

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

| | | |
|------------------------|---|--------------------|
| BETTIE M. HILL, |) | |
| |) | |
| Appellant, |) | |
| |) | |
| v. |) | CASE NO. 2D00-3770 |
| |) | |
| MICHELLE DENISE POOLE, |) | |
| |) | |
| Appellee. |) | |
| _____ |) | |

Opinion filed August 3, 2001.

Appeal from the Circuit Court for
Lee County, Lynn Gerald, Jr., Judge.

Bonita Kneeland Brown of Fowler, White
Gillen, Boggs, Villareal and Baker, P.A.,
Tampa, for Appellant.

Joseph R. Gaeta and Robert L. Donald
Fort Myers, for Appellee.

DAVIS, Judge.

In this automobile accident case, Bettie M. Hill appeals the final judgment entered on a jury verdict, which directed her to pay past and future medical damages to Michelle Denise Poole, who was injured in the accident. Hill challenges the sufficiency of the evidence in support of the damages, the court's award of pre-judgment interest, and credit for Poole's payment of the insurance premium. While we affirm without discussion

the trial court's award of pre-judgment interest and its denial of a new trial on the sufficiency issue, we reverse the provision that awards Poole a credit for her payment of the insurance premium.

After Hill conceded liability, the case went to trial on the issue of damages, and the jury awarded Poole \$22,350.78 for past and future medical expenses. Poole filed a post-trial motion asking the trial court to (1) determine the collateral source set-off, and (2) include both pre-judgment interest and the \$216 cost of Poole's insurance premium in the final judgment. Hill opposed inclusion of the premium credit in its entirety, but argued alternatively that Poole had paid only \$98 for the coverage.

Although Poole's counsel withdrew his request for the premium credit during a hearing held on Hill's motion for a new trial, the final judgment nonetheless included the \$216 award. This was error. When Poole's counsel withdrew this portion of the prayer for relief, the trial court was without jurisdiction to make the award. See Conidaris v. Cresswood Servs., Inc., 779 So. 2d 518 (Fla. 2d DCA 2000); Koehler v. Roberts, 661 So. 2d 374 (Fla. 2d DCA 1995). Accordingly, we affirm the final judgment, except for the \$216 credit for Poole's insurance premium, and remand for entry of an amended final judgment.

Affirmed in part, reversed in part, and remanded.

PARKER, A.C.J., and FULMER, J., Concur.