

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

- Whether either party is entitled to appellate attorney's fees under section 64.081, Florida Statutes, in a partition action.
- 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)

OPINION

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 2 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 3 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 4 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.