

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Highsmith v. Britten

Highsmith · No. 2D2025-0679 · Decided December 17, 2025

SUMMARY

The Florida Second District Court of Appeal held that Melissa Highsmith's motion to set aside a default judgment under Florida Rule of Civil Procedure 1.540(b)(3) sufficiently alleged fraud to warrant an evidentiary hearing. The court reversed the order denying the motion and remanded for further proceedings.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	Labrit; Silberman; Sleet
JURISDICTION	District Court of Appeal of Florida, Second District
DECIDED	December 17, 2025
DOCKET	2D2025-0679
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order denying without an evidentiary hearing a motion to set aside a default judgment under Florida Rule of Civil Procedure 1.540(b)(3).
PRECEDENTIAL VALUE	Published opinion
PARTIES	Melissa Highsmith v. Paul Britten, Garrett Highsmith

TOPICS

- default judgment
- default
- probate
- real estate
- civil procedure

PRACTICE AREAS

- civil procedure
- appellate procedure
- probate
- real estate

QUESTIONS PRESENTED

- Whether Highsmith's motion under Florida Rule of Civil Procedure 1.540(b)(3) sufficiently alleged fraud to establish a colorable entitlement to relief.

2. Whether the trial court erred by denying the rule 1.540(b)(3) motion without conducting an evidentiary hearing.

HOLDINGS

1. When a motion under Florida Rule of Civil Procedure 1.540(b) sets forth a colorable entitlement to relief, the trial court should conduct an evidentiary hearing to determine whether relief should be granted.
2. A motion under Florida Rule of Civil Procedure 1.540(b)(3) must specify the alleged fraud, misrepresentation, or misconduct with particularity and set forth essential facts entitling the movant to relief rather than mere legal conclusions.

KEY QUOTATIONS

“Generally, if a rule 1.540(b) motion ‘sets forth ‘a colorable entitlement to relief,’ the trial court should conduct an evidentiary hearing to determine whether such relief should be granted.’” (at 2)

“Where such a motion is based on fraud, misrepresentation, or misconduct of an adverse party under rule 1.540(b)(3)—as Ms. Highsmith’s was—the movant must specify the alleged fraud with particularity, setting forth essential facts that would entitle the movant to relief and not mere legal conclusions.” (at 2)

FACTUAL BACKGROUND

An individual with power of attorney over the plaintiff allegedly told Melissa Highsmith that the complaint was merely a legal formality and that she did not need to respond. Highsmith therefore did not file a response, and the plaintiff obtained a default judgment adjudicating him to be the fee simple owner of real property that Highsmith’s mother owned when she died. Highsmith alleged that the conduct was part of an orchestrated scheme to defraud her of her intestate interest in the property.

PROCEDURAL HISTORY

Melissa Highsmith timely moved under Florida Rule of Civil Procedure 1.540(b)(3) to set aside a default judgment, alleging fraud by an individual with power of attorney over the plaintiff. The Circuit Court for Hillsborough County denied the motion without holding a hearing. The Second District reversed and remanded for proceedings consistent with its opinion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for proceedings consistent with the opinion, including an evidentiary hearing on Highsmith’s rule 1.540(b)(3) motion.

CASES CITED

- *Cottrell v. Taylor, Bean & Whitaker Mortg. Corp.*, 198 So. 3d 688, 691 (Fla. 2d DCA 2016)
- *Chancey v. Chancey*, 880 So. 2d 1281, 1282 (Fla. 2d DCA 2004)
- *U.S. Bank Nat'l Ass'n v. Paiz*, 68 So. 3d 940, 944 (Fla. 3d DCA 2011)
- *Freemon v. Deutsche Bank Tr. Co. Ams.*, 46 So. 3d 1202, 1205 (Fla. 4th DCA 2010)
- *Casteel v. Maddalena*, 109 So. 3d 1252, 1256 (Fla. 2d DCA 2013)
- *Gulf Stream Boat Builders, Inc. v. S. Dade Boat, Inc.*, 583 So. 2d 807, 808 (Fla. 3d DCA 1991)
- *Am. Republic Ins. v. Westchester Gen. Hosp.*, 414 So. 2d 1163, 1163–64 (Fla. 3d DCA 1982)

OPINION

PER CURIAM.

