IN THE CIRCUIT COURT FOR THE
NINETEENTH JUDICIAL CIRCUIT IN AND
FOR MARTIN COUNTY, FLORIDA.
APPELLATE DIVISION

Circuit Case No. 18-AP-4
Lower Tribunal No. 17-CC-760

RIVER PINES HOMEOWNERS ASSOCIATION, INC.,

Appellant/Cross-Appellee,

v.

EDWARD RYAN, TARYN RYAN, AND KOAH RYAN, A MINOR CHILD,

Appellees/Cross-Appellants.
_____/

Not final until time expires for filing motion for rehearing, and if filed, disposed of.

Decision filed April 16, 2019.

Appeal from the County Court for Martin County; Curtis Disque/Darren Steele, Judges.

Shelly Stirrat, Appellate Services PLLC, Stuart, for appellant.

Robert Rydzewski, Treasure Coast Legal, Stuart, for appellees.

PER CURIAM.

The Appellant/Cross-Appellee ("Association") appealed the trial court's decision that neither party prevailed for purposes of attorney's fees and costs because each party prevailed on one issue at trial. Additionally, the Appellees/Cross-Appellants cross appealed and argued several issues, only one of which merits discussion; we affirm the other issues.

Although some districts maintain that the outcome of cases can be ties for the purposes of determining the prevailing party, the Fourth District Court of Appeal has maintained for over a decade that "in a breach of contract action, one party must prevail." *Coconut Key Homeowner's Association, Inc. v. Gonzalez*, 246 So. 3d 428, 433 (Fla. 4th DCA 2018); *Port-A-Weld, Inc. v. Padula & Wadsworth Const., Inc.*, 984 So. 2d 564, 569 (Fla. 4th DCA 2008). The prevailing party is the party who prevails on the significant issues in the litigation for purposes of attorney's fees."

Moritz v. Hoyt Enters., Inc., 604 So.2d 807, 810 (Fla. 1992). "Plaintiffs may be considered a 'prevailing party' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Coconut Key Homeowner's Association, Inc.*, 246 So. 3d at 434 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)).

In this case, the Association sought an injunction to prohibit the minor child from entering the pool and the boardwalk without supervision. While the trial court declined to grant the injunction as to the boardwalk area based on a notice issue, it did grant an injunction as to the pool area, which based on the foregoing case law, means that it erred in determining that neither party prevailed for purposes of attorney's fees and costs. We reverse, finding that the Association was the prevailing party at trial and is entitled to its attorney's fees and costs.

The Appellees/Cross-Appellants argue that the trial court erred in granting the Association relief outside the scope of the evidence when it permanently enjoined the Appellees/Cross-Appellants from allowing the minor son to have "access to the swimming pool areas at River Pines when he does not have adult supervision" when the language of the Rules and Regulations prohibited a child under the age of thirteen from being in the pool without supervision. The language in the injunction appears to be a scrivener's error. We reverse and direct the trial court to enter an injunction order that is in accord with the Rules and Regulations that were in place at the time of the minor son's offense, which would prohibit the Appellees/Cross-Appellants from allowing him to have access to the pool without supervision until the age of thirteen.

Both parties filed motion for appellate attorney's fees. As the prevailing party on the significant issue on appeal, the Association is entitled to an award of appellate attorney's fees. Therefore, the Association is entitled to its appellate attorney's fees, and we remand to the trial court to determine the proper amount. *See* Fla. R. App. P. 9.400(b).

Finally, the Association filed a motion for appellate costs. Fla. R. App. P. 9.400(a) clearly states "costs shall be taxed by the lower tribunal on a motion served no later than 45 days after rendition of the court's order." Therefore, the motion for appellate costs is not properly before this court, so it must be denied without prejudice to be refiled in the trial court. *See Arthur v. Arthur*, 54 So. 3d 454, 460 (Fla. 2010).

Reversed and remanded with instructions.

CROOM, LINN, JJ., and MORGAN, Acting Circuit Judge, concur.

Copies of above decision
were furnished to the attorneys/parties
of record on the same date
the decision was filed.