

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

**ALFA VISION INSURANCE  
CORPORATION,**

**CASE NO.: 2011-CV-88**

Lower Case No.: 2007-CC-8404

**Appellant,**

**v.**

**WELLNESS HEALTH ASSOCIATES, INC.,  
a/s/o JACQUET LECOIT,**

**Appellee.**

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Appeal from the County Court, for Orange County,  
Heather L. Higbee, County Judge.

Robert Alden Swift, Esquire and  
Tara Tamoney, Esquire, for Appellant.

Coretta Anthony-Smith, Esquire,  
for Appellee.

Before PERRY, JR., WALLIS, JOHNSON, J.J.

**PER CURIAM.**

**FINAL ORDER REVERSING TRIAL COURT**

Appellant, Alfa Vision Insurance Corporation (“ALFA”) timely files this appeal of the lower court’s “Final Judgment of Attorney’s Fees and Costs” rendered on October 11, 2011 in favor of Appellee, Wellness Health Associates, Inc. a/s/o Jacquet Lecoit (“WELLNESS”). This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument. Fla. R. App. P. 9.320.

### *Summary of Facts and Procedural History*

This action arose from claims brought by WELLNESS against ALFA for payment of No-Fault benefits for medical services rendered to four assignors/patients. After granting WELLNESS' various summary judgment motions, the lower court entered a Final Judgment in favor of WELLNESS on February 23, 2011. WELLNESS also filed motions for attorney's fees and costs pursuant to sections 57.041, 627.428, and 627.736(8), Florida Statutes. On September 8, 2011 and September 30, 2011 hearings were held on WELLNESS' motions for attorney's fees and costs. On October 11, 2011, the lower court entered the Final Judgment of Attorney's Fees and Costs granting WELLNESS attorneys' fees, costs and prejudgment interest in the amount of \$131,654.02.

ALFA appealed both Final Judgments. The Final Judgment entered on February 23, 2011 was appealed under case no. 2011-CV-21 and on February 18, 2013 this Court affirmed in part and reversed in part the lower court's rulings as to that Final Judgment. Accordingly, this Court now addresses ALFA's appeal of the lower court's rulings as to the Final Judgment of Attorney's Fees and Costs rendered on October 11, 2011.<sup>1</sup>

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<sup>1</sup> ALFA also appealed the Final Judgments entered in favor of Tampa Chiropractic Center from the consolidated case no. 2007-CC-8404. Specifically, in case no. 2011-CV-22, this Court entered an Order on February 18, 2013 affirming in part and reversing in part the lower court rulings as to the underlying Final Judgment and in case no. 2011-CV-87, the appeal of the Final Judgment of Attorney's Fees and Costs will be addressed by separate order.

### *Arguments on Appeal*

On appeal, ALFA argues that:

1) The lower court committed reversible error in granting summary judgment in favor of WELLNESS thus, the Final Judgment of Attorney's Fees and Costs, which is based on the erroneously entered summary judgment, must be reversed as well;

2) The lower court erred in ruling that ALFA's expert could not raise any objections that were not previously raised by ALFA pursuant to the lower court's preliminary order governing the process for determining attorney's fees and costs while at the same time allowing WELLNESS' expert to testify as to objections raised by ALFA that were not responded to by WELLNESS; and

3) The lower court failed to identify the date of entitlement to fees, thus erring in calculating the amount of the attorney fees to which WELLNESS was entitled and thus, the amount of any prejudgment interest owed thereon.

Conversely, WELLNESS argues that:

1) The lower court properly granted summary judgment in favor of WELLNESS. Thus, WELLNESS is entitled to attorney's fees and costs pursuant to section 627.428, Florida Statutes;

2) ALFA failed to prove that the lower court erred in refusing to allow its expert to raise certain objections. Specifically, WELLNESS argues that ALFA's argument ignores the fact that the preliminary order required ALFA to state its objection to the time entry and then ALFA was required to indicate what would be a reasonable amount of time for that particular task. Therefore, until ALFA's compliance with that portion of the

preliminary order, there would be nothing for WELLNESS to respond to as ALFA did not give an amount of time that it deemed to be reasonable. WELLNESS also argues that ALFA failed to establish that the lower court abused its discretion as there was competent substantial evidence that supports the lower court's refusal to allow ALFA to raise certain objections at the last minute and in dereliction of the court's preliminary order;

3) Lastly, WELLNESS argues that the lower court properly awarded it attorney fees through the date of the fee hearing as ALFA never conceded WELLNESS' entitlement to attorney fees and therefore, the lower court also properly awarded prejudgment interest as the entry of a final judgment is the triggering event for recovery of attorney's fees; and

4) WELLNESS also seeks an award of appellate attorney's fees and costs in the instant appeal.

#### ***Discussion***

This Court's Order on February 18, 2013 in case no. 2011-CV-21 affirming in part and reversing in part the lower court rulings as to the underlying Final Judgment entered on February 24, 2011 is dispositive for the instant appeal and warrants reversal of the Final Judgment of Attorney's Fees and Costs rendered by the lower court on October 11, 2011. *Olesh v. Greenberg*, 9 So. 3d 44, 45 (Fla. 5th DCA 2009) (holding that the attorney fee judgment should be reversed and remanded because the underlying summary final judgment had been reversed). *See Massachusetts Casualty Insurance Company v. Forman*, 516 F.2d 425, 431 (5th Cir. 1975) (applying Florida law and holding that the attorney's fees awarded to the insured under section 627.428, Florida Statutes, had to be reversed where the major part of the judgment for the insured on the merits was reversed).

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The lower court's Final Judgment of Attorney's Fees and Costs rendered on October 11, 2011 is **REVERSED** and this cause is **REMANDED** for further proceedings consistent with this opinion.

2. Appellee, Wellness Health Associates, Inc., a/s/o/ Jacquet Lecoit's Motion for Appellate Attorney's Fees and Costs filed July 9, 2012 is **DENIED**.

**DONE AND ORDERED** in Chambers, at Orlando, Orange County, Florida on this 3rd day of June, 2013.

/S/ \_\_\_\_\_  
**BELVIN PERRY, JR.**  
Circuit Judge

/S/ \_\_\_\_\_  
**F. RAND WALLIS**  
Circuit Judge

/S/ \_\_\_\_\_  
**ANTHONY H. JOHNSON**  
Circuit Judge

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing order was furnished to: **Robert Alden Swift, Esquire and Tara Tamoney, Esquire**, Cole, Scott & Kissane, P.A., Tower Place, Suite 750, 1900 Summit Tower Boulevard, Orlando, Florida 32810, [robert.swift@csklegal.com](mailto:robert.swift@csklegal.com), [tara.tamoney@csklegal.com](mailto:tara.tamoney@csklegal.com), [meghan.falk@csklegal.com](mailto:meghan.falk@csklegal.com); **Coretta Anthony-Smith, Esquire**, Anthony-Smith Law, P.A., 5401 S. Kirkman Road, Suite 610, Orlando, Florida 32819, [canthony@anthony-smithlaw.com](mailto:canthony@anthony-smithlaw.com); and **Crystal L. Eiffert, Esquire and Chad A. Barr, Esquire**, Eiffert & Associates, P.A., 122 E. Colonial Drive, Suite 210, Orlando, Florida 32801, [service@ealawgroup.com](mailto:service@ealawgroup.com), [cbarr@ealawgroup.com](mailto:cbarr@ealawgroup.com) on this 3rd day of June, 2013.

/S/ \_\_\_\_\_  
Judicial Assistant