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

SPECIALTY SOLUTIONS, INC.,

Appellant,

v. Case No. 5D19-1559

BAXTER GYPSUM & CONCRETE, LLC,

Appellee.
_____/

Opinion filed June 17, 2021

Nonfinal Appeal from the Circuit Court
for Orange County,
Keith A. Carsten, Judge.

Doryk "Rusty" B. Graf, Jr., of Moody & Graf, P.A., Maitland, for Appellant.

Andrew P. Thompson and Anthony Jaglal, of Thompson, Jaglal and Sutton, P.A., Orlando, for Appellee.

EN BANC

LAMBERT, J.

The issue that we address in this appeal is whether a final summary judgment awarding unliquidated damages in favor of a plaintiff against a

defaulted defendant, following a motion for summary judgment filed under Florida Rule of Civil Procedure 1.510 and a properly-noticed hearing, is void as a matter of law.[1]

BACKGROUND—

Appellee, Baxter Gypsum & Concrete, LLC ("Baxter"), is a limited liability company that installs concrete and provides waterproofing services. Baxter became aware that three of its former employees were now employed by Appellant, Specialty Solutions, Inc. ("SSI"), a local competitor. These employees had each executed Non-Compete Agreements with Baxter that Baxter believed were being breached as a result of the employees working for SSI. Baxter sent a "cease and desist" letter to its former employees and to SSI, indicating that it intended to file suit if the purported breaches of the agreements were not immediately remedied. SSI thereafter retained counsel who responded by letter to Baxter's cease and desist letter.

Unsatisfied with the response received from SSI's counsel, Baxter promptly filed suit against its former employees and SSI. Baxter sought

[1] We previously withdrew, sua sponte, the panel opinion in this case that held that the amended final summary judgment entered was void as it pertained to the award of unliquidated damages, *see Specialty Sols., Inc. v. Baxter Gypsum & Concrete, LLC*, 45 Fla. L. Weekly D1219 (Fla. 5th DCA May 22, 2020), to consider this issue en banc.

injunctive relief and monetary damages against SSI under section 542.335, Florida Statutes (2018), as well as the Florida Uniform Trade Secrets Act, codified in chapter 688 of the Florida Statutes.

SSI was served with process at its principal place of business. When SSI did not file an answer or another response to the complaint within twenty days of service, as required under Florida Rule of Civil Procedure 1.140(a), Baxter moved for a default, which was entered by the clerk of court. Baxter then moved for the entry of a default final judgment against SSI and sent a copy of its motion to SSI at the same address where SSI had been served with process. Two days before a scheduled hearing on this motion, SSI's president sent an email to Baxter's attorney, confirming receipt of the motion for entry of the final judgment. This email also advised Baxter's counsel that SSI had "ceased operating" as of December 31, 2016, and had "dissolved" as of December 31, 2017.[2]

At the hearing, the trial court granted Baxter's motion for default judgment. The next day, the court entered a final default judgment against SSI, enjoining it from "using confidential, proprietary information of Baxter's on SSI's ongoing projects and future projects" and from otherwise using and

[2] SSI's Articles of Dissolution were not filed with the Florida Secretary of State until March 28, 2018, which was after the clerk's default had been entered against SSI.

disseminating Baxter's confidential, proprietary information. The court also reserved jurisdiction in the judgment to determine the amount of damages to be awarded in favor of Baxter against SSI.

SSI's attorney then sent another letter to Baxter's counsel. From the context of this letter, counsel appears to have been unaware that the trial court had, that same day, entered the aforementioned final default judgment. In her letter, SSI's counsel stated, among other things, that "if and when the court agrees to enter your second, proposed final judgment, it will be against a company that is no longer doing business, an inactive corporation."

Undeterred by this letter, Baxter filed a motion for summary judgment for damages. Attached to this motion was an affidavit executed by Baxter's president, averring that as a direct result of SSI's actions described in the complaint, Baxter had sustained lost profits in the sum of $817,465. SSI was served with the motion for summary judgment by certified mail at its principal place of business. The motion was also provided to SSI through the e-filing portal. Baxter's summary judgment motion was separately noticed for hearing consistently with the time requirements of Florida Rule of Civil Procedure 1.510(c), with the notice being sent to SSI by U.S. mail to the same principal place of business where it had been served with process.

