

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

NATIONSTAR MORTGAGE, LLC,

Appellant,

v.

Case No. 5D14-1789

JOHN F. HOGAN, ET AL.,

Appellees.

Opinion filed March 18, 2016

Appeal from the Circuit Court
for Brevard County,
John Dean Moxley, Judge.

Nancy M. Wallace and Michael J. Larson, of
Akerman LLP, Tallahassee, and William P.
Heller, of Akerman LLP, Fort Lauderdale, for
Appellant.

Michael Alex Wasylik, of Ricardo & Wasylik,
PL, Dade City, for Appellee, Jack F. Hogan.

Jason M. Gordon, Cocoa Beach, for
Appellee, Sea Era Sands Condominium
Association, Inc.

PER CURIAM.

Nationstar Mortgage, LLC, appeals the trial court's order dismissing its foreclosure case against John F. Hogan. Nationstar argues that the trial court erred by failing to consider the required factors set forth in Kozel v. Ostendorf, 629 So. 2d 817, 819 (Fla.

1993), and failing to make the requisite express factual findings, before dismissing its second amended complaint with prejudice as a sanction for its counsel's failure to file it within the time allotted in a prior order. Hogan properly concedes error. Accordingly, we reverse the order dismissing the amended complaint and remand for consideration under Kozel. See Shortall v. Walt Disney World Hospitality, 997 So. 2d 1203, 1204 (Fla. 5th DCA 2008) ("The law is well-settled that '[b]efore dismissing a complaint based on the failure to follow a court order, the trial court must consider the factors set forth in Kozel.'" (quoting Scallan v. Marriott Int'l, Inc., 995 So. 2d 1066, 1067 (Fla. 5th DCA 2008))); see also Ham v. Dunmire, 891 So. 2d 492, 496 (Fla. 2004) ("Express findings are required to ensure that the trial judge has consciously determined that the failure was more than a mistake, neglect, or inadvertence, and to assist the reviewing court to the extent the record is susceptible to more than one interpretation."); Alvarado v. Snow White & Seven Dwarfs, Inc., 8 So. 3d 388, 388-89 (Fla. 3d DCA 2009) (citing Smith v. City of Panama City, 951 So. 2d 959, 962 (Fla. 1st DCA 2007)).

REVERSED AND REMANDED.

LAWSON, C.J., BERGER and EDWARDS, JJ., concur.