

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

AFFINITY HEALTH PARTNERS, LLC,
Appellant,

v.

HAYES LOCUMS, LLC,
Appellee.

No. 4D2025-2096

[August 19, 2026]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; David Alan Haines, Judge; L.T. Case No. 062024CA009968AXXXCE.

Bryan D. Hull and Lauren Yevich of Bush Ross, P.A., Tampa, for appellant.

John A. Schifino, Mark J. Ragusa and Gregory L. Pierson of Gunster, Yoakley & Stewart, P.A., Tampa, for appellee.

FORST, J.

Appellant Affinity Health Partners, LLC (“Affinity”) appeals from the trial court’s final default judgment for Hayes Locums, LLC (“Hayes”). Affinity argues the judgment should be reversed because the trial court awarded unliquidated damages without a properly noticed trial. For the reasons set forth below, we agree with Affinity and reverse.

Background

Affinity, a health care management firm, hired Hayes, a medical staffing company, to find and place medical professionals at Affinity’s facilities. Hayes and Affinity entered into a contract (“Service Agreement”) which stipulated that Hayes would find medical providers for Affinity and, if Affinity accepted such placements, it would issue a separate contract (“Confirmation”) stipulating the details of the placement and the fees for provider coverage. The Service Agreement is silent on how much Affinity must pay, only stating that the amount is to be “set forth in the

Confirmation for a particular Assignment,” and that Hayes shall bill invoices reflecting the applicable charges on a bi-weekly basis.

Hayes’s amended complaint alleged that Affinity had failed to pay more than \$200,000 for services provided under the Service Agreement. In support, Hayes attached the Service Agreement and a one-page spreadsheet summarizing Hayes’s invoices issued to Affinity (“the Invoice Sheet”). Hayes did not attach any of the Confirmations for any assignment. The Invoice Sheet contains no details regarding the rates, hours, or expenses incurred by Hayes for each assignment. The Invoice Sheet lists 23 amounts which Hayes claims are unpaid balances that Affinity owes. The listed amounts total \$219,822.70. However, Hayes alternated between requesting \$219,822 and \$234,822.70 in damages throughout its complaint, in addition to interest, attorney’s fees, and court costs, at one point even asserting it had “been damaged *in an amount to be determined at trial*, but no less than \$219,822 plus interest, costs, and attorney’s fees.” (Emphasis added). Affinity failed to file an answer or responsive pleading to Hayes’s amended complaint, and the clerk entered a default.

The trial court scheduled a five-minute hearing on April 8, 2025, to address Hayes’s motion for final default judgment. On March 14, 2025, Hayes’s counsel mailed Affinity a copy of the notice of hearing. Affinity’s counsel responded via email that they had received the notice.¹ Affinity did not attend the hearing.

After the hearing, the trial court entered a final default judgment against Affinity for a principal sum of \$219,822.70, attorney’s fees of \$7,789.75, court costs of \$997.40, and pre-judgment interest of \$50,904.21. Subsequently, Affinity moved for rehearing, new trial, or relief from final judgment,² arguing that the damages awarded were unliquidated and Affinity was thus entitled to an evidentiary hearing.

The trial court held a hearing on Affinity’s motion. The court agreed that the Invoice Sheet failed to identify the listed amounts’ source, and pointed out that Hayes had listed two different amounts as being owed

¹ Despite this email, Affinity claimed below that it had received notice of only *the lawsuit* on March 25, 2025. However, on appeal, Affinity concedes this assertion was wrong and that “Hayes had provided notice of the hearing to Affinity’s outside counsel.” Affinity argues that, despite this error, its motion to vacate was meritorious.

² Affinity’s motion, despite its title, asked the trial court to “vacate the final default judgment as void under [Florida] Rule [of Civil Procedure] 1.540(b)(4).”

throughout the complaint. However, the trial court ultimately removed only the attorney's fees from the damages awarded, maintaining that the other damages awarded were liquidated.

This appeal follows.

Analysis

"Whether damages alleged are liquidated or unliquidated is a question of law subject to de novo review." *Talbot v. Rosenbaum*, 142 So. 3d 965, 967 (Fla. 4th DCA 2014).

"A clerk's default entitles the plaintiff to all liquidated damages, but not to unliquidated damages." *City of Fellsmere v. Almanza*, 380 So. 3d 1199, 1202 (Fla. 4th DCA 2024). A defaulting party is entitled to notice and an opportunity to be heard on unliquidated damages, which "includes 'the presentation and evaluation of evidence necessary to a judicial determination of the amount of [unliquidated] damages.'" *Mosia v. Foglia*, 418 So. 3d 635, 639 (Fla. 4th DCA 2025) (quoting *Tand v. C.F.S. Bakeries, Inc.*, 559 So. 2d 670, 671 (Fla. 3d DCA 1990)). In cases involving unliquidated damages, a defaulted party has a due process right to "notice of an order setting the matter for trial or evidentiary hearing, and must be afforded an opportunity to defend." *Id.* at 639 (quoting *Viets v. Am. Recruiters Enters.*, 922 So. 2d 1090, 1095 (Fla. 4th DCA 2006) (alterations omitted)).

