

Appeals court overturns tobacco settlement due to Duval judge's 'critical misunderstanding'

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By Matt Dixon

TALLAHASSEE - A Tallahassee appeals court has ruled that a Duval County judge used flawed logic in 2011 when awarding a Jacksonville family nearly

\$15 million as part of a tobacco settlement.

The case surrounds Patricia Allen, who smoked for 36 years before dying in 2009 of chronic obstructive pulmonary disease. As a result, her estate, represented by Allen's husband, sued R.J. Reynolds Tobacco Co. and Phillip Morris USA Inc. for wrongful death.

In April 2011, a Duval County jury awarded her \$40 million. Judge Tyrie Boyer later lowered the award to \$14.4 million after considering motions filed by the tobacco companies.

In an opinion dated May 10, the 1st District Court of Appeal unanimously ruled Boyer employed a "critical misunderstanding" of the law and gave "fundamentally flawed instructions to the jury," when ruling the case should go back to trial.

Allen's attorneys plan to appeal. The family and both tobacco companies declined comment for this story.

The panel of three judges said that Boyer was flawed in ruling that the Allen case could be tried as one of thousands of tobacco-related cases known as the Engle Class. That wave of cases was created in 2006 when the Florida Supreme Court ruled that the thousands of plaintiffs could not sue tobacco companies as a large class-action lawsuit.

After a lengthy legal process, the court ruled that they could, however, move forward with individual lawsuits.

Members who are part of that class are not forced to prove certain things like smoking causes diseases, nicotine in cigarettes is addictive and the defendant's cigarettes were "unreasonably dangerous," among others.

In order to be part of the class, there has to be evidence that "addiction was the legal cause" of a disease, which the 1st District Court of Appeal said was not the case with Allen.

“The evidence at the time of the trial court’s decision was mixed on the issue ... the parties’ experts diametrically disagreed on that subject,” read the opinion penned by Judge Ronald V. Swanson.

Allen’s attorneys presented evidence that she was diagnosed with COPD in 1996. The tobacco companies argued that it was unclear if, up until that point, her smoking was driven by addiction or other reasons.

“Such as her desire to lose weight and for reasons of stress relief,” the 1st District Court of Appeal opinion explained.

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