IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

SHANDS TEACHING HOSPITAL AND CLINICS, INC., D/B/A SHANDS VISTA,

Petitioner,

v.

THE ESTATE OF ASHLEY LAWSON, BY AND THROUGH JOHN MARK LAWSON, PERSONAL REPRESENTATIVE,

Respondent.

_____/

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D14-4675

Opinion filed August 28, 2015.

Petition for Writ of Certiorari—Original Jurisdiction.

Christine Davis Graves of Carlton Fields Jorden Burt, P.A., Tallahassee, for Petitioner.

Brandon S. Vesely and Nicole M. Ziegler of Keane, Reese, Vesely & Gerdes, P.A., St. Petersburg, for Respondent.

EN BANC

OSTERHAUS, J.

Shands Teaching Hospital and Clinics, Inc., d/b/a Shands Vista, an adult psychiatric hospital, seeks a writ of certiorari to quash an order denying its motion to

dismiss a negligence action. Shands asserts that the Estate of Ashley Lawson failed to comply with mandatory presuit requirements under chapter 766, Florida Statutes (2014), before bringing a medical negligence claim cloaked in allegations of ordinary negligence. We have certiorari jurisdiction and conclude that because the claim arises from the services and care Shands was giving to a patient in a locked psychiatric unit, the complaint alleges medical negligence under section 766.106(1)(a), Florida Statutes. We thus grant the petition and quash the order.

I.

The Estate filed a complaint against Shands on the heels of a tragic accident. In January 2013, more than two months after Ashley Lawson had been admitted with a psychiatric condition to the locked unit at Shands Vista for safety reasons, she apparently took an employee's unattended keys and badge and escaped the hospital. Ms. Lawson made her way onto a nearby interstate highway and into the path of a truck, which struck and killed her. The Estate subsequently sued Shands alleging ordinary negligence and disavowing medical negligence. Shands moved to dismiss, claiming that the complaint actually sounded in medical negligence and that the Estate hadn't complied with the mandatory presuit requirements of chapter 766. But the trial court denied Shands' motion. It concluded that the Estate's complaint was for ordinary negligence because of an allegation that Ms. Lawson was not receiving care or services

when the breach occurred. Shands responded with a petition for writ of certiorari seeking relief from the order denying its motion to dismiss.

II.

A.

Certiorari review of the denial of a motion to dismiss is ordinarily unavailable. Baptist Med. Ctr. of Beaches, Inc. v. Rhodin, 40 So. 3d 112, 114–15 (Fla. 1st DCA 2010) (citing Martin-Johnson, Inc. v. Savage, 509 So. 2d 1097, 1099 (Fla. 1987)). But an exception applies to cases, like this one, where a defendant asserts that an order erroneously excuses a plaintiff from complying with chapter 766's presuit requirements. Id. Chapter 766 requires potential plaintiffs to investigate the merits of a claim and provide notice of intent to litigate before filing suit. Id. at 115. Where disputes arise regarding compliance with chapter 766's requirements, "[c]ertiorari review is proper to review the denial of a motion to dismiss." Goldfarb v. Urciuoli, 858 So. 2d 397, 398 (Fla. 1st DCA 2003); see also Rhodin, 40 So. 3d at 115; S. Baptist Hosp. of Fla., Inc. v. Ashe, 948 So. 2d 889, 890 (Fla. 1st DCA 2007).

For a court to grant certiorari relief from the denial of a motion to dismiss, a petitioner must establish 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 post-judgment appeal. Williams v. Oken, 62 So. 3d 1129, 1132 (Fla. 2011). As for elements (2) and (3), we have recognized that allowing noncomplying

medical negligence litigation to proceed frustrates the purposes of the Medical Malpractice Reform Act and imposes material and irreparable harm to medical defendants. See Rhodin, 40 So. 3d at 115; see also Holmes Reg'l Med. Ctr., Inc. v. Dumigan, 151 So. 3d 1282, 1284–85 (Fla. 5th DCA 2014). As for element (1), the legal merits prong of the test, we have said an order departs from the essential requirements of chapter 766 when a respondent fails to satisfy presuit requirements before bringing a medical negligence claim. Rhodin, 40 So. 3d at 115-16.

The specific presuit issue here—whether the claim sounds in medical negligence (requiring presuit compliance), or ordinary negligence (no presuit requirements)—is a familiar one which courts have analyzed in familiar ways under the applicable statute. See, e.g., Rhodin, 40 So. 3d at 115-16; Lakeland Reg'l Med. Ctr., Inc. v. Pilgrim, 107 So. 3d 505 (Fla. 2d DCA 2013); S. Miami Hosp., Inc. v. Perez, 38 So. 3d 809 (Fla. 3d DCA 2010); Indian River Mem'l Hosp., Inc. v. Browne, 44 So. 3d 237 (Fla. 4th DCA 2010); Dumigan, 151 So. 3d 1282. "[W]hether a claimant has satisfied threshold requirements [of chapter 766], warranting denial of the defendant's motion to dismiss, presents an issue of law." Rhodin, 40 So. 3d at 116; Dirga v. Butler, 39 So. 3d 388, 389 (Fla. 1st DCA 2010) (reviewing de novo whether defendants were entitled to presuit notice under chapter 766). Section 766.106(1)(a) defines a "'[c]laim for medical negligence' or 'claim for medical malpractice' [as] a claim, arising out of the rendering of, or the failure to render, medical care or services." The task for the courts

is to "decide from [the allegations] whether the claim arises 'out of the rendering of, or the failure to render, medical care or services.'" Ashe, 948 So. 2d at 890 (quoting Foshee v. Health Mgmt. Assocs., 675 So. 2d 957, 959 (Fla. 5th DCA 1996) and citing other cases). See also J.B. v. Sacred Heart Hosp. of Pensacola, 635 So. 2d 945, 949 (Fla. 1994) (describing the key inquiry as whether the complaint "arises out of any medical . . . diagnosis, treatment, or care"). If we conclude that the complaint sounds in ordinary negligence, we must deny the petition. See, e.g., Ashe, 948 So. 2d at 891. But if the Estate's claim is for medical negligence, then "we must quash [the order]." Rhodin, 40 So. 3d at 115.

B.

1.

