

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2008

JEFFREY BERNSTEIN and **WENDIE BERNSTEIN**,
Appellants,

v.

NEW BEGINNINGS TRUSTEE, LLC,
Appellee.

Nos. 4D07-4007 and 4D07-4969

[November 19, 2008]

ON MOTION TO REVIEW ORDER TAXING COSTS

PER CURIAM.

The motion to review the order denying appellate costs is granted. The court's denial of appellate costs is reversed. Although the assessment of attorney's fees may be deferred until the determination of a prevailing party, the assessment of costs is not likewise deferred. *See Lucas v. Barnett Bank of Lee County*, 732 So. 2d 405 (Fla. 2d DCA 1999). As the appellants prevailed on the significant issues of the appeal, they are entitled to recover their costs on appeal.

Contrary to the appellee's position, this court's order denying the motion to tax costs did not deny costs on the merits but merely denied the motion because motions to tax appellate costs must be made in the trial court with review by this court of any order entered. *See Fla. R. App. P. 9.400(a), (c)*. Our order of denial was without prejudice to file a motion to tax costs with the trial court.

We remand for determination and assessment of appellants' costs on appeal.

WARNER, POLEN and TAYLOR, JJ., concur.

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Consolidated appeals of non-final orders from the Circuit Court for

the Seventeenth Judicial Circuit, Broward County; Ronald J. Rothschild, Judge; L.T. Case Nos. CACE 06-9592 8 and COCE 06-6867 53.

James A. Bonfiglio of Law Offices of James A. Bonfiglio, P.A., Boynton Beach, for appellants.

Edward F. Holodak of Edward F. Holodak, P.A., Hollywood, for appellee.

Not final until disposition of timely filed motion for rehearing.