8/29/23

No. 23-201

IN THE

Supreme Court of the United States

LAWRENCE T. NEWMAN and
BEVERLY R. NEWMAN, ED.D.,
Petitioners,

v.

HERITAGE VILLAGE WEST CONDOMINIUM
ASSOCIATION, INC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SECOND DISTRICT COURT OF APPEAL OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

LAWRENCE T. NEWMAN and
BEVERLY R. NEWMAN, ED.D.,
Pro Se
6007 Hillside Avenue, East Drive
Indianapolis, Indiana 46220
(317) 397-5258
helpelders@hotmail.com

QUESTIONS PRESENTED

1. The trial court's judgment notwithstanding its lack of subject matter jurisdiction violated the Newmans' Constitutional rights to due process.

2. The imposition of appellate attorney fees in the absence of statutory authorization violated the Newmans' Constitutional due process rights.

TABLE OF CONTENTS

INDEX TO APPENDIX

TABLE OF AUTHORITIES

FEDERAL COURT CASES

STATE COURT CASES

CONSTITUTIONAL PROVISIONS

FEDERAL STATUTES

STATE STATUTES

FEDERAL COURT RULES

STATE COURT RULES

MISCELLANEOUS

PETITION FOR A WRIT OF CERTIORARI

Petitioners, Lawrence T. Newman, *Pro Se*, and Dr. Beverly R. Newman, *Pro Se*, respectfully request that this Court issue a writ of certiorari to review the judgment of the Twelfth Judicial Circuit Court for Manatee County, Florida, denying the Newmans' "Motion for Relief from Judgment Pursuant to Fla. R. Civ. Proc. 1.540(b)(4)" and the Order of the Florida Second District Court of Appeal affirming the trial court and the Order of the Florida Second District Court of Appeal awarding appellate attorney fees against the Newmans.

OPINIONS BELOW

The Order of the trial court dated August 22, 2022, denying relief from judgment is set forth in Appendix A. The Order of the Florida Second District Court of Appeal dated April 14, 2023, affirming the trial court *Per Curium* is set forth in Appendix B. The Order of the Florida Second District Court of Appeal dated April 14, 2023, awarding appellate attorney fees against the Newmans is set forth in Appendix C. The Order of the Florida Second District Court of Appeal dated June 1, 2023, denying the Newmans' Motion for Rehearing and for Written Opinion relative to the affirmance *Per Curium* is set forth in Appendix D. The Order of the Second District Court of Appeal dated June 1, 2023, denying the Newmans' Motion for Rehearing and for Written Opinion relative to the appellate attorney fee Order is set forth in Appendix D. The Order of the Florida Supreme Court dated July 5, 2023, dismissing the Newmans' Notice To

Invoke Discretionary Jurisdiction is set forth in Appendix E.

JURISDICTION

This cause arises from an Order from the trial court denying the Newmans' "Motion for Relief from Judgment Pursuant to Fla. R. Civ. Proc. 1.540(b)(4) that was affirmed by the Florida Court of Appeal. Because the Court of Appeal issued a *Per Curium* opinion, Florida rules prohibit a further appeal to the Florida Supreme Court.

Accordingly, the jurisdiction of this Court is invoked under 28 U.S.C § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the following Constitutional provisions, the pertinent portions of which are set forth below:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. U.S. Const. Article. VI.

.... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due

process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
U.S. Const. amend. XIV, Section 1.

STATEMENT OF THE CASE

This case concerns the denial by the Florida trial court and Florida Second District Court of Appeal of the Newmans' "Motion for Relief from Judgment Pursuant to Fla. R. Civ. Proc. 1.540(b)(4)" related to the eviction from their late father's condominium of Lawrence Newman and his wife, Dr. Beverly Newman ("the Newmans"), pursuant to **Fla. Stat. § 718.116(11)**, Florida's condominium rent-diversion statute, filed by the Heritage Village West Condominium Association, Inc. ("HVW").

On February 23, 2016, HVW filed its Complaint for Eviction against the Newmans pursuant to **Fla. Stat. § 718.116(11)** alleging that the Newmans were "**tenants**" who refused to divert "**rent**" payments to HVW from HVW unit condominium owner Al Katz, their father, who was no longer living for the prior 5 1/2 years.

On October 16, 2010, HVW filed a motion to strike the Newmans' pleadings. On October 17, 2019, HVW filed its Renewed Motion for Summary Judgment.

On February 18, 2020, the trial court issued its Order striking the Newmans' pleadings. On July 6, 2020, the trial court issued its Order granting HVW summary judgment against the Newmans. On May 21, 2021, the trial court issued its "Final

Judgment of Eviction," and on July 14, 2021, the Newmans were evicted from HVW. The Newmans appealed, but the appeal was denied.

On August 18, 2022, the Newmans filed their "Motion for Relief from Judgment Pursuant to Fla. R. Civ. Proc. 1.540(b)(4)" in the trial court, which was denied by Order of August 22, 2022.

On September 21, 2022, the Newmans appealed the trial court's Order denying relief from Judgment to the Florida Second District Court of Appeal, which affirmed the trial court by Order dated April 14, 2023. Upon Motion by HVW that was opposed by the Newmans, the Court of Appeal issued an Order, without reasoning, granting appellate attorney fees pursuant to **Fla. Stat. § 718.303**. The Newmans thereafter filed a Motion for Rehearing on both the Appeal and the attorney fee Order, which Motion was denied by the appellate court on June 1, 2023.

REASONS FOR GRANTING THE WRIT

1. THE TRIAL COURT'S JUDGMENT NOTWITHSTANDING ITS LACK OF SUBJECT MATTER JURISDICTION VIOLATED THE NEWMANS' CONSTITUTIONAL RIGHTS TO DUE PROCESS.

This Court Has the Authority To Review State Court Decisions that Were Based upon State Law.

The state court decision based upon state law in this cause nonetheless raises important Constitutional due process issues regarding a court's subject matter jurisdiction and the actions of the court notwithstanding its complete lack of subject matter jurisdiction.

This Court's decisions affirming its judicial power to rule on state court decisions based solely upon state law are legion, dating back to the early nineteenth century.

Since at least 1813, this Court routinely has reversed state courts on state-law questions. See *Fairfax's Devisee v. Hunter's Lessee*, 11 U.S. (7 Cranch) 603 (1813) and *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 355-56 (1816).

