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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

SHELLY L. HALL, M.D., P.A., a Florida corporation, d/b/a ISLAND PEDIATRICS,

Appellant,

v.

BONNIE K. WHITE, M.D., and BONNIE K. WHITE, M.D., P.A.,

Appellees.
_____/

Case No. **1D11-4546**
LT Case No. 2009-CA-000868

ON APPEAL FROM THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR CLAY COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

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Preliminary Statement

Appellant, Shelly L. Hall, M.D., P.A., d/b/a Island Pediatrics, will be referred to as Island Pediatrics. Appellees, Bonnie K. White and Bonnie K. White, M.D., P.A. will be referred to as Dr. White and White P.A., respectively. Collectively, Dr. White and White P.A. are referred to as Plaintiffs. Roger Hall will be referred to as Attorney Hall.

Statement of the Case and Facts

Island Pediatrics appeals from the trial court's order assessing attorney's fees against it pursuant to two motions – one for fees pursuant to Chapter 448, Florida Statutes, and the other pursuant to section 57.105, Florida Statutes. (AR3.392-94; 464-65.)[1] This appeal first concerns whether the trial court's assessment of fees was erroneous on both motions due to the lack of factual and legal support presented by Plaintiffs and the absence of factual findings by the trial court. Second, the appeal questions whether the order is erroneous due to an over-imposition of fees against Island Pediatrics on the section 57.105 motion.

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[1] The clerk of the lower tribunal mistakenly prepared separate appellate records based on appellant's and appellees' directions to clerk. References to R are to the record as designed by appellee, and references to AR are to the amended record on appeal, as designed by appellant. The number following these designations are to volume and page number, respectively.

In 2007, Dr. White became an employee of Island Pediatrics. (AR1.1.) At that time, Dr. White and Island Pediatrics entered into a Physician Employment Agreement (the "Agreement") for Dr. White to provide pediatric services on a part-time basis. (*Id.*; R1.2-8.) While an employee of Island Pediatrics, Dr. White agreed to work no less than twenty-four hours per week and would be paid $60 per hour. (R1.5.) She would also be paid 30% of her receipts in excess of $25,000 per month. (*Id.*)

Dr. White operated under the Agreement through June 1, 2008. (AR1.2.) On that date, Dr. White began performing for Island Pediatrics as an independent contractor through White P.A. (*Id.*) Under this new arrangement, White P.A. would receive 40% of all of Dr. White's collections for services she rendered after June 1, 2008, but Dr. White would have to pay for her own medical malpractice insurance. (*Id.*) The parties disputed whether this new arrangement was only for a test period, or whether they had actually entered into an oral modification of the Agreement. (R1.10; AR1.10.)

Soon after the new arrangement began, Dr. White informed Island Pediatrics that she was unhappy and wished to leave as soon as Island Pediatrics could find a replacement for her. (AR1.2-3.) Dr. White continued as an independent contractor through September 2008. (AR.1-3.) Plaintiffs filed their lawsuit against Island Pediatrics over a dispute in the amount White P.A. was entitled to receive as

compensation from June through September 2008. (*Id*.) The original complaint contained one count for an accounting and three counts for declaratory relief and damages. (AR1.1-12.) In counts II through IV, Plaintiffs alleged Dr. White had been unable to obtain employment due to threatened litigation. (AR1.4-12.)

Island Pediatrics filed a motion to strike sham pleadings, demonstrating that Dr. White was, in fact, employed at the time she filed her complaint. (AR1.13-19.) Island Pediatrics also answered the complaint, asserted numerous affirmative defenses, and filed a verified counter-claim. (R1.9-30.) By way of counter-claim, Island Pediatrics asserted that Dr. White had breached the Agreement, breached the non-competition provision in the Agreement, and tortiously interfered with Island Pediatrics' business. (R1.20-30.) The parties then filed a flurry of motions directed at each other. Plaintiffs moved to strike Island Pediatrics' affirmative defenses (AR1.20-25.); Island Pediatrics moved for sanctions pursuant to section 57.105, Florida Statues,[2] on the basis that Plaintiffs' equitable counts in the complaint were unsupported by facts or law (AR1.26-28). After the complaint was

[2] Section 57.105(1), Florida Statutes, directs the trial court to award attorney's fees to the prevailing party, in an amount to be equally paid by the losing party and the losing party's attorney,

> on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that the claim or defense …(a) [w]as not supported by the material facts necessary to establish the claim or defense; or (b) [w]ould not be supported by the application of then-existing law to those material facts.

amended, Island Pediatrics continued to pursue sanctions and filed a motion to dismiss, which the trial court granted for counts II through IV. (AR1.29-31, 41-67; R1.77.) Thereafter, Plaintiffs moved to disqualify one of Island Pediatrics' lawyers, Attorney Hall,[3] and filed their own motion for section 57.105 sanctions (AR1.132-33; AR2.135-37). Plaintiffs requested attorney's fees pursuant to section 57.105 based upon four filings: two motions for attorney's fees, a motion to dismiss for fraud upon the court, and a notice of appeal resulting from the trial judge's refusal to recuse himself. (AR2.136.) No hearing was held on Plaintiffs' section 57.105 motion, however, until after the conclusion of the trial. (AR3.392.)

Eventually, the operative Second Amended Complaint was filed, with the claims narrowed down to three counts: breach of oral agreement, equitable accounting, and a count to recover unpaid wages and for attorney's fees pursuant to Chapter 448, Florida Statutes.[4] (AR2.215-20.) The crux of the complaint was that Plaintiffs were owed 40% of Dr. White's collections following her departure from Island Pediatrics. (*Id.*) Island Pediatrics again filed an answer, affirmative defenses and a verified counterclaim, alleging claims against Plaintiffs for breach of contract, breach of non-competition agreement, tortious interference and abuse

[3] Attorney Hall is the husband of Dr. Shelly Hall, the principal of Island Pediatrics. (AR1.132)

[4] In particular, § 448.08, Florida Statutes, provides that a "court may award to the prevailing party in an action for unpaid wages costs of the action and a reasonable attorney's fee."

of process. (AR2.231-47.)

