

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Kozinski v. Phillips

126 So. 3d 1264 (Fla. 4th DCA 2013) · Decided November 20, 2013

SUMMARY

The Florida Fourth District Court of Appeal held that defective service of process, where the defendant received actual notice of the litigation, rendered the resulting default judgment voidable rather than void. Because the defendant moved to vacate the judgment more than one year after its entry, the motion was untimely. The court also held that the plaintiff was not required to file the original promissory note because the action was based on a fee agreement rather than the note.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Ciklin, J.; Warner, J.; Gerber, J.
JURISDICTION	Florida
DECIDED	November 20, 2013
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed an order vacating a default final judgment and quashing service of process under Florida Rule of Civil Procedure 1.540(b).
STANDARD OF REVIEW	An order granting a motion to vacate a default final judgment is reviewed for gross abuse of discretion; a ruling on personal jurisdiction is reviewed de novo.
PRECEDENTIAL VALUE	published binding opinion of the Florida Fourth District Court of Appeal
PARTIES	Kathleen G. Kozinski, P.A. v. Jill Phillips

TOPICS

service of process

default judgment

personal jurisdiction

civil procedure

appellate procedure

PRACTICE AREAS

civil procedure

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QUESTIONS PRESENTED

1. Whether defective but notice-producing service of process rendered the default judgment void or merely voidable, such that the one-year limitation for seeking relief under Florida Rule of Civil Procedure 1.540(b) applied.
2. Whether the judgment was void because Kozinski failed to attach or file the original promissory note before entry of final judgment.

HOLDINGS

1. Defective service of process that gives the defendant actual notice of the proceedings renders a judgment voidable, not void; therefore, a motion to vacate under Florida Rule of Civil Procedure 1.540(b) had to be filed within one year after entry of judgment.
2. The judgment was not void because Kozinski sued under the fee agreement rather than the promissory note and therefore was not required to attach or file the original note before entry of judgment.

KEY QUOTATIONS

“A total lack of service of process renders a judgment void, not voidable.” (126 So. 3d at 1268)

“Defective service of process, however, renders a judgment voidable.” (126 So. 3d at 1268)

“It is only where service is so defective as to amount to no notice that a judgment is void, because then there is a denial of due process.” (126 So. 3d at 1268)

“Because the defective service was sufficient to put Phillips on notice of the lawsuit against her, the one-year time limitation for voidable judgments applied and it was improper for the trial court to vacate the 2011 judgment almost two years after it was entered.” (126 So. 3d at 1268)

“Kozinski was not required to file the original promissory note in her lawsuit because she sued under the fee agreement, not the promissory note.” (126 So. 3d at 1269)

FACTUAL BACKGROUND

Kozinski represented Jill Phillips and Audre Phillips in trust litigation under a fee agreement requiring Jill Phillips to execute a promissory note and pay specified fees. Kozinski filed a complaint against Jill Phillips, attaching the fee agreement and promissory note; Phillips signed an acceptance of service and later signed a waiver of service, although the documents did not comply with statutory service requirements. Phillips received multiple notices of the lawsuit and the default-judgment hearing but did not appear, resulting in a \$450,000 default judgment. She moved to vacate the judgment approximately twenty-one months later.

PROCEDURAL HISTORY

Kozinski obtained a \$450,000 default final judgment against Jill Phillips. Approximately twenty-one months later, Phillips moved to vacate the judgment, arguing that service was defective and that Kozinski had not filed the original promissory note. The trial court deemed the judgment void, vacated it, quashed the acceptance and waiver of service, and allowed Kozinski 120 days to file a new complaint. The Fourth District reversed and remanded with instructions to reinstate the judgment.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court was instructed to reinstate the 2011 judgment in favor of Kozinski.

CASES CITED

- DND Mail Corp. v. Andgen Props., LLC, 28 So. 3d 111, 113 (Fla. 4th DCA 2010)
- Solmo v. Friedman, 909 So. 2d 560, 564 (Fla. 4th DCA 2005)
- Cannella v. Auto-Owners Ins. Co., 801 So. 2d 94, 100 (Fla. 2001)
- Decker v. Kaplus, 763 So. 2d 1229, 1230 (Fla. 5th DCA 2000)
- M.L. Builders, Inc. v. Reserve Developers, LLP, 769 So. 2d 1079, 1080 (Fla. 4th DCA 2000)
- State ex rel. Gore v. Chillingworth, 126 Fla. 645, 171 So. 649, 652 (1936)
- Paleias v. Wang, 632 So. 2d 1132, 1135 (Fla. 4th DCA 1994)
- Craven v. J.M. Fields, Inc., 226 So. 2d 407, 410 (Fla. 4th DCA 1969)