

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

RONALD HOWARTH,)
)
 Petitioner,)
)
 v.)
)
 DIANE LOMBARDI,)
)
 Respondent.)
_____)

Case No. 2D20-1239

Opinion filed December 11, 2020.

Petition for Writ of Certiorari to the Circuit
Court for the Sixth Judicial Circuit for
Pasco County; sitting in its appellate
capacity.

Thomas A. Burns of Burns, P.A., Tampa;
and Edward C. Castagna, Jr.,
and Nicole Kerr of Castagna Law
Firm, P.A., Clearwater, for Petitioner.

Nickolas C. Ekonomides of Nickolas C.
Ekonomides, P.A., Clearwater, for
Respondent.

PER CURIAM.

Ronald Howarth filed a petition for writ of certiorari asking this court to
strike an order and opinion of the circuit court sitting in its appellate capacity. For the
reasons set forth below, we grant the petition.

PROCEDURAL HISTORY

Mr. Howarth filed a complaint for eviction against Diane Lombardi in the county court. Ms. Lombardi filed a motion to dismiss and a counterclaim for damages in excess of \$15,000; she did not file a motion to transfer the action to the circuit court. Mr. Howarth successfully moved to dismiss the counterclaim and later obtained a default final judgment of eviction after Ms. Lombardi failed to deposit rent into the court's registry.

Ms. Lombardi filed a motion to vacate the final judgment of eviction. That motion was denied, and she appealed that denial to the circuit court. In the order and opinion now under review, the circuit court concluded that the county court was divested of subject matter jurisdiction when Ms. Lombardi filed her counterclaim and that the county court should have transferred the case to the circuit court at that time. Accordingly, the circuit court reversed all orders of the county court and remanded for the court to transfer the case to the circuit trial court. Because the circuit court's scope of appellate review was limited to the order denying the motion to vacate, we grant the petition and quash the order and opinion of the circuit court.

DISCUSSION

To invoke the jurisdiction of the circuit court in its appellate capacity, a notice of appeal must be filed within thirty days of rendition of the order to be reviewed. Fla. R. App. P. 9.110(b). Rendition may be tolled upon the filing of an authorized motion as specified in rule 9.020(h)(1).

In her initial notice of appeal to the circuit court, filed September 7, 2018, Ms. Lombardi only sought review of the July 6, 2018, final judgment of eviction. A

second amended notice of appeal sought review of the final judgment and the order denying the motion to vacate final judgment, rendered August 14, 2018. The appeal was thus untimely as to the final judgment of eviction, unless rendition of the final judgment was tolled by the filing of a motion per rule 9.020(h)(1). See Fla. R. App. P. 9.110(b).

Ms. Lombardi argues that her motion to vacate final judgment, filed pursuant to Florida Rule of Civil Procedure 1.540(b)(4), should be considered a motion for rehearing filed pursuant to rule 1.530. Critically, a motion for rehearing would stay rendition of the final judgment of eviction, whereas a rule 1.540(b)(4) motion to vacate would not. Fla. R. App. P. 9.020(h)(1).

The grounds for rehearing under rule 1.530 are broad, and the rule's purpose is to afford "the trial court an opportunity to consider matters which it overlooked or failed to consider." Balmoral Condo. Ass'n v. Grimaldi, 107 So. 3d 1149, 1151 (Fla. 3d DCA 2013) (quoting Carollo v. Carollo, 920 So. 2d 16, 19 (Fla. 3d DCA 2004)). In contrast, the grounds to seek relief from a final judgment under rule 1.540 are narrow and are strictly limited to those enumerated in the rule. Id. at 1152. Critically, "a denial (or granting) of a motion to vacate a final judgment cannot on appeal bring up for review the merits of the final judgment sought to be vacated." Averbuch v. Lauffer, 516 So. 2d 973, 974 (Fla. 5th DCA 1987) (quoting Bland v. Mitchell, 245 So. 2d 47, 48 (Fla. 1970)).

After reviewing the motion's contents and its assertions, we conclude that it is, as it announced, a rule 1.540 motion to vacate final judgment, not a motion for rehearing. The motion specifically references rule 1.540(b)(4), asserting that "the

judgment is void, and it must be vacated per [rule] 1.540(b)(4)"; and the arguments asserted are consistent with that rule, not with a motion for rehearing. Thus, the motion did not stay rendition of the final judgment of eviction, and the circuit court was without jurisdiction to consider the final judgment of eviction pursuant to the untimely notice of appeal. Rather, the circuit court could only consider the order that fell within the timely invocation of appellate jurisdiction, i.e., the order denying the motion to vacate final judgment.¹ See Averbuch, 516 So. 2d at 974.

We also reject the circuit court's conclusion that the county court was divested of its jurisdiction upon the filing of Ms. Lombardi's counterclaim. Florida Rule of Civil Procedure 1.170 allows the filing of a counterclaim in a sum greater than the jurisdiction of the then filed county court action. Where such a counterclaim is filed, rule 1.170(j) provides, in part, that

[t]he court must order the transfer of the action and the transmittal of all documents in it to the proper court if the party asserting the demand exceeding the jurisdiction deposits with the court having jurisdiction a sum sufficient to pay the clerk's service charge in the court to which the action is transferred at the time of filing the counterclaim or crossclaim.

However, failure to deposit the service charge at the time the counterclaim "is filed, or within such further time as the court may allow, will reduce a claim for damages to an amount within the jurisdiction of the court where the action is pending and waive the claim in other cases." Fla. R. Civ. P. 1.170(j). "The rule authorizes the court to

¹The circuit court did not address the substance of the order denying the motion to vacate, reversing only based on its finding that the county court lacked subject matter jurisdiction upon the filing of the counterclaim, an argument not raised by either party.

determine if these requirements have been satisfied prior to transfer of the action."

Pearce v. Parsons, 414 So. 2d 296, 297 (Fla. 2d DCA 1982).

Here, Ms. Lombardi did not comply with rule 1.170(j), and the county court was within its authority to conclude that the rule's mandate had not been satisfied. Therefore, Ms. Lombardi did not effectuate a transfer of the action and thereby remove jurisdiction from the county court.

Petition granted; order and opinion quashed; remanded for further proceedings.

CASANUEVA, VILLANTI, and LABRIT, JJ., Concur.