

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

THOMAS GIDDENS,

Appellant,

v.

THERESA TLSTY,

Appellee.

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

CASE NO. 1D11-2941

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Opinion filed October 5, 2012.

An appeal from the Circuit Court for Alachua County.  
Robert Groeb, Judge.

Thomas Giddens, pro se, Appellant.

Theresa Tlsty, pro se, Appellee.

ON APPELLANT'S MOTION FOR REVIEW OF  
LOWER TRIBUNAL'S DENIAL OF APPELLANT'S MOTION  
TO TAX APPELLATE COSTS

BENTON, C.J.

Thomas Giddens seeks review of the order denying the motion to tax appellate costs he filed in circuit court pursuant to Florida Rule of Appellate Procedure 9.400(a). We grant his motion for review, reverse the circuit court's order, and remand for further proceedings.

In the main appeal, Mr. Giddens challenged a final injunction for protection against repeat violence, entered against him at the behest of Theresa Tlsty pursuant to section 784.046(2), Florida Statutes (2011). On grounds that competent, substantial evidence did not support the final injunction, we reversed. Giddens v. Tlsty, 87 So. 3d 843 (Fla. 1st DCA 2012). Four days after the mandate issued, Mr. Giddens filed a motion in the trial court to tax appellate costs pursuant to Florida Rule of Appellate Procedure 9.400(a).<sup>1</sup> In the order under review, the trial court denied the motion, on the mistaken ground that it was without jurisdiction to award appellate costs. We now grant the motion for review of the order denying appellate costs. See Fla. R. App. P. 9.400(c).<sup>2</sup>

In granting the motion for review, we reverse the trial court’s July 25, 2012 order denying the motion to tax appellate costs. Motions to tax “appellate costs cannot be filed in the district court but must be filed in the lower tribunal after

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<sup>1</sup> Florida Rule of Appellate Procedure 9.400(a) provides, in part:

(a) Costs. Costs shall be taxed in favor of the prevailing party unless the court orders otherwise. . . . Costs shall be taxed by the lower tribunal on motion served within 30 days after issuance of the mandate.

<sup>2</sup> Florida Rule of Appellate Procedure 9.400(c) provides, in part:

(c) Review. Review of orders rendered by the lower tribunal under this rule shall be by motion filed in the court within 30 days of rendition.

jurisdiction has been returned to that body by our mandate.” Superior Prot., Inc. v. Martinez, 930 So. 2d 859, 860 (Fla. 2d DCA 2006). So long as the motion to tax appellate costs is timely, costs must be taxed in favor of the party who prevailed on the appeal. See Martin v. Hialeah Hous. Auth., 972 So. 2d 1113, 1114 (Fla. 3d DCA 2008) (“Under Florida Rule of Appellate Procedure 9.400(a), a party may serve a motion to tax costs within thirty days after the issuance of the mandate. Thus, by its terms, rule 9.400(a) authorizes proceedings for appellate costs to take place after the mandate has issued.”); Moran Towing of Fla., Inc. v. Mays, 623 So. 2d 850, 850 (Fla. 1st DCA 1993) (noting the trial court has jurisdiction pursuant to rule 9.400(a) for consideration of a motion for taxation of appellate costs “for 30 days following issuance of mandate without an order or directions from this court”); Jackson v. Dade Cnty. Sch. Bd., 433 So. 2d 1367, 1368 (Fla. 1st DCA 1983) (concluding the lower tribunal had jurisdiction to entertain a motion to tax appellate costs because the motion to tax appellate costs was served within thirty days after the issuance of the mandate). We remand for proceedings pursuant to Florida Rule of Appellate Procedure 9.400(a), to fix and tax the costs of the appeal against Theresa Tlsty, the unsuccessful appellee.

Reversed and remanded.

WETHERELL and RAY, JJ., CONCUR.