

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Nationstar Mortgage, LLC v. Steven Prine and Courtney Saucier

179 So. 3d 409 (Fla. 3d DCA 2015) · No. 3D14-2941 · Decided November 12, 2015

SUMMARY

The Florida Third District Court of Appeal held that Nationstar Mortgage, LLC was entitled to relief from a foreclosure dismissal because the clerk transmitted the trial notice to an incorrect email address. The court concluded that Nationstar's lack of adequate notice constituted excusable neglect and a due process violation, reversed the dismissal, and remanded for a new trial.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Fernandez, J.; Wells, J.; Salter, J.
JURISDICTION	Florida
DECIDED	November 12, 2015
DOCKET	3D14-2941
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Nationstar appealed a final order denying its Florida Rule of Civil Procedure 1.540(b) motion to vacate an order dismissing its mortgage foreclosure action.
STANDARD OF REVIEW	Abuse of discretion for an order ruling on a motion for relief from judgment under Florida Rule of Civil Procedure 1.540(b).
PRECEDENTIAL VALUE	Published opinion; precedential value under Florida law
PARTIES	Nationstar Mortgage, LLC v. Steven Prine, Courtney Saucier

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QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by summarily denying Nationstar's Rule 1.540(b) motion to vacate the dismissal when Nationstar did not receive the trial notice because of the clerk's erroneous email transmission.
2. Whether the lack of proper notice and adequate preparation time violated Nationstar's due process right to notice and an opportunity to be heard.
3. Whether Nationstar's failure to secure a trial witness under these circumstances constituted excusable neglect.

HOLDINGS

1. The trial court abused its discretion by summarily denying Nationstar's motion to vacate the dismissal because Nationstar's failure to prepare for trial was excusable neglect caused by the clerk's erroneous transmission of the trial notice.
2. A party's failure to receive proper notice of trial because of a clerk's transmittal error violates the party's due process right to fair notice and an opportunity to be heard, and requires reversal of a dismissal entered under those circumstances.

KEY QUOTATIONS

"We reverse the order of dismissal and remand for a new trial because Nationstar had a due process right to the notice of trial, which it did not receive when the trial court clerk erroneously transmitted the notice for service to an incorrect e-mail address." (at 1)

"The failure of service is tantamount to a due process violation." (at 4)

FACTUAL BACKGROUND

Nationstar sought to foreclose on a mortgage executed by Steven Prine and Courtney Saucier. The trial court scheduled the case for trial and correctly identified Nationstar counsel's email address in the trial-setting order, but the clerk transmitted the notice to an incorrect address. Counsel learned of the trial only five days beforehand, could not secure a witness on short notice, and appeared to request a continuance. The trial court denied the continuance and dismissed the foreclosure action for failure to produce a witness.

PROCEDURAL HISTORY

The trial court set the foreclosure case for trial and directed the clerk to transmit notice to counsel. Because the clerk sent the notice to an incorrect email address, Nationstar's counsel did not learn of the trial until five days before it began. The trial court denied Nationstar's requested continuance, dismissed the action when Nationstar could not produce a witness, and summarily denied Nationstar's motion to vacate. The Third District reversed and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the order of dismissal and remand for a new trial.

CASES CITED

- Barco Holdings, LLC v. Terminal Inv. Corp., 967 So. 2d 281, 295 (Fla. 3d DCA 2007)
- DeBello v. Faske, 668 So. 2d 324, 325 (Fla. 3d DCA 1996)
- World on Wheels of Miami, Inc. v. Int'l Auto Motors, Inc., 569 So. 2d 836, 837 n.1 (Fla. 3d DCA 1990)
- Ciolli v. City of Palm Bay, 59 So. 3d 295, 297 (Fla. 5th DCA 2011)
- Schuman v. Int'l Consumer Corp., 50 So. 3d 75, 76-77 (Fla. 4th DCA 2010)
- Mourning v. Ballast Nedam Constr., Inc., 964 So. 2d 889 (Fla. 4th DCA 2007)

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