

307 Fed.Appx. 349

This case was not selected for publication in the Federal Reporter. Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Eleventh Circuit Rules 36-2, 36-3. (Find CTA11 Rule 36-2 and Find CTA11 Rule 36-3) United States Court of Appeals, Eleventh Circuit.

Luisa E. SILVA, Plaintiff-Appellant,

v.

Grant MILLER, Joyce Miller, Defendants-Appellees.

No. 08-12011 | Non-Argument  
Calendar. | Jan. 13, 2009.

### Synopsis

**Background:** Housekeeper and married couple for whom she worked for several years filed a joint motion to review and approve a settlement in a Fair Labor Standards Act (FLSA) minimum wage action. The United States District Court for the Southern District of Florida, [547 F.Supp.2d 1299](#), awarded attorney fees, and attorneys appealed.

**Holding:** The Court of Appeals held that the district court had a duty to review a compromise of the housekeeper's FLSA claim and to award a reasonable attorney's fee to her counsel.

Affirmed.

West Headnotes (1)

### [1] Labor and Employment

#### 🔑 Compromise and Settlement

Settlement in the amount of \$20,000 proposed by parties, from which attorney's fees were to be deducted, necessarily involved a compromise of a Fair Labor Standards Act (FLSA) claim in light of FLSA's direction that the court provide for payment of the employee's attorney's fees by the defendant, and the district court had a

duty to review the compromise and to award a reasonable attorney's fee to the plaintiff's counsel, despite claim that the settlement was exempt from judicial review; fact that the plaintiff and his counsel had entered into a contingency contract to establish counsel's compensation if the employee prevailed was of little moment in the context of FLSA, which required judicial review of the reasonableness of counsel's legal fees. Fair Labor Standards Act of 1938, § 16(b), [29 U.S.C.A. § 216\(b\)](#).

[301 Cases that cite this headnote](#)

### Attorneys and Law Firms

\***350** [Jamie H. Zidell](#), J.H. Zidell, P.A., Miami Beach, FL, for Plaintiff-Appellant.

Appeal from the United States District Court for the Southern District of Florida. D.C. Docket No. 07-22834-CV-PAS.

Before [EDMONDSON](#), Chief Judge, [BIRCH](#) and [DUBINA](#), Circuit Judges.

### Opinion

PER CURIAM:

Appellants J.H. Zidell, Esq. and J.H. Zidell, PA (“Zidell”) appeal the attorney's fee awarded in an action brought under the Fair Labor Standards Act, [29 U.S.C. § 201 et seq.](#), (“FLSA”) on behalf of employee Luisa Silva. No reversible error has been shown; we affirm.

Silva was employed as a domestic-service employee by Defendants Grant and Joyce Miller. Zidell represented Silva in a minimum wage action. By fee agreement between Zidell and Silva, Zidell was to receive a contingency fee equal to the higher of 40% of the total recovery or an hourly rate based on \$300.00 per hour.

The parties agreed to settle Silva's FLSA claims for \$20,000—an amount stipulated to represent full compensation—and sought dismissal of the case with prejudice without court approval of the settlement. Zidell argued before the district court that no court approval was required because the settlement provided (before payment of attorney's fees) that Silva recover all wages to which she was entitled. The district

court concluded that FLSA and Eleventh Circuit precedent require that amounts paid under the settlement be reviewed to assure that the settlement constitutes a fair and reasonable resolution of the employee's claim. After review of the record and oral argument, the district court determined that \$20,000 constituted a reasonable settlement amount; the court rejected Zidell's claim to 40 per cent (\$8,000) from that amount plus costs. The district court determined that a fair and reasonable recovery for Silva was \$12,286; a reasonable attorney's fee of \$7,714 (a fee award of \$6,325 plus \$1,389 in costs) was awarded to Zidell.

Attorney Zidell argues that (1) no judicial oversight of an FLSA settlement is appropriate unless the employee is proceeding *pro se*; (2) the district court enjoyed no authority to reduce the amount of attorney's fees under the contingency contract to which the employee had agreed; and (3) whatever judicial review might otherwise apply, no judicial review is applicable when the employee is represented by counsel and the parties stipulate that the employee is receiving full recovery under the facts of the case. We do not accept that FLSA contemplates or sanctions such broad exemption of FLSA settlements from judicial review.

