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

APPELLATE DIVISION (CIVIL)
CASE NO: 502006AP000033XXXXMB
L.T.: 502004CC013458XXXXSB
DIVISION: 'AY'

GLEN CONRAD and
DEBRA CONRAD,

Appellants,

v.

HIDDEN LAKES HOMEOWNERS
ASSOCIATION, INC.,

Appellee.

FILED
07 JUL 16 AM 9:48
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL

Opinion filed: JUL 13 2007

Appeal from the County Court in and for Palm Beach County, Judge Debra Moses Stephens.

For Appellant: Barry M. Silver, Esq., 1200 S. Rogers Circle, Suite 8, Boca Raton, FL 33487.

For Appellee: Guy Shir, Esq., 1800 N.W. Corporate Blvd., Suite 102, Boca Raton, FL 33431.

REVERSED AND REMANDED.

The Appellants, Glen and Debra Conrad, seek review of the trial court's final judgment entered in favor of the Appellee, Hidden Lake Homeowners Association, Inc. (''Association''). The Appellants own a home and reside within the Association. In March of 2004, a storm swept through the community and damaged a tree located on the Association's common area. The tree branches fell and blocked a screen door that led onto the patio. The Appellants did not contact the Association to arrange for removal of the tree and instead, cut the tree down, leaving a stump.

The Association had the stump removed and the sod replaced. The Association then sought to have the Appellants reimburse its costs incurred in the amount of three hundred and twenty-five dollars ($325.00). The Appellants did not remit payment to the Association and the Association then filed suit.

The Appellants filed a Motion to Dismiss ("Motion") for failure to participate in mandatory mediation pursuant to Fla. Stat. § 720.311. The trial court denied the Motion, but stayed the action and referred the parties to mediation. The parties proceeded to trial and the trial court entered a final judgment in favor of the Association. The Appellants appealed arguing that the dispute fell within the purview of Florida Statute § 720.311, which required mandatory mediation as a condition precedent prior to initiating a lawsuit and that therefore, the action should have been dismissed.

Section 720.311, Fla. Stat. applies to disputes "between an association and a parcel owner regarding use of or changes to the parcel or the common areas and other covenant enforcement disputes...." § 720.311(2)(a), Fla. Stat. (2006). Under § 720.311(2)(a), Fla. Stat., such disputes ***"shall*** be filed with the department for mandatory mediation before the dispute is filed in court." (emphasis added). The Association's argument is that the dispute is merely one of damages. While the complaint seeks damages, the conduct that gave rise to the claim for damages was the appellants' unauthorized and improper removal of a tree located on the Association's common property. Thus the Appellants caused a change to the common area by removing a tree. This suit fell within the purview of a dispute between an association and a parcel owner regarding changes to the common area. Furthermore, § 720.311, Fla. Stat. also applies under "other covenant enforcement disputes".

Because the dispute falls within the purview of Fla. Stat. § 720.311, the trial court had no choice but to dismiss the suit due to the failure to satisfy a pre-condition to initiating a lawsuit. ***Neute v. Cypress Club Condominium, Inc.,*** 718 So. 2d 390, 392 (Fla. 4th DCA 1998). The analysis provided by the Fourth District Court of Appeal in ***Neate*** may be similarly applied to Fla. Stat. § 720.311. Adherence to the plain meaning of the statute requires mediation as a pre-condition to filing suit. Therefore, the judgment of the court below is reversed and this action is remanded for further action consistent with this decision.

(FRENCH and FINE, JJ. concur) (LEWIS, J. dissents with opinion)

I respectfully dissent. Fla. Stat. § 59.041 provides in pertinent part:

> No judgment shall be set aside or reversed, or new trial granted by any court of the state in any cause, civil or criminal...unless in the opinion of the court to which application is made, after an examination of the entire case it shall appear that the error complained of has resulted in a miscarriage of justice. This section shall be liberally construed.

See also, Pascale v. Fed. Exp. Corp., 656 So. 2d 1351 (Fla. 4th DCA 1995); ***National Union Fire Ins. Co. of Pittsburgh v. Blackmon,*** 754 So. 2d 840 (Fla. 1st DCA 2000)(stating that the test of harmless error in civil cases is whether, but for the error, a different result may have been reached).