

IN THE SUPREME COURT OF FLORIDA

FSC CASE NO. SC 05-675
3DCA CASE NO. 04-985
MIAMI-DADE
L.T. CASE NO. 03-2125 GD

WILLIAM F. HAYES, JR.,
ET AL.,
Appellant(s),

vs.

IN RE: THE GUARDIANSHIP
OF MAE E. THOMPSON, ETC.,
Appellee

AMENDED APPELLEE'S ANSWER BRIEF

Submitted by:

STEPHEN B. FULLER, ESQ.
Court-appointed Attorney
for the Appellee/Respondent/Ward
424 Zamora Avenue
Coral Gables FL 33134
305 446 4488
305 441 7077 (Facsimile)

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III. QUESTIONS PRESENTED

- A. WHETHER THE APPELLANTS DO NOT OR DO HAVE STANDING TO ADDRESS THE ISSUE OF ATTORNEY'S FEES AT THE LOWER TRIBUNAL / TRIAL COURT LEVEL OR AT THE APPELLATE LEVEL, AND WHETHER THEY DO NOT OR DO HAVE STANDING TO FURTHER RAISE THE ISSUE ON APPEAL

- B. WHETHER OR NOT, EVEN IF A CONFLICT EXISTS AMONG FLORIDA'S DISTRICT COURTS OF APPEAL, THE PROBATE CODE ALLOWS COURTS FLEXIBILITY REGARDING THE DETERMINATION OF STANDING, ON A CASE-BY-CASE BASIS

- C. WHETHER THE APPELLANTS ARE ESTOPPED, OR NOT, FROM CLAIMING STANDING BECAUSE, IN AN EQUITABLE PROCEEDING, THEIR COLLECTIVE UNCLEAN HANDS BAR THEM FROM ASSERTING ANY SUCH RIGHT

IV. INTRODUCTION

The Appellee is the Guardianship of Mae Thompson, an Incapacitated Person, as identified in the appellate court and trial court below. The Appellee, now deceased, will also be referred to as "the Guardianship," "the Respondent," "the Ward," "Ms. (Mae) Thompson," or "the Deceased." The Appellee is represented by and through her Trial Court-appointed Counsel, Stephen B. Fuller, Esq. Attorney Fuller will also be referred to as "Counsel" or "Mr. Fuller."

The Appellants are William F. Hayes, Jr., William F. Hayes, III and Vivian Hayes, and will be referred to individually as "William Hayes," "Billy Hayes," and "Vivian Hayes," (respectively), or collectively as "the Hayes" or "the Appellants."

References to the Record filed by the Clerk and as attached by Appendix to this Appellee's Answer Brief will be referred to with the symbol "R," followed by the appropriate numbers(s). Specific references to the transcript of the trial court proceedings of March 31, 2004, as attached by appendix to this Brief, will be referred to as "Trans.; [date], [page]; [line number]."

This is an Answer Brief pursuant to Fla.R.App.P. 9.210, to an Appeal filed with this court on or about June 17, 2005. This Appeal is of the Third District Court of Appeal's opinion filed on March 16, 2005, that found "that the appellants lack standing to challenge the trial court's award of attorney's fees" (R 928-929), and that accordingly certified conflict between *McGinnis v. Kanevsky*, 564 So.2d

1141 (Fla. 3d DCA 1990) and *Bachinger v. Sunbank*, 675 So.2d 186 (Fla. 4th DCA 1996) (R 853). The appeal to the Third District Court was of the "Order Awarding Attorney's Fees" to the Ward's Counsel, Mr. Fuller, which was rendered by Eleventh Judicial Circuit Judge Maria M. Korvick on March 31, 2004. (R 906-907.) The conflict herein concerns the issue of whether or not the Appellants have standing in this matter.

This Appeal is also of the Third District Court's order filed on March 31, 2005, that awarded attorney's fees and costs to the Appellee and denied such fees and costs to the Appellants (R 850-851). A more detailed summary of the proceedings in the lower tribunal is provided herein.

