

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 TAMARIND AVENUE
WEST PALM BEACH, FL 33401**

CINDY FORD

CASE NO. 4D2024-0843

Appellant(s)

L.T. Case No. CACE 23-016851

v.

RUSSELL CHARLES

AND

KEVIN AWAI

Appellee(s)

ON APPEAL FROM THE CIRCUIT COURT FOR THE SEVENTEENTH
JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

CINDY FORD

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I. INTRODUCTION

Appellant, Cindy Ford, respectfully submits this Reply Brief to address the issues raised in Appellee's Brief and to demonstrate that the final judgment rendered in this case must be reversed due to improper service of process, fraud, and deception.

Specifically, the Appellant was not properly served with the summons as required by law, and the service by FedEx to an address at which the Appellant did not reside and was not authorized to receive service constitutes a violation of due process.

Furthermore, the deed in question was wrongfully altered and recorded due to fraudulent actions by the Appellee.

II. ARGUMENT

1. Improper Service of Process

Appellees' attempt to serve Appellant at an incorrect address constitutes a failure to properly serve the summons, rendering the judgment void. Service of process must be made in accordance with the rules of the court and statutory provisions to ensure due process rights are not violated.

Florida Rule of Civil Procedure 1.070(a) requires that service be made on the defendant in person, or if the defendant cannot be found, by service at their usual place of abode or through substitute service on a person suitable age and discretion residing at that address.

In this case, the Appellant was not residing at the address 9107 Sharpes Circle Charlotte, NC 28214 to which the summons was mailed via FEDEX with no signature required on August 22, 2023 FedEx Tracking No 782806612205. (A4).

Appellees knew or should have known that the address used for service was incorrect, yet they proceeded to serve the summons via FedEx without any signature required, failing to ensure actual delivery.

The Fedex package that contained the summons was dropped off by the FedEx driver at the front doorstep on the floor at 9107 Sharpes Circle Charlotte, NC 28214. (A4). Which clearly shows that nobody of legal age obtained the FedEx package that contained the summons, and nobody signed or acknowledged that they ever received the package at 9107 Sharpes Circle Charlotte, NC 28214. Which clearly shows unsuccessful return of service.

Moreover, by using a delivery method that did not require a signature, Appellees made it impossible for Appellant to confirm receipt of the summons or contest the service. This failure to properly affect service is a clear violation of the requirements under Florida Rule of Civil Procedure 1.070 and renders the judgment void.

Additionally, the Appellees' decision to send the summons to an out of state address, despite the Appellant not residing there, violated the rules governing service on non-residents.

The proper procedure for service on a non-resident is governed by Florida Statutes 48.181, which requires service through the Secretary of State when the defendant is not a resident of the State.

Appellees incorrectly attempted substitute service at an

address that the Appellant did not reside at, bypassing the necessary procedures for service on a resident.

The trial court never gave Appellee permission to substitute service on Appellant to the Secretary of State as non-resident.

Case laws for equitable Remedies:

1. MacDonald v. MacDonald, 135 So. 2d 878 (Fla. 3d) DCA 1961.

Equitable Remedies in Property disputes.

2. West v. Hablinski, 590 So. 2d 1044 (Fla. 2d) DCA 1991.

Appeal for Motion for rehearing or appeal. Recording Deed.

3. Atkins V. Atkins, 542 So. 2d 131 (Fla. 1st DCA 1989).

Clerical Error.

4. Hayes v. State, 754 So. 2d 204 (Fla. 2000).

Appeal and Motion for Rehearing.

5. Rasmussen v. Warren, 177 So. 3d 251 (Fla. 4th DCA 2015).

6. Riverside National Bank of Florida v. Lewis, 477 So. 2d 1020 (Fla. 1985).

2. Fraudulent Conduct by Appellees

Appellees' actions also give rise to claims of fraud and deception. Appellees knowingly sent the summons to the Secretary of State to serve Appellant as non-resident knowing that the Appellant is a resident of Florida. Also, sends summons to incorrect address, then misrepresented to the court that Appellant resided at that address, which was false. This misrepresentation was intended to deceive the court into believing that proper service had been affected when, in reality, the Appellant had not been served at all.

- A. New Evidence shows that Jennifer Ford lied under perjury and oath with Fraudulent Affidavits she filed stating that Cindy Ford that she sent Appellant another FedEx package shipped on August 22, 2023, tracking number 782896938534 mailed to Cindy Ford at 7713 Coral Blvd Hollywood, FL 33023 and was delivered on August 25, 2023. Despite Jennifer Ford lied under penalty and perjury under oath with her Fraudulent Affidavits stating the reason she filed substitute summons is because she intentionally and fraudulently lied to deceive Courts and stated that Cindy Ford was a non-resident to file via Secretary of State by deception and committing fraud. Jennifer Ford intentionally didn't disclose this information to the Court that she

even mailed a second FedEx package to Appellant since she knew that she was lying, and that Cindy Ford does reside at the residence of 7713 Coral Blvd and is a residence of Florida...(A1).

B. Jennifer Ford new evidence sent letter to Cindy Ford residence on October 30, 2023 the address 7713 Coral Blvd Miramar, FL 33023 as written proof that Jennifer Ford committed fraud by stating on Affidavits that Cindy Ford did not reside at property and that she was a non-resident out of state just to evade proper return of service.

