IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

GLORIA METCALF,

Appellant,

v.

CASE NO.: CVA1 07-10
Lower Court Case No.: 2006-SC-922

CRYSTAL ORTIZ,

Appellee.
_____/

Appeal from the Small Claims Court,
for Orange County,
Wilfredo Martinez, Judge.

Before THORPE, RODRIGUEZ, LUBET, JJ.

FINAL ORDER AFFIRMING TRIAL COURT

Gloria Metcalf ("Appellant") appeals the trial court's "Order Reinstating Final Judgment of September 25, 2006 for the Plaintiff on Claim and Counterclaim." This appeal was timely filed. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument. Fla. R. App. P. 9.320.

Appellant and Crystal Ortiz ("Appellee") rented an apartment together in Orange County, Florida during 2005. At some point prior to the end of the year lease[1], both parties became embroiled in a dispute that caused the Appellee to file a claim for damages in the small claims court. Appellee claimed an exhaustive list of damages totaling $1,429. Appellant proceeded to file a counterclaim, providing the lower court with an equally impressive list of damages, totaling $1,400.41.

[1] The record does not contain any transcripts or recordings from any of the lower court hearings, however, sufficient documents exist for this Court to rule on this appeal and fully dispose of this case.

On March 21, 2006, both parties entered into a trial agreement and were notified in court that their trial would begin on June 6, 2006. On the date set for trial, the court ordered the case to be continued due to a lack of adequate time. The trial was held on August 21, 2006, and only the Plaintiff/Appellee was present. The court ruled in favor of the Plaintiff/Appellee, granting judgment in the amount of $1,197.04, and dismissed the Defendant/Appellant's counterclaim with prejudice.

Appellant filed a motion to vacate and set aside the final judgment, which was granted by the lower court on November 30, 2006. The trial was reset for January 29, 2007, however, a clarification hearing was held on January 9, 2007, at which both parties were present and the lower court judge found that the Defendant/Appellant had lied under oath as to a material fact in open court.[2] The lower court judge ordered that the previous final judgment be reinstated and cancelled the trial date scheduled for January 29, 2007.

Appellant thereafter filed this appeal and questions the appropriateness of reinstating the final judgment and cancelling the trial.

Appellant presents five arguments in her initial brief in support of her belief that the lower court's final judgment should not have been reinstated. First, the Appellant claims that the trial scheduled after the pretrial conference was clerically incorrect. Next, the Appellant claims that the continuance ordered on June 6, 2006, was invalid. Third, she argues that vacating the final judgment and subsequently reinstating that judgment was incorrect and violated her rights. Fourth, the Appellant argues that the Notice of Clarification hearing was filed without a proper motion. Finally, the court committed error by not accepting the Appellant's evidence supporting her defense.

[2] Again, no transcript of this hearing exists and no explanation of this finding was found in the record.

The Appellant has presented an initial brief to this Court that on first glance appears to meet the requirements of the Florida Rules of Appellate Procedure. Upon closer inspection, however, the arguments and minimal support provided by the Appellant are insufficient to reverse the lower court's ruling. The Petitioner cites the Florida Rules of Appellate Procedure, Florida Small Claims Rules, and Florida Rules of Civil Procedure, all to demonstrate how the lower court erred. She does not support her arguments other than to cite the rules, nor does she provide any transcripts from the hearing to support her claims.

Numerous courts have made observations regarding both the leniency granted to pro se litigants as well as how far that leniency can be stretched. "While *pro se* litigants may be given a certain amount of latitude in their proceedings, they may not proceed in such a fashion as to abuse the judicial process…" *Biermann v. Cook*, 619 So. 2d 1029, 1031 (Fla. 2d DCA 1993). The Fourth District Court of Appeal has recognized that "[i]t is not permissible for any litigant to submit a disorganized assortment of allegations and argument in hope that a legal premise will materialize on its own." *Barrett v. City of Margate*, 743 So. 2d 1160, 1163 (Fla. 4th DCA 1999). Furthermore, "[n]otwithstanding the fundamental principle of allowing pro se litigants procedural latitude, a practice effected to ensure access to the courts for all citizens, pro se litigants are not immune from the rules of procedure." *Id*. at 1162. Appellant's briefs present a compilation of rule violations and also recite portions of the rules in an effort to create a coherent argument similar to the haphazard assortment mentioned in *Barrett*.

