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

PAMELA A. OLSON,

Appellant,

v. Case No. 5D21-0291

ECO MARINE CONTACTOR, LLC
AND MARTIN BUTCHER,

Appellees.
_____/

Opinion filed June 4, 2021

Appeal from the County Court
for Putnam County,
Joe Boatwright, Judge.

Zachary Lucas Keller, of Keller Legal,
Palatka, for Appellant.

Steven M. Croskey, of Croskey Law, PLLC,
Jacksonville, for Appellee.

WOZNIAK, J.

Pamela A. Olson appeals a trial court order denying her motion for relief from an adverse final judgment in this breach of contract action. Because that adverse final judgment was rendered by a recused judge under

circumstances showing she engaged in more than the ministerial act of reducing a prior oral ruling to writing, the final judgment was void and should have been vacated. Thus, we reverse the successor judge's order denying Olson relief from that void final judgment and remand for a new trial.

The case has its genesis in county court. Eco Marine Contractors, LLC and Martin Butcher (collectively "Eco Marine") filed a small claims action to recover the $2,500 balance due under its contract with Olson for the construction of a boathouse on Olson's property. Olson, largely pro se, defended on the basis that Eco Marine was not licensed by the State and thus was precluded from enforcing the contract. The cause proceeded to trial in February 2019. No court reporter was present; the Court Minutes affirmatively state that the judge took the case under advisement.[1] A month later, the judge asked Eco Marine to submit a proposed final judgment, which it did.

Post-trial, Olson filed supplemental authority in the trial court. Eco Marine moved to strike the supplemental authority, sought sanctions, and set a hearing for April 4, 2019, on its motions. No court reporter was present

[1] While the absence of a trial transcript may have been fatal to any review of the merits of the final judgment had a timely appeal been brought therefrom, its absence does not prevent this Court's review of the successor judge's order denying relief from the final judgment that was ultimately rendered by the recused judge.

for that hearing. The Court Minutes make no reference to any oral ruling, which, we presume, would have been a noteworthy event, and instead reflect only that the court granted Olson's motion for a continuance so she could obtain counsel and continued the hearing to May 2, 2019. There is no indication that the judge made an oral ruling on the merits of Eco Marine's suit at that hearing, although Eco Marine subsequently represented that the judge announced an oral ruling disposing of the suit in its favor at the hearing.

Several days after the April hearing, the judge filed a note in the trial court docket, with a copy of Eco Marine's proposed final judgment attached, that stated, "Hold until May hearing." The proposed final judgment has handwritten changes to the interest and attorneys' fees figures and reduced the total award from $29,586.59 to $2,980.34. The May hearing never took place.

To the parties' apparent surprise, the judge sua sponte recused herself on May 2, 2019, before the continued hearing set for that same day could be held. The case was reassigned to a successor judge, who held a status conference on June 5, 2019, and correctly determined that a new trial on the merits of the suit was required. Within hours of the status conference, Eco Marine filed what it titled as a "Motion for Clarification." The motion reviewed the timeline of the case and asked that the recused judge's April 4 oral ruling

(of which there is no record evidence) be reduced to writing as a ministerial act. Eco Marine emailed a copy of its motion to the recused judge's judicial assistant, purportedly as a "courtesy copy" for the recused judge, and offered, "Please let me know if you need any other information or have any questions."

The recused judge, apparently prompted by Eco Marine's motion, rendered final judgment in favor of Eco Marine on June 20, 2019. Rendition of the final judgment occurred 126 days after the February trial, 77 days after the April 4 hearing, and 49 days after the judge had sua sponte recused herself. Olson timely moved to vacate the final judgment and sought a new trial. The successor judge denied Olson's motion.

