

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

BARBARA BATIE,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D09-2878

BILLY FRANKLIN BATIE, SR.,
dba BATIE TREE SERVICE and
GOODMAN CONSTRUCTION
COMPANY,

Appellees.

Opinion filed April 7, 2010.

An appeal from the Circuit Court for Alachua County.
Robert E. Roundtree, Jr., Judge.

Jana Ranieri Cortina, Gainesville, for Appellant.

Robert E. O'Quinn, Jr., of Cole, Scott & Kissane, P.A., Jacksonville, and Scott A. Cole and Alejandro Perez of Cole, Scott & Kissane, P.A., Miami, for Appellee Billy Franklin Batie, Sr. d/b/a Batie Tree Service.

PER CURIAM.

Appellant, Barbara Batie, appeals a final judgment, arguing that the trial court erred in entering summary judgment in favor of Appellee, Billy Franklin

Batie, Sr. d/b/a Batie Tree Service, on the basis that Appellant was estopped from bringing the lawsuit at issue. We agree that the trial court erred because Appellant's position in her first lawsuit against Appellee Batie, while inconsistent with the position taken in her current lawsuit, was not successfully maintained. See Grauer v. Occidental Life Ins. Co. of Cal., 363 So. 2d 583, 585 (Fla. 1st DCA 1978) (explaining that in order for a party to be equitably estopped from maintaining a position inconsistent with a prior position, the prior position must have been successfully maintained). Cf. Denmark v. Michael, 737 So. 2d 595, 595-96 (Fla. 1st DCA 1999) (affirming the final summary judgment on estoppel grounds because the appellant successfully maintained the position that title to the property at issue was held by the appellee in the prior litigation); Lambert v. Nationwide Mut. Fire Ins. Co., 456 So. 2d 517, 519-20 (Fla. 1st DCA 1984) (holding that the appellant was precluded from taking a position that was inconsistent from one he had previously taken because he successfully secured payment as a result of his allegations in the first case).

Accordingly, the final judgment is REVERSED and the case is REMANDED for further proceedings.

KAHN, DAVIS, and THOMAS, JJ., CONCUR.