

SUPREME COURT OF FLORIDA

In re: Amendment to Florida Rule of Appellate Procedure 9.130

No. SC2023-0701 (Fla. July 6, 2023) · No. SC2023-0701 · Decided July 6, 2023

SUMMARY

The Supreme Court of Florida amended Florida Rule of Appellate Procedure 9.130 to permit interlocutory review of nonfinal orders denying motions to dismiss medical malpractice claims based on the qualifications of a corroborating expert witness under section 766.102(5)-(9), Florida Statutes. The amendment became effective immediately, and the Court invited comments by September 19, 2023; Justice Labarga dissented from adopting the amendment on the Court’s own motion.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Carlos G. Muñoz, C.J.; Charles T. Canady, J.; Robert J. Luck, J.; Jamie R. Grosshans, J.; Renatha Francis, J.; Jorge Labarga, J.; Meredith L. Sasso, J.
JURISDICTION	Florida
DECIDED	July 6, 2023
DOCKET	SC2023-0701
DISPOSITION	other
PROCEDURAL POSTURE	Original proceeding in which the Supreme Court of Florida, on its own motion, amended Florida Rule of Appellate Procedure 9.130.
PRECEDENTIAL VALUE	Published Florida Supreme Court rulemaking opinion; the amended rule is authoritative.

TOPICS

- interlocutory appeal
- appellate procedure
- health law
- civil procedure

PRACTICE AREAS

- appellate procedure
- medical malpractice
- health law
- civil procedure

QUESTIONS PRESENTED

- Whether Florida Rule of Appellate Procedure 9.130 should be amended to authorize interlocutory review of nonfinal orders denying motions to dismiss medical malpractice actions based on the

qualifications of a corroborating expert witness under section 766.102(5)-(9), Florida Statutes.

2. Whether the amendment should become effective immediately while allowing a post-adoption period for public comments.

HOLDINGS

1. Florida Rule of Appellate Procedure 9.130(a)(3) is amended to permit interlocutory review of nonfinal orders denying a motion to dismiss on the basis of the qualifications of a corroborating expert witness under section 766.102(5)-(9), Florida Statutes.
2. The amendments become effective immediately, subject to a seventy-five-day period for interested persons to submit comments to the Court.

KEY QUOTATIONS

“Accordingly, we now amend Florida Rule of Appellate Procedure 9.130(a)(3) to provide for interlocutory review of nonfinal orders that deny a motion to dismiss on the basis of the qualifications of a corroborating witness under subsections 766.102(5)-(9), Florida Statutes.” (at 1-2)

“The amendments shall become effective immediately.” (at 2)

FACTUAL BACKGROUND

The Court addressed the procedural treatment of motions to dismiss medical malpractice actions based on the qualifications of a corroborating expert witness under section 766.102(5)-(9), Florida Statutes. The Court concluded that the Medical Malpractice Act warranted an interlocutory remedy for parties facing claims that fail to satisfy its presuit requirements. It therefore amended rule 9.130 to permit interlocutory review when such motions to dismiss are denied.

PROCEDURAL HISTORY

The Supreme Court of Florida exercised jurisdiction to amend rule 9.130 after holding in a concurrent opinion that the First District Court of Appeal lacked authority to review by certiorari a trial court's denial of a motion to dismiss a medical malpractice action based on presuit requirements. The Court adopted an interlocutory-review amendment immediately, while allowing seventy-five days for public comments because the amendment had not previously been published for comment.

DISPOSITION

other

CASES CITED

- Univ. of Fla. Bd. of Trs. v. Carmody, No. SC2022-0068 (Fla. July 6, 2023)
- Morgan v. Blancher, 489 So. 2d 1217, 1218 (Fla. 2d DCA 1986)

OPINION

In Re: Amendment to Florida Rule of Appellate Procedure 9.130

PER CURIAM.

Supreme Court of Florida _____ No. SC2023-0701 _____

IN RE: AMENDMENT TO FLORIDA RULE OF APPELLATE

PROCEDURE 9.130. July 6, 2023 PER CURIAM. The Court, on its own motion, amends Florida Rule of Appellate Procedure 9.130 (Proceedings to Review Nonfinal Orders and Specified Final Orders). We have jurisdiction. See art. V, § 2(a), Fla. Const.; Fla. R. Gen. Prac. & Jud. Admin. 2.140(d). In a concurrent opinion, we held that the First District Court of Appeal did not have the authority to perform certiorari review of a trial court’s denial of a motion to dismiss a medical malpractice action under chapter 766, Florida Statutes. *Univ. of Fla. Bd. of Trs. v. Carmody*, No. SC2022-0068 (Fla. July 6, 2023). However, we acknowledged that “the Medical Malpractice Act changed the law such that an interlocutory remedy for parties facing claims that fail to satisfy its presuit requirements is warranted.” *Id.* at 3. Accordingly, we now amend Florida Rule of Appellate Procedure 9.130(a)(3) to provide for interlocutory review of nonfinal orders that deny a motion to dismiss on the basis of the qualifications of a corroborating witness under subsections 766.102(5)-(9), Florida Statutes. We identify subsections (5)-(9) because those are the subsections that articulate the qualifications of a corroborating expert witness. And we amend the rule to provide for interlocutory review only when these particular motions to dismiss are denied, as an order granting such a motion to dismiss would as a general matter result in the plaintiff’s case being dismissed without prejudice. See *Morgan v. Blancher*, 489 So. 2d 1217, 1218 (Fla. 2d DCA 1986) (“An order of dismissal with leave to amend is not appealable because it is a nonfinal order.”). We amend rule 9.130 as reflected in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The amendments shall become effective immediately. Because the amendments were not published for comment previously, interested persons shall have seventy-five -2- days from the date of this opinion in which to file comments with the Court. 1 It is so ordered. MUÑIZ, C.J., and CANADY, COURIEL, GROSSHANS, and FRANCIS, JJ., concur. LABARGA, J., dissents with an opinion. SASSO, J., did not participate.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER

THE EFFECTIVE DATE OF THESE AMENDMENTS. LABARGA, J., dissenting. I respectfully dissent to the majority’s decision to amend Florida Rule of Appellate Procedure 9.130 on its own motion. This amendment will permit interlocutory review of nonfinal orders that deny motions to dismiss on the basis of the qualifications of a

1. All comments must be filed with the Court on or before

September 19, 2023, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal (Portal). If filed by a nonlawyer or a lawyer not licensed to

practice in Florida, the comment may be, but is not required to be, filed via the Portal. Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927; no additional copies are required or will be accepted. -3- corroborating witness in medical malpractice cases. A rule change of this magnitude should be referred to the appropriate committee for consideration and recommendations prior to its adoption. Original Proceeding – Florida Rules of Appellate Procedure -4-

APPENDIX

RULE 9.130. PROCEEDINGS TO REVIEW NONFINAL ORDERS AND SPECIFIED FINAL ORDERS

(a) Applicability.

(1)-(2) [No Change]

(3) Appeals to the district courts of appeal of nonfinal

orders are limited to those that: (A)-(E) [No Change] (F) deny a motion that: (i)-(ii) [No Change] (iii) asserts entitlement to sovereign immunity; or (G) grant or deny a motion for leave to amend to assert a claim for punitive damages.; or (H) deny a motion to dismiss on the basis of the qualifications of a corroborating expert witness under subsections 766.102(5)-(9), Florida Statutes.

(4)-(5) [No Change]

(b)-(i) [No Change] Committee Notes [No Change] -5-