

**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**

JURISDICTIONAL BRIEF OF PETITIONER

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STATEMENT OF THE CASE AND FACTS

On February 21, 2014 Nicole Lopez pursuant to §784.046, Fla. Stat. (2014), filed her Amended Petition for Injunction for Protection Against Repeat Violence. Her Petition was supported by forty-seven pages of exhibits. The case proceeded to a hearing on February 27, 2014 following which the trial court extended the Temporary Injunction and continued the case for the parties to conduct discovery. Nicole Lopez subsequently voluntarily dismissed her Amended Petition on September 10, 2014. Prior to the dismissal Respondent Sean Hall moved pursuant to §57.105, Fla. Stat. (2014), for an award of attorney's fees against both Ms. Lopez and her attorney. Hall asserted the domestic violence proceeding was a "sham prosecution."

The trial court held a hearing on the issue of whether a court in a repeat violence injunction action may award statutory attorney's fees under §57.105, Fla. Stat. The trial court then entered its order denying attorney's fees on January 6, 2015 holding that such fees were not permitted in a domestic violence proceeding for repeat violence under §57.105, Fla. Stat. The trial court expressly did **not** address whether if fees were permitted under the law whether such fees as sanctions would be warranted against either Ms. Lopez or her attorney Christopher W. Wickersham, Jr.

Respondent Hall then appealed to the First District Court of Appeal. The First District Court of Appeal issued its decision on July 28, 2016. In holding that attorney's fees under §57.105, Fla. Stat. are permitted in a domestic violence proceeding for repeat violence the First District expressly recognized its decision conflicted with decisions issued by the Third and Fifth District Courts of Appeal. "We recognize that this holding conflicts with the Fifth District's opinion in [*Dudley v. Schmidt*, 963 So.2d 297 (Fla. 5th DCA 2007)] and with the Third District's opinions in [*Ratigan v. Stone*, 947 So.2d 607 (Fla. 3d DCA 2007)] and [*Cisneros v. Cisneros*, 831 So.2d 257 (Fla. 3d DCA 2002)], and we certify conflict with those decisions." *Hall v. Lopez*, 1D15-0531 (Fla. 1st DCA July 28, 2016).

According to the Office of the State Courts Administrator's Florida's Trial Court Statistical Reference Guide, 83,961 domestic violence cases were filed in Florida during the 2014-2015 fiscal year. And there were 84,279 dispositions entered in domestic violence cases during that time. Domestic violence petitions made up twenty-nine point five percent (29.5%) of all family court filings during that period. In the Fourth Circuit alone 5,878 domestic violence petitions were filed in the 2014-2015 fiscal year. *Office of the State Courts Adm'r, Florida's Trial Court Statistical Reference Guide, FY 2014-15, 5-1* (December 2015) available at <http://flcourts.org/publications-reports-stats/statistics/trial-court-statistical-reference-guide.stml>. Thus, opening up domestic violence proceedings

to attorney's fee motions and hearings on those motions could place an additional heavy load upon Florida's already burdened family law courts. Accordingly, this Court should grant discretionary review to resolve this important question.

SUMMARY OF THE ARGUMENT

Discretionary review should be granted because the First District Court of Appeal's decision expressly and directly conflicts with the decisions of two other district courts of appeal regarding an important question. Intervention by the Florida Supreme Court is necessary to resolve the question of whether §57.105, Fla. Stat. may be used in domestic violence injunction proceedings to seek awards of attorney's fees. The legislature did not provide a means to seek attorney's fees in 1979 when Florida's domestic violence injunction statutes were enacted. Nor has the legislature enacted a fee mechanism within the domestic violence injunction statutes at any time since. This Court should accept jurisdiction to resolve the split between the district courts of appeal.

ARGUMENT

I

THE FIRST DISTRICT’S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS BY THE THIRD AND FIFTH DISTRICT COURTS OF APPEAL

The Supreme Court of Florida has discretionary jurisdiction under Art. V, §3(b)(3) of the Florida Constitution to review a decision of a district court of appeal that “expressly and directly conflicts with a decision of another district court of appeal ... on the same question of law.” Here, the First District Court of Appeal has plainly stated that its decision directly conflicts with decisions issued by two other district courts of appeal. The First District reasoned:

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 v. Cisneros*, 831 So.2d 257 (Fla. 3d DCA 2002)] and [*Ratigan v. Stone*, 947 So.2d 607 (Fla. 3d DCA 2007)] 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.**

Hall v. Lopez, 1D15-0531 (Fla. 1st DCA July 28, 2016) (emphasis added). Thus, the First District's holding is premised on the court's finding that §57.105, Fla. Stat. does not expressly prohibit an award of attorney's fees in domestic violence injunction proceedings.

It bears noting that the court, in *Hall*, departed from the First District's own precedent. In *Bane v. Bane*, 775 So.2d 938 (Fla. 2000), this Court recognized:

The former husband has brought to our attention *Belmont v. Belmont*, 761 So.2d 406 (Fla. 2d DCA 2000), and *Baumgartner v. Baumgartner*, 693 So.2d 84 (Fla. 2d DCA 1997), in which the Second District held that attorney's fees could not be awarded in a domestic violence injunction case. The First and Third Districts have reached the same conclusion. *See Lewis v. Lewis*, 689 So.2d 1271 (Fla. 1st DCA 1997); *Abraham v. Abraham*, 700 So.2d 421 (Fla. 3d DCA 1997). In reaching this determination, the court in *Lewis* made clear that the domestic violence injunction proceedings were not actions under chapter 61, but were instead separate proceedings under chapter 741, Florida Statutes, which does not contain a provision authorizing attorney's fees. 689 So.2d at 1273-74; *see also Belmont*, 761 So.2d

at 407 (citing *Lewis*); *Abraham*, 700 So.2d at 421 & n. 1 (chapter 61 fees improper for services rendered in a domestic violence proceeding that was filed and litigated before the dissolution petition was filed); *Baumgartner*, 693 So.2d at 85-86 (same). Thus, the important distinction between these cases and the present case is that the cases concerning domestic violence 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.