SSI did not attend the summary judgment hearing, nor did it file any type of response to Baxter's motion. The trial court entered a written order that same day granting Baxter's summary judgment motion. Seven days later, the court entered an amended final judgment awarding damages to Baxter, consistent with its summary judgment motion, in the sum of $817,465. SSI did not move for rehearing or file an appeal of this amended final judgment.

Baxter then took steps to collect on its judgment. Twenty-eight days after the amended final judgment was rendered, an alleged debtor of SSI that had been served with a writ of garnishment answered the writ, stating that it was retaining the sum of $32,813.67 that it owed to Specialty Solutions *Southeast*, Inc., but that it did not have in its possession or control any deposits, accounts, or property of SSI. That same day, an attorney, different from the one who, on behalf of SSI, had sent the previously-described pre-suit and post-suit letters to Baxter, filed a notice of appearance as counsel of record for SSI.[3]

[3] This attorney also represents SSI in this appeal.

SSI'S RULE 1.540 MOTION—

Thirty-five days after the amended final summary judgment for damages was rendered against it, SSI, by its new counsel, moved under Florida Rule of Civil Procedure 1.540(b) for relief from the judgment. This rule provides, in pertinent part, that upon motion, a court may relieve a party from a judgment for one of the following reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing;
>
> (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
>
> (4) that the judgment, decree, or order is void; or
>
> (5) that the judgment, decree, or order has been satisfied, released, or discharged, or a prior judgment, decree, or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment, decree, or order should have prospective application.

Fla. R. Civ. P. 1.540(b). The rule further provides that the motion shall be filed within a reasonable time, and for subsections (1), (2), and (3), not more than one year after the judgment, decree, order, or proceeding was entered or taken. *Id.*

SSI's rule 1.540 motion was filed under subsection (b)(4) of this rule. It argued that because the amended final judgment awarding Baxter unliquidated damages[4] was entered following a motion for summary judgment, instead of after a properly-noticed trial set pursuant to Florida Rule of Civil Procedure 1.440(c),[5] the judgment is void and must be vacated.[6]

TRIAL COURT'S RULING—

The trial court disagreed and denied the motion. As to this aspect of the motion, the court, citing to *Andrade v. Andrade*, 720 So. 2d 551, 552 (Fla. 4th DCA 1998), explained that in order to set aside a final judgment under rule 1.540(b), SSI had the burden to show: (1) excusable neglect in not responding to the complaint; (2) a meritorious defense to the suit; and (3) that it had acted with due diligence in moving to set aside the judgment. The court specifically found in its order denying SSI's motion that SSI had failed

[4] Baxter concedes that the damages awarded to it in the amended final judgment are unliquidated.

[5] At the time, rule 1.440(c) provided, in part, that in actions in which the damages are not liquidated, the order setting trial shall be served on parties in default in accordance with Florida Rule of Civil Procedure 1.080(a).

[6] SSI's motion also asserted that the amended final judgment was void because Baxter never effectuated proper service of process against it. Following an evidentiary hearing, the trial court denied this aspect of the motion in the same order now under review. We affirm, without further discussion, that portion of the appealed order.

to establish either excusable neglect or a meritorious defense. This appeal ensued.

APPEAL—

SSI argues here that, contrary to the trial court's reasoning, where a party asserts under rule 1.540(b)(4) that a final judgment is void, it is "not required to demonstrate excusable neglect, a meritorious defense, or due diligence in moving to set aside the judgment." *See Vercosa v. Fields*, 174 So. 3d 550, 552 (Fla. 4th DCA 2015). SSI is correct. That, however, does not end our analysis. While the trial court's reasoning for denying SSI's motion was erroneous, the question remains whether the court nevertheless correctly denied the motion because, contrary to SSI's argument, the amended final summary judgment awarding damages was not void. *See Redmond v. First Guar. Mortg. Corp.*, 268 So. 3d 918, 920 (Fla. 5th DCA 2019) (affirming the denial of a rule 1.540(b) motion for relief from judgment under the "Tipsy Coachman" doctrine because while the trial court's reasoning in denying the motion was erroneous, it nevertheless reached the correct result when it denied the motion).

