IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

ANCEL PRATT, JR., individually,

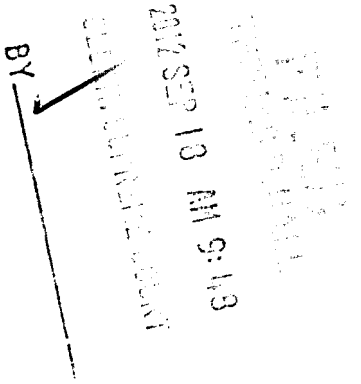
Petitioner,

vs.

MICHAEL C. WEISS, D.O., MICHAEL C. WEISS, D.O., P.A.; LOUIS H. ISAACSON, D.O.; LOUIS H. ISAACSON, D.O., P.A.; STERLING HEALTHCARE GROUP, INC.; STERLING MIAMI, INC.; LAUDERDALE ORTHOPEDIC SURGEONS; and FMC HOSPITAL, LTD., a Florida Limited Partnership d/b/a FLORIDA MEDICAL CENTER; FMC MEDICAL, INC., f/k/a FMC CENTER, INC. d/b/a FLORIDA MEDICAL CENTER,

Respondents.

CASE NO. SC12-1783
L.T. CASE NO. 98-011569 (19)



RESPONDENT, FLORIDA MEDICAL CENTER'S JURISDICTIONAL ANSWER BRIEF

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PREFACE

This is the Respondent's Answer Brief on Jurisdiction, opposing discretionary review of a decision of the Fourth District Court of Appeal dated May 2, 2012, affirming the Final Judgment of Attorney's Fees in favor of the Defendants.

In this Brief, Petitioner, Ancel Pratt, Jr., will be referred to as "Petitioner" or "Plaintiff." Respondents will be referred to as "Respondents" or "Defendants." FMC Hospital Ltd., a Florida Limited Partnership d/b/a Florida Medical Center; Florida Medical, Inc. f/k/a FMC Center, Inc. d/b/a Florida Medical Center will be referred to as Defendant or Florida Medical Center. The following designation will be used:

(A)-Fourth District Court's Opinion

(PB)-Petitioner's Brief on Jurisdiction

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STATEMENT OF THE CASE AND FACTS

This case revolved around Ancel Pratt, Jr.'s rejection of an unambiguous proposal for settlement that resulted in an award of attorney's fees and costs for Florida Medical Center. The Plaintiff sued eleven Defendants for medical malpractice, alleging that the Defendants failed to properly diagnose and treat the Plaintiff following a football injury. Of these eleven named Defendants, Florida Medical Center was named as "FMC Hospital, Ltd., a Florida Limited Partnership d/b/a Florida Medical Center; FMC Medical, Inc. f/k/a FMC Center, Inc., d/b/a Florida Medical Center." Throughout the entire litigation, these entities were treated as a single entity.

In 2004, Florida Medical Center served a proposal for settlement pursuant to Florida Rule of Civil Procedure 1.442 and section 768.79, Florida Statutes (2004), on the Plaintiff.[1] The Proposal offered the Plaintiff $10,000.00 to resolve all pending matters between the Plaintiff and the Defendants. The Proposal did not apportion any amounts. The Defendants also attached a "Release and Hold

[1] The Plaintiff also served its own un-apportioned proposal for settlement on "Defendant FMC HOSPITAL LTD., a Florida Limited Partnership d/b/a FLORIDA MEDICAL CENTER, FMC MEDICAL INC., f/k/a FMC CENTER INC., d/b/a FLORIDA MEDICAL CENTER."

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Harmless Agreement" and a stipulation for dismissal as conditions to the Proposal. Despite the unambiguous terms and conditions, the Plaintiff rejected the Proposal.

The case proceeded to trial. Prior to the trial, the parties stipulated that the proper party was FMC Hospital, Ltd. d/b/a Florida Medical Center. The jury found in favor of Florida Medical Center.

