statutory] provisions indicate an interest on the part of the Legislature in the timely and unequivocal assumption of full parental responsibility by biological fathers . . . [they] also indicate the Legislature’s intent to require specific actions on the part of unmarried biological fathers to preserve their rights to their children.”).⁶

ACCORDINGLY, IT IS HEREBY ORDERED and ADJUDGED as follows:

1. The Motion is GRANTED.
2. Biological Father is in default.
3. Biological Father has waived and surrendered any parental rights he may have to the Child who is due to be born on August XX, 2025.
4. The Adoption Entity, may proceed without any further notice to Biological Father. § 63.062(3), Fla. Stat.; *Heart of Adoptions*, 963 So. 2d 189.

¹The final hearing was briefly continued to afford Biological Father an ultimately unfruitful opportunity to obtain counsel.

²This Court uses the term “Putative father” in the vernacular, although it is aptly defined elsewhere in Florida Statutes. Cf. § 409.256(1)(g) (“‘Putative father’ means an individual who is or may be the biological father of a child whose paternity has not been established and whose mother was unmarried when the child was conceived and born.”). The more technical term for the Biological Father in this Chapter 63 proceeding is an “Unmarried biological father,” that is, “the child’s biological father who is not married to the child’s mother at the time of conception or on the date of the birth of the child and who, before the filing of a petition to terminate parental rights, has not been adjudicated by a court of competent jurisdiction to be the legal father of the child or has not filed an affidavit pursuant to s. 382.013(2)(c).” § 63.032(19), Fla. Stat.

³Following the decision in *Heart of Adoptions*, the Legislature substantially amended the adoption statute in ways not otherwise relevant to this Order’s reliance on the case. *E.g., Children’s Home Soc’y of Florida v. V. D.*, 188 So. 3d 920, 922 (Fla. 1st DCA 2016) [41 Fla. L. Weekly D771a].

⁴It’s probably becoming apparent to the reader that the adoption statute is riddled with redundancy and not a model of statutory draftsmanship. Perhaps the legislature will someday redraft this statute with less hostility to the reader. But while the statute is dense, it’s neither unclear nor ambiguous.

⁵Further, “[u]ntil a putative father complies with the statute, he has no constitutionally-protected right to counsel.” *K.H.*, 120 So. 3d at 108.

⁶In *D.S.*, the appellate court reversed the trial court’s finding that the father had not strictly complied with the affidavit and verified response requirements where the father had timely and “substantially complied” with the requirement. Here, Biological Father did timely or substantially comply with any of the Section 63.062(2)(b) requirements.

* * *

Child custody—Modification—Subject matter jurisdiction—Under Florida Uniform Custody Jurisdiction and Enforcement Act, authority to modify custody judgment issued by court in Brazil for child who has since moved to Florida with mother continues to be vested in Brazilian court that issued it—Assuming that child has resided in Florida for 6 months and, therefore, Florida court has jurisdiction to make an initial custody determination, jurisdiction continues to be vested in Brazilian court where no Brazilian court has determined that it no longer has exclusive continuing jurisdiction and that Florida court would be more convenient forum, and father of child still resides in Brazil—Argument that under UCCJEA Florida court can make determination that it is more convenient forum is contrary to canons of statutory interpretation and case law—Case dismissed

LUCIMAR BARBOSA GOMES FURLAN, Petitioner, and LUIS SERGIO FURLAN, Respondent. Circuit Court, 17th Judicial Circuit in and for Broward County. Case No. FMCE25002773 (33). August 15, 2025. Johnathan D. Lott, Judge. Counsel: Adelia R. Schuina, for Petitioner. Luis Sergio Furlan, Pro se, Respondent.

ORDER DISMISSING CASE FOR LACK OF SUBJECT MATTER JURISDICTION

This Court *sua sponte* raised the concern that it had no subject matter jurisdiction in this case and afforded Petitioner the opportunity to brief the issue. This Court has considered Petitioner’s August 5, 2025 Memorandum / Legal Brief in Opposition to Dismissal for Lack of Subject Matter Jurisdiction. For the reasons stated herein, this Court

lacks subject matter jurisdiction over the petition to modify a custody determination, and it is accordingly DISMISSED.

I. INTRODUCTION AND BACKGROUND

Mother was divorced in Brazil in 2012. Mother has since moved to Florida with Child,¹ while Father continues to reside in Brazil. Mother now seeks to domesticate and modify the judgment to grant her sole custody of Child, as well as to find that child has been abused and neglected by Father. She also seeks a finding that it is not in Child’s “best interests” to be returned to Brazil.² Father purportedly agreed with all of this.

Setting aside the fact that the Brazilian judgment already appears to award custody to Mother (see Petition at 16), the fundamental problem is that this Court lacks subject matter jurisdiction under Florida’s Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”). The statute generally vests “exclusive continuing jurisdiction” to modify a child custody judgment with the court that issued it unless certain stringent conditions are met. Because one of the parties to that judgment still resides in Brazil, the Brazilian court retains exclusive continuing jurisdiction to modify it—at least unless and until a Brazilian court holds that it does not—and so Florida jurisdiction to make any modification.

II. ANALYSIS

A. Statutory Interpretation

Florida courts’ “approach to interpreting the constitution,” and statutes “reflects a commitment to the supremacy-of-text principle, recognizing that the words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” *Planned Parenthood of Sw. & Cent. Florida v. State*, 384 So. 3d 67, 77 (Fla. 2024) [49 Fla. L. Weekly S73a] (cleaned up). “In interpreting a statute, our task is to give effect to the words that the legislature has employed in the statutory text.” *Lab. Corp. of Am. v. Davis*, 339 So. 3d 318, 323 (Fla. 2022) [47 Fla. L. Weekly S134a]. “We strive to determine the text’s objective meaning through the application of the text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued.” *Levy v. Levy*, 326 So. 3d 678, 681 (Fla. 2021) [46 Fla. L. Weekly S287a] (cleaned up).

“Because the plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole,” “judges must exhaust all the textual and structural clues that bear on the meaning of a disputed text.” *Conage v. United States*, 346 So. 3d 594, 598 (Fla. 2022) [47 Fla. L. Weekly S199a] (cleaned up). “Viewed properly as rules of thumb or guides to interpretation, rather than as inflexible rules, the traditional canons of statutory interpretation can aid the interpretive process from beginning to end.” *Id.* “Context is a primary determinant of meaning. . . Under the whole-text canon, proper interpretation requires consideration of ‘the entire text, in view of its structure and of the physical and logical relation of its many parts.’” *Lab. Corp.*, 339 So. 3d at 324.

B. Jurisdiction to Modify Foreign Child Custody Judgments

“Subject matter jurisdiction—the ‘power of the trial court to deal with a class of cases to which a particular case belongs’—is conferred upon a court by constitution or by statute.” *Miller v. Mitchell*, 328 So. 3d 1067, 1069 (Fla. 3d DCA 2021) [46 Fla. L. Weekly D2186a] (quotations omitted). “Subject matter jurisdiction is uniquely unwaivable because it concerns a court’s constitutional or statutory authority to hear a certain type of case, and the parties cannot confer such authority on a court.” *JJTJB, Inc. v. Schmidt*, 2025 WL 1968957, at *2 (Fla. July 17, 2025) [50 Fla. L. Weekly S188a]. Thus “[c]ourts have an independent obligation to examine their jurisdiction and may

raise subject matter jurisdiction *sua sponte*.” *Petro Welt Trading Ges.m.b.H v. Brinkmann*, 49 Fla. L. Weekly D2244a (Fla. 6th DCA Nov. 8, 2024). Courts “are compelled to consider [a] jurisdictional issue even though neither party raised it because an order entered without jurisdiction is a nullity, and cannot be considered harmless error. . . it is not a question a court can take or leave, and a judgment entered without jurisdiction is void.” *Johnson v. State*, 218 So. 3d 957, 960 (Fla. 5th DCA 2017) [42 Fla. L. Weekly D315c] (cleaned up, alterations omitted).

“A court’s exercise of subject matter jurisdiction over interstate child custody disputes is determined by the UCCJEA,” Section 61.501 *et seq.*, Florida Statutes. *Miller*, 328 So. 3d at 1069.

The UCCJEA distinguishes between a Florida court’s ability to make an *initial* custody determination over a child and its ability to *modify* another court’s custody determination over a child.

Under Section 61.514, Florida Statutes, a Florida court may (in most cases) make an initial custody determination if Florida is or recently was the “home state” of the child, that is, the place where the child had resided for the last six months. *See* § 61.503(7).

So, what happens after this determination is made? The idea behind the UCCJEA on this issue is that the court that makes the initial determination has exclusive, continuing jurisdiction to modify that initial determination, until such time as it doesn’t. Section 61.515 supplies this mechanism. A Florida court that makes the initial custody determination retains exclusive, continuing jurisdiction to modify the determination until one of two things occur. First, a Florida court may determine that none of the child and parents have a significant connection with this state. Second, a Florida court may determine that the children and parents do not presently reside in this state. *See* § 61.515(1)(a)-(b), Fla. Stat. If either of those things occurs, then Florida loses exclusive continuing jurisdiction and another court may modify the child custody determination (provided of course that it otherwise has jurisdiction to do so).

The flip side of Section 61.515 is Section 61.516, which concerns a Florida court’s ability to modify another state’s initial custody determination. Section 61.516 presumes that the state that made that initial determination, under its own analogue to Section 61.515, retains continuing, exclusive jurisdiction to modify that determination, until such as the other court determines that it doesn’t, with one of the two Section 61.515 tests being fulfilled by that other court. Thus under Section 61.516, a Florida court may *not* modify another court’s child custody determination *unless* two things occur. First, the state must have jurisdiction to make the initial determination under 61.514 (as mentioned, usually the child must reside here for six months). Second, one of the two Section 61.515 tests (or at least analogues to those tests) must be fulfilled as to the other state. So either (1) the court of the other state may determine that it no longer has exclusive continuing jurisdiction or that a court of this state would be a more convenient forum under Section 61.520; OR (2) a court of this state or the other state may determine that the children and parents no longer reside in the other state. If Florida would have jurisdiction to make the initial determination and one of these tests are met, then it could assume jurisdiction to modify the child custody determination.

Section 61.520 concerns an inconvenient forum. A Florida court that has jurisdiction may decline to exercise its jurisdiction if it determines that it is an inconvenient forum and that the court of another state is a more appropriate forum.

C. Application to this Case

Here, on the face of the Petition, the initial custody determination was made in Brazil, and the Father continues to reside in Brazil. *See* Petition ¶¶ 7-8 & pp.15-20.

Under Section 61.516, Florida Statutes, as mentioned,

[A] court of this state may not modify a child custody determination made by a court of another state **unless** a court of this state has jurisdiction to make an initial determination under s. 61.514(1)(a) or (b) **and**:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under s. 61.515 or that a court of this state would be a more convenient forum under s. 61.520; **or**

(2) A court of this state or a court of the other state determines that the child, the child’s parents, and any person acting as a parent do not presently reside in the other state.

§ 61.516, Fla. Stat. (emphasis added).

This Court will assume, without deciding, that the facially insufficient UCCJEA affidavit filed in this case could be corrected to show that the child has resided in Florida for the last six months and thus Florida has “jurisdiction to make an initial determination.” But one of the two tests in Section 61.516(1)-(2) must also be satisfied. Both fail.

Test (1) fails because no Brazilian court has determined that “it no longer has exclusive, continuing jurisdiction” nor has a Brazilian court determined “that a court of this state [*i.e.*, Florida] would be a more convenient forum.”

Test (2) fails because one of the child’s parents “presently reside[s]” in Brazil.

Therefore, because both tests fail, “a court of this state may not modify a child custody determination made by [the] court of another state,” and this matter must be dismissed for lack of jurisdiction.

Petitioner argues that, under Section 61.516(1), this Court should find that “a court of this state would be a more convenient forum under Section 61.520,” and accordingly exercise jurisdiction.³ But the statute provides that the initial court—here, the Brazilian court—must make that determination; Florida, as the court being requested to modify the determination, cannot make that determination. This is apparent for several reasons.

First, under the plain language of Section 61.516(1), the test is satisfied where “court of the other state determines . . . that a court of this state would be a more convenient forum under s. 61.520.” A contrary reading would leave the dependent clause (“that a court this state would be a more convenient forum. . .”) without any independent clause to modify. Correctly read, that dependent clause, along with the other dependent clause (“[that] it no longer has exclusive, continuing jurisdiction”), are both alternative objects of the independent clause (“The court of the other state determines”).

Second, Petitioner’s proposed reading would not make any sense in light of Section 61.520. That section allows a court to *decline* to exercise jurisdiction if it would otherwise have if it determines that it is an inconvenient forum. It doesn’t allow a court to exercise jurisdiction if it would not otherwise have if it finds its own venue to be the more convenient forum. Allowing this result would swallow the operative mechanisms of the UCCJEA and allow any court to modify a child custody determination upon its own finding that it were a convenient forum, effectively depriving other courts of the exclusive, continuing jurisdiction to so modify that they are explicitly afforded under Section 61.515.

Third, courts have repeatedly affirmed that the court that made the initial custody determination, not the court in which modification is being sought, must make the determination regarding inconvenient forum. *E.g.*, *McGhee v. Biggs*, 974 So. 2d 524, 525 (Fla. 4th DCA 2008) [33 Fla. L. Weekly D429c] (“North Carolina has not determined that it no longer has jurisdiction, and accordingly section 61.516(1) does not apply.”); *Kessinger v. Kessinger*, 228 So. 3d 1201, 1202 (Fla. 1st DCA 2017) [42 Fla. L. Weekly D2374a] (“The record also does not support the exercise of jurisdiction for other statutory

reasons. *See* § 61.514(1), Fla. Stat.; § 61.516, Fla. Stat. There is no indication, for instance, that Georgia’s courts (or another state’s courts) lack, or have declined jurisdiction over the custody issue here.”); *see also Mattingly v. Hatfield*, 49 Fla. L. Weekly D492a (Fla. 1st DCA Feb. 28, 2024), opinion withdrawn and superseded on denial of reh’g, 395 So. 3d 585 (Fla. 1st DCA 2024) [49 Fla. L. Weekly D1407a], reh’g denied (Oct. 28, 2024) (“The next exception available, described in subsection (1), does not apply because the Kentucky court neither determined that it no longer has jurisdiction nor that a court of this state would be a more convenient forum.”).

Indeed, this matter appears similar to the Fourth District’s decision in *Loud v. De La Espriella Medina*, 899 So. 2d 1242, 1243 (Fla. 4th DCA 2005) [30 Fla. L. Weekly D1019d]. There, the circuit court dismissed for lack of jurisdiction under the UCCJEA where “the parties were divorced in Panama, which issued a final judgment of divorce including provisions regarding custody of the children . . . and the father continued to reside in Panama.” *Id.* The Fourth District affirmed, holding that “[u]nder these facts, Panama had jurisdiction, and the Florida court could not invoke jurisdiction of the matter unless the Panamanian court determined that it no longer had continuing jurisdiction of the matter or that Florida would be a more convenient forum.” *Id.* (citing Section 61.516, Fla. Stat.).

III. CONCLUSION

For these reasons, this matter is DISMISSED for lack of subject matter jurisdiction. All pending motions are denied as moot. The Clerk is directed to close the file.

¹It is unclear how long Child has been residing here. The February 6, 2025 UCCJEA Affidavit in this case does not list any dates. It is facially deficient and dismissal would be appropriate on this ground alone.

²This Court has addressed a request for a “best interests” finding in the context of Chapter 751 proceedings for temporary custody by an extended family member. *See Ramon v. Ambrocio*, 33 Fla. L. Weekly Supp. 111a (Fla. 17th Cir. Ct. April 16, 2025) (Lott, J.). Because this Court lacks subject matter jurisdiction, it need not address the issue here, and Petitioner’s motion will be denied as moot.

³Petitioner’s other arguments that the parties consent to jurisdiction in Florida, and that the best interests of the child favors jurisdiction in Florida, are summarily rejected. The UCCJEA governs subject matter jurisdiction in this case, and parties cannot create subject matter jurisdiction by consent.

* * *

Insurance—Homeowners—Coverage—Conditions precedent—Post-loss obligations—Prompt notice—Insured’s failed to give prompt notice of loss as required by policy where it is undisputed that insureds were aware of damage to home shortly after hurricane made landfall but did not notify insurer until nineteen months later—Insureds’ belief that homeowners association was responsible for making roof repairs is legally insufficient reason for delay—Insureds have not explained why they did not promptly notify insurer of damage to home interior, and notice obligation was triggered by knowledge of damage irrespective of whether insureds believed that insurance policy was not implicated—Presumption of prejudice to insurer that arises from untimely notice of loss is not rebutted where inspecting engineers could not determine extent of damage caused by hurricane because of repairs that were completed prior to notifying insurer—Summary judgment entered in favor of insurer

THOMAS O’DEA, MARIE O’DEA, Plaintiffs, v. EDISON INSURANCE COMPANY, Defendant. Circuit Court, 20th Judicial Circuit in and for Lee County, Civil Action. Case No. 21-CA-000079. November 5, 2024. Kyle S. Cohen, Judge. Counsel: Aaron S. Kling, Kling Law Firm, for Plaintiffs. Donald Lavigne, Salehi, Boyer, Lavigne Lombana, P.A., for Defendant.

ORDER GRANTING DEFENDANT’S SECOND AMENDED MOTION FOR SUMMARY JUDGMENT

THIS CAUSE came before the Court for hearing on October 16, 2024, on Defendant Second Amended Motion for Summary Judgment

filed September 3, 2024. After reviewing the Defendant’s Motion, the opposition, the Court file, and hearing argument, for the reasons discussed below, Defendant’s Second Amended Motion for Summary Judgment is hereby GRANTED.

FACTUAL BACKGROUND

This is a first-party, residential property insurance case. Plaintiffs, Thomas and Marie O’Dea, are alleging that Defendant, Edison Insurance Company (“Edison”) breached the contract by failing to provide coverage for damage to the subject property caused by Hurricane Irma.

Hurricane Irma made landfall on September 10, 2017. Within 5 days after the hurricane, Plaintiffs, who had evacuated, were made aware by their home watch person of damage to the property. There was water in the garage that was leaking from the roof and a portion of the ceiling of the garage had collapsed to the floor. In October of 2017, Plaintiffs’ returned to the property and observed the damage for themselves. Importantly, there can be no dispute that Plaintiffs’ knew about the damage to their roof and property shortly after the passage of Hurricane Irma. Despite knowing about the damage caused by the hurricane in September or October of 2017, Plaintiffs’ waited until April 18, 2019—more than nineteen (19) months after Hurricane Irma—to report the loss to Edison. According to Plaintiffs, the reason for this delay is because they believed that the homeowners association was responsible for repairing the damages to the roof.

During the nineteen-month delay, repairs were done to Plaintiffs’ roof and to the ceiling in the garage. After finally being notified of the loss in April of 2019, Edison retained an independent engineer to inspect the property. He inspected the property on July 10, 2019, and noted that “repairs had already been made to the underlayment in the valley of certain roof slopes, as well as to field and cap tiles throughout the roof covering.” He also identified thirty-seven (37) tiles on the roof that were replaced prior to his inspection. As a result, he was unable to determine whether there was damage to the property that was caused by Hurricane Irma. Indeed, Plaintiffs’ own expert, Grant Renne, agreed that because there were areas that were repaired, the extent of the damage to the property caused by Hurricane Irma was “unknowable.”

On November 21, 2019, Edison denied covered based, in part, on the Plaintiffs’ failure to provide prompt notice of the loss. Plaintiffs’ filed this suit on January 5, 2021.

STANDARD OF REVIEW

The trial court should enter summary judgment only if no genuine dispute of material fact exists, and the moving party is entitled to judgment as a matter of law. Fla. R. Civ. P. 1.510(a). The moving party bears the initial burden of production to show the lack of a genuine dispute, and the nonmoving party must respond with evidence showing that a reasonable jury could find in its favor. *See Shiver v. Chertoff*, 549 F.3d 1342, 1343 (11th Cir. 2008) [21 Fla. L. Weekly Fed. C1268a]. The trial court must view all evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in its favor. *See Newcomb v. Spring Creek Cooler Inc.*, 926 F.3d 709, 713 (11th Cir. 2019) [27 Fla. L. Weekly Fed. C2037b]. The moving party carries its burden when it shows “an absence of evidence to support the nonmoving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). The nonmoving party must then point to evidence in the record demonstrating the existence of a genuine issue. *Id.* at 324.

CONCLUSIONS OF LAW

The insurance policy at issue contains a provision that requires the insured to give “prompt notice” of an alleged loss. Specifically, Section I of the insurance policy states:

2. Your Duties After Loss. In case of a loss to covered property, we have no duty to provide coverage under this Policy if the failure to comply with the following duties is prejudicial to us. These duties must be performed either by you, an “insured” seeking coverage, or a representative of either:

- a. Give prompt notice to us or your insurance agent;

The purpose of a notice provision in an insurance policy is to allow an insurer “to evaluate its rights and liabilities, to afford it an opportunity to make a timely investigation, and to prevent fraud and imposition upon it.” *LoBello v. State Farm Fla. Ins. Co.*, 152 So.3d 595, 598 (Fla. 2d DCA 2014) [39 Fla. L. Weekly D1273c] (citation omitted). An insured’s failure to give timely notice under such a provision is “a legal basis for the denial of recovery under the policy.” *Ideal Mut. Ins. Co. v. Waldrep*, 400 So.2d 782, 785 (Fla. 3d DCA 1981).

Under Florida law, the “question of whether an insured’s untimely reporting of loss is sufficient to result in the denial of recovery under the policy implicates a two-step analysis.” *LoBello*, 152 So.3d at 599. The first step is to determine whether the insured provided timely notice. *Id.* at 599. Next, if notice was untimely, then prejudice to the insurer is presumed. *Id.* However, the insured may rebut the presumption of prejudice by showing that the insurer was not prejudiced by the lack of timely notice. *Id.* “If the insured is unable to overcome the presumption of prejudice, then the insurer will prevail on a defense of untimely notice.” *Id.*

Although the term “prompt” is not defined in the policy, under Florida law an insured’s duty to notify their insurer of a potential loss is triggered once there has been an “occurrence that should lead a reasonable and prudent person to believe that a claim for damages would arise.” *Laquer v. Citizens Prop. Ins. Corp.*, 167 So. 3d 470, 474 (Fla. 3d DCA 2015) [40 Fla. L. Weekly D1186a].¹

In this case, there can be no dispute that the Plaintiffs were aware of damage caused by the Hurricane Irma shortly after it made landfall on September 10, 2017. Five days after the hurricane, Plaintiffs were provided pictures of the damage, and they personally observed the damage both inside and outside of the house in October of 2017. Despite knowing about damage caused by the hurricane at that time, Plaintiffs did not notify the Defendant until April 18, 2019—nineteen months later. Florida cases involving similar notice provisions have found that delays of far less time than nineteen months constituted late notice. *See PDQ Collidge Formad, LLC v. Landmark Am. Ins. Co.*, 566 Fed. Appx. 845, 849 (11th Cir. 2014) (six-month delay was not prompt); *SFR Serv., LLC v. Hartford Ins. Co. of the Midwest*, 609 F.Supp. 3d 1287, 1292 (SD. Fla. 2022) (five-month delay was not prompt); *Waldrep*, 400 So.2d at 786 (six-week delay constituted late notice).

Plaintiffs’ reason for the nineteen-month delay in reporting the damage to the insurer is legally insufficient. According to the Plaintiffs, they did not notify the insurer after discovering the damage because they believed that their homeowners association was responsible for making repairs to the roof.² However, no explanation was provided as to why Plaintiffs’ did not notify the insurer earlier about the damage to the interior of the home.

