

Third District Court of Appeal

State of Florida

Opinion filed July 1, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-782
Lower Tribunal No. 18-33816

Lazaro Monteagudo, et al.,
Petitioners,

vs.

Saul Cimpler,
Respondent.

A Case of Original Jurisdiction – Prohibition.

Giasi Law, P.A., and Melissa A. Giasi (Tampa), for petitioners.

Pugliese Law, P.A., and Marc C. Pugliese, for respondent.

Before **SALTER, LINDSEY** and **GORDO, JJ.**

SALTER, J.

Lazaro and Libia Monteagudo, plaintiffs below, and four other petitioners¹, seek a writ of prohibition to preclude the circuit court from attempting to exercise further jurisdiction over certain matters in a residential insurance case against Citizens Property Insurance Corporation (“Citizens”). The respondent, Saul Cimbler, was the neutral umpire on the three-person appraisal panel to which the Monteagudos’ insurance claim against Citizens was assigned.

Cimbler, a non-attorney and non-party to the circuit court case below (and the respondent here), claims a right to bring his own claims for his fees, costs, and other vaguely described damages into a case that concluded when the appraisal panel made its award and the Monteagudos voluntarily dismissed the case. To the extent that the trial court specifically reserved jurisdiction over any claims of the parties for their attorney’s fees, that reservation has no bearing on Cimbler’s claims or the pending petition.

We find no indication that, in the aftermath of the voluntary dismissal, the trial court has agreed to exercise jurisdiction over Cimbler’s amended motion for sanctions. Our precedent is clear that the voluntary dismissal divested the trial court of further jurisdiction save (a) as expressly reserved for an award of any timely motions by the parties for attorney’s fees, or (b) certain limited exceptions, none of

¹ The four other petitioners are a law firm and attorneys from that firm who represented the Monteagudos in the homeowners’ insurance dispute below.

which are applicable here. See, e.g., Pino v. Bank of New York, 121 So. 3d 23, 41-43 (Fla. 2013) (stating that a voluntary dismissal generally deprives the trial court of further jurisdiction; an exception applies to a motion for sanctions under section 57.105 filed before the notice of voluntary dismissal); Sidlosca v. Olympus Ins. Co., 276 So. 3d 987, 988 (Fla. 3d DCA 2019) (same); Bank of New York Mellon v. Poker Run Acquisitions, Inc., 208 So. 3d 199, 202 (Fla. 3d DCA 2016) (noting an exception to the Pino rule regarding continuing jurisdiction where “parties, prior to dismissal, present a settlement agreement to the trial court for approval and the trial court enters an order of dismissal predicated on the parties’ settlement agreement, the trial court retains jurisdiction to enforce the terms of the settlement agreement”); Select Builders of Fla., Inc. v. Wong, 367 So. 2d 1089, 1091 (Fla. 3d DCA 1979) (sanctions sought for conduct of a party amounting to a fraud on the court).

Sanctions and fees pursuant to section 57.105 pertain to parties and their attorneys. These cases plainly do not address claims by non-party, non-attorney appraisers who have performed contractual services for the insureds and insurer and claim that they have not been paid what they allege they are entitled to be paid (as well as their own attorney’s fees for pursuing such claims). Cimbler may of course pursue whatever claims he wishes in a new action, and we express no opinion regarding the merits of any such claim.

A case in which the trial court and this Court addressed compensation claims by an appraiser is Dynamic Public Adjusters, Inc. v. Rodriguez, 155 So. 3d 384 (Fla. 3d DCA 2014). In that case, however, the appraisers had intervened and no notice of voluntary dismissal by the insureds had been filed. Id. at 386.

Finding no indication that the trial court has exercised jurisdiction over Cimble's claims following the notice of voluntary dismissal by the Monteagudos, much less that the trial court intends to exercise such jurisdiction prospectively, we dismiss the petition for legal insufficiency.

Petition dismissed.