

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

THERESA A. RIVERNIDER,

Appellant,

v.

STERLING VILLAGES OF PALM  
BEACH LAKES CONDOMINIUM  
ASSOCIATION,

Appellee.

APPELLATE DIVISION (CIVIL)  
Case No.: 502009AP000022XXXXMB  
L.T.: 502008SC009703XXXXMB  
Division: 'AY'

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Opinion filed: *March 4, 2010*

*a*  
**Appeal from the County Court in and for Palm Beach County,  
Judge James L. Martz.**

For Appellant: Jerome F. Skrandel, Esq., 300 Prosperity Farms Road, Suite D, North  
Palm Beach, FL 33408-5212  
For Appellee: Steven Meyer, Esq., 2295 NW Corporate Boulevard, Suite 117, Boca  
Raton, FL 33431.

PER CURIAM.

REVERSED and REMANDED.

The Sterling Villages of Palm Beach Lakes Condominium Association ("Sterling") filed a statement of claim against Theresa A. Rivernider for failure to pay monthly condominium maintenance fees. After a non-jury trial, the court entered judgment for Sterling, finding that Rivernider was the owner of three units and was delinquent in payment of the fees.

Sterling subsequently moved the court to issue a writ of continuing garnishment against Rivernider, directing Rivernider's tenant to pay his rent to Sterling. Sterling moved for attorneys' fees and costs pursuant to section 718.116, Fla. Stat. The court granted the writ of continuing garnishment. Rivernider filed a claim of exemption from garnishment and request for

hearing. The court denied the exemption after the hearing. The court ordered that Sterling would recover from Donald Hannigan, Rivernider's tenant, his monthly rent payments owed to Rivernider.

Sterling filed a verified motion to hold Rivernider in contempt of court and for sanctions and emergency evidentiary hearing, alleging that Rivernider's "property manager" had threatened her tenant and told him not to pay Sterling rent pursuant to the order of garnishment, and had twice intentionally vandalized the unit. The court granted the motion. The order stated that Rivernider "shall reimburse Mr. Hannigan \$2,552.00, which is the total that he was forced to spend to repair the air conditioning unit. The Defendant shall pay this sum to the Garnishee, Mr. Hannigan, no later than the close of business on April 7, 2009. If this sum is not timely paid to Mr. Hannigan then this amount shall increase by \$1,000.00 per day until it is paid, for all of which let execution issue." This timely appeal followed.

The parties dispute whether the trial court held Rivernider in civil or criminal contempt. The distinction between criminal and civil contempt often turns on the character and purpose of the sanctions involved. *Florida Bar v. Forrester*, 916 So. 2d 647, 651 (Fla. 2005). Criminal contempt proceedings are intended to punish intentional violations of court orders and civil contempt proceedings are remedial and for the benefit of the complainant. *Id.* Civil contempt includes a purge provision allowing the contemnor to comply with the court order and avoid sanctions. *Id.* A flat unconditional fine is a criminal sanction because it does not include the purge provision. *In re Steffens*, 988 So. 2d 142, 144 (Fla. 5th DCA 2008). In contrast, a valid civil fine for every day the contemnor fails to comply with the court's prior orders is a purgeable sanction. *Parisi v. Broward County*, 769 So. 2d 359, 365 (Fla. 2000).

Here, the order stated that Rivernider "shall reimburse Mr. Hannigan \$2,552.00, which is the total that he was forced to spend to repair the air conditioning unit. The Defendant shall pay this sum to the Garnishee, Mr. Hannigan, no later than the close of business on April 7, 2009. If this sum is not timely paid to Mr. Hannigan then this amount shall increase by \$1,000.00 per day until it is paid, for all of which let execution issue." The fine for damage to the air conditioner is not a purgeable sanction because it is a flat fine not for failure to comply with the prior order of garnishment, but rather for the alleged tampering with the air conditioning unit in order to drive out the tenant to indirectly avoid the garnishment order. The only purgeable sanction of the order was to prevent additional civil fines for failure to comply with the flat fee of \$2,552.00. Therefore, the court should have complied with Florida Rule of Criminal Procedure 3.840, which governs indirect criminal contempt proceedings.

This Rule requires that the court issue an order to show cause against the defendant based upon an affidavit by a person having knowledge of the facts. Here, there was no such affidavit nor was there an order to show cause. The order to show cause must provide notice that the court is considering criminal contempt proceedings. *Steffens*, at 144. Failure to comply with the procedural requirements of Rule 3.840 is reversible fundamental error. *Cone v. Gillson*, 861 So. 2d 1210 (Fla. 2d DCA 2003). Thus, an appellate court must reverse even without objection in the trial court, unless there is an express waiver in the trial court. *Persoff v. Persoff*, 589 So. 2d 1007 (Fla. 4th DCA 1991). Here, there was no waiver. The court found Rivernider in contempt based upon the standard of clear and convincing evidence. Criminal contempt proceedings require the standard of proof beyond a reasonable doubt as do ordinary criminal proceedings. *Steffens*, at 144. Accordingly, the order is REVERSED and the cause is remanded for further proceedings consistent with this opinion.

Rivernider's request for appellate attorneys' fees is GRANTED. This cause is remanded to the trial court for an evidentiary hearing on the amount of appellate attorneys' fees to be awarded to Rivernider.

CROW, KELLEY, EVANS, JJ., concur.

<u>DVIE</u>	<u>DVIE</u>	<u>DVIE</u>
<u>VOICE</u>	<u>VOICE</u>	<u>VOICE</u>
VOICE ( )	DISVOICE ( )	DISVOICE ( )
VOICE ( )	VOICE ( )	VOICE ( )