

**IN THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT, STATE OF FLORIDA**

FOLEY, *et ux*, *Appellants*

vs.

ORANGE COUNTY, *et alia*, *Appellees*

Appeal No.: 5D21-233

Case No.: 2016-CA-007634-O

**MOTION FOR ORDER
DIRECTING COMPLIANCE
WITH RULE 9.200**

RECEIVED, 03/12/2021 03:45:29 PM, Clerk, Fifth District Court of Appeal

APPELLANTS DAVID AND JENNIFER FOLEY MOVE THE COURT pursuant Rule 9.200(e), Florida Rules of Appellate Procedure, for an order directing the clerk of the Orange County Circuit Court to correct the Record Index and Record on Appeal as follows: 1) make the record text searchable; 2) replace the document bookmarked as “01/28/2021 - Directions to Clerk (p. 1490)” with the “Directions to Clerk,” originally e-filed by the Foleys January 28, 2021; 3) insert into the Record “Plaintiffs’ Motion for Judicial Notice” filed May 22, 2017, as requested by the Foleys’ “Directions to the Clerk;” 4) repaginate the record and index to reflect the replacement of the Foleys’ “Directions to Clerk” and the insertion of their “Plaintiffs’ Motion for Judicial Notice;” 5) remove extraneous and unauthorized bookmarks from the PDF of the Record on Appeal; and, 6) correct the “Total Volumes” number in the index heading, or eliminate it and the unauthorized volume bookmarks in the PDF of the Record on Appeal.

In support of the these requests, the Foleys state:

1. This is an appeal of a final judgment rendered by the Orange County Circuit Court on December 18, 2020.
2. On March 9, 2021, the Clerk filed with this Court the Record Index and Record on Appeal.
3. The order of the Orange County Board of County Commissioners that is central to this action is found on page 735 of the Record on Appeal but is not text searchable.
4. Pursuant to Rule 9.200(d)(1)(C)(i), “[t]he entire record ... shall be compiled into a single PDF file,” and “[t]he PDF file shall be ... text searchable.”
5. To comply with this Rule, the Court should direct the clerk to make the entire Record on Appeal text searchable, including the order of the Orange County Board of County Commissioners on page 735 of the Record on Appeal.
6. On January 28, 2021, the Foleys e-filed their “Directions to Clerk” and requested their “Plaintiff’s Motion for Judicial Notice,” filed May 22, 2017, be included in the record (*See Appendix to this motion, page 4, item #5*).
7. The Record on Appeal filed by the Clerk with this Court includes an error at item #5 of the Foleys’ “Directions to Clerk” (*See Record on Appeal page 1491*) – the title of #5 has been replaced with gibberish.

8. More importantly, the Record on Appeal filed by the Clerk does not include the Foleys' "Plaintiff's Motion for Judicial Notice," filed May 22, 2017, as requested by item #5 of their "Directions to Clerk."

9. Pursuant to Rule 9.200(a)(1), "[e]xcept as otherwise designated by the parties, the record shall consist of all documents filed in the lower tribunal."

10. To comply with this Rule, the Court should direct the clerk: 1) to replace the document bookmarked as "01/28/2021 - Directions to Clerk (p. 1490)" with the "Directions to Clerk," originally e-filed by the Foleys January 28, 2021; and, 2) to insert the Foleys' "Plaintiff's Motion for Judicial Notice," filed May 22, 2017, into the Record on Appeal, in the chronological order originally requested by the Foleys.

11. The relief requested above in paragraph 10 will change the pagination of the Record on Appeal.

12. Pursuant to Rule 9.200(d)(1)(B), "[a]ll pages of the remainder of the record shall be consecutively numbered."

13. To comply with this Rule, the Court should direct the clerk to repaginate the Record on Appeal.

14. The clerk has added the following unauthorized, extraneous bookmarks and sub-bookmarks to the PDF of the Record on Appeal that are either nonsensical, non-functional, or do not appear in or match the index as required:

