w/o O/A.

IN THE

SUPREME COURT OF FLORIDA

Case No. 66,716

ANDREW BENDER,

Petitioner,

vs.

FIRST FIDELITY SAVINGS AND LOAN ASSOCIATION OF WINTER PARK f/k/a FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF MARTIN COUNTY,

Respondent.

FILED
SID J. WHITE
JUL 23 1985
CLERK, SUPREME COURT
By
Chief Deputy Clerk

ON PETITION FOR WRIT OF CERTIORARI FROM THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT, AS DIRECTLY CONFLICTING WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL ON THE SAME QUESTION OF LAW.

BRIEF OF RESPONDENT

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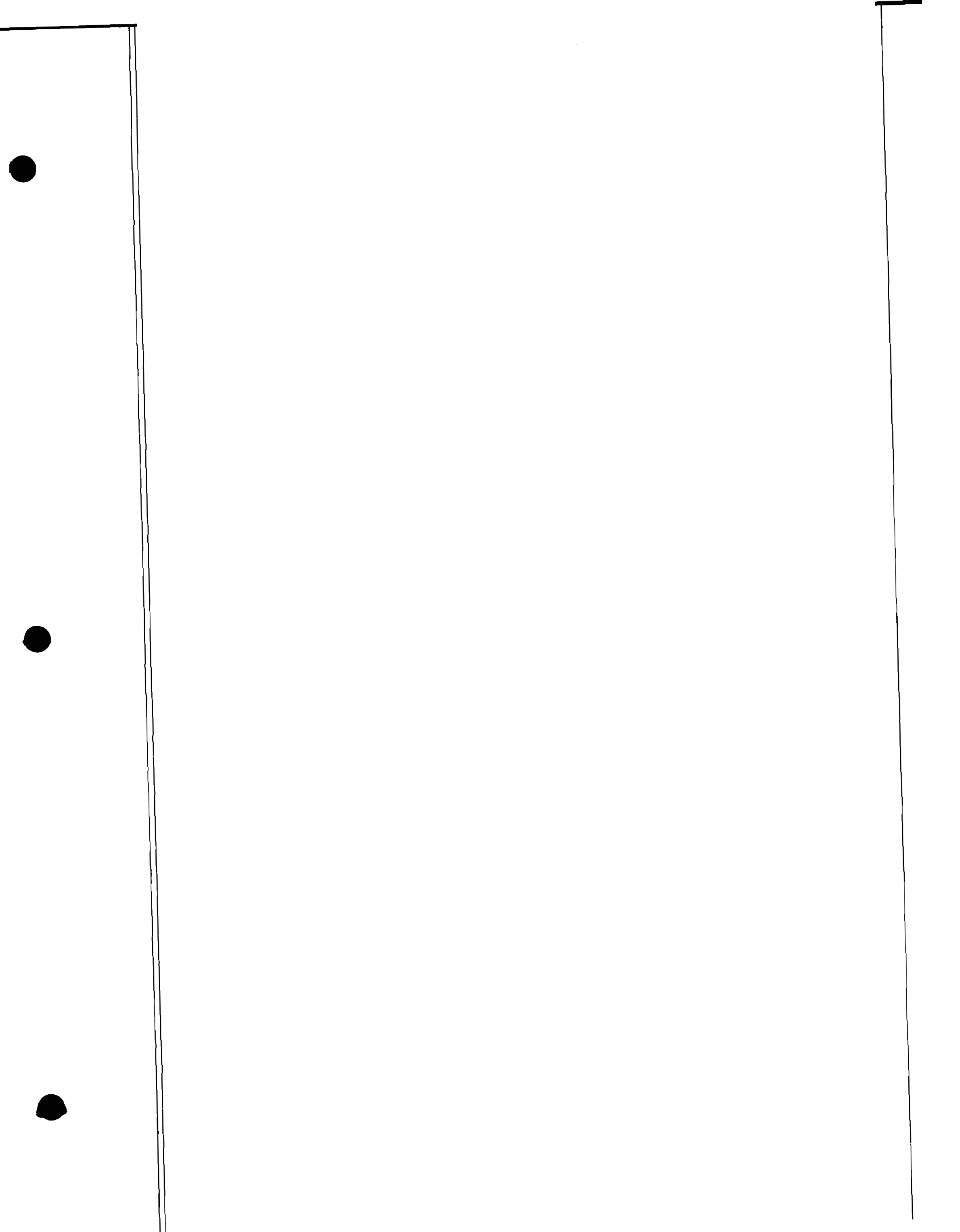

