

FIRST DISTRICT COURT OF APPEAL OF FLORIDA

Curtis Gorham v. Dr. Gary H. Lavine, Dr. Emily D. Billingsley,
Kendrea Virgil, RN, Lloyd G. Logue, Donna Baird, Joseph R.
Impicciche (CEO), Junco Emergency Physicians, Bay County Health
System, LLC, Daniel Cousin, PayPal, Inc., and State of Florida

Gorham · No. Nos. 1D2023-0358, 1D2023-0839, 1D2023-1518 (Consolidated for disposition) · Decided
November 29, 2023

SUMMARY

The Florida First District Court of Appeal consolidated three appeals arising from Curtis Gorham's medical-malpractice-related litigation. The court affirmed dismissals of claims against the retained expert and certain physicians, dismissed challenges to nonappealable or premature orders, and dismissed one appeal as untimely. The court also warned Gorham that further abusive or noncompliant filings could result in sanctions, including dismissal or a restriction on appearing before the court.

CASE DETAILS

COURT	First District Court of Appeal of Florida
WRITING FOR THE COURT	Per Curiam; Kelsey, J.; M.K. Thomas, J.; Nordby, J.
JURISDICTION	Florida
DECIDED	November 29, 2023
DOCKET	Nos. 1D2023-0358, 1D2023-0839, 1D2023-1518 (Consolidated for disposition)
DISPOSITION	other
PROCEDURAL POSTURE	Consolidated appeals from orders entered by the Circuit Court for Bay County. The court affirmed certain dismissals with prejudice and dismissed challenges to nonappealable, nonfinal, or untimely orders.
PRECEDENTIAL VALUE	published
PARTIES	Curtis Gorham v. Dr. Gary H. Lavine, Dr. Emily D. Billingsley, Kendrea Virgil, RN, Lloyd G. Logue, Donna Baird, Joseph R. Impicciche (CEO), Junco Emergency Physicians, Bay County Health System, LLC, Daniel Cousin, PayPal, Inc., State of Florida

TOPICS

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QUESTIONS PRESENTED

1. Whether the order dismissing with prejudice all claims against Gorham's retained expert was valid and appealable.
2. Whether an order cancelling pending hearings was appealable.
3. Whether a dismissal without prejudice of claims against PayPal was ripe for appeal.
4. Whether an order granting a motion to dismiss with prejudice, without final language actually dismissing the claims against Bay County Health System, LLC, was final and appealable.
5. Whether the dismissal with prejudice of claims against Dr. Billingsley and Lloyd G. Logue should be affirmed where Gorham failed to comply with medical-malpractice presuit requirements and the limitations period had expired.
6. Whether the appeal in Case No. 1D2023-1518 was timely and properly taken from an appealable order.

HOLDINGS

1. The order dismissing with prejudice all claims against the retained expert was final and appealable, and the challenge to the use of Gorham's personal email address in the order was meritless because it was unsupported by legal authority.
2. An order cancelling pending hearings is a procedural order that is not appealable.
3. A dismissal without prejudice is not appealable unless the order makes clear that any further proceedings must be brought in a separate action.
4. An order granting a motion to dismiss with prejudice is not final and appealable when it does not contain final language actually dismissing the claims or case.
5. The dismissal with prejudice of the claims against Dr. Billingsley and Lloyd G. Logue was affirmed where Gorham undisputedly failed to comply with medical-malpractice presuit requirements and the time to satisfy those requirements had expired, barring the action under the statute of limitations.
6. Case No. 1D2023-1518 was dismissed because it challenged the same nonappealable scheduling order and the notice of appeal was untimely.

KEY QUOTATIONS

“A dismissal without prejudice is not appealable unless it is clear in the order that any further proceedings must be brought in a separate action.” (at 2)

“We note, however, that the failure to organize arguments under cogent and distinct issues on appeal presents sufficient reason for an appellate court to decline consideration of a matter.” (at 3)

FACTUAL BACKGROUND

Gorham sued numerous healthcare providers and entities for alleged medical malpractice. He also sued the expert witness he had retained to provide the statutorily required presuit opinion, after the expert concluded that there had been no deviation from the medical standard of care. Gorham separately sued PayPal for refusing to refund his payment to the expert and sued the State of Florida over statutory requirements governing malpractice suits.

PROCEDURAL HISTORY

Gorham filed an action primarily alleging medical malpractice against healthcare providers and entities, as well as claims against his retained expert, PayPal, and the State of Florida. The circuit court entered various dismissal, scheduling, and procedural orders. Gorham brought three appeals, which the First District consolidated for disposition; the court affirmed two final dismissals and dismissed the remaining challenges.

DISPOSITION

other

CASES CITED

- *Hinote v. Ford Motor Co.*, 958 So. 2d 1009, 1010-11 (Fla. 1st DCA 2007)
- *Johnson v. First City Bank of Gainesville*, 491 So. 2d 1217, 1218 (Fla. 1st DCA 1986)
- *F.M.W. Props., Inc. v. Peoples First Fin. Sav. & Loan Ass'n*, 606 So. 2d 372, 377-78 (Fla. 1st DCA 1992)