NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

HIREN PATEL, M.D., and DIPAL PATEL, M.D., Appellants, v. BALA NANDIGAM, M.D.; USHA K. NANDIGAM, M.D.; HARBOR CARDIOLOGY & VASCULAR CENTER, P.A., a Florida Professional Services Corporation; and CITY CENTER, LLC, a Florida Limited Liability Company, Appellees.	)	Case No. 2D12-5790

Opinion filed June 11, 2014.

Appeal from the Circuit Court for Charlotte County; George C. Richards, Judge.

Gregory J. Orcutt of Gregory J. Orcutt, P.A., Tampa, and Steven L. Brannock and Sarah C. Pellenbarg of Brannock & Humphries, Tampa, for Appellants.

Douglas B. Szabo and Suzanne M. Boy of Henderson, Franklin, Starnes & Holt, Fort Myers, for Appellees.

DAVIS, Chief Judge.

Dr. Hiren Patel and his wife, Dr. Dipal Patel, challenge the award of attorney's fees to Dr. Bala Nandigam and Dr. Usha Nandigam. We affirm as to the

Nandigams' entitlement to fees; however, we must reverse for a new proceeding to recalculate the amount of that award.

The Nandigams practiced medicine in Sarasota, Florida, with Dr. H. Patel in a professional association named Harbor Cardiology & Vascular Center, P.A. The three doctors and Dr. D. Patel subsequently formed a limited liability company called City Center, LLC, for the purpose of owning the building in which Harbor Cardiology practiced. The Nandigams held a slight majority of the ownership interest in both business entities.

Due to personality conflicts, the parties ceased their joint practice at Harbor Cardiology. Disagreements then arose as to the management of City Center. The Patels sued the Nandigams and both Harbor Cardiology, P.A., and City Center, LLC, alleging several causes of action brought by Dr. H. Patel for matters dealing with Harbor Cardiology and several counts brought by both Patels for issues involving City Center. Some of the claims were for damages, while others sought equitable relief.[1]

The Nandigams filed counterclaims and then offered to settle the claims involving Harbor Cardiology for $70,000 payable to Dr. H. Patel and the claims involving City Center for $5000 to each of the Patels. The Patels rejected these offers, and after several months of pretrial motions and discovery, the trial court referred the matter to

[1]Counts one through four named Dr. H. Patel as plaintiff and Harbor Cardiology and the Nandigams as defendants. Counts five through eight named both Patels as plaintiffs and City Center and the Nandigams as defendants. Count one alleged breach of the shareholders agreement, count two alleged a breach of statutory duties as directors of Harbor Cardiology, count three sought the imposition of a constructive trust as to the assets of Harbor Cardiology and the personal assets of the Nandigams, count four asked for an accounting of Harbor Cardiology's business activities, count five alleged a breach of statutory duties by the members of City Center, count six requested a judicial dissolution of City Center, count seven asked that a constructive trust be imposed on the assets of City Center and the personal assets of the Nandigams, and count eight sought an accounting as to City Center.

nonbinding arbitration. The arbitrator found for the Nandigams on some of the claims and for the Patels on other claims and did not rule in favor of either party on the Nandigams' counterclaims.

Following the arbitration, the Patels moved for a trial de novo as to the arbitrator's rulings in favor of the Nandigams on the four counts related to Harbor Cardiology. The Patels also moved for a trial de novo on the arbitrator's rulings that City Center should be dissolved (count five) and that there should be an accounting of City Center's books (count eight). The Patels also sought trial court review of count two of the Nandigams' counterclaims. The trial court dismissed the count related to the dissolution of City Center as that matter was the subject of a separate pending law suit.

After a multiday bench trial, the trial court ruled in favor of the Nandigams on all counts of the complaint before the trial court and on the remaining counterclaim. The Nandigams then moved for attorney's fees. Their motion for fees was based on section 768.79, Florida Statutes, the offer of judgment statute; section 44.103(6), Florida Statutes, dealing with arbitration; and the terms of the shareholders agreement entered into by the three parties involved in Harbor Cardiology. The trial court held a hearing on the issue of entitlement and determined that the Nandigams were entitled to fees under both the offer of judgment statute and the arbitration statute. The trial court's order stated that the Nandigams were entitled to fees dating back to December 2, 2010, which was thirty days after the offers of judgment were tendered. The trial court made no ruling on the shareholders agreement argument.

A subsequent hearing was held to determine the amount of the fees to be awarded. Prior to the hearing, the Nandigams submitted an affidavit from counsel as to the total amount of fees and costs incurred and an expert witness affidavit attesting that

the "reasonable number of hours to handle a matter of this type would be 922.9 hours as such time involved preparing for and attending trial and handling the case from start to finish." After the hearing, the trial court issued its order awarding the Nandigams $361,081.95 in attorney's fees.

