

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

**ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY,**
Appellant,

CASE NO.: 2014-CV-000047-A-O

Lower Case No.: 2013-SC-000529-O

v.

FLORIDA HOSPITAL MEDICAL CENTER,
a/a/o assignee of Ariona Zi,
Appellee.

Appeal from the County Court, for Orange County, Florida,
Adam McGinnis, County Judge.

Anthony J. Parrino, Esquire and
Peter J. Valeta, Esquire, for Appellant.

Dean Mitchell, Esquire and
Thomas Andrew Player, Esquire, for Appellee.

Before SCHREIBER, LATIMORE, and DOHERTY, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

Appellant, Allstate Fire and Casualty Insurance Company (“Allstate”) timely appeals the trial court’s “Order and Partial Summary Judgment on Cross Motions” (includes Final Judgment) entered March 7, 2014 in favor of Appellee, Florida Hospital Medical Center (“Florida Hospital”) as assignee of the insured, Ariona Zi (“Zi”). This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument. Fla. R. App. P. 9.320.

The very recent decision in *Allstate Fire and Casualty Ins. v. Stand-Up MRI of Tallahassee, P.A.*, 40 Fla. L. Weekly D693b (Fla. 1st DCA March 18, 2015) is controlling as the First District Court of Appeal reviewed Allstate's policy language (the same policy language that is the subject of the instant appeal) and found that the policy language provided sufficient notice of the election to apply the fee schedule.¹ This Court also notes that the trial court in the instant case did not have the benefit of the First District's opinion which was issued after the trial court entered the Order Denying Defendant's Motion for Summary Judgment and Entering Final Judgment for Plaintiff. Accordingly, as a matter of law, summary judgment in favor of Allstate is warranted in this case and the trial court's Final Judgment in favor of Florida Hospital must be reversed.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED:**

1. The trial court's "Order and Partial Summary Judgment on Cross Motions" (that includes the Final Judgment) entered March 7, 2014 is **REVERSED** and **REMANDED** for further proceedings consistent with this opinion.

2. Allstate's Motion for Attorney's Fees filed December 23, 2014 is **GRANTED** contingent upon the trial court determining that Allstate is entitled to attorney's fees pursuant to the Proposal for Settlement and the assessment of those fees is **REMANDED** to the trial court. Also, Allstate is entitled to have costs taxed in its favor by filing a proper motion with the trial court pursuant to 9.400(a), Fla. R. App. P.

¹ In *South Florida Wellness, Inc. v. Allstate Insurance Co.*, Case No. 13-61759-CIV-DIMITROULEAS (United States District Court, Southern District of Florida - February 13, 2015), Judge Dimitrouleas also found that Allstate's policy language provided sufficient notice as to the election to limit reimbursement to the fee schedules in section 627.736, Florida Statutes.

3. Florida Hospital's Motion for Appellate Attorney's Fees filed December 1, 2014 is **DENIED.**

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 15th day of April, 2015.

/S/
MARGARET H. SCHREIBER
Presiding Circuit Judge

LATIMORE and DOHERTY, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **Anthony J. Parrino, Esquire**, Reynolds, Parrino, Spano & Shadwick, P.A., 8700-4th Street North, St. Petersburg, Florida 33702; **Peter J. Valeta, Esquire**, Meckler Bulger Tilson Marick & Pearson LLP, 123 N. Wacker Drive, Suite 1800, Chicago, Illinois 60606; **Dean A. Mitchell, Esquire**, 4939 N.W. 115th Avenue, Ocala, Florida 34482; **Thomas Andrew Player, Esquire**, The Nation Law Firm, 570 Crown Oak Centre, Longwood, Florida 32750, and the **Honorable Adam McGinnis, Orange County Judge**, 425 N. Orange Avenue, Orlando, Florida 32801, on this 15th day of April, 2015.

/S/
Judicial Assistant