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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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ANGELA ANTONICELLI,	)	
	)	
Plaintiff-Appellee,	)	
v.	)	
	)	
DANIEL JUAN RODRIGUEZ,	)	
	)	
Defendant-Appellee,	)	
	)	
ARTEMIO RAMOS	)	
	)	
Defendant,	)	Appeal from the Circuit Court
	)	of Cook County.
KARL BROWDER, CHICATO TUBE AND	)	
IRON COMPANY, a Foreign Corporation, and	)	
TRILLIUM STAFFING d/b/a TRILLIUM	)	No. 14 L 1184
DRIVERS SOLUTIONS, a Foreign Corporation,	)	
	)	
Defendants-Appellants,	)	The Honorable
	)	Moira S. Johnson,
KARL BROWDER, CHICAGO TUBE AND	)	Judge, presiding.
IRON COMPANY, a Foreign Corporation, and	)	
TRILLIUM STAFFING d/b/a TRILLIUM	)	
DRIVERS SOLUTIONS, A Foreign Corporation,	)	
	)	
Counter-Plaintiffs-Appellants,	)	
v.	)	
	)	
DANIEL JUAN RODRIGUEZ,	)	
	)	
Counter-Defendant-Appellee,	)	
	)	
KARL BROWDER, CHICAGO TUBE AND	)	

IRON COMPANY, a Foreign Corporation, and	)
TRILLIUM STAFFING d/b/a TRILLIUM	)
DRIVERS SOLUTIONS, A Foreign Corporation,	)
	)
Third Party Plaintiffs-Appellants,	)
v.	)
	)
COUNTRY FINANCIAL INSURANCE	)
COMPANY, COUNTRY PREFERRED	)
INSURANCE COMPANY, COUNTRY	)
MUTUAL INSURANC COMPANY, COUNTRY	)
CASIUALTY INSURANCE COMPANY and	)
CHARLES HERMAN,	)
	)
Third Party Defendants.	)

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PRESIDING JUSTICE HYMAN delivered the judgment of the court.  
Justices Neville and Mason concurred in the judgment.

**ORDER**

*Held:* Trial court did not abuse its discretion in finding that co-defendant's settlement with plaintiff was entered in good faith under section 2 of the Joint Tortfeasor Contribution Act (740 ILCS 100/2 (West 2014)), where plaintiff alleged negligent, not intentional conduct. Further, the trial court was not required to consider section 2-1117 of the Code of Civil Procedure (735 ILCS 5/2-1117) (West 2014)) before entering a good faith finding.

¶ 1 While driving under the influence of cocaine, Daniel Rodriguez instigated a three vehicle accident when he made an improper U-turn and struck the car in which plaintiff, Angela Antonicelli, was a passenger. Antonicelli's car was then hit by the semi-tractor and trailer driven by Karl Browder. Antonicelli suffered severe permanent injuries. She sued Rodriguez, Browder, and others, alleging their negligence caused her injuries. Browder and the other defendants counter-sued Rodriguez for contribution. Rodriguez pled guilty to aggravated driving under the influence of drugs. He then entered into a settlement agreement with Antonicelli for the limit of his insurance policy. The trial court granted Rodriguez's petition for a finding that the settlement

was entered into in good faith and dismissed him from the amended complaint under section 2 of the Joint Tortfeasor Contribution Act (740 ILCS 100/2 (West 2014)).

¶ 2 The non-settling co-defendants appeal arguing: (i) Rodriguez acted intentionally rather than negligently in causing the accident and the Contribution Act does not permit a good faith finding in a settlement with an intentional tortfeasor and (ii) the trial court's good faith finding was an abuse of discretion because the court failed to properly consider Browder's and the co-defendants' rights under section 2-1117 of the Code of Civil Procedure (735 ILCS 5/2-1117) (West 2014)), which provides that a defendant whose fault is less than 25% is severally liable, rather than jointly and severally liable for all other damages.

¶ 3 We need not decide whether an intentional tortfeasor may enter into a good faith settlement because Antonicelli's amended complaint alleged Rodriguez was a negligent not an intentional tortfeasor. Further, the trial court was not required to consider section 2-1117 of the Code before entering a good faith finding. We thus affirm the trial court's judgment in all respects.

