

CERTIORARI HAS ITS LIMITATIONS
By Ted Babbitt

Williams v. Oken, 36 Fla. L. Weekly S202 (Fla. May 5, 2011) was a review of Oken v. Williams, 23 So. 3d 140 (Fla. 1st DCA 2009) and St. Mary's Hospital v. Bell, 785 So. 2d 1261 (Fla. 4th DCA 2001). The Williams case arose out of a medical malpractice case where the plaintiff claimed that a cardiologist failed to properly treat him in the emergency room and he, therefore, suffered a heart attack. Plaintiff served a notice of intent to initiate litigation together with an affidavit by a board certified emergency room physician and the defendant cardiologist moved to dismiss on the grounds that the plaintiff's expert was not an expert in the field of cardiology and, therefore, that the plaintiff had failed to comply with Fla. Stat. 766.102 because he had not attached a corroborating affidavit from a qualified medical expert. The trial court denied the motion to dismiss and the defendant filed a petition for writ of certiorari with the First District Court of Appeals. The First District granted the petition for writ of certiorari and quashed the trial court's denial of the motion to dismiss. The plaintiff sought review before the Supreme Court alleging conflict with the St. Mary's case and the Supreme Court granted review.

While declining to review issues as to whether the affidavit in question was sufficient, the Supreme Court quashed the First District's decision in Oken and approved the Fourth District's decision in St. Mary's on the grounds that the First District's grant of certiorari was inappropriate.

The Supreme Court cited Reeves v. Fleetwood Homes of Fla., Inc., 889 So. 2d 812, 822 (Fla. 2004) which quoted from Bd. of Regents v. Snyder, 826 So. 2d 382, 387 (Fla. 2nd DCA 2002). Those cases held:

Before a court may grant certiorari relief from the denial of a motion to dismiss, the petitioner must establish the following three elements: '(1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case (3) that cannot be corrected on postjudgment appeal.'

The denial of a motion to dismiss cannot ordinarily be the basis for certiorari review but an exception has been carved out that permits certiorari review on the issue of whether presuit requirements of a medical malpractice statute have been complied with. Martin Mem'l Med. Ctr., Inc. v. Herber, 984 So. 2d 661, 662 (Fla. 4th DCA 2008); Lakeland Reg'l Med. Ctr. v. Allen, 944 So. 2d 541, 543 (Fla. 2nd DCA 2006). In Globe Newspaper Co. v. King, 685 So. 2d 518, 520 (Fla. 1995), the Supreme Court held:

Certiorari review is appropriate to determine whether a court has conducted the evidentiary inquiry required by section 768.72, Florida Statutes, but not so broad as to encompass review of the sufficiency of the evidence considered in that inquiry.

Globe was a punitive damage case and the issue was whether there was sufficient evidence to have permitted amendment of the complaint to claim punitive damages. The Supreme Court held that appellate courts have certiorari jurisdiction to determine if a trial court has followed the procedural requirements

of Florida Statute 768.72 but not to determine if sufficient evidence existed to justify the amendment of a complaint to claim punitive damages.

In Oken, the Court concluded that certiorari lies to determine whether a trial court has followed the appropriate presuit process under the medical malpractice statutes but not to conduct an evidentiary review of the trial court's determination. At 204, the Court holds:

A review of *Globe* supports Williams' arguments and demonstrates three things: (1) that a defendant cannot demonstrate material harm required for certiorari review concerning whether a punitive damages claim is viable, or by analogy, an expert is qualified, because those things do not deprive the defendant of the statutorily guaranteed process, (2) utilizing certiorari to review the trial court's findings regarding whether a claim for punitive damages exists, or, by analogy, whether an expert is qualified amounts to reviewing the sufficiency of the evidence, and (3) that granting a petition for writ of certiorari to review the sufficiency of the evidence is inappropriate.

In St. Mary's, supra, the Fourth District dismissed a petition for certiorari to determine whether there was sufficient evidence to prove that plaintiff's decedent had actually been a patient at St. Mary's Hospital prior to his death. The Court concluded:

Certiorari does not lie for appellate courts to reweigh the evidence presented concerning compliance with the presuit statutory requirements. St. Mary's at 1262.

The Supreme Court adopted the reasoning of the Fourth District in St. Mary's, supra, and quashed the opinion of the First District in Oken, supra. The

Court concluded that whether the trial court erred in finding that plaintiff's expert was qualified under the malpractice statutes was a legal error that was insufficient to justify review by certiorari. The Court held:

While ensuring that an expert meets the statutory presuit requirements is clearly an important consideration in medical malpractice cases, in the instant case, the First District exceeded its authority by granting certiorari to review whether Williams' expert met those qualifications. Florida courts have permitted certiorari review solely to ensure that the procedural aspects of the presuit requirements are met.

This case establishes the parameters of certiorari review in all cases not just medical malpractice. Appellate courts will accept certiorari to ensure that procedures are followed so that due process is met but will not determine on certiorari the evidentiary quality of the decision within that process.

NOTE: BECAUSE A NUMBER OF PEOPLE HAVE REQUESTED COPIES OF PAST ARTICLES, A COMPILATION OF THESE ARTICLES IS NOW AVAILABLE TO MEMBERS OF THE PALM BEACH COUNTY BAR ASSOCIATION, FREE OF CHARGE, BY CALLING (561) 684-2500.