

Third District Court of Appeal

State of Florida

Opinion filed October 8, 2014.
Not final until disposition of timely filed motion for rehearing.

No. 3D12-2605
Lower Tribunal No. 12-366-K

The William W. Zeigler Trust, et al.,
Appellants,

vs.

Cofran Sunday Sunshine Cannon, etc., et al.,
Appellees.

An Appeal from the Circuit Court for Monroe County, David J. Audlin, Jr.,
Judge.

Horan, Wallace & Higgins and David Paul Horan (Key West), for
appellants.

Stones & Cardenas and Adele V. Stones (Key West), for appellees.

Before SHEPHERD, C.J., and WELLS and LAGOA, JJ.

SHEPHERD, Chief Judge.

This is an appeal from a final judgment construing a Deed Granting
Easement over property in Monroe County. The parties stipulated that their cross-

motions for summary judgment “involve exclusively questions of law, [that] no genuine issue of material fact is involved, and that the issue before the court is the construction of the . . . Deed Granting Easement.” The trial court ruled in favor of appellees. However, the parties overlooked the dispositive question: Did a valid easement exist in the first place? See Winthrop v. Wadsworth, 42 So. 2d 541, 543-44 (Fla. 1949); One Harbor Fin. Ltd. Co. v. Hymes Props., LLC, 884 So. 2d 1039, 1044 (Fla. 5th DCA 2004); Hensel v. Aurilio, 417 So. 2d 1035, 1037 (Fla. 4th DCA 1982); see also 2 William Blackstone, Commentaries *46-47; 20 Fla. Jur. 2d Easements § 1 (2014)

Accordingly, the judgment below is reversed and the cause remanded for further proceedings as may be required to determine the issue.