

**IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA**

CASE NO.: CVA1 10-10
Lower Court Case No.: 2008-CC-15696-O

JEFFREY VOSE,
Appellant,

v.

**LAKESIDE RESERVE HOMEOWNERS
ASSOCIATION, INC.,**
Appellee.

Appeal from the County Court,
for Orange County,
John E. Jordan, Judge.

Gretchen Vose, Esquire,
for Appellant.

Lakeside Reserve Homeowners' Association, Inc., Pro Se,
for Appellee.

Before MUNYON, BLACKWELL, S. KEST, J.J.

PER CURIAM.

FINAL ORDER AND OPINION AFFIRMING TRIAL COURT

Appellant Jeffrey Vose ("Vose") appeals the trial court's Order on Motions to Determine Prevailing Party finding Appellant to be the prevailing party and denying entitlement to attorney's fees and costs. Appellee Lakeside Reserve Homeowners Association, Inc. ("Lakeside Reserve") filed a cross-appeal on the same order. The cross-appeal was dismissed on August 16, 2010. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A). Oral argument is dispensed with pursuant to Florida Rule of Appellate Procedure 9.320. Appellee did not favor the Court with an answer brief.

Lakeside Reserve filed a complaint for injunctive relief requesting the issuance of an injunction requiring Vose to comply with the Declaration of Covenants and Restrictions for Lakeside Reserve (“Declaration”).¹ Vose filed an answer admitting that he is bound by the Declaration and asserting waiver and estoppel as affirmative defenses. Following a non-jury trial, the trial court entered a final judgment denying injunctive relief and reserving jurisdiction to award supplemental relief and attorney’s fees. The trial court later addressed the parties’ competing motions for attorneys’ fees and costs. Lakeside Reserve asserted that it was entitled to attorney’s fees because Vose failed to participate in pre-suit mediation and acceded to Lakeside Reserve’s request for relief by bringing the property into compliance. Conversely, Vose sought prevailing party attorney’s fees on the grounds that Lakeside Reserve’s request for injunctive relief was denied and the pre-suit mediation notice was not in substantial compliance with section 720.311, Florida Statutes. On February 26, 2010, the trial court entered an order finding Vose to be the prevailing party but denying entitlement to attorney’s fees on both sides because Lakeside Reserve’s demand letter substantially complied with the statute and Vose failed or refused to participate in mediation. This appeal followed.

When reviewing a trial court’s determination regarding entitlement to attorney’s fees, the standard of review is abuse of discretion. *Musselwhite v. Charboneau*, 840 So. 2d 1158 (Fla. 5th DCA 2003). It is well established that in appellate proceedings the decision of a trial court is presumed to be correct and the burden is on the appellant to demonstrate error. *Applegate v.*

¹ The complaint asserts that Vose violated the following sections of the Declaration: (1) Article 6, Paragraph 6.7, entitled Commercial and Recreational Vehicles, prohibits the parking of a commercial vehicle upon the subdivision property, unless fully enclosed within a garage; (2) Article 6, Paragraph 6.8, entitled Maintenance, each lot and all improvements located thereon, including landscaping, shall at all times be kept and maintained in a safe, clean, wholesome and attractive condition and shall not be allowed to deteriorate, fall into disrepair, or become unsafe or unsightly; (3) Article 6, Paragraph 6.10, entitled Garbage and Garbage Containers, all garbage and trash containers are not to be visible from any adjacent lot, common property or street, except on collection day, and garbage and trash needs to be properly disposed; and (4) Article 6, Paragraph 6.12, entitled Storage Tanks, requires that propane storage tanks must either be underground or placed inside of walls, fences, landscaping screen, or similar type enclosures.

Barnett Bank of Tallahassee, 377 So. 2d 1150, 1152 (Fla. 1980); *Wright v. Wright*, 431 So. 2d 177, 178 (Fla. 5th DCA 1983). In reviewing a discretionary act, the appellate court should apply the “reasonableness” test to determine whether the trial judge abused his or her discretion. *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980). “If reasonable men could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion.” *Id.* Absent a showing of clear abuse of discretion, a trial court’s finding with regard to an award of attorney’s fees will not be disturbed. *DiStefano Constr., Inc. v. Fidelity and Deposit Co. of Maryland*, 597 So. 2d 248, 250 (Fla. 1992).

The issue on appeal is whether the trial court abused its discretion when it denied Vose’s motion for attorney’s fees despite finding that he was the prevailing party. On appeal, Vose argues that the trial court erred in denying his motion for attorney’s fees and costs because: (1) Vose was the prevailing party below and (2) Lakeside Reserve’s notice regarding pre-suit mediation was not in substantial compliance with the form set forth in section 720.311, Florida Statutes. We find that the trial court’s denial of entitlement to attorney’s fees and costs was not an abuse of discretion. Pursuant to section 720.311(2)(b), Florida Statutes, “persons who fail or refuse to participate in the entire mediation process may not recover attorney’s fees and costs in subsequent litigation relating to the dispute.” Based upon the record and appellate brief before us, Vose has not met his burden of showing that the trial court abused its discretion in finding that Lakeside Reserve’s pre-suit demand notice did not substantially comply with the statute.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the lower court’s “Order on Motions to Determine Prevailing Party” is **AFFIRMED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this the
_13th____ day of __January_____, 2011.

_____/S/_____
LISA T. MUNYON
Circuit Judge

_____/S/_____
ALICE L. BLACKWELL
Circuit Judge

_____/S/_____
SALLY D.M. KEST
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. mail on the _14th____ day of __January_____, 2011, to the following: **Gretchen Vose, Esquire**, 324 West Morse Blvd., Winter Park, Florida 32789 and **Lakeside Reserve Homeowners' Association, Inc.**, ATTN: Board of Directors, c/o Mark Management, Inc., Meridythe Kanaga, Manager, 2755 Border Lake Road, Suite 101, Apopka, Florida 32703-4857.

_____/S/_____
Judicial Assistant