After their claim for an accounting was dismissed, Plaintiffs moved for partial summary judgment against Island Pediatrics. (R1.132-43; 151.) Among other things, Plaintiffs argued that there was no evidence to support Island Pediatrics' claim for abuse of process. (R1.141-42.) The trial court denied Plaintiffs' motion. (R1.196.) Island Pediatrics filed its own motion for partial summary judgment on the Chapter 448 claim because independent contractors are not entitled to "wages." (R1.116-30.) This motion was also denied. (R1.196.)[5] Thereafter, during the deposition of Island Pediatrics' principal, Plaintiffs' counsel discovered that Island Pediatrics had inadvertently underpaid Dr. White during her first quarter of employment. (AR3.545.) Plaintiffs did not amend their complaint, electing to stand on the existing claim for unpaid wages.

The parties later stipulated to the amounts allegedly owed to White P.A. as 40% of Dr. White's receipts. (R1.117.) The primary dispute remained over whether Island Pediatrics was obligated to pay those sums to Plaintiffs based on the various affirmative defenses raised. (R2.198-99.) A secondary issue that arose during the course of the litigation was whether Island Pediatrics failed to pay Dr. White all she was due during her first quarter of employment. (*Id.*; AR3.545)

[5] While the jury ultimately determined that Dr. White became an independent contractor of Island Pediatrics in June 2008 (AR2.387), had the jury instead concluded that she was still an employee, she would have been pursuing back wages pursuant to Chapter 448.

Following a trial, the jury made multiple factual findings. (AR2.386-89.) It first found that Island Pediatrics owed Dr. White $916.14 for wages while she was an employee. (AR2.386.) The jury then found that the parties had, in fact, orally modified the Agreement and agreed to amend its terms as of June 1, 2008. (*Id.*) The jury also found that Island Pediatrics breached the orally-modified Agreement by failing to pay White P.A. $23,707.94 for Dr. White's services while she was an independent contractor. (AR2.387.) On Island Pediatrics' counter-claims, the jury found that Dr. White breached the Agreement by leaving before the conclusion of her two-year term, but that her breach was excused by Island Pediatrics' prior breach of the Agreement. (AR2.387-88.) The jury separately found that Dr. White did not tortiously interfere with Island Pediatrics' business or abuse the judicial process. (AR2.388.)

Following entry of final judgment, Plaintiffs filed two motions for attorney's fees. One motion asked to recover attorney's fees under Chapter 448 for the $916.14 in wages the jury awarded to Dr. White. (AR3.464-65.) Because the Chapter 448 claim was not discovered until April 14, 2010, attorney's fees related to the unpaid wage claim were calculated from that date forward. (AR3.545.)

The other motion asked the trial court to tax attorney's fees against Island Pediatrics and one of its attorneys, Attorney Hall, for pursuing the abuse of process claim and declining to withdraw various motions related to Plaintiffs'

misrepresentations in her first complaint. (AR3.392-94.) Plaintiffs' counsel represented in the section 57.105 motion that "it is impossible to determine with certainty the precise amount of attorney's fees incurred by White defending the abuse of process claim. Accordingly, White respectfully suggests that an award of 1/6 of the total fees incurred by White would be appropriate under the circumstances, given that White had two claims against Island Pediatrics, and Island Pediatrics had four claims back against White." (AR3.394.)

But when Plaintiffs' counsel filed his supporting affidavits, he alleged that he was able to specifically calculate the amount of time he spent defending Island Pediatrics' "frivolous motions" and abuse of process claim and that the fees incurred for this time were $7,913.75. (AR3.524.) He alleged, however, that he was unable to segregate time spent on the $900 past wage claim from the $24,000 breach of the independent contractor relationship and sought all attorney's fees from April 14, 2010 though October 6, 2010 in the amount of $84,898.25. (*Id.*) No time sheets or detailed descriptions of counsel's time were attached to his affidavit; nor were they attached to the affidavit of reasonableness provided by Alan Winter ("Attorney Winter"). (AR3.521-26.)

Trial counsel stated in his affidavit that all attorneys who worked on the case spent a combined total of 273.05 hours between discovery of the wage claim and the entitlement hearing, for a blended rate of approximately $312.00 per hour.

(AR3.524.) Trial counsel indicated that fees charged to the Plaintiff ranged between $325 and $85 per hour. (AR3.525.) Yet nowhere does he identify how many time keepers worked on the file, what their specific hourly rates were, what services they performed, or whether any of the rates charged – other than for Mr. Henderson and Ms. Green – were even reasonable hourly rates. (AR3.521-26.) Similarly, Attorney Winter's affidavit opined that after having reviewed the file, talked with Plaintiffs' counsel, and considered the *Florida Patient's Compensation Fund v. Rowe* factors, he believed 297.4 hours at a blended rate of $312.00 per hour, for a total of $92,812, "is a reasonable fee to be awarded to Plaintiff's attorney for services rendered in this cause." (AR3.522.) He opined generally that the fees were reasonable because he charges a "similar fee for commercial litigation," (AR3.571), but did not specifically opine that each distinct rate charged was reasonable.

The day following the jury verdict, Attorney Hall filed a consent motion to withdraw, which the trial court granted *nunc pro tunc* to August 19, 2010. (AR2.390; AR3.518.) Island Pediatrics remained represented by its lead counsel, Mark Addington. (*Id.*) With their professional relationship now terminated, Island Pediatrics and Attorney Hall responded separately to the motions to tax attorney's fees. (AR3.467, 486, 505.) The first fee hearing was held in October 2010, during which time the trial court determined that Plaintiffs were entitled to their attorney's

fees pursuant to both the Chapter 448 claim (for time incurred on that claim from April 14, 2010 forward) and pursuant to section 57.105, Florida Statutes, for defending the abuse of process counterclaim. (AR3.544-45.) No court reporter was present for these proceedings, nor was an order entered.

