IN THE
SUPREME COURT OF FLORIDA

CASE NO.: SC16-1921

NICOLE LOPEZ,

Petitioner,

v.

SEAN HALL,

Respondent.

On Review from the District Court of Appeal,
First District of Florida

RESPONDENT'S BRIEF

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ATTORNEY FOR RESPONDENT

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[1] First DCA Record on Appeal hereinafter "R. __ ." First DCA opinion on review hereinafter "*Hall* Opinion."

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STATEMENT OF THE CASE AND FACTS

At the September 5, 2014, hearing on Respondent's (hereinafter "Hall") section 57.105 and common law sanctions motions, and facing substantial evidence of fraud upon the trial court by Petitioner (hereinafter "Lopez"), Judge Cole read Lopez her *Miranda* rights "because of that possibility that a criminal charge could be brought against [Lopez] for perjury …" R. 486, ll. 9-11.

Lopez made an *oren tenus* announcement that she was voluntarily dismissing the action. R. 478, l. 16. Judge Cole nevertheless directed Lopez' attorney to withdraw as her counsel, pending the sanctions motion, based upon a conflict interest since he was also subject to the motions; and the trial court continued the hearing. R. 488-498.

These unusual proceedings were the end result of a *temporary* injunction received by Lopez against Hall in February of 2014 that continued for several months until it was voluntarily dismissal under the specter of sanctions motions and *Miranda* Rights being read to Lopez at the September 5, 2014, hearing. R. 478, l.16.

Lopez' *ex parte* petition against repeat domestic violence did not allege any type of physical violence. Rather it focused on cyber, telephone, texting, electronic mail, postal mail and money wire allegations. R 1-6. Hall was not allowed to testify at the expedited final hearing on February 27, 2014 because it was continued. R. 259.

On that date, the trial court declined to enter a final judgment of injunction, recessed the final hearing until further notice, and continued the temporary injunction for the parties to conduct discovery. R. 145-147.

Following the receipt of third party discovery from wire transfer companies and telephone carriers (R. 254-57; 379-89), on May 20, 2014, Hall filed a motion for section 57.105 attorney's fees and sanctions against Lopez and her counsel. R. 404. On May 22, 2014, the trial court again stayed the action and deferred hearing on Hall's sanctions motions. R. 410-411.

On December 8, 2014, the trial court recognized the limited appearance of new counsel for Lopez. R. 505.

The 21 day "safe harbor" period under section 57.105 having run, on December 19, 2014, the trial court held a hearing "on the legal issue of whether a court has authority in a repeat violence injunction case to award attorney's fees pursuant to 57.105, Fla. Stat." R. 505.

Thereafter the trial court denied Hall's motion for section 57.105 attorney's fees and sanctions because "section 784.046, Fla. Stat., does not authorize an award of attorney's fees on any basis …" R. 552.

SUMMARY OF THE ARGUMENT

Abuse of discretion is the appropriate standard of review of issues of the award of attorney's fees. *DiStefano Constr. Inc. v. Fid. & Deposit Co. of Md*., 597 So. 2d 248, 250 (Fla. 1992). However, such an order is reviewed *de novo* to the extent it is based on an issue of law. *Blue Infiniti, LLC v. Wilson*, 170 So.3d 136, 139 (Fla. 4th DCA 2015); *Wells v. Halmac Dev., Inc.*, 189 So.3d 1015, 1019 (Fla. 3d DCA 2016).

The First District Court of Appeal correctly reversed the trial court's ruling that attorney's fees and sanctions could not be awarded against Lopez or her attorney under section 57.105 or under the trial court's inherent authority to do so[2] for fraud upon the court.

Unsupported by any case precedent, Lopez' view that the underlying trial court injunction proceeding was somehow "criminal," and therefore not subject to section 57.105, is a bridge too far. (Petitioner's Int. Brf., pp. 4, 14).

Moreover, as squarely analyzed by the First District in *Hall*, none of the opinions of the conflicting Districts "pertain[ed] to an award of fees pursuant to section 57.105. As such those cases are inapposite." *Hall* Opinion, at p. 9.

