

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

RANDOLPH WILLIAMS,
Appellant,

APPELLATE DIVISION (CIVIL): AY
CASE NO: 2015-AP-000078-CAXXMB
L.T. NO: 2015-SC-004386-XXXXMB

v.

CITY TOWING, L.L.C.,
Appellee.

_____ /

Opinion filed: **DEC 14 2016**

Appeal from the County Court in and for Palm Beach County,
Judge Frank Castor

For Appellant: Randolph Williams, *pro se*, 2810 SE 5th Circle, Boynton Beach, FL
33435

For Appellee: City Towing LLC (No Appearance), 506 NE 3rd St., Boynton
Beach, FL 33435

PER CURIAM.

This is an appeal from a summary disposition entered pursuant to Florida Small Claims Rule 7.135. Appellant/Plaintiff, Randolph Williams (“Williams”), filed a small claims action against Appellee/Defendant, City Towing LLC (“City Towing”), alleging that City Towing illegally towed his vehicle. Williams sought compensation for: (1) the bond posted for the retrieval of his vehicle, and; (2) the daily cost associated with the tow of his vehicle. In a written order entering summary disposition after the pre-trial conference, the trial court determined that no triable issues existed.

On appeal, Williams raises multiple factual and legal arguments, asserting it was error to enter summary disposition in favor of City Towing. We find that the trial court erred in entering summary disposition because the record reflects that it did not consider Williams’ pending claim

for per diem damages during the period of time in which City Towing was in possession of his vehicle.

The trial court's order entering summary disposition recites all of the relevant facts:

Defendant towed a vehicle owned by Plaintiff. On the date the vehicle was towed, Defendant did not know who the owner of the vehicle was. Plaintiff had the vehicle title issued on May 12, 2015, the same day the vehicle was towed. Plaintiff posted a bond to have the vehicle released in the amount of \$123.00. The Clerk of Court properly issued a Certificate for the release of the vehicle pursuant to F.S. 713.78. While Defendant did not initially comply with the release of the vehicle, it was released after the Court issued an Order threatening Defendant with contempt.

Williams initially filed a statement of claim in small claims court, seeking only \$123.00 in damages for the amount of the bond, but he subsequently filed an Amended Complaint,¹ in which he alleged that City Towing would not release his car despite posting the \$123.00 bond with the Clerk's Office. In the Amended Complaint, Williams not only sought compensation for the \$123.00 bond, but also damages of eighty dollars (\$80.00) per day that City Towing unlawfully retained the vehicle.

A pre-trial conference was held, but there is no transcript of the conference in the record on appeal. In its Final Judgment, the trial court determined that no triable issues existed and entered summary disposition in favor of City Towing:

Pursuant to Fl. Sm. Cl. R. 7.135, it is ORDERED AND ADJUDGED that Defendant is entitled to the \$123.00 posted into the Court Registry. The Clerk shall disburse the funds in the Court Registry to Defendant, less Clerk fees, forthwith. No additional fees or costs are awarded to either party.

Williams appeals this Final Judgment and raises multiple factual and legal issues, some of which we affirm without comment. One overarching argument in Williams' brief, however, is

¹ Although styled as an amended complaint rather than an amended statement of claim, the case remained within the jurisdictional limits of small claims court and therefore continued to be governed by the Florida Small Claims Rules.

that the trial court erred by entering summary disposition at the pre-trial conference because triable issues existed.

We begin our analysis by clarifying the appellate standard of review for a summary disposition, as there is no binding precedent on this issue and there is disagreement between at least two circuit courts.

A. Standard of Review for Summary Disposition.

Florida Small Claims Rule 7.135 is titled “Summary Disposition,” and provides that “[a]t pre-trial conference or at any subsequent hearing, if there is no triable issue, the court shall summarily enter an appropriate order or judgment.” In small claims court, the parties are not required to file a formal motion for summary disposition with attached evidence prior to the pre-trial conference. *Compare* Fla. R. Civ. P. 1.510 (requiring written motion for summary judgment with attached evidence) *with* Fla. Sm. Cl. R. 7.090 (outlining purpose and procedure for small claims pre-trial conference) and Fla. Sm. Cl. R. 7.020 (does not adopt Florida Rule of Civil Procedure 1.510 for small claims court). Rather, the Small Claims Rules simply require a pre-trial conference, which is an opportunity for the trial judge to determine whether the issues may be simplified prior to trial, or whether any triable issues even exist. If the pre-trial conference reveals that there are no disputed issues of fact and that one side is entitled to judgment as a matter of law, then the trial court is required to summarily enter a judgment under Rule 7.135.