Thereafter, Plaintiffs scheduled a second fee hearing to determine the amount of fees. (AR3.527-28.) They did not give notice of the fee hearing to Attorney Hall. (*Id.*; AR3.560.) Attorney Hall did not appear at the hearing to defend against the amount of fees assessed pursuant to the section 57.105 motion. (AR3.556.) When discussing this procedural irregularity during the hearing, Plaintiffs' counsel argued that the burden should be on Island Pediatrics to bring in Attorney Hall to contest the amount of fees that could be awarded against him. (AR3.560.) Plaintiffs' counsel also agreed to waive the imposition of fees against Attorney Hall and instead seek them solely from Island Pediatrics. (AR3.561.) Island Pediatrics objected to this procedure. (*Id.*)

At the hearing, the only testimony came from Attorney Winter. (AR3.563-577.) Plaintiffs' counsel did not offer his own testimony, nor did he enter his time records into evidence. He stated that he stood by the affidavits he had on file. (AR3.563.) Counsel did argue, however, that the time he spent on the Chapter 448 claim was inextricably intertwined with the time he spent prosecuting and defending the remainder of the case. (AR3.547-48.) Counsel based his argument

around the jury verdict form. (AR3.548-49.) Specifically, counsel argued that when the jury found that Island Pediatrics breached the Agreement for wages by $916.14, that finding became the basis to rule against Island Pediatrics on its counterclaims. (*Id*.) Counsel also argued, though he did not provide sworn testimony, that "I can tell you if you look at my time entries there was no way to decipher out what I spent on the unpaid wage claim versus trying this case." (AR3.558.)

Attorney Winter testified that he didn't "know how [he] could have separated" the claims and that his understanding was that the case was presented to the jury around one core of facts. (AR3.574-75.) He also opined that since all the claims were presented in a single trial and decided by a single jury on one verdict form, all of the claims in the case were prepared together, considered together and therefore inextricably intertwined. (AR3.575-76.) However, Attorney Winter admitted that he did not create a worksheet or otherwise attempt to quantify time between the wage claim and contract claim. (AR3.656-66.) He admitted that the time entries he reviewed were not specific to any claim, but contained generic references like "reviewing pleadings." (AR3.567.) Attorney Winter remembered that the attorneys did research on the case, but could not recall whether some entries may have been unrelated to the wage claim. (AR3.567-68.) He did not know who certain witnesses were and whether their testimony was at all related to

the wage claim. (AR3.570.) In short, Attorney Winter opined that because of the "central core of facts," even if someone came in and gave testimony strictly related to a counterclaim that had nothing to do with wages, the time spent on that witness would still be recoverable under Chapter 448. (*Id.*) Attorney Winter also opined that counsel's rates were reasonable and that all of the time claimed by counsel was reasonably incurred. (AR3.570-71.)

In contrast, Island Pediatrics argued that the wage claim and breach of contract claim were separate transactions. (AR3.554.) Indeed, no one even discovered the wage claim until two years into the litigation. (*Id.*) The jury awarded separate amounts for the two different claims. (AR2.386-87.) Island Pediatrics also presented case law that the party seeking fees has the legal burden to separate them. (AR3.555.) Just "because [counsel] doesn't have the ability to go back because of the way he put in entries, doesn't mean that he should be entitled to everything." (AR3.559.)

Following the hearing, Plaintiffs' counsel sent a letter to the trial court, attempting to distinguish Island Pediatrics' case law. (AR3.533-34.) Island Pediatrics filed a response. (AR3.529-32.) Island Pediatrics argued Plaintiffs did not meet their burden of proof in establishing that the wage claims and breach of contract claims were inextricably intertwined. (AR3.530-31.) Furthermore, Island Pediatrics pointed out that Florida law requires that the party paying fees should

not be penalized because the prevailing party's counsel did not keep accurate time records. (AR3.531.) Island Pediatrics then noted that Plaintiffs never introduced records of their attorney's time and Attorney Winter admitted that he made no effort to distinguish between time spent on the wage claim and time spent on the breach of contract claim. (*Id.*)

Notwithstanding these arguments, the trial court directed Plaintiffs' counsel to prepare a proposed order granting all $92,812.00 in requested attorney's fees. (AR3.535.) The trial court found that, consistent with Attorney Winter's testimony, all the time was reasonable and the two claims were inextricably intertwined. (*Id.*) The trial court then separately entered an order granting the motion for attorney's fees and a final judgment awarding those fees. (AR3.536-38; AR3.608.) Neither order made a finding on the reasonable number of hours expended by Plaintiffs' counsel, the reasonable hourly rate, or whether the court had considered the enhancement or reduction factors. (*Id.*) Island Pediatrics filed a motion for rehearing, which asked the trial court to again consider that Plaintiffs had not meet their burden of proof with respect to proving that the wage claim and independent contractor claims were inextricably intertwined. (AR3.594-603.) The motion for rehearing also established that the order awarding fees lacked the requisite findings and denied due process to Attorney Hall. (*Id.*) The trial court denied Island Pediatrics' motion for rehearing (AR3.605) and this timely appeal

followed (AR3.606.)

SUMMARY OF ARGUMENT

The final judgment awarding attorney's fees to Plaintiffs pursuant to Chapter 448, Florida Statutes, and section 57.105, Florida Statutes, is fatally deficient on many levels. As an initial matter, neither the order granting the motions for fees nor the final judgment make sufficient findings of fact to enable this Court to engage in meaningful appellate review. This deficiency alone mandates reversal of both the award of Chapter 448 fees and section 57.105 fees.

The award of Chapter 448 fees must be reversed for two additional reasons. First, the Plaintiffs failed to meet their burden of proof establishing that the number of hours claimed were reasonable. Most notably, Plaintiffs failed to offer detailed time records or invoices describing the work performed or identifying the time keepers who worked on the file. Without this critical evidence, the Court must reverse. Because Plaintiffs failed to offer any proof of the reasonableness of their hours, this Court should reverse, and Plaintiffs should not be given a second opportunity to present critical evidence on remand.

Second, the order must be reversed because the trial court erred as a matter of law when it concluded that the Chapter 448 claims were inextricably intertwined with the remaining claims in the lawsuit. From a simple perspective of the facts, the trial court could not have made this determination without reviewing the

timesheets. Moreover, the claims and counterclaims in the lawsuit were not based on the same core set of facts, but were independent claims, each of which could have formed the basis for an independent lawsuit rather than being alternative claims for the same wrongful act. If the Court does reverse and remand, it should be with instructions that the trial court only award fees that are clearly related to the Chapter 448 wage claim and, to the extent that trial counsel cannot segregate those hours, no fees should be awarded.

Finally, the judgment with respect to the section 57.105 attorney's fees must also be reversed because it improperly taxes one hundred percent of the assessed attorney's fees against Island Pediatrics. Because the statute specifically mandates that fees be assessed equally between attorney and client, the trial court erred in assessing the fees solely against Island Pediatrics in an effort to avoid the obvious violation of Attorney Hall's due process rights in never being notified of the hearing.

