

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

GENNA GARDNER,
Appellant,

v.

MOVING COST, INC., a Florida corporation, **NATIONWIDE
RELOCATION SERVICES, INC.,** a Florida corporation, **NATIONWIDE
AUTO TRANSPORTERS, INC.,** a Florida corporation, and **WE HAUL
INTERNATIONAL, INC.,** a Florida corporation,
Appellees.

No. 4D09-4648

[April 6, 2011]

PER CURIAM.

The circuit court dismissed appellant's complaint with prejudice after she failed to file an amended complaint. On July 1, 2009, appellant's attorney withdrew and the court gave her 20 days to retain new counsel and file an amended complaint. On August 17, 2009, appellees moved to dismiss with prejudice. The court entered a final order of dismissal with prejudice on September 11, 2009. Six days later, appellant filed a pro se motion to set aside the final order of dismissal; she said that she had not received notice of the hearing on the motion and had not been able to acquire new counsel. The court denied the motion.

"[N]ot every failure to comply with a court order or rule of civil procedure will justify dismissal." *Town of Manalapan v. Florida Power & Light Co.*, 815 So. 2d 670, 672 (Fla. 4th DCA 2002). In dismissing the case, the court did not consider the six factors of *Kozel v. Ostendorf*, 629 So. 2d 817, 818 (Fla. 1993), to decide whether a sanction less severe than dismissal with prejudice was appropriate. We reverse the order dismissing the case with prejudice and remand for further proceedings.

GROSS, C.J., STEVENSON and GERBER, JJ., concur.

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Appeal from the Circuit Court for the Seventeenth Judicial Circuit,
Broward County; Robert B. Carney, Judge; L.T. Case No. 08-23047 04.

Genna Gardner, Plantation, pro se.

Neil Flaxman of Neil Flaxman, P.A., Miami, for appellees.

Not final until disposition of timely filed motion for rehearing.