

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CHRISTINE HUNSICKER,
Appellant,

v.

KSV CAASTLE HOLDINGS L.P. and KSV CAASTLE HOLDINGS II L.P.,
Appellees.

No. 4D2025-3415

[September 2, 2026]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Bradley G. Harper, Judge; L.T. Case No. 502025CA003703XXXAMB.

Javier A. Lopez, Andrew T. Figueroa, and Marcel De La Cruz of Vedder Price (FL), LLP, Miami, for appellant.

Jay A. Yagoda, Joseph J. Mamounas, and Elizabeth C. Sardinas of Greenberg Traurig, P.A., Miami, for appellees.

SCHWAB, CHARLES A., Associate Judge.

The defendant, Christine Hunsicker, appeals from the circuit court's order denying her motion to vacate the clerk's default and default final judgment and related orders. She argues the clerk's default and the resulting default final judgment are void because the plaintiffs sought a clerk's default without providing notice to her known counsel, who had communicated both representation and an intent to defend. We agree and reverse.

The plaintiffs, KSV CaaStle Holdings, L.P. and KSV CaaStle Holdings II, L.P., filed a multi-count complaint against the defendant alleging fraudulent inducement, negligent misrepresentation, breach of fiduciary duty, securities violations, and unjust enrichment arising from investments in CaaStle. The defendant was personally served, and no responsive pleading was filed within twenty days. Over a month after the response deadline, the defendant's attorney emailed the plaintiffs' counsel stating that he represented the defendant in the action and "will be appearing shortly." He inquired about service and requested fourteen days

to respond. The parties' counsel then conferred twice in the following week.

Roughly two weeks later, the plaintiffs applied for a clerk's default based on defendant's failure to file any document in the case. Because the first application was deficient, the plaintiffs filed a second application eleven days later. Neither time did the plaintiffs serve notice of the application for default on the defendant or her counsel. The clerk entered a default upon the second application, and the court thereafter entered a default final judgment exceeding \$51 million.

The defendant moved to vacate, arguing the plaintiffs had failed to provide the required notice of the application for default, despite knowing she was represented and intended to defend. Her counsel's supporting affidavit averred that he was not served with the default papers or the hearing notice.

The circuit court denied relief, reasoning that the plaintiffs were not required to serve non-appearing counsel, the notices were properly served through the e-filing system or by other means, and the defendant failed to satisfy Florida Rule of Civil Procedure 1.540(b).

A "denial of due process is fundamental error that can be raised for the first time on appeal." *Lamaze v. Guthrie*, 411 So. 3d 16, 21 (Fla. 4th DCA 2025) (quoting *Blechman v. Dely*, 138 So. 3d 1110, 1114 (Fla. 4th DCA 2014)). Whether a judgment is void for denial of due process presents a question of law reviewed de novo. *Hendrix v. Dep't Stores Nat'l Bank*, 177 So. 3d 288, 290 (Fla. 4th DCA 2015). The denial of a motion to vacate is otherwise reviewed for an abuse of discretion. *Fernandez v. Difiore*, 279 So. 3d 174, 176 (Fla. 4th DCA 2019).

The version of Florida Rule of Civil Procedure 1.500 in effect at the time of entry of the subject default and default final judgment provided:

(a) By the Clerk. When a party against whom affirmative relief is sought has failed to file or serve any document in the action, the party seeking relief may have the clerk enter a default against the party failing to serve or file such document.

(b) By the Court. 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.*

Fla. R. Civ. P. 1.500 (emphasis added).¹

Rule 1.500 “should be construed liberally to allow trial upon the merits rather than to encourage resolution of legal disputes by default.” *Nat’l Union Fire Ins. Co. of Pittsburgh, P.A. v. McWilliams*, 799 So. 2d 378, 380 (Fla. 4th DCA 2001). “The purpose of a default is to ‘speed the action toward conclusion on the merits where possible, not to expedite litigation by ex parte actions and surprise.’” *Zephyr Aviation Servs., Inc. v. Amerijet Int’l, Inc.*, 631 So. 2d 371, 372 (Fla. 4th DCA 1994) (quoting *Gulf Maint. & Supply, Inc. v. Barnett Bank of Tallahassee*, 543 So. 2d 813, 816 (Fla. 1st DCA 1989)).