Ordinarily, the abuse of discretion standard of review is applicable to review of an order denying a motion to vacate under Florida Rule of Civil Procedure 1.540(b), Avael v. Sechrist, 305 So. 3d 593, 596 (Fla. 3d DCA 2020), review denied, No. SC20-864, 2020 WL 6336056 (Fla. Oct. 29, 2020), and its small claims rule counterpart, rule 7.190. However, an appellate court is obligated to reverse such an order if the challenged judgment is void; no discretion is involved in that instance. Avael, 305 So. 3d at 596 (quoting Lamoise Grp., LLC v. Edgewater S. Beach Condo. Ass'n, 278 So. 3d 796, 798 (Fla. 3d DCA 2019) ("[I]f a judgment previously entered is void, the trial

court must vacate the judgment.")). An order rendered by a judge after recusal is void, Bolt v. Smith, 594 So. 2d 864, 864 (Fla. 5th DCA 1992), unless entry of the order comes within the narrow exception for the purely ministerial act of reducing an oral ruling to writing. Because, as we explain below, the final judgment is void for having been rendered by a recused judge acting outside her authority, we are obligated to reverse the order denying relief therefrom and remand for a new trial.

It is well settled that once a judge enters an order of disqualification, that judge is prohibited from taking any further action in the case, other than the ministerial act of reducing to writing an oral ruling made prior to the rendition of the disqualification order. See, e.g., Fischer v. Knuck, 497 So. 2d 240, 243 (Fla. 1986) ("When a judge has heard the testimony and arguments and rendered an oral ruling in a proceeding, the judge retains the authority to perform the ministerial act of reducing that ruling to writing. However, any substantive change in the trial judge's ruling would not be a ministerial act." (citations omitted)); Godin v. Owens, 275 So. 3d 700, 701 (Fla. 5th DCA 2019) (affirming written judgment based on judge's oral pronouncements made at trial and before motion to disqualify filed, but reversing child support obligation contained in judgment not included in the oral pronouncements), review denied, No. SC19-1326, 2020 WL 290716

(Fla. Jan. 21, 2020); Berry v. Berry, 765 So. 2d 855, 857 (Fla. 5th DCA 2000) ("The act of reducing to writing a previously announced oral ruling is ministerial because it is merely the memorialization of the oral ruling and does not require the judge to further exercise his or her discretion.").

The exception allowed for reducing an oral pronouncement to writing is narrow and does not apply, for instance, "if the final judgment or order provides details not articulated in the trial court's prior oral pronouncement." Godin, 275 So. 3d at 701 (citing Parnell v. Parnell, 113 So. 3d 989, 990-91 (Fla. 5th DCA 2013)). Other factors are also given weight when determining whether a recused judge had authority to render an order post-recusal. For example, in Berry, this Court concluded that the narrow exception did not apply because, inter alia, the judge's request that the husband's attorney prepare a proposed judgment would require that the judge exercise discretion in determining whether the proposed judgment comported with his directions. Berry, 765 So. 2d at 857. Further, this Court observed that the "lengthy" four-month delay following the oral pronouncement, without a judgment being rendered, made it "unlikely the trial judge would be able to draft its own comprehensive and detailed judgment without further exercising his discretion." Id. at 858; see also Plaza v. Plaza, 21 So. 3d 181, 183 (Fla. 3d DCA 2009) (finding that the ministerial act exception did not apply

"because the trial judge directed the mother's attorney to prepare and submit a proposed order reflecting the trial judge's pronouncements after the hearing, the parties dispute what occurred at the hearing, the trial judge made changes to the proposed order, and there is no transcript to determine whether the order signed by the judge comports with the factual findings and oral pronouncements made by the judge at the hearing").

Our review of the record in this case leads us to the same conclusion as this Court in Berry and the Third District Court in Plaza. Similar factors, including the passage of time between trial and judgment, the entry of judgment only upon prompting by a party, and the lack of a transcript reflecting any oral ruling by which a comparison of the rendered judgment and the oral ruling can be made, demonstrate that the ministerial exception allowing a recused judge to reduce an oral ruling to writing is inapplicable. The result is a void judgment from which Olson was entitled to relief. Accordingly, we reverse the order denying her motion for relief from judgment and remand for a new trial.

REVERSED and REMANDED for new trial.

EDWARDS and HARRIS, JJ., concur.