Third District Court of Appeal

State of Florida

Opinion filed December 18, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-0631
Lower Tribunal No. 17-0166-M

Biza, Corporation, d/b/a Galway Bay Mobile Home Park,
Appellant,

vs.

Galway Bay Mobile Homeowners Association, Inc.,
Appellee.

An Appeal from non-final orders from the Circuit Court for Monroe County, Mark H. Jones, Judge.

Lutz, Bobo & Telfair, P.A., and David D. Eastman and Carol S. Grondzik (Tallahassee), for appellant.

Kopelowitz Ostrow Ferguson Weiselberg Gilbert, and Alexis Fields (Ft. Lauderdale), for appellee.

Before FERNANDEZ,[1] SCALES, and LINDSEY, JJ.

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[1] Judge Fernandez did not participate in Oral Argument.

LINDSEY, J.

This appeal arises out of a dispute between Appellee Galway Bay Mobile Homeowners Association (the "Association") and Appellant Biza, Corp., the owner of the Galway Bay Mobile Home Park. Biza appeals (1) the trial court's order denying its motion for summary judgment and (2) the trial court's order denying its motion to certify class. For the reasons set forth below, we dismiss the appeal with respect to the order denying Biza's motion for summary judgment for lack of jurisdiction. And we affirm the order denying Biza's motion for certification because actions brought by mobile homeowners' associations under Florida Rule of Civil Procedure 1.222 are not subject to the class certification requirements of Florida Rule of Civil Procedure 1.220.

I. BACKGROUND AND PROCEDURAL HISTORY

The underlying dispute stems from Biza's attempt to raise the lot rent for mobile homeowners by 18%. This dispute is governed by the Florida Mobile Home Act, Chapter 723, Florida Statutes (2019). Pursuant to section 723.037, which sets forth a mandatory pre-suit dispute resolution process, a majority of the mobile homeowners designated a five-member negotiating committee to meet with and discuss the dispute with Biza. A majority of homeowners also signed a Statement of Dispute, contesting the reasonableness of the rental amount increase. After the negotiating committee failed to resolve the dispute, a majority of the homeowners

signed a petition to initiate mediation through the Department of Business and Professional Regulation.

While the parties worked to resolve the dispute, 50 out of the 68 mobile homeowners agreed, in writing, to form the Galway Bay Mobile Homeowners Association. These homeowners agreed to be "bound by the provisions of the articles of incorporation and bylaws of the [A]ssociation." Both the Articles of Incorporation and the Bylaws explicitly state that the Association was organized to represent the mobile homeowners "in all matters relating to Chapter 723 of the Florida Statutes (the 'Florida Mobile Home Act')."

On July 13, 2017, the Association filed a three-count complaint on the homeowners' behalf, alleging unreasonable rental amount increase, failure to maintain common areas, and violation of the obligation of good faith. The complaint was brought pursuant to Florida Rule of Civil Procedure 1.222, which allows a mobile homeowners' association to "institute, maintain, settle, or appeal actions or hearings in its name on behalf of all homeowners concerning matters of common interest . . . ."

In its answer and affirmative defense, Biza asserted the Association lacked standing for failing to strictly comply with section 723.037(1), Florida Statutes, which provides, in pertinent part, as follows:

> The homeowners' association shall have no standing to challenge the increase in lot rental amount . . . unless a

> majority of the affected homeowners agree, in writing, to such representation.

Biza also filed a motion to certify class[2] and a motion for summary judgment based on the Association's alleged lack of standing.

In response to Biza's motion for summary judgment, the Association filed affidavits signed by a majority of homeowners, each stating, in part, that the individual affiant had not "withdrawn . . . authorization of the [Association]'s representation of [his/her] interest in challenging the Rent Increase" and that the Association was authorized to "represent such interest, whether in this lawsuit, or otherwise." The Association also filed several exhibits, including the Statement of Dispute; the individually-signed Agreements to Form the Association; the Association's Bylaws; the Association's Articles of Incorporation; a notice to the Association's members on May 20, 2017, addressing the potential need for filing a lawsuit if mediation proved unsuccessful; and a notice to the members on August 16, 2017, informing them that a complaint had been filed.

Following a hearing, the trial court found that the Association satisfied section 723.037(1)'s written authorization requirement. In so doing, the trial court

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[2] It is unusual for *the Defendant* to seek class certification. Cf. Amber Glades, Inc. v. Leisure Associates Ltd. P'ship, 893 So. 2d 620, 622 (Fla. 2d DCA 2005) ("It should occur to the reader that the positions of the parties in this case are oddly backwards."). The Association claims that Biza is attempting to use the class action mechanism to disqualify Legal Services as the Association's counsel because Legal Services cannot represent a class action. Biza's motive is irrelevant to our analysis.

highlighted the documents in the Association's response to the motion for summary judgment, which conferred standing on the Association.

The trial court also denied Biza's motion to certify class, concluding that an evidentiary hearing was not required because the order on summary judgment "found as a matter of law that the requirements of section 723.037(1), Florida Statutes ha[d] been satisfied and . . . [the] Association was authorized to represent the homeowners." It further held that "an action initiated by a mobile homeowners' association pursuant to Fla. R. Civ. P. 1.222 is not subject to the class certification requirements of Fla. R. Civ. P. 1.220." It is from these two non-final orders that Biza now appeals.