- A9Re70-31455d9b, and the following sub-bookmarks;
 - Ordinance No. 2016-19 Certified.pdf
 - Ordinance No. 2016-19.pdf
 - Appendix A - Sec. 38-77. Use Table
 - Exhibit A Conway Road
- A9Re70-31455db6, and the following sub-bookmarks;
 - Exh A.pdf
 - 01 Pages from Ordinance No. 2016-19
 - 02 Pages from Ordinance No. 2016-19-2
 - 04 Pages from Ordinance No. 2016-19-3
 - 05 Pages from Ordinance No. 2016-19-4
 - 28 Pages from Ordinance No. 2016-19-5
 - 29 Pages from Ordinance No. 2016-19-6
 - AppA Pages from Ordinance No. 2016-19-7
 - Blank Page
- 00_respDISMISS.02
- 01_memoFWC.2
- 02_mainCODE
- 03_transcriptSCOTUS
- 2016-19.pdf, and the following sub-bookmarks;

- Appendix A - Sec. 38-77. Use Table
- Exhibit A Conway Road
- A9Re70-31456db8, and the following sub-bookmarks;
 - 04_noticeAPPEAL
 - 17.12.12
 - 17.12.07
 - 17.11.13
 - 17.10.25
- A9Re70-31457099, and the following sub-bookmarks;
 - DCA
 - DCA 2
- A9Re70-31457269 (and all 48 included sub-bookmarks)
- A9Re70-314575c6, (and all 52 included sub-bookmarks)
- A9Re70-31457832, and the following sub-bookmark;
 - CERTIFICATE SERVICE
- A9Re70-314579de, and the following sub-bookmarks;
 - OC's Response to MRF
 - OC's Rsp to MFR – Exhibits
 - Certification of CEB Record (May 22, 2007)
 - CEB Order (April 18, 2007)

- A9Re70-31457d12
 - NOTICE OF APPEAL
 - ORDER ON MOTION FOR REHEARING AND MOTION TO AMEND
 - ORDER DISMISSING THE AMENDED COMPLAINT WITH PREJUDICE AS TOORANGE COUNTY

15. Pursuant to Rule 9.200(d)(1)(C)(i), “[t]he entire record ... shall be compiled into a single PDF file,” and “[t]he PDF file shall be ... bookmarked, consistently with the index, such that each bookmark states the date, name, and record page of the filing and the bookmarks are viewable in a separate window.”

16. To comply with this Rule, and to avoid the confusion and navigational frustration created by roughly one hundred and fifty unauthorized bookmarks that do not state any “date, name, and record page of the filing,” the Court should direct the clerk to delete the above cited bookmarks and sub-bookmarks from the PDF of the Record on Appeal.

17. The “Index to Record on Appeal” at the top of page 1 of the Record on Appeal states “Total Volumes: <_ApplTotalVolumes_>.”

18. The clerk has subdivided and bookmarked the PDF of the Record on Appeal into 9 Volumes.

19. To make the Index of the Record on Appeal consistent with the volume divisions in the PDF made by the clerk, the Court should direct the clerk to state “Total Volumes: Nine (9)” at the top of page 1 of the Record on Appeal.

20. Alternatively, to comply with Rule 9.200(d)(1)(C)(i), (*supra* ¶15) the Court should direct the clerk to eliminate the unauthorized volume division bookmarks in the PDF of the Record on Appeal, and the statement “Total Volumes: <_ApplTotalVolumes_>” at the top of page 1 of the Record on Appeal.

CONCLUSION

WHEREFORE DAVID AND JENNIFER FOLEY MOVE THE COURT for an order directing the clerk of the Orange County Circuit Court to correct the Record Index and Record on Appeal as follows: 1) make the record text searchable; 2) replace the document bookmarked as “01/28/2021 - Directions to Clerk (p. 1490)” with the “Directions to Clerk,” originally e-filed by the Foleys January 28, 2021; 3) insert into the Record “Plaintiffs’ Motion for Judicial Notice” filed May 22, 2017, as requested by the Foleys’ “Directions to the Clerk;” 4) repaginate the record and index to reflect the replacement of the Foleys’ “Directions to Clerk” and the insertion of their “Plaintiffs’ Motion for Judicial Notice;” 5) remove extraneous and unauthorized bookmarks from the PDF of the Record on Appeal; and, 6) correct the “Total Volumes” number in the index heading, or eliminate it and the unauthorized volume bookmarks in the PDF of the Record on Appeal.

CERTIFICATE OF SERVICE

Plaintiffs certify that on March 12, 2021, the foregoing was electronically filed with the Clerk of the Court, and served on the following, through ePORTAL:

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Date: March 12, 2021

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