¶ 4 **BACKGROUND**

¶ 5 On November 2, 2013, at about 1:30 a.m., Angela Antonicelli was a passenger in a Toyota Scion heading eastbound on I-88 near Naperville. Three of the eastbound I-88 lanes were closed for construction. Charles Herman, the Scion's driver, was in the lane closest to the median, the only open eastbound lane. Following behind the Scion was a semi-tractor and trailer driven by Karl Browder, who worked for Chicago Tube and Iron Company and Trillium Staffing d/b/a Trillium Drivers Solutions.

¶ 6 Heading the opposite direction, westbound on I-88, was Daniel Rodriguez driving a Chrysler Pacifica. Rodriguez was under the influence of cocaine. Rodriguez made an improper

U-turn through the buffer on the median and collided with the Scion, which rotated clockwise. Browder, who was unable to stop his truck, slammed into the passenger side door, severely injuring Antonicelli. Emergency personnel extricated her from the car and took her to the hospital. She suffered multiple injuries and underwent numerous surgeries.

¶ 7 The Illinois State Police concluded that Rodriguez's improper lane usage and other traffic violations caused the accident. Rodriguez pled guilty to a Class 4 felony of aggravated driving under the influence of drugs and received a sentence of seven years imprisonment, followed by one year of mandatory supervised release. Rodriguez acknowledged he was at fault but claimed to have no independent recollection of the accident because of brain injuries he suffered in the collision.

¶ 8 Antonicelli's amended complaint names Rodriguez, Browder, and Browder's employers, Chicago Tube and Iron and Trillium Staffing d/b/a Trillium Drivers Solution. All claims alleged the defendants' negligence caused her injuries.

¶ 9 Antonicelli and Rodriguez entered into a settlement agreement for \$20,000, the limits of Rodriguez's insurance policy. Rodriguez filed a petition for a finding of good faith and dismissal. Rodriguez asked the trial court to find that his agreement with Antonicelli constitutes a good faith settlement under section 2 of the Joint Tortfeasor Contribution Act (740 ILCS 100/2 (West 2014)), that Antonicelli's claims against him be dismissed in their entirety and with prejudice, and that all counterclaims for contribution by the non-settling co-defendants be dismissed with prejudice or be barred by the good faith settlement.

¶ 10 Browder, Chicago Tube, and Trillium separately filed counterclaims for contribution against Rodriguez. The counterclaims alleged that Rodriguez's intentional rather than negligent conduct caused the accident and Antonicelli's injuries.

¶ 11 After briefing and argument, the trial court granted Rodriguez's petition for a good faith finding and dismissal. Specifically, the court (i) found the monetary settlement of the insurance policy limit of \$20,000 to be in good faith, (ii) dismissed with prejudice Antonicelli's amended complaint against Rodriguez, (iii) dismissed the non-settling defendants' counterclaim for contribution filed after Rodriguez's petition as barred by the good faith finding; and (iv) allowed non-settling defendants the right to credit \$20,000 against any future judgment in plaintiff's favor.

¶ 12 The non-settling co-defendants (“Browder co-defendants”) appeal, arguing that (i) Rodriguez acted intentionally in causing the accident and (ii) the Illinois Contribution Act does not permit a good faith finding in a settlement with an intentional tortfeasor. The Browder co-defendants also contend the trial court's good faith finding was against the manifest weight of the evidence because it failed to properly consider their rights under section 2-1117 of the Code, which limits the liability of minimally responsible defendants.

¶ 13 ANALYSIS

¶ 14 As an initial matter, Supreme Court Rule 342(a) requires an appellant's brief include “as an appendix, \* \* \* a complete table of contents, with page references, of the record on appeal.” Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005). The table of contents to the appellants' brief does not comply with Illinois Supreme Court Rule 342(a) (eff. Jan. 1, 2005). Instead of a table of contents to the record on appeal, the Browder co-defendants’ brief contains a one-page table of contents referring to the pages of the appendix attached to the brief.

