

**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**

UNOPPOSED MOTION TO STAY TRIAL COURT

Petitioner NICOLE LOPEZ, by and through her undersigned counsel, respectfully moves this Court to stay the trial court from proceeding on hearing Respondent's Hall's Motion for Section 57.105 Attorney's Fees and Sanctions. As grounds therefore she states:

1. In the interim between the First District Court of Appeal issuing its decision reversing the trial court's Order Denying Respondent's Motion for Attorney's Fees and this Court issuing its Order accepting jurisdiction and granting review, the First District Court of Appeal entered an order directing the trial court to comply with the First District's Mandate and to hold a hearing on the merits on Respondent Hall's Motion for Section 57.105 Attorney's Fees and Sanctions.

2 On today's date the trial court issued an order indicating that absent an Order from the First District or from this Court that the trial court believes it is obligated to go forward with hearing the motion on its merits. A copy of the trial court's Order dated March 20, 2017 is attached hereto as Exhibit "A."

3. The Petitioner believes this Court's acceptance of jurisdiction nullifies the First District's order directing the trial court to proceed to a hearing and believes this Court now has exclusive jurisdiction over the matters at issue.

4. In *Jallali v. Knightsbridge Village Homeowners' Association*, 152 So.3d 808 (Fla. 4th DCA 2014), the court held the trial court erred in entering an amended final judgment while an appeal was pending. The court, in *Jallali*, held:

The trial court erred in entering the amended judgment because the pendency of the appeal of the 2012 judgment divested the trial court of jurisdiction.

When an appeal is taken, "the lower court [is] divested of jurisdiction to proceed with matters related to the final judgment." *Hudson v. Hofmann*, 471 So.2d 117, 118 (Fla. 2d DCA 1985) (citing *Wilson Realty, Inc. v. David*, 369 So.2d 75 (Fla. 2d DCA 1979)). During the appeal's pendency, the trial court lacks jurisdiction "to modify or amend the judgment on appeal," *Brown v. Brown*, 931 So.2d 251, 251 (Fla. 1st DCA 2006), or "entertain ... motion[s] pursuant to Florida Rule of Civil Procedure 1.540(b)."¹ *State ex. rel. Schwartz v. Lantz*, 440 So.2d 446, 449 n. 3 (Fla. 3d DCA 1983) (citations omitted); see, e.g., *Zuckerman v. Alex Hofrichter, P.A.*, 630 So.2d 210, 211 (Fla. 3d DCA 1993)

("[A] trial court lacks jurisdiction to proceed on a motion for relief from judgment once appellate jurisdiction is invoked" (citations omitted)); *Flemenbaum v. Flemenbaum*, 636 So.2d 579, 580 n. 1 (Fla. 4th DCA 1994) ("The pendency of the appeal divested the trial court of jurisdiction to hear the rule 1.540 motion." (citation omitted)). Under such circumstances, the proper recourse is to ask the appellate court to "relinquish[] jurisdiction to the trial court." *Glatstein v. City of Miami*, 391 So.2d 297, 298 (Fla. 3d DCA 1980) (citations omitted); *see also* Fla. R. App. P. 9.600.

A pending appeal does not entirely nullify a trial court's ability to enter orders on a case. **While the appeal is pending, the trial court retains jurisdiction "with regard to those matters which do not interfere with the power and authority of the appellate court or with the rights of a party to the appeal which are under consideration by the appellate court."** *Palma Sola Harbour Condo., Inc. v. Huber*, 374 So.2d 1135, 1138 (Fla. 2d DCA 1979) (citations omitted). As the third district has explained:

Whether the trial court lacks jurisdiction depends not simply on the fact that an appeal in the case has been taken and is pending, but rather on the nature of the action being taken by the trial court in relation to the subject matter of the pending appeal. **If what the trial court does while the appeal is pending cannot affect or interfere with the subject matter of the appeal, and thus impinge upon the appellate court's power and authority to decide the issues presented to it by the appeal, then the trial court can act. The jurisdiction of the appellate court is exclusive only as to the subject matter of the appeal.**

Bailey v. Bailey, 392 So.2d 49, 52 (Fla. 3d DCA 1981). Thus, for example, a trial court retains jurisdiction to award post-trial attorney's fees since such a ruling “does not interfere with the authority of the appellate court with regard to the matters under consideration in the main appeal.” *Schultz v. Schickedanz*, 884 So.2d 422, 424 (Fla. 4th DCA 2004) (citations omitted).

For these reasons we quash the December 2013 amended final judgment and reinstate the 2012 final judgment.

Id. at 809-810 (emphasis added). *See also*, *State v. Meneses*, 392 So.2d 905, 907 (Fla. 1981) (“[W]e hold that during the pendency of a certiorari proceeding before us, the trial court is without jurisdiction to rule on a motion to vacate filed after review is sought in this Court.”); *Payne v. State*, 493 So.2d 1104 (Fla. 1st DCA 1986)(“Once the notice was filed, jurisdiction vested in the supreme court, and neither this court nor the trial court has jurisdiction to proceed.”); and *Veiner v. Veiner*, 364 So.2d 834,) (Fla. 3rd DCA 1978)(holding, “[I]t was error fo the trial court to enter the final judgment and proceed to enforce that judgment while an appeal challenging the amount of attorney’s fee was before this court.”).

