

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Clarke-Morales v. Coca-Cola Refreshments USA, Inc.

271 So. 3d 1128 (Fla. 3d DCA 2019) · No. No. 3D17-1367 · Decided March 20, 2019

SUMMARY

The Florida Third District Court of Appeal affirmed a \$160,218.64 cost judgment entered against plaintiffs who voluntarily dismissed their personal-injury action on the day trial was scheduled to begin. The court held that the voluntary dismissal terminated the lawsuit and deprived the appellate court of jurisdiction to review pre-dismissal orders, while the trial court retained authority to award trial-preparation costs. The court also concluded that the trial court did not abuse its discretion in awarding taxable costs.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	EMAS, C.J.; SCALES, J.; LINDSEY, J.
JURISDICTION	Florida
DECIDED	March 20, 2019
DOCKET	No. 3D17-1367
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed final judgments awarding defendants taxable costs and attorney's fees after plaintiffs voluntarily dismissed the action on the day set for trial.
STANDARD OF REVIEW	Abuse of discretion for the taxable-costs award; appellate jurisdiction over pre-dismissal orders was unavailable after the voluntary dismissal.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Junae Clarke-Morales, individually and on behalf of minor Jahir Clarke-McLean, Nahesha Barnes, Angela V. Clarke-Morales v. Coca-Cola Refreshments USA, Inc., Kenroy Washington Buckle

TOPICS

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QUESTIONS PRESENTED

1. Whether the appellants could obtain appellate review of the trial court's refusal to strike the case from the trial docket after voluntarily dismissing the action.
2. Whether the trial court properly entertained and awarded defendants' trial-preparation costs after the voluntary dismissal.
3. Whether the trial court abused its discretion in awarding \$160,218.64 in taxable costs.
4. Whether the attorney's-fee judgment entered as a sanction for violation of a discovery order should be disturbed when appellants abandoned any challenge to it on appeal.

HOLDINGS

1. A voluntary dismissal terminates the lawsuit, divests the trial court of jurisdiction, and deprives the appellate court of jurisdiction to review pre-dismissal trial-court orders.
2. After a voluntary dismissal, the trial court may entertain and award trial-preparation costs against the dismissing party.
3. The trial court did not abuse its discretion by awarding appellees \$160,218.64 in taxable costs.
4. The attorney's-fee judgment was affirmed because the appellants abandoned any challenge to it by failing to raise an argument concerning that judgment in their initial brief.

FACTUAL BACKGROUND

The appellants sued after a Coca-Cola truck crashed into their home and caused injuries. On the eve of trial, they sought to strike the case from the trial docket, but after the trial court denied that motion, they voluntarily dismissed the action on the day trial was scheduled to commence. The appellees then sought and obtained a cost judgment totaling \$160,218.64, including transcription and expert-witness fees.

PROCEDURAL HISTORY

The plaintiffs sued Coca-Cola Refreshments USA, Inc. and Kenroy Washington Buckle for injuries arising from a Coca-Cola truck crashing into their home. Shortly before trial, plaintiffs moved to strike the case from the trial docket; after the motion was denied, they voluntarily dismissed the action on the day trial was to begin. The trial court later awarded defendants \$160,218.64 in taxable costs and awarded attorney's fees as a sanction for violation of a discovery order. The Third District affirmed.

DISPOSITION

affirmed

CASES CITED

- Land v. Fla. Dep't of Corr., 181 So. 3d 1252, 1254 (Fla. 1st DCA 2015)
- Two Islands Dev. Corp. v. Clarke, 239 So. 3d 115, 124-25 (Fla. 3d DCA 2018)
- Fleet Servs. Corp. v. Reise, 775 So. 2d 383, 384 (Fla. 2d DCA 2000)
- Coastal Petroleum Co. v. Mobil Oil Corp., 583 So. 2d 1022, 1024-25 (Fla. 1991)
- Albanese Popkin Hughes Cove, Inc. v. Scharlin, 141 So. 3d 743, 745 (Fla. 3d DCA 2014)

OPINION

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed March 20, 2019. Not final until disposition of timely filed motion for rehearing. _____ No. 3D17-1367 Lower Tribunal No. 13-18635 _____ Junae Clarke-Morales, etc., et al., Appellants, vs. Coca-Cola Refreshments USA, Inc., et al., Appellees. An Appeal from the Circuit Court for Miami-Dade County, Thomas J. Rebull, Judge.

