

Circuit, Appellate Courts Issue Injunction Against HOA to Fix Flooding Problems

By Michael L. Hyman



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South Florida's flooding woes are well documented, and the flood warnings at the start of this year's rainy season in mid-May were a reminder that the problem continues to grow worse with every passing year. For HOAs governing sprawling communities, maintaining the property's drainage and water management system is a vital requirement of their covenants with their unit owners. Recent decisions by circuit and appellate courts illustrate that Florida's courts will issue mandatory injunctions to force associations to do their duty to maintain drainage systems, and the appellate ruling also demonstrates that HOAs will be held liable for the legal fees and costs of their homeowner plaintiffs in these actions.

The case of *Coconut Key Homeowner's Association v. Gonzalez* pitted a homeowner against her HOA, which she alleged breached its governing documents by failing to properly maintain the surface water management system for the community. This caused chronic flooding problems in her own backyard whenever it rained and led to significant damage to her home.

Gonzalez sought an injunction to require the association to cure the alleged surface water management violations and stop the flooding problem. A Broward circuit court jury ruled in her favor, concluding that the association breached its governing documents by failing to maintain and operate the surface water management system in the community. However, it concluded that this breach was not a legal cause of damage to Gonzalez, so it awarded no monetary damages.

The court then conducted a post-trial hearing on whether to issue an injunction against the association. It granted Gonzalez's motion for a mandatory injunction in accord with the jury's

finding that the HOA's violations of its own governing documents caused her irreparable harm without an adequate remedy under the law.

On the question of whether Gonzalez would be awarded attorney fees and costs, the court then ruled that she had not been the prevailing party because no damages were awarded to her, even though the jury found in her favor that the HOA had breached its contract.

The HOA appealed the order imposing a mandatory injunction, and Gonzalez appealed the circuit court's decision to deny her motion for attorney's fees and costs.

The Fourth District Court of Appeal found no error with the trial court's issuance of an injunction against the association. It noted Gonzalez had demonstrated a clear legal right had been violated, and she proved irreparable harm with multiple witnesses testifying that the flooding problem could only be resolved if the HOA fixed the swales and drainage system. The appellate panel found that only an injunction requiring the HOA to comply with its governing documents would prevent future harm to her property.

As to the issue of attorney fees and costs, which Florida law stipulates must be awarded to the prevailing party in any such litigation between homeowners and HOAs, the appellate panel reviewed the trial court's determination of whether Gonzalez was the prevailing party for abuse of discretion. It concluded the lower court was in error by focusing solely on the question of the award of monetary damages and ignoring the substance of what occurred in the litigation.

The opinion cited a 2012 Fourth DCA decision in which despite a zero-damage award the court held that the homeowner was the prevailing party for purposes of recovering attorney fees and costs. Regardless of the absence of damages in the current case, the panel concluded that the jury's finding the association had breached its contract made the homeowner the prevailing party and entitled her to receive attorney fees and costs.

The judges acknowledged and addressed contradictory rulings on this same issue in other jurisdictions. "Although there is ongoing debate in the courts on whether a plaintiff who recovers no money damages can be a prevailing party, a party who receives affirmative judicial or equitable relief is clearly considered a prevailing party under the law," it concluded.

With its upholding of the mandatory injunction against the HOA and its award of attorney fees and costs, this appellate ruling should send a clear signal to Florida HOAs for communities with surface water management and drainage systems. The governing documents for these communities require the associations to maintain these systems in working order, and the state's courts will use their injunctive powers against HOAs that fail to meet these obligations in order to force them to comply.

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<https://www.law.com/dailybusinessreview/2018/07/18/circuit-appellate-courts-issue-injunction-against-hoa-to-fix-flooding-problems/>

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