IN THE CIRCUIT COURT OF THE 15TH

JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

DAVID GARTEN, ESQ., CASE NO: 2012CA011639XXXXMB

CIRCUIT CIVIL DIVISION AE

Plaintiff,

**DEFENDANT SKENDER HOTI’S**

**MOTION FOR REHEARING**

V

SKENDER HOTI,

Defendant.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/

COMES NOW SKENDER HOTI, the Defendant in this case Pro Se, who makes and files this motion for Rehearing and respectfully pleads and shows as follows:

1. I am the Defendant Skender Hoti Pro Se.
2. I make this motion for Rehearing of the Final Judgment and Orders issued on April 12, 2017 and make this motion according to Florida Rules of Civil Procedure 1.530.
3. As the 10th day to file this motion fell on a Saturday, and today April 24, 2017 is the first business day after the weekend, this motion is timely under Florida Rule of Civil Procedure 1.090.
4. I make this Motion to Rehear and Vacate, alter and amend the Final Judgment dated April 12, 2017 ( See Exhibit 1 ), the Nunc Pro Tunc Order also dated April 12, 2017 on Defendant’s prior Motion to Dismiss the Plaintiff’s application and other relief ( See Exhibit 2 ), and Order on Plaintiff’s Motion to Tax Costs also dated April 12, 2017 ( See Exhibit 3 ).
5. This Court has overlooked, disregarded or misapprehended the material facts in the case and -or alternatively misapplied or failed to apply the law.
6. My motion to Dismiss the Plaintiff’s Application and seeking a Stay and continuance filed with this Court on Feb. 17, 2017 under Docket Entry No. 231 set out facts from the underlying actions of Judge Colin in taking Gwendolyn Batson into Guardianship without a hearing undisclosed through his Wife Betsy Savitt and attorney Sheri Hazeltine which were the primary reasons David Garten had been hired as an attorney. See Defendant’s Motion of Feb. 17, 2017 Docket Entry 231 ( Exhibit 4 ).
7. As shown to this Court in Par. 9-18 of this filing, “My case became the lightning rod for a series of Investigative articles by the Palm Beach Post which are still ongoing.
8. As shown in this April 2015 article by John Pacenti titled “Professional guardian’s lawyer empties man’s home”, “One afternoon three years ago, Skender Hoti received an unusual call from a neighbor asking whether he was moving out of his Lake Worth home.
9. Hoti rushed to the house to find a moving truck packed with furniture, heirlooms and valuables owned by him and the elderly woman he called mom. The lock on his front door was bashed in and the house ransacked.
10. But this wasn’t breaking and entering by a street thug. This was an attorney operating under a court-ordered guardianship.”
11. Still further according to the article and factual background for this case, “Court records shows that there was no legally required examination of Batson within five days of the appointment of temporary guardians to determine whether she was incapacitated by Alzheimer’s disease.(emphasis added ).”
12. Further, In a court pleading, “Hoti said that Hazeltine mocked him in his home. “She was laughing and waving the house key in the air stating, ‘I have a key and a court order. I come into this house anytime I want.’ ”
13. Deputies ordered Hazeltine, against her strenuous objections, to return all the items taken from Hoti’s home after he proved he had title to the house, according to an offense report. Hoti claims many of the valuables are still missing and there were at least three confrontations between the parties at the home.” ( emphasis added ).
14. “The strategy didn’t work. Circuit Judge James Martz overturned Colin’s previous ruling finding Batson incapacitated and appointing Davis as emergency temporary guardian. Martz interviewed Batson, finding her to “be delightful.” according to the article.
15. Lastly, “Hoti’s former attorney Debra Rochlin of Fort Lauderdale was also highly critical of Hazeltine, saying the elder law attorney “just made up stuff as she went along.”  
    “It was a miracle the judge (Martz) saw the light and saw what was going on. He understood. He was upset,” she said. “I think what happened to Skender was a crime.” See, Palm Beach Post April 2015. <http://www.mypalmbeachpost.com/news/professional-guardian-lawyer-empties-man-home/Ks1BZu5Aq0pEohOWiKZYiO>” See Exhibit 4.
16. Yet, none of the Proceedings or Orders or Judgments of this Court has considered and acted upon these facts which have been disregarded, overlooked, or other, not mentioning any of these facts whatsoever. ( See Exhibits 1-3 )
17. More importantly, the Feb. 17, 2017 filing ( Exhibit 4 ) further showed in Par. 21 and 22: “As shown to the 4th DCA in the other case on Appeal from the alleged “Fraudulent Transfer” case 4D16-0444, “Because of the complete lack of Substantial and Competent Evidence to Support any Award of fees to Appellee in the underlying fee dispute claim beyond possibly $6,413.35 as shown by the Records on Appeal in Case No. D16-0444 ( 1244 Pages ) and Case No.4D14-4826 ( 1353 Pages ), the 4th DCA is Demanded to Perform it’s Mandatory duty to Reverse and Vacate All Orders, Decisions and Judgments against Appellant in both cases and issue sanctions against Appellee and attorneys.” See, 4th DCA Case No. D16-0444 Appellant’s Reply Brief of 9-27-16. Exhibit B.