WHEN IS A FINAL JUDGMENT VOID?—

"Generally, a [final] judgment is void if: (1) the trial court lacks subject matter jurisdiction; (2) the trial court lacks personal jurisdiction over the party; or (3) 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." *Nationstar Mortg., LLC v. Diaz*, 227 So. 3d 726, 729 (Fla. 3d DCA 2017) (citing *Tannenbaum v. Shea*, 133 So. 3d 1056, 1061 (Fla. 4th DCA 2014)). Here, no argument has been made that the trial court lacked subject matter jurisdiction. Moreover, as previously indicated, we have rejected SSI's separate argument that the trial court lacked personal jurisdiction over it.[7]

Accordingly, the issue to be resolved appears to be whether the amended final judgment for damages is void because the proceedings leading up to its entry violated SSI's due process rights to both notice and an opportunity to be heard. If so, then the judgment must be vacated. *See Phenion Dev. Grp., Inc. v. Love*, 940 So. 2d 1179, 1181 (Fla. 5th DCA 2006) (holding that when a final judgment is void, a trial court has no discretion and must vacate the judgment (citing *State, Dep't of Transp. v. Bailey*, 603 So. 2d 1384, 1386–87 (Fla. 1st DCA 1992))); *Lamoise Grp., LLC v. Edgewater S. Beach Condo. Ass'n*, 278 So. 3d 796, 798 (Fla. 3d DCA 2019) ("[I]f a

[7] *See supra* footnote 6.

judgment previously entered is void, the trial court must vacate the judgment." (quoting *Wiggins v. Tigrent, Inc.*, 147 So. 3d 76, 81 (Fla. 2d DCA 2014))). Whether a final judgment is void presents a question of law that an appellate court reviews de novo. *Lamoise Grp.*, 278 So. 3d at 798–99 (quoting *Diaz*, 227 So. 3d at 729).

Our court has recognized that when an adverse party has been given notice and an opportunity to be heard, "then errors, irregularities, or wrongdoing in proceedings, short of illegal deprivation of opportunity to be heard, will not render the judgment void." *Krueger v. Ponton*, 6 So. 3d 1258, 1261 (Fla. 5th DCA 2009) (citing *Phenion Dev. Grp*., 940 So. 2d at 1181). In the instant case, SSI does not suggest that it did not receive Baxter's motion for final summary judgment and supporting affidavit wherein Baxter requested the specific amount of damages that were ultimately awarded. Nor does SSI argue that it failed to receive the notice of hearing on Baxter's motion for summary judgment or that it was precluded or prevented from being heard at the summary judgment hearing.[8]

[8] As such, the present case differs from our court's en banc opinion last year in *Ciotti v. Hubsch*, 302 So. 3d 497 (Fla. 5th DCA 2020), where we held that a final summary judgment for unliquidated damages was void against a defaulted defendant when it was entered without notice and an opportunity to be heard.

Despite this, SSI argues that under what it describes as this court's "instructive" precedent in *Lauxmont Farms, Inc. v. Flavin*, 514 So. 2d 1133 (Fla. 5th DCA 1987), and *Ciprian-Escapa v. City of Orlando*, 172 So. 3d 485 (Fla. 5th DCA 2015), a final judgment awarding unliquidated damages against a defaulted defendant absent a trial set under rule 1.440(c) renders any judgment entered as a result void. We now turn to consider these precedents *in seriatim*.

LAUXMONT FARMS, INC. V. FLAVIN—

In our relatively-unelaborated opinion in *Lauxmont Farms*, we reversed on direct appeal a final summary judgment awarding unliquidated damages against a defaulted defendant, writing that "[a]lthough a default judgment can be entered to establish liability a trial is necessary to establish unliquidated damages." 514 So. 2d at 1134. We remanded the case for a trial to be held with proper notice under rule 1.440. *Id.* While SSI relies upon the above-quoted language and our ruling in *Lauxmont Farms* for relief, for the following reasons, its reliance is misplaced.