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PERTINENT TEXT OF STATUES AND RULES CITED

Fla.R.Civ.P. 1.420 [Dismissal of actions]:

> (a) Voluntary dismissal; effect thereof.
> (1) By Parties. . . . [A]n action may be dismissed by plaintiff without order of court . . . by serving . . . a notice of dismissal at any time before a hearing on motion for summary judgment, or if none is served or if such motion is denied, before retirement of the jury in a case tried before a jury or before submission of a nonjury case to the court for decision . . .
>
> * * *
>
> (c) Dismissal of counterclaim, cross-claim or third party claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim or third party claim.

Fla.R.Civ.P. 1.540 [Relief from judgment, decrees or orders]:

> (b) Mistake; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, decree, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect . . . The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, decree, order or proceeding was entered or taken.

Ga. Code §81A-141 [Dismissal of actions]:

> (a) voluntary dismissal; effect. . . . [A]n action may be dismissed by the plaintiff, without order of court, by filing a written notice of dismissal at any time before verdict . . .
>
> * * *
>
> (c) Dismissal of counterclaim, cross-claim, or third-party claim. This Code section also applies to the dismissal of any counterclaim, cross-claim, or third-party claim.

[Complete text provided at Appendix B, p. 5]

Ga. Code §81A-160 [Relief from judgments]:

> (e) Complaint in equity. Complaint in equity may be brought to set aside a judgment for fraud, accident, or mistake, or the acts of the adverse party unmixed with the negligence or fault of the complainant. Where a judgment is subject to be set aside in equity, the court may grant such other and further relief, legal or equitable, as may be necessary to afford complete relief.
> (f) Procedure; time of relief. Reasonable notice shall be afforded the parties on all motions. Relief in equity must proceed by complaint and summons. A judgment void because of lack of jurisdiction of the person or subject matter may be attacked at any time. Motions for new trial must be brought within the time prescribed by law. In all other instances, all motions, complaints, or other proceedings to set aside or attack judgment shall be brought within three years from entry of the judgment complained of.
> (g) Clerical mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

[Complete text provided at Appendix B, pp. 6-7]

STATEMENT OF THE FACTS AND CASE

[Petitioner's statement of the facts and case is incomplete. Therefore, a statement of the facts and case is included for the benefit of the Court.]

Both parties to the present proceeding were defendants in a mortgage foreclosure. Respondent First Fidelity filed a cross-claim against Petitioner Andrew Bender on Respondent's second note and mortgage.

Trial counsel for Respondent made a tactical decision to file a voluntary dismissal without prejudice of its cross-claim and to file a separate action on the note so as to obtain a personal judgment against Petitioner. (Appendix A, pp. 1, 2, 4)

Respondent's trial counsel instructed an employee to prepare a voluntary dismissal of the cross-claim against Petitioner without prejudice. At the same time, trial counsel for Respondent requested that the same employee prepare a voluntary dismissal with prejudice in another action. In the preparation of the dismissals, trial counsel's employee inadvertently reversed the phrases "with prejudice" and "without prejudice" in the two dismissals. (Appendix A, pp. 5, 7).

Trial counsel for Respondent had previously established an office procedure pursuant to which all pleadings and papers regarding foreclosure actions were to be reviewed by an associate. On the day the voluntary dismissals were prepared, the associate responsible for reviewing those documents was in court. Thus, the associate did not review the voluntary dismissals for errors. Respondent's trial counsel inadvertently signed the

dismissal in question having incorrectly assumed that it had previously been reviewed for mistakes. (Appendix A, pp. 5-6)

