

IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA

CLAY G. COLSON,

Case No.: 2D22-3637

L.T. No.: 21-005793-CI

Appellant,

v.

THE CITY OF TARPON SPRINGS,
FLORIDA,

Appellee. _____ /

**THERESA D. RUBALCAVA'S MOTION
FOR REHEARING, ISSUANCE OF A WRITTEN OPINION, AND
FOR REHEARING EN BANC**

THERESA D. RUBALCAVA moves for rehearing and/or issuance of a written opinion pursuant to Florida Rule of Appellate Procedure 9.330 and moves for rehearing en banc pursuant to Florida Rule of Appellate Procedure 9.331.

On July 5, 2023, this Court issued its Order which simply adopted the lower court's findings and recommendations regarding the Motion for Substitution of Appellant made by THERESA D. RUBALCAVA, denied the Motion for Substitution of Appellant, and dismissed this appeal without even reviewing, or allowing a review

of, the record upon which the lower court made its erroneous decision.

I. Motion for Rehearing.

By entering its Order of July 5, 2023 which simply adopted the lower court's findings and recommendations regarding the Motion for Substitution of Appellant made by THERESA D. RUBALCAVA, denied the Motion for Substitution of Appellant, and dismissed this appeal without even reviewing, or allowing a review of, the record upon which the lower court made its erroneous decision, this Court overlooked the Florida Rules of Appellate Procedure and the fundamental right to due process of law.

Florida Rule of Appellate Procedure 9.200(f)(2) provides in material part that “[n]o proceeding shall be determined, because of an incomplete record, until an opportunity to supplement the record has been given.”

Without an adequate record, the appellate court cannot properly review the underlying issues so as to conclude whether the trial court's judgment is supported or not. See, e.g., Lavender v. State, App. 5 Dist., 889 So.2d 882 (Fla. 5th DCA 2004).

Furthermore, pursuant to Rule 9.200(f)(2), this Court must allow the undersigned to supplement the record to allow for effective review of the decision of the lower court. See, e.g., Starks v. Starks, 423 So. 2d 452 (Fla. 1st DCA 1982) and Brice v. State, 419 So. 2d 749 (Fla. 2d DCA 1982).

“Due process of law means a course of legal proceedings according to those rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights.” Ryan’s Furniture Exchange v. McNair, 162 So. 483, 487 (Fla. 1935).

By entering its Order of July 5, 2023 which simply adopted the lower court’s findings and recommendations regarding the Motion for Substitution of Appellant made by THERESA D. RUBALCAVA, denied the Motion for Substitution of Appellant, and dismissed this appeal without even reviewing, or allowing a review of, the record upon which the lower court made its erroneous decision, this Court violated due process.

WHEREFORE, this Court should rehear and reverse its Order of July 5, 2023 and allow at least 30 days after entry of its order on this motion for the undersigned to prepare and file her brief and

appendix of the record of the proceedings in the lower court concerning her Motion for Substitution of Appellant.

II. Motion for Written Opinion.

The undersigned moves for a written opinion because this Court's Order of July 5, 2023 is a per curiam denial which prevents discretionary review by the Florida Supreme Court and does not explain why this Court ignored Rule 9.200(f)(2), precedent of this Court, and controlling precedent the Florida Supreme Court.

III. Motion for Rehearing En Banc.

Petitioner moves for rehearing en banc because this Court overlooked or failed to apply prior rulings of this Court including, but not limited to, Brice v. State, 419 So. 2d 749 (Fla. 2d DCA 1982) which requires this Court to allow a party to provide a record to obtain a fair and effective review of the decision of the lower court.

WHEREFORE, the Petitioner requests that this Court hear this motion en banc, reverse this Court's Order of July 5, 2023, and grant at least 30 days after entry of its order on this motion for the undersigned to prepare and file her brief and appendix of the record

of the proceedings in the lower court concerning her Motion for Substitution of Appellant.

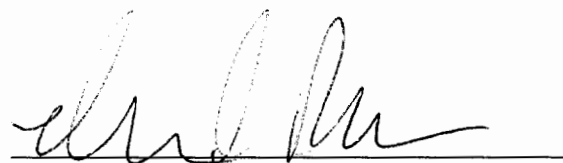
Respectfully submitted,



THERESA D. RUBALCAVA

CERTIFICATE OF SERVICE

I hereby certify that a copy of this petition has been served by U.S. Mail to Andrew J. Salzman, Esq. of Unice Salzman Jenson, P.A. at 1815 Little Rd., Second Floor in Trinity, FL 34655; and to Shane T. Costello, Ed Armstrong, and A. Evan Dix of Hill, Ward & Henderson, P.A. at at 600 Cleveland St., Suite 800 in Clearwater, FL 33755 on this 20 day of July 2023.



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