

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

PAULA MELLEY,
Appellant,

v.

MARINER'S WAY ASSOCIATION, INC. and **DAVID HEMINGWAY,**
Appellees.

No. 4D16-2795

[November 1, 2017]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Meenu Sasser, Judge; L.T. Case No. 50-2008-CA-014696-XXXX-MB.

Robert Rivas of Sachs Sax Caplan, P.L., Tallahassee, for appellant.

Kathryn L. Ender of Cole, Scott & Kissane, P.A., Miami, for appellee Mariner's Way Association, Inc.

PER CURIAM.

Appellant sought a declaratory judgment against Mariner's Way Association relating to the expansion of her boat dock. After years of litigation, the Association moved to dismiss the complaint as moot, stating that it was no longer contesting the dock modifications. Over appellant's objection, the trial court dismissed the complaint and entered a final judgment incorporating the Association's unilateral stipulation.

A trial court's discretion is limited when it "essentially enters a declaratory judgment as to one or more significant, disputed issues while describing the judgment as an order of dismissal." *Ribaya v. Bd. of Trs. of City Pension Fund for Firefighters & Police Officers in City of Tampa*, 162 So. 3d 348, 354 (Fla. 2d DCA 2015). Additionally, "it is difficult for a trial court to justify its discretionary act of dismissal at that stage [of ruling on a motion to dismiss] unless the parties have made stipulations or concessions on the record[.]" *Id.* at 353.

In the instant case, the Association's unilateral stipulation did not afford appellant all of the relief she sought inasmuch as the relief in the

stipulation did not cover all items pled in the third amended complaint. As such, we find the trial court erred in entering the dismissal, and we reverse and remand for further proceedings. Because the Association no longer contests the main issue in the complaint—the dock modifications—this case should be able to be resolved expeditiously on remand.

Reversed and remanded for further proceedings.

GERBER, C.J., MAY and LEVINE, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.