

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

GARRY COLEMAN,

Appellant,

v.

ALICIA BENSON,

Appellee.

CASE NO.: 2017-CV-000079-A-O
Lower Case No.: 2016-SC-007808-O

Appeal from the County Court,
for Orange County, Florida,
David P. Johnson, County Judge.

Moses R. DeWitt, Esq.,
for Appellant.

Robert W. Rasch, Esq.,
for Appellee.

Before J. KEST, LUBET, and APTE, J.J.

PER CURIAM.

We reverse the trial court's order denying the motion for rehearing, or in the alternative, motion to set aside final judgment, and remand for the court to conduct an evidentiary hearing on the issue of excusable neglect. We agree with appellant that the trial court should have permitted counsel to give sworn testimony, including testimony from counsel, with respect to the law firm's calendaring system and why the trial date did not get calendared. *See Acosta v. Deutsche Bank Nat'l Trust Co.*, 88 So. 3d 415 (Fla. 4th DCA 2012). *See also Suntrust Mortg. v. Torrenza*, 153 So. 3d 952, 954 (Fla. 4th DCA 2014) (“[T]he attorney’s unintentional absence in the instant case due to inadvertent calendaring is the type of mistake excused by Florida Rule of Civil Procedure 1.540(b), as well as judicial precedent.”); *Wilson v. Woodward*, 602 So. 2d 547, 549 (Fla. 2d DCA

1992) (“Although the court has the authority to discipline counsel for failure to comply with the rules of civil procedure, ordinarily any punishment should be imposed upon the attorney and not the litigant.”) (citations omitted). In light of our disposition of the excusable neglect issue, we do not address the remaining issues on appeal.

REVERSED and REMANDED.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this _____ day of _____, 2018.

/S/ _____
JOHN MARSHALL KEST
Presiding Circuit Judge

LUBET and APTE, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the Honorable David P. Johnson, County Judge, Orange County Courthouse, 425 N. Orange Ave., Orlando, FL 32801; Moses R. DeWitt, Esq., DeWitt Law Firm, P.A. 37 N. Orange Ave., Suite 840, Orlando, FL 32801; and Robert W. Rasch, Esq., Robert W. Rasch, P.A., 1188 Buttonwood Cir., Altamonte Springs, FL 32714, on this _____ day of _____, 2018.

Judicial Assistant