

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Casa Inv. Co., Inc. v. Nestor

8 So. 3d 1219 (Fla. 3d DCA 2009) · No. No. 3D08-2310 · Decided April 29, 2009

SUMMARY

The Florida Third District Court of Appeal granted Casa Investment Co., Inc.'s petition for second-level certiorari and quashed a circuit court appellate division decision affirming summary judgment for Marcel Nestor. The court held that an ore tenus motion for summary judgment violated Florida Rule of Civil Procedure 1.510(c)'s written-service and 20-day notice requirements, depriving Casa of due process.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Lagoa, J.; Cope, J.; Schwartz, Senior Judge
JURISDICTION	Florida
DECIDED	April 29, 2009
DOCKET	No. 3D08-2310
DISPOSITION	quashed
PROCEDURAL POSTURE	Casa Investment Co., Inc. petitioned for second-level certiorari review of a circuit court appellate division decision affirming the county court's final summary judgment for Nestor.
STANDARD OF REVIEW	Second-level certiorari review is extremely limited and examines whether the lower tribunal provided due process and followed the correct law. Certiorari is appropriate only upon a violation of a clearly established legal principle resulting in a miscarriage of justice.
PRECEDENTIAL VALUE	Published Florida Third District Court of Appeal opinion; precedential.
PARTIES	Casa Investment Co., Inc. v. Marcel Nestor

TOPICS

- summary judgment
- writ of certiorari
- service of process
- appellate procedure
- civil procedure

PRACTICE AREAS

- Civil procedure
- Appellate procedure

QUESTIONS PRESENTED

1. Whether an oral, ore tenus motion for summary judgment may be granted when the motion was not written, served, and noticed at least 20 days before the hearing as required by Florida Rule of Civil Procedure 1.510(c).
2. Whether granting the improperly noticed oral summary-judgment motion deprived Casa of due process and constituted a departure from the essential requirements of law warranting second-level certiorari.

HOLDINGS

1. Florida Rule of Civil Procedure 1.510(c) does not permit an oral motion for summary judgment. A summary-judgment motion must be served in writing, state its grounds with particularity, identify the relied-upon evidence, and be served at least 20 days before the hearing.
2. Granting summary judgment on Nestor's improperly noticed oral motion deprived Casa of due process and constituted a departure from the essential requirements of law; the appellate division's affirmance was therefore quashed.

KEY QUOTATIONS

"The language of Rule 1.510(c), explicitly requiring that a movant 'shall serve the motion' for summary judgment 'at least 20 days before the time fixed for the hearing,' does not permit oral motions for summary judgment." (8 So. 3d at 1221)

"Nestor's failure to comply with Rule 1.510(c) deprived Casa of the ability to both adequately respond and prepare for the summary judgment hearing." (8 So. 3d at 1222)

FACTUAL BACKGROUND

Casa noticed its amended motion for final summary judgment for a hearing on September 10, 2007. At that hearing, Nestor presented an oral motion for summary judgment based on a statute-of-limitations defense, without serving a written motion at least 20 days before the hearing. The trial court granted Nestor's motion, leaving Casa without the required notice and opportunity to prepare a response.

PROCEDURAL HISTORY

Casa served an amended motion for final summary judgment and noticed a hearing. At the hearing, Nestor made an ore tenus motion for summary judgment based on a statute-of-limitations defense, which the county court granted. The circuit court appellate division affirmed, but Casa sought certiorari, and the Third District granted the petition, quashed the appellate division's order, and remanded with directions to reverse the summary judgment.

DISPOSITION

quashed

REMAND INSTRUCTIONS

The appellate division's decision was quashed, and the case was remanded with directions to reverse the summary judgment entered in favor of Nestor.

CASES CITED

- Williams v. Miami-Dade County, 969 So. 2d 389, 392 (Fla. 3d DCA 2007)
- Loguercio v. Department of Highway Safety & Motor Vehicles, 907 So. 2d 1267 (Fla. 3d DCA 2005)
- Haines City Community Development v. Heggs, 658 So. 2d 523, 528 (Fla. 1995)
- City of Cooper City v. Sunshine Wireless Co., 654 So. 2d 283, 284 (Fla. 4th DCA 1995)
- State, Florida Highway Patrol v. In re: Forfeiture of Twenty Nine Thousand Nine Hundred & Eighty (\$29,980.00) in U.S. Currency, 802 So. 2d 1171, 1172-73 (Fla. 3d DCA 2001)