

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN
AND FOR ORANGE COUNTY,
FLORIDA

PROGRESSIVE AMERICAN
INSURANCE COMPANY,

Appellant,

v.

FLORIDA HOSPITAL
MEDICAL CENTER,
a/a/o Kavell Willis,

Appellee.

CASE NO. 2018-CV-000026-A-O
L.C. CASE NO. 2014-SC-011804-O

Appeal from the County Court,
for Orange County, Florida,
David P. Johnson, County Judge.

Michael C. Clarke, Esquire,
Danielle M. Lutyk, Esquire, and
Betsy E. Gallagher, Esquire,
for Appellant.

Robert J. Hauser, Esquire, and
Alexander Thomas Briggs, Esquire,
for Appellee.

Before WILSON, CARSTEN, and WHITEHEAD, J.J.

PER CURIAM.

ON CONFESSION OF ERROR

The Court previously granted Appellee's motion to stay this appeal pending the resolution of Appellee's petition for writ of certiorari in 5D19-1372, filed in the Fifth District Court of Appeal. In 5D19-1372, Appellee was seeking certiorari review of

this Court’s opinion in *Progressive Select Insurance Company v. Florida Hospital Medical Center a/a/o Larry Hunt*, No. 2017-CV-000146-A-O (Fla. 9th Cir. Ct. Apr. 11, 2019) (“*Hunt*”), which according to Appellee “addressed a critical legal issue.”¹

Recently, the Fifth District denied certiorari in 5D19-1372. *Fla. Hosp. Med. Ctr. a/a/o Larry Hunt v. Progressive Select Ins. Co.*, No. 5D19-1372 (Fla. 5th DCA Oct. 22, 2019). Thus, this Court issued an order directing Appellee to show cause why the stay previously imposed in this appeal should not be lifted, and why the Court should not reverse and remand for further proceedings consistent with *Hunt*. In response to the Court’s show cause order, Appellee has filed a confession of error, in light of this Court’s opinion in *Hunt*, and states that the “appropriate procedure” is to set aside the summary judgment on appeal and remand “for further proceedings in accordance with *Hunt*.” In view of Appellee’s confession of error, the stay previously imposed in this appeal is now lifted. We REVERSE the summary judgment entered in this case and REMAND to the trial court for further proceedings consistent with *Hunt*.

Appellant’s motion for provisional award of appellate attorney fees is GRANTED, contingent on a judgment of no liability or a judgment obtained by Appellee that is at least 25% less than the amount of Appellant’s proposal for settlement, and on the trial court’s determination that Appellant’s proposal for

¹ In *Hunt*, this Court determined that the trial court erred in failing to follow *Progressive Select Insurance Co. v. Emergency Physicians of Central Fla.*, 202 So. 3d 437 (Fla. 5th DCA 2016), and in finding that the insurer was not entitled to contest the reasonableness of the provider’s bill.

settlement is otherwise enforceable under section 768.79, Florida Statutes (2018), and Florida Rule of Civil Procedure 1.442. The assessment of those fees is REMANDED to the trial court.

Appellee's motion for appellate attorney's fees is DENIED.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this _____ day of _____, 2020.

TANYA DAVIS WILSON
Presiding Circuit Judge

CARSTEN and WHITEHEAD, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order was furnished on this _____ day of _____, 2020, to the following: the Honorable David P. Johnson, Orange County Judge, Orange County Courthouse, 425 N. Orange Ave., Orlando, FL 32801; the Honorable Gisela T. Laurent, Orange County Judge, Orange County Courthouse, 425 N. Orange Ave., Orlando, FL 32801; Robert Hauser, Esquire, Alexander Thomas Briggs, Esquire, Pankauski Hauser PLLC, 415 S. Olive Ave., West Palm Beach, FL 33401 at courtfilings@phflorida.com; Michael C. Clarke, Esquire, Danielle M. Lutyk, Esquire, Betsy E. Gallagher, Esquire, Kubicki Draper, P.A., 400 N. Ashley Dr., Suite 1200, Tampa, FL 33602 at MC-KD@kubickidraper.com.

Judicial Assistant