

# Third District Court of Appeal

## State of Florida

Opinion filed October 8, 2014.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D12-2605  
Lower Tribunal No. 12-366-K

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**The William W. Zeigler Trust, et al.,**  
Appellants,

vs.

**Cofran Sunday Sunshine Cannon, etc., et al.,**  
Appellees.

An Appeal from the Circuit Court for Monroe County, David J. Audlin, Jr.,  
Judge.

Horan, Wallace & Higgins and David Paul Horan (Key West), for  
appellants.

Stones & Cardenas and Adele V. Stones (Key West), for appellees.

Before SHEPHERD, C.J., and WELLS and LAGOA, JJ.

SHEPHERD, Chief Judge.

This is an appeal from a final judgment construing a Deed Granting  
Easement over property in Monroe County. The parties stipulated that their cross-

motions for summary judgment “involve exclusively questions of law, [that] no genuine issue of material fact is involved, and that the issue before the court is the construction of the . . . Deed Granting Easement.” The trial court ruled in favor of appellees. However, the parties overlooked the dispositive question: Did a valid easement exist in the first place? See Winthrop v. Wadsworth, 42 So. 2d 541, 543-44 (Fla. 1949); One Harbor Fin. Ltd. Co. v. Hymes Props., LLC, 884 So. 2d 1039, 1044 (Fla. 5th DCA 2004); Hensel v. Aurilio, 417 So. 2d 1035, 1037 (Fla. 4th DCA 1982); see also 2 William Blackstone, Commentaries \*46-47; 20 Fla. Jur. 2d Easements § 1 (2014)

Accordingly, the judgment below is reversed and the cause remanded for further proceedings as may be required to determine the issue.