

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

FLORIDA CALIPER MANUFACTURERS,  
INC., and CARL SHUHI,

Appellants,

v.

CARL A. CASCIO, P.A.

Appellee.

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APPELLATE DIVISION (CIVIL)  
CASE NO. 502007AP000081XXXXMB  
L.T. 502001CC014605XXXXMB  
DIVISION "AY"

Opinion filed: **JUN 19 2003**

✓ **Appeal from the County Court in and for Palm Beach County,  
Judge Janis Brustares Keyser.**

✓ For Appellants: Jeff M. Brown and Chad L. Silverman, Esqs., 750 South Dixie Highway,  
Boca Raton, FL 33432.

✓ For Appellee: Carl A. Cascio, Esq., 525 NE 3<sup>rd</sup> Avenue, Suite 102,  
Delray Beach, FL 33444.

**REVERSED AND REMANDED.**

This is an appeal from an order effectively denying a motion to vacate a void final judgment.

We reverse.

In 2001, appellee, Carl A. Cascio, P.A., filed a suit for collection of unpaid attorney's fees against appellants, Florida Caliper Manufacturers, Inc. and Carl J. Shuhi. Appellants failed to appear at a pre-trial conference and the trial court entered a default. The trial court subsequently entered a final judgment against appellants.

Five years later, in 2006, appellants filed a motion to vacate the final judgment, alleging that they had not received copies of the orders setting the pre-trial conference or entering the default. The

clerk's docket reflected that the trial court's orders were returned as undelivered. The trial court initially granted the motion to vacate, specifically citing, without comment, *M.L. Builders, Inc. v. Reserve Developers, LLP*, 769 So. 2d 1079 (Fla. 4th DCA 2000).

Cascio then filed a motion for rehearing and/or reconsideration, alleging that appellants did not move to vacate the final judgment within a reasonable time. According to Cascio, appellants were aware of the final judgment at least as early as 2004, when Florida Caliper filed for bankruptcy and Cascio filed a claim as a judgment creditor in the bankruptcy proceeding. The trial court granted Cascio's motion, holding that appellants failed to move to vacate the final judgment within a reasonable time as contemplated by Florida Rule of Civil Procedure 1.540(b). The trial court also cited, without comment, *Polani v. Payne ex rel. Prudential Prop. & Cas. Co.*, 654 So. 2d 202 (Fla. 4th DCA 1995), and *Osceola Farms Co. v. Sanchez*, 238 So. 2d 477 (Fla. 4th DCA 1970). Accordingly, the trial court set aside its order vacating the final judgment, and reinstated the final judgment.

Inherent in both of the orders below is the trial court's finding that appellants did not have notice of the proceedings leading to the entry of final judgment against them. That is, the trial court initially vacated the final judgment because appellants did not have notice, and the trial court's reinstatement of the final judgment apparently occurred based on the trial court's finding that appellants did not move to vacate the final judgment within a reasonable time, not because the trial court receded from its initial finding of lack of notice. This court will not disturb the finding of lack of notice.

Because a judgment entered without notice is void and may be attacked at any time, the trial court's initial decision to rely upon *M.L. Builders* to vacate the final judgment was correct. In *M.L. Builders*, the Fourth District Court of Appeal held, "While it is true that Rule 1.540(b)(4) states that

a motion for relief from a void judgment must be made within a 'reasonable time,' most courts have felt constrained to interpret the 'reasonable time' requirement of the rule to mean no time limit when the judgment attacked is void." 769 So. 2d at 1081 (citation omitted). Addressing its previous opinions, the Fourth District added that, while there is language in *Polani* and *Osceola* which can be interpreted as holding that a particular limitation applies to the time in which a motion to vacate a void judgment must be filed, those cases are, to that extent, inconsistent with Florida Supreme Court authority:

A void judgment is a nullity, ... and is subject to collateral attack and may be stricken at any time. The passage of time cannot make valid that which has always been void but it can and often does render valid that which was merely voidable or erroneously entered.

769 So. 2d at 1082, quoting *Ramagli Realty Co. v. Craver*, 121 So. 2d 648, 654 (Fla. 1960).

Accordingly, we reverse and remand with instructions for the trial court to vacate the judgment against appellants.

GERBER, MCCARTHY, and FRENCH, JJ., concur.