

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

RAY T. MAURIELLO and TINA A. MAURIELLO,

Appellants,

v.

THE PROPERTY OWNERS ASSOCIATION OF
LAKE PARKER ESTATES, INC.,

Appellee.

No. 2D21-500

April 13, 2022

Appeal from the County Court for Pasco County; Frank I. Grey,
Judge.

Daniel A. Harris of Daniel A. Harris, P.A., Tampa, for Appellants.

Adam C. Gurley of Rabin Parker Gurley, P.A., Clearwater, for
Appellee.

KELLY, Judge.

At issue in this appeal is whether the trial court erred when it
determined The Property Owners Association of Lake Parker
Estates, Inc. (the Association), was entitled to prevailing party

attorney's fees in an action in which it sought a mandatory injunction against Ray and Tina Mauriello. The Association's action alleged the Mauriellos were not maintaining their lawn and landscaping in good condition as required by the Association's Declaration and Design Review Manual. The complaint sought a mandatory injunction ordering the Mauriellos to remove the weeds and then continually treat for weeds, resod the lawn, regularly mow the lawn, and trim the bushes and hedges on the property "to a neat condition."

The Mauriellos and the Association litigated over the condition of the property for years. The Mauriellos tried unsuccessfully to have the suit dismissed or to have summary judgment entered in their favor arguing the Association was not entitled to a mandatory injunction because it had an adequate remedy at law. In support, they cited the Association's Declaration which contains the following provision:

Section 14. Special Assessment for Maintenance Obligations of Owners. In the event an Owner obligated to maintain, replace or repair a Boundary Wall, or portion thereof, pursuant to this Declaration shall fail to do so, or should an Owner fail to perform any maintenance, repair or replacement required under the terms of this Declaration, the Association, upon ten (10)

days prior written notice sent certified or registered mail, return receipt requested, or hand delivered, may have such work performed, and the cost thereof shall be specifically assessed against such Lot, which assessment shall be secured by the lien set forth in Section 9 of this Article VI.

They argued that under this provision, the Association had the ability to remedy the condition and assess them for the cost to do so.

The trial court rejected this argument, and the litigation continued. Eventually the Mauriellos sold the property. As a result, the Association filed a third amended complaint naming the new owner as a defendant, but it did not dismiss the Mauriellos and instead continued to seek a mandatory injunction against them requiring them to cure the violations and maintain the property.

The Mauriellos again sought summary judgment, this time adding to their previous arguments the fact they were no longer the property owners. Therefore, they were not responsible for the condition of the property, they had no right to maintain the property, and the court could not order them to do so. In response, the Association asserted that the case had become moot because the new owner had cured the violations. Because the case was

moot, the Association asserted summary judgment was improper and the "only remaining justiciable issue before the court" was who was the prevailing party for the purposes of attorney's fees.¹

Rather than proceed to summary judgment, the Association agreed to dismiss the suit. The dismissal came nearly a year after the property was sold and was only as to the Mauriellos because the Association had never served the new owner and thus it was not a party to the lawsuit.

In support of its motion for fees the Association argued:

Voluntary compliance obtained only after the Association is forced to commence legal action is the functional equivalent of a judgment or verdict in the Association's favor, thus making the Association the prevailing party.

Here, the Mauriellos sold the Property . . . during the course of the litigation, and [the new owner] subsequently cured the violations at issue. Ultimately, the [Mauriellos'] untimely and volitional compliance as evidenced by their having substantially cured the violations noted in the Association's Complaint(s) after the commencement of this action renders the Association the prevailing party. As such, the Association is entitled to an award of reasonable attorneys' fees and costs to be paid by the [Mauriellos] pursuant to Florida law.

¹ The Association sought prevailing party fees pursuant to sections 720.305 and 720.311, Florida Statutes (2019).

The Association acknowledged that generally when a plaintiff voluntarily dismisses an action, the defendant is the prevailing party, but it asserted that it fell within an exception to that rule and that the court should look beyond the dismissal to determine whether it had succeeded on the primary issue in the litigation. *See, e.g., Tubbs v. Mechanik Nuccio Hearne & Wester, P.A.*, 125 So. 3d 1034, 1040-41 (Fla. 2d DCA 2013); *Walter D. Padow, M.D., P.A. v. Knollwood Club Ass'n*, 839 So. 2d 744, 745-46 (Fla. 4th DCA 2003). The Association argued the only pertinent question was whether the violations were remedied after the litigation was commenced.

