

**IN THE COUNTY COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION**

**GULF COAST REHABILITATION AND
WELLNESS CENTER, INC.,**

on behalf of **Ron Bower**

Appellant/Plaintiff

vs.

**PROGRESSIVE EXPRESS
INSURANCE COMPANY,**

Appellee/Defendant

Appeal Number: 07-0060AP-88A

County Case: 03-001010-SC-045

UCN: 522003SC001010XXSCSC

Opinion filed _____ /

Appeal from Final Judgment
Pinellas County Court of the Sixth Judicial Circuit.
The Honorable Walt Fullerton

Scott E. Zimmer, Esquire
Mancuso, Zimmer & Howell, P.A.
Attorney for Appellant

Michael C. Clarke, Esquire
Kubicki Draper, P.A.
Attorney for the Appellee

ORDER AND OPINION

THIS CAUSE came before the Court on appeal, filed by Gulf Coast Rehabilitation and Wellness Center, Inc. ("Gulf Coast"), from the Final Judgment entered September 7, 2007, in favor of the defendant, Progressive Express Insurance Company ("Progressive"). The Final Judgment found the Plaintiff, Gulf Coast, liable for attorney's fees and costs pursuant to Florida Statute §768.89 and Florida Rule of Civil Procedure 1.442. Upon review of the briefs, the Court affirms the trial court's ruling as set forth below.

On February 4, 2003, Gulf Coast filed a complaint against Progressive seeking insurance benefits for medical care given to Ron Bower, a patient insured by Progressive. Progressive

served a Proposal for Settlement ("Proposal") pursuant to §768.89 and Rule 1.442 on October 20, 2003. Progressive prevailed on its Motion for Summary Judgment and the court entered Final Judgment in favor of Progressive. Progressive also filed a Motion for Attorney's Fees and Costs on October, 17, 2006. After a hearing on the matter, on September 7, 2007, the trial court found that Progressive was entitled to fees and costs under §768.89. The award of \$4,165 consisted of \$4,000 for attorney's fees and \$165 for costs. The costs and fees awarded were in accordance with the amount specified in the affidavit of Robert Oxendine, the attorney who was retained to represent Progressive regarding the Motion for Summary Judgment.

On appeal, Gulf Coast contends that the lower court erred in awarding attorney's fees and costs for two reasons: (1) the Proposal for Settlement is too ambiguous and (2) there is insufficient evidence to justify awarding the entire amount requested by Progressive. The proper standard of review in determining whether or not the Proposal is enforceable is de novo. Jamieson v. Kurland, 819 So.2d 267 (Fla. 2d DCA 2002). The proper standard of review of an award for attorney's fees and costs is abuse of discretion. Discovery Experimental and Dev., Inc. v. Dep't of Heath, 824 So.2d 195 (Fla. 2d DCA 2002).

Gulf Coast contends that the Proposal is unenforceable because it is ambiguous and open to judicial interpretation. Gulf Coast argues that the Proposal was ambiguous because it did not specify all relevant conditions to the offer, particularly whether or not Gulf Coast would have to sign a release, file a dismissal of the action, or pay attorney's fees and costs. A proposal for settlement should be "as specific as possible, leaving no ambiguities so that the recipient can fully evaluate its terms and conditions." State Farm Mut. Auto. Ins. Co. v. Nichols, 932 So.2d 1067, 1079 (Fla. 2006). However, sometimes absolute certainty is impossible and Rule 1.442 should be construed to mean that the "settlement proposal be sufficiently clear and definite to allow the offeree to make an informed decision without needing clarification." Id. In this case,

there was no doubt that the Proposal would prevent Gulf Coast from the threat of future litigation by Progressive regarding all claims that are currently involved in this action. The Proposal also does not limit Gulf Coast's ability to make future claims against other parties. Therefore, the settlement proposal was sufficiently clear to allow Gulf Coast to make an informed decision about what rights would be exercised or extinguished by signing the Proposal. There is no ambiguity in this case to render the Proposal unenforceable. Additionally, the Proposal met all the requirements outlined in Rule 1.442.

As to the second point, in order to assess whether or not the Final Judgment was properly granted, the party seeking review has the burden to show that there was an error in judgment. City of Hialeah v. Cascardo, 443 So.2d 448 (Fla. 1st DCA 1984). Without a transcript regarding the fee and cost hearing, this Court is unable to evaluate the legal or factual basis for the trial court's decision as to the attorney's fees and costs. Rose v. Clements, 973 So.2d 529 (Fla. 1st DCA 2007). Therefore, due to the lack of evidence showing that the lower court erred, the decision of the trial court cannot be reversed on this point.

Appellee's Motion for Appellate attorney's fees and costs is **GRANTED**.

Therefore, it is

ORDERED AND ADJUDGED that the Final Judgment as to Attorney's Fees and Costs is **AFFIRMED**. The matter is remanded to the trial court to determine the appropriate amount of reasonable attorney's fees and costs to be assessed.

DONE AND ORDERED in Chambers, at Clearwater, Pinellas County, Florida this 30 day of June, 2009.

Original order entered on June 30, 2009 by Circuit Judges John A. Schaefer, George W. Greer, and George M. Jirotko.

Copies furnished to:
Judge Walt Fullerton

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