

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

MARK HUGGINS and **ANN HUGGINS**,
Appellants,

v.

SAFEPOINT INSURANCE COMPANY,
Appellee.

No. 4D2024-1804

[February 18, 2026]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit,
Broward County; William W. Haury, Jr., Judge; L.T. Case No.
062022CA010582AXXXCE.

Robin I. Bresky and Randall D. Burks of Schwartz Sladkus Reich
Greenberg Atlas LLP, Boca Raton, for appellants.

Patrick Michael Chidnese and Frieda C. Lindroth of Bickford &
Chidnese, LLP, Tampa, for appellee.

GERBER, J.

The homeowners appeal from the circuit court's final order dismissing their breach of contract action against the insurer as a sanction for their counsel's failure to appear at trial. The homeowners argue dismissal was not warranted because their counsel's failure to appear was, at worst, due to excusable neglect, and not due to any willful disobedience of the court.

We agree with the homeowners' argument. Therefore, we reverse the dismissal order, and remand for a new trial.

Relevant Procedural History

The circuit court entered an order setting calendar call for March 25, 2024, for a four-week trial period beginning on April 1, 2024. The order advised that "[t]he order of trials set during this Trial Period will be determined the day after Calendar Call," and that "failure to appear ... may result in the dismissal of the action."

The parties' counsel appeared at calendar call and announced they were ready for trial. The circuit court set the case for trial during the week of April 15-19, along with other cases.

On the afternoon of April 15, the homeowners' counsel received a telephone call from the circuit court's judicial assistant, advising that the circuit court had started the trial at 1:30 p.m. that afternoon. The judicial assistant also said that she had attempted to contact the homeowners' counsel earlier that morning, but she had not been able to reach them.

The following morning, the circuit court entered its final order dismissing the homeowners' action as a sanction due to the homeowners' counsel's failure to appear for trial. Yet the circuit court had not taken any action to determine the circumstances of why the homeowners' counsel had failed to appear for trial, nor found that their failure to appear was due to willful disobedience of the court.

Nine days later, the homeowners filed a motion for rehearing pursuant to Florida Rules of Civil Procedure 1.530 and 1.540(b). The motion explained that the homeowners' counsel had expected to receive notice if the case was going to be reached for trial on April 15. However, the homeowners' counsel had not received any notice. The motion argued that the homeowners' counsel's failure to appear for trial was, at worst, due to excusable neglect, and not due to any willful disobedience of the court. The motion requested the circuit court to vacate the dismissal order and set a new trial date.

The insurer's counsel filed a response notifying the court that no supporting affidavit had been filed with the homeowners' motion. The response also detailed the steps which the insurer's counsel had taken to remain informed about whether the case would be reached for trial. Those steps included requesting the circuit court's judicial assistant to include them in any schedule update emails. The insurer's counsel added they had received, from the judicial assistant, emails about cases ahead of theirs having been resolved. The insurer's counsel also had reached out to counsel on cases ahead of them to determine whether those cases were close to being resolved. The insurer's counsel added that on the morning of April 15, they had called the circuit court's judicial assistant to request an update, and were informed they should appear for trial at 1:30 p.m.

The circuit court later entered an order summarily stating that, based on its review of the homeowners' motion and the insurer's response, the homeowners' motion for rehearing was denied.

Thirteen days later, the homeowners filed a renewed motion for rehearing. The renewed motion alleged the homeowners' counsel inadvertently had not attached their supporting affidavit to the original rehearing motion, which was now attached. The renewed motion added that the homeowners' counsel had not been included in any of the judicial assistant's emails which had been sent to the insurer's counsel.

The circuit court entered an order denying the homeowners' renewed rehearing motion. The circuit court pertinently explained:

The court notes its practice at [c]alendar [c]all of informing the parties that they may receive a blast email containing an updated trial schedule or ["batting order"] whenever there is a change in the trial docket by providing their email to the court's Judicial Assistant. ...

The court notes the ... multiple notifications to the parties concerning the trial schedule and the complete lack of response by [the homeowners' counsel]. ...

[The homeowners' counsel] offers no explanation for his failure to stay abreast of movement in the trial schedule subsequent to the assignment of his April 15 trial date at [c]alendar [c]all. ...

(emphases added).

The Parties' Arguments on Appeal

On appeal, the homeowners summarize their argument as follows:

The trial court's dismissal of the [homeowners'] action as a sanction for counsel's purported failure to appear at trial was error and must be reversed because the court failed to provide [the homeowners'] counsel with notice of the specific date and time of trial, violating due process. Thus, the Final Order of Dismissal is void.

The trial court then compounded this error by summarily denying [the homeowners'] motion for rehearing ... despite [the homeowners'] showing that the nonappearance was the result of excusable neglect—namely, the judicial assistant's omission of counsel's email addresses from any trial notifications which the judge had told the parties to await so

that they could be informed of the specific day and time for commencement of the trial within the designated week.

Because a void judgment must be vacated, and because courts must vacate a sanctions order when a failure to appear at a trial was excusable neglect in the form of lack of notice, and because Florida law requires courts to ... consider lesser sanctions before dismissing an action with prejudice, the trial court's orders constitute reversible error. The harsh sanction of dismissal ... operates as a dismissal with prejudice because the statute of limitations had already run.

This drastic and harshest of sanctions is far out of proportion to the purported failure to appear, especially where the record shows no willful disobedience by counsel, and where [the homeowners] have meritorious claims ... and ... acted with due diligence in seeking relief.

The insurer pertinently summarizes its response as follows:

[The homeowners] received notice ... that a failure to appear [at trial] could result in dismissal. ... The subsequent dismissal order is not void for lack of due process.

Next, [the homeowners] turn to their primary argument in the trial court that their failure to attend trial resulted from excusable neglect. ...

