

DEATH OF A PARTY
by Ted Babbitt

What happens when a party dies after either a verdict or settlement or even after a judgment while the matter is on appeal? The answer to all of those questions is contained in the recent case of Kaufman v Herrman, 24 F.L.W. D2447 (Fla. 4th DCA, Oct. 27, 1999). That was a medical malpractice case which resulted in a verdict for the defendants. Subsequent to the rendition of the verdict but prior to the entry of the final judgment, one of the plaintiffs died. The plaintiff then sought to abate the action after filing a suggestion of death. The Circuit Court denied the Motion and entered the final judgment and the appellate court affirmed. In discussing the facts of the case, the Court reviewed the law with respect to the effect of the death of a party in a variety of circumstances.

While the precise facts present in Kaufman, supra, had not previously been ruled upon in Florida, the court found support for its position in Variety Children's Hospital, Inc. v Perkins, Inc., 382 So.2d 331 (Fla. 3rd DCA 1980). There a party died after the entry of a final judgment while the case was still on appeal. The Third District held that the action did not abate. In that case, the Third District held:

With specific relation to the facts before us, the rule that death does not effect an extinguishment of a judgment applies when the party dies while an appeal is pending. *Brundrett v Hargrove*, 204 Ark. 258, 161 S.W. 2d 762 (1942); *Heuchert v State Industrial Accident Commission*, 168 Or. 74,

121 P.2d 453 (1942); while post-trial motions remain undisposed of, *Gambell v Irvine*, 102 S.W.2d 784 (Mo. 1937); *Sherwin v Southern Pacific Company*, 168 Cal. 722, 145 P. 92 (1914); 1 C.J.S. Abatement and Revival s 126 (1936); and even during the period between the return of a verdict and the entry of a judgment. *Garrett v Byerly*, 135 Wash. 351, 284 P. 343 (1930); see *Becker v King*, 307 So.2d 855, 858 (Fla. 4th DCA 1975). Indeed it would be a strange rule under which a defendant could succeed in relieving itself of a judgment simply by pursuing meritless, even frivolous, attempts to reverse it. See *McNitt v Osborne*, 371 So.2d 696, 697 n. 1 (Fla. 3d DCA 1979).

The Kaufman Court also discussed the issue of what happens when a party dies after a settlement is reached but before the Court has approved the settlement. The Court concluded that even under those circumstances the death would not effect the validity of the settlement. The Court cited with approval Reed ex rel. Reed v United States, 89 F.2d 878 (11th Cir. 1990). In that case, a settlement was reached, but before the Court approved it, the child, whose injuries were the subject of the settlement, died. The trial court, nevertheless approved the settlement and the appellate court affirmed:

A settlement is as conclusive of the rights between the parties as a judgment. See *Cia Anon Venezolana De Navegacion v Harris*, 374 F.2d 33, 35 (5th Cir. 1967); *Crisp County v S.J. Groves & Sons Co.*, 73 F.2d 327, 329

(5th Cir. 1934); *Gunn Plumbing, Inc. v Dania*

Bank, 252 So.2d 1, 4 (Fla. 1971); *Wallace v Townsell*, 471 So.2d 662, 664 (Fla. Dist. Ct. App. 1985) (“The parties to a civil action have the right to settle the controversy between them by agreement at any time and an agreement settling all issues in the case is binding not only upon the parties but also upon the court.”). Because the action had been settled, no personal injury action existed at the time of Benjamin’s death that could have abated. The court’s jurisdiction to enforce the settlement thus was unaffected by Benjamin’s death.

The Fourth District in Kaufman, supra, concludes that whenever an action has been decided, whether by settlement, verdict or judgment, the subsequent death of a party has no effect on the decision. The controversy having been decided, the ministerial act of entering the judgment, an order approving a settlement or an affirmance on appeal will not justify the abatement of the action or the overturning of the original decision.