

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)

OPINION

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed July 30, 2025. Not final until disposition of timely filed motion for rehearing. _____ No. 3D24-1788 Lower Tribunal No. 14-20872-CA-01 _____ Surf Consultants, Inc., Appellant, vs. Lizbeth Sanchez, Appellee. An Appeal from the Circuit Court for Miami-Dade County, David C. Miller, Judge.

Sprechman & Fisher, P.A., and Stacey S. Fisher, for appellant. No appearance, for appellee. Before SCALES, C.J., and EMAS and LOBREE, JJ. PER CURIAM. Surf Consultants appeals the trial court’s (1) order granting a motion to vacate default final judgment based on defective service of process and (2) order dismissing the action without prejudice. While we find no gross abuse of discretion in granting the motion to vacate the default final judgment, see DND Mail Corp. v. Andgen Props., LLC, 28 So.

3d 111, 113 (Fla. 4th DCA 2010) (“An order granting a motion to vacate a default final judgment is reviewed under a ‘gross abuse of discretion’ standard.”) (citation omitted) and Karan v. Pernia, 343 So. 3d 689, 690 (Fla. 3d DCA 2022) (noting the distinction between the standard of review for an order denying a motion to vacate default (abuse of discretion) and an order denying motion to vacate default final judgment (gross abuse of discretion)), see also Allstate Mortg.

Sols. Transfer, Inc. v. Bank of Am., N.A., 338 So. 3d 985, 987-88 (Fla. 3d DCA 2022) (“A defendant may voluntarily appear in the case and submit to the court’s jurisdiction in any number of ways, ranging from failure to timely object to personal jurisdiction, to submission implied from conduct, to express consent to the prosecution of a case before the court.”); compare with Vives v. Wells Fargo Bank, N.A., 128 So.

3d 9 (Fla. 3d DCA 2012) (holding pro se mortgagor did not waive defense of lack of service of process in foreclosure action where she first appeared in action when she filed emergency motion to cancel foreclosure sale and contested service of 2 process in the emergency motion), we reverse the trial court’s order dismissing the action, because 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.

See Caban v. Skinner, 648 So. 2d 251, 251 (Fla. 3d DCA1994) (“The trial court may not dismiss the complaint, where, as here, service, albeit invalid service, was effected during the designated time.”); Bice v. Metz Const. Co., 699 So. 2d 745, 746 (Fla. 4th DCA 1997) (noting that a “dismissal of an action is improper where service, albeit invalid, was effected within the 120-day period.”) (citing Sneed v. H.B.

Daniel Const. Co., 674 So. 2d 158, 159 (Fla. 5th DCA 1996) (reversing trial court’s dismissal with prejudice of the plaintiff’s complaint on the basis it was served on the defendant beyond the 120 days of the date of filing the initial complaint)); Stoeffler v. Castagliola, 629 So. 2d 196, 198 (Fla. 2d DCA 1993) (holding: “Even though service of process against both [defendants] was invalid, the action against both should remain pending because service, although invalid, was made within the 120-day limit pursuant to Florida Rule of Civil Procedure 1.070(j)”) (citing Payette v. Clark, 559 So.

2d 630, 633 (Fla. 2d DCA 1990) (“When an invalid method of service is used, the proper 3 procedure is to quash the service and permit the action to remain pending.”)); see also Miranda v. Young, 19 So. 3d 1100, 1102 (Fla. 2d DCA 2009) (“[W]hen the statute of limitations has run and service has been perfected as of the date of the hearing on the motion to dismiss, a trial court abuses its discretion by not extending the time for service and dismissing the complaint.”) (citing Brown v. Ameri Star, Inc., 884 So.

2d 1065, 1067 (Fla. 2d DCA 2004) (“[I]t ordinarily is an abuse of discretion not to allow additional time for service of the summonses even in the absence of a showing of good cause or excusable neglect” if the order of dismissal is entered after the statute of limitations has run) and Kohler v. Vega–Maltes, 838 So. 2d 1249, 1250 (Fla. 2d DCA 2003) (“[W]here the statute of limitations has run and there has been no showing of good cause or excusable neglect, discretion should be exercised in favor of giving the plaintiff an extension of time to accomplish service.”)).

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. 4

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/florida-third-district-court-of-appeal-third-district-court-of-appeal-of-florida/2025/surf-consultants-inc-v-lizbeth-sanchez-iat7cfe0>