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IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT, STATE OF FLORIDA

JOSHUA M. MADDOX,

Appellant,

vs.

Case No.: 2D20-3663
Lower Ct. No.: 2017-CA-2335

BRADY J. TROMBETTA,

Appellee.

ANSWER BRIEF OF APPELLEE

Morgan & Morgan

Brian J. Lee
Florida Bar No. 561681
76 South Laura Street, Suite 1100
Jacksonville, Florida 32202
E-mail: blee@forthepeople.com
Telephone: (904) 456-6816
Facsimile: (904) 456-6845
Attorney for Appellee

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STATEMENT OF THE CASE AND FACTS

Appellee, BRADY J. TROMBETTA (hereinafter "Trombetta"), agrees generally with the procedural history of the case set forth in Appellant, JOSHUA MADDOX's (hereinafter "Maddox"), Statement of the Case and Facts. However, Maddox says little about the trial court's ultimate ruling on this matter, and Trombetta believes that the trial court's words hold merit for this Court to consider.

After argument by the parties at the hearing that took place on August 12, 2020, the trial court gave his rulings and thoughts regarding this issue. Trombetta reproduces the salient points below:

> THE COURT: So here's what I find, and I almost want to draw it up -- if you were in my chambers, I'd draw it up on the whiteboard. I believe that -- let me see if I can start and be clear. Long before the proposal for settlement statutes came into existence, it was always the practice that the prevailing party got its costs. All right? And nothing in the proposal for settlement statutes, or whatever they're called, changed that.
>
> …
>
> But as White makes clear, it's not just the verdict. As White versus Steak and Ale made clear, you've got to add -- for purposes of doing the formula for the proposal for settlement statute or offer settlement, you've got to add the costs that predated the proposal for settlement. But those cases, including the most recent one that I was --I thought I printed out enough of it. Just recently there's a case called Tierra Holdings versus Mercantile Bank, 78 So. 3d 558 of 2011, supreme court case written by a very bright Judge Van Nortwick as well as -- I thought I printed out some other case. Oh, there's

the Petri Positive Pet Control versus CCM Condominium Association, 271 So.3d 1001, a May '19 case. The Petri case, P-E-T-R-I, it just dealt with whether you had to add pre-offer interest in that case, so it's different, but they talked a lot about why it was included.

So these cases, they all talk about, how do we figure out -- and, for lack of a better word, I'm going use the word "lodestar." How do we figure out this thing that they call the judgment in the statute and the rule? Right? And those courts have ruled how they've ruled. Now, but what those courts made clear, and I think that Tierra Holdings makes clear, and I unfortunately didn't print off enough of it, but Van Nortwick talks about that that's still different than the final judgment.

…

So I think what has to be done is that we go to a jury trial. We get a verdict. We then do the posttrial setoffs that --whatever they may be, whether they're PIP, whether they're other things. Then we have to add the pre-offer costs and the pre-offer attorney's fees, should we have been in a situation where we get attorney's fees, whether that's by statute or contract.

…

Then you figure out your lodestar. And then if under that lodestar in this situation the defendant wins, then the defendant gets its post-offer settlement attorney fees and costs. Right? And then at the end of the day, the judge does a calculation and takes what the plaintiff wins, what the defendant wins, nets it all out, and enters a judgment either for the plaintiff or the defendant. And the rules talk about doing that.

Now, the last piece in that is, again, this rule that preexisted all of us, I think all of our births, is that the plaintiff wins all its costs, and I do not find a case and I do not find the statute telling me that goes away. So not in the calculation of the lodestar but in getting to the eventual final judgment, the

plaintiff gets all of his or her allowable costs under the rules. And then when we're all done with all that math, somebody gets a final judgment in their favor.

But in that I am making clear, the plaintiff could get all his or her costs and the defendant can get all his or her costs and then there's a setoff. You know, we're going to set those off against each other and get a final judgment.

