FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-1613

MICHAEL HAMBLEN, as Personal Representative of the Estate of Samantha Hamblen,

Appellant,

v.

PILOT TRAVEL CENTERS, LLC, d/b/a FLYING J,

Appellee.

On appeal from the Circuit Court for Gadsden County.
Robert R. Wheeler, Judge.

February 26, 2021

PER CURIAM.

In an issue of first impression, we are called upon to determine what final judgment means in section 768.24 of the Florida Wrongful Death Act. We decline the Estate's invitation to adopt a new interpretation of the phrase and instead apply the reasoning in our decision interpreting a similar term in *Pruitt v. Brock*, 437 So. 2d 768 (Fla. 1st DCA 1983). There, we decided final judgment occurred at "the termination of judicial labor at the trial level." *Id.* at 772. Because the trial court reached the same conclusion, we affirm.

The Facts

Samantha Hamblen died in a car crash on a highway next to a Flying J travel center. Her estate sued Flying J under the Florida Wrongful Death Act. A jury awarded Steven Hamblen, the only statutory survivor of Samantha Hamblen, $200,000 per year for 25 years for his mental pain and suffering. The $5,000,000 verdict was then reduced for the comparative negligence of non-parties. Flying J timely moved for a new trial. While that motion was pending, Steven Hamblen died. The trial court later denied Flying J's motion for a new trial.

Flying J then moved for relief from judgment, arguing the award to Steven Hamblen for mental pain and suffering should be reduced to $0. Section 768.24, Florida Statutes (2013), states that "[a] survivor's death before final judgment shall limit the survivor's recovery to lost support and services to the date of his or her death." Because there was no claim for lost support and services, Flying J argued the recovery for pain and suffering should be vacated.

The dispute turns on when final judgment occurred. Flying J argued that because its motion for a new trial was pending when Steven Hamblen died, the judgment was not yet final. The Estate argued the trial court should interpret final judgment in the context of abatement law and conclude that it occurred before his death. The trial judge found Flying J's argument more persuasive, citing this Court's decision in *Pruitt*, and reduced the judgment. The Estate now appeals.

The Law

We have jurisdiction. Art V. § 4(b)(1), Fla. Const. Issues of statutory interpretation are reviewed de novo. *Coastal Creek Condo. Ass'n, Inc. v. Fla Tr. Servs. LLC*, 275 So. 3d 836, 838 (Fla. 1st DCA 2019).

A.

In *Pruitt v. Brock* we decided that a final judgment, as written in Florida Rule of Civil Procedure 1.540(b), does not occur until a

motion for rehearing under the same rule is disposed. This finding has been typical of Florida case law absent an alternative statutory definition or common law authority:

> This Court has never departed from the principle that where a petition for rehearing has been properly made within the time fixed by appropriate statute or rule, the trial court has complete control of its decree with the power to alter or change it until said motion has been disposed of. It therefore follows that the judicial labor has not been terminated and could not be terminated until the trial court had disposed of such petition. Until that time the decree or judgment was not final and the time for taking the appeal did not commence to run until the date of the entry of such order.

Pruitt, 437 So. 2d at 772 (quoting *State ex rel. Owens v. Pearson*, 156 So. 2d 4, 7 (Fla. 1963)). The same is true of motions for a new trial. *Rice v. Doyle*, 232 So. 2d 163, 164 (Fla. 1970) ("Of course, the rationale of our holding in *State v. Pearson* applies with equal efficacy to a motion for new trial."). Yet *Pruitt* addressed a rule of procedure, not a statute as we have here.

The Legislature has defined the term final judgment twice in all of statutory law, though the term, like in the Florida Wrongful Death Act, is included without definition in hundreds of different statutes. Both times it was defined, the Legislature intended final judgment to occur after the exhaustion of appellate remedies. *See* §§ 111.071(2), 501.203(1), Fla. Stat. (2019). But in other contexts, final judgment was intended to mean the judgment entered by the trial court without regard for post-judgment motions or appeals. *See, e.g.*, §§ 45.031(1), 55.01, 77.081(2), 702.10(1), Fla. Stat. (2019). In general, Florida courts have "defined 'final judgment' different ways in different contexts." *Chalfonte Condo. Apartment Ass'n, Inc. v. QBE Ins. Corp.*, 561 F.3d 1267, 1274 (11th Cir. 2009).

B.

