

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

U.S. BANK NATIONAL ASSOCIATION
TRUSTEE FOR RAMP 2006EFC26,

Appellant,

v.

Case No. 5D17-2983

KENNETH BELL, SR. AND ALENA BELL,

Appellees.

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Opinion filed February 1, 2019

Appeal from the Circuit Court
for Flagler County,
Scott C. Dupont, Judge.

Daniel S. Hurtes and Nicole R. Topper, of
Blank Rome, LLP, Fort Lauderdale, for
Appellant.

Patricia K. Herman, of Law Office of Patricia
K. Herman, P.A., Apopka, for Appellees.

PER CURIAM.

Appellant, U.S. Bank National Association, as Trustee for RAMP 2006EFC26, appeals a final judgment dismissing, with prejudice, its foreclosure action against Appellees, Alena Bell and Kenneth Bell, Sr. Concluding that the trial court erred in finding that Appellant was not properly represented by counsel and in denying Appellant the right to be heard, we reverse.

The record reveals that Appellant filed its foreclosure action in 2008. Appellant moved for summary judgment and although Appellees appeared at the summary judgment hearing, their counsel did not. The trial court rendered final judgment of foreclosure in favor of Appellant on July 11, 2013. Shortly before the scheduled foreclosure sale, Appellees filed a notice of filing bankruptcy, resulting in an automatic stay. After the bankruptcy case was dismissed, Appellees' new counsel sought to vacate the foreclosure judgment and cancel the foreclosure sale. The trial court ultimately vacated the foreclosure judgment, determining that Appellees had been prejudiced by their attorney's failure to appear at the summary judgment hearing and thereby denied an opportunity to be heard.

After Appellees filed an amended answer, the case was set for trial. Upon Appellees' motion, the court continued the trial, rescheduling it from November 28, 2016 to January 31, 2017. The parties appeared on January 31, 2017, but the court rescheduled trial for February 9, 2017. On February 7, 2017, the law firm of Brock & Scott, PLLC, filed with the court and served Appellees a notice of appearance on behalf of Appellant, along with a motion to continue the trial. Counsel from Brock & Scott appeared on February 9 with a corporate representative witness and orally requested a continuance. Appellees objected. The trial court denied the motion for continuance, stating the case was a 2008 case that had been continued multiple times.

Thereafter, Appellees' counsel argued that Brock & Scott was not properly representing Appellant because there was no withdrawal of the prior law firm and there was no order of substitution of counsel. Thus, she contended that counsel should not be heard. She then made an ore tenus motion for dismissal of the case with prejudice. The

trial court agreed with Appellees that Brock & Scott was not properly representing Appellant. As such, the court found that Appellant's attorney "failed to appear after being properly noticed" and granted Appellees' motion to dismiss the case with prejudice.

On the facts of this case, the trial court abused its discretion in finding that Brock & Scott was not "counsel of record" for Appellant. Pursuant to Florida Rule of Judicial Administration 2.505(e), counsel may appear in a proceeding through any one of three ways: (1) by serving and filing a party's first pleading; (2) by substitution of counsel, which requires an order of the court and the client's written consent; or (3) by "filing with the court and serving upon all parties a notice of appearance as counsel for a party that has already appeared in a proceeding pro se or as co-counsel for a party that has already appeared in a proceeding by non-withdrawing counsel." Here, Brock & Scott filed a notice of appearance pursuant to rule 2.505(e)(3), which did not require a court order. As prior counsel had not moved to withdraw, the only implication is that Appellant was represented by more than one law firm, which is permissible. We further determine that Appellant was denied due process when the trial court proceeded to hear and rule on Appellees' *ore tenus* motion for dismissal of the complaint with prejudice without providing Appellant a full and fair opportunity to present its case, despite the fact that Appellant was present by counsel and a corporate representative witness. We reverse and remand for further proceedings.

REVERSED and REMANDED.

EVANDER, C.J. and GROSSHANS, J., and JACOBUS, B.W., Senior Judge, concur.