

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.

**ORDER SETTING EVIDENTIARY HEARING ON
ENTITLEMENT TO ATTORNEY'S FEES AS A
SANCTION PURSUANT TO SECTION 57.105, FLA. STAT**

Pursuant to the December 8, 2016, Order of the First District Court of Appeal, the undersigned judge has scheduled an evidentiary hearing (*see* below) on the motion of Mr. Sean Hall¹ seeking sanctions against Ms. Nicole Lopez in the form of attorney's fees pursuant to section 57.105, Fla. Stat. Counsel requested and have been provided 1.5 days for the hearing.

This highly-contested injunction for protection action has been before the trial court on multiple occasions. When Ms. Lopez voluntarily dismissed her trial-level petition, Mr. Hall filed a motion seeking an award of attorney's fees against her under section 57.105. After a hearing, the Court denied the motion with an explanatory order. *See* Order Denying Respondent's Motion for Attorney's Fees, filed January 5, 2015.

¹ To avoid confusion, the undersigned judge refers to the parties by their names rather than by their procedural titles such as Petitioner/Respondent or Appellant/Appellee.

Also to avoid confusion, the undersigned judge refers to the involved attorneys as "counsel for" Christopher Wickersham and Michael R. Yokan represent Ms. Lopez, and Earl Johnson represents Mr. Hall.

FILED
JOHN A. TOMASINO
DEC 14 2016

CLERK, SUPREME COURT
BY

On appeal by Mr. Hall, the First District Court of Appeal, on July 29, 2016: (a) reversed the order denying the motion for attorney's fees; (b) remanded to the trial court for a hearing to determine whether Mr. Hall was entitled to attorney's fees against Ms. Lopez, and (c) certified that its opinion conflicted with opinions of other district courts of appeal in Florida.

Counsel for Mr. Hall then asked the Court for calendar time for a status conference on the case. The Court readily provided time on September 29, 2016. Through inadvertence, Mr. Hall's counsel neglected to prepare, file, and send a Notice of Hearing. On September 29, 2016, Ms. Lopez's counsel appeared for the time coordinated for the status conference. Mr. Hall's counsel did not appear. The Court therefore cancelled the September 29, 2016, status conference and rescheduled the matter for a subsequent status conference on October 24, 2016.

At the status conference on October 24, 2016, counsel for Ms. Lopez advised that, on October 20, 2016, he had filed with the Florida Supreme Court a Notice to Invoke Discretionary Jurisdiction, based upon the First District's certification of direct conflict. Counsel for Ms. Lopez also advised the Court that, within ten days, he would be filing with either the First District or the Florida Supreme Court a Motion to Stay the directions of the First District in its Opinion and Mandate. In light of that representation, the Court elected to await the appellate court's decision on the motion for a stay before scheduling what all anticipated would be a lengthy evidentiary hearing.²

Unfortunately, no Motion to Stay was filed with either appellate court, a fact which the Court determined upon receiving today's order from the First District, and neither party made or renewed a request for time for an evidentiary hearing on the remanded issue.


² In retrospect, the better procedure would have been for the Court to set the evidentiary hearing required by the First District's opinion and then to cancel the hearing if either the First District or the Florida Supreme Court granted a stay.

After receiving today's order, the undersigned judge immediately directed the setting of an evidentiary hearing on the issue of Mr. Hall's entitlement to attorney's fees pursuant to section 57.105, Fla. Stat. Counsel advised the Court's judicial assistant that 1.5 days would be required. After comparing counsel's calendars and the Court's calendar, the hearing was scheduled, *see* below, for the first time available on all calendars.

As of November 29, 2016, the remanded attorney's fees issue was submitted to the Florida Supreme Court for its consideration. A brief was filed on behalf of Ms. Lopez. No brief was filed on behalf of Mr. Hall.

It is **ORDERED** that an evidentiary hearing on the issue of Mr. Sean Hall's entitlement, *vel non*, to an award of attorney's fees against Ms. Nicole Lopez as a sanction available under section 57.105, Fla. Stat., is scheduled for March 20, 2017, from 9:30 a.m. to 4:30 p.m., and for March 21, 2017, from 9:30 a.m. to noon, in room 705 of the Duval County Courthouse, 501 W. Adams Street, Jacksonville, FL 32202. A courtesy copy of this order is provided to the Florida Supreme Court and to the First District Court of Appeal.

ENTERED on December 9, 2016, in Jacksonville, Duval County, Florida.


Circuit Judge Karen K. Cole

Copies to:

Mr. John A. Tomasino
Clerk, Florida Supreme Court
500 S. Duval Street
Tallahassee, Florida 32399-1927
Case no.: SC16-1921

Mr. Jon S. Wheeler
Clerk, First District Court of Appeal
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Case no.: 1D15-0531

Michael Yokan, Esquire
Christopher W. Wickersham, Esquire
Attorneys for Ms. Nicole Lopez

Earl M. Johnson, Jr., Esquire
Aida M. Ramirez, Esquire
Attorney for Mr. Sean Hall