

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH
DISTRICT

Regions Bank v. Austin & Laurato, P.A.

Regions Bank · No. 5D22-567 · Decided April 6, 2023

SUMMARY

The Florida Fifth District Court of Appeal held that Austin & Laurato, P.A.’s notice of voluntary dismissal was void because it was filed after a hearing on competing summary judgment motions. The court reversed the order denying Regions Bank’s motion for relief, directed the trial court to strike the notice of voluntary dismissal, and remanded for further proceedings.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fifth District
WRITING FOR THE COURT	Kilbane, J.; Edwards, J.; Harris, J.
JURISDICTION	Florida
DECIDED	April 6, 2023
DOCKET	5D22-567
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Regions Bank appealed the denial of its Florida Rule of Civil Procedure 1.540 motion seeking relief from Austin & Laurato, P.A.'s notice of voluntary dismissal, which was filed after the trial court had heard competing summary judgment motions and ruled in Regions's favor.
STANDARD OF REVIEW	A trial court's ruling on a Florida Rule of Civil Procedure 1.540(b) motion is generally reviewed for abuse of discretion; however, when the underlying judgment is void, the trial court has no discretion and must vacate it.
PRECEDENTIAL VALUE	published
PARTIES	Regions Bank v. Austin & Laurato, P.A.

TOPICS

- summary judgment
- civil procedure
- appellate procedure
- standard of review
- commercial litigation

PRACTICE AREAS

civil procedure

appellate procedure

commercial litigation

QUESTIONS PRESENTED

1. Whether a plaintiff may file a notice of voluntary dismissal under Florida Rule of Civil Procedure 1.420(a)(1) after a hearing on a motion for summary judgment.
2. Whether the trial court erred in denying Regions Bank's Rule 1.540 motion for relief from the post-summary-judgment notice of voluntary dismissal.

HOLDINGS

1. A notice of voluntary dismissal filed after a summary judgment hearing is a nullity and is therefore void.
2. When the underlying judgment or order is void, the trial court has no discretion under Rule 1.540(b)(4) and must grant appropriate relief.

KEY QUOTATIONS

"A notice of voluntary dismissal filed after a summary judgment hearing is a nullity." (at 3)

"Because Regions was deprived of a final judgment entitling it to the proceeds of the check to pay off its line of credit, plus interests and costs, Regions properly sought relief and the trial court erred in denying that relief." (at 3)

FACTUAL BACKGROUND

Phillip Davis obtained a sinkhole-damage settlement from State Farm, which issued a check payable jointly to Regions Bank, Davis, and Austin & Laurato, P.A. for the amount needed to pay off Davis's Regions line of credit. Austin & Laurato refused to endorse that check to Regions, claiming that its contingency fee had not been fully paid, and filed an action asserting quasi-contract and charging-lien claims. After the trial court ruled on competing summary judgment motions that Regions was entitled to the proceeds, Austin & Laurato filed a notice of voluntary dismissal.

PROCEDURAL HISTORY

Austin & Laurato filed an action involving its asserted charging lien and Regions Bank's entitlement to insurance settlement proceeds. After a summary judgment hearing, the trial court ruled that Regions was entitled to the relevant proceeds and reserved jurisdiction over interest and costs. Following non-binding arbitration, Austin & Laurato filed a notice of voluntary dismissal. The trial court denied Regions's motion to strike the notice, and the Fifth District reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Grant Regions Bank's Rule 1.540 motion, strike Austin & Laurato's notice of voluntary dismissal, and conduct further proceedings, including proceedings concerning Regions's entitlement to the proceeds, interest, and costs.

CASES CITED

- Phenion Dev. Grp., Inc. v. Love, 940 So. 2d 1179, 1181 (Fla. 5th DCA 2006)
- Gelinas v. Forest River, Inc., 931 So. 2d 970, 973 (Fla. 4th DCA 2006)
- Stonely v. Moore, 851 So. 2d 905, 906 (Fla. 3d DCA 2003)

OPINION

PER CURIAM.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT
NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED REGIONS BANK, Appellant, v. Case No. 5D22-567 LT
Case No. 2018-CA-000525-A-X AUSTIN & LAURATO, PA, Appellee.
_____/ Opinion filed April 6, 2023 Appeal from the Circuit
Court for Hernando County, Donald E. Scaglione, Judge.