DISTRICT COURT OF APPEAL OF FLORIDA SECOND DISTRICT MELISSA HIGHSMITH, Appellant, v. PAUL BRITTEN and GARRETT HIGHSMITH, Appellees. No. 2D2025-0679 December 17, 2025 Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Hillsborough County; Melissa M. Polo, Judge. Jeremy Roth of Roth Legal Counsel, Tampa (withdrew after briefing); Ciera C. Gainey of Matthew Law Group, Jacksonville (substituted as counsel of record), for Appellant.

Robert E. Biasotti and Brandon S. Vesely of The Florida Appellate Firm, P.A., St. Petersburg, for Appellee Paul Britten. No appearance for remaining Appellee. LABRIT, Judge. In the proceedings below, Melissa Highsmith timely filed a motion to set aside a default judgment under Florida Rule of Civil Procedure 1.540(b)(3).

The trial court denied her motion without a hearing. Ms. Highsmith argues that she was entitled to an evidentiary hearing because her motion sufficiently alleged a claim for relief based on fraud. We agree. Generally, if a rule 1.540(b) motion "sets forth 'a colorable entitlement to relief,' the trial court should conduct an evidentiary hearing to determine whether such relief should be granted."

See *Cottrell v. Taylor, Bean & Whitaker Mortg. Corp.*, 198 So. 3d 688, 691 (Fla. 2d DCA 2016) (quoting *Chancey v. Chancey*, 880 So. 2d 1281, 1282 (Fla. 2d DCA 2004)). Where such a motion is based on fraud, misrepresentation, or misconduct of an adverse party under rule 1.540(b)(3)—as Ms. Highsmith's was—the movant must specify the alleged fraud with particularity, setting forth essential facts that would entitle the movant to relief and not mere legal conclusions.

See *U.S. Bank Nat'l Ass'n v. Paiz*, 68 So. 3d 940, 944 (Fla. 3d DCA 2011); *Freemon v. Deutsche Bank Tr. Co. Ams.*, 46 So. 3d 1202, 1205 (Fla. 4th DCA 2010). Here, Ms. Highsmith's motion alleged that an individual with power of attorney over the plaintiff¹ told her that the complaint was "just a legal formality" and that she didn't need to file a response, so she didn't file one.

The plaintiff then obtained a default judgment that adjudged him to be the fee simple owner of real property that Ms. Highsmith's mother owned at the time of her death. Ms. Highsmith alleged that

this was part of an "orchestrated... plot and scheme to defraud" her of her intestate interest in her mother's property, and the motion explained this alleged scheme in detail.

While the motion does not mention what occurred in the proceedings after Ms. Highsmith was told not to file a response or 1 According to the appellee, Ms. Highsmith failed to allege misconduct of "an adverse party" sufficient to entitle her to relief under rule 1.540(b)(3), see *Casteel v. Maddalena*, 109 So. 3d 1252, 1256 (Fla. 2d DCA 2013), because this individual was acting on his own behalf and not on behalf of the plaintiff, see *Power of Attorney*, Black's Law Dictionary (12th ed 2024).

But Ms. Highsmith's motion is unclear on this point, and it presents a factual issue that this court cannot resolve on appeal. 2 indicate whether she had notice of the default judgment the plaintiff sought, we conclude that Ms. Highsmith's motion alleged just enough to warrant an evidentiary hearing. See *Gulf Stream Boat Builders, Inc. v. S. Dade Boat, Inc.*, 583 So.

2d 807, 808 (Fla. 3d DCA 1991); *Am. Republic Ins. v. Westchester Gen. Hosp.*, 414 So. 2d 1163, 1163–64 (Fla. 3d DCA 1982). We therefore reverse the order denying Ms. Highsmith's rule 1.540(b)(3) motion and remand for proceedings consistent with this opinion. Reversed and remanded. SILBERMAN and SLEET, JJ., Concur. Opinion subject to revision prior to official publication.