2022 WL 2374327
Only the Westlaw citation
is currently available.

District Court of Appeal of
Florida, Second District.

Rachel LOVELL and
Misty Lovell, Appellants,
v.
SECURITY FIRST
INSURANCE CO., Appellee.

No. 2D21-501
|
July 1, 2022

Appeal from the Circuit Court for Polk County; Gerald P. Hill, II, Judge.

Attorneys and Law Firms

Nicholas A. Shannin and Carol B. Shannin of Shannin Law Firm, P.A., Orlando, for Appellants.

Angela C. Flowers of Kubicki Draper, Ocala, for Appellee.

Opinion

LABRIT, Judge.

***1** We lack jurisdiction over this appeal and therefore dismiss it. Appellee Security First Insurance Company (Security) issued a homeowners' insurance policy to the Lovells. A dispute arose over a water damage claim and the Lovells sued Security. Shortly after filing suit, the Lovells moved to enforce a settlement agreement, asserting that the parties had agreed to settle the case in a series of e-mail exchanges. In June 2018, the trial court denied that motion.

In September 2020, after the Florida Rules of Appellate Procedure were amended to authorize appeals from nonfinal orders determining enforceability of settlement agreements,[1] the Lovells filed an "amended" motion to enforce the same purported settlement agreement underlying their original motion. The trial court denied the amended motion by order dated January 7, 2021 (January Order). On January 29, 2021, the Lovells filed a motion for clarification in which they asked the trial court to issue an order reflecting that their motion to enforce settlement agreement was denied "as a matter of law" in order to facilitate an interlocutory appeal pursuant to rule 9.130(a)(3)(C)(ix), Florida Rules of Appellate Procedure. On February 8, 2021, the trial court issued an order (February Order) stating that the January Order is "hereby clarified so that the motion is DENIED as a matter of law." Three days later, the Lovells filed a notice of appeal directed to both the January Order and the February Order.

1 *See In re Amends. to Fla. Rules of App. Proc.-2017 Regular-Cycle Report*, 256 So. 3d 1218, 1220 (Fla. 2018).

As the Lovells acknowledge, the January Order was not appealable under rule 9.130(a)(3)(C)(ix) because it lacked an express ruling that the motion to enforce settlement agreement was denied "as a matter of law." *See, e.g.*,

Hastings v. Demming, 694 So. 2d 718, 720 (Fla. 1997); *Honahan v. Burgeson*, 327 So. 3d 1260, 1261 (Fla. 2d DCA 2021). Nonetheless, the Lovells argue that we have jurisdiction over this appeal, contending that the motion for clarification tolled rendition of the January Order and the February Order "incorporates" the January Order.

The Lovells are incorrect. A motion for rehearing or clarification does not toll rendition of a nonfinal order. *See, e.g., Bodkin v. Sweeney*, 805 So. 2d 847, 847 (Fla. 2d DCA 2001); *see also Adventist Health Sys./Sunbelt Inc. v. Kiss*, 510 So. 2d 971, 971 (Fla. 5th DCA 1987) (stating that a motion for clarification that "merely ask[s] the trial court to specify the precise grounds on which" its earlier order is based does not "delay rendition" of the earlier order). Beyond that, the February Order is not independently appealable because it merely granted the Lovells' motion to clarify the January Order and did not rule anew on enforceability of the purported settlement agreement. *See De Shlesinger v. De Sleyzynger*, 653 So. 2d 1135, 1135 (Fla. 3d DCA 1995).

Because neither the January Order nor the February Order is appealable, we dismiss this appeal for lack of jurisdiction.

***2** Appeal dismissed.

KELLY and SMITH, JJ., Concur.

All Citations

--- So.3d ----, 2022 WL 2374327

End of Document