Notably, the issue before the court in *Lauxmont Farms* was whether reversible error was committed by the trial court in entering the final summary judgment. Stated somewhat differently, unlike here, we were not tasked in

Lauxmont Farms[9] with deciding whether an award of unliquidated damages against a defaulted defendant who received proper notice of the motion for summary judgment and the resulting hearing is void under rule 1.540(b)(4). Whether a judgment is reversible on direct appeal is far different than whether a purported erroneous judgment, unchallenged by direct appeal, can be set aside, perhaps years later, as void under a rule 1.540(b)(4) motion. *See Fiber Crete Homes, Inc. v. Div. of Admin., State, Dep't of Transp.*, 315 So. 2d 492, 493 (Fla. 4th DCA 1975) ("Rule 1.540 was intended to provide relief from judgments, decrees or orders under a limited set of circumstances; it was [not] intended to serve . . . as a substitute for appellate review of judicial error." (citations omitted)); *Johnson v. State, Dep't of Rev. ex rel. Lamontagne*, 973 So. 2d 1236, 1238 (Fla. 1st DCA 2008) (holding that "[a]lthough a motion to set aside a judgment must be filed 'within a reasonable time,' because the mere passage of time cannot make a void

[9] We would also note that shortly after *Lauxmont Farms*, this court issued an opinion in *Sloan v. Freedom Savings & Loan Ass'n*, 525 So. 2d 1000, 1001 (Fla. 5th DCA 1988), in which we "clarified" that in *Lauxmont Farms*, we should have said that awarding unliquidated damages by *default* is error. *Sloan* was a direct appeal where we affirmed a final summary judgment awarding unliquidated damages. *Id.* That case differs from the present case because not only was it a direct appeal, but the defendant in *Sloan* had apparently not been defaulted.

judgment valid, a motion to vacate a judgment as void may 'reasonably' be filed many years after the judgment was entered" (citation omitted)).

CIPRIAN-ESCAPA v. CITY OF ORLANDO—

As previously indicated, SSI concisely argues that this court's more recent decision in *Ciprian-Escapa* makes clear that the final summary judgment entered here is void because a trial is required before a judgment awarding unliquidated damages against a defaulted defendant may be entered.

In *Ciprian-Escapa*, the City of Orlando brought a subrogation claim against the two appellants to recover workers' compensation benefits that the City had paid to two of its police officers after both were injured in an automobile accident caused by the appellants. 172 So. 3d at 487. After a default judgment,[10] the City moved "for final judgment," with an attached affidavit establishing damages. *Id.*[11] The City thereafter served a notice of hearing on the appellants at their address of record. *Id.* At the scheduled

[10] The appellants' answer in the case had been stricken by the trial court and a default had been entered against them as a sanction. *Id.* at 487 n.4.

[11] The record in that case showed that a copy of the motion and affidavit was sent to the appellants at the same address that they had used in their earlier filings.

hearing,[12] the trial court entered a final judgment for damages for the total amount set forth in the motion and affidavit. *Id.*

Several months later, the appellants filed a motion under Florida Rule of Civil Procedure 1.540(b) to vacate the final judgment. *Id.* at 487–88. In their motion, which was accompanied by supporting verified affidavits, the appellants claimed that they had only recently learned of the final judgment when the Department of Motor Vehicles sent them notice suspending their drivers' licenses. *Id.* The appellants argued that the judgment should be vacated because the trial court lacked personal jurisdiction over them as well as subject matter jurisdiction, the complaint failed to state a cause of action, and the City had committed fraud upon the court. *Id.* at 488. After a hearing, the trial court denied that motion. *Id.*

On appeal, the appellants argued for the first time that the trial court committed fundamental error in entering the judgment for unliquidated damages without an evidentiary hearing, noticed in accordance with rule 1.440, to establish the amount, rendering the judgment void. *Id.* at 487.

We agreed with this argument. *Id.* Citing to our earlier opinion in *Lauxmont Farms*, we wrote that "[s]trict compliance with Florida Rule of Civil

[12] The hearing was held, as scheduled, twenty-four days after the notice was sent.

Procedure 1.440 is required and failure to do so is reversible error." *Id.* at 488. We continued that "[i]t is fundamental error to set unliquidated damages without the notice, proof, and hearing required by rule 1.440(c)." *Id.* Accordingly, we reversed the order denying the appellants' rule 1.540(b) motion and vacated the portion of the final judgment that awarded unliquidated damages to the City, holding that the appellants "were entitled to an evidentiary hearing, with notice and opportunity to be heard, before the trial court entered the final judgment establishing the amount of [unliquidated] damages owed to the City." *Id.* at 490.