¶ 15 We remind counsel that when unsure about how to prepare a formal brief, better to seek clarification than forgiveness. When a brief fails to follow the requirements set forth in Supreme Court Rule 342(a), we may dismiss the appeal. *Fender v. Town of Cicero*, 347 Ill. App. 3d 46, 51

(2004). But, the argument section of the Browder co-defendants' brief provides references to the volume and pages of the record on appeal, as required by Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008). Because we are able to assess whether the facts are accurate and a fair portrayal, we choose to exercise our discretion and address the issues on their merit.

¶ 16 Good Faith Finding

¶ 17 The Joint Tortfeasor Contribution Act (740 ILCS 100/1 *et seq.* (West 2014)) seeks to promote two important public policies: encouraging settlements and ensuring the equitable apportionment of damages among tortfeasors. *Johnson v. United Airlines*, 203 Ill. 2d 121, 133 (2003); *BHI Corp. v. Litgen Concrete Cutting & Coring Co.*, 214 Ill. 2d 356, 365 (2005). The Contribution Act creates a right of contribution in actions “where 2 or more persons are subject to liability in tort arising out of the same injury to person or property, or the same wrongful death, to the extent that a tortfeasor pays more than his *pro rata* share of the common liability.” (Citations omitted.) *Johnson*, 203 Ill. 2d at 128. The Contribution Act also provides that a tortfeasor who settles in good faith with the injured party is discharged from contribution liability. 740 ILCS 100/2(c), (d).<sup>1</sup>

¶ 18 The only limitation the Contribution Act places on the settlement is that it be in “good faith.” *Johnson*, 203 Ill. 2d at 128. In determining whether a settlement has been made in good

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<sup>1</sup> Specifically, section 2 of the Contribution Act states, in pertinent part, provides:

"(c) When a release or covenant not to sue or to enforce judgment is given in good faith to one or more persons liable in tort arising out of the same injury or the same wrongful death, it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide but it reduces the recovery on any claim against the others to the extent of any amount stated in the release or the covenant, or in the amount of the consideration actually paid for it, whichever is greater.

(d) The tortfeasor who settles with a claimant pursuant to paragraph (c) is discharged from all liability for any contribution to any other tortfeasor.” 740 ILCS 100/2(c), (d) (West 2014).

faith a court must strike a balance between the two important public policies of promoting the encouragement of settlements and the equitable apportionment of damages among tortfeasors. *Id.* at 133. A settlement is not in good faith if the settling parties engaged in wrongful conduct, collusion, or fraud. *Id.* at 134. But a disparity between the settlement amount and the amount of damages sought in the complaint is not an accurate measure of the good faith of a settlement. *Johnson*, 203 Ill. 2d at 136-37; *Miranda v. The Walsh Group, Ltd.*, 2013 IL App (1st) 122674, ¶ 10. Settlements may be substantially different from the results of litigation, as damages are often speculative and the probability of liability uncertain. *Ziarko v. Soo Line R.R.*, 161 Ill. 2d 267, 284 (1994); *Cellini v. Village of Gurnee*, 403 Ill. App. 3d 26, 39-40 (2010). Thus, the amount of a settlement must be evaluated in relation to the probability of recovery, the defenses raised, and the settling party's potential legal liability. *Johnson*, 203 Ill. 2d at 137; *Miranda*, 2013 IL App (1st) 122674, ¶ 10. Further, “[s]ettlements are not designed to benefit non-settling third parties.” *Muro v. Abel Freight Lines, Inc.*, 283 Ill. App. 3d 416, 420 (1996). “They are instead created by the settling parties in the interests of these parties.” *Id.* “If the position of a non-settling defendant is worsened by the terms of a settlement, this is the consequence of a refusal to settle.” *Id.*

¶ 19 We review a trial court's decision to approve a settlement for an abuse of discretion. *Johnson*, 203 Ill. 2d at 135; *Miranda*, 2013 IL App (1st) 122674, ¶ 10, which is the most deferential standard of review—next to no review at all—and is therefore traditionally reserved for decisions made by a trial judge in overseeing his or her courtroom or in maintaining the progress of a trial.” *In re D.T.*, 212 Ill. 2d 347, 356 (2004). A trial court abuses its discretion where its ruling is so arbitrary or illogical that no reasonable person would adopt it. *Id.*; *1515 N. Wells, L.P. v. 1513 N. Wells, L.L.C.*, 392 Ill. App. 3d 863, 870 (2009). Questions of statutory

interpretation, however, are subject to a *de novo* standard of review. *Hall v. Henn*, 208 Ill. 2d 325, 330 (2006).

