

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JP MORGAN CHASE BANK, N.A.,
Appellant,

v.

NELIDA I. KEHLE, et al.,
Appellee.

No. 4D14-1631

[December 2, 2015]

Appeal of a non-final order from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Diana Lewis, Judge; L.T. Case No. 502008CA000755XXXXMB.

Andrew B. Boese of Leon Cosgrove, LLC, Coral Gables, for appellant.

No appearance for appellee.

PER CURIAM.

Appellant, the plaintiff in a mortgage foreclosure action, appeals the trial court's denial of its motion for relief from final judgment, filed pursuant to Florida Rule of Civil Procedure 1.540(b). Appellant requested relief from its notice of voluntary dismissal, which it alleged had been filed by mistake and without authorization. The trial court refused to hear the motion, believing it did not have jurisdiction. This was error. We reverse.

Rule 1.540(b)(1) allows a trial court to grant relief from "a final judgment, decree, order, or proceeding" for reasons including mistake, inadvertence, and excusable neglect. A notice of voluntary dismissal is a "proceeding" within the meaning of rule 1.540. *Miller v. Fortune Ins. Co.*, 484 So. 2d 1221, 1224 (Fla. 1986) (holding that "the limited jurisdiction conferred on the courts by rule 1.540(b) to correct errors includes the power to correct clerical substantive errors in a voluntary notice of dismissal").

Resolving a conflict, the *Miller* court agreed with this court's conclusion "that Rule 1.540(b) may be used to afford relief to *all* litigants who can demonstrate the existence of the grounds set out under the rule." *Miller*,

484 So. 2d at 1224 (quoting *Shampaine Indus., Inc. v. S. Broward Hosp. Dist.*, 411 So. 2d 364, 368 (Fla. 4th DCA 1982)) (emphasis added by *Miller*). In *Shampaine*, this court affirmed an order granting rule 1.540 relief to a plaintiff that inadvertently had included the words “with prejudice” instead of “without prejudice” in its voluntary dismissal. 411 So. 2d at 365; *cf. Pino v. Bank of New York*, 121 So. 3d 23 (Fla. 2013) (reiterating that rule 1.540 may be used to relieve a party from a voluntary dismissal, but not under the specific circumstances of the case).

Reversed and remanded for further proceedings.

WARNER, TAYLOR and KLINGENSMITH, JJ., concur.

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Not final until disposition of timely filed motion for rehearing.