The difficulty with the Association's position is obvious. The alleged violations were *not* remedied by the Mauriellos—the new owner cured the alleged violations. This may be why the Association abandoned this argument even before the hearing on its fee motion and has not resurrected it on appeal. Instead, it now argues:

[T]he relevant inquiry here is very limited in scope: [I]s the case moot and, if so, did the [Mauriellos'] volitional act render the case moot? If both questions are answered in the affirmative, the Association is the prevailing party such that it is entitled to an award of

fees and costs. It is undisputed that the [Mauriellos'] decision to sell their property rendered this case moot.²

In ruling on the fee motion, the trial court agreed with the Association's concession that the Mauriellos should have been dismissed from the lawsuit after they sold the property. Because of this, the trial court found the Mauriellos were prevailing parties in part and awarded them fees from the time the third amended complaint was filed until the time the case was dismissed. It also found that notwithstanding the voluntary dismissal, the Association was the prevailing party under the second amended complaint because the Mauriellos' "volitional act" in selling their home rendered the action moot. Implicit in this ruling is the court's rejection of the Mauriellos' argument that none of the Association's complaints ever stated a proper claim for injunctive relief.

We address this latter argument first. The Mauriellos argue, as they did in the trial court, that neither the third amended complaint nor the second amended complaint ever stated a cause of

² This stands in contrast to the argument set forth in the Association's fee motion in which it asserted that it was not the sale of the property that rendered the case moot; it was the fact the violations were cured by the new owner.

action against them and that thus, under this court's decision in *Alorda v. Sutton Place Homeowners Ass'n*, 82 So. 3d 1077 (Fla. 2d DCA 2012), the Association cannot be considered a prevailing party. We agree *Alorda* is controlling.

In *Alorda*, we reversed an award of prevailing party attorney's fees to a homeowner's association under similar circumstances. Like the Mauriellos, the defendant homeowner in *Alorda* argued the association's complaint seeking a mandatory injunction did not state a cause of action. 82 So. 3d at 1080-81. There, as here, the association's declaration gave it the option of remedying the alleged violation itself, assessing the owner for the cost, and if the owner failed to pay, placing a lien on the property and foreclosing if it remained unpaid. *Id.* at 1080. We see no meaningful distinction between *Alorda* and this case. As in *Alorda*, the Association cannot be considered a prevailing party because the trial court should have dismissed the complaint or entered summary judgment in favor of the Mauriellos at the outset.

Nor could the Association be considered a prevailing party under the reasoning adopted by the trial court. Referring to the second amended complaint, the trial court found that the

Association had prevailed up until the time the Mauriellos sold the property. The court then found that the sale of the Mauriellos' property rendered the action moot as to them. It linked the sale of the home to the eventual dismissal.

Generally, when a plaintiff voluntarily dismisses an action, the defendant is considered the prevailing party. *Thornber v. City of Fort Walton Beach*, 568 So. 2d 914, 919 (Fla. 1990). However, it is not automatic, and the court may look behind the voluntary dismissal to determine whether the party seeking fees is a "substantially prevailing party." *See Tubbs*, 125 So. 3d at 1041. The test for determining whether a party has prevailed is whether the party "succeed[ed] on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Moritz v. Hoyt Enters., Inc.*, 604 So. 2d 807, 809-10 (Fla. 1992) (alteration in original) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). When an action is voluntarily dismissed because it has become moot, the court can look to the results, not simply the voluntary dismissal, to determine which party prevailed. *See Tubbs*, 125 So. 3d at 1041.

Contrary to the trial court's conclusion that the sale prompted the dismissal for mootness, the record shows the Association did not dismiss the lawsuit when the Mauriellos sold their home. Instead, it added the new owner to the complaint and continued to seek a mandatory injunction against the Mauriellos. It only dismissed the lawsuit as moot after the new owner cured the alleged violations. Thus, the Association may have obtained the relief it sought, but it came from the new owner, not the Mauriellos. Therefore, it was not a prevailing party. *Cf. Thornber*, 568 So. 2d at 919 (explaining that although the plaintiff obtained some relief, that relief did not come from the defendants he voluntarily dismissed and therefore, those defendants were the prevailing parties, not the plaintiff).

For these reasons, we reverse the portion of the final judgment awarding attorney's fees to the Association. On remand, the trial court should reconsider the award of fees to the Mauriellos in light of our decision.

Reversed and remanded with instructions.

KHOUZAM and ROTHSTEIN-YOUAKIM, JJ., Concur.

Opinion subject to revision prior to official publication.