

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

OLYMPUS INSURANCE COMPANY,
Petitioner,

v.

MAIKEL HERNANDEZ,
as Personal representative of the Estate of Yaimi Gandul,
Respondent.

No. 4D15-1060

[August 19, 2015]

Petition for writ of certiorari to the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Thomas M. Lynch, Judge; L.T. Case No. CACE14-004731 05.

Matthew C. Scarfone of Colodny Fass, P.A., Fort Lauderdale, for petitioner.

Scot Stremms of The Stremms Law Firm, P.A., Coral Gables, for respondent.

PER CURIAM.

The trial court departed from the essential requirements of law when it granted the motion for substitution of party and denied the motion to dismiss based upon counsel's unsworn assertions of excusable neglect. *Steinhardt v. Intercondominium Grp. Inc.*, 771 So. 2d 614, 614 (Fla. 4th DCA 2000). The petition for writ of certiorari is granted, and the trial court's February 19, 2015 order is quashed. On remand, the trial court is directed to conduct an evidentiary hearing to determine whether the untimely filing of the motion for substitution of party was caused by excusable neglect. *Id.* at 615.

STEVENSON and FORST, JJ., concur.
CONNER, J., dissents with opinion.

CONNER, J., dissenting.

I dissent and agree with the reasoning expressed by Judge Warner in

her dissent in *Volkswagen Group of America, Inc. v. Harmon*, 110 So. 3d 536 (Fla. 4th DCA 2013).

* * *

Not final until disposition of timely filed motion for rehearing.