

FLORIDA THIRD DISTRICT COURT OF APPEAL

Danny L. Curry v. Crescent Bank and Trust

Curry v. Crescent Bank and Trust · No. 3D22-0826 · Decided March 1, 2023

SUMMARY

The Florida Third District Court of Appeal reversed a final judgment entered after a bench trial at which the appellant did not appear. The court held that the trial court violated Florida Rule of Civil Procedure 1.440(c) by setting the trial only 17 days after serving the notice for trial and remanded for a new trial.

CASE DETAILS

COURT	Florida Third District Court of Appeal
WRITING FOR THE COURT	Lindsey; Miller; Gordo
JURISDICTION	Florida
DECIDED	March 1, 2023
DOCKET	3D22-0826
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a final judgment entered for Crescent Bank and Trust after a bench trial at which Curry did not appear.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Danny L. Curry v. Crescent Bank and Trust

TOPICS

- civil procedure
- appellate procedure
- final judgment rule

PRACTICE AREAS

- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court erred by setting the case for trial only 17 days after service of the notice for trial, contrary to Florida Rule of Civil Procedure 1.440(c), and proceeding to judgment when the appellant did not appear.

HOLDINGS

1. The trial court erred by setting the case for trial only 17 days in advance because Florida Rule of Civil Procedure 1.440(c) requires that trial be set at least 30 days from service of the notice for trial.

KEY QUOTATIONS

“Trial shall be set not less than 30 days from the service of the notice for trial.”

FACTUAL BACKGROUND

The trial court sua sponte and unilaterally set the case for a bench trial only 17 days before the trial date. Curry received notice of the trial but was unavailable on that date and could not obtain a new trial date. He did not appear at trial, and the court entered final judgment in favor of Crescent Bank and Trust.

PROCEDURAL HISTORY

The Miami-Dade County Court sua sponte and unilaterally set the case for trial 17 days before the trial date. Curry received notice but was unavailable and was unsuccessful in obtaining a new trial date; after the bench trial proceeded without him, the court entered final judgment against him. He appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must vacate the final judgment and set the case for a new trial in accordance with Florida Rule of Civil Procedure 1.440(c).

OPINION

DANNY L. CURRY v. CRESCENT BANK AND TRUST
PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed March 1, 2023. Not final until disposition of timely filed motion for rehearing. _____ No. 3D22-0826 Lower Tribunal No. 18-24350 CC _____ Danny L. Curry, Appellant, vs. Crescent Bank and Trust, Appellee. An Appeal from the County Court for Miami-Dade County, Diana Gonzalez-Whyte, Judge. Renita Henry Law, PLLC, and Renita F. Henry (Ft. Lauderdale), for appellant. Andreu, Palma, Lavin & Solis, PLLC, and Jorge L. Palma, and Carlos Cruanes, for appellee. Before LINDSEY, MILLER, and GORDO, JJ. PER CURIAM. Appellant Danny L. Curry appeals a final judgment entered against him in favor of Appellee Crescent Bank and Trust following a bench trial at which he did not appear. The trial court sua sponte and unilaterally set the case for trial 17 days in advance of the trial date. Curry claims that though he received notice, he was unavailable on that date and that he was unsuccessful in obtaining a new trial date from the trial

court.¹ Because the trial court noticed the case for trial only 17 days in advance of the trial date, we reverse and remand for the trial court to vacate the final judgment and set the case for a new trial in accordance with Florida Rule of Civil Procedure 1.440(c), which requires that a “[t]rial shall be set not less than 30 days from the service of the notice for trial.” Reversed and remanded with instructions. ¹ Crescent Bank has been precluded from filing an answer brief in this appeal for failure to timely do so. ²