> The key allegations in the Estate's complaint state:
>
> 1. This is an ordinary negligence action for which damages exceed $15,000, inclusive of interest, costs and attorneys' fees.
>
> 2. This is not an action for medical malpractice. This is not an action for negligent psychiatric treatment, negligent psychiatric diagnosis, or negligent psychiatric care.
>
> * * *
>
> 5. On November 1, 2012, Ashley Lawson was admitted to Shands Vista . . . and primarily resided in the Florida Recovery Center facility. She remained a resident until her death on January 23, 2013.
>
> * * *
>
> 8. Ashley Lawson (DOB 6/17/84) was admitted to [the Hospital] on

> November 1, 2012[,] as a psychiatric patient with a history of psychiatric illness, drug abuse, impulsive behavior, and multiple suicide attempts.
>
> 9. For her own safety, [she] was transferred to [the Hospital's] inpatient locked unit.
>
> 10. The [Hospital] owed a legal duty to provide adequate security for [her] and other psychiatric patients who resided in the locked unit.
>
> 11. Notwithstanding the legal duty owed to Ashley Lawson, the Defendant breached its duty when its employee negligently left her keys and badge unattended and kept them unattended for an unreasonable period of time which allowed Ashley Lawson to exit the locked unit with said keys and badge.
>
> 12. At the time the employee negligently left her keys and badge unattended, the employee was not rendering medical or psychiatric care to Ashley Lawson.
>
> 13. At the time the employee negligently left her keys and badge unattended, she was acting in the scope of her employment.
>
> 14. As a direct and proximate result of the Defendant's breach of its duty, Ashley Lawson impulsively eloped and made her way to the interstate in a confused condition and without any money, cell phone, or warm clothing. She was, then, struck by a tractor trailer, resulting in her death on January 23, 2012.

2.

Shands argues that the trial court's order departed from the essential requirements of law by elevating conclusory "ordinary negligence" labels alleged in the complaint over patently conflicting fact allegations that amount to a medical negligence claim. The complaint alleges that Shands had a legal duty to confine Ms. Lawson within the locked unit, where she had been admitted because her psychiatric

condition demanded the safety and security of a "locked unit." Shands apparently provided this 24-7 confinement service to Ms. Lawson for some two and a half months before she, "[a]s a direct and proximate cause of [Shands'] breach of its duty, . . . impulsively eloped." Despite the Estate's disavowals of medical negligence, we agree with Shands because under § 766.106(1)(a), the harm alleged in the Complaint arose from Shands' duty (and failure) to confine Ms. Lawson inside the hospital, which was the very service that the locked unit existed to provide. Because the breach arose from Shands' provision, and ultimate failure, to keep Ms. Lawson confined within its locked unit, and was ***the*** service that Ms. Lawson's condition allegedly required, we conclude that the Estate's claim arises out of the medical care, treatment, and services provided to her for purposes of § 766.106(1)(a).

We recognize that the Estate alleged "[t]his is not an action for medical malpractice. This is not an action for negligent psychiatric treatment, negligent psychiatric diagnosis, or negligent psychiatric care . . . [and that Shands' employee] was not rendering medical or psychiatric care to Ashley Lawson" when the breach occurred. But simply labeling allegations as "ordinary negligence" is not dispositive. Omni Healthcare, Inc. v. Moser, 106 So. 3d 474, 475 (Fla. 5th DCA 2012). Courts must look beyond the legal labels urged by plaintiffs and "must[] apply the law to the well-pleaded factual allegations and decide the legal issue of whether the complaint

sounds in simple or medical negligence." Dr. Navarro's Vein Ctr. of Palm Beach, Inc. v. Miller, 22 So. 3d 776, 778 (Fla. 4th DCA 2009).

The trial court credited the complaint's conclusory and internally inconsistent allegations that Ms. Lawson wasn't receiving care at the time of the breach, but overlooked those allegations defining the breach in terms of the unit's failure to keep her confined. Notably, the complaint set Shands' breach in the context of allegations of (1) Ms. Lawson's psychiatric condition, as "a psychiatric patient with a history of psychiatric illness, . . . impulsive behavior, and multiple suicide attempts," and (2) Shands' psychiatric care and services, stating: "For her own safety, [she] was transferred to Shands Vista's inpatient locked unit . . . [where Shands] owed a legal duty to provide adequate security for [her] and other psychiatric patients who resided in the locked unit." The complaint then defined the harm in terms of Ms. Lawson's poor psychiatric condition—impulsivity, mental infirmity, and suicidal tendencies—which Shands failed to keep in check: "[she] impulsively eloped and made her way to the interstate in a confused condition . . . resulting in her death."

Although courts must liberally construe, and accept as true, factual allegations in a complaint, as well as reasonable inferences therefrom, there is no obligation to accept internally inconsistent factual claims, conclusory allegations, unwarranted deductions, or mere legal conclusions made by a party. W.R. Townsend Contracting, Inc. v. Jensen Civil Const., Inc., 728 So. 2d 297, 300 (Fla. 1st DCA 1999) (citing Response

Oncology, Inc. v. Metrahealth Ins. Co., 978 F.Supp. 1052, 1058 (S.D. Fla.1997)). This rule applies to unfounded ordinary negligence claims. See South Miami Hospital, Inc. v. Perez, 38 So. 3d 809, 811 (Fla. 3d DCA 2010) (rejecting an ordinary negligence claim that "flies in the face of logic"); Dr. Navarro's Vein Centre, 22 So. 3d at 778 (rejecting an ordinary negligence claim that amounted to a "creative dance around the obvious"). Here, the ordinary negligence claim cannot be taken at face value, because the breach allegedly arose from Shands' failure in providing the signature psychiatric service offered by its specialty "locked unit"—confinement—which was the service that Ms. Lawson's psychiatric condition especially required.

Furthering our view that the Estate's claim sounds in medical negligence is that the proof required in this case will inevitably involve the medical negligence standard of care, or "that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers." § 766.102(1), Fla. Stat. Our court said in Broadway v. Bay Hospital, Inc., 638 So. 2d 176 (Fla. 1st DCA 1994), that the test for determining if presuit requirements apply is "whether the defendant is directly or vicariously liable under the medical negligence standard of care as set forth in section 766.102(1), Florida Statutes." Now, to be sure, some negligence suits alleged in medical contexts don't implicate medical standards of care. See, e.g., Quintanilla v. Coral Gables Hosp., Inc., 941 So. 2d 468 (Fla. 3d DCA 2006) (spilling hot tea on a

patient); Tenet St. Mary's Inc. v. Serratore, 869 So. 2d 729 (Fla. 4th DCA 2004) (inadvertently kicking a patient); Lake Shore Hosp., Inc. v. Clarke, 768 So. 2d 1251 (Fla. 1st DCA 2000) (garden variety slip and fall in a hospital). Just because a negligent act occurred in a medical setting doesn't make it medical negligence subject to chapter 766's presuit requirements. Robinson v. W. Fla. Reg'l Med. Ctr., 675 So. 2d 226, 228 (Fla. 1st DCA 1996). In Broadway, for instance, a hospital bed collapsed and injured a patient. Our court concluded that the claim sounded in ordinary negligence. 638 So. 2d 176. In that situation, medical standards of care didn't matter when evaluating the act of offering a dangerous bed. Jurors could resolve the negligence question by referring to common experience, the same as if a hotel, cruiseline, or other bed-providing proprietor had supplied the collapsed bed.

