

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

Yehuda Balva v. Ontario Wealth Management Corporation

241 So. 3d 869 (Fla. 4th DCA 2018) · No. No. 4D17-1126 · Decided March 14, 2018

SUMMARY

The Florida Fourth District Court of Appeal reversed an amended foreclosure judgment awarding attorney’s fees and costs. The court held that a successor trial judge lacked authority to reconsider and reverse the original judge’s definitive ruling denying entitlement to those fees and costs. The proper method for challenging the original ruling was an appeal.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Damoorgian, J.; Taylor, J.; May, J.
JURISDICTION	Florida
DECIDED	March 14, 2018
DOCKET	No. 4D17-1126
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from an amended final judgment of foreclosure awarding the Bank attorney's fees and costs after a second trial judge conducted an evidentiary hearing on the fee claim.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	Yehuda Balva v. Ontario Wealth Management Corporation, Jeffrey Friedman, Randi Friedman, Jason Klinghoffer, United States of America, Department of Treasury, Florida Department of Revenue

TOPICS

attorney fees final judgment rule appellate procedure civil procedure foreclosure

PRACTICE AREAS

Civil procedure Appellate procedure Foreclosure Attorney fees

QUESTIONS PRESENTED

1. Whether a successor trial judge could conduct an evidentiary hearing and amend a final judgment to award attorney's fees and costs after the original judge had definitively denied the Bank's motion to amend the judgment.
2. Whether the successor judge properly denied the appellant's motion to vacate the amended final judgment.

HOLDINGS

1. A successor judge may not reverse or correct the predecessor judge's final ruling on the merits based on the same facts; therefore, the second judge had no authority to conduct the fee hearing and amend the final judgment after the original judge denied entitlement to attorney's fees and costs.

KEY QUOTATIONS

“It is well established that “a successor judge may not correct errors of law committed by his predecessor and hence he cannot review and reverse on the merits and on the same facts the final orders and decrees of his predecessor.”” (241 So. 3d at 870)

“Accordingly, when a party is aggrieved by a final judgment, the proper procedure is for the aggrieved party to seek review on appeal, not in front of a different trial court judge.” (241 So. 3d at 870)

FACTUAL BACKGROUND

Following a mortgage foreclosure bench trial limited to damages, Ontario Wealth Management Corporation requested that jurisdiction be reserved to determine attorney's fees and costs because it lacked an available expert witness. The original judge entered a final judgment that did not award or reserve those amounts and later denied the Bank's motion to amend the judgment to include them. A second judge nevertheless conducted an evidentiary hearing and entered an amended final judgment awarding fees and costs.

PROCEDURAL HISTORY

The Bank obtained a final judgment of foreclosure after a bench trial limited to damages. The original trial judge entered a final judgment that did not award attorney's fees or costs and later denied the Bank's motion to amend the judgment to include them. Without knowledge of that ruling, a second judge conducted the scheduled evidentiary hearing and entered an amended final judgment awarding fees and costs. The appellant moved to vacate the amended judgment, the motion was denied, and the appellant appealed.

DISPOSITION

reversed

CASES CITED

- Drdek v. Drdek, 79 So. 3d 216, 219 (Fla. 4th DCA 2012)
- Groover v. Walker, 88 So. 2d 312, 313 (Fla. 1956)

OPINION

PER CURIAM.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT
YEHUDA BALVA, Appellant, v. ONTARIO WEALTH MANAGEMENT CORPORATION, a
foreign corporation, JEFFREY FRIEDMAN, RANDI FRIEDMAN, JASON KLINGHOFFER,
UNITED STATES OF AMERICA, DEPARTMENT OF TREASURY, and FLORIDA
DEPARTMENT OF REVENUE, Appellees. No. 4D17-1126 [March 14, 2018] Appeal from the
Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Thomas H. Barkdull III,
Judge; L.T.

Case No. 502015CA011898XXXXMBAW. Scott C. Gherman of Scott C. Gherman, P.A., Boca
Raton, for appellant. Dariel Abraham of Greenspoon Marder, P.A., Boca Raton, for appellee
Ontario Wealth Management Corporation, a foreign corporation. DAMOORGIAN, J. Yehuda
Balva appeals the trial court's entry of amended final judgment of foreclosure in favor of Ontario
Wealth Management Corporation ("the Bank") following a bench trial.

We reverse. In 2016, the Bank filed a mortgage foreclosure complaint against Appellant. The
matter ultimately proceeded to a bench trial on the issue of damages only. At the conclusion of the
trial, the Bank requested that the court reserve jurisdiction to determine the reasonable amount of
attorney's fees and costs as the Bank did not have an expert available to testify at trial.

The court did not make any rulings and instead requested that each party submit a proposed final
judgment. The court ultimately entered the proposed final judgment submitted by the Bank with
some modifications. Specifically, the court crossed out the amounts that the Bank listed for
attorney's fees and costs and also crossed out the word "Reserved" written next to those amounts.

Following entry of the final judgment, the Bank filed a motion to amend the final judgment to
include attorney's fees and costs following an evidentiary hearing. For reasons not entirely clear,
the matter was specially set for an evidentiary hearing before a second judge. Appellant objected
and moved to strike the motion and sought sanctions on the grounds that the Bank's motion was
frivolous and in contradiction to the final judgment.

Unbeknownst to the parties, the day prior to the scheduled hearing, the original judge entered an
order denying the Bank's motion to amend the final judgment to include attorney's fees and
cancelling the evidentiary hearing before the second judge.

Having not received this ruling, the parties proceeded as scheduled to the hearing before the
second judge. At the beginning of the hearing, Appellant reiterated his position that the original
judge had already ruled on the issue of entitlement to attorney's fees and costs.

The second judge denied Appellant's motion to strike and proceeded with an evidentiary hearing on the fee claim. Ultimately the second judge entered an amended final judgment and awarded the Bank attorney's fees and costs.

After receiving the original judge's ruling, Appellant moved to vacate the amended final judgment of foreclosure, which the second judge denied. On appeal, Appellant argues that because the original judge made a definitive ruling on the issue of entitlement to attorney's fees, the second judge abused his discretion in proceeding with the evidentiary hearing in the first place, amending the final judgment, and denying the motion to vacate.

We agree. It is well established that "a successor judge may not correct errors of law committed by his predecessor and hence he cannot review and reverse on the merits and on the same facts the final orders and decrees of his predecessor." *Drdek v. Drdek*, 79 So. 3d 216, 219 (Fla. 4th DCA 2012) (quoting *Groover v. Walker*, 88 So. 2d 312, 313 (Fla. 1956)).

Accordingly, when a party is aggrieved by a final judgment, the proper procedure is for the aggrieved party to seek review on appeal, not in front of a different trial court judge. *Id.* Here, the judge who presided over the trial made a definitive ruling on the issue of entitlement to attorney's fees and costs, both in the original final judgment and the order denying the Bank's motion to amend the final judgment to include attorney's fees and costs.

These rulings were made before the second judge considered the fee issue. Accordingly, the second judge had no authority to reverse the original judge's decision to deny attorney's fees and costs. *Id.* Reversed. 2 TAYLOR and MAY, JJ., concur. * * * Not final until disposition of timely filed motion for rehearing. 3