Florida Rule of Civil Procedure 1.440(c)(4) provides that any order setting a trial period must do so starting "at least 30 days after the date" of service unless all parties agree otherwise. Here, Affinity was given notice of the hearing only 25 days before the April 8 hearing, and the record does not indicate that the parties agreed to less than 30 days' notice. Thus, providing only 25 days' notice to Affinity was error. See *Bodygear Activewear, Inc. v. Counter Intel. Servs.*, 946 So. 2d 1148, 1151 (Fla. 4th DCA 2006) ("[E]ven though it was in default, Bodygear was entitled to an evidentiary hearing on the issue of damages noticed in compliance with Florida Rule of Civil Procedure 1.440.").³

³ We note an emerging split among the District Courts of Appeal regarding whether a trial noticed in compliance with Rule 1.440 is always required before unliquidated damages can be awarded against a defaulted defendant, or whether the ordinary summary judgment procedure can be used. Compare *Pierce v. Anglin*, 721 So. 2d 781, 782–83 (Fla. 1st DCA 1998) (requiring a trial noticed per Rule 1.440), and *Cellular Warehouse, Inc. v. GH Cellular, LLC*, 957 So. 2d 662, 666–67 (Fla. 3d DCA 2007) (same), with *Specialty Sols., Inc. v. Baxter Gypsum &*

In addition to the violation of Rule 1.440's notice requirement, the April 8 hearing was not evidentiary, because no presentation or evaluation of evidence occurred to determine the damages. Instead, the trial court based its judgment solely on the facts alleged in the complaint. Thus, the default judgment was entered without an evidentiary hearing and without proper notice under Rule 1.440.

Hayes argues the damages which the trial court awarded were liquidated. We disagree. "The test for liquidated damages is whether 'the proper amount to be awarded can be determined with exactness from the cause of action as pleaded.'" *City of Fellsmere*, 380 So. 3d at 1202 (quoting *Bodygear*, 946 So. 2d at 1150). "Damages are not liquidated if a court must consider testimony or evidence to ascertain facts upon which to base a value judgment." *Talbot*, 142 So. 3d at 968 (citation modified) (quoting *Bowman v. Kingsland Dev., Inc.*, 432 So. 2d 660, 662 (Fla. 5th DCA 1983)). Exactness can be based on "a pleaded agreement between the parties, by an arithmetical calculation or by application of definite rules of law." *Id.* (quoting *Bodygear*, 946 So. 2d at 1150). Additionally, damages are not liquidated "simply because a fixed sum was demanded by the complaint[.]" *Hartford Fire Ins. Co. v. Controltec, Inc.*, 561 So. 2d 1334, 1335 (Fla. 5th DCA 1990).

Here, the Service Agreement and Hayes's Invoice Sheet are insufficient to determine the amount which Affinity owed with exactness or through arithmetical calculation. The Service Agreement itself provides no information as to specific amounts owed by Affinity, only stating that such amounts are to be agreed upon in the written Confirmation of each assignment. Without these Confirmations, the trial court had no evidence by which to determine the agreed-upon fees, and thus no way to perform an arithmetical calculation to determine the damages. Although Hayes's pleading demands a fixed sum of \$219,822.70 on the Invoice Sheet, that unsupported statement was not enough to liquidate damages. Additionally, the fact that Hayes's amended complaint states that it is

Concrete, LLC, 325 So. 3d 192, 196–200 (Fla. 5th DCA 2021) (en banc) (rejecting this reading of Rule 1.440 and holding that "a final summary judgment awarding unliquidated damages against a defaulted defendant, when entered after proper notice and based on timely-filed summary judgment evidence, is not automatically void as a matter of law and thus subject to being set aside under a rule 1.540(b)(4) motion"). We decline to certify conflict at the present time, because reversal would be required here under any District's standard, as Hayes did not move for summary judgment or file summary judgment evidence, and Hayes's complaint was internally inconsistent on the amount of damages owed.

owed \$219,822.70 in some places, \$234,822.70 in others, and even “an amount to be determined at trial, but no less than \$219,822 plus interest, costs, and attorney’s fees” in another, shows that the court would need additional evidence to determine the damages.

Because the amounts agreed upon cannot be determined through arithmetic calculation or with exactness from the Invoice Sheet without additional documentation, the damages are unliquidated. Given that the principal sum is unliquidated, the prejudgment interest deriving from the sum is also unliquidated. Additionally, damages for costs awarded by a trial court are typically unliquidated. *MacDonnell v. U.S. Bank N.A. as Tr. for Truman 2013 SC4 Title Tr.*, 293 So. 3d 585, 590 (Fla. 2d DCA 2020).

Conclusion

The trial court erred by awarding unliquidated damages in the final default judgment without a properly noticed damages trial because the damages awarded could not be determined with exactness or arithmetic calculation from the pleadings. On remand, the trial court shall hold a properly noticed damages trial to determine the unliquidated damages.

Reversed and remanded with instructions.

GERBER, C.J., and SHAW, J., concur.

* * *

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