After trial, Florida Medical Center moved for attorney's fees and costs based on the 2004 Proposal that the Plaintiff rejected. The trial court awarded attorney's fees and costs. The Plaintiff appealed contending that the Proposal was invalid since it (1) failed to apportion an offer between the two separately named defendants; (2) was ambiguous; and (3) required the release of future unknown claims. [A]-[1].

In a detailed written opinion, the Fourth District Court affirmed the trial court's award of attorney's fees and costs based on Florida Rule of Civil Procedure 1.442 and Florida case law. [A]-[1-6]. The Petitioner moved to invoke discretionary jurisdiction of this Court, claiming conflict jurisdiction exists. [PB]-[1-2]. The Respondent's Brief on Jurisdiction follows:

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SUMMARY OF ARGUMENT

This Court must deny the Petitioner's Motion to Invoke Discretionary Jurisdiction to review the Fourth District's opinion, upholding an award of attorney's fees and costs pursuant to the rules governing proposals for settlement. The proposal for settlement was valid, unambiguous, and rejected by the Plaintiff prior to a jury's finding that the Defendant, Florida Medical Center was not liable for the Plaintiff's injuries.

The Fourth District's opinion properly applied Florida Rule of Civil Procedure 1.442 and did not create an exception to the rules governing proposals for settlement. The opinion did not expressly and directly conflict with any Florida Supreme Court opinion or with any district court of appeal opinion dealing with proposals for settlement. Therefore, this Court must deny the Petitioner's request to invoke jurisdiction as there is no conflict to resolve.

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ARGUMENT

THE FOURTH DISTRICT'S OPINION DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH ANY DECISION OF THIS COURT OR OTHER DISTRICT COURTS OF APPEAL BECAUSE IT PROPERLY APPLIED PROPOSAL FOR SETTLEMENT RULES AND FLORIDA CASE LAW IN AFFIRMING AN AWARD OF ATTORNEY'S FEES AND COSTS BASED ON A VALID AND UNAMBIGUOUS PROPOSAL FOR SETTLEMENT.

Here, the Fourth District's well-reasoned, detailed written opinion upheld the award of attorney's fees and costs based on an unambiguous, valid proposal for settlement. [A]-[1-6]. The Fourth District properly conducted a *de novo* review of the trial court's order. Saenz v. Campos, 967 So. 2d 1114, 1116 (Fla. 4th DCA 2007). The opinion also addressed the applicable provisions of Florida Rule of Civil Procedure 1.442 before applying the facts of this case. [A]-[1-6].

Florida Rule 1.442 and section 768.79, Florida Statutes, were implemented in order to "reduce litigation costs and conserve judicial resources by encouraging the settlement of legal actions." See Sarkis v. Allstate Ins. Co., 863 So. 2d 210, 218 (Fla. 2003). However, the intent of the policy behind these rules is often defeated in circumstances such as this case. See Wolfe v. Culpepper Constructors, Inc., 2D10-3228, 2D10-3670 (Fla. 2d DCA Feb. 29, 2012)(holding that the fact that the

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offer of judgment was made on behalf of two parties did not invalidate the offer). Further, as Fourth District Court of Appeal Judge Dorian Damoorgian aptly stated in his concurring opinion, it is a waste of judicial resources for a party to utilize a "gotcha" tactic by raising ambiguity as a defense after the time for acceptance of an offer has passed. See Land & Sea Petroleum, Inc. v. Business Specialists, Inc., 53 So. 3d 348, 356 (Fla. 4th DCA 2011).

Florida Rule of Civil Procedure 1.442 requires a proposal for settlement to "identify" the claim or claims to be resolved, "state with particularity" any relevant conditions, "state" the total amount of the proposal, and state with particularity the "non-monetary terms of the proposal." [A]-[4-5]. Rule 1.442(c)(3) also provides that "[a] proposal may be made by or to any party or parties and by or to any combination of parties properly identified in the proposal. A joint proposal shall state the amount and terms attributable to each party." [A]-[5]; see also Attorney's Title Ins. Fund, Inc. v. Gorka, 36 So. 3d 646, 650 (Fla. 2010). The Rule "merely requires that the settlement proposal be sufficiently clear and definite to allow the offeree to make an informed decision without needing clarification." Carey-All Transp., Inc. v. Newby, 989 So. 2d 1201, 1206 (Fla. 2d DCA 2008) (citing State Farm Mut. Auto. Ins. Co. v. Nichols, 932 So. 2d 1067, 1079 (Fla. 2006)).

