

DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

Hinkley v. Gould, Cooksey, Fennell, O'Neill, Marine, Carter & Hafner, P.A.

971 So. 2d 955 (Fla. 5th DCA 2007) · No. No. 5D06-4245 · Decided December 28, 2007

SUMMARY

The Florida Fifth District Court of Appeal reviewed an award of attorney's fees and costs to a closing agent that had interpleaded a disputed real estate brokerage commission. The court held that the contractual fee provision could not support the award because the broker and sales associate were not parties to the real estate purchase contract, and it reversed the fee and cost award.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fifth District
WRITING FOR THE COURT	Thompson, J.; Palmer, C.J.; Lawson, J.
JURISDICTION	Florida
DECIDED	December 28, 2007
DOCKET	No. 5D06-4245
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from a final order awarding the interpleading closing agent attorney's fees and costs from an interpleaded brokerage commission.
STANDARD OF REVIEW	De novo review applies to entitlement to attorney's fees when entitlement depends on interpretation of contractual provisions or a statute as a pure question of law. Abuse of discretion generally applies to the amount of a fee award.
PRECEDENTIAL VALUE	published opinion
PARTIES	Martha Hinkley, d/b/a My Place Realty v. Gould, Cooksey, Fennell, O'Neill, Marine, Carter & Hafner, P.A.

TOPICS

- interpleader
- attorney fees
- contract interpretation
- appellate procedure
- real estate

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the closing agent was entitled to attorney's fees and costs under the attorney-fee provision of a real estate purchase contract when the broker and sales associate involved in the interpleaded commission were not parties to that contract.
2. What standard of review applies to the issue of entitlement to contractual attorney's fees.

HOLDINGS

1. When entitlement to attorney's fees depends on interpreting contractual provisions or a statute as a pure question of law, the appellate court reviews entitlement de novo rather than for abuse of discretion.
2. A contractual attorney's-fee provision cannot support an award to an interpleading closing agent when the broker and sales associate involved in the commission dispute are not parties to the real estate purchase contract.

KEY QUOTATIONS

“Because My Place Realty and Meyer are not parties to the real estate purchase contract, its provision for attorney's fees in favor of the interpleader cannot stand.” (957)

“Hence the de novo standard applies.” (956)

FACTUAL BACKGROUND

Martha Hinkley, doing business as My Place Realty, was the broker in a real estate transaction. A dispute arose between My Place Realty and its licensed sales associate, Ginger Meyer, who terminated her employment before closing. The closing agent, Gould-Cooksey, interpleaded the \$72,600 brokerage commission and sought attorney's fees and costs, relying on an attorney-fee provision in the real estate purchase contract; neither Hinkley, My Place Realty, nor Meyer was a party to that contract.

PROCEDURAL HISTORY

A dispute arose over a \$72,600 brokerage commission after a real estate sales associate terminated her employment before closing. The closing agent interpleaded the commission, and the circuit court approved the interpleader, ordered the funds placed in the court registry, and awarded the closing agent \$5,387.12 in attorney's fees and costs. The appellate court previously dismissed an appeal from the order granting interpleader for lack of jurisdiction, but reviewed the final fee award in this appeal.

DISPOSITION

reversed

CASES CITED

- DiStefano Constr., Inc. v. Fidelity & Deposit Co., 597 So. 2d 248, 250 (Fla. 1992)

- Gibbs Construction Co. v. S.L. Page Corp., 755 So. 2d 787, 790 (Fla. 2d DCA 2000)
- Allstate Insurance Co. v. Regar, 942 So. 2d 969, 971 (Fla. 2d DCA 2006)
- Brickell Bay Club Condominium Association, Inc. v. Forte, 397 So. 2d 959, 960 (Fla. 3d DCA 1981)
- Hastings v. Osius, 104 So. 2d 21, 22 (Fla. 1958)

OPINION

Hinkley v. GOULD, COOKSEY, FENNELL

971 So. 2d 955

PER CURIAM.

