Third District Court of Appeal

State of Florida

Opinion filed July 8, 2020.
Not final until disposition of timely filed motion for rehearing.

Nos. 3D19-1197 & 3D19-1721
Lower Tribunal No. 04-20174

Coral Gables Imports, Inc.,
Appellant/Appellee,

vs.

Ricardo Suarez,
Appellee/Appellant.

Appeals from the Circuit Court for Miami-Dade County, Reemberto Diaz, Judge.

Jesse Dean-Kluger, P.A., and Jesse Dean-Kluger, and Lisa J. Jerles, for appellant/appellee.

MSP Recovery Law Firm, and Christine M. Lugo, and John H. Ruiz, for appellee/appellant.

Before EMAS, C.J., and SCALES, and MILLER, JJ.

MILLER, J.

In these consolidated appeals, Ricardo Suarez and Coral Gables Imports ("CGI") both challenge the denial below of their respective motions for attorneys' fees and costs.[1] The sole issue on appeal meriting further discussion is whether the act of affixing a Summary Reporting System ("SRS")[2] closure stamp ripens a nonfinal order into a final order.[3]

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[1] We hereby consolidate the appeals of both parties for purposes of this opinion.

[2] The SRS stamp finds its origins in the development of a uniform case reporting system codified within section 25.075, Florida Statutes (2020). The procedure is intended to "assist in the administrative management of the court system and to provide a measuring tool for judicial workloads," by recording the quantity, duration, and type of case dispositions. Burke v. Esposito, 972 So. 2d 1024, 1028 (Fla. 2d DCA 2008) (Altenbernd, J., concurring). This compilation of data is regularly transmitted to the Florida Supreme Court to assist in "certification of need for additional judgeships." See Summary Reporting System (SRS) Manual (2002) ("The primary purpose of the SRS is the certification of need for additional judgeships.").

[3] On appeal, Suarez claims entitlement to prevailing party attorney's fees, premised upon the confession of judgment doctrine and FDUTPA. As the trial court tacitly rejected the asserted theory in rendering the unappealed adverse summary judgment, and, recognizing the discretionary nature of the relevant statutory provision, we find no error. See Dawson v. Wachovia Bank, N.A., 61 So. 3d 1218, 1220 (Fla. 3d DCA 2011) ("We decline to address the merits of this claim as the order granting final summary judgment on [May 9, 2019] was not appealed."); Marine Midland Bank Cent. v. Cote, 384 So. 2d 658, 659 (Fla. 5th DCA 1980) ("The parties have the right to appeal any matter by which they may be aggrieved and their failure to do so acts as an acceptance of the propriety of the matter."); see also Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 398, 101 S. Ct. 2424, 2428, 69 L. Ed. 2d 103 (1981) ("A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Nor are the res judicata consequences of a final, unappealed judgment on the merits altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case.") (citations omitted); Humane Soc. of Broward Cty., Inc. v. Fla. Humane Soc., 951 So. 2d 966, 969 (Fla. 4th DCA 2007) (Under section 501.2105(1), Florida Statutes, "the legislature gave trial courts the

PROCEDURAL HISTORY

In September 2004, Suarez filed a single-count, class action lawsuit against CGI, alleging a violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"). See § 501.204(1), Fla. Stat. The operative complaint alleged CGI engaged in a practice of arbitrarily and inconsistently fulfilling exotic vehicle orders, despite routinely collecting and retaining deposits for the purpose of prioritizing prospective purchasers.

After languishing on the lower court docket for several years, the case was dismissed for want of prosecution. Approximately one year later, Suarez requested and received from CGI a sum of money corresponding with his deposit.

Despite having recovered his demand, Suarez revived the litigation by successfully procuring an order vacating the dismissal.[4] CGI moved for summary judgment, and, at a hearing convened on May 1, 2019, the trial court granted the motion. The court entered a perfunctory order, simply identifying the title of the motion and writing the word "granted."

The same day, an SRS stamp was affixed to the order. The stamp reflected the following language: "Final orders as to all parties . . . the court dismisses this

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discretion to award prevailing party attorney fees to both plaintiffs and defendants.") (citation omitted).

