

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.<sup>1</sup>

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<sup>1</sup> 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 Appeal<sup>2</sup> 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 Yogan has assumed responsibility for the drafting and filing of the motion, and attorney Earl Johnson has assured Mr. Yogan that he will be available today to sign the motion. Mr. Yogan will provide the Court a copy of the filed motion, and will advise the Court when the appellate court rules on the motion.

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<sup>2</sup> 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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