Conversely, the claim alleged here was grounded in Shands' duty to confine Ms. Lawson in its locked unit against her will. The Estate's claim is not that there is a duty to constantly guard one's keys and badge in the workplace. Rather, the complaint repeatedly highlighted the unique setting giving rise to the harm—in a "locked unit" of psychiatric patients—because it was critical to the allegations. In this special context, expert testimony is necessary to evaluate the "unattended" keys allegation and whether Shands appropriately handled Ms. Lawson's security. Cf., Sierra v. Associated Marine Insts., Inc., 850 So. 2d 582, 586 (Fla. 2d DCA 2003) (recognizing a policy at a residential juvenile detention camp not to keep keys on one's person, but to leave them

in a locked box in an administrative office). Medical experts might address questions like:

- In a locked hospital unit confining psychiatric patients against their will, must employees' keys and badges be kept "attended" on their person—perhaps pinned to a shirt or hanging around a neck—while caring for patients?
- If acceptable security policies allow for (or require) keys and badges to be stored away from patients and employees in a locked psychiatric unit, how are they to be stored given the wishes of some patients to escape?
- The complaint alleges that the keys and badge were left unattended for "an unreasonable" period of time; what is a reasonable period of time for an employee to leave keys and a badge unattended?
- Given Ms. Lawson's suicidal and impulsive condition and need for locked unit, psychiatric services, did Shands act acceptably in allowing her to move about the unit, where she could obtain keys, badges, and access to exits, or was confinement to her room or bed required?

Without the help of experts to establish what is acceptable, appropriate, and prudent in this psychiatric context, jurors cannot be expected to determine through common experience whether Shands or its employee breached relevant standards. See, e.g., Robison v. Faine, 525 So. 2d 903, 906 (Fla. 3d DCA 1987) (allowing medical standards of care testimony where an unwatched, suicidal patient escaped a bed restraint, exited onto the hospital's roof, and fell); Young v. Bd. of Hosp. Dirs. of Lee Cnty., 426 So. 2d 1080, 1081 (Fla. 2d DCA 1983) (tendering a physician to testify about medical care standards where a psychiatric patient escaped, ran into the streets, and was struck and injured by a car).

The Estate's argument relies mostly on Robinson and Joseph v. University Behavioral LLC, 71 So. 3d 913 (Fla. 5th DCA 2011), both of which involved physical attacks by dangerous patients in psychiatric facilities. In Robinson, the plaintiff alleged that the hospital "negligently failed to maintain the premises . . . in a safe condition," after an unsupervised patient with a violent history attacked the plaintiff while she was alone in her room. 675 So. 2d at 227. Our Court considered the claim to be "in effect, a premises liability case arising out of a criminal attack by a third party," emphasizing that the harm was "independent of any medical diagnosis, treatment, or care." Id.

Joseph is similar. A patient with a violent background attacked Mr. Joseph—for the second time—after Mr. Joseph had warned the residential facility about that patient's violent tendencies and sought to be removed from his ambit. Joseph, 71 So. 3d at 919. The Fifth District also concluded that the claim sounded in ordinary negligence, noting that "there [was] no record evidence that Joseph's injuries resulted from any decision made in the course of Joseph's psychiatric treatment." Id. In both cases, the negligence allegations translated easily to non-medical contexts where an entity is sued for ignoring known dangers on its premises.

The Estate also points to our decision in Ashe, which found ordinary negligence where a psychiatric patient was released without documented approval of a psychiatrist or other approved physician, violating both "mandatory and non-discretionary requirements of Florida's Baker Act." 948 So. 2d at 891. The neglect of legally

required documentation in Ashe has little bearing on the claim here that Shands failed in its duty to keep Ms. Lawson confined.

This case more closely resembles two patient confinement cases decided by other district courts in 2010. In Perez, the Third District Court of Appeal quashed an order denying a motion to dismiss where a patient fell from a hospital bed in the critical care unit and died. 38 So. 3d 809. The complaint alleged ordinary negligence because hospital employees left the patient unrestrained, unattended, and unsupervised. But the district court found the claim to sound in medical negligence. It granted the hospital's petition because the hospital's liability "clearly ar[o]se from the rendering of, or failure to render, medical services," determined by section 766.102's medical standard of care. Id. at 811–12.

The Fourth District found a similar complaint to allege medical malpractice where a 76-year-old, disoriented, and confused man fell from a stretcher after being admitted to a hospital and suffered fatal head injuries. Indian River Mem'l Hosp., Inc. v. Browne, 44 So. 3d 237 (Fla. 4th DCA 2010). The court held the claim to be subject to presuit requirements because it related to the hospital's standard of care in evaluating the condition of patients and to the adequacy of the hospital's patient-safety management procedures. The Fourth District noted that the failure to "implement adequate procedures to protect emergency room patients from falling from hospital

beds" includes a medical component. Id. at 239. And it concluded that the fall arose out of the rendering of, or the failure to render, medical care or services.

The claims in both Perez and Browne dealt with inadequately confined patients, just like the Estate's claim here that Shands failed to keep Ms. Lawson adequately confined within the locked unit as her condition required. And the same result is called for here. We agree with these two courts that "[t]hese types of issues arise out of the rendering of, or the failure to render, medical care or services." Browne, 44 So. 3d at 239.

3.

Finally, this matter has been determined en banc in order to maintain uniformity in the court's decisions. The three-judge panel could not reach a definitive result, with one judge favoring a return of the issue to the trial court for a motion-to-dismiss-stage evidentiary process. Shands did not request an evidentiary proceeding below and our cases have not required one, even when chapter 766 presuit-involved claims have been difficult to interpret, vague, or raised unanswered questions about whether a claim sounds in ordinary versus medical negligence. Requiring a novel evidentiary process would be a time- and resource-intensive departure both from traditional pleading standards and from the manner that trial courts have always handled these cases. Even in Lakeland Regional Medical Center, Inc. v. Pilgrim, 107 So. 3d 505, 508 (Fla. 2d DCA 2013), the decision underpinning this proposed approach, the court didn't simply

require an evidentiary process upon remand. Rather, it granted the defendant's petition and stated that the trial court should have dismissed the complaint without prejudice so that the plaintiff could more definitively allege an ordinary negligence claim, or replead in medical negligence. Dismissal along these same lines was called for here, without resorting to a new way of handling these cases.

III.

Because the Estate's complaint alleges medical negligence, the trial court should have granted Shands' motion to dismiss without prejudice for the Estate either to allege presuit compliance under chapter 766, see Hosp. Corp. of Am. v. Lindberg, 571 So. 2d 446, 449 (Fla. 1990), or to reallege their theory with details manifesting an ordinary negligence claim.

The Petition is GRANTED and the order denying Shands' motion to dismiss is QUASHED.

