

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Christyane Whitson v. Advocate 3413, LLC

No. 2D21-609, 2022 WL 16999878 (Fla. 2d DCA Nov. 16, 2022) · No. 2D21-609

SUMMARY

In a partition action, Florida Statute § 64.081 does not operate as a prevailing-party fee provision; instead, each party must pay a share of attorney's fees commensurate with services that benefit the partition, apportioned equitably in proportion to ownership interests. The court held that this standard governs appellate attorney's fees as well, and remanded for the trial court to determine entitlement and equitably apportion fees without considering which party prevailed on appeal. Fees may be denied only if the appeal is frivolous.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	Villanti; Sleet; Labrit
JURISDICTION	Florida
DOCKET	2D21-609
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a final judgment of partition following entry of summary judgment; both parties moved for appellate attorney's fees.
PRECEDENTIAL VALUE	published
PARTIES	Christyane Whitson v. Advocate 3413, LLC

TOPICS

[real estate](#)[attorney fees](#)[appellate procedure](#)[civil procedure](#)

PRACTICE AREAS

[Real Property](#)[Attorney's Fees](#)[Appellate Procedure](#)

QUESTIONS PRESENTED

1. Whether either party is entitled to appellate attorney's fees under section 64.081, Florida Statutes, in a partition action.
2. How such fees should be apportioned and determined on remand.

HOLDINGS

1. Section 64.081 is not a prevailing party statute; each party must pay a share of the attorney's fees to the plaintiff's or defendant's attorney commensurate with services rendered of benefit to the partition, determined on equitable principles in proportion to the party's interest. A party's attorney fees may be denied only if the pleadings are frivolous and thus not of benefit.

KEY QUOTATIONS

“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.” (at 2)

“Section 64.081 is not a prevailing party statute. To the contrary: ... 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.” (at 2)

“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.’” (at 2-3)

“The respective merit of the parties' arguments in this appeal shall not be a factor in that determination.” (at 4)

FACTUAL BACKGROUND

The case involves a partition action for real property. Advocate 3413, LLC, as successor in interest to Dixon Whitson, obtained summary judgment and a final judgment of partition. The appeal was not frivolous. The specific underlying facts of the partition dispute are not detailed in the opinion.

PROCEDURAL HISTORY

The Circuit Court for Hillsborough County entered a final judgment of partition of real property after granting summary judgment in favor of Advocate 3413, LLC. Christyane Whitson appealed. Both parties moved for appellate attorney's fees under section 64.081, Florida Statutes.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

Remand both parties' motions for appellate attorney's fees to the trial court to determine entitlement under section 64.081 and apportion fees equitably; the merit of appellate arguments shall not be a factor. Advocate 3413's motion for costs is stricken; costs are subject to trial court discretion under section 64.081.

CASES CITED

- Fernandez-Fox v. Reyes, 79 So. 3d 895 (Fla. 5th DCA 2012)
- Deshommes v. Bazin, 421 So. 2d 806 (Fla. 3d DCA 1982)
- Parker v. Shecut, 597 S.E.2d 793 (S.C. 2004)
- Daugharty v. Daugharty, 441 So. 2d 1160 (Fla. 1st DCA 1983)
- Hasle v. Maasbrock, 120 So. 2d 794 (Fla. 3d DCA 1960)
- Adler v. Schekter, 197 So. 2d 46 (Fla. 3d DCA 1967)

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