

Carollo v. Carollo
 Fla.App. 3 Dist.,2007.

District Court of Appeal of Florida,Third
 District.

Joseph CAROLLO, Appellant,

v.

Maria Ledon CAROLLO, Appellee.
No. 3D06-3109.

Dec. 12, 2007.

Background: Wife petitioned for dissolution of marriage. The Circuit Court, Miami-DadeCounty, Henry H. Harnage, J., entered final judgment and dissolution of marriage. Husband appealed and wife cross-appealed. The District Court of Appeal affirmed in part and reversed in part, 920 So.2d 16.On remand, the Circuit Court, Miami-DadeCounty, Paul Siegel, J., entered order imposing a constructive trust on husband's monthly retirement trust. Husband appealed.

Holding: The District Court of Appeal held that prior appellate decision determining that husband's monthly retirement trust was a marital asset did not preclude, under the doctrine of law of the case, trial court from imposing a constructive trust on a portion of the proceeds from the husband's trust.

Affirmed.

West Headnotes

[1] Divorce 134 ¶287

134 Divorce

134V Alimony, Allowances, and Disposition of Property

134k278 Appeal

134k287 k. Determination and Disposition of Questions. Most Cited Cases Prior appellate decision in marriage dissolution, determining that husband's monthly retirement trust was a marital asset subject to equitable distribution, did not preclude, under the doctrine of law of the case, trial court from imposing a constructive trust on a portion of the proceeds from the husband's trust; prior appellate decision did not determine the remedies available to wife to guarantee her share of husband's trust. West's F.S.A. § 61.075.

[2] Appeal and Error 30 ¶1097(1)

30 Appeal and Error

30XVI Review

30XVI(M) Subsequent Appeals

30k1097 Former Decision as Law of the Case in General

30k1097(1) k. In General.

Most Cited Cases

Appeal and Error 30 ¶1195(1)

30 Appeal and Error

30XVII Determination and Disposition of Cause

30XVII(F) Mandate and Proceedings in Lower Court

30k1193 Effect in Lower Court of Decision of Appellate Court

30k1195 As Law of the Case

30k1195(1) k. In General.

Most Cited Cases

The doctrine of law of the case mandates that questions of law actually decided on appeal must govern the case in the same court and the trial court, through all subsequent stages of the proceedings.

[3] Appeal and Error 30 ¶1097(1)

30 Appeal and Error

30XVI Review
30XVI(M) Subsequent Appeals
30k1097 Former Decision as Law
of the Case in General
30k1097(1) k. In General.
Most Cited Cases

Appeal and Error 30 ↪1195(1)

30 Appeal and Error
30XVII Determination and Disposition
of Cause
30XVII(F) Mandate and Proceedings
in Lower Court
30k1193 Effect in Lower Court of
Decision of Appellate Court
30k1195 As Law of the Case
30k1195(1) k. In General.

Most Cited Cases

The law of the case doctrine may foreclose subsequent consideration of issues implicitly addressed or necessarily considered by an appellate court's decision.

***930** Greene Smith McMillan and Cynthia L. Greene, Miami, for appellant.
Lauri Waldman Ross, Miami, for appellee.

***931** Before GERSTEN, C.J., and ROTHENBERG, and LAGOA, JJ.

PER CURIAM.

Joseph Carollo (the “former husband”) appeals from a non-final order imposing a constructive trust on a portion of proceeds from his monthly Elected Officer's Retirement Trust (“EORT”), which benefit Maria Ledon Carollo (the “former wife”). We affirm.

[1] On appeal, the former husband contends that the doctrine of the law of the case precludes the trial court from imposing a constructive trust because the ruling in *Carollo v. Carollo*, 920 So.2d 16 (Fla. 3d DCA 2004) (“*Carollo I*”), establishes

that the former wife does not have a property interest in the EORT. The former wife asserts that in *Carollo I*, this Court determined that the EORT was a marital asset, thereby entitling the former wife to half. We agree with the former wife and affirm.

[2][3] The law of the case mandates that “questions of law actually decided on appeal must govern the case in the same court and the trial court, through all subsequent stages of the proceedings.” See *State v. McBride*, 848 So.2d 287, 289 (Fla.2003) (quoting *Fla. Dep't of Transp. v. Juliano*, 801 So.2d 101, 105 (Fla.2001)); *U.S. Concrete Pipe Co. v. Bould*, 437 So.2d 1061 (Fla.1983); *Thornton v. State*, 963 So.2d 804 (Fla. 3d DCA 2007). Additionally, the law of the case doctrine may foreclose subsequent consideration of issues “implicitly addressed or necessarily considered by the appellate court's decision.” *Juliano*, 801 So.2d at 106.

In *Carollo I*, this Court determined the former husband's EORT was a marital asset, subject to equitable distribution, pursuant to section 61.075, Florida Statutes (2003). 920 So.2d at 18. This Court did not determine the legal or equitable remedies available to the former wife to guarantee monthly payments from the former husband's EORT.

Because this Court did not address the remedies available to the parties, the doctrine of the law of the case did not preclude the trial court from imposing a constructive trust—a device used to restore property to its rightful owner and to prevent unjust enrichment. *Provence v. Palm Beach Taverns, Inc.*, 676 So.2d 1022 (Fla. 4th DCA 1996). Thus, the trial court did not err in imposing a constructive trust on a portion of monthly proceeds from the former husband's EORT. Accordingly, we affirm the

non-final order.

Affirmed.

Fla.App. 3 Dist.,2007.
Carollo v. Carollo
972 So.2d 930, 32 Fla. L. Weekly D2936

END OF DOCUMENT