In *Jackson v. Wells Fargo Home Mortgage, Inc.*, the Sixth Judicial Circuit of Florida analogized summary disposition to summary judgment. 12 Fla. L. Weekly Supp. 188a (Fla. 6th Cir. Ct. Aug. 9, 2004). “Small Claims Rule 7.135 . . . does provide a procedural mechanism for the trial court to consider a motion for summary judgment without the need to invoke the Florida Rules of Civil Procedure.” *Id.* (citing *Bloodworth v. Int’l Auto City, Inc.*, 10 Fla. L. Weekly

Supp. 1046b (Fla. 17th Cir. Ct. Aug. 29, 2003)). Thus, by analogy, the entry of summary disposition would be subject to a de novo standard of review. *See, e.g., Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000).

The Seventeenth Judicial Circuit disagrees, and has held that summary disposition is not akin to summary judgment and should be reviewed under an abuse of discretion standard. *United Auto. Ins. Co. v. Hallandale Open MRI, LLC*, 21 Fla. L. Weekly Supp. 399d (Fla. 17th Cir. Ct. December 11, 2013). In that case, the Seventeenth Circuit held:

[A]fter review of Florida Small Claim Rule 7.135 . . . the court finds summary disposition is distinct from summary judgment. Rule 7.135 allows a trial judge to summarily dispose of an action “if there is no triable issue.” *Fla. Sm. Cl. R. 7.135*. Specifically, the rule provides that “[a]t pretrial conference or at any subsequent hearing, if there is no triable issue, the court shall summarily enter an appropriate order or judgment.” *Id.* (emphasis added). In deciding whether there is a triable issue, the trial court is given broad authority to determine whether there is a triable issue. Accordingly, Rule 7.135 permits a trial judge to weigh the evidence submitted by the parties in support of and in opposition to summary disposition, reviewed for abuse of discretion. The court is not inclined to set forth a list of the evidence that a trial court may consider when presented with a motion for summary disposition, but leave the issue to the discretion of the lower court.

Id. This decision was appealed to the Fourth District Court of Appeal, where the court “question[ed] the circuit court’s statement that Florida Small Claims Rule 7.135 ‘permits a trial judge to weigh the evidence submitted by the parties in support of and in opposition to summary disposition.’” *United Auto. Ins. Co. v. Hallandale Open MRI, LLC*, 145 So. 3d 997, 997 (Fla. 4th DCA 2014). The Fourth District Court of Appeal, however, declined to expressly reach that issue. *Id.*

In alignment with both the Fourth District Court of Appeal’s dicta in *United Automobile Insurance Co.* and the reasoning of the Sixth Judicial Circuit, we hold that summary disposition

standard for reviewing a summary disposition is contrary to the principle that a judgment entered pre-trial should be subject to a heightened level of appellate scrutiny as a matter of due process, compared to a judgment entered after a full and fair trial on the merits. *See Bush v. State Farm Fire & Cas. Co.*, 711 So. 2d 68, 69 (Fla. 2d DCA 1998) (citing *Bifulco v. State Farm Mutual Auto Ins. Co.*, 693 So. 2d 707, 709 (Fla. 4th DCA 1997)) (“The strict procedural requirements for summary judgment motions contained in Florida Rule of Civil Procedure 1.510 are designed to protect a litigant’s constitutional right to a trial on the merits of a particular claim.”). Accordingly, we will review the trial court’s entry of summary disposition under a *de novo* standard of review.

B. Effect of the Lack of a Transcript in Reviewing the Entry of Summary Disposition.

In a *de novo* review of the entry of summary judgment, the appellate court must determine whether a genuine issue of material fact exists and whether the moving party is entitled to a judgment as a matter of law. *Chhabra v. Morales*, 906 So. 2d 1261, 1262 (Fla. 4th DCA 2005). Although a summary disposition is legally analogous to summary judgment, the procedural mechanics of Rule 7.135 differ substantially from Rule 1.510. In a motion for summary judgment, the movant must file a motion and attach all evidence demonstrating a lack of triable factual issues. Fla. R. Civ. P. 1.510. In contrast, summary disposition is entered *sua sponte* by the trial court at a pretrial conference upon hearing the parties’ explanations of their positions. Although Rule 7.090 does not expressly state this, it is implied given that the court is required to consider the following matters at the pretrial conference:

1. The simplification of issues.
2. The necessity or desirability of amendments to the pleadings.
3. The possibility of obtaining admissions of fact and of documents that avoid unnecessary proof.
4. The limitations on the number of witnesses.
5. The possibilities of settlement.

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5. The possibilities of settlement.
6. Such other matters as the court in its discretion deems necessary.

