

**IN THE
SUPREME COURT OF FLORIDA**

CASE NO.: SC16-1921

NICOLE LOPEZ,
Petitioner,

vs.

SEAN HALL,
Respondent.

**On Review from the District Court of Appeal,
First District of Florida**

**APPENDIX TO
INITIAL BRIEF OF PETITIONER**

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APPENDIX

<i>Hall v. Lopez</i> , 1D15-0531 (Fla. 1 st DCA July 28, 2016)	“A”
Order Denying Respondent’s Motion to Attorney’s Fees dated January 5, 2015	“B”
Order Confirming Voluntary Dismissal of Action But Retaining Jurisdiction to Consider Motion for Section 57.105 Attorney’s Fees and Costs	“C”
Respondent’s Motion For Section 57.105 Attorney’s Fees and Sanctions dated April 9, 2014.....	“D”
Amended Petition for Injunction For Protection Against Repeat Violence dated February 21, 2014 (less exhibits)	“E”
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CERTIFICATE OF COMPLIANCE	2

SEAN HALL, Appellant,
v.
NICOLE LOPEZ, Appellee.

CASE NO. 1D15-0531

**DISTRICT COURT OF APPEAL FIRST
DISTRICT, STATE OF FLORIDA**

July 28, 2016

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

An appeal from the Circuit Court for Duval
County.

Karen K. Cole, Judge.

Earl M. Johnson, Jr., and Aida M. Ramirez,
Jacksonville, for Appellant.

Christopher W. Wickersham, Jr. of the Law
Offices of C. W. Wickersham, Jr. P.A.,
Jacksonville, for Appellee.

LEWIS, J.

Appellant, Sean Hall, appeals the trial
court's order denying his motion for section
57.105 attorney's fees and sanctions. We
agree with Appellant that the trial

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court erred in ruling that attorney's fees
pursuant to section 57.105, Florida Statutes,
cannot be awarded in an action for injunction
for protection against violence; therefore, we
reverse the trial court's order.¹

Appellee, Nicole Lopez, filed against
Appellant an amended petition for injunction
for protection against repeat violence
pursuant to section 784.046, Florida Statutes.
After the trial court had entered a temporary
injunction, Appellant filed a motion for
attorney's fees and sanctions against Appellee
and her attorney pursuant to section 57.105,
Florida Statutes. Thereafter, Appellee

voluntarily dismissed the action, and the trial
court retained jurisdiction to consider
Appellant's motion for attorney's fees.
Following a hearing on the legal issue of
whether a court may award attorney's fees
under section 57.105 in a repeat violence
injunction action, the trial court entered an
order denying Appellant's motion for fees. In
its order, the trial court reasoned as follows:

Section 57.105 attorney's fees
may be awarded as a sanction in
a variety of types of actions
Such fees may not, however, be
awarded in an action for an
injunction for protection against
violence. *Cisneros v. Cisneros*,
81 So.2d 257 (Fla. 3d DCA
2002) ("The trial court was also
without jurisdiction to award
trial level attorney's fees
pursuant to section 57.105,
Florida Statutes, for the
domestic violence [injunction]

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proceeding.") In support of that
proposition, the *Cisneros* court
cited the First District case of
Lewis v. Lewis, 689 So.2d 1271
(Fla. 1st DCA 1997).

After discussing *Ratigan v. Stone*, 947 So. 2d
607 (Fla. 2d DCA 2007), the trial court
further explained:

The only basis upon [which] the
[Appellant's] Motion for Section
57.105 Attorney's Fees and
Sanctions seeks fees and
sanctions is the cited statute.
Like section 741.30, Fla. Stat.,
the domestic violence injunction
statute, section 784.046, Fla.
Stat., does not authorize an
award of attorney's fees on any
basis, and the case law
interpreting section 784.046

makes it plain that "nowhere in section 784.046 is there any provision for an award of sanctions against a petitioner who uses the statutory provisions concerning injunctions as a sword rather than a shield."

This appeal followed.

A trial court's order on attorney's fees pursuant to section 57.105(1), Florida Statutes, is generally reviewed for an abuse of discretion; however, such an order is reviewed *de novo* to the extent it is based on an issue of law. Blue Infiniti, LLC v. Wilson, 170 So. 3d 136, 139 (Fla. 4th DCA 2015); see also Wells v. Halmac Dev., Inc., 189 So. 3d 1015, 1019 (Fla. 3d DCA 2016).

Section 57.105, Florida Statutes (2013), provides in pertinent part:

(1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

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- (a) Was not supported by the material facts necessary to establish the claim or defense; or
- (b) Would not be supported by

the application of then-existing law to those material facts.

....

(6) The provisions of this section are supplemental to other sanctions or remedies available under law or under court rules.

Chapter 741, Florida Statutes, governs marriage and domestic violence, and section 741.30, Florida Statutes (2013), governs domestic violence injunctions. Chapter 784, Florida Statutes, governs assault, battery, and culpable negligence, and section 784.046, Florida Statutes (2013), governs actions for repeat, sexual, and dating violence injunctions.