In its opinion, the Fourth District included language from portions of Florida

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Medical Center's proposal for settlement to apply Rule 1.442. [A]-[2]. The proposal clearly and unambiguously identified the claims to be resolved. The proposal attached a confidential release and a stipulation for dismissal, which sufficiently laid out the conditions, both monetary and non-monetary conditions, of the proposal. [A]-[3]. The Plaintiff had ample opportunity to evaluate the terms of the proposal, and he elected to reject it.

Contrary to the Plaintiff's assertion that the proposal should have apportioned the amount between the Defendants, Florida Medical Center was treated as a single entity throughout the entire litigation. The Fourth District did not create an exception to the rules governing proposals for settlement as the proposal was sufficiently clear and definite to allow the Plaintiff to make an informed decision without needing clarification as to the party that made the proposal. See Carey-All, 989 So. 2d at 1206.

Throughout the proceedings, the Defendants were treated as a single entity. They submitted only one answer to the complaint; they answered discovery as a single entity; and they were represented by the same lawyer. The Plaintiff served an un-apportioned proposal on the Defendant, treating the Defendants as a single entity. At trial, the parties stipulated to the proper parties, and only one defendant, FMC Hospital, Ltd., a Florida Limited Partnership d/b/a Florida Medical Center,

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was listed on the verdict form.

Thus, there is no plausible way that the Plaintiff can assert that he was not fully informed when he received Florida Medical Center's proposal for settlement as he was well aware that there was only one entity throughout the entire proceedings, and that only one entity was making the proposal. Instead, the Plaintiff defeated the policy behind the proposal for settlement rules by appealing to the Fourth District, and again in seeking to invoke discretionary jurisdiction of the Florida Supreme Court, when the law is clear on this issue.

Further, the Fourth District opinion cited case law that directly and expressly comports with the law governing proposals for settlement. [A]-[5]. The cases that Petitioner cites in his Brief on Jurisdiction are the same cases with the same argument that was already addressed on appeal and again on a motion for rehearing, which the Fourth District denied. Therefore, since the Fourth District properly followed the rule, statute, and case law governing proposals for settlement and since there is clearly no conflict to resolve, then there is no basis for this Court to invoke its discretionary jurisdiction.

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CONCLUSION

For the aforementioned reasons, this Court should deny the Petitioner's Motion to Invoke the Discretionary Jurisdiction of the Fourth District's decision as it does not expressly and directly conflict with any decision from this Court or from decisions of the district courts of appeal.

CERTIFICATE OF TYPE SIZE AND STYLE

Respondent hereby certifies that the type size and style of the Respondents' Answer Brief on Jurisdiction is Time New Roman 14 point.

KIMBERLY J. KANOFF
FloridaBarNo.15399

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a correct copy hereof has been furnished via email to: ANDREW A. HARRIS, ESQ. and PHILIP M. BURLINGTON, ESQ. [pmb@flappellatelaw.com; aah@flappellatelaw.com; jew@flappellatelaw.com], Burlington & Rockenbach, P.A., Courthouse Commons, Suite 430, 444 W. Railroad Ave., West Palm Beach, FL 33401; LINDA A. ALLEY, ESQ. [LAlley@schlesingerlaw.com], Sheldon J. Schlesinger, P.A., Attorneys for Plaintiff, 1212 S.E. Third Avenue, Fort Lauderdale, FL 33316, ROSEMARY COONEY, ESQ. AND WILLIAM VIERGEVER, ESQ., [rc@srcke.com,

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