

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

APPELLATE DIVISION (CIVIL) 'AY'
Case No.: 502009AP000022XXXXMB
L.T.: 502008SC009703XXXXSB

THERESA RIVERNIDER,

Appellant(s),

v.

STERLING VILLAGES OF PALM BEACH LAKES
CONDOMINIUM ASSOCIATION, INC., and
STEVEN MEYER, and DONALD HANNIGAN,

Appellee(s).

Opinion filed: **JAN - 9 2013**

**Appeal from the County Court in and for Palm Beach County,
Judge Janis Keyser.**

For Appellant: Jerome F. Skrandel, P.A.
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For Appellee: Steven Meyer, Esq.
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PER CURIAM.

The Court previously reversed and remanded this case to the lower court because the trial court failed to follow the correct procedure before entering a sanction for indirect criminal contempt. *Rivernider v. Sterling Villages of Palm Beach Lakes Condo. Ass'n*, 17 Fla. L. Weekly Supp. 426b (Fla. 15th Cir. Ct. 2010). In that opinion, the Court granted Theresa Rivernider's motion for appellate attorney's fees and remanded the issue to the trial court to determine the amount. Sterling Villages of Palm Beach Lakes Condominium Association, Inc. ("Sterling") now

seeks review of the attorney fee award pursuant to Florida Rule of Appellate Procedure 9.400(c). We grant review and find that Sterling is not entitled to appellate fees.

This appeal originally arose from an order that this Court deemed to be an order finding criminal contempt. “Neither the Florida Statutes nor the Florida Rules of Criminal Procedure provide any assistance in determining whether attorneys fees and costs can be awarded to a private individual in a criminal contempt proceeding.” *Routh v. Routh*, 565 So. 2d 709, 710 (Fla. 5th DCA 1990). Furthermore, the Fourth DCA addressed the issue of attorney’s fees in criminal contempt actions in *Anderson v. City of Wilton Manors*, 490 So. 2d 1313 (Fla. 4th DCA 1986). See *Routh*, 565 So. 2d at 710. In *Anderson*, Judge Glickstein’s concurring opinion discussed the difference between the concepts of civil and criminal contempt when that court affirmed the trial court’s denial of a motion for attorney’s fees to a municipality. The concept applicable in that case – and here - is that “a contempt proceeding criminal in nature is instituted solely and simply to vindicate the authority of the court or otherwise punish for conduct offensive to the public in violation of an order of the court.” *Id.*, citing to *Demetree v. State ex rel. Marsh*, 89 So. 2d 498, 501 (Fla. 1956). The court concluded that “a judgment of guilt of criminal contempt should, therefore, not inure to the benefit of a private individual.” *Routh*, 565 So. 2d at 710. Although *Routh* discussed the propriety of awarding appellate fees to the successful **prosecutor** of a contempt action, rather than the successful **defender**, the same analysis applies here. It would be inequitable if Sterling could not recover fees for a successful prosecution, yet Rivernider could recover fees for a successful defense.

The Court clearly erred by previously awarding attorney fees in this appeal. Although Sterling did not raise this issue in its current motion, Rivernider’s lack of entitlement to attorney’s fees is a threshold issue that supersedes Sterling’s other arguments. However, an

appellate court is barred under the doctrine of law of the case by its prior ruling granting entitlement to attorney's fees, absent manifest injustice. *Suffolk Const. Co., Inc. v. First Seabord Sur., Inc.*, 63 So. 3d 18 (Fla. 3d DCA 2011); *see, e.g., Young v. State*, 939 So. 2d 263 (Fla. 4th DCA 2006) (noting that appellate courts have the power to reconsider and correct erroneous rulings where reliance on a previous decision would result in manifest injustice). The Court finds that permitting the award of attorney's fees to stand would constitute a manifest injustice, since this Court's prior opinion had the effect of awarding attorney's fees in a criminal case. *See Forbes v. State*, 933 So.2d 706, 712 (Fla. 4th DCA 2006). Furthermore, both parties have moved for fees in another case seeking review of a contempt order that is currently pending before this Court, therefore the error must be rectified to avoid inconsistent outcomes. *See Rivernider v. Sterling Villages of Palm Beach Lakes Condo. Ass'n*, 502011CA008776XXXXMB.

HAFELE, CROW, and COX, JJ., concur.