Fla. Sm. Cl. R. 7.090(b). Although it is not evidentiary in nature, the parties clearly must orally discuss the evidence that they intend to present in order to fulfill the purpose of the pre-trial conference.

This oral discussion of the evidence complicates a *de novo* review of the entry of summary disposition when the pre-trial conference is not transcribed. *Cf. Gonzalez v. Chase Home Fin. LLC*, 37 So. 3d 955, 958-59 (Fla. 3d DCA 2010) (holding that a transcript of a summary judgment hearing is unnecessary for appellate review because the required record consists of the motion and papers filed rather than the parties' legal argument at the hearing). It is well-established that the decision of the trial court has the presumption of correctness on appeal and the burden is on the appellant to demonstrate error. *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979). Nevertheless, an appellate court may reverse an order or judgment even in the absence of an adequate record where such order or judgment is fundamentally erroneous on its face. *Kanter v. Kanter*, 850 So. 2d 682, 684 (Fla. 4th DCA 2003). Given the lack of a transcript of the pre-trial conference, we must determine whether the Final Judgment is fundamentally erroneous in light of the limited record available.

C. The Order is Fundamentally Erroneous Because the Record Indicates that a Triable Issue Exists

In the instant case, the trial court wrote a detailed Final Judgment reciting the facts as presumably described by the parties at the pre-trial conference; the facts also match those alleged in Williams' pleadings. The determination that there is no triable issue regarding City Towing's

entitlement to the \$123.00 bond is presumed correct and cannot be disturbed under the record before this Court. We therefore affirm that portion of the Final Judgment.

The Order is silent, however, as to Williams' claim in his Amended Complaint for per diem damages during the time City Towing was in possession of his vehicle. The trial court found that the Clerk properly issued a certificate for the vehicle's release pursuant to section 713.78, Florida Statutes,² and that City Towing "did not initially comply with the release of the vehicle" and "released [the vehicle] after the Court issued an Order threatening [City Towing] with contempt." This finding in the Final Judgment that City Towing was unlawfully holding Williams' vehicle once it failed to release it upon being presented with the Clerk's certificate is inconsistent with the Final Judgment that does not address the amended claim of Williams seeking damages for unlawful retention of his property. In other words, if City Towing unlawfully held Williams' vehicle after being presented with the Clerk's certificate, then Williams may be entitled to reasonable per diem damages for those days City Towing unlawfully held the vehicle. However, the trial court did not address this issue in its order. Although generally the Court would defer to the trial court given the lack of a transcript and affirm its entry of summary disposition, in this instance, the trial court's detailed explanation of the posture of this case does not address Williams' pending claim of per diem damages. Therefore, the

² Section 713.78 governs liens for recovering, towing, or storing vehicles and vessels. Section 713.78(5)(b) provides in pertinent part:

[The] owner or lienholder [of a confiscated vehicle] may have her or his vehicle or vessel released upon posting with the court a cash or surety bond or other adequate security equal to the amount of the charges for towing or storage and lot rental amount to ensure the payment of such charges in the event she or he does not prevail. Upon the posting of the bond and the payment of the applicable fee set forth in s. 28.24, the clerk of the court shall issue a certificate notifying the lienor of the posting of the bond and directing the lienor to release the vehicle or vessel.

record appears inconsistent with the Final Judgment on the issue of whether this triable issue existed.

Accordingly, the trial court's entry of summary disposition pursuant to Florida Rule of Small Claims Court 7.135 is **REVERSED** in part. We **REMAND** this case for a pretrial conference to determine whether a triable issue exists regarding Williams' claim for per diem damages based upon unlawful retention of his vehicle, and, if so, to hold a trial.

BRUNSON, BLANC, and COLIN, JJ. concur.

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IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY

CASE NO: 2015-AP-000078

L.T. NO: 2015-SC-004368

4386

RANDOLPH WILLIAMS,
Appellant,

Opinion filed/Decision filed: DEC 14 2016

Appeal from County Court in and for Palm Beach
County, Florida;

Judge Frank Castor

v.

CITY TOWING, LLC,
Appellee.

Appealed: November 4, 2015

DATE OF PANEL: AUGUST 15, 2016

PANEL JUDGES: BRUNSON, BLANC, COLIN

AFFIRMED/REVERSED/OTHER: AFFIRM

PER CURIAM OPINION/DECISION BY: PER CURIAM

DATE CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:)
	)	With Opinion	)	With/Without Opinion)
<u>Catherine Brunson</u> 11/23/16)))
J. )	)	J. )	)	J.))
<u>Donna M. White</u> 12/8/16)))
J. )	)	J. )	)	J.))
<u>Michael</u> 12/9/16)))
J. )	)	J. )	)	J.))

see case #
corrected above