The Patels now challenge that award on three grounds. First, the Patels argue that the Nandigams are not entitled to fees under the offer of judgment statute because the Patels' complaint sought both damages and equitable relief. Second, the Patels argue that the fee award was also erroneous under the arbitration statute because it does not satisfy the formula set forth in section 44.103(6). Finally, the Patels maintain that the trial court erred in setting the amount of the fee award without allowing them an evidentiary hearing at which to contest what they allege are instances of double billing.

As to their first argument, we agree with the Patels that attorney's fees are improper under the offer of judgment statute. The general offers made by the Nandigams both included language that each offer was to settle "all claims for damages . . . and all claims for equitable relief." Such language rendered these offers ineffective. See Diamond Aircraft Indus., Inc. v. Horowitch, 107 So. 3d 362, 374 (Fla. 2013) (holding that the offer of judgment statute "does not apply to an action in which a plaintiff seeks both damages and equitable relief[ ] and in which the defendant has served a general offer of judgment that seeks release of all claims" even where the equitable claims lack serious merit). As such, the trial court erred in finding that the Nandigams were entitled to attorney's fees based on their offers of judgment. See also Bull Motors, LLC v. Borders, 132 So. 3d 1158, 1160 (Fla. 3d DCA 2013) ("The offer of judgment statute . . .

does not apply to cases that, as here, involve a general offer seeking release of all claims in the case, both equitable and monetary.").

However, the trial court also found that the Nandigams were entitled to attorney's fees under section 44.103(6), the arbitration statute. That section provides that attorney's fees may be assessed against a plaintiff if he seeks a de novo trial after the entry of an arbitration order under certain conditions. Specifically, the fees may be awarded if "[t]he plaintiff, having filed for a trial de novo, obtains a judgment at trial which is at least [twenty-five] percent less than the arbitration award." § 44.103(6)(a). The Patels argue on appeal that section 44.103(6) is inapplicable here because they received a zero recovery at arbitration and a zero recovery at trial and that therefore the statutory formula was not met. They maintain that the trial court's award was not twenty-five percent less than the arbitration award because both awards were zero. We disagree with this reading of the statute.

The purpose of the attorney's fee provision of the arbitration statute is to serve as a sanction to discourage the needless filing of a motion for de novo hearing. To accept the Patels' argument would lead to the conclusion that one who totally fails at arbitration has no potential consequence for asking for a de novo trial regardless of how frivolous the request may be. This interpretation leads to such an illogical result that the argument must be disregarded. See Warner v. City of Boca Raton, 887 So. 2d 1023, 1033 n.9 (Fla. 2004) ("[A] statutory provision should not be construed in such a way that it renders the statute meaningless or leads to absurd results."); City of St. Petersburg v. Siebold, 48 So. 2d 291, 294 (Fla. 1950) ("The courts will not ascribe to the [l]egislature an intent to create absurd or harsh consequences, and so an interpretation avoiding absurdity is always preferred.").

We recognize that this is an attorney's fee statute that is in contradiction to the common law and therefore must be strictly construed. Cf. Diamond Aircraft Indus., 107 So. 3d at 376 (noting that in dealing with attorney's fees awards based on an offer of judgment, "[b]oth section 768.79 and [Florida Rule of Civil Procedure] 1.442 are in derogation of the common law rule that each party is responsible for its own attorney's fees which requires that we strictly construe both the statute *and* the rule"). However, even a strict statutory construction has to be meaningful and must not lead to an illogical result.[2] Payne v. Payne, 89 So. 538, 539 (Fla. 1921) ("Statutes must be so construed as to give effect to the evident legislative intent, even if the result seems contradictory to rules of construction and the strict letter of the statute; particularly does this rule apply when a construction based upon the strict letter of the statute would lead to an unintended result that defeats the evident purpose of the [l]egislature."). Accordingly, the trial court did not err in awarding attorney's fees to the Nandigams pursuant to the arbitration statute.

However, we note that section 44.103(6) provides that the award of fees shall apply to those fees "incurred after the arbitration hearing and continuing through the trial of the case." As pointed out above, the trial court ruled that the Nandigams were entitled to fees from December 2, 2010. The arbitration order, however, was not

[2]We also note that the results of the two proceedings were not technically the same. At arbitration, the Patels were found to prevail on the counts related to the dissolution of City Center, the accountings of City Center and Harbor Cardiology, the breach of statutory duties by the Nandigams as members of City Center, and the imposition of the constructive trust on the assets of City Center. All of these claims were equitable in nature. The trial court found to the contrary and ruled in favor of the Nandigams on each of these claims. Although there was a zero damage award by both the arbitrator and the trial court, the equitable relief granted in the arbitration was all denied by the trial court. Accordingly, the ruling of the trial court significantly reduced the Patels' award by the arbitrator even if the reduction cannot be quantified by a damage amount.

issued until February 27, 2012. Accordingly, by the terms of section 44.103(6), the Nandigams were not entitled to all of the attorney's fees awarded by the trial court.