V. STATEMENT OF THE CASE AND THE FACTS

The underlying matter on appeal is of an Order Awarding Attorney's Fees in the amount of \$3071.00 to Stephen B. Fuller, Court-appointed attorney for the Ward. Eleventh Judicial Circuit Judge Maria Korvick entered the Order in the lower court on March 31, 2004. (R 906-907.) The lower court proceeding is a guardianship case; the Ward, now deceased, was at the time of filing an 83-year-old woman, Mae Thompson.

Ms. Thompson first came to the attention of the Court on February 6, 2003, upon the Florida Department of Children and Families' (the Department) Petition for order Authorizing Emergency Adult Protective Services (APS) for the Ward (R

900-902). The Court thereupon appointed Mr. Fuller as the attorney to represent the Ward's interests (R 903). The Court then ordered the Department to furnish APS to the Ward, and initiated a Determination of Capacity proceeding (R 904-905). Mr. Fuller represented the Ward's interests at every stage of the APS proceedings, and throughout the subsequent Mental Health and Guardianship proceedings.

The Appellants are some of the relatives of Ms. Thompson. Appellant Vivian Hayes ("Vivian") is the Ward's sister, and Appellant Billy Hayes ("Billy") is one of the Ward's nephews. The Appellants acknowledge that until the Department and the Court's intervention, they were "responsible for [Mae Thompson's] medical and financial assistance." (Appellant's Initial Brief, p. 3.)

Mae Thompson was living in an apartment with her nephew Billy, ostensibly as his roommate, when the Department was informed of the living conditions under which Ms. Thompson was being forced to live. Among other allegations in their Petition for Emergency Adult Protective Services, the Department stated that Ms. Mae Thompson

resides in deplorable conditions. The home is cluttered with garbage, and paper bags. There is a strong smell of cat urine, and there is mold growing on the walls and ceilings. She is confused about her finances...her nephew does not work, however respondent is under the impression that he is paying all the bills. (R 900.)

The Department referred to nephew Billy Hayes, son of sister Vivian, as

"[Ms. Thompson's] 45 y/o nephew...who is supposed to be her caregiver," and then clearly stated the nature of the emergency: "There is concern for the health of the respondent living in such deplorable conditions." (Id.) As a result, the Department sought several services for Ms. Thompson, including "placement in an appropriate facility," "medical and legal services," and "the provision of protective services." (R 901.)

Because of the evidence introduced at the APS and subsequent proceedings, the Court made certain findings in an eight-page Order issued on December 12, 2003. Among them, the Court found that Mae Thompson was a victim of multiple abuses at the hands of her sister Vivian and her nephew Billy, who had been responsible for Mae Thompson's medical and financial assistance (R 420-427). The Court specifically found that the living conditions that Mae Thompson shared with her nephew were deplorable, that the apartment was cluttered with garbage, that mold was growing abundantly, that there were visible feces on the floor and furniture, and that "Billy prohibited Mae Thompson from using the shared kitchen." (R 421.) The Court found that "living with Billy, she was at risk of harm and danger and was appropriately placed [in APS]." (Id.)

Moreover, the Court found that Mae Thompson "has been exploited by her sister, Vivian and her nephew, Billy" and that she "can be easily influenced." (Id.) The Court found that Ms. Thompson had "poor insight and judgment regarding her

finances," (Id.) and that as a result of her sister Vivian's actions, "there were gross misappropriations from Mae Thompson's (financial) account(s)." (R 424.) The Court had great concern regarding Mae Thompson's physical condition and the mismanagement of [her] funds" (R 422), and found that sister Vivian

consistently, knowingly and willingly ignored several of this Court's Orders instructing her, among other things, not to interfere with the medical treatment of the Ward, not to visit the Ward at [her new placement]...not to withdraw funds from the Joint Accounts [held, variously, with the Ward], and to turn over the Ward's personal property to the Guardian. (Id.)

