

293 So.3d 1096

District Court of Appeal of Florida, Fourth District.

Joshua CAMPOS, an Individual, and
Insta Insure, LLC, a Florida Limited
Liability Company, Appellants,

v.

ARANA AUTO INSURANCE &
MULTISERVICES AGENCY CORP., a
Florida for profit Corporation, Appellee.

No. 4D19-1419

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April 15, 2020

Synopsis

Background: Corporation brought action against individual and limited liability company (LLC). After a bench trial, and the entry of judgment in favor of defendants, the Circuit Court, 15th Judicial Circuit, Palm Beach County, [Cymonie Rowe](#), J., denied defendants' motion to tax costs and their motion for rehearing. Defendants appealed.

[Holding:] The District Court of Appeal held that trial court could not deny the motion to tax costs on the ground that counsel never verified the costs.

Reversed and remanded.

Procedural Posture(s): On Appeal; Motion for Rehearing; Motion to Tax Costs.

West Headnotes (2)

[1] [Costs](#)  [Form and requisites of application in general](#)

A claim for prevailing party costs does not need to be asserted in the pleadings. [Fla. Stat. Ann. § 57.041\(1\)](#).

[2] [Costs](#)  [Form and requisites of application in general](#)

Trial court could not deny defendants' motion to tax prevailing party costs on the ground that counsel never verified the costs; motion to tax costs was not required to be supported by an affidavit. [Fla. Stat. Ann. § 57.041\(1\)](#); [Fla. R. Civ. P. 1.100\(b\)](#), 1.525.

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; [Cymonie S. Rowe](#), Judge; L.T. Case No. 50-2015-CA-009523-XXXX-MB.

Attorneys and Law Firms

[Orrin R. Beilly](#) of the Law Office of Orrin R. Beilly, LLC, Palm Beach Gardens, for appellants.

No brief filed on behalf of appellee.

Opinion

Per Curiam.

The trial court denied a motion to tax costs based on a lack of verification. Because there is no requirement that a motion to tax costs be verified or accompanied by affidavit, we reverse and remand for further proceedings.

After a bench trial, the trial court entered a final judgment in favor of the appellants, the defendants below. The appellants filed a motion to tax costs, wherein the type of costs sought to be reimbursed was categorized and amounts provided. The order denying the motion ***1097** provided that counsel failed to appear and that the motion was insufficient due to a lack of verification. The appellants then filed a verified motion for rehearing, wherein they explained the extenuating circumstances surrounding counsel's absence and pointed out that counsel was prepared to offer evidence in support of the motion. The following exhibits were attached to the motion for rehearing: invoices for court reporting services, including the production of transcripts; a mediation conference report and photocopies of a check or checks made out to the mediator; and an invoice for an expert's services.

The trial court's order setting a hearing on the motion for rehearing provides that "the attorneys/parties must submit to the Court ... 1. copies of all relevant pleadings; 2. a copy of any memorandum of law ...; 3. copies of all case law authority."

After the hearing was held, the trial court denied the motion for rehearing, reasoning that the parties failed to submit “all relevant pleadings prior to the hearing” and that the appellants’ counsel “never verified the costs in the [original motion to tax costs], which was the original basis of the Court’s denial.” The court further reasoned that “[w]hen seeking to tax costs, the movant must file the appropriate motion, attaching a verified statement setting forth the items claimed to be taxable.”

[1] [Section 57.041\(1\), Florida Statutes \(2018\)](#), provides in pertinent part that “[t]he party recovering judgment shall recover all his or her legal costs and charges which shall be included in the judgment[.]” The claim for costs does not need to be asserted in the pleadings. See [First Protective Ins. Co. v. Featherston](#), 978 So. 2d 881, 883 (Fla. 2d DCA 2008).

[2] [Florida Rule of Civil Procedure 1.525](#) provides in pertinent part that “[a]ny party seeking a judgment taxing costs, attorneys’ fees, or both shall serve a motion no later than 30 days after filing of the judgment[.]” [Florida Rule of Civil Procedure 1.100\(b\)](#) provides that motions “must be made in writing unless made during a hearing or trial, must state with particularity the grounds for it, and must set forth the relief or order sought.” This court has held that these rules do not require a supporting affidavit. See

[Silver Springs Props., L.L.C. v. ERA Murray Realities, Inc.](#), 874 So. 2d 712, 714 (Fla. 4th DCA 2004). Other courts have agreed. See [McDaniel v. Edmonds](#), 990 So. 2d 9, 12 (Fla. 2d DCA 2008) (“Rule 1.100(b) does not impose a requirement that motions for attorney’s fees and costs be accompanied by affidavits setting forth the amount of fees and costs claimed.”); [Seminole Cty. v. Koziara](#), 881 So. 2d 83, 84 n.2 (Fla. 5th DCA 2004) (“[N]othing in [section 57.041, Florida Statutes](#) or [Florida Rule of Civil Procedure 1.525](#) requires supporting affidavits. If (as there almost never is) there is a genuine dispute over an identified item of taxable costs, the court should conduct a hearing to resolve the dispute.” (citation omitted)).

Based on the foregoing, we find that the trial court erred in denying the motion based on a lack of verification and on counsel’s failure to submit “all relevant pleadings.” We reverse and remand for further proceedings.

Reversed.

[Levine, C.J.](#), [Ciklin](#) and [Gerber, JJ.](#), concur.

All Citations

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