DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2011

WILLOW WOOD MID-RISE CONDOMINIUM I ASSOCIATION, INC.,
Appellant,

v.

VANCO CONSTRUCTION & SUPPLY, INC.,
Appellee.

No. 4D09-174

[August 31, 2011]

POLEN, J.

Appellant, Willow Wood Mid-Rise Condominium I Association, Inc. ("Willow"), appeals two non-final orders of the trial court, dated October 6, 2008, and December 16, 2008. Willow's appeal was not appropriately directed at the final judgment, issued on October 20, 2008. Consequently, this court does not have jurisdiction and, as such, we dismiss this matter.

On May 2, 2007, appellee/plaintiff, Vanco Construction & Supply, Inc. ("Vanco"), filed a four-count complaint against appellant/defendant Willow, alleging that Willow failed to pay Vanco for furnished labor, services, and materials it supplied in connection with the Willow property. The complaint alleged foreclosure of construction lien (Count I); breach of contract (Count II); services rendered/goods supplied (Count III); and unjust enrichment (Count IV). The parties appeared at a mediation conference and agreed to voluntary binding arbitration to resolve the contract and lien foreclosure disputes. On June 5, 2008, the arbitrator issued an award in Vanco's favor. Vanco then filed a motion to confirm arbitration award and for entry of final judgment, pursuant to section 682.12, Florida Statutes. On October 6, 2008, the trial court granted Vanco's motion to confirm award in part and denied it in part. The trial court also denied Willow's motion to strike the attorney's fees provision in the award for failure to file a timely motion to strike or vacate that award. This order also directed Vanco to "submit final judgment for court's signature."

On October 16, 2008, Willow filed a motion for rehearing to modify or clarify arbitration award to determine prevailing party attorney's fees, requesting the trial court to rehear Willow's *ore tenus* motion to strike attorney's fees awarded to Vanco. On October 20, 2008, the trial court entered final judgment in favor of Vanco, awarding Vanco the sum of $86,050.32 – the sum awarded to Vanco in the October 6, 2008 arbitration award. On November 3, 2008, Willow untimely filed a renewed motion for rehearing to modify or clarify arbitration award to determine prevailing party attorney's fees, directed at the non-final order from October 6, 2008. On December 16, 2008, the trial court denied Willow's motion.

On January 15, 2009, Willow appealed the trial court's October 6, 2008 and December 16, 2008 orders denying Willow's motions to strike the attorney's fee award. Willow did not appeal the final judgment issued on October 20, 2008. Vanco moved to dismiss the January 15, 2009 appeal because Willow's appeal was not directed at the final judgment, but instead at non-final orders issued on October 6, 2008 and on December 16, 2008. This court relinquished jurisdiction for thirty days so that Willow could obtain a final judgment, even though one had been issued on October 20, 2008. On July 10, 2009, Willow filed with this court a revised final judgment.

Orders that contain neither "the traditional words of finality nor other words of similar import" are not final judgments subject to appellate review. *Danford v. City of Rockledge*, 387 So. 2d 967, 968 (Fla. 5th DCA 1980) (citing *Armstrong Contracting & Supply Corp. v. Aerospace Indus., Inc.*, 254 So. 2d 242 (Fla. 4th DCA 1971)). "To be appealable as a final order, an order must contain unequivocal language of finality." *Hoffman v. Hall*, 817 So. 2d 1057, 1058 (Fla. 1st DCA 2002). "[T]he use of additional language such as 'the plaintiff take nothing by [this] suit . . . and go hence without day' lends the necessary unequivocal declaration of finality that will support an appeal." *Allstate Ins. Co. v. Collier*, 405 So. 2d 311, 312 (Fla. 4th DCA 1981). In *Hoffman*, the First District held that "the title of the order, the lack of language demonstrating finality and the ambiguous phrasing which suggests that some future order 'shall be entered' renders the order nonfinal for appellate purposes."[1] *Hoffman*, 817 So. 2d at 1058. Consequently, the First District held that the order

[1] In *Hoffman*, the circuit court issued an order titled, "Order on Defendant's Motion to Dismiss Second Amended Complaint." Paragraph 1 of the order stated that the defendant's motion to dismiss was granted. Paragraph 2 of the order stated, "Plaintiff's Second Amended Complaint shall be dismissed with prejudice and judgment in favor of defendant shall be entered." *Id.*

merely established entitlement to a judgment and did not actually enter or render a judgment. *Id.*

> A motion for new trial or for rehearing shall be served not later than 10 days after the return of the verdict in a jury action *or the date of filing of the judgment in a non-jury action*. A timely motion may be amended to state new grounds in the discretion of the court at any time before the motion is determined.

Fla. R. Civ. P. 1.530(b) (emphasis added). In *Wagner v. Bieley, Wagner & Associates, Inc.*, 263 So. 2d 1, 3 (Fla. 1972), our supreme court held that:

> [A] motion for rehearing may be directed *only to final judgments rendered by a court*, since that is the only judicial action specified in the rule authorizing the filing of such a motion. If the rule-making authority had intended to authorize the filing of a motion for rehearing directed to an interlocutory order, it could easily have so provided. Unless the filing of a motion for rehearing to an interlocutory order is authorized by a rule of court promulgated by the rule-making authority, then its filing is improper and would not toll the rendition date of the order or the running of the time for seeking appellate review of the order complained about.

