

FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 5D2025-1928
LT Case No. 55-2024-SC-2869

MOISES RIOS, JR.,

Appellant,

v.

KATHRYN HAWKINS d/b/a SAFE
PET RESCUE,

Appellee.

On appeal from the County Court for St. Johns County.
Alexander R. Christine, Jr., Judge.

Jason A. Martorella, of Martorella Law, Coral Gables, for
Appellant.

David D. Naples, Jr. and Tiera L. Henry, of D. Naples Law,
PLLC, St. Augustine, for Appellee.

August 28, 2026

HARRIS, J.

In March 2024, Appellant, Moises Rios, Jr., was arrested after a vehicle accident, with his dogs in his possession, and was subsequently detained at Lee County and Sumter County Detention Center. Law enforcement transported his dogs to the Lee County animal shelter where they were placed in a five-day

holding period. During that period, the animal shelter unsuccessfully attempted to make contact with Appellant. Animal control then transferred possession of the dogs to Appellee, Kathryn Hawkins d/b/a Safe Pet Rescue (“Safe Pet”), around April 9, 2024.

After learning that his dogs were transferred to Safe Pet, Appellant sent Appellee an email on May 6, 2024 seeking to have the dogs returned to him. Appellee informed Appellant that the dogs had already been adopted.

Appellant subsequently filed a pro se statement of claim for replevin against Appellee, seeking to reclaim possession of his dogs. The court entered an order directing Appellee to show cause as to why the property should not be taken from her possession and delivered to Appellant. A hearing on the show cause order was scheduled for July 19, 2024. However, four days before the hearing, Appellee filed an answer and affirmative defenses to Appellant’s claim, alleging Safe Pet lawfully obtained possession and ownership of the dogs from animal control and that it was no longer in possession of the dogs, who were legally adopted to a new home.

On July 19, 2024, a few hours before the scheduled hearing on the show cause order, Appellant filed a motion for continuance. The hearing nevertheless proceeded. While there is no transcript from this hearing in the record, the unsigned court notes indicate that the court was “to dismiss case.”

Six months later, the court filed a notice of lack of prosecution for no record activity, setting a hearing for March 28, 2025. The court notes following that hearing state “case to remain open.” Appellee then filed a motion asking the court to enter a written order dismissing the action in accordance with the court notes from the July 19, 2024 hearing. On May 28, 2025, the court entered an order of dismissal, nunc pro tunc to July 19, 2024.

Appellant argues the trial court violated his right to due process by dismissing his claim without notice, after it had ruled that the case would remain open. He emphasizes that there was no order actually dismissing the case after the July 19, 2024

hearing, and that the July hearing was not a hearing on a motion to dismiss; rather, it was a hearing on the trial court's order to show cause. We agree.

Here, the July 19 hearing was for the court's show cause order directed at Appellee. There was no motion to dismiss or objection pending, nor did the show cause order mention dismissal or closing of the action. *See McGhee v. Est. of McGhee*, 373 So. 3d 417, 418–19 (Fla. 2d DCA 2023). Based upon the record before this Court, there was nothing that gave Appellant notice or warning that dismissal of the entire action would be considered at the hearing noticed solely on the court's show cause order. Thus, Appellant was not given an opportunity to be heard prior to entry of the dismissal order.

Accordingly, because Appellant was denied due process before dismissal of his claim, we reverse and remand for further proceedings.

REVERSED and REMANDED for further proceedings.

EISNAUGLE and BOATWRIGHT, JJ., concur.

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