Similarly, in *Osborn v. Bank of United States* 22 U.S. (9 Wheat.) 738 (1824), Chief Justice Marshall declared that federal courts may decide not only those federal-law questions falling squarely within Article III's "judicial power," but also all other

questions - including state-law questions - in any case that even threatens to raise a question under federal law.

The supremacy clause offers a "doctrinal basis" for this Court's practice of reversing state-court state-law judgments for state-law error. Alfred Hill, The Inadequate State Ground, 65 COLUM. L. REV. 943, 949 (1965).

In *Rogers v. Alabama*, 192 U.S. 226, 230 (1904), this Court held that its jurisdiction to protect constitutional rights "cannot be declined when it is plain that the fair result of a [state-court] decision is to deny the rights."

Davis v. Wechsler. 263 U.S. 22 (1923) provides one of the most frequently-cited authorities permitting state-ground reversals.

> If the Constitution and laws of the United States are to be enforced, this Court cannot accept as final the decision of the state tribunal as to what are the facts alleged to give rise to the right or to bar the assertion of it even upon local grounds. *Davis*, 263 U.S. at 24.

Where federal law steps in to protect substantive interests originally created by state law - like property rights - this Court has routinely claimed jurisdiction to reverse a state court's decision denying those rights. Although state, not federal, law ordinarily governs whether and what kind of

property rights exist, this Court will review and reverse a state court's ruling on those questions in order to reach the federal-law claim that the state violated the Constitution by depriving an owner of that property without due process.

Just as in *Rogers*, this Court will decide for itself regarding the Newmans' due process rights in their property interests protected under the Fourteenth Amendment despite the rulings of the Florida courts based upon Florida law.

As far back as 1930, this Court endorsed state-grounds reversal where the state court decision was either erroneous or indicated evasion. *Broad River Power Co. v. South Carolina*, 281 U. S. 537,540-41 (1930).

In the present case, neither the trial court nor the Florida Court of Appeal dealt directly with the issue of subject matter jurisdiction, as the trial court denied the Newmans' Motion for Relief From Judgment on irrelevant grounds, because the trial court Order striking the Newmans' pleadings, the sole ground cited by the trial court, was void due to lack of subject matter jurisdiction; while the appellate court skirted the issue entirely by affirming the trial court *per curium* without any stated grounds. Both state courts disregarded *res judicata*, under which their decisions were both clearly erroneous and an evasion of the precedential effects of the determinative state ruling authorities of *Toledo v. Escamilla*, 962 So. 2d 1028 (Fla. Dist. Ct. App. 2007) and *Mesnikoff v. FQ Backyard Trading LLC*, 239 So.3d 765 (2018).

Without subject matter jurisdiction, a court has no authority to act, and the trial court actions against the Newmans in the absence of subject matter jurisdiction were a grievous error and a complete deprivation of their Constitutional due process rights.

Marbury v. Madison, 1 Cranch 137, 5 U. S. 137 (1803) declared the **basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution**, and that principle has ever since been respected by this Court and the country as a permanent and indispensable feature of our Constitutional system.

Although the Florida state trial and appellate courts refused to even consider the trial court's complete lack of subject matter jurisdiction and the grave violation of the Newmans' Constitutional due process rights that were its result, as they were evicted from their residence by a court without jurisdiction to do so, this Court "is supreme in the exposition of the law of the Constitution" and should accept this Writ to right a grievous wrong that, if the state court judgments were to stand, would upend centuries of jurisprudence that prohibit a court from acting in the absence of subject matter jurisdiction and void all actions taken in the absence of such jurisdiction.

In this respect, it is clear and well-established law that a void order can be challenged in any court, including in this Court. *Old Wayne Mut. L. Assoc. v. McDonough*, 204 U. S. 8 (1907).

No Court Can Act Without Subject Matter Jurisdiction.

Notwithstanding the Florida trial and appellate courts' refusal to abide by settled law mandating jurisdiction, both federal and Florida authorities consonantly and consistently hold that a court cannot take any actions in the absence of subject matter jurisdiction.

Jurisdiction is the power of a court "to decide a case or issue a decree." *Black's Law Dictionary* 980 (10th ed. 2014).

"A court can never act without jurisdiction ...." *Badgerow v. Walters*, ___ U.S. ___ (2022).

A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. *Old Wayne Mut. L. Assoc. v. McDonough*, 204 U. S. 8 (1907).

Subject-matter jurisdiction refers to "the courts' statutory or constitutional power to adjudicate the case." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83,89 (1998).

"If a court lacks subject matter jurisdiction, it is obligated to dismiss the case, regardless of how long the litigation has been ongoing. . . . This is true even though [a jurisdictional] objection 'may also result in the waste of judicial resources and may

unfairly prejudice litigants.'" *Rainero v. Archon Corp.*, 844 F.3d 832,841 (9th Cir. 2016).

The question of original jurisdiction cannot be ignored by a court or waived by a party. It is well settled that "challenges to subject-matter jurisdiction may be raised by the defendant 'at any point in the litigation,' and courts must consider them *sua sponte*." *Fort Bend Cty. v. Davis*, 139 S. Ct. 1843,1849 (2019).

"[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived." *United States v. Cotton*, 535 U.S. 625,630 (2002).

"Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83,94 (1998).

"[I]f there is no jurisdiction there is no authority to sit in judgment of anything else." *Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765,778 (2000).

Thus, if a particular prerequisite goes to a court's subject-matter jurisdiction, a litigant can raise that issue "at any time," *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428,434 (2011), including after a trial has concluded, on appeal, or after a remand. Parties can even engage in "sandbagging," i.e., "remaining silent about [an]

objection and belatedly raising the error only if the case does not conclude in [their] favor." *Puckett v. United States*, 556 U.S. 129,134 (2009); *Henderson*, 562 U.S. at 434-35 ("a party, after losing at trial, may move to dismiss the case because the trial court lacked subject-matter jurisdiction"). Indeed, as this Court has recognized, "a party may raise [a subject-matter jurisdictional] objection even if the party had previously acknowledged the trial court's jurisdiction." *Henderson*, 562 U.S. at 435.

The Newmans in their Motion for Relief from Judgment document that the trial court's lack of subject matter jurisdiction *ab initio* in this case rendered all trial court Orders and judgments, as well as all appellate decisions thereto, as void due to the trial court's lack of subject matter jurisdiction to take any actions or issue any orders in this cause from the initiation of HVW's subject lawsuit on February 23, 2016, through the present date.

