

THIRD DISTRICT COURT OF APPEAL OF FLORIDA

Neyman Ida Rojas v. Best Taxi Service Corporation, et al.

No. 3D24-0989 · No. 3D24-0989 · Decided September 3, 2025

SUMMARY

The Third District Court of Appeal of Florida held that the trial court erred by denying Neyman Ida Rojas’s motion to vacate a dismissal for lack of service without conducting an evidentiary hearing. The court reversed and remanded for an evidentiary hearing concerning Rojas’s claimed excusable neglect.

CASE DETAILS

COURT	Third District Court of Appeal of Florida
WRITING FOR THE COURT	Lindsey; Gordo; Bokor
JURISDICTION	Third District Court of Appeal of Florida
DECIDED	September 3, 2025
DOCKET	3D24-0989
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a non-final order of the Circuit Court for Miami-Dade County denying a motion to vacate a dismissal for lack of service after notice.
STANDARD OF REVIEW	Abuse of discretion
PRECEDENTIAL VALUE	Published
PARTIES	Neyman Ida Rojas v. Best Taxi Service Corporation, et al.

TOPICS

- civil procedure
- service of process
- appellate procedure
- standard of review

PRACTICE AREAS

- civil procedure
- appellate procedure
- remedies

QUESTIONS PRESENTED

1. Whether the trial court erred by denying a Rule 1.540(b) motion seeking relief from a dismissal based on excusable neglect without conducting an evidentiary hearing.

HOLDINGS

1. When a Rule 1.540(b) motion establishes a colorable entitlement to relief and the claim is raised and contested, the trial court must conduct an evidentiary hearing rather than summarily deny the motion.
2. Excusable neglect must be proven by sworn statements or affidavits.

KEY QUOTATIONS

“Where a motion under rule 1.540(b) sets forth ‘a colorable entitlement to relief,’ the trial court should conduct an evidentiary hearing to determine whether such relief should be granted.” (1)

“A motion for relief from judgment should not be summarily denied without an evidentiary hearing” (1)

“Where such a claim is raised and contested, the trial court abuses its discretion in failing to conduct an evidentiary hearing on the motion.” (1)

“Excusable neglect must be proven by sworn statements or affidavits.” (2)

FACTUAL BACKGROUND

The underlying action was dismissed for lack of service after notice. Rojas sought relief from the dismissal based on excusable neglect, but the trial court denied the motion without an evidentiary hearing despite the claim being raised and contested.

PROCEDURAL HISTORY

Rojas, the plaintiff below, moved under Florida Rule of Civil Procedure 1.540(b) to vacate a dismissal for lack of service, asserting excusable neglect. The trial court denied relief without conducting an evidentiary hearing, and Rojas appealed. The Third District Court of Appeal reversed and remanded for an evidentiary hearing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must conduct an evidentiary hearing on Rojas's Rule 1.540(b) motion.

CASES CITED

- Barton Protective Servs. v. Redmon, 387 So. 3d 353, 355-56 (Fla. 3d DCA 2023)
- Cottrell v. Taylor, Bean & Whitaker Mortg. Corp., 198 So. 3d 688, 691 (Fla. 2d DCA 2016)
- Schleger v. Stebelsky, 957 So. 2d 71, 73 (Fla. 4th DCA 2007)
- Oshana v. Lopiano, 314 So. 3d 311, 312 (Fla. 3d DCA 2020)

- Noel v. James B. Nutter & Co., 232 So. 3d 1112, 1116 (Fla. 3d DCA 2017)
- Elliott v. Aurora Loan Servs. LLC, 31 So. 3d 304, 307 (Fla. 4th DCA 2010)

OPINION

Neyman Ida Rojas v. Best Taxi Service Corporation

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed September 3, 2025. Not final until disposition of timely filed motion for rehearing. _____ No. 3D24-0989 Lower Tribunal No. 23-11344-CA-01 _____ Neyman Ida Rojas, Appellant, vs. Best Taxi Service Corporation, et al., Appellees. An Appeal from the Circuit Court for Miami-Dade County, David Craig Miller, Judge. Chad Barr Law, and Chad A. Barr (Altamonte Springs), for appellant. Michael S. Kaufman, for appellees. Before LINDSEY, GORDO, and BOKOR, JJ. PER CURIAM. Appellant Neyman Ida Rojas (Plaintiff below) appeals a non-final order denying his Motion to Vacate a Dismissal for lack of service after notice. Rojas requests reversal based on excusable neglect. The trial court denied Rojas relief without an evidentiary hearing. This was error. “Where a motion under rule 1.540(b) sets forth ‘a colorable entitlement to relief,’ the trial court should conduct an evidentiary hearing to determine whether such relief should be granted.” Barton Protective Servs. v. Redmon, 387 So. 3d 353, 355 (Fla. 3d DCA 2023) (quoting Cottrell v. Taylor, Bean & Whitaker Mortg. Corp., 198 So. 3d 688, 691 (Fla. 2d DCA 2016)). “A motion for relief from judgment should not be summarily denied without an evidentiary hearing” Id. (quoting Schleger v. Stebelsky, 957 So. 2d 71, 73 (Fla. 4th DCA 2007)). “Where such a claim is raised and contested, the trial court abuses its discretion in failing to conduct an evidentiary hearing on the motion.” Id. at 356 (citing Oshana v. Lopiano, 314 So. 3d 311, 312 (Fla. 3d DCA 2020)). “Excusable neglect must be proven by sworn statements or affidavits.” Noel v. James B. Nutter & Co., 232 So. 3d 1112, 1116 (Fla. 3d DCA 2017) (quoting Elliott v. Aurora Loan Servs. LLC, 31 So. 3d 304, 307 (Fla. 4th DCA 2010)). Based on the record before us, we reverse and remand for an evidentiary hearing. Reversed and remanded. 2