¶ 20 With these general principles in mind, we turn to the specific arguments before us.

¶ 21 Settlement With Intentional Tortfeasor

¶ 22 The Browder co-defendants claim the trial court did not have authority under the Contribution Act to make a good faith finding regarding the settlement agreement because Rodriguez was an "intentional tortfeasor," as evidenced by his guilty plea to criminal charges. This involves statutory interpretation, which, as noted, is a question of law that is reviewed *de novo*. *Hall*, 208 Ill. 2d at 330.

¶ 23 As the Browder co-defendants' correctly note, in *Gerill Corp. v. Hargrove Builders, Inc.*, 128 Ill. 2d 179 (1989), our supreme held that intentional tortfeasors are not entitled to contribution under the Act. *Id.* at 206. But *Gerill* did not address the issue raised here: whether a counterclaim asserting that the settling defendant is an intentional tortfeasor, a claim not brought by the plaintiff, can bar a finding of a good faith settlement under section 2(d) of the Contribution Act.

¶ 24 Rodriguez relies on *Pecoraro v. Balkonis*, 383 Ill. App. 3d 1028 (2008), to argue that a defendant sued in intentional tort may settle in good faith and receive the protection of the Act. In *Pecoraro*, the plaintiff, a hockey coach, was injured when one of his players threw a hockey stick at him and punched him in the temple. *Id.* at 1029. The plaintiff sued the player alleging assault and battery and the hockey association for negligence. *Id.* The association filed a contribution claim against the player. *Id.* at 1032. The player pled guilty to a criminal battery charge and settled with the plaintiff for \$5,000 and assigned him his rights under two insurance policies that denied coverage. *Id.* Over the hockey association's objection, particularly as to the



adequacy of the judgment in light of the damages, which exceeded \$800,000, the trial court entered an order dismissing plaintiff's claim against the player under the terms and conditions of the settlement agreement and finding that the agreement was reached in good faith under the Contribution Act. The appellate court affirmed, finding the trial court did not abuse its discretion in making its good faith finding, noting that the player did not have any assets of consequence and there was little or no probability that he could ever satisfy a significant judgment against him. *Id.* at 1039.

¶ 25 Rodriguez contends that like the settling defendant in *Pecoraro*, even if he acted intentionally, the trial court did not err in making a good faith finding, because he is afforded the protections of the Contribution Act. The Browder co-defendants argue, however, that the court in *Pecoraro* had no reason to address the issue here as the non-settling defendants there did not raise it. Nevertheless, we need not and indeed cannot make the determination that the Browder co-defendants seek based on the facts before us. Antonicelli's amended complaint alleged that Rodriguez and all other defendants engaged in negligent, not intentional, conduct. Although the Browder co-defendants raised counterclaims alleging intentional conduct after Antonicelli and Rodriguez entered into a settlement agreement, a counterclaim is "an independent cause of action, separate from a complaint \*\*\*." *Health Cost Controls v. Sevilla*, 307 Ill. App. 3d 582, 589 (1999). Thus, because the Browder co-defendants' counterclaims alleging intentional conduct are separate and independent causes of action; they do not change the nature of Antonicelli's complaint, which alleged only negligent conduct. And under the plain language of the Contribution Act, Rodriguez was permitted to enter into a good faith settlement with Antonicelli and be discharged from all liability for any contribution. 740 ILCS 100/2(d) (West 2014). *Halleck v. Coastal Building Maintenance Co.*, 269 Ill. App. 3d 887, 899 (1995). Thus, we

need not address the Browder co-defendants' contention that a trial court may not make a good faith finding in favor of an intentional tortfeasor.

¶ 26 Good Faith Finding

¶ 27 The Browder co-defendants next argue the trial court erred in entering a good faith finding because it failed to properly consider their rights under section 2-1117 of the Code of Civil Procedure (735 ILCS 5/2-1117) (West 2014)). As noted, a trial court's decision to approve a settlement is subject to an abuse of discretion standard of review. *Johnson*, 203 Ill. 2d at 135. But the Browder co-defendants ask us to determine whether a trial court must first consider section 2-1117 of the Code before entering a good faith finding, which is a question of law subject to *de novo* review. *Hall*, 208 Ill. 2d at 330.

