

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

FLORIDA CERTIFIED SIGN
ERECTORS, LLC,

CASE NO.: 2012-CV-000013-A-O
LOWER COURT CASE NO. 2010-CC-7591-O

Appellant,

v.

KIEFFER & CO., INC.,

Appellee.

Appeal from the County Court,
in and for Orange County, Florida,
Antoinette Plogstedt, County Court Judge.

Russell N. Parrish, Esquire,
for Appellant.

Michael A. Tessitore, Esquire,
for Appellee.

Before DOHERTY, SCHREIBER, and WHITE, J.J.

PER CURIAM.

FINAL ORDER AND OPINION AFFIRMING TRIAL COURT'S FINAL JUDGMENT

Appellant, Florida Certified Sign Erectors, LLC ("Florida Certified"), a subcontractor hired by Kieffer & Co., Inc. ("Kieffer"), brought an action to recover unpaid monies allegedly owed by Kieffer for the installation of a sign. Florida Certified filed an appeal of the trial court's "Order Granting Defendant's Motion for Summary Judgment" in favor of Kieffer rendered on October 4, 2011 and "Final Judgment Awarding Attorney's Fees," awarding Kieffer attorney's fees, rendered February 1, 2012. This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A).

On May 24, 2010, Florida Certified filed its Complaint, alleging breach of contract and construction lien foreclosure against Kieffer and FelCor Hotel Asset Company, LLC (“FelCor”). On December 15, 2010, the trial court dismissed the construction lien foreclosure count, as well as Florida Certified’s Complaint as to FelCor only. On June 27, 2011, Kieffer filed a motion for summary judgment, claiming that it was entitled to judgment as a matter of law because Florida Certified had effectuated an accord and satisfaction when it deposited the check from Kieffer; additionally in that motion, Kieffer requested reasonable attorney’s fees and costs. On October 4, 2011, the trial court granted Kieffer’s motion and entered an order of summary judgment for Kieffer, and on February 1, 2012, the trial court entered the Final Judgment Awarding Attorney’s Fees, awarding Kieffer a total \$16,040.87 for both attorney’s fees and costs.

Florida Certified raises two issues on appeal: 1) whether the trial court erred in granting Kieffer’s motion for summary judgment; and 2) whether the trial court erred in awarding attorney’s fees and costs to Kieffer.

The standard of review for reviewing the grant of a motion for summary judgment is *de novo*, as “[a] trial court may enter summary judgment only when there are no issues of material fact conclusively shown from the record and the movant is entitled to judgment as a matter of law.” *Shaw v. Tampa Elec. Co.*, 949 So. 2d 1066, 1069 (Fla. 2d DCA 2007) (quoting *Reeves v. N. Broward Hosp. Dist.*, 821 So. 2d 319, 321 (Fla. 4th DCA 2002)). As to the issue of attorney’s fees, “[t]he standard of review for an award of prevailing party attorney fees is an abuse of discretion.” *Shands Teaching Hosp. and Clinics, Inc. v. Mercury Ins. Co. of Florida*, 97 So. 3d 204, 213 (Fla. 2012).

Kieffer argues that the appeal of the summary judgment order is not timely filed because the appeal was filed more than 30 days after the rendition of the trial court’s Order Granting

Motion for Summary Judgment. Florida Certified argues that the summary judgment order is not a final order because the title does not state that it is final while the attorney's fees orders states that it is a final judgment which indicates the Court's intention that it be consider the final order from which appeal deadlines should run.

Although the trial court's summary judgment order is not titled "Final Judgment," the order states "The Motion is granted, and *summary judgment is entered in favor of Defendant Kieffer & Co and against Plaintiff Florida Certified Sign Erectors, LLC.*" (Emphasis added). This language is sufficient to establish finality. *See State Farm Mut. Auto. Ins. Co. v. Open MRI of Orlando, Inc.*, 780 So. 2d 339, 340-341 (Fla. 5th DCA 2001). The Court finds that the Order Granting Motion for Summary Judgment is a final order and the appeal of that order is untimely. Accordingly, this Court does not have jurisdiction to review that order.

As to this issue of whether the trial court erred in awarding attorney's fees and costs to Kieffer, this Court affirms the trial court's Final Judgment Awarding Attorney's Fees.

Accordingly, it is hereby **ORDERED AND ADJUDGED** the trial court's Final Judgment Awarding Attorney's Fees is **AFFIRMED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 24th day March, 2014.

/S/
PATRICIA A. DOHERTY
Presiding Circuit Judge

SCHREIBER and WHITE, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. mail to **Russell N. Parrish, Esq.**, Farmer, Price, Hornsby & Weatherford, L.L.P., Post Office Drawer 2228, Dothan, Alabama 36302; and **Michael A. Tessitore, Esq.**, McClane Partners, 215 East Livingston Street, Orlando, Florida 32801, on the 24th day of March, 2014.

/S/

Judicial Assistant