The erroneous dismissal with prejudice went undetected until Petitioner's trial counsel raised the issue in argument of Petitioner's motion to dismiss a separate lawsuit on the note. (Appendix A, p. 6) Thereafter, Respondent timely filed a motion, pursuant to Fla.R.Civ.P. 1.540(b), to amend its voluntary dismissal from one with prejudice to one without prejudice. This motion was filed fifteen days after the dismissal was taken. (Appendix A, pp. 1, 2-3) A hearing on the motion was had before Judge Lawrence L. Korda and the motion was granted. (Appendix A, p. 8)

Petitioner subsequently filed a petition for writ of prohibition in the District Court of Appeal, Fourth District. The Fourth District elected to treat the petition as a non-final appeal and affirmed the trial court's order. (Appendix A, pp. 9-10)

Thereafter, Petitioner filed a petition for writ of certiorari in this Court alleging conflict jurisdiction. This Court accepted discretionary jurisdiction over the petition in question pursuant to Fla.R.App.P. 9.030(a)(2)(A)(iv).

SUMMARY OF ARGUMENT

Pursuant to Fla.R.Civ.P. 1.540(b), trial courts may relieve a party from a final judgment, decree, order or proceeding on grounds of, inter alia, mistake, inadvertence, or excusable neglect. A voluntary dismissal taken pursuant to Fla.R.Civ.P. 1.420 is an "order" or, in the alternative, a "proceeding" within the meaning of Rule 1.540(b). Thus, trial courts have jurisdiction to grant relief from voluntary dismisals pursuant to Rule 1.540(b) under appropriate circumstances. Four of the five District Courts of Appeal have reached this conclusion.

Though a court's discretion in granting relief from a voluntary dismissal is not without limitation, the facts presented in the case at bar satisfy all such limitations. The mistake at issue was non-tactical; Respondent's dismissal with prejudice was the result of a mistake by trial counsel's secretarial staff and subsequent inadvertence on the part of trial counsel. The relief granted by the trial court below did not reinstate Respondent's cause of action. The inclusion of the words "with prejudice" in the voluntary dismissal in question was nonvolitional. The relief sought by Respondent was from the unanticipated consequences of an unintended act. Therefore, the trial court below had discretionary authority to grant the relief sought by Respondent.

Petitioner's reliance on Miller v. Fortune Insurance Company, 453 So.2d 489 (Fla. 2d DCA 1984), is misplaced. The Miller decision is a clear misinterpretation of the scope of this Court's decision in Randle-Eastern Ambulance Service, Inc. v. Vasta, 360

So.2d 68 (Fla. 1978). When the holding in Miller is taken to its logical conclusion, it is in conflict with a long line of decisions granting relief, pursuant to Rule 1.540, from final judgments and orders of dismissal. Under the circumstances, the trial court below properly granted the relief sought by Respondent.

ARGUMENT

I. PURSUANT TO FLA.R.CIV.P. 1.540(b), TRIAL COURTS HAVE JURISDICTION TO AMEND A VOLUNTARY DISMISSAL FILED "WITH PREJUDICE" TO READ "WITHOUT PREJUDICE" WHEN THE FACTS ESTABLISH THAT THE DISMISSING PARTY INTENDED FOR THE DISMISSAL TO BE WITHOUT PREJUDICE.

Once an order, judgment, or decree becomes final, the court does not retain the jurisdiction, unless otherwise authorized by statute or rule, to amend, modify or alter the order, judgment, or decree except as to time and manner of enforcement. See Shelby Mutual Insurance Company of Shelby, Ohio v. Pearson, 236 So.2d 1 (Fla. 1970); Donovan v. Environs Palm Beach, 372 So.2d 1008 (Fla. 4th DCA 1979); DeFilippis v. DeFilippis, 378 So.2d 325 (Fla. 4th DCA 1980).

In Florida, Fla.R.Civ.P. 1.540 authorizes courts to revisit orders, judgments, decrees, and proceedings under certain circumstances. Pursuant to Rule 1.540(b), a court may, within one year from the date of entry, relieve a party or his legal representative from a final judgment, decree, order, or proceeding on the grounds of, inter alia, mistake, inadvertence or excusable neglect.

