

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY  
CASE NO.: 502015AP000056XXXXMB  
L.T. No.: 502012SC004468XXXXSB

JAIRO D. LIBREROS CUPIDO M.D., P.A.,  
Appellant,

v.

AUTO-OWNERS INSURANCE COMPANY,  
Appellee.

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Opinion filed: **AUG 5 2016**

Appeal from the County Court in and for Palm Beach County,  
Judge Edward A. Garrison

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PER CURIAM.

Plaintiff/Appellant, Jairo D. Libreros-Cupido, M.D., P.A. (“Dr. Libreros”), appeals a final judgment awarding attorney’s fees and costs to Defendant/Appellee, Auto-Owners Insurance Company (“Auto-Owners”). Dr. Libreros argues that the judgment must be reversed because 1) Auto-Owners’s motion for attorney’s fees was untimely, 2) the trial court failed to make express findings in support of its award under section 57.105,<sup>1</sup> and 3) the award of expert witness costs was not authorized by section 57.105. We find that the motion was timely filed, but agree that the lack of express findings and the award of costs require reversal.

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<sup>1</sup> Dr. Libreros also argues that the facts do not support an award of fees, however, given the lack of findings by the trial court, the Court declines to address this argument.

Dr. Libreros's claim that Auto-Owners's Motion for Sanctions was barred by Florida Rule of Civil Procedure 1.525 is meritless. Auto-Owners filed its motion seeking sanctions more than three months prior to Dr. Libreros's voluntary dismissal. Rule 1.525 requires parties seeking attorney fees, costs, or both, to serve a motion "no later than 30 days after filing of the judgment, including a judgment of dismissal, or the service of a notice of voluntary dismissal." Fla. R. Civ. P. 1.525 (emphasis added); see *Barco v. School Bd. of Pinellas Cty.*, 975 So. 2d 1116, 1124 (Fla. 2008) (finding that the language "no later than" clarifies "that the intent of the rule is to establish only an outside deadline for service of the motion.") There is no requirement that motions seeking fees and costs filed prior to a judgment or dismissal must be renewed within thirty days after the dismissal. See *Taylor v. Miller*, 977 So. 2d 799, 799 (Fla. 2d DCA 2008) (finding that Rule 1.525 does not require service of a motion for fees within a thirty day window after the filing of the judgment). Accordingly, we find that Auto-Owners timely filed its motion in accordance with Rule 1.525.

Despite the motion being timely filed, we do find that the award of attorney's fees must be reversed because the trial court did not make the requisite factual findings to support an award under section 57.105. The Fourth District Court of Appeal has recognized that "there **must** be a finding on record, supported by substantial competent evidence, in order for the trial court to award attorney's fees" under section 57.105. *Vasquez v. Provincial S., Inc.*, 795 So. 2d 216, 218 (Fla. 4th DCA 2001) (emphasis added). "[S]ection 57.105 requires an explicit finding by the trial court that there was a complete absence of a judiciable issue of law or fact raised by the plaintiff in the action." *Id.* at 218; see also *Palm Beach Polo Holdings, Inc. v. Stewart Title Guar. Co.*, 134 So. 3d 1073, 1078 (Fla. 4th DCA 2014) (finding that the trial court's order granting section 57.105 fees was "technically deficient" because it failed to include the required

specific findings). In this case, the trial court did not make any express findings in support of its award of attorney's fees pursuant to section 57.105. Accordingly, the fee award must be reversed and the matter remanded to allow the trial court either to make the requisite findings, or to deny the motion for attorney's fees.

Finally, we find that the award of expert witness costs under section 57.105, Florida Statutes (2013) was not permissible, as that statute only provides for an award of attorney's fees and "makes no mention of costs." *Ferdie v. Isaacson*, 8 So. 3d 1246, 1251 (Fla. 4th DCA 2009); *Dux v. Dicker, Krivok & Stoloff, P.A.*, 20 Fla. L. Weekly Supp. 330b (Fla. 15th Cir. Ct. Dec. 21, 2012); *see also Santini v. Cleveland Clinic Florida*, 65 So. 3d 22, 36 (Fla. 4th DCA 2011) (reversing the trial court's award of costs under a section 57.105 motion, as such was not permitted by the statute); *Berman & Feldman v. Winn Dixie, Inc.*, 684 So. 2d 320, 323 (Fla. 4th DCA 1996) (holding that the assigning of expert witness fees was error since section 57.105 does not provide for the imposition of costs against the losing party's attorney).

Accordingly, the trial court's order awarding attorney's fees is **REVERSED** and the matter is **REMANDED** for the trial court either to enter an order denying Auto-Owners's Motion for Sanctions, or to enter an order awarding attorney's fees that includes the required express findings in accordance with section 57.105, Florida Statutes. The trial court's order awarding expert witness costs is **REVERSED**.

BLANC, CARACUZZO, and OFTEDAL, JJ., concur.

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Appeal from the County Court in and for  
Palm Beach County; Judge Edward A. Garrison

AUTO-OWNERS INSURANCE COMPANY  
Appellee(s).

Date of Appeal: June 16, 2015

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DATE OF PANEL: JUNE 21, 2016

PANEL JUDGES: BLANC, CARACUZZO, OFTEDAL

AFFIRMED/REVERSED/OTHER: REVERSED

PER CURIAM OPINION/DECISION BY: PER CURIAM

DATE: CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:	)
	)	With/Without Opinion	)	With/Without Opinion	)
<u>PSM</u>	)	_____	)	_____	)
J.	)	J.	)	J.	)
<u>Caracuzzo</u>	)	_____	)	_____	)
J.	)	J.	)	J.	)
<u>RW</u>	)	_____	)	_____	)
J.	)	J.	)	J.	)