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

HFC COLLECTION CENTER, INC., ROLFE & LOBELLO, P.A., LAWRENCE C. ROLFE, AND AMANDA C. ROLFE,

Petitioners,

v. Case No. 5D21-217

STEPHANIE ALEXANDER,

Respondent.

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Opinion filed August 27, 2021

Petition for Certiorari Review of Decision from the Circuit Court for Orange County, Acting in its Appellate Capacity.

Bryan S. Gowdy and Dimitrios A. Peteves, of Creed & Gowdy, P.A., Jacksonville, for Petitioners.

Taras S. Rudnitsky, of Ruditsky Law Firm, Longwood, Nicholas A. Shannin, of Shannin Law Firm, Orlando, and James C. Hauser, of Attorney's Fees in Florida P.L., Maitland, for Respondent.

SASSO, J.

HFC Collection Center ("HFC"), Lawrence Rolfe, and Amanda Rolfe (collectively "Petitioners") petition this Court for relief from an order awarding attorney's fees and costs following remand from *HFC Collection Center, Inc. v. Alexander*, 190 So. 3d 1114 (Fla. 5th DCA 2016) ("*HFC I*"). We treat the petition as a motion to enforce the mandate and grant the motion.

BACKGROUND AND FACTS

HFC originally filed suit against the Respondent, Stephanie Alexander, in the county court to collect amounts owed pursuant to a credit card agreement. A primary issue in the case was whether HFC had standing to enforce the agreement, which was originally between Alexander and American Express. Due to gaps in the chain of assignment, the county court concluded that HFC lacked standing because there was "no evidence that (HFC) is a real party-interest" to the contract. That determination was not appealed.

Alexander subsequently relied on section 57.107(7), Florida Statutes, to seek attorney's fees pursuant to the same contract she had successfully maintained HFC was not a party to. The claim for fees eventually led to this Court's opinion in *HFC I*, in which this Court determined that Alexander could not employ section 57.105(7) as a basis for an attorney's fees award after she prevailed in arguing that HFC was a stranger to the contract. *HFC I*, 190

So. 3d at 1115–17. Specifically, this Court held that "Alexander is indeed estopped from relying on the credit card agreement to recover attorney's fees after she successfully maintained that HFC was not a party to that agreement." *Id.* at 1118.

Nonetheless, this Court identified an alternative basis under which attorney's fees may be appropriate, noting that Alexander had also sought fees under section 57.105(1)–(4). Since HFC had apparently proceeded with a suit upon a contract to which it was not a party, this Court speculated that fees may be appropriate under section 57.105(1). This Court therefore remanded the case to the county court with specific instructions to "first decide if it will consider awarding fees on its own initiative, and then . . . make specific findings regarding whether HFC or its counsel knew or should have known that its claims were not supported by the material facts or applicable law." *Id.* at 1120. In a separate order, this Court also conditionally granted Alexander's motion for appellate attorney's fees, contingent "on the county court finding that [HFC] or its counsel knew or should have known that [HFC's] claims were not supported by material facts or applicable law, in violation of section 57.105(1)." *Id.*

On remand, the county court held a hearing to determine whether Alexander was entitled to fees under the alternative statutory sections.

Alexander initially conceded that she did not comply with the procedural requirements of section 57.105(4), so all the county court needed to decide was whether it would impose sanctions sua sponte under section 57.105(1).

At the hearing, HFC's president testified and acknowledged that the necessary assignment of the agreement was missing from HFC's initial complaint. However, he determined after the summary judgment hearing that the assignment was, in fact, in HFC's file and that HFC's attorney had "just missed it." HFC then made a "business decision" not to file a motion for rehearing or appeal because "enough was enough." As to the subsequent dispute over attorney's fees, HFC insisted that because the county court originally found that there was no contract between itself and Alexander, it was perfectly reasonable for HFC to argue that if there was no contract, there could be no fees awarded under the contract.

Ultimately, the county court entered an order awarding sanctions. While the court acknowledged that the appropriate assignment did exist and had, in fact, been in the possession of HFC and its counsel, the court nonetheless determined that Alexander should be awarded fees under three alternative bases. First, the county court found Alexander was entitled to fees pursuant to section 57.105(1). Because HFC had the missing assignment in its possession, but nevertheless argued that there was no contract between

the parties, HFC's argument was unsupported by the material facts, it engaged in bad faith litigation, and it perpetrated a fraud on the court. Second, for these same reasons, the county court awarded Alexander fees using the court's inherent authority to sanction. Finally, the county court awarded fees under section 57.105(7). Despite this Court's determination that fees under this provision were inappropriate, the county court held that "newly discovered evidence" demonstrated that a contract existed between HFC and Alexander. Because of this newly discovered evidence, the county court reasoned that the law of the case doctrine did not apply.