In the present case, Respondent sought relief from a voluntary dismissal pursuant to Rule 1.540(b). As grounds for relief, Respondent alleged that the voluntary dismissal was intended to be "without prejudice"; however, as a result of a secretarial mistake by trial counsel's staff and inadvertence on the part of trial counsel, the dismissal was filed "with prejudice". The evidence produced in the motion and during the hearing on the motion clearly established that a dismissal without prejudice was intended. The trial court granted the requested relief by amending the dismissal to read "without prejudice".

The question now before the Court is whether the trial court abused its discretion in granting the relief. That discretion is very broad. As the District Court of Appeal, Fifth District, noted in Church v. Strickland, 382 So.2d 419 (Fla. 5th DCA 1980):

> A motion filed under Florida Rules of Civil Procedure 1.540 is addressed to the sound discretion of the trial court. . . . It is the duty of the trial court, not the appellate court, to make the determination whether the facts constitute excusable neglect, mistake, or inadvertence within the rules. . . . This discretion is of the broadest scope. [Emphasis added]

382 So.2d at 420. As a result, Petitioner does not argue that the facts did not establish the requisite grounds for relief. Instead, Petitioner contends that Rule 1.540(b) does not give a trial court jurisdiction to grant relief from a voluntary dismissal.

Petitioner supports this contention by citing Randle-Eastern Ambulance Service, Inc. v. Vasta, 360 So.2d 68 (Fla. 1978). In Randle, the plaintiff took a voluntary dismissal without prejudice only to subsequently realize that the opportunity to relitigate had been foreclosed by the statute of limitations. The plaintiff sought relief from its tactical error by asking the trial court to reinstate its cause of action pursuant to Fla.R.Civ.P. 1.540(b). The Randle decision held that Rule 1.540(b) does not give trial courts jurisdiction to reinstate a cause of action. In so doing, this Court noted that Rule 1.540(b) was not designed to relieve attorneys of their tactical mistakes.

This proceeding is the result of disagreement between the District Courts as to the scope of the Randle decision. See Shampaine Industries, Inc. v. South Broward Hospital District, 411 So.2d 767 (Fla. 4th DCA 1982); Atlantic Associates, Inc. v. Laduzinski, 428 So.2d 767 (Fla. 3d DCA 1983); Miller v. Fortune Insurance Company, 453 So.2d 489 (Fla. 2d DCA 1984). Shampaine, Atlantic, and Miller involved fact situations very similar to the present case. The present case, however, involves facts substantially dissimilar from the facts presented in Randle.

In Randle the plaintiff's voluntary dismissal without prejudice was a tactical mistake in that the opportunity to relitigate had been foreclosed. In the case at bar, a voluntary dismissal without prejudice would not have been a tactical mistake in that the opportunity to relitigate was still available. Unfortunately, trial counsel for Respondent unknowingly dismissed

Respondent's cross-claim with prejudice. Unlike Randle, the tactical decision to file a voluntary dismissal is not the mistake at issue.

The plaintiff in Randle sought relief from the unanticipated consequences of an intended act. In the present case, Respondent sought relief from the unanticipated consequences of an unintended act.

In Randle, the relief sought by the plaintiff was to have the trial court reinstate her cause of action. In the case at bar, Respondent sought only to expunge language inadvertently and mistakenly included in its voluntary dismissal and to have the trial court amend its dismissal to read as intended.

Petitioner relies on the Second District's interpretation of Randle in Miller v. Fortune Insurance Company, supra. The Miller decision fails to recognize the aforedescribed distinctions and is a clear misinterpretation of the scope of this Court's Randle decision.

A. Under appropriate circumstances, a court may grant relief from a voluntary dismissal pursuant to Fla.R.Civ.P. 1.540(b) in that a voluntary dismissal is an "order or proceeding" within the meaning of the Rule.

In Miller v. Fortune Insurance Company, 453 So.2d 489 (Fla. 2d DCA 1984), the Second District interpreted Randle as holding that a voluntary dismissal divests a court of jurisdiction to entertain any motion for relief pursuant to Rule 1.540(b), regardless of the circumstances. The Second District appears to be alone in its interpretation of this Court's Randle decision.