Notably, the Court found that even though on April 11, 2003 it had "ordered Vivian Hayes not to withdraw, dissipate, deplete and convert any of the Ward's funds," that "on April 14, 2003, Vivian closed one of the Ward's accounts and transferred [the money] from a joint account with the Ward, to Vivian's individual account." (R 423.) The Court found by *Vivian's own testimony* (e.s.) that "all of the monies in all of the joint accounts titled Mae E. Thompson and Vivian Hayes belonged to the Ward" (R 422) and that by Vivian's own admission "she never placed any of her own money into the Joint Accounts." (R 423.) The Court also found that Vivian committed nine other violations of the Court's Orders, as enumerated in the December 12 Order (R 422-423.) Additionally, the Court found that Vivian and Billy withdrew cash from Mae Thompson's bank account on or about March 19, 2003, in order to purchase a house for Billy's exclusive use and "with the intention of not moving the Ward into the Property." (R 425.)

While the Appellants filed a motion on December 22 to rehear certain parts of the December 12 matter (R 428-474), their assertions are chiefly allegations of misapplied mathematics by the forensic accountant appointed by the Court to decipher the nature and degree of mismanagement of the multiple bank accounts held by Vivian, Billy and Mae Thompson. That accounting remains the subject of litigation, but the Appellants themselves at the very least concede in paragraph nine of their motion that, even in the light most favorable to them,

the only Funds belonging to Mae Thompson besides the \$68,000 used to purchase the (aforementioned) house, was the \$43,009.91 already returned to the Guardian. (R 431.)

Those monies were among those of the Ward that the trial court ordered not to be withdrawn or depleted by Vivian Hayes. Even assuming, arguendo, the Appellants' contention that the December 12 Order was "replete with errors, omissions and duplications," the Appellants have admittedly misappropriated and converted over \$110,000.00 of the Ward's money, and that alone is not inconsistent with the trial court's findings that Mae Thompson had been "exploited by her sister, Vivian and her nephew, Billy." (R 421.)

Throughout the APS and Guardianship proceedings, Mr. Fuller remained Ms. Thompson's Court-appointed attorney. From time-to-time during the near fourteen-month (at the time of the award under appeal) proceedings Mr. Fuller prepared Petitions to Authorize Payment of Reasonable Attorney's Fees, following

the provisions of Fla.Stat. §744.108. The Guardian, the Guardian's attorney and the later-appointed Special Monitor were all furnished with copies of the Petitions, and itemized exhibits. The Court at no time ever entertained any other petitions for legal fees on behalf of the Ward, and so, by definition, there has never been any award of 'duplicate' fees. Throughout this initial fourteen-month period, neither the Guardian nor Guardian's attorney nor Monitor objected to any of Mr. Fuller's applications for payment (for about sixty-six hours of work, covering about the first twelve-months' representation of the Ward).

The Appellants never filed a Request for Notices and Copies of Pleadings pursuant to Fla.R.Probate 5.060 in support of their assertions to having standing. There have been no hearings regarding their status as putative adverse parties or putative interested parties. As a courtesy, however, counsel for the Ward provided them with a copy of the instant petition for the Order under appeal, and they appeared at the hearing. The trial judge heard testimony regarding the fees that reflected Mr. Fuller's continued efforts to protect and preserve the Ward's assets from the further exploitation of her sister and nephew. The very same sister and nephew, as Appellants who would now have the Court believe that their violations of multiple Court Orders (R 422-425) were done for altruistic purposes, then objected on the record, and the Court, being otherwise informed in the premises noted the objections, made deliberate findings specific to the case-at-hand and

signed the appropriate Order. (Trans. March 31, 2004; p. 12, line 19 – p. 17, line 7, inclusive.)