[2] Of interest, in her brief, Lopez does not address the trial court's inherent authority to sanction even though the First District treated such as axiomatic citing this Court," but 'if a specific statute or rule applies, the trial court should rely on the applicable rule or statute rather than on inherent authority.'" *Hall* (rejecting without discussion whether trial court erred in not employing inherent authority), p. 2 n. 1, quoting *Moakley v. Smallwood*, 826 So.2d 221, 224-27 (Fla. 2002).

Accordingly, the First District correctly found that "an award of attorney's fees pursuant to section 57.105 is not prohibited under section 784.046." *Hall* Opinion, at p. 9.

Finally, this Court should affirm a trial court's inherent authority to discipline its parties and their counsel, even in domestic violence injunction cases.

ARGUMENT

III. THE FIRST DISTRICT CORRECTLY HELD THAT AN AWARD OF ATTORNEY'S FEES PURSUANT TO SECTION 57.105 IS NOT PROHIBITED UNDER CHAPTER 784[3]

The *Hall* opinion appears to be the only district court case in Florida that thoroughly addresses the discrete issue of whether section 57.105 are available in a Chapter 784 domestic violence injunction. At bar, the First District analyzed the cases of the Second, Third and Fifth Districts that held section 57.105 fees are not available in domestic violence injunction proceedings. *Hall* Opinion, pp. 4-9.[4]

In doing so, the First District discovered that none of the underlying cases upon which those decisions were based related at all to section 57.105:

> [i]n 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, Baugartner, Abraham and Lewis-cases that did not pertain to an award of fees pursuant to section 57.105. As such, those cases are inapposite.

Hall, at p. 9; e.g. *Abraham* (fees under section 61.16(1)); *Lewis* (fees under Chapter 741); *Fernandez*, (fees under Chapter 741); *Geiger v. Schrader*, 926 So. 2d 432 (Fla. 1st DCA 2006)(fees under Chapter 741); *Belmont* (fees under Chapter 741).

[3] It is notable that 17 years ago, this Court was nearly presented in instant issue in Bane v. Bane, 775 So. 2d 938, 942 n. 4 (Fla. 2000), wherein this Court mentioned the Third and Fifth District holdings at bar, discussed *infra*, but noted "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."

[4] *Lewis v. Lewis*, 689 So. 2d 1271 (Fla. 1st DCA 1997); Baumgartner v. Baumgartner, 693 So. 2d 84 (Fla. 2DCA 1997);*Abraham v. Abraham*, 700 So.2d 421 (Fla. 3d DCA 1997); *Ratigan v. Stone*, 947 So. 2d 607 (Fla. 3rd DCA 2007) *Cisneros v. Cisneros*, 831 So. 2d 257 (Fla. 3rd DCA 2002); *Fernandez v. Wright*, 111 So. 3d 229 (Fla. 2d DCA 2013); *Belmont v. Belmont*, 761 So.2d 406 (Fla. 2d DCA 2000).

The *Hall* court also cited *Bierlin v. Lucibella*, 955 So. 2d 1206 (Fla. 4th DCA 2007), that found section 57.105 sanctions *were* available in a section 784 domestic injunction proceeding, but focused on the requirements of section 57.105, versus whether such sanctions were available in the first place. *Bierlin*, at 1208.

The *Hall* Court then engaged in analysis not previously offered on the issue – statutory interpretation of section 57.105 *visa vi* Chapter 784. *Hall* Opinion, at p. 9.

In that regard, this Court has been unwavering:

> [w]hen a statute is clear, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. Instead, the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent.

DeBaun v. State, No. SC13-2336, p. 8 (J. Canady, March 16, 2017), quoting *Paul v. State*, 129 So. 3d 1058, 1064 (Fla. 2013).

Using those tenants, the *Hall* court observed no statutory prohibition to the application of the section 57.105 attorney's fee provisions within Chapters 784 or 741: "[there is an] absence of a[ny] 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." *Hall*, at p. 9.

