



COLUMBIA COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM REQUEST FORM

The Board of County Commissioners meets the 1st and 3rd Thursday of each month at 5:30 p.m. in the Columbia County School Board Administrative Complex Auditorium, 372 West Duval Street, Lake City, Florida 32055. All agenda items are due in the Board's office one week prior to the meeting date.

Today's Date: 2/23/2018 Meeting Date: 3/1/2018

Name: Joel Foreman Department: County Attorney

Division Manager's Signature:

Ben Scott

1. Nature and purpose of agenda item:

Request for authorization to extend offer of judgment in Robert and Carol Brown v. Columbia County and SRWMD

2. Recommended Motion/Action:

There is no recommended motion or action.

3. Fiscal impact on current budget.

This item has no effect on the current budget.

MEMORANDUM

To: Board Agenda, March 1, 2018

From: Joel F. Foreman

Re: **Request for Authorization to Offer Judgment
Robert and Carol Brown v. Columbia County and SRWMD**

Date: February 23, 2018

The County's litigation counsel, Nabors & Giblin, requests authorization to make an offer of judgment in the above-referenced case. Under Florida Statutes section 768.79 a litigant may make an offer of judgment at certain times during a case. If the offer is not accepted and the offering party later prevails in the case, the non-prevailing party may be required to pay the attorneys' fees incurred from the offer of judgment deadline through the end of the litigation.

An offer of judgment in this case must include monetary payment to the plaintiffs, and counsel is requesting \$5,000.00 be authorized for the offer of judgment. A copy of *Polk County v. Highlands-in-the-Woods, LLC*, an opinion that deals with an award of fees in a similar type of case, is attached for your information.

I am requesting approval of \$5,000.00 for an offer of judgment.

227 So.3d 161

District Court of Appeal of Florida,
Second District.

POLK COUNTY, Appellant,

v.

HIGHLANDS-IN-THE-
WOODS, L.L.C., Appellee.

Case No. 2D15-5642

|

Opinion filed May 19, 2017

Synopsis

Background: Developer brought action against county for declaratory judgment and inverse condemnation by conditioning permit on installation and dedication of a reclaimed water use system when reclaimed water was unavailable. The Circuit Court, Polk County, John Radabaugh, J., entered summary judgment in favor of county. Developer appealed, and the District Court of Appeal, 217 So.3d 1175, affirmed. County filed motion for attorney fees pursuant to the offer of judgment statute and rule, based on its having made a \$5,000 settlement offer. The Circuit Court, Radabaugh, J., denied the motion. County appealed.

Holdings: The District Court of Appeal, Sleet, J., held that:

[1] county's offer of settlement satisfied the offer of judgment rule, and

[2] developer did not seek equitable relief, and thus offer of judgment statute applied.

Reversed and remanded with instructions.

West Headnotes (4)

[1] Counties

🔑 Costs

County's offer of settlement, which offered to pay developer \$5,000 in exchange for the dismissal with prejudice of developer's takings and inverse condemnation claims arising out of the installation of a reclaimed water system on developer's property, satisfied the offer of judgment rule and, thus, entitled county to attorney fees after the award of summary judgment to county on developer's claims, even though offer did not state an amount proposed to settle a punitive damages claim; developer did not assert a punitive damages claim, offer was sufficiently particular, and offer was sufficient to include all damages that would otherwise be awarded in a final judgment. U.S. Const. Amend. 5; Fla. R. Civ. P. 1.442(c).

Cases that cite this headnote

[2] Appeal and Error

🔑 Cases Triable in Appellate Court

Entitlement to attorney fees and costs under the offer of judgment statute and rule is reviewed de novo. Fla. Stat. Ann. § 768.79; Fla. R. Civ. P. 1.442(c).

Cases that cite this headnote

[3] Counties

🔑 Judgment

Developer's takings and inverse condemnation action against county did not seek equitable relief, and thus offer of judgment statute applied to county's \$5,000 settlement offer, even though complaint included a count for declaratory relief; each count of the complaint sought recovery of additional development expenses incurred as a result of county's requirement that developer install a reclaimed water system and county's failure to supply developer with reclaimed water, including the

declaratory judgment count, which sought a declaration that developer was “permitted to obtain compensation” for the costs associated with county's actions. U.S. Const. Amend. 5; Fla. Stat. Ann. § 768.79.

Cases that cite this headnote

[4] Costs

🔑 Effect of offer of judgment or pretrial deposit or tender

When determining whether a complaint alleges an action for damages or one for equitable relief, for purposes of determining whether a party is entitled to attorney fees under the offer of judgment statute, courts look to whether the real issue is one for damages or equitable relief. Fla. Stat. Ann. § 768.79.

1 Cases that cite this headnote

***162** Appeal from the Circuit Court of Polk County; John M. Radabaugh, Judge.

Attorneys and Law Firms

Hank B. Campbell of Valenti Campbell Trohn Tamayo & Aranda, P.A., Lakeland, for Appellant.

Eric S. Adams and Lauren A. Taylor of Shutts & Bowen LLP, Tampa, for Appellee.

Opinion

SLEET, Judge.

Polk County appeals the order denying its motion for attorney fees pursuant to section 768.79, Florida Statutes (2015), following the entry of summary judgment in its favor against Highlands-in-the-Woods, LLC (Highlands). Because Polk County's proposal for settlement satisfied the requirements of Florida Rule of Civil Procedure 1.442 and Highlands' complaint did not allege any claim seeking equitable relief, we reverse and remand for the trial court to grant Polk County's fee motion

and determine the amount of reasonable attorney fees.