Notwithstanding the clear and repeated U.S. Supreme Court rulings, the trial court erroneously denied the Newmans' Motion for Relief from Judgment on the basis that it had previously struck all of the Newmans' pleadings, without giving any consideration to the matter of its lack of subject matter jurisdiction. Said denial was clearly in error, as, without subject matter jurisdiction from the outset of the case, the trial court's striking Order was void, just as all of its other Orders, including its Order of eviction, were void.

The Florida Court of Appeal compounded the error by affirming the trial court's denial of the

Newmans' Motion for Relief from Judgment *per curium*, without any reasoning given whatsoever, critically with respect to the trial court's absence of subject matter jurisdiction.

"The refusal to supply readily available evidentiary support for a conclusion strongly suggests that the conclusion is, well, unsupported." *Biesteck v. Berryhill*, 587 U. S. ____ (2019), Justice Gorsuch, dissenting.

It is heretofore unknown in the law that a court would knowingly and intentionally act in a case without subject matter jurisdiction; yet, this is exactly what the Florida trial court and appellate court did in the Newmans' case. Given over two centuries of Supreme Court jurisprudence on the subject, it is not an overstatement to suggest that the Florida state courts have intentionally dispensed with the law as proclaimed by this Court. In this respect, "This Constitution... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby...." U.S. Const. art. VI.

The above-described errors of the trial court and Court of Appeal, in completely disregarding this Court's repeated pronouncements that a court cannot act in the absence of subject matter jurisdiction and that any such actions are necessarily void *ab initio*, were a gross violation of the Newmans' due process rights, especially as the Newmans, as Jews, are a tiny targeted minority in Manatee County and the United States.

This Court's rulings as to violations of a citizen's due process rights are legion, but the violations are magnified exponentially when a court does so in a case where it has no power and authority to act at all and in a case where a tiny minority is evicted without jurisdiction of the court.

Due process rights are considered as so fundamental that they are guaranteed in multiple clauses in the United States Constitution. See *Christopher v. Harbury,* 536 U.S. 403,415 n.12 (2002), holding the right to be "grounded in the Article IV Privileges and Immunities Clause, the First Amendment Petition Clause, the Fifth Amendment Due Process Clause, and the Fourteenth Amendment Equal Protection and Due Process Clauses."

Due process rights are the type of "fundamental rights" that are both "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702,720-21 (1997).

This Court has stated that "some errors are so fundamental and pervasive that they require reversal without regard to the facts and circumstances of the case." *Young v. U.S. ex rel. Vuitton*, 481 U.S. 787,810 (1987). An error is fundamental if it undermines confidence in the proceeding. *Id.*, at 812-813.

The errors in this case are so prolonged and pervasive for years that large numbers of the public

have truly lost confidence in the infected proceeding against a tiny minority family.

A "proceeding infected with fundamental procedural error, like a void judicial judgment, is a legal nullity." *Winterberger v. Gen. Teamsters Auto Truck Drivers & Helpers Local Union 162*, 558 F.2d 923,925 (9th Cir. 1977).

Indeed, this case never should have been allowed by the trial court to be initiated, as it lacked subject matter jurisdiction pursuant to two years-old Florida precedents almost completely identical to the Newmans' case that ruled indisputably that there was no subject matter jurisdiction because the Newmans were never "tenants" under applicable law. By not only failing to abide by those precedents, but to continue with the case, eventually evict the Newmans from their long-time residence, and subsequently deny their Motion for Relief from Judgment, the trial court intentionally acted without subject matter jurisdiction, intentionally violated the Newmans' Constitutional due process rights not to be subjected to litigation in a court without jurisdiction, and violated the Newmans Constitutionally-protected property rights in their residence.

We should "follow the text of the Constitution, which sets forth certain substantive rights that cannot be taken away, and adds, beyond that, a right to due process when life, liberty, or property is to be taken away." *United States* v. *Carlton*, 512 U. S. 26,42 (1994).

Controlling Precedents Declaring that the Trial Court Lacked Subject Matter Jurisdiction Were Disregarded by the Trial Court and Court of Appeal.

In the instant case, the applicable rule of law is set forth in two seminal Florida cases of ***Toledo v. Escamilla***, **962 So. 2d 1028 (Fla. Dist. Ct. App. 2007)** and ***Mesnikoff v. FQ Backyard Trading LLC***, **239 So. 3d 765 (2018)**, each of which ruling precedents established that Florida trial courts lack subject matter jurisdiction to consider a case brought pursuant to **Chapter 83, Part II, Florida Statutes, the Florida Residential Landlord and Tenant Act** ("the **Florida Residential Landlord and Tenant Act**"), seeking evictions of persons who are not defined/qualified as "**tenants**" pursuant to said Act.

In this respect, ***Toledo v. Escamilla***, **962 So. 2d 1028 (Fla. Dist. Ct. App. 2007)** holds in pertinent part as follows (emphasis added):

> The petitioner, Maite Toledo ("Ms. Toledo"), petitions this court for a writ of certiorari, seeking to quash the circuit court's appellate opinion dated October 10, 2006, which affirms the **final judgment of eviction entered by the county court pursuant to Chapter 83, Part II, Florida Statutes** (2004). As **we conclude that the county court lacked subject matter jurisdiction to enter the final judgment of eviction**, we grant the petition.

The respondent, Alejandro Escamilla ("Mr. Escamilla"), filed an eviction action against Ms. Toledo in county court pursuant to Chapter 83, Part II, Florida Statutes (2004), which is known as the Florida Residential Landlord and Tenant Act ("Act"), asserting that Ms. Toledo was a tenant. Ms. Toledo answered the complaint asserting that she lived with her former boyfriend and their son in the subject property, and that after her former boyfriend left, she and her son remained in the property. Believing that she was a part owner of the property, Ms. Toledo continued to pay the mortgage, association fees, and maintenance, and she also made improvements to the property. Several years later, without Ms. Toledo's knowledge, her former boyfriend sold the property to Mr. Escamilla. The county court entered a default judgment against Ms. Toledo for failing to place rent into the court's registry ....

In this petition for writ of certiorari, Ms. Toledo argues that the county court lacked subject matter jurisdiction over Mr. Escamilla's action .... We agree ....