Excusable neglect evokes clerical errors, mistakes, and systems gone awry. The concept does not extend to a knowing failure to act or a system that does not exist. Both occurred here. Like [the insurer's counsel], [the homeowners' counsel] were aware of the trial date. Unlike [the insurer's counsel], [the homeowners' counsel] failed to take any additional available steps to stay informed about the "batting order" for the cases that day. Most obviously, [the homeowners' counsel] failed to request inclusion on the docket update emails, despite blaming the [j]udicial [a]ssistant for their own error. Nor did they call the [j]udicial [a]ssistant, like [the insurer's counsel did], on the day of trial. It was the trial court that ultimately had to telephone [the homeowners' counsel] to remind them that the case was proceeding on the day that [the homeowners' counsel] knew the case was scheduled for trial.

Our Review

Our standard of review is mixed. See *Strems Law Firm, P.A. v. Avatar Prop. & Cas. Ins. Co.*, 297 So. 3d 592, 593 (Fla. 4th DCA 2020) (“A trial court’s sanctions order is reviewed for abuse of discretion. Additionally, the denial of due process is reviewed for fundamental error.”) (internal citation omitted); *VMD Fin. Servs., Inc. v. CB Loan Purchase Assocs., LLC*, 68 So. 3d 997, 999 (Fla. 4th DCA 2011) (“Whether the trial court has complied with the guarantees of due process is subject to de novo review.”); *Fast Funds, Inc. v. Aventura Orthopedic Care Ctr.*, 279 So. 3d 168, 171 (Fla. 4th DCA 2019) (“A trial court’s denial of relief from judgment upon a showing of excusable neglect, including relief pursuant to Florida Rule of Civil Procedure 1.530, is reviewed for an abuse of discretion.”); *Acosta v. Deutsche Bank Nat’l Tr. Co.*, 88 So. 3d 415, 417 (Fla. 4th DCA 2012) (“A trial court’s denial of 1.540(b) relief is reviewed for an abuse of discretion.”).

According to the order denying the homeowners’ rehearing motion, the circuit court apparently has self-created a process whereby multiple counsel whose cases are set for trial on the same date “may receive a blast email containing an updated trial schedule or [‘]batting order[’] whenever there is a change in the trial docket by providing their email to the court’s Judicial Assistant.” While this process appears well-intended, its flaw is that when a case is ultimately reached for trial, if the party inadvertently has not provided their email to the court’s judicial assistant, that party will not receive notice that their case has been reached for trial. Thus, any dismissal order which results from this lack of notice violates due process and is void. See *Shiver v. Wharton*, 9 So. 3d 687, 690 (Fla. 4th DCA 2009) (“A judgment is void if, in the proceedings leading up to the judgment, there is [a] violation of the due process guarantee of notice and an opportunity to be heard.”) (citation and internal quotation marks omitted); *Bank of Am., N.A. v. Fogel*, 192 So. 3d 573, 575 (Fla. 4th DCA 2016) (“If a party’s due process rights are violated, the underlying final order is void.”).

Even if we were to consider the failure of notice to have fallen upon the homeowners’ counsel due to not having provided their email to the circuit court’s judicial assistant, the record indicates that failure was due, at worst, to excusable neglect, warranting relief under rule 1.530. See *Fast Funds, Inc.*, 279 So. 3d at 171 (“[E]xcusable neglect causing a party to fail to appear for a final hearing has been grounds for granting relief under rule 1.530.”).

Further, nothing in the record indicates the homeowners themselves were culpable in this failure, thus not warranting the severe sanction of

dismissing their facially viable action. See *Walicki v. Waste Mgmt., Inc.*, 703 So. 2d 1095, 1096 (Fla. 2d DCA 1997) (“[A party] should not be made to suffer the loss of viable claims due to [its] attorney’s malfeasance where there is no evidence in the record to indicate that [the party] personally engaged in misconduct.”); *King v. Macaleer*, 774 So. 2d 68, 69 (Fla. 2d DCA 2000) (“Of particular importance to our decision [to reverse an order of dismissal as too harsh a sanction] is the lack of any record indication that [the client] was personally involved in the act of disobedience or was even aware that her lawsuit was in danger of being dismissed.”).

Based on the foregoing, we reverse the dismissal order and remand for a new trial.

*Reversed and remanded for new trial.*¹

KUNTZ, C.J., and GROSS, J., concur.

* * *

Not final until disposition of timely-filed motion for rehearing.

¹ We note that Florida Rule of Civil Procedure 1.080(a) and Florida Rule of General Practice and Judicial Administration 2.516 do not appear applicable to the judicial assistant’s trial update emails, which are not “pleading[s],” “orders,” or “document[s] filed or required by statute or rule to be served in the action.” See Fla. R. Civ. P. 1.080(a) (“Every pleading after the initial pleading, all orders, and every other document filed or required by statute or rule to be served in the action must be served in conformity with the requirements of Florida Rule of General Practice and Judicial Administration 2.516.”); see generally Fla. R. Gen. Prac. & Jud. Admin. 2.516 (describing the procedures for service of “[f]iled [d]ocuments,” including using the portal’s e-service function).

Yet, if the circuit court had asked its judicial assistant to use the portal’s e-service function to notify the parties that their case had been reached for trial—instead of using the circuit court’s self-created “opt-in” email notification system—then the homeowners’ counsel, like the insurer’s counsel, would have been notified that their case had been reached for trial, because all counsel were already included in the portal’s e-service for the instant case. For this reason, we strongly encourage the circuit court, going forward, to either use the portal’s e-service to notify parties when their case has been reached for trial, or modify the circuit court’s email notification system to ensure that all parties included in the portal’s e-service are emailed when their case has been reached for trial.