

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

ELIZABETH A. TRENDOWSKI,  
Appellant,

v.

Case No. 5D19-3438

ROBSON FORENSICS, INC.,

Appellee.

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Opinion filed October 16, 2020

Appeal from the Circuit Court  
for St. Johns County,  
R. Lee Smith, Judge.

David D. Naples, Jr. and John J. Spence, of  
Naples & Spence, PLLC, St. Augustine, for  
Appellant.

Benjamin Cody Davis, of Baker & McKenzie  
LLP, Miami, for Appellee.

LAMBERT, J.

Elizabeth A. Trendowski appeals the trial court's post-judgment order granting Robson Forensics, Inc.'s ("Robson") motion for "other remedies." Because the court granted this motion following a hearing at which the motion was not scheduled to be

heard, we reverse the order and remand for the court to address the motion at a properly-noticed hearing.<sup>1</sup>

Robson obtained a final judgment for damages against Trendowski in a Pennsylvania state court that it later domesticated in Florida. In an effort to collect on its judgment, Robson served a writ of garnishment on VyStar Credit Union regarding certain checking and savings accounts that Trendowski maintained there. Robson also served a separate writ of garnishment on Dram Shop Forensics, LLC (“Dram Shop”), seeking to recover any earnings owed by Dram Shop to Trendowski.

Trendowski responded to the writs by filing separate claims of exemption from garnishment and requested a hearing on her claims. She also filed a motion to determine the confidentiality of court records regarding certain financial documents of hers that had been placed in the court file. On June 17, 2019, Trendowski filed and served a notice of hearing, scheduling her two claims of exemption and her motion for hearing on July 1, 2019.

The next day, Robson moved to strike Trendowski’s claim of exemption as to Dram Shop. Robson also included a request for other remedies in its motion, including, but not limited to, the court: (1) finding that all of Dram Shop’s assets are within Trendowski’s control; (2) finding that all of Dram Shop’s earnings are owed to Trendowski; and (3) ordering Trendowski to provide Dram Shop’s “quarterly statements” to Robson.

Consistently with an apparent policy of the trial court for the scheduling of hearings, Robson’s counsel sought consent from Trendowski’s counsel to allow Robson’s motion

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<sup>1</sup> Based upon our ruling, we decline to address Trendowski’s second argument on appeal, asserting that the trial court substantively erred in granting the motion, and we express no position as to the correctness of the trial court’s ruling.

to strike and for other remedies to be heard also at the July 1 hearing. Trendowski's counsel declined. Consequently, Robson's motion to strike and for other remedies was not noticed or set for hearing on July 1.

Shortly thereafter, Trendowski changed counsel; and, on July 1, she and her new counsel attended the previously-scheduled hearing. The parties represented to the court that they had resolved two of the three scheduled matters, leaving for disposition Trendowski's claim of exemption regarding Dram Shop. After further discussion with the court, Trendowski withdrew this claim of exemption. Robson then sought to address its motion for other remedies, to which Trendowski's counsel advised the court that the motion was not noticed for hearing and counsel was not prepared to go forward on Robson's motion. Although the trial court at first appeared willing to set the motion for a later hearing, it nevertheless proceeded to hear the motion and grant to Robson the substantive remedies that it sought in its motion.

Trendowski argues on appeal that the trial court erred in expanding the scope of the July 1 hearing on her claims of exemption and motion to determine confidentiality of court records by proceeding, over objection, to hear Robson's motion for other remedies because Robson had not noticed its motion for hearing. Our standard of review is de novo. See *Nationstar Mortg., LLC v. Weiler*, 227 So. 3d 181, 183 (Fla. 2d DCA 2017) (recognizing that whether a trial court erred in expanding the scope of a hearing by proceeding to hear matters not properly noticed for hearing presents a due process question that appellate courts review de novo (citing *Crescenzo v. Marshall*, 199 So. 3d 353, 355 (Fla. 2d DCA 2016))).

Florida Rule of Civil Procedure 1.090(d) provides that “[a] copy of any written motion which may not be heard ex parte and a copy of the notice of the hearing thereof shall be served a reasonable time before the time specified for the hearing.” Here, Robson did not comply with this rule as it did not notice its motion for other remedies for hearing. Moreover, as indicated, Trendowski’s counsel expressly advised the trial court that he was not prepared to proceed on Robson’s unnoticed motion for other remedies.

Under these circumstances, we conclude that the trial court violated Trendowski’s due process rights by hearing and ruling on Robson’s motion. See *Christie v. Casaday*, 486 So. 2d 622, 622–23 (Fla. 5th DCA 1986) (holding that the failure to serve a written notice of hearing regarding a motion a reasonable time before the motion is heard constitutes an essential departure from the Florida Rules of Civil Procedure and the requirements of due process); *Weiler*, 227 So. 3d at 183 (“[A] trial court may violate a party’s ‘due process rights by hearing and determining matters that were not the subject of appropriate notice.’” (quoting *Levitt v. Levitt*, 454 So. 2d 1070, 1071 (Fla. 2d DCA 1984))).

Accordingly, we reverse, without prejudice, the order granting Robson’s motion for other remedies and remand for the trial court to hold an evidentiary hearing on the motion upon proper notice being provided.

REVERSED and REMANDED, with directions.

EVANDER, C.J., and TRAVER, J., concur.