

SUPREME COURT OF FLORIDA

Wagner v. Bieley, Wagner & Associates, Inc.

263 So. 2d 1 (Fla. 1972) · No. No. 41546 · Decided May 10, 1972

SUMMARY

The Supreme Court of Florida held that a motion for rehearing directed to an interlocutory order denying summary judgment was not authorized by the applicable rules. Because the motion was unauthorized, it did not toll the time for filing an interlocutory appeal, making the respondent’s appeal untimely. The court quashed the District Court of Appeal’s order and remanded with instructions to quash the appeal.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	McCain, J.; Roberts, C.J.; Ervin, J.; Carlton, J.; Adkins, J.; Boyd, J.; Dekle, J.
JURISDICTION	Florida
DECIDED	May 10, 1972
DOCKET	No. 41546
DISPOSITION	quashed
PROCEDURAL POSTURE	Petition for writ of certiorari seeking review of a Third District Court of Appeal order denying a motion to quash an interlocutory appeal as untimely.
STANDARD OF REVIEW	The Supreme Court reviewed the District Court of Appeal's disposition of the timeliness and tolling issue under the governing appellate and civil rules through conflict certiorari review.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Florida; binding Florida precedent subject to later modification or supersession.
PARTIES	Walter W. Wagner v. Bieley, Wagner & Associates, Inc.

TOPICS

- interlocutory appeal
- appellate procedure
- summary judgment
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Florida Rule of Civil Procedure 1.530 authorizes a motion for rehearing directed to an interlocutory order denying summary judgment.
2. Whether an unauthorized motion for rehearing suspends rendition of the interlocutory order or tolls the 30-day period for filing notice of interlocutory appeal under Florida Rules of Appellate Procedure 1.3 and 4.2(b).
3. Whether the Third District Court of Appeal erred in denying the motion to quash the untimely interlocutory appeal.

HOLDINGS

1. Florida Rule of Civil Procedure 1.530 does not authorize a motion for rehearing directed to an interlocutory order denying summary judgment; the rule permits rehearing of matters heard without a jury, including summary judgments, but applies to judgments rather than interlocutory orders.
2. Only a timely and proper motion or petition permitted by the rules suspends rendition and tolls the time for seeking appellate review; an unauthorized motion for rehearing has no effect on rendition or on the deadline for filing notice of interlocutory appeal.
3. The Third District Court of Appeal erred by denying the motion to quash; the interlocutory appeal was untimely and had to be quashed.

KEY QUOTATIONS

“Thus, a timely and proper motion for rehearing, permitted by the Civil Rules, will operate to suspend “rendition” during its pendency. An unauthorized motion not permitted by the Rules, such as respondent’s motion for rehearing in this case, would have no effect on rendition and would thus have no effect on the time for filing notice of appeal.” (263 So. 2d at 3)

“Our rules as currently amended do not permit motions for rehearing directed to interlocutory orders, such as orders denying summary judgment; accordingly, such motions cannot operate to toll the time for filing an interlocutory appeal under the Rules.” (263 So. 2d at 4)

FACTUAL BACKGROUND

Bieley, Wagner & Associates brought an action against Wagner involving enforcement of a termination agreement, alleged unlawful competition, and claims for damages. The trial court denied the respondent’s motion for summary judgment on liability. The respondent then filed a motion for rehearing directed to that interlocutory denial and filed its notice of interlocutory appeal more than 30 days after the original order, but within 30 days after the rehearing motion was denied.

PROCEDURAL HISTORY

Bieley, Wagner & Associates sued Wagner in the Circuit Court for Dade County to enforce a termination agreement and obtain injunctive, compensatory, and punitive relief. After the respondent's motion for summary judgment on liability was denied, it filed a motion for rehearing, which the trial court denied. The respondent then filed notice of interlocutory appeal more than 30 days after the original order but within 30 days after denial of rehearing. The Third District denied Wagner's motion to quash, and the Supreme Court of Florida accepted conflict jurisdiction, quashed the District Court's order, and remanded with instructions to quash the interlocutory appeal.

DISPOSITION

quashed

REMAND INSTRUCTIONS

The order of the Third District Court of Appeal was quashed, and the cause was remanded to that court with instructions to quash the respondent's interlocutory appeal and remand the cause to the trial court for further proceedings.

CASES CITED

- Home News Publishing Co. v. U-M Publishing, Inc., 246 So. 2d 117 (Fla. 1st DCA 1971)
- Weisberg v. Perl, 73 So. 2d 56 (Fla. 1954)
- Counne v. Saffan, 87 So. 2d 586 (Fla. 1956)
- La Joie v. General Motors Acceptance Corp., 108 So. 2d 497 (Fla. 2d DCA 1959)
- Albert v. Carey, 120 So. 2d 189 (Fla. 3d DCA 1960)
- Aurremma v. B-Thrifty Super Market, Inc., 127 So. 2d 682 (Fla. 3d DCA 1961)
- Floyd v. State ex rel. La Vigne Electric Co., 139 So. 2d 873 (Fla. 1962)
- Goode v. Hialeah Race Course, Inc., 246 So. 2d 105 (Fla. 1971)
- In re Estate of Lee, 90 So. 2d 290 (Fla. 1956)
- Marans v. Stang, 124 So. 2d 891 (Fla. 3d DCA 1960)
- Mathis v. Butler, 128 So. 2d 142 (Fla. 2d DCA 1961)
- Pitts v. State, 225 So. 2d 352 (Fla. 1st DCA 1969)

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