Thus, it appears that our opinion in *Ciprian-Escapa* may arguably be interpreted to mean that, absent a trial following proper notice given under rule 1.440(c), any final judgment entered thereafter awarding unliquidated damages against a defaulted defendant constitutes fundamental error that may be set aside as void pursuant to a rule 1.540(b)(4) motion. We next turn to consider whether the verbiage of rule 1.440(c) requires such a result.

DOES THE LANGUAGE OF RULE 1.440(c) MANDATE THAT CLAIMS FOR UNLIQUIDATED DAMAGES AGAINST A DEFAULTED PARTY CAN ONLY BE RESOLVED BY TRIAL?—

Rule 1.440 is succinctly titled "Setting Action for Trial." Pertinent to the present appeal, subsection (c) of this rule, relied upon by this court in *Ciprian-Escapa* to vacate that portion of the final judgment awarding unliquidated

damages, states:

> **Setting for Trial.** If the court finds the action ready to be set for trial, it shall enter an order fixing a date for trial. Trial shall be set not less than 30 days from the service of the notice for trial. By giving the same notice the court may set an action for trial. In actions in which the damages are not liquidated, the order setting an action for trial shall be served on parties who are in default in accordance with Florida Rule of Judicial Administration 2.516.

Fla. R. Civ. P. 1.440(c).

Other than the recent amendment referencing service in accordance with Florida Rule of Judicial Administration 2.516, the last sentence of rule 1.440(c), providing that in cases involving unliquidated damages the defaulted defendant is to be served with the order setting the case for trial, became effective on January 1, 1977.[13] Prior to this 1977 amendment, such notice was not required. *See Stevenson v. Arnold*, 250 So. 2d 270, 272 (Fla. 1971) (holding that in a suit seeking a money judgment for unliquidated damages, "generally a defendant in default for failing to file pleadings is not entitled to notice of trial or of other proceedings dispositive of the cause").

[13] *See In re The Fla. Bar, Rules of Civ. Proc.*, 339 So. 2d 626 (Fla. 1976). In 1977, the last sentence of rule 1.440(c) provided that an order setting the action for trial must be served in accordance with rule 1.080(a). *Id.* at 629. The present requirement of serving the parties with the order setting trial in accordance with Florida Rule of Judicial Administration 2.516 became effective in 2019. *See In re Amends. to Fla. Rules of Civ. Proc.*, 257 So. 3d 66, 74 (Fla. 2018).

The 1977 amendment to rule 1.440(c) requiring service of the order setting trial on defaulted parties has been interpreted by this court to be a response to the ruling in *Stevenson*. *See B/G Amusements, Inc. v. Mystery Fun House, Inc.*, 381 So. 2d 318, 320 (Fla. 5th DCA 1980) (observing that the 1977 amendment to rule 1.440 was an intent to change the rule set forth in *Stevenson* and holding that now, a party against whom a default is entered is entitled to notice of the order setting an action involving unliquidated damages for trial). The question nonetheless remains whether this last sentence of rule 1.440(c) is properly construed to require a trial on all claims for unliquidated damages against a defaulted defendant, thus causing any final judgment for unliquidated damages entered without such a trial, as the final summary judgment entered here under Florida Rule of Civil Procedure 1.510, to be void.

"It is well settled that the Florida Rules of Civil Procedure are construed in accordance with the principles of statutory construction." *Koppel v. Ochoa*, 243 So. 3d 886, 891 (Fla. 2018) (quoting *Saia Motor Freight Line, Inc. v. Reid*, 930 So. 2d 598, 599 (Fla. 2006)). "[W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation." *Id.* (quoting *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)).

Applying this principle, the plain language of rule 1.440 simply states that when the damages being sought are unliquidated and a trial is scheduled to determine the unliquidated damages, a defaulted defendant must be served with the order setting the trial date. Nothing within this rule mentions or addresses, one way or another, the resolution of a claim for unliquidated damages by summary judgment against a defaulted defendant.

Stated somewhat differently, we fail to discern how a defendant who, after being properly served with process, chooses not to respond to the complaint and is thereafter defaulted, can, years later, have a final summary judgment that was entered after a properly-noticed hearing under rule 1.510, readily set aside as void under rule 1.540(b)(4) because no trial was held pursuant to rule 1.440(c), *see Greisel v. Gregg*, 733 So. 2d 1119, 1121 (Fla. 5th DCA 1999) (recognizing that a judgment alleged to be void may be attacked at any time under rule 1.540(b)(4) because a void "judgment creates no binding obligation on the parties, is legally ineffective and is a nullity"), yet a non-defaulted co-defendant, who either filed an answer admitting to the allegations of a complaint or an unelaborated answer generally denying the allegations of a complaint, arguably may not have the same final summary judgment that awarded the same unliquidated damages

at the properly-noticed summary judgment hearing set aside by the court as void.

