

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED**  
**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT**  
**IN AND FOR PINELLAS COUNTY, FLORIDA**  
**APPELLATE DIVISION**

KAREN P. WILLIAMS and  
ZAHEERA SHIREEN RIZVON,  
Appellants,

vs.

Ref. No.: 15-0015AP-88B  
UCN: 522015AP000015XXXXCI

PINE RIDGE AT LAKE TARPON VILLAGE I  
CONDOMINIUM ASSOCIATION, INC., a Florida  
not for profit corporation,  
Appellee.

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**ORDER AND OPINION**

Appellants challenge the trial court's denial of a motion to set aside final judgment of foreclosure. For the reasons set forth below, the trial court's decision is affirmed.

**Facts and Procedural History**

In May 2013, Pine Ridge Condominium Association (Appellee) filed a complaint seeking damages and foreclosure of a claim of lien against Appellants. The trial court granted summary judgment in favor of Appellee on November 13. On December 19, Appellant Karen Williams filed a *pro se* motion to set aside and continue. The trial court called it a motion to set aside final judgment of foreclosure and denied it. Appellants hired an attorney and appealed only the Order Denying the Motion to Set Aside Final Judgment of Foreclosure.

In the Initial Brief, Appellants assert for the first time that the trial court erred by accepting a hearsay ledger into evidence at the summary judgment hearing, granting summary judgment despite genuine issues of material fact, and not ensuring Appellants were served the Motion for Summary Judgment and the Notice of Hearing.

## Discussion

“A motion for relief from judgment may not be used as a substitute for appeal.” *Balbin v. Lexington Insurance Co.*, 982 So. 2d 10, 11 (Fla. 3d DCA 2008). Accordingly, on appeal of a motion to set aside a final judgment, an appellate court cannot consider the merits of the final judgment, only the merits of the motion. “The inquiry must be confined to determining whether in ruling on the motion the trial court abused its discretion on the facts and circumstances asserted in the motion's behalf.” *Bland v. Mitchell*, 245 So. 2d 47, 48 (Fla. 1970). Therefore, Appellants’ first two issues cannot be considered. The third issue presents the only possible grounds for granting a motion to set aside a judgment: the judgment is void or voidable for lack of notice or defective notice. Appellant references the notice issue in her Motion to Set Aside. The Motion is difficult to understand, but states as follows:

1. Wrong place of notice mailed; “Quid Pro Quo” \$17795.00 paid by WNF, Ins.
2. Right of redemption “paid by substantive” support payment materials. Denied civil liberty.
3. Denied due process of owner and remainder.
4. Address change presented w/notice of lien for nonpayment for: LOMR completed. Final acceptance delivered to site for day (Est.) Epc Wright vs. PC Bocc Federal standing only.

Appellant has continued to reside at the condominium at issue where all previous pleadings and orders were apparently received with no issues. Furthermore, a certificate of service creates a rebuttable presumption of notice, and both the Motion for Summary Judgment and the Notice of Hearing contain a proper certificate of service. *See Depelisi v. Wishner*, 15 So. 3d 808, 811 (Fla. 4th DCA 2009). If Appellant’s Motion presented a “colorable entitlement to relief,” she would have been entitled to an evidentiary hearing. *See Schuman v. Int’l Consumer Corp.*, 50 So. 3d 75, 77 (Fla. 4th DCA 2010). Similarly, in cases in which the moving party submits an affidavit to support a lack of notice, an evidentiary hearing is required to determine

whether the facts in the affidavit can be proven. *See Monsour v. Balk*, 705 So. 2d 968, 969 (Fla. 2d DCA 1998). In the instant case, Appellant submitted only an unsworn motion that does not demonstrate a colorable entitlement for relief. Therefore, it cannot be said that the trial court abused its discretion. "Discretion is abused only when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable person would take the view adopted by the trial court." *White v. State*, 817 So. 2d 799, 806 (Fla. 2002). Accordingly, it is

**ORDERED AND ADJUDGED** that the Order Denying the Motion to Set Aside Final Judgment of Foreclosure is **AFFIRMED**.

**DONE AND ORDERED** in Chambers, at St. Petersburg, Pinellas County, Florida, this 26 day of OCTOBER 2015.

Original Order entered on October 26, 2015, by Circuit Judges Jack Day, Pamela A.M. Campbell, and Peter Ramsberger.

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