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Walgreen Co. v. Sklandis

Fla.App. 3 Dist.,2005.

District Court of Appeal of Florida,Third District.

WALGREEN COMPANY, Appellant,

v.

Joseph SKLANDIS, Appellee.

Nos. 3D04-1519, 3D04-751.

Feb. 23, 2005.

Rehearing Denied April 1, 2005.

An Appeal from the Circuit Court for Miami-Dade County, [Barbara Levenson](#), Judge.

Walton Lantaff Schroeder & Carson and [Robert L. Teitler](#) and [Stephanie L. Bandy](#), Miami, for appellant. [Lauri Waldman Ross](#) and [Theresa L. Girten](#), Miami; Koltun & Lazar, Miami, for appellee.

Before [COPE](#), [RAMIREZ](#), and [WELLS](#), JJ.Prior report: [832 So.2d 942](#).[WELLS](#), Judge.

In this personal injury action, Walgreen Company appeals a final judgment entered on a jury verdict in favor of Joseph Sklandis claiming that the trial court abused its discretion in failing to dismiss this action for fraud on the court and for refusing to permit it to introduce documentary evidence of that fraud. We find no abuse of discretion in the trial court's rulings in either respect and affirm the final judgment.

Walgreen Company also appeals a final judgment awarding attorney's fees and costs to Sklandis pursuant to a proposal for settlement dated February 7, 2002. At oral argument, Sklandis' counsel conceded \*1202 that the wrong settlement proposal had been used when calculating attorney's fees and costs, and that a proposal dated January 8, 2003, should have been used instead. We agree. Accordingly, we affirm the trial court's determination that Sklandis is entitled to an award of fees and costs, including the expert witness fee awarded, but remand with directions to reduce the fee and cost judgment to award fees and costs incurred only after January 8, 2003. See §

[768.79\(1\), Fla. Stat. \(2000\)](#)(stating that a recovering plaintiff should recover "reasonable costs and attorney's fees incurred from the date of the filing of the demand").

Affirmed in part, reversed in part, remanded with instructions.

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895 So.2d 1201, 30 Fla. L. Weekly D538

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