

**SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

Case No. 6D2023-1983
Lower Tribunal No. 21-CA-003973

DOUGLAS HANNAH a/k/a DOUGLAS J. HANNAH,

Appellant,

v.

TONY MALKANI, DR. SUNIL MALKANI, and ACES OF NAPLES, LLC,

Appellees.

Appeal from the Circuit Court for Lee County.
Alane Laboda, Judge.

February 10, 2026

**ON APPELLANT’S MOTION FOR REHEARING, OR, IN THE
ALTERNATIVE, WRITTEN OPINION**

PER CURIAM.

This Court previously affirmed by citation opinion the trial court’s order granting summary judgment in favor of Appellee Tony Malkani and against Appellant Douglas Hannah. Appellant moves for rehearing or, alternatively, for a written opinion. In support of his request for a written opinion, Appellant argues that a written opinion would provide a legitimate basis for Supreme Court review. Appellant is correct on this point, and so we grant the motion for written opinion,

vacate our prior opinion, and substitute this opinion in its place. We otherwise deny the motion.

Appellant, Douglas Hannah, appeals the trial court's order granting summary judgment in favor of Appellee Tony Malkani. Appellant makes multiple arguments on appeal, but we write to address only one. We reject the remainder of the arguments without discussion.

Appellant argues that the doctrines of collateral estoppel and res judicata barred Mr. Malkani's claim against Appellant. However, Appellant did not raise that argument in opposition to Mr. Malkani's motion for summary judgment. Rather, Appellant raised the collateral estoppel and res judicata argument for the first time in his motion for rehearing directed to the trial court's order granting summary judgment, which the trial court denied. For this reason, we find Appellant's collateral estoppel and res judicata argument to be unpreserved. *See Melrose Ventures, LLC v. Uptempo Mktg. Corp.*, 418 So. 3d 217, 220 (Fla. 6th DCA 2025) (“[A]s a general rule, new and different arguments untimely raised for the first time in motions for rehearing which were denied are unpreserved.”).

For the same reasons given in *Melrose*, we certify this decision to be in direct conflict with *Kawsar v. Alhamdi Grp., LLC*, 369 So. 3d 1227, 1230 (Fla. 5th DCA 2023), and *Elser v. Law Offs. of James M. Russ, P.A.*, 679 So. 2d 309, 312 (Fla. 5th

DCA 1996), both of which held that a party can preserve a new argument by raising it for the first time in a motion for rehearing.

AFFIRMED. CONFLICT CERTIFIED.

STARGEL, SMITH and MIZE, JJ., concur.

Christopher D. Donovan, of Donovan Appellate Law, PLLC, Estero, for Appellant.

Steven L. Brannock and Sarah C. Pellenbarg, of Brannock Berman & Seider, Tampa, for Appellees, Tony Malkani, Dr. Sunil Malkani, and Aces of Naples, LLC.

Jack J. Aiello, of Gunster, Yoakley & Stewart, P.A., West Palm Beach, for Appellee, Tony Malkani.

Edward K. Cheffy, of Cheffy Passidomo, P.A., Naples, for Appellee, Aces of Naples, LLC.

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