

SUPREME COURT OF FLORIDA

Gerald R. Shurman v. Atlantic Mortgage & Investment Corporation

795 So. 2d 952 (Fla. 2001) · No. SC96918 · Decided September 6, 2001

SUMMARY

The Supreme Court of Florida held that an incarcerated defendant's "usual place of abode" for purposes of substituted service under section 48.031(1)(a), Florida Statutes (1997), is the prison where the defendant is actually living at the time of service. Because service on Gerald Shurman's wife at their former marital residence was invalid, the court quashed the Fifth District's decision and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Shaw, J.; Harding, J.; Anstead, J.; Pariente, J.; Lewis, J.; Quince, J.; Wells, C.J.
JURISDICTION	Florida
DECIDED	September 6, 2001
DOCKET	SC96918
DISPOSITION	quashed
PROCEDURAL POSTURE	Florida Supreme Court discretionary conflict review of a Fifth District Court of Appeal decision affirming the denial of Shurman's motion to set aside a foreclosure judgment for improper service of process.
STANDARD OF REVIEW	De novo review of the legal validity of service of process and the resulting jurisdiction; statutory service provisions are strictly construed and enforced.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion; binding statewide precedent.
PARTIES	Gerald R. Shurman v. Atlantic Mortgage & Investment Corporation

TOPICS

- service of process
- foreclosure
- statutory interpretation
- appellate procedure
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether an incarcerated defendant's usual place of abode under section 48.031(1)(a), Florida Statutes (1997), is the prison where the defendant is actually living at the time of service or the former marital residence where the defendant's family continues to reside.
2. Whether substituted service on the defendant's wife at the former marital residence was valid and conferred jurisdiction over the defendant.

HOLDINGS

1. For purposes of substituted service under section 48.031(1)(a), Florida Statutes (1997), a person's usual place of abode is the place where the person is actually living at the time of service. For an incarcerated defendant, that place is the prison, not the defendant's former residence where family members continue to live.
2. Because Shurman was not served at his usual place of abode, substituted service was invalid and the foreclosure judgment as to his interest could not stand.

KEY QUOTATIONS

"In sum, we adhere to Heffernan and reaffirm that for purposes of substituted service one's "usual place of abode" is where the person is actually living at the time of service." (at 956)

"Thus, Shurman was not properly served at his usual place of abode as required under section 48.031(1)(a), Florida Statutes (1997)." (at 956)

FACTUAL BACKGROUND

Gerald Shurman was incarcerated in state prison in May 1997. Atlantic Mortgage filed a mortgage foreclosure action against him in March 1998 and served process by leaving it with his wife at their former marital residence, where she continued to live. A default, final summary judgment of foreclosure, and foreclosure sale followed. Shurman moved to set aside the judgment, arguing that he had not been properly served because he was actually living in prison when service occurred.

PROCEDURAL HISTORY

Atlantic commenced a mortgage foreclosure action against Shurman while he was incarcerated. After substituted service was made on his wife at the marital residence, a default and final summary judgment of foreclosure were entered, and the property was sold. The trial court denied Shurman's motion to set aside the judgment, and the Fifth District affirmed. The Florida Supreme Court accepted review because the decision expressly and directly conflicted with *State ex rel. Merritt v. Heffernan*, then quashed the district court's decision and remanded.

DISPOSITION

quashed

REMAND INSTRUCTIONS

Remanded to the district court of appeal for further proceedings consistent with the opinion.

CASES CITED

- Shurman v. Atlantic Mortgage & Investment, 740 So. 2d 1221 (Fla. 5th DCA 1999)
- State ex rel. Merritt v. Heffernan, 142 Fla. 496, 195 So. 145 (1940)
- Klosenski v. Flaherty, 116 So. 2d 767 (Fla. 1959)
- Clark v. Clark, 158 Fla. 731, 30 So. 2d 170 (1947)
- Gribbel v. Henderson, 151 Fla. 712, 10 So. 2d 734 (1942)
- Arcadia Citrus Growers Ass'n v. Hollingsworth, 135 Fla. 322, 185 So. 431 (1938)
- Schupak v. Sutton Hill Assocs., 710 So. 2d 707 (Fla. 4th DCA 1998)
- Aero Costa Rica, Inc. v. Dispatch Servs., Inc., 710 So. 2d 218 (Fla. 3d DCA 1998)
- Hauser v. Schiff, 341 So. 2d 531 (Fla. 3d DCA 1977)
- Eckman v. Grear, 14 N.J. Misc. 807, 187 A. 556 (Com. Pl. 1936)
- Mygatt v. Coe, 63 N.J.L. 510, 44 A. 198 (Sup. Ct. 1899)
- Stout v. Leonard, 37 N.J.L. 492
- Milanese v. Colonial Penn Ins. Co., 507 So. 2d 777 (Fla. 3d DCA 1987)
- Panter v. Werbel-Roth Securities, Inc., 406 So. 2d 1267 (Fla. 4th DCA 1981)
- Alvarez v. State Farm Mutual Auto Ins. Co., 635 So. 2d 131 (Fla. 3d DCA 1994)
- Stern v. Gad, 505 So. 2d 531 (Fla. 3d DCA 1987)
- Gonzalez v. Totalbank, 472 So. 2d 861 (Fla. 3d DCA 1985)
- Fidelity & Deposit Co. v. Abagnale, 97 N.J. Super. 132, 234 A.2d 511 (1967)
- Saienni v. Oveide, 355 A.2d 707 (Del. Super. Ct. 1976)
- Whetsel v. Gosnell, 181 A.2d 91 (Del. 1962)
- State ex rel. Page v. Hollingsworth, 117 Fla. 288, 157 So. 887 (1934)