

Davis v. Clark

Court of Appeal of Florida, Second District

August 20, 2021, Decided

No. 2D21-171

Reporter

2021 Fla. App. LEXIS 12220 *

CARYN N. DAVIS, Appellant, v. MAX LEROY CLARK, Appellee. No. 2D21 171

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Opinion

[*1] Appeal from the County Court for Sarasota County; Erika Quartermaine and Dana M. Moss, Judges.

Derek W. Eisemann of Michael J. Belle, P.A., Sarasota, for Appellant.

Brian S. Kessler of Berg & Kessler, Venice, for Appellee.

LaROSE, Judge.

Caryn N. Davis appeals a county court judgment awarding

attorney's fees to Max Leroy Clark. We have jurisdiction.¹ See Fla.

R. [App. P. 9.030\(b\)\(1\)\(A\)](#). We affirm. We write to address Ms. Davis'

claim that offers of judgment do not apply in small claims cases.

Background

Ms. Davis sued Mr. Clark for \$4,814 for breach of an oral

contract. She alleged that Mr. Clark "has items of mine, owned by

me which he promised to return to me." She identified various

personal items. In addition to her damages claim, Ms. Davis

requested the "return of items . . . or depreciated value of said

items."

In an offer of judgment made "pursuant to Section

[768.79](#), Florida Statutes (2019)]," Mr. Clark proposed to resolve

Ms. Davis' claims for \$100. The offer did not mention Florida Rule

of Civil Procedure 1.442 ("Proposals for Settlement"). Ms. Davis did

1Ms. Davis initiated the appeal in the circuit court. Before disposition of the appeal, the legislature amended [section 26.012\(1\), Florida Statutes](#) (2020), to eliminate circuit court jurisdiction over appeals [*2] of county court orders and judgments, effective January 1, 2021. See ch. 20-61 3, Laws of Fla. Consequently, the circuit court transferred the appeal to us.

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not accept the offer. The matter proceeded to a nonjury trial. Mr.

Clark prevailed.

Mr. Clark then moved to recover his attorney's fees. The trial

court granted the motion and entered a judgment awarding Mr.

Clark \$10,740 in attorney's fees and costs.

Analysis

Ms. Davis contends that because Mr. Clark failed to "invoke"

rule 1.442 in his offer, he may not recover fees under section

768.79. Incongruently, she also tells us that rule 1.442 does not

apply in small claims proceedings. An ontological conundrum,

indeed. Unfortunately for Ms. Davis, [section 768.79](#) gave Mr. Clark

a substantive right to recover his fees.²

²The Florida Small Claims Rules "do not create a 'small claims court.' They simply create rules of procedure for use in county court when the amount in controversy is small." [LaSalla v. Pools by George of Pinellas Cnty., Inc., 125 So. 3d 1016, 1017 \(Fla. 2d DCA 2013\)](#) ("[F]or the purposes of the concept of subject matter jurisdiction, a county court that applies the Florida Small Claims Rules in a particular proceeding is not a separate court from a county court that applies the Florida Rules of Civil Procedure. This is true even if a county court has elected [*3] to create a 'small claims division' to handle cases under the Florida Small Claims Rules.").

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I. The Categorical Prohibition that Wasn't

Ms. Davis' suggestion that [section 768.79](#) has no place in small claims cases flies in the face of Florida case law. See, e.g.,

[State Farm Mut. Auto. Ins. Co. v. Nichols, 932 So. 2d 1067, 1080 \(Fla. 2006\)](#) (applying [section 768.79](#), Florida's offer of judgment statute in the PIP small claims context, and specifically "hold[ing] that the offer of judgment statute applies to PIP suits"); [Tran v. State Farm Fire & Cas. Co., 860 So. 2d 1000, 1000 \(Fla. 1st DCA 2003\)](#) ("[Section 768.79, Florida Statutes](#), applies to cases brought pursuant to [section 627.736, Florida Statutes](#), and to cases pending in small claims court."); [U.S. Sec. Ins. Co. v. Cahuasqui, 760 So. 2d 1101, 1104 \(Fla. 3d DCA 2000\)](#) (concluding that offer of judgment statute applied in the PIP context where [section 768.79](#) explicitly applies "[i]n any civil action for damages filed in the courts of this state").

Moreover, [section 768.79](#) provides that an offer of judgment is available "[i]n any civil action for damages filed in the courts of this state." [768.79\(1\)](#).³ Although it could have, the legislature did not

³Ms. Clark also insists that [section 768.79](#) was inapplicable because she sought "both damages and equitable relief." *Diamond*

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exclude small claims cases from the statute's scope. Cf. [Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253-54 \(1992\)](#) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there."). Thus, we reject Ms. Davis' [*4] effort to tailor such a sweeping prohibition on the use of an offer of judgment.

II. Conflict Between a Statute and a Rule of Procedure

Trying to escape the breadth of [section 768.79](#), Ms. Davis

reminds us that the small claims rules do not adopt rule 1.442.4 As

[Aircraft Indus., Inc. v. Horowitch, 107 So. 3d 362, 374 \(Fla. 2013\)](#) ("We hold that [section 768.79](#) does not apply to an action in which a plaintiff seeks both damages and equitable relief, and in which the defendant has served a general offer of judgment that seeks release of all claims."). The trial court properly determined that the "true relief" sought by Ms. Davis was damages. See, e.g., [Tower Hill Signature Ins. Co. v. Javellana, 238 So. 3d 372, 377 \(Fla. 3d DCA 2017\)](#) ("[W]e conclude that this case is an 'action for damages,' within the meaning of [section 768.79\(1\)](#), because it is plain that the true relief sought by the Javellanas was money damages for a breach of contract, rather than equitable relief."); [MYD Marine Distrib., Inc. v. Int'l Paint Ltd., 187 So. 3d 1285, 1285-87 \(Fla. 4th DCA 2016\)](#) (concluding that the "true relief" sought in plaintiff's conspiracy in restraint of trade claim seeking monetary damages and a permanent injunction was monetary because the plaintiff did not actually pursue any nonmonetary relief during the course of the litigation).