18. Thus, in 2597 Pages ( Two-Thousand-Five hundred and Ninety-seven pages ) of Records DAVID GARTEN AND HIS ATTORNEYS STILL HAVE NOT PRODUCED ANY COMPETENT OR SUBSTANTIAL EVIDENCE to justify ANY fees beyond $6,413.35 and yet has been permitted in this Billing Scheme of Fraud to attack me and litigate for years, putting Liens on properties and harassment and interference with basic civil rights and human life.”
19. Thus, in the **nearly 2600 PAGES of DOCUMENTS in Appellate Records and in None of the additional pages in this Case, neither David Garten nor his Attorneys have ever come forward with competent substantial evidence to prove entitlement to the underlying fees and have thus been engaged in a fraudulent billing scheme.**
20. Yet, once again, none of the Proceedings or Orders or Judgments of this Court has considered and acted upon these facts which have been disregarded, overlooked, or other, not mentioning any of these facts whatsoever. ( See Exhibits 1-3 )
21. Defendant continued to file further Objections with this Court and even a Proposed Order pointing out that none of the proposed or issued Orders addressed any of the Facts or law submitted by Defendant. See, Objections and filings on March 7, 2017 under Docket Entry No. 233 ( Exhibit 5 ), Objections and Alternate Proposed Order April 6, 2017 under Docket Entry No. 239 ( Exhibit 6 ), and Objections To Tax Costs filed April 11, 2017 under Docket No. 241 ( Exhibit 7 ).
22. All of these Docket Entries are shown by Exhibit 8, a Screen print from this Case from the Clerk’s E-View of this date, April 24, 2018.
23. “This court and others have held that if a party files a motion pursuant to rule 1.540(b)(3),  
    pleads fraud or misrepresentation with particularity, and shows how that fraud or misrepresentation affected the judgment, the trial court is required to conduct an evidentiary hearing to determine whether the motion should be granted.[7]See Seal v. Brown, 801 So. 2d 993, 994-95 (Fla. 1st DCA 2001); St. Surin v. St. Surin, 684 So. 2d 243, 244 (Fla. 2d DCA \*782 1996); Estate of Willis v. Gaffney, 677 So. 2d 949 (Fla. 2d DCA 1996); Dynasty Exp. Corp. v. Weiss, 675 So. 2d 235, 239 (Fla. 4th DCA 1996); Townsend v. Lane, 659 So. 2d 720 (Fla. 5th DCA 1995); S. Bell Tel. & Tel. Co. v. Welden, 483 So. 2d 487, 489 (Fla. 1st DCA 1986)”.
24. "[W]here the moving party's allegations raise a colorable entitlement to rule 1.540(b)(3) relief, a formal evidentiary hearing on the motion, as well as permissible discovery prior to the hearing, is required."); Kidder v. Hess, 481 So. 2d 984, 986 (Fla. 5th DCA 1986); Stella v. Stella, 418 So. 2d 1029 (Fla. 4th DCA 1982); see also Robinson. Moreover, the courts have held that the hearing requirement applies when fraud is asserted as a grounds for relief under either rule 1.530 or 1.540, Florida Rules of Civil Procedure. See Stella. The motion filed by Robinson sufficiently alleges fraud and demonstrates how it affected the judgment, thereby satisfying the requirement for an evidentiary hearing under either rule 1.530 or 1.540.”
25. The requisite fraud on the court occurs where “it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system’s ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party’s claim or defense.” Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1118 (1st Cir. 1989) .
26. The trial court has the inherent authority, within the exercise of sound judicial discretion, to dismiss an action when a plaintiff has perpetrated a fraud on the court, or where a party refuses to comply with court orders. See, Kornblum v. Schneider, 609 So. 2d 138, 139 (Fla. 4th DCA 1992).
27. The plaintiff’s false or misleading statement given under oath concerning issues central to her case amounted to fraud. See Cox v. Burke, 706 So. 2d 43, 47 (Fla. 5th DCA 1998).
28. Courts throughout this state have repeatedly held “that a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding should not be permitted to continue to employ the very institution it has subverted to achieve her ends.” Metropolitan Dade County v. Martinsen, 736 So. 2d 794, 795 (Fla. 3d DCA 1999) (quoting Hanono v. Murphy, 723 So. 2d 892, 895 (Fla. 3d DCA 1998)); see also Cox v. Burke, 706 So. 2d 43, 47 (Fla. 5th DCA 1998); O’Vahey v. Miller, 644 So. 2d 550, 551 (Fla. 3d DCA 1994); Kornblum v. Schneider, 609 So. 2d 138, 139 (Fla. 4th DCA 1992).
