Third District Court of Appeal

State of Florida

Opinion filed August 12, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-2215
Lower Tribunal No. 09-48539

Dan Van Tran,
Appellant,

vs.

Deutsche Bank National Trust Company, etc., et al.,
Appellees.

An appeal from the Circuit Court for Miami-Dade County, Daryl E. Trawick, Judge.

Arthur J. Morburger, for appellant.

Feinstein & Mendez, P.A., and Brett Feinstein; Blank Rome LLP, and Michael R. Esposito, and Nicole R. Topper (Tampa), for appellees.

Before SCALES, LINDSEY, and MILLER, JJ.

MILLER, J.

Appellant, Dan Van Tran, challenges the denial of a motion for relief from a final judgment of foreclosure rendered in favor of appellee, Deutsche Bank National Trust Company.[1] See Fla. R. Civ. Pro. 1.540(b). We have jurisdiction. See Fla. R. App. P. 9.130(a)(5). On appeal, Van Tran raises numerous claims of error, only one of which merits discussion. Van Tran contends Deutsche Bank was never formally substituted into the lawsuit as a party, hence the underlying judgment is void. Discerning no error, we affirm.

PROCEDURAL HISTORY

After acquiring ownership and possession of a promissory note and mortgage executed by Hector Borges to a predecessor lender, OneWest Bank, FSB, initiated suit against Borges, Van Tran and others, seeking to foreclose upon property located in Hialeah, Florida. Although Borges answered the complaint and asserted a myriad

[1] Hector Borges did not join in the motion below. As the underlying judgment became final in late 2012, we dismiss his appeal. See generally Credit Indus. Co. v. Remark Chem. Co., 67 So. 2d 540, 541 (Fla. 1953) ("The general rule on appeal to review proceedings of an inferior court is that a party to the cause may appeal only from a decision in some respect adverse to him.") (citations omitted). See Fla. R. App. P. 9.110(b) ("Jurisdiction of the court under this rule shall be invoked by filing a notice, accompanied by any filing fees prescribed by law, with the clerk of the lower tribunal within [thirty] days of rendition of the order to be reviewed."); see also First Nat'l Bank of Fla. v. Brandon State Bank, 377 So. 2d 990, 992 n.4 (Fla. 2d DCA 1979) ("[A] judgment becomes final [thirty] days after entry if an appeal has not been filed and a new trial has not been granted.").

of affirmative defenses, Van Tran failed to file a responsive pleading. Consequently, the clerk entered a default against Van Tran.

OneWest then filed a motion seeking to substitute Deutsche Bank as the proper party plaintiff. The lower court granted the motion, ordering both the requested substitution and a corresponding amendment to the style of the case. However, no amended complaint reflecting the change was ever submitted.

Several months later, the court issued a non-jury trial order, notifying all parties of an impending trial date. On the morning of trial, Van Tran failed to appear, but filed an emergency motion for continuance through newly retained counsel. Despite the filing, the trial proceeded forward. After receiving evidence, the court entered final judgment in favor of Deutsche Bank and ordered a sale of the relevant property.

Some years later, Van Tran sought relief from the judgment, contending that because the complaint was never formally amended to reflect Deutsche Bank as the party plaintiff, the ensuing judgment was void. The lower tribunal denied the motion and the instant appeal ensued.

STANDARD OF REVIEW

"This Court generally reviews a trial court's ruling on a rule 1.540(b) motion for relief from judgment for abuse of discretion." Deutsche Bank Nat'l Tr. Co. v. Nat'l Tr. Co. v. Garcia del Busto, 254 So. 3d 1050, 1052 (Fla. 3d DCA 2018)

(citation omitted). Nevertheless, "if a judgment previously entered is void, the trial court must vacate the judgment." Lamoise Grp., LLC v. Edgewater S. Beach Condo. Ass'n, Inc., 278 So. 3d 796, 798 (Fla. 3d DCA 2019) (citation omitted). "As a trial court's ruling on whether a judgment is void presents a question of law, an appellate court reviews the trial court's ruling de novo." Nationstar Mortg., LLC v. Diaz, 227 So. 3d 726, 729 (Fla. 3d DCA 2017) (citation omitted).

LEGAL ANALYSIS

Our courts have long differentiated between "void" and "voidable" judgments. "If a judgment is 'void' then under rule 1.540(b) it can be attacked at any time, but if it is only 'voidable' then it must be attacked within a year of entry of the judgment." Condo. Ass'n of La Mer Estates, Inc. v. Bank of N.Y. Mellon Corp., 137 So. 3d 396, 398 (Fla. 4th DCA 2014).

Generally, "[t]o authorize the assertion that a judgment is void, it must have emanated from . . . a court of general jurisdiction, where the parties are not actually or by legal construction before the court and subject to its jurisdiction," Malone v. Meres, 91 Fla. 709, 731, 109 So. 677, 685 (1926), or "in the proceedings leading up to the judgment, there is '[a] violation of the due process guarantee of notice and an opportunity to be heard.'"[2] Shiver v. Wharton, 9 So. 3d 687, 690 (Fla. 4th DCA

[2] "Courts are constituted by authority and they cannot beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply

2009) (alteration in original) (citation omitted); see also Miller v. Preefer, 1 So. 3d 1278, 1282 (Fla. 4th DCA 2009) ("A void judgment is one entered in the absence of the court's jurisdiction over the subject matter or the person.") (citations omitted).

