

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Perez v. Perez

519 So. 2d 1104 (Fla. 3d DCA 1988) · No. No. 87-1203 · Decided February 9, 1988

SUMMARY

The Florida Third District Court of Appeal reversed a dissolution judgment entered after the husband's default. The court identified multiple defects, including failure to plead Florida residency, lack of notice of the hearing, improper custody relief, and an unsupported award of the husband's interest in the marital home.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Per curiam; Schwartz, C.J.; Hubbart, J.; Daniel S. Pearson, J.
JURISDICTION	Florida
DECIDED	February 9, 1988
DOCKET	No. 87-1203
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from a judgment of dissolution entered after a hearing following the entry of a default.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Rafael Perez v. Elizabeth Perez

TOPICS

- dissolution of marriage
- family law procedure
- default judgment
- subject matter jurisdiction
- due process

PRACTICE AREAS

- family law
- civil procedure
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

- Whether the trial court had subject matter jurisdiction when the dissolution complaint failed to allege that either party had been a Florida resident for the statutory period.
- Whether entry of judgment after a hearing without notice to the defaulted husband violated due process.

3. Whether a default dissolution judgment could award custody-related relief when the complaint failed to comply with the statutory jurisdictional requirements and did not request custody.
4. Whether a default dissolution judgment could award the husband's interest in the marital home when the complaint did not demand that relief.

HOLDINGS

1. The failure of the complaint to allege that either party was a Florida resident for the statutory period deprived the trial court of subject matter jurisdiction over the cause.
2. The husband's failure to receive notice of the hearing deprived him of the basic requirements of due process.
3. The custody portion of the judgment was erroneous because the complaint did not comply with sections 61.1308 or 61.132, Florida Statutes (1985), and because the relief was not sought in the complaint and therefore could not be awarded in a default proceeding.
4. The award of the husband's interest in the marital home to the wife was improper because the complaint did not demand that relief.

KEY QUOTATIONS

“The judgment of dissolution entered after hearing following the entry of a default is reversed in its entirety for numerous reasons” (1104)

“the appellant husband's failure to receive notice of the hearing deprived him of the basic requirements of due process” (1104)

FACTUAL BACKGROUND

A judgment of dissolution was entered after the husband had defaulted and a hearing was held. The complaint did not allege the required Florida residency, did not adequately address statutory child-custody jurisdiction requirements, and did not seek either custody relief or an award of the husband's interest in the marital home. The husband also did not receive notice of the hearing.

PROCEDURAL HISTORY

The trial court entered a judgment dissolving the parties' marriage after a hearing held following the husband's default. The husband appealed, and the District Court of Appeal reversed the judgment in its entirety for multiple jurisdictional, due-process, pleading, and relief-related errors.

DISPOSITION

reversed

CASES CITED

- Beekman v. Beekman, 53 Fla. 858, 43 So. 923 (1907)

- Gredler v. Gredler, 36 Fla. 372, 18 So. 762 (1895)
- Buffington v. Torcise, 504 So. 2d 490 (Fla. 3d DCA 1987)
- Heritage Casket & Vault Ind., Inc. v. Sunshine Bank, 428 So. 2d 341 (Fla. 1st DCA 1983)
- Cortina v. Cortina, 98 So. 2d 334 (Fla. 1957)
- Barreiro v. Barreiro, 377 So. 2d 999 (Fla. 3d DCA 1979)
- Matthews v. Matthews, 376 So. 2d 484 (Fla. 3d DCA 1979)
- Hernandez v. Hernandez, 444 So. 2d 35 (Fla. 2d DCA 1983), review denied, 451 So. 2d 848 (Fla. 1984)
- Williams v. Williams, 227 So. 2d 746 (Fla. 2d DCA 1969)

OPINION

PER CURIAM.

519 So. 2d 1104 (1988) Rafael PEREZ, Appellant, v. Elizabeth PEREZ, Appellee. No. 87-1203. District Court of Appeal of Florida, Third District. February 9, 1988. Karlan & Gerson and Charlotte Karlan, Miami, for appellant. Mark Friedman, Miami Beach, for appellee.

Before SCHWARTZ, C.J., and HUBBART and DANIEL S. PEARSON, JJ. SCHWARTZ, Chief Judge. The judgment of dissolution entered after hearing following the entry of a default is reversed in its entirety for numerous reasons, of which the most prominent are (a) the failure of the complaint to allege that either party was a resident of Florida for the statutory period deprived the court of jurisdiction over the subject matter of the cause, *Beekman v. Beekman*, 53 Fla. 858, 43 So.

923 (1907); *Gredler v. Gredler*, 36 Fla. 372, 18 So. 762 (1895); (b) the appellant husband's failure to receive notice of the hearing deprived him of the basic requirements of due process, *Buffington v. Torcise*, 504 So. 2d 490 (Fla. 3d DCA 1987); *Heritage Casket & Vault Ind., Inc. v. Sunshine Bank*, 428 So. 2d 341 (Fla. 1st DCA 1983); see also *Cortina v. Cortina*, 98 So.

2d 334 (Fla. 1957); *Barreiro v. Barreiro*, 377 So. 2d 999 (Fla. 3d DCA 1979); *Matthews v. Matthews*, 376 So. 2d 484 (Fla. 3d DCA 1979); (c) that portion of the judgment granting "custody" of the parties' child was plainly erroneous both because the complaint did not comply with section 61.1308 or 61.132, Florida Statutes (1985), and because the relief granted was not sought in the complaint and therefore could not be awarded in a proceeding by default, *Hernandez v. Hernandez*, 444 So.

2d 35 (Fla. 2d DCA 1983), pet. for review denied, 451 So. 2d 848 (Fla. 1984); see also *Williams v. Williams*, 227 So. 2d 746 (Fla. 2d DCA 1983); and (d) the award of the husband's interest in the marital home to the wife was similarly not supported by any such demand in the complaint. Reversed.