The Appellants are singularly appealing this Order, which reflects about sixteen hours of Mr. Fuller's efforts, over an approximate ten-week period, for a fee award of \$3071.00. The Third District Court of Appeal found that the Appellants did not have standing to challenge the award of fees, and certified conflict to this Court. (R 928-929.)

VI. SUMMARY OF THE ARGUMENT

The Appellants lack standing to challenge the Order Awarding Attorney's Fees at the trial court level, and they lack standing at the District Court of Appeal level. If the Appellants have any concerns at all regarding the legal matter of the guardianship, they have demonstrated, on the record, through their shameful physical treatment of the Ward and their continuous financial exploitation of the Ward that those concerns are decidedly non-altruistic. In any event, those concerns do not rise to the level of granting the Appellants standing as interested parties in this matter.

Furthermore, even if a conflict regarding the Appellant's "interested party" status exists within the District Court level, the party's standing as such must be examined on a case-by-case basis, and determined according to the particular issues involved. In this instance, both the trial court and the appellate court have

determined that they do not have standing.

Even if the Appellants somehow have standing, their collective unclean hands, as demonstrated by their prior conduct of contemptible behavior towards, and financial and physical exploitation of, the Ward in this equitable proceeding to benefit the property and estate of the Ward effectively bar them from now making claims to benefit the Ward.

The appellate court correctly upheld the trial court's decision that under the specific facts of this case, the Appellants do not have standing to argue the award of attorney's fees, and the appellate court correctly awarded attorney's fees in favor of the Appellee.

VII. ARGUMENT

A. THE APPELLANTS DO NOT HAVE STANDING TO CHALLENGE THE ISSUE OF ATTORNEY'S FEES AT THE LOWER TRIBUNAL/TRIAL COURT LEVEL OR AT THE APPELLATE LEVEL, AND THEY DO NOT HAVE STANDING TO FURTHER RAISE THE ISSUE ON APPEAL

The Ward, Mae E. Thompson, suffered dramatically and consistently at the hands of her sister, Appellant Vivian Hayes and of her nephew, Appellant Billy Hayes. (R 420-425.)

She was indeed removed from the home she shared with Billy on or about February 6, 2003, and the Department of Children and Families had good cause to do so. She was "weak, frail, and undernourished," the trial court found (R 421).

That "Billy prohibited [her] from using the kitchen in the apartment..." (Id.) was undoubtedly a contributing factor. Regarding the general conditions under which Mae Thompson was forced to live, the court agreed with the Department that

the conditions of the apartment [were] deplorable, specifically: the home was cluttered with garbage and paper bags, mold was growing on the floors and ceiling, there was a strong odor of cat urine and feces, visible feces was (sic) on the floor and furniture, and there were obvious signs of rats and roaches¹

and that because of these deplorable conditions, "the Ward was at risk of harm and danger and was appropriately placed...in Adult Protective Services." (Id.)

Mae Thompson's "exploit[ation] by her sister, Vivian, and her nephew, Billy" (Id.) resulted in financial, as well as physical, suffering. Together, the two relatives conspired and schemed in March 2003, during the APS stage of the case when the Ward was placed at an Adult Living Facility and while the Determination of Capacity proceedings were ongoing, to purchase a house with a large sum of Mae Thompson's money for Billy's exclusive use² "with the intention of not moving the Ward into the Property." (R 425.) Even after April 11, 2003, when the court ordered sister Vivian "not to withdraw, dissipate, deplete, and convert any of the Ward's funds," she did just that when she withdrew \$43,009.91 from a joint

¹ The court also found that "the photographs introduced by DCF documented the testimony regarding the apartment." (R 421.)

