

IN THE SUPREME COURT OF THE STATE OF FLORIDA
CASE NO. SC19-385

STEVEN YOUNKIN,

Petitioner,

vs.

NATHAN BLACKWELDER,

Respondent.

PETITIONER'S MOTION FOR APPELLATE ATTORNEY'S FEES

Petitioner STEVEN YOUNKIN, by and through their undersigned counsel and pursuant to Florida Rule of Appellate Procedure 9.400 and section 768.79, Florida Statute, hereby moves this Court for an award of appellate attorney's fees and states as follows:

1. This case is before this Court seeking review of the Fifth District Court of Appeal's opinion denying Petitioner's petition for writ of certiorari seeking to quash the trial court's order compelling production of information related to the financial relationship between Petitioner's attorney's law firm and the doctor he retained to perform a compulsory medical examination.

2. The Fifth District certified a question of great importance on this issue.

3. Before the petition was filed with the Fifth District, Petitioner Steven Younkin served a Proposal for Settlement on Respondent Nathan Blackwelder on October 26, 2018, pursuant to section 768.79, Florida Statutes, and Florida Rule of Civil Procedure 1.442. A copy of the Notice of Service and Proposal for Settlement are attached hereto as *Exhibit A*.

4. Respondent Nathan Blackwelder did not accept the proposal for settlement.

5. Section 768.79(1), Florida Statutes, provides:

In any civil action for damages filed in the courts of this state, if a defendant files an offer of judgment which is not accepted by the plaintiff within 30 days, the defendant shall be entitled to recover reasonable costs and attorney's fees incurred by her or him or on the defendant's behalf pursuant to a policy of liability insurance or other contract from the date of filing of the offer if the judgment is one of no liability or the judgment obtained by the plaintiff is at least 25 percent less than such offer, and the court shall set off such costs and attorney's fees against the award.

§ 768.79(1), Fla. Stat.

6. Section 768.79, Florida Statutes “creates an independent, substantive, and statutory basis for the award of attorney’s fees when the requirements of the statute have been met.” DuPont Builders, Inc. v. Baker, 987 So. 2d 146, 147 (Fla. 2d DCA 2008).

7. The clear intent and purpose of section 768.79 is to encourage settlement by penalizing parties that reject valid offers thereby eliminating further litigation costs and judicial system resources. Allstate Prop. & Cas. Ins. Co. v. Lewis, 14 So. 3d 1230, 1235 (Fla. 1st DCA 2009).

8. “[A]ny provision of a statute . . . providing for the payment of attorney’s fees to the prevailing party shall be construed to include payment of attorney’s fees to the prevailing party on appeal.” § 59.46, Fla. Stat.

9. “The right to attorney fees pursuant to section 768.79 applies to fees incurred on appeal.” Frosti v. Creel, 979 So. 2d 912, 917 (Fla. 2008). Accord Disney v. Vaughn, 804 So. 2d 581, 583 (Fla. 5th DCA 2002); Westfield Ins. Co. v. Mendolera, 647 So. 2d 223, 224 (Fla. 2d DCA 1994).

10. If this Court exercises its jurisdiction to consider the merits of Petitioner’s argument and ultimately agrees with Petitioner, Petitioner requests an award of provisional appellate attorney’s fees for the fees incurred before this Court, in the event he prevails below and beats the proposal for settlement after trial.

WHEREFORE, Petitioner STEVEN YOUNKIN respectfully requests that this Court enter an order provisionally awarding appellate attorney’s fees incurred in this proceeding against Respondent Nathan Blackwelder.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a copy of the foregoing was uploaded and served in the eportal to: **George H. Anderson, III Esq.**, Dutch.Anderson@newlinlaw.com; Anderson.pleadings@newlinlaw.com; Dan Newlin & Partners, 7335 W Sand Lake Road, Orlando, FL 32819; **Mark A. Nation, Esq.**, and **Paul W. Pritchard, Esq.**, bhirt@nationlaw.com, mnation@nationalw.com, ppritchard@nationlaw.com, The Nation Law Firm, 570 Crown Oak Centre Drive, Longwood, FL 32750; **Amanda E. Wright, Esq.**, OrlandoLegal@Allstate.com, Law Offices of Robert J. Smith, 390 North Orange Avenue, Suite 895, Orlando, FL 32801-1635; this 12th day of March, 2019.