In Cisneros v. Cisneros, 831 So. 2d 257, 258 (Fla. 3d DCA 2002), a case upon which the trial court relied, the Third District reversed an award of trial and appellate attorney's fees pursuant to section 57.105 for the appellee's successful litigation and appeal of a domestic violence injunction for the following reasons:

As concerns the appellate attorney's fees, because no motion for attorney's fees was made in this court, the trial court was without jurisdiction to award the same. . . . The trial court was also without jurisdiction to award trial level attorneys fees pursuant to section 57.105, Florida Statutes for the domestic violence proceeding. See Abraham v. Abraham, 700 So.2d 421, 422 (Fla. 3d DCA 1997); Lewis v. Lewis, 689 So.2d 1271 (Fla. 1st DCA 1997).

Cisneros relied on Abraham v. Abraham, 700 So. 2d 421, 422 (Fla. 3d DCA 1997), where the Third District concluded that the trial court had abused its

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discretion in awarding attorney's fees to the appellee for services her attorneys rendered in a domestic violence proceeding that was filed and litigated before the dissolution proceeding at issue, and in a footnote emphasized the language in section 61.16(1), Florida Statutes, permitting an award of fees related to a proceeding "under this chapter."

Cisneros also relied on Lewis v. Lewis, 689 So. 2d 1271, 1271 (Fla. 1st DCA 1997), where this Court reversed an injunction against domestic violence that awarded custody of the parties' minor children to the appellee upon concluding that the appellant was improperly denied an adequate hearing pursuant to section 741.30. There, this Court also denied the appellee's request for appellate attorney's fees made pursuant to Florida Rule of Appellate Procedure 9.400 and Chapter 61, Florida Statutes, because the appellate rule "does not provide independent authority for granting attorney's fees," the action involved a Chapter 741 not a Chapter 61 proceeding, and "Chapter 741 contains no provision authorizing the award of attorney's fees." Id. at 1272-73. The Court noted, "In denying this request, we are not unaware that many of the public policy reasons for granting attorney's fees in a chapter 61 proceeding exist in a domestic violence proceeding. This is a matter, however, that should be dealt with by the Legislature rather than the courts." Id. at 1274; see also Fernandez v. Wright, 111 So. 3d 229, 230-31 (Fla. 2d DCA 2013) (finding that the trial court abused its discretion in awarding attorney's fees to the

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appellee for work related to the appellant's petitions for domestic violence injunctions,

but affirming the award of fees incurred in the parties' family law case, because "the statute creating a cause of action for an injunction for protection against domestic violence, § 741.30, Fla. Stat. (2011), does not provide for an award of attorney's fees") (citing Baumgartner v. Baumgartner, 693 So. 2d 84 (Fla. 2d DCA 1997), and Belmont v. Belmont, 761 So. 2d 406 (Fla. 2d DCA 2000)); Geiger v. Schrader, 926 So. 2d 432, 433 (Fla. 1st DCA 2006) ("Appellee has also filed a cross appeal, alleging that the trial court erred in declining to award attorney's fees against appellant in the injunction order. However, because there is no provision for an award of attorney's fees in a section 741.30, Florida Statutes, proceeding, this cross appeal is without merit. See Lewis v. Lewis, 689 So. 2d 1271 (Fla. 1st DCA 1997) (denying an award of attorney's fees in a section 741.30, Florida Statutes, proceeding)."); Belmont v. Belmont, 761 So. 2d 406, 407 (Fla. 2d DCA 2000) (reversing on appeal from a final judgment of dissolution of marriage the portion of the attorney's fees award related to a separately filed domestic violence injunction case) (citing Lewis); Baumgartner v. Baumgartner, 693 So. 2d 84, 85 (Fla. 2d DCA 1997) ("The cause of action created in section 741.30 does not provide for an award of attorneys' fees."). Cf. Bane v. Bane, 775 So. 2d 938, 942 n.4 (Fla. 2000) ("[T]he important distinction between these cases [Belmont, Baumgartner, Lewis, and Abraham] and the present case is that the cases concerning domestic violence

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injunction proceedings all involved an independent action under chapter 741, and none of the actions were filed under chapter 61 or pertained to enforcement or modification of the final judgment of dissolution. In making this distinction, we note that the issue of whether attorney's fees are authorized in a domestic violence injunction proceeding is not before us, and

therefore we neither approve nor disapprove of these cases.").

Similarly, in Ratigan v. Stone, another case upon which the trial court relied, the Third District found that the trial court was justified in awarding section 57.105 fees as sanctions in the dissolution proceeding, but erred in awarding such fees in the domestic violence injunction proceeding because there was no statutory authority for the award. 947 So. 2d 607, 608 (Fla. 3d DCA 2007) (citing Belmont, Abraham, Baumgartner, and Lewis). Furthermore, in Dudley v. Schmidt, 963 So. 2d 297, 297-98 (Fla. 5th DCA 2007), the Fifth District affirmed the trial court's denial of section 57.105 attorney's fees relating to a petition for injunction against repeat violence as follows:

