

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

THE LAKE HAMILTON LAKESHORE)
OWNERS ASSOCIATION, INC., a Florida)
not-for-profit corporation, on behalf of its)
Members,)
)
Appellant,)
)
v.)
)
WAYNE L. NEIDLINGER, d/b/a Captain)
Fred's Airboat Nature Tours; and LAKE)
HAMILTON COMMERCE & STORAGE)
CENTER, INC., a Florida corporation,)
)
Appellees.)
_____)

Case No. 2D15-1402

Opinion filed February 24, 2016.

Appeal from the Circuit Court for Polk
County; John M. Radabaugh, Judge.

Douglas A. Lockwood, III, and Alexander M.
Landback of Straughn & Turner, P.A.,
Winter Haven, for Appellant.

Daniel P. Rooney of the Law Office of Allan
L. Casey, Winter Haven, for Appellee
Wayne L. Neidlinger.

No appearance for Appellee Lake Hamilton
Commerce & Storage Center, Inc.

LaROSE, Judge.

The Lake Hamilton Lakeshore Owners Association (the Association) sued Wayne Neidlinger, d/b/a Captain Fred's Airboat Nature Tours (Mr. Neidlinger), alleging that his airboat activities on Lake Hamilton constituted a nuisance. The trial court dismissed the complaint with prejudice, finding that state law preempted the claim. The trial court also awarded Mr. Neidlinger attorney's fees pursuant to section 57.105, Florida Statutes (2014). The Association appealed the order dismissing the complaint and, in this case, separately appealed the order granting attorney's fees.

We reversed the order of dismissal in Lake Hamilton Lakeshore Owners Assoc. v. Neidlinger, No. 2D14-5611, 2015 WL 9487589 (Fla. 2d DCA Dec. 30, 2015). Consequently, we must set aside the order granting attorney's fees. See Fieldstone v. Chung, 416 So. 2d 11, 12 (Fla. 3d DCA 1982); Huie v. Dent & Cook, P.A., 635 So. 2d 111 (Fla. 2d DCA 1994) (holding that suit that is not frivolous at its inception does not justify award of attorney's fees as sanctions).

Reversed.

CASANUEVA and LUCAS, JJ., Concur.