

Third District Court of Appeal

State of Florida

Opinion filed September 30, 2026.
Not final until disposition of timely filed motion for rehearing.

No. 3D26-1605
Lower Tribunal No. 24-187694-CC-25

Hansel O. Santos,
Appellant,

vs.

Western Funding Incorporated,
Appellee.

An appeal from a non-final order from the County Court for Miami-Dade County, Gordon Murray, Judge.

Corona Law Firm, P.A., and Ricardo M. Corona; Light & Gonzalez, PLLC, and Gregory Light (Plantation), for appellant.

Pollack & Rosen, P.A., and Kevin J. Spinozza, for appellee.

Before LOGUE, GORDO and BOKOR, JJ.

BOKOR, J.

Hansel O. Santos, the defendant in the underlying breach of contract action, petitions for a writ of prohibition to prevent the trial court from continuing to exercise jurisdiction following an order vacating a dismissal for lack of prosecution. We treat this petition as an appeal under Fla. R. App. P. 9.130(a)(5).¹ Santos contends that Fla. R. Civ. P. 1.540(b)(1) is an inappropriate avenue for relief, or that Western Funding Incorporated, the plaintiff below, failed to demonstrate due diligence in seeking relief under the rule. As explained below, we reverse because although we disagree with Santos as to the availability of relief under rule 1.540(b)(1), we agree that the trial court erred in granting it here.

I

The action below was dismissed for lack of prosecution on April 16, 2026, on the (erroneous) basis that no record activity had occurred in the preceding 60 days. On June 3, 2026—48 days after dismissal—Western Funding moved to set aside the dismissal and reopen the case, noting that the court misapprehended that record activity had in fact occurred. This

¹ Petitioner alternatively asks us to consider this as an appeal under Fla. R. App. P. 9.130(a)(5). See Fla. R. App. P. 9.040(c) (“If a party seeks an improper remedy, the cause must be treated as if the proper remedy had been sought”); Amerant Bank N.A. v. D.R. Horton, Inc., 433 So. 3d 492, 493 (Fla. 3d DCA 2026) (reviewing grant of relief under Rule 1.540(b)(1) by appeal).

motion did not provide an explanation for the delay in seeking relief (nor did it explain why Western Funding failed to appear at the hearing or move for reconsideration after dismissal). After a hearing on the motion, the court treated the motion as seeking relief from judgment due to mistake, per rule 1.540(b)(1), and granted it due to the court's admirable concession that it mistakenly did not realize that the record demonstrated activity within the requisite 60-day safe harbor established by Fla. R. Civ. P. 1.420(e). Santos petitions from, or alternately appeals, that order granting relief in favor of Western Funding.

II

A

The trial court explained that by oversight or accident it dismissed the matter for lack of prosecution, not because of any mistaken view of the law, but for the simple fact that it did not see the docket entries demonstrating record activity within the 60-day safe harbor established by rule 1.420(e). As a threshold matter, we agree with Western Funding that this type of error is cognizable by rule 1.540(b)(1). The trial court therefore properly considered the motion under that rule. See Curbelo v. Ullman, 571 So. 2d 443, 445 (Fla. 1990) ("Mistakes which result from oversight, neglect or accident are subject to correction under rule 1.540(b)(1)."); Viking Gen. Corp. v. Diversified Mortg.

Invs., 387 So. 2d 983, 985 (Fla. 2d DCA 1980) (“Mistakes contemplated by [rule 1.540(b)(1)] include the court’s inadvertent signing of an incorrect order. The entry of final judgment under the mistaken belief that the defendant is in default is also a mistake cognizable under the rule.” (citation omitted)).

