

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 impli-  
cantly 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”) ap-  
peals 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 af-  
firm.

[1] On appeal, the former husband con-  
tends that the doctrine of the law of the  
case precludes the trial court from impos-  
ing 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 prop-  
erty interest in the EORT. The former wife  
asserts that in *Carollo I*, this Court determ-  
ined 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 ap-  
peal 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. Con-*  
*crete 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 sub-  
sequent 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 as-  
set, subject to equitable distribution, pursu-  
ant 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 hus-  
band's EORT.

Because this Court did not address the rem-  
edies 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 en-  
richment. *Provence v. Palm Beach Tav-*  
*erns, 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 hus-  
band'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