The Third and Fourth Districts have expressly held that voluntary dismissals are within the parameters of Rule 1.540(b). In Shampaine Industries, Inc. v. South Broward Hospital District, 411 So.2d 364 (Fla. 4th DCA 1982), the Fourth District's conclusion on the jurisdiction issue was that:

> . . .[W]e are not concerned with the court's jurisdiction, but rather the extent to which this Rule may be applied . . . [A] trial court does have jurisdiction to grant relief assuming the existence of circumstances contemplated by the provisions of the rule.

411 So.2d at 366. See also McKibbin v. Fujarek, 385 So.2d 724 (Fla. 4th DCA 1980).

In Atlantic Associates, Inc. v. Laduzinski, 428 So.2d 767 (Fla. 3d DCA 1983), the Third District also concluded that the Randle decision does not preclude relief. The Atlantic court stated that:

> Rule 1.540(b) . . . allows for relief from judgments, decrees or orders when a party can show that there was mistake, inadvertence, surprise or excusable neglect.
>
> * * *
>
> Appellee here is not asking the trial court to reinstate his cause of action after taking a voluntary dismissal. . . . Thus, it is not necessary to reach the jurisdictional issues raised in Randle. . . . Rule 1.540 may be used to afford relief to all litigants who can demonstrate the existence of the grounds set out in the Rule.

428 So.2d at 768.

Further, the First and Fifth Districts have implicitly adopted this approach to jurisdictional scope of Rule 1.540. In Piper Aircraft Corporation v. Prescott, 445 So.2d 591 (Fla. 1st DCA 1984), the First District distinguished but implicitly approved the Shampaine decision. The Fifth District also appeared to limit the scope of the Randle holding in Siler v. Lumbermens Mutual Casualty Company, 420 So.2d 357 (Fla. 5th DCA 1982), when it noted that:

> . . .[Randle] do[es] not hold that proper grounds for relief under rule 1.540 from a notice of voluntary dismissal can never be alleged.

420 So.2d at 358, n.2. The Shampaine, McKibbon, Atlantic, and Siler opinions reflect the most logical interpretation of the Randle decision. The conclusion reached by the Second District in Miller is contrary to the language of Rule 1.540(b).

Rule 1.540(b) provides that:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, decree, order or proceeding . . . [Emphasis added]

Nothing in Rule 1.540(b) can reasonably be interpreted as excluding voluntary dismissals from the scope of the Rule 1.540(b).

According to Randle, a plaintiff has an absolute right to dismiss pursuant to Fla.R.Civ.P. 1.420. As a result, a voluntary dismissal is an "order" within the meaning of Rule 1.540(b).

In Georgia, an action may be dismissed by the plaintiff at any time prior to a verdict by filing a notice of dismissal. Ga. Code §81A-141(a) [Appendix B, p. 5]; compare Fla.R.Civ.P. 1.420. The Georgia Code also provides for the correction of clerical mistakes in judgments, orders, or other parts of the record. Ga. Code §81A-160(g) [Appendix B, pp. 6-7]. In applying these code sections, the Georgia courts have held in accord with this Court's Randle decision; Georgia trial courts do not have authority to reinstate a cause of action after a voluntary dismissal. Matthews v. Riviera Equipment, Inc., 152 Ga.App. 870, 264 S.E.2d 318 (Ct. App. 1980) [Appendix B, pp. 3-4].

However, in Page v. Holiday Inns, Inc., 245 Ga. 12, 262 S.E.2d 783 (1980) [Appendix B, pp. 1-2], the Supreme Court of Georgia was confronted with a fact situation very similar to the case at bar. In Page, the plaintiff's trial counsel dictated, signed, and filed a notice of dismissal without reading it. Though trial counsel intended for the dismissal to be "without prejudice", it was filed "with prejudice". As is the situation in the case at bar, there was no issue of laches, statute of limitations, state claims or estoppel, and the defendants claimed no prejudice other than that experienced from a voluntary dismissal without prejudice.

The Page decision unanimously held that the evidence compelled a conclusion that the error was a clerical mistake and its correction was proper. In so doing, the Georgia Supreme Court held that a voluntary dismissal is an order within the meaning of

Ga. Code §81A-160(g) by virtue of right to voluntarily dismiss provided by Ga. Code §81A-141(a). In that Rule 1.420 is substantively identical to Ga. Code §81A-141(a) in the context of the case at bar, the rationale of the Page decision is applicable, and a voluntary dismissal is an order within the meaning of Rule 1.540(b).