There is no basis for the imposition of attorney's fees in a proceeding for injunction against repeat violence under section 741.30, Florida Statutes (2005). Attorney's fees cannot be awarded in a domestic violence injunction case. See Bane v. Bane, 775 So.2d 938, 942 n. 4 (Fla.2000) (citing Belmont v. Belmont, 761 So.2d 406 (Fla. 2d DCA 2000), Abraham v. Abraham, 700 So.2d 421 (Fla. 3d DCA 1997), Lewis v. Lewis, 689 So.2d 1271 (Fla. 1st DCA 1997), and Baumgartner v. Baumgartner, 693 So.2d 84 (Fla. 2d DCA 1997)). See also Ratigan v. Stone, 947 So.2d 607, 608 (Fla. 3d DCA 2007) (holding trial court erred in awarding attorney's fees in the domestic violence injunction

fees as sanctions in such case); Geiger v. Schrader, 926 So.2d 432, 433 (Fla. 1st DCA 2006) (holding there is no provision for an award of attorney's fees in a section 741.30 proceeding); Cisneros v. Cisneros, 831 So.2d 257, 258 (Fla. 3d DCA 2002) (holding trial court was without jurisdiction to award trial level attorney's fees pursuant to section 57.105 for domestic violence proceeding).

On the other hand, in Bierlin v. Lucibella, 955 So. 2d 1206, 1207 (Fla. 4th DCA 2007), a case involving a Chapter 784 proceeding, the Fourth District reversed the denial of the appellant's section 57.105 motions for fees. The appellee filed suit against the appellant for an injunction under section 784.046, which the trial court dismissed with prejudice for failure to state a cause of action. Id. While that dismissal was pending on appeal, the trial court denied the appellant's section 57.105 motions for fees, which was the subject of this second appeal. Id. In the first appeal, the Fourth District affirmed the dismissal and granted the appellant's motion for section 57.105 appellate attorney's fees. Id. In the second appeal, the court reversed the denial of the appellant's section 57.105 motions, explaining:

We conclude that the trial court abused its discretion by finding justiciable issues of fact or law where none were present and denying Bierlin's section 57.105 motions. This case involved more than a dismissal for failure to state a cause of action. Rather, it involved a dismissal for failure to state a cause of action after four nearly identical attempts to do so and without presenting a justiciable issue of fact or law. Moreover, no cause of action could ever be stated in

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proceeding because there is no statutory authority to award

the form which Lucibella employed due to its non-compliance with the clear and mandatory statutory requirements of section 784.046. Additionally, Lucibella never asserted below that he was attempting to change the law to limit the statutory requirements to ex parte injunctions. Furthermore, it is telling that this Court granted section 57.105

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attorney's fees on appeal of the dismissal order in Case No. 4Do6-86. Therefore, we reverse and remand for the entry of an award of section 57.105 attorney's fees against Lucibella.

Id. at 1208.

Turning to the case before us, the trial court was correct in observing that section 784.046, like section 741.30, does not authorize an award of attorney's fees, and Cisneros and Ratigan support its conclusion that attorney's fees pursuant to section 57.105 may not be awarded in an action for injunction against violence. However, in concluding that the trial court lacked authority to award attorney's fees pursuant to section 57.105 in the domestic violence proceeding, Cisneros cited Abraham and Lewis and Ratigan relied on Belmont, Baumgartner, Abraham, and Lewis—cases that did not pertain to an award of fees pursuant to section 57.105. As such, those cases are inapposite. Given the absence of a statutory provision providing that an award of attorney's fees pursuant to section 57.105 is impermissible in a Chapter 784 (or Chapter 741) proceeding, and in light of the language in section 57.105 that its provisions apply to civil proceedings/actions and are supplemental to other sanctions/remedies,

we hold that an award of attorney's fees pursuant to section 57.105 is not prohibited in an action under section 784.046. We recognize that this holding conflicts with the Fifth District's opinion in Dudley and with the Third District's opinions in Ratigan and Cisneros, and we certify conflict with those decisions.

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Accordingly, we REVERSE the trial court's order, REMAND for a hearing on Appellant's entitlement to attorney's fees as sanctions, and CERTIFY CONFLICT.

WETHERELL and RAY, JJ., CONCUR.

Footnotes:

¹ Although we reject without discussion Appellant's second argument that the trial court erred in not considering sanctions under its inherent authority, we note that a trial court has a limited inherent authority to assess attorney's fees against an attorney or party for bad faith conduct, but "if a specific statute or rule applies, the trial court should rely on the applicable rule or statute rather than on inherent authority." Moakley v. Smallwood, 826 So. 2d 221, 224-27 (Fla. 2002).

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA.

CASE NO.: 16-2014-DR-354-DVXX
DIVISION: FM-V

NICOLE LOPEZ,

Petitioner,

v.

SEAN HALL,

Respondent.

FILED 15 JAN 06 PM 01:34 R FISSILL

ORDER DENYING RESPONDENT'S MOTION FOR ATTORNEY'S FEES

On May 20, 2014, Respondent Sean Hall filed Respondent's Motion for Section 57.105 Attorney's Fees and Sanctions ("Respondent's motion"). On September 18, 2014, Petitioner Nicole Lopez filed [Petitioner's] Motion to Strike, asking the Court to strike Respondent's motion.

