

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA
CIVIL DIVISION**

MICHAEL T. FLYNN,

Plaintiff,

v.

JIM STEWARTSON, et al.,

Defendants.

Case No.: 2023 CA 004264 NC

Division C Circuit

NOTICE OF WITHDRAWAL OF MOTION TO STAY PENDING APPEAL

Plaintiff, Michael T. Flynn, by and through undersigned counsel, hereby provides notice of his withdrawal of his Motion to Stay Pending Appeal, filed on February 27, 2025.

Dated: February 28, 2025

Respectfully submitted,

/s/ Jared Roberts

Jared J. Roberts

(Fl. Bar No. 1036550)

Stephen B. French

(Fl. Bar No. 0078761)

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Counsel for Michael T. Flynn

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2025, I have caused a true and accurate copy of the foregoing to be delivered to counsel of record via e-filing.

/s/ Jared Roberts

Jared J. Roberts
(Fl. Bar No. 1036550)

Counsel for Michael T. Flynn

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**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR FEES AND
PLAINTIFF'S MOTION TO STAY PENDING APPEAL**

Plaintiff, Michael T. Flynn, by and through undersigned counsel, hereby opposes Defendant, Rick Wilson's, Motions for Fees, and moves to stay these proceedings pending appeal, and states as follows:

BACKGROUND

1. On January 30, 2024, this Court entered final judgment as to Defendant Wilson. The Court dismissed Plaintiff's Second Amended Complaint pursuant to Florida's anti-SLAPP statute. The Court reserved jurisdiction in its order to entertain motions for attorney's fees and costs.

2. On February 1, 2024, Plaintiff filed his notice of appeal.

3. On February 19, 2024, Defendant Wilson filed his Motion for Attorney's Fees and Costs.

4. On December 11, 2024, the Second District Court of Appeal affirmed this Court's order.

5. On December 18, 2024, Plaintiff filed a motion for rehearing, which the Second District Court of Appeal denied on December 26, 2024.

6. On January 10, 2025, Plaintiff filed his notice to invoke the discretionary jurisdiction of the Florida Supreme Court. This notice remains pending.

7. On January 14, 2025, the Second District Court of Appeal issued a Mandate.

8. On February 3, 2025, Defendant Wilson filed his Motion for Appellate Attorney's Fees and Costs.

ARGUMENT

9. Fla. R. App. P. 9.310(a) grants a trial court authority “to stay a final or nonfinal order pending review.”

10. The Court has broad authority to stay proceedings. *See Shake Consulting, LLC v. Suncruz Casinos, LLC*, 781 So. 2d 494, 495 (Fla. 4th DCA 2001) (affirming the trial court's stay of proceedings because “a trial court has broad discretion to grant or deny a motion to stay a case pending before it” and “[s]ubstantial judicial resources will be conserved” by the stay); *REWJB Gas Invs. v. Land O' Sun Realty*, 643 So. 2d 1107, 1108 (Fla. 4th DCA 1994) (“The granting of a stay of proceedings by a trial court, pending the outcome of an action in another court, is in the broad discretion of the trial court.”).

11. Here, it is in the best interests of judicial economy to stay Defendant Wilson's pending motions for fees. *See Mann v. Brantley*, 732 So. 2d 1090, 1091 (Fla. 4th DCA 1998) (holding it was an abuse of discretion to deny a stay due to

the potential for wasted money and wasted judicial resources). Determining the amount of fees Defendant Wilson is entitled to will be subject to lengthy briefing and an evidentiary hearing. If the Supreme Court reverses this Court, however, finding that Defendant Wilson is not entitled to fees, then such proceedings would have been a waste of judicial resources. Accordingly, it is in the parties' and the Court's best interests to stay these proceedings until the Supreme Court has ruled.

12. Furthermore, while the Second District Court of Appeal found that it was not relying on *Gundel*, it still shifted the burden to Plaintiff to illustrate that his case did not lack merit or was not brought "primarily" to chill speech. *Flynn v. Wilson*, 2024 WL 5063563, at *7 (Fla. 2d DCA Dec. 11, 2024). Such burden-shifting only occurs under *Gundel*; therefore, it is likely that the Supreme Court will invoke its discretionary jurisdiction to review *Gundel's* burden-shifting framework.