We start with the language of the statute:

Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages.... The \*351 court in [an action to recover under FLSA] shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

29 U.S.C. § 216(b). The language of the statute contemplates that “the wronged employee should receive his full wages plus the penalty without incurring any expense for legal fees or costs.” *Maddrix v. Dize*, 153 F.2d 274, 275-76 (4th Cir.1946). See also, *Skidmore v. John J. Casale, Inc.*, 160 F.2d 527, 531 (2d Cir.1947) (“We have considerable doubt as to the validity of the contingent fee agreement; for it may

well be that Congress intended that an employee's recovery should be net....”).

As we noted in *Lynn's Food Stores, Inc. v. U.S. ex rel. U.S. Dept. of Labor*, 679 F.2d 1350, 1352 (11th Cir.1982), FLSA provisions are mandatory; the “provisions are not subject to negotiation or bargaining between employer and employee.” *Id.* Only two ways exist for the settlement or compromise of an employee FLSA claim: one is where an employee accepts payment supervised by the Secretary of Labor, *id.* at 1352-53; the other is pursuant to “a stipulated judgment entered by a court which has determined that a settlement proposed by an employer and employees, in a suit brought by the employees under the FLSA, is a fair and reasonable resolution of a bona fide dispute over FLSA provisions.” *Id.* at 1354. On its face, *Lynn's Food* suggests no exception to judicial oversight of settlements when the employee receives all wages due; it offers no support for the even broader exception proposed by Zidell that would include all counseled settlements.

Zidell contends that *Lynn's Food* applies only when an FLSA claim is compromised. See *Mackenzie v. Kindred Hospitals East, L.L.C.*, 276 F.Supp.2d 1211, 1217 (M.D.Fla.2003) (“*Lynn's Food Stores* addresses judicial oversight of ‘compromises’ of FLSA claims.... There is no need for judicial scrutiny where, as here, the defendant represents that it has offered the plaintiff more than full relief, and the plaintiff has not disputed that representation.”). We do not say what, if any, judicial oversight applies under *Lynn's Food* when full satisfaction of the FLSA claim is made; because FLSA directs the court to provide for payment of the employee's attorney's fees by the defendant, the \$20,000 settlement as proposed by the parties—from which attorney's fees were to be deducted—necessarily involved a compromise of the FLSA claim.<sup>1</sup>

That Silva and Zidell entered into a contingency contract to establish Zidell's compensation if Silva prevailed on the FLSA claim is of little moment in the context of FLSA. FLSA requires judicial review of the reasonableness of counsel's legal fees to assure both that counsel is compensated adequately and that no conflict of interest taints the amount the wronged employee recovers under a settlement agreement. FLSA provides for reasonable attorney's fees; the parties cannot contract in derogation of FLSA's provisions. See *Lynn's Food*, 679 F.2d at 1352 (“FLSA rights cannot be abridged by contract or otherwise waived.”) (quotation and citation omitted). To turn a blind eye to an agreed upon contingency fee in an \*352 amount greater than the amount determined to be reasonable after judicial scrutiny

runs counter to FLSA's provisions for compensating the wronged employee. See *United Slate, Tile & Composition Roofers v. G & M Roofing & Sheet Metal Co.*, 732 F.2d 495, 504 (6th Cir.1984) ("the determination of a reasonable fee is to be conducted by the district court regardless of any contract between plaintiff and plaintiff's counsel"); see also *Zegers v. Countrywide Mortg. Ventures, LLC*, 569 F.Supp.2d 1259 (M.D.Fla.2008).

The district court had a duty to review the compromise of Silva's FLSA claim and to award a reasonable attorney's fee to Silva's counsel. No reversible error has been shown.<sup>2</sup>

AFFIRMED.

**Parallel Citations**

2009 WL 73164 (C.A.11 (Fla.))

Footnotes

- 1 As noted by the district court, the Settlement Agreement provided that Silva agreed to and understood that the Agreement compromised disputed claims. And the district court determined that the \$10,611 recovery to Silva under the Settlement Agreement-net after \$8,000 for attorney's fees and \$1,389 for costs-fell below the range of reasonable recovery amounts. The Settlement Agreement set out a compromised claim within the meaning of *Lynn's Food*.
- 2 We understand Zidell's appeal to take issue with judicial review of the attorney's fees and the fact-as opposed to the amount-of reduction of the fee award.

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