…

So I'm denying any motion for rehearing that would not entitle Ms. Trombetta to the costs that I did award her on July 8th, 2020. Okay? But I am no way by that changing my mind about anything else that I've done, and I'm not saying in any way the defendant is not entitled to its attorney's fees and costs for having the rule. I just think it's that different calculation. So hopefully that was not too confusing.

(R. 482-487)

SUMMARY OF ARGUMENT

This Court should affirm the trial court's order granting the full amount of taxable costs and the Final Judgment entered for Trombetta because the proposal for settlement and costs statutes are not in conflict. Section 57.041, Fla. Stat, clearly mandates that the party recovering a judgment recover all legal costs. Section 768.79, Fla. Stat., applies to the judgment obtained by Maddox pursuant to his proposal for settlement, and is not in conflict. The cases cited by Maddox are either irrelevant to this Court's determination, or are contrary to the wording of the above statutes.

ARGUMENT

I. This Court should affirm the trial court's order awarding Trombetta all of her taxable costs, and the Final Judgment entered for Trombetta.

Trombetta agrees that the standard of review is de novo. *Jones v. Golden*, 176 So. 3d 242, 244 (Fla. 2015). When reviewing a statute and its wording, it must be "presume[d] that a legislature says in a statute what it means and means in a statute what it says there." *Page v. Deutsche Bank Tr. Co. Americas*, 2020 WL 7778183, at *5 (Fla. Dec. 31, 2020)(citing *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992)).

Trombetta argues that the prior case law regarding this subject, even from this Court, has gone far astray from what the proposal for settlement statute contemplated. Also, while Maddox argues that the proposal for settlement and costs statutes are in conflict, Trombetta argues that if this Court looks at the wording of the statutes, they are not in conflict.

Looking at the proposal for settlement statute first, it says that the offer to a party "shall be construed as including all damages which may be awarded in a final judgment." Section 768.79(2), Fla. Stat. The plain language of this statute directs courts to examine the

net of the judgments that were entered by the court. Section 768.79(6), Fla. Stat. Because of this, there is no "collision" between section 768.79, Fla. Stat. and section 57.041, Fla. Stat.

Section 57.041(1), Fla. Stat., provides that a party recovering judgment "shall recover all his or her legal costs and charges which shall be included in the judgment..." There is nothing qualifying within this statute, as it clearly mandates that the party recovering a judgment recover all legal costs.

Therefore, Trombetta contends that both statutes can and should be read that a judgment includes all taxable costs. While Trombetta admits that the trial court did not rule as such when it dealt with determining the "judgment obtained" in relation to Maddox's proposal for settlement, that fact does not stop this Court from ruling otherwise.

Ultimately, the trial court made the correct ruling as to what Trombetta's judgment should contain, and the comparison of both Trombetta and Maddox's judgments, albeit through a different route. This Court can affirm the trial court's ruling even if its ruling was for the wrong reasons. *Miller v. Florida Ins. Guar. Ass'n, Inc.*, 200 So. 3d 200, 204 (Fla. 2d DCA 2016)(holding that the "tipsy coachman"

doctrine can be used to affirm a trial court because of an appellate court's proper application of a statute).

It is anticipated that Maddox will argue that *White v. Steak & Ale of Fla.*, 816 So. 2d 546 (Fla. 2002), as well as other cases, hold that only pre-proposal costs are included under section 768.79. But, the *White* case, and particularly this part of the *White* case, has come under scrutiny.

In the case of *Petri Positive Pest Control, Inc. v. CCM Condo. Assoc.*, 271 So. 3d 1001, 1006 (Fla. 4th DCA 2019), the Fourth District lamented that it was "troubled by how far the formula created in *White* strays from what we believe is the plain meaning of the statute." Likewise, in *Antunez v. Whitfield*, 980 So. 2d 1175, 1180 (Fla. 4th DCA 2008), the Fourth District held that *White* "did not address the issue of whether post-settlement offer costs should be considered part of the judgment." Instead, the Fourth District found that "*White*, which only addressed pre-settlement offer costs, simply stated that costs are part of the 'judgment obtained.'" *Id.*

The Fifth District has held that *White*, through judicial interpretation, sets forth a definition of 'judgment obtained' that modifies the literal language of the statute. *R.J. Reynolds Tobacco Co.*

v. Lewis, 275 So. 3d 747 (Fla. 5th DCA 2019). Thus, various courts have expressed their discomfort and outright criticism regarding the fact that *White* effectively changed the meaning of the proposal for settlement statute.