29. Defendant’s moving papers of Feb. 17, 2017 and continuing Objections filed ***demonstrated sufficient facts and law to entitle Defendant to an Evidentiary Hearing and Discovery from David Garten and his Attorneys as it shows that David Garten has wholly failed throughout the entirety of this Case and Appeal either through himself or Attorneys to file or provide any competent and substantial evidence according to established standards to prove attorney’s fees.*** "[W]here the moving party's allegations raise a colorable entitlement to rule 1.540(b)(3) relief, a formal evidentiary hearing on the motion, as well as permissible discovery prior to the hearing, is required."); Kidder v. Hess, 481 So. 2d 984, 986 (Fla. 5th DCA 1986); Stella v. Stella, 418 So. 2d 1029 (Fla. 4th DCA 1982); see also Robinson. Moreover, the courts have held that the hearing requirement applies when fraud is asserted as a grounds for relief under either rule 1.530 or 1.540, Florida Rules of Civil Procedure. See Stella. The motion filed by Robinson sufficiently alleges fraud and demonstrates how it affected the judgment, thereby satisfying the requirement for an evidentiary hearing under either rule 1.530 or 1.540.”
30. This Court has either overlooked or disregarded both the law and facts herein.
31. As shown in the Feb. 17, 2017 papers under Exhibit 4 in Paragraphs 24-41, “Just like the Miller case above, this Court is duly demanded to perform mandatory duties in this case as follows from Miller: “On the face of it, the order embodies an unacceptable, even incredible result. No court is obliged to approve a judgment which so obviously offends even the most hardened appellate conscience and which is so obviously contrary to the manifest justice of the case. Indeed, it is obliged not to. Florida Nat'l. Bank v. Sherouse, 80 Fla. 405, 406, 86 So. 279, 279 (1920) ("[I]f a decree is manifestly against the weight of the evidence, or contrary to the legal effect of the evidence, then it becomes the duty of the appellate court to reverse the same."); Newman v. Smith,77 Fla. 633, 650, 82 So. 236, 241 (1918) ("Where the finding of a trial judge is contrary to the legal effect of the evidence on the issues made the appellate court should reverse the finding even though the trial judge personally saw and heard the witnesses testify, and even though there were conflicts in the testimony, and there was some evidence tending to support the finding."). Accord Howell v. Blackburn, 100 Fla. 114, 129 So. 341 (1930); Boyd v. Gosser, 78 Fla. 64, 82 So. 758 (1918); Fuller v. Fuller, 23 Fla. 236, 2 So. 426 (1887); John D.C. v. State, 16 Fla. 554 (1878); Uhley v. Tapio Constr. Co., Inc., 573 So.2d 390 (Fla. 4th DCA),rev. denied, 583 So.2d 1037 (Fla. 1991); C.M. Life Ins. Co. v. Ortega, 562 So.2d 702 (Fla. 3d DCA 1990), rev. denied, 576 So.2d 289 (Fla. 1991). See, Miller v. First American Bank & Trust 607 So.2d 483 (4th DCA 1992).   
    Just like in the Miller case this 15th Judicial Circuit Court is demanded to perform its duties and find in this case, “The appellees claim that, in effect, we have no choice but to affirm the judgment as within the trial court's discretion, particularly since the fact that the record contains no transcript of the fee hearing requires the conclusion that the order is supported by competent evidence. See Applegate v. Barnett Bank, 377 So.2d 1150 (Fla. 1979). We strongly disagree.”  
    Just like in the Miller case above, “This is especially true with respect to attorney's fees, with which the profession and the courts must be particularly concerned, see Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 485\*485 1985),[4] and even more so since the case involves the notorious "billable hours" syndrome, with its multiple evils of exaggeration, duplication, and invention. Mercy Hosp., Inc. v. Johnson, 431 So.2d 687 (Fla. 3d DCA), pet. for review denied, 441 So.2d 632 (Fla. 1983); In re Estate of Simon, 402 So.2d 26 (Fla. 3d DCA 1981), appeal after remand, 427 So.2d 235 (Fla. 3d DCA 1983); see also Browne v. Costales, 579 So.2d 161 (Fla. 3d DCA) (abuse of "unit billing"), rev. denied, 593 So.2d 1051 (Fla. 1991).”  
    Just like in the Miller case above, “Nor are we precluded from reaching this result by the fact that, under Applegate, we must presume that someone testified that the hours in question were actually employed and that an "expert" opined that they and the fee awarded were "reasonable."[5] The existence of such evidence does not require that we abandon our own expertise, much less our common sense.”  
    "Competent evidence includes invoices, records and other information detailing the services provided as well as the testimony from the attorney in support of the fee." Brewer v. Solovsky, 945 So.2d 610, 611 (Fla. 4th DCA 2006) (citations omitted).” See, Diwakar v. Montecito Palm Beach Condominium, No. 4D13-915. 143 So.3d 958 (2014). Yet, NONE of this proof has ever been provided by David Garten nor his attorneys at Walton, Lantaff and these parties must now be Stopped and Stayed from pursuing any further fees at this time.   
    As shown to this Court herein and by the Attached Exhibit A to the 4th DCA “Thus, as factually shown by the Record on Appeal at pages 000007-000011 the only Billing Statement for any fees in the Original Complaint seeking $32,952.32 are some alleged factual details for the Bill totalling $6,413.35.   