The *Hall* Court then turned to the plain meaning of the language within section 57.105. Firstly the statute applies to any civil proceeding.[5] *Id*., at (1) & (2). The statute provides that upon its own initiative or motion, a trial court may award a reasonable attorney's fee against a losing party and their attorney, if the court finds that the losing party presented a claim not supported by the material facts. *Id.* The provisions of section 57.105 are *supplemental* to other sanctions and remedies available to the courts. *Id*., at paragraph 6.

Utilizing the plain meaning of section 57.105, the *Hall* Court found that section 57.105 applies to civil proceedings/actions and that it provides no restriction to its application in Chapter 784 cases: "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 57.105 is not prohibited in an action under section 784.046." *Hall* Opinion, at p. 9.

Thus, as concluded by the First District, section 57.105 applies at bar because there is no other statutory language to the contrary. *DeBaun v. State,* No. SC13-2336 (March 16, 2017)(" … the statute's plain and ordinary meaning must control … ").

[5] Citing no authority, Lopez opines that the underlying proceedings are not "civil actions" but are somehow criminal: "a pure statutory creature afforded by the criminal code to enjoin a quasi-criminal act." Lopez Brief, at p. 14. Without overstating the obvious, Chapter 784 proceedings are not criminal and do not even carry the badges of criminal court: arrest, bonds, bail, police charges, State-brought charges, arraignment, pleas, incarceration, sentences or probation. Lopez' clever criminality argument misses the mark.

IV. THE TRIAL COURT HAS INHERENT AUTHORITY TO CONSIDER DISCIPLINE AND SANCTIONS AGAINST PARTIES AND THEIR COUNSEL

While rejecting Hall's argument, without discussion, the First District agrees that "a trial court has a limited inherent authority to assess attorney's fees against an attorney or party for bad faith conduct." *Hall* Opinion, p. 2 n. 1.

In addition to section 57.105, this Court should iterate a trial court's well-settled inherent authority to discipline and sanction litigants and their attorneys who commit fraud upon the court, file sham pleadings, disrupt proceedings or otherwise engage in bad faith conduct; and that such applies, even in an injunction proceeding. *Ex rel State v. Sheiner*, 73 So. 2d 851 (Fla. 1954); *Rose v. Palm Beach County*, 361 So. 2d 135 (Fla. 1978); *Moakley v. Smallwood*, 826 So. 2d 221 (Fla. 2002); *Jackson v. Fla. Dept. Corrections*, 790 So. 2d 398 (Fla. 2001); *E.I. DuPont de Nemours & Co. v. Sidran*, 140 So. 3d 620 (Fla. 3rd DCA 2014); *Patsy v. Patsy*, 666 So. 2d 1045 (Fla. 4th DCA 1996). "Inherent power has to do with the incidents of litigation, control of the court's process and procedure, control of the conduct of its officers, and the preservation of order and decorum with reference to its proceedings." *Petition of Florida Bar*, 61 So. 2d 646, 647 (Fla. 1952); *S.Y. v. McMillan*, 563 So. 2d 807, 809 (Fla. 1st DCA 1990).

As stated above, section 57.105 expressly provides that it is *supplemental* to other sanctions and remedies available to the courts. *Id*., at paragraph 6.

Accordingly, even though section 57.105 applies to like situations at bar, Florida trial courts maintain their inherent authority to discipline parties and counsel in domestic violence injunction cases because there is no statutory prohibition otherwise. *Debaun*.

CONCLUSION

Based upon the foregoing, the Court should affirm the decision in *Hall* and a trial court's inherent authority to discipline its parties and their counsel in domestic violence injunction cases.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the instant Brief complies with the requirements of Fla. R.App.P. 9.210(a).

/s/ Earl M. Johnson Jr.
Earl M. Johnson, Jr., Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email to Christopher W. Wickersham, Esq., and Michael Yokan, Esq. this 26th day of March 2017.

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