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

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

JAMES MONEY, Appellant, v. HOME PERFORMANCE ALLIANCE, INC., Appellee.	)	Case No. 2D19-1642

Opinion filed January 6, 2021.

Appeal from the Circuit Court for Sarasota County; Maria Ruhl, Judge.

Albert A. Sanchez, Jr. of Sanchez Law, PLLC, Sarasota; and David A. Wallace of Bentley and Bruning, P.A., Sarasota, for Appellant.

Richard N. Asfar and Mason A. Pokorny of Cotney Construction Law, LLP, Tampa, for Appellee.

LaROSE, Judge.

Following a settlement payment and the voluntary dismissal of his lawsuit, James Money appeals the trial court's order denying his motion for attorney's fees. We have jurisdiction. See Fla. R. App. P. 9.030(b)(1)(A). Because the statute under which Mr. Money sought fees does not authorize such relief absent a judgment, we affirm.

Background

Mr. Money sued Home Performance Alliance, Inc., and Time Investment Company, Inc.,[1] alleging, among other causes of action, violations of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). §§ 501.201-.213, Fla. Stat. (2017). The suit arose from Home Performance's alleged defective installation of doors and windows in Mr. Money's home and the purported bait-and-switch credit agreement he signed to finance the work. Mr. Money sought attorney's fees under FDUTPA.

Mr. Money extended a proposal for settlement to Home Performance, pursuant to section 768.79, Florida Statutes (2018). The proposal did not "include attorney's fees or court costs." See Fla. R. Civ. P. 1.442(c)(2)(F) (requiring that a proposal for settlement "state whether the proposal includes attorneys' fees and whether attorneys' fee[s] are part of the legal claim").

The parties exchanged a flurry of counterproposals, all of which focused on the amount of the settlement and whether attorney's fees were included. Eventually, the parties settled. The settlement agreement covered "all claims for damages and monetary relief which could be awarded to [Mr.] Money against [Home Performance] in a final judgment in the above-styled action." Upon acceptance of the proposal and receipt of a $9000 settlement amount, the agreement obligated Mr. Money to dismiss the lawsuit with prejudice. The agreement provided that it "does not include attorney's fees or court costs which [Mr. Money] claims against [Home Performance] in this action."

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[1]Time Investment Company, Inc., was dismissed below before Mr. Money filed his notice of appeal.

Home Performance filed a written notice of acceptance and remitted $9000 to Mr. Money's counsel. Mr. Money filed a "Notice of Dismissal with Prejudice." The notice dismissed "all claims affected by [Mr. Money]'s Proposal for Settlement"; however, it "expressly exclude[d Mr. Money]'s claim for attorney's fees against . . . Home Performance."

Several weeks later, Mr. Money moved for attorney's fees, arguing that he "[wa]s the prevailing party in this action as a result of [Home Performance]'s acceptance of the proposal for settlement." Mr. Money sought fees pursuant to section 501.2105(1), FDUTPA's attorney's fees provision.

The trial court denied the motion, reasoning that section 501.2105(1) "strictly requires the entry of a judgment by the trial court." Absent such judgment, Mr. Money was not entitled to attorney's fees. Further, the trial court reasoned that it lacked jurisdiction to enter a judgment because Mr. Money had dismissed the case.

Mr. Money asserts that the trial court's rationale flies in the face of Mady v. DaimlerChrysler Corp., 59 So. 3d 1129, 1133 (Fla. 2011), in which the court held that the acceptance of a proposal for settlement and the corresponding payment is tantamount to a final judgment when considering the assessment of prevailing party attorney's fees. Thus, he argues, the trial court erred by holding that Home Performance's acceptance of his proposal for settlement is not the equivalent of a judgment under section 501.2105. Further, he complains that the reasoning in Mady, which involved a federal cause of action under the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, 15 U.S.C. §§ 2301-2312 (2000) (MMWA), should apply to his FDUTPA claim. Lastly, he contends that the trial court retained jurisdiction to award fees.

Analysis

We first address whether the trial court had jurisdiction to entertain Mr. Money's motion for fees. It did. Our opinion in Ekonomides v. Sharaka, 133 So. 3d 1174, 1175 (Fla. 2d DCA 2014), illustrates the point:

> Pursuant to the offer of judgment statute, "[u]pon filing of both the offer and acceptance, the court has full jurisdiction to enforce the settlement agreement." § 768.79(4), Fla. Stat. (2011); see also Mady v. DaimlerChrysler Corp., 59 So. 3d 1129, 1133 (Fla. 2011) (stating that "a settlement produced pursuant to Florida's offer of judgment statute is subject to that court's full continuing jurisdiction thereafter"). Thus, if the Tenant had accepted the proposal and Ekonomides had failed to pay the $100, the trial court would have had jurisdiction to enforce the settlement agreement.

