



## **LUCINDA ADAMS v. SETZER'S SUPER STORES**

145 So. 2d 893 (1962) | Cited 0 times | District Court of Appeal of Florida | February 15, 1962

Per Curiam.

We consider appellee's motion to dismiss this appeal for failure of the appellant, plaintiff below, to comply with Florida Appellate Rule 3.2, subd. f, 31 F.S.A. by paying, prior to the institution of the appeal, the costs specifically taxes against appellant up to the time the appeal was taken or by assigning the taxation of costs as error and superseding the judgment specifically taxing same.

This appeal has been before this court on at least two previous occasions in connection with motions of appellee addressed to procedural matters, none of which involved the subject of the present motion, though at all times the facts obtained upon which this motion is based. Except for the disposition of this motion, this appeal is ripe for final hearing. While the failure of appellee to present the subject of this motion at a prior time must be held to constitute a waiver of the right to have the appeal summarily dismissed, such acquiescence does not operate to invest the defaulting appellant with a right to maintain the appeal without curing the default.

In open court Horace E. Hill, Esquire, counsel for appellant, announced that if permitted so to do, he would within a short day to be fixed by the court cause such costs to be paid.

An order will be entered allowing the appellant ten days from the date of this decision in which to pay the costs by the trial court specifically taxed against plaintiff in this cause, together with interest thereon, as provided by Section 59.09, Florida Statutes, F.S.A., and to file in this court a certificate to such effect, failing which the appeal to be dismissed.

CARROLL, DONALD K., C.J., and STURGIS and RAWLS, JJ., concur.

On the Merits

Per Curiam.

Affirmed.

CARROLL, DONALD, C.J., RAWLS, J., and McLANE, Associate Judge, concur.