[T]he county court lacked subject matter jurisdiction to enter the

judgment of eviction. The Act affords a landlord a summary procedure in county court when seeking to remove a tenant from its premises. Specifically, section 83.59(2), Florida Statutes (2004), provides in part:

> A landlord . . . applying for the removal of a *tenant* shall file in the *county court* of the county where the premises are situated a complaint describing the dwelling unit and stating the facts that authorize its recovery. . . . The landlord is entitled to the summary procedure provided in s. 51.011[F.S. 1971], and the court shall advance the cause on the calendar. (Emphasis added).

Thus, a landlord/tenant relationship is a condition precedent to applying this statutory remedy. Section 83.43(4), Florida Statutes (2004), defines "tenant" as "any person entitled to occupy a dwelling unit under a rental agreement." Moreover, section 83.43(7) defines "rental agreement" as "any written agreement, or oral agreement if for less duration than 1

year, providing for use and occupancy of premises."

In the instant case, it is undisputed that there was no written "rental agreement." Moreover, it is also undisputed that after Ms. Toledo's former boyfriend moved from the condominium unit, Ms. Toledo continued to live there for approximately four years. Thus, any oral agreement between Ms. Toledo and her former boyfriend cannot be considered a "rental agreement" as defined in section 83.43(7), as the oral agreement, if any, between Ms. Toledo and her former boyfriend was not for a duration of less than one year. **Therefore, as Ms. Toledo is not a "tenant" as defined by the Act, the county court lacked subject matter jurisdiction** ....

Because the county court lacked subject matter jurisdiction to resolve the issues before it, the decision reached by the county court constitutes fundamental error. Therefore, as the county court lacked subject matter jurisdiction, we grant the petition, quash the circuit court's opinion, and instruct the circuit court to enter an order reversing the county court's judgment of eviction ....

The factual circumstances of the present case are almost identical to those in the *Toledo* case, virtually a mirror image to the instant case; and the trial court therefore lacked subject matter jurisdiction over the within case from its inception, because the Newmans are not and never were "**tenants**" as defined by the **Florida Residential Landlord and Tenant Act**.

As in *Toledo*, the Newmans were subject to a void "final judgment of eviction entered by the ... court pursuant to Chapter 83, Part II, Florida Statutes," in this case, the trial court's Final Judgment of Eviction issued on May 21, 2021.

As in *Toledo*, the Plaintiff, HVW, "**filed an eviction action against [the Newmans] pursuant to Chapter 83, Part II, Florida Statutes (2004), which is known as the Florida Residential Landlord and Tenant Act**," in HVW's Complaint for Eviction filed on February 23, 2016. In the instant case, HVW filed its eviction action against the Newmans under **Fla. Stat. § 718.116(11)**, Florida's condominium rent-diversion statute, which provides in pertinent part (emphasis added):

> (d) **The association may** issue notice under s. 83.56 and **sue for eviction under ss. 83.59-83.625 as if the association were a landlord under part II of chapter 83** if the ***tenant*** fails to pay a required payment to the association after written demand has been made to the ***tenant***. However, the association is not otherwise considered

> a landlord under chapter 83 and specifically has no obligations under s. 83.51.

As in *Toledo*, HVW filed for eviction against the Newmans pursuant to Chapter 83, Part II, Florida Statutes, falsely "**asserting that [each of the Newmans] was a tenant**," which assertion HVW later admitted was false. See HVW's Complaint for Eviction, which states in pertinent part (emphasis added):

> This is an action to remove ***tenants*** from real property located in Manatee County, Florida .... Defendant ***tenants*** BEVERLY NEWMAN and LAWRENCE NEWMAN failed to pay their December 2015 and January 2016 (sic) to the ASSOCIATION as required. As a result of Defendant ***tenants***, BEVERLY NEWMAN and LAWRENCE NEWMAN'S failure to pay rent to the ASSOCIATION, Section 718.116(11)(d) provides: The association may issue notice under s. 83.56 and sue for eviction under ss. 83.59-83.625 as if the association were a landlord under part II of chapter 83 if the ***tenant*** fails to pay a required payment to the association after written demand has been made to the ***tenant***. However, the association is not otherwise considered a landlord under chapter 83 and specifically has no obligations under s. 83.51.

As in *Toledo*, the Newmans "lived with [their father, Al Katz, the sole record owner of HVW Unit 4102] in the subject property [during 2009-2010], and that after [Al Katz passed away on July 11, 2010, but nonetheless remained the sole record owner of the condominium, the Newmans] remained in the property [and] continued to pay ... [for] maintenance, and [they] also made improvements to the property."

As in *Toledo*, "[the trial] court entered a ... judgment against [the Newmans] for failing to place rent into the court's registry."

As in *Toledo*, the trial court "lacked subject matter jurisdiction to enter the judgment of eviction" because the Newmans were owner Al Katz's close family members and never "tenants" in his HVW Unit 4102, which "tenant" legal status is a statutory prerequisite to an eviction action and to the court's subject matter jurisdiction under the Florida Residential Landlord and Tenant Act.

As in *Toledo*, "a landlord/tenant relationship *is a condition precedent* to applying this statutory remedy. Section 83.43(4), Florida Statutes (2004), defines 'tenant' as 'any person entitled to occupy a dwelling unit under a rental agreement.' Moreover, section 83.43(7) defines 'rental agreement' as 'any written agreement, or oral agreement if for less duration than 1 year, providing for use and occupancy of premises'."

As in *Toledo*, "it is undisputed that there was no written 'rental agreement.' Moreover, it is also

undisputed that after [Al Katz passed away, the Newmans continued to live there for approximately six] years [before HVW filed its eviction proceeding against the Newmans in February 2016]. Thus, any [purported] oral agreement between [the Newmans and Al Katz] cannot be considered a "rental agreement" as defined in section 83.43(7), as the oral agreement, [between the Newmans and Al Katz] was not for a duration of less than one year."

Over a decade after the *Toledo* decision, the court in *Mesnikoff v. FQ Backyard Trading LLC*, 239 So.3d 765 (2018), under similar facts, came to the same conclusion as the *Toledo* court that **the trial court lacked subject matter jurisdiction over an eviction case under the Florida Residential Landlord and Tenant Act because the resident of the real property at issue was not a "tenant" under said eviction statute**, ruling in pertinent part (emphasis added):

> Because **we conclude that the county court lacked subject matter jurisdiction to enter the final judgment of eviction**, we grant the petition and quash the decision entered by the circuit court appellate division ....
>
> Following Mesnikoff's answer and affirmative defenses, Backyard Trading moved for summary judgment. In its motion, despite the absence of any allegations in its complaint concerning a residential

tenancy, **Backyard Trading stated that Mesnikoff is a "*tenant* who refuses to vacate the premises."** (emphasis added). ....