Under these scenarios, both defendants in the same case were provided with their due process rights of notice and an opportunity to be heard. Yet, if both elected not to attend a properly-noticed summary judgment hearing or otherwise to contest the legal arguments made in the motion or the summary judgment evidence provided in support of the motion, under our decision in *Ciprian-Escapa*, the defaulted defendant apparently retains the ability, at any time, to have the final judgment set aside as void under rule 1.540(b)(4), while the non-defaulted defendant would not. We do not believe that rule 1.440(c) requires such a result.

Here, SSI had notice of the summary judgment hearing. The correspondence from both its president and its first attorney did not challenge Baxter's claim but, instead, suggested to Baxter the likely futility of seeking a money judgment against SSI as it purportedly was no longer in existence.

Moreover, SSI apparently had notice of the entry of the amended final judgment for damages and was aware, within thirty days of it being rendered, that Baxter had taken steps to collect on the judgment. At most, these factors arguably made the amended final summary judgment here voidable, as opposed to void, s*ee Sterling Factors Corp. v. U.S. Bank Nat'l Ass'n*, 968

So. 2d 658, 666 (Fla. 2d DCA 2007) (recognizing that generally, "so long as a court has jurisdiction over the subject matter and a party, a procedural defect before entry of the judgment does not render the judgment void," particularly where "there is evidence that the party received actual notice of the proceedings," and "timely notice of the entry of any judgment against them"); however, we need not decide this issue today because SSI did not argue in its rule 1.540(b) motion that the judgment was voidable. *Cf. id.* at 665 ("A voidable judgment can be challenged by motion for rehearing or appeal and may be subject to collateral attack under specific circumstances, but it cannot be challenged at any time as void under rule 1.540(b)(4).").

Accordingly, we conclude 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,[14] is not automatically void as a matter of law and thus subject to being set aside under a rule 1.540(b)(4) motion. To the extent that our opinion in *Ciprian-Escapa* can be interpreted to hold otherwise, we recede from that portion of

[14] To be clear, we take no position as to whether Baxter's affidavit here was legally sufficient under Florida Rule of Civil Procedure 1.510(e) to support the entry of the amended final summary judgment. Our decision today is based solely upon our finding that under the circumstances of this case, and for the reasons expressed, the amended final summary judgment for damages was not void.

the opinion.[15] We therefore affirm the amended final judgment in favor of Baxter.

AFFIRMED.

EVANDER, C.J., COHEN, WALLIS, EDWARDS, HARRIS, and TRAVER, JJ., concur.
EISNAUGLE, J., concurs specially, with opinion in which SASSO and NARDELLA, JJ., concur.
WOZNIAK, J., did not participate.

[15] We also recede from *Lauxmont Farms* and from our opinions in *Krueger v. Ponton*, 6 So. 3d 1258 (Fla. 5th DCA 2009), and *Powers v. Gentile*, 662 So. 2d 374 (Fla. 5th DCA 1995), but only to the extent that these cases can be interpreted to mean that a final summary judgment awarding unliquidated damages against a defaulted defendant following a motion and properly-noticed hearing under Florida Rule of Civil Procedure 1.510, and not after a trial, is void.

EISNAUGLE, J., concurring specially. Case No. 5D19-1559

The narrow issue before us is whether a judgment entered against a defaulted party pursuant to the summary judgment procedures, rather than after a trial set pursuant to Florida Rule of Civil Procedure 1.440(c), is void. While I do not join all of the majority's analysis, I agree that reversible error on direct appeal "is far different" than the type of defect that renders a judgment void, and that we must recede from *Ciprian-Escapa v. City of Orlando*, 172 So. 3d 485 (Fla. 5th DCA 2015). In short, the judgment in this case is not void because SSI received fair notice and an opportunity to be heard. *See Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) ("[D]ue process is flexible and calls for such procedural protections as the particular situation demands.").

SASSO and NARDELLA, JJ., concur.