Finally, we agree with the Patels that the trial court erred in awarding fees without holding an evidentiary hearing as to the reasonableness of the amount of fees to be awarded. See Envirocycle Solutions, Inc. v. Carpet Inn of Sarasota, Inc., 933 So. 2d 1280, 1281 (Fla. 2d DCA 2006).

In conclusion, we reverse the trial court's order as to the amount of the award only and remand for an evidentiary hearing. On remand, the trial court's award of fees must be limited to those based on entitlement pursuant to section 44.103(6) in an amount supported by competent, substantial evidence.

Affirmed in part, reversed in part, and remanded.

SLEET, J., Concurs.
ALTENBERND, J., Concurs in part and dissents in part.

ALTENBERND, Judge, Concurring in part and dissenting in part.

I concur in the court's opinion holding that fees are not awardable under the offer of judgment statute. Although the court's outcome seems fair in light of the facts in this particular case, I dissent as to the court's interpretation of section 44.103(6)(a) to authorize an award of attorney's fees when the plaintiff recovers no damages in both the arbitration and the subsequent trial. This statute provides for the assessment of costs including attorney's fees if "[t]he plaintiff, having filed for a trial de novo, obtains a judgment at trial which is at least 25 percent less than the arbitration

award." The statute does not appear to me to be ambiguous. Even a brief analysis of the statute reveals that a zero dollar award at the arbitration creates a situation in which no outcome at trial can be "25 percent less."

It is hard to imagine that the legislature, with the assistance of its staff, did not realize that the language of this statute provided no penalty for a plaintiff who elects to go to trial after receiving no award in the arbitration. This is particularly true given that a zero dollar award at trial had resulted in somewhat analogous problems for the sanction established by the statutory offer of judgment. See State Farm Mut. Auto. Ins. Co. v. Malmberg, 639 So. 2d 615, 616 (Fla. 1994) (statutory presumption of an unreasonable rejection of an offer is not conclusive where the trial results in a zero sum award).

Our holding today essentially adds the following language at the end of the above-quoted sentence of the statute: "or equal to the arbitration award if that award is zero." In general, courts are on safer ground when they interpret a statute to narrow the reach of the statute. Our addition today expands the statute. If I were completely convinced that the narrowness of the statute was simply a legislative mistake, leading to an absurd result, I would vote with the majority to save the legislature the trouble of amending the statute to state more clearly what they obviously intended. But I am not so certain that the narrowness of the statute is a mistake.

Section 44.103 allows the court to impose nonbinding arbitration under rules of procedure to be created by the Florida Supreme Court. The legislature clearly realized that the statute could result in situations where parties who want a trial by jury are first required to submit to arbitration. In a situation, for example, where a plaintiff believes its case is worth $30,000 and it receives a $20,000 award in arbitration, it might

be reasonable to impose an assessment when the trial results in a verdict less than $15,000. The plaintiff in such a case is turning down a significant monetary award and using precious court resources primarily due to its unreasonable evaluation of its case. But in the same case, if both the arbitration and the trial result in an award of zero, then the plaintiff is being sanctioned for demanding his or her constitutional right to trial by jury when no monetary award is available through arbitration.

It is not my contention that the legislature necessarily established a better policy by giving this break to plaintiffs who receive no award in arbitration. I only conclude that such a policy is not absurd or even a harsh consequence. The legislature knew when this statute was amended in 2007,[3] adding the "25 percent less" provision, that truly frivolous claims could already be sanctioned under section 57.105, Florida Statutes (2006). The statute and this particular amendment were not enacted to sanction frivolous litigation. This statute promotes a form of alternative dispute resolution, but it preserves a public policy recognizing that litigants should not be unduly pressured to waive their right to trial by jury, especially when they receive no compensation in the nonbinding arbitration. When a plaintiff receives no award at the nonbinding arbitration, the statute simply preserves the common law American rule under which parties bear their own attorney's fees. I am not prepared to override this legislative policy or to declare the common law rule to be an absurd result in this context. The legislature can amend the statute if the holding of this case is actually the intended legislative policy.

[3]Ch. 2007-206, § 1, at 1887, Laws of Fla.