¶ 28 Section 2-1117<sup>2</sup> addresses joint and several liability and protects minimally responsible defendants from paying the entire damages award. *Unzicker v. Kraft Food Ingredients Corp.*, 203 Ill. 2d 64, 78 (2003).

¶ 29 In *Unzicker*, the plaintiffs argued that sections 3 and 4 of the Contribution Act, which recognize a plaintiff's right to recover all of his or her damages from any responsible defendant, conflicts with section 2-1117, which eliminates a plaintiff's ability to recover the full amount of

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<sup>2</sup> Section 2-1117 provides:

"Except as provided in Section 2-1118, in actions on account of bodily injury or death or physical damage to property, based on negligence or product liability based on strict tort liability, all defendants found liable are jointly and severally liable for plaintiff's past and future medical and medically related expenses. Any defendant whose fault, as determined by the trier of fact, is less than 25% of the total fault attributable to the plaintiff, the defendants sued by the plaintiff, and any third party defendant except the plaintiff's employer, shall be severally liable for all other damages. Any defendant whose fault, as determined by the trier of fact, is 25% or greater of the total fault attributable to the plaintiff, the defendants sued by the plaintiff, and any third party defendants except the plaintiff's employer, shall be jointly and severally liable for all other damages." 740 ILCS 5/2-1117 (West 2014).

nonmedical damages from any defendant found to be less than 25% responsible for the plaintiff's injuries. *Id.* at 79-80. The supreme court disagreed, finding that those statutory provisions were not in conflict. *Id.* at 80. In explaining how the statutes work in conjunction, the court stated that "Section 2-1117 comes into play before the Contribution Act is applied to determine liability. Any defendant who pays damages in an amount greater than his or her proportionate share of fault can then seek contribution under the Contribution Act." *Id.*

¶ 30 The Browder co-defendants contend that under this language in *Unzicker*, a trial court must first consider a non-settling defendant's rights under section 2-1117 before making a good faith finding under the Contribution Act. We disagree. First, in *Unzicker*, after a trial, the jury entered a verdict in plaintiff's favor and apportioned the fault between the defendants—finding that one defendant was 1% liable and the other was 99% liable. The plaintiff appealed arguing, in part, that section 2-1117 conflicts with the Contribution Act. As noted, the supreme court rejected this argument. The court did state that section 2-1117 comes into play before the Contribution Act, but that was in the context of apportioning fault after trial, and not a settlement agreement. The court did not say that before entering a good faith finding regarding the settlement by one defendant, a trial court must first consider how section 2-1117 of the Code affects other defendants' liability.

¶ 31 Thus, the appellants cite nothing in the statutes or the case law supporting their argument that a trial court must make a fault determination before entering a good faith finding. And, indeed, requiring a trial court to make a determination as to each defendant's fault before finding that a settlement agreement was entered into in good faith would be impracticable and would defeat the purpose of section 2 of the Contribution Act of encouraging compromise and settlement in the absence of bad faith, fraud, or collusion. *Pecoraro*, 383 Ill. App. 3d at 1038.

¶ 32 Although we do not disagree with the Browder co-defendants' contention that a reasonable jury may conclude that Rodriguez, who was under the influence of cocaine at the time of the accident, was the sole and proximate cause of the accident, that is not a factor the trial court needs to take into consideration in making a good faith finding. As noted, "[s]ettlements are not designed to benefit non-settling third parties." *Muro*, 283 Ill. App. 3d at 420. "They are instead created by the settling parties in the interests of these parties." *Id.* "If the position of a non-settling defendant is worsened by the terms of a settlement, this is the consequence of a refusal to settle." *Id.* No evidence has been presented showing that the settling parties engaged in wrongful conduct, collusion, or fraud. And a disparity between the settlement amount and the amount of damages sought in the amended complaint is not an accurate measure of the good faith of a settlement. *Johnson*, 203 Ill. 2d at 136-37. Thus, we affirm the trial court's good faith finding.

¶ 33 Affirmed.