FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-1246

EUGENIA BURNS,

Appellant,

v.

NOLAN TURNAGE,

Appellee.

On appeal from the Circuit Court for Leon County.
John C. Cooper, Judge.

October 6, 2022

JAY, J.

Appellant, Eugenia Burns, appeals the trial court's award of attorney's fees and costs to Appellee, Nolan Turnage. We affirm the award.

I.

Following a car accident, Burns filed a personal injury action against Turnage. Turnage made Burns a $60,000 settlement offer, which Burns did not accept. At trial, the jury returned a verdict awarding Burns $40,827.28 in damages. Because the parties stipulated that the proper set-off amount was $32,515.66, the trial court entered judgment for Burns in the amount of $8,311.62.

Citing his $60,000 settlement proposal, Turnage moved for attorney's fees and costs under section 768.79, Florida Statutes. In response, Burns moved to strike the proposal, arguing that it did not comply with the statute because, in her view, the proposal was ambiguous.

The trial court held a hearing on the parties' competing motions. The trial court ruled that Turnage's settlement proposal was a valid predicate for obtaining fees and costs under the statute. In reaching this result, the court said, "I think that [the offer's] intent is clear. It's intended to settle this case and all claims that could arise out of this case for the amount stated . . . . I don't think there is any ambiguity in this proposal or in the release." Accordingly, the trial court awarded fees and costs to Turnage.

Burns appeals the trial court's award. She does not dispute the reasonableness of the amounts in the award; instead, she maintains that Turnage is not legally entitled to any fees and costs under section 768.79.

II.

Burns argues that the trial court should have deemed Turnage's settlement proposal too ambiguous to be a predicate for obtaining fees and costs under section 768.79.[1] Burns contends the offer did not state its conditions and nonmonetary terms with particularity because it did not allow her to know which claims and parties she would be releasing by accepting the offer.

"Our review of a trial court's ruling on a motion for attorney's fees and costs filed pursuant to section 768.79 is *de novo*." *Wilcox v. Neville*, 283 So. 3d 878, 880 (Fla. 1st DCA 2019). To comply with section 768.79, a settlement offer must:

[1] Burns also argues that the trial court committed fundamental error by awarding fees and costs to Turnage because Turnage did not formally place his settlement proposal in the court file. We affirm this issue without discussion.

> (a) Be in writing and state that it is being made pursuant to this section.
>
> (b) Name the party making it and the party to whom it is being made.
>
> (c) State with particularity the amount offered to settle a claim for punitive damages, if any.
>
> (d) State its total amount.

§ 768.79(2), Fla. Stat. The statute provides that the offer "shall be construed as including all damages which may be awarded in a final judgment." *Id.* Florida Rule of Civil Procedure 1.442(c)(2) follows and builds upon the statute's requirements. The version in effect at the time stated that a proposal shall:

> (A) name the party or parties making the proposal and the party or parties to whom the proposal is being made;
>
> (B) state that the proposal resolves all damages that would otherwise be awarded in a final judgment in the action in which the proposal is served, subject to subdivision (F);
>
> (C) state with particularity any relevant conditions;
>
> (D) state the total amount of the proposal and state with particularity all nonmonetary terms of the proposal;
>
> (E) state with particularity the amount proposed to settle a claim for punitive damages, if any;
>
> (F) state whether the proposal includes attorneys' fees and whether attorneys' fee[s] are a part of the legal claim; and
>
> (G) include a certificate of service in the form required by Florida Rule of General Practice and Judicial Administration 2.516.

At issue here is whether Turnage's settlement offer complied with the Rule's demand for particularity. Regarding the need for particularity in settlement offers, the Florida Supreme Court has explained:

> We recognize that, given the nature of language, it may be impossible to eliminate all ambiguity. The rule does not demand the impossible. It merely requires that the settlement proposal be sufficiently clear and definite to allow the offeree to make an informed decision without needing clarification. If ambiguity within the proposal could reasonably affect the offeree's decision, the proposal will not satisfy the particularity requirement.