(A2).

C. Jennifer Ford affidavit. (A3).

D. FedEx Package Summons. (A4).

E. Non-Identity Affidavit of Deed. (A5).

F. Complaint. (A6).

G. Notice of Hearing. (A7).

H. Order Setting Case Management. (A8).

I. Motion for Reconsideration. (A9).

J. Order on Defendant's Motion for Reconsideration. (A10).

K. Notice of Filing Return of Service. (A11).

L. Summons (Secretary of State). (A12).

M. Order on Defendant's Motion to Vacate. (A13).

N. Quit Claim Deed. (A14).

- O. Notice of Filing to Strike. (A15).
- P. Notice of Filing Proof of Residence. (A16).
- Q. Affidavit of Cindy Ford. (A17).
- R. Case Detail. (A18).
- S. Notice of Affidavit Kevin Awai. (A19)
- T. Notice of Affidavit Russell Charles. (A20).
- U. Defendant Motion to Dismiss Default & Final Default. (A21).

Jennifer Ford never got permission from the lower trial court to file substitute service before filing summons with Florida Secretary of State as non-resident.

Appellee's lied that Appellant never filed Affidavit with Motion to Dismiss and Vacate Judgment it was filed on October 23, 2023. (A17). Therefore, the Judgment should have been vacated.

Appellee's answer brief is redundant and full of fraudulent statements that they have no evidence to show as proof.

Under Florida law, a judgment obtained through fraud or misrepresentation is subject to being vacated.

In *Brown v. Brown*, 736 So. 2d 1162 (Fla. 4th DCA 1999), the court held that a final judgment obtained through fraudulent actions, including improper service, could be vacated. The Appellees' conduct in mailing the

summons to an incorrect address and serving.

summons to Secretary of State as nonresident and falsely claiming it was proper service constitutes fraudulent conduct that deprived Appellant due process and renders the void.

Furthermore, Appellee's use of FedEx to serve the summons, without requiring signature, further suggests a deliberate attempt to evade proper service. In *Rasmussen v. Warren*, 177 So. 3d 251 (Fla. 4th DCA 2015), the court emphasized that service of process must be performed in a way that ensures the party being served has adequate notice. The Appellees' actions in this case do not meet this requirement and show an intentional for the Appellant's due process rights.

3. Void Judgment Due to Fraud and Deception

The final judgment in this case, which was entered by default, is void due to the improper service of process and the fraudulent conduct of the Appellees. A judgment obtained through fraud or without proper service does not have the legal effect of binding the defendant and can be set aside. Under Florida Rule of Civil Procedure 1.540 (b)(3), a party can seek relief from a judgment due to fraud, misrepresentation, or misconduct by the opposing party. The Appellant's failure to respond to the summons was not due to neglect or intentional disregard of the court's authority, but rather

the result of Appellee's improper service and fraudulent actions.

Case law supports the principle that fraud and improper service render a judgment void. In *Riverside National Bank of Florida v. Lewis*, 77 So. 2d 1020 (Fla. 1985), the Florida Supreme Court held that a judgment rendered under circumstances involving fraud can be challenged as void. The facts here mirror those in *Lewis* and other similar cases, where fraudulently induced service and misrepresentation to the court resulted in an unjust judgment.

The trial court abused its' discretion. The trial court did not allow Appellant witness Mr. Marshall to testify at Evidentiary Hearing on February 7, 2024. The trial court asked Mr. Marshall who he was and why he was at the zoom hearing, and he stated under oath his name and that he was a witness for Appellant. Trial court during the hearing the Judge never asked Mr. Marshall to testify so when the Judge did denial order for Motion to Vacate Final Judgment and stated that she heard all witness's testimony before she made her decision was not true. The appellant was not given fair evidentiary hearing on February 7, 2024, and not given due process as required by law.

III. CONCLUSION

For the reasons set forth above, the Appellant respectfully requests that this Court reverse the final judgment, as the service of process was improper and fraudulent, depriving the Appellant of due process. The judgment should be vacated, and the deed should be reinstated in the Appellant's name. The actions of the Appellees have rendered this judgment void, and justice requires the reversal.

Respectfully submitted the 12th day of November 2024.



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CERTIFICATE OF COMPLIANCE

Appellant, CINDY FORD, certifies that this Pleading has been prepared in Arial, 14-point, in compliance with the requirements set forth in Florida Rule of Appellate Procedure 9.210(a)(2).

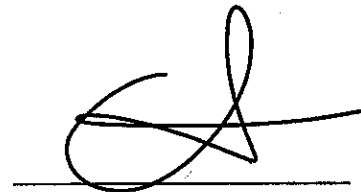


CINDY FORD

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing.

was served via electronic mail to: ***Nathaniel E. Green, (as Successor Personal Representative for the Estate of Vilma Awai).***, NATHANIEL GREEN LAW OFFICES 3201 W. COMMERCIAL BLVD #228 FT. LAUDERDALE, FL 33309. nate@nategreenpa.com: on this 12th day of November 2024.

A handwritten signature in black ink, appearing to be 'Cindy Ford', written over a horizontal line.

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