

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.

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