As an example, in her first argument the Appellant merely presents a single sentence: "During the first appearance to the court, trial was scheduled on June 6, 2006 from March 21, 2006 which conflicts with Florida Small Claims Rule 7.190(a)." The cited rule refers to clerical mistakes and the appropriate methods for correcting such mistakes. Fl. Sm. Cl. R. 7.190(a)

(2008). The Appellant mistakenly believes that the March 21, 2006, initial appearance was her trial. This hearing, however, was merely the required pretrial conference setting establishing the trial agreement and trial schedule pursuant to the rules. Fl. Sm. Cl. R. 7.090(b) (2008). No error exists for this Court to overturn.

Second, the Appellant contends that the lower court incorrectly ordered a continuance because it was not supported by Florida Small Claims Rule 7.130(a). A review of the record indicates that the June 6, 2006, trial was scheduled for an hour. The trial was continued because the lower court judge determined that a two hour trial period would be needed to complete the trial. This is certainly a good cause for a continuance and will not be upset by this Court.

Next the Appellant argues that the final judgment was vacated either by clerical mistake or misunderstanding pursuant to Florida Small Claims Rules 7.190(a) and 7.190(b)(1&5). Unfortunately for the Appellant, the lower court's vacating of the final judgment was in her favor. As the defendant in the lower court case, the Appellant drafted a letter that the lower court treated as a motion for rehearing. Therefore, this Court will disregard this argument as irrelevant to the Appellant's appeal of the reinstatement of the final judgment.

Appellant's next arguments are convoluted and misleading. She argues that she was "ambushed," concerning "irrelevant objects," by the lower court while attending a January 9, 2007, clarification hearing. Additionally, she argues that the lower court judge expressed bias through certain comments made during this hearing. The sparse record does not contain any transcripts that would clarify these arguments. The only information available is from the "County Court Minutes," from the January 9 hearing. Those minutes indicate that the lower court judge found that the Appellant had lied under oath regarding a material fact. The judge

proceeded to reinstate the previously vacated final order. Acting with the deference due to the lower court, this Court will not reverse the decision to reinstate the Final Judgment.

The Appellant has presented numerous disjointed arguments while providing a minimal record for this Court to review. "It is incumbent upon the appellant to bring to this court such parts of the record as are necessary to support his contentions on appeal." *Conner v. Coggins,* 349 So. 2d 780, 781 (Fla. 1st DCA 1977) (citing *Howell v. State,* 337 So. 2d 823 (Fla. 1st DCA 1976)); *Chipola Nurseries, Inc. v. Div. of Admin. Dept. of Trans.,* 294 So. 2d 357 (Fla. 1st DCA 1974). Without transcripts from any of the hearings this Court can only rely on what is found in the record, and in those few documents we can find no reversible error. The lower court acted appropriately and we will not upset the order reinstating the final judgment. As such, the "Order Reinstating Final Judgment of September 25, 2006 for the Plaintiff on Claim and Counterclaim," should be affirmed.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that the lower court's "Order Reinstating Final Judgment of September 25, 2006 for the Plaintiff on Claim and Counterclaim," is **AFFIRMED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this __29_day of _May_____, 2009.

__/S/_____
ROBERT M. EVANS
Circuit Judge

_/S/_____
JOSE R. RODRIGUEZ
Circuit Judge

__/S/_____
MARC L. LUBET
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. mail to:

GLORIA METCALF, 1416 Primrose Lane, Daytona Beach, FL 32117, and;

CRYSTAL ORTIZ, 1012 Alpine Drive, Deltona, FL 32725.

_____/S/_____
Judicial Assistant