

RECEIVED, 7/5/2016 10:16 AM, Clerk, Fourth District Court of Appeal

IN THE DISTRICT COURT OF APPEAL  
FOURTH DISTRICT, STATE OF FLORIDA

CASE NO. 4D14-4826  
LOWER TRIBUNAL NO. 502012CA011639XXXMB AJ

SKENDER HOTI,

Appellant,

v.

DAVID M. GARTEN,

Appellee.

**APPELLEE'S RESPONSE IN OPPOSITION TO  
APPELLANT'S MOTION FOR A REHEARING OF THIS COURT'S  
DECISION ON CASE #4D14-4826 AND FOR A WRITTEN OPINION  
AND CLARIFICATION OF ORDERS AND DECISIONS**

COMES NOW, the Appellee, David M. Garten (hereinafter referred to as "Appellee"), by and through his Undersigned Counsel, and pursuant to Fla. R. App. P. 9.300, files this Response in Opposition to Appellant's Motion for a Rehearing of this Court's Decision on Case #4D14-4826 and for a Written Opinion and Clarification of Orders and Decisions, and as grounds therefore states as follows:

Walton Lantaff Schroeder & Carson LLP  
Corporate Center  
110 E. Broward Blvd., Suite 2000  
Fort Lauderdale, FL 33301-3503

Appellee moves the Court to enter an Order denying Appellant's Motion for a Rehearing of this Court's Decision on Case #4D14-4826 and for a Written Opinion and Clarification of Orders and Decisions (hereinafter referred to as "Motion for Rehearing").

## **I. INTRODUCTION**

On May 19, 2016, this Court entered its *per curiam* affirmance of the trial court's Order denying Appellant's Amended Motion to Set Aside Final Judgment in Appellee's favor.

On June 3, 2016, Appellant filed a Motion for an Extension of Time to File a Motion for a Written Opinion, Clarification and Rehearing of Court's Decision (hereinafter referred to as "Motion for Extension of Time").

On June 14, 2016, the Court entered an Order granting Appellant's Motion for Extension of Time.

On June 21, 2016, Appellant filed his Motion for Rehearing.

In the Motion, Appellant requests a rehearing, written opinion, and clarification of 'orders and decisions' on the basis that the Court misapprehended or overlooked facts in the Record on Appeal and

misapplied the law involving the proof required to sustain an award of attorney's fees.

## **II. ARGUMENT**

The Court should deny Appellant's Motion for Rehearing as it is being used to continue Appellant's attempts at advocacy and impermissibly asserts new grounds or positions for reversing the Order on appeal.

In Lawyers Title Ins. Corp. v. Reitzes, 631 So. 2d 1100 (Fla. 4th DCA 1993), the Fourth District Court of Appeal pointed out the limits of Rule 9.330:

It should be noted that the filing of Rule 9.330 motions should be done under very limited circumstances; it is the exception to the norm. . . . We find the oft-quoted passage from Judge Wigginton's opinion in State v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958), to be particularly instructive here: "Certainly it is not the function of a petition for rehearing to furnish a medium through which counsel may advise the court that they disagree with its conclusion, to reargue matters already discussed in briefs and oral argument and necessarily considered by the court, or to request the court to change its mind as to a matter which has already received the careful attention of the judges, or to further delay the termination of litigation."

Id. at 1101.

See also Whipple v. State, 431 So. 2d 1011, 1013 (Fla. 2d DCA 1983).

Further, Courts have held that motions for rehearing are rarely, if ever, warranted after the issuance of a *per curiam* decision. See Tennant v. Orlando Pain & Med. Rehab., 67 So. 3d 264 (Fla. 5th DCA 2011); Snell v. State, 522 So. 2d 407 (Fla. 5th DCA 1988).

Motions for rehearing are strictly limited to calling the Court's attention—without argument—to something it has obviously overlooked or misapprehended. A motion for rehearing is not a vehicle for counsel or a party to continue its attempts at advocacy. Goter v. Brown, 682 So. 2d 155, 158 (Fla. 4th DCA 1996). See also Elliott v. Elliott, 648 So. 2d 135 (Fla. 4th DCA 1994). No new ground or position may be assumed in a motion for rehearing. Ayer v. Bush, 775 So. 2d 368 (Fla. 4th DCA 2000).

Here, in Appellant's Motion for Rehearing, Appellant makes arguments that were not raised in his initial or reply brief. The proof required to sustain an award of attorney's fees was not an issue on appeal. As matters not argued in the briefs may not be raised for the first time on a motion for rehearing, Appellant's Motion for Rehearing should be denied. Ayer, 775 So. 2d at 369 (Fla 4th DCA 2000).

Finally, as to a request for a written opinion, Florida Courts have made it clear that opinions will not be written “to merely repeat well established principles and further burden attorneys with their research.” Whipple v. State, 431 So. 2d 1011, 1015 (Fla. 2d DCA 1983) (“We write opinions in all reversals and remands and, as noted, in affirmances where we believe an opinion will make a substantial contribution to the law, or where necessary to disclose conflict or certify questions.”). See also, R.J. Reynolds Tobacco Co. v. Kenyon, 882 So. 2d 986 (Fla. 2004).

This Court’s *per curiam* affirmance was clear and unambiguous, rendering any Motion for a Written Opinion, Clarification and Rehearing unnecessary: there is nothing to clarify as the Court clearly affirmed the ruling of the trial court and the issues need not be reconsidered.

Accordingly, the Court should enter an Order denying Appellant’s Motion for Rehearing.

WHEREFORE, Appellee, David M. Garten, respectfully requests that this Court enter an Order denying Appellant, Skender Hoti’s, Motion for a Rehearing of this Court’s Decision on Case #4D14-4826 and for a Written

Opinion and Clarification of Orders and Decisions, together with any and other further relief as the Court may deem just and proper.

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a copy of the foregoing has been served via U.S. Mail and electronically on: Skender Hoti, Pro Se, 3103 Drew Way, Palm Springs, FL 33406; 3396 Via Mancebo, Lake Worth, Florida 33467; skendertravel@hotmail.com; this 5<sup>th</sup> day of July, 2016.

Walton Lantaff Schroeder & Carson LLP  
**Counsel for Appellee**  
Corporate Center  
110 E. Broward Blvd., Suite 2000  
Fort Lauderdale, FL 33301-3503  
Tel: (954) 463-8456  
Fax: (954) 763-6294

By: Deborah P. FitzGerald  
Deborah P. FitzGerald, Esq.  
Florida Bar No. 289949  
Primary: FTL.filing@waltonlantaff.com  
Secondary: dfitzgerald@waltonlantaff.com  
Secondary: kvogt@waltonlantaff.com