(Alteration in original.) We are unpersuaded that the dismissal of the lawsuit left the trial court powerless to enforce the settlement's terms. Indeed, the settlement explicitly reserved the issue of attorney's fees for the trial court's consideration. Unfortunately for Mr. Money, we can side no further with him.

FDUTPA's "attorney's fees provision applies to claims asserted under FDUTPA." Diamond Aircraft Indus., Inc. v. Horowitch, 107 So. 3d 362, 368 (Fla. 2013). FDUTPA's attorney's fees provision applies so long as the legal action is filed pursuant to FDUTPA, irrespective of its success, see, e.g., Brown v. Gardens by the Sea S. Condo. Ass'n, 424 So. 2d 181, 184 (Fla. 4th DCA 1983) (holding that despite the trial court's finding that FDUTPA was inapplicable, because the plaintiff invoked FDUTPA's protections and filed an action under FDUTPA, the nonprevailing plaintiff was responsible to the defendant for attorney's fees under the act), or even if the trial court ultimately finds FDUTPA inapplicable, see, e.g., Rustic Vill., Inc. v. Friedman, 417 So. 2d 305, 305-06 (Fla. 3d DCA 1982) (stating that upon a trial court's finding that a plaintiff

filed a claim under FDUTPA, an award of attorney's fees to a prevailing defendant is permissible despite the trial court's conclusion that FDUTPA did not apply).

Our task is to review the trial court's construction and application of section 501.2105(1). "Generally, a trial court's order on attorney's fees is reviewed for an abuse of discretion. When entitlement to attorney's fees is based on the interpretation of a statute, however, this Court's review is de novo." Saltzman v. Hadlock, 112 So. 3d 772, 774 (Fla. 5th DCA 2013) (citation omitted). It is a "fundamental premise that legislative intent is the polestar that guides us in our [statutory construction] inquiry." Donato v. Am. Tel. & Tel. Co., 767 So. 2d 1146, 1150 (Fla. 2000). "[T]he primary source for determining legislative intent is the language chosen by the Legislature to express its intent." Id. Furthermore, "[i]t is . . . well-established in Florida that a statute that awards attorney's fees is in derogation of the common law rule that each party pay its own attorney's fees and must be strictly construed." Diamond Aircraft Indus., Inc., 107 So. 3d at 367.

No one can dispute that "[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984) (quoting A.R. Douglass, Inc. v. McRainey, 137 So. 157, 159 (Fla. 1931)). With these principles in mind, we turn to the statute's language. See Fla. Birth-Related Neurological Injury Comp. Ass'n v. Dep't of Admin. Hearings, 29 So. 3d 992, 997 (Fla. 2010) ("As a general rule, statutory interpretation begins with the plain meaning of the statute.").

Section 501.2105(1) states that "[i]n any civil litigation resulting from an act or practice involving a violation of this part . . . the prevailing party, after judgment in the trial court and exhaustion of all appeals, if any, may receive his or her reasonable attorney's fees and costs from the nonprevailing party." Under the statute's plain and obvious meaning, it is only after entry of a judgment[2] in the trial court that the prevailing party[3] may be entitled to attorney's fees.

Mr. Money did not obtain a judgment. Pursuant to the parties' agreement, he voluntarily dismissed his lawsuit. Therefore, Mr. Money is not entitled to attorney's fees under FDUTPA. See, e.g., Diamond Aircraft Indus., Inc., 107 So. 3d at 368 ("In accordance with the plain language of [section 501.2105(1), Florida Statutes (2011)], to recover attorney's fees in a FDUTPA action, a party must prevail in the litigation; meaning that the party must receive a favorable judgment from a trial court with regard to the legal action, including the exhaustion of all appeals." (emphasis added)); Black Diamond Props., Inc. v. Haines, 36 So. 3d 819, 821 (Fla. 5th DCA 2010) ("[S]ection 501.2105(1) . . . requires that there be an entry of judgment before attorney's fees can be awarded. In this case, attorney's fees cannot be granted to Black Diamond under section 501.2105(1) because judgment is not entered . . . ."); Sanborn v. Jagen Pty. Ltd., No. 8:10-cv-142-T-30MAP, 2010 WL 3781641, at *1 (M.D. Fla. Sept. 23, 2010)

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[2]The term "judgment" is not defined in FDUTPA; however, "final judgment" is defined. See § 501.203(1) (" 'Final judgment' means a judgment, including any supporting opinion, that determines the rights of the parties and concerning which appellate remedies have been exhausted or the time for appeal has expired."). This is the only instance throughout FDUTPA in which the term "final judgment" is utilized.

