

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 2019-AP-000018-CAXX-MB
L.T. No.: 2018-CC-009335-XXXX-MB

DAISY BIVINS,
Appellant,
v.

PALM BEACH COUNTY
HOUSING AUTHORITY,
Appellee.
_____ /

Opinion filed: May 6, 2020

Appeal from the County Court in and for Palm Beach County,
Judge Edward Garrison

For Appellant: Daisy Bivins (Pro Se)
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For Appellee: Kaye-Ann Baxter, Esq.
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PER CURIAM.

Appellee, Palm Beach County Housing Authority (“PBCHA”), sought to evict Appellant, Daisy Bivins, following her arrest in front of her apartment as a violation of her lease agreement. PBCHA served Appellant with a Fourteen (14) Day Notice of Lease Termination, which advised her of her right to a grievance hearing and instructed her to vacate the property by July 20, 2018 or the date specified by the hearing officer. At Appellant’s request, a grievance hearing was held. The hearing officer upheld PBCHA’s decision to terminate Appellant’s lease and required Appellant to vacate immediately because the fourteen-day period had expired.

When Appellant refused to vacate the property, PBCHA filed an action for eviction and damages. After an unsuccessful mediation, the case was set for a non-jury trial to be held January 11, 2019. Two days before trial, Appellant's attorneys notified PBCHA's attorney via e-mail that Appellant accepted PBCHA's settlement offer, which required Appellant to vacate in 45 days. Appellant's attorneys also filed a motion to withdraw as attorneys of record, alleging a serious breakdown in communication with Appellant. Based on this purported settlement, PBCHA canceled the trial. On January 13, 2019, PBCHA submitted a Stipulation of Settlement outlining the agreed upon terms to Appellant's attorneys. However, Appellant refused to sign the Stipulation. In response, PBCHA submitted an amended Stipulation of Settlement wherein it agreed to return Appellant's security deposit subject to an inspection, but refused to grant her more time to vacate. Appellant again refused to sign.

PBCHA then filed a Motion to Ratify and Enforce the Settlement Agreement. Appellant filed correspondence to the trial court stating that she received no notice that her attorneys withdrew, needed time to find a new attorney, and wished to go to trial. On February 13, 2019, PBCHA's motion was heard by the lower court at a non-evidentiary hearing. After hearing argument, the trial court ordered Appellant to comply with the settlement terms and vacate the property. Appellant appeals the trial court's Order Ratifying Settlement Agreement and Agreement to Vacate, arguing that the Agreement was granted without her approval or signature. No transcript of the February 13 hearing was filed.

“[W]hen based on erroneous reasoning, a conclusion or decision of a trial court will generally be affirmed if the evidence or an alternative theory supports it.” *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979). However, where reversible error exists

on the face of the record, even when the record excludes a transcript, the reviewing court must reverse. *Dean v. Rutherford Mulhall, P.A.*, 16 So. 3d 284, 286 (Fla. 4th DCA 2009).

Settlement agreements are governed by the law of contracts and favored as means to conserve judicial resources. *Spiegel v. H. Allen Holmes, Inc.*, 834 So. 2d 295, 297 (Fla. 4th DCA 2002). Settlement agreements do not have to be in writing. *Dania Jai-Alai Palace, Inc. v. Sykes*, 495 So. 2d 859, 862 (Fla. 4th DCA 1986). “A trial court’s finding of a meeting of the minds must be supported by competent substantial evidence.” *Long Term Mgmt., Inc. v. U. Nursing Care Ctr., Inc.*, 704 So. 2d 669, 673 (Fla. 1st DCA 1997). When that evidence exists, a court should affirm. *Spiegel*, 834 So. 2d at 297. The burden of showing assent by opposing party is on the party seeking to enforce a settlement agreement. *Id.*

The employment of an attorney does not itself give the attorney the implied or apparent authority to settle or compromise on behalf of his or her client. *Nehleber v. Anzalone*, 345 So. 2d 822, 823 (Fla. 4th DCA 1977). “A client may give his attorney special or express authority to compromise or settle his cause of action, but such authority must be clear and unequivocal.” *Id.* An unauthorized compromise executed by an attorney is of no effect, unless subsequently ratified by his client. *Id.*; *see also Weitzman v. Bergman*, 555 So. 2d 448, 449 (Fla. 4th DCA 1990). Again, the burden is on the party seeking to enforce settlement to establish that counsel for opposing party was given clear and unequivocal authority to settle. *Jorgensen v. Grand Union Co.*, 490 So. 2d 214, 215 (Fla. 4th DCA 1986).

Although there is no transcript of the February 13 hearing, the hearing was a non-evidentiary hearing and, therefore, we cannot assume that PBCHA established Appellant agreed, orally or otherwise, with the terms of the Settlement Agreement at that hearing. Further, there is nothing in the record establishing Appellant’s assent. The only assent on the record is the e-mail

from Appellant's attorney stating that Appellant agreed to settle. However, there is no evidence establishing that Appellant gave clear and unequivocal authority to her attorneys to settle. To the contrary, Appellant's attorneys sought to withdraw for a breakdown in communication. *See Williams v. Ingram*, 605 So. 2d 890, 894 (Fla. 1st DCA 1992) (reversing judgment to enforce settlement agreement where no evidence existed that appellants assented or gave their attorney clear and unequivocal authority to enter agreement). Accordingly,

We **REVERSE** the lower court's Order Ratifying Settlement Agreement and Agreement to vacate, and **REMAND** for an evidentiary hearing to determine whether Appellant's attorneys had authority to settle on her behalf. We do not address Appellant's other arguments. *See Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979). Further,

We **DENY** Appellee's Motion for Appellate Attorney's Fees.

J. KEYSER, GOODMAN, and CURLEY JJ., concur.

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Opinion/Decision filed: May 6, 2020

Appeal from Palm Beach County Court
Judge Edward Garrison

Date of Appeal: February 13, 2019

DATE OF PANEL: JANUARY 28, 2020

PANEL JUDGES: J. KEYSER, GOODMAN, CURLEY

AFFIRMED/REVERSED/OTHER: REVERSED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:)
	)	With/Without Opinion	)	With/Without Opinion)
)))
<u>/s/ Janis Keyser</u>)	_____)	_____)
DATE: 5/05/20 J.	)	J.	)	J.)
)))
<u>/s/ Jaimie Goodman</u>)	_____)	_____)
DATE: 5/05/20 J.	)	J.	)	J.)
)))
<u>/s/ Joseph Curley</u>)	_____)	_____)
DATE: 5/05/20 J.	)	J.	)	J.)