² The court found, "Vivian and Billy testified that the Property was bought for the Ward and Billy to reside in, however, upon moving out of the Apartment and into the Property; only Billy's belongings were moved into the Property." (R 425.)

account with the Ward and transferred it to her individual account. (R 423.) But for the Appellants' unclean hands as manifested by these and other "consistent[], knowing[], and willing[]" violations of several of the lower tribunal's orders (R 422) that interfered with the court's management of the case and the Guardian's care of the Ward (R 422-423), the lower tribunal's case file would be a much less thick one, indeed. As the Appellants themselves state, "the majority of the proceedings below involv[e] motions against the Hayes" (Appellants' Initial Brief at p. 11), but were necessary to prevent the Appellants from further exploitation of Mae Thompson's person and her property.

Relatives of a Ward who have a concern in a Guardianship proceeding, where there has been *no finding of exploitation*, have not been constituted as interested persons and so could not participate in litigation. (*Ash v. Coconut Grove Bank*, 448 So.2d 605, 607 (Fla. 3d DCA 1984) (mother was not an interested person in a guardianship proceeding involving her minor incompetent child); *Maceda v. Duhig*, 474 So.2d 292, 293 (Fla. 3d DCA 1985) (maternal grandmother had no standing to contest actions of the personal representative). Here, the Ward's relatives demonstrate reprehensible conduct towards the Ward, and contempt for the court, and then claim that this very same conduct somehow elevates them to "interested party" status.

The Appellants now claim (not having raised the argument in their district

court appeal) that in asserting standing to appeal the Award for Attorney's Fees, they are merely preserving their claims to alleged co-mingled guardianship funds, and not to their assets under any presumed inheritance.³ However, they cite the proposition that *Bachinger v. Sunbank/South Florida N.A.* (675 So.2d 186 (Fla. 4th DCA 1996)), (the case the Third District certified in conflict with their own *McGinnis v. Kanevsky*, 564 So.2d 1141 (Fla. 3d DCA 1990)) allows them to so-assert because in *Bachinger*, the son of a ward was deemed an interested party *because* of his inheritance rights. (*Bachinger* at 188.)

Bachinger does not support the Appellants because they are disassociating themselves as heirs of the ward, and *Bachinger* is also distinguished from the facts herein because in *Bachinger* the appellants alleged "they were relatives and were taking care of (the Ward) before she was declared incompetent," and the court found that this gave them "sufficient interest to question how her funds were spent." (Id.) Here, with a record of "taking care" that is so alarming that the term "deplorable" is used to describe the Ward's living conditions under nephew Billy (R 421), and the term "exploit(ation)" is used to describe sister Vivian's handling of her sister's finances (Id.), the Appellants' alignment with the Bachinger relatives – that they were each "taking care" of a family member – is a spurious one.

³ "The Appellants are not challenging any awards in the guardianship estate to protect the assets for their inheritance; but rather, the challenge was intended to preserve their claims to the guardianship funds, which they claim, are their funds even prior to the death of the Ward." (Appellant's Initial Brief at p. 14.)

B. EVEN IF A CONFLICT EXISTS AMONG FLORIDA'S DISTRICT COURTS OF APPEAL, THE UNIFORM PROBATE CODE ALLOWS COURTS FLEXIBILITY REGARDING THE DETERMINATION OF STANDING, ON A CASE-BY-CASE BASIS

The Uniform Probate Code §5-116 allows for "interested person(s) not otherwise entitled to notice (and) who desire(s) to be notified" if they "file a request for notice with the clerk of the court." The Appellants have never filed any such request. Even if they had done so, "whether a person is an interested person...must be determined according to the particular issues involved." (*See* Comment, Uniform Probate Code §5-116.)

The trial court demonstrated on the record that it was aware of the "particular issues involved" when it denied the Appellants standing, but still allowed them "the courtesy to speak" as "friend(s) of the court." (Trans. March 31, 2004; p. 13, lines 15 – 16.) The trial judge thereupon asked the Appellants, concerning their comments and their challenge to the Award for Attorney's Fees, "are you suggesting that the initial bringing of this record by Children and Family Services was wrong?" and then it then firmly stated⁴

I'm deciding that these are exceptional circumstances. I find that the fees are reasonable and necessary...and that it is unfortunate that so much work has been required but that there are volumes of records...and they speak for themselves. I'm signing the order... (Id at p. 16, line 21 – p. 17, line 4.)