13. As to attorney's fees and costs, Plaintiff objects to any entitlement to such fees and costs because, as briefing has illustrated, even if Plaintiff failed to state a claim, his Second Amended Complaint did not fall within the ambit Fla. Stat. § 768.295.

WHEREFORE, Plaintiff, Michael T. Flynn, respectfully requests this Court (1) use its broad discretion to stay any ruling on Defendants' Motions for Attorney's Fees and Costs until after the Florida Supreme Court has ruled on Defendant Wilson's entitlement to fees; or (2) deny Defendant's Motions for Attorneys' Fees and Costs.

Dated: February 27, 2025

Respectfully submitted,

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_____ /

**RESPONSE IN OPPOSITION TO
PLAINTIFF'S MOTION TO STAY PENDING APPEAL**

Defendant, Rick Wilson, by and through the undersigned counsel responds in opposition to Plaintiff, Michael Flynn's motion to stay pending appeal and states as follows:

1. The Second District Court of Appeals upheld this Court's Order granting Summary Judgment to Mr. Wilson under Florida's Anti-SLAPP statute, finding that Plaintiff's claims lacked merit and were primarily brought because Wilson exercised his first amendment rights. (DIN 127).

2. The Second District issued a mandate in this case. (See, ¶7 of Plaintiff's Motion for Stay, see also the mandate itself (DIN 127)).

3. When the appellate court issues a mandate, it ends the appeal and relinquishes jurisdiction to the trial court. E.g., *State v. Miyasoto*, 805 So. 2d 818, 824 (Fla. 2d DCA 2001).

4. Plaintiff cites to Fla. R. App. P. 9.310(a) and asks this Court to stay a final order. But Plaintiff ignores the rest of the rule which undermines any such request at this stage of the proceedings.

5. Plaintiff ignores Fla. R. App. P. 9.310(d) which provides:

A stay entered by a lower tribunal will remain in effect during the pendency of all review proceedings in Florida courts until a mandate issues, or unless otherwise modified or vacated. (e.s.).

6. Plaintiff could have sought to stay the mandate but did not do so. The Supreme Court explained in *State ex rel. Price v. McCord*, 380 So. 2d 1037 (Fla. 1980) that Rule 9.310(e) and Rule 9.340(a) interact to provide a 15-day delay in which an aggrieved party may file a motion in the lower appellate court for an order staying the mandate. Here, Flynn never filed a motion for stay with the Second District.

7. The time for filing a motion for stay of the mandate is jurisdictional. See, *American Home Assurance Company v. APAC-Florida Inc.*, 841 So. 2d 556 (Fla. 2d DCA 2003).

8. Accordingly, the district court of appeal is without authority to consider a motion for stay filed more than 15 days order. It is interesting to note that here, the Second District reduced the time for Flynn to file any motion pursuant to the Florida Rules of Civil Procedure to seven days. (DIN 122).

9. Even if Plaintiff timely filed such motion, it would have been rejected.

10. Plaintiff's Motion fails to address the standard under Fla. R. App. P. 9.310 which was explained by the Florida Supreme Court as follows:

The effect of these rules is to make the decisions of the district courts of appeal presumptively final in money judgment (as well as most other) matters, subject to an applicant's showing that there is both a likelihood of success in the Supreme Court and irreparable harm by the denial of a stay pending review in that Court. Only upon such a showing will the stay entered by the trial court remain in effect to protect the applicant. See, *Price* at 1039, see also Fla. R. App. P. 9.310, Committee Notes. (e.s.).

11. Plaintiff makes a weak argument concerning ultimate success on the merits. Plaintiff's appeal to the Florida Supreme Court is based on the absurd and false claim that this Court dismissed his case and relied upon *Gundel v. AV Homes*, 264 So. 3d 304 (Fla. 2019) to shift the burden to Plaintiff in the context of a motion to dismiss and that the Second District upheld that dismissal. Plaintiff claims that this case expressly and directly conflicts with *Lam v. Univision Communications, Inc.*, 329 So. 3d 2021 (Fla. 3d DCA 2021).