The case law is clear that when an insured has knowledge of the damage and the cause, the duty to provide notice to the insurer is triggered. This is true even where the insured, for whatever reason, does not think that the policy would be implicated. *See 1500 Coral Towers Condo. Ass’n v. Citizens Prop. Ins.*, 112 So. 3d 541, 543 (Fla. 3d DCA 2013) [38 Fla. L. Weekly D731b] (affirming summary judgment where the insured had knowledge of damage covered by the insurance policy but waited to notify the insurer because the insured questioned whether the amount of damages would exceed the policy

deductible); *Kramer v. State Farm Fla. Ins.*, 95 So. 3d 303, 304 (Fla. 4th DCA 2012) [37 Fla. L. Weekly D1699a] (affirming summary judgment in favor of the insurer where the insureds were aware of damage caused by a hurricane but “decided for themselves that the roof tiles which blew off their roof were not the type of damages which involved the policy at issue”); *Tamiami Condo. Warehouse Plaza Ass’n v. Markel Am. Ins.*, 2020 WL 1692177, at *2 (SD. Fla. Feb. 24, 2020) (granting summary judgment where the insured “was aware of damage caused by Hurricane Irma in close proximity to the time of the occurrence of Hurricane Irma” but waited seven months to notify the insurance company).

For that reason, Plaintiffs’ reliance on *Bensen v. Privilege Underwriters Reciprocal Exch.*, 2023 WL 3668085 (Fla. 6th DCA May 26, 2023) [48 Fla. L. Weekly D1085a] is misplaced. In *Bensen*, summary judgment on the issue of whether the insured gave late notice was reversed because there was “no evidence” that the insured knew that the damage to his roof was caused by Hurricane Irma prior to giving notice to the insurer. *Id.* at *4. The Court explicitly noted the factual contrast with cases where there was “no dispute that the insured was aware that the cause of the damage was of a type covered by the insurance policy.” *Id.* Unlike *Bensen*, in this case, the Plaintiffs were aware almost immediately after the hurricane that there was damage caused by the hurricane.

Accordingly, because Plaintiffs were on notice of the damage and the cause of the damage to their property shortly after the hurricane in September of 2017, and waited nineteen months to report the claim to the Defendant, notice was untimely. Because notice was untimely, prejudice to the Defendant is presumed and Plaintiffs were required to overcome this presumption. *See LoBello*, 152 So.3d at 599. They have not.

As a result of Plaintiffs’ late notice, Edison was not able to inspect the property until twenty-two months after Hurricane Irma. By that time, Plaintiffs had already made multiple repairs. As a result of the passage of time and the work that had already been done before the Defendant was already put on notice, Edison’s inspector was unable to determine whether the damage was caused by Hurricane Irma.

In response to the motion for summary judgment, Plaintiffs seem to contend that because the Defendant’s expert engineer was able to opine that the damages were not caused by Hurricane Irma, Defendant was not prejudiced. However, even if Defendant’s were still able to determine the cause of the damage despite the late notice, Plaintiffs’ have wholly failed to overcome the prejudice to Defendant’s ability to determine the extent of the damage. *De La Rosa v. Florida Peninsula Ins. Co.*, 246 So.3d 438 (Fla. 4th DCA 2018) [43 Fla. L. Weekly D1116a] (“While in this case there may be disputed issues of fact as to whether the insurer was prejudiced in determining the cause of the incident, the record forecloses the insured’s ability to overcome the prejudice to the insurer in evaluating the extent of the damage because of the delay in making the claim.”); *Kramer*, 95 So.3d at 307 (finding that the insurer was prejudiced by the delay where the resetting of the roof tiles prior to the insurer’s engineer’s inspection rendered it impossible to discern the full extent of the damages that existed immediately after the hurricane).

Here, multiple repairs were made to the property prior to the insurer being put on notice. Plaintiffs did not provide documentation of the scope of these repairs. Even Plaintiffs’ own engineer agreed that he could not determine the extent of the damage caused by Hurricane Irma due to the repairs that were completed after the storm.

For all of these reasons, the Court finds that Plaintiffs have failed to rebut the presumption of prejudice to the Defendant due to Plaintiffs’ untimely notice and, therefore, summary judgment is required. Accordingly, it is hereby **ORDERED** and **ADJUDGED**:

1. Defendant's Second Amended Motion for Summary Judgment filed on September 3, 2024, is **GRANTED**.

2. Final Judgment is entered in favor of Defendant, **EDISON INSURANCE COMPANY**.

3. Plaintiffs, **THOMAS O'DEA AND ANN MARIE O'DEA**, shall take nothing from this action and Defendant shall go hence without day.

4. The Court reserves jurisdiction to determine entitlement to, and the amount of, reasonable attorney's fees and costs, and to enter such other orders as may be necessary to enforce this Final Judgment.

¹In their response, Plaintiffs' contend that because the insurance policy at issue also contained a provision that stated that a claim caused by a hurricane is barred unless notice of the claim is given within "3 years after the date the hurricane first made landfall in Florida," Plaintiffs had three years to report the claim regardless of the "prompt notice" provision. This argument improperly conflates these separate policy conditions, and has been soundly rejected in Florida. See *Security First Ins. Co. v. Visca*, 387 So.3d 313, n.1 (Fla. 4th DCA 2024) [49 Fla. L. Weekly D1185a] ("Florida courts have held that such policy language sets an outer limit for an insured to give notice of a hurricane loss, but does not establish a presumption that notice is timely if given inside that three-year window. In other words, as the three-year window runs, the insured's duty to provide "prompt notice" to the insurer is unaffected."); *Navarro v. Citizens Prop. Ins. Co.*, 353 So.3d 1276, 1280 (Fla. 3d. DCA 2023) [48 Fla. L. Weekly D152b] ("Read together, the clauses require the insured to file any hurricane-related claim within three years of the storm, and, for viable claims, act swiftly upon discovering damages.").

²Edison has also claimed that Plaintiffs' were involved in a "scheme of insurance fraud," along with other members of the homeowner's association, relating to this claim. In their earlier motion for summary judgment, Edison alleged that "because all of the roofs in the community were reaching the end of their useful life, and because the HOA's roofreserve was drastically underfunded, all members of the HOA were advised to make insurance claims with their own, respective property insurance companies, claiming damage due to Hurricane Irma." The Court denied that motion for summary judgment based on fraud on June 28, 2024. For the purposes of the instant motion, the Court does not have to find that the Plaintiffs' had fraudulent intent in order to determine that they failed to provide timely notice as was required under the policy.

* * *

Insurance—Homeowners—Coverage—Conditions precedent—Post-loss obligations—Prompt notice—Insureds were in material breach of contractual duty to provide prompt notice of loss where it is undisputed that insureds were aware of damage to home shortly after hurricane made landfall but did not notify insurer until ten months later, and that insureds allowed 9 - 17 roofers to inspect roof and repaired damage to living room ceiling before claim was reported—Because damage to roof tiles caused by foot traffic can mirror wind damage, there is no genuine issue of material fact that insureds cannot rebut presumption of prejudice to insurer arising from delayed notice—Summary judgment entered in favor of insurer

ROBERT ATKINS and JULIA ATKINS, Plaintiffs, v. FLORIDA PENINSULA INSURANCE COMPANY, Defendant. Circuit Court, 20th Judicial Circuit in and for Collier County. Case No. 21-CA-001170. December 19, 2022. Lauren L. Brodie, Judge. Counsel: Ron Haynes, Ligor Law Group, for Plaintiff. Donald Lavigne, Salehi, Boyer, Lavigne Lombana, P.A., for Defendant.

FINAL ORDER

GRANTING DEFENDANT'S MOTION FOR FINAL SUMMARY JUDGMENT DUE TO PREJUDICE

THIS CAUSE having come before the Court on Defendant's Motion for Final Summary Judgment Due to Prejudice, and the Court having considered the filings of both parties, reviewed summary judgment evidence and applicable case law, heard arguments of counsel, and otherwise being fully advised, it is hereby **ORDERED and ADJUDGED** that Defendant's Motion for Final Summary Judgment Due to Prejudice is **GRANTED**. The Court makes the following findings of fact and conclusions of law in support of its ruling:

RECORD EVIDENCE

1. This is a first party, residential property insurance case.

2. The operative Complaint alleges breach of contract, and is based on a policy of insurance, #FPH4139149-02 (hereinafter the "Policy") that Defendant provided to Robert Atkins and Julie Atkins (hereinafter the "Plaintiffs") in reference to the property located at 3083 Santorini Court, Naples, FL 34101 (hereinafter the "Property").

3. Said Policy was in effect as of September 10, 2017 (Hurricane Irma), which is the date of loss being alleged in this case.

4. However, per the Policy, the Plaintiffs have several "Duties After Loss," which must be performed for coverage to be provided; one of which was to provide prompt notice of the loss to the Defendant.

5. Moreover, the Policy further indicates that no action can be brought against the Defendant unless the Plaintiffs have complied with all of the terms of the Policy.

6. Here, the substantive facts are as follows:

a. The Plaintiffs knew that there was damage to their Property immediately after Hurricane Irma (which occurred on September 10, 2017), including damage to the roof.

b. The Plaintiffs did not report the subject claim to the Defendant until July 12, 2018, more than ten (10) months after the loss became known to the Plaintiffs.

c. In those ten (10) months, at least nine (9) and as many as seventeen (17) different roofers inspected the Property's roof.

d. Subsequently, Defendant and Plaintiffs each retained separate "experts" to inspect the roof and opine as to cause and origin of damage (as only the damage directly caused by the reported loss—Hurricane Irma—would be covered).

e. Both experts found that there were multiple lifted, cracked and chipped tiles on the roof at the time of their respective inspections (Defendant's expert's inspection occurred on September 13, 2018, and Plaintiff's expert's inspection occurred on or around September 14, 2020).

f. However, Plaintiffs' expert testified that he would have no way of knowing if the lifted tiles were caused by Hurricane Irma versus having been done by one of the roofers who inspected the roof prior to the claim being reported to the Defendant.

g. Plaintiffs' expert further testified that he could not rule out that the cracked and chipped roof tiles were caused by foot traffic rather than Hurricane Irma.

h. Plaintiffs' expert was also not aware that there were several cracked/broken roof tiles, which pre-existed Hurricane Irma.

i. Plaintiff's expert stated that since these roof tiles were mechanically fastened, a single cracked roof tile could not be replaced without having to remove and replace every tile above the damaged tile. He further opined that, given the number of cracked tiles in this case, it would not be financially practicable to repair the roof versus replace it. Accordingly, the extent of loss-related damage was a material factor in evaluating whether the roof could be repaired versus replaced, as well as what the associated cost would be to return the roof to its pre-loss condition.

j. Moreover, Defendant's expert found that multiple cracked tiles on the roof were indicative of foot traffic, which he opined can mimic other causes of damage.

k. Also, as of the time of Defendant's expert's inspection, the Insured had already begun to repair a stain to the ceiling in the living room.

l. The Insured did not have any photographs of what said stain looked like before the repair began; as such, Defendant's expert was unable to comment as to the condition of this portion of the ceiling prior to repair.

m. Defendant's Corporate Representative testified that Defendant was prejudiced in its ability to investigate and adjust the claim due to the Insured's late reporting, the multiple individuals who inspected the

roof in the meantime, and the necessity of having to rely on an “expert” inspection that could not take place until a year after the reported date of loss.

LEGAL STANDARD

Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to judgment as a matter of law. *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126 (Fla. 2000) [25 Fla. L. Weekly S390a]. A party is entitled to summary judgment as a matter of law if “the pleadings, depositions, answers to interrogatories, and admissions on file together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *F. R. Civ. P. 1.510(a)*.

The Florida Supreme Court amended Florida Rule of Civil Procedure 1.510 to “align the State’s summary judgment standard with that of the federal court.” *In re Amends. to Fla. Rule of Civ. Procedure 1.510*, 317 So. 3d 72, (Fla. 2021) [46 Fla. L. Weekly S95a]. The new summary judgment standard will continue to be guided by the *Celotex* Trilogy and is fundamentally similar to the standard for directed verdict. *In re Amends. to Fla. Rule of Civ. Procedure 1.510*, 309 So. 3d 192 (Fla. 2020) [46 Fla. L. Weekly S6a]. The movant does not bear the burden of disproving the nonmovant’s case but may either disprove it or, alternatively, show that the nonmoving party lacks the evidence to prove its case. To survive a motion for summary judgment, the nonmoving party must come forward with facts contradicting those submitted by the movant and demonstrate a real issue between the parties. *Pritchard v. Peppercorn and Peppercorn, Inc.*, 96 So. 2d 769, (Fla. 1957). There is no express or implied requirement that the moving party support its motion with affidavits or other similar materials *negating* the opponent’s claim. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) *citing Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

Ultimately, for the purpose of summary judgment, the test as to what constitutes a genuine issue of material fact is “whether the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* “If the [nonmovant’s] evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” *Id.*

CONCLUSIONS OF LAW

Under Florida law, “the failure of an insured to give timely notice of loss in contravention of a policy provision is a legal basis for the denial of recovery under the policy.” *Ideal Mut. Ins. Co. v. Waldrep*, 400 So.2d 782 (Fla. 3d DCA 1981). If the undisputed evidence will not support a finding that the insured gave notice to the insurer as soon as practicable, then a finding that notice was timely given is unsupported. *Id.* An insured’s failure to comply with a condition precedent of a policy—such as Plaintiffs’ failure to provide prompt notice of the claimed loss—prior to filing suit constitutes a material breach of the policy and thereby relieves an insurer of its duties under said policy. *Hunt v. State Farm Florida Ins. Co.*, 145 So. 3d 210 (Fla. 4th DCA 2014) [39 Fla. L. Weekly D1762b].

Untimely notice constitutes a breach of the notice requirement because the insurer is deprived of its contractual right to timely investigate a claimed loss. *Bankers Ins. Co. v. Macias*, 475 So. 2d at 1216 (Fla. 1985). An insured’s duty to notify their insurer of a potential loss is triggered once there has been an event “that should lead a reasonable and prudent [person] to believe that a claim for damages would arise.” *Laquer v. Citizens Property Ins. Corp.*, 167 So. 3d 470 (Fla. 3d DCA 2015) [40 Fla. L. Weekly D1186a]. Courts are guided by the general principle that “notice should be given with reasonable dispatch and within a reasonable time in view of all of the facts and circumstances of the particular case.” *Id.*

In Florida, if an insured breaches the notice provision of his homeowner’s insurance policy, “prejudice to the insurer will be presumed, but may be rebutted by a showing that the insurer has not been prejudiced by the lack of notice.” *De La Rosa v. Florida Peninsula Ins. Co.*, Fla. 4th DCA 2018 [43 Fla. L. Weekly D1116a]. Unless the Insured can overcome this presumption by showing that the insurer suffered *no* prejudice from non-compliance with the conditions of their insurance policy, final summary judgment must be granted in favor of the insurer.

COURT’S FINDINGS IN THE INSTANT CASE

Based on the record evidence provided above, the current summary judgment standard, and applicable case law, the Court makes the following findings:

1. Defendant is entitled to assert the Affirmative Defenses that there is no coverage for the subject claim due to Plaintiffs’ failure to satisfy their contractual “Duties After Loss,” even though, pre-suit, Defendant opened coverage for the claim. *See Edwards v. SafePoint Ins. Co.*, 318 So. 3d 13 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D1086a].

2. Although Plaintiffs knew there was damage to their Property immediately after Hurricane Irma, they waited ten (10) months to report the claim to the Defendant, during which time they allowed at least nine (9) and as many as seventeen (17) individuals to inspect and potentially damage the roof. Also, Plaintiffs repaired loss-related damage to the ceiling in the living room before the claim was reported. For these reasons, as a matter of law, this was a material breach of Plaintiffs’ contractual duty to provide prompt notice of the loss to the Defendant.

3. Because tile roof damage caused by foot traffic/manual lifting can mirror those damages caused by wind, no reasonable juror could find that Defendant was not prejudiced in its ability to determine the cause and origin of roof damage. Stated otherwise, there is no genuine issue of material fact that Plaintiff cannot rebut the presumption of prejudice against the Defendant in this regard.

4. Because tile roof damage caused by foot traffic/manual lifting can mirror damages caused by wind, no reasonable juror could find that Defendant was not prejudiced in its ability to determine the extent of damage to the roof, which may have been caused by Hurricane Irma. Determining the extent of loss-related damage was a material factor in evaluating whether the roof could be repaired versus replaced, and what the associated cost would be to return the roof to its pre-loss condition. Stated otherwise, there is no genuine issue of material fact that Plaintiff cannot rebut the presumption of prejudice against the Defendant in this regard. *See De La Rosa v. Florida Peninsula Ins. Co.*, 246 So. 3d 438 (Fla. 4th DCA 2018) [43 Fla. L. Weekly D1116a].

Accordingly, it is hereby

ORDERED and ADJUDGED:

1. Defendant’s Motion for Final Summary Judgment Due to Prejudice is **GRANTED**.

2. Final Judgment is entered in favor of Defendant, Florida Peninsula Insurance Company.

3. Plaintiffs, Robert Atkins and Julie Atkins, shall take nothing from this action and Defendant shall go hence without day.

4. The Court reserves jurisdiction to determine entitlement to, and the amount of, reasonable attorney’s fees and costs, and to enter such other orders as may be necessary to enforce this Final Judgment.

* * *

Insurance—Homeowners—Coverage—Property damage—Insurer was not in breach of insurance contract when suit was filed where it is undisputed that insurer issued multiple payments to insureds based on its determination of actual cash value of direct physical damage to property in accordance with policy terms and that insureds had not submitted documentation that would entitle them to any additional money under policy at time suit was filed—Summary judgment is entered in favor of insurer

RACHAEL MAJOR and MICHAEL BLUM, Plaintiffs, v. EDISON INSURANCE COMPANY, Defendant. Circuit Court, 20th Judicial Circuit in and for Lee County. Case No. 24-CA-1740. August 28, 2025. Rachael S. Loukonen, Judge. Counsel: Erik D. Diener, Diener Law Firm, for Plaintiffs. Donald Lavigne, Salehi, Boyer, Lavigne Lombana, P.A., for Defendant.

ORDER GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT AND ENTRY OF FINAL JUDGMENT IN FAVOR OF DEFENDANT

THIS CAUSE having come before the Court at hearing on August 18, 2025 on Defendant’s Motion for Final Summary Judgment, filed on April 10, 2025 (hereinafter referred to as “Defendant’s Motion”), and the Court having reviewed Defendant’s Motion and Plaintiffs’ Response thereto, filed May 20, 2025 (hereinafter referred to as “Plaintiffs’ Response”), and all record evidence and other relevant filings of record, and the Court having heard oral arguments from Donald Lavigne, Esq. on behalf of Defendant and Erik Diener on behalf of Plaintiffs and otherwise being fully advised in the premises, it is,

ORDERED AND ADJUDGED:

The Defendant’s Motion is *GRANTED*.

The Court finds that Defendant has shown the nonexistence of any genuine dispute as to any material fact based on the record evidence and legal authority presented, and that all reasonable inferences to be drawn uncontrovertibly establish that Defendant is entitled to final judgment as a matter of law, for the following reasons:

1. In Florida, rule 1.510 “requires summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” See, *In Re: Amendments to Florida Rule of Civil Procedure 1.510*, No. SC20-1490 (Dec. 31, 2020) [46 Fla. L. Weekly S6a] (per curiam) (internal quotations and citations omitted). In ruling, this Court considered “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson v. Liberty Lobby, Inc.*, 411 U.S. 242, 251-52 (1986). “When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 550 U.S. 371, 380 (2007) [20 Fla. L. Weekly Fed. S225a]. A party opposing summary judgment “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

2. This is a breach of contract action involving a first party-property homeowner’s insurance claim dispute wherein the reported date of loss is September 28, 2022.

3. Based on the undisputed record evidence and uncontested material facts relevant to this summary judgment proceeding, it is conclusively established that prior to suit, Plaintiff made a claim by reporting the loss event to Defendant on or about September 30, 2022, which was assigned claim number EDI951255. Upon investigating Plaintiffs’ claim, which included an inspection of the Plaintiffs’ Property (the “Property”), Defendant issued an initial coverage determination to Plaintiffs, which extended payments based on its assessment of the Actual Cash Value (“ACV”) of covered repairs, in

the amount of \$19,816.49, after the application of the Policy’s \$6,442.00 deductible.

4. On or about February 1, 2023, Defendant received an estimate prepared by Plaintiff’s Public Adjuster, Steller Public Adjusting Services, totaling \$240,569.80 (the “Public Adjuster’s Estimate”), which included matching damages, law and ordinance damages, and damages incidental to direct physical loss without any deduction for depreciation.

5. After Defendant reviewed the additional documentation submitted by Plaintiffs and following an additional inspection of the Property, Defendant found additional coverage and issued a supplemental payment totaling \$5,417.95 on or about May 11, 2023.

6. It is undisputed that, prior to filing suit against the Defendant on February 29, 2024, Plaintiffs did not submit any additional documentation showing that repair work was performed and expenses were incurred, a signed contract with a licensed contractor, or a competing estimate of direct physical damage caused by Hurricane Ian.

7. Plaintiffs offered no record evidence that any documentation was submitted prior to filing suit on February 29, 2024, that would substantiate additional payment under the Policy as of the time that the lawsuit was filed.

8. “It is well settled under Florida law that a Plaintiff’s right of action for benefits under a contract of insurance is limited to those benefits that have accrued at the time Plaintiff institutes the action.” See *Wolk v. National Union Fire Ins. Co. of Pittsburgh, PA*, 2012 WL 12952758 (M.D. Fla. 2012).

9. Because there is no genuine dispute of material fact that Defendant did not, and is not in, breach of the clear and unambiguous terms of the subject insurance policy contract, Defendant is entitled to final summary judgment accordingly.

10. Defendant’s instant Motion moves for final summary judgment in its favor arguing that it could not have conceivably breached the policy contract by acknowledging coverage for Plaintiffs’ claim and issuing undisputed payments to Plaintiffs pursuant to the terms of the policy, and at no time thereafter, or prior to this suit being filed, did the Plaintiffs ever submit any additional documentation (other than the Public Adjuster’s Estimate) so as to obligate Defendant to make any additional payments pursuant to the Policy’s clear and unambiguous language.

11. Defendant could not have been in breach of the insurance policy contract as of the time of this suit being filed.

12. Under Florida law, “[t]he elements of a breach of contract action are (1) a valid contract; (2) a material breach; and (3) damages.”¹ The burden of proving these three elements lies with Plaintiff.² Without evidence of damages, Plaintiffs cannot satisfy its burden of proving all three elements of this breach of contract action.

13. In this case, it is undisputed that Defendant issued multiple payments to Plaintiffs based on its determination of actual cash value of direct physical damage in accordance with the terms of the policy. It is further undisputed that Plaintiffs have failed to submit documentation that would entitle the Plaintiffs to additional money under the Policy as of the time that the lawsuit was filed.

14. Plaintiffs filed suit on February 29, 2024, at which point, the right of action for benefits under a contract of insurance is limited to those benefits that had accrued at that time.³ This court finds that as of that date, the Defendant was not obligated to make any additional payments pursuant to the plain language of the policy.

