

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

GARRISON PROPERTY AND  
CASUALTY INSURANCE  
COMPANY,

CASE NO.: 2018-CV-000048-A-O  
Lower Case No.: 2016-SC-018601-O

Appellant,

v.

TAMPA BAY EMERGENCY  
PHYSICIANS, P.L.  
a/a/o Alessandra Parker,

Appellee.

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**ORDER DENYING APPELLEE'S MOTION TO VACATE OR ALTERNATIVE  
MOTION FOR REHEARING AND THE PARTIES' JOINT MOTION TO  
VACATE PER CURIAM OPINION**

**THIS MATTER** came before the Court for consideration of Appellee's Motion to Vacate or Alternative Motion for Rehearing and the Parties' Joint Motion to Vacate Per Curiam Opinion, both filed on October 3, 2019. The Court finds as follows:

On September 18, 2019, the Court issued its Opinion, which treated Appellant's appeal as a writ of certiorari and granted the writ concluding that the trial court departed from the essential requirements of law by refusing to enforce a valid, mandatory forum selection clause in the relevant insurance policy. In the instant Motions, Appellee requests, joined by Appellant, that the Court vacate its Opinion and dismiss the appeal because the parties had previously reached a settlement in May of 2019 pending determinations

regarding fees and costs which were apparently resolved by August 15, 2019.<sup>1</sup> The parties claim that as a result of the settlement, the appeal is moot and subject to dismissal, citing to case law holding that a moot appeal is generally subject to dismissal. *See, e.g., Dep't of Health v. Shands Jacksonville Med. Ctr.*, 259 So. 3d 247, 251 (Fla. 1st DCA 2018). However, this case also provides for three exceptions to the general rule, including where “the issues are likely to recur.” *Id.* Despite the parties’ claim that the opinion of September 18 “no longer serves any purpose” we believe that the Opinion as rendered has precedential value. This Court has received numerous similar interlocutory appeals or petitions for writ of certiorari regarding venue transfer decisions made in the county court on the issues presented in this case.

In the alternative, Appellee contends, this time not joined by Appellant, that this Court overlooked a critical fact. Appellee argues that even if the address contained in the insurance policy is sufficient to establish the Insured’s address at the time the policy was issued, it is insufficient to establish the Insured’s address *at the time of the accident* without further “evidence that the address had not been updated before the accident.” This argument was already made by Appellee and considered by this Court. *See Lawyers Title Ins. Corp. v. Reitzes*, 641 So. 2d 1100 (Fla. 4th DCA 1993). As we concluded, and Appellee accepts “for the purposes of this motion,” the address in the policy was not hearsay and Insured was required to update her address during the effective period of the policy,

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<sup>1</sup> However, as noted by Appellee, neither party informed this Court of the settlement and dismissal of the case in the lower court until after rendition of this Court’s opinion.

Appellant met its burden of proof to establish Insured's residence and enforce the forum selection clause in the policy.

On the other hand, Appellee could have submitted evidence that Insured had, in fact, updated her address, and that for some reason the policy submitted to the court was outdated or no longer accurate in this respect. However, as noted in the Opinion, Appellee did not submit any evidence to refute Appellant's evidence regarding Insured's address. We do not agree with Appellee's contention that Appellant was required to submit additional evidence, in the first instance, to establish that Insured had not updated her insurance policy.

Accordingly, this Court declines to withdraw its Opinion.

Therefore, it is hereby **ORDERED AND ADJUDGED** that the Parties' Joint Motion to Vacate Per Curiam Opinion, filed October 3, 2019, is **DENIED**. Further, Appellee's Motion to Vacate or Alternative Motion for Rehearing, filed October 3, 2019, is **DENIED**.

**DONE AND ORDERED** in Chambers, at Orlando, Orange County, Florida, on this \_\_\_\_ day of \_\_\_\_\_, 2019.

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**BOB LEBLANC**  
Presiding Circuit Judge

APTE and O'KANE, JJ., concur.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Order has been furnished on this \_\_\_\_ day of \_\_\_\_\_ 2019, to **Rebecca O'Dell Townsend, Esq.**, Dutton Law Group, PA, P.O. Box 260697, Tampa, FL 33685 at service.ROT@duttonlawgroup.com; **Suzette M. Alfonso, Esq.**, Dutton Law Group, PA, P.O. Box 260697, Tampa, FL 33685 at service.sma@duttonlawgroup.com; **Scott W. Dutton, Esq.**, Dutton Law Group, PA, P.O. Box 260697, Tampa, FL 33685 at service.swd@duttonlawgroup.com; **Robert J. Hauser, Esq.**, Pankauski Hauser PLLC, 415 South Olive Avenue, West Palm Beach, FL 33401 at courtfilings@phflorida.com.

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**Judicial Assistant**