ARGUMENT

I. THE TRIAL COURT ERRONEOUSLY TAXED ATTORNEY'S FEES AGAINST ISLAND PEDIATRICS RELATED TO THE CHAPTER 448 WAGE AND HOUR CLAIM.

The trial court's final judgment awarded Plaintiffs the entirety of their claimed attorney's fees up through the entitlement hearing. (AR3.524, 536-38, 608.) The award totaled nearly $85,000 in attorney's fees for a claim on which the

jury awarded less than $1,000. (AR3.537; R2.386.) Although the trial court adopted the conclusory opinions of Attorney Winter that the award was sustainable because the Chapter 448 claim was "inextricably intertwined" with the remainder of the case, the final judgment is erroneous for a number of reasons. (AR3.537.) First, the final judgment is facially erroneous because it lacks the requisite factual findings. *See* section I.A., *infra*. Second, the trial court erroneously found the Chapter 448 claim was inextricably intertwined with the other claims in the case. *See* section I.B., *infra*. Finally, the trial court should not have awarded fees where trial counsel never presented a record of detailed time entries. *See* section I.B.2., *infra*. For all of these reasons, this Court should reverse the final judgment as it pertains to the attorney's fees awarded pursuant to Chapter 448, Florida Statutes.

Standard of Review.

The Court is required to apply two different standards of review on this issue. The trial court's decision to grant or deny attorney's fees is reviewed for an abuse of discretion. *Massey v. David*, 953 So. 2d 599, 603 (Fla. 1st DCA 2007) (citations omitted). This standard of review will apply to our first and third arguments. *See* sections I.A. and I.B.2., *infra*. However, the determination of whether multiple claims within a lawsuit are "inextricably intertwined" is a question of law (sections I.B. and I.B.1., *infra*), and this Court reviews that decision *de novo*. *Van Diepen v. Brown*, 55 So. 3d 612, 614 (Fla. 5th DCA 2011);

Ocean Club Comm. Ass'n, Inc. v. Curtis, 935 So. 2d 513, 516 (Fla. 3d DCA 2006); *Anglia Jacs & Co. v. Durbin*, 830 So. 2d 169, 171 (Fla. 4th DCA 2002).

A. The Trial Court's Failure to Make Findings on the *Rowe* Factors Constitutes Reversible Error.

Any analysis of the propriety of an award of attorney's fees necessarily begins with the Supreme Court's seminal case of *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985). In *Rowe*, the Court articulated the factors a trial court must consider when ruling on a motion for attorney's fees. Specifically, the trial court must make factual findings about: (1) the reasonableness of counsel's hourly rate; (2) the reasonableness of the hours expended; and (3) the appropriateness of the enhancement or reduction factors. *Id.* at 1150; *see also Giltex Corp. v. Diehl*, 583 So. 2d 734, 735 (Fla. 1st DCA 1991); *Morgan v. S. Atl. Prod. Credit Ass'n*, 528 So. 2d 491, 492 (Fla. 1st DCA 1988).

The enhancement or reduction factors are those articulated in Disciplinary Rule 4-1.5(b)(1) of the Florida Bar Rules of Professional Conduct (formerly Rule 2-106(b)), which include considerations such as the amount involved and the results obtained, as well as whether the fee is fixed or contingent. *Rowe*, 472 So. 2d at 1150. If the trial court fails to make these findings, the order will be reversed. *Giltex*, 583 So. 2d at 735 ("the trial court's order fails to set forth specific findings as to the hourly rate, the number of hours reasonably expended, and the appropriateness of the reduction or enhancement factors …. We reverse.")

Here, both the trial court's final judgment, as well as the order granting Plaintiffs' motion for attorney's fees, are devoid of these factual findings. (AR4.555-56; R2.290.) The orders never state the reasonable number of hours expended, the reasonableness of the hourly rate, or whether the trial court considered any of the enhancement or reduction factors. (*Id.*) In the absence of these factual findings, this Court must reverse, even if there is competent substantial evidence to support the order.[6] *See Ingram v. Ingram*, 59 So. 3d 147, 148-49 (Fla. 1st DCA 2011); *Hamlin v. Hamlin*, 722 So. 2d 851, 852 (Fla. 1st DCA 1998); *Hoffay v. Hoffay*, 555 So. 2d 1309, 1310 (Fla. 1st DCA 1990); *Stewart v. Stewart*, 534 So. 2d 807, 807 (Fla. 1st DCA 1988).

Reversal is mandated because the factual findings are critical for this Court to undertake meaningful appellate review. *Patricia Gail Van Diepen, P.A. v. Brown*, 976 So. 2d 38, 40 (Fla. 5th DCA. 2008). As the *Van Diepen* court explained, conclusory statements that a given fee is reasonable will generally be insufficient. *Id.* Rather, "the trial court 'must articulate the decisions it made, give principled reasons for those decisions, and show its calculation.'" *Id.* (quoting *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1304 (11th Cir. 1988)). The lack of factual findings in the orders here is "fundamentally erroneous

[6] As will be explained more thoroughly in section I.B., *infra*, Plaintiffs did not present competent substantial evidence to support their request for attorney's fees.

on its face." *Parton v. Palomino Lakes Prop. Owners, Ass'n*, 928 So. 2d 449, 453 (Fla. 2d DCA 2006). Accordingly, this Court must reverse the award of attorney's fees for the simple reason that the trial court did not set forth the requisite factual findings in its order. That mandate notwithstanding, Island Pediatrics asks this Court to review the remaining points raised on appeal and either reverse without remand or provide guidance to the trial court on remand.

B. The Trial Court Erred as a Matter of Law When it Concluded that the Wage and Hour Claim was Inextricably Intertwined with the Breach of Oral Contract Claim.

A second, independent, basis for reversing the fee order is that the trial court erred when it concluded that Dr. White's Chapter 448 wage and hour claim was inextricably intertwined with the remaining portions of the case. Because the question of whether causes of action are "inextricably intertwined" is a legal question, this Court reviews the trial court's determination *de novo. Van Diepen II*, 55 So. 3d at 614.

