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NEW FLORIDA APPELLATE RULE IMPACTS LITIGATION PRACTICE FOR PUNITIVE DAMAGES

Resource

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In a divided decision, the Florida Supreme Court has agreed to adopt an amendment to Rule 9.130, which allows parties to request immediate nonfinal appellate review of orders relating to punitive damages. Set to go into effect April 1st of this year, the rule provides for the interlocutory appeal of nonfinal orders granting or denying leave to amend a complaint to assert a claim for punitive damages.

Plaintiffs in Florida are accustomed to obtaining leave of court to add a claim for punitive damages and know that a showing of evidentiary support must be brought with that request. Florida Statute §768.72 “prohibits claims for punitive damages absent a reasonable showing by evidence in the record or proffered by the claimant which would find a reasonable basis for recovery of such damages.”

This proffer must provide evidence of the opposing party’s gross negligence or willful misconduct. Once the court grants leave to a party to seek these damages, the defendant may be forced to submit to financial discovery and disclose sensitive financial information.

Proponents of the new rule change say that it is necessary because under the prior framework, the parties had limited access to interlocutory appeals and were automatically subjected to detailed financial worth discovery and required to post a bond pending the resolution of the post judgment appeal. The new rule allows interlocutory review of evidentiary and procedural issues.

Rule 9.130 was amended after the Appellate Rules Committee proposed an amendment which adds Subdivision (a)(3)(G) and seeks “to authorize appeals of nonfinal orders that grant or deny a motion for leave to amend to assert a claim for punitive damages.” Before the passage of this amendment, the appellate court was limited in reviewing a trial court’s order granting leave to assert punitive damages. The change in the rule will now allow parties to seek immediate review.

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Opponents of the rule, including dissenting Judge Labarga, feared that the new option for parties will stall cases at the trial court level and cause added stress on an already overloaded and backlogged court system. In addition, some voiced concerns that meritorious claims for damages may be abandoned in the interest of resolving the case and avoiding added delays. Chief Justice Jorge Labarga stated in his dissent that he was especially worried about the fate of personal injury lawsuits. He stated, “Claims for much-needed medical and economic relief will stall until the question of punitive damages is resolved.” He went on to opine that the new rule is unnecessary and predicted that more losing parties than not will choose to request an immediate appeal of the trial court’s order causing unprecedented delays in the final resolution of cases.

The attorneys at Wood, Smith, Henning and Berman are fully apprised of this rule change and are available to answer any questions you may have about how this may impact your case or future litigation. Please do not hesitate to reach out to a member of our team should you have any questions or concerns about this new development in Florida trial procedure.