Subsequently, Petitioner, through her counsel, verbally dismissed the action. *See* Order Confirming Voluntary Dismissal of Action but Retaining Jurisdiction to Consider Motion for Section 57.105 Attorney's Fees and Costs. In an Order Setting Hearing on Legal Issue of Whether a Court in a Repeat Violence Injunction Action May §57.105 Attorney's Fees, the Court set a hearing on the preliminary legal issue of whether a court may award attorney's fees under section 57.105, Fla. Stat., in a repeat violence injunction action.

Section 57.105 attorney's fees may be awarded as a sanction in a variety of types of actions, including an action under Chapter 61 of the Florida Statutes for dissolution of marriage. Such fees may not, however, be awarded in an action for an injunction for protection against

violence.¹ *Cisneros v. Cisneros*, 831 So.2d 257 (Fla. 3d DCA 2002)(“The trial court was also without jurisdiction to award trial level attorney’s fees pursuant to section 57.105, Florida Statutes, for the domestic violence [injunction] proceeding.”) In support of that proposition, the *Cisneros* court cited the First District case of *Lewis v. Lewis*, 689 So.2d 1271 (Fla. 1st DCA 1997).

In *Ratigan v. Stone*, 947 So.2d 607, 608 (Fla. 3d DCA 2007), a trial judge awarded section 57.105 attorney’s fees to the wife as a sanction against the husband for his husband’s “litigation misconduct” and “wrongdoing throughout the trial.” The husband engaged in a similar unfortunate course of conduct in a related domestic violence injunction action between himself and the wife’s fiancé. As it had in the dissolution of marriage case, the trial court imposed section 57.105 attorney’s fees against the husband as a sanction for his inappropriate conduct of the litigation.

On appeal, the Third District Court of Appeal affirmed the award of section 57.105 attorney’s fees in the dissolution of marriage case but reversed the similar award in the injunction action, finding that there was no statutory authority for that award. Referring to the by-then-divorced husband and wife as “former” spouses, the appellate court wrote:

We find that the trial judge was justified in awarding attorney’s fees as a sanction to the former wife, pursuant to section 57.105, Florida Statutes (2002)....We find, however, that the trial judge erred in awarding attorney’s fees to [the former wife’s fiancé] in the domestic violence injunction action. Although we understand the trial court’s frustration and outrage, there was no statutory

¹ There are five types of such actions: an action pursuant to section 741.30 for injunctions for protection against domestic violence, and actions for injunctions pursuant to section 784.046 for protection against repeat violence, sexual violence, dating violence, stalking violence.


authority to award attorney's fees as sanctions in the separately-filed domestic violence case. [Citations omitted.] *Lewis v. Lewis*, 689 So.2d 1271 (Fla. 1st DCA 1997). Therefore, we reverse the award of attorney's fees as sanctions to [the former wife's fiancé'].

The only basis upon the Respondent's Motion for Section 57.105 Attorney's Fees and Sanctions seeks fees and sanctions is the cited statute. Like section 741.30, Fla. Stat., the domestic violence injunction statute, section 784.046, Fla. Stat., does not authorize an award of attorney's fees on any basis, and the case law interpreting section 784.046 makes it plain that "nowhere in section 784.046 is there any provision for an award of sanctions against a petitioner who uses the statutory provisions concerning injunctions as a sword rather than a shield."

ACCORDINGLY, it is **ORDERED** that:

- (1) Respondent's Motion for Section 57.105 Attorney's Fees and Sanctions is denied.
- (2) In light of the above ruling, Petitioner's Motion to Strike is denied as moot.

ENTERED on January 5, 2015, in Jacksonville, Duval County, Florida.



Circuit Judge Karen K. Cole

Copies to:

Christopher Wickersham, Esquire
Michael Yokan, Esquire
Earl Johnson, Esquire

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA.

CASE NO.: 16-2014-DR-354-DVXX
DIVISION: CV-B

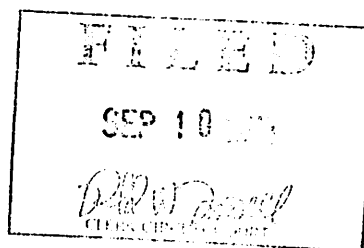
NICOLE LOPEZ,

Petitioner,

v.

SEAN HALL,

Respondent.



ORDER CONFIRMING VOLUNTARY DISMISSAL OF ACTION
BUT RETAINING JURISDICTION TO CONSIDER MOTION
FOR SECTION 57.105 ATTORNEY'S FEES AND COSTS

This case came before the Court on September 5, 2014, for a hearing on: Respondent's Verified Motion to Hold Petitioner in Contempt of Court for Perjury and to Dismiss the Petition for Injunction and Respondent's Motion for Attorney's Fees and Sanctions. Petitioner and her attorney were present. So, too, were Respondent and his attorney.

