

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SCOTT H. PEARSON AND SUSAN F.  
PEARSON, AS PERSONAL  
REPRESENTATIVES OF THE ESTATE OF  
KIMBERLY A. PEARSON, DECEASED,

Claimants,

vs.

Case No. 20-1761MA

INDIAN RIVER MEMORIAL HOSPITAL, INC.,  
D/B/A CLEVELAND CLINIC INDIAN RIVER  
HOSPITAL AND INDIAN RIVER MEDICAL  
CENTER,

Defendant.

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ARBITRATION AWARD

The final arbitration hearing in this case was held by Zoom technology before Lisa Shearer Nelson, Chief Arbitrator; Stuart Z. Grossman, Arbitrator; and Ronald C. Dresnick, Arbitrator, on October 1, November 2, 3, and 11, 2020.

APPEARANCES

For Claimants: Jorge E. Silva, Esquire  
Silva & Silva, P.A.  
236 Valencia Avenue  
Coral Gables, Florida 33134

For Defendant: James D. DeChurch, Esquire  
Marc J. Schleier, Esquire  
Fowler White Burnett, P.A.  
14th Floor  
1395 Brickell Avenue  
Miami, Florida 33131

AWARD

Following the presentation of all evidence in this proceeding, the arbitrators conferred to determine an award, which by majority vote of the arbitrators,<sup>1</sup> is stated below:

1. Funeral expenses:	\$11,075.00
2. Past medical expenses:	\$14,304.64
3. Present value of loss of net estate accumulations:	\$972,106.00
<b>Present value of total award:</b>	<b>\$997,485.64</b>

4. The parties have agreed to pay the arbitrators, Stuart Z. Grossman and Ronald C. Dresnick, at the rate of \$800 per hour. The arbitrators have agreed to be compensated for 30 hours each, which is less than the actual time spent preparing for, and attending, the arbitration. Accordingly, Defendant shall pay to each of the arbitrators named above \$24,000. Defendant shall also pay for the costs of the arbitration proceeding.

5. The parties have stipulated to the payment of Claimants' attorney's fees and costs for the proceedings before the arbitration panel at the statutory cap of 15% of the arbitration award, in the amount of \$149,622.85.

6. Claimants have also requested appellate attorney's fees for 36.3 hours of work performed with respect to the petition for discretionary review filed by Defendants in *Indian River Memorial Hospital, Inc. v. Scott and Susan Pearson*, Case No. 4D20-1355 (Fla. 4th DCA). However, Claimants' counsel acknowledged that he did not file a motion for attorney's fees in the appellate court pursuant to Florida Rule of Appellate Procedure 9.400(b). To obtain an award of appellate attorney's fees, Claimants were required to file a motion in the appellate court. Without having done so, the arbitration panel has no

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<sup>1</sup> Mr. Grossman dissented to the determination that there was not sufficient evidence to determine that it was reasonably certain that Ms. Pearson would have become an administrator as opposed to remaining in the classroom.

authority to make an award for appellate attorney's fees. *Respiratory Care Servs., Inc. v. Shear*, 715 So. 2d 1054, 1056 (Fla. 5th DCA 1998) ("Absent a mandate, the trial court has no jurisdiction to award appellate attorney's fees."); *see also Phillips v. Skilled Servs. Corp.*, 775 So. 2d 921, 922 (Fla. 2000) (appellate attorney's fees can only be awarded when a party complies with the substantive requirements of rule 9.400(b)); *Webber v. Dep't of Bus. & Prof'l Reg.*, 198 So. 3d 922, 923 (Fla. 1st DCA 2018) (failure to file a motion for attorney's fees pursuant to rule 9.400(b) is proper basis for denial of fees on appeal); *Gieseke v. Gieseke*, 499 So. 2d 839 (Fla. 4th DCA 1986) (to obtain appellate attorney's fees, a litigant must first request the fees from the appellate court).

DONE AND ORDERED this 13th day of November, 2020, in Tallahassee, Leon County, Florida.



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LISA SHEARER NELSON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 13th day of November, 2020.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.