

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Nacius v. One West Bank, FSB

211 So. 3d 152 (Fla. 4th DCA 2017) · Decided February 22, 2017

SUMMARY

The Florida Fourth District Court of Appeal dismissed an appeal from the denial of a motion to vacate a writ of possession for lack of appellate jurisdiction. The court held that a motion to vacate under Florida Rule of Civil Procedure 1.540(b) cannot be directed at a nonfinal writ of possession and that the denial was not among the appealable nonfinal orders under Rule 9.130(a)(3).

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Kuntz, J.; Conner, J.; Klingensmith, J.
JURISDICTION	Florida
DECIDED	February 22, 2017
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from the denial of an emergency motion to stay and vacate a writ of possession following a foreclosure judgment.
STANDARD OF REVIEW	The appellate court independently assesses its own jurisdiction, even when jurisdiction is not challenged by the parties.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Melina M. Nacius, Aurilien Nacius v. One West Bank, FSB

TOPICS

appellate jurisdiction

appellate procedure

final judgment rule

civil procedure

PRACTICE AREAS

appellate procedure

foreclosure

real estate

QUESTIONS PRESENTED

1. Whether the appellate court was required to accept the appellee's confession of error.
2. Whether the appellate court had jurisdiction to review the denial of a motion to vacate a writ of possession.

3. Whether a motion to vacate under Florida Rule of Civil Procedure 1.540(b) may be directed at a non-final writ of possession.
4. Whether the denial of that motion constituted an appealable non-final order under Florida Rule of Appellate Procedure 9.130(a)(3).

HOLDINGS

1. The appellate court is not required to accept a confession of error.
2. An appellate court must assess its own jurisdiction even when the parties do not raise the jurisdictional issue.
3. A motion to vacate under Florida Rule of Civil Procedure 1.540(b) cannot be directed toward a non-final order such as a writ of possession.
4. The appellate court lacked jurisdiction to review the denial of the motion to vacate because the order did not fall within the categories of appealable non-final orders in Florida Rule of Appellate Procedure 9.130(a)(3).

KEY QUOTATIONS

“We are, however, required to assess our own jurisdiction even when not raised by the parties.” (at 152)

“We agree with the Third District’s opinion in Bryant and dismiss this appeal for lack of appellate jurisdiction.” (at 152)

FACTUAL BACKGROUND

A foreclosure judgment had been entered against the appellants, and a writ of possession was issued. After the prior appeal from the foreclosure judgment was dismissed as untimely, the appellants sought to stay and vacate the writ of possession. The trial court denied that motion, and the appellants appealed.

PROCEDURAL HISTORY

The appellants previously appealed the final judgment of foreclosure, but that appeal was dismissed because the notice of appeal was untimely. They then appealed the trial court’s denial of their motion to vacate the writ of possession. The appellee confessed error and requested reversal, but the Fourth District independently examined its jurisdiction and dismissed the appeal.

DISPOSITION

dismissed

CASES CITED

- D.A. v. Department of Children & Family Services, 84 So. 3d 1136, 1139 (Fla. 3d DCA 2012)
- Bain v. State, 919 So. 2d 599, 602 (Fla. 3d DCA 2006)
- Perry v. State, 808 So. 2d 268 (Fla. 1st DCA 2002)

- Santiago v. State, 669 So. 2d 334, 335 (Fla. 3d DCA 1996)
- Rayburn v. Bright, 163 So. 3d 735, 736 (Fla. 5th DCA 2015)
- Ruffin v. Kingswood East Condominium Association, 719 So. 2d 951, 952 (Fla. 4th DCA 1998)
- Bryant v. Wells Fargo Bank, N.A., 182 So. 3d 927, 930 (Fla. 3d DCA 2016)

OPINION

KUNTZ, J.

Kuntz, J. Appellants appeal the court’s final judgment and denial of their “Emergency Motion to Stay and Vacate Writ of Possession.” Previously, we dismissed the appeal of the final judgment of foreclosure for lack of jurisdiction as the notice of appeal was not timely as to that final judgment. Appellee now files a confession of error and states that we should reverse the denial of the motion to vacate the writ of possession.

We reject the confession of error and sua sponte dismiss this appeal for lack of appellate jurisdiction. While we appreciate counsel’s candor and explanation in the confession of error, we are not required to accept a confession of error. D.A. v. Dep’t of Children & Family Servs., 84 So.3d 1136, 1139 (Fla. 3d DCA 2012); Bain v. State, 919 So.2d 599, 602 (Fla.

3d DCA 2006) (citing Perry v. State, 808 So.2d 268 (Fla. 1st DCA 2002)); Santiago v. State, 669 So.2d 334, 335 (Fla. 3d DCA 1996)). We are, however, required to assess our own jurisdiction even when not raised by the parties. Rayburn v. Bright, 163 So.3d 735, 736 (Fla. 5th DCA 2015); Ruffin v. Kingswood E. Condo. Ass’n, 719 So.2d 951, 952 (Fla. 4th DCA 1998).

The appellants appeal the trial court’s denial of their motion to vacate a writ of possession. However, as the Third District recently held, a motion to vacate cannot be directed to a non-final order. Bryant v. Wells Fargo Bank, N.A., 182 So.3d 927, 930 (Fla. 3d DCA 2016) (“[W]e note that a motion to vacate pursuant to Rule 1.540(b) cannot be directed toward non-final orders such as the writ of possession....”).

Further, as the court held in Bryant, “even if the motion to vacate had been the proper procedural vehicle below, we are without jurisdiction to review the trial court’s denial of that motion because it does not fall within the purview of ap-pealable, non-final orders set forth in Rule 9.130(a)(3).” Id. at 930.

We agree with the Third District’s opinion in Bryant and dismiss this appeal for lack of appellate jurisdiction. Appeal dismissed. Conner and Klingensmith, JJ., concur.