At the outset of the hearing, counsel for Petitioner voluntarily dismissed the action filed by Petitioner. The dismissal does not deprive the Court of jurisdiction to address the issues below:

A) Respondent seeks a determination that Petitioner committed perjury by testifying falsely under oath in this case. The statute cited by Respondent is a criminal statute. This is a civil case. Respondent, however, may contact the State Attorney's Office to request that it evaluate whether it will pursue a criminal charge of perjury against Petitioner.

B) Respondent seeks a contempt adjudication against Petitioner. Because Respondent cannot identify an express order of the Court that Petitioner has violated, the Court is unable to conduct a contempt hearing or to enter a contempt adjudication.

C) Respondent seeks an award of attorney's fees and costs from Petitioner pursuant to section 57.105, Fla. Stat.¹, which allows for such an award where an action involves unsupported

¹ The pertinent portions of the statute read as follows:

57.105 Attorney's fee; sanctions for raising unsupported claims or defenses; exceptions; service of motions; damages for delay of litigation.—

(1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

(a) Was not supported by the material facts necessary to establish the claim or defense; or

(b) Would not be supported by the application of then-existing law to those material facts.

(2) At any time in any civil proceeding or action in which the moving party proves by a preponderance of the evidence that any action taken by the opposing party, including, but not limited to, the filing of any pleading or part thereof, the assertion of or response to any discovery demand, the assertion of any claim or defense, or the response to any request by any other party, was taken primarily for the purpose of unreasonable delay, the court shall award damages to the moving party for its reasonable expenses incurred in obtaining the order, which may include attorney's fees, and other loss resulting from the improper delay.

(3) Notwithstanding subsections (1) and (2), monetary sanctions may not be awarded:

(a) Under paragraph (1)(b) if the court determines that the claim or defense was initially presented to the court as a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, as it applied to the material facts, with a reasonable expectation of success.

claims or defenses.

The Court finds that the hearing as it relates to the request for attorney's fees and costs under section 57.105 should be continued to allow counsel for the parties to research legal issues,² file affidavits, and explore opportunities to resolve this final issue.

ACCORDINGLY, it is **ORDERED** that:

(1) The Respondent's Verified Motion to Hold Petitioner in Contempt of Court for Perjury and to Dismiss the Petition for Injunction is denied. The Court retains jurisdiction to consider Respondent's Motion for Attorney's Fees and Sanctions.

(b) Under paragraph (1)(a) or paragraph (1)(b) against the losing party's attorney if he or she has acted in good faith, based on the representations of his or her client as to the existence of those material facts.

(c) Under paragraph (1)(b) against a represented party.

(d) On the court's initiative under subsections (1) and (2) unless sanctions are awarded before a voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.


(4) A motion by a party seeking sanctions under this section must be served but may not be filed with or presented to the court unless, within 21 days after service of the motion, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

(6) The provisions of this section are supplemental to other sanctions or remedies available under law or under court rules.

² These include, but are not limited to: (a) whether Petitioner's counsel at the upcoming §57.105 hearing must testify regarding a material issue, *see* Rule 4-3.7 ("Lawyer as Witness"), Rules of Professional Conduct, (b) whether Petitioner's counsel has a conflict of interest with Petitioner since Respondent's motion seeks fees and costs against both Petitioner and her attorneys, and, if such a conflict does exist, (c) whether the conflict is one capable of being waived.

(2) Petitioner Nicole Lopez has voluntarily dismissed her petition in this case. Except as to the jurisdiction retained in the preceding paragraph, this action is concluded.³

ENTERED on September 8, 2014, in Jacksonville, Duval County, Florida.


Circuit Judge Karen K. Cole

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³ No final injunction has been entered against Respondent Sean Hall.

**IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT IN AND
FOR DUVAL COUNTY, FLORIDA**

CASE NO.: 16-2014-DR-000354-DVXX

NICOLE LOPEZ,

Petitioner,

Vs.

SEAN HALL,

Respondent.

RESPONDENT'S MOTION FOR SECTION 57.105
ATTORNEY'S FEES AND SANCTIONS

The Respondent, via his undersigned counsel, and Section 57.105, Fla. Stat., hereby moves this Honorable Court to enter an Order awarding Respondent attorney's fees and sanctions against Petitioner, Nicole Lopez, and her attorney, Christopher Wickersham, and in support thereof states:

- 1) Petitioner and her attorney have offered allegations and evidence, not supported by the facts and indeed presented through the perjured testimony of Petitioner.
- 2) Petitioner brought the instant injunction action, claiming among other things, to have been harassed by Respondent through the transmitting of a Western Union Money Transfer. Petitioner testifies: "A text message was received ... stating that there was a Western Union pickup, and they gave a number." *See* Ex. A. Motion for Contempt, Hearing Transcript ("HT"), at p. 26, ll. 12-16.
- 3) Petitioner did not present the telephone number alleged to have sent the Western Union text: "I don't recall the telephone number at this time." HT, at p. 26, ll. 19-20.

