

THIRD DISTRICT COURT OF APPEAL OF FLORIDA

Surf Consultants, Inc. v. Lizbeth Sanchez

No. 3D24-1788 · No. No. 3D24-1788 · Decided July 30, 2025

SUMMARY

The Florida Third District Court of Appeal affirmed the order vacating a default final judgment based on defective service of process. It reversed the dismissal without prejudice, holding that defective service should have been quashed rather than the action dismissed, particularly because the statute of limitations had expired, and remanded for further proceedings.

CASE DETAILS

COURT	Third District Court of Appeal of Florida
WRITING FOR THE COURT	Per curiam; SCALES, C.J.; EMAS, J.; LOBREE, J.
JURISDICTION	Florida Third District Court of Appeal
DECIDED	July 30, 2025
DOCKET	No. 3D24-1788
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Surf Consultants appealed orders granting a motion to vacate a default final judgment based on defective service of process and dismissing the action without prejudice.
STANDARD OF REVIEW	An order granting a motion to vacate a default final judgment is reviewed for gross abuse of discretion.
PRECEDENTIAL VALUE	Published
PARTIES	Surf Consultants, Inc. v. Lizbeth Sanchez

TOPICS

- service of process
- default judgment
- motions to dismiss
- appellate procedure
- standard of review

PRACTICE AREAS

- Civil procedure
- Appellate procedure
- Remedies

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by vacating the default final judgment based on defective service of process.
2. Whether defective service of process warranted dismissal of the action rather than quashing service and permitting the action to remain pending.

HOLDINGS

1. The trial court did not grossly abuse its discretion by granting the motion to vacate the default final judgment based on defective service of process.
2. When service of process is invalid but was effected within the applicable service period, the proper remedy is to quash service and permit the action to remain pending, not to dismiss the action outright.

KEY QUOTATIONS

“An order granting a motion to vacate a default final judgment is reviewed under a ‘gross abuse of discretion’ standard.” (at 2)

“When an invalid method of service is used, the proper procedure is to quash the service and permit the action to remain pending.” (at 3)

“the trial court’s determination (that service of process on Surf Consultants was defective) should have resulted in an order quashing service of process, rather than outright dismissal without prejudice, which in the instant case effectively dismissed the case with prejudice, given the expiration of the statute of limitations.” (at 2)

FACTUAL BACKGROUND

A default final judgment had been entered against Surf Consultants, Inc. The trial court later determined that service of process on Surf Consultants was defective and vacated the default final judgment. The trial court then dismissed the action without prejudice, but the dismissal effectively operated as a dismissal with prejudice because the statute of limitations had expired.

PROCEDURAL HISTORY

The Circuit Court for Miami-Dade County vacated the default final judgment after determining that service of process on Surf Consultants was defective, then dismissed the action without prejudice. Surf Consultants appealed both orders. The Third District affirmed the order vacating the default final judgment, reversed the dismissal, and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for further proceedings consistent with the opinion; the dismissal should be replaced by the proper remedy of quashing service of process and permitting the action to remain pending.

CASES CITED

- DND Mail Corp. v. Andgen Props., LLC, 28 So. 3d 111, 113 (Fla. 4th DCA 2010)
- Karan v. Pernia, 343 So. 3d 689, 690 (Fla. 3d DCA 2022)
- Allstate Mortg. Sols. Transfer, Inc. v. Bank of Am., N.A., 338 So. 3d 985, 987-88 (Fla. 3d DCA 2022)
- Vives v. Wells Fargo Bank, N.A., 128 So. 3d 9 (Fla. 3d DCA 2012)
- Caban v. Skinner, 648 So. 2d 251, 251 (Fla. 3d DCA 1994)
- Bice v. Metz Const. Co., 699 So. 2d 745, 746 (Fla. 4th DCA 1997)
- Sneed v. H.B. Daniel Const. Co., 674 So. 2d 158, 159 (Fla. 5th DCA 1996)
- Stoeffler v. Castagliola, 629 So. 2d 196, 198 (Fla. 2d DCA 1993)
- Payette v. Clark, 559 So. 2d 630, 633 (Fla. 2d DCA 1990)
- Miranda v. Young, 19 So. 3d 1100, 1102 (Fla. 2d DCA 2009)
- Brown v. Ameri Star, Inc., 884 So. 2d 1065, 1067 (Fla. 2d DCA 2004)
- Kohler v. Vega–Maltes, 838 So. 2d 1249, 1250 (Fla. 2d DCA 2003)

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