This is not a case of a trial court revisiting its legal reasoning or coming to a different factual conclusion. To the contrary, in this context, “[i]f [record] activity is shown by a party, it is a mechanical, ministerial review of the record with no discretion on the part of the trial court.” Waldeck v. MacDougall, 300 So. 3d 1218, 1220 (Fla. 4th DCA 2020). In a similar legal posture, this court has explained that under appropriate circumstances relief is available under a rule 1.540(b)(1) motion. See Renovaship, Inc. v. Quatremain, 208 So. 3d 280, 284 (Fla. 3d DCA 2016) (explaining that “any asserted error in the trial court’s entry of a dismissal order should have been appealed by Quatremain *or raised in a rule 1.540[(b)(1)] motion filed within one year of the order*” but denying such relief as untimely where the motion was filed “fifteen months after entry of the dismissal order” (emphasis added)). And this tracks. The record showed record activity. Yet the trial court granted dismissal based on the mistaken view that there was no record activity. It then granted relief from judgment based on that oversight during a “mechanical, ministerial review of the record.” Waldeck, 300 So. 3d at 1220.

B

But our analysis doesn't end there. Despite rule 1.540(b)(1) offering a potential avenue for relief, we are constrained to conclude that the trial court abused its discretion in granting such relief here. This is so because a motion seeking relief for a mistake of fact must still be filed "within a reasonable time . . . not more than 1 year after the judgment, decree, order, or proceeding was entered or taken." Fla. R. Civ. P. 1.540(b). While the one-year mark is a jurisdictional bar for relief under this rule, it does not follow that anything filed within a year is automatically considered reasonable. The trial court did not address this factor, other than to note that the motion was timely filed within a year. But we have repeatedly held similar delays unreasonable absent evidence that the movant did not receive notice of the judgment, or of similar circumstances justifying the delay. See, e.g., Benefit Admin. Sys., LLC v. W. Kendall Baptist Hosp., Inc., 274 So. 3d 480, 484 (Fla. 3d DCA 2019) (affirming finding of no due diligence as to plaintiff who waited five months after receiving copy of default judgment before moving to vacate); Lazcar Int'l, Inc. v. Caraballo, 957 So. 2d 1191, 1193 (Fla. 3d DCA 2007) ("Absent competent substantial evidence of some exceptional circumstance explaining the delay, a six-week delay in filing a motion to vacate a default after receiving notice constitutes a lack of due diligence as

a matter of law.” (citation omitted)); Fischer v. Barnett Bank of S. Fla., N.A., 511 So. 2d 1087, 1088 (Fla. 3d DCA 1987) (“Although counsel promptly acted upon being so contacted and immediately filed a motion to vacate the final declaratory decree herein, the prior five-week delay by the defendants was entirely inexcusable.”); cf. Pierre v. Am. Sec. Ins. Co., 346 So. 3d 62, 64 (Fla. 4th DCA 2022) (“The five-week period from the entry of the order of dismissal to the bringing of the motion to vacate was a ‘reasonable time,’ especially where the order itself does not indicate that it was served upon the plaintiff by either email or mail.”); see also Allstate Floridian Ins. Co. v. Ronco Inventions, LLC, 890 So. 2d 300, 304 (Fla. 2d DCA 2004) (finding abuse of discretion as to grant of motion filed seven weeks after notice of default where movant offered no explanation for delay).

Here, the notice of hearing and order of dismissal both show notice to counsel of record. Western Funding waited over seven weeks before moving to vacate the dismissal. Western Funding proffered no explanation for the delay and showed no good cause or excusable neglect for its failure to attend the dismissal hearing or to seek relief from the order of dismissal.² The trial

² The order setting the hearing required “the party opposing the dismissal to appear at the hearing and establish the existence of” record activity within 60 days of service of the hearing notice. Cf. Waldeck, 300 So. 3d at 1219–20 (reversing dismissal and noting that “Appellants showed timely record

court did not explain what evidence, if any, justified its finding of due diligence. And the record does reflect any competent, substantial evidence (or any evidence) that could support such a finding.

III

We are therefore constrained to conclude that, absent any evidence demonstrating due diligence in seeking relief under rule 1.540(b)(1), the trial court abused its discretion in granting the motion. We reverse and remand for reentry of an order of dismissal.

Reversed and remanded with instructions.

activity” by presenting the trial court at the hearing “with docket entries that were within the sixty-day safe harbor period permitted by rule”).