

Third District Court of Appeal

State of Florida

Opinion filed November 26, 2025.
Not final until disposition of timely filed motion for rehearing.

No. 3D24-2065
Lower Tribunal No. 24-CC-54-K

Alvin Fisher,
Appellant,

vs.

The Housing Authority of the City of Key West,
Appellee.

An Appeal from the County Court for Monroe County, Mark Wilson,
Judge.

Legal Services of Greater Miami, and Karina Bodnieks, Lissie Salazar,
and Jeffrey M. Hearne, for appellant.

Highsmith & Van Loon, P.A., and David Van Loon, for appellee.

Before LINDSEY, GORDO and GOODEN, JJ.

GOODEN, J.

This case involves the clash between section 51.011, Florida Statutes,
and Florida Rule of Civil Procedure 1.530. Because we find that section

51.011, Florida Statutes, controls and Appellant Alvin Fisher did not timely file his notice of appeal, we dismiss the appeal for lack of jurisdiction.

I.

Fisher rented an apartment month-to-month from Appellee The Housing Authority of Key West. In January 2024, Fisher received a fifteen-day notice of termination. But see § 83.57(3), Fla. Stat. (2024) (requiring thirty days' notice). When Fisher did not vacate, the Housing Authority sought possession of the premises. In accordance with summary procedure, Fisher, pro se, filed an answer within five days. He explained that he failed inspection and promised to maintain his unit from now on. No other defenses were lodged and rent was not paid into the court registry. See § 83.60(2), Fla. Stat. (2024).

The trial court advanced the cause on the calendar and held the final hearing. Both parties appeared and, according to the Housing Authority, Fisher testified.¹ The trial court entered final judgment of possession on April 15, 2024. It allowed Fisher two more weeks to vacate the premises.

On April 23, 2024, Fisher filed a motion for rehearing under Florida Rule of Civil Procedure 1.530.² Fisher raised—for the first time—that the

¹ The transcript of the final hearing was not included in the record on appeal.

² Fisher retained an attorney to file the motion.

notice was deficient under section 83.57(3), Florida Statutes. Along with this motion, Fisher moved to amend his answer and sought to determine rent. Shortly thereafter, Fisher voluntarily vacated the premises and turned in his keys.

In late October, the trial court denied the motion for rehearing and directed the clerk to close the case. On November 13, 2024, Fisher filed his notice of appeal. This was filed within thirty days of the denial of the motion for rehearing.

II.

“We are governed by the fundamental principle that the time for initiating an appeal is jurisdictional.” Fire & Cas. Ins. Co. of Conn. v. Sealey, 810 So. 2d 988, 990 (Fla. 1st DCA 2002). “An appellate court cannot exercise jurisdiction over a cause where a notice of appeal has not been timely filed.” State ex rel. Cantera v. Dist. Ct. of Appeal, Third Dist., 555 So. 2d 360, 362 (Fla. 1990). See also § 59.081(2), Fla. Stat. (2024) (“Failure to invoke the jurisdiction of any such court within the time prescribed by such rules shall divest such court of jurisdiction to review such cause.”).

The process to file an appeal is spelled out in the Florida Rules of Appellate Procedure. See Art. V, § 2(a), Fla. Const. (“The supreme court shall adopt rules for the practice and procedure in all courts including the

time for seeking appellate review”); § 59.081(1), Fla. Stat. (“The time within which and the method by which the jurisdiction of any court in this state possessed of power to review the action of any other court . . . may be invoked by appeal . . . shall be prescribed by rule of the Supreme Court.”). For appeals of final orders, Rule 9.110 requires the notice of appeal to be filed within thirty days of rendition of the order to be reviewed. Fla. R. App. P. 9.110(b). “An order is rendered when a signed, written order is filed with the clerk of the lower tribunal.” Fla. R. App. P. 9.020(h).