- 4) Petitioner testified at final hearing that “the Western Union [she] received was a MoneyGram for \$14.00 worth of notes saying, This is for your wife’s services?” HT, at p. 24, ll. 16-19; *see* Ex. B (Petitioner’s Western Union Receipt).
- 5) Petitioner testified that she did “request from Western Union, the receipt or a copy of the receipt from the center to show who originated it?” HT, at p. 24, ll. 20-23. *See Id.*
- 6) Petitioner produced an “original” copy of the Western Union receipt, dated September 10, 2012. HT, pp. 24-25. *See* Ex. B Motion for Contempt.
- 7) According to the Petitioner, the receipt she produced at hearing was “cut by the Western Union People.” HT, p. 27, l. 20.
- 8) The petitioner conceded that her receipt did not indicate the name of the recipient, the receiver of the MoneyGram. HT, p. 28, ll. 1-3.
- 9) At final hearing, the Petitioner moved the Western Union receipt into evidence. Attached hereto at *See* Ex. B.
- 10) The Respondent also presented his original copy of the same receipt, bearing “MTCN: 501-097-3235.” Ex. C Motion for Contempt.
- 11) Additionally, in the Petitioner’s Answers to Respondent’s Interrogatories, #3, Petitioner claims once again “A money transfer was received via Western Union for a nominal amount, believed by the Petitioner to be fourteen dollars (\$14.00), in California on September 10, 2012. This transaction bore Western Union...MTCH 501-097-3235.” *See* Ex. D Motion for Contempt.
- 12) The “MTCN” number on the receipt offered by Petitioner is “501-097-3235,” the exact same transaction number as the receipt offered by the Respondent. Compare Ex. B&C Motion for Contempt.

- 13) Petitioner thus willfully misled this Court on multiple occasions about the Western Union money transfers in an effort to fraudulently utilize the Western Union receipt at issue against Respondent in furtherance of her sham prosecution.
- 14) In response to Respondent's Subpoena *Duces Tecum*, the Western Union Company provided a response through its attorney, confirming that the Petitioner has perjured herself regarding the Western Union testimony. This is so because the Western Union Company has responded that "MTCN: 501-097-3235" is never received by the Petitioner nor was it for the amount of \$14.00. Rather the Western Union Company confirms that "MTCN: 501-097-3235" is "Sender: Sean Hall and Receiver Cynthia Cruz" in the amount of \$540.00. Comp. Ex. E (emphasis added) Motion for Contempt.
- 15) Given Western Union's business record confirmation that the receipt offered by Petitioner is actually the receipt representing the Respondent's \$540.00 extortion payment, Petitioner has gravely abused and deceived this Court.
- 16) Respondent testified that, in and around September 2012, he was telephoned by a friend of petitioner, Cynthia Cruz, who stated that Petitioner had been kicked out of her home by her husband and that she needed money. HT, p. 98, ll. 8-13. Respondent testified that Cruz demanded \$1000 on Petitioner's behalf, but settled for \$540. HT, p. 101, ll. 2-15.
- 17) Respondent further testified that Cynthia Cruz contacted his wife soon after, on September 27, 2012. HT, p. 102, ll. 4-13.
- 18) Respondent stated that he sent a Western Union in September of 2012 to a Cynthia Cruz on behalf of the Petitioner: "Let me be clear, I sent a Western Union telegram to

a woman named Cynthia Crews (sp), and I have the receipt. It says the amount, and it says the name. It's the same number that they're showing for \$540, because I was threatened that if I did not send it that they would go to my wife." HT, at p. 97, ll. 8-13.

19) Respondent showed the original receipt bearing the MTCN "501-097-3235" to the Court. HT., p. 97, ll. 15-17. The Respondent went on to say that Cruz made the threat of extortion over the telephone. HT, p. 97, ll. 19-21.

20) On numerous occasions, Petitioner has perjured herself, by testifying or stating under oath that she does not know a Cynthia Cruz:

"Q: Who is Cynthia Crews (sp)? A. (Petitioner) I'm sorry?

Q: Do you know a Cynthia Crews? A: No, sir."

HT, p. 60, ll. 16-19 (emphasis added).

"Please provide your relationship with Cynthia Cruz.

ANSWER:

None. I do not know any Cynthia Cruz, and I do not have any relationship with any such person."

See Petitioner's Answers to Respondent's Interrogatories, #9 (emphasis added), Ex. D.

21) The Petitioner could only be aware of the MTCN "501-097-3235" Western Union money transfer through firsthand knowledge from the **actual** payee, Cynthia Cruz. The business record provided by Western Union of the transaction clearly identifies the payee as Cynthia Cruz with an address of 1045 Myrtle Ave., Long Beach, CA 90813 and phone number 562-704-6920. Comp. Ex. C

- 22) The Western Union response was the first time Cynthia Cruz' address had been identified in this action. Using that address, the undersigned ran a Google map search. The search revealed that the Petitioner's residence (identified from the original Petition for Injunction) and Cynthia Cruz' residence, 1045 Myrtle Ave., Long Beach, CA 90813, are approximately 2.42 miles apart. Ex. F Motion for Contempt.
- 23) Clearly, Petitioner not only knows Cynthia Cruz (contrary to her statements under oath) but Petitioner has utilized Cruz in the scheme to extort Respondent.
- 24) Petitioner's conduct is unfathomable, unexplainable and utterly contemptible.
- 25) Based upon the foregoing, the Petitioner and her attorney should be made to pay Respondent's reasonable attorney's fees and costs.

