Meb Loan Trust VI v. Isaacs

Court of Appeal of Florida, Third District

October 7, 2026, Opinion Filed

No. 3D25-1280

Reporter
2026 Fla. App. LEXIS 7876 *; 2026 LX 560398; 51 Fla. L. Weekly D 2085; 2026 WL 3012330

Meb Loan Trust VI, Appellant, vs. Albert Isaacs, et al., Appellees.

Notice: NOT FINAL UNTIL DISPOSITION OF TIMELY FILED MOTION FOR REHEARING.

Prior History: [*1] An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Reemberto Diaz, Judge. Lower Tribunal No. 23-17090-CA-01.

Counsel: McCalla Raymer Leibert Pierce, LLC, and Robinson Keith Ustler (Orlando), for appellant.

Markowitz, Ringel, Trusty & Hartog, P.A., and Adrian Carlington Delancy, for appellee Albert Isaacs.

Judges: Before SCALES, C.J., and FERNANDEZ, and REBULL, JJ.

Opinion by: REBULL

Opinion

REBULL, J.

In a mortgage foreclosure action must an incapacitated ward be personally named as a defendant where a probate court has already appointed a guardian to act on behalf of the ward's real property? Or must the guardian be substituted as a named defendant in place of the incapacitated ward?

I.

MEB Loan Trust VI appeals an order dismissing defendant Albert Isaacs from its foreclosure suit, contending the trial court erroneously dismissed Isaacs under *Florida Rule of Civil Procedure 1.260(a)* and *(b)*. We review the dismissal de novo. *Grove Isle Ass'n Inc. v. Grove Isle Assocs., LLLP, 137 So. 3d 1081 (Fla. 3d DCA 2014)*; *see also Hamza v. McLemore, 421 So. 3d 742, 743 (Fla. 5th DCA 2025)* ("We review de novo the trial court's dismissal under *Rule 1.260*.").

MEB filed this foreclosure action in May 2023 against Albert Isaacs, among other defendants. Isaacs was a co-owner of the property, and he executed the mortgage MEB is seeking to enforce. When MEB filed this action, it knew that the probate court had already adjudicated Isaacs totally incapacitated and appointed Adrian Delancy as Guardian for the property of Isaacs as his Ward.

The probate court's Letters of Plenary Guardianship of the **[*2]** Property declare that Delancy had "full power" to, among other things, "take possession of and to hold for the benefit of the Ward, all property and income of the Ward." The Letters empowered Delancy to administer and take possession of Isaacs' property, but they did not divest Isaacs of title or ownership. In a later order, the probate court authorized Delancy "to file pleadings in the foreclosure action . . . to protect the Ward's interest in real properties and business."

Delancy filed an answer and affirmative defenses to the foreclosure complaint "in his official capacity of Guardian of the Property of Albert Isaacs." Delancy later moved to dismiss Isaacs as a party defendant and argued that MEB's failure to substitute Delancy as party defendant was required by *Florida Rule of Civil Procedure 1.260(a)(1)*, and that any judgment against Isaacs would be void. MEB responded that Isaacs, as a record title property owner, was an indispensable party who could not be substituted.

The trial court initially denied the motion to dismiss, but when Delancy moved for reconsideration of the order, asserting that dismissal was mandatory under *Rule 1.260*, the court granted the motion for reconsideration and dismissed Isaacs from the case. This appeal **[*3]** followed.[1]

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[1] During the pendency of this appeal, Delancy filed a suggestion of death, indicating Isaacs died on June 1, 2026. We express no opinion on the application of *Rule 1.260* below,

II.

A.

The legal issue raised in this appeal is whether, under *Florida Rule of Civil Procedure 1.260*, the trial court was required to dismiss MEB's foreclosure complaint because it failed to file a motion substituting Delancy for Isaacs within ninety days after Delancy filed a statement that Isaacs was incapacitated. The simple answer is no, and we conclude the trial court erred in dismissing Isaacs as a party.

As happened here, an incapacitated person's right to defend a lawsuit can be delegated by court order to a guardian. *See § 744.3215(3)(b), Fla. Stat.* (2025). When that happens, the ward or incapacitated person remains an indispensable defendant in an action to foreclose their ownership interest, but they are not "substituted" as a party by the guardian. Rather, the guardian "may . . . defend *on behalf of* the . . . incompetent person."[2] *See Fla. R. Civ. P. 1.210(b)* (emphasis added). As a record title holder, the ward must remain as a named defendant.[3] The guardianship did not have the legal effect of divesting him of his ownership interest in the property; it merely empowered the guardian to act on his behalf and for his benefit as it relates to the property he owned.

Community Federal Savings & Loan Association of Palm Beaches v. Wright, 452 So. 2d 638 (Fla. 4th DCA 1984), illustrates this proposition. There, a lender filed a foreclosure action against the guardian **[*4]** of the minor title holder. The complaint named as the sole defendant "Karen L. Wright as guardian of the person and property of Robert W. Olsker, Jr." When the guardian failed to file responsive papers, a default final judgment was entered, and the property was sold at a foreclosure sale.