Backyard Trading's counsel announced that he was dismissing the ejectment action and was proceeding solely on a claim for "possession," **arguing that the instant case involves "a landlord-*tenant* issue."**

.... After the parties failed to enter into a settlement, the county court entered an order granting Backyard Trading's motion for summary judgment. Thereafter, the county court entered a final judgment in favor of Backyard Trading on what the county court called a "Complaint for Eviction," which entitled Backyard Trading to recover possession of the condominium from Mesnikoff.

Mesnikoff then appealed the judgment of eviction entered by the county court to the circuit court appellate division, **arguing that the county court lacked subject matter jurisdiction.** The circuit court, sitting in its appellate capacity, entered a per curium affirmance. Mesnikoff's second-tier petition for certiorari review followed.

> .... the sole issue before this Court is whether the circuit court **failed to apply the correct law, resulting in a miscarriage of justice**. In his petition for second-tier certiorari review, Mesnikoff argues **that the county court lacked subject matter jurisdiction**, and therefore, the circuit court failed to apply the correct law when affirming the final judgment entered by the county court. **We agree** ....
>
> Even if Backyard Trading did attempt to include in its complaint a second count for possession under section 83.59(1) of the Act, which it did not, we would nonetheless conclude that **the county court lacked subject matter jurisdiction to enter a final judgment for eviction and possession because a landlord-*tenant* relationship did not exist**. And as previously stated, **a court's "incorrect decision on subject matter jurisdiction . . . constitutes a departure from the essential requirements of law**, sufficient to justify invocation of [second-tier] certiorari jurisdiction." *Stel-Den of Am.*, 438 So. 2d at 884.
>
> The Act "applies to the rental of a dwelling unit." § 83.41, Fla. Stat. (2016). Although we agree that Backyard Trading is a "landlord"

> under the Act, § 83.43(3), Fla. Stat. (2016) (defining "landlord" as "the owner or lessor of a dwelling unit") (emphasis added), **Mesnikoff is not a "*tenant*" under the Act *because there was no rental agreement.*** **See § 83.43(4), Florida Statutes (2016)** (defining "tenant" as "any person entitled to occupy a dwelling unit under a rental agreement"); see **also *Toledo v. Escamilla***, 962 So. 2d 1028, 1030 (Fla. 3d DCA 9 2007) (holding that, **because the party occupying the dwelling unit "is not a 'tenant' as defined by the Act, the county court lacked subject matter jurisdiction"**). Thus, **section 83.59(1) of the Act does not apply**.

In the instant case, as in *Mesnikoff*, the trial court "failed to apply the correct law, **resulting in a [grave] miscarriage of justice**" by evicting the elderly and disabled Newmans from the residence they had maintained for 12 years and made improvements to, without the court having subject matter jurisdiction to do so under the **Florida Residential Landlord and Tenant Act**.

As in *Mesnikoff*, "**the [trial] court lacked subject matter jurisdiction to enter a final judgment for eviction and possession because a landlord-tenant relationship did not exist [between Al Katz, sole record owner of HVW Unit 4102, and the Newmans]**."

As in *Mesnikoff*, "**[the trial] court's incorrect decision on subject matter jurisdiction . . . constitutes a departure from the essential requirements of law.**"

As in *Mesnikoff*, "**[Lawrence Newman and Beverly Newman each] is not a "tenant" under the Act because there was no rental agreement. See § 83.43(4), Florida Statutes (2016)** (defining 'tenant' as 'any person entitled to occupy a dwelling unit under a rental agreement')."

As in Mesnikoff, "**because the party occupying the dwelling unit [Lawrence and Beverly Newman each] 'is not a 'tenant' as defined by the Act, the [trial] court lacked subject matter jurisdiction'.**"

As in *Mesnikoff*, "**section 83.59(1) of the Act does not apply,**" because the Newmans (1) were not "**tenants**" and (2) had no "**rental agreement,**" as required for said statute to apply.

The *Toledo* and *Mesnikoff* decisions **are controlling** and required immediate reversal of the case by the trial court due to its lack of subject matter jurisdiction therein. The trial court's lack of subject matter jurisdiction also resulted in all of the trial court's Orders, including its Order striking the Newmans' pleadings and its Order of eviction, as being void *ab initio.*

Toledo is controlling in the State of Florida and was cited with approval in: *Mesnikoff v. FQ Backyard Trading, LLC*, 239 So. 3d 765 (Fla. Dist. Ct. App. 2018); *Dupree v. Dellmar*, 323 So. 3d 342 (Fla. Dist. Ct. App. 2021); *Borjas v. Vergara*, 232 So.

3d 1067 (Fla. Dist. Ct. App. 2017); *Thompson v. Thompson*, No. 3D21-0165 (Fla. Dist. Ct. App. Jul. 6, 2022); *Golden Cape of Fl., Inc. v. Perez De Ospina*, 324 So. 3d 558 (Fla. Dist. Ct. App. 2021); *Ward v. Ward*, 1 So. 3d 238 (Fla. Dist. Ct. App. 2009); *Hernandez v. Porres*, 987 So. 2d 195 (Fla. Dist. Ct. App. 2008).

Mesnikoff is also controlling in the State of Florida and has been cited with approval in: *Dupree v. Dellmar*, 323 So. 3d 342 (Fla. Dist. Ct. App. 2021); *Thompson v. Thompson*, No. 3D21-0165 (Fla. Dist. Ct. App. Jul. 6, 2022).

Critically, both *Toledo* and *Mesnikoff* ruled that the trial court had no subject matter jurisdiction because the person sought to be evicted was not a "tenant" as defined by the applicable statute. In the present case, the Newmans similarly were not "tenants" as defined by statute. Dispositively, HVW conceded and admitted in the trial court that **the Newmans are not and never were "tenants" as defined by the Florida Residential Landlord and Tenant Act**.