[4] CGI appealed the order granting the motion to vacate. This court affirmed the decision of the trial court. Coral Gables Imports, Inc. v. Suarez, 219 So. 3d 101 (Fla. 3d DCA 2017).

case against any party not listed in this final order or previous order(s). This case is closed as to all parties." The trial court initialed the stamp.

Six days later, the court entered a second order, reading:

> FINAL JUDGMENT FOR DEFENDANT, CORAL GABLES IMPORTS, INC.
>
> Pursuant to the May 1, 2019 Order granting Defendant, CORAL GABLES IMPORTS, INC.'s, Motion for Summary Judgment against Plaintiff, RICARDO SUAREZ, it is ordered and adjudged as follows:
>
> 1. Plaintiff, Ricardo Suarez shall take nothing by this action and Defendant, Coral Gables Imports, Inc., shall go hence without a day.
>
> 2. This court retains jurisdiction to enter such further orders as may be proper.

Suarez did not appeal either order.

On June 6, 2019, CGI filed a motion for attorney's fees, claiming entitlement under the prevailing party provision of FDUTPA. Finding the initial summary judgment order constituted a final order "that would initiate the thirty day period for serving the fee motion under Florida Rule of Civil Procedure 1.525," the court denied the request as untimely. Paige v. Am. Sec. Ins. Co., 987 So. 2d 128, 129 (Fla. 4th DCA 2008). CGI's instant appeal ensued.

STANDARD OF REVIEW

The determination of the finality of an order is a "pure question of law and is, therefore, subject to de novo review." M.M. v. Fla. Dep't of Children & Families, 189 So. 3d 134, 137 (Fla. 2016) (citation omitted).

LEGAL ANALYSIS

Under Florida law, "[a]ny party seeking . . . attorneys' fees . . . shall serve a motion no later than [thirty] days after filing of the judgment, including a judgment of dismissal, or the service of a notice of voluntary dismissal, which judgment or notice concludes the action as to that party." Fla. R. Civ. P. 1.525. "Rule 1.525 establishes a bright-line time requirement." Hovercraft of S. Fla., LLC v. Reynolds, 211 So. 3d 1073, 1076 (Fla. 5th DCA 2017).

To be deemed final, "an order must demonstrate an end to the judicial labor." Hoffman v. Hall, 817 So. 2d 1057, 1058 (Fla. 1st DCA 2002) (citation omitted). "The traditional test for finality is whether the decree disposes of the cause on its merits leaving no questions open for judicial determination except for execution and enforcement," if necessary. Id. (citation omitted). While the use of discrete verbiage is "not essential," Id., the order must contain such phrases as "'hereby enters' a judgment," or "similar unequivocal language of finality." Monticello Ins. Co. v. Thompson, 743 So. 2d 1215, 1216 (Fla. 1st DCA 1999) (citations omitted).

Hence, under a reasoned body of jurisprudential precedent, in Florida, "[a]n order that merely grants a motion for summary judgment is not a final order." Libman v. Fla. Wellness & Rehab. Ctr., Inc., 260 So. 3d 515, 517 (Fla. 3d DCA 2018) (citation omitted); see Bowman v. State Farm Mut. Auto. Ins. Co., 599 So. 2d 273, 274 (Fla. 5th DCA 1992) (an order that merely grants a motion for summary

judgment is not a final order); Danford v. City of Rockledge, 387 So. 2d 967, 968 (Fla. 5th DCA 1980) ("A review of both of the orders [granting summary judgment] shows that neither of the orders contains either the traditional words of finality nor other words of similar import. Without such language, the orders are not final judgments.") (citations omitted); Rizzuto v. DiPaolo, 357 So. 2d 490, 491 (Fla. 2d DCA 1978) (holding an order that read "that defendant's motion for summary judgment is hereby granted" was not a final decision); Renard v. Kirkeby Hotels, Inc., 99 So. 2d 719, 720 (Fla. 3d DCA 1958) (finding order containing language "that defendant's motion for summary judgment be and the same is hereby granted" was not a final judgment).