Id. at 942, n.4. The First District, in *Hall*, by finding that §57.105, Fla. Stat. may serve as a basis for a fee award in a domestic violence proceeding, made an end run around its prior recognition in *Lewis*, 689 So.2d at 1274, that “This is a matter, however, that should be dealt with by the Legislature rather than the courts.”

In contrast to *Hall*, in *Dudley v. Schmidt*, 963 So.2d 297, 297 (Fla. 5th DCA 2007), the court concluded: “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 case.” (citations omitted). One of the cases cited as precedent by the court, in *Dudley*, was *Baumgartner v. Baumgartner*, 693 So.2d 84 (Fla. 2d DCA 1997). In *Baumgartner*,

the court reversed an award of attorney's fees which had been awarded in a domestic violence injunction proceeding. *Id.* at 86. In doing so the court held:

We cannot imply a right to attorneys' fees under this statute, especially given the legislature's efforts to minimize the involvement of attorneys in its enforcement. We are fully aware that attorneys often become involved in these proceedings. Indeed, the Hillsborough Association of Women Lawyers recently received a well deserved award from the Hillsborough County Bar Association for its extensive pro bono work in helping victims obtain domestic violence injunctions. See HCBA Lawyer, Vol. 7, No. 7, April 1997, at 31. Providing trial courts with the discretion to award attorneys' fees in appropriate cases would certainly encourage greater reliance upon this statute. Nevertheless, the power to amend this statutory cause of action belongs to the legislature.

Id. This Court has recognized the well-established rule that, "Generally, a court may only award attorney's fees when such fees are "expressly provided for by statute, rule, or contract." *Bane v. Bane*, 775 So.2d 938, 941 (Fla. 2000) (citation omitted). Thus, First District's decision, in *Hall*, departs from long established precedent that fees may not be awarded absent an express statutory provision.

In *Ratigan v. Stone*, 947 So.2d 607, 608 (Fla. 3d 2007), the court found, "[T]here was no statutory authority to award attorneys fees as sanctions in the separately-filed domestic violence case." And in *Cisneros v. Cisneros*, 831 So.2d 257, 258 (Fla. 3d 2002), the Third District vacated an award of attorneys fees holding, "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.” *Citing, Abraham v. Abraham*, 700 So.2d 421, 422 (Fla. 3d DCA 1997), *Lewis v. Lewis*, 689 So.2d 1271 (Fla. 1st DCA 1997). Thus, the First District’s decision, in *Hall*, squarely conflicts with the precedent of the Third and Fifth District Courts of Appeal.

In *Bierlin v. Lucibella*, 955 So.2d 1206 (Fla. 4th DCA 2007), a case cited by the court, in *Hall*, the Fourth District held the trial court abused its discretion by failing to award attorney’s fees pursuant to §57.105, Fla. Stat. where the petitioner “repeatedly failed to meet the statutory pleading requirements.” *Id.* at 1208. Notably, the Fourth District’s holding is bereft of any analysis of whether such fees are permissible under §57.105, Fla. Stat. in a Chapter 784 proceeding.

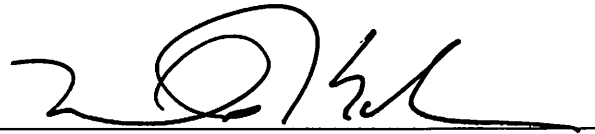
In *Baumgartner, supra.*, the court recognized that the domestic violence injunction procedure was designed to minimize the involvement of attorneys. These proceedings which now account for roughly thirty percent of all family law filings in Florida are typically streamlined hearings which err on the side of the issuance of injunctions for protection. If the Florida legislature had intended attorneys fee awards to be part of the process it would have stated so, especially after multiple appellate courts have commented that it is the legislature’s province to provide for such if that is what the lawmakers desire.

A conflict clearly lies between Florida's district courts of appeal on the question now before this Court. Accordingly, this Court should grant discretionary review to resolve the important question posed by the First District's holding and express recognition of conflict.

CONCLUSION

For all the foregoing reasons, the Court should exercise its discretionary jurisdiction to review the merits of the issue on appeal in this case.

Respectfully submitted,

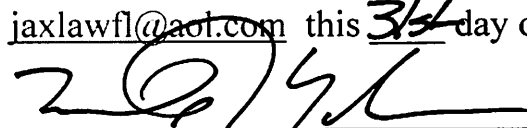


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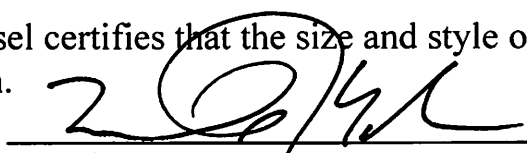
I HEREBY CERTIFY that a true copy of the foregoing has been furnished to **Earl Johnson, Esq.**, Post Office Box 40091, Jacksonville, FL 32203, by mail and by email at: email at: jaxlawfl@aol.com this 3rd day of October, 2016.



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CERTIFICATE OF COMPLIANCE

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



ATTORNEY

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