In this respect, on October 16, 2019, over three years after filing its Complaint for Eviction, HVW filed its "Motion for Summary Judgment on the Counterclaim" in the trial court. In said Motion, HVW conceded and admitted in pertinent part as follows (emphasis added):

> .... **the Newmans do not qualify as "*tenants*"** because they had no written agreement "providing for use and

> occupancy of premises," and any alleged oral agreements would be insufficient .... **They do not qualify as "*tenants*" under the statute** ....
>
> Absent a "rental agreement," **Lawrence cannot satisfy the definition of "*tenant*." .... He was not a *tenant*.**

Thus, HVW expressly admitted that the Newmans never qualified as "**tenants**" under the statute; yet, HVW's litigation against the Newmans continued unabated until the Newmans were evicted pursuant to the very statute that HVW admitted could not be invoked as a legal basis for evicting the Newmans.

Despite unrefuted controlling legal precedents and conclusive admissions by HVW in favor of the Newman Family, HVW continued to litigate its case for years against its only Jewish family, and the trial court ruled punitively against the minority family.

HVW conclusively established that the Newmans were not and never were "**tenants**" under the controlling law, and, consequently, the trial court never had subject matter jurisdiction over the eviction case, which could have been lawfully asserted by HVW only against "**tenants.**"

HVW was bound by the admissions of their chosen attorneys. As this Court in *Link v. Wabash Railroad Co.*, 370 U.S. 626,633-634 (1962) ruled:

> Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent ...."

In sum, HVW is legally bound by the multiple written representations made by its attorneys in the trial court that the Newmans were not "**tenants**" for purposes of HVW's eviction action pursuant to the **Florida Residential Landlord and Tenant Act**.

Critically, in addition to HVW's controlling admissions, the trial court never made any contrary findings that the Newmans were "**tenants**" as defined by **§ 83.43(4), Fla. Stat.** in either the court's summary judgment Order or in its Final Judgment of Eviction.

Thus, as with the trial courts in *Toledo* and *Mesnikoff*, the trial court in this cause lacked subject matter jurisdiction over HVW's eviction lawsuit against the Newmans pursuant to the **Florida Residential Landlord and Tenant Act** because the Newmans were not "**tenants**" as defined by the Act.

The "first" rule of statutory interpretation, however, is that "unambiguous" statutory text controls. *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992).

"[W]hen the statute's language is plain, the sole function of the courts — at least where the disposition required by the text is not absurd — is to enforce it according to its terms." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1,6 (2000)

In this case, the meanings of the applicable statutes are "clear and unambiguous." **Fla. Stat. § 718.116(11)**, the statute under which HVW sued the Newmans for eviction, by its "clear and unambiguous language," applies only to "**tenants**" who pay "**rent**" as both terms are defined by the **Florida Residential Landlord and Tenant Act**. Further, **Fla. Stat. §§ 83.59-83.625**, the statutes referenced in **Fla. Stat. § 718.116(11)**, through which a condominium association is authorized to sue for eviction, by its "clear and unambiguous language," similarly applies **only** to "**tenants**" as defined therein by the **Florida Residential Landlord and Tenant Act**. As there is no dispute by HVW that the Newmans are not "**tenants**" under the controlling law, the trial court never had subject matter jurisdiction over HVW's eviction lawsuit against the Newmans, as the required statutory prerequisite for said eviction, "**tenants**," did not exist.

Accordingly, as in *Toledo*, "Because [the trial court] lacked subject matter jurisdiction to resolve the issues before it, ***the decision reached by [the trial court] constitutes fundamental error.*** **Therefore, as *[the trial court] lacked subject matter jurisdiction,* [the trial court must] enter an order reversing [the trial court's] judgment of eviction.**"

As in *Toledo*, the trial court refused to "enter an order reversing [its] judgment of eviction."

Summary reversal is an "extraordinary remedy" usually reserved for situations where "the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error." *Kisela v. Hughes*, 138 S. Ct. 1148,1162 (2018) (Sotomayor, J., dissenting).

The Newmans respectfully suggest that a summary reversal by this Court is appropriate, in that "the law is settled and stable ... and the decision[s] below [are] clearly in error" by both the trial court and the appellate court, dispensing consideration of the subsuming matter of subject matter jurisdiction and upholding the eviction of the Newmans in the face of absence of subject matter jurisdiction.

Controlling Precedents Must Be Followed.

The trial court was obliged to follow the State of Florida precedents as determined in the *Toledo* (Third District Court of Appeal) and *Mesnikoff* (Third District Court of Appeal) cases, but failed to do so, and the Florida Court of Appeal compounded the error by affirming the trial court *per curium*. In this respect, in *Pardo v. State,* 596 So. 2d 665,667 (Fla. 1992), the Florida Supreme Court explained the hierarchy of authority within the Florida court system as follows:

> The [d]istrict [c]ourts of [a]ppeal are required to follow Supreme Court decisions. As an adjunct to this rule it is logical and necessary in order to preserve stability and predictability in the law that, likewise, **trial courts be required to follow the holdings of higher courts — [d]istrict [c]ourts of [a]ppeal.** *The proper hierarchy of decisional holdings would demand that* ***in the event the only case on point on a district level is from a district other than the one in which the trial court is located, the trial court be required to follow that decision.***

Similarly, the Florida Supreme Court held in *Brannon v. State,* 850 So. 2d 452,458 n.4 (Fla. 2003):

> If there is no controlling decision by this Court or the district court having jurisdiction over the trial court on a point of law, **a decision by another district court is *binding*.**

There being no contrary authority on this subject from the Second District Court of Appeal, the trial court was "required to follow the holdings of ... a district other than the one in which the trial court is located," specifically, the Third District Court of Appeal in the cases of *Toledo v. Escamilla*, 962 So. 2d 1028 (Fla. Dist. Ct. App. 2007), and *Mesnikoff v. FQ Backyard Trading LLC*, 239 So.3d 765 (2018), which decisions were "**binding**" on the trial court and

required that the trial court determine that it had no subject matter jurisdiction in the instant litigation for eviction of the Newmans from HVW Unit 4102 because the Newmans were not "**tenants**" under **§ 83.43(4), Florida Statutes**, and that **all Orders** issued by the trial court in the cause below **were void *ab initio***, including, *inter alia*, the trial court's Order striking the Newmans' pleadings and its Final Judgment of Eviction issued on May 21, 2021.

In view of the Florida Supreme Court's requirement that the trial court recognize the "binding" effect of the *Toledo* and *Mesnikoff* cases, the trial court was obligated pursuant to **Fla. R. Civ. Proc. 1.540** to: (1) determine its lack of subject matter jurisdiction in this cause; (2) vacate all of its Orders therein as void *ab initio*; and (3) grant the Newmans' "Motion for Relief from Judgment Pursuant to Fla. R. Civ. Proc. 1.540(b)(4)."

