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Paul Revere Life Ins. Co. v. Kahn
Fla.App. 3 Dist.,2004.

District Court of Appeal of Florida,Third District.
The PAUL REVERE LIFE INSURANCE COM-
PANY, Petitioner,

v.

Shelley KAHN, Respondent.

No. 3D04-1198.

May 26, 2004.

Background: Insurance company filed petition for writ of certiorari, seeking review of a decision of the Circuit Court, Miami-Dade County, Appellate Division, granting its motion for extension of time to file appellate brief only until date trial transcript was to be completed.

Holding: The District Court of Appeal, [Ramirez, J.](#), held that insurance company was entitled to an extension beyond date when transcript was to be completed.

Petition granted with directions.

West Headnotes

[1] Appeal and Error 30  **765**

[30](#) Appeal and Error

[30XII](#) Briefs

[30k765](#) k. Filing and Service. [Most Cited](#)

[Cases](#)

Insurance company was entitled to an extension of time to file appellate brief in the Circuit Court's Appellate Division beyond date when trial transcript was to be completed; appellant's motion for an extension of time was unopposed, and appellant was entitled to have the benefit of the transcript when writing its brief.

[2] Appeal and Error 30  **765**

[30](#) Appeal and Error

[30XII](#) Briefs

[30k765](#) k. Filing and Service. [Most Cited](#)

[Cases](#)

It is fundamentally unfair to require a party to prepare an appellate brief without a trial transcript.

A Writ of Certiorari to the Circuit Court for Miami-Dade County, Appellate Division.

Shutts & Bowen, LLP, and [John E. Meagher](#), Miami, for petitioner.

McLuskey & McDonald, P.A., and [John W. McLuskey](#); and [Lauri Waldman Ross](#), Miami, for respondent.

Before [SHEVIN](#), [RAMIREZ](#), and [WELLS](#), JJ.

[RAMIREZ](#), J.

The Paul Revere Life Insurance Company seeks certiorari review of a decision of the Eleventh Circuit Court's Appellate Division, granting its motion for extension of time only until June 2, 2004, the day when the preparation of the trial transcript will be completed. We find that the circuit court departed from the essential requirements of the law; thus we grant the petition, quash the circuit court order with instructions to grant an extension to June 20, 2004.

[1][2] This Petition is unopposed. It is fundamentally unfair to require a party to prepare a brief without a transcript. *Cf. [Trans-Continental Fin. Corp. v. Baxter](#), 402 So.2d 1289, 1290 (Fla. 5th DCA 1981)*. Perhaps the circuit court's order is its response to our decision in *[United Auto. Ins. Co., v. Total Rehab & Med. Ctr.](#), 870 So.2d 866 (Fla. 3d DCA 2004)* (en banc), wherein we held that it was improper to dismiss an appeal without first providing fair warning that the failure to file an initial brief could result in such a sanction. We would like to point out that we based our decision on Florida's long-standing policy in favor of deciding controversies on the merits.

The miserly granting of the unopposed motion for extension of time only until the same day when a transcript is completed in effect forces an appellant to prepare a brief without the benefit of a transcript. This has resulted in additional expense to the litigants in having to perfect this appeal, the additional cost of paying a filing *596 fee, the additional attorney's time of having to research and draft a petition for cer-

tiorari, and the additional judicial labor of granting such a meritorious petition.

We again recognize the appellate division's discretion in the control and management of its own docket, but repeat that this cannot be achieved at the expense of litigants' rights to due process and the essential requirements of law.

Petition granted with directions.

Fla.App. 3 Dist.,2004.

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873 So.2d 595, 29 Fla. L. Weekly D1247

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