

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

FLORIDA INSURANCE GUARANTY)
ASSOCIATION, as statutory successor in)
interest to HomeWise Preferred Insurance)
Company,)
)
Appellant,)
)
v.)
)
)
DANIEL CARMAN and THERESA)
CARMAN,)
)
Appellees.)
)
)
_____)

Case No. 2D19-141

Opinion filed June 12, 2020.

Appeal from the Circuit Court for
Hillsborough County; Rex M. Barbas, Judge.

Dorothy V. DiFiore and Karen S. Shimonsky
of Quintairos, Prieto, Wood & Boyer, P.A.,
Tampa, for Appellant.

Kurt J. Rosales and George A. Vaka of Vaka
Law Group, P.L., Tampa, for Appellees.

NORTHCUTT, Judge.

Florida Insurance Guaranty Association (FIGA) appeals an order awarding
Daniel and Theresa Carman attorney's fees and costs incurred in sinkhole litigation.

We reverse based on this court's recent decision in Heid v. Florida Insurance Guaranty Ass'n, 45 Fla. L. Weekly D523 (Fla. 2d DCA Mar. 6, 2020).

In 2011, the Carmans reported sinkhole damage to their insurance carrier, HomeWise Preferred. HomeWise investigated and concluded that there was no sinkhole activity. FIGA assumed responsibility for administering the Carmans' claim later in 2011, when HomeWise became insolvent. FIGA did not pay the Carmans' claim, and the Carmans filed suit against FIGA in March 2014. In June 2014, FIGA accepted the findings and recommendations of a neutral evaluator and agreed to cover the claim. FIGA paid for \$214,485.32 in repairs.

The Carmans moved for attorney's fees and costs under sections 631.70 and 627.428, Florida Statutes (2011). The circuit court granted the Carmans' motion, concluding that FIGA affirmatively denied the sinkhole claim when it filed its answer and affirmative defenses to the Carmans' complaint in May 2014 and that the Carmans were entitled to fees under section 631.70. The court awarded \$63,144.30 in fees and costs.

On appeal, FIGA contends that the language of section 631.54(3)(c) prohibits FIGA from paying attorney's fees in connection with a sinkhole claim. It argues that this court should revisit its decision in Miller v. Florida Insurance Guaranty Ass'n, 200 So. 3d 200 (Fla. 2d DCA 2016). After the briefs were filed and the oral argument was held in this case, this court decided Heid, which addressed the precise issue raised by FIGA in this case. In Heid, this court held that section 631.54(3)(c) is the more specific statute that controls over section 631.70 and that section 631.54(3)(c) prevents a homeowner from recovering attorney's fees from FIGA in connection with a sinkhole loss. 45 Fla. L. Weekly at D523. We noted that this court's discussion of sections

631.54(3)(c) and 631.70 in Miller was nonbinding dicta. 45 Fla. L. Weekly at D523. We also concluded that section 631.54(3)(c) prevents homeowners from receiving awards of costs against FIGA. 45 Fla. L. Weekly at D523.

Bound by Heid, we conclude that it was error to award attorney's fees and costs to the Carmans. As we did in Heid, we certify the following question as one of great public importance:

DOES THE LANGUAGE IN SECTION 631.54(3)(c)
REGARDING ATTORNEY'S FEES IN CONNECTION WITH
A SINKHOLE LOSS OPERATE TO PREVENT A SINKHOLE
CLAIMANT FROM RECEIVING FEES FROM FIGA UNDER
SECTION 631.70?

In light of our decision, we need not reach the remaining issues raised by FIGA.

Reversed and remanded; question certified.

SLEET, J., and CASE, JAMES R., ASSOCIATE SENIOR JUDGE, Concur.