Maddox has cited this Court to other cases that he says supports his position. *Horn v. Corkland Corp.*, 518 So. 2d 418 (Fla. 2d DCA 1988), is not binding on the Court's determination in this case. In *Horn*, this Court was reviewing a previous version of Fla. R. Civ. P. 1.442, which provided that "[i]f the judgment finally obtained by the adverse party is not more favorable than the offer, he must pay the costs incurred after the making of the offer." This is not the current rule applicable in this case. In a similar way, this Court's decision in *Mincin v. Short*, 662 So. 2d 1323 (Fla. 2d DCA 1995), is not binding on the Court's determination because *Mincin* was severely called into question by its abrogation by *White*.

While Trombetta would concede that the holdings of the Fourth District in *Goode v. Udhwani*, 648 So. 2d 247 (Fla. 4th DCA 1994) and this Court in *Dozier v. City of St. Petersburg*, 702 So. 2d 593 (Fla. 2d DCA 1997), support Maddox's position in this case, these cases should not be relied on for multiple reasons. First, while these cases

are over 25 years old, these cases do not predate section 57.041(1), Fla. Stat. Second, both Goode and Dozier are premised on the flawed argument that sections 57.041(1) and 768.79 are in conflict with one another. Finally, even if this Court viewed these cases as valid precedent, this Court would of course have the inherent ability to change its mind based upon the arguments before it, as it has done many times before.

Section 57.041(1) applies to the judgment entered for Trombetta, and allows him to recover all of his legal costs. Section 768.79 applies to the judgment obtained by Maddox pursuant to his proposal for settlement. The trial court correctly awarded Trombetta all of his taxable costs incurred for a total of $28,486.59. The trial court then correctly calculated the final judgment in favor of Trombetta in the amount of $11,613.63. (R. 499) This Court should not disturb the trial court's rulings.

CONCLUSION

For all the reasons set forth herein, this Court should affirm the order awarding Trombetta all of his taxable costs and the Final Judgment entered on behalf of Trombetta for $11,613.63.

Morgan & Morgan

/s/ Brian J. Lee
Brian J. Lee
Florida Bar No. 561681
76 South Laura Street, Suite 1100
Jacksonville, Florida 32202
blee@forthepeople.com
Telephone: (904) 456-6816
Facsimile: (904) 456-6845
Attorney for Appellee

CERTIFICATE OF SERVICE

I hereby certify that on this 12nd day of August, 2021, a true and correct copy of the foregoing was electronically filed using the Florida Courts E-Filing Portal, and was electronically furnished to all counsel of record listed below via the E-Filing Portal in accordance with Fla. R. Jud. Admin. 2.516:

KANSAS GOODEN, ESQUIRE
JOANNA S. BRUNELL, ESQUIRE
Boyd & Jenerette, P.A.
11767 S. Dixie Hwy., #274
Miami, Florida 33156
Attorneys for Appellant

CHRISTOPHER SPATH, ESQUIRE
Morgan & Morgan
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602
Attorney for Plaintiff/Appellee

GEOGYMON GEORGE, ESQUIRE
Law Offices of Robert J. Smith
101 E. Kennedy Blvd., Suite 2125
Tampa, Florida 33602
Attorney for Defendant/Appellant

/s/ Brian J. Lee
Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Answer Brief complies with the applicable font and word count limit requirements of Fla. R. App. P. 9.045 and 9.210 (2)(B).

/s/ Brian J. Lee
Attorney