

Third District Court of Appeal

State of Florida

Opinion filed July 29, 2026.
Not final until disposition of timely filed motion for rehearing.

No. 3D26-0814
Lower Tribunal No. 24-6878-CA-01

Barry M. Leff, et al.,
Appellants,

vs.

Rossana Larez,
Appellee.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Jason Emilios Dimitris, Judge.

Barry M. Leff, P.A., and Barry M. Leff (Davie), for appellants.

Mark T. Blake, LL.M., and Mark T. Blake (Winter Park), for appellee.

Before MILLER, LOBREE, and BOKOR, JJ.

PER CURIAM.

Appellant, Barry M. Leff, appeals from an order denying his motion to vacate a default final judgment rendered in favor of appellee, Rossana Larez, as void. In his motion, appellant argued that the default final judgment was void as violative of due process because he was never provided a notice of application for default. This fact is undisputed. In appellant's direct appeal of the trial court's default final judgment, we affirmed on preservation grounds, but noted that appellant "was entitled to notice of application for a default, which the trial court never delivered." See Leff v. Larez, 422 So. 3d 625, 627 (Fla. 3d DCA 2025) (citing Fla. R. Civ. P. 1.500(b) ("When a party against whom affirmative relief is sought has failed to plead or otherwise defend as provided by these rules or any applicable statute or any order of court, the court may enter a default against such party; provided that if such party has filed or served any document in the action, that party must be served with notice of the application for default."))). Because the failure to provide such notice constituted a due process violation, the default final judgment is void and we are constrained to reverse and remand for the trial court to enter an order vacating the default final judgment. See Etienne v. Irvin, 309 So. 3d 256, 256 (Fla. 3d DCA 2020) ("[D]espite possessing knowledge Irvin was represented by counsel and intended to defend on the merits, Etienne failed to furnish her with notice of his application for default.

This action was unauthorized under a body of clearly developed precedent.” (citing U.S. Bank Nat’l. Ass’n v. Lloyd, 981 So. 2d 633, 640 (Fla. 2d DCA 2008) (“A default entered in violation of the due process notice requirement of rule 1.500(b) must be vacated without regard to whether the defendant can establish a meritorious defense or whether the defendant can demonstrate inadvertence or excusable neglect under Florida Rule of Civil Procedure 1.540(b).”)); Gulf Maint. & Supply, Inc. v. Barnett Bank of Tallahassee, 543 So. 2d 813, 817 (Fla. 1st DCA 1989) (holding failure to provide notice of application rendered default final judgment void: “The Bank’s lawyers knew at all times that Lewis was representing these defendants and intended to assert matters in defense of the action. Consequently, rule 1.500(b) required the Bank to serve Lewis with notice of the application for default and present it to the court for entry; the invalid entry of the default by the clerk under rule 1.500(a) in these circumstances renders the judgment void.” (citing Picchi v. Barnett Bank of South Florida, N.A., 521 So. 2d 1090 (Fla. 1988))); see also Demir v. Schollmeier, 273 So. 3d 59, 62 (Fla. 3d DCA 2018) (“Although a trial court’s denial of a rule 1.540 motion is ordinarily reviewed for an abuse of discretion, [i]f it is determined that the judgment entered is void, the trial court has no discretion, but is obligated to vacate the judgment.”) (quotation omitted)). It is irrelevant that appellant

could have raised this issue earlier in the proceedings but did not as the default final judgment is void and therefore can be challenged at any time. See Demir, 273 So. 3d at 61 n.1 (rejecting waiver argument: “[E]ven if not properly preserved, plaintiff’s failure to acquire personal jurisdiction over defendant, rendering the subsequent judgment void, can be raised as fundamental error on appeal.” (Citing Kitchens v. Nationstar Mortg., LLC, 189 So. 3d 355 (Fla. 4th DCA 2016) and Falkner v. Amerifirst Fed. Sav. and Loan Ass’n, 489 So. 2d 758 (Fla. 3d DCA 1986) (explaining that a void judgment is a legal nullity, deemed never to have had any legal force and effect, and may be attacked at any time))).

Reversed.