

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

Zoran Potparic, M.D. v. Junie Barnes, Adore Plastic Surgery, LLC, and Cassandre Dorcely-Forges, A.R.N.P.

No. 4D2025-1701 (Fla. 4th DCA Sept. 24, 2025) · No. 4D2025-1701 · Decided September 24, 2025

SUMMARY

The Florida Fourth District Court of Appeal granted Zoran Potparic, M.D.’s petition for writ of certiorari and quashed an order denying his motion to dismiss a medical negligence action. The court held that the expert affidavit submitted during presuit proceedings did not corroborate the different negligence theory alleged in the second amended complaint, requiring dismissal under sections 766.203(2) and 766.206(2), Florida Statutes. The case was remanded with directions.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                     |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | District Court of Appeal of the State of Florida, Fourth District                                                                                                                                                                                                                                                                   |
| WRITING FOR THE COURT | Forst, J.; Gross, J.; Gerber, J.                                                                                                                                                                                                                                                                                                    |
| JURISDICTION          | District Court of Appeal of the State of Florida, Fourth District                                                                                                                                                                                                                                                                   |
| DECIDED               | September 24, 2025                                                                                                                                                                                                                                                                                                                  |
| DOCKET                | 4D2025-1701                                                                                                                                                                                                                                                                                                                         |
| DISPOSITION           | remanded                                                                                                                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | Petition for writ of certiorari challenging the circuit court's order denying a motion to dismiss a medical-negligence action for failure to comply with Florida's statutory presuit corroboration requirements.                                                                                                                    |
| STANDARD OF REVIEW    | Certiorari review is available when a trial court departs from the essential requirements of law, resulting in material injury for the remainder of the case that cannot be corrected on postjudgment appeal. In medical-malpractice presuit matters, certiorari may be used to review compliance with the procedural requirements. |
| PRECEDENTIAL VALUE    | Published opinion                                                                                                                                                                                                                                                                                                                   |
| PARTIES               | Zoran Potparic, M.D. v. Junie Barnes, Adore Plastic Surgery, LLC, Cassandre Dorcely-Forges, A.R.N.P.                                                                                                                                                                                                                                |

TOPICS

medical malpractice

writ of certiorari

appellate procedure

civil procedure

standard of review

## PRACTICE AREAS

medical malpractice

civil procedure

appellate procedure

health law

## QUESTIONS PRESENTED

1. Whether certiorari review was available to determine compliance with Florida's medical-negligence presuit requirements.
2. Whether an expert affidavit supporting an abandoned negligence theory corroborated the different negligence theory asserted in the second amended complaint.
3. Whether the circuit court was required under section 766.206(2), Florida Statutes, to dismiss the claim after finding that the affidavit did not support the operative negligence theory.

## HOLDINGS

1. Certiorari review is available to determine whether the procedural aspects of Florida's medical-negligence presuit requirements have been satisfied, including whether the plaintiff submitted a qualifying corroborating expert affidavit.
2. A corroborating expert affidavit must support the negligence theory asserted in the operative complaint; an affidavit addressing an abandoned theory does not satisfy the statutory corroboration requirement for a materially different theory.
3. When the plaintiff fails to submit a corroborating expert affidavit supporting the operative medical-negligence claim, section 766.206(2) requires dismissal of the claim.

## KEY QUOTATIONS

*“Florida courts have permitted certiorari review solely to ensure that the procedural aspects of the presuit requirements are met.”* (3)

*“The purpose of the medical expert opinion is to assure the defendants, and the court, that a medical expert has determined that there is justification for the plaintiff’s claim; that is, the purpose is not to give notice of the plaintiff’s claim, but rather to corroborate that the claim is legitimate.”* (3)

*“Thus, the expert’s affidavit does not meet the low bar of qualifying as a “corroborating affidavit” at all.”* (4)

*“We are simply correcting the trial court’s legal error in failing to apply the remedy which, as section 766.206(2) commands, must follow from its own express findings: “[T]he court shall dismiss the claim.””* (5)

## FACTUAL BACKGROUND

Potparic performed a surgical procedure on Barnes in September 2021. Barnes alleged postsurgical complications and submitted an expert affidavit stating that Potparic violated the standard of care by performing Level III office surgery while improperly registered with the Florida Department of Health, and that the nurse administering anesthesia violated the standard of care because Potparic was not properly registered. Discovery

established that Potparic was properly registered, after which Barnes abandoned that theory and amended her complaint to allege that the nurse was not properly registered; Barnes did not submit a new expert affidavit supporting the amended theory.

**PROCEDURAL HISTORY**

Barnes sued Potparic for medical negligence after a September 2021 surgical procedure and submitted an expert affidavit supporting a theory that Potparic was improperly registered to perform the surgery. Discovery established that Potparic was properly registered, and Barnes amended her complaint to assert a different theory based on the nurse's alleged lack of registration without submitting a new affidavit. The circuit court denied Potparic's motion to dismiss, finding that the issue was better suited for summary judgment. Potparic sought certiorari review, and the Fourth District granted the petition, quashed the order, and remanded with directions to dismiss the claim.

