

# **Third District Court of Appeal**

## **State of Florida**

Opinion filed October 21, 2015.

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No. 3D15-7  
Lower Tribunal No. 11-11626

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**Hector De La Guardia and Dayami Martinez,**  
Appellant,

vs.

**Federal National Mortgage Association,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Hon. Jerald Bagley, Judge.

Paul Alexander Bravo and Ricardo Corona, for appellant.

Choice Legal Group, P.A., and William David Newman, Jr., for appellee.

Before WELLS, SHEPHERD, and LOGUE, JJ.

### ON CONFESSION OF ERROR

LOGUE, J.

On April 14, 2011, Federal National Mortgage Association (“Lender”) filed a foreclosure action against Hector De La Guardia and Dayami Martinez

(“Borrowers”). On July 11, 2013, the trial court issued a notice that it would dismiss the case for lack of prosecution. On October 28, 2013, after no party opposed the dismissal, the trial court dismissed the action for lack of prosecution. On or about June 25, 2014, the Lender filed a motion for rehearing, or in the alternative for reconsideration, of the order of dismissal. The trial court denied the motion on September 8, 2014 because it was not verified. The Lender then filed a second motion for rehearing, or in the alternative reconsideration, identical to its first motion, but verified, on October 22, 2014. The trial court then granted the motion and reinstated the foreclosure action on December 3, 2014. The Borrowers appealed.

The Lender did not file a motion for rehearing within the fifteen days provided by Florida Rule of Civil Procedure 1.530. Moreover, neither of the motions filed by the Lender are premised on the limited bases provided by Florida Rule of Civil Procedure 1.540. Accordingly, as the Lender properly and commendably concedes, the trial court lacked jurisdiction to vacate the order of dismissal. See Shelby Mut. Ins. Co. of Shelby, Ohio v. Pearson, 236 So. 2d 1 (Fla. 1970); Francisco v. Victoria Marine Shipping, Inc., 486 So. 2d 1386 (Fla. 3d DCA 1986).

Based upon the foregoing, we reverse the trial court’s December 3, 2014 order.

Reversed.