

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

1. 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)

