

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 2001

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Appellant,

vs.

ANNITA D. MIDDLETON and JAMES
E. MIDDLETON, her husband,

Appellees.

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CASE NO. 3D00-1879

**

LOWER

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TRIBUNAL NO. 97-772

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Opinion filed December 26, 2001.

An Appeal from the Circuit Court for Dade County, Amy Steele
Donner, Judge.

Luis E. Ordoñez & Associates and Frances F. Guasch, for appellant.

Ginsberg & Schwartz and Arnold R. Ginsberg; Jon W. Burke, for
appellees.

Before JORGENSON, LEVY, and SHEVIN, JJ.

PER CURIAM.

State Farm Mutual Automobile Insurance Company appeals from a
final judgment. For the following reasons, and based upon the

appellees' proper and commendable confession of error, we affirm in part and reverse in part.

The trial court erred in denying the insurer's motion to set off liability payments made to the plaintiffs/appellees prior to trial. See Allstate Ins. Co. v. Morales, 533 So. 2d 952 (Fla. 5th DCA 1988); § 627.727(1), Fla. Stat. (1997). Accordingly, we affirm the final judgment awarding damages to plaintiffs, but reverse the trial court's denial of the motion for set-off and remand for further proceedings consistent with this opinion.