

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

CHRISTYANE WHITSON,

Appellant,

v.

ADVOCATE 3413, LLC,

Appellee.

No. 2D21-609

November 16, 2022

Appeal from the Circuit Court for Hillsborough County; James M. Barton and Frances Perrone, Judges.

Joseph H. Lee of Lee Law Group, LLC, Tampa (withdrew after briefing), for Appellant.

Christyane Whitson, pro se.

Ross M. Mabery of Perry Gruman, P.A., Tampa, for Appellee.

VILLANTI, Judge.

Christyane Whitson appeals from a final judgment of partition of real property following the entry of summary judgment in favor of Advocate 3413, LLC, successor in interest to Dixon Whitson. We

affirm the final judgment without comment but write to address the parties' competing motions for appellate attorney's fees.

In their motions, both parties assert entitlement to appellate attorney's fees pursuant to section 64.081, Florida Statutes (2016).

That statute provides:

Every party shall be bound by the judgment to pay a share of the costs, including attorneys' fees to plaintiff's or defendant's attorneys or to each of them commensurate with their services rendered and of benefit to the partition, to be determined on equitable principles in proportion to the party's interest.

Section 64.081 is not a prevailing party statute. To the contrary:

Pursuant to this statute, each party to a partition action must pay a share of the attorney's fees to the plaintiff's attorney, the defendant's attorney, *or to each of them*. The share is to be set with reference to the services rendered by the attorney(s) that are of benefit to the partition—"to be determined on equitable principles in proportion to the party's interest."

Fernandez-Fox v. Reyes, 79 So. 3d 895, 897 (Fla. 5th DCA 2012)

(quoting § 64.081). Moreover, the apportionment of attorney's fees

under section 64.081 "has been interpreted to mean that the

majority interest should bear the greater proportion of the fees

awarded to his own attorney, as well as to the attorney for the

minority interest, and the minority interest similarly should bear a

share of fees in proportion to his interest." *Id.* (quoting *Deshommes v. Bazin*, 421 So. 2d 806, 807 (Fla. 3d DCA 1982)); *see also Parker v. Shecut*, 597 S.E.2d 793 (S.C. 2004) (holding that entitlement to appellate attorney's fees in a partition proceeding must be determined by the circuit court (citing S.C. Code Ann. § 15-61-110 (1976), which states, "The court of common pleas may fix attorneys' fees in all partition proceedings and, as may be equitable, assess such fees against any or all of the parties in interest.")).

Although it has been held that a party's attorney in a partition proceeding did not render services "of benefit to the partition" where the party's pleadings were frivolous, *see Daugharty v. Daugharty*, 441 So. 2d 1160, 1161 (Fla. 1st DCA 1983), in this case, Advocate 3413 has not alleged that Whitson's appeal was frivolous, and we specifically find that it was not.

Accordingly, we remand both parties' motions to the trial court, which shall determine the parties' relevant entitlement to appellate attorney's fees pursuant to section 64.081. If entitlement is found, the court may apportion such fees as it determines, in its discretion, to be reasonable, just, and equitable. *See Fernandez-Fox*, 79 So. 3d at 896 ("The amount of attorney's fees to be awarded

in a partition action is within the discretion of the trial court. The award is based upon '[t]he service performed, the responsibility incurred, the nature of the service, the skill required, the circumstances under which it was rendered, the customary charges for like service, the amount involved, and the ability of litigants to respond.' " (alteration in original) (first citing *Hasle v. Maasbrock*, 120 So. 2d 794 (Fla. 3d DCA 1960); and then quoting *Adler v. Schekter*, 197 So. 2d 46, 49 (Fla. 3d DCA 1967))). The respective merit of the parties' arguments in this appeal shall not be a factor in that determination.

Advocate 3413's motion for costs is stricken. See Fla. R. App. P. 9.400(a). We additionally observe that pursuant to section 64.081, costs are subject to the trial court's discretion and that the same equitable principles discussed above apply.

Affirmed; remanded with instructions.

SLEET and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.