

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-3506

STEVEN CASTO,

Appellant,

v.

FIRST COAST CARDIOVASCULAR
INSTITUTE, P.A.,

Appellee.

On appeal from the Circuit Court for Duval County.
Waddell A. Wallace, Judge.

December 30, 2022

TANENBAUM, J.

Steven Casto asserts that the trial court erred in denying his motion for attorney's fees and costs following First Coast Cardiovascular Institute's voluntary dismissal of its suit against him. The suit had sought to enforce certain post-employment restrictions contained in a contract between the parties, and the agreement contained a prevailing-party fee provision. First Coast's conclusive dismissal with prejudice came as part of its acceptance of a settlement offer from Casto, and we are asked in this appeal to determine the effect that a paragraph addressing Casto's previously submitted fee claim had on his entitlement to fees once the case was concluded. We agree with Casto and reverse.

I

First Coast initially sued Casto for statutory injunctive relief as allowed by section 542.335, Florida Statutes (count I), and for contract damages (count II). In both counts, First Coast averred that Casto violated the non-compete and non-solicitation provisions of the parties' employment agreement. Following some motion practice, First Coast filed a second amended complaint, which dropped the injunctive relief count and narrowed the suit to a single common-law, breach-of-contract cause of action.

Several months later, on December 17, 2020, Casto moved for an award of attorney's fees and costs pursuant to both section 542.335 and the fee provision in the contract. In that motion, Casto claimed entitlement to fees and costs because First Coast had abandoned its claim for injunctive relief—which he characterized as the enforcement part of the suit. The motion asserted that Casto became the prevailing party in First Coast's "enforcement" effort at that point, entitling him to the fee and cost award under the statute and contract, notwithstanding First Coast's remaining claim for damages. As his prayer for relief, Casto asked for an award of fees and costs "incurred with respect to [First Coast's] attempted enforcement of the restrictive covenants."

The following month, Casto served First Coast with a proposal for settlement. In it, Casto offered to pay First Coast \$1.26 "to resolve all damages that may otherwise be awarded to [First Coast] in a final judgment entered upon the cause of action asserted in the Second Amended Complaint." First Coast in turn would take a voluntary dismissal of its action with prejudice. The proposal, however, was "subject to" a paragraph regarding attorney's fees. That paragraph stated as follows:

This proposal does not extend to and is not intended to resolve, settle, or compromise [] Casto's claim for attorneys' fees as set forth in Defendant's Motion to Tax Attorneys' Fees and Costs served herein on December 17, 2020, which claim shall survive [First Coast]'s acceptance of this proposal.

First Coast accepted the proposal and later filed the required dismissal.

Following this voluntary dismissal, Casto filed a “renewed” motion for fees and costs. The motion reiterated the arguments made in his initial motion, noted the dispositive effect of First Coast’s voluntary dismissal, and made the same prayer for relief as the original motion: for an award of fees and costs “incurred with respect to [First Coast’s] attempted enforcement of the restrictive covenants.” At first the trial court granted this renewed motion, finding that Casto had “prevailed on the significant issues in this litigation, which concluded with no adjudication that [Casto] breached his employment agreement, no award of temporary or permanent injunctive relief, and . . . only a nominal payment from [Casto] in an amount far less than the damages sought by [First Coast].”

First Coast then sought reconsideration, arguing that the trial court’s prevailing-party determination was based on a fee claim not preserved by Casto in his proposal for settlement. According to First Coast’s motion, Casto’s proposal language preserved only the fee claim asserted in the December 17, 2020, motion for fees, which meant the trial court could not base its determination of whether Casto was the prevailing party on any occurrences after that date. To put it another way, First Coast argued that under the settlement, Casto could recover his fees and costs only if the trial court determined that he had been the prevailing party as of December 17, 2020. As First Coast saw it, as of that date, Casto was not the prevailing party because there was still an outstanding claim in the suit and the suit had not been conclusively determined on the merits. The trial court agreed with this position, vacated its prior order finding an entitlement to fees, and denied Casto’s renewed motion for attorney’s fees and costs. Casto now appeals.

