

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2010

LINDA HAMILTON, as Personal Representative of the Estate of
HERBERT HAMILTON, deceased,
Appellant,

v.

**FLORIDA POWER & LIGHT COMPANY, ASPLUNDH TREE EXPERT
COMPANY, BOYNTON LANDSCAPE COMPANY, INC., and SUSAN
SMITH**,
Appellees.

No. 4D09-3971

[November 24, 2010]

HAZOURI, J.

Linda Hamilton, as Personal Representative of the Estate of Herbert Hamilton, filed a wrongful death action against Florida Power & Light Company (FPL), Asplundh Tree Expert Company (Asplundh), Boynton Landscape Company, Inc. (Boynton) and Susan Smith. FPL, Asplundh, and Boynton settled with Hamilton through her attorney for fifty thousand dollars each. Hamilton asserted that she had not given her attorney the authority to settle and FPL, Asplundh and Boynton filed motions to enforce settlement after Hamilton refused to execute the settlement agreement.

The trial court held an evidentiary hearing to determine whether Hamilton had given her attorney the clear and unequivocal authority to settle. Following the evidentiary hearing, the trial court granted the appellees' motions to enforce settlement from which Hamilton now appeals.

A party seeking to enforce a settlement agreement bears the burden of showing that the attorney proposing the settlement had the clear and unequivocal authority from his client to do so. *Sosnick v. McManus*, 815 So. 2d 759, 762-63 (Fla. 4th DCA 2002). The trial court's factual findings that there was a clear and unequivocal grant of authority must be supported by competent, substantial evidence in order to be upheld

on appeal. See *Spiegel v. H. Allen Holmes, Inc.*, 834 So. 2d 295, 297 (Fla. 4th DCA 2002).

At the hearing to enforce the settlement there was conflicting evidence regarding Hamilton's attorney's authority to settle. The trial court took testimony and resolved the conflict in favor of the appellees. When there is a nonjury finding on disputed evidence, it is reviewed on appeal for competent, substantial evidence because the lower court "is in the best position 'to evaluate and weigh the testimony and evidence based upon its observation of the bearing, demeanor and credibility of the witnesses.'" *Acoustic Innovations, Inc. v. Schafer*, 976 So. 2d 1139, 1143 (Fla. 4th DCA 2008) (quoting *Shaw v. Shaw*, 334 So. 2d 13, 16 (Fla. 1976)). Upon review of the record of the hearing on the motions to enforce settlement there is competent, substantial evidence to support the trial court's findings and we therefore affirm.

Affirmed.

CIKLIN and LEVINE, JJ., concur.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Timothy P. McCarthy, Judge; L.T. Case No. 502006CA005471XXXXMB.

Diana L. Martin of Leopold~Kuin, P.A., Palm Beach, Gardens, and Edwin Ferguson of The Ferguson Firm, Riviera Beach, for appellant.

Helen Ann Hauser and Maria E. Dalmanieras of Restani, Dittmar & Hauser, P.A., Coral Gables, for appellee Florida Power & Light Company.

Mitchell L. Lundeen and Kevin M. O'Brien of George, Hartz, Lundeen, Coral Gables, for appellee Asplundh Tree Expert Company.

Rayford H. Taylor of Stiles, Taylor & Grace, P.A., Atlanta, Georgia, and Robert J. Grace, Jr., of Stiles, Taylor & Grace, P.A., Tampa, for appellee Boynton Landscape Company, Inc.

Not final until disposition of timely filed motion for rehearing.