15. In *Orlando Sports Stadium, Inc.*, the Fourth District Court of Appeal stated that:

A cause of action must exist and be complete before an action can be commenced or, as sometimes stated, the existence or non-existence of a cause of action is commonly dependent upon the state of facts existing when the action was begun. As a general rule the plaintiff

may not be permitted to cure the defect of non-existence of a cause of action when suit was begun, by amendment of his pleadings to cover subsequently accruing rights.⁴

16. Because there is no genuine dispute of material fact that Defendant did not, and is not in, breach of the clear and unambiguous terms of the subject insurance contract as of the time that the lawsuit was filed, Defendant is entitled to final summary judgment accordingly.

The Court enters final judgment in favor of Defendant, EDISON INSURANCE COMPANY, and against Plaintiffs, RACHEL MAJOR AND MICHAEL BLUM; the Plaintiffs shall take nothing in this action, and the Defendant may go without delay; and the Court reserves jurisdiction to determine Defendant's entitlement to attorney's fees and costs pursuant to §768.79, §57.105, and/or §57.041, Fla. Stat. and applicable Florida law.

¹*Beck v. Lazard Freres & Co., LLC*, 175 F.3d 913, 914 (11th Cir. 1999).

²See *Carpenter Contractors of America, Inc. v. Fastener Corp. of America, Inc.*, 611 So.2d 564, 565. (Fla. 4th DCA 1992); *Xiang v. Ocala Heart Clinic II, LLC*, 379 So.3d 561, 565 (Fla. 5th DCA 2024) [49 Fla. L. Weekly D297b].

³*Wolk v. National Union Fire Ins. Co. of Pittsburgh, PA*, 2012 WL 12952758 (M.D. Fla. 2012) (citations omitted); see also, *Aetna Life Ins. Co. v. Smith*, 345 So.2d 784 (Fla. 4th DCA 1977) (stating "the right of action based upon an insurer's failure to pay [] indemnity or benefits is limited to the installments which have accrued at the institution of the action"); *Klein v. John Hancock Mut. Life Ins. Co.*, 683 F.2d 358 (11th Cir. 1982); *Levenson v. Motor Union (Aviation) Orion Ins. Co.*, 176 So.2d 125 (Fla. 3d DCA 1965); see also, e.g., *Monsanto Co. v. Fuqua*, 280 So.2d 496 (Fla. 1st DCA 1973), cert. denied, 286 So.2d 205 (Fla. 1973); *Cruz v. Union Gen. Ins.*, 586 So.2d 91 (Fla. 3d DCA 1991); *Orlando Sports Stadium, Inc. v. Sentinel Star Co.*, 316 So.2d 607 (Fla. 4th DCA 1975).

⁴*Orlando Sports Stadium, Inc.* at 610. see also, *Hasam Realty Corp. v. Dade County*, 178 So.2d 747 (Fla. 3d DCA 1965) ("If a plaintiff has no valid cause of action on the facts existing at the time of filing suit, the defect cannot ordinarily be remedied by the accrual of one while the suit is pending. We do not find that this rule has been changed by the Rules of Civil Procedure which provide for amended or supplemental pleadings."); see also *Condor West Investments, LLC v. Cannabis Growth Indstr., Inc.*, 279 So.3d 1219 (Fla. 4th DCA 2019) [44 Fla. L. Weekly D2350a] ("[N]either a supplemental pleading nor an amended pleading can be used to create a cause of action where one did not exist at the inception of the suit.") (citations omitted).

* * *

COUNTY COURTS

Insurance—Personal injury protection—Coverage—Medical expenses—Notice of loss—Claim form that omitted professional license number of medical provider did not provide notice of covered loss—Cases holding that professional license number of provider is not material provision construed No-Fault statute prior to 2012 amendment making license number a mandatory and material provision of claim form—Any argument that insurer waived defense or is estopped from asserting defense due to payment of charges is without merit

COMPLETE MEDICAL SERVICES OF NW FLORIDA, INC., a/a/o Walter McQueen, Plaintiff, v. MGA INSURANCE COMPANY, INC., Defendant. County Court, 1st Judicial Circuit in and for Escambia County. Case No. 2024-SC-006455. Division V. September 30, 2025. Barry Dickson, Jr., Judge. Counsel: Adam Saben, Shuster, Saben & Estevez, P.A., Jacksonville, for Plaintiff. James C. Rinaman, III, Dutton Law Group, Jacksonville, for Defendant.

FINAL ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE came before the Court on September 18, 2025 on Defendant's Motion for Summary Judgment and Plaintiff's Opposing Motion for Summary Judgment. After having heard arguments of counsel, considered all Motions and Responses, and being otherwise duly advised in the premises, the Court finds as follows:

According Florida Statutes §627.736(5)(d)(post-2012), in order for an insurer to have been provided written notice of a covered loss, the medical provider must include the professional license number of the medical provider rendering treatment in the line or space provided for "Signature of Physician or Supplier, Including Degrees or Credentials." Section (5)(d) states in pertinent part:

All statements and bills for medical services rendered by any physician, hospital, clinic, or other person or institution shall be submitted to the insurer on a properly completed Centers for Medicare and Medicaid Services (CMS) 1500 form, UB 92 forms, or any other standard form approved by the office or adopted by the commission for purposes of this paragraph. . . . All providers, other than hospitals, must include on the applicable claim form the professional license number of the provider in the line or space provided for "Signature of Physician or Supplier, Including Degrees or Credentials." . . . For purposes of paragraph (4)(b), an insurer shall not be considered to have been furnished with notice of the amount of covered loss or medical bills due unless the statements or bills comply with this paragraph, and are properly completed in their entirety as to all material provisions, with all relevant information being provided therein.

§627.736(5)(d), Fla. Stat. (emphasis added).

If the language of a statute is clear and unambiguous, the legislative intent must be derived from the words used without involving construction or speculating as to what the Legislature intended. *Nationwide Mut. Fire Ins. Co. v. Southeast Diagnostics, Inc.*, 766 So. 2d 229 (Fla. 4th DCA 2000) [25 Fla. L. Weekly D316a]. When the language of a statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation; the statute must be given its plain and obvious meaning. *State v. Warren*, 796 So. 2d 489 (Fla. 2001) [26 Fla. L. Weekly S434b]. In complying with the rules of statutory construction, statutory language is not to be assumed superfluous; a statute must be construed so as to give meaning to all words and phrases contained within that statute. *Terrinoni v. Westward Ho!*, 418 So. 2d 1143, 1146 (Fla. 1st DCA 1982).

This Court recognizes that there are District Court rulings which have found that the professional license number of a provider is not a material provision; however, these cases construed the No-Fault

statute prior to the 2012 amendment. *United Auto. Ins. Co. v. Professional Med. Grp., Inc.*, 26 So. 3d 21 (Fla. 3d DCA 2009) [34 Fla. L. Weekly D2500a]; *see also* *USAA Cas. Ins. Co. v. Pembroke Pines MRI, Inc.*, 31 So. 3d 234, 238 (Fla. 4th DCA 2010) [35 Fla. L. Weekly D613b]; *GEICO Gen. Ins. Co. v. Tarpon Total Health Care*, 86 So. 3d 585 (Fla. 2d DCA 2012) [37 Fla. L. Weekly D1027a]. This Court is unaware of any appellate rulings on this issue after the 2012 amendment to the No-Fault statute.

Prior to the 2012 amendment, subsection (5) read, "All providers other than hospitals *shall* include on the applicable claim form the professional license number of the provider in the line or space provided for 'Signature of Physician or Supplier, Including Degrees or Credentials.'" After the Second District Court's decision in *Tarpon Total Health Care, supra.*, the Legislature amended subsection (5) to state that a provider's professional license number must be included on the CMS form.

When the legislature amends a statute, it is presumed that the legislature intends the statute to have a different meaning than that accorded to prior to the amendment. *Capella v. City of Gainesville*, 377 So. 2d 658, 660 (Fla. 1979). Further, a "change in language is indicative of the legislature's intent to change the meaning of this statutory provision." *Id.* The Second, Third, and Fourth District court's previous interpretation of section (5) was that the license number provision was not a material provision.

However, after these Courts ruled, the Legislature amended section (5) to specifically state that the license number **MUST** be included in Block 31 of the CMS 1500 form. The use of the word "must" rather than "shall" in the 2012 amendment of Florida Statute §627.736(5)(d) confirms that the legislature's intent is clear, the inclusion of a professional license number is a mandatory and material provision.

Plaintiff argues that its CMS 1500 form was substantially "properly completed," as defined by statute. Pursuant to §627.732(13), "[p]roperly completed" means providing truthful, substantially complete, and substantially accurate responses **as to all material elements** to each applicable request for information or statement by a means that may lawfully be provided and that complies with this section, or as agreed by the parties." CMS 1500 forms have thirty-three (33) sections to complete, not including sub-parts. However, out of the thirty-three (33) sections, the Legislature chose to specifically address only one section as a mandatory provision. This cannot be ignored by this Court.

The Legislature's intent is clear. By specifically addressing the provider's professional license number and to include exactly where it must go, the Legislature intended the professional license number to be a material provision. Therefore, Plaintiff's CMS 1500 form cannot be found to be "properly completed" since the form did not include the provider's professional license. Accepting Plaintiff's argument would allow providers to disregard the mandatory requirement.

Further, any argument that Defendant has waived this defense, or is estopped from asserting this defense, is without merit. Section 627.736(4)(b) specifically states that an insurer does not waive a deficiency in Plaintiff's CMS 1500 form by issuing payment and that a violation of subsection (5) can be asserted **at any time**. Specifically, §(4)(b) states in pertinent part:

Personal injury protection insurance benefits paid pursuant to this section are overdue if not paid within 30 days **after the insurer is furnished written notice of the fact of a covered loss** and of the amount of same. . . . **This paragraph does not preclude or limit the**

ability of the insurer to assert that the claim was . . . in violation of, subsection (5). Such assertion may be made at any time, including after payment of the claim or after the 30-day period for payment set forth in this paragraph. (emphasis added).

Here, Plaintiff's violation of subsection (5) was Plaintiff's failure to include the mandatory material professional license number of the rendering physician. The statutory language of §627.736 (5) and (4) is clear and unambiguous. The CMS-1500 submitted by Plaintiff **must** include their professional license number in the line/space provided for "Signature of Physician or supplier, including degrees or Credentials." If a provider does not include its professional license number on its CMS 1500 form, an insurer is not charged with notice of a covered loss.

Even if an insurer issues payment on a deficient CMS 1500 form, it has not waived its right to challenge that it was not on proper notice of a covered loss due to a violation of subsection (5). Several County, Circuit, and District Courts have analyzed Subsection (4)(b) and found that waiver is not applicable to claims that are in violation of subsection (5), or that are not reasonable, related, or necessary. *See Advanced Spine & Injury Center a/o Carmes Arenas v. Progressive Select Ins. Co.*, 14 Fla. L. Weekly Supp. 893b (Pinellas Cty. Ct. 2007) (finding that the defendant did not waive its right to assert the deficiency of the HCFA forms . . . since the deficiency may be asserted even after payment is made or after the 30 day time period for payment has expired."); *see also Northwoods Sports, Med & Physical Rehab., Inc. v. State Farm Mut. Auto. Ins. Co.*, 137 So. 3d 1049, 1057 (Fla. 4th DCA 2014) [39 Fla. L. Weekly D491a] (A ruling that an insurer is permitted to defend a suit by the provider at any time for additional amounts on the grounds of reasonableness, relatedness and medical necessity.); *State Farm Mut. Auto. Ins. Co. v. Advanced Chiropractic & Med. Ctr. Corp. a/o Alan Watkins*, 27 Fla. L. Weekly Supp. 235a (Fla. 17th Cir. App. 2019) ("State Farm is permitted to contest relatedness or medical necessity **at any time.**"); *State Farm Mut. Auto. Ins. Co. v. Millennium Radiology, LLC a/o Anjelina Fortier*, 27 Fla. L. Weekly Supp. 137a (Fla. 17th Cir. App. 2019) ("Notwithstanding its payment of a reduced amount of the claim, nothing in section 627.736(4)(b)(6), Florida Statutes, precludes State Farm from contesting reasonableness, relatedness, or necessity **at any time.**") *Geico Indem. Co. v. Central Fla. Chiropractic Care a/o David Cherry*, 26 Fla. L. Weekly Supp. 613a (Fla. 9th Cir. App. 2017) ("Section 627.736(4)(b)6., Florida Statutes clearly allows the insurer to raise challenges to a PIP claim after the 30 days for paying a claim have passed."); *Coral Gables Chiropractic PLLC v. United Auto. Ins. Co.*, 199 So. 3d 292, 295 (Fla. 3d DCA 2016) [41 Fla. L. Weekly D687a] ("Because section 627.736(4)(b)(6) allows an insurer to dispute the reasonableness of charges at any time, **including after payment of the claim**, the fact that UAIC issued payments in amounts \$2,873.12 for PIP benefits does not dispose of the issue of the charges' reasonableness."); *Florida Med. & Injury Ctr., Inc. v. Progressive Express Ins. Co.*, 29 So. 3d 329, 340 (Fla. 5th DCA 2010) [35 Fla. L. Weekly D215b] (holding that § 627.736(4)(b) is meant to allow insurers to challenge a claim as unrelated, not medically necessary, or unreasonable "**at any time, even after payment**"); *State Farm Mut. Auto. Ins. Co. v. Bruce Chiropractic & Comprehensive Care, PLLC*, 23 Fla. L. Weekly Supp. 890a (Fla. 5th Cir. App. 2016) (holding that plain reading of statute at issue shows that State Farm had a right to contest at any time that the claim was unrelated, not medically necessary, or that the charges were not reasonable, and that the county court erred in its determination that State Farm had waived this right by paying the bills at a reduced amount before commencement of the lawsuit).

Plaintiff asks this Court to find waiver when it knew or should have

known that waiver is inapplicable to violations of subsection (5). Plaintiff also argues the words "shall" and "must" are synonyms. However, the Legislature changed the language after the district court appellate opinions cited above had been published. This Court gives meaning to that material and mandatory change. Further, the statute is clear, Defendant can challenge a violation of subsection (5) **at any time, even after payment**. Any argument regarding waiver or estoppel is clearly inapplicable by law when the PIP Statute specifically states that an insurer can challenge a provider pursuant to subsection (5) at any time.

Based on the foregoing, it is **ORDERED and ADJUDGED** that Defendant's Motion for Summary Judgment is **GRANTED**, with Final Judgment for Defendant, and Plaintiff shall go hence without day.

* * *

Insurance—Attorney's fees—Prevailing insurer

NOLAND'S ROOFING, INC, a/o Donald Grant, Plaintiff, v. SAFE HARBOR INSURANCE COMPANY, Defendant. County Court, 5th Judicial Circuit in and for Lake County. Case No. 2017CC002800. September 8, 2022. Jason Nimeth, Senior Judge. Counsel: Katie Monroe, Hillegas Monroe, P.A., for Plaintiff. Donald Lavigne, Salehi, Boyer, Lavigne Lombana, P.A., Coral Gables, for Defendant.

ORDER ON DEFENDANT'S MOTION FOR SANCTIONS AND ATTORNEY'S FEES UNDER FLORIDA STATUTE 57.105 AND DEFENDANT'S MOTION FOR ENTITLEMENT TO ATTORNEY'S FEES AND COSTS

THIS CAUSE having come on to be heard on the Defendant's Motion for Sanctions and Attorney's Fees Under Florida Statute 57.105 and Defendant's Motion for Entitlement to Attorney's Fees and Costs, the Court having heard argument of counsel for the parties and being otherwise fully advised in the premises, it is hereby **ORDERED** that:

1. Defendant's Motion for Sanctions and Attorney's Fees Under Florida Statute 57.105 is **GRANTED**.
2. Defendant's Motion for Entitlement to Attorney's Fees and Costs is hereby pursuant to Florida Statute §768.79 is **GRANTED**.
3. Defendant shall file another Motion to Determine the reasonable amount of attorney's fees and costs to be paid by the Plaintiff.
4. The Court recommends that any hearing on Defendant's Motion to Determine the Reasonable Amount of Attorney's Fees and Costs shall be set following the outcome of the appeal currently pending in the 5th DCA.
5. Based on the foregoing recommendation, the Court acknowledges that Defendant does not waive and/or forego any right or arguments it has or may have as it pertains to the reasonable amount of attorney's fees and costs to be paid by the Plaintiff.

* * *

Criminal law—Possession of marijuana—Medical marijuana—Motion to dismiss based on exception to general prohibition on possession of marijuana for qualified patients who possess medical marijuana card is denied—Although defendant is qualified patient and purchased permitted amount of marijuana from treatment center pursuant to physician's certification, defendant did not keep marijuana in its original packaging as is required by exception

STATE OF FLORIDA, v. JAYDEN BARTLEY, Defendant. County Court, 2nd Judicial Circuit in and for Wakulla County. Case No. 24-MM-251. November 13, 2024. Brian D. Miller, Judge. Counsel: Harrison G. Broer, Assistant State Attorney, Second Judicial Circuit, Crawfordville, for State. Anabelle Dias, for Defendant.

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

THIS CAUSE comes before the Court on the Defendant's Motion

to Dismiss (hereafter “Motion”). After reviewing the Motion, the State’s demurrer, considering the argument of counsel for the State and the Defendant at a hearing held on November 12, 2024, and being fully advised in the premises, the Court DENIES the Defendant’s Motion for the reasons stated below:

Factual Background

1. The State and Defendant stipulated to the facts of this case, as well as the facts alleged in their respective Motion and demurrer. The Defendant is a qualifying patient for medicinal marijuana pursuant to Article X, § 29 of the Florida Constitution, and holds a valid medical marijuana card issued by the Florida Department of Health. On September 6, 2024, the Defendant purchased 28g of marijuana from a licensed medical marijuana treatment center. On September 10, 2024, law enforcement stopped a vehicle in which the Defendant was a passenger. Trooper White, the law enforcement officer who initiated the stop, detected the odor of fresh and burnt cannabis emanating from the vehicle, and observed loose cannabis spread throughout the vehicle. Trooper White detained both the driver and the Defendant and determined that the Defendant possessed a valid medical marijuana card. Trooper White then conducted a search of the vehicle, which resulted in the discovery of 11g of cannabis in clear cellophane plastic wrap in the center console of the vehicle. Trooper White searched the Defendant and discovered approximately 2g of cannabis in clear cellophane plastic wrap in the Defendant’s back right pocket. The State admitted a photo of the 2g of cannabis on the Defendant’s person without objection at the hearing on the Motion as State’s Exhibit 1. The State and Defendant stipulated that the 2g of cannabis discovered in the Defendant’s back right pocket was not in the original packaging as purchased on September 6, 2024.

2. The issue for the Court to resolve is whether the State presented prima facie evidence in its demurrer and at the hearing on the Motion that a violation of Fla. Stat. § 893.13(6)(b) occurred or if the Defendant met all the requirements for the exception provided for in Fla. Stat. § 381.986(14) in this case to survive a motion to dismiss.

Legal Standard for Motion to Dismiss

3. In response to a defendant’s motion to dismiss pursuant to Rule 3.190(c)(4), Fla. R. Crim. P., the State may file a traverse or demurrer in response. Rule 3.190(d), Fla. R. Crim. P. By filing a demurrer, the State admits the basic facts in a motion to dismiss, but despite such an admission, the trial court must still consider the facts alleged in the motion to determine whether the State has set forth a prima facie case. *State v. Jaramillo*, 951 So.2d 97 (Fla. 2nd DCA 2007) [32 Fla. L. Weekly D696a]. To establish a prima facie case necessary to survive a motion to dismiss, the State may rely on circumstantial evidence, and all inferences to be drawn therefrom are resolved in the light most favorable to the State. *Id.*

Applicability of Fla. Stat.

§§ 893.13(6)(b) and 381.986(14)(a)

4. Statutes which relate to the same or closely related subjects should be read in pari materia. *State v. Fuchs*, 769 So.2d 1006 (Fla. 2000) [25 Fla. L. Weekly S680c]. Fla. Stat. §§ 893.13(6)(b) and 381.986(14)(a) relate to the unlawful and lawful possession, respectively, of the same substance, cannabis. Fla. Stat. § 893.02 defines “cannabis” as “all parts of any plant of the genus *Cannabis*.” Fla. Stat. § 893.02(3). Fla. Stat. § 381.986 defines “marijuana” as “all parts of any plant of the genus *Cannabis*.” Fla. Stat. § 381.986(1)(g). Fla. Stat. § 893.13(6)(b) provides criminal sanctions for possession of less than 20g of cannabis, while Fla. Stat. § 381.986(14)(a) provides for an exception to such criminal sanctions for the same substance. Accordingly, the statutes are to be read in pari materia.

5. There is a general prohibition on the possession of less than 20g of cannabis by persons in Florida. Fla. Stat. § 893.13(6)(b). Violation

of this general prohibition is a first-degree misdemeanor. *Id.* The legislature created an exception to the general prohibition of possession of cannabis by enacting Fla. Stat. § 381.986(14), which states:

Notwithstanding § 893.13... or any other provision of law, but subject to the requirements of this section, a qualified patient and qualified patient’s caregiver may purchase from a medical marijuana treatment center for the patient’s medical use a marijuana delivery device and up to the amount of marijuana authorized in the physician certification, but may not possess more than a 70-day supply of marijuana, or the greater amount of 4 ounces of marijuana in a form for smoking or an amount of marijuana in a form for smoking approved by the department pursuant to paragraph (4)(f), at any given time and all marijuana purchased must remain in its original packaging.

Fla. Stat. § 381.986(14)(a) (emphasis added).

6. A plain reading of Fla. Stat. §§ 893.13(6)(b) and 381.986(14)(a) in pari materia indicates that unless a person complies with each element of the exception specified in Fla. Stat. § 381.986(14)(a), their possession on less than 20g of cannabis could result in criminal sanctions pursuant to Fla. Stat. § 893.13(6)(b).

Conclusion

7. As applicable to this case, the Defendant is a qualified patient and purchased less than four (4) ounces or a 70-day supply of cannabis from a medical marijuana treatment center pursuant to his physician’s certification. However, the Defendant did not keep this cannabis in its original packaging. The Defendant had the cannabis in a plastic bag. Accordingly, the Defendant did not comply with the requirements of Fla. Stat. § 381.986(14)(a) to meet the exception to the general prohibition on the possession of cannabis in Fla. Stat. § 893.13(6)(b). Presumably, the legislature required all lawfully purchased cannabis to remain in its original packaging precisely to avoid this situation.

8. The Court finds that the Defendant failed to meet all the requirements of the exception to the general prohibition to the possession of cannabis, and, resolving all inferences in the light most favorable to the State, finds that the State has presented sufficient prima facie evidence that a violation of Fla. Stat. § 893.13(6)(b) occurred to survive a motion to dismiss.

9. Accordingly, it is hereby:

ORDERED AND ADJUDGED that the Defendant’s Motion to Dismiss is DENIED.

* * *

Criminal law—Driving under influence—Search and seizure—Driver asleep or passed out in vehicle—Officer who encountered defendant asleep or passed out in vehicle did not have reasonable suspicion to detain defendant and require defendant to perform field sobriety exercises where defendant had no indicia of impairment, and white powder found in vehicle and defendant’s wallet did not test positive for cocaine or heroin—Likewise, officer did not have probable cause for DUI arrest—Defendant’s refusal to perform field sobriety exercises is not admissible—Since there was no reasonable suspicion of impairment, implied consent statute did not require that defendant submit to urine test, and his refusal of test is not admissible

STATE OF FLORIDA, v. SHANEM. NASH, Defendant. County Court, 7th Judicial Circuit in and for Volusia County. Case No. 2020 105418 MMDL. October 22, 2021. Robert A. Sanders, Jr., Judge. Counsel: Arnie Assent, Assistant State Attorney, for State. Donald Dempsey, for Defendant.