ROBERTS, C.J., and BENTON, LEWIS, ROWE, MARSTILLER, RAY, and WINOKUR, JJ., concur.

MAKAR, J., concurs in part and dissents in part with opinion.

WOLF, J., dissents in an opinion in which THOMAS and WETHERELL, JJ., join.

SWANSON, J., dissents in an opinion in which BILBREY, J., joins.

KELSEY, J., recused.

MAKAR, J., concurring in part, dissenting in part.

Shands Teaching Hospital and Clinics, Inc., seeks review of the trial court's order denying its motion to dismiss the complaint of the Estate of Ashley Lawson, which seeks to proceed against the Hospital with a negligence claim without resorting to the medical malpractice presuit screening requirements of chapter 766, Florida Statues (2013). Our three judge panel divided evenly, one member voting to deny the petition, one to grant the petition, leaving the opinion that follows (modified a bit) as a middle ground, one that would adopt the Second District's opinion in Lakeland Regional Medical Center v. Pilgrim, 107 So. 3d 505 (Fla. 2d DCA 2013). Like our panel, the en banc court has splintered its vote, albeit producing a majority view. Because the question of whether the presuit requirements apply in this case involves a mixed question of fact and law that cannot be determined from the complaint alone, the case should be remanded for further proceedings consistent with Pilgrim.

I.

The Estate's complaint arises from the death of Ashley Lawson, a psychiatric patient who received medical services in the secured psychiatric care facility at the Hospital. According to the complaint, Ms. Lawson "was admitted to [the Hospital] on November 1, 2012, as a psychiatric patient with a history of psychiatric illness, drug abuse, impulsive behavior, and multiple suicide attempts." It further stated that "[f]or her own safety, [she] was transferred to [the Hospital's] inpatient locked unit" and that

the Hospital "owed a legal duty to provide adequate security for [her] and other psychiatric patients who resided in the locked unit."

As the basis for liability, the complaint alleged that the Hospital "breached its [legal] duty when its employee negligently left her keys and badge unattended and kept them unattended for an unreasonable period of time which allowed [Ms. Lawson] to exit the locked unit with said keys and badge." As a result, she "impulsively eloped and made her way to the interstate in a confused condition and without any money, cell phone, or warm clothing. She was, then, struck by a tractor trailer, resulting in her death on January 23, 2012."

The Estate's complaint expressly disavowed that the action was based on medical negligence. The complaint specified that it was "an ordinary negligence action" and "not an action for medical malpractice." Further, it stated it was "not an action for negligent psychiatric treatment, negligent psychiatric diagnosis, or negligent psychiatric care." Paragraph twelve of the complaint specifically alleged that "[a]t the time the employee negligently left her keys and badge unattended, the employee was not rendering medical or psychiatric care" to Ms. Lawson.

Notwithstanding these disavowals, the Hospital moved to dismiss the complaint for failure to satisfy presuit requirements, arguing that the allegations sounded in medical negligence. The Hospital pointed out that the complaint alleged a duty was owed to psychiatric patients in the "locked unit" of the psychiatric facility to be kept

safe while being treated for psychiatric illnesses, including—in Ms. Lawson's case—drug abuse, impulsive behavior, and suicidal tendencies. Viewing these allegations as the basis for a standard of medical care for psychiatric patients like Ms. Lawson when assigned to a locked psychiatric unit, the Hospital asserted the action "is clearly one in medical malpractice" and subject to the "requirements of Chapter 766, Florida Statutes, including without limitation the requirements for presuit investigation and corroboration of grounds for such a claim."

The Estate responded that its complaint, on its face, alleged only ordinary, not medical, negligence that happened to occur in a medical facility. Specifically, the breach occurred when the Hospital's "employee negligently left her keys and badge unattended and kept them unattended for an unreasonable amount of time, which allowed Ashley Lawson to exit a locked unit with said keys and badge." This negligent act, though occurring in the psychiatric care unit, "involved no medical skill or knowledge . . . misdiagnosis on admission or afterwards or any improper treatment."

At the hearing on its motion, the Hospital urged that the complaint's allegations of inadequate security had to be judged by the standard for security of a psychiatric hospital overseeing psychiatric patients in a locked unit; the provision of security in this environment must be viewed "in light of the particular type of patient and the psychiatric illness and the threat that that patient represents, all of which entails a medical judgment, a psychiatric analysis of that patient, as well as that facility." The

Estate again countered that its complaint did not allege medical negligence, and no medical treatment or evaluation was alleged. It analogized the alleged security breach as akin to the decision of whether to leave a gurney rail up or down, which lacks a medical basis.

After argument, the trial court denied the Hospital's motion, saying "I don't know what the facts are going to show one way or the other, but I have to take that allegation particularly in Paragraph 12 on its face value and say this particular employee was not rendering medical or psychiatric care at the time." In denying the motion, the trial court made "perfectly clear to everyone [that] I'm not resolving this issue overall. I'm saying that at this stage, having to give deference to the allegations and the complaint, I don't think I could grant a motion to dismiss." An unelaborated written order followed.

II.

As a preliminary matter, certiorari jurisdiction exists to review the denial of the Hospital's motion, the potential effect of which would be to subject the Hospital to defending a claim in contravention of Florida's Medical Malpractice Reform Act. See Sova Drugs, Inc. v. Barnes, 661 So. 2d 393, 394 (Fla. 5th DCA 1995) ("If the case is fully litigated, without resort to the presuit procedures, that purpose [of the Act] would be frustrated, and appellate courts could not properly remedy the cause on appeal."). Irreparable harm occurs when a court improperly denies a motion to dismiss for failure

to follow presuit requirements because the defendant irretrievably loses the cost-saving benefits the Act was intended to provide. Holmes Reg'l Med. Ctr., Inc. v. Dumigan, 151 So. 3d 1282, 1284 (Fla. 5th DCA 2014).

Turning to the merits, whether a suit raises an issue of medical negligence for purposes of statutory presuit notice requirements involves a case-by-case approach, one that is guided by the statutory definition of "medical negligence" and the panoply of cases attempting to articulate a dividing line between situations subject to the presuit process and those that are not. To date, the district courts' collective attempts to "draw a clear, predictable line" between such cases "has not been entirely successful." Pilgrim, 107 So. 3d at 508. Where standards exist, they can be difficult to apply in specific cases, resulting in a degree of inconsistency and uncertainty. See, e.g., Holmes, 151 So. 3d at 1286 ("This Court has previously held that '[t]he primary test for whether a claim is one for medical malpractice is whether the claim relies on the application of the medical standard of care'. . . Application of this standard is not always easy or consistent.") (citation omitted).

