

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

October 26, 2011

CASE NO.: 4D11-1899  
L.T. No. : CACE 07-31159 08

CLEVELAND CLINIC FLORIDA

v.

WESTON EMERGENCY  
PHYSICIANS, LLC

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Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

The petition for writ of certiorari is denied. By not requesting an evidentiary hearing until after the magistrate's recommendation, the petitioner waived its ability to request a full evidentiary hearing on the issue of whether the e-mail at issue is protected from disclosure by the attorney-client privilege or is not protected pursuant to the crime-fraud exception. See *First Union Nat'l Bank v. Turney*, 824 So. 2d 172, 183 (Fla. 1st DCA 2001) ("Even if [an] *in camera* inspection makes it appear that the crime[-]fraud exception applies, a full evidentiary hearing is necessary (*unless waived by the proponent of the privilege*), before confidential communications between attorney and client can be disclosed to another party.") (emphasis added; citations omitted). Based on our review of the e-mail at issue, the circuit court did not depart from the essential requirements of the law in rejecting the petitioner's exceptions the magistrate's recommendation that the e-mail was not protected from disclosure pursuant to the fraud portion of the crime-fraud exception. See *Williams v. Oken*, 62 So. 3d 1129, 1132 (Fla. 2011) ("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.") (emphasis added; citations and internal quotations omitted); further,

ORDERED that petitioner's June 7, 2011, Request for Oral Argument is hereby denied; further,

ORDERED that petitioner's Motion for Attorneys' Fees filed August 31, 2011, is hereby denied; further,

ORDERED that the respondent's motion for attorney's fees filed August 9, 2011, is granted conditioned on the trial court determining that respondent is the prevailing party and, if so, to set the amount of the attorney's fees to be awarded for this appellate case. If a motion for rehearing is filed in this court, then services rendered in connection therewith, including but not limited to preparation of a responsive pleading, shall be taken into account in computing the amount of the fee.

STEVENSON, TAYLOR and GERBER, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Howard Forman, Clerk  
Eileen Parsons  
Hon. Dale Ross

Kimberly J. Donovan  
Martin B. Goldberg

Alvin B. Davis  
Douglas T. Marx

dl

*Marilyn Beuttenmuller*  
Marilyn BEUTTENMULLER, Clerk  
Fourth District Court of Appeal

