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Jessica Underwood of Schwartz, Sladkus, Reich, Greenberg and Atlas. Courtesy photo

COMMENTARY

Rehearing Required: Changes in Fla. Rule of Civil Procedure and Fla.

Family Law Rule of Procedure

On its own motion, the Florida Supreme Court recently amended Florida Rule of Civil Procedure 1.530 and Florida Family Law Rule of Procedure 12.530 to include provisions requiring motions for rehearing to preserve an objection to insufficient trial court findings in a final judgment.

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On its own motion, the Florida Supreme Court recently amended Florida Rule of Civil Procedure 1.530 and Florida Family Law Rule of Procedure

12.530 to include provisions requiring motions for rehearing to preserve an objection to insufficient trial court findings in a final judgment. This article examines the amendments to the rules and their impact.

Amendments by the Florida Supreme Court

Florida Rule of General Practice and Judicial Administration provides that the Florida Supreme Court may change court rules, with or without notice, on its own motion. The court may set the change to occur immediately or at a future time.

Here, the court sua sponte amended rules 1.530 and 12.530—both entitled “Motions for New Trial and Rehearing; Amendments of Judgments”—with the changes to become effective immediately.

On Aug. 25, the court issued an opinion amending rules 1.530 and 12.530 after determining “that amendments to these rules are necessary to clarify that filing a motion for rehearing is required to preserve an objection to insufficient trial court findings in a final judgment order.”

Rules 1.530(a) and 12.530(a) were each amended to include the following language: To preserve for appeal a challenge to the sufficiency of a trial court’s findings in the final judgment, a party must raise that issue in a motion for rehearing under this rule.

Importantly, these amendments took effect immediately upon the issuance of the court’s Aug. 25 opinion.

In recognition that the amendments were not previously published for comment, the court instructed that any interested person shall have 75 days from the issuance of the opinion to file comments with the court. All

comments must be filed on or before Nov. 8 and a person must file a separate request for oral argument should the person wish to participate.

Practical Implications

As of Aug. 25, to preserve a challenge to the sufficiency of a court's findings in the final judgment for appeal, an attorney must file a motion for rehearing. Under both rules, a motion for rehearing is timely where it is served not later than 15 days after the return of the jury verdict or the date of filing of the judgment in a nonjury action. Failure to properly preserve an issue in the motion for rehearing results in a waiver of the issue on appeal.

Because the rules became effective immediately, it is important for a party to pay attention to the date the final judgment was rendered and timely serve a motion for rehearing. Where a deadline may have been missed after the rules took effect, a party might consider filing a comment with the court to lodge any concerns regarding the immediate effectiveness of the amendments.

Comments concerning the amendments should be filed by the court's Nov. 8 deadline. Concerns may include comments regarding abrogation of the rules or delays in the effective date.

Significant Development Unifying Family Law Procedure

The amendment to rule 12.530 resolves a district court split on the requirement of filing rehearing motions to preserve for appeal a court's failure to make statutorily required findings. This amendment

supersedes opinions from the Second District Court of Appeal and the Fourth District Court of Appeal.

The Second and Fourth Districts have held that regardless of whether an error was raised in the trial court by a motion for rehearing, a court's failure to make specific factual findings as required is reversible error. These districts considered a rehearing motion to be a procedural constraint elevating "judicial convenience over equity" when the purpose of family law is to mitigate harm to spouses and their children.

Both districts encouraged the Family Law Rules Committee to review and address this very issue.

In contrast, the First, Third, and Fifth Districts required a motion for rehearing to preserve the issue. In requiring a rehearing motion, the First District noted that a trial judge is in a better position to redraft a judgment making the required finding at a time closer to the rendition of the judgment, rather than a year or more later after an appeal.

With the amendment to rule 12.530, the court sua sponte resolved this district split. Now, parties in all district courts must align and follow the required, uniform procedure of filing a motion for rehearing to preserve a lack of required findings for purposes of appeal.

Appellate Impact

To raise the issue of insufficient findings on appeal, parties must remember that the process of preservation matters.

A timely, authorized motion for rehearing tolls rendition of the judgment (unless another rule of procedure provides to the contrary) and the time

for filing a notice of appeal. Under rules 1.530 and 12.530, the motion for rehearing must be served not later than 15 days from the return of the verdict or filing of the judgment.

Failure to preserve the issue by a motion for rehearing will likely result in waiver on appeal where even an argument of fundamental error may not prevail. Courts have held that insufficient statutory findings do not equate to fundamental error allowing an appellate court to address an issue a litigant failed to object to or raise. Accordingly, if a party does not timely file a motion for rehearing, the issue will likely be lost for appellate purposes.

In conclusion, with the amendments to rules 1.530 and 12.530, a party must remain cognizant of the required rehearing motion to ensure both timely of service of the motion and preservation of the issue for appeal.

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