

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

DYCK-O'NEAL, INC.,

Appellant,

v.

Case No. 5D15-3154

JOSEPH W. SMITH,

Appellee.

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Opinion filed September 23, 2016

Appeal from the Circuit Court  
for Volusia County,  
Sandra C. Upchurch, Judge.

Susan B. Morrison, of the Law Offices of  
Susan B. Morrison, P.A., Tampa, for  
Appellant.

No Appearance for Appellee.

PER CURIAM.

In the underlying suit for a deficiency judgment filed by Dyck-O'Neal, Inc., the trial court entered a dismissal of the action based on the parties' failure to submit a joint status report as ordered by the trial court. Dyck-O'Neal, Inc., filed a motion to vacate the dismissal, arguing that it had no record of receiving the order to file a joint status report and that, pursuant to Florida Rule of Civil Procedure 1.540, the trial court should grant the

requested relief based on excusable neglect. The motion further alleged that the statute of limitations had expired and that refiling the action was prohibited.

The trial court denied the motion to vacate without holding an evidentiary hearing to give Dyck-O'Neal, Inc., the opportunity to establish excusable neglect under the rule. Dyck-O'Neal, Inc., contends this was error. Based on the record before us, we agree, reverse the order under review, and remand this case for an evidentiary hearing.

REVERSED and REMANDED.

LAWSON, C.J., SAWAYA and EVANDER, JJ., concur.