

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

JESUS JACQUES-MERAZ AND
DEBBIE JACQUES-MERAZ,

Petitioners,

v.

Case No. 5D20-412

DEBRA WALKER

Respondent.

_____ /

Opinion filed July 2, 2020

Petition for Writ of Certiorari
of the Circuit Court of Volusia County,
Acting in its Appellate Capacity.

Tanner Andrews, of Tanner Andrews, P.A.,
DeLand, for Petitioners.

Debra Walker, Osteen, pro se.

WALLIS, J.

Petitioners seek a Petition for Writ of Certiorari and request that we quash an order from the circuit court, acting in its appellate capacity, denying their motion for appellate attorney's fees following Respondent's unsuccessful appeal originating in the county court. We grant the petition.

Respondent originally sued Petitioners in county court, seeking an eviction for failure to pay rent as well as non-compliance with the terms of a Lease and Purchase

Option agreement. The Petitioners moved to dismiss the complaint for lack of subject matter jurisdiction, arguing that the lease was essentially a contract for a deed and the amount in controversy exceeded the jurisdictional limits. The county court granted the motion and Respondent appealed the dismissal to the circuit court. During that appeal, Petitioners moved for appellate attorney's fees citing to the agreement that was attached to the complaint and to sections 57.105(7), 59.46, and 83.48, Florida Statutes (2019). The circuit court affirmed the county court's dismissal but denied the Petitioners' motion for appellate attorney's fees, concluding that because there was no eviction proceeding, there was no basis for fees.

We review a decision issued by a circuit court sitting in its appellate capacity to determine whether the circuit court afforded the parties procedural due process and whether the essential requirements of the law were observed. Hartford Ins. Co. of Midwest v. O'Connor, 855 So. 2d 189, 191 (Fla. 5th DCA 2003) (citing Ivey v. Allstate Ins. Co., 774 So. 2d 679 (Fla. 2000), and Dep't of High. Saf. & Motor Veh. v. Whitley, 846 So. 2d 1163 (Fla. 5th DCA 2003)). The instant petition is entirely directed at the circuit court's denial of Petitioners' motion for appellate attorney's fees. Petitioners argue, essentially, that the circuit court applied the wrong law because they are entitled to fees as the prevailing party in the county court pursuant to sections 57.105(7) and 59.46. Our Court has previously held that:

the availability of attorney's fees was determined by the cause of action asserted in Appellees' complaint, not the disposition of the case. Provided that the contract is not found to be unenforceable between the parties, if a claim is within the scope of an attorney's fees provision, the party defending against that claim is entitled to attorney's fees pursuant to section 57.105(7) if the party prevails.

CalAtlantic Grp., Inc. v. Dau, 268 So. 3d 265, 268–69 (Fla. 5th DCA 2019).

In the present case, the contract was not found unenforceable, the eviction and breach of lease agreement claims in the complaint were within the scope of the attorney's fees provision contained in the agreement, and the Petitioners succeeded in both the county and the circuit courts. Therefore, the Petitioners are entitled to fees. See id.

PETITION GRANTED.

HARRIS and TRAVER, JJ., concur.