Id. (quoting *Home News Publ'g Co. v. U-M Publ'g, Inc.*, 246 So. 2d 117 (Fla. 1st DCA 1971)) (emphasis added). In *Clearwater Federal Savings & Loan Ass'n v. Sampson*, our supreme court stated:

> An interlocutory order entered after judgment, post decretal, order, is not to be confused with one entered during the pendency of the proceedings before final judgment. Post decretal orders are not true interlocutory orders, and perhaps the term "interlocutory" is a misnomer. Where an order after judgment is dispositive of any question, it becomes a final post decretal order. To the extent that it completes the judicial labor on that portion of the cause after judgment, it becomes final as to that portion and should be treated as a final judgment, and, therefore, a petition for rehearing could be properly directed to such a post decretal order *which constitutes a final and distinct adjudication of rights which have not been adjudicated in the original final judgment.* Sub judice, the post decretal order by the trial court to which the petition for rehearing was directed was

> dispositive of the question of disposition of the money paid to the receiver, and in itself, was a distinct adjudication so final in nature as to partake of the character of a final decree. A petition for rehearing could properly be addressed to it as one could be addressed to any final decree.

336 So. 2d 78, 79-80 (Fla. 1976) (internal citations omitted) (emphasis added). The July 10, 2009 revised final judgment did not change any of the terms of the October 20, 2008 final judgment; all that was changed was the date.[2] Accordingly, the July 10, 2009 revised final judgment did not serve to cure an otherwise untimely notice of appeal and has no bearing on our decision as to finality.

Here, the October 6, 2008 order is titled "Order," and states:

> ORDERED and ADJUDGED that the motion [Plaintiff's motion to confirm arbitration award and for entry of final judgment] is GRANTED as to the request for a money judgment in the amount of $86,000.32. It is denied as to the request that a judgment be entered on the claim for foreclosure of a construction lien for failure to file a timely motion to modify or clarify. Defendant's motion to strike attorney's [sic] is denied for failure to file a timely motion to strike or vacate that award. *Plaintiff's counsel shall submit final judgment for court's signature.*

(Emphasis added).

The October 6, 2008 order did not contain the requisite unequivocal language of finality. Further, as in *Hoffman*, the order contemplated future judicial labor in that the order actually stated that "*Plaintiff's counsel shall submit a final judgment for court's signature*." Thus, the language of finality is not present in the order and the order is non-final for purposes of Florida Rule of Appellate Procedure 9.030(b)(1)(A), as the order explicitly contemplated further judicial labor. *See also Friendly Homes of the S., Inc. v. Fontice*, 932 So. 2d 634 (Fla. 2d DCA 2006) ("The order on appeal was entered in response to Friendly Homes' motion to

---

[2] Although the July 10, 2009 revised final judgment separately lists the individual amounts awarded to Vanco (the damage award; the prejudgment interest award; the attorney's fees and costs awards; and the arbitration expenses award), the total amount awarded, $86,060.32, is the same amount awarded in the October 20, 2008 final judgment.

confirm the arbitration award. This was not a final order because it did not end the judicial labor in the case.")

As to the December 16, 2008 order entitled "Order on Defendant's Renewed Motion for Rehearing to Modify or Clarify Arbitration Award to Determine Prevailing Party Attorney Fees," the order merely stated: "Motion is denied for the reasons set forth in the record."[3] Willow's motion for rehearing was directed at the October 6, 2008 non-final order; thus, pursuant to Florida Rule of Civil Procedure 1.530, the motion was not directed at a final judgment. As such, because the motion was not permitted under 1.530, it did not affect the time for filing a notice of appeal. Moreover, although the order was entered after the October 20, 2008 judgment and was post decretal, under *Sampson*, the order did not constitute a final and distinct adjudication of rights which were not previously adjudicated in the original final judgment. Thus, the time to file did not start ticking again, and Willow's notice of appeal, filed more than thirty days after rendition of the October 20, 2008 final judgment, was untimely.

Neither of the orders Willow appealed are final orders. Willow's notice of appeal, dated January 15, 2009, identified and attached the two orders of the trial court from October 6, 2008 and December 16, 2008. Consequently, Willow did not appeal the final judgment entered on October 20, 2008. Further, Willow's motion for rehearing was directed at the October 6, 2008 order confirming arbitration and denying Willow's *ore tenus* motion to vacate attorney's fees; this is not in the nature of a rehearing authorized by rule 1.530(a) or (b). Therefore, the motion had no effect on the timing for filing a notice of appeal. Even if we were to consider the November 3, 2008, renewed motion for rehearing as directed to the final judgment, it was untimely and would not have tolled the time for filing a notice of appeal from the October 20, 2008, final judgment. Finally, as explained above, the revised final judgment, dated July 10, 2009, does not form a new basis for a timely notice of appeal. Thus, because Willow's notice of appeal was filed on January 15, 2009, Willow's notice of appeal is untimely, and this court is without jurisdiction. Consequently, we dismiss this matter.

---

[3] The trial court stated that a party desiring changes to the arbitration award or clarification is required to seek timely modification or clarification from either the arbitrator or the court; otherwise, the award becomes ripe for confirmation. In this case, it is undisputed that neither party moved to modify or clarify the award within the time rules applicable.

Dismissed.

MAY, C.J., and WARNER, J., concur.

* * *

Appeal of non-final orders from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Jonathan D. Gerber and Donald Hafele, Judges; L.T. Case No. 502007CA006712XXXXMB.

Ronald E. D'Anna of McClosky, D'Anna & Dieterle, LLP, Boca Raton, for appellant.

Scott J. Topolski and Sally Still of Buckingham, Doolittle & Burroughs, LLP, Boca Raton, for appellee.

Not final until disposition of timely filed motion for rehearing.