In contrast, where the "court is legally organized and has jurisdiction of the subject matter and the adverse parties are given an opportunity to be heard, then errors, irregularities, or wrongdoing in proceedings, short of illegal deprivation of opportunity to be heard, will not render the judgment void." Krueger v. Ponton, 6 So. 3d 1258, 1261 (Fla. 5th DCA 2009) (citing Phenion Dev. Grp., Inc. v. Love, 940 So. 2d 1179 (Fla. 5th DCA 2006)). Such a distinction is of paramount significance given the "'deeprooted policy in favor of the repose of judgments,' . . . the interest in finality," and the concern in the stability of property titles. District of Columbia v. Stokes, 785 A.2d 666, 671 (D.C. 2001) (citation omitted).

In the instant case, placing considerable stress upon the failure to rigorously observe the formalities of amending the pleading, Van Tran seeks refuge in a carefully crafted line of jurisprudence nullifying those judgments obtained in violation of due process. It is true that some authority exists for the proposition a pleading may be so patently defective as to leave an ensuing judgment void. See

---

void, and this even prior to reversal." Vallely v. N. Fire & Marine Ins. Co., 254 U.S. 348, 353-54, 41 S. Ct. 116, 117, 65 L. Ed. 297 (1920) superseded by rule on other grounds as recognized in United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (2010).

Cornman v. Wilder, 113 Fla. 164, 167, 151 So. 419, 420 (1933) ("The deficiency decree against Wright, Warlow & Co. was unauthorized and void because there was no basis in the pleading or evidence for such a decree."). Further, it is axiomatic that "a trial court may not render judgment in favor of a nonparty," as such action would extend beyond its authority. Hiltsley v. Ryder, 738 P.2d 1024, 1025 (Utah 1987). Nonetheless, under the factual scenario presented here, we conclude Van Tran was fully afforded due process.

Firstly, despite duly furnished notice, Van Tran did not object to the substitution motion. Secondly, although the order setting the cause for non-jury trial reflected Deutsche Bank as the substituted party plaintiff, Van Tran did not raise the instant purported procedural infirmity in his emergency motion for continuance. Thirdly, and finally, Van Tran chose not to defend suit, and Deutsche Bank proceeded at trial as the proper party plaintiff.

We remain cognizant that "[t]he rule is well settled that mere leave to amend does not of itself operate as an amendment, or raise any presumption that an amendment was made, as a party may have leave to amend and not choose to amend." Clack v. Clack, 41 P.2d 32, 36 (Mont. 1935) (quoting 49 Cyclopedia of Law and Procedure 548). Nonetheless, "the weight of authority is that, if leave to amend is granted and the cause tried as though the amendment had been made, even

though it is best that actual amendment be made, the necessity for making it is obviated." Id. (citation omitted).

Thus, here, while, "[i]t is true that the complaint was not formally amended to substitute the name[] of [Deutsche Bank] for [OneWest,] . . . the identical result was obtained by the pretrial order which did substitute them." White v. Indem. Ins. Co. of N. Am., 54 Cal. Rptr. 630, 632 (Cal. Ct. App. 1966); see also Esterkyn v. Van Hedge Fund Advisors, Inc., 108 F. Supp. 2d 876, 880 (M.D. Tenn. 1999) ("In the motion to amend the style of the case, . . . the plaintiff essentially is moving to amend its complaint to effect a substitution of parties."). Indeed, the final judgment, furnished to all parties, including Van Tran, reflected the substitution.[3]

Accordingly, we conclude that the status of party plaintiff was conferred upon Deutsche Bank by virtue of the unopposed substitution order. Consequently, at best, the judgment was voidable, and the ensuing collateral attack was time-barred.[4] Embracing no error in the remaining claims, we affirm. See Dage v. Deutsche Bank Nat'l Tr. Co., 95 So. 3d 1021, 1024 (Fla. 2d DCA 2012) ("Even if Deutsche Bank lacked standing when it filed suit, the final judgment is merely voidable, not void.")

[3] Van Tran filed for bankruptcy protection twice, postjudgment, and obtained a stay of the proceedings.

[4] "The leading distinction is between judgments and decrees merely void, and such as are voidable only. The former are binding nowhere, the latter everywhere, until reversed by a superior authority." Harris v. Hardeman, 55 U.S. 334, 344, 14 L. Ed. 444 (1852).

(citation omitted); Phadael v. Deutsche Bank Tr. Co. Ams., 83 So. 3d 893, 895 (Fla. 4th DCA 2012) ("Even where a judgment is entered in favor of a plaintiff that lacks standing, the judgment is merely voidable, not void.") (citing Jones-Bishop v. Estate of Sweeney, 27 So. 3d 176, 177 (Fla. 5th DCA 2010)).

Affirmed.