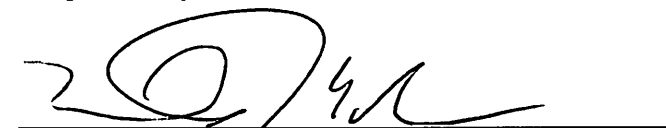
5. The heart of the matter at issue now before this Court is whether Mr. Hall is as a matter of law entitled to go forward with a motion for 57.105 attorney’s fees in this domestic violence injunction case. A decision on the merits by the trial court would clearly impinge upon this Court’s power and authority to decide the issues presented by the appeal.

6. Ms. Lopez respectfully submits that the trial Court has been divested of and is without jurisdiction to go forward with the scheduled hearing. The proscription of Rule 9.600(a) and (b), Fla.R.App.P. that the trial court may only proceed with any matter in this case by leave of this Court clearly applies at this time. In addition to a want of jurisdiction, it would also be a costly and time consuming hearing which is the reason the parties and the trial court bifurcated the proceeding in the first place. Ms. Lopez and her counsel understand the predicament the trial court is in having received an Order from the First District in the interim directing her to proceed with a hearing before this Court accepted jurisdiction.

7. Undersigned counsel has been authorized to represent by counsel for Respondent Hall that the Respondent does not oppose and joins in the relief requested herein.

WHEREFORE, Petitioner Nicole Lopez moves this Court to issue an Order directing the trial court not to proceed with a hearing on the merits of the Respondent's 57.105 motion if at all until after such time as this Court has issued its opinion in this cause.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Yokan', is written over a horizontal line.


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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was
duly furnished this 20th day of March, 2017, to: **Earl Johnson, Esq.**, via email at:
jaxlawfl@aol.com .



Attorney

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

NICOLE LOPEZ,

Petitioner,

v.

SEAN HALL,

Respondent.

**CASE NO.: 16-2014-DR-354-FMXX
DIV: FM-V**

**ORDER CONTINUING BUT NOT CANCELLING
ATTORNEYS' FEES ENTITLEMENT HEARING**

This repeat violence injunction case came before the Court on Monday, March 20, 2017, for a 1.5-day hearing on the issue of entitlement to attorneys' fees under section 57.105, Fla. Stat. Counsel for the parties were present.

On December 8, 2016, the First District Court of Appeal issued an order in this case requiring, pursuant to its earlier mandate, that an attorneys' fees entitlement hearing be held under section 57.105, Fla. Stat. On the following day, December 9, 2016, the Court coordinated with the calendars of all counsel and issued an Order Setting Evidentiary Hearing on Entitlement to Attorneys' Fees as a Sanction Pursuant to Section 57.105. That order scheduled the evidentiary hearing for March 20-21, 2017.

Thereafter, on January 23, 2017, the Supreme Court of Florida accepted jurisdiction of this case.¹

¹ The First District had held in this case that attorney's fees could be awarded under section 57.105 in an action pursuant to section 784.046 for an injunction for protection against repeat violence. In doing so, it certified conflict with cases from the Fifth District Court of Appeal and the Third District Court of Appeal.

Counsel for the parties desire to continue the trial-level entitlement hearing until the Supreme Court of Florida issues an opinion on the underlying issue of whether attorneys' fees can be awarded as a 57.105 sanction in a repeat violence injunction case. They attempted unsuccessfully to jointly cancel the evidentiary hearing set by this Court. On March 15, 2017, the Court issued an Order Maintaining Hearing in Face of Attempted Cancellation.

On the morning of the hearing, Petitioner Nicole Lopez filed a Suggestion of Non-Jurisdiction, premised on the contention that the Supreme Court's acceptance of jurisdiction has deprived this trial court of the ability to proceed with the entitlement hearing ordered by the First District Court of Appeal. This Court disagrees, and believes it has an obligation, absent contrary order from either the First District Court of Appeal or the Supreme Court of Florida, to conduct the entitlement hearing. It recognizes, however, that the day-and-a-half hearing will involve considerable expense to the parties and that it is possible that the outcome of the matter before the Supreme Court of Florida will obviate the need for a hearing.

Counsel for the parties intend to today file with either the Supreme Court of Florida or the First District Court of Appeal² a joint motion allowing the undersigned to defer the entitlement hearing until the Supreme Court of Florida rules on the issue before it. Attorney Michael Yokan has assumed responsibility for the drafting and filing of the motion, and attorney Earl Johnson has assured Mr. Yokan that he will be available today to sign the motion. Mr. Yokan will provide the Court a copy of the filed motion, and will advise the Court when the appellate court rules on the motion.

² In its December 8, 2016 order, the First District cited cases which held that only the district court of appeal or the Supreme Court of Florida has the authority to stay the mandate of a district court of appeal.

ACCORDINGLY, it is **ORDERED** that, in light of the matters described above, the March 20-21, 2017, hearing on entitlement to attorney's fees under section 57.105, Fla. Stat., will be **rescheduled** but not permanently cancelled. If by April 20, 2017, one month from today, counsel for the parties have not received an order from either the First District Court of Appeal or the Supreme Court of Florida permitting this Court to defer the conduct of an attorneys' fees entitlement hearing until after the conclusion of proceedings before the Supreme Court of Florida, they shall immediately jointly contact the Court's judicial assistant and reschedule the entitlement hearing to the first dates available on all calendars.

ENTERED on March 20, 2017, in Jacksonville, Duval County, Florida.


Circuit Judge Karen K. Cole

Copies to:

Mr. John A. Tomasino
Clerk, Supreme Court of Florida
Nicole Lopez v. Sean Hall, no. SC16-1921

Mr. Jon S. Wheeler
Clerk, First District Court of Appeal
Sean Hall v. Nicole Lopez, no. 1D15-0531

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