

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
APPELLATE DIVISION**

JAMES STEWART FOGELMAN,  
Appellant,

vs.

Ref. No.: 15-0035AP-88B  
UCN: 522015AP000035XXXXCI

MHC ELDORADO VILLAGE, L.L.C.,  
Appellee.

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**ORDER AND OPINION**

Michael Fogelman (erroneously named “James” in the lower court pleadings and judgment; hereafter “Appellant”) appeals the trial court’s Order Requiring Deposit, and its subsequent Default Final Judgment of Eviction entered against him upon his failure to deposit money into the court registry. For the reasons set forth below, the orders of the trial court are reversed, and the eviction action is remanded for further proceedings.

**Facts and Procedural History**

Appellee owns Eldorado Village Mobile Home Park (the “Community”). Prior to the action below, Appellant had owned the mobile home located in the Community but had been evicted. Appellant subsequently transferred ownership of the mobile home to a third party. Thereafter, he moved back into the mobile home and submitted an application to Appellee for residency, as required by the rules of the Community. Appellant did not receive approval to live in the Community, apparently due to credit issues and his previous eviction. Nevertheless, he continued to live in the mobile home without approval. Appellee served Appellant with seven days’ notice to vacate the premises, but Appellant did not vacate.

Appellee filed a complaint, and later an amended complaint, to evict Appellant for “[f]ailure...to be qualified as, and to obtain approval to become, a tenant or occupant,” pursuant to Florida Statutes section 723.061(1)(e). After a hearing on its own motion to determine rent, the court below entered an order requiring Appellant to make a deposit of \$11,300.00 into the court registry as back rent. When he failed to pay that amount, the court entered a default judgment of eviction. Although Appellant filed a timely notice of appeal, he did not move for a stay. Therefore, a writ of possession was issued and executed, and thereafter, having not been

removed from the Community, the mobile home was sold at a public sale. Alleging that Appellant no longer has any property right in the mobile home, Appellee filed a suggestion of mootness asserting that the appeal should be dismissed.

### **Standard of Review**

When resolution of a case turns on the interpretation of a specific statute, the applicable standard of review is *de novo*. See *GTC, Inc. v. Edgar*, 967 So. 2d 781, 785 (Fla. 2007).

### **Discussion**

Appellee's Suggestion of Mootness would have this Court overlook the fact that evictions have collateral legal consequences, such as negatively affecting a person's ability to rent in the future. Where "collateral legal consequences that affect the rights of a party flow from the issue to be determined," it is improper to dismiss the appeal as moot. See *Goodwin v. State*, 593 So. 2d 211, 212 (Fla. 1992).

On the merits, Appellee asserts that the trial court acted within its inherent power when it ordered a deposit into the court registry. Citing *Koch v. Koch*, Appellee argues that a court's inherent power exists "even in the absence of statutory authority." 47 So. 3d 320, 323 (Fla. 2d DCA 2010). However, that court went on to quote the Florida Supreme Court holding that "if a specific statute or rule applies, the trial court should rely on the applicable rule or statute rather than on inherent authority." *Id.* (quoting *Moakley v. Smallwood*, 826 So. 2d 221, 227 (Fla. 2002)). Here, a specific statute was available to Appellee to recover the unpaid rent, had such relief been sought in Appellee's Complaint or Amended Complaint.

When nonpayment of rent is the basis of the action, Florida Statutes section 723.063 requires unpaid rent to be deposited in the court registry. Subsection (1) specifically addresses "any action based upon nonpayment of rent or seeking to recover unpaid rent." Subsection (2) further provides that "[i]n any action...under subsection (1), the mobile home owner shall pay into the registry . . . accrued rent." (emphasis supplied). However, the sole basis for Appellee's eviction action was section 723.061(1)(e), which provides that mobile home parks may evict occupants who continue to reside in the mobile home after failing to obtain approval. Thus, a statute specifically addresses the particular issue of unpaid rent, but Appellee never raised that issue in its pleadings.

This Court, in *Abramski v. Paradise Park Co-Op Inc.*, held that an order requiring the mobile home owner to deposit unpaid rent was proper where the body of the complaint sought

only eviction, but the request for relief mentioned “recovery of rent due.” 19 Fla. L. Weekly Supp. 178a (Fla. 6th Cir. App. Ct. November 22, 2011). Here, Appellee’s request for relief sought only “judgment of eviction of the defendants from the Community, Lot and Mobile Home, a writ of possession, attorney’s fees, costs and such further relief as deemed just and proper.” The trial court ordered money deposited in the court registry as if the pleadings alleged nonpayment of rent. The trial court’s order was in error because this remedy was never demanded or pled by Appellee.

### **Conclusion**

Appellee had ample opportunity to seek recovery of unpaid rent from Appellant and did not do so. Therefore, the trial court erred in injecting such a claim into the case. Accordingly, it is,

#### **ORDERED AND ADJUDGED that:**

1. The Suggestion of Mootness is DENIED.
2. The Order Requiring Deposit is REVERSED.
3. The Default Judgment for Eviction is REVERSED and REMANDED for further proceedings.

**DONE AND ORDERED** in Chambers, at St. Petersburg, Pinellas County, Florida on this 27<sup>th</sup> day of October 2015.

Original Order entered on October 27, 2015, by Circuit Judges Jack Day, Amy M. Williams, and Thomas M. Ramsberger.

#### **Copies Furnished to:**

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