IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502019AP000058CAXXMB
L.T. NO.: 502018CC008458XXXXMB

ROGER QUISENBERRY,
Appellant,

v.

MANDY BALDWIN,
Appellee.
_____/

Opinion filed: July 29, 2020

Appeal from the County Court in and for Palm Beach County;
Judge Paige Gillman.

For Appellant: James D. Ryan, Esq., Lauren J. Schindler, Esq.
636 U.S. Highway One, Suite 110
North Palm Beach, FL 33408
jdr@ryanlawgroup.net, sue@ryanlawgroup.net, lauren@ryanlawgroup.net

For Appellee: Allegra Fung, Esq.
2541 Metrocentre Blvd., Suite 3
West Palm Beach, FL 33407
service@kortepa.com, afung@kortepa.com

PER CURIAM.

Appellant, Roger Quisenberry, appeals the trial court's entry of a Final Judgment, which assessed attorneys' fees and costs in favor of Appellee, Mandy Baldwin. On appeal, Appellant

asserts that the trial court's entry of final judgment—and several orders leading up to such—are void, as they allegedly deprived Appellant of procedural due process. We hold that this Court is without jurisdiction to consider the August 9, 2018 "Order Regarding Dismissal" and the August 31, 2018 "Order Denying Plaintiff's Motion for Emergency Hearing on Eviction for New Defendant," as both orders constituted final appealable orders for which Appellant did not timely appeal. However, we hold that the trial court improperly granted final judgment assessing attorneys' fees and costs, requiring reversal as to that order alone.

BACKGROUND

On July 17, 2017, Appellant filed a Complaint for Eviction ("Complaint") against Appellee. After Appellee responded, the court entered an "Order Setting Mandatory Meditation and Rent Determination Hearing on Complaint for Eviction" ("Mediation Order") for August 9, 2019. However, the court did not send the Mediation Order to Appellant's correct mailing address. After Appellant unsurprisingly failed to appear for mediation, the trial court entered an "Order Regarding Dismissal" ("Dismissal Order"), where it dismissed the case without prejudice for Appellant's failure to prosecute and directed the Clerk to close the case file. The Dismissal Order, too, was sent to Appellant's incorrect mailing address.

Appellee subsequently filed a Motion to Tax Attorney's Fees and Costs ("Fee Motion").[1] Appellant thereafter filed an emergency motion on August 30, 2018, seeking the eviction of an unknown tenant. Despite its seemingly unrelated nature, Appellant briefly stated in his motion that he did not receive any court papers nor any notice of the August 9, 2018 mediation hearing. However, on August 31, 2018, the trial court issued an "Order Denying Plaintiff's Motion for Emergency Hearing on Eviction for New Defendant" ("Order Denying Emergency Motion") and

[1] At all times, Appellee sent her motions to Appellant's correct mailing address.

once more sent the order to an incorrect mailing address for Appellant.

Several months later, on January 2, 2019, Appellee filed a Notice of Special Set Hearing, notifying Appellant that she scheduled her Fee Motion to be heard on January 16, 2019. Appellee filed another Notice of Special Set Hearing, stating that she was scheduling her Fee Motion to be heard on February 12, 2019.[2] On February 12, 2019, the court entered an order resetting the evidentiary hearing on Appellee's Fee Motion to March 6, 2019. This Order was also sent to Appellant's incorrect address.

The evidentiary hearing on the Fee Motion took place on March 6, 2019, and—after Appellant failed to show—the trial court entered an Order on Defendant's Motion to Tax Attorney's Fees and Cost[s]" ("Fee Order"), granting Appellee entitlement to $4,515.00 in attorney's and expert fees. Importantly, the Fee Order was the first Order the trial court sent to Appellant's correct mailing address. Shortly thereafter, on March 12, 2019, the trial court entered a Final Judgment against Appellant, awarding Appellee $4,515.00 in attorney's fees and costs at an interest rate of 4.75% per year. (R. at 34–35.) On March 22, 2019, the court amended the interest rate in the Final Judgment. Appellant thereafter timely filed a Notice of Appeal on April 11, 2019, seeking review of the Final Judgment.

ANALYSIS

On Appeal, Appellant asserts the following orders are void: (1) the August 9, 2019 Dismissal Order; (2) the August 31, 2019 Order Denying Emergency Motion; and (3) the Final Judgment. Appellant asserts these orders were entered without notice, which deprived him of due process. We review whether an order or judgment is void under a de novo standard of review. *Vercosa v. Fields*, 174 So. 3d 550, 552 (Fla. 4th DCA 2015); *Sanchez v. Sanchez*, 285 So. 3d 969,

[2] Despite filing an Amended Motion two days earlier, the Notice of Special Set Hearing refers to the original Motion to Tax Attorney's Fees and Costs.

972 n.4 (Fla. 3d DCA 2019).

