

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Harry Barnett v. Linda Simonet

No. 3D25-0106 (Fla. 3d DCA Mar. 31, 2026) · No. No. 3D25-0106 · Decided March 31, 2026

SUMMARY

The Third District Court of Appeal of Florida affirmed an order denying Harry Barnett's motion for costs because he was not the party recovering judgment and therefore was not entitled to costs under section 57.041, Florida Statutes. The court dismissed for lack of jurisdiction the portion of the appeal challenging an order granting entitlement to attorney's fees and costs because the amount had not yet been determined.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Gordo, J.; Emas, J.; Gooden, J.
JURISDICTION	Florida Third District Court of Appeal
DECIDED	March 31, 2026
DOCKET	No. 3D25-0106
DISPOSITION	other
PROCEDURAL POSTURE	Harry Barnett appealed a final order denying his motion for costs and also challenged an order granting the appellees' entitlement to attorney's fees and costs.
STANDARD OF REVIEW	The court applied de novo appellate-jurisdiction principles to determine whether the attorney-fee entitlement order was final and appealable, and applied section 57.041, Florida Statutes, to determine entitlement to costs.
PRECEDENTIAL VALUE	Published
PARTIES	Harry Barnett v. Linda Simonet, Florida Keys Veterinary Relief, d/b/a Key West Vets and Pets, Dr. Thomas Householder

TOPICS

- costs
- attorney fees
- appellate jurisdiction
- final judgment rule
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Barnett was entitled to recover costs under section 57.041, Florida Statutes, despite not being the party who recovered judgment in the underlying action.
2. Whether the appellate court had jurisdiction to review an order granting entitlement to attorney's fees and costs without determining the amount of the fees or costs.

HOLDINGS

1. A party who did not recover a judgment in the underlying action is not entitled to costs under section 57.041, Florida Statutes.
2. An order granting entitlement to attorney's fees and costs without determining the amount of fees or costs is non-final and non-appealable, and an appeal from that order must be dismissed for lack of jurisdiction.

KEY QUOTATIONS

“Because an order granting entitlement to attorney’s fees without determining the amount of fees or costs is a non-final and non-appealable order, we dismiss that portion of the appeal for lack of jurisdiction.” (2)

FACTUAL BACKGROUND

Barnett was involved in an underlying action against Simonet, Florida Keys Veterinary Relief d/b/a Key West Vets and Pets, and Dr. Thomas Householder. Barnett sought costs, but the trial court denied his motion because he was not the party who recovered judgment against the appellees. The trial court also entered an order granting the appellees entitlement to attorney's fees and costs without determining the amount of those fees or costs.

PROCEDURAL HISTORY

The appeal arose from the Circuit Court for Monroe County. The appellate court affirmed the order denying Barnett's motion for costs because he was not the party who recovered judgment in the underlying action. It dismissed the portion of the appeal challenging the attorney-fee entitlement order because that order did not determine the amount of fees or costs and was therefore non-final and non-appealable.

DISPOSITION

other

CASES CITED

- Arellano v. Bisson, 761 So. 2d 365, 366 (Fla. 3d DCA 2000)
- Anderson v. King, 817 So. 2d 1102, 1103 (Fla. 2d DCA 2002)
- Pawley v. Fla. Dep't of Corr., 303 So. 3d 249, 250 (Fla. 1st DCA 2020)
- Mills v. Martinez, 909 So. 2d 340, 342 (Fla. 5th DCA 2005)

- Yampol v. Turnberry Isle S. Condo. Ass'n, Inc., 250 So. 3d 835, 837 (Fla. 3d DCA 2018)
- Kling Corp. v. Hola Networks Corp., 127 So. 3d 833, 833 (Fla. 3d DCA 2013)

OPINION

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed March 31, 2026. Not final until disposition of timely filed motion for rehearing. _____ No. 3D25-0106 Lower Tribunal No. 18-CA-1271-K _____ Harry Barnett, Appellant, vs. Linda Simonet, et al., Appellees. An Appeal from the Circuit Court for Monroe County, James M. Barton, II, Senior Judge and Timothy J. Koenig, Judge.

Harry Barnett, in proper person. Kubicki Draper and Sharon C. Degnan (Orlando) for appellees Linda Simonet, Florida Keys Veterinary Relief, d/b/a Key West Vets and Pets and Dr. Thomas Householder. Before EMAS, GORDO and GOODEN, JJ. GORDO, J. Harry Barnett (“Appellant”) appeals from a final order denying his motion for costs in favor of Linda Simonet, Florida Keys Veterinary Relief d/b/a Key West Vets and Pets, and Dr. Thomas Householder (“Appellees”).

We have jurisdiction. Fla. R. App. P. 9.030(b)(1)(A). Because the Appellant was not the prevailing party against the Appellees in the underlying action, he was not entitled to costs under section 57.041, Florida Statutes.

Thus, we affirm the challenged order. See § 57.041, Fla. Stat. (“The party recovering judgment shall recover all his or her legal costs and charges which shall be included in the judgment[.]”); Arellano v. Bisson, 761 So. 2d 365, 366 (Fla. 3d DCA 2000) (“Under the language of section 57.041, a prevailing party’s entitlement to costs is conditioned solely on recovering a judgment.”); Anderson v. King, 817 So.

2d 1102, 1103 (Fla. 2d DCA 2002) (“The court [] determined that Anderson was not entitled to costs under section 57.041 because he was not the party recovering judgment.”); Pawley v. Fla. Dep’t of Corr., 303 So. 3d 249, 250 (Fla. 1st DCA 2020) (“[Appellant] was not the prevailing party and therefore not entitled to costs under section 57.041, Florida Statutes.”).

The Appellant also challenges an order granting the motion for entitlement to attorney’s fees and costs in favor of the Appellees. Because an order granting entitlement to attorney’s fees without determining the amount of fees or costs is a non-final and non-appealable order, we dismiss that portion of the appeal for lack of jurisdiction. See Mills v. Martinez, 909 So.

2d 340, 342 (Fla. 5th DCA 2005) (“An award of attorneys’ fees does not become final, and, therefore, appealable until the amount is set by the trial court.”); Yampol v. Turnberry Isle S. Condo. Ass’n, Inc., 250 So. 3d 835, 837 (Fla. 3d DCA 2018) (“An order granting entitlement to attorney’s fees but not determining the amount of fees or costs is a non-final, non-appealable order,

and such an order is subject to dismissal for lack of jurisdiction.”); *Kling Corp. v. Hola Networks Corp.*, 127 So.

3d 833, 833 (Fla. 3d DCA 2013) (“An order that merely finds entitlement to attorney’s fees but does not set an amount is a non-final, non-appealable order.... Because the Order[] on appeal do[es] not set the amount of the award, but only find[s] an entitlement to fees, we... dismiss the appeal for lack of jurisdiction.”). Affirmed in part; dismissed in part.