

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2011

MARTIN COUNTY, FLORIDA,
Appellant,

v.

POLIVKA PAVING, INC., d/b/a Polivka Surface Engineering, Ltd.,
Appellee.

No. 4D09-248

[August 17, 2011]

PER CURIAM.

In *Martin County v. Polivka Paving, Inc.*, 44 So. 3d 126 (Fla. 4th DCA 2010), we reversed that portion of a final judgment awarding home office overhead damages and remanded for the entry of an amended final judgment. This case is an appeal from an award of attorney's fees. Although the appellee/plaintiff remains the prevailing party entitled to an award of attorney's fees, the reversal on a significant aspect of the underlying case requires the trial court to reconsider the amount of attorney's fees awarded; the trial court "must evaluate the relationship between the successful and unsuccessful claims and determine whether the investigation and prosecution of the successful claims can be separated from the unsuccessful claims." *Fla. Patient's Comp. Fund v. Rowe*, 472 So. 2d 1145, 1151 (Fla. 1985). On remand, the trial court should attempt to determine whether the plaintiff's attorneys spent a separate and distinct amount of time on the issue of home office overhead damages that then can be backed out of the lodestar. We agree with the trial court that some contingency risk multiplier was appropriate in this case, but on remand the trial court should evaluate how the adjusted result obtained impacts the amount of the multiplier.

Reversed and remanded.

STEVENSON, GROSS and TAYLOR, JJ., concur.

* * *

Appeal from the Circuit Court for the Nineteenth Judicial Circuit,

Martin County; Robert R. Makemson, Judge; L.T. Case No. 07-917CA.

Stephen Fry, County Attorney, and David A. Acton, Senior Assistant County Attorney, Stuart, for appellant.

Joseph W. Lawrence, II and Diana J. Zelmer of Vezina, Lawrence & Piscitelli, P.A., Fort Lauderdale, for appellee.

Not final until disposition of timely filed motion for rehearing.