

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

ANTHONY I. PROVITOLA AND  
KATHLEEN A. PROVITOLA,

Appellants,

v.

Case No. 5D16-3027

DENNIS L. COMER,

Appellee.

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Opinion filed August 4, 2017

Appeal from the Circuit Court  
for Volusia County,  
Randell H. Rowe, III, Judge.

Anthony I. Provitola of Anthony I. Provitola,  
P.A., DeLand, for Appellants.

Lindsay R. Dunn, of First American Law  
Group, Largo, and F. A. (Alex) Ford, Jr., of  
Landis Graham French, P.A., DeLand, for  
Appellee.

PER CURIAM.

We affirm the final order dismissing Appellants' second amended complaint with prejudice. See *Bozeman v. City of St. Petersburg*, 76 So. 894, 896 (Fla. 1917) (holding that plaintiff could not maintain action to enjoin obstruction of public street where plaintiff's allegations were insufficient to show that he suffered "some special damage to his

property or injury to him different not only in degree but in kind from the damage sustained by the community at large” (quoting *Robbins v. White*, 42 So. 841 (Fla. 1907)); *Wedner v. Escambia Chem. Corp.*, 102 So. 2d 631, 632 (Fla. 1st DCA 1958) (“The unauthorized obstruction of a public way is a common or public nuisance. It is not in itself ground upon which to maintain a private suit for injuries occasioned thereby. In order to maintain such a suit it must be shown that the party seeking relief has suffered some special injury, differing not only in degree, but in kind from that sustained by the community at large.”).

We dismiss, without prejudice, Appellants’ appeal of the trial court order determining that Appellee was entitled to recover attorney’s fees under section 57.105, Florida Statutes (2016). An order that determines entitlement to attorney’s fees without setting the amount is a non-final, non-appealable order. *Adlow, Inc. v. Mauda, Inc.*, 632 So. 2d 714, 714 (Fla. 5th DCA 1994).<sup>1</sup>

AFFIRMED, in part; DISMISSED, in part.

EVANDER and EDWARDS, JJ., and ATKIN, J.E., Associate Judge, concur.

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<sup>1</sup> The other issues raised on appeal are rendered moot by our affirmance of the trial court’s order of dismissal.