

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

ANDREA PELECKI,

Appellant,

v.

Case No. 5D19-3702

FEDERATED NATIONAL INSURANCE  
COMPANY,

Appellee.

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Opinion filed May 14, 2021

Appeal from the Circuit Court  
for Brevard County,  
James H. Earp, Judge.

Matthew G. Struble and Christine S.  
Cohen, of Struble, P.A., Fort  
Lauderdale, for Appellant.

Caryn L. Bellus and Angela C.  
Flowers, of Kubicki Draper, Miami, for  
Appellee.

PER CURIAM.

This is the second appeal in a homeowner's suit against her  
homeowner's insurer for failure to fully pay a claim for hurricane damages.

In the first appeal, the homeowner, Andrea Pelecki (“Andrea”) appealed a final judgment in favor of her insurer, Federated National Insurance Company (“Federated”). The \$0 judgment arose from a jury verdict in her favor for \$15,000 less a setoff of \$30,000 from Federated’s prior settlement with her husband, Darron Pelecki (“Darron”). This court per curiam affirmed the final judgment.

In this appeal, Andrea challenges a final order awarding Federated attorney’s fees and costs based on her rejection of its \$5,000 proposal for settlement to her. We affirm, except as to the trial court’s award of costs for a non-testifying expert. *See KMS of Fla. Corp. v. Magna Props., Inc.*, 464 So. 2d 234, 235 (Fla. 5th DCA 1985) (“Appellee’s argument that it is nevertheless entitled to an expert witness fee because the witness was prepared to testify and would have done so but for the directed verdict in appellee’s favor, was considered and rejected in *Junkas [v. Union Sun Homes, Inc.]*, 412 So. 2d 52 (Fla. 5th DCA 1982)].”). On remand, the trial court shall strike the award of costs for the services rendered by Dr. Moon.

AFFIRMED, in part; REVERSED, in part; and REMANDED, with instructions.

WALLIS and LAMBERT, JJ., concur.  
EVANDER, C.J., concurs, with opinion.

EVANDER, C.J., concurring.

I concur with the majority but write to discuss the questionable validity of the proposals for settlement served by Federated on Andrea and Darron. Andrea and Darron jointly owned the real property that was insured by Federated. They were also represented by the same attorney below. Early in the litigation, Federated simultaneously served separate proposals for settlement on Andrea and Darron. The proposal for settlement to Andrea was for \$5,000, while the proposal for settlement to Darron was for \$30,000. Darron accepted Federated's proposal for settlement and Federated delivered a \$30,000 check payable to Andrea and Darron. Andrea rejected the proposal for settlement directed to her.

The questionable validity of the proposals for settlement arises from two seemingly inconsistent statements contained therein. In one paragraph, the proposal for settlement recites that although both plaintiffs will be listed on the check, the acceptance of the proposal (by the plaintiff to whom the proposal was directed) and the negotiation of the check "will not affect the claim" of the other plaintiff. In the ensuing paragraph, the proposal for settlement recites that if the plaintiff to whom the proposal is directed accepts

the proposal, the amount paid by Federated “will be set-off from additional sums, if any, awarded to [the other plaintiff].”

An argument can certainly be made that Andrea’s claim was, in fact, affected by Darron’s acceptance of the proposal for settlement served on him. Indeed, if Darron had not accepted the proposal for settlement served on him, Andrea would, based on the jury’s verdict, have obtained a judgment against Federated and would further have been entitled to recover her attorney’s fees pursuant to section 627.428, Florida Statutes (2018).<sup>1</sup>

However, because this argument was not made below, it is unnecessary for us to determine whether the proposal for settlement served on Andrea was “sufficiently clear and free of ambiguity to allow [Andrea] the opportunity to fully consider the proposal.” *Allen v. Nunez*, 258 So. 3d 1207, 1211 (Fla. 2018); see also *Mount Vernon Fire Ins. Co. v. New Moon Mgmt., Inc.*, 239 So. 3d 183, 186 n.2 (Fla. 3d DCA 2018) (declining to address argument that proposal for settlement was ambiguous because it was not preserved for appeal). Accordingly, I join in the majority opinion.

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<sup>1</sup> Section 627.428 allows insureds who prevail against their insurance company to recover attorney fees. *Johnson v. Omega Ins. Co.*, 200 So. 3d 1207, 1215 (Fla. 2016).