ORDER GRANTING MOTION TO SUPPRESS

THIS CAUSE having come before the Court for a hearing on Defendant’s Motion to Suppress Illegally Obtained Evidence and Warrantless Misdemeanor Arrest and Defendant’s Motion to Suppress Refusal to Submit to a Urine Test, filed pursuant to Rule

3.190 Fla. R. Criminal Procedure, the Fourth Amendment of the United States Constitution, and Article 1, Section 12 of the Florida Constitution. The Court having taken notice of the court file, having evaluated all testimony and evidence, and having considered the arguments from counsel, hereby makes the findings upon which it enters the **Order Granting** the Defendant's Motions.

On December 4, 2020, Officer Illya Kryshchenko of the Deland Police Department made contact with Mr. Nash while at the scene of a suspicious vehicle with a subject passed out or sleeping behind the wheel.

The defense raised three issues in their Motions to Suppress that were argued on September 14, 2021. First, there was no reasonable suspicion to request field sobriety exercises. Second, Mr. Nash's refusal to submit to FSEs is inadmissible against him because he was never told of the adverse consequences of failing to submit to FSEs. Third, there was no reasonable cause to request Mr. Nash to give a urine sample.

On the first issue, the defense argued that there was no reasonable suspicion to request FSEs, nor was there sufficient probable cause to arrest Mr. Nash for DUI. There was no testimony provided from the State that would have given rise to reasonable suspicion for the arresting officer to request FSEs. Officer Kryshchenko testified that Mr. Nash appeared to be sleeping or passed out upon his arrival. Eventually a car window was broken to unlock the vehicle's door and to gain access to Mr. Nash. Once the door was opened, Mr. Nash awoke and was removed from the vehicle. Mr. Nash was placed in handcuffs and ordered to remain on scene while the officer conducted a crash investigation. Officer Kryshchenko testified that he located a small plastic bag on the center console in the vehicle that had a white substance residue in it. At some point, Mr. Nash's wallet was handed to Officer Kryshchenko from an unknown firefighter and there was a red straw in it which also contained a white residue substance. Officer Kryshchenko used #13 & #16 SIRCHIE test kits on the residue, which did not reveal a presumptive positive for Cocaine or Heroin. Officer Kryshchenko did not provide any testimony indicating that he believed that Mr. Nash was impaired by narcotics. No other evidence was presented that would indicate impairment by controlled substances.

Officer Kryshchenko indicated that there was no odor of alcohol coming from Mr. Nash's breath. There was no mention of slurred speech, balance problems, flushed face, blood shot or watery eyes. Rather, the officer testified that Mr. Nash was alert and aware of what was going on around him. Officer Kryshchenko then requested Mr. Nash to perform FSEs. The officer relied only upon the fact that Mr. Nash was either passed out or sleeping when he was contacted, along with the presence of the items containing white residue.

Law enforcement detention of a person for a DUI investigation requires the presence of reasonable suspicion that the person was driving under the influence to the extent that their normal faculties are impaired. *See State v. Taylor*, 648 So.2d 701, 703-04 (Fla.1995) [20 Fla. L. Weekly S6b]. Reasonable suspicion requires a totality of the circumstances analysis "which has a factual foundation in the circumstances observed by the officer, when those circumstances are interpreted in the light of the officer's knowledge and experience." *Origi v. State*, 912 So. 2d 69, 71 (Fla. 4th DCA 2005) [30 Fla. L. Weekly D2302a]. Based upon the testimony presented during the suppression hearing, this Court finds that Officer Kryshchenko did not have reasonable suspicion to continue the detention and require Mr. Nash to perform FSEs. Further, Officer Kryshchenko lacked probable cause to arrest Mr. Nash for driving under the influence.

On the remaining issues, because there was no reasonable suspicion of impairment to require Mr. Nash to perform field sobriety exercises, it follows that Mr. Nash's alleged refusal to perform field

sobriety exercises is not admissible. Similarly, without a reasonable suspicion of impairment, there cannot be reasonable cause to require Defendant to submit to a urinalysis. Therefore, Mr. Nash was not required to submit to a urine test under the implied consent statute. See *Estrada v. State*, 18 Fla. L. Weekly Supp. 579a (Fla. Miami-Dade Cty. Ct., 2007).

THEREFORE, the Defendant's Motions to Suppress are **GRANTED**.

* * *

Criminal law—Driving under influence—Search and seizure—Vehicle stop—Traffic infraction—Speeding—Field sobriety exercises—There was reasonable suspicion justifying traffic stop for speeding based on officer's visual estimate of defendant's speed—Officer lacked reasonable suspicion to request that defendant perform field sobriety exercises where officer conceded in his testimony that his reports were in conflict as to whether defendant had flushed face, evidence indicated that this might be defendant's normal complexion, and remaining indicia of impairment were not sufficient to provide reasonable suspicion—Because radar reading could not be admitted into evidence based on a failure to maintain radar log, speeding could not be proven beyond reasonable doubt—Motion to suppress is granted

STATE OF FLORIDA, v. PARRISH D. SILBERNAGEL, Defendant. County Court, 7th Judicial Circuit in and for Flagler County. Case No. 2025 CT 42. September 15, 2025. D. Melissa Distler, Judge. Counsel: Susan Bexley, Assistant State Attorney, Office of the State Attorney, for State. G. Kipling Miller, for Defendant.

ORDER ON DEFENDANT'S MOTION TO SUPPRESS

THIS MATTER came before the Court on August 18, 2025 on the Defendant's Motion to Suppress. The Court, having heard testimony from Trooper Jordan Capela, having reviewed the video recording admitted into evidence, and heard argument from both Counsel for the State and the Defendant, the Court makes the following findings of fact:

Findings of Fact:

On January 9, 2025, Trooper Capela stopped and ultimately charged the Defendant PARRISH D. SILBERNAGEL with Driving under the influence within Flagler County. The Defendant filed a Motion to Suppress, challenging the basis for a traffic stop for speeding, claiming the Defendant was in custody when ordered from his vehicle, and further contesting the probable cause to request field sobriety exercises.

Trooper Capela testified that the he was stationary on Belle Terre Parkway in the grass median. The trooper testified that the vehicle was traveling southbound at a rate of speed higher than the posted speed. Trooper Capela visually estimated the vehicle was traveling 55 mph in a 45mph zone. The State conceded that Trooper Capela had not properly maintained his radar logs to allow the Stalker DX2 radar reading to be admitted into evidence.

The trooper testified that he approached vehicle and explained reason for stop. Trooper Capela asked the driver, the Defendant PARRISH D. SILBERNAGEL, where he was coming from. While speaking with him, the trooper testified that he observed indicators of impairment, specifically flushed face, bloodshot glossy eyes, and the odor of an alcoholic beverage coming from his breath while speaking. Due to indicators of impairment, Trooper Capela instructed the driver to exit the vehicle. Apparently after being asked to exit the vehicle, Trooper Capela then inquired as to whether the Defendant had been drinking, at which time he admitted to having two drinks. Trooper Capela then stated he would be conducting a DUI investigation and asked the Defendant if he was willing to submit to field sobriety exercises. The Defendant initially refused, explaining he was not fit to complete the exercises. After explaining repercussions for refusing

to participate, the Defendant changed his mind and agreed to submit.

Limited portions of Trooper Capela's video recordings were played during the hearing; however, video recordings were not admitted into evidence.

On cross-examination, Trooper Capela acknowledged that the Defendant's driving pattern, ability to react to the traffic stop and pulling over were all appropriate and without concern. Likewise, his retrieval of his drivers' license (from Minnesota) sparked conversation about how cold it was that evening. The Defendant produced all documents relating to insurance and registration without problems as well. It was at this time that the trooper went back to his vehicle to run the Defendant's license and perform the standard checks. The trooper testified that, upon his return to the vehicle and asking the Defendant to exit, the Defendant had no issue exiting his vehicle and no balance problems upon his exit. The trooper acknowledged a discrepancy between his Alcohol Influence Report and Arrest Affidavit, one of which reflected a flushed face and the other reflected "apparently normal" face color. There was also testimony that the Defendant's face was flushed in open court at the hearing, thus being his apparently normal facial coloring.

The Defendant contests the legal basis for a traffic stop for speeding, the detention and any statements therefrom, and the probable cause to request field sobriety exercises. The State argued that the trooper had reasonable suspicion to conduct a traffic stop, even if the radar logs were incomplete or insufficient to sustain a conviction beyond a reasonable doubt. The State also argued that there were sufficient indicators of impairment to conduct a DUI investigation. The Defendant cited *State v. Joy*, 637 So.2d 946 (Fla. 3rd DCA 1994); *State v. Eady*, 538 So.2d 96 (Fla. 3rd DCA 1989); *State v. Garcia*, 696 So.2d 1352 (Fla. 5th DCA 1997) [22 Fla. L. Weekly D1801a]; *State v. Taylor*, 648 So.2d 701 (Fla. 1995) [20 Fla. L. Weekly S6b]; *State v. Kliphouse*, 771 So.2d 16 (Fla. 4th DCA 2000) [25 Fla. L. Weekly D2309f]; *State v. Nagata*, 10 Fla. L. Weekly Supp. 915c (Volusia County Court, Fla. 7th Circuit 2003); *State v. Stackhouse*, 20 Fla. L. Weekly Supp. 431a (Volusia County Court, Fla. 7th Circuit 2012); *State v. Smith*, 27 Fla. L. Weekly Supp. 386b (Volusia County Court, Fla. 7th Circuit 2019); *State v. Jacobs*, 22 Fla. L. Weekly Supp. 831a (Volusia County Court, Fla. 7th Circuit 2014); *State v. Ramirez*, 23 Fla. L. Weekly Supp. 259a (Volusia County Court, Fla. 7th Circuit 2015); *State v. Brantley*, 19 Fla. L. Weekly Supp. 373a (Volusia County Court, Fla. 7th Circuit 2011); *State v. Knuth*, 18 Fla. L. Weekly Supp. 470a (Volusia County Court, Fla. 7th Circuit 2011); *State v. Diprima*, 22 Fla. L. Weekly Supp. 605b (Volusia County Court, Fla. 7th Circuit 2014); *State v. McCommons*, 22 Fla. L. Weekly Supp. 1076a (Volusia County Court, Fla. 7th Circuit 2015); *State v. Jackson*, 31 Fla. L. Weekly Supp. 43a (Broward County Court, Fla. 17th Circuit 2023); *McCormick v. Dept. of Highway Safety and Motor Vehicles*, 28 Fla. L. Weekly Supp. 871b (Fla. 7th Circuit Appellate 2020); *State v. Louime*, 28 Fla. L. Weekly Supp. 163a (Broward County Court, Fla. 17th Circuit 2020).

The State cited *State v. Tyson*, 382 So.3d 714 (Fla. 4th DCA 2024) [49 Fla. L. Weekly D532a].

Conclusions of Law:

In analyzing whether reasonable suspicion exists for a traffic stop for speeding, it is not necessary to meet the full requirements of Florida Statute 316.1906(2) as would be needed to sustain a conviction for speeding violations. See *Dept. of Highway Safety and Motor Vehicles v. Nelson*, 823 So.2d 828 (Fla. 1st DCA 2002) [27 Fla. L. Weekly D1831a]. One issue in this case is whether the stop was lawful, which is determined simply by whether the officer had a reasonable suspicion to stop the vehicle for speeding, not whether there was sufficient evidence to sustain a conviction beyond a

reasonable doubt. *State v. Eady*, 538 So.2d 96 (Fla. 3rd DCA 1989). Furthermore, a stop can be justified based on the officer's visual perception. See *State v. Joy*, 637 So.2d 946 (Fla. 3rd DCA 1994). Despite the State agreeing that the radar log was insufficiently maintained by Trooper Capela, the Court finds that there existed reasonable suspicion to justify the traffic stop for speeding in this case.

However, considering the testimony of Trooper Capela under oath, coupled with the video recordings, the Court further finds that there were insufficient indicators of impairment to arrest the Defendant for Driving Under the Influence. The trooper's testimony articulated exponentially more indications that the Defendant was not impaired than that he was. The trooper conceded that the flushed face indicator was conflicted in his report and evident on the Defendant at the hearing (thus apparently normal condition). This leaves the Court with the allegation of speeding, which cannot be proven beyond a reasonable doubt, bloodshot glassy eyes, and an odor of alcohol from his breath when he was speaking as the only potential indicators of impairment before the Defendant was asked to exit his vehicle for the DUI investigation. These limited indicators amount to nothing more than a hunch that the Defendant may have been impaired. The Court finds that the State failed to meet its burden and concludes that, based upon the totality of the circumstances, there was insufficient reasonable suspicion for Trooper Capela to request the Defendant participate in field sobriety exercises.

Based upon the above findings of fact, it is therefore ORDERED AND ADJUDGED that the Defendant's Motion to Suppress is GRANTED. All evidence after the Defendant PARRISH D. SILBERNAGEL is seized by being instructed to step out of his car, including any statements, admissions, field sobriety exercises and chemical testing are suppressed.

* * *

Creditors' rights—Garnishment—Location of accounts—Writ of garnishment attaches to Florida judgment debtor/depositor's interest in Virginia credit union account—Account document providing that account is located in Virginia is not sole and exclusive determining factor as to location of account—Funds deposited in credit union branch in Florida, accessed in Florida, utilized in Florida, owned by Floridian, and never accessed in Virginia are subject to garnishment in Florida—Even if account were found to be located outside Florida, court has jurisdiction to enforce garnishment where court has jurisdiction over garnishee and can direct its indebtedness to defendant to be due to plaintiff instead—Consumer Financial Protection Bureau consent order is not applicable and does not prohibit garnishment

F. A. MANAGEMENT SOLUTIONS, INC., Plaintiff, v. RODDY V. PURCELL, a/k/a VICTORIA PURCELL, Defendant, v. NAVY FEDERAL CREDIT UNION, Garnishee. County Court, 9th Judicial Circuit in and for Orange County, Civil Action. Case No. 04-SC-114. July 23, 2024. Andrew Cameron, Judge. Counsel: Aaron F. Miller and Hugh Shafritz, Shafritz and Associates, P.A., Delray Beach, for Plaintiff.

FINAL JUDGMENT IN GARNISHMENT

THIS CAUSE came on for consideration after Plaintiff and Garnishee, in lieu of the non-jury trial on Plaintiff's Reply to Garnishee's Answer to the instant Writ of Garnishment served on Garnishee on August 5, 2022. Garnishee's Answer, dated, August 5, 2022 and filed August 10, 2022, states that Defendant "does not have garnishable assets within the issuing state." On August 23, 2022, Plaintiff filed a Reply to Garnishee's Answer pursuant to 77.061 Fla. Stat. Plaintiff and Garnishee submitted a Joint Stipulation of Facts and Documentary Evidence for Consideration in Lieu of Trial, filed on May 13, 2023. The parties filed separate Trial Briefs/Memoranda on March 27, 2023. Defendant did not file a claim of exemption or other objection to the garnishment. Further, from its Answer, as well as subsequent representations to the Court, specifically at that Status

Conference held June 4, 2024, Garnishee failed to make any withholdings from Defendant's accounts.

In this garnishment action, there is no dispute the Court has jurisdiction over the Garnishee, Navy Federal Credit Union. However, the Garnishee argues that the Defendant's funds on deposit with Garnishee are beyond this Court's jurisdiction. The stipulated facts indicate that at the time the instant Writ was served upon Garnishee, it was indebted to Defendant in the total sum of \$12,948.67 spread over various different accounts.

Location of the Accounts

As an initial matter, the Court must make a determination as to the location of the subject bank accounts. Plaintiff argues that the subject accounts are located in Florida, and Garnishee argues the subject accounts are located in Virginia. It is undisputed that Garnishee is properly authorized to do business in Florida, and maintains numerous branches and other locations through this State. It is also undisputed that the subject accounts were opened in Florida, accessed in Florida, and utilized in Florida. There is no indication that Defendant ever accessed or utilized the subject accounts in Virginia. However, the operable account agreement, revised relatively recently before the service of the instant Writ, contains language that the account holder agrees the accounts would be "located" in Virginia.

This Court finds Plaintiff's arguments, and the authority cited in its Trial Memorandum persuasive. In particular, in *Power Rental Op Co., LLC, v. Virgin Islands Water & Power Auth.*, No. 3:20-CV-1015-TJC-JRK, 2021 WL 9881137, at *8 (M.D. Fla. July 6, 2021), the Middle District of Florida agreed that "helpful indicia for identifying an account's location include deposit slips, documents related to an account's opening, and other similar information." There, the Court relied upon the Florida Supreme Court, when it stated, "When questions of jurisdiction are involved, the constructive situs of intangibles is often equivalent to their physical situs and the constructive situs is ample to give jurisdiction of them to the courts of the state where they are constructively located. In other words, actual physical situs may become immaterial." *Henderson v. Usher*, 160 So. 9, 11 (Fla. 1935).

Garnishee cannot point to any authority that directly adheres to the notion that an account opened at a branch in Florida, accessed in Florida, utilized in Florida, owned by a Floridian, and never accessed in Virginia, is somehow not subject to a garnishment in Florida. Rather, the authority supplied in its Brief is distinguishable from the instant situation. The Court also recognizes that an agreement can only bind the parties to that agreement. Thus, because Garnishee would argue it and Defendant agreed the funds might be located in Virginia, doesn't make it correct. Garnishee has failed to present cognizant authority to support its position that the sole and exclusive determining factor as to the location of an account is an agreement between a bank and its customer.

Additionally, the adoption of Garnishee's theory would lead to absurd results. For example, if a customer of a national bank headquartered outside of Florida, deposits cash into her account in a Florida branch, that cash would be somehow instantaneously transported to another state. The same would also have to be true in reverse. For that same customer to withdraw cash in a Florida branch, the physical cash would have to be instantaneously transported, from the other state to the branch in Florida, to then be handed to the customer.

For these reasons, the Court finds that the subject accounts are located in Florida, that the Court has jurisdiction over Garnishee, and thus the subject accounts are located in Florida for garnishment purposes, and Plaintiff is entitled to a Final Judgment in Garnishment.

Although the Court's finding above renders the other issue raised

by the parties as moot, the Court will address them for purposes of completeness.

Garnishee is indebted to Defendant

It is well established that a garnishment is based upon a debt due to a judgment debtor by a third party. For the reasons set forth below, even if this Court were to find that the subject accounts were located outside of Florida (which it does not find), the Court would still hold the subject accounts are subject to the instant garnishment.

Pursuant to §77.01 Fla. Stat., a garnishment action is not necessarily based on the location of any property in the possession of a third party. Rather, a garnishment subjects "any debt due to defendant by a third person," or "any tangible or intangible personal property of defendant in the possession or control of a third person." §77.01 Fla. Stat. "Garnishment is available to subject any debt due to a judgment debtor by a third person to the claims of the judgment creditor." *Coleman Music & Games Co. v. McDaniel*, 411 So. 2d 193, 193 (Fla. 5th DCA 1981). The words "indebtedness due," in garnishment statute, F.S.A. § 77.01, refer to a debt due or to become due absolutely, not depending on any contingency. *W. Fla. Grocery Co. v. Teutonia Fire Ins. Co.*, 77 So. 209 (Fla. 1917). Further, it is well established that a depositor of a financial institution is considered a creditor, and the financial institution owes a debt to such depositors for the amount deposited.

The Court also agrees with Plaintiff's argument that Garnishee's position focuses too heavily on a notion of the physical location of the intangible debt it owes to Defendant. By definition, such an intangible obligation has no specific physical location.

It is undisputed that at the time the instant Writ was served upon Garnishee, it was indebted to Defendant in the amount of \$12,948.67. As the debt owed is intangible by nature, it cannot have any physical location, and thus any argument as to the location of such debt is immaterial. Therefore, Garnishee is liable for the debt due to Defendant at the time the instant Writ was served, and Plaintiff is entitled to the entry of Final Judgment in Garnishment.

The Court has Jurisdiction over the Subject Accounts

Notwithstanding the above findings, should this Court determine the subject debt has a physical location outside of Florida (which as provided above, it does not), the Court would still have jurisdiction to enforce the instant garnishment. It is undisputed that the Court may exercise jurisdiction over Garnishee. The Court agrees with the authority provided by Plaintiff, that the Court has jurisdiction over the subject accounts.

It is well established that a Court may direct a party, over whom it has jurisdiction, to act upon property, regardless of the location of such property. "It has long been established in this and other jurisdictions that a court which has obtained *in personam* jurisdiction over a [party] may order that [party] to act on property that is outside of the court's jurisdiction, provided that the court does not directly affect the title to the property while it remains in the foreign jurisdiction." *Gen. Elec. Capital Corp. v. Advance Petroleum, Inc.*, 660 So. 2d 1139, 1142 (Fla. 3d DCA 1995) [20 Fla. L. Weekly D2096a]. "This Court has recognized that it is permissible for a trial court to direct a defendant over whom it has personal jurisdiction to act on property located outside its jurisdiction, if the title to the property is not directly affected while the property remains in the foreign jurisdiction." *Schanck v. Gayhart*, 245 So. 3d 970, 973 (Fla. 1st DCA 2018) [43 Fla. L. Weekly D965a] (Relying on *Ciungu v. Bulea*, 162 So.3d 290, 294 (Fla. 1st DCA 2015) [40 Fla. L. Weekly D689c]. "It is well-established that a court's personal jurisdiction over a defendant gives the court the "power to require a defendant to do or to refrain from doing anything beyond the limits of its territorial jurisdiction which it might have required to be done or omitted within the limits of such terri-

tory.’” *Shim v. Buechel*, 339 So.3d 315, 317-8 (Fla. 2022) [47 Fla. L. Weekly S133a].

As this Court may compel action by Garnishee, it may also direct its indebtedness to Defendant to be due instead to Plaintiff pursuant to the provisions of Chapter 77 Fla. Stat. Therefore, Plaintiff is entitled to the entry of Final Judgment in Garnishment.

The Consumer Financial Protection Bureau Consent Order does not Apply

The Garnishee takes the position that it must somehow comply with the Consent Order entered by the Consumer Financial Protection Bureau (“CFPB”) and as a result cannot participate in the garnishment of the Defendant’s accounts. Plaintiff takes the opposite position that the Consent Order is not applicable for various reasons. This Court agrees with the position of the Plaintiff and has determined that the CFPB order is not applicable in this case.

One way to view the Consent Order (analogous to a consent judgment) is to treat it like a contract. “A consent judgment is a judicially approved contract”. *Gallagher v. Dupont*, 918 So. 2d 342, 347 (Fla. 5th DCA 2005) [30 Fla. L. Weekly D2776b]. Additionally, there is plenary authority that an entity that is not a party to a contract cannot be bound by its terms. “[T]he ‘rule in Florida that ordinarily a contract cannot bind one who is not a party thereto or has not in some fashion agreed to accept its terms.’” *Drucker v. Duvall*, 61 So. 3d 468,472 (Fla. 4th DCA 2011) [36 Fla. L. Weekly D1072b] (quoting *CH2M Hill Se., Inc. v. Pinellas Cnty.*, 598 So. 2d 85, 89 (Fla. 2d DCA 1992)). “Generally, ‘the obligation of contracts is limited to the parties making them.’” *Pozo v. Roadhouse Grill, Inc.*, 790 So. 2d 1255, 1260 (Fla. 5th DCA 2001) [26 Fla. L. Weekly D1940a] (quoting 11 Fla. Jur 2d Contracts§ 131 (1979)).

