

Third District Court of Appeal

State of Florida, July Term, A.D., 2008

Opinion filed July 16, 2008.
Not final until disposition of timely filed motion for rehearing.

No. 3D08-1112
Lower Tribunal Nos. 05-1686 & 07-79

Hollywood Injury Rehab Center, etc.,
Petitioner,

vs.

United Automobile Insurance Company,
Respondent.

A Writ of Certiorari to the Circuit Court, Appellate Division, for Miami-Dade County, Israel Reyes, Peter Adrien, and Spencer Eig, Judges.

Jose R. Iglesia and Mari Sampedro-Iglesia, for petitioner.

Lara J. Edelstein, for respondent.

Before SUAREZ, ROTHENBERG, and LAGOVA, JJ.

LAGOVA, J.

Petitioner, Hollywood Injury Rehab Center (“Hollywood Center”), seeks a Writ of Certiorari to quash an order of the circuit court appellate division denying

its motion for attorney's fees.¹ Because we find that the circuit court sitting in its appellate capacity departed from the essential requirements of the law, we grant the petition and quash the order below.

Hollywood Center filed suit against the respondent, United Automobile Insurance Company ("United Auto"), for recovery of personal injury protection benefits. The county court entered summary judgment in Hollywood Center's favor, and United Auto appealed. The circuit court sitting in its appellate capacity affirmed the trial court's order. As the prevailing party, Hollywood Center, pursuant to section 627.428, Florida Statutes (2007), filed a motion for attorney's fees. The circuit court appellate division, however, denied Hollywood Center's motion for fees and this petition followed.

United Auto properly concedes that attorney's fees should have been awarded to Hollywood Center as the prevailing party. "Section 627.428 mandates that an insured be awarded attorneys' fees when he is the prevailing party on appeal in an action against his insurer." Arango v. United Auto. Ins. Co., 901 So. 2d 320, 321 (Fla. 3d DCA 2005). It is undisputed that Hollywood Center was the prevailing party on appeal in an action against its insurer. As such, Hollywood Center is entitled to appellate attorney's fees pursuant to section 627.428. By failing to grant the motion, the circuit court appellate division departed from the

¹ We find that certiorari jurisdiction exists under Florida Rule of Appellate Procedure 9.030(b)(2)(B).

essential requirements of the law. Id. at 322; Prof'l Med. Group, Inc. v. United Auto. Ins. Co., 967 So. 2d 243, 244 (Fla. 3d DCA 2007).

Accordingly, we grant the petition, quash the order below, and remand with directions to grant Hollywood Center's motion for attorney's fees.