

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

JOANNE HUNT,
Petitioner,

v.

**CASE NO.: 2010-CA-22549-O
WRIT NO.: 10-76**

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,**
Respondent.

Petition for Writ of Certiorari
from the County Court,
for Orange County,
Wilfredo Martinez, Judge.

V. Rand Saltsgaver, Esquire and
Adam Ross Littman, Esquire
for Petitioner.

Dale T. Gobel, Esquire and
Kimberly D. Webb, Esquire,
for Respondent.

Before ARNOLD, LAUTEN, J. ADAMS, SR., JJ.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner, Joanne Hunt, (hereinafter referred to as “Hunt”) seeks review of the lower court’s order dated September 8, 2010, denying her motion for protective order as to Respondent, State Farm Mutual Automobile Insurance Company’s (hereinafter referred to as “State Farm”) request for a compulsory medical examination by an orthopedic physician. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(2) and (3). We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

Hunt was involved in an automobile accident on February 22, 2000. At the time of the accident, she was insured for personal injury protection and medical payment benefits under a State Farm policy of insurance. She then submitted a claim for benefits under the policy. After seven years of medical treatment, Hunt's physician advised State Farm that she had reached maximum medical improvement. At that time, State Farm requested that Hunt submit to a compulsory medical exam per the policy which she did. The examining pain management physician, Adria Johnson, M.D., provided State Farm a report that no further treatment was reasonable, necessary or related to the subject accident. Upon receiving the report, State Farm advised Hunt, by correspondence dated May 31, 2007, that her coverage for medical treatment arising out of the automobile accident would be discontinued effective June 30, 2007.

In the instant action, Hunt claimed that she incurred medical expenses after the cut-off date of June 30, 2007 for medical treatment arising from the February 22, 2000 accident and that State Farm breached its contract by refusing to pay for those costs. State Farm denied that the subsequent medical expenses incurred by Hunt arose out of the accident and requested under Rule 1.360 an examination of Hunt by an orthopedic physician, Thomas Broderick, M.D. In response to this request, Hunt filed a Notice of Objections and Motion for Protective Order that was heard by the Trial Court on April 12, 2010. On September 8, 2010, the Trial Court entered an order overruling Hunt's objections and denying her Motion for Protective Order. Subsequently, Hunt sought certiorari review with this Court.

In the Petition, Hunt argues that 1) State Farm is not entitled to a second exam because it is contrary to its sole defense in this case; 2) State Farm is not entitled to a second compulsory medical exam (CME) in a PIP suit after termination of benefits; 3) State Farm's

second exam is invalid and inadmissible under § 627.736(7)(a), Florida Statutes; 4) State Farm is estopped from seeking a second exam; 5) State Farm waived or abandoned the CME; 6) State Farm's exam notice is defective as a matter of law, thus, Hunt is not required to attend the exam; 7) State Farm failed to meet the requirements for a 1.360 exam; 8) The exam violates Hunt's right to privacy under § 456.057, et al. Florida Statutes, and is thus inadmissible at trial; and 9) State Farm is not entitled to a second exam because the physician's opinion is neither relevant nor admissible as to the benefits in dispute. Hunt also has petitioned for an award of attorney's fees and costs.

Conversely, State Farm, in response, claims that the determination of whether it is liable to Hunt for additional benefits under the policy depends upon a determination of whether the treatment for which Hunt has made claim is, in fact reasonable, necessary, and related to the subject accident. State Farm argues that Hunt's medical condition has been placed squarely at issue in this litigation. Further, State Farm stresses that because Hunt's medical records indicate a potential unrelated orthopedic cause for her need for pain management, her orthopedic condition has been specifically placed at issue. Thus, State Farm claims that it has shown good cause for the physical examination.

In reviewing a nonfinal order, for which no appeal is provided by statute, this Court's review by certiorari is limited only to whether the order departs from the essential requirements of law and whether it causes material injury to petitioner throughout the remainder of the proceedings below, effectively leaving no adequate remedy on appeal. This principle remains the appropriate standard in considering the grant of certiorari relief in pretrial discovery. *Allstate Insurance Co. v. Boecher*, 733 So. 2d 993 (Fla. 1999).

“Discovery in civil cases must be relevant to the subject matter of the case and must be admissible or reasonably calculated to lead to admissible evidence.” *Residence Inn by Marriott v. Cecile Resort Ltd.*, 822 So. 2d 548, 549 (Fla. 5th DCA 2002). Furthermore, it is axiomatic that information sought in discovery must relate to the issues involved in the litigation, as framed in all pleadings. A departure from the essential requirements of law is more than “a simple legal error” but requires that there be “a violation of a clearly established principle of law resulting in a miscarriage of justice.” *Ivey v. Allstate Ins. Co.*, 774 So. 2d 679, 682 (Fla. 2000) (quoting *Combs v. State*, 436 So. 2d 93, 95-96 (Fla. 1983)).

Rule of Civil Procedure 1.360(a)(1) provides that a party may request any other party to submit to, or to produce a person in that other party’s custody or legal control for, examination by a qualified expert when the condition that is the subject of the requested examination is in controversy. Subsection (a)(2) of Rule 1.360 provides that an examination under this rule is authorized only when the party submitting the request has good cause for the examination. At any hearing the party submitting the request shall have the burden of showing good cause.

Upon review of the court record, this Court concurs with State Farm in its Response as it finds that Hunt’s orthopedic condition has been specifically placed at issue in this action and State Farm has satisfied its burden that good cause exists for the requested physical examination as required under Florida Rule of Civil Procedure 1.360. Further, State Farm’s Response adequately addresses in detail each argument presented by Hunt. Accordingly, State Farm’s Response is incorporated herein by reference. Among the cases cited in the Response, see *Florida Emergency Physicians – Kang & Assoc., M.D., P.A. v. Parker*, 800 So.

2d 631, 634 n. 3 (Fla. 5th DCA 2001) (citing *Schlagenhauf v. Holder*, 379 U.S. 104 (1964) and see *Scales v. Swill*, 715 So. 2d 1059, 1060 (Fla. 5th DCA 1998).

Based on the forgoing, this Court finds that the Trial Court's Order overruling Hunt's objections and denying her Motion for Protective Order as to State Farm's request for a compulsory medical exam should stand as the Trial Court did not depart from the essential requirements of law. Therefore, it is hereby **ORDERED AND ADJUDGED** that the Petition for Writ of Certiorari is **DENIED** and Petitioner's Motion for Attorney's Fees and Costs is **DENIED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this ___3rd___ day of August, 2011.

_____/S/_____
C. JEFFERY ARNOLD
Circuit Court Judge

_____/S/_____
FREDERICK J. LAUTEN
Circuit Court Judge

_____/S/_____
JOHN H. ADAMS, SR.
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. mail to: **V. Rand Saltgaver, Esquire**, 1215 Mount Vernon Street, Post Office Box 536096, Orlando, Florida 32853-6096; **Adam Ross Littman, Esquire**, 1801 Lee Road, Suite 320, Winter Park, Florida 32789; and **Dale T. Gobel, Esquire** and **Kimberly D. Webb, Esquire**, 189 South Orange Avenue, Suite 1430, Orlando, Florida 32801 on this 3rd day of August, 2011.

_____/S/_____
Judicial Assistant