Recent Developments In The Law

by Nancy Little Hoffman

["FOUR WAYS TO LOSE AN APPEAL"]

CLIENT'S REPEATED DISOBEDIENCE OF COURT ORDERS CAN FORFEIT RIGHT TO APPEAL.

The husband in a dissolution of marriage case repeatedly failed to pay court-ordered support and refused to comply with discovery orders, resulting in contempt orders and writs of bodily attachment. The Fourth District, noting that it has the discretion to dismiss his appeal on that basis as long as it gives him an opportunity to purge himself, relinquished its jurisdiction for 30 days for that purpose. If he fails to do so, his appeal will be dismissed. Whissell v. Whissell, 40 Fla. L. Weekly D1829 (Fla. 4th DCA Aug. 5, 2015).

FILING MOTION FOR REHEARING FROM NON-FINAL ORDER WILL OFTEN RESULT IN DISMISSAL OF APPEAL AS UNTIMELY.

The father sought to appeal a post-dissolution of marriage order establishing custody, visitation, and time-sharing. His appeal was dismissed because his counsel filed a motion for rehearing and waited until the motion was decided before filing the notice of appeal – which was more than 30 days after the original order, was rendered. Since the order was a non-final order according to the appellate rules, the motion did not extend the time for rendition, and the notice of appeal was too late. Lopez v. Lopez, 40 Fla. L. Weekly D1830 (Fla. 4th DCA Aug. 5, 2015).

UNLESS ERROR IS APPARENT ON THE FACE OF A JUDGMENT, FAILURE TO PROVIDE AN ADEQUATE RECORD CAN RESULT IN AFFIRMANCE.

The homeowners appealed a final judgment of foreclosure on the basis that the bank lacked standing to foreclose when it filed suit. Standing was a contested issue at trial, but the appellants provided only a partial transcript because only a part of the trial was reported. The opinion noted that although the appellate rules provide that an appellant be given an opportunity to supplement the record that does not apply where the party failed to make an adequate record at the trial level. Accordingly, the DCA held that it could not presume that the judgment was unsupported by competent substantial evidence of the bank's standing, and it affirmed the foreclosure judgment. Snowden v. Wells Fargo Bank, 40 Fla. L. Weekly D1818 (Fla. 1st DCA Aug. 4, 2015).

NOT ALL NON-FINAL ORDERS IN A CASE CAN BE REVIEWED ON APPEAL FROM THE FINAL JUDGMENT.

An insurer appealed from a final judgment finding that its policy afforded coverage to its insureds. Its argument on appeal, however, related to a prior order allowing the insureds' bad faith claim to be joined in the litigation. The DCA recognized that the purpose of the appeal was to try to reach back to the ruling made months earlier; and that the appellate rules allow it to review "any ruling...occurring before the filing of the notice" of appeal. However, it held that an appeal calls up for review only "all necessary interlocutory steps leading to that final order." Since the rulings on the bad faith claim were not necessary steps leading to the judgment on coverage, the DCA refused to consider them. It also declined to treat the appeal as a petition for certiorari, since it was filed more than 30 days after the rulings on the bad faith issue. North American Capacity Ins. Co. v. C.H., 40 Fla. L. Weekly D1849 (Fla. 2d DCA Aug. 7, 2015). B

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