As we said in Broadway v. Bay Hospital, Inc., 638 So. 2d 176 (Fla. 1st DCA 1994), the test for determining if presuit screening requirements apply is "whether the defendant is directly or vicariously liable under the medical negligence standard of care as set forth in section 766.102(1), Florida Statutes." Id. at 177; see § 766.106(1)(a), Fla. Stat. (claims for medical negligence or malpractice are those "arising out of the

rendering of, or the failure to render medical care or services"). The statutory standard for medical care is in section 766.102(1), which states that the "prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers." § 766.102(1), Fla. Stat.

Given this statutory guidepost, the starting point in determining whether medical negligence is at issue is what is alleged in a complaint. Broadway, 638 So. 2d at 177. For example, at issue in Broadway was a complaint seeking recovery from a hospital after a patient "was injured when her hospital bed collapsed." Id. Because it was apparent that the facts alleged could only support a non-medical negligence claim, "rather than for breach of some professional standard of care," this Court ruled that dismissal was improper and the lawsuit would proceed; it was unnecessary to delve beyond the "face of the complaint." See also Tenet St. Mary's Inc. v. Serratore, 869 So. 2d 729, 731 (Fla. 4th DCA 2004) (negligently kicking a patient's foot while trying to adjust reclining chair is ordinary negligence because there was "clearly no professional standard of care involved in attempting to kick a footrest of the reclining chair to return it to its upright position"). Noting that "[n]ot every wrongful act by a health care provider amounts to medical malpractice," the Court in Broadway drew a contrast with Neilinger v. Baptist Hospital of Miami, Inc., 460 So. 2d 564 (Fla. 3d

DCA 1984), in which the "complaint alleged that the plaintiff, a maternity patient, slipped and fell on a pool of amniotic fluid while descending from an examination table under the direction and care of employees of the hospital." 638 So. 2d at 177. In contrast to Ms. Broadway's purely non-medical negligence claim, the "complaint [in Neilinger] on its face alleged breach of a professional standard of care." Id.

While the starting point is what a complaint says, and plaintiffs have the right to assert what they believe is the true nature of the negligence alleged, simply labeling a claim as one not involving medical negligence is not dispositive of the judicial inquiry. See Omni Healthcare, Inc. v. Moser, 106 So. 3d 474, 475 (Fla. 5th DCA 2012) (finding that although the plaintiff attempted to allege a claim in simple negligence, the claim sounded in medical negligence). Cloaking a medical malpractice claim in non-medical verbiage, if rotely accepted from the face of a complaint, could defeat the legislative intent of the presuit process; disavowals that a claim is for ordinary, versus medical, negligence do not control. Dr. Navorro's Vein Ctr. of Palm Beach, Inc. v. Miller, 22 So. 3d 776, 778 (Fla. 4th DCA 2009) (complaint's claim of general negligence for laser hair removal is one for medical negligence despite "plaintiff's creative dance around the obvious"). Thus, if the face of the complaint suggests a possible breach of a medical standard of care, a trial court's responsibility is to determine as early and expeditiously as possible whether grounds for dismissal exist, much like is done in resolving jurisdictional disputes. Pilgrim, 107 So. 3d at 508

("Even though the [presuit] issue needs to be resolved at the beginning of the lawsuit, it may involve factual questions comparable to those that must be decided at the beginning of a case to resolve a jurisdictional issue." (citing Venetian Salami Co. v. Parthenais, 554 So. 2d 499 (Fla.1989) (footnote omitted))).

Let's turn now to the Estate's complaint. To support its position that a medical negligence claim underlies the complaint's allegations, the Hospital contends the Estate's negligence claim implies, if not states directly, that decisions about psychiatric patient security involve some degree of medical judgment; after all, not all psychiatric patients have the same degree of risk of flight or risk of harm to self or others. Unlike other hospital patients who are free to leave if physically able to do so, psychiatric patients like Ms. Lawson may be subject to confinement as part of their treatment plans. And at least inferentially, a standard of medical care exists regarding how those overseeing a psychiatric facility are to ensure patients at risk for flight, suicide, and other such risks are appropriately restricted. See Young v. Bd. of Hosp. Dir. of Lee Cnty., 426 So. 2d 1080, 1081 (Fla. 2d DCA 1983) (physician, though excluded for lacking sufficient experience, tendered to testify about medical standard in case where involuntary patient in a psychiatric ward "escaped from the ward, ran into the streets, and was struck and injured by a car"). The presuit process on the books at the time Young was decided required that medical negligence claims be heard first by a medical mediation panel.

A review of the caselaw finds none directly on point. The Hospital's view is supported by Indian River Memorial Hospital v. Browne, 44 So. 3d 237, 238 (Fla. 4th DCA 2010), which involved a 76-year-old admittee to an emergency room where he "fell off a stretcher and suffered head injuries that caused his death." The complaint against the hospital alleged that the patient "was admitted to the emergency room in a disoriented and confused state and the hospital improperly supervised him and left the bed's guardrail unsecured." Id. Concluding that the claim involved medical negligence, the Fourth District said that the "standard of care for the hospital's treatment of [the emergency room patient] is based in part on the hospital's evaluation of his medical condition when he was admitted to the emergency room." Id. at 238-39. The failure to "implement adequate procedures to protect emergency room patients from falling from hospital beds" includes a medical component. Id. at 239. ("The adequacy of the hospital's procedures depends on the prevailing professional standard for managing and supervising those admitted to emergency rooms. These types of issues arise out of the rendering of, or the failure to render, medical care or services.").

The parallel in this case to Indian River is that the face of the Estate's claim contains two key allegations that indicate that the negligence alleged may be based, at least in part, on the breach of a professional medical standard of care. The first is that Ms. Lawson "was admitted to [the Hospital] . . . as a psychiatric patient with a history of psychiatric illness, drug abuse, impulsive behavior, and multiple suicide attempts,"

such that "[f]or her own safety . . . [she] was transferred to [the Hospital's] inpatient locked unit." These allegations suggest that Ms. Lawson had a specific medical condition that might warrant the implementation of standards of care to protect her. The second, which completes the loop on the first, is that the Hospital "owed a legal duty to provide adequate security for [her] and other psychiatric patients who resided in the locked unit." Together, these two allegations suggest that the security to be provided was linked to, if not dependent upon, the medical status and needs of each psychiatric patient.

Much like Indian River, the standard of care for the Hospital's treatment of psychiatric patients may be "based in part on the hospital's evaluation of his medical condition when he was admitted" to the psychiatric inpatient locked facility. Id. at 238-39. By interlineation with the words of the Indian River court, the failure to "implement adequate procedures to protect [psychiatric] room patients from" escaping a locked psychiatric unit includes a medical component. Id. at 239. Because the "adequacy of the hospital's procedures depends on the prevailing professional standard for managing and supervising those admitted to [psychiatric facilities that include an inpatient locked unit], these types of issues arise out of the rendering of, or the failure to render, medical care or services." Id. A difference between Indian River and this case is that the former involved admission to an emergency room while the latter

involves admission to a psychiatric facility, but Indian River is persuasive in favor of the Hospital's position.

