

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

**FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER
SERVICES,**
Appellant,

v.

KATHRYN COX, et al.,
Appellees.

No. 4D09-979

[January 26, 2011]

WARNER, J.

In an inverse condemnation action, the Department of Agriculture appeals the trial court's order denying its request for costs as the prevailing party pursuant to section 57.041, Florida Statutes. This action involves the Department's destruction of backyard citrus trees of homeowners in Broward County in the Department's futile attempt to eradicate citrus canker in this state.¹ Even though the Department was defeated in its claim that no taking occurred,² *and* the jury awarded damages, which resulted in a net award to the class of plaintiffs of \$4,000,000, when the Department argued that no damages occurred, the Department still claims it prevailed because the class sought substantially more in damages than what the jury awarded.

We find the Department's arguments to be frivolous. No matter how one looks at the facts, the owners prevailed on the significant issues. The mere fact that the owners sought more in damages than the jury awarded does not mean that they did not prevail on both issues of liability and damages.

¹ The history of the citrus canker eradication program is contained in *Haire v. Florida Department of Agriculture*, 870 So. 2d 774 (Fla. 2004).

² *Florida Dep't of Agriculture v. Bogorff*, 35 So. 3d 84 (Fla. 4th DCA 2010), *review denied*, 2010 WL 4304405 (Fla. Oct. 28, 2010).

Moreover, section 57.041, Florida Statutes, applies to all civil actions *except* those that are governed by specific statutes containing more particular provisions concerning the taxation of costs. *See Morales v. Rosenberg*, 919 So. 2d 476, 480 (Fla. 3d DCA 2005). Sections 73.091 and 73.092 specifically relate to condemnation proceedings, including inverse condemnation proceedings. *See Volusia County v. Pickens*, 435 So. 2d 247, 248 (Fla. 5th DCA 1983). Those statutes govern these proceedings.

Affirmed.

POLEN and STEVENSON, JJ., concur.

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Appeal of a non-final order from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Ronald J. Rothschild, Judge; L.T. Case No. 00-18394 08 CACE.

Wesley R. Parsons, Jack R. Reiter and Veronica Tejada Lacayo of Yoss, LLP, Miami, for appellant.

Robert C. Gilbert and Bruce S. Rogow of Alters Law Firm, P.A., Miami, Julie H. Littky-Rubin of Lytal, Reiter, Clark, Fountain & Williams, LLP, West Palm Beach, Jamie Alan Cole of Weiss Serota Helfman Pastoriza Cole & Boniske, P.A., Fort Lauderdale, and Michael J. Pucillo of Berman DeValerio, Palm Beach Gardens, for appellees.

Not final until disposition of timely filed motion for rehearing.