Rendition of that order is tolled if an “authorized and timely” motion is filed. Id. Rendition then occurs when that motion is disposed of. Id. See also Gordon v. Barley, 383 So. 2d 322, 324 (Fla. 5th DCA 1980) (“Therefore, a motion for rehearing must be both timely and authorized in order to fall within the tolling provision of Rule 9.020(g).”). But if the motion is either not authorized or not timely filed, it does not toll rendition. See McNeal v. State, 19 So. 3d 448, 448 (Fla. 2d DCA 2009) (“An untimely motion for rehearing does not suspend rendition.”); Melton v. Schwinger, 678 So. 2d 470, 471 (Fla. 5th DCA 1996) (“In fact, the trial court lacks jurisdiction to rule on an untimely motion for new trial.”); Potucek v. Smeja, 419 So. 2d 1192, 1193 (Fla. 2d DCA 1982) (“An unauthorized motion for rehearing does not toll the

time.”). Then, the notice of appeal must be filed within thirty days of the final judgment.

The Housing Authority maintains that Fisher did not timely file his notice of appeal because his motion for rehearing was not “authorized and timely.” To make this determination, we must analyze the relevant statutes and rules applicable to this type of proceeding.

A.

“The Florida Residential Landlord and Tenant Act, found in Chapter 83, Part II of the Florida Statutes, affords a landlord a summary procedure in county court when seeking to remove a tenant from its premises.” Borjas v. Vergara, 232 So. 3d 1067, 1068–69 (Fla. 3d DCA 2017). See also § 83.21, Fla. Stat. (2024) (“The landlord, the landlord’s attorney or agent, applying for the removal of any tenant, shall file a complaint stating the facts which authorize the removal of the tenant, and describing the premises in the proper court of the county where the premises are situated and is entitled to the summary procedure provided in s. 51.011.”); § 83.59(2), Fla. Stat. (2024) (“The landlord is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on the calendar.”); Toledo v. Escamilla, 962 So. 2d 1028, 1029 (Fla. 3d DCA 2007) (“The Act affords a landlord a summary procedure in county court when seeking to remove a

tenant from its premises.”). “The summary procedure statutes envision an expedited process to determine the right to possession promptly without the necessity of deciding all other issues between the parties.” Camena Invs. & Prop. Mgmt. Corp. v. Cross, 791 So. 2d 595, 596–97 (Fla. 3d DCA 2001).³

Summary procedure is controlled by section 51.011, Florida Statutes. This section was first enacted in 1967. See Ch. 67-254, § 7, Laws of Fla. It has only undergone minor amendments. See Ch. 73-333, § 23, Laws of Fla. (changed time to file notice of appeal from ten days to thirty days); Ch. 87-405, § 5, Laws of Fla. (changed word “served” in subsection (1) to “filed”); Ch. 95-147, § 292, Laws of Fla. (updated pronouns to reflect both genders).

The present version provides:

The procedure in this section applies only to those actions specified by statute or rule. Rules of procedure apply to this section except when this section or the statute or rule prescribing this section provides a different procedure. If there is a difference between the time period prescribed in a rule and in this section, this section governs.

. . .

(4) New trial.-- Motion for new trial shall be filed and served within 5 days after verdict, if a jury trial was had, or after entry of judgment, if trial was by the court. A reserved motion for directed verdict shall be renewed within the period for moving for a new trial.

³ Outside of summary procedure, Chapter 83 does not specify any procedure for post-decision motions.

(5) Appeal.-- Notice of appeal shall be filed and served within 30 days from the rendition of the judgment appealed from.

§ 51.011, Fla. Stat. (2024).

