SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 6D23-281
Lower Tribunal No. 2015-CP-002703-0001-XX

HOPE VICKERS,

Appellant,

v.

FAITH MALPELI and ESTATE OF LYNNE C. MALPELI, deceased,

Appellees.

Appeal from the Circuit Court for Collier County.
Elizabeth V. Krier, Judge.

March 17, 2023

COHEN, J.

Hope Vickers appeals the denial of her request for attorney's fees.[1] The order denying fees is unelaborated; however, based upon the briefing in this appeal, the sole issue for our determination is whether Vickers properly pled for such an award.

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[1] This case was transferred from the Second District Court of Appeal on January 1, 2023.

The procedural posture of the case is not in dispute. Following the death of Lynne Malpeli, two of her five children filed a petition challenging the validity of her Last Will and Testament and Trust. That action was resolved in a mediated settlement agreement approved by the court. One of the provisions stated that, in the event of further litigation, the prevailing party was entitled to attorney's fees.

Shortly thereafter, Faith Malpeli filed a two-count petition accusing Vickers of breaching the agreement and conversion. In response, Vickers filed a motion to dismiss, relying on the mutual general release provisions of the settlement agreement. Within that motion, Vickers requested an award of attorney's fees. When her motion to dismiss was denied, Vickers filed an answer that did not include a request for attorney's fees.

The case proceeded for over two years. At one point, Vickers filed a motion for summary judgment that included a request for attorney's fees. The record does not indicate that the motion for summary judgment was called up for hearing. Malpeli then filed an amended petition adding a count for money lent. Vickers timely answered but, again, did not request attorney's fees.

The case proceeded to a non-jury trial. The trial court found in favor of Vickers on some claims, found in favor of Malpeli on the remaining claim, and entered a final judgment accordingly. Within thirty days after the final judgment was

rendered, Vickers filed a motion for attorney's fees. That motion was denied, and this appeal followed.

The issue for resolution on her request for attorney's fees is whether the claims she made in her motion to dismiss and motion for summary judgment are sufficient to permit the court to award those fees under *Stockman v. Downs*, 573 So. 2d 835 (Fla. 1991).

As in this case, *Stockman* dealt with an attorney's fee provision in a contract. The court in *Stockman* held that a claim for attorney's fees, whether based on statute or contract, must be pled. *Id.* at 837. That means Vickers was required to have stated her claim for attorney's fees in her answers to the petitions. *See Green v. Sun Harbor Homeowners' Ass'n Inc.*, 730 So. 2d 1261, 1263 (Fla. 1998) (observing that "pled" is to be construed in accordance with Florida Rule of Civil Procedure 1.100(a), which defines a pleading as a complaint, answer, or counterclaim).

The purpose of the pleading requirement is to "notify the opposing party of the claims alleged and prevent unfair surprise." *Stockman*, 573 So. 2d at 837. Accordingly, the court also held:

> Where a party has notice that an opponent claims entitlement to attorney's fees, and by its conduct recognizes or acquiesces to that claim or otherwise fails to object to the failure to plead entitlement, that party waives any objection to the failure to plead a claim for attorney's fees.

Id. at 838 (citations omitted).

Here, Vickers filed an answer to both Malpeli's initial and amended petitions. She did not request attorney's fees in either of the two answers. As such, she failed to comply with the requirements of *Stockman*. Her requests for attorney's fees contained in motions filed more than two years apart were insufficient to place Malpeli on notice that Vickers was claiming attorney's fees for the entire action pursuant to the settlement agreement. *See Taylor v. T.R. Props., Inc. of Winter Park*, 603 So. 2d 1380, 1381 (Fla. 5th DCA 1992) (determining that a party's failure to object to an attorney's fee request made for the first time in a motion for summary judgment did not constitute a waiver because "there is no requirement . . . to respond in any way to that demand prior to the hearing on the motion"). The trial court was correct to deny her claim for attorney's fees.

Accordingly, the order denying attorney fees is affirmed.

AFFIRMED.

SASSO, C.J., and WHITE, J., concur.

Scott A. Beatty and Iman Zekri, of Henderson, Franklin, Starnes & Holt, P.A., Naples, for Appellant.

D. Keith Wickenden, of Grant Fridkin Pearson, P.A., Naples, for Appellees.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF TIMELY FILED