Here, it is indisputable that neither Plaintiff nor Garnishee were parties to the Consent Order, have no direct connection with the Consent Order, and thus cannot be bound by it. Further, the Consent Order does not prohibit a garnishee from responding to a Florida garnishment, processing a Florida garnishment, or holding funds pursuant to a Florida writ of garnishment.

Based upon the findings above, the stipulated facts, and the Court’s agreement with Plaintiff’s positions, it is hereby ORDERED AND ADJUDGED that:

1. In accordance with the Final Judgment previously entered against Defendant, Defendant is indebted to Plaintiff F. A. MANAGEMENT SOLUTIONS, INC. in the sum of \$12,563.43 (the original Final Judgment amount plus accrued post-judgment interest through June 19, 2024, less post-judgment payments made, if any), together with simple interest from the aforementioned date at the then statutory rate of 7.0000%, plus post-judgment costs in the amount of \$401.98, for a total of \$12,965.41.

2. Plaintiff, whose address is 601 North Congress Ave, Suite 424, Delray Beach, FL 33445, shall have, receive, and recover from Garnishee, NAVY FEDERAL CREDIT UNION, whose address is 820 Follin Lane, Vienna, VA, 22180 the sum of \$12,948.67 for which let execution issue forthwith.

3. Payment shall be made to Plaintiff, F. A. MANAGEMENT SOLUTIONS, INC., care of Plaintiff’s counsel, Shafritz and Associates at the following address: 601 North Congress Avenue, Suite 424, Delray Beach, FL 33445.

4. Plaintiff shall furnish Garnishee with a Satisfaction of Judgment in Garnishment when the amount set forth in paragraph 2 above has been paid by Garnishee.

5. This court reserves jurisdiction to enter all further orders as necessary, including an order authorizing execution against Garnishee’s property if this judgment is not otherwise paid or satisfied.

* * *

Insurance—Personal injury protection—MedPay—Coverage—Default—Motion to vacate default is denied—Conclusory declaration devoid of specific credible facts is not sufficient to establish excusable neglect, and insurer that waited one month to seek to vacate default did not act with due diligence—Motion for entry of final default judgment granted

LUCIEN ARISTYLE, Plaintiff, v. PROGRESSIVE SELECT INSURANCE COMPANY, Defendant, County Court, 9th Judicial Circuit in and for Orange County. Case No. 2025-CC-008537-O. July 17, 2025. [Order on Defendant’s Motion for Reconsideration Denied. September 16, 2025]. Martha C. Adams, Judge. Counsel: Pamela Rakow-Smith, Eiffert & Associates, P.A., Orlando, for Plaintiff. Christopher Bertels, for Defendant.

ORDER GRANTING PLAINTIFF’S MOTION FOR FINAL DEFAULT JUDGMENT AND ORDER DENYING DEFENDANT’S MOTION TO SET ASIDE DEFAULT

THIS MATTER came before the Court on June 25, 2025 on Plaintiff, LUCIEN ARISTYLE’s, Motion for Entry of Final Default Judgment against Defendant, PROGRESSIVE SELECT INSURANCE COMPANY, pursuant to Florida Rule of Civil Procedure 1.500 and Defendant’s Motion to Set aside the Clerk’s Default and the Court, having reviewed the record, considered the arguments of counsel, examined the pleadings and evidence presented, and being otherwise fully advised in the premises, ; it is hereby **ORDERED AND ADJUDGED** that:

1. Plaintiff’s Motion for Entry of Final Default Judgment is hereby **GRANTED**.

2. Defendant’s Motion to Set Aside Clerk’s Default is hereby **DENIED**.

FINDINGS OF FACT:

3. On April 30, 2025, Plaintiff properly served the Complaint upon Defendant. The Complaint seeks declaratory relief arising from Defendant’s wrongful denial of insurance coverage and benefits under a valid policy as outlined in the Complaint.

4. Defendant failed to file any responsive pleading or otherwise defend this action within the time prescribed by law.

5. On May 22, 2025, at Plaintiff’s request, the Clerk entered a Default against Defendant for its failure to timely respond.

6. As a result of the Default, all well-pled allegations contained in Plaintiff’s Complaint are deemed admitted as a matter of law. See *Wiseman v. Stocks*, 527 So. 2d 904, 905-06 (Fla. 1st DCA 1988).

7. On June 2, 2025, Plaintiff filed its Motion for Entry of Final Default Judgment.

8. On June 23, 2025, over a month after entry of the Clerk’s Default, Defendant filed its Motion to Set Aside Default and a supporting declaration from its litigation adjuster.

ANALYSIS AND CONCLUSION:

9. To set aside a default judgment, the Defendant must establish all three of the following: (1) that the failure to file a responsive pleading was the result of excusable neglect; (2) that it has a meritorious defense; and (3) that it acted with due diligence in seeking relief from the default. *Credit General Ins. Co. v. Thomas*, 515 So.2d 336, 337 (Fla. 3d DCA 1987).

10. The Court finds that Defendant failed to meet this burden. The declaration submitted is conclusory and devoid of specific, credible facts sufficient to establish excusable neglect. The claimed “clerical oversight” lacks detail and substantiation.

11. The Court further finds that Defendant failed to act with due diligence. Defendant was clearly aware or should have been aware of the Clerk’s Default as early as May 2025. Yet, Defendant waited until June 23, 2025 to seek relief, an unjustified and unreasonable delay under the circumstances.

12. Additionally, all motions, notices, and the Default were served

upon Defendant by U.S. Mail and properly filed via the Court's e-port system. The Court finds no credible evidence that Defendant failed to receive these filings or that they were sent to an incorrect address.

It is therefore ORDERED AND ADJUDGED that:

1. Final Default Judgment is hereby **ENTERED** in favor of Plaintiff, LUCIEN ARISTYLE, and against Defendant, PROGRESSIVE SELECT INSURANCE COMPANY.

2. Defendant's Motion to Set Aside Default is hereby **DENIED**.

3. The Court hereby declares that:

a. The insurance policy issued by Defendant was in full force and effect on or about June 27, 2024;

b. Plaintiff is entitled to coverage under the policy for Personal Injury Protection (PIP) and/or Medical Payments (MedPay) benefits;

c. Defendant wrongfully denied coverage and benefits owed to Plaintiff under said policy.

d. Defendant is liable for the payment of benefits due, pre-judgment interest, costs, and attorney's fees pursuant to Florida Statutes §§ 86.121 and 92.231, 57.041 and 86.081, and applicable law.

4. Defendant shall pay:

a. All benefits due under the policy for Plaintiff's medical bills;

b. Pre-judgment interest as permitted by law;

c. Post-judgment interest at the rate of 9.15% per annum until paid in full;

d. Plaintiff's Reasonable attorney's fees and costs pursuant to Florida Statutes §§ 86.121, 92.231, 57.041, and 86.081. The amount to be determined at an evidentiary hearing.

5. The Court hereby awards entitlement to attorney's fees and costs to Plaintiff and reserves jurisdiction to determine amount. The Parties are hereby directed to coordinate and schedule an evidentiary hearing before the Court on the amount of Plaintiff's attorney's fees and costs.

6. The Court retains jurisdiction of this case to enter further orders that are proper to enforce compliance with this judgment.

* * *

Attorney's fees—Contracts—Prevailing party—Mutuality or reciprocity of obligation—Defendant who prevailed as result of dismissal of plaintiff's action for breach of contract and unjust enrichment seeking monies due on credit card account was entitled to award of attorney's fees under attorney's fees provision of underlying credit card agreement, made reciprocal to apply to defendant pursuant to section 57.105(7)—No merit to argument that defendant is not prevailing party because matter was settled prior to dismissal—Email with attached proposed written settlement agreement sent after dismissal demonstrates that pre-dismissal emails between counsel amounted to nothing more than preliminary settlement negotiations

LVNV FUNDING, LLC, Plaintiff, v. ARAMIS SEGARRA, Defendant. County Court, 10th Judicial Circuit in and for Orange County. Case No. 2024-SC-015073-O. January 2, 2025. Amanda Bova, Judge. Counsel: Messer Strickler Burnette, LTD, for Plaintiff. Bryan Dangler, The Power Law Firm, Altamonte Springs, and Shawn Wayne, The Law Office of Robert Wayne, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR ATTORNEY FEES AND COSTS

THIS CAUSE came before the Court for hearing via zoom on December 17, 2024, on the Defendant's Motion for Attorney Fees and Costs, and the Court having reviewed the file, heard argument from counsel, and being fully advised in the premises, hereby finds:

On April 13, 2024, Plaintiff initiated a lawsuit against Defendant to recover monies allegedly owed on a credit card account, asserting claims of Breach of Contract and Unjust Enrichment.¹ On August 29, 2024, Plaintiff voluntarily dismissed the action with prejudice, thereby rendering Defendant the prevailing party. See *Alhambra Homeowners Ass'n v. Asad*, 943 So. 2d 316, 318 (Fla. 4th DCA 2006) [31 Fla. L.

Weekly D3118a] ("The general rule is that when a plaintiff voluntarily dismisses an action, the defendant is the 'prevailing party' within the meaning of statutory or contractual provisions awarding attorney fees."). This rule applies even in cases where limited pretrial activity occurred before the dismissal. *Hatch v. Dance*, 464 So. 2d 713, 714 (Fla. 4th DCA 1985).

On September 27, 2024, Defendant moved to recover attorney fees and costs as the prevailing party, citing the Contract between the parties and Florida Statute § 57.105(7). In response, Plaintiff acknowledged the general rule but argued that Defendant is not the prevailing party because the matter was settled prior to the dismissal.

A party seeking to enforce a settlement bears the burden of demonstrating, through competent and substantial evidence, that the opposing party assented to the essential terms of the agreement. *E Qualcom v. Global Commerce Ctr. Ass'n*, 189 So. 3d 850 (Fla. 4th DCA 2015) [40 Fla. L. Weekly D2588a]. Here, Plaintiff seeks to enforce a settlement but has failed to admit any evidence to support that claim. Plaintiff did not file or serve a witness or exhibit list in anticipation of the hearing, nor did it introduce any documentary or testimonial evidence at the hearing.² Instead, Plaintiff relied on (i) arguments made by its counsel, which are not a substitute for evidence (*Celebrity Actors Camp, Inc. v. Bredbenner*, 394 So. 3d 782 (Fla. 2d DCA 2024) [49 Fla. L. Weekly D1922h]), and (ii) two unauthenticated emails sent by the Defendant's counsel that were neither introduced as evidence nor sufficient to establish assent. These emails appear to reflect preliminary negotiations between the parties, emphasizing the attorneys' failure to finalize settlement terms before the dismissal.³ They also lack the substantive provisions typically expected in a settlement agreement, particularly in debt-related matters, such as terms addressing attorney fees and costs, credit reporting, taxation, and confidentiality.⁴ Contrary to Plaintiff's assertions, the dismissal did not serve as a substitute for these missing terms. *E Qualcom v. Global Commerce Ctr. Ass'n*, 189 So. 3d at 852 ("... [cancellation] does not supply the missing material terms of a settlement. Both attorneys desired a settlement, but their desire never bore fruit.") Furthermore, Plaintiff cited no authority to support the argument that the term "mutual release" as used in the emails is synonymous with a "general release" or that a "general release" inherently includes all the above-mentioned essential terms.

Notably, these essential terms were presumably included in the proposed five (5) page draft settlement agreement that Plaintiff's counsel emailed to Defendant's counsel on October 1, 2024 which was sent thirty-three (33) days after Plaintiff's dismissal.⁵ See *Club Eden Roc, Inc. v. Tripmasters, Inc.*, 471 So. 2d 1322 (Fla. 3d DCA 1985) ("Where the parties intend that there will be no binding contract until the negotiations are reduced to a formal writing, there is no contract until that time."). By Plaintiff's own admissions, the sending of this email and the proposed written settlement agreement clearly demonstrate that the prior emails sent amounted to nothing more than preliminary negotiations, and that based upon the parties' decade-long practice with one another, settlement of this action required a formal written, signed document with agreed upon essential terms other than a "mutual release" to be effective.⁶ See *Keys Hosp. Found. v. Stiger*, 1986 Fla. App. LEXIS 11538 (Fla. 3d DCA 1986) (citing *Club Eden Roc, Inc.* and holding no binding settlement exists without an executed stipulation).

The record in this case fails to demonstrate the existence of an enforceable settlement agreement at the time the case was dismissed, or that Defendant's counsel even had the authority to settle the case on his client's behalf. See *Ponce v. U-Haul Co. of Fla.*, 979 So. 2d 380, 383 (Fla. 4th DCA 2008) [33 Fla. L. Weekly D1050a] (reversing where record demonstrated that while attorney had authority to

negotiate settlement terms, “U-Haul failed to meet its burden to prove that [the attorney] had clear and unequivocal grant of authority to [settle] the case.”⁷ As such, Plaintiff’s voluntary dismissal rendered the Defendant the prevailing party, who is entitled to recover attorney fees and costs under the terms of the Contract and Florida law.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Defendant’s Motion for Attorney Fees and Costs is granted.

¹A copy of the contract between the parties was attached to the Statement of Claim as Exhibit “A” and referenced therein (“Contract”). DIN #3.

²Plaintiff’s counsel stated during the hearing that he could call Defendant’s counsel as a witness to testify but chose not to. DIN #34, *Transcript of Proceedings*, pp. 16, Dec. 17, 2024.

³Both emails were sent from Defendant’s counsel, with no response or acknowledgment at any time from Plaintiff’s counsel.

⁴During the hearing, Plaintiff stated that because of the dismissal, it could no longer attempt to collect the debt from the Defendant, nor could it continue to report the debt on the Defendant’s credit reports. DIN #34, *Transcript of Proceedings*, pp. 19, Dec. 17, 2024. However, neither the emails nor the voluntary dismissal includes such prohibitory language.

⁵The agreement appears to be in Word format (.docx), presumably for the parties to revise its terms prior to execution. DIN #30, *Defendant’s Notice of Filing in Support of Defendant’s Motion for Attorney Fees and Costs*, Ex. A. (“Notice of Filing”).

⁶DIN #29, *Plaintiff’s Opposition to Defendant’s Motion for Attorney Fees and Costs (Entitlement)*, pp. 1-2. (“Due to clerical oversight and mistake, the formal settlement agreement was never emailed to the Defendant’s counsel.”) At the hearing, Plaintiff further acknowledged that it made a mistake by dismissing the action prior to sending the formal settlement agreement to Defendant’s counsel for review. DIN #34, *Transcript of Proceedings*, pp. 26, Dec. 17, 2024.

⁷The October 1st email sent to the Defendant with the proposed settlement agreement explicitly states that Plaintiff requires the Defendant to execute the settlement agreement, not its counsel. DIN #30, *Defendant’s Notice of Filing*.

* * *

Insurance—Personal injury protection—Attorney’s fees—Amount

NEW LIFE MEDICAL AND REHAB CENTER, INC., Plaintiff, v. INFINITY INDEMNITY INSURANCE COMPANY, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2019-004734-CC-21. Section HI01. August 19, 2025. Milena Abreu, Judge. Counsel: Attorney George Milev, The Evolution Law Group P.A., Plantation, for Plaintiff. Robert Phaneuf, Law Offices of Terry M. Torres & Assoc., Doral, for Defendant.

ORDER ON REASONABLENESS OF ATTORNEY FEES AND COSTS

COMES NOW, the Court, after hearing on Plaintiff’s Motion to Tax Costs and for the Award of Attorney’s Fees. This Court has considered the testimony of the witnesses and other evidence, the argument of counsel for the parties, regarding inter alia, services performed, time and expertise required, the nature of the suit, the amount in controversy, and the results obtained, and has examined time records of counsel for the Plaintiff and the entire court file, and is otherwise fully advised in the premises.

1. This action was brought by the Plaintiff as a breach of contract for PIP benefits.

2. The Plaintiff prevailed via a Notice of Settlement of the claim filed on 9/29/23. Pursuant to Florida statute and as the prevailing party, the Plaintiff is entitled to reasonable attorney’s fees.

3. The issues for consideration by this Court were the hours reasonably expended by counsels for the Plaintiff, as well as their hourly rates. The Court was also asked to consider the hours reasonably expended by attorney **Chris Boyar** as expert for Plaintiff regarding the reasonableness of attorneys fees, preparation, and attendance at the attorney fees’ hearing.

4. “It is well-settled that an award of attorney’s fees must be supported by substantial competent evidence and contain express findings regarding the number of hours reasonably expended and a reasonable hourly rate for the type of litigation involved.” *Morton v. Heathcock*, 913 So.2d 662, 669 (Fla. 3d DCA 2005) [30 Fla. L. Weekly D2163a].

5. In determining the reasonable amount of attorneys’ fees recoverable by the Plaintiff firm, the Court uses the “lodestar” methodology set forth in *Florida Patient’s Compensation Fund v. Rowe*, 472 So.2d 1145 (Fla. 1985). The first step in the lodestar process is to determine the reasonable number of hours incurred by Plaintiff in prosecuting its claim. The second step in the Lodestar process is to determine the reasonable hourly rates for the legal professionals at the Plaintiff’s firm who performed work on this case.

6. This Court determines based on the factors above that the reasonable hourly rate for the work performed by attorney **Kelly Victor** is **\$600.00 per hour**. Specifically, Ms. Kelly has been a practicing litigation and trial attorney for 20 years. Mr. Patino has been awarded by this Court in the past \$550.00 and determines the increase is appropriate for the scope and experience of work for Ms. Kelly and of course consideration of the Lodestar factors.

7. Ms. Kelly is **13.3 hours**, taking into consideration the Plaintiff’s own expert reductions, testimony on direct and cross examination and objections of Defense expert.

8. Accordingly, with regard to attorney **Kelly Victor**, this Court finds that the reasonable hourly rates times the reasonable number of hours equals **\$7,980.00** which represents the “lodestar” amount of attorney’s fees to be awarded to the Plaintiff for the work performed by **Ms. Victor** in this matter.

9. As to attorney **George Milev**, this Court determines that the reasonable hourly rate for the work performed is **\$600.00 per hour**.

10. Having considered the testimony of the witnesses, the other evidence presented, the arguments of counsel, cross examination of the experts, defense objections, and the law on the factors above, this Court finds that the reasonable number of hours expended by attorney **George Milev** is **65.6 hours**.

11. Accordingly, with regard to attorney **George Milev**, this Court finds that the reasonable hourly rates times the reasonable number of hours equals **\$39,360.000** which represents the “lodestar” amount of attorney’s fees to be awarded to the Plaintiff for the work performed by **Mr. Milev** in this matter.

12. In making these findings, the Court has considered all of the evidence presented and all of the factors enumerated in Florida Bar Code of Ethics Rule 4-1.5, the cases of *Florida Patient’s Compensation Fund v. Rowe*, 472 So.2d 1145 (Fla. 1985) and *Standard Guaranty Ins. Co. v. Quanstrom*, 555 So.2d 828 (Fla. 1990) as well as other applicable Florida law.

13. Upon stipulation of the parties the Court awards taxable costs in the amount of **\$430.00 to the Evolution Law Group**.

14. The Court also finds that a reasonable hourly rate for the time expended by the Plaintiff’s expert, **Chris Boyar**, Esq. is **\$750.00** per hour. The Court further finds that **9.5 hours** were reasonably expended by Plaintiff’s expert, Mr. Boyar, for a total expert witness fee of **\$7,125.00** to be taxed as a cost against the Defendant in this action.

FINAL JUDGMENT

In view of the foregoing, it is hereby:

ORDERED and **ADJUDGED** that the **Evolution Law Group**, shall recover from the Defendant, Infinity Indemnity Insurance Company, the sum of **\$47,340.00** in attorney fees, costs in the amount of **\$430.00** and prejudgment interest to be calculated by the parties, which shall bear interest at the legal rate from the date of this Order and Final Judgment, for which let execution issue.

Additionally, the Defendant shall issue payment to the Law Firm of Plaintiff’s expert, Chris Boyar, in the amount of **\$7,125.00**, which shall bear interest at the legal rate from the date of this Order and Final Judgment, for which let execution issue.

This Court reserves jurisdiction for purposes of enforcement of this

Order and Final Judgment, including the award of additional attorney's fees, and for purposes of appellate attorney's fees to be determined, if any.

* * *

Insurance—Dismissal—Failure of corporate plaintiff to retain new counsel after withdrawal of its original counsel more than one year previously

COLUMNA INC., *a/a/o* Jose Raul Gonzalez, Plaintiff, *v.* INFINITY AUTO INSURANCE COMPANY, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2022-015969-SP-25. Section CG03. June 10, 2025. Patricia Marino-Pedraza, Judge. Counsel: Gregory J. Blackburn, Fort Lauderdale, for Plaintiff. Nick Cruz Encinas, Law Office of Michael G. Califano, Tampa, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

THIS CAUSE having come before the Court on Defendant's, INFINITY AUTO INSURANCE COMPANY's, Motion to Dismiss for Plaintiff's Complaint. The Court, having reviewed the motion, the record, and being otherwise fully advised in the premises, finds as follows:

1. Plaintiff filed the Complaint in this action on June 22, 2022.
2. On November 2, 2023, Plaintiff's counsel filed a Motion to Withdraw as Counsel.
3. On November 14, 2023, the Court entered an Order granting said Motion and directing Plaintiff, a corporate entity, to obtain new counsel within twenty (20) days.
4. Since entry of the Court's Order, no appearance of new counsel has appeared on behalf of Plaintiff.
5. As a corporation, Plaintiff must be represented by counsel in accordance with Florida law. *See Yacht Assist, Inc. v. CRP LMC PROP Co., LLC*, 353 So. 3d 65 (Fla. 4th DCA 2022) [47 Fla. L. Weekly D2630a].

Plaintiff has failed to comply with the Court's Order and has made no effort to retain counsel or otherwise participate in the litigation, despite the passage of more than one (1) year since the entry of the Court's Order.

* * *

Attorneys—Disqualification—Conflict of interest—Representation adverse to existing client—Law firm's representation of tenant in eviction action is directly adverse to interests of existing client that filed eviction action on behalf of landlord—Law firm is disqualified from eviction action—Law firm's arguments that no substantial relationship with existing client exists and no confidential information is at risk are misplaced as this is not case involving former client, but case involving current client wherein those considerations are not applicable

FALAH VENTURES, LLC, Plaintiff, *v.* SALAH AYYAD and UNKNOWN PARTY OR PARTIES IN POSSESSION, Defendants. County Court, 13th Judicial Circuit in and for Hillsborough County. Case No. 25-CC-28066. County Civil Division V. September 3, 2025. Matthew A. Smith, Judge. Counsel: Sam Badawi, Tampa, for Plaintiff. Richard McIntyre, McIntyre Thanasides Bringgold Elliott Grimaldi & Guito, P.A., Tampa; and Adham Yennes, Tampa, for Defendant.

ORDER DISQUALIFYING MCINTYRE, THANASIDES, BRINGGOLD, ELLIOTT GRIMALDI AND GUITO, P.A. (THE MCINTYRE FIRM)

THIS CAUSE came before this Court on "Plaintiff's Motion to Disqualify Counsel" (DIN 25) filed on August 12, 2025. The Court held an in-person hearing on August 27, 2025, where Falah Ventures, LLC, was represented by Sam Badawi and Salah Ayyad was represented by Richard McIntyre of McIntyre, Thanasides, Bringgold, Elliott, Grimaldi and Guito, P.A., hereafter "the McIntyre Firm". The Court admitted 13 total exhibits which were stipulated to by the

parties.