Not only did the trial court disregard Florida's identical legal precedents to rule against the Newman minority family, it punitively struck the Newmans' pleadings to irreparably harm the Holocaust Survivor family.

The Florida courts' refusal to abide by their own ruling precedents violated the Newmans' Constitutional due process rights. In this respect, the trial court, "like all other decisionmaking tribunals, **is obliged to follow its own Rules**." *Ballard v. Commissioner of Internal Revenue*, 544 U.S. 40, 125 S. Ct. 1270, 161 L. Ed. 2d 227 (2005).

As this Court held in *Hollingsworth*, *Hollingsworth v. Perry*, 558 U.S. 183,192 (2010), that rules of court, no less than other regulations, are binding, not just on the parties, but on the court itself. "**If courts are to require that others follow regular procedures, courts must do so as well.**" 558 U.S. at 199. "The Court's interest in ensuring compliance with proper rules of judicial administration is **particularly acute when those rules relate to the integrity of judicial processes.**" *Id.* at 196.

In effect, the Florida courts simply rewrote the statute defining "tenants" and replacing the class of persons subject to eviction under said statute, applying their "rewritten" statute against the Newman Holocaust Survivor family.

"A judge must not rewrite a statute, neither to **enlarge** nor to contract it." Felix Frankfurter, Some Reflections on the Reading of Statutes, 47 COLUM. L. REV. 527, note 3, at 533 (1947).

"When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, ... the statute must be given its plain and obvious meaning." *Holly v. Auld*, 450 So.2d 217,219 (Fla. 1984).

Due process has been interpreted by the U.S. Supreme Court as **preventing the states from denying litigants use of established adjudicatory procedures**, when such an action would be "**the equivalent of denying them an opportunity to be**

heard upon their claimed right[s]." *Boddie v. Connecticut*, 401 U.S. 371,380 (1971).

Because the Florida state courts refused to adhere to and follow the established ruling precedents of *Toledo* and *Mesnikoff*, they denied the Newmans their Constitutional due process rights as explicated in *Boddie*, thus compelling a reversal by this Court of the Florida state court judgments.

The Trial Court's Violations of the Newmans' Property Rights Raise Additional Constitutional Issues.

By evicting the Newmans from their lawful residency in their father's condominium, the trial court violated the Newmans' Constitutionally-protected property rights.

A tenancy-type interest is sufficient to invoke the due process clause. *Engblom v. Carey*, 677 F.2d 957 (2d Cir. 1982).

Rigid notions of ownership are not prerequisites to constitutional protections .... Similarly, in applying the due process clause, the [Supreme] Court has extended its procedural protection "well beyond actual ownership of real estate, chattels, or money." *Board of Regents v. Roth*, 408 U.S. 564,572 (1972) .... *Engblom v. Carey*, 677 F.2d 957 (2d Cir. 1982).

While the determination looks first to state law as the "primary source of property rights," *Quinn v. Syracuse Model Neighborhood Corp.*, 613 F.2d 438,

448 (2d Cir. 1980), ultimately the issue is one of "federal constitutional law." *Memphis Light, Gas Water Division v. Craft*, 436 U.S. 1,9 (1978) .... *Engblom v. Carey*, 677 F.2d 957,063 (2d Cir. 1982).

"It would be absurd to allow a State to do by judicial decree what the Takings Clause forbids it to do by legislative fiat." *Stop the Beach Renourishment, Inc. v. Florida Dept. of Environmental Protection,* 560 U.S. 702 (2010).

By evicting the Newmans without statutory authority, the trial court violated their established right to reside in their father's HVW condominium as authorized since 1984 by their father. This, coupled with the trial court's lack of subject matter jurisdiction to order the eviction, implicates multiple Constitutional violations by the trial court that should be reversed by this Court.

This Court Historically Has Enforced Rights to Relief from Wrongful Judgments in Order To Accomplish Justice.

Fla. R. Civ. Proc. 1.540(b)(4) provides that "the court may relieve a party . . . from a final judgment, decree, order, or proceeding" on the basis that the "judgment, decree, or order is void."

What could be more void than an order imposed without jurisdiction?

Fla. R. Civ. Proc. 1.540(b)(4) tracks **Fed. R. Civ. Proc. 60**, which similarly provides (emphasis added):

> RULE 60. RELIEF FROM A JUDGMENT OR ORDER .... (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: .... **(4) the judgment is void**; ... **(6) any other reason that justifies relief.**

Fed. R. Civ. Proc. 60(b)(6) "enables courts '**to vacate judgments whenever such action is *appropriate to accomplish justice*.**'" *Primbs v. United States*, 4 Cl. Ct. 366,368 (1984).

This Court's cases illustrate federal Rule 60(b)(6)'s breadth. This Court has relied on Rule 60(b)(6) as a vehicle for addressing both **(1) legal errors apparent at the time of the judgment and (2) those based on intervening legal developments.** For instance, Rule 60(b)(6) was the "proper" subsection for relief where a trial judge erroneously failed to follow a federal statute requiring recusal at the time of trial. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847,850-51,863 n.11 (1988). Rule 60(b)(6) governed a motion raising a Sixth Amendment violation at trial. *Buck v. Davis*, 137 S. Ct. 759,772 (2017). Rule 60(b)(6) was the vehicle for a movant to argue that a denaturalization judgment against him "was unlawful and erroneous." *Ackermann v. United States*, 71 S. Ct 209 (1950).

In all state and federal cases cited above, **the rationale for granting relief was "to accomplish justice" by vacating unfair or inequitable judgments;** and the vehicle to "accomplish justice" is Rule 60(b).

In order to "accomplish justice," this Court should accept this Petition for Writ of Certiorari and reverse the Orders of the Florida courts that authorized the eviction of the Newmans by a court that lacked subject matter jurisdiction over the case.

2. THE IMPOSITION OF APPELLATE ATTORNEY FEES IN THE ABSENCE OF STATUTORY AUTHORIZATION VIOLATED THE NEWMANS' CONSTITUTIONAL DUE PROCESS RIGHTS.

On April 14, 2023, the Florida Court of Appeal issued its Order awarding appellate attorney fees to HVW and against the Newmans. Said Order violated the Newmans' Constitutional due process rights because the Florida statute under which said fees were awarded did not apply to the Newmans by definition.