BOYD & JENERETTE, P.A.

Attorneys for Petitioner

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Jacksonville, Florida 32202

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/s/ Kansas R. Gooden

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IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA
CIVIL DIVISION

NATHAN BLACKWELDER,

PLAINTIFF,

VS.

STEVEN YOUNKIN,

DEFENDANT.

CASE NO.

2017-CA-003610-O

NOTICE OF SERVICE OF PROPOSAL FOR SETTLEMENT

Defendant, STEVEN YOUNKIN, by and through the undersigned attorney, pursuant to Florida Statute 768.79 and Florida Rule of Civil Procedure 1.442, gives notice that a Proposal for Settlement was served on Plaintiff, NATHAN BLACKWELDER, on this date.

I HEREBY CERTIFY that on the 26 day of October, 2018,

pursuant to Administrative Order No. AOSC13-49, a copy of the foregoing Notice of Service of Proposal for Settlement has been electronically filed and served using the Florida Courts E-Filing Portal to:

Attorney for Plaintiff
George H. Anderson, III, Esquire
Dan Newlin & Partners
7335 W Sand Lake Rd Ste
Orlando FL 32819
Dutch.Anderson@newlinlaw.com
Anderson.pleadings@newlinlaw.com
407-250-6540
FBN: 346888

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Telephone: (407) 428-0321
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Attorney Direct: (407) 428-0332
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By: Electronically Signed

AMANDA E. WRIGHT
FL Bar No. 99232
Attorney for Defendant(s)
STEVEN YOUNKIN
PRINCIPAL E-MAIL ADDRESS:
ORLANDOLEGAL@ALLSTATE.COM
Personal E-mail Address
(NOT for Service of Pleadings and Documents):
Amanda.Wright@allstate.com

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA
CIVIL DIVISION

NATHAN BLACKWELDER,
PLAINTIFF,
VS.
STEVEN YOUNKIN,
DEFENDANT.

CASE NO.
2017-CA-003610-O

PROPOSAL FOR SETTLEMENT

Pursuant to Florida Statute §768.79 and Florida Rule of Civil Procedure 1.442, Defendant, **STEVEN YOUNKIN**, hereby serves the following Proposal for Settlement as follows:

A. The party making this Proposal is Defendant, **STEVEN YOUNKIN**, and the party to whom this Proposal is made is Plaintiff, **NATHAN BLACKWELDER**.

B. This proposal resolves all claims and damages that are the subject matter of the Complaint filed by Plaintiff, **NATHAN BLACKWELDER**, against this Defendant, **STEVEN YOUNKIN**, and that would otherwise be awardable in a final judgment in this action.

C. In exchange for the payment set forth in this Proposal, the Plaintiff, **NATHAN BLACKWELDER**, will dismiss with prejudice the Defendant, **STEVEN YOUNKIN**, from this lawsuit.

D. The total dollar amount of this Proposal for Settlement and Offer of Judgment as to Plaintiff, **NATHAN BLACKWELDER**, is **EIGHT THOUSAND DOLLARS AND 00/100 (\$8,000.00)** to Plaintiff, **NATHAN BLACKWELDER**, which is inclusive of Plaintiff's taxable costs. The non-monetary terms of this proposal are set forth in Paragraph C immediately above.

E. The amount proposed to settle any claims for punitive damages, if any: None.

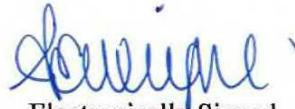
F. Attorneys' fees **are not** part of the legal claim alleged in this lawsuit. The amount of this Proposal includes any attorney's fees which may be payable by Plaintiff, **NATHAN BLACKWELDER**, to his attorney for legal services related to this action.

I HEREBY CERTIFY that on the 26 day of October, 2018,

a copy of the foregoing Proposal for Settlement has been furnished by E-mail to:

Attorney for Plaintiff
George H. Anderson, III, Esquire
Dan Newlin & Partners
7335 W Sand Lake Rd Ste
Orlando FL 32819
Dutch.Anderson@newlinlaw.com
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By: Electronically Signed

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