Alternatively, a voluntary dismissal is within the meaning of the term "proceeding" as used in Rule 1.540(b). In Cooper v. Carroll, 239 So.2d 511 (Fla. 3d DCA 1970), the Third District noted that Rule 1.420 provides an expeditious manner of disposing of a cause which otherwise would be accomplished by court order. The Third District thus held that a voluntary dismissal pursuant to Rule 1.420, equivalent to dismissal by court order, constitutes a "proceeding" within the meaning of Rule 1.540(b). The conclusion reached by the Cooper court is in accordance with the accepted meaning of the term.

As a general rule, "proceeding" is a very comprehensive term. See Bowers v. New York & Albany Lighterage Company, 273 U.S. 346, 47 S.Ct. 389, 71 L.Ed. 676 (1927); 1 Fla.Jur.2d Actions §2; 1 C.J.S. Actions §§1(h)(1)(a), 3. Black's Law Dictionary defines the term "proceeding" as generally including:

> . . . the form and manner of conducting juridical business before a court or judicial officer. Regular and orderly progress in form of law, including all possible steps in an action from its commencement to the execution of judgment. . .
>
> An act which is done by the authority . . . of the court, . . . express or implied; . . . a prescribed mode of action for carrying into effect a legal right. All the steps or measures adopted in the prosecution or defense

> of an action . . . The proceedings of a suit embrace all matters that occur in its progress judicially. [Emphasis added]

Black's Law Dictionary 1083 (5th ed. 1980).

Chief Justice John Marshall of the United States Supreme Court interpreted the phrase ". . .[t]he forms and modes of proceedings, in causes of equity, and of admiralty and maritime jurisdiction. . ." as embracing all matters in the progress of a suit, from its commencement to its close. Wayman v. Southard, 23 U.S. (10 Wheat) 1, 6 L.Ed. 253 (1825) [Emphasis added].

Similarly, this Court held in State Road Department v. Crill, 99 Fla. 1012, 128 So. 412 (1930), that a "proceeding in court" encompassed "case," "cause," "action" and "suit". Yet the term "proceeding" is even broader than the terms "case", "cause", "action", and "suit". See 1 Fla.Jur.2d Actions §2; 1 Am.Jur.2d Actions §3.

A voluntary dismissal of a suit should clearly fall with the meaning of the term "proceeding" as used in Rule 1.540(b). Pursuant to Rule 1.420, a voluntary dismissal is an act which may be done by express authority of this Court. A voluntary dismissal is a legal right in light of the facts in the present case. A voluntary dismissal is one of the steps or measures often adopted in the prosecution of an action. If a voluntary dismissal is not an "order", then it clearly is a "proceeding". To conclude to the contrary would contradict the historical meaning of the term.

So long as a voluntary dismissal is an "order or proceeding",

the Second District's Miller decision is without merit. When the holding in Miller is taken to its logical conclusion, it is in conflict with a long line of decisions granting relief from final judgments, default final judgments, and orders of dismissal pursuant to Rule 1.540.

As a general rule, a trial court loses jurisdiction over a cause upon final judgment. There are four exceptions: (1) a party may move for a new trial pursuant to Fla.R.Civ.P. 1.530; (2) a court may exercise jurisdiction to aid the enforcement of its judgment pursuant to Fla.R.Civ.P. 1.550-1.590; (3) as noted supra, a court may exercise jurisdiction as to time and manner of enforcement of the final judgment; and (4) a party may move for relief from a final judgment pursuant to Rule 1.540. Relief pursuant to Rule 1.540 is available notwithstanding the court's loss of jurisdiction over the cause. Pruitt v. Brock, 437 So.2d 768 (Fla. 1st DCA 1983); Avant v. Waites, 295 So.2d 362 (Fla. 1st DCA 1972); Cunningham v. White, 390 So.2d 467 (Fla. 3d DCA 1980); Don Mott Agency, Inc. v. Harrison, 362 So.2d 56 (Fla. 2d DCA 1978); Dixie Insurance Company v. Federick, 449 So.2d 972 (Fla. 5th DCA 1984). The same is true regarding relief from orders of dismissal and default final judgments pursuant to Rule 1.540(b).

