

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

APPELLATE DIVISION (CIVIL): "AY"  
Case No.: 502008AP000029XXXXMB  
L.T.: 502004CC013458XXXXSB

GLEN CONRAD and DEBRA CONRAD,

Appellant(s),

v.

HIDDEN LAKES HOMEOWNERS  
ASSOCIATION INC,

Appellee(s).

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Opinion filed: **OCT 18** 2012

**Appeal from the County Court in and for Palm Beach County,  
Judge Donald Hafele.**

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

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

PER CURIAM.

Glen and Debra Conrad argue that the trial court misapplied the law of the case doctrine in its denial of their Motion for Award of Appellate and Trial Court Level Attorney's Fees. We agree and reverse.

This case arises from a dispute between the Conrads and Hidden Lakes Homeowner's Association ("Association") concerning a tree that was knocked onto the Conrads' property during a storm. The Association brought an action for temporary and permanent injunctive relief and damages, and the county court issued a permanent injunction and awarded the Association damages. The final judgment was previously appealed, and this Court reversed, holding that the

case must be mediated pursuant to Fla. Stat. sec. 720.211 (2007) before either party may bring suit. The Association filed a Petition for Writ of Certiorari with the Fourth DCA regarding that decision. The Conrads subsequently moved for trial and appellate attorney's fees in this Court. On November 5, 2007, we denied the motion for appellate attorney fees as untimely and ruled that the Conrads must file their motion for trial-level attorney's fees in the trial court. The Conrads later filed another motion for attorney's fees that we again denied as procedurally defective.

The Fourth DCA denied the Association's Petition for Writ of Certiorari and on February 6, 2008 it denied, without explanation, the Conrads' motion for trial court and appellate attorney fees. The trial court denied the Conrads' motion for award of fees, stating:

This Court further finds that the District Court of Appeals specifically denied the Defendants' Motion for trial court as well as appellate fees in its February 6, 2008 Order. Based upon the 4th District Court of Appeals February 6, 2008 Order, it is therefore Ordered and Adjudged that Defendants' Motion for Trial Court level attorney's fees and appellate level attorney's fees are hereby DENIED, *the 4th District Court of Appeals decision being the Law of the Case.*

(emphasis added). The Conrads argue that this ruling was erroneous and that they are entitled to trial-level attorney's fees.

The doctrine of law of the case requires that questions of law actually presented and considered on a former appeal must govern the case in the same court and the trial court through all subsequent stages of the proceedings. *Fla. Dep't of Transp. v. Juliano*, 801 So. 2d 101, 106, 108-9 (Fla. 2001). The scope of the law of the case doctrine is "limited to rulings on questions of law actually presented and considered on a former appeal." *Id.* at 105. "Additionally, the law of the case doctrine may foreclose subsequent consideration of issues implicitly addressed or necessarily considered by the appellate court's decision." *Id.*

The Fourth District Court of Appeal's February 6, 2008 order did not state the basis for its denial of the Conrads' motion for attorney's fees and simply stated that the motion "is hereby denied." There are at least two possible explanations for the Fourth DCA's denial of the Owners' motion for trial-level attorney's fees. It could be that the Fourth DCA denied the motion because it had decided that Owners are not entitled to trial-level attorney's fees at all. However, it is far more likely that the Fourth DCA denied the motion for trial-level attorney's fees because it was improperly filed with the appellate court rather than the trial court. The firmly established procedure for obtaining trial-level attorneys fees is to first obtain a ruling on the trial-level fees from the trial court, and to seek review of that order from an appellate court. *See, generally*, Fla. Jur. 2d Appellate Review § 328. There is no rule or case law authorizing a party to seek trial-level attorney's fees directly from an appellate court. Indeed, this Court explicitly denied the motion for trial-level fees that the Conrads filed in the parties' former appeal for precisely this reason.

Given that there is a clear procedural basis for the Fourth DCA's denial of the motion, we find that it did not establish the law of the case as to the Conrads' entitlement to trial-level fees and reverse the trial court's order. The Conrads were the prevailing parties in the trial level proceedings. *See Frazier v. Dreyfuss*, 14 So. 3d 1183 (Fla. 4th DCA 2009). Since there exists both a contractual and statutory basis for attorney's fees, we remand this matter for the trial court to award a reasonable amount of trial-level fees to the Conrads.

The Association's Motion for Attorney's Fees and Costs is **DENIED**.

FRENCH, BROWN, and SMALL, JJ., concur.

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