12. This Court granted Summary Judgment to Wilson (DIN 75) and the Second District upheld that ruling (DIN 114) and burden shifting in the context of a summary judgment motion is well settled law. See, *Celotex Corp. v Catrett*, 477 U.S. 317 (1986). Defendant's arguments at paragraphs 12 and 13 are disingenuous, they were outright rejected by the Second District who ruled, "Thus, affirming the trial court here does not require us to rely on *Gundel*" (DIN 127 at page 17 of the opinion). It is exceedingly likely that the Florida Supreme Court will deny Plaintiff's petition.

13. In terms of harm, all the Court would do here is find that Wilson won, which he did, and will set a hearing to determine reasonable attorneys' fees and costs under 768.295, F.S. and will allow for the light discovery that accompanies such hearing.

14. Mr. Wilson is prepared to file his motion to determine reasonable fees and costs shortly after the entry of the order entitling him to reasonable fees and costs sought at the instant hearing. A draft of the motion, including his expert report has already been shared with counsel for Flynn.

15. Flynn is not harmed by following the requirements of statute and applicable rules at this stage of the proceedings. Mr. Wilson respectfully suggests that this hearing can be scheduled to occur in the next 45 to 60 days.

16. To the extent that an actual monetary judgment is issued before the Supreme Court dispenses with this case (which by any measure is highly unlikely), Flynn can simply post a bond and allow the process to play itself out. In the interim, Wilson also seeks to move forward to determine reasonable fees and costs under 768.295, F.S. on liability with his 57.105 motion, as opposed to not making good use of the litigant's time.

17. Finally, the arguments advanced by Plaintiff in the instant motion are frivolous and his counsel should know that there is no basis to seek a stay under Fla. R. App. P. 9.310(a), given the issuance of a mandate. Counsel for Flynn will surely argue that the preparation of this response by Mr. Wilson should not be charged against him as it constitutes "fees for fees". On the other hand, this court has inherent authority to sanction parties for filing frivolous pleadings. On behalf of Mr. Wilson, we respectfully request that should such filings become a pattern during this stage of the litigation, (where Mr. Wilson may not otherwise recover his fees under Anti-SLAPP) that the Court admonish counsel and if this continues that the Court fine counsel for multiplying proceedings concerning issues that lack legal merit.

WHEREFORE, this Court should deny Plaintiff's Motion for Stay.

Respectfully submitted on February 28, 2025.

/s/ Leonard M. Collins
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CERTIFICATE OF SERVICE

I certify that, on February 28, 2025, the foregoing document was furnished by email to all individuals identified on the Service List that follows.

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**SUPPLEMENTAL ARGUMENT IN SUPPORT OF
RICK WILSON'S 57.105 MOTION**

Defendant, Rick Wilson files this supplemental argument in support of his Motion for Sanctions pursuant to Fla. Stat. Section 57.105 filed on December 7, 2023, and says:

1. Mr. Wilson's 57.105 Motion filed December 7, 2023 (DIN 51) stands on its own. This filing does not extend any of the arguments asserted therein. This motion is filed only to address several finite issues that have arisen since the filing of the underlying sanctions motion more than 14 months ago.

I. Recovery under Wilson's 57.105 Motion would supplement recovery under 786.295.

2. Section 57.105(6), Fla. Stat., provides:

The **provisions of this section are supplemental** to other sanctions *or remedies* available under law or under court rules. (e.s.).

3. Mr. Wilson is entitled to recover his reasonable attorneys' fees and costs under Florida's Anti-SLAPP Statute, § 768.295(1), Fla. Stat. (See, this Court's Order granting Summary Judgment to Mr. Wilson (DIN 75), see also the Second DCA opinion (DIN 121)).

4. Mr. Wilson is not seeking a double recovery. Recovery for fees due under Section 57.105 would be set off from recovery under Section 786.295.

5. The trial court's findings of fact and law and the appellate court's findings of fact and law, both closely follow Mr. Wilson's argument in the underlying Motion (which incorporates Wilson's Motion for Summary Judgment) and plainly establish that there is no legal merit to the claim that the statements "Putin employee Mike Flynn" or "FYI, Mike Flynn is 'Q'" are actionable statements.

II. The allegations and arguments that were the subject of Wilson's 57.105 Motion were never withdrawn by Flynn even though he filed an amended pleading.

6. The 57.105 Motion was directed against the allegations in Flynn's amended complaint (DIN 23), which was filed on July 13, 2023.