Navarro | McKown, and Luis F. Navarro, for appellants. Weinberg Wheeler Hudgins Gunn & Dial, LLC, and Lawrence E. Burkhalter, Kate D. Spinelli and Kyle R. Jackson, Sr., for appellees. Before EMAS, C.J., and SCALES and LINDSEY¹, JJ. PER CURIAM. ¹ Did not participate at oral argument. Appellants, plaintiffs below, Junae Clarke-Morales (individually and on behalf of minor Jahir Clarke-McLean), Nahesha Barnes and Angela V. Clarke- Morales sued appellees, defendants below, Coca-Cola Refreshments USA, Inc. and Kenroy Washington Buckle for injuries sustained when a Coca-Cola truck crashed into appellants' home.

On the eve of trial, appellants moved the trial court to strike the case from the trial docket.² After the trial court denied appellants' motion, appellants took a voluntary dismissal on August 23, 2016, the day trial was to commence. Appellees filed a motion to tax costs, which the trial court granted after a series of evidentiary hearings. Ultimately, the trial court entered a \$160,218.64 cost judgment³ against the appellants (including \$26,151.83 in transcription fees and \$105,112.68 in expert witness fees), allocating the amounts due among the appellants.

² Approximately a month before trial, appellants moved to strike appellees' affirmative defenses and amended answer. The trial court did not hear and rule on this motion. In seeking to strike the case from the docket, appellants argued that the case was not at issue under Florida Rule of Civil Procedure 1.440. ³ In addition to the trial court's May 17, 2017 final judgment for costs, appellants attached to their notice of appeal the trial court's May 17, 2017 final judgment awarding attorney's fees to appellees as a sanction for the violation of a discovery order.

Appellants, however, raised no argument in their initial brief regarding this attorney's fee judgment, thereby abandoning any challenge to it. Land v. Fla. Dep't of Corr., 181 So. 3d 1252, 1254 (Fla. 1st DCA 2015). Thus, we affirm the attorney's fee judgment without further elaboration. ² Appellants state two bases for appealing the judgment: (1) the trial court erred by

not striking the case from the trial docket (i.e., had the case been stricken from the docket, appellants would not have had to voluntarily dismiss the case entitling appellees to costs); and (2) the trial court abused its discretion by awarding appellees taxable costs.

For the succinct reasons that follow, we affirm. Once the appellants took a voluntary dismissal, they could not challenge the trial court's earlier rulings. The voluntary dismissal terminated the lawsuit, thereby divesting the trial court of jurisdiction and depriving this Court of appellate jurisdiction to review pre-dismissal orders of the trial court. *Two Islands Dev.*

Corp. v. Clarke, 239 So. 3d 115, 124-25 (Fla. 3d DCA 2018); *Fleet Servs. Corp. v. Reise*, 775 So. 2d 383, 384 (Fla. 2d DCA 2000). After a voluntary dismissal occurs, the trial court may entertain and award trial preparation costs against the dismissing party. *Coastal Petroleum Co. v. Mobil Oil Corp.*, 583 So. 2d 1022, 1024-25 (Fla. 1991); Fla. R. Civ. P. 1.420(d).

On this record, we cannot say that the trial court abused its discretion in its costs award to appellees. See *Albanese Popkin Hughes Cove, Inc. v. Scharlin*, 141 So. 3d 743, 745 (Fla. 3d DCA 2014). Affirmed. 3