

FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 5D2024-1458
LT Case No. 2019-CA-009090

TAMMY ELLIS,

Appellant,

v.

EAST COAST COOLING TOWER,
INC.,

Appellee.

On appeal from the Circuit Court for Duval County.
Robert M. Dees, Judge.

Brian J. Lee, of Morgan & Morgan, Jacksonville, for Appellant.

Ezequiel Lugo and DeeAnn J. McLemore, of Banker Lopez
Gassler P.A., St. Petersburg, and Eleanor H. Sills, Tallahassee,
for Appellee.

May 22, 2026

PER CURIAM.

Tammy Ellis appeals the trial court's order dismissing her amended complaint pursuant to Florida Rule of Civil Procedure 1.070(j) based on her failure to timely effect service of process on East Coast Cooling Tower, Inc. Although the trial court's order dismissed Ms. Ellis' case without prejudice, because the statute of

limitations had run, the dismissal was, as a practical matter, a dismissal with prejudice. The law is clearly established that a trial court abuses its discretion by dismissing a case under Rule 1.070(j) where, as here, service of process was obtained prior to the hearing on the motion to dismiss and when the statute of limitations has run preventing plaintiff from refileing its suit. *See Regions Bank v. Buoncervillo*, 220 So. 3d 1225, 1227 (Fla. 5th DCA 2017).

Accordingly, we reverse and remand for further proceedings.

REVERSED and REMANDED.

LAMBERT, EDWARDS, and EISNAUGLE, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.
