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IN THE SUPREME COURT OF FLORIDA

CASE NO: 86,652

District Court of Appeal
3rd District - No. 95-38
L.T. Case No: 91-56048 CA 27

FILED

SID J. WHITE

MAY 23 1996

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

GULLIVER ACADEMY, INC.,

Petitioner,

vs.

RALPH BODEK and LORRAINE BODEK,
as Parents and Natural Guardians
of their minor son, ROBERT BODEK,
on behalf of their minor son,
Robert Bodek and themselves,
individually,

Respondents.

PETITIONER'S REPLY BRIEF

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 <u>OTHER AUTHORITIES:</u>	
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ARGUMENT I

THE MOTION FOR ATTORNEY'S FEES AND COSTS PURSUANT TO \$768.79 WAS TIMELY.

The principle of a reservation of jurisdiction in a final judgment was recognized by this Court in Finkelstein v. North Broward Hospital District, 484 So.2d 1241 (Fla. 1986). However, in that case this Court essentially said that a reservation was not necessary because the motion for attorney's fees raised a "collateral and independent claim".

Bosch v. Hagar, 639 So.2d 1096 (Fla.App. 4Dist. 1994) cited by Respondent is inapplicable because the motion for new trial had already been ruled on in the 1992 case, 92-3575, and there was no reservation of jurisdiction.

The cases cited by Respondent dealing with Florida Rule of Appellate Procedure 9.400(b) merely deal with that very specific Rule which calls for service of a motion no later than the time the reply brief is due and the specific grounds for relief must be stated. That rule has nothing to do with a Circuit Court procedural post-trial rule where jurisdiction was reserved and there was no finality to the case until approximately five months after the disputed attorney's fee motion was filed. Casto v. Casto, 404 So.2d 1046 (Fla. 1981) and Bannister v. Allen, 127 So.2d 907 (Fla.App. 3Dist. 1961) merely deal with the staying of time to file an appeal through a timely motion for rehearing.

Gilbert v. K-Mart Corporation, 664 So.2d 335 (Fla.App. 1Dist. 1995) involves the 30-day time period of the Offer of Judgment statute. Held, it is not jurisdictional. Though the

final judgment involved expressly reserved jurisdiction to consider attorney's fees, even if it hadn't, the trial court has the power to enlarge the time period pursuant to the provisions of Fla.R.Civ.P. 1.090(b).

ARGUMENT II

THE OFFER OF JUDGMENT WAS IN PROPER FORM,
WAS CAPABLE OF ACCEPTANCE OR REJECTION
AND THE TRIAL COURT DID NOT ERR IN
GRANTING PETITIONER'S MOTION FOR
ATTORNEY'S FEES AND COSTS PURSUANT TO
§768.79.

The offer of judgment statute makes no distinction between claims brought by minors, persons of majority or business entities. §744.387, Florida Statutes (1990) sets forth the parameters for settlement of a minor's claim. There is nothing about that statute that interferes with acceptance of an offer pursuant to the Offer of Judgment statute any more than any offer not involving the statute. The allocation of proceeds of settlement is subject to court approval either way. As noted in Tucker v. Shelby Mut. Ins. Co. of Shelby, Ohio, 343 So.2d 1357 (Fla.App. 1Dist. 1977), a parent action for recovery of loss of a child's services and medical expenses is independent of the child's personal action. Joinder of the two together is appropriate. However, the court first has to approve a settlement offer pursuant to the agreement of the parties.

There is no reason why settlements involving minors, under the Offer of Judgment statute, should be presented or handled differently than when the statute is not involved. If the 30-day time period became a problem because of scheduling a hearing for approval, all the offeree would have to do is file a motion with the trial judge to extend the 30-day period so that an approval hearing could be scheduled and heard. In the alternative, the offer could be accepted subject to court approval.

CONCLUSION

The motion to tax fees and costs was timely. Since a minor was involved, acceptance by agreement of the offerees was subject to court approval as always.

Respectfully submitted,

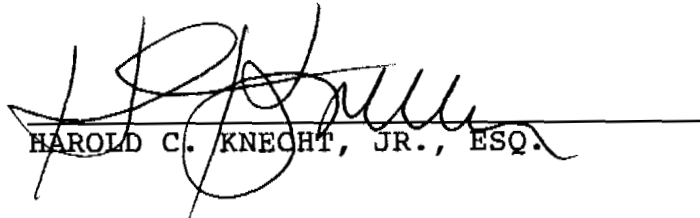
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By


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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of Petitioner's Reply Brief was mailed this 16th day of May, 1996 to JAMES C. BLECKE, ESQ., Attorney for Appellants, Deutsch & Blumberg, P.A., New World Tower, Suite 2802, 100 North Biscayne Boulevard, Miami, Florida 33132 and CHARLES B. PATRICK, ESQ., Charles B. Patrick, P.A., Attorney for Plaintiffs, 1648 S. Bayshore Drive, Miami, Florida 33133.


HAROLD C. KNECHT, JR., ESQ.