

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D22-0526

JONI JAMES,

Appellant,

v.

HIGHLAND LAKES OWNERS
ASSOCIATION, INC.,

Appellee.

On appeal from the County Court for Duval County.
Roberto Arias, Judge.

December 30, 2022

ON MOTION FOR CLARIFICATION AND REHEARING

PER CURIAM.

We deny James’s motion for rehearing. We grant her motion for clarification, withdraw our previously issued opinion, and substitute the following opinion in its place.

Joni James appeals a nonfinal order directing her to deposit funds into a court registry before exercising her right of redemption after a foreclosure sale. We have jurisdiction because “[a]n order requiring the deposit of funds into the registry of the court prior to judgment is, in effect, an order granting an injunction and is thus reviewable under Fla. R. App. P. 9.130(a)(3)(B).” *CMR Distributors, Inc. v. Resolution Tr. Corp.*, 593

So. 2d 593, 594 (Fla. 3d DCA 1992). We affirm the order except its award of attorney's fees to the third-party buyer of the property.

A court cannot award attorney's fees unless it is "expressly provided for by statute, rule, or contract." *Hubbel v. Aetna Cas. & Sur. Co.*, 758 So. 2d 94, 97 (Fla. 2000). The court below identified no basis for its attorney's fee award other than to make the third-party buyer whole. While this justification may be laudable, "a court cannot use an equitable remedy to indirectly assess attorney fees where it cannot do so directly." *Simon v. Waters*, 253 So. 3d 1172, 1172 (Fla. 5th DCA 2018). We reverse the award of attorney's fees to the third-party buyer. We remand to ensure James has an opportunity to exercise her right of redemption without inclusion of the erroneous attorney's fee award.

REVERSED in part; AFFIRMED in part; REMANDED.

B.L. THOMAS, KELSEY, and LONG, JJ., concur.

No further motions will be considered. The Clerk is directed to issue the mandate forthwith.

Antoinette Burgess of the Law Offices of Fred Tromberg,
Jacksonville, for Appellant.

Nicholas Martino, Jacksonville, for Appellee Highland Lakes
Owners Association, Inc.

Stephen M. Sperling, Hollywood, for Duval Home Buyers, LLC.