1. Prior Orders

We first address Appellant's argument that the Final Judgment is void because the orders upon which it is based were entered without due process. Pursuant to Florida Rule of Appellate Procedure 9.110(b), an appellant must file a notice of appeal within thirty (30) days "of rendition of the order to be reviewed." Fla. R. App. P. 9.110(b). "Multiple final orders may be reviewed by a single notice, if the notice is timely filed *as to each such order*." Fla. R. App. P. 9.110(h) (emphasis added). "[A] late-filed appeal is not the appropriate procedure to seek relief from . . . a void order." *Nogales v. Countrywide Home Loans, Inc.*, 100 So. 3d 1161, 1163 (Fla. 2d DCA 2012). "[T]he time to file [an] appeal is not extended even if the rendered order is actually void ab initio." *Id.*

Here, Appellant seeks to collaterally attack several orders outside of the jurisdictional time limit. Although the appeal of the Final Judgment itself is timely, the Dismissal Order, which dismissed the case without prejudice and closed the case file, was a final order that ended all judicial labor and could have been appealed. *See Delgado v. J. Byrons, Inc.*, 877 So. 2d 822, 823 (Fla. 4th DCA 2004) ("If the effect of the order is to dismiss the case . . . the language 'without prejudice' would not affect the finality of the order."). Moreover, the Order Denying Emergency Motion, whether characterized as a motion for rehearing or a motion for relief from judgment, also constituted a final appealable order. Therefore, because Appellant did not appeal either the Dismissal or the Order Denying Emergency Motion, we hold that we are without jurisdiction to consider either order.

However, we note that Appellant is not without recourse as to those orders. "The failure to file . . . an appeal does not prevent the aggrieved party from seeking collateral relief from an

order that is void ab initio by an authorized motion in an authorized court." *Nogales*, 100 So. 3d at 1162. A party seeking relief from a void order may file a rule 1.540 motion with the lower court. *See De La Osa v. Wells Fargo Bank, N.A.*, 208 So. 3d 259, 264–65 (Fla. 3d DCA 2016). As Appellee concedes in her Answer Brief, "[c]ollateral attacks on void judgments must be carried out in the trial court via a Rule 1.540(b)(4) motion." Thus, we hold that Appellant may challenge the validity of the Dismissal Order and the "Order Denying Plaintiff's Motion for Emergency Hearing on Eviction for New Defendant" through a rule 1.540(b)(4) motion in the court below.[3]

2. Final Judgment

Appellant also asserts the Final Judgment itself was entered without notice. In Florida, a party is entitled to notice and an opportunity to be heard when damages are unliquidated, and "[a] judgment entered without such notice and opportunity to be heard is void." *Vercosa v. Fields*, 174 So. 3d 550, 552 (Fla. 4th DCA 2015). "A final judgment is void where the notice of hearing that resulted in the judgment was sent to an *incorrect address* and, as a result, the defendant failed to receive notice." *Greisel v. Gregg*, 733 So. 2d 1119, 1121 (Fla. 5th DCA 1999) (emphasis in original). "While proof of mailing normally raises a rebuttable presumption that the mailed item was received, no such presumption arises when there is no evidence that the mailed item was sent to the *correct* address." *Ciolli v. City of Palm Bay,* 59 So. 3d 295, 297 (Fla. 5th DCA 2011) (emphasis in original).

Here, on February 12, 2019, the court entered an Order Re-Setting Hearing on Defendant's

[3] We are cognizant that Appellant sought relief in the lower court pursuant to a rule 1.540(a) motion, and note that this Court previously relinquished jurisdiction for the trial court to consider such motion. However, the trial court ultimately denied the motion. Although we do not reach the propriety of the trial court's decision, we note that Appellant may still seek appropriate relief in the trial court below following the issuance of this Opinion. We further note that Appellant's June 22, 2020 "Motion to Vacate the Trial Court Order Denying Relief under Rule 1.540, Alternatively for Certiorari Relief Quashing the Order," in which Appellant seeks to invoke this Court's appellate jurisdiction to review the trial court's denial of the rule 1.540(a) motion under his initial Notice of Appeal, is inappropriate.

Motion for Attorney's Fees, setting an evidentiary hearing for March 6, 2019. (R. at 90–91.) The order, however, was sent to an incorrect mailing address for Appellant. Because the Order contained error on its face, as it was sent to Appellant's incorrect mailing address, we hold that the trial court's entry of Final Judgment must be reversed.[4]

Although Appellee argues that Appellant was present at both the February 12 , 2019 and March 6, 2019 hearings, we note that this Court previously relinquished jurisdiction to consider Appellant's rule 1.540(a) motion, and, if necessary, to allow the parties to prepare a statement of evidence concerning Appellant's presence at both hearings. Yet, after the trial court denied the rule 1.540(a) motion below, Appellee filed a notice with this Court stating the issue stands fully briefed and ripe for resolution. Because the only evidence before this Court is an order which is demonstrably incorrect—containing both an incorrect service address for Appellant as well as reference to counsel that Appellant did not have—we find that Appellee has waived the issue and that reversal is appropriate as to the Final Judgment alone.

CONCLUSION

Accordingly, we **REVERSE** the trial court's entry of Final Judgment, which assessed attorney's fees and costs in favor of Appellee and **REMAND** to the trial court for proceedings consistent with this Opinion. Because we reverse the entry of Final Judgment, we conditionally **GRANT** Appellant's Motion for Attorney's Fees & Costs filed pursuant to sections 83.48 and 57.105(7), Florida Statutes, contingent upon Appellant prevailing in the trial court below, and **DENY** Appellee's Motion to Tax Appellate Fees & Costs.

GOODMAN, J. KEYSER, and CURLEY, JJ., concur.

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[4] We also note that the trial court's February 12, 2019 order stated that "[b]oth Plaintiff's counsel and Defendant were present." This language appears to be in error, as Appellant—the Plaintiff below—was apparently not represented by counsel until April of 2019.