

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

JULY TERM 2013

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

ERIC A. KNAPP,

Appellant/Cross-Appellee,

v.

Case No. 5D13-375

DAVID L. TALTON,
WALTER A. MCCULLY, ET AL.,

Appellee/Cross-Appellant.

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Opinion filed December 6, 2013

Appeal from the Circuit Court
for Seminole County,
Alan A. Dickey, Judge.

Dennis Wells, of Webb, Wells &
Williams, P.A., Longwood, for
Appellant/Cross Appellee.

Jim McCrae and J. Keith Ramsey, of
Holland & Knight LLP, Orlando, for
Appellee/Cross-Appellant.

PER CURIAM.

AFFIRMED. See Fla. R. Civ. P. 1.540(b); *Harrison v. La Placida Cmty. Ass'n*, 665 So. 2d 1138, 1141 (Fla. 4th DCA 1996) (holding that Rule 1.540 cannot be used to remedy legal error, such as "vacat[ing] an order of dismissal upon a finding that [the] decision [to dismiss] was erroneous"); *Averbuch v. Lauffer*, 516 So. 2d 973, 974 (Fla. 5th DCA 1987) ("[A] party may not utilize a motion for relief from judgment under Rule 1.540(b), Fla. R. Civ. P., to relitigate issues which have been previously litigated in a

motion for rehearing pursuant to Rule 1.530, Fla. R. Civ. P. If the grounds are identical, a party's failure to seek appellate review of the order denying the motion for rehearing precludes further judicial review." (quoting *Sloan v. Sloan*, 393 So. 2d 642, 644 (Fla. 4th DCA 1981)).

ORFINGER, LAWSON and EVANDER, JJ., concur.