

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

LENNOX NATIONAL ACCOUNT SERVICES, LLC,
Appellant,

v.

BARRY CLAIRE and STACI CLAIRE,
Appellees.

No. 4D20-2797

[December 22, 2021]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County, Keathan B. Frink, Judge; L.T. Case No. CACE19-000502 (12).

Benjamin L. Bedard and Shelli A. Healy of Roberts, Reynolds, Bedard & Tuzzio, PLLC, West Palm Beach, for appellant.

Matthew E. Haynes of Lytal, Reiter, Smith, Ivey & Fronrath, West Palm Beach, for appellees.

FORST, J.

Appellant Lennox National Account Services, LLC (“Defendant”) appeals the denial of its motion to tax costs following the voluntary dismissal of the tort action by appellees Barry Claire and Staci Claire (“Plaintiffs”). Defendant argues it was entitled to an award of taxable costs pursuant to Florida Rule of Civil Procedure 1.420(d). We agree and reverse accordingly.

Barry Claire was allegedly injured while shopping at a store. At the time, Defendant’s technicians were working on the store’s rooftop. Plaintiffs filed a complaint for negligence and loss of consortium against several parties, including Defendant. Subsequently, Defendant moved for summary judgment and the motion was set for a hearing. A few hours before the hearing, Plaintiffs filed a notice of voluntary dismissal without prejudice as it related to Defendant. Following the dismissal, Defendant filed a motion to tax costs against Plaintiffs. The motion was summarily denied by the trial court.

Florida Rule of Civil Procedure 1.420(d) provides in pertinent part that “[c]osts in any action dismissed under this rule *shall* be assessed and judgment for costs entered in that action, once the action is concluded as to the party seeking taxation of costs.” (emphasis added). We have held that “[r]ule 1.420(d) is unambiguous—costs are to be assessed in the action that is the subject of the voluntary dismissal.” *Bis v. U.S. Bank Nat’l Ass’n*, 172 So. 3d 971, 972 (Fla. 4th DCA 2015) (quoting *Wilson v. Rose Printing Co.*, 624 So. 2d 257, 258 (Fla. 1993)); *see also Fleet Servs. Corp. v. Reise*, 857 So. 2d 273, 275 (Fla. 2d DCA 2003) (“When [the plaintiff] filed its voluntary dismissal, [the defendant] became entitled to an award of ‘costs’ pursuant to Florida Rule of Civil Procedure 1.420(d).”).

Thus, we reverse and remand for entry of an order granting Defendant’s motion to tax costs and a hearing on the amount of costs to be awarded to Defendant.

Reversed and remanded with instructions.

GROSS and KUNTZ, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.