    But even for this alleged amount, there is No Sworn Testimony from David Garten in the Record on Appeal, No full Invoice or Account History in the Record on Appeal of David Garten, and absolutely NO Factual basis in the Record on Appeal whatsoever to claim anything more than the $6, 413.35.   
    In fact, even for this amount the Record on Appeal and documents from this 15th Judicial case have no Sworn Testimony, and no copies of Any of the work Garten allegedly did even for this amount.   
    The Bill refers to several “Draft motions” and “Draft emails” but none of these items are contained anywhere in the Record on Appeal as these items were not provided in the proceedings below.”   
    As further shown to the 4th DCA in the June 21, 2016 motion for Rehearing, “Thus, not only is there absolutely NO Facts in the Record nor in the original Complaint filed before Judge Lucy Brown to claim the additional $26,137.38 claimed as “Prior Balance” but even the amount where there is a Billing Statement is significantly in question.”   
    There are No Invoices for the $26,137.38 in the Record on Appeal, No Sworn Testimony from David Garten in the Record on Appeal or documents in this 15th Judicial for this amount, No Invoice Notices or Proof of Sending Invoices in the Record on Appeal, no Proof of when I allegedly received such Bills in the Record on Appeal, no documents or records to show what was done for the $26,137.38 such as Motions or Hearings, nothing other than an attorney claiming he is owed some amount.   
    Nowhere in the Record on Appeal of this Case or documents in the 15th Judicial are there any Exhibits or Transcripts or Sworn Testimony to support the Arbitrator’s Award found at pages Record on Appeal 00153-00158.   
    Nor are any of these items contained anywhere in this Record on Appeal to support the original Order of Judge Lucy Brown upholding the Arbitrator’s Award which has to be an Abuse of Discretion under the standards established by the 4th DCA and District Courts of Appeal and Supreme Court in Florida and this must now be reversed and vacated on appeal.”   
    As further shown to the 4th DCA in the June 21, 2016 motion for Rehearing, “The long line of cases from the 4th DCA and other District Courts of Appeal in Florida further make it clear that, "Generally, when an attorney's fee or cost award is appealed and the record on appeal is devoid of competent substantial evidence to support the order, the appellate court will reverse the award without remand." Rodriguez v. Campbell, 720 So. 2d 266, 268 (Fla. 4th DCA 1998); Cooper v. Cooper, 406 So. 2d 1223 (Fla. 4th DCA 1981); Warner v. Warner, 692 So. 2d 266, 268 (Fla. 5th DCA 1997); Brake v. Murphy, 736 So. 2d 745 (Fla. 3d DCA 1999). See, FAIRCLOTH, v BLISS, No. 4D04-2761, 917 So. 2d 1005 (2006) District Court of Appeal of Florida, Fourth District.January 4, 2006.”  
    And further shown to the 4th DCA and now to this Court, “As stated by this Court in Faircloth v Bliss, 917 So. 2d 1005 ( 2006 ). “Here, the record is devoid of any competent evidence regarding the number of hours reasonably expended, the reasonable hourly rate or details of the services performed. We, therefore, reverse the fee award without remand.”  
    Thus, this Court must find the underlying Judgments for attorney’s fees against me as Defendant VOID and without force and effect and therefore there is No proper Appeal upon which Attorney’s fees may be granted.   
    Alternatively this Court should STAY and CONTINUE these matters until the 4th DCA rules on the DEMAND to Perform Mandatory obligations as set out in Exhibit A and for such time as actions by WRIT may be taken and further for time to file a Motion with this Court under Florida Rules 1.540(b)(4).   
    As the 4th DCA said in Tannebaum v Shea, No. 4D13-1368 ( 4th DCA 2014 ), “A void judgment is so defective that it is deemed never to have had legal force and effect.” Sterling Factors Corp. v. U.S. Bank Nat'l Ass'n, 968 So.2d 658, 665 (Fla. 2d DCA 2007). As legally ineffective and a nullity, “[a] void judgment may be attacked” pursuant to Rule 1.540(b)(4) “at any time because the judgment creates no binding obligation on the parties.” Fisher v. State, 840 So.2d 325, 331 (Fla. 5th DCA 2003) (emphasis added).” See, Exhibit 4.
32. Because the underlying fee awards and Judgment must be Vacated, the Final Judgement herein and award of Fees and Costs on Appeal must also be Vacated and an Evidentiary Hearing set after proper Discovery.   
     **WHEREFORE**, it is respectfully prayed for an Order vacating the Final Judgment herein and the accompanying Orders and vacating all awards of Fees, attorneys’ fees, Costs, Taxes and for granting an Evidentiary Hearing upon Proper Discovery from David Garten and his attorneys and for such other and further relief as is just and proper.