The Estate counters that Indian River can be distinguished because it asserts no claim that the Hospital was negligent in assessing Ms. Lawson's psychiatric condition; instead, the Hospital adequately diagnosed that condition, but failed to implement its generic security plan when an employee negligently left keys and a badge where Ms. Lawson could access them. Of course, the failure to keep a psychiatric patient safe from her own actions is not unlike failing to give medicines, or leaving them unattended for the patient to take indiscriminately. Leaving a scalpel in a surgical patient could be considered an act of ordinary negligence if viewed in isolation from its medical context; similarly, leaving keys unattended in a medical facility could be considered an act of ordinary negligence if viewed in isolation from its psychiatric context. Even if Ms. Lawson's condition was assessed correctly, the Hospital's duty to patients in a locked unit is to prevent harm that could result from their acting upon their impulses or ideations. Like Indian River, the failure here appears to be based, in part, on implementation of protocols related to a patient's specific medical condition. The Estate says its claim is like the situation in Lake Shore Hospital, Inc. v. Clarke, 768 So. 2d 1251, 1251 (Fla. 1st DCA 2000), where a hospital's patient "fell as she walked from her hospital bed to the bathroom." No medical dimension to the fall was evident. A mere slip and fall of this type, without more, sounds in ordinary negligence;

in contrast, the adequacy of a psychiatric unit's security plan and its implementation as to a particular patient in a locked inpatient unit plausibly involves at least some degree of medical judgment, thereby distinguishing Lake Shore Hospital. See also St. Joseph's Hosp., Inc. v. Cintron, 998 So. 2d 1192, 1194 (Fla. 2d DCA 2009) (anti-dumping claim, on its face, did not set for basis for medical negligence). Some degree of professional medical judgment may be necessary in balancing the relative degree of freedom and restraint a psychiatric patient with specific risk factors will have while in the facility.

The Estate further relies on Joseph v. University Behavioral LLC, 71 So. 3d 913, 919 (Fla. 5th DCA 2011) and Robinson v. West Florida Regional Medical Center, 675 So. 2d 226, 227 (Fla. 1st DCA 1996).[1] Though both involve psychiatric facilities, they are distinguishable because each involved attacks by one patient upon another and each was decided via summary judgment after some degree of discovery. Though the health care defendants in each case attempted to show the breach of a psychiatric standard of care, neither asserted the type of individualized, patient-centric standard

[1] The Estate also points to Southern Baptist Hospital of Florida, Inc. v. Ashe, 948 So. 2d 889, 891 (Fla. 1st DCA 2007), which involved the negligent release of a patient in "violation of mandatory and non-discretionary requirements of Florida's Baker Act." This Court held that the claim of the patient's estate sounded in ordinary, rather than medical negligence, even though the statute required "documented approval of a psychiatrist, a clinical psychologist, or . . . an attending emergency department physician with experience in the diagnosis and treatment of mental and nervous disorders" for her release. Id. In contrast to Ashe, this case appears to fall closer to a breached treatment protocol versus the neglected statutory prerequisites in that case.

that is potentially at issue in this case; instead, in both cases the alleged negligence involved inadequate security "independent of any medical diagnosis, treatment, or care." Robinson, 675 So. 2d at 228; see Joseph, 71 So. 3d at 919 (Fla. 5th DCA 2011) (refuting facility's claim at trial that "everything that happens in a psychiatric care facility is psychiatric treatment and any negligence is within the realm of medical malpractice"). Moreover, each arose after the trial court had been presented with some evidence beyond that in the complaint itself. See Robinson, 675 So. 2d at 228 ("On its face, the complaint, to which the deposition testimony adds few facts, is for inadequate security, independent of any medical diagnosis, treatment, or care.").

What is to be done in light of the presence of a possible medical negligence claim in this case? The trial judge felt hampered, making it "perfectly clear" to the parties that he was "not resolving this issue overall," needing more information to make a reasoned judgment. And the Estate leaves open, if not encourages, the possibility that the Hospital can reassert its position at later stages of the proceeding via a summary judgment if it believes that pre-suit requirements have been met. See id. (leaving open possibility for defendant "to show, with further development of the record, by way of proof of its affirmative defense, that any wrongful conduct on its part did arise from medical diagnosis, treatment or care . . . ."); see also Cintron, 998 So. 2d at 1194 n.1 ("Our opinion should not be read as foreclosing St. Joseph's from raising appropriate objections should the case develop into a medical malpractice

claim."). But the cost and delays of litigation are the very burdens that the presuit process was designed to avoid; a favorable summary judgment entered years and thousands of dollars in legal bills after a complaint is filed would be a Pyrrhic victory for health care entities that should never have incurred such costs at all; it could also be a calamitous setback for plaintiffs whose claims—because of the passage of time—are barred by the lapse of applicable statutes of limitations.

A pivotal point is that no substantiation yet exists in this case that a *medical* standard of care *actually exists* in the real world for securing individual psychiatric patients in a psychiatric ward; perhaps affidavits or testimony of medical experts will say it exists, perhaps not. To conclude at this point that this case must be based on medical negligence, because conflicting expert opinions may be presented on this issue at some point, puts the suture before the scalpel; the pre-suit process applies only if, as a matter of law, it is first proven that a medical standard actually exists in the specific context alleged. That question can't be answered yet on this record. See Pilgrim, 107 So. 3d at 509 ("[N]either the trial court nor this court should guess at an outcome."). Much like the cystology brush in Pilgrim, about which judicial speculation was required to determine whether a medical duty of care attached in its maintenance, insufficient information exists to conclude whether a medical duty underlies the negligence alleged in this case. A mixed question of fact and law exists, one upon

which judicial minds differ, and for which additional background and details would be useful, if not critical, in promoting informed judicial decision-making.

Viewed in this light, the most reasonable approach in this type of situation is described by Judge Altenbernd in Pilgrim, which provides for the filing of affidavits and a *possible* "limited evidentiary hearing," the overall purpose of which is to determine expeditiously at the outset of litigation whether a claim is based on medical negligence and subject to pre-suit. Id. at 509 ("If the factual basis for the claim remains disputed, it may be necessary for the trial court to conduct a limited evidentiary hearing, comparable to the hearing used to resolve a Venetian Salami jurisdictional dispute, to determine whether this case falls within the ambit of chapter 766."). When a complaint is vague or raises an unanswered question of whether medical negligence is involved, the "parties are entitled to a process that presents evidence by affidavit or evidentiary hearing." Id. This approach best achieves the intended legislative goal of the pre-suit process, which is similar to jurisdictional and standing disputes, see Chuck v. City of Homestead Police Department, 888 So. 2d 736, 751 (Fla. 3d DCA 2004) (en banc) (requiring evidentiary hearing on "the issue of standing" and adopting the procedure set forth in Venetian Salami), the point being that by adjudicating disputes at the start of a lawsuit, overall litigation costs are substantially reduced and medical negligence claims are channeled into the pre-suit process in a timely way. The upfront cost of securing affidavits that address whether a medical standard of care exists, or a

limited evidentiary hearing on the matter (if the trial court deems one necessary), is a far smaller price to pay than a costly "kick-the-pre-suit-can-down-the-road" approach that serves neither party well. In this case, the Hospital's petition should be granted, allowing it to contest the Estate's allegations of ordinary negligence by, for example, filing affidavits establishing that a medical standard of care exists or seeking a limited evidentiary hearing as in Pilgrim, which we should adopt.