State Farm Mut. Auto. Ins. Co. v. Nichols, 932 So. 2d 1067, 1079 (Fla. 2006). Here, Turnage's settlement offer stated the following terms:

> A. The party making this proposal is the defendant, Nolan Turnage. The party to whom this proposal is made is the plaintiff, Eugenia Burns.
>
> B. The proposal offers to settle *all damages* that would otherwise be awarded in a final judgment against the defendant, Nolan Turnage, in the above-styled action, *regarding a motor vehicle accident that occurred on June 11, 2016, in Wakulla County, Florida.*
>
> C. The total amount of this proposal for settlement is SIXTY THOUSAND DOLLARS AND NO CENTS ($60,000.00). This proposal is inclusive of costs. *The non-monetary terms of the proposal are that (1) plaintiff will provide a general release in favor of the defendant, Nolan Turnage, and vehicle owner(s) and insured(s), attached hereto, and; (2) plaintiff will dismiss with prejudice the claim(s) that she has asserted against the defendant, Nolan Turnage, in the above-styled lawsuit.*
>
> D. This offer does not include any amount for punitive damages and no claim for punitive damages has been asserted in the subject lawsuit.

> E. This offer does not include any amount for attorney's fees and no claim for attorney's fees has been asserted in the subject lawsuit.

(Emphasis added; capitalization in original). In relevant part, the release attached to the proposal stated:

> FOR THE SOLE CONSIDERATION of SIXTY THOUSAND DOLLARS AND NO CENTS ($60,000.00) . . . the undersigned releases and forever discharges Nolan Turnage, Kelly[2] Turnage, and Allen Turnage, their heirs, successors, executors, agents and insurers . . . *from any and all claims, demands, damages, causes of action or suits of any kind or nature whatsoever*, for or on account of injuries or damages, known or unknown, which have resulted or may in the future develop, and including any claim for punitive damages, *because of a motor vehicle accident that occurred in Wakulla County, Florida, on or about June 11, 2016, and which is the subject of case number 2017 CA 2365, Circuit Court, Leon County, Florida* . . . .
>
> The undersigned hereby declares that the terms of this settlement have been completely read and are fully understood and voluntarily accepted for the purpose of making a *full and final compromise, adjustment, and settlement of any and all claims* she has or may have against those released by this document, and for the express purpose of *precluding forever any further or additional claims arising out of the above-referenced accident* against the parties released by this document.

(Emphasis added; capitalization in original).

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[2] The record suggests that "Kelley" is the correct spelling. This typographical error is immaterial to our analysis. *See Floyd v. Smith*, 160 So. 3d 567, 569–70 (Fla. 1st DCA 2015).

We believe that this language was sufficiently clear and definite to allow Burns to evaluate the settlement offer without needing clarification from Turnage, and there were no ambiguities within the offer that could have reasonably affected Burns' decision of whether to accept it. *See Nichols*, 932 So. 2d at 1079. The proposal offered to settle "all damages" that would otherwise be awarded in a final judgment against Turnage in the instant case "regarding a motor vehicle accident that occurred on June 11, 2016, in Wakulla County, Florida." This provision tracks the language of Rule 1.442(c)(2)(B), which requires a proposal to state that it "resolves all damages that would otherwise be awarded in a final judgment in the action in which the proposal is served . . . ."

The proposal identified two nonmonetary terms: (1) Burns would sign the attached release and (2) Burns would dismiss with prejudice her lawsuit against Turnage. The attached release stated that Burns would release Turnage "from any and all claims, demands, damages, causes of action or suits of any kind or nature whatsoever" that arose "because of a motor vehicle accident that occurred in Wakulla County, Florida, on or about June 11, 2016, and which is the subject of case number 2017 CA 2365, Circuit Court, Leon County, Florida." The release also said the settlement would be the "full and final compromise, adjustment, and settlement of any and all claims" that Burns "has or may have against those released by this document," and existed "for the express purpose of precluding forever any further or additional claims arising out of the above-referenced accident against the parties released by this document."