II. JURISDICTION

The Association contends the trial court's order denying summary judgment is not an appealable order.[3] We agree. An order denying summary judgment is not one of the enumerated categories of appealable non-final orders found in Florida Rule of Appellate Procedure 9.130. See Miami-Dade County v. Pozos, 242 So. 3d 1152, 1153 (Fla. 3d DCA 2017) ("As a general rule, a party may not seek interlocutory review by appeal of a nonfinal order, including an order denying a motion for summary judgment."). This is true even if the non-appealable order is

[3] The Association has filed a motion to dismiss Biza's appeal of the order denying summary judgment.

intertwined with a non-final order that is appealable. See Horton v. Horton, 179 So. 3d 459, 460 (Fla. 1st DCA 2015) ("[W]hen an order contains one ruling that is subject to interlocutory appeal under Rule 9.130, other rulings that are contained in the same written order may not 'tag along' and are not reviewable on interlocutory appeal."); see also Swartz v. Citimortgage, Inc., 97 So. 3d 267, 268 n.1 (Fla. 5th DCA 2012) ("Even if the two rulings had been made in the same order, the issues relating to denial of the motion to dismiss would not be properly before us.").

In its Response to the Association's motion to dismiss, Biza contends that the order denying summary judgment provides a sufficient basis to invoke this Court's certiorari jurisdiction. We disagree. See Miami-Dade County v. Perez, 988 So. 2d 40, 41 (Fla. 3d DCA 2008) (holding that orders denying a motion for summary judgment do not meet the criteria for review via certiorari); Smith v. Glisson, 468 So. 2d 394, 395 (Fla. 3d DCA 1985) ("[S]ince the alleged error may be considered on a subsequent appeal from an adverse final judgment if one is entered against the present appellants, it is inappropriate to treat this proceeding as a petition for certiorari.").

With respect to the order denying Biza's motion to certify class, we have jurisdiction pursuant to Florida Rule of Appellate Procedure 9.130(a)(3)(C)(vi), which authorizes review of non-final orders that determine "whether to certify a class." See Amber Glades, Inc. v. Leisure Associates Ltd. P'ship, 893 So. 2d 620,

624 (Fla. 2d DCA 2005) ("Both of the parties have treated this proceeding as an appeal from a nonfinal order that certifies a class. See Fla. R. App. P. 9.130(a)(3)(C)(vi). We are inclined to believe that this treatment is probably correct.").

III. STANDARD OF REVIEW

Generally, standing is a legal issue subject to de novo review; however, "[t]o the extent that the trial court's standing determination involves factual findings, we uphold such findings only if supported by competent, substantial evidence." Citibank, N.A. v. Olsak, 208 So. 3d 227, 229 (Fla. 3d DCA 2016) (citing Verneret v. Foreclosure Advisors, LLC, 45 So. 3d 889, 891 (Fla. 3d DCA 2010)). We review the trial court's order denying class certification for an abuse of discretion. Easter v. City of Orlando, 249 So. 3d 723, 729 (Fla. 5th DCA 2018).

V. ANALYSIS

The issues before us on appeal are (1) whether the trial court erred in finding that the Association had standing to bring this action and (2) whether the trial court erred in denying Biza's motion to certify class without conducting an evidentiary hearing. We address them in turn.

1. Standing

Biza contends that the Association has no standing to bring a lawsuit challenging the increase in lot rental amount because it failed to secure the written

consent of the majority of the mobile homeowners as required by section 723.037(1). The Association argues that the phrase "standing to challenge" as used in the statute is ambiguous and should be interpreted to mean capacity or authority to sue as opposed to legal standing to bring a lawsuit. Although we disagree with the Association's interpretation, we nevertheless conclude that the trial court's finding that the Association had legal standing was supported by competent substantial evidence.

Standing is a question of whether "an entity ha[s] sufficient interest in the outcome of litigation to warrant the court's consideration of its position." Keehn v. Joseph C. Mackey & Co., 420 So. 2d 398, 400 (Fla. 4th DCA 1982) (citing Argonaut Ins. Co. v. Commercial Standard Ins. Co., 380 So. 2d 1066 (Fla. 2d DCA 1980)). Pursuant to section 723.037(1), a homeowners' association does not have standing to challenge a lot rent increase unless a majority of the affected homeowners agree, in writing, to be represented by the homeowners' association.

In Sun Valley Homeowners, Inc. v. American Land Lease, Inc., 927 So. 2d 259, 264 (Fla. 2d DCA 2006), the Second District explained the "standing to challenge" language found in section 723.037(1) is a "broad formulation" that includes standing to initiate a lawsuit: "Under the statutory scheme, the filing of a lawsuit constitutes a 'challenge' to which the standing requirement of section 723.037(1) applies." We agree with this interpretation.