⁴ After the Appellants directly replied "No, ma'am" to the question. (Trans. March 31, 2004; p.16, line 19.)

The issue of standing is a legal matter and the standard of review is *de novo*. It involves the "determination whether the issue was correctly decided in the lower court." Phillip J. Padovano, Florida Appellate Practice §9.4 (2004 ed.). See, e.g., *Rittman v. All State Ins. Co.*, 727 So.2d 391 (Fla. 1st DCA 1999) (dismissing a complaint for failure to state a cause of action). The lower court here certainly had, after conducting over a year's worth of hearings in matters concerning Mae Thompson's welfare, knowledge of the facts surrounding the case. It "exercised the broad discretion it has in managing and controlling litigation" (*Ash*, 448 So.2d at 697) (citing Fla.Prob.R. 5.080(b)) and ruled accordingly. The district court affirmed the lower court's decision to deny standing and to award the fees, citing *McGinnis v. Kanevsky* (564 So.2d 1141).

The *McGinnis* court held that "an heir of a...ward may not be heard to challenge orders like these" (*i.e.*, *orders involving guardianship fees*) (Id. at 1144), because "the court is concerned only with the welfare of the ward...in the administration of what are, after all, only his funds." (Id.) The Appellants are not "interested persons" as heirs because Florida Statute specifically denies them that status: "The term ("*Interested person*") does *not* (e.s.) include an heir at law or a devisee..." (Fla.Stat. §731.201(21)).

The Appellants' reliance on *Bachinger* fails because if they are not relying on their standing because of their status as heirs ("Appellants do not claim to be

interested parties solely due to inheritance rights." Appellants' Initial Brief at p. 16), then they must seek reliance because "they were relatives and were taking care of decedent before she was declared incompetent." (*Bachinger* at 188.) While the language "relatives taking care of the [Ward]" may be appropriate under the facts surrounding the "Oberdick" guardianship that prompts *Bachinger*, the record of the Hayes' treatment of their relative, and which led to the Mae Thompson APS and guardianship, lends a different meaning to the phrase "taking care" and is clearly distinguishable. Their "taking care" amounted to Ms. Thompson living in deplorable conditions with nephew Billy, and her being financially exploited by both him and her sister. It was their "taking care" of Mae Thompson that prompted the intervention of the Department, and which required the Department's provision of *Emergency* (e.s.) Adult Protective Services, and, ultimately, the establishment of a guardianship.⁵

These surrounding and supportive facts are within the meaning and intent of the Uniform Probate Code's caveat that standing is "determined by the particular issues involved." (Comment, Uniform Probate Code §5-116.)

The Appellants cannot now come forward and claim that they are "interested" because they are victims of the court's freezing their assets, which the court froze because of their collective exploitation and multiple violations of court

⁵ The Guardians was Mirtha Sanchez, on behalf of Diverse Professional Guardianship Services, Inc. None of the Appellants objected to the appointment, and none applied themselves to be the Ward's guardian.

orders in the first place. They may allege that their collective savings are at risk of being depleted, and they may challenge the forensic accounting report submitted to the court. However, even if they were to prevail at some level, the bare facts remain that they admitted to withdrawing (after the Court ordered them not to) over \$43,000.00 of the Ward's money and placing it in their own account(s), and to spending at least \$68,000.00 of the Ward's money to purchase a house for which they never intended the Ward to live in, all while the Determination of Capacity proceedings were ongoing.