WOLF, J., dissenting.

Shands Hospital files a petition for writ of certiorari asserting that the trial court erred in denying its motion to dismiss because the plaintiffs failed to allege that they followed the presuit notice requirements contained in chapter 766, Florida Statutes (Medical Malpractice Act). The trial court correctly determined, in ruling on the motion to dismiss, it was required to take the allegations of the complaint as true and that the allegations therein, leaving a pass and key unattended, established simple carelessness unrelated to diagnosis and treatment. Therefore, as alleged in the complaint, the case did not constitute one for medical negligence. See St. Joseph's Hosp., Inc. v. Cintron, 998 So. 2d 1192, 1194 (Fla. 2d DCA 2009).

Standard of Review

The appropriate certiorari review of the trial court's decision to deny the motion to dismiss is to review the four corners of the complaint to determine whether the trial court departed from the essential requirements of law. St. Joseph's Hosp., 998 So. 2d 1192; Lakeland Reg'l Med. Ctr., Inc. v. Allen, 944 So. 2d 541 (Fla. 2d DCA 2006). The standard which has been defined in cases involving certiorari review of denial of a motion to dismiss in medical malpractice actions, as in other certiorari reviews, is "'a violation of clearly established principle of law resulting in a miscarriage of justice.'" See Nieves v. Vera, 150 So. 3d 1236, 1238 (Fla. 3d DCA 2014) (quoting Williams v. Oken, 62 So. 3d 1129, 1132 (Fla. 2011)).

Complaint

The complaint in this case states in pertinent part:

8. Ashley Lawson (DOB 6/17/84) was admitted to [the Hospital] on November 1, 2012 as a psychiatric patient with a history of psychiatric illness, drug abuse, impulsive behavior, and multiple suicide attempts.

9. For her own safety, [she] was transferred to [the Hospital's] inpatient locked unit.

10. The [Hospital] owed a legal duty to provide adequate security for [her] and other psychiatric patients who resided in the locked unit.

11. Notwithstanding the legal duty owed to Ashley Lawson, the Defendant breached its duty when its employee negligently left her keys and badge unattended and kept them unattended for an unreasonable period of time which allowed Ashley Lawson to exit the locked unit with said keys and badge.

12. At the time the employee negligently left her keys and badge unattended, the employee was not rendering medical or psychiatric care to Ashley Lawson.

13. At the time the employee negligently left her keys and badge unattended, she was acting in the scope of her employment.

14. As a direct and proximate result of the Defendant's breach of its duty, Ashley Lawson impulsively eloped and made her way to the interstate in a confused condition and without any money, cell phone, or warm clothing. She was, then, struck by a tractor trailer, resulting in her death on January 23, 2012.

(Emphasis added).

The key assertions are:

1. The nature of the negligent act. The keys and badge were left unattended, an act not involving medical judgement.

2. The background circumstances at the time of the incident. Diagnosis or treatment was not taking place.

3. The employee's role or job duties are not identified in the complaint. In fact, based on what is alleged in the complaint, it could have involved staff with no relationship to medical diagnosis or treatment.

4. The standard of care. The failure to provide adequate security in a lock down facility. A standard that this court has stated does not necessarily involve medical negligence. See Robinson v. West Florida Regional Medical Center, 675 So. 2d 226 (Fla. 1st DCA 1996).

Trial Court's Ruling

At the hearing on the motion to dismiss, the trial court ruled as follows:

Okay. Well, I'm here at the complaint stage and a motion addressed to the complaint and I have to take the allegations of the complaint as true for the purposes of this motion anyway, and ask myself basically, under these circumstances, whether the Plaintiff has pled themselves out of court, basically by establishes that this is no way could have been connected or established that it was within the scope of rendering medical or psychiatric care. The complaint alleged quite the opposite in terminology. I don't know what the facts are going to show one way or the other, but I have to take that allegation particularly in Paragraph 12 on its face value and say this particular employee was not rendering medical or psychiatric are at the time. I don't know what the facts are going to reveal, but at this stage, I don't think I can grant a motion to dismiss. But in denying the motion to dismiss, I want to make it perfectly clear to everyone that I'm not resolving this issue overall. I'm saying that at this stage, having to give deference to the allegations and the complaint, I don't think I could grant a motion to dismiss.

The trial court's ruling may be summarized as follows:

1. In ruling on the motion to dismiss, the court was limited to review of the four corners of the complaint.

2. Based on the allegations in the complaint, the court could not say this case is based on medical negligence.

3. The court would revisit the issue if, as the facts develop, it becomes apparent the case is based on medical negligence.

The trial court's ruling was entirely correct and did not constitute a departure from the essential requirements of law.

Pertinent Statutory Sections

Chapter 766, Florida Statutes, contains a complex process which must be followed in medical negligence cases. The chapter defines a claim for medical negligence as "arising out of the rendering of, or the failure to render, medical care or services." § 776.106(1)(a), Fla. Stat.

The complex procedures contain strict presuit notice and investigation requirements. See, e.g., § 766.203, Fla. Stat. There are also extensive statutory requirements concerning breaches of standards of care and methods of proving these breaches in medical negligence actions. See, e.g., § 766.202, Fla Stat. One specific example of a provision which would make no sense outside the context of medical judgment is section 766.203(2)(b), which requires corroboration of reasonable grounds to institute medical negligence litigation by providing "submission of a verified written medical expert opinion from a medical expert as defined" in the statute.

The clear import of these extensive procedures is to prevent frivolous second guessing of health care providers in their diagnosis of patients and their method of treatment of patients. The onerous procedures were not intended to provide

unnecessary obstacles to injured parties attempting to institute claims against health care providers for simple carelessness. Indeed, requirements of extensive investigation and written medical expert opinions would make no sense in the context of simple careless acts, such as carelessly leaving one's keys where a patient can get them.