**DISPOSITION**

remanded

**REMAND INSTRUCTIONS**

Petition granted and circuit court order quashed; the circuit court was directed to dismiss the claim under section 766.206(2), Florida Statutes.

**CASES CITED**

- Univ. of Fla. Bd. of Trs. v. Carmody, 372 So. 3d 246, 251-53 (Fla. 2023)
- Williams v. Oken, 62 So. 3d 1129, 1133-34, 1137 (Fla. 2011)
- Rell v. McCulla, 101 So. 3d 878, 881 (Fla. 2d DCA 2012), rev. dismissed, 140 So. 3d 538 (Fla. 2014)
- Ragoonanan ex rel. Ragoonanan v. Assocs. in Obstetrics & Gynecology, 619 So. 2d 482, 484 (Fla. 2d DCA 1993)
- Rafferty v. Martin Mem'l Med. Ctr., Inc., 335 So. 3d 144, 144 (Fla. 4th DCA 2022)
- Tomas v. Sandler, 406 So. 3d 1089, 1093-94 (Fla. 3d DCA 2025)
- Howell v. Balchunas, 284 So. 3d 1180, 1181-83 (Fla. 1st DCA 2019)
- Kukral v. Mekras, 679 So. 2d 278 (Fla. 1996)
- Morris v. Muniz, 252 So. 3d 1143 (Fla. 2018)

**OPINION**

PER CURIAM.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT ZORAN POTPARIC, M.D., Petitioner, v. JUNIE BARNES, ADORE PLASTIC SURGERY, LLC, and CASSANDRE DORCELY-FORGES, Respondents. No. 4D2025-1701 [September 24, 2025]

Petition for writ of certiorari to the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Jeffrey R. Levenson, Judge; L.T.

Case No. CACE23-021054. Dinah S. Stein and Dean Kandi of Hicks, Porter & Stein, P.A., Miami, and James L. White, III, of White & Russell, P.A., Palm Beach Gardens, for petitioner. Andres I. Beregovich of The Beregovich Law Firm, P.A., Orlando, for respondent Junie Barnes. No appearance for respondent Adore Plastic Surgery, LLC. No appearance for respondent Cassandre Dorcely-Forges.

FORST, J. Petitioner Zoran Potparic, M.D., petitions this Court for a writ of certiorari, seeking to quash the trial court's order denying his motion to dismiss based on respondent Barnes' failure to comply with Florida's statutory presuit requirements for medical negligence cases.

As set forth below, we grant the petition. Background Potparic performed a surgical procedure on respondent Junie Barnes in September 2021. Following alleged post-surgical complications, Barnes sued Potparic for medical negligence. Barnes submitted with her complaint a plastic surgeon's expert affidavit opining that Potparic had violated the medical standard of care by performing Level III office surgery on Barnes at respondent Adore Plastic Surgery's surgery center while not properly registered with the Florida Department of Health ("DOH") to do so.

The affidavit further opined that respondent Cassandre Dorcely- Forges, the nurse who had administered anesthesia during the surgery, had violated the medical standard of care by doing so while the surgeon (Potparic) was not registered.

The affidavit did not mention the nurse's own registration, nor did the affidavit describe any deficient act by either surgeon or nurse during the surgery or explain how any such act caused injury to Barnes. Discovery revealed that Potparic was, in fact, properly registered at the time of the surgery.

Accordingly, Barnes sought leave and was permitted to file a second amended complaint that abandoned the original negligence theory. Instead, Barnes alleged that she was harmed because the nurse was not properly registered with DOH. Barnes did not submit a new affidavit with the second amended complaint. Potparic moved to dismiss the revised complaint for failure to comply with Florida's statutory presuit requirements for medical negligence cases.

The applicable statute provides: Corroboration of reasonable grounds to initiate medical negligence litigation shall be provided by the claimant's submission of a verified written medical expert opinion from a medical expert... at the time the notice of intent to initiate litigation is mailed, which statement shall corroborate reasonable grounds to support the claim of medical negligence. § 766.203(2), Fla. Stat. (2021) (emphasis added).

Furthermore, “[i]f the court finds that the notice of intent to initiate litigation mailed by the claimant does not comply with the reasonable investigation requirements of ss. 766.201-766.212,... the court shall dismiss the claim[.]” § 766.206(2), Fla. Stat. (2021) (emphasis added).

The trial court’s order denying Potparic’s dismissal motion made the following “express findings as to [Barnes’] compliance with the Chapter 766 Presuit Requirements”: The allegation of negligence against Dr. Potparic contained in [Barnes’] corroborating expert affidavit was faulty. Discovery established Dr. Potparic was licensed and registered to perform the subject surgery; 2 The Second Amended Complaint offers a different theory of negligence against Dr. Potparic that was not included in [Barnes’] corroborating expert affidavit; The Court construes the medical malpractice screening requirements in a manner that favors access to the Courts.