Plaintiff's Motion to Disqualify Counsel (DIN 25) was filed pursuant to Rule 4-1.7 of the Rules Regulating the Florida Bar. The burden of proof is on the movant to show a *prima facie* case for disqualification which then shifts the burden to the firm whose disqualification is sought to demonstrate by a greater weight of the evidence that it (the firm) should not be disqualified. *See Koulisis v. Rivers*, 730 So.2d 289, 292 (Fla. 4th DCA 1999) [24 Fla. L. Weekly D129a]; *Akrey v. Kindred Nursing Centers East, LLC*, 837 So.2d 1142, 1144 (Fla. 2d DCA 2003) [28 Fla. L. Weekly D543a]; *Sultan v. Earing-Doud*, 852 So.2d 313, 317 (Fla. 4th DCA 2003) [28 Fla. L. Weekly D1776a].

While the analysis of this case is fairly simple, the history is quite complex. There are four separate cases that are relevant to this motion but the Court is only determining whether or not the McIntyre Firm is to be disqualified from the instant case (**25-CC-28066**). The other relevant cases are: **22-CA-2108** (*Westlake Services, LLC v. Hashim I Sullaiman*) which is still pending, **22-CA-3742** (*777 Equipment Finance, LLC v. Xpress Auto Mall LLC*) which is still pending, and **25-CA-7201** (*Albawadi Grill, LLC v. Falah Ventures LLC*) which is also still pending. A timeline of relevant filings and events can be seen below:

1. March 14, 2022- garnishment action is filed against Defendant, Hashim Sullaiman (**22-CA-2108**).
2. May 5, 2022-complaint (breach of contract action etc) filed against Defendant, Xpress Auto Mall LLC (**22-CA-3742**).
3. June 9, 2022-James Elliott of the McIntyre Firm enters a Notice of Appearance on behalf of Defendant, Hashim Sullaiman (**22-CA-2108**).
4. June 9, 2022-James Elliott of the McIntyre Firm enters a Notice of Appearance on behalf of Defendant, Xpress Auto Mall LLC (**22-CA-3742**).
5. July 2, 2025- initial complaint (residential eviction) in the instant case filed by Hashim Sullaiman, *pro se* (**25-CC-28066**).
6. July 10, 2025-Notice of Appearance filed by Adham Yennes of Yennes Law, PLC, on behalf of the Defendant, Salah Ayyad (**25-CC-28066**).
7. July 10, 2025-Motion to Dismiss filed by Adham Yennes of Yennes Law, PLC, on behalf of Defendant, Salah Ayyad (**25-CC-28066**).
8. July 10, 2025-Motion to Determine Rent filed by Adham Yennes of Yennes Law, PLC, on behalf of Defendant, Salah Ayyad (**25-CC-28066**).
9. July 22, 2025-Notice of Appearance filed by Sam Badawi on behalf of Plaintiff, Hashim Sullaiman (**25-CC-28066**).
10. July 23, 2025-Motion for Leave to Amend Complaint filed by Sam Badawi on behalf of Plaintiff, Hashim Sullaiman (**25-CC-28066**).
11. July 28, 2025-Answer and Counterclaim filed by Adham Yennes of Yennes Law, PLC on behalf of Defendant, Salah Ayyad (**25-CC-28066**).
12. July 29, 2025-Complaint (breach of contract, declaratory action, etc) filed by Richard McIntyre of the McIntyre Firm on behalf of Plaintiff, Albawadi Grill, LLC, against Defendant, Falah Ventures, LLC (**25-CA-7201**).
13. July 30, Amended Counterclaim filed by Adham Yennes of Yennes Law, PLC, on behalf of Defendant, Salah Ayyad (**25-CC-28066**).
14. July 31, 2025-Order granting Motion for Leave to Amend Complaint (**25-CC-28066**).
15. July 31, 2025-Amended Complaint filed by Sam Badawi on behalf of Plaintiff, Falah Ventures, LLC (**25-CC-28066**).
16. August 7, 2025-Answer to Amended Complaint filed by Adham Yennes of Yennes Law, PLC on behalf of Defendant, Salah

Ayyad (25-CC-28066).

17. August 11, 2025-Notice of Appearance filed by Richard McIntyre on behalf of Defendant, Salah Ayyad (25-CC-28066).

18. August 12, 2025-Motion to Disqualify Counsel filed by Sam Badawi on behalf of Falah Ventures, LLC (25-CC-28066).

19. August 21, 2025-Motion to Withdraw as Counsel filed by James W. Elliott of the McIntyre Firm (22-CA-2108)

20. August 21, 2025-Motion to Withdraw as Counsel filed by James W. Elliott of the McIntyre Firm (22-CA-3742).

The Court must first look to the Rules Regulating the Florida Bar to provide the standard for determining whether counsel(s) should be disqualified in a given case: *Pagidipati v. Vyas*, 353 So.3d 1204, 1212-1213 (Fla. 2d DCA 2022) [47 Fla. L. Weekly D2195a] citing *Young v. Achenbauch*, 136 So.3d 575, 580 (Fla. 2014) [39 Fla. L. Weekly S165a]; *State Farm Mut. Auto. Ins. Co. v. K.A.W.*, 575 So.2d 630, 633 (Fla. 1991). Here Plaintiff alleges that the McIntyre Firm's representation of Defendant, Salah Ayyad violates Rule 4-1.7 by way of Rule 4-1.10. Rule 4-1.7 states in relevant part:

RULE 4-1.7 CONFLICT OF INTEREST; CURRENT CLIENTS

(a) Representing Adverse Interests. Except as provided in subdivision (b), a lawyer must not represent a client if:

(1) the representation of 1 client will be directly adverse to another client; or

(2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Informed Consent. Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.

This Court finds that during the hearing held on August 27, 2025, the Plaintiff, Falah Ventures LLC did present a prima facie case of a violation of Rule 4-1.7(a)1. Specifically, the Court makes the finding factual findings:

1. That James W. Elliott of the McIntyre Firm currently (and has since June 9, 2022, at the latest and as early as October 26, 2021, as the McIntyre Firm's own records indicate billing Hashim Sullaiman for work done on this case as early as October 2021) represents Hashim Sullaiman in case 22-CA-2108, in which a garnishment action has been filed against Hashim Sullaiman by Westlake Services LLC; as evidenced by the Notice of Appearance (Exhibit 4) filed by Mr. Elliott on June 9, 2022, in case 22-CA-2108 (DIN 11) and the McIntyre Firm's billing records (Exhibit 13). James W. Elliot's current representation of Hashim Sullaiman on case 22-CA-2108 has been stipulated to in open Court on August 2025, and further evidenced by Mr. Elliott's pending "Motion to Withdraw as Counsel" (DIN 32) (Exhibit 4) filed in case 22-CA-2108 on August 21, 2025, which has yet to be ruled on by the Hon. Jennifer X. Gabbard.

2. That James W. Elliot of the McIntyre Firm currently (and has since June 9, 2022, at the latest and as early as October 26, 2021, as the McIntyre Firm's own records indicate billing Hashim Sullaiman for work done on this case as early as October 26, 2021) represents Xpress Auto Mall, LLC, in case 22-CA-3742 in which 777 Equipment Finance, LLC has filed a breach of contract complaint against Xpress Auto Mall, LLC; as evidenced by the Notice of Appearance filed by Mr. Elliott on June 9, 2022, in case 22-CA-3742 (DIN 12) and the McIntyre Firm's billing records (Exhibit 12). James W. Elliott's current representation of Xpress Auto Mall, LLC, on case 22-CA-

3742 has been stipulated to in open Court on August 27, 2025, and further evidenced by Mr. Elliott's pending "Motion to Withdraw as Counsel" (DIN 51) filed on August 21, 2025, in case 22-CA-3742 has yet to be ruled on by the Hon. Cheryl K. Thomas.

3. That Hashim Sullaiman is the Registered Agent AND CEO of Falah Ventures LLC, as of (at least) April 21, 2025, as evidenced by the Sunbiz documents in evidence (Exhibit 6).

4. That Kathim H. Sulaiman is the Registered Agent and Manager of Xpress Auto Mall LLC, as of (at least) November 15, 2017, as evidenced by the Sunbiz documents in evidence (Exhibit 6).

5. That Hashim Sullaiman was being billed as client by work done by the McIntyre Firm on the Xpress Auto Mall LLC matter as evidenced by Hashim Sullaiman's client number of 024647 (matches Hashim Sullaiman's client number from the Account Statement from the McIntyre Firm regarding the garnishment matter filed against Hashim Sullaiman in Exhibit 13) being used with the billing code of 000003 for General Representation on the McIntyre's Statement of Account (Exhibit 12).

6. That Hashim Sullaiman, whilst both the Registered Agent as well as the CEO of Falah Ventures, LLC, filed a residential eviction complaint against Salah Ayyad on July 2, 2025, (DIN 2) in case 25-CC-28066. Additionally, with Hashim Sullaiman as both CEO and Registered Agent of Falah Ventures, LLC, an Amended Complaint for eviction (DIN 19) was filed on July 31, 2025, by Sam Badawi on behalf of Falah Ventures, LLC against Salah Ayyad in case.

7. That Salah Ayyad has been represented by Adham Yennes of Yennes Law, PLC in this eviction matter (25-CC-28066) since July 10, 2025.

8. That Richard McIntyre of the McIntyre Firm filed a Notice of Appearance as Co-counsel (DIN 24) on behalf of Salah Ayyad in this case (25-CC-28066) on August 11, 2025, whilst the McIntyre Firm was and is simultaneously representing Hashim Sullaiman in case 22-CA-2108 who is the CEO and Registered Agent of Falah Ventures, LLC. The McIntyre Firm is also simultaneously representing Xpress Auto Mall, LLC, in case 22-CA-3742.

9. That Richard McIntyre of the McIntyre Firm filed a Complaint (DIN 13) on behalf of Albawadi Grill, LLC, on July 29, 2025, (25-CA-7201) against Falah Ventures, LLC, whilst the McIntyre Firm was and is representing Falah Ventures, LLC's CEO and Registered Agent, Hashim Sullaiman (case 22-CA-2108). The McIntyre Firm is also simultaneously representing Xpress Auto Mall, LLC in case 22-CA-3742.

While it is obvious that the McIntyre Firm's representation of Salah Ayyad is directly adverse to that of Fatah Ventures, LLC, however Falah Ventures, LLC, is not an existing client of the McIntyre Firm. The real question is whether or not the McIntyre Firm's representation of Salah Ayyad is "directly adverse" to that of Hashim Sullaiman, because he IS an existing client of the McIntyre Firm. At the time in which the eviction action in this case was filed against Salah Ayyad, Hashim Sullaiman was (and continues to be) both CEO and the Registered Agent of Falah Ventures, LLC. Under agency law a CEO generally has the same interests as the parent corporation *See: Coleman v. 688 Skate Park, Inc*, 40 So.3d 867, 869 (Fla. 2d DCA 2010) [35 Fla. L. Weekly D1611b]; *cf: Napleton's North Palm Auto Park, Inc v. Agosto*, 364 So.3d 1103, 1106-1107 (Fla. 4th DCA 2023) [48 Fla. L. Weekly D1250b]; particularly when the CEO is acting on behalf of the parent corporation. Here it is apparent that Hashim Sullaiman was acting on behalf of the parent corporation, Falah Ventures, LLC when he filed the eviction complaint against Salah Ayyad. Therefore, this Court finds that in this matter Hashim Sullaiman and Falah Ventures, LLC, have the same interests. With Hashim Sullaiman and Falah Ventures, LLC, having the same interests the evidence lays out a *prima facie* case for disqualification of the McIntyre Firm as their representation of Salah Ayyad is directly adverse to their existing client, Hashim Sullaiman.

Since the movant was able to establish a *prima facie* case for disqualification it is incumbent upon the McIntyre Firm to establish by the greater weight of the evidence that they should not be disqualified. This Court is not persuaded.

The McIntyre Firm's position seems predicated on two major arguments: (1) That no substantial relationship exists pursuant to *State Farm Mut. Auto. Ins. Co. v. K.A.W.*, 575 So.2d 630 (Fla. 1991) and (2) that no confidential information is at risk. The McIntyre Firm's argument is further buttressed by the affidavit of James W. Elliott (Exhibit 9), the billing/account statements of Hashim Sullaiman and Xpress Auto Mall, LLC which detail the nature of the legal representation being provided by the McIntyre Firm (Exhibits 12 and 13). Other exhibits offered to the Court are of emails between the McIntyre Firm and Hashim Sullaiman in which they convey their intention to drop Hashim Sullaiman as a client (Exhibits 10 and 11).

The McIntyre Firm's reliance on these arguments, the litany of case law cited for these positions and the exhibits mentioned above is misplaced as this is NOT a case involving a former client, nor is it a case of potential disqualification under 4-1.7(a)2. Substantial relationship tests, confidential information at risk tests, balancing tests are NOT applicable under Rule 4-1.7(a)1. This is NOT a case involving a former client. Hashim Sullaiman is a current client as stipulated to by the McIntyre Firm at the hearing on August 27, 2025, and as evidenced by the record which has been discussed at length in the Court's nine numbered paragraphs of findings above.

Additionally, any argument that Rule 4-1.10 is unwarranted is similarly not well taken as this is a disqualification under Rule 4-1.7(a)1. Rule 4-1.10 plainly states:

(a) Imputed Disqualification of All Lawyers in Firm. While lawyers are associated in a firm, none of them may knowingly represent a client when any 1 of them practicing alone would be prohibited from doing so by rule 4-1.7 or 4-1.9 except as provided elsewhere in this rule, or unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

This is NOT a disqualification based upon a "personal interest of the prohibited lawyer" nor is it a disqualification based upon former representation of a client (Rule 4-1.9). This is a disqualification based upon a lawyer/firm taking on a new client (Salah Ayyad) whose interests are directly adverse to that of a current client (Hashim Sullaiman). Imputed Disqualification is required. Therefore, the only exception to disqualification (of a lawyer or firm) under either Rule 4-1.7(a)1 and 4-1.10 (as a result of 4-1.7(a)1) is by way of "informed consent" by Hashim Sullaiman. The Court has no evidence of even argument that Hashim Sullaiman has given his "informed consent" for the McIntyre Firm to represent Salah Ayyad in this matter despite the glaring conflict of interest in that Salah Ayyad's interest are directly adverse to his own. Courts should not hesitate to disqualify an attorney/firm where the circumstances justify such a severe remedy *see: Pagidipati v. Vyas*, 353 So.3d 1204, 1211 (Fla. 2d DCA 2022) [47 Fla. L. Weekly D2195a] citing *Balaban v. Philip Morris USA Inc.*, 240 So.3d 896, 899 (4th DCA 2018) [43 Fla. L. Weekly D838a] (quoting *Manning v. Cooper*, 981 So.2d 668, 670 (Fla. 4th DCA 2008) [33 Fla. L. Weekly D1370b]).

WHEREFORE IT IS

ORDERED AND ADJUDGED that McIntyre, Thanasides, Bringgold, Elliott, Grimaldi, and Guito, P.A. (The McIntyre Firm) is hereby **DISQUALIFIED** from case 25-CC-28066.

* * *

Insurance—Automobile—Windshield repair—Evidence—Insurer's mobile app or pop-up inspection notice—Testimony regarding mobile app or pop-up inspection notice or other business record is prohibited unless record is admitted into evidence or falls within statutory exception that allows testimony consistent with best evidence rule, and record was timely produced in discovery and identified on exhibit list—Single screenshot already disclosed and listed by plaintiff may be used subject to authentication and rulings at trial—Hearsay—Exceptions—Business records—Proponent of admitting app screen evidence under business records exception must establish foundation through qualified witness or section 90.902(11) certification and show that record was produced in discovery and listed as exhibit

PRISTINE AUTO GLASS, LLC, a/a/o Dominique Chisolm, Plaintiff, v. GEICO INDEMNITY COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County, County Civil Division. Case No. 23-CC-056503. Division L. September 18, 2025. Michael C. Baggé-Hernández, Judge. Counsel: Emilio R. Stillo and Kevin W. Richardson, Stillo & Richardson, P.A.; Rowena M. Racca, Rowena Maria Racca, P.A.; and Mac S. Phillips, Phillips Tadros, P.A., for Plaintiff. Scott E. Zimmer, Lloydann A. Wade, and David S. Dougherty, Law Office of Jaskirat K. Asti, for Defendant.

**ORDER GRANTING PLAINTIFF'S
ORAL MOTION IN LIMINE REGARDING
"APP" OR "POP-UP" INSPECTION NOTICE
AND RELATED BUSINESS-RECORD TESTIMONY**

THIS MATTER came before the Court during trial on Plaintiff's oral motion in limine and Fla. Stat. § 90.104 seeking to preclude testimony describing the contents of an electronic "inspection request" or "pop-up" notice and other business records that have not been admitted into evidence. Having heard argument, considered the Florida Evidence Code, and being otherwise fully advised, the Court finds and rules as follows.

1. Authentication is required. A writing, recording, or photograph must be authenticated as a condition precedent to admissibility. Fla. Stat. § 90.901 (2025).

2. Hearsay rules apply. Testimony by a witness without personal knowledge that merely relates the contents of a business record not in evidence is hearsay. *See Richardson v. State*, 875 So. 2d 673, 674-75 (Fla. 1st DCA 2004) [29 Fla. L. Weekly D1203a]. The business-records exception requires a proper foundation or a qualifying certification. Fla. Stat. § 90.803(6) (2025); Fla. Stat. § 90.902(11) (2025); *Yisrael v. State*, 993 So. 2d 952, 956-57 (Fla. 2008) [33 Fla. L. Weekly S577a]; *Holt v. Calchas, LLC*, 155 So. 3d 499, 502-03 (Fla. 4th DCA 2015) [40 Fla. L. Weekly D296a]. Each layer of hearsay must be excepted. Fla. Stat. § 90.805 (2025).

3. Best-evidence rules apply. To prove the contents of a writing, recording, or photograph, the original is required except as otherwise provided by statute. Fla. Stat. § 90.952 (2025). Duplicates may be admissible. Fla. Stat. § 90.953 (2025). Secondary evidence of contents is permissible only under the limited circumstances in § 90.954 (2025).

4. Rule of completeness. If part of a writing or recorded statement is introduced by a party, an adverse party may require introduction of any other part that in fairness ought to be considered contemporaneously. Fla. Stat. § 90.108(1) (2025).

Accordingly, it is ORDERED:

A. Plaintiff's motion in limine is GRANTED as set forth herein.

B. No party may elicit testimony from any witness describing the contents, wording, or purported substance of the GEICO mobile-app "inspection request," "pop-up," or similar on-screen notice, or any other business record, unless (i) the record itself is first admitted into evidence or falls within a statutory exception that permits testimony about its contents consistent with Florida's best-evidence provisions, and (ii) the record was timely produced in discovery and identified on that party's trial exhibit list in compliance with the Court's pretrial

orders. *See* Fla. Stat. §§ 90.901, 90.952-.954, 90.803(6), 90.902(11).

C. The single screenshot or photograph already disclosed and listed by Plaintiff as an exhibit in this case may be used, subject to proper authentication and the Court's rulings at trial. Any additional versions of that screenshot, any related screens, or any other materials not (i) timely produced in discovery and (ii) listed on the parties' trial exhibit lists are excluded and may not be used to elicit testimony about their contents before the jury.

D. If a party seeks to admit app-screen content or similar records under the business-records exception, that party must (i) establish a foundation through a qualified witness or present a compliant § 90.902(11) certification satisfying each element of § 90.803(6), and (ii) show that the record was timely produced in discovery and listed on that party's exhibit list. Hearsay within hearsay must independently satisfy an exception. *See* Fla. Stat. § 90.805; *Yisrael v. State*, 993 So. 2d 952, 956-57 (Fla. 2008) [33 Fla. L. Weekly S577a]; *Holt v. Calchas, LLC*, 155 So. 3d 499, 502-03 (Fla. 4th DCA 2015) [40 Fla. L. Weekly D296a].

E. Counsel shall refrain in witness examinations, and closing from quoting or characterizing the contents of any record not admitted into evidence and not both (i) produced in discovery and (ii) listed on the exhibit list. Violations may result in curative instructions or other appropriate relief under the law.

F. This Order is without prejudice to a party renewing a request outside the jury's presence if a proper foundation can be established under the Florida Evidence Code and if the record has been produced in discovery and listed on the exhibit list consistent with the Court's pretrial orders.

* * *

Insurance—Automobile—Windshield repair— Evidence— Hearsay—Exceptions—Business records—Objection to admission of records of third-party windshield repair vendors is sustained where insurer did not satisfy business records exception predicate and did not establish verification and integration through witness who is insurer's own employee, not custodian of third parties' records—Moreover, vendor records contain hearsay within hearsay—Inspection email from vendor is unauthenticated and hearsay—Screenshot of inspection pop-up in insurer's app will not be admitted without business records exception foundation and compliance with authentication and best evidence rules—Insurer may not present testimony relaying vendor statements or website notes unless those records are first admitted under Evidence Code—Habit or routine practice—Evidence regarding vendors' mailing and contact practices is barred where insurer's employee lacks personal knowledge of vendors' practices, and habit does not cure hearsay and authentication defects of records

PRISTINE AUTO GLASS, LLC, *a/a/o* Dominique Chisolm, Plaintiff, v. GEICO INDEMNITY COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County, County Civil Division. Case No. 23-CC-056503. Division L. September 19, 2025. Michael C. Baggé-Hernández, Judge. Counsel: Emilio R. Stillo and Kevin W. Richardson, Stillo & Richardson, P.A.; Rowena M. Racca, Rowena Maria Racca, P.A.; and Mac S. Phillips, Phillips Tadros, P.A., for Plaintiff. Scott E. Zimmer, Lloydann A. Wade, and David S. Dougherty, Law Office of Jaskirat K. Asti, for Defendant.

ORDER ON DEFENDANT'S PROFFER AND REQUEST TO ADMIT THIRD-PARTY INSPECTION MATERIALS AND RELATED NOTICES, AND TO RELY ON HABIT OR ROUTINE PRACTICE UNDER SECTION 90.406

THIS MATTER came before the Court during trial, outside the presence of the jury, on Defendant GEICO's proffer and request to admit third-party inspection materials and related notices (including AGIS/Neural contact logs, emails, texts, notes, and a Safelite "V2" inspection email), and to rely on the habit or routine practice of AGIS,

Neural, or Safelite under section 90.406, Florida Statutes. Plaintiff objected on hearsay, hearsay within hearsay, lack of business-records predicate, authentication, best evidence, discovery, foundation, and section 90.406 grounds. The Court heard the proffer of GEICO witness Adelaidea Pinder and argument of counsel. Being fully advised, the Court finds and orders as follows.

I. GOVERNING LAW

1. Hearsay and layered hearsay. Out-of-court statements offered for the truth are inadmissible unless an exception applies, and each layer must be excepted. *See* Fla. Stat. §§ 90.802, 90.805 (2025).

2. Business-records exception; third-party vendor records. To admit records under section 90.803(6), the proponent must establish the statutory elements, and when offering another company's records must either present a qualified custodian of the originating business or prove verification and integration of the third-party data before reliance. *See* Fla. Stat. § 90.803(6) (2025); *Yisrael v. State*, 993 So. 2d 952, 956 (Fla. 2008) [33 Fla. L. Weekly S577a]; *Channell v. Deutsche Bank Nat'l Tr. Co.*, 173 So. 3d 1017, 1019-20 (Fla. 2d DCA 2015) [0 Fla. L. Weekly D1467a]; *Bank of N.Y. v. Calloway*, 157 So. 3d 1064, 1071-72 (Fla. 4th DCA 2015) [40 Fla. L. Weekly D173b]; *WAMCO XXVIII, Ltd. v. Integrated Elec. Envs., Inc.*, 903 So. 2d 230, 233 (Fla. 2d DCA 2005) [30 Fla. L. Weekly D957a]. For electronic records, a sponsoring witness should be knowledgeable about the record-keeping system. *See Bank of Am., N.A. v. Delgado*, 166 So. 3d 857, 859-60 (Fla. 3d DCA 2015) [40 Fla. L. Weekly D1080a].

