

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

J.A.B. Enterprises and John Brown v. Joseph L. Gibbons, Sr., et al.

596 So. 2d 1247 (Fla. Dist. Ct. App. 1992) · No. No. 91-0192 · Decided April 15, 1992

SUMMARY

The Florida Fourth District Court of Appeal affirmed summary judgment enforcing a workers' compensation order against J.A.B. Enterprises and John Brown. The court held that the appellants waived defenses based on lack of notice of the compensation hearing and failure to receive the compensation order because those defenses were not raised in the answer or by motion. The court also held that the appellants' failure to deny the allegation that the compensation order had become final constituted an admission.

CASE DETAILS

|                       |                                                                                                                                             |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | District Court of Appeal of Florida, Fourth District                                                                                        |
| WRITING FOR THE COURT | Per Curiam; Glickstein, C.J.; Warner, J.; Garrett, J.                                                                                       |
| JURISDICTION          | Florida                                                                                                                                     |
| DECIDED               | April 15, 1992                                                                                                                              |
| DOCKET                | No. 91-0192                                                                                                                                 |
| DISPOSITION           | affirmed                                                                                                                                    |
| PROCEDURAL POSTURE    | Appeal from a final order granting summary judgment on Gibbons's amended petition for a rule nisi to enforce a workers' compensation order. |
| STANDARD OF REVIEW    | De novo review of the summary judgment and the legal consequences of admissions and waived defenses.                                        |
| PRECEDENTIAL VALUE    | Published opinion; precedential value under Florida appellate law.                                                                          |
| PARTIES               | J.A.B. Enterprises, John Brown v. Joseph L. Gibbons, Sr., et al.                                                                            |

TOPICS

- waiver
- summary judgment
- civil procedure
- workers compensation
- appellate procedure

PRACTICE AREAS

- civil procedure
- workers compensation
- appellate procedure
- remedies

## QUESTIONS PRESENTED

1. Whether appellants waived their defenses based on lack of notice of the workers' compensation hearing and failure to receive the compensation order by failing to assert them in a motion or responsive pleading.
2. Whether appellants' failure to deny the allegation that the compensation order had not been appealed and had become final constituted an admission of finality.
3. Whether the circuit court properly entered summary judgment enforcing the compensation order.
4. Whether appellants could raise for the first time in their reply brief that they had not received the compensation order.

## HOLDINGS

1. Defenses other than lack of subject matter jurisdiction are waived if not raised by motion or responsive pleading. Because appellants did not assert lack of notice of the compensation hearing or failure to receive the compensation order in their answer, they could not raise those defenses for the first time in opposition to summary judgment.
2. An answer stating that the defendant neither admits nor denies a material allegation and demanding strict proof does not constitute a denial. Because appellants failed to deny the allegation that the compensation order had not been appealed and had become final, finality was admitted.
3. Once the compensation order was treated as final and the relevant defenses were waived or admitted, the circuit court had no authority to do anything other than order enforcement of the compensation order.
4. An issue not raised in an appellant's initial brief is deemed abandoned and may not be raised for the first time in a reply brief.

## KEY QUOTATIONS

*"We hold that appellants waived their right to collaterally attack the compensation order at the summary judgment hearing."* (596 So. 2d at 1249)

*"Because the answer did not assert the defenses of lack of notice of the compensation hearing or failure to receive the compensation order, appellants waived those defenses."* (596 So. 2d at 1249)

*"We also hold that appellants admitted that the compensation order had become final."* (596 So. 2d at 1249)

*"Thus, the compensation order had to be considered final and the "trial court had no authority to do anything but order enforcement of the compensation order.""* (596 So. 2d at 1250)

*"an issue not raised in an initial brief is deemed abandoned and may not be raised for the first time in a reply brief."* (596 So. 2d at 1250)

## FACTUAL BACKGROUND

Gibbons filed a workers' compensation claim against J.A.B. Enterprises and John Brown. Although notice of the compensation hearing was sent to the employer's last known address and returned unclaimed, the deputy commissioner proceeded after counsel represented that appellants intended to ignore the proceeding and entered

an order awarding benefits. In the subsequent enforcement action, appellants' answer admitted that the compensation order had been entered and failed to deny that it had become final, while raising only an independent-contractor defense. Appellants first raised lack of notice in an unsworn response to Gibbons's summary-judgment motion.

## PROCEDURAL HISTORY

Gibbons obtained a workers' compensation order awarding him benefits after appellants did not appear at the compensation hearing. Gibbons later filed an amended petition for a rule nisi in circuit court to enforce that order. Appellants' answer did not assert lack of notice of the compensation hearing or failure to receive the compensation order, and the circuit court entered summary judgment for Gibbons. The district court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Wyman v. Robbins, 513 So. 2d 230, 231 (Fla. 1st DCA 1987)
- Goldberger v. Regency Highland Condo. Ass'n, 452 So. 2d 583, 585 (Fla. 4th DCA 1984)
- Clermont-Minneola Country Club, Inc. v. Coupland, 106 Fla. 111, 143 So. 133 (Fla. 1932)
- Covert v. Hall, 467 So. 2d 372, 374 (Fla. 2d DCA 1985)
- Giddens v. Denman Rubber Mfg. Co., 440 So. 2d 1320 (Fla. 5th DCA 1983)
- Snyder v. Volkswagen of America, Inc., 574 So. 2d 1161 (Fla. 4th DCA 1991)