

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

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

MAI SO VANG AND YANG XIONG,

Appellants,

v.

Case No. 5D19-1606

JOSE A. GUILLEN,

Appellee.

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Opinion filed September 18, 2020

Appeal from the Circuit Court  
for Orange County,  
Heather L. Higbee, Judge.

Warren Kwavnick, of Cooney Trybus  
Kwavnick Peets, Ft. Lauderdale, for  
Appellants.

Desiree E. Bannasch, of Desiree E.  
Bannasch, P.A., Orlando, for Appellee.

LAMBERT, J.

Appellants, Mai So Vang and Yang Xiong, who were the defendants below in a motor vehicle negligence action brought by Appellee, Jose A. Guillen, challenge the trial court's order assessing the sum of \$7600 in attorney's fees against them as a sanction. Appellants raise three arguments for reversal. We affirm, without further discussion, Appellants' claims that the amount of the sanction is excessive and that the trial court

lacked jurisdiction to enter this order. However, we do agree with Appellants' third argument that this \$7600 sanction should be offset against the final judgment to be entered for Appellants for taxable court costs and, potentially, for their attorney's fees pursuant to their proposals for settlement that had been previously rejected by Appellee, so that one net final judgment is entered.

Appellee had filed a pretrial motion for sanctions against Appellants, the specific reasons for the motion being immaterial to the disposition of this appeal. Following a hearing, the trial court entered an order granting Appellee's motion. In pertinent part, the order directed that the parties' counsel meet to see if they could agree on the "amount and type of sanctions," but that absent such an agreement, Appellee's counsel was to schedule an evidentiary hearing for the court to determine the sanctions. No agreement was reached.

For reasons not entirely clear in the record, this evidentiary hearing was not held prior to trial. The case proceeded to trial, resulting in the court directing a verdict against Appellee and thereafter entering final judgment in favor of Appellants. Appellee timely appealed, and our court has recently affirmed the final judgment without opinion.<sup>1</sup>

Subsequently to the entry of the final judgment, a hearing was scheduled to address the amount of the sanction to be imposed on Appellants. Also set to be determined at this hearing were the timely motion filed by Appellants under section 57.041, Florida Statutes (2018), seeking taxable costs in the sum of \$47,493.24 and their motion for attorney's fees pursuant to Florida Rule of Civil Procedure 1.442 and section

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<sup>1</sup> See *Guillen v. Mai So Vang*, Case No. 5D19-408, 2020 WL 5266147 (Fla. 5th DCA Sept. 3, 2020).

768.79, Florida Statutes, based on their earlier proposals for settlement. Appellants sought more than \$100,000 in attorney's fees.

During this hearing, the trial court ordered the \$7600 sanctions amount against Appellants but also found that, as the prevailing party in the litigation, Appellants were entitled to taxable costs. However, because the court had insufficient time remaining at the hearing to determine the amount to award Appellants for their taxable costs or to address Appellants' motion for an award of reasonable attorney's fees based on the aforementioned proposals for settlement, those matters were not resolved and remain pending below.

The \$7600 sanctions order entered against Appellants, the amount of taxable court costs to be awarded in favor of Appellants, and the potential attorney's fees award in favor of Appellants indisputably arise from the same action or proceeding below. Under these circumstances, we conclude that the amount assessed against Appellants as a sanction should be offset against the likely larger judgment to be entered in their favor for taxable costs and that may also be entered in their favor for reasonable attorney's fees, so that one net final judgment is entered. *See Nationwide Mut. Fire Ins. Co. v. Voigt*, 21 So. 3d 895, 896 (Fla. 2d DCA 2009) (reversing for the entry of one net final judgment that offsets the judgment imposing monetary sanctions against a party against the larger final judgment for damages entered in favor of that same party, where both judgments arose from the same proceeding).

Accordingly, while we affirm the amount of the sanction assessed against Appellants, we vacate the present order imposing the sanction. Consistently with this opinion, we remand for the trial court to: (1) determine the amount of Appellants' taxable

court costs; (2) decide whether Appellants are entitled to attorney's fees under their proposals for settlement and, if so, set the amount of those attorney's fees; and then (3) enter a net final judgment that sets off the \$7600 sanctions amount against the taxable costs to be awarded to Appellants, as well as their reasonable attorney's fees, if the trial court finds entitlement.

AFFIRMED, in part; SANCTIONS ORDER VACATED; REMANDED for further proceedings.

EVANDER, C.J., and TRAVER, J., concur.