

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Cuyler v. Freedom Mortgage Corporation

Cuyler · No. No. 2D2025-2101 · Decided June 5, 2026

SUMMARY

The District Court of Appeal of Florida, Second District, dismissed James M. Cuyler's appeal from four nonfinal orders in a mortgage foreclosure action brought by Freedom Mortgage Corporation. The court held that the orders dismissing a counterclaim without prejudice, dismissing a punitive-damages request, granting an extension of time, and striking a jury-trial demand were not appealable under Florida Rule of Appellate Procedure 9.130.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	Morris, Judge; Silberman, Judge; Black, Judge
JURISDICTION	District Court of Appeal of Florida, Second District
DECIDED	June 5, 2026
DOCKET	No. 2D2025-2101
DISPOSITION	dismissed
PROCEDURAL POSTURE	Cuyler appealed four nonfinal orders entered in Freedom Mortgage Corporation's mortgage foreclosure action against him.
STANDARD OF REVIEW	The court applied de novo review to the issue of whether the challenged orders were final or appealable nonfinal orders.
PRECEDENTIAL VALUE	Published opinion
PARTIES	James M. Cuyler v. Freedom Mortgage Corporation

TOPICS

- appellate procedure
- interlocutory appeal
- final judgment rule
- motions to dismiss
- foreclosure

PRACTICE AREAS

- appellate procedure
- civil procedure
- mortgage foreclosure

QUESTIONS PRESENTED

1. Whether the order dismissing Cuyler's fraud counterclaim without prejudice was a final or appealable nonfinal order.
2. Whether the order dismissing Cuyler's request for punitive damages was appealable under Florida Rule of Appellate Procedure 9.130(a)(3)(G).
3. Whether the orders granting an extension of time and striking Cuyler's jury-trial demand were appealable nonfinal orders.

HOLDINGS

1. An order dismissing Cuyler's fraud counterclaim without prejudice, while allowing amendment and not requiring the filing of a new case, was nonfinal and was not appealable under Florida Rule of Appellate Procedure 9.130(a)(3).
2. The order dismissing Cuyler's request for punitive damages was not appealable under Florida Rule of Appellate Procedure 9.130(a)(3)(G) because Cuyler had not filed a motion for leave to amend to assert a punitive-damages claim.
3. The order granting Freedom Mortgage an extension of time and the order striking Cuyler's jury-trial demand were not appealable nonfinal orders because they did not fall within Rule 9.130(a)(3)'s list of appealable orders.

KEY QUOTATIONS

"Generally, when an order dismisses a complaint 'without prejudice,' that language signifies that the order is not a final order." (at 1)

"An exception to this general rule arises when a dismissal is without prejudice but when it is clear from the context that the plaintiff's right to pursue the case requires the filing of a completely new case." (at 1)

FACTUAL BACKGROUND

Freedom Mortgage Corporation filed a mortgage foreclosure action against James M. Cuyler. During the litigation, the circuit court dismissed Cuyler's fraud counterclaim without prejudice and allowed ten days to amend, dismissed his request for punitive damages, granted Freedom Mortgage an extension of time, and struck Cuyler's jury-trial demand. Cuyler appealed all four orders.

PROCEDURAL HISTORY

The Circuit Court for Hillsborough County entered orders dismissing Cuyler's fraud counterclaim without prejudice with leave to amend, granting Freedom Mortgage's motion to dismiss Cuyler's request for punitive damages, granting Freedom Mortgage an extension of time, and striking Cuyler's jury-trial demand. Cuyler appealed those orders to the Second District. The district court dismissed the appeal because the orders were not appealable nonfinal orders under Florida Rule of Appellate Procedure 9.130.

DISPOSITION

dismissed

CASES CITED

- Al-Hakim v. Big Lots Stores, Inc., 161 So. 3d 568, 569 (Fla. 2d DCA 2014)
- Philip J. Padovano, Florida Appellate Practice § 23.2 (2013)
- U.S. Bank Nat'l Ass'n v. Rodriguez, 206 So. 3d 734, 736 (Fla. 3d DCA 2016)
- Keck v. Eminisor, 104 So. 3d 359, 363-64 (Fla. 2012)

OPINION

PER CURIAM.

DISTRICT COURT OF APPEAL OF FLORIDA SECOND DISTRICT JAMES M. CUYLER, Appellant, v. FREEDOM MORTGAGE CORPORATION, Appellee. No. 2D2025-2101 June 5, 2026 Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Hillsborough County; Helene Daniel, Judge. James M. Cuyler, pro se. Gavin MacMillan of Brock & Scott, PLLC, Winston Salem, North Carolina, for Appellee.

MORRIS, Judge. James M. Cuyler appeals four nonfinal orders entered in a mortgage foreclosure action filed against him by Freedom Mortgage Corporation. We dismiss the appeal for the reasons explained below. Cuyler first appeals an order dismissing without prejudice his counterclaim for fraud with leave to file an amended counterclaim within ten days. "Generally, when an order dismisses a complaint 'without prejudice,' that language signifies that the order is not a final order."

Al- Hakim v. Big Lots Stores, Inc., 161 So. 3d 568, 569 (Fla. 2d DCA 2014). "An exception to this general rule arises when a dismissal is without prejudice but when it is clear from the context that the plaintiff's right to pursue the case requires the filing of a completely new case." Id. (citing Philip J. Padovano, Florida Appellate Practice § 23.2 (2013)); accord U.S. Bank Nat'l Ass'n v. Rodriguez, 206 So.

3d 734, 736 (Fla. 3d DCA 2016) ("If a dismissal is 'without prejudice' but it is clear from the context of the record that the plaintiff's right to pursue the case requires the filing of a new case, the order is final.").

The dismissal here is without prejudice and does not require Cuyler to file a new case. Therefore, the order is nonfinal. And the order does not fall within the category of nonfinal orders appealable under Florida Rule of Appellate Procedure 9.130(a)(3). See Keck v. Eminisor, 104 So. 3d 359, 363-64 (Fla. 2012) ("Generally, an appellate court may not review interlocutory orders unless the order falls within the ambit of non-final orders appealable to a district court as set forth in Florida Rule of Appellate Procedure 9.130.").

Cuyler next appeals an order granting Freedom's motion to dismiss Cuyler's request for punitive damages, finding that Cuyler failed to comply with section 768.72(1), Florida Statutes (2025), and failed to obtain leave of court to seek punitive damages. Orders that "grant or deny a motion for leave to amend to assert a claim for punitive damages" are nonfinal orders that are subject to interlocutory appeal under rule 9.130(a)(3)(G).

There is no indication that Cuyler filed a motion for leave to amend to assert a claim for punitive damages, as contemplated by rule 9.130(a)(3)(G) and as required by section 768.72. See § 768.72(1) ("In any civil action, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by 2 the claimant which would provide a reasonable basis for recovery of such damages.

The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure."). Last, Cuyler appeals an order on Freedom's motion for extension of time and an order granting Freedom's motion to strike Cuyler's jury trial demand. These orders are nonfinal orders and do not fall within the list of appealable nonfinal orders in rule 9.130(a)(3).

Dismissed. SILBERMAN and BLACK, JJ., Concur. Opinion subject to revision prior to official publication. 3