DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2012

BRENDA COX,
Appellant,

v.

GREAT AMERICAN INSURANCE COMPANY, an Ohio corporation, authorized to do business in the State of Florida, as assignee of Rigobert Ledesma, plaintiff on behalf of itself and all others similarly situated, **BROWARD MANAGEMENT COMPANY, INC.,** a Florida corporation, **BROWARD MANAGEMENT COMPANY, INC.,** as Trustee, **SCHILIAN, WATARZ & COX, P.A.,** n/k/a **SCHILIAN & WATARZ, P.A.,** a Florida corporation,
Appellees.

No. 4D10-5155

[March 21, 2012]

GROSS, J.

We reverse a final judgment awarding attorney's fees as a sanction under a Florida Rule of Civil Procedure for failure to comply with the procedural requirement of specificity. We affirm the trial court's determination that the rule allows the recovery of fees for litigating the amount of the fee, as opposed to just the entitlement to it.

Brenda Cox appeals an attorney's fee award assessed under Florida Rule of Civil Procedure 1.730(c), which provides:

> **(c) Imposition of Sanctions.** In the event of any breach or failure to perform under the [mediation] agreement, the court upon motion may impose sanctions, including costs, attorneys' fees, or other appropriate remedies including entry of judgment on the agreement.

Johnson v. Bezner, 910 So. 2d 398, 401 (Fla. 4th DCA 2005), held that an award of fees pursuant to rule 1.730(c) must contain detailed factual findings describing the specific acts of conduct that justify the imposition of sanctions. In effect, this holding adopted the procedural requirements for a final judgment awarding fees under the inequitable

conduct doctrine, which "permits the award of attorney's fees where one party has exhibited egregious conduct or acted in bad faith." *Bitterman v. Bitterman,* 714 So. 2d 356, 365 (Fla. 1998). The procedures a trial court must follow in exercising its power to impose attorney's fees against a party under the inequitable conduct doctrine "are the same as those prescribed by the supreme court" in *Moakley v. Smallwood*, 826 So. 2d 221 (Fla. 2002), which involved the imposition of attorney's fees against a party's attorney. *See N. Cnty. Co., Inc. v. Bologna*, 816 So. 2d 842, 844 (Fla. 4th DCA 2002); *T/F Sys., Inc. v. Malt*, 814 So. 2d 511, 513 (Fla. 4th DCA 2002).

Moakley requires "an express finding of bad faith conduct . . . supported by detailed factual findings describing the specific acts of bad faith conduct that resulted in the unnecessary incurrence of attorneys' fees." 826 So. 2d at 227. *Moakley*'s requirement of specificity ensures that the power to sanction is not exercised lightly. Judges must identify the conduct that justifies a sanction. This allows for appellate review of the sanction and the development of a body of law describing the conduct that gave rise to the sanction. In this way, rule 1.730(c) sanctions are applied responsibly and "diligently both 'to penalize those whose conduct may be deemed to warrant such a sanction, [and] to deter those who might be tempted to such conduct in the absence of such a deterrent.'" *Roadway Exp., Inc. v. Piper*, 100 S. Ct. 2455, 2463 (1980) (quoting *Nat'l Hockey League v. Metro. Hockey Club*, 96 S. Ct. 2778, 2781 (1976) (discussing sanctions under Federal Rule of Civil Procedure 37(b))).

To comply with the procedural requirements that *Johnson v. Beznar* imposes for an attorney's fee award under rule 1.730(c), the trial court should have made specific factual findings detailing Cox's breach or failure to perform under the mediation agreement and identified those attorney's fees and costs that Great American incurred as a result of such conduct. *See Moakley*, 826 So. 2d at 227. Rather than make the findings with the "high degree of specificity" that *Moakley* requires, the final judgment summarily grants Great American's motion for attorney's fees.

We briefly address Cox's other arguments. The trial court did not err in assessing attorney's fees incurred in litigating the amount of the fee award, including work done on a prior appeal. *See Condren v. Bell*, 853 So. 2d 609 (Fla. 4th DCA 2003); *Bennett v. Berges*, 50 So. 3d 1154, 1160-61 (Fla. 4th DCA 2010); *Bates v. Islamorada*, 939 So. 2d 171, 172 (Fla. 3d DCA 2006). The release executed by Great American, as part of

the mediated settlement agreement that Cox refused to honor, did not bar Great American's entitlement to sanctions under rule 1.730(c).

Affirmed in part, reversed in part, and remanded.

CIKLIN and LEVINE, JJ., concur.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Thomas M. Lynch, IV, Judge; L.T. Case No. 06-6825 (14).

Jerome L. Tepps, Plantation, for appellant.

Kenneth V. Hemmerle, II of Kenneth V. Hemmerle, II, Professional Association, Fort Lauderdale, and Richard P. McCusker, Jr., Delray Beach, for appellee, Great American Insurance Company.

Not final until disposition of timely filed motion for rehearing.