7. Wilson filed his 57.105 motion on December 7, 2023 (DIN 51) after having served his safe harbor notice on counsel for Plaintiff, Mr. Roberts, Mr. Greaves and Binnall Law Group PLLC on November 10, 2023.

8. Subsequently, on December 26, 2023, Flynn filed a second amended complaint (DIN 59).

9. The allegations in the second amended complaint relative to Mr. Wilson are ***identical*** to the allegations in the amended complaint. (Compare ¶7 in the amended complaint to ¶8 in the second amended complaint, both state: "Defendant Rick Wilson, who is the founder of the anti-Republican group The Lincoln Project, also spreads lies about Conservative figures associated with President Donald Trump"; compare ¶8 of the amended complaint to ¶9 in the second amended complaint, both state, "Wilson maliciously defamed General Flynn, calling him a "Putin employee," and also calling him "Q.") This pattern of identical paragraphs between these two pleadings (DIN 23 and 59), holds and both documents are identical as it relates to Mr. Wilson,

but for the change to the paragraph number, see and compare the following paragraphs: ¶12/¶13
¶31-35/¶33-37; ¶37/¶48; ¶56/¶67; ¶76/¶87; ¶80/¶100; ¶86/¶106; ¶89/¶109; ¶110/¶134; ¶112/¶136;
¶114/¶138; ¶116/¶141; ¶124/¶150.

10. Section 57.105 (2) provides:

At any time in any civil proceeding or action in which the moving party proves by a preponderance of the evidence that any action taken by the opposing party, including, but not limited to, the filing of any pleading or part thereof, the assertion of or response to any discovery demand, **the assertion of any claim** or defense, or the response to any request by any other party, was taken primarily for the purpose of unreasonable delay, the court shall award damages to the moving party for its reasonable expenses incurred in obtaining the order, which may include attorney's fees, and other loss resulting from the improper delay. (e.s.).

11. Mr. Wilson's filing of his 57.105 Motion on December 7, 2023 (DIN 51) addressed and concerned all of the issues that were adjudicated in his favor relative to the fact that Flynn's lawsuit was without merit and filed primarily because Wilson exercised the constitutional right of free speech in connection with public issues.

III. 57.105 liability extends to all counsel for Flynn.

12. On November 10, 2023, the safe harbor notice was served on Mr. Roberts and Mr. Greaves with Binnall Law Group PLLC. (See, DIN 51).

13. However, because the claims against Mr. Wilson were not abandoned (by dismissing those claims against Mr. Wilson), the 57.105 motion was filed with the Court on December 7, 2023. (DIN 51).

14. Subsequently, Mr. Huffman and Mr. Boatman filed their notice of appearance on December 15, 2023, (DIN 54), after the 57.105 Motion was filed.

15. Then on December 26, 2023, Mr. Roberts with Binnall Law Group PLLC ***and*** Mr. Huffman with the Boatman Ricci firm signed the second amended complaint. (DIN 59).

16. The Court entered its order granting final summary judgment in favor of Mr. Wilson on January 30, 2024 (DIN 75) and Flynn filed his notice of Appeal on February 1, 2024. (DIN 78).

17. Thereafter, Mr. French also with Binnall Law Group PLLC appeared in the case on February 28, 2024. (DIN 95).

18. Under § 768.295(4), Fla. Stat., “The court shall award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section.”

19. Here Mr. Wilson prevailed over General Flynn, so Wilson is entitled to payment of fees and costs from Flynn.

20. On the other hand, under 57.105, the statute provides in pertinent part:

(1) Upon the... motion of any party, the court shall award a reasonable attorney’s fee, including prejudgment interest, to be paid to the prevailing party in equal amounts **by the losing party** and **the losing party’s attorney** on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party’s attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

(a) Was not supported by the material facts necessary to establish the claim or defense; or

(b) Would not be supported by the application of then-existing law to those material facts. (e.s.)

21. Here, General Flynn is the losing party. The losing party’s attorney(s) are Mr. Roberts, Mr. Greaves and Mr. French with Binnall Law Group PLLC and Mr. Huffman and Mr. Boatman with the Boatman Ricci law firm.

