

**IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA**

**DENETRY LAMPKIN,**

Appellant,

vs.

**SEAN BRIDGNANAN,**

Appellee.

**CASE NO.: CVA1 07-51**

**County Court Case No. 2007-CC-4918**

\_\_\_\_\_/

Appeal from the County Court,  
for Orange County,  
Deb S. Blechman, Judge.

Dennis A. Chen, Esquire,  
for Appellant.

Justin R. Clark, Esquire,  
for Appellee.

Before POWELL, MCDONALD, WHITEHEAD, J.J.

PER CURIAM.

**REVISED FINAL ORDER REVERSING TRIAL COURT**

(Revised only as to title above)

Appellant Denetry Lampkin timely appealed the trial court's order denying defendant's motion for fees and costs entered on June 21, 2007, in favor of Appellee Sean Bridgnanan. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

Bridgnanan filed a tenant eviction action against Lampkin on April 13, 2007, for nonpayment of rent. In response, Lampkin filed a motion to dismiss and the trial court entered a

final order granting dismissal on May 3, 2007, based on Bridgnanan's acceptance of rent. On June 21, 2007, the trial court entered an order denying Lampkin's motion for attorney's fees and costs. This appeal followed.

Lampkin was the prevailing party below and the dismissal order in his favor was a final order.<sup>1</sup> The prevailing party in a residential landlord-tenant eviction action is entitled to an award of costs. See §83.48, Fla. Stat. (2007); Fla. R. Civ. P. 1.420(d)<sup>2</sup>. Section 83.48, Florida Statutes, states that "[i]n any civil action brought to enforce the provisions of the rental agreement or this part, the party in whose favor a judgment or decree has been rendered may recover reasonable court costs, including attorney's fees, from the nonprevailing party."<sup>3</sup> See Xanadu of Cocoa Beach, Inc. v. Lenz, 504 So. 2d 518, 520 (Fla. 5th DCA 1987). Where, as here, a statute makes attorney's fees part of recoverable costs, the court has no discretion and is mandated to award them under rule 1.420(d), Florida Rules of Civil Procedure, to the prevailing party in a dismissed action. See Muniz v. Samero, 534 So. 2d 848, 849 n.2 (Fla. 5th DCA 1988).

Accordingly, this Court concludes that the trial court erred in denying Lampkin's motion for attorney's fees and costs in the case below.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the order appealed from is **REVERSED** and this case is **REMANDED** to the trial court with directions to schedule a hearing on both motions with notice to the parties. It is further **ORDERED AND**

---

<sup>1</sup> The dismissal order was with prejudice and thus a final order. It was not necessary that the order use the magic words "Final Order of Dismissal with Prejudice." It is the substance, not the title, which governs. This order did not grant leave to amend. Instead, it stated in part "[p]laintiff may refile a new case as to rent subsequently and still owed."

<sup>2</sup> Rule 1.420(d), Florida Rules of Civil Procedure, makes no distinction between voluntary and involuntary dismissals. There is a line of Florida circuit appeal decisions reversing orders refusing to award attorney's fees as part of costs in eviction cases where the plaintiff landlord took a voluntary dismissal. See Haige v. Schueder, 12 Fla. L. Weekly Supp. 196a (Fla. 6th Cir. Ct. Aug. 28, 2004)(citing Wilson v. Rose Printing Co., Inc., 624 So. 2d 257 (Fla. 1993); Grant v. Morrison, 9 Fla. L. Weekly Supp. 68a (Fla. 17th Cir. Ct. Nov. 9, 2001); Scott v. McGregor, 7 Fla. L. Weekly Supp. 556a (Fla. 17th Cir. Ct. May 21, 2000).

<sup>3</sup> This statute is not limited to final judgments, but has been applied to final orders of dismissal.