3. Authentication and certifications. Evidence must be authenticated. If admission by certification is sought, section 90.902(11) requires a compliant certificate and reasonable written notice affording the adverse party a fair opportunity to challenge. *See* Fla. Stat. §§ 90.901, 90.902(11) (2025).

4. Best evidence for writings and electronic data. *See* Fla. Stat. §§ 90.952-90.954 (2025).

5. Habit or routine practice. Section 90.406 permits evidence of an organization's routine practice only where a witness has personal knowledge of that organization's general practice. The fact that a document exists does not prove it was mailed, and the absence of a "returned as undeliverable" entry does not prove mailing. *See* Fla. Stat. § 90.406 (2025); *Allen v. Wilmington Tr., N.A.*, 216 So. 3d 685, 688 (Fla. 2d DCA 2017) [42 Fla. L. Weekly D691b]; *CitiMortgage, Inc. v. Hoskinson*, 200 So. 3d 191, 192-93 (Fla. 5th DCA 2016) [41 Fla. L. Weekly D1576b]; *Burt v. Hudson & Keyse, LLC*, 138 So. 3d 1193, 1195 (Fla. 5th DCA 2014) [39 Fla. L. Weekly D1077a]; *see also Blum v. Deutsche Bank Tr. Co.*, 159 So. 3d 920, 920-21 (Fla. 4th DCA 2015) [40 Fla. L. Weekly D574c].

6. Prior evidentiary framework. The Court also applies the evidentiary framework it articulated in *Pristine Auto Glass, LLC a/a/o Victoria Mathis v. GEICO Indem. Co.*, No. 23-CC-056487 (Fla. Hillsborough Cty. Ct. Sept. 17, 2025) (county civil).

II. FINDINGS FROM THIS TRIAL'S PROFFER OF MS. PINDER

1. Ms. Pinder is a GEICO employee, not a custodian for AGIS, Neural, or Safelite. She brought no documents. She testified she memorized the summary of another company's records. She lacks personal knowledge of vendor mailing or outreach practices in this claim.

2. The AGIS or Neural website notes said to reflect emails and phone calls were not produced or admitted as vendor records. No AGIS or Neural custodian testified. No description of the vendor electronic system was offered.

3. The Safelite V2 email (Defendant's Exhibit C) bears GEICO branding and a Safelite footer. No transmission headers, send receipts, routing, or a section 90.902(11) certification with reasonable written notice were proffered. The witness could not identify which Safelite entity maintains V2 or who has access.

4. The GEICO in-app inspection popup was shown only in a partial

screenshot produced by Plaintiff. Defendant did not list or produce a complete GEICO business record of the popup. The Court previously limited testimony to the image actually in evidence and sustained objections to describing unproduced text.

5. The parties stipulated, among other facts, that GEICO received timely notice of loss, that Pristine did not refuse inspection, and that GEICO failed to inspect. These stipulations are summarized for context only and do not resolve the merits.

III. RULINGS UNDER FLA. STAT. § 90.104 (2025)

A. AGIS or Neural logs, emails, call records, and summaries, including GEICO references to them. Objection SUSTAINED. GEICO did not meet the business-records predicate for vendor records and did not establish verification and integration under *Channell*, *Calloway*, and *WAMCO*. A GEICO witness may not be a conduit for unadmitted vendor statements. See Fla. Stat. § 90.803(6) (2025); *Channell*, 173 So. 3d at 1019-20; *Calloway*, 157 So. 3d at 1071-72; *WAMCO*, 903 So. 2d at 233; *Yisrael*, 993 So. 2d at 956; *Delgado*, 166 So. 3d at 859-60.

B. Hearsay within hearsay. As an independent ground, the vendor materials contain assertions that contact attempts occurred. No exception has been shown for each layer. Objection SUSTAINED. See Fla. Stat. § 90.805 (2025).

C. Safelite V2 inspection email (Defendant's Exhibit C). On this proffer, the document is not authenticated and is hearsay. No send receipts or headers and no section 90.902(11) certification with reasonable written notice were proffered; the witness could not explain routing or storage. Objection SUSTAINED without prejudice. See Fla. Stat. §§ 90.901, 90.902(11), 90.803(6) (2025).

D. GEICO in-app inspection popup (partial screenshot). Admission is DENIED WITHOUT PREJUDICE beyond the image already in evidence. Any renewed offer requires a GEICO-only section 90.803(6) foundation and compliance with authentication and best-evidence rules. Vendor-sourced content within the popup requires a vendor foundation. See Fla. Stat. §§ 90.803(6), 90.901, 90.952-90.954 (2025).

E. Limits on testimony going forward. GEICO may elicit testimony about GEICO's own actions and decisions from GEICO's admitted records. GEICO may not relay AGIS, Neural, or Safelite statements or website notes unless those records are first admitted under the Evidence Code. See Fla. Stat. §§ 90.802, 90.803(6), 90.805 (2025).

F. Section 90.406 habit or routine practice (AGIS, Neural, Safelite). Objection SUSTAINED.

(1) No personal-knowledge witness. Ms. Pinder lacks personal knowledge of AGIS, Neural, or Safelite mailing or contact practices. Under section 90.406 and *Allen*, an organization's routine practice must be proved by a witness with personal knowledge of that organization's general practice. Testimony that servicers are not in the habit of generating letters they do not send is insufficient where the witness is unfamiliar with the originating entity's practices and there is no corroboration such as mailing logs, return receipts, or send confirmations. See Fla. Stat. § 90.406 (2025); *Allen*, 216 So. 3d at 688; *Hoskinson*, 200 So. 3d at 192-93; *Burt*, 138 So. 3d at 1195.

(2) Habit does not cure hearsay or authentication defects. Even with a proper section 90.406 foundation, habit does not authenticate vendor records, supply a section 90.803(6) predicate for another company's records, or resolve hearsay within hearsay. The foregoing defects independently bar admission here. See Parts III.A through III.C, *supra*.

IV. DISPOSITION OF SPECIFIC EXHIBITS

1. Defendant's Exhibit B (in-app inspection popup). Denied without prejudice except for the already-admitted image. Any renewed offer must be supported by a GEICO-only section 90.803(6) foundation and compliance with authentication and best-evidence rules; vendor content requires a vendor foundation. See Fla. Stat. §§ 90.803(6), 90.901, 90.952-90.954 (2025).

2. Defendant's Exhibit C (Safelite-footer email, "V2"). Objection sustained on authentication and hearsay grounds. Defendant may renew only with a Safelite custodian or a compliant section 90.902(11) certificate with reasonable written notice, plus a showing that GEICO verified and integrated the information consistent with *Channell*, *Calloway*, and *WAMCO*. See Fla. Stat. §§ 90.901, 90.902(11), 90.803(6) (2025); *Channell*, 173 So. 3d at 1019-20; *Calloway*, 157 So. 3d at 1071-72; *WAMCO*, 903 So. 2d at 233.

V. PATH TO CURE ON ANY RENEWED OFFER

If Defendant renews its request, it shall present:

1. A live AGIS or Neural (or as applicable, Safelite) custodian who establishes each element of section 90.803(6) and explains the electronic system, or a compliant section 90.902(11) certification with reasonable written notice identifying the specific records; and

2. Competent evidence that GEICO verified the vendor data and integrated it into GEICO's records before reliance, consistent with *Channell*, *Calloway*, and *WAMCO*; and

3. If relying on section 90.406, a witness with personal knowledge of the vendor's routine practice. Section 90.406 does not substitute for business-records and authentication requirements. See Fla. Stat. § 90.406 (2025); *Allen*, 216 So. 3d at 688.

* * *

Landlord-tenant—Landlord's duty to maintain premises—Conditions precedent—Seven-day notice of tenant's intent to terminate lease is not condition precedent to asserting claims related to landlord's violation of obligation to maintain premises

WILLIAM BINDER, an individual, Plaintiff, v. 54 WHISPERING PALMS APTS., LLC, a Florida Limited Liability Company, Defendant. County Court, 15th Judicial Circuit in and for Palm Beach County. Case No. 502025CC010342XXXAWB (RA). September 25, 2025. Sara Alijewicz, Judge. Counsel: Brian Korte, Korte and Associates, PLLC, and Michele Muir, Law Offices of Michele Muir, P.A., for Plaintiff. Samantha Lee, Lee & Amtzis, P.L., for Defendant.

Order Denying

Defendant's Motion to Dismiss

THIS CAUSE having come before the Court upon the Defendant's Motion to Dismiss, and the Court having heard argument of counsel at a hearing on September 25, 2025, and being fully advised in the premises:

IT IS ORDERED AND ADJUDGED that:

1. Defendant's Motion to Dismiss is Hereby DENIED.

2. The Court hereby finds that a seven day written notice pursuant to F.S. Section 83.56(1) is not a condition precedent to asserting claims related to the Defendant's violations of F.S. Section 83.51.

3. The Defendant shall have twenty (20) days from the date of this Order to Answer the Plaintiff's Complaint.

* * *

Creditors' rights—Garnishment—Exemptions—Personal property—Claim for personal property exemption is denied where defendant did not file personal property inventory or attend hearing to present testimony to establish entitlement to exemption—No merit to claim based on application of Illinois law where action is Florida action resulting in Florida judgment before Florida court—Bank accounts—Situs of funds—No merit to argument that funds to be garnished are beyond jurisdiction of court because they are in Illinois bank account because intangible obligation has no specific physical location—If debt has physical location outside of Florida, court still has jurisdiction to enforce garnishment where court has personal jurisdiction over garnishee and may direct it to act on bank account irrespective of its location—Where court has jurisdiction to compel action by garnishee, it may also direct its indebtedness to defendant to be due to judgment assignee

CACH, LLC, et al., Plaintiff, v. CORY L. CAIN, Defendant. County Court, 17th Judicial Circuit in and for Broward County, Case No. CONO05002966. Division 71. June 30, 2025. Kathleen Angione, Judge. Counsel: Aaron Miller and Hugh Shafritz, Shafritz and Associates, P.A., Delray Beach, for Dove Investment Corp., Judgment Assignee.

ORDER DENYING CLAIM OF EXEMPTION

THIS CAUSE, came on to be heard on June 23, 2025, upon Defendant's Claim of Exemption from garnishment. The Court heard argument from counsel for judgment assignee and argument from counsel for Defendant. This Court also noted the Defendant failed to appear to provide testimony regarding his claimed exemption, reviewed the Court's file, accepted supplemental authority from both parties, and thereafter being sufficiently advised in the premises makes the following findings of fact:

A. Defendant raised a claim based on the personal property exemption of §222.25(4) Fla. Stat. Pursuant to §222.061 Fla. Stat., in order for Defendant to properly present a claim of exemption for the personal property exemption, he is required to file the necessary inventory as required by the Statute. A review of the case file, as well as the representation of counsel for Defendant, indicates that no inventory was filed. Further, Defendant did not attend this hearing to present testimony to establish his entitlement to the personal property exemption.

B. Defendant raised a claim based on the application of Illinois Law arguing the subject matter of the claimed exemption (i.e. the funds held in the Defendant's bank account) should be treated as specific "res" located outside the State of Florida. However, Defendant provided no authority or argument as to the applicability of the code section provided in his Claim of Exemption. It is noted that the instant action is a Florida action, resulting in a Florida Judgment, before a Florida Court. As there does not appear to be an issue touching upon Illinois Law, same is inapplicable here.

C. Defendant also raised a claim based on an argument of the location of the subject funds. Defendant contends the subject funds are located in the State of Illinois, and are thus beyond the jurisdiction of this Court. Judgment Assignee contends the debt due by Garnishee to Defendant is within this Court's jurisdiction.

i. Garnishee is indebted to Defendant

It is well established that that a garnishment is based upon a debt due to a judgment debtor by a third party. For the reasons set forth below, the Court holds the subject accounts are subject to the instant garnishment.

Pursuant to §77.01 Fla. Stat., a garnishment action is not necessarily based on the location of any property in the possession of a third party. Rather, a garnishment subjects "any debt due to defendant by a third person," or "any tangible or intangible personal property of defendant in the possession or control of a third person." §77.01 Fla.

Stat. "Garnishment is available to subject any debt due to a judgment debtor by a third person to the claims of the judgment creditor." *Coleman Music & Games Co. v. McDaniel*, 411 So.2d 193, 193 (Fla. 5th DCA 1981). The words "indebtedness due," in garnishment statute, F.S.A. § 77.01, refer to a debt due or to become due absolutely, not depending on any contingency. *W. Fla. Grocery Co. v. Teutonia Fire Ins. Co.*, 77 So. 209 (Fla. 1917). Further, it is well established that a depositor of a financial institution is considered a creditor, and the financial institution owes a debt to such depositors for the amount deposited.

The Court agrees with Judgment Assignee, that Defendant's position focuses too heavily on a notion of a physical location of the intangible debt owed by Garnishee. By definition, such an intangible obligation has no specific physical location.

It is undisputed that pursuant to the Answer of Garnishee, it was indebted to Defendant in the amount of \$3,058.16. As the debt owed is intangible by nature, it cannot have any physical location, and thus any argument as to the location of such debt is immaterial. As Garnishee's liability for the debt due to Defendant at the time the instant Writ was served lacks a physical location, same is within the jurisdiction of this Court.

ii. The Court has Jurisdiction over the Subject Accounts

Notwithstanding the above findings, should this Court determine the subject debt has a physical location outside of Florida (which as provided above, it does not), the Court would still have jurisdiction to enforce the instant garnishment. It is undisputed that the Court may exercise jurisdiction over Garnishee. The Court agrees with the authority provided by Judgment Assignee, that the Court has jurisdiction over the subject accounts.

It is well established that a Court may direct a party, over whom it has jurisdiction, to act upon property, regardless of the location of such property. "It has long been established in this and other jurisdictions that a court which has obtained in *personam* jurisdiction over a [party] may order that [party] to act on property that is outside of the court's jurisdiction, provided that the court does not directly affect the title to the property while it remains in the foreign jurisdiction." *Gen. Elec. Capital Corp. v. Advance Petroleum, Inc.*, 660 So. 2d 1139, 1142 (Fla. 3d DCA 1995) [20 Fla. L. Weekly D2096a]. "This Court has recognized that it is permissible for a trial court to direct a defendant over whom it has personal jurisdiction to act on property located outside its jurisdiction, if the title to the property is not directly affected while the property remains in the foreign jurisdiction." *Schanck v. Gayhart*, 245 So. 3d 970, 973 (Fla. 1st DCA 2018) [43 Fla. L. Weekly D965a] (Relying on *Ciungu v. Bulea*, 162 So.3d 290, 294 (Fla. 1st DCA 2015) [40 Fla. L. Weekly D689c]. "It is well-established that a court's personal jurisdiction over a defendant gives the court the "power to require a defendant 'to do or to refrain from doing anything beyond the limits of its territorial jurisdiction which it might have required to be done or omitted within the limits of such territory.'" *Shim v. Buechel*, 339 So.3d 315, 317-8 (Fla. 2022) [47 Fla. L. Weekly S133a].

As this Court may compel action by Garnishee, it may also direct its indebtedness to Defendant to be due instead to Judgment Assignee pursuant to the provisions of Chapter 77 Fla. Stat.

iii. Analysis of Defendant's Authority

At the above hearing, counsel for Defendant referred to that Report and Recommendation on Defendant's Emergency Motion to Dissolve Writ of Garnishment on Defendant's Accounts Located in the Virgin Islands with FirstBank, entered on June 16, 2025, in the United States District Court, Southern District of Florida, in that action styled *Trafigura Trading LLC v. Virgin Islands Water and Power Authority*, case no. 23-MC-61480. A review of said Report and Recommendation

tion finds no discussion of the Florida Statutory definition that a garnishment operates upon a debt due to the judgment debtor, and focuses solely upon the notion of a physical situs of funds. Said Report and Recommendation was entered by a magistrate judge, and at the time of hearing in the instant cause has not been adopted by the District Court. Further, even if this Court were to accept the conclusions in Defendant's authority, there was no testimony or other evidence provided to the Court to establish that the subject account was solely utilized outside the State of Florida.

In opposition to Defendant's late presented authority, Judgment Assignee supplied relatively recent rulings issued in those actions styled *The Ohio Casualty Insurance Company v. Darrell Blackman*, 31 Fla. L. Weekly Supp. 207b (Duval Cnty, May 30, 2023), *Surf Consultants, Inc. v. Amii Griffin*, 31 Fla. L. Weekly Supp. 212a (Orange Cnty, June 7, 2023)(Affirmed, 395 So.3d 1096 (Fla. 6th DCA 2024)), *Superior Debt Recovery LLC v. Clinton Eskridge*, COSO 15-006976 (Broward Cnty. August 30, 2023), *F.A. Management Solutions, Inc. v. Roddy V Purcell*, 2004-SC-000114 (Orange Cnty, July 23, 2024) [33 Fla. L. Weekly Supp. 301a], *Surf Consultants II LLC v. Wendell Bowles*, 2021-SC-001718 (Okaloosa Cnty, January 7, 2025).

A review of the additional authority provided by Judgment Assignee, reveals Florida Courts have uniformly concluded the physical location of funds in a bank account is not the determinative factor of garnishment jurisdiction. "The writ of Garnishment is therefore attaching to the depositor's interest (right to refund of the amounts deposited) in the account. . .The physical location of the account is irrelevant to the garnishment." *Surf Consultants* at 2). "Pursuant to Fla. Stat. §77.01(2022), a garnishment action is not necessarily based on the location of any property in the possession of a third party. Rather, a garnishment subjects "any debt due to defendant by a third person," or "any tangible or intangible personal property of defendant in the possession or control of a third person. Garnishment if available to subject any debt due to a judgment debtor by a third person to the claims of the judgment creditor. Additionally, [statutes] support the idea that garnishment is based on a garnishee's indebtedness." *The Ohio Casualty Insurance Company*, at pg 2 (internal citations omitted.) Further, "[a]s this Court may compel Garnishee to act, this Court may direct Garnishee's indebtedness to Defendant to be due to Plaintiff pursuant to Fla. Stat. Chapter 77." (*Id.*)

The Court has reviewed the recently submitted authorities, as well as those cited in Judgment Assignee's Supplemental Response to Defendant's Claim of Exemption.

It is clear to this Court that the Garnishee is indebted to Defendant as indicated in its Answers. That as a depositor, Defendant is a creditor of Garnishee, and is owed a debt by virtue of the funds deposited. That the debt due to Defendant by Garnishee is intangible in nature, and cannot have a physical situs. The Court clearly has jurisdiction over both Defendant and Garnishee, and may compel either to act. This includes the authority to compel Garnishee to direct its indebtedness to Defendant to be due instead to Judgment Assignee.

Based upon the findings above, it is hereby

ORDERED and ADJUDGED that:

1. Defendant's Claim of Exemption based upon the personal property exemption contained in §222.25(4), or pursuant to Illinois Law, is hereby DENIED.

2. Defendant's Claim of Exemption based on his argument as to the situs of physical funds is hereby DENIED.

* * *

Insurance—Automobile—Windshield repair—Insurer complied with terms of policy by preparing its own estimate for windshield repair, obtaining bids from two glass repair shops, and paying plaintiff highest

amount, which was insurer's own estimate—Argument that insurer paid based on "program price" rather than bid or estimate is not supported by evidence—Argument that insurer may not prepare own estimate fails where nothing in contract limits insurer to using estimates only when prepared by others, and practice of insurer paying losses based on estimate prepared by insurer has statutory approval—No merit to claim that, because "bid" and "estimate" are not defined in contract, terms must be construed against insurer and read to obligate insurer to approve bid or estimate from entity approved by plaintiff where plain language of contract gives insurer right to approve bid or estimate—Argument that plaintiff's reasonable expectation of payment creates question of fact for jury precluding entry of summary judgment fails where Florida Supreme Court has declined to adopt doctrine of reasonable expectations in context of insurance contracts—Insurer's payment of less than full billed amount is not de facto deductible—Summary judgment entered in favor of insurer

LCO AUTOGLASS, INC., a/a/o Luis Atencio, Plaintiff, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant. County Court, 18th Judicial Circuit in and for Seminole County. Case No. 2019-SC-002131-19P. May 27, 2025. Sylvia Grunor, Judge. Counsel: Michael Brehne, Altamonte Springs, for Plaintiff. Johanna W. Clark, Carlton Fields P.A., Orlando, for Defendant.

ORDER GRANTING STATE FARM'S MOTION FOR FINAL SUMMARY JUDGMENT

THIS MATTER having come before the Court on May 16, 2025, on State Farm's Motion for Final Summary Judgment, and the Court, having reviewed the motion, evidence, and responses filed by the parties, considered the argument of counsel, and being otherwise fully advised of the premises, sets forth the following background information, undisputed facts, and conclusions of law:

BACKGROUND

1. This matter involves a first party breach of contract claim asserted by Plaintiff, who repaired the windshield of a vehicle owned by State Farm's insured, Luis Atencio.
2. Plaintiff demanded no money from the insured, took an assignment of his insurance benefits, and sent State Farm a bill for \$1,256.27 for the windshield repair.
3. State Farm determined the loss amount under the policy to be \$673.83 and sent Plaintiff that amount, plus interest. Plaintiff claims State Farm breached the policy by not paying the full amount Plaintiff charged.

UNDISPUTED FACTS

4. State Farm issued an automobile insurance policy to its insured.
5. The insured's vehicle developed windshield damage, and Plaintiff, LCO Auto Glass, Inc., replaced the damaged windshield with a new one.
6. The insured paid Plaintiff nothing and instead assigned Plaintiff his benefits under State Farm's policy.
7. Plaintiff filed a lawsuit against State Farm under the insured's policy with State Farm and attached an invoice for the repair work totaling \$1,256.27.
8. Following receipt of the Complaint with Plaintiff's \$1,256.27 invoice, State Farm exercised its right under the policy to settle the loss and determine the coverage amount by using an approved bid or approved estimate.
9. Specifically, as part of the claim processing, State Farm created its own repair estimate for the work, in the amount of \$673.83. State Farm also obtained bids from two other glass repair shops—a \$561.75 bid from Choice Auto Glass LLC and a \$420 bid from Ideal Auto Glass. State Farm reviewed all three amounts and approved its own repair estimate, the highest of the three.
10. State Farm issued payment to Plaintiff in the amount of \$673.83, plus interest.

The Insurance Contract

11. State Farm's policy (the "Contract") is an insurance contract.

12. The Contract sets forth different types of coverage, including the type at issue here, Comprehensive Coverage:

PHYSICAL DAMAGE COVERAGES

The physical damage coverages are Comprehensive Coverage, Collision Coverage, Emergency Road Service Coverage, and Car Rental and Travel Expenses Coverage.

Contract at 30.

13. The Contract's insuring agreement for Comprehensive Coverage provides:

Insuring Agreements

1. Comprehensive Coverage

a. We will pay for *loss*, except *loss caused by collision*, to a *covered vehicle*.

...

c. The deductible does not apply to damage to the windshield of any *covered vehicle*.

Id. at 31 (emphasis in original).

14. For comprehensive coverage, the Contract expressly sets forth multiple methods by which State Farm, at its option, can determine the amount of loss. This language is key for purposes of this case. The Contract states, in pertinent part:

Limits and Loss Settlement—Comprehensive Coverage and Collision Coverage

We have the right to choose to settle with *you* or the owner of the *covered vehicle* in one of the following ways:

a. Pay the cost to repair the *covered vehicle* minus any applicable deductible.