When the minor was evicted, he (through a guardian ad litem) moved to set aside the default judgment and foreclosure sale. The trial court granted the motion and set aside the judgment and the sale. On appeal the Fourth DCA affirmed and held in pertinent part that the minor[4] was an indispensable party as he was the holder of fee simple title to the property. Because the minor was not named a party to the foreclosure suit, the judgment of foreclosure was void. *Id. at 641*. The same can be said for a minor and an incapacitated person, as Isaacs was in this case. 39 C.J.S. Guardian and Ward §1 (2026) ("A guardian is a person who legally has the care of the person or property, or both, of another person, who is incompetent to act for themself."). As the court did in *Wright*, we reiterate that an incapacitated title holder to property, such as Isaacs, is an indispensable party in a suit to foreclose on that property. **[*5]** *See Meh Byron 4 LLC v. Federal Nat. Mortg. Ass'n, 187 So. 3d 335, 335 (Fla. 3d DCA 2016)* ("One who holds legal title to mortgaged property is an indispensable party defendant in a suit to foreclose a mortgage . . . ." (quoting *Davanzo v. Resolute Ins. Co., 346 So. 2d 1227, 1228 (Fla. 3d DCA 1977)*).

B.

Having answered the question posed at the outset that an incapacitated ward who holds title to realty must be named as a party defendant in a foreclosure suit, we further hold that *Rule 1.260* did not require dismissal in this case. Indeed, that rule did not apply here at all. The Rule provides in pertinent part:

(a) Death.

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following the death of Isaacs and the filing of any suggestion of death in the trial court. We merely take this opportunity to note: "The courts of this state have a long-standing tradition in favor of the disposition of an action on its merits. Further, this court has recognized that *rule 1.260* has been liberally interpreted to permit substitution beyond the ninety-day time period. Moreover, we have explained that all doubt should be resolved in favor of allowing trial upon the merits." ***Sammons v. Adam Greenfield, D.O., 270 So. 3d 534, 535 (Fla. 2d DCA 2019)*** (citation modified).

[2] The Florida Rules of Civil Procedure use the terms "[i]ncompetency" and "incompetent" person. The *Florida Guardianship Law, Chapter 744, Florida Statutes*, uses the terms "Incapacitated Person" and "incapacity." We use the term "incapacitated person" as that is also the terminology used by the probate court in its orders adjudicating Isaacs and appointing Delancy. For purposes of this opinion, we treat the phrase "incompetent person" as synonymous with "incapacitated person."

[3] A precise and complete naming of a ward as a party defendant would be: "Albert Isaacs, by Adrian Delancy, as guardian." Or "Albert Isaacs, a ward, by Adrian Delancy, as guardian of the property."

[4] The court cited to 39 C.J.S. Guardian and Ward §179, at 359-60 for the proposition that "A ward is a necessary party to a suit affecting his title to real property and cannot be bound by such an action brought against the guardian alone." *Community Federal Sav. & Loan Ass'n of Palm Beaches v. Wright, 452 So. 2d 638, 641 (Fla. 4th DCA 1984)*.

> If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties.
>
> **(b) Incompetency.** If a party becomes incompetent, the court, upon motion filed and served as provided in *subdivision (a)* of this rule, may allow the action to be continued by or against that person's representative.

The Rule plainly covers a situation where an existing party to a civil action dies or *becomes* "incompetent." When that happens, the Rule contemplates that the court in that action, upon proper filing and service of a motion, may order substitution (in the case of death) or continuation of the action against an "incompetent" person's representative.

Here, all parties agree that MEB knew Isaacs had a guardian before it filed **[*6]** the foreclosure action, because MEB tried to effect service of initial process on Isaacs at the Guardian's place of business. Indeed, service of process on the Guardian was legally correct under *section 48.042 of the Florida Statutes*:

> 48.042 Service on incompetent.—
>
> (1) Process against an incompetent shall be served:
>
> (a) By serving two copies of the process to the person who has care or custody of the incompetent or, when there is a legal guardian appointed for the incompetent, by serving the guardian as provided in *s. 48.031*.

In the end, the only issue that existed with MEB's complaint was — at worst — a misnomer. MEB, knowing he was incapacitated and had a guardian, sued "Albert Isaacs" without qualification or any indication of his incapacity. As we have noted, the better practice would have been for MEB to note his incapacity and guardianship by, for example, naming him as: "Albert Isaacs, a ward, by Adrian Delancy, as guardian of the property." But even with this misnomer, the rules of civil procedure provide a remedy:

> *RULE 1.120*. PLEADING SPECIAL MATTERS
>
> (a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued, the authority of a party to sue or be sued in a representative capacity, or the legal existence of an **[*7]** organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. The initial pleading served on behalf of a minor party shall specifically aver the age of the minor party. *When a party desires to raise an issue as to . . . the capacity of any party to sue or be sued . . . that party shall do so by specific negative averment which shall include such supporting particulars as are peculiarly within the pleader's knowledge.*

In other words, Delancy could have raised by specific negative averment that Albert Isaacs was incapacitated and was his ward, and that he was acting as his guardian in the action. Lastly, the other remedy for misnomer of a party is — of course — amendment by interlineation. "The long-standing general rule in Florida with respect to amendments changing the description of a defendant is that amendment by interlineation is proper and will relate back to the original filing of the complaint if the mis-description [of the defendant] is interpreted merely as a misnomer or defect in the characterization of the party...." *See Barone v. Scandinavian World Cruises (Bahamas), Ltd., 531 So. 2d 1036, 1039-40 (Fla. 3d DCA 1988)* (citation modified).

III.

For these reasons, it was error for the trial court to dismiss Isaacs **[*8]** as a party defendant on the ground that MEB failed to comply with *Rule 1.260* by failing to substitute the Guardian in his place.

Reversed and remanded.

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