C. THE APPELLANTS ARE ESTOPPED FROM CLAIMING STANDING BECAUSE, IN AN EQUITABLE PROCEEDING, THEIR COLLECTIVE UNCLEAN HANDS BAR THEM FROM ASSERTING ANY SUCH RIGHT

The Appellants' conduct towards their relative may be compared to that of the putative husband towards his "wife" in *Doherty v. Traxler et al.* (66 So.2d 274 (Fla.1953)). There, the Appellant Doherty married a Ms. Baxley so that he might acquire an interest in her property, and then he almost immediately deserted Ms. Baxley. He lived in a bigamous relationship for twenty years, and upon Ms. Baxley's death claimed to be her sole heir (there had not been a divorce) and filed to be the administrator of the estate. The court reasoned that the Appellant's conduct estopped him from asserting such claims:

This proceeding is in the nature of an equitable proceeding. The appellant comes into Court with unclean hands. He shows by his own testimony that he has openly, brazenly and flagrantly violated the laws

of God and man and every principle of right, justice, decency, public policy and sound morals...He shows no shame and offers no excuse or apology...No Court should...assist him in such a nefarious scheme and because of his conduct...he is now and forever estopped and barred from asserting any right to be appointed administrator of the estate or...to inherit said estate. (Id. at 277.)

The instant matter is also equitable in nature, and the Appellants seek to be treated fairly. But by their horrible intentional treatment of Mae Thompson, that led to her emergency removal from her living arrangements with her family – and which was essentially a domain of exploitation, they too have certainly violated principles of justice, decency, public policy and sound morals. They willfully depleted and converted their relative the Ward's assets in order to further their own selfish agenda, and now profess standing to challenge an award of attorney's fees to the same counsel who, among others, called to the attention of the Court the very 'depletions' and 'conversions' that harmed Mae Thompson in the first place.

Their pleadings are contrary to their deeds. Their collective actions have heretofore done nothing to benefit the Ward, while the actions of counsel, the guardianship and the Department did benefit the Ward – through an effort to first identify the various means by which the Hayes' exploited Mae Thompson, and then to stop that exploitation. The Appellants, by their *Doherty v. Traxler*-like schemes of exploitation and reprehensible conduct, should therefore also be estopped from asserting any right to standing in this matter.

VIII. CONCLUSION

The Appellants are not interested parties under any meaning of the law and have no standing to assert that the lower tribunal erred in awarding attorney's fees to the Ward's attorney. They do not have standing as "heirs at law" because Florida Law specifically denies such heirs as having standing in these matters. They do not have standing otherwise because under case law their collective "unclean hands" effectively bar them from asserting that interest. Even if the question of their standing were an arguable one, Florida Law allows that trial courts may determine standing on a case-by-case basis, according to the issues and facts involved.

The lower tribunal's findings of fact regarding (among other things) the Appellants' conduct, and its judicial reasoning, on the record do not constitute an abuse of discretion. The Order that awarded Mr. Fuller attorney's fees must be affirmed, and the Third District Court's Order granting Mr. Fuller appellate attorney's fees, and denying the Appellants any attorneys' fees, must also be affirmed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Appellee's Answer Brief was sent by US Mail on __ August, 2005, to the attorneys for the Appellants: Rosenthal, Rosenthal and Rasco, 2875 Northeast 191 Street #500, Miami FL 33180, and to the Guardian of the Property: Enrique Zamora, Esq. 306 Aviation Avenue #4C, Miami FL 33133.

Stephen B. Fuller, Esq.
Court-appointed Attorney for the Ward
Florida Bar No. 54951
424 Zamora Avenue
Coral Gables FL 33134
305 446 4488
305 441 7077 (Facsimile)

CERTIFICATE OF FONT REQUIREMENT COMPLIANCE

I HEREBY CERTIFY that I have complied with the font requirements of Rule 9.210 (a)(2) (Times New Roman 14-point font) of the Florida Rules of Appellate Procedure.

Stephen B. Fuller, Esq.
Court-appointed Attorney for the Ward
Florida Bar No. 54951
424 Zamora Avenue
Coral Gables FL 33134
305 446 4488
305 441 7077 (Facsimile)