Section 448.08, Florida Statutes, allows for the imposition of attorney's fees against an employer on behalf of an employee who sues to collect unpaid "wages," and does not apply to an independent contractor. *Goodwin v. Blu Murray Ins. Agency, Inc.*, 939 So. 2d 1098, 1102-03 (Fla. 5th DCA 2006); *Singer Prods., Inc. v. Tecnecol, Ltda.*, 625 So. 2d 892, 893 (Fla. 3d DCA 1993). The jury specifically found that after June 1, 2008, Dr. White was an independent contractor for Island

Pediatrics. (AR2.387.) Dr. White, accordingly, was entitled to recover attorney's fees only with respect to the wage claim on which she recovered $916.14, and not on her claim for breach of the oral agreement, for which the jury awarded $23,707.94. (AR2.386-87.) Indeed, Plaintiffs' counsel stated as much at the start of the fee hearing:

> Because one of my counts against the Defendant was pursuant to Chapter 448, an action for unpaid wages, you [the trial court] determined that we were entitled to *recover attorney's fees related to that issue of proving unpaid wages*. And since the first day that issue came to light was the date of Defendant's deposition which I believe was April 14th of 2010[,] Your Honor, ruled that we would be entitled to attorney's fees from April 14th, 2010 forward *as it relates to that issue*.

(AR3.545) (emphasis added). In an effort of obtain significantly more fees, however, Plaintiffs' counsel argued that the wage claim was "inextricably intertwined" with the breach of oral contract claim and counterclaims. (AR3.547-48.)

As the parties seeking attorney's fees, Plaintiffs had "'the burden to allocate them to the issues for which fees are awardable or to show that the issues were so intertwined that allocation is not feasible.'" *Chodorow v. Moore*, 947 So. 2d 577, 579-80 (Fla. 4th DCA 2007) (quoting *Lubkey v. Compuvac Sys., Inc.*, 857 So. 2d 966, 968 (Fla. 2d DCA 2003)); *see also Ocean Club Comm. Ass'n, Inc. v. Curtis*, 935 So. 2d 513, 516 (Fla. 3d DCA 2006) ("the plaintiff has 'an affirmative burden to demonstrate what portion of the effort was expended on the claim which

allowed attorney's fees.'") (citations omitted). The only "evidence" of Plaintiffs' inability to separately allocate the time spent on the Chapter 448 wage claim came in two forms: (1) trial counsel's unsworn representation that he could not separate out the time by looking at his time sheets; and (2) Attorney Winter's conclusory opinion that based on his understanding the case focused on one core of facts, all of the issues in the case were inextricably intertwined. (AR3.570.) Neither of these statements amounts to competent substantial evidence that all of the claims in the lawsuit were intertwined.

As an initial matter, an attorney's unsworn statements are not evidence and cannot support any findings of fact made by the trial court. *Hale v. Shear Exp., Inc.*, 946 So. 2d 94, 96 (Fla. 1st DCA 2006); *Faircloth v. Bliss*, 917 So. 2d 1005, 1006-07 (Fla. 4th DCA 2006). Thus, the arguments raised by Plaintiffs' counsel on why the Chapter 448 claims were supposedly intertwined with the remainder of the case cannot be considered competent substantial evidence to support the trial court's factual finding. Similarly, Attorney Winter's conclusory statements that in his opinion, all of the claims were inextricably intertwined, is also not competent substantial evidence. Rather, it is a legal conclusion, the determination of which is left exclusively to the trial court. *Crown Custom Homes, Inc. v. Sabatino*, 18 So. 3d 738, 741 (Fla. 2d DCA 2009).

The *Crown* case is illustrative because of the numerous factual similarities it

has with this case. There, the plaintiff alleged multiple theories of recovery and the defendant filed multiple counter-claims. *Id.* at 739. Post-trial, the plaintiffs sought attorney's fees for successfully defending the lien foreclosure counterclaim. *Id.* At the hearing to determine fees, an expert "testified that he was unable to apportion the [plaintiff's] attorney's time sheet records to the various causes of action raised at trial because, at least in part, the counts were intertwined." *Id.* at 740. While the trial court made the legal conclusion that all counts in the lawsuit were intertwined, on *de novo* review, the appellate court reversed. *Id.* at 739, 740. In reversing, the court noted that "the trial court made no factual findings to support its legal conclusion that the counts were so intertwined as to make individual allocation of the fees unfeasible." *Id.* at 740. The court further explained that that "'[t]he expert's opinion, lacking any factual foundation, was not competent proof.'" *Id.* (quoting *Lubkey*, 857 So. 2d at 968).

The same is true here because Attorney Winter's conclusory opinion lacks any factual foundation. There is no testimony or evidence in the record from Plaintiffs' counsel about why the Chapter 448 claim is intertwined with the remaining claims. There are no timesheets in evidence, which would allow this Court to resolve on *de novo* review whether all of the time spent since April 14, 2010 was inextricably intertwined with the remaining counts. Moreover, Attorney Winter testified that he made no effort to separate out the time spent on the Chapter

448 claim. (AR3.565-66); *cf. Lubkey*, 857 So. 2d at 968 (expert did not attempt to allocate time spent on each particular count). He did not attempt to ascertain whether research was specific to the Chapter 448 claim or some other cause of action. (AR3.567-68.) He did not attempt to discern whether certain witnesses were even relevant to the Chapter 448 claim. (AR3.570.) In essence, Attorney Winter testified that in his expert opinion all claims in the lawsuit were inextricably intertwined without first attempting to find a thread by which to unravel them.

Just as in *Crown* and *Lubkey*, Attorney Winter's expert opinion cannot be considered competent proof sufficient to support the fee award because his opinion lacked any factual foundation. 18 So. 3d at 740; 857 So. 2d at 968. The Third District also reached this same conclusion when it found:

> While there must be testimony from an expert witness on the reasonable amount of the fees, '[i]t is elementary that the conclusion or opinion of an expert witness based on facts or inferences not supported by the evidence in a cause has no evidential value.' *Arkin Constr. Co. v. Simpkins,* 99 So. 2d 557, 561 (Fla. 1957). 'It is equally well settled that the basis for a conclusion cannot be deduced or inferred from the conclusion itself. The opinion of the expert cannot constitute proof of the existence of the facts necessary to the support of the opinion.' *Id.* at 561. In short, the 'expert' testimony in this case finds no factual support in the record and is, therefore, of no evidentiary value whatsoever. Thus, it cannot, and does not, support the instant fee award.