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing to be served to by email upon: Christopher Wickersham, ESQ., this 9th day of April, 2014.

Respectfully submitted,

/s/Earl M. Johnson, Jr.
Earl M. Johnson Jr., Esq.
Florida Bar No. 006040
P.O. Box 40091
Jacksonville, Florida 32203
(904) 356-5252 Telephone
(904) 394-3288 Facsimile
jaxlawfl@aol.com (Primary)
jaxlawnl@gmail.com (Secondary)

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY FLORIDA

NICOLE LOPEZ,

Petitioners,

vs.

SEAN HALL,

Respondent.

Case No. 2014-DR-0354-DVXX

Division: DV

**AMENDED PETITION FOR INJUNCTION
FOR PROTECTION AGAINST REPEAT VIOLENCE**

COMES NOW the Petitioner, NICOLE LOPEZ, by and through her undersigned counsel, pursuant to § 784.046, Florida Statutes, and hereby files this Amended Petition for the entry of an Injunction for Protection against the Respondent, SEAN HALL, and in support thereof avers and shows as follows:

1. At all times material, the Petitioner maintained dual residences, 1533 Ionia Street, Jacksonville Florida 32206, and 4045 East 14th Street Long Beach, California 90804.
2. At all times material, the Respondent's residence was located at 224 East 5th Street, Jacksonville, Florida 32206.
3. The Petitioner has known the Respondent for quite some time, and the incidents leading to the filing of this Petition have continued over the span of a few years.
4. § 784.046(1)(b), Florida Statutes, provides that "*Repeat Violence*" constitutes "*two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member.*"
5. § 784.046(2)(a), Florida Statutes, provides in relevant part: "*Any person who is a*

victim of repeat violence ... has standing to file a sworn petition for an injunction for protection against repeat violence."

6. As will be demonstrated *infra*, where the stalking and harassing behavior of the Respondent has persisted over the past several years, despite the Petitioner's protestations that it stop, and has occurred within the six (6) months prior to the filing of the Petition, the Petitioner is a victim of "*repeat violence*" as has standing to file her Petition for Injunction in this Court.

7. The Petitioner met the Respondent in the course of their social dealings, and the two became involved in a romantic relationship which dissolved acrimoniously in 2012. After such time as the couple split up, the Respondent began engaging in verbal threats and profane language directed towards both the Petitioner and her family, which has continued unabated up to the present, despite the Petitioner's repeated requests that the Respondent cease all harassing and stalking behavior directed toward her and her family.

8. The Respondent, through the use of cell phone text messaging and phone calls, began to harass and denigrate the Petitioner, and to harass and denigrate the Petitioner's husband, and which acts have continued despite the Petitioner's numerous demands that the Respondent cease all communication with her and her family. Exhibit A.

9. In furtherance of his harassment and denigration of the Petitioner, the Respondent, through the services of Western Union, wired a money order in the amount of \$14.00 to the Petitioner's residence that specified to the Petitioner's husband that it was payment for "*your wife's services*." Exhibit B.

10. Continuing his pattern of harassment, the Respondent additionally shipped, or caused to be shipped, a plastic sex toy to the Petitioner's residence with the instructions that the Petitioner "*use it and think of him*."

11. On or about the month of October, 2012, Petitioner received a telephone call

originating from a number belonging to the insurance company at which the Respondent's wife is employed. This telephone call resulted in a voice message, which informed the Petitioner that should consider obtaining quotes on life insurance, and that it was going to be "*necessary*" that the Petitioner's husband obtain such protection.

12. On October 12, 2012, the undersigned sent a letter demanding that the harassment and stalking behavior of the Respondent suffered by the Petitioner cease immediately. In response, the Respondent contacted the undersigned counsel, and stated that he would ensure that such actions were discontinued in the future, and agreed that no further contact would occur between the parties. Exhibit C.

13. After the Respondent agreed and consented to discontinue his pattern of harassment and stalking of the Petitioner and her immediate family, and to have no further contact with the Petitioner, the Petitioner's husband was arrested by local police as the result of an anonymous and false tip that the Petitioner's husband was a drug trafficker and had made terrorist threats. Upon information and belief, this false police report originated with the Respondent.

14. The Respondent has continued in his pattern of harassment and stalking of the Petitioner, by sending threatening and demeaning text messages to the Petitioner and her husband. Exhibit D. The latest of these text messages fell within the 6-month window as prescribed in § 784.046(1)(b), Florida Statutes.

15. In July 2013, the Respondent even went so far as to mail the Petitioner a disposable razor and note stating "*No excuses, Keep it Smelling Fresh and Shaved!*", in reference to the Petitioner's genital area. Exhibit E. This stalking and harassing behavior also falls within the required 6-month window provided in § 784.046(1)(b), Florida Statutes.

