Third District Court of Appeal

State of Florida

Opinion filed October 20, 2021.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-1082
Lower Tribunal No. 19-36863

Shelia T. Powell,
Appellant,

vs.

John Argyle Gilmore Sampson, M.D., et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Alan Fine, Judge.

Alexander Appellate Law P.A., and Samuel Alexander (DeLand), for appellant.

Lalchandani Simon PL, and Kubs Lalchandani and Daniel E. Davis; Lubell & Rosen, LLC, and Ryan M. Sanders (Fort Lauderdale), for appellees.

Before LOGUE, SCALES and LINDSEY, JJ.

PER CURIAM.

Shelia T. Powell, the plaintiff below, appeals a June 30, 2020 final order dismissing her medical malpractice complaint against the defendants below, appellees John Argyle Gilmore Sampson, M.D. and Seduction Cosmetic Center Corp. d/b/a Seduction by Jardon's Cosmetic. After Powell filed her medical malpractice complaint below, the appellees filed their "Motion to Dismiss Plaintiff's Complaint for Failure to Comply with the Medical Malpractice Presuit Requirements." At the subsequent non-evidentiary hearing on the motion to dismiss, the trial court, over the objection of Powell's counsel that an evidentiary hearing was required to adjudicate the motion, heard and granted the motion. Because, on this record, the trial court should have afforded the parties an evidentiary hearing to determine whether Powell "complied with the reasonable presuit investigation requirements of chapter 766," Holden v. Bober, 39 So. 3d 396, 403 (Fla. 2d DCA 2010); § 766.206, Fla. Stat. (2019), we reverse the challenged dismissal order and remand for further proceedings.

Reversed and remanded with instructions.