

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

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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)

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