

SUPREME COURT OF FLORIDA

Massey v. David

Massey v. David, 979 So. 2d 931 (Fla. 2008) · No. SC07-776

SUMMARY

In Massey v. David, 979 So.2d 931 (Fla. 2008), the Florida Supreme Court held that section 57.071(2), Florida Statutes, which conditions the taxation of expert witness fees as costs on providing a written expert report, is an unconstitutional procedural statute that violates separation of powers by encroaching on the court’s exclusive rulemaking authority under Article V, Section 2(a) of the Florida Constitution. The court determined the provision is purely procedural because it does not create a substantive right but imposes discovery-related requirements that conflict with the Florida Rules of Civil Procedure. The decision reaffirms that the legislature may not enact procedural rules that interfere with the judiciary’s constitutional power to govern practice and procedure.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Lewis; Anstead; Pariente; Quince; Cantero; Bell
JURISDICTION	Florida
DOCKET	SC07-776
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the First District Court of Appeal's decision declaring Florida Statutes section 57.071(2) unconstitutional.
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	Binding precedent in Florida
PARTIES	Gary Massey v. Calvin F. David

TOPICS

- civil procedure
- constitutional law
- appellate procedure

PRACTICE AREAS

- Constitutional Law
- Civil Procedure
- Appellate Procedure

QUESTIONS PRESENTED

1. Whether section 57.071(2), Florida Statutes (1999), which conditions the recovery of expert witness fees as taxable costs on furnishing a written expert report, is an unconstitutional encroachment on the Florida Supreme Court's exclusive rulemaking authority over practice and procedure under article V, section 2(a) of the Florida Constitution.

HOLDINGS

1. Section 57.071(2) is unconstitutional because it is purely procedural in nature, does not create a substantive right, and conflicts with the Florida Rules of Civil Procedure and the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions, thereby impermissibly intruding on this Court's exclusive authority to adopt rules of practice and procedure.

KEY QUOTATIONS

“Substantive law has been defined as that part of the law which creates, defines, and regulates rights, or that part of the law which courts are established to administer. It includes those rules and principles which fix and declare the primary rights of individuals with respect towards their persons and property. On the other hand, practice and procedure ‘encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion. ‘Practice and procedure’ may be described as the machinery of the judicial process as opposed to the product thereof.’ It is the method of conducting litigation involving rights and corresponding defenses.” (at 936-37)

“In conclusion, we hold that section 57.071(2) impermissibly encroaches on the rulemaking authority of this Court because it imposes procedural requirements with regard to both the discovery of expert witnesses and the taxation of expert witness fees as costs which do not exist under the rules of practice and procedure that have been promulgated by this Court.” (at 943)

FACTUAL BACKGROUND

Gary Massey retained attorney Calvin David to represent him in a personal injury case against Beazer East, Inc. A disagreement arose over settlement, and David submitted the dispute to an arbitrator, who decided Massey should accept the settlement. David then moved the trial court to approve the settlement, which was granted; a guardian ad litem signed the release on Massey's behalf. Massey subsequently sued David for legal malpractice. The trial court bifurcated the proceedings: in Phase I, the jury found David negligent and that his negligence caused damage to Massey; in Phase II, the jury awarded zero damages. Thereafter, the trial court entered a separate judgment for costs in favor of David, including expert witness fees, despite David's failure to provide written expert reports as required by section 57.071(2), Florida Statutes (1999). Massey contended on appeal that the cost award was improper because David did not comply with the statute.

PROCEDURAL HISTORY

Massey appealed the cost judgment to the First District Court of Appeal, which affirmed the award, holding that section 57.071(2) was unconstitutional. The First District agreed with the Fourth District's decision in *Estate of Cort v. Broward County Sheriff*, 807 So.2d 736 (Fla. 4th DCA 2002), which had declared the statute unconstitutional. Massey then appealed to the Florida Supreme Court, which has jurisdiction under article V, section 3(b)(1) of the Florida Constitution.

DISPOSITION

affirmed

CASES CITED

- Massey v. David, 953 So. 2d 599 (Fla. 1st DCA 2007)
- Estate of Cort v. Broward County Sheriff, Estate of Cort v. Broward County Sheriff, 807 So. 2d 736 (Fla. 4th DCA 2002)
- Knealing v. Puleo, 675 So. 2d 593 (Fla. 1996)
- Haven Fed. Sav. & Loan Ass'n v. Kirian, 579 So. 2d 730 (Fla. 1991)
- State v. Raymond, 906 So. 2d 1045 (Fla. 2005)
- Caple v. Tuttle's Design-Build, Inc., 753 So. 2d 49 (Fla. 2000)
- VanBibber v. Hartford Accident & Indem. Ins. Co., 439 So. 2d 880 (Fla. 1983)
- Jackson v. Fla. Dep't of Corrections, 790 So. 2d 381 (Fla. 2000)
- Allen v. Butterworth, 756 So. 2d 52 (Fla. 2000)
- City of Miami v. McGrath, 824 So. 2d 143 (Fla. 2002)
- Leapai v. Milton, 595 So. 2d 12 (Fla. 1992)
- Timmons v. Combs, 608 So. 2d 1 (Fla. 1992)
- Military Park Fire Control Tax Dist. No. 4 v. DeMarois, 407 So. 2d 1020 (Fla. 4th DCA 1981)
- Pardo v. State, 596 So. 2d 665 (Fla. 1992)
- Markert v. Johnston, 367 So. 2d 1003 (Fla. 1978)
- Board of County Comm'rs v. Sawyer, 620 So. 2d 757 (Fla. 1993)
- In re Fla. Rules of Crim. Pro., 272 So. 2d 65 (Fla. 1972)
- Ivey v. Chicago Ins. Co., 410 So. 2d 494 (Fla. 1982)
- White v. State, 714 So. 2d 440 (Fla. 1998)
- Gulfstream Park Racing Ass'n v. Tampa Bay Downs, 948 So. 2d 599 (Fla. 2006)
- State v. Goode, 830 So. 2d 817 (Fla. 2002)
- Mays v. State, 717 So. 2d 515 (Fla. 1998)
- School Board of Broward County v. Price, 362 So. 2d 1337 (Fla. 1978)
- Looney v. State, 803 So. 2d 656 (Fla. 2001)
- Boyd v. Becker, 627 So. 2d 481 (Fla. 1993)
- Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437 (1987)

CITED IN

- Massey v. David, Massey v. David, 979 So. 2d 931 (Fla. 2008)