See *Kukral v. Mekras*, 679 So. 2d 278 (Fla. 1996); *Morris v. Muniz*, 252 So. 3d 1143 (Fla. 2018); and The issues presented in *Zoran Potparic, M.D.’s Motion* are more appropriately suited for summary judgment after conducting discovery based on the theory of negligence offered in [Barnes’] Second Amended Complaint. (paragraph lettering omitted). Potparic now petitions for certiorari review.

Analysis Certiorari review is available when a trial court departs from the essential requirements of law, resulting in a material injury for the remainder of the case that cannot be corrected on postjudgment appeal. *Univ. of Fla. Bd. of Trs. v. Carmody*, 372 So. 3d 246, 252 (Fla. 2023). Potparic’s petition contends that, because the expert’s affidavit does not “corroborate reasonable grounds to support the claim of medical negligence” set out in the second amended complaint, and no other corroborating affidavit was provided, the trial court departed from the essential requirements of law in denying Potparic’s dismissal motion.

We agree. While certiorari relief is an extraordinary remedy not usually available to review an order denying a motion to dismiss, “Florida courts have created an exception... when the presuit requirements of a medical malpractice statute are at issue since the purpose of the Medical Malpractice Act is to avoid meritless claims and to encourage settlement for meritorious claims.” *Carmody*, 372 So.

3d at 251–52 (quoting *Williams v. Oken*, 62 So. 3d 1129, 1133–34 (Fla. 2011)) (internal quotation marks omitted). “Florida courts have permitted certiorari review solely to ensure that the procedural aspects of the presuit requirements are met.” *Id.* at 253 (quoting *Williams*, 62 So. 3d at 1137). “Thus, a district court can grant certiorari review to verify that the plaintiff submitted the 3 corroborating affidavit of an expert witness.” *Id.* at 253 (citing *Williams*, 62 So.

3d at 1137). “The purpose of the medical expert opinion is to assure the defendants, and the court, that a medical expert has determined that there is justification for the plaintiff’s claim; that is, the

purpose is not to give notice of the plaintiff's claim, but rather to corroborate that the claim is legitimate." *Rell v. McCulla*, 101 So. 3d 878, 881 (Fla.

2d DCA 2012), rev. dismissed, 140 So. 3d 538 (Fla. 2014) (citation modified). Thus, "the notice of intent to initiate litigation and the corroborating medical expert opinion, taken together, must sufficiently indicate the manner in which the defendant doctor allegedly deviated from the standard of care, and must provide adequate information for the defendants to evaluate the merits of the claim." *Id.* (quoting *Ragoonanan ex rel.*

*Ragoonanan v. Assocs. in Obstetrics & Gynecology*, 619 So. 2d 482, 484 (Fla. 2d DCA 1993)) (citation modified). In other words, a dismissal motion may raise the issue "whether the [plaintiff's] corroborating affidavit sufficiently indicated that the [plaintiff] had a legitimate claim for medical malpractice." *Id.*; see also *Rafferty v. Martin Mem'l Med. Ctr., Inc.*, 335 So.

3d 144, 144 (Fla. 4th DCA 2022) (affirming dismissal under § 766.206(2) because affidavit did not comply with statutory corroboration requirements of § 766.203(2)); *Tomas v. Sandler*, 406 So. 3d 1089, 1093–94 (Fla. 3d DCA 2025) (same holding); *Howell v. Balchunas*, 284 So. 3d 1180, 1181–83 (Fla. 1st DCA 2019) (same holding).

Here, the trial court correctly found that the expert's affidavit did not tend to corroborate the negligence claim in Barnes' second amended complaint. The only theory of negligence described in the expert's affidavit proved unfounded and was abandoned. Even if every word in the affidavit were proven to be true, it would lend no support to the claim alleged in Barnes's second amended complaint.

Thus, the expert's affidavit does not meet the low bar of qualifying as a "corroborating affidavit" at all. Conclusion Because Barnes failed to comply with the procedural requirement to submit the corroborating affidavit of an expert witness, we grant the petition and quash the order under review.

In so doing, we are not reweighing the evidence or revisiting the trial court's factual findings. The trial court expressly found that "[t]he allegation of negligence against Dr. Potparic contained in [Barnes'] 4 corroborating expert affidavit was faulty" and "[t]he Second Amended Complaint offers a different theory of negligence against Dr. Potparic that was not included in [Barnes'] corroborating expert affidavit[.]" We are simply correcting the trial court's legal error in failing to apply the remedy which, as section 766.206(2) commands, must follow from its own express findings: "[T]he court shall dismiss the claim." Petition granted; order quashed; remanded with directions.

GROSS and GERBER, JJ., concur. \* \* \* Not final until disposition of timely filed motion for rehearing. 5

---

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/district-court-of-appeal-of-the-state-of-florida-fourth-district-district-court-of-appeal-of-the-sta/2025/zoran-potparic-m-d-v-junie-barnes-adore-plastic-surgery-llc-taeqqcps>