

FLORIDA THIRD DISTRICT COURT OF APPEAL

Lynn Wolland v. Frank Wolland

No. 3D25-1520 (Fla. 3d DCA May 27, 2026) · No. 3D25-1520 · Decided May 27, 2026

SUMMARY

The Third District Court of Appeal of Florida reviewed a final judgment assigning all attorney’s fees and costs in a partition action to Lynn Wolland. The court held that section 64.081, Florida Statutes, required the fees and costs to be apportioned between the parties according to their proportional interests in the partitioned property, reversed the judgment, and remanded with directions.

CASE DETAILS

COURT	Florida Third District Court of Appeal
WRITING FOR THE COURT	Lobree, J.; Fernandez, J.; Miller, J.
JURISDICTION	Florida Third District Court of Appeal
DECIDED	May 27, 2026
DOCKET	3D25-1520
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Lynn Wolland appealed a final judgment in a partition action that assigned solely to her responsibility for Frank Wolland's attorney's fees and costs. On rehearing, the court denied the motion, withdrew its prior opinion, substituted this opinion, and reversed and remanded with directions.
STANDARD OF REVIEW	The entitlement determination under section 64.081 was within the trial court's discretion; the fee-allocation issue was governed by the statute's mandatory proportionality requirement.
PRECEDENTIAL VALUE	Published; precedential
PARTIES	Lynn Wolland v. Frank Wolland

TOPICS

- partition
- attorney fees
- appellate procedure
- preservation of error
- statutory interpretation

PRACTICE AREAS

- Real estate
- Civil procedure
- Appellate procedure
- Attorney's fees
- Statutory interpretation

QUESTIONS PRESENTED

1. Whether section 64.081, Florida Statutes (2023), permitted the trial court to assign all attorney's fees and costs incurred for services benefiting the partition solely to Lynn.
2. Whether the appellate court should reach Lynn's claim that the final judgment lacked findings required under Florida Patient's Compensation Fund v. Rowe.

HOLDINGS

1. Although the trial court had discretion to determine that Frank's attorney rendered services benefiting the partition and was entitled to fees, section 64.081 did not give it discretion to assign liability for those fees and costs solely to Lynn. The fees and costs had to be apportioned between the parties in accordance with their proportional interests in the partitioned property.

KEY QUOTATIONS

“Although the trial court acted entirely within its discretion under section 64.081, Florida Statutes (2023), in determining that Frank’s attorney rendered services of benefit to the partition and was therefore entitled to attorney’s fees, we reverse because under section 64.081, the trial court lacked the commensurate discretion to assign liability for those attorney’s fees only to Lynn.” (at 2)

“Accordingly, we reverse the final judgment for attorney’s fees and costs and remand with directions to apportion Frank’s attorney’s fees and costs between the parties in accordance with each party’s proportional interest in the partitioned property.” (at 2)

FACTUAL BACKGROUND

The underlying action sought partition of a jewelry collection. The trial court determined that Frank's attorney rendered services that benefited the partition and awarded attorney's fees, but assigned sole responsibility for those fees and costs to Lynn. The parties' respective proportional interests in the partitioned property therefore controlled the required allocation.

PROCEDURAL HISTORY

Frank Wolland brought an action against Lynn Wolland seeking partition of a jewelry collection. The circuit court entered a final judgment awarding attorney's fees to Frank's attorney and assigning sole responsibility for payment to Lynn. Lynn appealed, and the substituted opinion on rehearing reverses the fee and cost allocation and remands for apportionment according to the parties' proportional interests.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Apportion Frank's attorney's fees and costs between the parties in accordance with each party's proportional interest in the partitioned property.

CASES CITED

- Diaz v. Sec. Union Title Ins. Co., 639 So. 2d 1004, 1006 (Fla. 3d DCA 1994)
- Adler v. Schekter, 197 So. 2d 46, 50 (Fla. 3d DCA 1967)
- Florida Patient’s Compensation Fund v. Rowe, 472 So. 2d 1145, 1151 (Fla. 1985)
- Jones v. Bank of Am., N.A., 401 So. 3d 334, 337 (Fla. 4th DCA 2024)
- Platt v. Cape Marine Servs., Inc., 422 So. 3d 654, 656 (Fla. 5th DCA 2025)

OPINION

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed May 27, 2026. _____
No. 3D25-1520 Lower Tribunal No. 23-505-CA-01 _____ Lynn Wolland, Appellant,
vs. Frank Wolland, Appellee. An Appeal from the Circuit Court for Miami-Dade County, Mavel
Ruiz, Judge. Lowy and Cook, P.A., and Jonathan Smulevich and Leah Rose, for appellant. Law
Offices of Mark Wolin, and Mark Wolin, for appellee.

Before FERNANDEZ, MILLER and LOBREE, JJ. ON MOTION FOR REHEARING LOBREE,
J. We deny Appellee’s motion for rehearing, but withdraw our previous opinion and substitute the
following opinion in its stead. Lynn Wolland, the defendant in an action brought by Frank Wolland
seeking partition of a jewelry collection, appeals from a final judgment apportioning solely to her
the responsibility for payment of attorney’s fees to Frank’s attorney.

Although the trial court acted entirely within its discretion under section 64.081, Florida Statutes
(2023), in determining that Frank’s attorney rendered services of benefit to the partition and was
therefore entitled to attorney’s fees, we reverse because under section 64.081, the trial court lacked
the commensurate discretion to assign liability for those attorney’s fees only to Lynn.

See § 64.081, Fla. Stat. (2023) (“Every party shall be bound by the judgment to pay a share of the
costs, including attorneys’ fees to plaintiff’s or defendant’s attorneys or to each of them
commensurate with their services rendered and of benefit to the partition, to be determined on
equitable principles in proportion to the party’s interest.”); see also Diaz v. Sec. Union Title Ins.

Co., 639 So. 2d 1004, 1006 (Fla. 3d DCA 1994) (“[A]ttorneys’ fees in a partition action are to be
paid ‘in proportion to [the party’s] interest.’ As cotenants, Diaz and the estate each possess one-
half interest in the property and are therefore each liable for one-half of the attorneys’ fees
awarded.” (quoting § 64.081 Fla. Stat. (1993))); Adler v. 2 Schekter, 197 So.

2d 46, 50 (Fla. 3d DCA 1967) (“The burden of [attorney’s fees in a partition suit], however, is to
be borne by the parties in proportion to their interests....”). Accordingly, we reverse the final
judgment for attorney’s fees and costs and remand with directions to apportion Frank’s attorney’s

fees and costs between the parties in accordance with each party's proportional interest in the partitioned property.

1 Reversed and remanded with directions. 1 We do not reach the issue of whether the trial court erred in failing to set forth in its final judgment findings required under *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145, 1151 (Fla. 1985), as Lynn waived any claim of error by not raising the issue in her rehearing motion below. See Fla. R. Civ. P. 1.530(a) ("To preserve for appeal a challenge to the failure of the trial court to make required findings of fact in the final judgment, a party must raise that issue in a motion for rehearing under this rule."); *Jones v. Bank of Am., N.A.*, 401 So.

3d 334, 337 (Fla. 4th DCA 2024) (holding that under rule 1.530(a) argument that trial court failed to make required *Rowe* findings was not preserved for review where appellant "did not move for rehearing and point out the deficiency in the trial court's findings of fact"); *Platt v. Cape Marine Servs., Inc.*, 422 So. 3d 654, 656 (Fla. 5th DCA 2025) (same). 3