(1) We have the right to choose one of the following to determine the cost to repair the *covered vehicle*:

(a) The cost agreed to by both the owner of the *covered vehicle* and *us*;

(b) A bid or repair estimate approved by *us*; or

(c) A repair estimate that is written based upon or adjusted to

(i) the prevailing competitive price

(ii) the lower of paintless dent repair pricing established by an agreement we have with a third party or the paintless dent repair price that is competitive in the market; or

(iii) a combination of (i) and (ii) above.

Id. at 32 (emphasis in original).

CONCLUSIONS OF LAW

Summary Judgment in Insurance Contract Cases

15. Disputes arising from the meaning of a contract are generally questions of law. As such, they are to be determined by the courts. *See e.g., Palm Beach Cnty. v. Trinity Indus., Inc.*, 661 So.2d 942, 944 (Fla. 4th DCA 1995) [20 Fla. L. Weekly D2379a] ("Where the determination of the issues of a lawsuit depends upon the construction of a written instrument and the legal effect to be drawn therefrom, the question at issue is essentially one of law only and determinable by entry of summary judgment"); *Langford v. Paravant, Inc.*, 912 So.2d 359, 306 (Fla. 5th DCA 2005) [30 Fla. L. Weekly D2368a] ("Contract interpretation is generally a question of law for the court, rather than a question of fact"); *Gen. Tool Indus., Inc. v. Premier Machinery, Inc.*, 790 So.2d 449, 451 (Fla. 3d DCA 2001) [26 Fla. L. Weekly D1026b] ("If the terms of a written contract are clear and undisputed, the construction of the contract is a question of law, and therefore, can be resolved by summary judgment").

16. The parties' intent must be discerned from the four corners of the document, and courts must give the contract's language, which is

the best evidence of the parties' intent, its plain meaning. *Zimmerman v. Olympus Fidelity Trust, LLC*, 936 So.2d 652, 655 (Fla. 4th DCA 2006) [28 Fla. L. Weekly D1440b]; *Dows v. Nike, Inc.*, 846 So.2d 595, 601 (Fla. 4th DCA 2003) [28 Fla. L. Weekly D1130a] ("It is fundamental that where a contract is clear and unambiguous in its terms, the court may not give those terms any meaning beyond the plain meaning of the words contained therein"); *Barakat v. Broward Cnty. Hous. Auth.*, 771 So.2d 1193, 1194-95 (Fla. 4th DCA 2000) [25 Fla. L. Weekly D2474a]. ("[I]t is a well-settled principle of contract law that where the terms of a contract are unambiguous, the parties' intent must be determined from within the four corners of the document"). Courts may not rewrite the parties' contract; rather, they must honor the terms and enforce them. *Dows*, 846 So.2d at 601.

17. These points are true for an insurance contract just as with any other contract. *See, e.g., Nat. Union Fire Ins. Co. of Pittsburgh, PA v. Underwriters at Lloyds, London*, 971 So.2d 885, 889 (Fla. 3d DCA 2007) [32 Fla. L. Weekly D2827b] ("The construction of an insurance policy is a question of law for the court and may be appropriately decided on motions for summary judgment"). Where an insurance policy's contractual language is clear, courts may not indulge in construction or modification, and the express terms of the contract control. *Security Ins. Co. of Hartford v. Puig*, 728 So.2d 292, 294 (Fla. 3d DCA 1999) [24 Fla. L. Weekly D456a].

18. Further, "[p]articularly with respect to insurance policies, a court needs to view the contract provisions in light of the character of the risks assumed by the insurer." *South Carolina Ins. Co. v. Heuer*, 402 So.2d 480, 481 (Fla. 4th DCA 1981).

State Farm's Payment of the Windshield Repair

19. The Contract permits State Farm to choose among various methods to determine the cost to repair the windshield and thus the amount of loss that State Farm must pay.

20. Here, State Farm chose to use "[a] bid or repair estimate approved by us." Contract at 32 (emphasis omitted).

21. In doing so, State Farm created a repair estimate for the work in the amount of \$673.83. State Farm also obtained two bids from other glass repair shops: a \$561.75 bid from Choice Auto Glass LLC and a \$420 bid from Ideal Auto Glass. State Farm then compared the three amounts and approved the highest, which was the estimate State Farm created.

22. By the Contract's clear and unambiguous terms, State Farm had the contractual right to choose among the bids obtained and its own repair estimate to determine the amount of loss. State Farm made its choice and approved its repair estimate totaling \$673.83. In doing so, State Farm complied with the Contract's terms.

23. Plaintiff has failed to present counter evidence upon which a reasonable jury could return a verdict for Plaintiff.

24. State Farm did not breach the Contract, and neither State Farm's insured nor Plaintiff has suffered any damages under the agreed-upon contractual language.

Plaintiff's Opposition to State Farm's Motion for Summary Judgment

25. Plaintiff raises multiple arguments in opposition. They are not supported by evidence or law.

26. First, Plaintiff argues that State Farm approved and paid "Program Price," as opposed to approving a bid or estimate. However, State Farm's Corporate Representative testified that State Farm's payment was based on an estimate approved by State Farm. State Farm also filed the written estimate it approved and relied on to issue payment. State Farm's written estimate is titled "Estimate Summary" and provides an itemized breakdown of prices for the windshield part, kit, labor, and tax, as well as an "Estimate Total" at the bottom of the document. No evidence supports that State Farm did not pay based on

an estimate it approved.

27. Second, Plaintiff argues that State Farm may not prepare its own repair estimate. However, in the absence of a statutory or other legal impediment, the Contract controls, and nothing in the Contract limits State Farm to using estimates only when they are prepared by others. Furthermore, in connection with the adjustment and settlement of personal and commercial motor vehicle claims, the Legislature has expressly recognized that an insurer may pay losses based on “a written estimate prepared by or for an insurer,” and thus this practice has statutory approval. State Farm’s payment based on an estimate that State Farm prepared does not constitute a breach of contract.

28. Third, Plaintiff argues the Contract is ambiguous because “bid” and “estimate” are undefined and therefore should be construed against State Farm. However, under Florida law “[t]he lack of a definition of an operative term in a policy does not necessarily render the term ambiguous and in need of interpretation by the courts.” *State Farm Fire & Cas. Co. v. CTC Dev. Corp.*, 720 So. 2d 1072, 1076 (Fla. 1998) [23 Fla. L. Weekly S527a]. Rather, “[w]hen a term in an insurance policy is undefined, it should be given its plain and ordinary meaning.” *Gov’t Emp. Ins. Co. v. Macedo*, 228 So. 3d 1111, 1113 (Fla. 2017) [42 Fla. L. Weekly S731a] (quoting *Botee v. S. Fid. Ins. Co.*, 162 So. 3d 183, 186 (Fla. 5th DCA 2015) [40 Fla. L. Weekly D368a]). See also *Washington Nat. Ins. Corp. v. Ruderman*, 117 So. 3d 943, 948 (Fla. 2013) [38 Fla. L. Weekly S616b] (“Where the language in an insurance contract is plain and unambiguous, a court must interpret the policy in accordance with the plain meaning so as to give effect to the policy as written.”). “Dictionaries aid us in establishing the publicly understood plain meaning of a word whose relevant definition is contested, and we look to them when a contractual term is undefined within a contract.” *Parrish v. State Farm Fla. Ins. Co.*, 356 So. 3d 771, 775 (Fla. 2023) [48 Fla. L. Weekly S27a].

29. Here, State Farm’s Contract provides, in simple terms, that State Farm’s payment may be based on a “bid or repair estimate approved by [State Farm].” Contract at 32. Merriam-Webster’s Dictionary defines “bid” as an “offer (a price) whether for payment or acceptance” or “a statement of what one will give or take for something.” See *Merriam-Webster Online Dictionary*, <https://www.merriam-webster.com/dictionary/bid> (last accessed May 22, 2025). Further, Merriam-Webster’s Dictionary defines “estimate” as “a rough or approximate calculation” or “a statement of the cost of work to be done.” See *Merriam-Webster Online Dictionary*, <https://www.merriam-webster.com/dictionary/estimate> (last accessed May 22 2025).

30. Using these commonly accepted definitions, State Farm is not obligated to approve the “full amount” of Plaintiff’s bill, as alleged by Plaintiff. Am. Compl. ¶ 9. Likewise, State Farm is not obligated to approve a bid or estimate from an entity approved by Plaintiff. To the contrary, the plain language of the Contract gives State Farm—not Plaintiff—the right to approve the bid or estimate. Nor do the commonly accepted definitions of “bid” and “estimate” mean Plaintiff can inject obligations and duties on State Farm surrounding *how* a bid or estimate is obtained. Plaintiff’s interpretation of the Contract not only conflicts with the plain language but would mean State Farm owes any amount billed by a repair company. Such an interpretation would lead to an absurd result, which is not permitted under Florida law. See, e.g., *Philip Morris, Inc. v. French*, 897 So. 2d 480, 489 (Fla. 3d DCA 2004) [30 Fla. L. Weekly D48b] (“[A]n unambiguous contract cannot be interpreted to achieve absurd results.”).

31. Fourth, Plaintiff argues that, under the implied covenant of good faith and fair dealing, Plaintiff’s reasonable expectation of payment creates a question of fact for the jury. However, the Florida Supreme Court “has specifically declined to adopt the doctrine of reasonable expectations in the context of insurance contracts,

concluding that construing insurance policies under this doctrine ‘can only lead to uncertainty and unnecessary litigation.’” *QBE Ins. Corp. v. Chalfonte Condo. Apartment Ass’n, Inc.*, 94 So. 3d 541, 549 (Fla. 2012) [37 Fla. L. Weekly S395a] (quoting *Deni Assocs. of Fla., Inc. v. State Farm Fire & Cas. Ins. Co.*, 711 So. 2d 1135, 1140 (Fla. 1998) [23 Fla. L. Weekly S59a]); *Lenhart v. Federated Nat’l Ins. Co.*, 950 So. 2d 454, 461 (Fla. 4th DCA 2007) [32 Fla. L. Weekly D460b] (explaining that a reasonable belief contrary to the plain meaning of insurance policy, or even to unclear text capable of being read to provide coverage, is irrelevant to construction of the policy); *State Farm Fire & Cas. Co. v. Castillo*, 829 So. 2d 242, 247 (Fla. 3d DCA 2002) [27 Fla. L. Weekly D1845a] (“[I]t is the policy’s terms which define [insurance] coverage, not the insured’s reasonable expectations”).

32. In *QBE*, the Florida Supreme Court acknowledged that “Florida contract law does recognize an implied covenant of good faith and fair dealing in every contract,” which is “intended to protect the ‘reasonable expectations of the contracting parties in light of their express agreement.’” *QBE Ins. Corp.*, 94 So. 3d at 548 (quoting *Ins. Concepts & Design, Inc. v. Healthplan Servs., Inc.*, 785 So. 2d 1232, 1234 (Fla. 4th DCA 2001) [26 Fla. L. Weekly D1316a]). However, “[a] duty of good faith must relate to the performance of an express term of the contract and is *not* an abstract and independent term of contract which may be asserted as a source of breach when all other terms have been performed pursuant to the contract.” *Id.* (emphasis added). See also *Royal Oldsmobile-GMC Trucks Co.*, 292 So. 3d at 508 (Fla. 2d DCA 2020) [45 Fla. L. Weekly D455a] (“the implied covenant cannot be utilized to create a breach where there has been no breach of an express term of the contract”).

33. Fifth, Plaintiff argues State Farm did not satisfy its burden of proof related to its affirmative defenses. However, the Court is not granting summary judgment based on an affirmative defense. Plaintiff filed suit for breach of contract. There are three elements for a cause of action for breach of contract: “(1) a valid contract, (2) a material breach, and (3) damages. *E.g., JF & LN, LLC v. Royal Oldsmobile-GMC Trucks Co.*, 292 So. 3d 500, 508-509 (Fla. 2d DCA 2020) [45 Fla. L. Weekly D455a]; *Havens v. Coast Fla., P.A.*, 117 So. 3d 1179, 1181 (Fla. 2d DCA 2013) [38 Fla. L. Weekly D1273b] (same). Breach and damages are essential elements of a cause of action for breach of contract, and “an essential element of the plaintiff’s cause of action is not an affirmative defense.” *Rauch, Weaver, Norfleet, Kurtz & Co. v. AJP Pine Island Warehouses, Inc.*, 313 So. 3d 625, 629-30 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D591a].

34. Finally, Plaintiff argues that State Farm’s payment—which was less than the full amount billed—was a defacto deductible. The Court finds that argument without support.

35. In sum, the record shows without dispute that State Farm exercised its option to pay its insured’s claim based on an estimate or bid approved by State Farm, obtained three such figures, and paid the claim based on the one it selected. The record taken as a whole cannot lead a rational trier of fact to find for the Plaintiff, and therefore the Court’s inquiry is at an end. State Farm complied with the terms of the Contract and is entitled to summary judgment as a matter of law.

WHEREFORE, it is ORDERED and ADJUDGED that:

1. State Farm’s Motion for Summary Judgment is GRANTED;
2. Full and final judgment is hereby ENTERED in favor of State Farm.
3. Plaintiff shall take nothing in this action and Plaintiff shall go henceforth without day.
4. The Court reserves jurisdiction to consider any timely filed motion for fees or costs.

* * *

Attorney’s fees—Contracts—Prevailing party—Mutuality or reciprocity of obligation—Defendant who prevailed as result of dismissal of plaintiff’s action for account stated seeking monies due on credit card account was entitled to award of attorney’s fees under attorney’s fees provision of underlying credit card agreement, made reciprocal to apply to defendant pursuant to section 57.105(7)—Florida law is applicable where plaintiff failed to plead in complaint that foreign law applied

DC PORTFOLIO SERVICES, LLC, Plaintiff, v. LORI CONTRERAS, Defendant. County Court, 18th Judicial Circuit in and for Seminole County. Case No. 2022-SC-3266. September 10, 2025. Wayne Culver, Judge. Counsel: Pollack & Rosen, P.A., for Plaintiff. Bryan A. Dangler, The Power Law Firm, Altamonte Springs, for Defendant.

[Final judgment for fees published at FLWSUPP 3308DCPO]

**ORDER GRANTING DEFENDANT’S MOTION
FOR ATTORNEY FEES AND COSTS**

THIS MATTER came before the Court on September 3, 2025, on the Defendant’s Motion for Attorney Fees and Costs (DIN #32), and the Court having reviewed the motion and the record, and being otherwise fully advised in the premises, finds the following:

Plaintiff filed a one-count complaint for Account Stated to recover money allegedly owed by the Defendant on a charged-off credit

account. (DIN #3). The case was properly noticed for lack of prosecution on May 19, 2025 (DIN #30) and was subsequently dismissed by this Court on June 23, 2025. (DIN #31). Defendant timely moved to recover attorney fees and costs as the prevailing party following the dismissal under Florida Statute § 57.105(7) in conjunction with the terms of the underlying written credit agreement between the parties. (DIN #32). Florida law applies in this case because Plaintiff failed to plead in its complaint that foreign law applied. *Columbian Nat’l Life Ins. Co. v. Lanigan*, 19 So. 2d 67, 68 (Fla. 1944) (“The general rule is that when a law of a foreign state is relied on as governing a given transaction it must be pleaded and proved as any other issue of fact. . .”).

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Defendant’s Motion for Attorney Fees and Costs is **GRANTED** as to entitlement. The Court reserves jurisdiction to determine the amount of attorney fees and costs to be awarded at a future evidentiary hearing.

* * *

MISCELLANEOUS REPORTS

Judges—Judicial Ethics Advisory Committee—Disclosure, recusal, or disqualification—Judge’s prior employment as chief legal counsel for sheriff’s office does not, by itself, require disqualification from presiding over criminal cases where deputies appear only as investigative witnesses—Disclosure of prior employment with sheriff’s office remains within judge’s discretion

FLORIDA SUPREME COURT JUDICIAL ETHICS ADVISORY COMMITTEE.
Opinion Number: 2025-15. Date of Issue: September 12, 2025.

ISSUES

1. SELF-DISQUALIFICATION - Whether a judge is required to disqualify themselves from presiding over criminal cases where the deputies from the sheriff’s office are appearing as investigative witnesses, not as a party, when the judge was previously employed as chief legal counsel for the sheriff’s office.

ANSWER: No, under the facts presented in this case.

2. DISCLOSURE - Whether a judge must disclose in every criminal case over which they preside that the judge was previously employed as counsel for the sheriff wherein the sheriff’s office is the investigating entity, meaning that the sheriff’s office employees are not “litigants” but rather agents of the State or witnesses.

ANSWER: No, under the facts presented in this case.

FACTS

The inquiring judge was recently appointed within the last year, and it is contemplated that the judge will be rotated to the circuit criminal bench in the near future. Prior to the appointment, the inquiring judge served as the chief legal counsel for a sheriff in the circuit within which the judge presides. In that capacity, the inquiring judge represented the sheriff in civil case matters including asset forfeitures, risk protection orders, public records disputes, small claims matters, civil liability matters, policy and procedure advisement, amongst other common duties of a general counsel. Furthermore, as chief legal counsel, the inquiring judge was primarily involved in the administrative operations of the sheriff’s office rather than participating as a witness or investigator in active criminal investigations. The inquiring judge’s role was not to represent deputy sheriffs in their individual capacity, but rather the sheriff in his official capacity when the sheriff was a party to a civil case or controversy.

DISCUSSION

The Florida Code of Judicial Conduct, Canon 3E, requires a judge to disqualify himself or herself from a proceeding in which the judge’s impartiality might reasonably be questioned.

Canon 3E provides, in pertinent part:

(1) a judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of disputed evidentiary facts concerning the proceedings;

(b) the judge served as a lawyer or was the lower court judge in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

(c) the judge knows that he or she individually . . . , or the judge’s spouse . . . has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding.

In Fla. JEAC Op. 2010-36 [18 Fla. L. Weekly Supp. 322b] this Committee considered whether a judge who served as an assistant

public defender and was recently elected as a circuit judge could hear a case involving a defendant who was represented by the public defender’s office during the judge’s employment in that office, regardless that the judge had no involvement with, and no knowledge of the facts of the case. The judge who worked for the public defender’s office litigated homicide cases almost exclusively, sometimes handling armed robbery and kidnapping cases, but as a judge the former public defender did not intend to hear any homicide cases which were assigned to the public defender’s office during the inquiring judge’s employment there. This Committee opined that:

“The individual circumstances involving the former public employee, now a judge, will determine whether the judge’s impartiality might reasonably be questioned. The result suggested by these circumstances may vary depending on such facts as the size of the agency, the seniority and supervisory responsibilities of the lawyer, who has now become a judge, the length of time the lawyer served in a particular position in the agency, among others. Because these circumstances may vary so significantly, the committee is unable to provide any guidance on this issue that may be applied universally.”

Comments in JEAC Op. 2010-36 [18 Fla. L. Weekly Supp. 322b] citing Op. 1991-17 further explained that:

“. . . that lawyers in government agencies, such as a public defender’s office, are not automatically disqualified from hearing a matter simply because it had been assigned to the public defender’s office at the time the lawyer (now a judge) was employed by that office.

The commentary goes on to note, however, that, even though not automatically disqualified because of the previous employment, the judge should “disqualify himself or herself in a proceeding if the judge’s impartiality might reasonably be questioned because of such association.”

Recently, a more encompassing approach can be found in Fla. JEAC Op. 2021-18 [29 Fla. L. Weekly Supp. 693b], wherein this Committee considered issues related to the self-disqualification of a judge who was a former prosecutor presiding over sex offender/predator-failure-to-register cases, where the underlying sex offense conviction that forms the basis of the registration requirement was initially charged by the inquiring judge when he/she was an assistant state attorney. In this opinion, the Committee specifically opined that Canon 3E(1)(b) provides that “a judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where (b) the judge served as a lawyer . . . *in the matter in controversy*. . .” (emphasis added).

In JEAC Op. 2021-18 [29 Fla. L. Weekly Supp. 693b] this Committee appropriately focused on whether the judge served as a lawyer on the *matter in controversy*, not the employer-employee relationship, when considering a plain reading of Canon 3E(1)(b). Similar to the facts in JEAC Op. 2021-18 [29 Fla. L. Weekly Supp. 693b], the inquiring judge here, served as chief legal counsel to the sheriff’s office handling primarily administrative matters, rarely handling specific investigations. However, if the judge was sheriff’s counsel on a specific case and therefore acutely aware of the details of a specific investigation being handled by the sheriff’s office causing the judge to develop a personal bias or prejudice concerning a particular party, or the judge has personal knowledge of disputed evidentiary facts related to the pending charges, self-disqualification would be required. But that does not appear to be the case in the current question for this Committee.

The “matter in controversy” analysis is the one consistently utilized in the line of opinions that consider judge-former client

opinions. As pointed out in *Perona v. Fort Pierce/Port St. Lucie Tribune*, 763 So. 2d 1188 (Fla. 4th DCA 2000) [25 Fla. L. Weekly D255c], this Canon does not specifically list former representation in the examples of grounds for self-disqualification.

But in numerous opinions authored by this Committee concerning judges who formerly represented clients appearing before them or attorneys who are representing or formerly represented a judge appearing before that judge, this Committee has repeatedly opined that self-disqualification is not mandatory.

For example, in Fla. JEAC Op. 2017-17 [25 Fla. L. Weekly Supp. 683a] this Committee opined that a judge who has recently assumed the bench is not required to self-recuse from presiding over cases in which a party was until recently a client of the judge. The Committee opined that:

“Canon 3E(1) of the Code of Judicial Conduct mandates disqualification on the judge’s own motion “in a proceeding in which the judge’s impartiality might reasonably be questioned . . .” As pointed out in *Perona v. Fort Pierce/Port St. Lucie Tribune*, 763 So. 2d 1188 (Fla. 4th DCA 2000) [25 Fla. L. Weekly D255c], this Canon does not specifically list former representation in the examples of grounds for self-disqualification. . . . In Florida Judicial Ethics Committee Opinion 05-05 [12 Fla. L. Weekly Supp. 507b], the Committee opined that disqualification was not mandated where the judge was presiding over a case in which a party was a former client of the judge, and the judge had assumed the bench four (4) years earlier. (The Committee did however recommend disclosure of such relationship, and noted that different issues were involved in the litigation.)”

In regard to the second question, disclosure is not required and is completely within the discretion of the judge. In Fla. JEAC Op. 2005-05 [12 Fla. L. Weekly Supp. 507b] this Committee considered whether a judge must disclose that a litigant was a former client of the judge’s four years prior, the Committee opined that:

“The Commentary to Canon 3E(1), Florida Code of Judicial Conduct, states: A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification. The fact that the judge conveys this information does not automatically require the judge to be disqualified upon a request by either party, but the issue should be resolved on a case-by-case basis.”

Considering the discussion above regarding employment at the sheriff’s office, self-disqualification would not be mandatory therefore disclosure is not mandatory.

REFERENCES

Florida Constitution, Article V, Section 13.
Sections 251.001(2), (5), (6) and (8)(a), Florida Statutes (2023).
Fla. Code of Jud. Conduct, Canons 2A, 4A (1)-(6), 5A(1)-(6) and Commentary to Canon 5A.
Fla. JEAC Ops. 2010-36 [18 Fla. L. Weekly Supp. 322b], 2021-18 [29 Fla. L. Weekly Supp. 693b], 2017-17 [25 Fla. L. Weekly Supp. 683a], 2005-05 [12 Fla. L. Weekly Supp. 507b].

* * *