

IN THE SECOND DISTRICT COURT OF APPEAL
IN AND FOR THE STATE OF FLORIDA

CITIMORTGAGE, INC.

Appellant,

CASE NO.: 2D-13-3506

vs.

L.T. CASE NO.: 11-CA-15469

JOSHUA J. CRITCHFIELD,

Appellee.

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**MOTION FOR CLARIFICATION, RECONSIDERATION,
AND FOR WRITTEN OPINION**

Appellee, Joshua J. Critchfield, by and through his undersigned counsel, hereby moves this Court for an Order clarifying its December 17, 2013 Order, reconsidering same, and for issuance of a written opinion regarding same, and would show:

1. Appellant served its Notice of Appeal on July 18, 2013. Appellant was supposed to have paid the filing fee at that time. Appellant failed to do so.

2. On July 25, 2013, this Court entered an Order directing Appellant to pay the filing fee within 20 days thereafter, warning Appellant that failure to do so may result in dismissal. Again, Appellant failed to pay the required fee.

3. On August 13, 2013, Appellant filed a Motion for Extension of Time, arguing it had “misplaced” the filing fee.

4. On September 18, 2013, this Court entered an Order dismissing the

appeal.

5. Appellant did not seek rehearing of this Court's Order within 10 days. Instead, on November 11, 2013 – nearly two months after the Order dismissing this appeal and nearly four months after the filing fee should have been paid – Appellant moved this Court for an Order reinstating the appeal. In support, Appellant argues the filing fee was not paid due to unspecified “clerical error.”

6. Appellant cited no appellate rule or legal authority authorizing the reinstatement of this action. Apparently, Appellant sought to establish some type of “excusable neglect” similar to that which circuit courts may grant relief under Rule 1.540. However, there is no similar provision in the appellate rules.

7. Even if a rule authorizing the relief Appellant seeks did exist, it would not justify the relief requested. The delay here was excessive and the reasons for the delay unpersuasive.¹

8. Notwithstanding the foregoing, this Court entered an Order on December 17, 2013 which granted the motion for reinstatement. The Court gave no reason for its ruling, cited no rule or legal authority, and the Order did not identify the name(s) of any judges who joined in that ruling.

9. With all due respect, the facts at bar deserve a second look.

¹ A motion under Rule 1.540 has to be brought within a “reasonable time.” Here, it was unreasonable for Appellant to wait two months after the appeal was dismissed before serving its motion.

10. This Appellant is a large financial institution. It waited months to pay a filing fee, saw its appeal dismissed for failure to do so (after purportedly “misplacing” that fee), then waited two more months to seek relief from that dismissal.

11. With all due respect, what is the legal authority for reinstating an appeal on such facts? At minimum, this Court should so clarify.

12. If this Court cannot set forth any such authority, it should reconsider the issue. In the undersigned’s view, there is no legal basis to reinstate an appeal on such facts.

13. Finally, if this Court disagrees with the statements set forth herein, it should issue a written opinion, with the names of three judges joining in the ruling. Otherwise, candidly but respectfully, it seems the result reached herein is not a byproduct of established law, but a result-oriented ruling based on the type of case before the Court.

14. Rightly or wrong, defendants in foreclosure cases should not be made to feel like a different set of rules applies for them. There should always appear to be a fixed set of procedural rules that apply equally for everyone. If there is a rule or legal authority that authorized reinstatement on the facts at bar, this Court should at least say what it is. Otherwise, intentionally or not, this Court creates the impression there are two sets of rules – one for parties in foreclosure cases and one

for everyone else.

15. If this Court disagrees with that statement, then that only accentuates the need for a written opinion. What is the legal authority for reinstating this appeal? How long is too long for a party to have waited to seek that relief? These are reasonable questions for which these parties and all litigants are entitled to answers.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e-mail service to Christopher Hixon, Esq., Law Offices of Daniel C. Consuegra, PL, 9204 King Palm Dr., Tampa, FL 33619-1328, attorneynotice@consuegralaw.com and Christopher.hixson@consuegralaw.com on this 23rd day of December, 2013.

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