II

Casto contends he is entitled to attorney’s fees pursuant to the employment agreement, which provided that “[t]he prevailing party shall be entitled to recover all costs incurred with respect to the enforcement or attempted enforcement of this Agreement, including attorneys’ fees, whether suit be brought or not.” There can be no dispute that Casto, at a minimum, was the prevailing party in First Coast’s suit once it voluntarily dismissed it with

prejudice pursuant to Florida Rule of Civil Procedure 1.420(a)(1). See *Thornber v. City of Ft. Walton Beach*, 568 So. 2d 914, 919 (Fla. 1990) (“In general, when a plaintiff voluntarily dismisses an action, the defendant is the prevailing party.”); cf. *Bay Lincoln-Mercury-Dodge, Inc. v. Transouth Mortg. Corp. of Fla.*, 531 So. 2d 1027 (Fla. 1st DCA 1988) (noting that the employee was the prevailing party and entitled to fees after the action instituted [by the employer] to enforce the parties’ Non-Solicitation and Non-Competition Agreement” was dismissed for lack of prosecution); *Sun Grp. Enters., Inc. v. DeWitte*, 890 So. 2d 410, 412 (Fla. 5th DCA 2004) (determining that employees prevailed by “having successfully challenged the enforceability of a restrictive covenant” once the count seeking injunctive relief was dismissed with prejudice, leaving only breach of contract claims).

We do not, however, need to reach the question of whether Casto was the prevailing party any earlier in the litigation to resolve this appeal. The salient question before us is a simple matter of contract interpretation: whether the trial court correctly interpreted the parties’ settlement agreement to cabin the scope of, and ultimately obviate, Casto’s fee claim.* Generally speaking, we review a trial court’s prevailing-party fee determination for an abuse of discretion, but we review de novo a trial court’s interpretation of a contract insofar as the interpretation drives the fee determination. Cf. *Rogers v. Vulcan Mfg. Co., Inc.*, 93 So. 3d 1058, 1060 (Fla. 1st DCA 2012).

That is what we do here. The trial court read the paragraph in the settlement agreement dealing with attorney’s fees to limit the scope of Casto’s fee claim to the circumstances as they existed on December 17, 2020. Based on that interpretation, it concluded that as of December 17 (when Casto filed his original motion for fees), he could not have been the prevailing party because on that day, there still was a contract count remaining. There was not a resolution of all the significant issues pending in the litigation

* To the extent First Coast asserts that its receipt of a de minimis payment rendered it the prevailing party for purposes of “the enforcement or attempted enforcement” of the agreement, we find that argument unpersuasive.

when Casto filed his motion on December 17, so he would not have been entitled to any fees. According to the trial court, the terms of the settlement precluded it from making a prevailing party determination based on events occurring after December 17, 2020. This is a misreading of the agreement.

There is nothing in the settlement agreement that required the trial court to consider Casto’s renewed motion for fees and costs—filed on April 28, 2021—as if it had been filed on December 17, 2020, such that it could not consider what happened in the litigation after that date for the purpose of determining whether Casto was the prevailing party. The settlement agreement’s carve-out for the fee-issue applies generally to Casto’s “claim for attorney’s fees.” The use of the language “as set forth in [the December 17 motion]” did not arbitrarily fix December 17, 2020, as the date for making the prevailing party determination. Rather, it simply established the type of fee claim being reserved: Casto’s claimed entitlement to fees as a prevailing party in an enforcement action under the employment agreement. Notably, Casto’s renewed motion asserted the same claim (as its prayer for relief) that the December 17 motion did.

III

The settlement agreement reserved, and did not resolve, Casto’s claim for attorney’s fees and costs as the prevailing party in First Coast’s enforcement action—regardless of when that claim was asserted. The trial court erred when it failed to read the settlement terms in this way. That error led to its failure to determine Casto’s status as the prevailing party under the terms of the employment agreement once First Coast’s voluntary dismissal brought its suit to an end without any enforcement ordered against Casto. Under the circumstances of this case, as a matter of law, Casto was the prevailing party and was entitled to fees and costs. We in turn reverse the trial court’s order denying Casto’s renewed fee-and-cost motion and remand with an instruction that the trial court award Casto his attorney’s fees and costs in an amount to be determined upon an appropriate hearing.

REVERSED and REMANDED with instruction.

JAY and M.K. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

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