

SIXTH DISTRICT COURT OF APPEAL OF FLORIDA

Christopher Lusby, Deborah Lusby, and Donald Lusby v. Carl M. Canevari and C. Gene Canevari

Lusby v. Canevari · No. 6D2024-0703 · Decided June 6, 2025

SUMMARY

The Florida Sixth District Court of Appeal dismissed an appeal challenging summary judgment declaring an express easement and permanently enjoining interference with its use. The court held that the order was nonfinal and nonappealable because an alternative prescriptive-easement count and related counterclaims remained pending in the trial court.

CASE DETAILS

COURT	Sixth District Court of Appeal of Florida
WRITING FOR THE COURT	Chief Judge Traver; Judge Stargel; Judge Wozniak
JURISDICTION	Florida Sixth District Court of Appeal
DECIDED	June 6, 2025
DOCKET	6D2024-0703
DISPOSITION	dismissed
PROCEDURAL POSTURE	The appellants appealed a circuit court summary judgment declaring an express easement and permanently enjoining interference with the appellees' use of it.
STANDARD OF REVIEW	Whether the appealed order was final and appealable is a question of appellate jurisdiction reviewed under the applicable final-judgment rule.
PRECEDENTIAL VALUE	Published opinion; precedential value is not otherwise specified in the text.
PARTIES	Christopher Lusby, Deborah Lusby, Donald Lusby v. Carl M. Canevari, C. Gene Canevari

TOPICS

- [easements](#) [appellate procedure](#) [final judgment rule](#) [injunctions](#) [declaratory judgment](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether an order granting summary judgment on some counts of an amended complaint is final and appealable when a factually and legally related count remains pending.
2. Whether a judgment on the original complaint is nonfinal for appeal purposes when a compulsory counterclaim arising from the same dispute remains pending.

HOLDINGS

1. An order granting summary judgment on Counts I and II was nonfinal and nonappealable because the factually and legally related alternative prescriptive-easement Count III remained pending in the circuit court.
2. The appealed judgment was also nonfinal because the Lusbys' compulsory counterclaim for declaratory and injunctive relief arising from the same dispute remained pending below.

KEY QUOTATIONS

“However, because Count III remains pending in the trial court, the order granting summary judgment on Counts I and II is nonfinal and nonappealable.” (at 2)

“Generally, the existence of a compulsory counterclaim will render a judgment on the original complaint nonfinal for appeal purposes.” (at 2)

FACTUAL BACKGROUND

The dispute concerned an easement for ingress and egress across portions of property owned by the Lusbys. The Canevaris sought a declaration that an express easement existed, an injunction preventing interference with its use, and alternatively establishment of a prescriptive easement. The trial court declared an express easement, permanently enjoined interference, and left the prescriptive-easement claim and the Lusbys' related counterclaim unresolved.

PROCEDURAL HISTORY

The Canevaris filed an amended complaint asserting claims for declaration of an express easement, injunctive relief, and, alternatively, a prescriptive easement. The circuit court granted summary judgment on the express-easement and injunction counts but did not resolve the prescriptive-easement count. The Lusbys also had a pending two-count amended counterclaim arising from the same dispute. The Sixth District Court of Appeal dismissed the appeal because the order was nonfinal and nonappealable.

DISPOSITION

dismissed

CASES CITED

- Lusby v. Canevari, 363 So. 3d 233 (Fla. 6th DCA 2023)
- E. Ave., LLC v. Insignia Bank, 136 So. 3d 659, 661 (Fla. 2d DCA 2014)
- Marinich v. Special Edition Custom Homes, LLC, 1 So. 3d 1197, 1199 (Fla. 2d DCA 2009)
- Londono v. Turkey Creek, Inc., 609 So. 2d 14, 19 (Fla. 1992)
- Yost v. Am. Nat'l Bank, 570 So. 2d 350, 352 (Fla. 1st DCA 1990)

OPINION

Christopher Lusby, Deborah Lusby and Donald Lusby v. Carl M. Canevari and C. Gene Canevari
PER CURIAM.

SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

_____ Case No. 6D2024-0703 Lower Tribunal No. 2022-CA-000057 _____

CHRISTOPHER LUSBY, DEBORAH LUSBY, and DONALD LUSBY,

Appellants, v.

CARL M. CANEVARI and C. GENE CANEVARI,

Appellees. _____ Appeal from the Circuit Court for Highlands

County. Peter F. Estrada, Judge. June 6, 2025 PER CURIAM. This is a case involving a dispute over an easement for ingress and egress across portions of property owned by Appellants, the Lusbys. Appellees, the Canevaris, filed a three-count amended complaint seeking: Count I, declaration of an express easement; Count II, injunctive relief precluding the Lusbys from interfering with their use of the easement; and Count III, alternatively, to establish a prescriptive easement. 1 The trial court granted summary judgment in favor of the 1 We previously reversed an order granting a temporary injunction in favor of the Canevaris. Lusby v. Canevari, 363 So. 3d 233 (Fla. 6th DCA 2023). Canevaris on Counts I and II, declaring the existence of an express easement and permanently enjoining the Lusbys from interfering with the Canevaris' right to use the easement. The summary judgment order did not address Count III. The Lusbys now bring the instant appeal challenging the trial court's determination that a portion of the easement had been moved by deed from its original location to the northern boundary of the subject property. However, because Count III remains pending in the trial court, the order granting summary judgment on Counts I and II is nonfinal and nonappealable. See E. Ave., LLC v. Insignia Bank, 136 So. 3d 659, 661 (Fla. 2d DCA 2014) (holding that when "factually and legally interrelated counts" remained pending in the circuit court, judgment was not final or appealable). Additionally, the Lusbys' two-count amended counterclaim for declaratory and injunctive relief arising out of the same dispute also remains pending below. See Marinich v. Special Edition Custom Homes, LLC, 1 So. 3d 1197, 1199 (Fla. 2d DCA 2009) ("Generally, the existence of a compulsory counterclaim will render a judgment on the original complaint nonfinal for appeal purposes.").2 DISMISSED. TRAVER, C.J., and STARGEL and WOZNIAK, JJ., concur. 2 "A

compulsory counterclaim is ‘a defendant’s cause of action arising out of the transaction or occurrence that formed the subject matter of the plaintiff’s claim.’” *Londono v. Turkey Creek, Inc.*, 609 So. 2d 14, 19 (Fla. 1992) (quoting *Yost v. Am. Nat’l Bank*, 570 So. 2d 350, 352 (Fla. 1st DCA 1990)). 2 Devin R. Maxwell, of Law Office of Devin Maxwell, Okeechobee, and Scott W. Zappolo, of Zappolo Law, P.A., Palm Beach Gardens, for Appellants. William C. Davell and Jennifer H. Wahba, of Tripp Scott, P.A., Fort Lauderdale, for Appellees.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING
AND DISPOSITION THEREOF IF FILED

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