This court, in fact, has held on numerous occasions that where the challenged action does not involve a medical diagnosis or a decision that required professional skill or judgment, the presuit requirements need not be met. S. Baptist Hosp. of Fla., Inc. v. Ashe, 948 So. 2d 889, 891 (Fla. 1st DCA 2007). See also Holmes Reg'l Med. Ctr., Inc. v. Dumigan, 151 So. 3d 1282, 1286 (Fla. 5th DCA 2014). In a case clearly analogous to the one at issue, involving security in a psychiatric lockdown unit, this court recognized that limitations should not be placed on a party's right to sue. The court could not say on a "sparse record" with certainty that the claim arose "out of the rendering of medical care by licensed health care providers subject to the prevailing professional standard of care." Robinson v. W. Fla. Reg'l Med. Ctr., 675 So. 2d 226, 228 (Fla. 1st DCA 1996) (reversing summary judgment entered based on the court's conclusion that the two-year medical malpractice statute of limitations applied).

Several other courts have reached similar conclusions concerning the appropriate way of analyzing the statute's applicability. "[B]ecause the presuit requirements of [Florida's Medical Malpractice Act] limit the constitutional right of

access to courts, they must be narrowly construed." Holmes, 151 So. 3d at 1285 (citing Acosta v. HealthSpring of Fla., Inc., 118 So. 3d 246, 248 (Fla. 3d DCA 2013)).

In analyzing whether an act constitutes medical or simple negligence we cannot forget what the clear language of the statute indicates is intended to be covered and not covered.

Case Law Analysis

There are many cases dealing with the distinction between medical negligence and simple negligence. On one end of the spectrum are cases involving alleged misdiagnosis or harm caused during the treatment of a patient, and on the other end are cases not involving professional judgment or skill, such as simple premises liability. Compare Broadway v. Bay Hosp., Inc., 638 So. 2d 176 (Fla 1st DCA 1994) (finding the collapse of a hospital bed did not constitute medical negligence), and Joseph v. Univ. Behavioral LLC, 71 So. 3d 913 (Fla. 5th DCA 2011) (finding administrative decision not to separate patients did not constitute medical negligence), with Goldman v. Halifax Med. Ctr., Inc., 662 So. 2d 367 (Fla. 5th DCA 1995) (improperly conducting mammogram on patient constituted medical negligence).

In Holmes, 151 So. 3d 1282, the court addressed many of the major cases in this area and attempted to establish a framework for determining when actions constituted medical negligence versus simple negligence. The court stated that obvious cases of

medical negligence involved "incorrect diagnosis or an error that occurs during treatment or surgery." Id. at 1286. Specifically, the court stated:

> It is axiomatic that the mere fact that a wrongful act occurs in a medical setting does not automatically transform the contested action into one that sounds in medical malpractice; the wrongful act must be "directly related to the improper application of medical services and the use of professional judgment or skill." Corbo, 949 So.2d at 368 (quoting Lynn v. Mount Sinai Med. Ctr., Inc., 692 So.2d 1002, 1003 (Fla. 3d DCA 1997)). This Court has previously held that "[t]he primary test for whether a claim is one for medical malpractice is whether the claim relies on the application of the medical malpractice standard of care." Pierrot, 106 So.3d at 493 (citing Weinstock v. Groth, 629 So.2d 835, 838 (Fla.1993); Joseph v. Univ. Behavioral LLC., 71 So.3d 913, 917 (Fla. 5th DCA 2011); GalenCare, Inc. v. Mosley, 59 So.3d 138, 141–43 (Fla. 2d DCA 2011)).

Id. Cases not involving medical skill or judgment, however, are simple negligence actions not subject to the presuit requirements of chapter 776. Id. at 1287. This analysis is consistent with the purpose of the presuit requirements in chapter 766.

Here, the hospital's position is that decisions concerning the level of security to provide for a psychiatric patient are directly related to diagnosis and establishing protocols and therefore constitute medical negligence. The courts of this state, including this court, have specifically rejected such an expansive definition and recognized that not all negligence related to security in a psychiatric lockdown unit constitutes medical negligence. In Joseph, 71 So. 3d 913, and Robinson, 675 So. 2d 226, the courts found claims that one patient attacked another did not constitute medical negligence. If anything, the alleged negligence in those cases, which related to the decision of whether to separate patients, is more directly related to a patient's

diagnosis and care than what occurred in this case, which was simple carelessness. These cases, in fact, control our decision in this case and constitute well-reasoned approaches to the problem. We should not recede from our Robinson decision or create conflict with the Fifth District Court of Appeal in Joseph.

Here, the hospital relies heavily on the case of Indian River Memorial Hospital, Inc. v. Browne, 44 So. 3d 237 (Fla. 4th DCA 2010). That case is different from this case because the plaintiff in Indian River was in the course of being evaluated and treated. Here no evaluation and treatment of the deceased was alleged to have been taking place at the time of the negligence. To the extent that Indian River can be read to hold that the mere failure to properly put up a guardrail on a hospital bed after diagnosis has taken place and was unrelated to medical treatment constitutes medical negligence, we should not follow the decision of our sister court.

The hospital also relies on Young v. Board of Hospital Directors of Lee County, 426 So. 2d 1080 (Fla. 2d DCA 1983). The Young court, however, never made a determination in that case that the actions of hospital personnel constituted "medical negligence." The issue before the court was whether the written decision of a medical mediation panel was admissible. Thus, Young is not helpful in reaching a decision in this case.

Because the actions alleged in the complaint are unrelated to diagnosis and treatment, the trial court was correct in denying the motion to dismiss.

SWANSON, J., dissenting.

I respectfully dissent.

The trial court's duty in determining whether to grant or deny a motion to dismiss simply is to review the four corners of the complaint. St. Joseph's Hosp., Inc. v. Cintron, 998 So. 2d 1192, 1194 (Fla. 2d DCA 2009). In the present case, the trial court determined that the four corners of the complaint did not fulfill the requirements of a medical negligence case as stated in chapter 766, Florida Statutes (the Medical Malpractice Act). Appellant now seeks review of that determination by way of a petition for writ of certiorari, which requires this Court to determine whether the trial court (1) departed 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. Williams v. Oken, 62 So. 3d 1129, 1132 (Fla. 2011). The sole issue we need to examine is whether the trial court departed from the essential requirements of the law. It did not.

A writ of certiorari must be limited in its use to maintain its effectiveness as a remedy in preventing frivolous and "piecemeal review of pretrial orders." Abbey v. Patrick, 16 So. 3d 1051, 1054 (Fla. 1st DCA 2009). In this instance, when one looks at the complaint, I believe that the majority wrongly concludes the trial court departed from the essential elements of the law. Such a conclusion manifests a misapplication of the narrow standard of review. Moreover, it has stymied a litigant's right to seek a lawful remedy. The trial court clearly understood the mandated requirements of the

Medical Malpractice Act and, given the opportunity, I am confident that it would have judiciously moved this case to closure if it became clear that the cause of action could only proceed as medical malpractice. I would deny the petition.