

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

USAA GENERAL
INDEMNITY COMPANY,

CASE NO.: 2017-CV-000119-A-O
Lower Case No.: 2015-SC-007091-O

Appellant,

v.

FLORIDA HOSPITAL
MEDICAL CENTER a/a/o
Wassim Khan,

Appellee.

Appeal from the County Court,
for Orange County, Florida,
Eric H. DuBois, County Judge.

Douglas H. Stein, Esquire,
for Appellant.

Robert J. Hauser, Esquire,
for Appellee.

Before CARSTEN, MURPHY, and TRAVER, J.J.

PER CURIAM.

OPINION ON MOTION TO WITHDRAW OPINION

Appellant's Motion to Withdraw Opinion, filed on February 18, 2019, is being denied by separate order of the Court. The Court's Opinion of February 1, 2019 is revised¹ as follows:

¹ The Court's Opinion of February 1, 2019 is revised to include Judge Murphy's dissent.

The trial court’s final judgment granting final summary judgment in favor of Florida Hospital Medical Center is **AFFIRMED**. *See Progressive Select Ins. Co. v. Florida Hosp. Med. Ctr., a/a/o Jonathan Parent*, 2018 WL 6816810 (Fla. Jan. 24, 2019). Furthermore, we decline to disturb the trial court’s determination regarding the election of a deductible. *See Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979) (“In appellate proceedings the decision of a trial court has the presumption of correctness and the burden is on the appellant to demonstrate error.”).

Accordingly, “Appellant’s Motion for Attorney’s Fees,” and “Appellant’s Request for Oral Argument,” filed on April 4, 2018, are **DENIED**.² “Provider’s Motion for Appellate Attorneys’ Fees,” filed on August 13, 2018, is **GRANTED**, and the assessment of those fees is **REMANDED** to the trial court.

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

KEITH A. CARSTEN
Presiding Circuit Judge

TRAVER, J.J., concurs.

MURPHY, J., dissents.

The case settled prior to the opinion being released, therefore the appeal should have been dismissed pursuant to Rule 9.350(a) of the Florida Rules of Appellate Procedure. *See* dissent in Order Denying Motion to Withdraw Opinion.

² *See* Fla. R. App. P. 9.320.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: the **Honorable Eric H. DuBois**, Orange County Judge, Orange County Courthouse, 425 N. Orange Ave., Orlando, FL 32801; **Douglas H. Stein, Esq.**, Association Law Group, P.L., 1200 Brickell Avenue, PH 2000, Miami, FL 33131; **Robert J. Hauser, Esq.**, Pankauski Hauser PLLC, 415 South Olive Avenue, West Palm Beach, FL 33401, on this _____ day of _____, 2019.

Debbie Hafner, Judicial Assistant