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IN THE DISTRICT COURT OF APPEAL
SIXTH DISTRICT OF FLORIDA

CASE NO.: 6D24-0493
L.T. NO.: 2020-SC-10901-O

ACTION RENTALS MCO, LLC,

***Appellant*,**

v.

LAW OFFICE OF BRANDON F. DARK, P.A.,

Appellee.

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

REPLY BRIEF OF APPELLANT

Armando Montesino
Christian Paul Struven IV
Montesino Law
5201 Blue Lagoon Drive, Ste. 800
Miami, FL 33126
Telephone: (305) 900-6529
Email: AMontesino@MontesinoLaw.com
CStruven@MontesinoLaw.com

Counsel for Appellant Action Rentals MCO, LLC

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SUMMARY OF ARGUMENT[1]

Appellee fundamentally misstates the facts and the law throughout the Answer Brief. As stated in the Initial Brief, the lack of a transcript *is not* determinative: The error is apparent in the record. The lower tribunal made none of the required findings in its Order, the hearing was not noticed as an evidentiary hearing (nor was testimony taken), there was no record evidence of excusable neglect[2] or due diligence, and the "meritorious defense" was not presented with sufficient ultimate facts to satisfy the relevant rules.

This Court's task is straightforward: The lower tribunal erroneously vacated not only the default judgment but the default without an evidentiary hearing. This Court should reverse and remand for an evidentiary hearing.

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[1] Citations to other documents in this appeal are formatted as follows: "I.B." for initial brief, "I.A." for the appendix to the initial brief, "A.B." for answer brief, and "A.A." for Appellee's supplemental appendix to its answer brief; with each followed by the relevant page number.

Due to Appellee's failure to add page numbers to its supplemental appendix, the page numbers used are the numbers displayed by Acrobat. Otherwise, page numbers are those displayed at the bottom of each page. Thus, "I.B. 1" or "A.A. 7–11."

[2] Nor could there be. Appellee's registered agent—that is, the owner of the firm, Mr. Dark—was *personally served* with the writ of garnishment. (I.A. 12).

ARGUMENT

Appellee Fails to Distinguish the Case Law on the Non-Necessity of a Transcript

Appellee dances around the case law cited in the Initial Brief as to the necessity of a transcript. The Court should not miss the opportunity to address this matter: A transcript is not necessary where the order and the record fails to show the consideration of *evidence*.

Appellee attempts to distinguish both *Benedetto* and *Varga* in a curious passage, recited here:

> Here, the trial court's Order does not reflect the hearing on Appellee's motion to set aside the default and final judgment was a non-evidentiary hearing. Furthermore, the court's Order states it was "fully advised of the premises" underlying the motion.

(A.B. 4–5). This completely misses the point of both cases: Transcripts were not necessary where the error was evident on the face of the record. *Varga v. Dongal Invs., LLC*, 345 So. 3d 919, 919 (Fla. 4th DCA 2022); *Benedetto v. U.S. Bank, N.A.*, 181 So. 3d 564, 567 (Fla. 4th DCA 2015). Little else needs to be said on these cases, which are discussed at length in the Initial Brief. (I.B. 14–16).

Appellee goes on to contend that "there is no prior admission or other evidence showing the Appellee was properly served and had notice of the writ of garnishment." (A.B. 5). This is simply false: The return of service for the writ of garnishment is in the record. (I.A. 12). Appellee's counsel, who signed the Answer Brief,[3] was *himself* personally served.

*Assuming Arguendo that the Hearing **was** an Evidentiary Hearing, Appellant's Due Process Rights were Violated*

Appellee asserts, on an unclear basis, that the hearing below *was* an evidentiary hearing and that sworn testimony was taken. Appellant declines to make its Reply Brief focus on this in light of the lack of transcript. The simple fact is that if we assume that the hearing below was an evidentiary hearing, then because it was not *noticed* as an evidentiary hearing, Appellant's due process rights were violated.

This is not a mere formality. In order to comply with due process, an evidentiary hearing must properly be noticed as an evidentiary hearing. *See, e.g.*, *Crepage v. City of Lauderhill*, 774 So. 2d 61, 65 (Fla. 4th DCA 2000) (quoting *J.B. v. Dep't of*

[3] (A.B. 9). *See also* Fla. R. Gen. Prac. & Jud. Admin. 2.515(a).

Children & Family Servs., 734 So. 2d 498, 500 (Fla. 1st DCA 1999), *quashed on other grounds*, 768 So. 2d 1060 (Fla. 2000)). *See also Zahav Refi LLC v. White Hawk Asset Mgmt.*, 378 So. 3d 1192, 1194 (Fla. 2d DCA 2023) (noting the failure to notice a hearing as evidentiary).

In *Crepage*, quoting *J.B.*, the Fourth District observed,

> The amount of notice, like other components of procedural due process, depends on the nature of the proceeding. For example, the amount of notice that is necessary to provide a meaningful opportunity to be heard is not the same for an evidentiary hearing as it is for a status conference. ***<u>The opportunity to be heard at an evidentiary hearing requires time to secure the attendance of witnesses and to prepare for the presentation of evidence and argument.</u>***

774 So. 2d at 65 (emphasis added). As in *Crepage*, Appellant was not given adequate notice of an *evidentiary* hearing such that witnesses and evidence could be produced. Indeed, had Appellant been on notice that the hearing would be an evidentiary hearing, it *certainly* would have obtained a court reporter.

<u>The Court should Disregard Appellee's Distortions of the Record</u>

In the Answer Brief, Appellee falsely states that there was no evidence that it was served with the Writ of Garnishment. (A.B. 5). As the record on appeal very clearly shows, Appellee was served via

personal service on Appellee's registered agent: Brandon F. Dark, Esq., (I.A. 12), one of the attorneys for Appellee. This document was in the record at the time of the hearing.

There is little else to be said here. If, as Appellee asserts, the Court had held that Appellee was not properly served with the writ, this would appear to be an abuse of discretion.

CONCLUSION

Contrary to Appellee's assertions, the lack of transcript does not doom this appeal: The error is evident on the face of the record: First, the lower tribunal did not consider the required factors, as evidenced by its order. Second, the hearing below was either non-evidentiary (and therefore error) or was not noticed as an evidentiary hearing (and therefore a due process violation). Regardless, this Court should reverse and remand.

Respectfully submitted,
Montesino Law
Attorneys for Appellant
5201 Blue Lagoon Dr., Ste. 800
Miami, FL 33126
Tel: (305) 900-6529

By: /s/ Christian Paul Struven IV
Christian Paul Struven IV
Florida Bar No.: 1055402
CStruven@MontesinoLaw.com
Armando Montesino
Florida Bar No.: 100771
AMontesino@MontesinoLaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 31, 2024, a true and correct copy of the foregoing was filed with the Clerk of the Court and served on counsel of record via the Florida Courts eFiling portal.

By: /s/ Christian Paul Struven IV
Florida Bar No.: 1055402
CStruven@MontesinoLaw.com

CERTIFICATE OF COMPLIANCE FOR COMPUTER-GENERATED BRIEFS

Counsel for Appellant certifies that the size and style of type used in this document is Bookman Old Style 14-point font. Additionally, this Brief does not exceed 4,000 words, exclusive of the cover page, tables of contents and citations, certificates of service and compliance, and signature block. Fla. R. App. P. 9.210(a)(2)(B), (a)(2)(E); 9.045(e).

By: /s/ Christian Paul Struven IV
Florida Bar No.: 1055402
CStruven@MontesinoLaw.com