

Third District Court of Appeal

State of Florida

Opinion filed October 21, 2015.
Not final until disposition of timely filed motion for rehearing.

No. 3D14-2320
Lower Tribunal No. 8-33479

Ingrid A. Beckles, etc., et al.,
Appellants,

vs.

Alcira Marcella Brit,
Appellee.

Appeal from the Circuit Court for Miami-Dade County, Rosa I. Rodriguez,
Judge.

Derek V. Lewis, P.A., for appellants.

Gerson & Schwartz, P.A., and Philip M. Gerson and Edward S. Schwartz,
for appellee.

Before SHEPHERD, EMAS and SCALES, JJ.

PER CURIAM.

On Order to Show Cause

On September 29, 2014, Derek Lewis, counsel for Appellants and defendants below, Ingrid A. Beckles d/b/a Club Lexx f/k/a Club Rol-Lexx, C.H.I.R. Corporation, and PIRTS, Inc., filed a notice of appeal with this Court. Appellants purported to appeal an adverse final judgment awarding \$2.8 million in damages against Appellants following a jury trial held in August 2014.

On December 29, 2014, after Appellants failed to file an initial brief or a motion seeking an extension of time to file an initial brief, Appellee filed a motion to dismiss the appeal.

On December 31, 2014, this Court issued an order requiring Appellants – within ten days – to show cause as to why the appeal should not be dismissed.

On January 11, 2015, Mr. Lewis filed a motion on behalf of Appellants, seeking a twenty-day extension to file Appellant’s initial brief. We granted the motion, requiring that Appellant’s initial brief be filed no later than February 7, 2015.

On February 23, 2015, after Appellants again failed to file an initial brief or a motion seeking an extension of time, Appellee filed a renewed motion to dismiss the appeal.

On March 6, 2015, we entered an order stating that the appeal would be dismissed if the Appellant's initial brief was not served within ten days (i.e., March 16, 2015).

On March 31, 2015, after Appellants failed yet again to file an initial brief or any other motion or paper with the Court, we dismissed Appellant's appeal, and ordered Mr. Lewis to show cause as to why sanctions should not be imposed for failure to comply with orders of the Court and Florida's Rules of Appellate Procedure.

On April 30, 2015, Mr. Lewis filed a response to our order to show cause, indicating that the September 2014 final judgment entered against Appellants had left Appellants without the resources needed to prosecute the appeal.

While not entirely clear, it appears from Mr. Lewis's response that, because Mr. Lewis was not receiving payment, he did not prosecute the appeal.

Rule 4-1.3 of Professional Conduct requires that lawyers act with reasonable diligence and promptness in representing a client. In our view, the rule requires that, when faced with such a situation (a client lacks the resources to pay for an attorney's appellate services), it is incumbent on the attorney of record to respond appropriately to Court orders, seek enlargements of time, or file a motion to withdraw from representation.

The rule does not contemplate the attorney simply doing nothing, so that the client's appeal is dismissed.

While we are of the view that Mr. Lewis's conduct may have implicated Florida's Rules of Professional Conduct, we choose not to sanction Mr. Lewis, nor do we think it appropriate to forward a complaint to the Florida Bar for grievance/disciplinary purposes.

In 2013, the Florida Supreme Court, acting on the recommendation of the Florida Commission on Professionalism, ordered each of Florida's judicial circuits to set up a local professionalism panel – under an administrative order from each circuit's chief judge – to handle professionalism complaints and address attorney conduct – such as the conduct described herein – which does not rise to the level of an allegation that could result in disciplinary action for unprofessional conduct.

Under the facts and circumstances of this case, we conclude that referral of Mr. Lewis to The Eleventh Circuit's Local Professionalism Panel is the proper course of action.

Hence, the Clerk is directed to forward a copy of this Order to the Local Professionalism Panel for Florida's Eleventh Circuit – Attn: Professionalism Panel, Lawson E. Thomas Courthouse Center, 30th Floor, 175 NW 1st Avenue, Miami, Florida 33128.

Order to show cause discharged.