

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

JANUARY TERM 2013

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

ASSET RECOVERY CENTER
INVESTMENTS, LLC,

Appellant,

v.

Case No. 5D11-3116

ESTATE OF CHARLES HOSSAIRATI,

Appellee.

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Opinion filed May 31, 2013

Appeal from the Circuit Court
for Orange County,
Thomas R. Kirkland , Judge.

Jack R. Reiter of Carlton Fields,
P.A., Miami, for Appellant.

Nicholas A. Shannin of The Shannin Law
Firm, P.A., and Roger D. Moss, Jr., of
Zimmerman, Kiser & Sutcliffe, P.A.,
Orlando, for Appellee.

PER CURIAM.

We conclude that the trial court abused its discretion in denying Appellant's motion for rehearing, which established excusable neglect by Appellant's counsel in failing to appear at the summary judgment hearing and failing to file a counter-affidavit. The late-filed affidavit creates an issue of material fact precluding summary judgment. *Marco Surfside, Inc. v. Velez*, 438 So. 2d 911 (Fla. 3d DCA 1983).

REVERSED and REMANDED.

GRIFFIN, TORPY and JACOBUS, JJ., concur.