[4Florida Small Claims Rule 7.020](#) provides that certain Rules of Civil Procedure "are applicable in all actions covered by these

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a result, she urges, the rule has no role in small claims cases. [*5] She

ignores the reach of the statute, however. Additionally, Ms. Davis'

argument poses a false conflict between a statute and a procedural

rule. "When a statute confers a substantive right, a conflicting

procedural rule is invalid as a violation of separation of powers

under [article II, section 3 of the Florida Constitution](#) because a rule

of procedure cannot enact substantive law." *Hines v. State*, 931 So.

2d 148, 149-50 (Fla. 1st DCA 2006). Principally, there is no small

claims rule in effect that conflicts with [section 768.79](#). Further,

[section 768.79](#) is substantive. See *Se. Floating Docks, Inc. v. Auto-*

[Owners Ins. Co., 82 So. 3d 73, 80 \(Fla. 2012\)](#) ("[W]e hold that

[section 768.79](#) is substantive for both constitutional and conflict of

law purposes.").

rules." [Fla. Sm. Cl. R. 7.020\(a\)](#). Ms. Davis contends that because [rule 7.020\(a\)](#) omits specific mention of rule 1.442, offers of judgment are omitted from the purview of the small claims rules. Cf. [Thayer v. State, 335 So. 2d 815, 817 \(Fla. 1976\)](#) ("It is of course, a general principle of statutory construction that the mention of one thing implies the exclusion of another; *expressio unius est exclusio alterius*. Hence, where a statute enumerates the things on which it is to operate, or forbids certain things, it is ordinarily to be construed as excluding from its operation all those not expressly mentioned." (citing *Ideal Farms Drainage Dist. v. Certain Lands*, 19 So. 2d 234 (Fla. 1944))).

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Mr. Clark's offer specifically referenced [section 768.79](#). The statute grants him a substantive right to recover his fees. And, [*6] there is no dispute that the offer complied with the requirements of [section 768.79\(2\)](#). Consequently, we will not adopt Ms. Davis' contention that a talismanic incantation of rule 1.442 is required for an offer of judgment to be effective in the small claims context.

III. Trial Courts (Small Claims and Otherwise)

Ms. Davis explains that small claims cases are different than those filed in circuit court; therefore, the procedural rules are different. She posits that the use of offers of judgment in small claims cases unduly complicates otherwise simple disputes. We agree that the small claims rules are to "be construed to implement the simple, speedy, and inexpensive trial of actions at law in county courts." [Fla. Sm. Cl. R. 7.010\(a\)](#). Nor do we quibble with Ms. Davis' contention that small claims cases typically involve small amounts of money. Compare [Fla. Sm. Cl. R. 7.010\(b\)](#) ("These rules are applicable to all actions of a civil nature in the county courts which contain a demand for money or property, the value of which does not exceed \$8,000 exclusive of costs, interest, and attorneys' fees."), with [34.01\(1\)\(c\)\(1\)](#), Fla. Stat. (2018) (providing that county courts

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possess jurisdiction over those cases in which "the matter in controversy does not exceed, exclusive of interest, costs, [*7] and attorney fees . . . the sum of \$15,000");⁵ [26.012\(2\)\(a\)](#) (providing circuit courts with exclusive original jurisdiction "[i]n all actions at law not cognizable by the county courts").

But it does not follow that the small claims

rules limit the use of offers of judgment. Whether in county or circuit court, "[t]he purpose of [section 768.79](#) is to 'reduce litigation costs and conserve judicial resources by encouraging the settlement of legal actions.' "

[Kuhajda v. Borden Dairy Co. of Ala., LLC., 202 So. 3d 391, 395 \(Fla. 2016\)](#) (quoting [Att'ys Title Ins. Fund, Inc. v. Gorka, 36 So. 3d 646, 650 \(Fla. 2010\)](#)); [Old Dominion Ins. Co. v. Tipton, 269 So. 3d 653, 655 \(Fla. 2d DCA 2019\)](#) ("The very purpose of a proposal for settlement is to facilitate settlement and to avoid the costs associated with unnecessary litigation." (citing [Nichols, 932 So. 2d at 1078](#))). Ms. Davis offers no compelling authority to ignore the

⁵Effective January 1, 2020, the legislature expanded the monetary jurisdiction of county courts to \$30,000. [34.01\(1\)\(c\)\(2\)](#), Fla. Stat. The \$15,000 amount set forth in the 2018 version of the statute is relevant here because Ms. Davis filed her lawsuit in December 2018.

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statute's command that it apply equally "in any civil action for damages." [768.79\(1\)](#).

We reject Ms. Davis' contention that offers of judgment are unauthorized or otherwise invalid in small claims litigation. [Section 768.79](#) provides substantive rights that we must honor.

Conclusion

We affirm the attorney's fee [*8] and cost judgment entered on Mr. Clark's offer of judgment.

Affirmed.

SILBERMAN and STARGEL, JJ., Concur.

Opinion subject to revision prior to official

publication.

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