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

SARA R. MACKENZIE AND RALPH MACKENZIE,

Appellants/Cross Appellees,

v. Case No. 5D18-1901

CENTEX HOMES, A NEVADA GENERAL PARTNERSHIP, BY CENTEX REAL ESTATE CORPORATION, A NEVADA CORPORATION, SULLIVAN RANCH HOMEOWNERS ASSOCIATION, INC., A FLORIDA CORPORATION, ET AL.,

Appellees/Cross Appellants.

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Opinion filed November 1, 2019

Appeal from the Circuit Court
for Lake County,
William G. Law, Jr., Judge.

Sara R. MacKenzie, Mount Dora, Appellants/Cross Appellees.

Ronald D. Edwards, Jr., of Lowndes, Drosdick, Doster, Kantor & Reed, P.A., Orlando, for Appellees/Cross Appellants, Centex Homes, a Nevada General Partnership, by Centex Real Estate Corporation, a Nevada Corporation.

No Appearance for other Appellees/Cross Appellants.

SASSO, J.

Sara R. MacKenzie and Ralph MacKenzie challenge the trial court's final judgment and amended final judgment entered on their three-count complaint against Centex Homes, a Nevada General Partnership, by Centex Real Estate Corporation, a Nevada Corporation ("Centex"), and Sullivan Ranch Homeowners Association, Inc., a Florida Corporation ("the HOA"). Although the trial court granted the MacKenzies' request for attorney's fees on count II, they argue the trial court erred in reducing their requested attorney's fees and costs and in failing to apply a contingency fee multiplier on that count. Centex cross-appeals the portion of the final judgment declining to award it attorney's fees as the prevailing party on counts I and III, for alleged discovery violations, and as assignee of the HOA's entitlement to attorney's fees. We reverse that portion of the final judgment declining to award Centex prevailing party attorney's fees on count III. In all other respects, we affirm without further discussion.

The MacKenzies reside in the Sullivan Ranch residential development, which was developed by Centex. In April 2015, they filed a three-count, fifth amended complaint against Centex and the HOA. Although each count sought a declaration of the parties' rights under the Declaration of Covenants, Conditions and Restrictions ("the Declaration"),[1] each count requested distinct relief.[2]

[1] For additional background and facts, *see generally MacKenzie v. Centex Homes*, 208 So. 3d 790 (Fla. 5th DCA 2016).

[2] Count I sought a declaration of the parties' rights and obligations regarding the validity of Centex's unilateral amendment to the Declaration, which extended the date by which Centex was required to transition control of the HOA Board to the homeowners. Count II sought a declaration that Centex failed to sufficiently fund the HOA's capital reserve account, in violation of the Declaration and section 720.303(6), Florida Statutes, and resulting damages. Count III sought a declaration of the parties' rights and obligations resulting from Centex's decision to abandon developing an equestrian center.

In July 2015, the trial court dismissed count III with prejudice, reserving jurisdiction to award attorney's fees and costs. Subsequently, the trial court rendered summary final judgment against the MacKenzies on the remaining two counts, again reserving jurisdiction to award attorney's fees and costs. The MacKenzies appealed the summary final judgment as to count II only. In *MacKenzie v. Centex Homes*, 208 So. 3d 790 (Fla. 5th DCA 2016), this Court reversed the summary final judgment on count II and remanded for further proceedings.

Upon remand, the trial court held several hearings regarding the parties' competing requests for attorney's fees pursuant to the Declaration and relevant statutory fee provisions. It determined that the MacKenzies were the prevailing party on count II, which it determined was the significant issue in the case, and that Centex and the HOA were the prevailing parties on count III.[3] Though it awarded fees to the MacKenzies on count II, it declined to award fees to Centex on count III, finding that count III was an insignificant part of the case that was resolved early on. We agree with Centex that the trial court erred in denying its request for fees on count III.

