IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502014AP000051XXXXMB
L.T. No.: 502013SC005127XXXXMB

BOCA VIEW CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DIANA KUKA, GIUSEPPE MARCIGLIANO, and HARRY MARCELLINO,
Appellants,

v.

EDWARD LEPSELTER and ELEANOR LEPSELTER,
Appellees.
_____/

Opinion filed: AUG 27 2015

Appeal from the County Court in and for Palm Beach County, Judge Sandra Bosso-Pardo

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PER CURIAM.

This appeal arises from the Supplemental Order Taxing Costs and Fees entered by the trial court on August 15, 2014, in which it awarded attorney's fees under a "prevailing party" provision in a condominium declaration, as well as section 718.303, Florida Statutes. The Appellants are Boca View Condominium Association, Inc., and several of its Directors, who were named defendants below in the lawsuit filed by Appellees Eleanor and Edward Lepselter. Appellants contend that the trial court erred in its reduction of the amount of attorney's fees sought by their counsel. They also contend that the trial court erred in failing to award their costs for retaining an expert. We affirm the amount of attorney's fees awarded by the trial court without further comment, but we reverse the trial court's Supplemental Order Taxing Costs and Fees with respect to the costs sought for Appellants' retention of an expert.

A trial court's determination regarding the appropriate amount of a costs award is reviewed for abuse of discretion. *Chodorow v. Moore*, 947 So. 2d 577, 581 (Fla. 4th DCA 2007). "In reviewing the action of the trial judge, the question for the appellate court is whether reasonable persons informed by the experience of a trial judge with full knowledge of the material facts, could differ as to the action taken." Philip J. Padovano, 2 *Fla. Prac., Appellate Practice* § 19:5 (2015 ed.).

Here, the trial court held the first hearing on attorney's fees on April 4, 2014. The trial court explained in a June 11, 2014 Order that Appellants had sought $1000.00 for retaining an expert for the evidentiary hearing on attorney's fees, but that the parties agreed to waive the necessity of expert testimony after Appellants retained the expert. Because there was "no testimony offered as to the terms of the retention of the expert or whether the expert performed any services for the $1,000.00," the trial court declined to award any expert costs.

Appellants subsequently filed an Amended Affidavit of Costs on June 26, 2014. In their Amended Affidavit, Appellants sought $775.00 related to their retention of an expert, Brian M. Becher, from the firm Shapiro, Blasi, Wasserman & Gora, P.A. Included with the Amended Affidavit were Becher's time entries, reflecting that he had done 3.1 total hours of work at $250.00 per hour, which appeared to have been paid out of a $1000.00 retainer. Appellants also separately filed the retainer agreement between themselves and the expert, which provided for the payment of a refundable retainer of $1,000.00.

Despite Appellants' submission of invoices that appeared to show their payment of $775.00 for 3.1 hours of total work by the expert, the trial court still refused to award any costs for the expert's retention in its Supplemental Order Taxing Costs and Fees. Curiously, the trial court stated that it was declining to award "the $1000 requested" even though Appellants only sought $775.00 in their Amended Affidavit. The trial court explained that it was not awarding costs because the retainer was refundable and "there was no evidence presented as to whether or not any part of that retainer had been earned."

Appellants contend on appeal that the expert's invoices show that the $775.00 sought was charged by and paid to the expert. We agree that the invoices appear to show just that. While the retainer may have been refundable when initially paid, the expert apparently used up some of the retainer in providing services to Appellants. The trial court's finding that "there was no evidence presented as to whether or not any part of that retainer had been earned" is simply not supported by the record, and we accordingly reverse.

AFFIRMED IN PART, REVERSED IN PART.

OFTEDAL, GILLEN, and BRUNSON, JJ., concur.