

Supreme Court of Florida

No. 67,806

DONALD E. WATSON, Petitioner,

vs.

LAUREN FRANK ANDERSON,
MISENER MARINE CONSTRUCTION
COMPANY, and INTERNATIONAL
INSURANCE COMPANY, Respondents.

[JUNE 26, 1986]

BARRETT, J.

We have for review Anderson v. Watson, 475 So.2d 1315 (Fla. 2d DCA 1985), because it directly and expressly conflicts with Bender v. First Fidelity Savings and Loan Association, 463 So.2d 445 (Fla. 4th DCA 1985), and Shampaine Industries, Inc. v. South Broward Hospital District, 411 So.2d 364 (Fla. 4th DCA 1982). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

In deciding the instant case, the Second District relied on its opinion in Miller v. Fortune Insurance Co., 453 So.2d 489 (Fla. 2d DCA 1984), and held that after a party dismisses an action "with prejudice," the trial court no longer has jurisdiction to correct the dismissal by expunging the words "with prejudice," even if the mistaken use of the words resulted from excusable neglect. We have recently quashed the district court decision in Miller v. Fortune Insurance Co., 484 So.2d 1221 (Fla. 1986). Accordingly, we quash the decision below and remand this cause for reconsideration in light of our opinion in Miller.

It is so ordered.

BOYD, C.J., and ADKINS, McDONALD, EHRLICH and SHAW, JJ., Concur
OVERTON, J., Dissents for the reasons stated in Miller v. Fortune Insurance Co., 484 So.2d 1221, 1225 (Fla. 1986).

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

Application for Review of the Decision of the District Court of
Appeal - Direct Conflict of Decisions

Second District - Case No. 85-697

Edward C. Rood of Rood and Associates, Tampa, Florida; and LAWRENCE
& DANIELS, Miami, Florida,

for Petitioner

Michael S. Rywant of Mitchel, Alley, Rywant and Vessel, Tampa,
Florida, for Lauren Frank Anderson; H. Vance Smith of Macfarlane,
Ferguson, Allison and Kelly, Tampa, Florida, for Misener Marine
Construction Co.; and Thomas J. Roehn of Annis Mitchell, Cockey,
Edwards and Roehn, Tampa, Florida, for International Insurance Co.,

Respondents