A trial court's determination of whether a party prevails on the "significant issues" in litigation so as to designate that party the prevailing party for the purpose of awarding attorney's fees is reviewed for an abuse of discretion. *Olson v. Pickett Downs Unit IV Homeowner's Ass'n*, 205 So. 3d 869, 872 (Fla. 5th DCA 2016) (citing *Moritz v. Hoyt Enters., Inc.*, 604 So. 2d 807, 810 (Fla. 1992)). Conversely, "[t]he determination of whether multiple claims within a lawsuit are separate and distinct for

[3] The trial court found that count I had become moot when Centex transferred control of the HOA Board to the homeowners during pendency of the case; thus, neither party prevailed on that count.

purposes of attorney's fees is a matter of law to be reviewed de novo." *Leon F. Cohn, M.D., P.A. v. Visual Health & Surgical Ctr., Inc.*, 125 So. 3d 860, 863 (Fla. 4th DCA 2013) (quoting *Avatar Dev. Corp. v. DePani Constr., Inc.*, 883 So. 2d 344, 345 (Fla. 4th DCA 2004)). Further, a de novo review applies where a court's attorney's fee order rests on the interpretation of a statute or contract. *Moore v. Estate of Albee*, 239 So. 3d 192, 194 (Fla. 5th DCA 2018) (citing *Infiniti Emp't Sols., Inc. v. MS Liquidators of Ariz., LLC*, 204 So. 3d 550, 553 (Fla. 5th DCA 2016)).

"Florida law permits more than one prevailing party in a single lawsuit where each of the claims that support a fee award is 'separate and distinct.'" *Leon F. Cohn, M.D., P.A.*, 125 So. 3d at 863 (quoting *Fid. Warranty Servs., Inc. v. Firstate Ins. Holdings, Inc.*, 98 So. 3d 672, 677 (Fla. 4th DCA 2012) (reversing denial of fees to defendant that prevailed on one distinct claim)). Multiple claims within a lawsuit are separate and distinct if they can support an independent action and are not simply alternative theories of liability for the same wrong. *Id.* (citing *Fid. Warranty Servs.*, 98 So. 3d at 677).

As initially recognized by the trial court, count III was distinct from the MacKenzies' other two requests for declaratory relief. Count III depended on unique allegations of wrongdoing and elements of proof based on unique provisions of the Declaration. Moreover, the trial court dismissed count III with prejudice after adopting Centex's argument that the plain language of the Declaration precluded the relief sought in count III and that count could not be amended to assert a viable cause of action.

Despite its apparent recognition of the distinct nature of count III, the trial court declined to award fees, noting the time expended in the defense of the claim was not "significant." The court erred in this regard. Both the statutory and contractual attorney's

fee provisions applicable to the dispute contain mandatory fee language. Specifically, section 720.305, Florida Statutes, states that the prevailing party in an action to redress a failure or refusal to comply with the governing documents of a homeowners' association "is entitled" to recover fees. § 720.305(1), Fla. Stat. (2018). Similarly, the Declaration states that the prevailing party in an action to enforce the governing documents "shall be entitled" to recover attorney's fees. Neither provision contains a de minimis exception. *Accord Sanchez v. State Farm Fla. Ins. Co.*, 997 So. 2d 1209, 1210 (Fla. 3d DCA 2008) (Shepard, J., dissenting); *see also First Real Estate, LLC v. Grant*, 88 So. 3d 1073, 1073–74 (Fla. 1st DCA 2012) (noting that although dismissal at early stage "will certainly impact the *amount* of fees awarded, it has no bearing on . . . *entitlement* to fees").

Because Centex prevailed on a separate and distinct claim to which mandatory fee provisions apply, we hold that the trial court erred in denying Centex's motion for fees as to count III. *See Sorrentino v. River Run Condo. Ass'n*, 925 So. 2d 1060, 1066 (Fla. 5th DCA 2006) ("Where there is a party who clearly prevailed . . . and there is a prevailing party statute or contract, reasonable attorney fees must be awarded." (citing *Lasco Enters., Inc. v. Kohlbrand*, 819 So. 2d 821 (Fla. 5th DCA 2002))). Accordingly, we reverse the final judgment to the extent it denies prevailing party attorney's fees to Centex on count III and remand for the trial court to determine the amount of fees to which Centex is entitled.

AFFIRMED IN PART; REVERSED IN PART; and REMANDED FOR FURTHER PROCEEDINGS.

ORFINGER and LAMBERT, JJ., concur.