Because section 723.037(1) imposes a legal standing requirement for a homeowners' association to challenge unreasonable increases in lot rent amounts, in order to maintain the underlying lawsuit, the Association must have had the written approval of the majority of affected homeowners. The trial court determined that the Association satisfied this requirement, and we conclude that this determination was supported by competent substantial evidence.

Here, it is undisputed that a negotiating committee was designated to represent the homeowners' interests in meetings with Biza pursuant to the Mobile Home Act. It is also undisputed that a majority of the homeowners authorized the committee to mediate the dispute. Moreover, a majority also signed a Statement of Dispute, contesting the reasonableness of the rental amount increase. But not only is there evidence that a majority of the homeowners agreed, in writing, to have their interests represented in meetings with Biza and in mediation, the evidence demonstrates that a majority also agreed to allow the Association to represent their interests in a lawsuit.

In response to Biza's motion for summary judgment, the Association filed numerous documents to prove its standing. Importantly, while the parties engaged in the mandatory pre-suit process, over two-thirds of the homeowners agreed, in writing, to form the Association. According to the Articles of Incorporation, the Association was formed for the express "purpose of serving as representative of the

mobile home homeowners . . . in all matters relating to Chapter 723 of the Florida Statutes . . . ." Similarly, the Bylaws also explicitly state that "[t]he Association has been organized to serve as the representative of the mobile homeowners . . . in the Mobile Home Park in all matters relating to Chapter 723 . . . ." Further, a majority of the homeowners signed individual affidavits after the fact, explaining that "I have not withdrawn my authorization of the [Association's] representation of my interest in challenging the Rent Increase, and I continue to authorize the [Association] to represent such interest, whether in this lawsuit, or otherwise." Based on these documents, we have no trouble concluding that the trial court's determination that the Association satisfied section 723.037(1)'s standing requirement was supported by competent substantial evidence.

2. Biza's Motion to Certify the Class

Biza argues that the trial court erred in failing to conduct an evidentiary hearing before denying its motion for class certification. We disagree.

Florida Rule of Civil Procedure 1.222 was first adopted by the Florida Supreme Court in Lanca Homeowners, Inc. v. Lantana Cascade of Palm Beach, Ltd., 541 So. 2d 1121 (Fla. 1988). [4] See id. at 1123 ("[T]he unique features of mobile home residency call for an effective procedural format for resolving disputes

[4] The rule was amended once in 1993 to make minor, editorial changes.

between park owners and residents concerning matters of shared interest"). The Rule provides as follows:

> A mobile homeowners' association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all homeowners *concerning matters of common interest* . . . . If the association has the authority to maintain a class action under this rule, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action under this rule. Nothing herein limits any statutory or common-law right of any individual homeowner or class of homeowners to bring any action which may otherwise be available. *An action under this rule shall not be subject to the requirements of rule 1.220*.

(Emphasis added).

By its plain language, Rule 1.222 does not require an evidentiary hearing. Similarly, Florida Rule of Civil Procedure 1.220, the traditional rule governing class actions, does not require an evidentiary hearing prior to the entry of an order determining class representation. See Ernie Haire Ford, Inc. v. Gilley, 903 So. 2d 956, 958 (Fla. 2d DCA 2005). Yet, evidentiary hearings are generally used in most Rule 1.220 class certification cases. That is because an order granting class certification must have an evidentiary basis. Id. at 959. However, the same is not true for actions under Rule 1.222 because those actions are explicitly not subject to the requirements of Rule 1.220. Fla. R. Civ. P. 1.222 ("An action under this rule shall not be subject to the requirement of rule 1.220.").

The Florida Supreme Court has explained the purpose behind this distinction when addressing Rule 1.221, which governs homeowners' and condominium associations. See The Florida Bar, 353 So. 2d 95 (Fla. 1977). The Court found that "public policy is advanced by expressly declaring condominium association members a class as a matter of law without the necessity for pleading or proving the traditional seven class action elements . . . . [E]lements traditionally required to establish the efficacy of a class are inherent in a condominium association relationship making pleading and proof of such elements unnecessary and burdensome." Id. at 97. The Court further held that "we believe[] that as to controversies affecting the matters of common interest . . . , the condominium association, without more, should be construed to represent the class composed of its members as a matter of law." Id.

The only two issues raised in the trial court were the parties' standing and common interest in the case. Standing was already addressed at the summary judgment hearing when the trial court reviewed the undisputed facts and found that the Association had standing. As such, the only issue left to be addressed was the common interest element in Rule 1.222. There is no dispute that the first two counts, unreasonable rental amount increase and failure to maintain common areas, concern matters of common interest. With respect to count three, violation of obligation of good faith under § 723.021, Biza argues that the allegations in the complaint address

individual claims specific to unnamed persons and are therefore not matters of common interest. However, because a violation of the Mobile Home Act's obligation of good faith and fair dealings concerns a matter of common interest to the entire class, we are unable to conclude that the trial court abused its discretion in failing to conduct an evidentiary hearing.

VI. CONCLUSION

For the reasons set forth above, we dismiss the appeal of the order denying Biza's motion for summary judgment for lack of jurisdiction and affirm the order denying Biza's motion for certification.

Affirmed.