[3]The parties also dispute whether Mr. Money was a "prevailing party" under section 501.2105. Because our conclusion on the threshold issue of whether the absence of a judgment precludes an award of attorney's fees under 501.2105 is dispositive, we do not address this argument.

("Florida case law makes it clear that . . . an [attorney's fee] award is inappropriate in a FDUTPA case under these circumstances because section 501.2105(1) specifically requires a 'judgment.' "). Mr. Money alerts us to no case specifically holding otherwise.

Mr. Money relies on Mady to salvage his claim. He insists "the trial court erred by ruling that . . . Mady . . . is not applicable to the fee shifting provision contained in [section] 501.2105(1)." He concedes that there must be a "judgment in the trial court." However, he argues that "Mady holds that a settlement produced pursuant to Florida's offer of judgment statutes [sic], section 768.79 . . . and 'the corresponding payment is tantamount to a final judgment when considering prevailing party type attorney fee assessments' " (quoting Mady, 59 So. 3d at 1131). We disagree.

Mady addressed whether a consumer who resolves an action against a warrantor pursuant to section 768.79 is a prevailing party under the MMWA and may recover attorney's fees. 59 So. 3d at 1131. The court held that under those circumstances, the consumer "may recover attorneys' fees as allowed by that statute." Id. at 1137.

Seemingly, the court focused a keen eye on the the purposes of the MMWA. See id. at 1131 ("The MMWA was designed to 'encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms.' " (quoting 15 U.S.C. § 2310(a)(1) (2000))). Accordingly,

> [a] consumer who has exhausted all non-judicial remedies as a condition required by the MMWA and later secures a favorable formal settlement offer of judgment from a defendant which is accepted in a Florida legal action filed under the MMWA 'finally prevails' and may be entitled to recover costs, expenses, and attorneys' fees under the MMWA.

Id. (citation omitted). The MMWA offers a "carrot-and-stick" approach to resolving disputes:

> Subsection (d)(2)'s fee-shifting provision is consistent with the MMWA's overarching concern to provide consumer protection at the lowest cost possible. In enacting the MMWA, Congress designed a process intended to encourage warrantors to resolve claims quickly, efficiently, and informally without the necessity of forcing consumers to file legal actions. See 15 U.S.C. § 2310(a)(1). If a warrantor waits to resolve a meritorious claim until after the consumer is forced to involve the courts, the MMWA provides a remedy and method of shifting costs to the warrantor which at times may be associated with a more extensive resolution process in our courts when the outcome acknowledges the validity of the warranty claim. See 15 U.S.C. § 2310(d)(2).

Mady, 59 So. 3d at 1132 (emphasis added).

Although Congress designed the MMWA with the goal of expeditiously resolving disputes "without the necessity of forcing consumers to file legal actions," id., the plain language of FDUTPA's attorney's fees provision requires a party to file a legal action and obtain a "judgment in the trial court," § 501.2105(1). In other words, FDUTPA's attorney's fees provision requires a legal action be resolved in favor of the prevailing party and that such favorable resolution be memorialized in a judgment. On the other hand, the MMWA's objectives are advanced by the requirement that "warrantors . . . establish an 'informal dispute settlement procedure' that adheres to minimum requirements prescribed by the Federal Trade Commission." Mady, 59 So. 3d at 1131-32 (quoting 15 U.S.C. § 2310(a)(2)). In short, FDUTPA's attorney fees provision is distinguishable from the MMWA fee shifting provision, in that the former requires entry of a "judgment in the trial court," § 501.2105(1), while the latter merely

requires that the consumer "finally prevail[ ]," 15 U.S.C. § 2310(d)(2). Mr. Money's reliance on Mady is misplaced.

Conclusion

In the absence of a judgment entered in Mr. Money's favor, we conclude that the trial court properly denied his motion for attorney's fees under section 501.2105(1).

Affirmed.

KHOUZAM, C.J., and LUCAS, J., Concur.