Donald A. Mihokovich, of Adams and Reese LLP, Tampa, for Appellant. Robert M. Austin, of Austin & Laurato, PA, Tampa, for Appellee. KILBANE, J. Regions Bank ("Regions") appeals an order denying Regions's motion to strike Appellee's notice of voluntary dismissal. Regions contends that the voluntary dismissal was untimely and void as it was filed after summary judgment had been entered in favor of Regions.

We have jurisdiction. See Fla. R. App. P. 9.130(a)(5). We agree with Regions, and reverse and remand for entry of an order granting Regions's motion and for further proceedings. Facts In a prior action, Phillip Davis, represented on contingency fee by the law firm of Austin & Laurato, PA ("A&L"), obtained a sinkhole damage settlement from his homeowners insurer, State Farm Florida Insurance Company ("State Farm").

In accordance with the terms of the settlement, State Farm issued three checks totaling the amount of its dwelling coverage. The first check was for the amount needed to pay off the first mortgage on the home held by CitiBank and was made payable to Citibank, Davis, and A&L.

The second check was for the amount needed to pay off Davis's line of credit with Regions and was made payable to Regions, Davis, and A&L. The third check was for the remainder of the insurance proceeds and was made payable to Davis and A&L. A&L refused to endorse the Regions check over to Regions, contending that the check for the remainder paid only to A&L and Davis did not fully satisfy its contingency fee arrangement with Davis.

A&L then filed its complaint in the case below, containing counts for quasi-contract, an 2 equitable charging lien superior to Regions's prior mortgage lien, and a declaratory judgment that

A&L's charging lien had priority over Regions's mortgage lien.

The parties filed competing summary judgment motions. The trial court heard the motions, ruled that Regions was entitled to the proceeds of the second check, and reserved jurisdiction to determine interest and costs.

The court then ordered the parties to non-binding arbitration. Shortly after the arbitrator issued its decision, A&L first filed a notice of trial de novo and then filed a notice of voluntary dismissal of its complaint under Florida Rule of Civil Procedure 1.420(a)(1), in an attempt to deprive Regions of a final judgment granting it entitlement to the check proceeds, interest, and costs.

Regions filed a timely motion for relief from the notice of voluntary dismissal under Florida Rule of Civil Procedure 1.540, asserting that the notice was void because it was filed after an adverse summary judgment.

The trial court denied the motion and this appeal from that order followed. Analysis Generally, a trial court's decision on a rule 1.540(b) motion is reviewed for abuse of discretion, but when the underlying judgment is void, the trial court has no discretion; it is obligated to vacate the judgment. *Phenion Dev. Grp., Inc. v. Love*, 940 So. 2d 1179, 1181 (Fla.

5th DCA 2006). Florida Rule 3 of Civil Procedure 1.540(b)(4) permits a trial court to relieve a party from a "final judgment, decree, order, or proceeding" if the "judgment, decree, or order is void." Florida Rule of Civil Procedure 1.420(a)(1) permits a plaintiff to file a notice of voluntary dismissal, inter alia, "at any time before a hearing on motion for summary judgment." A notice of voluntary dismissal filed after a summary judgment hearing is a nullity.

Gelinas v. Forest River, Inc., 931 So. 2d 970, 973 (Fla. 4th DCA 2006); *Stonely v. Moore*, 851 So. 2d 905, 906 (Fla. 3d DCA 2003). Thus, A&L's notice of voluntary dismissal was void. Because Regions was deprived of a final judgment entitling it to the proceeds of the check to pay off its line of credit, plus interests and costs, Regions properly sought relief and the trial court erred in denying that relief.

Accordingly, we reverse and remand with instructions to grant the motion, strike the notice of voluntary dismissal, and conduct further proceedings. REVERSED and REMANDED. EDWARDS and HARRIS, JJ., concur. 4