As the Fourth District noted in its Shampaine decision:

> It makes little sense to conclude . . . that a trial court would have no jurisdiction to relieve a party whose action had been terminated by voluntary dismissal for the same kind of "mistake, inadvertence, surprise or excusable neglect" that would clearly entitle the party to relief if a default judgment or order of dismissal had been entered because of the same kind of mistake.

411 So.2d at p.368. The only logical conclusion is that, under appropriate circumstances, courts may grant relief from voluntary dismissals to litigants who can demonstrate the existence of the grounds set out in the Rule.

> B. A trial court may correct a mistake in a voluntary dismissal so long as: (1) the mistake is non-tactical; (2) the mistake was not the result of a volitional act; (3) the relief sought is from the unanticipated consequences of an unintended act; and (4) the relief sought does not require the reinstatement of the cause voluntarily dismissed.

The remaining question is whether the trial court abused its discretion by granting Respondent's motion. As previously noted, a trial court's discretion, when confronted with a motion filed under Fla.R.Civ.P. 1.540, is of the broadest scope. Church v. Strickland, 382 So.2d 419 (Fla. 5th DCA 1980). Though a trial court's discretion is not without limitation, the facts presented in Respondent's motion and memorandum in support thereof clearly satisfy all limitations.

One limitation imposed by this Court in Randle is that a trial court has no jurisdiction to reinstate a dismissed proceeding. As previously noted, the trial court below did not reinstate Respondent's cause of action.

This Court further limited a court's discretion in Randle when it stated:

> It has never been the role of the trial courts of this state to relieve attorneys of their tactical mistakes. The rules of civil procedure were never designed for that purpose, and nothing in Rule 1.540(b) suggests otherwise. [Emphasis added]

360 So.2d at 679. In Randle, the mistake at issue was tactical in nature; counsel for plaintiff dismissed plaintiff's proceeding having failed to realize that the statute of limitations had run.

In the present case, the mistake at issue was non-tactical in nature. Respondent's tactical decision to file a voluntary dismissal without prejudice is not at issue. Respondent's dismissal with prejudice was the result of a mistake by trial counsel's secretarial staff and subsequent inadvertence on the part of trial counsel. The mistake and inadvertence at issue are of the exact type which Rule 1.540(b) was intended to remedy.

Another potential limitation imposed by the Randle decision is that a party may not be relieved of a "volitional dismissal". Though the dismissal in the case at bar was volitional, the inclusion of the words "with prejudice" was nonvolitional and subject to correction under Rule 1.540(b). When this approach to the "volitional" requirement is taken to its logical conclusion, a party's attorney could not be relieved of the unanticipated consequences of an intended act. A party's attorney could, however, be relieved of the unanticipated consequences of an unintended act. The first category would include misapprehension of law or fact; the second category would include secretarial error. See Acting Chief Judge Grime's specially concurring opinion in Miller v. Fortune Insurance Company, supra. As the Fourth District noted in Shampaine:

> . . . [A] dismissal with prejudice found to have been entered as the result of secretarial error is simply not a "volitional dismissal" as we understand the term, and we do not believe it was the intention of the Randle court to hold that trial courts are divested of jurisdiction to grant relief in such situations.

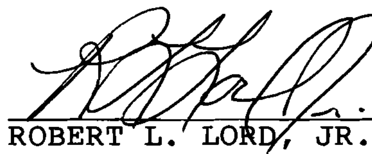
411 So.2d at 367. Similarly, the dismissal with prejudice here at issue was not a "volitional dismissal" within the meaning of the Randle decision, and the trial court properly granted the relief sought.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that the trial court's order granting Respondent's motion to amend voluntary dismissal be affirmed in all respects.

Respectfully submitted,

PAPY, POOLE, WEISSENBORN & PAPY
Counsel for Respondent

By: 
ROBERT L. LORD, JR.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent was mailed this 22nd day of July, 1985, to John W. Case, Esq., Counsel for Petitioner, 1330 S.E. Fourth Avenue, Suite A, Ft. Lauderdale, FL 33316.

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