Highlands sued Polk County alleging federal and state takings and inverse condemnation claims arising from the installation of a reclaimed water system on a development owned by Highlands. Section 702.G of the Polk County Land Development Code required Highlands to install a reclaimed water system in order to obtain its development permit from Polk County. Highlands alleged that although it installed the system in 2006, Polk County was unable to supply reclaimed water until 2008. In its complaint Highlands sought damages for the alleged taking and the expenses it incurred as a result of its lack of access to the promised reclaimed water.

On December 2, 2011, Polk County served a proposal of settlement for \$5000 on Highlands. On July 14, 2015, the trial court granted summary judgment in Polk County's favor. That order was recently affirmed by this court on appeal. Highlands-in-the-Woods, LLC v. Polk County, No. 2D15–2801, 217 So.3d 1175, 2017 WL 1547939 (Fla. 2d DCA April 28, 2017). The trial court awarded Polk County costs under section 57.041, Florida Statutes (2015), but denied its motion seeking attorney fees under section 768.79. On appeal, Polk County argues that the denial of attorney fees was error because its proposal for settlement complied with rule 1.442 and Highlands did not raise any equitable claims of relief in its complaint. See Diamond Aircraft Indus., Inc. v. Horowitch, 107 So.3d 362, 374 (Fla. 2013) (“[S]ection 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.”). We agree.

[1] [2] Highlands contends that Polk County's offer of settlement was invalid because it failed to state the nonmonetary ***163** conditions of settlement, the amount proposed to settle a claim of punitive damages, and that it would resolve all damages that would otherwise be awarded in a final judgment. See Fla. R. Civ. P. 1.442(c). “Entitlement to attorney's fees and costs under an

offer of judgment is reviewed de novo.” Wolfe v. Culpepper Constructors, Inc., 104 So.3d 1132, 1134 (Fla. 2d DCA 2012).

Polk County's proposal for settlement offered \$5000 “in exchange for a dismissal with prejudice of all claims against ... POLK COUNTY” and stated that it was “intended as a full settlement of all claims asserted by [Highlands] in this lawsuit.” The nonmonetary relief sought by Polk County was the dismissal with prejudice of all of Highlands' claims. The proposal was sufficiently particular to put Highlands on notice that Polk County was seeking the dismissal with prejudice of all of its claims asserted in this lawsuit. Had Highlands accepted the proposal, there would have been no need for judicial interpretation of its terms. See State Farm Mut. Auto. Ins. Co. v. Nichols, 932 So.2d 1067, 1079 (Fla. 2006) (explaining that “the proposal should be capable of execution without the need for judicial interpretation” (quoting Lucas v. Calhoun, 813 So.2d 971, 973 (Fla. 2d DCA 2002))). This general statement of the claims to be resolved was sufficient to include all damages that would otherwise be awarded in a final judgment. See Miley v. Nash, 171 So.3d 145, 148 (Fla. 2d DCA) (“[W]hen the proposal indicates that it seeks to resolve all claims identified in the complaint, or in a specific count, it is unnecessary to identify the various elements of damages in the settlement proposal.” (quoting Lucas, 813 So.2d at 972 n.1)), review denied, 192 So.3d 40 (Fla. 2015). Furthermore, because Highlands was not seeking punitive damages, Polk County was not required to include those amounts in its proposal for settlement. See Lucas, 813 So.2d at 973 (“We conclude that the ‘if any’ language of [rule 1.442(c)(2)(E)] requires a proposal for settlement to include terms for settlement of a punitive damage claim only when the pleadings contain a pending claim for punitive damages.”). Accordingly, Polk County's proposal for settlement fulfilled the requirements of rule 1.442.

[3] [4] Highlands also argues that because it included a count for declaratory relief, section 768.79 does not apply. See Diamond Aircraft, 107 So.3d at 374. When determining whether a complaint alleges an action for damages or one for equitable relief, Florida courts “look[] to

whether the ‘real issue’ is one for damages” or equitable relief. Nat'l Indem. Co. of the S. v. Consol. Ins. Servs., 778 So.2d 404, 408 (Fla. 4th DCA 2001); see also DiPompeo Constr. Corp. v. Kimmel & Assocs., 916 So.2d 17 (Fla. 4th DCA 2005). In this case, Highlands' complaint included three counts for relief: (1) declaratory relief, (2) inverse condemnation under the Florida Constitution, and (3) inverse condemnation under the U.S. Constitution. In each count Highlands sought recovery of the additional development expenses it incurred as a result of the county's requirement that it install a reclaimed water system and the county's failure to supply it with reclaimed water for irrigation of the development. Although Highlands styled count one as seeking declaratory relief, it requested that the trial court “enter a declaratory judgment finding that ... [Highlands] is permitted to obtain compensation, including attorneys' fees, for the costs associated with and impacts from the actions of POLK COUNTY.” Highlands did not seek the return of the property dedicated to the county for the reclaimed system or any other equitable remedy; instead, it sought compensation for the losses it incurred related to the water reclamation system. Therefore, the “real issue” in this case was entitlement to damages, not a declaratory *164 judgment. See DiPompeo, 916 So.2d at 18 (holding that section 768.79 applied to a declaratory judgment action when “the central issue ... was the entitlement to money damages”); Nelson v. Marine Grp. of Palm Beach, Inc., 677 So.2d 998, 999 (Fla. 4th DCA 1996) (rejecting the argument that section 768.79 did not apply to an action seeking a declaratory judgment when “the only matter at issue was money”).

Because Polk County's proposal for settlement satisfied the requirements of rule 1.442 and Highlands' complaint alleged an action for damages, not equitable relief, we reverse and remand for the trial court to grant Polk County's attorney fee motion and to determine the amount of reasonable attorney fees.

Reversed and remanded with instructions.

NORTHCUTT and LUCAS, JJ., Concur.

All Citations

227 So.3d 161, 42 Fla. L. Weekly D1135

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.