Trumbull Ins. Co. v. Wolentarski, 2 So. 3d 1050, 1056 (Fla. 3d DCA 2009) (emphasis added). Just like the expert opinion in *Trumbull*, Attorney Winter's

opinion is not supported by the record and cannot justify the award in this case.

The unsubstantiated order in this case is also similar to the one reversed in *Ocean Club*, 935 So. 2d at 516-17. There, while the attorney testified that "he was not able to make an allocation for each entry in his timesheet because the claims were 'inextricably intertwined,'" the appellate court found that "a review of the amended complaint indicates that each claim was separate and distinct, not inextricably intertwined, because each claim 'could support an independent action and are not simply alternative theories of liability for the same wrong.'" *Id.* at 516 (quoting *Avatar Dev. Corp. v. DePani Constr., Inc.*, 883 So. 2d 344, 346 (Fla. 4th DCA 2004). On review, the appellate court found the fee award erroneous because it did not take into consideration things like depositions that were completely unrelated, or only partially related, to the claim on which fees were predicated. *Id.* at 517. The appellate court instructed that on remand, the trial court must go through every entry in the attorney's time sheet to determine whether the entry or a portion thereof was related to the unpaid wage claim. *Id.* As further guidance, the court directed:

> The trial court is to keep in mind that the plaintiff, as the party seeking attorney's fees, bears 'an affirmative burden to demonstrate what portion of the effort was expended on the claim which allowed attorney's fees,' and if he cannot meet his burden for any reason, including inadequate timesheets or record keeping, he cannot be awarded attorney's fees.

Id. (internal citation omitted).

Thus, *Ocean Club* is instructive for two reasons: (1) it illustrates that the relatedness of claims is determined by whether the claims could form separate actions as opposed to being alternate theories of the same wrong; and (2) that absent adequate time records, the trial court cannot, as a matter of law, conclude that the Plaintiffs met their burden of proof to show all claims in the litigation were inextricably intertwined. Plaintiffs' assertion that that they cannot separate their attorney's fees because the claims in the lawsuit were inextricably intertwined fails on both points.

1. Dr. White's wage claim is unrelated to any other claim in the litigation.

First, this is not a case based on one core set of facts as Plaintiffs claim. (AR3.570.) The Supreme Court of Florida has explained that where "each claim is an independent cause of action for which a separate suit could have been maintained," the claims are separate and distinct. *Folta v. Bolton,* 493 So. 2d 440, 443 (Fla. 1986). Indeed, the Court said that claims are considered separate and distinct where they "would support an independent action" and are not merely "alternative theor[ies] of liability for the same wrong." *Id.* at 442. That is precisely the case here. For the vast majority of the litigation, the parties did not even know about the wage claim from the first quarter of Dr. White's employment. (AR3.545.) The case was brought and litigated over whether, as an independent contractor, Plaintiffs were entitled to breach of oral contract damages for

collections that Island Pediatrics brought in after Dr. White left the practice. (AR2.217-18.) The first quarter wage claim was wholly independent of the post-termination breach of contract claim; either could have formed the basis for an independent lawsuit.[7] Indeed, the payment obligations under the written Agreement and the modified oral agreement were completely separate and distinct. (R1.5, AR1.2.) Proving a claim under one agreement would do nothing to proving a claim under the other.

Similarly, the wage claim was also not inextricably intertwined with the counterclaims, which were directed at Dr. White's post-termination conduct. Island Pediatrics counterclaimed against Plaintiffs for: (Count I) Dr. White's breach of contract in leaving the practice before the expiration of the two-year contract term; (Count II) her breach of the non-competition portion of the Agreement; (Count III) her alleged tortious interference with an advantageous business relationship; and (Count IV) her alleged abuse of process in using the legal system for an unlawful purpose. (AR3.399-403.) Each of these claims is entirely separate, both factually and temporally, from the claim that Dr. White was underpaid during the first quarter of her employment with Island Pediatrics. Indeed, all of the counter-claims arose from actions that occurred after the parties

[7] *See e.g. Zamora v. Fla. Atlantic Univ. Bd. of Trustees*, 969 So. 2d 1108, 1114 (Fla. 4th DCA 2007) (where claims require proof of different facts, constitute separate causes of action, and the jury awards damages for each of two incidents, the claims are distinct).

terminated their independent contractor relationship, whereas the unpaid wage claim arose during the first quarter of Dr. White's employment.

Moreover, while the jury did find that Island Pediatrics' underpayment of Dr. White during the first quarter of her employment excused her breach of the Agreement by leaving the practice early (AR3.407), that fact does not make Dr. White's post-termination conduct "an alternative theory of liability" for her 2007 wage claim. *See Folta*, 493 So. 2d at 442. And, as illustrated by the verdict form, whether or not Dr. White was underpaid in 2007 had absolutely no bearing on the tortious interference or abuse of process claims. (AR3.407.) Island Pediatrics' prior breach was not an affirmative defense to either of those claims; the jury simply found against Island Pediatrics on the independent facts of those claims. (*Id.*) Thus, while Plaintiff's counsel may not have maintained sufficient time records to distinguish the work performed on one claim from the others – a fact he readily admitted at the fee hearing (AR3.558) – the claims in the lawsuit were not inextricably intertwined as a matter of law.

