

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.

OPINION

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