Respectfully submitted,

Dated: April 24th, 2017

**/s/ Skender Hoti**

Skender Hoti

3103 Drew Way

Palm Springs, Florida 33406

Telephone: (561) 385-6390

[skendertravel@hotmail.com](mailto:skendertravel@hotmail.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been served via Electronic mail to Walton Lantaff Schroeder & Carson LLP 110 E. Broward Blvd. Suite 2000 Fort Lauderdale, Fl 33301-3503 on this 24th day of April, 2017 at the following addresses: FTLfiling@waltonlantaff.com; dfitzgerald@waltonlantaff.com; kvogt@waltonlantaff.com.

**/s/ Skender Hoti**

Skender Hoti

3103 Drew Way

Palm Springs, Florida 33406

Telephone: (561) 385-6390

[skendertravel@hotmail.com](mailto:skendertravel@hotmail.com)

EXHIBIT 1

Final Judgment dated April 12, 2017

EXHIBIT 2

Nunc Pro Tunc Order dated April 12, 2017

EXHIBIT 3

Order on Plaintiff’s Motion to Tax Costs dated April 12, 2017

EXHIBIT 4 Feb. 17, 2017 Defendant’s Motion Docket Entry No. 231 citing

Palm Beach Post April 2015. <http://www.mypalmbeachpost.com/news/professional-guardian-lawyer-empties-man-home/Ks1BZu5Aq0pEohOWiKZYiO>

EXHIBIT 5

Objections and filings on March 7, 2017 under Docket Entry No. 233

EXHIBIT 6

Objections and Alternate Proposed Order April 6, 2017 under Docket Entry No. 239

EXHIBIT 7

Objections To Tax Costs filed April 11, 2017 under Docket No. 241

EXHIBIT 8

Screen print from this Case from the Clerk’s E-View of this date, April 24, 2018