After assignment of the case to a different judge, a final order setting the amount of fees was entered in favor of Alexander. HFC sought review in the circuit court, which affirmed in an unelaborated opinion. HFC now petitions this Court for relief, seeking alternative remedies.

DISCUSSION

In its petition, HFC asserts numerous errors evident in the county court's order granting entitlement to fees. Primarily though, HFC's petition centers on the argument that the county court exceeded the scope of this Court's mandate. Accordingly, we treat this petition as a motion to enforce the mandate and address only those issues necessary to the scope of this review. *See Allen v. State*, 301 So. 3d 463, 463 (Fla. 5th DCA 2020) (treating

petition for writ of mandamus as a motion to enforce mandate); *Ramsay v. State*, 291 So. 3d 963, 965 (Fla. 4th DCA 2020) (noting disparate treatment of appeals challenging lower tribunal's actions effectuating mandates, and concluding appeal should be treated as motion to enforce mandate).

With that framework in mind, we next evaluate each basis upon which the county court granted fees. Because a lower court does not have the authority to modify, nullify, or evade a mandate, this Court has authority to enforce its own mandate. § 35.08, Fla. Stat. (2020); *see also O.P. Corp. v. Village of N. Palm Beach*, 302 So. 2d 130, 131 (Fla. 1974). "[A]ny motion or petition to vary the judgment of [the appellate court] may not be entertained without permission of [the appellate court] to do so." *City of Miami Beach v. Arthree, Inc.*, 300 So. 2d 65, 67 (Fla. 3d DCA 1973).

In evaluating the county court's order granting fees, we conclude that each basis for fees exceeds the scope of this Court's mandate.

First, the county court exceeded this Court's mandate by granting fees pursuant to section 57.105(1). While this Court specifically cited that provision as a potential basis for fees, that suggestion was based on the possibility that HFC had filed a complaint based upon a contract to which it was not a party. *HFC I*, 190 So. 3d at 1119. Rather than conducting additional proceedings based on the narrow issue specified by this Court—

namely, whether HFC had a "factual basis for its suit against Alexander"—the county court instead evaluated every action HFC took, at trial and on appeal, to extract a basis for Alexander's fees. This exercise was neither authorized nor contemplated by the mandate.

Second, and for the same reasons, the county court exceeded the scope of this Court's mandate by granting fees based upon its inherent authority, where the "omission" giving rise to the purported fraud occurred in the context of disputes over attorney's fees following disposition of the underlying claim. This inquiry also was not authorized nor contemplated by the mandate.

Finally, the county court's determination that Alexander was entitled to fees pursuant to section 57.105(7) was not only unauthorized by the mandate, but it directly contravened *HFC I*'s judicial estoppel analysis as well. Contrary to Alexander's argument, neither this Court's decision in *Madl v. Wells Fargo Bank, N.A.*, 244 So. 3d 1134 (Fla. 5th DCA 2018), nor the Florida Supreme Court's decision in *Page v. Deutsche Bank Trust Co.*, 308 So. 3d 953 (Fla. 2020), justify the trial court's departure from the *HFC I* mandate. Both of those cases were predicated on the fact that "there was no adjudication . . . that the Bank never acquired the right to enforce the note and mortgage." *Page*, 308 So. 3d at 960; *accord Madl*, 244 So. 3d at 1139

(noting appellee joined appellants, the original mortgagors, as parties to the contract). By contrast, the basis for *HFC I*, which unlike foreclosure cases did not require proof of standing at the inception of the case and at trial, was that "Alexander proved that her credit card agreement and debt were never assigned to plaintiff." *HFC I*, 190 So. 3d at 1117.

In sum, the county court went far afield of the *HFC I* mandate. These unauthorized determinations formed the basis for the single order awarding fees incurred by Alexander at both the trial court and appellate levels. Accordingly, we grant the motion to enforce the mandate and quash the trial court's order awarding Alexander attorney's fees.

MOTION TO ENFORCE MANDATE GRANTED.

LAMBERT, C.J., and EVANDER, J., concur.