

Third District Court of Appeal

State of Florida, January Term, A.D. 2010

Opinion filed June 9, 2010.

Not final until disposition of timely filed motion for rehearing.

No. 3D09-927 & 09-1401
Lower Tribunal No. 00-8822

Juvenal Barreto, Jr., et al.,
Appellants,

vs.

Norman Washington Wray, etc., et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Victoria Platzer and Gerald D. Hubbart, Judges.

Gaebe, Mullen, Antonelli, Esco & DiMatteo, and Michael A. Mullen, Maximo A. Santiago and Anne C. Sullivan, for appellants.

Ross & Girten, and Lauri Waldman Ross; Silverstein, Silverstein & Silverstein, and Gregg A. Silverstein, for appellees.

Before RAMIREZ, C.J., and COPE and GERSTEN, JJ.

RAMIREZ, C.J.

Juvenal Barreto, Jr. and Juvenal Barreto, Sr., the defendants in the trial court, appeal the trial court's Amended Final Judgment entered after the trial court

denied their motion for new trial on liability only as to the claims of plaintiffs Norman Wray, Sr. and Christopher Wray, and after the trial court granted their renewed motion for a partial directed verdict and motion for judgment in accordance with motion for a partial directed verdict as to the claims of Christopher Way. In addition, the Barretos appeal the trial court's Final Judgment on Taxable Costs, awarding plaintiffs \$218,690.14 in costs. We affirm the Amended Final Judgment, concluding that the trial court did not abuse its discretion when it denied a new trial on liability where the jury's verdict was consistent with the evidence. We also affirm the Final Judgment on Taxable Costs.

This Court lacks discretion to grant new trials based on unpreserved error. Martinez v. Poly-Ply Corp., 883 So. 2d 327, 329 (Fla. 3d DCA 2004). In the case before us, although the Barretos' counsel did tell the judge at sidebar that he "thought" the amended verdict was inconsistent, Florida law requires that there be a specific request to resubmit the matter to the jury. Adoro Marketing, Inc. v. Da Silva, 623 So. 2d 542, 543 (Fla. 3d DCA 1993); Coward v. Kendall United Methodist Church, 476 So. 2d 289, 290-91 n.2 (Fla. 3d DCA 1985). Such a request was not made in this case, thus the inconsistency was waived. Accordingly, we affirm.