Given this language, Burns could not have reasonably believed that Turnage's settlement offer was intended to (a) resolve only some of Burns' potential claims against Turnage that stemmed from the June 2016 car accident, or (b) resolve any claims that were factually unrelated to the car accident. Instead, Turnage offered Burns $60,000 to release him and his parents from any liability they might have incurred to Burns because of the June 2016 car accident. This scope of release is enforceable. *Compare Ambeca, Inc. v. Marina Cove Village Townhome Ass'n, Inc.*, 880 So. 2d 811, 813 (Fla. 1st DCA 2004) ("Here, although the language may require releases for claims not raised or set forth in the

pleadings, it does so only to the extent those claims would arise from the facts giving rise to the underlying litigation. Because the release language does not contain an invalid obligation to relinquish rights on future causes of action *based on facts that have not occurred*, it was a valid offer of judgment pursuant to section 768.79, Florida Statutes.") (emphasis added) *and Bd. of Trs. of Fla. Atlantic Univ. v. Bowman*, 853 So. 2d 507, 510 (Fla. 4th DCA 2003) (a settlement offer is valid because the plaintiffs "*were only required to release any and all claims they had up to the date of the Proposal for Settlement*. They were not required to release all rights to sue Defendant based on any causes of action accruing in the future.") (emphasis added) *with Hales v. Advanced Sys. Design, Inc.*, 855 So. 2d 1232, 1233 (Fla. 1st DCA 2003) (a "global release of any claim *that might arise in the future*, against any entity remotely related to appellee" fails to satisfy the particularity requirement because the offeree could not reasonably evaluate whether the settlement amount was enough to cover any claim that he might ever accrue against the offeror) (emphasis added).

Additionally, the language that included Allen and Kelley Turnage (Appellee's parents) in the release should not have been confusing to Burns since Burns initially named Allen as a defendant in this case and Allen responded that Kelley owned Turnage's car on the date of the accident. Given this case history—as well as the text of the release—it is obvious that the offer's reference in Paragraph C to "vehicle owner(s)" could only refer to Turnage's parents.

Finally, even though Burns' complaint did not seek punitive damages, the language in the offer about punitive damages should not have been confusing because it emanates from Rule 1.442(c)(2)(E), which requires an offer to "state with particularity the amount proposed to settle a claim for punitive damages, if any." When read together with the rest of the proposal and the attached release, Burns could not have reasonably thought that the settlement would resolve all claims except one for punitive damages. This conclusion is reinforced by the fact that a claim for punitive damages is not a distinct cause of action, but instead is a sanction tethered to an underlying cause of action. *See Soffer v. R.J. Reynolds Tobacco Co.*, 187 So. 3d 1219, 1221–22 (Fla. 2016); *Ambeca*, 880 So. 2d at 813.

In sum, Burns is attempting to introduce ambiguity after the fact into a straightforward proposal for settlement. Had Burns accepted Turnage's proposal, there is no doubt that it would have barred her from raising any claims against Turnage or his parents that stemmed from the June 11, 2016 car accident in Wakulla County. This is consistent with the purpose of a general release from liability, which is to once and for all put a matter to rest. *See Nichols*, 932 So. 2d at 1079 ("We caution that rule 1.442 is not intended to revolutionize the language used in general releases. Traditionally, general releases have included expansive language designed to protect the offeror from unforeseen developments or creative maneuvering by the other party. Such language can be sufficiently particular to satisfy rule 1.442.").

III.

A proposal for settlement fails to satisfy Rule 1.442's demand for particularity only if any ambiguity within the proposal could reasonably affect the offeree's decision of whether to accept the offer. *Id.* Here, because there were no ambiguities in Turnage's settlement offer that could have reasonably affected Burns' decision, the trial court was right to find that Turnage's offer was a valid predicate for obtaining fees and costs under section 768.79, Florida Statutes.

AFFIRMED.

RAY and WINOKUR, JJ., concur.

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

Brian J. Lee of Morgan & Morgan, Jacksonville, for Appellant.

Angela C. Flowers of Kubicki Draper, Ocala, for Appellee.