We look to the text of the statute to guide our interpretation. There is no definition of the term in the Florida Wrongful Death Act. The only textual clue offered by the Estate in support of its

position is section 768.17 of the Act: "[i]t is the public policy of the state to shift the losses resulting when wrongful death occurs from the survivors of the decedent to the wrongdoer." § 768.17, Fla. Stat. (2013). The Estate claims this provision shows that when in doubt, the wrongdoer pays out. We do not read the provision so broadly.

When a person would receive compensation for future mental anguish, but never suffers that anguish, there are no losses to shift. Indeed, "[t]he philosophy of the [Wrongful Death] Act is to afford recovery for this element of damage for the living rather than the dead." *Fla. Clarklift, Inc. v. Reutimann*, 323 So. 2d 640, 641 (Fla. 2d DCA 1975). Also flowing against the Estate's argument is the plain language of section 768.24, which states that "[a] survivor's death before final judgment *shall limit the survivor's recovery*." (emphasis added).

The Estate then argues we should apply abatement law and interpret final judgment as occurring at the time of verdict or, at the latest, when the judgment reflecting the verdict is entered. But this argument is not based on the text of the statute. After all, the provision says final judgment, not verdict. And abatement law appears in other portions of the Wrongful Death Act. *See* Section 768.20, Florida Statutes (2013) (indicating that, where the injury results in death, a personal injury action pending at the time of a plaintiff's death "shall abate"). The express inclusion of abatement in other portions of the Wrongful Death Act makes its absence here all the more conspicuous. There is no indication that the Legislature intended abatement law to apply here.

The Estate next argues *Pruitt* is distinguishable because it interprets a rule of civil procedure that affects the timing of motions rather than a substantive law affecting rights. We agree *Pruitt* is distinguishable—it interprets a different provision altogether. But the same principles of construction apply. "It is well settled that the Florida Rules of Civil Procedure are construed in accordance with the principles of statutory construction." *Saia Motor Freight Line, Inc. v. Reid*, 930 So. 2d 598, 599 (Fla. 2006). The decision in *Pruitt* was decided on the text and well-established law holding that the filing of a motion for rehearing tolls the finality of the judgment. Though we are not bound to *Pruitt*, we

find the reasoning persuasive. And we believe the addition of a new interpretation of final judgment to the body of law would serve more to confuse than to clarify.

It is true that final judgment can mean different things. But here, without a statutory basis to conclude otherwise, final judgment simply means a judgment that is final. And this interpretation aligns with the statutory scheme of the Wrongful Death Act. To recover on a claim for mental pain and suffering, a survivor must be alive at the time of final judgment. § 768.24, Fla. Stat. (2019). And neither the verdict nor the judgment entered reflecting it are final when a motion for a new trial is pending.

A trial judge is not a wallflower when faced with a motion for a new trial. The motion requires the trial judge to weigh the evidence. *Fieldbinder v. Hill*, 356 So. 2d 1292 (Fla. 1st DCA 1978) (Boyer, concurring specially) ("When a motion for new trial is made it is directed to the sound, broad discretion of the trial court. If he concludes that the jury verdict is contrary to the manifest weight of the evidence then it is his duty to grant a new trial."); *Meyers v. Shontz*, 251 So. 3d 992, 1005 (Fla. 2d DCA 2018) (noting the trial judge must weigh the evidence and credibility of witnesses on a motion for a new trial). A judgment is not final until the weighing of evidence is complete and all fact-finding matters are resolved. To hold otherwise would ignore the trial judge's independence and broad discretion in the process.

The Holding

The text of the statute, and the context of the statutory scheme it exists within, lead us to this conclusion. Without a statutory definition to the contrary, we see no reason to reach a different conclusion than we did in *Pruitt*. We hold the term final judgment in section 768.24 of the Florida Wrongful Death Act means the moment the trial court's judgment becomes final. This finality is reached when the trial court's judicial labor is at an end.

Because Steven Hamblen died while Flying J's motion for a new trial was pending, he died before final judgment. As a result, his recovery is limited to "lost support and services to the date of his or her death." § 768.24, Fla. Stat. Because Steven Hamblen

did not recover damages for lost support and services, the trial court correctly reduced the award to $0.

The judgment of the trial court is AFFIRMED.

LEWIS, NORDBY, and LONG, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Jimmy Fasig and Rose Kasweck of Fasig Brooks, Tallahassee; Bryan S. Gowdy of Creed and Gowdy, P.A., Jacksonville, for Appellant.

Daniel S. Weinger, Daniel J. Santaniello, Dale J. Paleschic, and Alec G. Masson of Luks, Santaniello, Petrillo & Cohen, Fort Lauderdale, for Appellee.