2. The trial court erred in awarding fees in the absence of detailed time records.

On the second point addressed in the *Ocean Club* opinion, Plaintiffs failed to provide the trial court with detailed time records. *See* 935 So. 2d at 514. Neither affidavit, filed in support of fees, attached or included Plaintiffs' counsels' detailed time records. (AR4.538-45.) The time records also were not introduced into

evidence at the fee hearing. Indeed, Attorney Winters did not even have the records with him to refer to during his testimony. (AR4.585-86.) Although Island Pediatrics brought this failing to the trial court's attention (AR4.621), the court denied a rehearing (AR4.624). As the *Faircloth* court explained, "[g]enerally, a fee award must be supported by competent evidence which must include evidence detailing the services performed and the reasonableness of the fee." 917 So. 2d at 1006. Where time records are not introduced into evidence, and there is no "detailed description of the work done, the date of the work done or the time expended," the fee award cannot be affirmed. *Id.* at 1006, 1007.[8]

The reason detailed time records are required is to satisfy the basic requirement that the trial court's order be supported by competent substantial evidence. *Quality Holdings of Fla., Inc. v. Selective Invest., IV, LLC*, 25 So. 3d 34, 37 (Fla. 4th DCA 2009). "Substantial competent evidence includes invoices, records and other information detailing the services provided, as well as the testimony of the attorney in support of the fee." *Id.* In *Quality Holdings*, the

[8] *See also Morton v. Heathcock*, 913 So. 2d 662, 670 (Fla. 3d DCA 2005) (fee award reversed in the absence of time records being authenticated or moved into evidence); *Nants v. Griffin*, 783 So. 2d 363, 366 (Fla. 5th DCA 2001) ("The applicant should present records detailing the amount of work performed and the time to perform each task."); *Saussy v. Saussy*, 560 So. 2d 1385, 1386 (Fla. 2d DCA 1990) (party must introduce evidence "detailing the services performed" to support a fee award); *Rowe*, 472 So. 2d at 1150 ("To accurately assess the labor involved, the attorney fee applicant should present records detailing the amount of work performed.").

appellate court noted that, as here, the trial court "received no invoices or records detailing the services provided, and it appears that the attorney did not testify in support of his fee…." *Id*. The court also noted that, as here, the trial court did not make factual findings on the reasonableness of the hours expended or rate charged. *Id.* Given all of these failings, the appellate court reversed the award of attorney's fees. *Id.*[9]

C. This Court Should Reverse Without Remand.

Where the party requesting fees fails to provide the trial court with competent substantial evidence to support an award, reversal *without* remand is the proper remedy. *See Davis v. Davis*, 613 So. 2d 147, 148 (Fla. 1st DCA 1993). Stated another way, if the record contains evidence that would support findings as to hourly rate, the number of hours reasonably expended, and the appropriateness of enhancement or reduction factors, the appellate court will remand for entry of an appropriate order. *Id.* However, if "the record is devoid of any evidence to support the award of attorney's fees," the order must be reversed. *Id.*; *see also Golian v. Wollschlager*, 893 So. 2d 666, 669 (Fla. 1st DCA 2005) ("having been afforded one evidentiary hearing on costs, appellee is not entitled to a second opportunity to present sufficient evidence.").

[9] Moreover, while the award in that case also was premature, the court "raise[d] a judicial eyebrow" at the attorneys expending nearly $24,000 to secure a $20,000 disbursement to the client. *Id.* This Court should look with similar skepticism on an $80,000 attorney's fee to secure less than $1000 in back wages.

Here, Plaintiffs have not presented competent substantial evidence to support the award of attorney's fees. As already explained, Plaintiffs did not introduce any time records or invoices. Trial counsel did not testify about his time entries or expound upon the time he spent on the case. He simply stated in his affidavit that all counsel who worked on the case spent a combined total of 273.05 hours since discovery of the wage claim for a blended rate of approximately $312.00 per hour. (AR3.524.) Given the rates of $85 and $180 per hour included in the affidavit, the fees charged to Plaintiffs presumably includes time billed for paraprofessionals and associate attorneys. (AR3.525.) Yet nowhere do Plaintiffs identify how many time keepers worked on the file, what their specific hourly rates were, what services they performed, or whether any of the rates charged – other than for Mr. Henderson and Ms. Green – were reasonable. (AR3.521-26.)

This lack of evidence is even more critical in this case because Plaintiffs claimed that time spent on the wage claim was inextricably intertwined with the rest of the litigation. Without evidence of the time entries, however, there was no factual predicate to support this claim. Without the factual predicate, Attorney Winter's expert opinion that the hours were reasonable must be rejected because it opines on the ultimate issue without showing a consideration of the facts. *Crown Custom Homes*, 18 So. 3d at 740. Where "the record is devoid of any evidence to support the award of attorney's fees," the award will be reversed without remand

for an additional evidentiary hearing. *Davis v. Davis*, 613 So. 2d 147, 148 (Fla. 1st DCA 1993); *see also Pridgen v. Agoado*, 901 So. 2d 961, 962 (Fla. 2d DCA 2005); *but see, Snow v. Harlan Bakeries, Inc.*, 932 So. 2d 411, 413 (Fla. 2d DCA 2006) (award reversed and remanded because counsel provided sworn affidavits with attached invoices and testified about their rates and hours.)

Although Plaintiffs' counsel did place affidavits into the record, the testimony contained therein is wholly unsupported by timesheets, invoices, or other documents verifying the number of hours worked or explaining how the time was spent. Plaintiffs should not be afforded a second opportunity to present this obviously critical evidence that was apparently withheld from the trial court intentionally. *See* Attorney Winter's testimony at AR3.567-68 (expert returned trial counsel's time sheets and did not bring them to hearing; without timesheets in front of him he could not testify whether certain entries were unrelated to the wage claim). This Court should not sanction Plaintiffs' litigation "gotcha" tactics by giving them a second opportunity to prove their case. Rather, the order should be reversed without remand.

II. THE TRIAL COURT ERRONEOUSLY TAXED ALL OF THE SECTION 57.105 SANCTIONS AGAINST ISLAND PEDIATRICS.

Standard of Review: This Court reviews the trial court's decision to impose sanctions under an abuse of discretion standard. *Hutchinson v. Plantation Bay AMDs., LLC*, 931 So. 2d 957, 959 (Fla. 1st DCA 2006). Here, the trial court

abused its discretion when taxing section 57.105 attorney's fees against Island Pediatrics for two reasons: (1) the trial court improperly taxed all of the fees against Island Pediatrics in an effort to avoid the due process violation of Attorney Hall's rights; and (2) the final judgment does not contain any of the requisite findings required under section 57.105, Florida Statutes.

A. The trial court improperly taxed all attorney's fees against Island Pediatrics in an attempt to avoid violating the due process rights of Attorney Hall.