As noted by the statute's text, this section provides the procedure for these types of matters. See generally Black's Law Dictionary 1367-68 (4th ed. 1968) (defining "procedure" as "[t]he mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right, and which, by means of the proceeding, the court is to administer," and "[t]hat which regulates the formal steps in, an action or other judicial proceeding"); Ballentine's Law Dictionary 1000 (3d ed. 1969) (defining "procedure" as "[t]he means adopted, that is the practice followed, whereby a court adjudicates controversies within its jurisdiction and properly presented to it, as distinguished from the substantive principles according to which the rights and wrongs are determined."). Subsection (4) sets forth the procedure for post-decision motions. It mandates that a motion for new trial or a reserved motion for directed verdict be filed within five days of the verdict or final judgment. Pro-Art Dental Lab, Inc. v. V-Strategic Grp., LLC, 986 So. 2d 1244, 1254 (Fla. 2008). It is undisputed that no motion for new trial or reserved motion for directed verdict was filed within five days of the final judgment.

Instead, Fisher maintains that his motion for rehearing was authorized and timely under Florida Rule of Civil Procedure 1.530. Rule 1.530 reads:

(a) Jury and Non-Jury Actions. A new trial may be granted to all or any of the parties and on all or a part of the issues. To preserve for appeal a challenge to the failure of the trial court to make required findings of fact in the final judgment, a party must raise that issue in a motion for rehearing under this rule. On a motion for a rehearing of matters heard without a jury, including summary judgments, the court may open the judgment if one has been entered, take additional testimony, and enter a new judgment.

(b) Time for Motion. A motion for new trial or for rehearing must be served not later than 15 days after the return of the verdict in a jury action or the date of filing of the judgment in a non-jury action. A timely motion may be amended to state new grounds in the discretion of the court at any time before the motion is determined.

Fla. R. Civ. P. 1.530. Fisher focuses on distinguishing motions for new trial from motions for rehearing.

Yet Fisher ignores the plain language of the summary procedure statute: “Rules of procedure apply to this section except when this section or the statute or rule prescribing this section provides a different procedure. If there is a difference between the time period prescribed in a rule and in this section, this section governs.” § 51.011, Fla. Stat. The statute sets forth a different procedure for post-verdict or post-judgment motions. And this

procedure—filing a motion for new trial or a reserved motion for directed verdict—controls. See Pro-Art Dental Lab, Inc., 986 So. 2d at 1254 (“[C]hapter 51 itself explicitly provides that the Rules of Civil Procedure apply unless section 51.011 or the statute creating the cause of action supply a contrary mode of procedure.”). Indeed, Rule 1.530 sets forth a competing procedure that does not apply here. See Fla. R. Civ. P. 1.010 (“The form, content, procedure, and time for pleading in all special statutory proceedings shall be as prescribed by the statutes governing the proceeding unless these rules specifically provide to the contrary.”); id. at Editors’ Notes (“To the extent that statutes dealing specifically with a particular civil action or proceeding do not set out a specific rule for a particular phase of practice or procedure, such phase would appear to be governed by these rules.”).

What is more, subsection (4)’s concept of a motion for new trial necessarily includes arguments which would fall within a motion for rehearing. It accounts for both jury and non-jury trials. Rule 1.530 notes that a motion for rehearing is for matters not heard before a jury. Fla. R. Civ. P. 1.530(a). Many summary proceedings are just that—especially in the landlord-tenant arena.

At bottom, even if we were to construe Fisher’s motion for rehearing as a motion for new trial, it would still not be timely under section 51.011,

Florida Statutes. Section 51.011, Florida Statutes, requires the motion to be filed within five days. This was not done here. The final judgment was entered on April 15, 2024, and the motion was filed on April 23, 2024.

As a result, Fisher's motion was not an "authorized and timely" motion under section 51.011, Florida Statutes. So, the motion did not toll rendition of the final judgment. Any notice of appeal was required to be filed by May 15, 2024. Yet Fisher filed the notice on November 13, 2024—five months too late. While we are sympathetic to Fisher's plight, this inaction divests this Court of jurisdiction. § 59.081(2), Fla. Stat.; State ex rel. Cantera, 555 So. 2d at 362. Without jurisdiction, there is only one action we can take: we must dismiss.

Dismissed.