

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

WINTON W. WILCOX, JR.
AND THEA WILCOX,

Appellants,

v.

Case No. 5D20-359

MANLEY L. CUPSTID, VIVIAN F. VINES,
MARY F. VINES, ANTONETTE G. LAKE,
MITCHELL AND FREEMAN FAMILIES TRUST,
DUKE ENERGY FLORIDA, LLC, ERVIN LAKE,
HOME TURNERS, LLC, JANICE HOPE,
JOHN FAVORS, ET AL.,

Appellees.

_____ /

Opinion filed December 18, 2020

Appeal from the Circuit Court
for Marion County,
Lisa D. Herndon, Judge.

Lawrence C. Callaway, III, of Klein & Klein,
LLC, Ocala, for Appellants.

Linda G. Blackburn, of Bice Cole Law Firm,
PL, Ocala, for Mary F. Vines.

No appearance for remaining Appellees.

HARRIS, J.

Winton and Thea Wilcox ("Appellants") appeal the trial court's order granting attorney's fees and costs to Mary Vines. Because we find that the statute relied upon by

the trial court does not provide a basis for attorney's fees under the facts of this case, we reverse.

In 2014, Appellants purchased a parcel of real property in Marion County that was immediately across the road from a parcel owned by Vines. Despite having alternative access to the nearest public road, Appellants contended that their land was hemmed in and claimed an easement across Vines' property under section 704.01(2), Florida Statutes (2016). That statute creates a statutory way of necessity to provide ingress and egress from landlocked property to "the nearest practicable public or private road." § 704.01(2). Because Appellants had other means of ingress and egress to their property, Vines objected to the easement, and Appellants filed suit, seeking declaratory and injunctive relief to formally establish the statutory way of necessity they were claiming. Count one of that complaint named Vines as a defendant and addressed her property.

Vines ultimately moved to strike count one as a sham pleading. Following an evidentiary hearing, the trial court struck count one, finding that Appellants' property was not hemmed in. In so doing, the court specifically found that, despite the fact that Appellants had another practicable means to access their property, the complaint was not inherently false and thus, not a sham pleading.

Following the striking of count one, Vines moved to tax attorney's fees and costs pursuant to section 704.04, Florida Statutes (2019), seeking to recover the fees she incurred in defending Appellants' claim. Following a hearing on that motion, the court ordered Appellants to pay almost \$27,000 in attorney's fees and costs to Vines, finding that Appellants "unreasonably prosecuted [their] 704.01(2) claim." On appeal, Appellants

argue that section 704.04 does not authorize an award of attorney's fees in this case. We agree.

Under section 704.04, if the parties dispute whether a statutory easement exists under section 704.01(2), either one may file a lawsuit to have the court determine if the claimed easement exists. The court is also given the discretion to award attorney's fees and costs to either party if it determines that the opposing side unreasonably refused to comply with the provisions of section 704.01(2). In this case, there was no argument that Appellants refused to comply, unreasonably or otherwise, with section 704.01(2). Vines simply argued, and the court found, that the decision to file the claim against Vines when Appellants had another means of access to their property was unreasonable. This is not the finding required under the statute in order to authorize an award of attorney's fees.

The entitlement to fees and costs under section 704.04 requires a finding that one party unreasonably refused to comply with 704.01(2), which merely establishes a statutory right of way to legally hemmed in property. Disagreements as to whether the easement properly exists, e.g., whether the dominant parcel is truly hemmed in, are to be judicially determined. This is precisely the avenue Appellants pursued. Just because the facts of this case ultimately did not support their claimed easement does not mean that they unreasonably refused to comply with section 704.01(2). The court's finding that Appellants should be ordered to pay Vines' attorney's fees and costs because the filing of this lawsuit was unreasonable is not the finding required in this case to establish Vines' entitlement to fees. The order awarding fees and costs in essence treats section 704.04 as a prevailing party statute, which is not how the statute was drafted by the legislature. While it does not seem equitable for Vines to have incurred significant fees and costs in

defending what proved to be a baseless claim, it is nonetheless the outcome required by applying the statute. Vines chose not to pursue fees under section 57.105, Florida Statutes (2016), the court found that the complaint was not a sham pleading, and there was no finding that Appellants unreasonably refused to comply with section 704.01(2). As a result, Vines did not establish an entitlement to fees and costs from Appellants, and the court erred in awarding those fees.

The order taxing attorney's fees and costs is reversed and the case is remanded to the trial court with directions to enter an order denying Vines' motion.

REVERSED and REMANDED with instructions.

EVANDER, C.J., and LAMBERT, J., concur.