In the instant dispute, the initial order did nothing more than grant the summary judgment motion. It was not a decree "which dispose[d] of the whole subject, [gave] all the relief contemplated, provide[d] with reasonable completeness for giving effect to the sentence, and [left] nothing to be done in the cause save to superintend ministerially the execution of the order." Daniels v. Truck & Equip. Corp., 139 S.E.2d 31, 35 (Va. 1964) (quoting 4 Minor's Inst. 860). Thus, it was nonfinal.

Consequently, we turn our analysis to whether affixing the SRS stamp had the effect of transforming "that which [was] not, by its nature, a final . . . order, into the same by mere appellation." Summit Petroleum, Inc. v. K.S.T. Oil & Gas Co., Inc.,

590 N.E.2d 1337, 1338 (Ohio App. Ct. 1990). It is well-established that the clerk of courts is a ministerial officer of the court and, as such, is not endowed with any discretion. Corbin v. State ex rel. Slaughter, 324 So. 2d 203, 204 (Fla. 1st DCA 1976) (citing Leatherman v. Gimourginas, 192 So. 2d 301 (Fla. 3d DCA 1966); Pan Am. World Airways v. Gregory, 96 So. 2d 669 (Fla. 3d DCA 1957)). "He [or she] has no authority to contest the validity of any act of the court for which he [or she] acts as clerk which purports to have been done in the performance of the court's judicial function." Id. (citing State v. Almand, 75 So. 2d 905 (Fla.1954)). Hence, the clerk lacks "authority to judicially determine the legal significance of a document tendered for filing." Collins v. Taylor, 579 So. 2d 332, 333 (Fla. 1st DCA 1991) (citations omitted).

Applying these principles here, the clerical designation of the document was purely ministerial, and the closure stamp did not operate to convert the otherwise nonfinal order into a final order. Nonetheless, Suarez further contends that by initialing the stamp, the lower tribunal placed a judicial imprimatur on the finalization of the order. We disagree.

"One cannot transform a nonfinal order into a final order by calling it final." Jackson v. Alverez, 831 N.E.2d 1159, 1162 (Ill. App. Ct. 2005) (citation omitted). Thus, a "trial court's assertion cannot [convert] an interlocutory order into a final order because the finality of an order is determined by its effect." In re Adoption of

E.J.W., 515 A.2d 41, 43 (Pa. Super. Ct. 1986); see Othman v. Bd. of Educ. of the Princeton City Sch. Dist., Nos. C-160878 & C-170187, at *2 (Ohio Ct. App. Dec. 20, 2017) ("However, such a stamp cannot transform a nonfinal order into [a final] order.") (citation omitted); PNC Bank, Nat'l Ass'n v. Roemer, No. 15CA28, at *6 (Ohio Ct. App. Dec. 15, 2017) ("[A]lthough the trial court included a stamp that stated, in part, 'This is a Final–Appealable Order,' a trial court's purported determination is not binding upon the appellate court.") (citation omitted); Maryland Comm'n on Human Relations v. Baltimore Gas & Elec. Co., 459 A.2d 205, 212 n.8 (Md. 1983) ("This Court has here determined that the . . . order was not a final . . . decision because it neither determined [parties'] rights nor terminated the . . . proceeding. It, therefore, lacked the characteristics necessary for finality."); see also Heritage Prop. & Cas. Ins. Co. v. Romanach, 224 So. 3d 262 (Fla. 3d DCA 2017) (acknowledging that the designation of an order as "final" based on the SRS stamp does not control the nature of the order). Accordingly, we find the language derived from the SRS stamp did not constitute "a mystical incantation which transform[ed] [the] nonfinal order into a final appealable order." Wisintainer v. Elcen Power Strut Co., 617 N.E.2d 1136, 1138 (Ohio 1993) (citation omitted).

Although we find no error in the denial of Suarez's motion for attorney's fees, because we conclude CGI filed its fee motion within thirty days of the rendition of

the executable final judgment, we reverse the denial of same and remand for further consideration.

Affirmed in part; reversed in part.