22. By filing the instant motion, Mr. Roberts, Mr. Greaves and Mr. French with Binnall Law Group PLLC and Mr. Huffman and Mr. Boatman with the Boatman Ricci law firm are on

notice that their rights will be adjudicated at the hearing on Mr. Wilson's 57.105 motion.

23. The purpose of section 57.105 is "to discourage baseless claims, stonewall defenses, and sham appeals by sanctioning those responsible for unnecessary litigation costs." See e.g. *Vissoy v. Sec. Pacific Credit Corp.*, 768 So.2d 482, 492 (Fla. 3d DCA 2000).

24. The Third District Court of Appeal issued an opinion in *Shapiro v. WPLG*, 365 So. 3d 450, (Fla. 2d DCA 2023), holding that an attorney who appeared in a case *after* a sanctions motion was served **was still responsible** for paying fees pursuant to the 57.105. While the attorney was not directly served with the sanctions motion, he had appeared as co-counsel of record. This decision is akin to the situation here, where counsel for General Flynn (Mr. Roberts and Mr. Greaves with Binnall Law Group PLLC) were served with the 57.105 motion in November. Then because the claims were not withdrawn, Wilson filed his 57.105 motion with the Court in December. Then shortly after the 57.105 Motion was filed, Mr. Boatman and Mr. Huffman filed their notices of appearance and Mr. Huffman signed a complaint with the identical allegations that were the subject of the 57.105 motion (and the anti-SLAPP motion). Mr. French filed his appearance after Summary Judgment was granted to Wilson.

25. The Second DCA opined in *Fantauzzi v. Fleck*, 385 So. 3d 1098 (Fla. 2d DCA), addressed a different situation where an attorney who withdrew from a case post filing the 57.105 motion and the appellate court found that the withdrawn attorney could not be sanctioned under 57.105 as that lawyer was not given due process. Here, Mr. Roberts and Mr. Greaves were served with the Motion. No attorneys withdrew from the representation, to the contrary other attorneys. Further Mr. Huffman, Mr. Boatman and Mr. French subsequently appeared and advocated claims that had no merit and were subsequently rejected by this court and then on appeal. "Section 57.105 does not require a finding of frivolousness to justify sanctions, but only a finding that the claim

lacked a basis in material facts or then-existing law.” *Martin County Conservation All. v. Martin County*, 73 So. 3d 856, 858 (Fla. 1st DCA 2011).

26. The underlying opinions of both this Court and the Second District Court when considering this case are instructive of the entire lack of legal support for General Flynn’s claims under existing law, i.e., *New York Times v. Sullivan*, 376 U.S. 254 (1964); *Kieffer v. Atheists of Florida, Inc.*, 269 So. 3d 656 (Fla. 2d DCA 2019). *Jews for Jesus v. Rapp*, 997 So. 2d 1107-1108 (Fla. 2008) and their progeny (as cited in the underlying Motion to Dismiss/Motion for Summary Judgment (DIN 63). Sanctions are appropriate when a “lawyer knew or should have known that the relief sought . . . and the arguments presented . . . were not supported by the application of the law.” *de Vaux v. Westwood Baptist Church*, 953 So. 2d 677, 684 (Fla. 1st DCA 2007) (affirming judgment below, remanding for assessment of appellate fees). There should be no question here that the underlying filing could not succeed and as a result 57.105 applies.

WHEREFORE, Mr. Wilson respectfully requests that this Court grant his 57.105 motion and 1.) find that the service of the second amended complaint did not serve to withdraw arguments that were the subject of the underlying 57.105 motion directed to the amended complaint; 2.) order payment of Mr. Wilson’s reasonable attorneys’ fees and costs under 57.105, would supplement (*if needed*) Mr. Wilson’s recovery of reasonable attorneys’ fees and costs under Section 786.295 (where fees for both claims are the same), F.S.; and 3.) that judgment for reasonable attorneys’ fees and costs under 57.105 be in equal amounts payable against Plaintiff (General Flynn) and Plaintiff’s attorneys (jointly and severally from Plaintiff’s attorneys Mr. Roberts, Mr. Greaves and Mr. French with Binnall Law Group PLLC and Mr. Huffman and Mr. Boatman with the Boatman Ricci law firm).

Respectfully submitted on February 27, 2025.

/s/ Leonard M. Collins

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