

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

Chiomed Injury Center, P.A.,
a/a/o Veralucia Campana,

CASE NO.: 2015-CV-82-A-O
Lower Court Case No.:
2013-SC-4438-O

Appellant,

v.

**State Farm Mutual Automobile
Insurance Company,**

Appellee.

Appeal from the County Court,
for Orange County, Florida,
Tina Caraballo, County Judge.

Robert W. Morris, Esq., and Crystal L.
Eiffert, Esq., for Appellant.

Gregory J. Willis, Esq., Alexandra Valdes, Esq.,
and Daniel M. Schwarz, Esq., for Appellee.

Before DOHERTY, TURNER, and WOOTEN, J.J.

PER CURIAM.

Appellant, Chiomed Injury Center, P.A., seeks review of the final judgment entered in favor of State Farm Mutual Automobile Insurance Company. This Court has jurisdiction. § 26.012(1), Fla. Stat. (2015); Fla. R. App. P. 9.030(c)(1)(A). We deny the request for oral argument and affirm. *Med. Therapies, LLC v. State Farm Mut. Auto. Ins. Co.*, 22 Fla. L. Weekly Supp. 34a (9th Cir. Ct. July 1, 2014).

State Farm asks this Court to “unconditionally” award it appellate attorney’s fees under Florida’s proposal for settlement law. On May 17, 2013, Chiomed filed a statement of claim

against State Farm seeking payment for medical services rendered on July 30, 2012, through September 14, 2012. State Farm served its proposal for settlement on September 26, 2013, which stated, “The total amount offered to Plaintiff, CHIROMED INJURY CENTER, P.A. a/a/o Veralucia Campana is TWENTY FIVE DOLLARS and 0/100 (\$25.00) for the underlying claim and TWO HUNDRED DOLLARS and 0/100 (\$200.00) in attorney’s fees and costs.” (Appellee’s Mot. Appellate Att’y Fees Ex. A at ¶ 1.) It continues, “This proposal is intended to *resolve all claims* of the Plaintiff, CHIROMED INJURY CENTER, P.A. a/a/o Veralucia Campana, against the Defendant STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, *in the above styled action.*” (*Id.* at ¶ 2 (emphasis added).) Additionally, the proposal stated that if the offer was accepted, then Chiromed would file a notice of voluntary dismissal with prejudice.

On November 20, 2014, after State Farm served its proposal for settlement, Chiromed served its motion to amend its statement of claim to add claims for benefits for services rendered on additional dates. State Farm agreed to an order permitting the amendment. The Amended Statement of Claim demanded PIP benefits for “treatment for dates of service 07/30/2012 – 11/14/2012.” (R. 713.) State Farm did not serve a new proposal for settlement after the claim was amended. State Farm paid \$999.33 to satisfy the claims added in the Amended Statement and filed a confession of judgment regarding those claims. State Farm did not confess judgment regarding the claims in the original Statement. The trial court entered final judgment for State Farm regarding the original claims, and for Chiromed regarding the claims added in the Amended Statement.

Florida Statute section 768.79(1) states, “In any civil action for damages . . . , if a defendant files an offer of judgment which is not accepted by the plaintiff . . . , the defendant

shall be entitled to recover reasonable costs and attorney's fees incurred by her or him . . . 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" (Emphasis added.) Here, the final judgment was not one of "no liability." Instead, State Farm was found liable for the claims for the dates of service from September 19, 2012, through November 14, 2012. Although the proposal for settlement was served before these claims were included in this litigation, the Amended Statement of Claim treated all of the claims as one. Additionally, the proposal for settlement that State Farm drafted stated that it would "*resolve all claims of . . . CHIROMED INJURY CENTER, P.A. a/a/o Veralucia Campana, against . . . STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, in the above styled action.*" (Appellee's Mot. Appellate Att'y Fees Ex. A at ¶ 2 (emphasis added).) Thus, the proposal for settlement attempted to resolve all of Chiromed's claims against State Farm in this action, which would include the claims added in the Amended Statement. This conclusion is supported by the condition in the proposal that Chiromed voluntarily dismiss this action. State Farm was aware of the newly-added claims because it agreed to the order permitting the amendment; yet, it did not serve a new proposal for settlement on Chiromed. Finally, the Amended Statement of Claim did not differentiate among the claims in seeking relief, and the trial court's judgment found State Farm liable for those new claims. Thus, State Farm did not satisfy the condition in section 768.79(1) that it obtain a judgment of no liability.

Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The "Order of Final Judgment," entered on November 3, 2015, is **AFFIRMED**.
2. "Appellant's Motion to Determine Entitlement to Appellate Attorney's Fees and Motion to Tax Appellate Attorney's Fees," filed on December 9, 2015, and

“Appellee’s Motion for Appellate Attorneys’ Fees,” filed on March 2, 2016, are
DENIED.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 14th
day of July, 2016.

/S/

PATRICIA A. DOHERTY
Presiding Circuit Judge

Turner and Wooten, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **The Honorable Tina Caraballo, Orange County Judge**, Orange County Courthouse, 425 N. Orange Ave., Orlando, FL 32801; **Robert W. Morris, Esq., and Crystal L. Eiffert, Esq.**, Eiffert & Associates, P.A., 1199 N. Orange Ave., Orlando, FL 32804; and **Gregory J. Willis, Esq., Alexandra Valdes, Esq., and Daniel M. Schwarz, Esq.**, Cole Scott & Kissane, P.A., 9150 South Dadeland Boulevard, Suite 1400, Miami, FL 33156; on this 14th day of July, 2016.

/S/

Judicial Assistant