

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED**  
**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT**  
**IN AND FOR PINELLAS COUNTY, FLORIDA**  
**APPELLATE DIVISION**

**TINA MARIE WALKER,**  
**Appellant,**

**Case No.: 18-000025AP-88A**  
**UCN: 522018AP000025XXXXCI**

**v.**

**DAVID SOMERVILLE,**  
**Appellee.**

\_\_\_\_\_ /

Opinion Filed \_\_\_\_\_

Appeal from Order and Final Judgment,  
Pinellas County Court  
Judge Lorraine Kelly

Tina Marie Walker,  
Pro se Appellant

David Somerville,  
Pro se Appellee

**PER CURIAM.**

Appellant, Tina Marie Walker, appeals the “Order and Final Judgment,” rendered on March 8, 2018. Upon review of the briefs, the record on appeal, and the applicable case law, this Court dispensed with oral argument pursuant to Florida Rule of Appellate Procedure 9.320. We reverse and remand.

**STATEMENT OF FACTS**

In December 2017, David Somerville, Appellee, filed a statement of claim in replevin, alleging that Tina Marie Walker, Appellant, took a dog from him. According to the Order and Final Judgment, the parties were neighbors who shared custody of a black

Labrador Retriever for almost two years. When Appellee asked to have his name substituted for Appellant's on the dog's microchip, an argument ensued and the friendship ended. Appellant then refused to let Appellee see the dog. After a non-jury trial, the lower court found that it "is best for all concerned that the parties resume shared custody and care" of the dog. The court set out a schedule of time that the dog would spend with each party and reserved jurisdiction to enforce it. Thereafter, Appellant filed the instant appeal.

### **STANDARD OF REVIEW**

When an appellant fails to provide a transcript or an approved statement of the proceedings, this Court can only look for fundamental error on the face of the order. See Tramontana v. Bank of New York Mellon, 230 So. 3d 601, 602 (Fla. 2d DCA 2017) ("Without a transcript, and in the absence of fundamental error on its face, an appellate court will affirm a trial court's decision.").

### **ANALYSIS**

In the Initial Brief, Appellant, pro se, asserts both that "the trial court erred in the final judgment as to which party paid for/purchased the property," and the "trial court lacks authority to order visitation with personal property."

First, Appellant contends the record evidence establishes that she paid for the dog, so the Order and Final Judgment is in error. The record does reflect that Appellant's credit card was used to purchase the dog and Appellee wrote on his Statement of Claim that "*She* paid \$5.00 for him." (Emphasis added). However, without a transcript of the trial, this Court cannot determine what testimony was produced concerning the purchase price that possibly led the trial court to determine that Appellee paid for the dog, or even whether Appellant raised the issue at trial to preserve the matter for appeal. Accordingly, this argument is without merit.

Next, Appellant asserts that the trial court erred in ordering shared custody of the dog. “[E]ven in the absence of a transcript, an appellate court can reverse in those instances when the trial court makes an error of law on the face of the judgment.” Smith v. Wallace, 249 So. 3d 670, 671 (Fla. 2d DCA 2017). While this Court understands the unenviable position that the trial court was in, Florida law still considers pets to be property. See Bennett v. Bennett, 655 So. 2d 109, 110 (Fla. 1st DCA 1995) (“While a dog may be considered by many to be a member of the family, under Florida law, animals are considered to be personal property. . . . There is no authority which provides for a trial court to grant custody or visitation pertaining to personal property.” (internal citations omitted)); State v. Milewski, 194 So. 3d 376, 378 (Fla. 3d DCA 2016) (reiterating “that Florida law considers animals to be personal property”). Accordingly, an error of law is apparent on the face of the Order and Final Judgment.

### **CONCLUSION**

Based on the facts and analysis set forth above, the Order and Final Judgment is reversed and the case is remanded to the trial court.

**DONE AND ORDERED** in Chambers in Clearwater, Pinellas County, Florida, this 23 day of July, 2019.

**TRUE COPY**

Original Order entered on July 23, 2019, by Circuit Judges Jack R. St. Arnold, Patricia A. Muscarella, and Sherwood Coleman.

Copies furnished to:

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