

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

PALM BEACH COUNTY  
SHERIFF'S OFFICE,

Appellant,

v.

TIMOTHY A. READ,

Appellee.

APPELLATE DIVISION (CIVIL)  
CASE NO.: 502006AP0000093XXXXMB  
L.T.: 502006SC010098XXXXNB  
Division: 'AY'

FILED  
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SHERIFF'S OFFICE, CLERK  
PALM BEACH COUNTY, FL  
CIRCUIT CIVIL 3

Opinion filed: **AUG 02 2007**

**Appeal from the County Court in and for Palm Beach County, Florida**  
**Judge Nancy Perez.**

For Appellant: Fred H. Gelston, Esq., 601 N. Dixie Highway, Ste. C, West Palm Beach,  
FL 33401

For Appellee: Timothy Read, 13549 83<sup>rd</sup> Lane North, West Palm Beach, FL 33412

PER CURIAM

AFFIRMED.

This is an appeal from an Order of Replevin entered in favor of Appellee, Timothy Read ("Read") requiring the release of property held in the possession of Appellant, Palm Beach County Sheriff's Office ("Sheriff"), and awarding costs to Read. The Sheriff seeks review of the trial court's decision to grant costs to Read.

On January 19, 2005, officers from the Sheriff's Office seized Read's firearm pursuant to a domestic disturbance call. The officers seized the firearm in response to Read acting "hostile

and aggressive” upon their arrival. Because the officers perceived Read’s actions as a breach of peace, they held the firearm pursuant to § 933.14 (3), Fla. Stat. (2006).<sup>1</sup>

On August 8, 2006, Read filed a Statement of Claim for replevin for the firearm and an Application for Determination of Civil Indigent Status. The trial court issued a Rule to Show Cause as to why the firearm should not be returned to Read, and set a hearing at which both parties appeared. On November 20, 2006, the trial court ordered the Sheriff to release Read’s property and further ordered Read to recover court costs in the amount of \$130.00.

On appeal, the Sheriff argues that justice negates the imposition of court costs when the property at issue was held pursuant to the Sheriff’s statutory duty under Section 933.14 (3). The Sheriff does not, however, challenge the constitutionality of the statute as to the method by which the Sheriff may return property held pursuant to Section 933.14 (3) without having to pay costs. Because Section 933.14 (3) requires a court order authorizing the release of property, it appears that the Sheriff had no choice but to wait for Read to bring a Claim for Replevin and accept the results of the order granting costs and the return of the property.

We have no transcript or substitute therefore, and have no basis on which to hold that the trial court erred in awarding costs. While it is conceivable that a plausible constitutional argument can be made to support appellant’s position, we are not able to tell whether it was raised below, and we are not constrained to discuss that issue without its having been a subject of this appeal. We do not even know if it was raised below, and in the absence of a record on appeal, a judgment that is not fundamentally erroneous must be affirmed. *Applegate v. Barnett Bank*, 377 So.2d 1150, 1152 (Fla. 1979). “The burden is on the appellant to ensure that the

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<sup>1</sup> Section 933.14 (3) provides that, “No pistol or firearm taken by any officer with a search warrant or without a search warrant upon a view by the officer of a breach of the peace shall be returned except pursuant to an order of a trial court judge.”

record includes all of the materials necessary to show reversible error.” *Resort Sales Int'l, Inc. v. Fla. Dept. of Bus. Reg'n, etc.*, 795 So.2d 1040, 1042 (Fla. 1st DCA 2001). Because the record brought before this Court is insufficient to demonstrate reversible error, the trial court must be, and is, affirmed. *Applegate, supra*.

KELLEY, STERN, AND MCCARTHY, JJ., concur.

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IN AND FOR PALM BEACH COUNTY, FLORIDA

Appellate Division (Civil)  
CASE NO.: 502006AP0000093XXXXMB  
L.T.: 502006SC010098XXXXNB  
Division: 'AY'

PALM BEACH COUNTY  
SHERIFF'S OFFICE,

Appellant,

Opinion/Decision filed: ~~November 29, 2007~~ **AUG 02 2007**

Appealed from County Court  
In and for Palm Beach County, Florida  
Judge Nancy Perez

v.

TIMOTHY A. READ,

Appealed: December 18, 2006

Appellee.

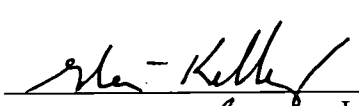
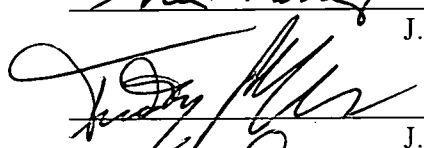
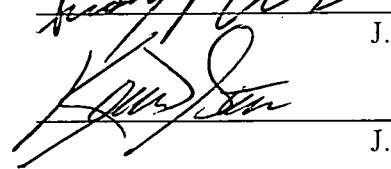
Rendered: **AUG 02 2007**

DATE OF: July 16, 2007

PANEL: Kelley, Stern, and McCarthy

AFFIRMED/REVERSED/OTHER: AFFIRM

PER CURIAM OPINION/DECISION BY: \_\_\_\_\_

DATE CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:	)
	)	With/Without Opinion	)	With/Without Opinion	)
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