971 So.2d 955 (2007) Martha HINKLEY, d/b/a My Place Realty, Appellant, v. GOULD, COOKSEY, FENNELL, O'NEILL, MARINE, CARTER & HAFNER, P.A., Appellee. No. 5D06-4245. District Court of Appeal of Florida, Fifth District. December 28, 2007.

*956 Michael Anthony Faro of Michael Anthony Faro, P.A., Cocoa Beach, for Appellant.

Jason L. Odom of Gould, Cooksey, Fennell, O'Neill, Marine, Carter & Hafner, P.A., Vero Beach, for Appellee. THOMPSON, J. Martha Hinkley, the broker with My Place Realty, Inc., challenges the circuit court's award of attorney's fees and costs to Gould, Cooksey, Fennell, O'Neill, Marine, Carter & Hafner, P.A. ("Gould-Cooksey"), the closing agent under a contract for the sale and purchase of real estate. Gould-Cooksey interpleaded the \$72,600 brokerage commission after a dispute arose between My Place Realty and its licensed real estate sales associate, Ginger Meyer, who terminated employment prior to the closing. Because the trial court erred in awarding attorney's fees and costs to Gould-Cooksey under the real estate purchase contract to which the broker and its sales associate were not parties, we reverse. The commission dispute prompted Gould-Cooksey to interplead the brokerage commission and request an award of attorney's fees for filing the complaint for interpleader. The court's order approved the interpleader proceeding, directed that the funds be placed in the registry of the court, and awarded Gould-Cooksey \$5,387.12 in fees and costs.[1] Typically, the appellate court applies an abuse of discretion standard in reviewing a trial court's award of attorney's fees, usually with regard to the amount of an award rather than the actual entitlement to an award. DiStefano Constr., Inc. v. Fidelity & Deposit Co., 597 So.2d 248, 250 (Fla.1992). However, when entitlement to attorney's fees is based on the interpretation of contractual provisions, see Gibbs Construction Co. v. S.L. Page Corp., 755 So.2d 787, 790 (Fla. 2d DCA 2000), or a statute, see Allstate Insurance Co. v. Regar, 942 So.2d 969, 971 (Fla. 2d DCA 2006), as a pure matter of law, the appellate court undertakes a de novo review. In this case, the appellant contests only the entitlement to fees and does not argue that the court abused its discretion in determining the amount of the award. Hence the de novo standard applies. Hinkley argues that neither she, d/b/a My Place Realty, nor Meyer are *957 parties to the contract relied upon by Gould-Cooksey for the court's authority to award fees. Hinkley is correct that the trial court erred in awarding attorney's fees and costs from the interpleaded fund. As the court explained in Brickell Bay Club Condominium Association, Inc. v.

Forte, 397 So.2d 959, 960 (Fla. 3d DCA 1981), an agreement gives those who are parties to it a clear and unequivocal right to the recovery of both attorney's fees and costs. (Emphasis added.) Gould-Cooksey timely filed a motion for attorney's fees based upon paragraph 15, "Escrow Agent," of the contract for sale and purchase of real estate. The broker and its sales associate, however, are not parties to that agreement, and, therefore, this authority does not support the trial court's award of attorney's fees to the escrow agent. Section 475.711, Florida Statutes (2006), addresses the interpleader of reserved proceeds in the court registry, discharge of the closing agent from further liability, and costs and reasonable attorney's fees incurred by the closing agent. The escrow agent did not cite this statute for an award of attorney's fees and costs to the interpleader perhaps because the statute specifically addresses commission entitlement vis-à-vis the owner and broker. That factual scenario is not present here. Because My Place Realty and Meyer are not parties to the real estate purchase contract, its provision for attorney's fees in favor of the interpleader cannot stand. Accordingly, we reverse the order awarding attorney's fees and costs. REVERSED. PALMER, C.J., and LAWSON, J., concur.

NOTES

[1] This court dismissed for lack of jurisdiction the appeal of the order granting interpleader, but has jurisdiction to review the final order awarding an attorney's fee. See *Hastings v. Osius*, 104 So.2d 21, 22 (Fla.1958).