Third District Court of Appeal

State of Florida

Opinion filed July 24, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-628
Lower Tribunal No. 14-24835

Maria Sidlosca,
Appellant,

vs.

Olympus Insurance Company,
Appellee.

An appeal from the Circuit Court for Miami-Dade County, Jacqueline Hogan Scola and Rodolfo A. Ruiz, Judges.

Giasi Law, P.A., and Melissa A. Giasi (Tampa), for appellant.

Colodny Fass, and Matthew C. Scarfone (Sunrise), for appellee.

Before SALTER, HENDON, and MILLER, JJ.

MILLER, J.

Appellant, Maria Sidlosca, appeals from a final judgment awarding attorney's fees and costs to her insurer, Olympus Insurance Company, rendered following a voluntary dismissal of the underlying first-party property insurance dispute.[1] Because entitlement to fees was premised upon a motion for sanctions filed after the voluntary dismissal, and it is well-established that "a trial court has continuing jurisdiction to consider a [section] 57.105 motion for sanctions only where the motion for sanctions was filed with the court before a voluntary dismissal," we are constrained to reverse and remand. Pomeranz & Landsman Corp. v. Miami Marlins Baseball Club, L.P., 143 So. 3d 1182, 1183 (Fla. 4th DCA 2014); see § 57.105(4), Fla. Stat. (2019); see also Pino v. Bank of N.Y, 121 So. 3d 23, 43 (Fla. 2013) ("Sanctions pursuant to section 57.105 were unavailable because [plaintiff] dismissed the case within [the safe harbor period]."); Lago v. Kame By Design, LLC, 120 So. 3d 73, 74 (Fla. 4th DCA 2013) ("[B]ecause appellee's second motion for section 57.105 sanctions did not comply with the twenty-one-day 'safe harbor' provision of section 57.105(4), the trial court erred in granting that motion.").[2]

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[1] Appellant also appeals from a preliminary order granting appellee entitlement to attorney's fees.

[2] Appellee alternatively urges affirmance based on the inequitable conduct doctrine. See Moakley v. Smallwood, 826 So. 2d 221, 224 (Fla. 2002); Bitterman v. Bitterman, 714 So. 2d 356, 365 (Fla. 1998); see also Dade Cty. Sch. Bd. v. Radio Station WQBA, 731 So. 2d 638, 644 (Fla. 1999) ("[I]f a trial court reaches the right result, but for the wrong reasons, it will be upheld if there is any basis which would support the judgment in the record."). However, as "the effect of a voluntary dismissal is to 'remove completely from the court's consideration the power to enter

Reversed and remanded.[3]

an order, equivalent in all respects to a deprivation of "jurisdiction,""" a trial court does not have the "inherent authority to sua sponte impose sanctions after the entry of the voluntary dismissal." Almazan v. Estate of Aguilera-Valdez, 44 Fla. L. Weekly D1230, D1230 (Fla. 4th DCA May 8, 2019) (quoting Randle-E. Ambulance Serv., Inc. v. Vasta, 360 So. 2d 68, 69 (Fla. 1978)).

[3] Upon remand, in considering the enforceability of the proposal for settlement, see section 768.79, Florida Statutes; Florida Rule of Civil Procedure 1.442, the lower tribunal shall conduct all proceedings in accordance with relevant procedural due process requirements. See, e.g., 1445 Wash. Ltd. P'Ship v. Lemontang, 19 So. 3d 1079, 1080 (Fla. 3d DCA 2009) (reversing a final default judgment awarding attorney's fees where appellant was not afforded "reasonable notice [and] an opportunity to be heard before the trial court awarded [the] fees"); see also Brewer v. Solovsky, 945 So. 2d 610, 611 (Fla. 4th DCA 2006) ("An award of attorney's fees requires competent and substantial evidence.") (citation omitted).