

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH  
DISTRICT**

**Lennox National Account Services, LLC v. Barry Claire and Staci  
Claire**

Lennox · No. 4D20-2797 · Decided December 22, 2021

**SUMMARY**

The Florida Fourth District Court of Appeal held that a defendant is entitled to taxable costs under Florida Rule of Civil Procedure 1.420(d) after the plaintiffs voluntarily dismiss claims against that defendant. The court reversed the denial of the defendant’s motion to tax costs and remanded for entry of an order granting the motion and a hearing on the amount of costs.

**CASE DETAILS**

|                              |                                                                                                                                                           |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>COURT</b>                 | District Court of Appeal of the State of Florida, Fourth District                                                                                         |
| <b>WRITING FOR THE COURT</b> | Forst, J.; Gross, J.; Kuntz, J.                                                                                                                           |
| <b>JURISDICTION</b>          | Florida                                                                                                                                                   |
| <b>DECIDED</b>               | December 22, 2021                                                                                                                                         |
| <b>DOCKET</b>                | 4D20-2797                                                                                                                                                 |
| <b>DISPOSITION</b>           | reversed_and_remanded                                                                                                                                     |
| <b>PROCEDURAL POSTURE</b>    | Defendant appealed the summary denial of its motion to tax costs after plaintiffs voluntarily dismissed their claims against defendant without prejudice. |
| <b>PRECEDENTIAL VALUE</b>    | Published opinion                                                                                                                                         |
| <b>PARTIES</b>               | Lennox National Account Services, LLC v. Barry Claire, Staci Claire                                                                                       |

**TOPICS**

costs civil procedure appellate procedure remedies

**PRACTICE AREAS**

civil procedure appellate procedure costs remedies

**QUESTIONS PRESENTED**

1. Whether a defendant is entitled to an award of taxable costs under Florida Rule of Civil Procedure 1.420(d) after the plaintiff voluntarily dismisses the action against that defendant without prejudice.

## HOLDINGS

1. A defendant is entitled to an assessment of costs under Florida Rule of Civil Procedure 1.420(d) when the plaintiff voluntarily dismisses the action as to that defendant.

## KEY QUOTATIONS

*“Rule 1.420(d) is unambiguous—costs are to be assessed in the action that is the subject of the voluntary dismissal.”*

## FACTUAL BACKGROUND

Barry Claire was allegedly injured while shopping at a store where Lennox's technicians were working on the rooftop. Barry and Staci Claire sued several parties for negligence and loss of consortium. The plaintiffs voluntarily dismissed their claims against Lennox without prejudice shortly before a scheduled hearing on Lennox's summary-judgment motion.

## PROCEDURAL HISTORY

Plaintiffs filed a negligence and loss-of-consortium action against several parties, including Lennox. After Lennox moved for summary judgment and shortly before the scheduled hearing, plaintiffs voluntarily dismissed their claims against Lennox without prejudice. Lennox then moved to tax costs, but the circuit court summarily denied the motion; the Fourth District reversed and remanded.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The circuit court must enter an order granting Lennox's motion to tax costs and conduct a hearing on the amount of costs to be awarded.

## CASES CITED

- Bis v. U.S. Bank National Association, 172 So. 3d 971, 972 (Fla. 4th DCA 2015)
- Wilson v. Rose Printing Co., 624 So. 2d 257, 258 (Fla. 1993)
- Fleet Services Corp. v. Reise, 857 So. 2d 273, 275 (Fla. 2d DCA 2003)

## OPINION

LENNOX NATIONAL ACCOUNT SERVICES, LLC v. BARRY CLAIRE  
PER CURIAM.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FOURTH DISTRICT

LENNOX NATIONAL ACCOUNT SERVICES, LLC,

Appellant, v.

BARRY CLAIRE and STACI CLAIRE,

Appellees. No. 4D20-2797 [December 22, 2021] Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County, Keathan B. Frink, Judge; L.T. Case No. CACE19-000502

(12).

Benjamin L. Bedard and Shelli A. Healy of Roberts, Reynolds, Bedard & Tuzzio, PLLC, West Palm Beach, for appellant. Matthew E. Haynes of Lytal, Reiter, Smith, Ivey & Fronrath, West Palm Beach, for appellees. FORST, J. Appellant Lennox National Account Services, LLC (“Defendant”) appeals the denial of its motion to tax costs following the voluntary dismissal of the tort action by appellees Barry Claire and Staci Claire (“Plaintiffs”). Defendant argues it was entitled to an award of taxable costs pursuant to Florida Rule of Civil Procedure 1.420(d). We agree and reverse accordingly. Barry Claire was allegedly injured while shopping at a store. At the time, Defendant’s technicians were working on the store’s rooftop. Plaintiffs filed a complaint for negligence and loss of consortium against several parties, including Defendant. Subsequently, Defendant moved for summary judgment and the motion was set for a hearing. A few hours before the hearing, Plaintiffs filed a notice of voluntary dismissal without prejudice as it related to Defendant. Following the dismissal, Defendant filed a motion to tax costs against Plaintiffs. The motion was summarily denied by the trial court. Florida Rule of Civil Procedure 1.420(d) provides in pertinent part that “[c]osts in any action dismissed under this rule shall be assessed and judgment for costs entered in that action, once the action is concluded as to the party seeking taxation of costs.” (emphasis added). We have held that “[r]ule 1.420(d) is unambiguous—costs are to be assessed in the action that is the subject of the voluntary dismissal.” *Bis v. U.S. Bank Nat’l Ass’n*, 172 So. 3d 971, 972 (Fla. 4th DCA 2015) (quoting *Wilson v. Rose Printing Co.*, 624 So. 2d 257, 258 (Fla. 1993)); see also *Fleet Servs. Corp. v. Reise*, 857 So. 2d 273, 275 (Fla. 2d DCA 2003) (“When [the plaintiff] filed its voluntary dismissal, [the defendant] became entitled to an award of ‘costs’ pursuant to Florida Rule of Civil Procedure 1.420(d).”). Thus, we reverse and remand for entry of an order granting Defendant’s motion to tax costs and a hearing on the amount of costs to be awarded to Defendant. Reversed and remanded with instructions. GROSS and KUNTZ, JJ., concur. \* \* \* Not final until disposition of timely filed motion for rehearing. 2