

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 13-13212

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D.C. Docket No. 3:09-cv-10116-RBD-JBT

OLIVER PICKETT, JR.,  
as Personal Representative of the Estate of Oliver Pickett, Sr.,

Plaintiff - Appellee,

versus

R.J. REYNOLDS TOBACCO COMPANY,

Defendant - Appellant,

PHILIP MORRIS USA, INC.,  
a foreign corporation, et al.,

Defendants.

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Appeal from the United States District Court  
for the Middle District of Florida

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(May 6, 2014)

Before WILSON and JORDAN, Circuit Judges, and ROTHSTEIN,<sup>\*</sup> District Judge.

PER CURIAM:

R.J. Reynolds Tobacco Company appeals the district court's denial of its motion for attorney's fees after finding that its offer of judgment pursuant to Florida Statute § 768.79 was not made in good faith. We review the district court's denial of Reynolds's motion for an abuse of discretion. *See Sahyers v. Prugh, Holliday and Karatinos, P.L.*, 560 F.3d 1241, 1244 (11th Cir. 2009). The district court would abuse its discretion if it made a clear error of judgment or applied the wrong standard in considering the motion. *United States v. Whatley*, 719 F.3d 1206, 1219 (11th Cir.), *cert. denied* 134 S. Ct. 453 (Oct. 15, 2013).

After reviewing and considering the briefs and record, and having the benefit of oral argument, we conclude that the district court did not abuse its discretion. The court arrived at its judgment after considering: “the low amount of the offer [\$10,000.00], the timing of the offer [the eve of trial], the pre-determined conduct issues tipping the scales, the high potential for punitive damages, the verdicts decided around the same time that the offer was made, and the protracted, rancorous history of this litigation” to find that the offer was not made with the subjective good faith intent to settle the claim. The record supports the district

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<sup>\*</sup> Honorable Barbara Jacobs Rothstein, United States District Judge for the District of Columbia, sitting by designation.

court's findings and we find no clear error of judgment sufficient to amount to an abuse of discretion. Therefore, the judgment of the district court is affirmed.

**AFFIRMED.**