

Third District Court of Appeal

State of Florida

Opinion filed September 2, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-795
Lower Tribunal No. 14-26233

Truist Bank, etc.,
Appellant,

vs.

Jorge R. De Posada, et al.,
Appellees.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, William Thomas, Judge.

Liebler Gonzalez & Portuondo, and Alan M. Pierce, for appellant.

Kozyak Tropin & Throckmorton LLP, and Javier A. Lopez, David A. Samole and Dwayne A. Robinson, for appellees.

Before SCALES, MILLER and GORDO, JJ.

On Motion to Dismiss

SCALES, J.

Appellant, garnishee below, Truist Bank, appeals a non-final trial court order that denies competing summary judgment motions filed by Truist Bank and appellees, creditors and garnishors below, Jorge R. De Posada, Laura O. De Posada-Mendez, and JLP Ventures, LLC. Appellees argue in their motion to dismiss that this Court lacks the jurisdiction to hear the appeal because the challenged order is a non-appealable, non-final order. We agree and dismiss the appeal.

I. Relevant Facts and Procedural Background

After appellees obtained a \$6.43 million judgment against judgment debtors Juan Carlos Collar and Anthony Fernandez, appellees served a writ of garnishment on Truist Bank. A second writ, served in February 2019, eventually revealed a Truist Bank account that, appellees asserted, held \$6.28 million in funds belonging to the judgment debtors. Truist Bank answered appellees' garnishment by denying any indebtedness to the judgment debtors. Truist Bank asserted in its answer that the funds in the account were not owned by the judgment debtors. This Truist Bank account was subsequently closed.

The trial court set the garnishment proceedings for a trial to commence in March 2020 (now postponed to October 2020). Truist Bank then filed in the trial court its "Motion to Dissolve Writs of Garnishment and/or Motion for Summary Judgment as to Writs of Garnishment and/or Motion to Adjudicate Facts Not at Issue." Appellees filed a response and a cross-motion for summary judgment.

After conducting a summary judgment hearing, the trial court entered the challenged order denying both summary judgment motions. The adjudicatory portion of the order reads, in its entirety, as follows: “[T]he cross motions for Summary Judgment are DENIED. There are genuine issues of material fact that preclude entry of a judgment as a matter of law. See Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000).”¹ Truist Bank then timely filed this appeal. Appellees filed the instant motion to dismiss, arguing that we lack appellate jurisdiction to review this non-final order.

II. *Analysis*

At the outset, we are reminded that, when deciding whether we have appellate jurisdiction to review a non-final order under Florida Rule of Appellate Procedure 9.130(a)(3), we narrowly construe the rule and its enumerated categories of orders subject to interlocutory appellate review. Miami-Dade Cty. v. Pozos, 242 So. 3d 1152, 1153 (Fla. 3d DCA 2017). We note this exacting standard because Truist Bank argues we have appellate jurisdiction to review the challenged order under rule 9.130(a)(3)(C)(ii). This rule reads, in relevant part, as follows: “Appeals to the district courts of appeal of nonfinal orders are limited to those that . . . *determine* . . . the right to immediate possession of property, including . . . orders that . . . dissolve,

¹ The cited portion of this case reiterates that summary judgment is granted only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

or refuse to . . . dissolve writs of . . . garnishment.” Fla. R. App. P. 9.130(a)(3)(C) (ii) (emphasis added).

Focusing exclusively on the second part of the rule, Truist Bank asserts that, because its motion is captioned as one seeking to dissolve a writ of garnishment, and because it argued in its motion that the trial court should dissolve the writ of garnishment, we have jurisdiction because its motion was denied.

When, however, we are analyzing whether we have jurisdiction to review a non-final order under rule 9.130(a)(3)(C) – i.e., whether the non-final order has made the requisite *determination* so as to trigger the rule’s applicability – this Court looks to the four corners of the *challenged order*, not to the arguments made in the *underlying motion*. See Citizens Prop. Ins. Corp. v. Calonge, 246 So. 3d 447, 449 (Fla. 3d DCA 2018) (dismissing, for lack of jurisdiction, consolidated appeals of unelaborated orders that denied motions to dismiss premised on immunity grounds, and stating: “[W]e look only to the face of the trial court’s order and do not penetrate the record with a searchlight to divine whether the trial court’s undisclosed rationale warrants appellate review.”); see also Hastings v. Demming, 694 So. 2d 718, 720 (Fla. 1997) (concluding that a non-final summary judgment order denying, without elaboration, an employer’s workers’ compensation immunity claim is not reviewable under rule 9.130(a)(3)(C) because the order lacks the necessary determination required by the rule); Pozos, 242 So. 3d at 1155 (holding that where

the trial court merely “denies” a motion arguing entitlement to immunity, the trial court has not made the requisite determination for appellate jurisdiction).²

It is plain from the four corners of the challenged order in this case that it determines nothing other than that the trial court is precluded from entering a summary judgment because of the existence of genuine issues of material fact. The order does not “determine” the right to immediate possession of property, nor does it dissolve, or refuse to dissolve, a writ of garnishment that would trigger the right to immediate possession of property. The challenged non-final order does not make

² Earlier this year the Florida Supreme Court created a new subdivision (F) to rule 9.130(a)(3) regarding several species of non-final order related to governmental immunity that had previously been included under subdivision 9.130(a)(3)(C). See In re Amendments to Fla. Rule of Appellate Procedure 9.130, 289 So. 3d 866 (Fla. 2020); Fla. Highway Patrol v. Jackson, 288 So. 3d 1179, 1186 (Fla. 2020). The purpose of this recent amendment to rule 9.130(a)(3), as plainly reflected in the text of subdivision (F), was to include in the schedule of appealable, non-final orders those non-final orders *denying motions* that sought governmental immunity. Hence, when determining whether a non-final order is reviewable under rule 9.130(a)(3)(F), we now focus on the content of the underlying motion and on as much as the record as necessary. In re Amendments to Fla. Rule of Appellate Procedure 9.130, 289 So. 3d at 867. These recent Supreme Court cases, though, left intact the Florida Supreme Court’s holding in Hastings, as well as the analysis we employed in Pozos and Calonge. Our Supreme Court did not alter or amend rule 9.130(a)(3) with regard to other species of appealable, non-final order, including those non-final orders determining the immediate possession of property – as Truist Bank seeks to characterize the challenged order in this case. Indeed, the very reason our Supreme Court found it necessary to amend rule 9.130(a)(3) to create subdivision (F) was because it agreed with our analysis that the rule’s text permitted appellate review only of orders that, on their face, make the requisite determinations. Fla. Highway Patrol, 288 So. 3d at 1182. We therefore have no difficulty continuing to apply the analysis that led to the holdings in Hastings, Pozos, and Calonge.

the necessary determination to trigger rule 9.130(a)(3)(C)(ii)'s applicability. We therefore grant the appellees' motion because we lack appellate jurisdiction to review the challenged order.

Appeal dismissed.