16. The Respondent also sent a message to the Petitioner's business colleague stating "*the whole community is upset at your continue support of the whore*", referring to the Petitioner,

and "Stop supporting her!". **Exhibit F.**

17. The Respondent placed a fake Craigslist personal advertisement on September 20, 2013, posing as the Petitioner, for a "*married woman seeking married man.*" **Exhibit G.**

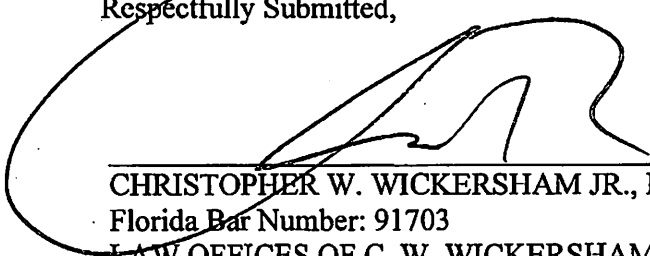
18. As the result of these incidents, where a pattern of harassment and stalking behavior by the Respondent has been established and continued unabated over the course of several years, several of which occurred within the six (6) months prior to the filing of the Petition, despite the Petitioner's counsel contacting him and imploring him to cease this behavior, the Petitioner is in genuine fear for her personal safety and that of her family, and is afraid of what further actions, harassment, or other stunts the Respondent is willing to carry out.

WHEREFORE, the Petitioner moves this Honorable Court for the entry of an Order enjoining the Respondent from undertaking any further acts intended to threaten or harass the Petitioner, and prohibiting any further contact by the Respondent, either in person, or by telephone, mail, Email, in writing, through any other person, or in any other fashion whatsoever.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served this 21st day of February, 2014, by Email to: Earl Mayberry Johnson, Jr., Esq., at jaxlawfl@aol.com.

Respectfully Submitted,



CHRISTOPHER W. WICKERSHAM JR., ESQ.
Florida Bar Number: 91703
LAW OFFICES OF C. W. WICKERSHAM JR., P.A.
The Whiteway Building, Suite 205
2720 Park Street, Jacksonville, Florida 32205
(904) 389-6202 Telephone
(904) 389-6204 Facsimile
Email: pleadings@chriswickersham.com
Attorney for Petitioner.

VERIFICATION

The undersigned, being first duly sworn, does hereby swear and affirm that the above and foregoing statements in the Amended Petition for Injunction for Protection against Repeat Violence are true and correct to the best of our knowledge and belief, and that we are familiar with the nature of an oath, and with the penalties for perjury.

SWORN TO AND SUBSCRIBED, this 20 day of February, 2014.



NICOLE LOPEZ, *Petitioner*.

NOTARY

STATE OF CALIFORNIA)
COUNTY OF _____)

I HEREBY CERTIFY that, on this day, before me, an officer duly authorized to administer oaths and take acknowledgements, appeared one NICOLE LOPEZ, who is known to me to be the person described herein, and who executed the foregoing instrument, and acknowledged before me that they executed the same for the reasons therein stated, and that an oath was taken.

WITNESS MY HAND AND SEAL in the County and State last aforesaid, this _____ day of February, 2014.

[SEAL]



NOTARY SIGNATURE

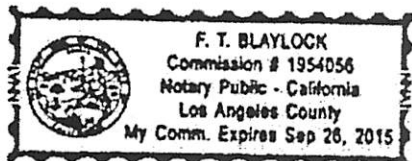
NOTARY PRINTED NAME

California All-Purpose Acknowledgement

State of California }
County of LOS ANGELES

On FEBRUARY 20, 2014 before me, F.T.BLAYLOCK, a Notary Public

personally appeared NICOLE LOPEZ



Notary Public Seal

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he~~ she/they executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public Signature

OPTIONAL

Description of Attached Document

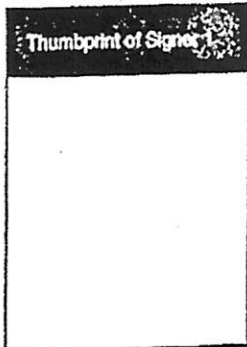
Title or Type of Document: AMENDED PETITION FOR INJUNCTION FOR PROTECTION

Document Date: 2-20-14

Number of Pages: 5

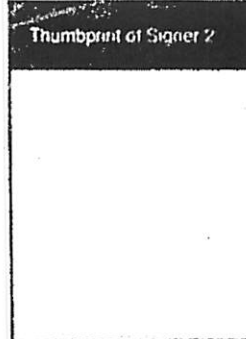
Signer(s) Other than Named Above: NONE

Capacity(ies) Claimed by Signer(s)



- ☐ Individual
☐ Corporate Officer: _____
☐ Partner - ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: _____



- ☐ Individual
☐ Corporate Officer: _____
☐ Partner - ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: _____

Respectfully submitted,



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Email: mike.yokan@gmail.com
ATTORNEY FOR PETITIONER

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Email: pleadings@chriswickersham.com
ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that a true copy of the foregoing has been furnished to **Earl Johnson, Esq.**, Post Office Box 40091, Jacksonville, FL 32203, by mail and by email at: email at: jaxlawfl@aol.com, this 7th day of March, 2017.



ATTORNEY

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that the size and style of type used in this appendix is 14-point Times Roman.



ATTORNEY