As a Holocaust Survivor family, the Newmans are very familiar with American judicial antisemitism in which Jewish crime victims were punished in court and charged costs for crimes committed against them.

HVW filed its fees request pursuant to **Fla. Stat. § 718.303**, which statute provides in pertinent part:

> (1) **Each unit owner, tenant and other invitee, and association** is governed by, and must comply with the provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws which are expressly incorporated into any lease of a unit. **Actions at law or in equity, or both, for failure to comply with these provisions may be brought by the association** or by a unit owner against:
>
> (a)The association.
>
> **(b)A unit owner. ....**
>
> **(e)Any tenant leasing a unit, and any other invitee occupying a unit.**
>
> **The prevailing party in any such action** ... is entitled to recover reasonable attorney fees.

F.S. 718.303(a) applies, *inter alia*, only to certain actions brought by a condominium association against "A unit **owner**" or "Any **tenant** leasing a unit, and any other **invitee** occupying a unit." The Newmans have never been: (1) unit **owners**, (2) **tenants** leasing a unit, or (3) **invitees**.

Dispositively, because the Newmans were not among the specific classes of persons identified by the **unambiguous statute** who may be liable for an award of attorney fees, no such attorney fee award could be legally assessed against the Newmans, and the Florida appellate court's award of appellate attorney fees against the Newmans violated the

statute and, consequently, the Newmans' Constitutional due process rights.

HVW never alleged or provided any evidence to the appellate court that the Newmans were either owners, tenants, or invitees, which evidence does not exist, and the Court of Appeal never made any such findings. The Newmans denied and provided proof to the appellate court that they were never owners, tenants, or invitees. Accordingly, based upon the authorities cited below, the appellate court's award of appellate attorney fees against the Newmans was not only erroneous, but, under the circumstances of this case, violated the Newmans' Constitutional due process rights.

As ruled by this Court in *Giaccio v. State of Pennsylvania*, 382 U.S. 399 (1966) (emphasis added):

> **Certainly one of the basic purposes of the Due Process Clause has always been to protect a person against having the Government impose burdens upon him *except in accordance with the valid laws of the land.*** Implicit in this constitutional safeguard is the premise that the law must be one that carries ***an understandable meaning with legal standards that courts must enforce.***

"The history of liberty has largely been the history of observance of procedural safeguards." *McNabb v. United States*, 318 U.S. 332,347 (1943). The history of this case has largely been the history

of courts discarding "procedural safeguards" and laws.

"[W]hen the statute's language is plain, the sole function of the courts — at least where the disposition required by the text is not absurd — is to enforce it according to its terms." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000)

The Court of Appeal did not enforce **Fla. Stat. § 718.303 "according to its terms,"** but rather assessed the attorney fees with no evidence that the Newmans were amongst the classes of persons specifically designated in the statute, and, when in fact, the Newmans were never amongst said classes; thus, the appellate court grossly violated the Newmans' Constitutional due process rights by fining them without any lawful authority to do so, even beyond the continuing lack of jurisdiction.

This Court has considered the issue of the right to an award of attorney fees in numerous cases. See, *inter alia*, *Alyeska Pipeline Service Company v. The Wilderness Society, et al.*, 421 U.S. 240, 95 S.Ct. 1612, 44 L.Ed.2d 141 (1975); *Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983); *Martin v. Franklin Capital Corp.*, 163 L.Ed.2d 547, 546 U.S. 132, 126 S. Ct. 707 (2005); and *Octane Fitness, LLC v. Icon Health*, 134 S.Ct. 1749, 188 L.Ed.2d 816, 82 USLW 4330 (2014).

"In *Alyeska Pipeline Service Co. v. Wilderness Society,* 421 U.S. 240 ... (1975), this Court reaffirmed the 'American Rule' that each party in a lawsuit

ordinarily shall bear its own attorney's fees **unless there is *express* statutory authorization to the contrary.**" *Hensley v. Eckerhart*, 461 U.S. 424,430 (1983).

Because the Florida Court of Appeal assessed statutory appellate attorney fees against the Newmans in the absence of any statutory authority to award said fees, the court violated the Newmans' Constitutional due process rights.

"... **[A]n individual ... may not be punished for exercising a protected statutory or constitutional right.**" *United States v. Goodwin*, 357 U.S. 368,372 (1982).

The long history of this case demonstrates how a minority family has been "punished for exercising [its] protected statutory or constitutional right."

The Florida Supreme Court itself has ruled:

> **Where the legislature has provided such a process, courts are not free to deviate from that process** absent express authority. *State v. DiGuilio,* 491 So.2d 1129,1133 (Fla.1986).

This Court has described due process as "the protection of the individual against arbitrary action." *Ohio Bell Tel. Co. v. Pub. Serv. Comm'n,* 301 U.S. 292, 302 (1937).

By knowingly assessing attorney fees against the Newmans in the absence of any statutory

authority to do so, the appellate court simply exerted "arbitrary action" outside of its authority (and jurisdiction).

For a frank appraisal summing up the unsupported determination against the Newmans which violated their due process rights as discussed herein, see *Zelman v. Zelman*, 175 So.3d 871 (Fla.Dist.Ct.App. 2015): "We note that the judgment here was infected by legal hocus pocus, containing findings so unsupported by the record as to be clearly erroneous."

The Florida Court of Appeal acted with wrongful "arbitrary action," employing "legal hocus pocus" in asserting statutory appellate attorney fees against the Newmans which they were indisputably not subject to by statute.

Consequently, the Newmans request this Court to accept this Petition for Writ of Certiorari in order to establish that a court may not deviate from the "American Rule," affirmed by this Court, regarding assessment of attorney fees, in the absence of statutory authority to so deviate.

CONCLUSION

In the interest of the public good, this Petition for Writ of Certiorari should be granted to correct the fundamental and pervasive errors of the Florida trial court and the Florida Court of Appeal in acting against the Newmans in the absence of subject

matter jurisdiction and in levying appellate attorney fees against the Newmans in the absence of all statutory authority, all of which decisions so substantially violated the Newmans' Constitutional due process rights as to compel the complete reversal of the Florida courts' Orders.

Respectfully submitted,

Lawrence T. Newman, *Pro Se*
Beverly R. Newman, Ed.D., *Pro Se*
6007 Hillside Avenue, East Drive
Indianapolis, Indiana 46220
(317) 397-5258
helpelders@hotmail.com