“Florida courts construing rule 1.500(a) have defined the term ‘any document’ broadly and liberally, ‘and [it] includes any written communication that informs the plaintiff of the defendant’s intent to contest the claim.’” *Cardona v. FirstBank P.R.*, 336 So. 3d 418, 421-22 (Fla. 3d DCA 2022) (quoting *Contreras v. Stambul, LLC*, 306 So. 3d 1143, 1145 (Fla. 3d DCA 2020)); *see also Becker v. Re/Max Horizons Realty, Inc.*, 819 So. 2d 887, 890 (Fla. 1st DCA 2002) (explaining that “under rule 1.500(a), the term ‘paper’ is construed liberally and includes any written communication that informs the plaintiff of the defendant’s intent to contest the claim,” and holding motion requesting extension served roughly one week after answer was due was “paper”).²

Under rule 1.500(b), “any paper served prior to the entry of a default triggers the requirement that the party against whom the default is sought shall be served with notice of application for default.” *EGF Tampa Assocs. v. Edgar V. Bohlen, G.F.G.M. A.G.*, 532 So. 2d 1318, 1320 (Fla. 2d DCA 1988). “Reasonable doubts are resolved in favor of granting the application and permitting trial upon the merits.” *Id.* at 1321. Rule 1.500(b) “is premised on the notion that such paper indicates an intention by the defendant to defend on the merits and that due process considerations

¹ Rule 1.500 was amended effective January 1, 2026, to require service of a motion for default, among other amendments. *See In re Amends. to Fla. R. Civ. P. 1.440 & 1.500*, 422 So. 3d 149, 150 (Fla. 2025).

² Rule 1.500’s prior version used the word “paper” in place of “document.” *See In re Amends. to Fla. R. Civ. P.*, 199 So. 3d 867, 884 (Fla. 2016).

require such notice if the plaintiff intends to proceed and hold the defendant within the time constraints in the rules of procedure.” *Gulf Maint. & Supply, Inc.*, 543 So. 2d at 816. “It follows that notice of an application for default should always be served when the plaintiff is aware that a defendant is being represented by counsel who has expressed an intention to defend on the merits.” *Id.*

Here, the undisputed record establishes two independent bases requiring notice before any default could be entered.

First, the defendant “served” a “document” in the action within rule 1.500’s meaning. Her counsel’s email expressly announced representation in this case, stated that counsel would be appearing, and requested fourteen days to respond. This written communication, served on opposing counsel, conveyed an intent to defend and triggered the rule’s notice requirement before any default could be sought. The plaintiffs nevertheless pursued and obtained a clerk’s default without prior notice to the defendant or her known counsel of an application for default. Entry of a clerk’s default under these circumstances contravened rule 1.500 and due process.

Second, apart from whether the email constituted a “document,” the plaintiffs had actual knowledge that the defendant was represented and intended to defend. Her counsel told the plaintiffs’ counsel that he represented the defendant, would be appearing, and requested an extension to respond, demonstrating an intent to defend. Defendant’s counsel then engaged in two follow-up conferences, solidifying an intent to defend. Because the plaintiffs knew both that representation existed and the defendant intended to defend, they were obligated to notify counsel before seeking a default. The plaintiffs’ contention that counsel had not yet formally appeared, and that time had passed without a filing, does not negate the duty to provide notice before obtaining an ex parte clerk’s default on the heels of these communications.

In essence, the plaintiffs’ counsel should never have sought a clerk’s default knowing that defense counsel was involved and had given notice of representation and demonstrated an intent to defend. The proper remedy would have been to seek a default under 1.500(b).

“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.” *Hendrix*, 177 So. 3d at 290 (alteration in original) (quoting *Tannenbaum v. Shea*, 133 So. 3d 1056, 1061 (Fla. 4th DCA 2014)). “[A] denial of due process ‘voids the default, and derivatively

the default judgment.” *Id.* (quoting *Viets v. Am. Recruiters Enters., Inc.*, 922 So. 2d 1090, 1096 (Fla. 4th DCA 2006)). “If a judgment is void, a party is not required to demonstrate excusable neglect or a meritorious defense.” *Id.*

Here, because the plaintiffs sought and obtained a clerk’s default without providing notice to the defendant’s known counsel after counsel had communicated representation and requested time to respond, the clerk’s default is void, and the resulting default final judgment is void.

Accordingly, we reverse the orders denying the motions to vacate and for rehearing and remand with instructions to vacate the clerk’s default and the default final judgment.

Reversed and remanded with instructions.

CONNER and KLINGENSMITH, JJ., concur.

* * *

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