At the fee hearing, Island Pediatrics' trial counsel noted that its former counsel, Attorney Hall, had not been provided with notice of the hearing. (AR3.560.) Because section 57.105 sanctions generally must be taxed equally between attorney and client – and Plaintiffs' motion specifically requested that fees be taxed equally against Island Pediatrics and Attorney Hall – Attorney Hall had a due process right to be notified of the hearing. *See* § 57.105(1), Fla. Stat. (2009); *De Vaux v. Westwood BAMDist Church*, 953 So. 2d 677, 684 (Fla. 1st DCA 2007) (section 57.105 fees to be paid by losing party and losing party's attorney in equal amounts); *Alvarez, Armas & Borron, P.A. v. Heitman*, 770 So. 2d 208, 209-10 (Fla. 3d DCA 2000) (due process requires that former counsel be given notice of section 57.105 motion; notice to former client is insufficient). Confronted with this procedural irregularity, Plaintiffs offered to impose sanctions exclusively against Island Pediatrics. (AR3.561) Island Pediatrics objected to this procedure.

(*Id.*) Notwithstanding this objection, the trial court taxed nearly $8,000 in attorney's fees – the total amount claimed by Plaintiffs pursuant to section 57.105 – against Island Pediatrics. (AR3.537.)

Section 57.105 is clear that a trial court may not impose sanctions exclusively against the client unless the client misrepresented material facts to her counsel. *See* § 57.105(1)(b), Fla. Stat. (2009); *Gopman v. Dep't of Educ.*, 974 So. 2d 1208, 1212 n.3 (Fla. 1st DCA 2008). No such allegations have been raised here; indeed, the motion to tax fees complains almost exclusively of Attorney Hall's conduct. (AR3.392-94.) Thus, the most the trial court could have assessed against Island Pediatrics pursuant to section 57.105 was $3,956.88; i.e., *half* of the fees claimed. *See Neustein v. Miami Shores Village*, 837 So. 2d 1054, 1055 (Fla. 3d DCA 2002) (reducing section 57.105 award against trial counsel by 50%). The final judgment awarding *all* of Plaintiffs' requested section 57.105 attorney's fees is therefore erroneous and an abuse of the trial court's discretion. *See also De Vaux*, 953 So. 2d at 684 (reversing section 57.105 order taxing fees only against client and not attorney).

B. Neither the Final Judgment Nor the Order Awarding Fees Contains the Requisite Findings of Fact that Any of Island Pediatrics' Claims or Defenses Were Not Supported by the Facts or Then-existing Law.

Moreover, the final judgment is also flawed because it does not contain any factual findings regarding either Attorney Hall's or Island Pediatrics' supposed bad

faith. Section 57.105(1), Florida Statutes, however, mandates that the trial court find "that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial: (a) Was not supported by the material facts necessary to establish the claim or defense; or (b) Would not be supported by the application of then-existing law to those material facts." This failure alone is a basis for reversal. *Santini v. Cleveland Clinic Fla.*, 65 So. 3d 22, 36 (Fla. 4th DCA 2011), *reh'g denied*, (July 26, 2011); *see also Glisson v. Jacksonville Trans. Auth.*, 705 So. 2d 136, 137 (Fla. 1st DCA 1998); *Dep't of Child. & Fam. v. H.G.*, 922 So. 2d 1072, 1075 n.4 (Fla. 5th DCA 2006).

The entirety of the trial court's findings related to the section 57.105 motion are: "Additionally, this Court awards Plaintiff $7,913.75 in attorney's fees incurred for defending frivolous motions filed by Defendant and defending the abuse of process claim." (AR3.537.) The order does not indicate which motions were supposedly frivolous. (*Id.*) It also does not make a specific finding that either Island Pediatrics or Attorney Hall knew or should have known that the abuse of process counterclaim was unsupported by the facts or then-existing law.[10] (*Id.*) Although Island Pediatrics notified the trial court of these deficiencies by way of

[10] Indeed, the fact that the trial court earlier denied Plaintiffs' motion for partial judgment on the abuse of process claim suggests that at least some material facts existed to support the claim. (R1.196, 141-42.)

its motion for rehearing (AR3.595-96), the trial court refused to correct its errors and denied rehearing (AR3.605).

Florida law requires that orders imposing attorney's fees be reversed where they do not contain the requisite factual findings. *See Kurgan v. Morton D. Weiner/AMPAC, Inc.*, 49 So. 3d 342, 343 (Fla. 3d DCA 2010) ("Because the order on appeal assesses attorney's fees without making the statutory findings required under section 57.105 to support the award, we are compelled to reverse."); *Goldberg v. Watts*, 864 So. 2d 59, 60 (Fla. 2d DCA 2003) (reversing order awarding attorney's fees as insufficient under section 57.105 because it did not contain factual findings); *Shortes v. Hill*, 860 So. 2d 1, 2 (Fla. 5th DCA 2003) (reversing section 57.105 fee award where order lacked express factual findings and the attorney did not enter his fee agreement with his client into the record); *see also Mickler v. Graham*, 611 So. 2d 93, 94 (Fla. 1st DCA 1992) (reversing and remanding fee award under prior version of section 57.105 where the order lacked requisite statutory findings; trial court directed to reassess "fees only if it makes the necessary findings based on the record."). Accordingly, the trial court abused its discretion when imposing section 57.105 sanctions against Island Pediatrics and that portion of the final judgment must be reversed.

CONCLUSION

For the forgoing reasons, Island Pediatrics respectfully requests that this Court reverse the final judgment taxing attorney's fees against it without remanding for further proceedings. Alternatively, Island Pediatrics requests that this Court reverse the final judgment and remand for: (1) a determination of the amount of attorney time devoted exclusively to the Chapter 448 claim; (2) entry of a final judgment that contains specific and sufficient factual findings related to both attorney's fee awards; and (3) a direction that the trial court not impose more than 50% of the taxable section 57.105 attorney's fees against Island Pediatrics.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic and U.S. mail to: **Roger D. Hall, Esq.**, 465 Hope Hull Court, Green Cove Springs, Florida 32043; **Mark A. Addington, Esq.**, 11250 Old St. Augustine Road, Ste. 15141, Jacksonville, Florida 32257, **Alan D. Henderson, Esq.,** 105 Solana Road, Suite C, Ponte Vedra Beach, Florida 32082 and **Suzanne Worrall Green, Esq.**, 105 Solana Road, Suite B, Ponte Vedra Beach, Florida 32082 this 28th day of December, 2011.

/s/ Jessie L. Harrell
Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief is in Times New Roman 14-point font and complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

/s/ Jessie L. Harrell
Attorney