

# Third District Court of Appeal

State of Florida

Opinion filed January 14, 2026.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D24-1955  
Lower Tribunal No. 13-30875-CA-01

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**Dania Hernandez,**  
Appellant,

vs.

**Wilmington Savings Fund Society, FSB,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Antonio Arzola, Judge.

David J. Winker, P.A., and David J. Winker, for appellant.

Law Offices of Manganelli, Leider & Savio, P.A., and Melisa Manganelli (Boca Raton), for appellee.

Before FERNANDEZ, GORDO and GOODEN, JJ.

PER CURIAM.

Affirmed. See Ham v. Dunmire, 891 So. 2d 492, 495 (Fla. 2004) (“It is well settled that determining sanctions for discovery violations is committed to the discretion of the trial court, and will not be disturbed upon appeal absent an abuse of the sound exercise of that discretion.”); Mercer v. Raine, 443 So. 2d 944, 946 (Fla. 1983) (“We agree that the striking of pleadings or entering a default for noncompliance with an order compelling discovery is the most severe of all sanctions which should be employed only in extreme circumstances. A deliberate and contumacious disregard of the court’s authority will justify application of this severest of sanctions, as will bad faith, willful disregard or gross indifference to an order of the court, or conduct which evinces deliberate callousness.”) (internal citations omitted); Green v. Mann, 420 So. 3d 501, 504 (Fla. 4th DCA 2025) (“The trial court’s order delineated the Kozel factors, made the requisite findings, and the record supports such findings.”).

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL  
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2013-030875-CA-01

SECTION: CA24

JUDGE: Antonio Arzola

**WILMINGTON SAVINGS FUND SOCIETY FSB**

Plaintiff(s)

vs.

**Lakeview At The Hammocks Condo J Assn In et al**

Defendant(s)

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**ORDER ON PLAINTIFF'S FOURTH MOTION FOR CONTEMPT, SANCTIONS, AND  
FOR ATTORNEY'S FEES & COSTS FOR FAILURE TO APPEAR AT DEPOSITION AND  
FAILURE TO COMPLY WITH COURT ORDERS**

**THIS CAUSE** having come before the Court on August 27, 2024, held via Zoom upon Plaintiff's Fourth Motion for Contempt, Sanctions and for Attorney's Fees and Costs for Failure to Appear at Deposition and Failure to Comply with Court Orders and the Court having heard argument of counsel, having reviewed the matter, and having been duly advised in the premises, the Court makes the following findings:

1. This is a 2013 foreclosure case. The case is set for trial during the week of September 2, 2024. It was set for this latter trial date back in February of 2024 and the Plaintiff has been attempting to take the deposition of the Defendant since that time. As set forth in detail below, Defendant, Dania Hernandez, has continued to willfully violate this Court's explicit Orders without any reasonable explanation as to the continued failure to comply.
2. Specifically, on April 9, 2024 an Order was entered requiring Defendant to appear for her deposition on April 18, 2024.
3. At no time prior to the April 18, 2024 deposition did counsel for Defendant contact counsel for Plaintiff advising that nobody would be in attendance at the April 18, 2024 deposition, nor was any request to continue or re-coordinate the deposition made by Defendant or her counsel.
4. Defendant and her counsel failed to comply with the April 9, 2024 Order when they both failed to appear for the April 18, 2024 deposition in which Plaintiff ultimately received a

Certificate of Non-Appearance.

5. On April 22, 2024, Plaintiff filed a Motion for Contempt and Sanctions due to the non-attendance at the April 18, 2024 deposition.
6. On May 28, 2024, the Court entered an Order on the Motion for Contempt and Sanctions requiring Defendant to: 1) coordinate her deposition within three (3) days to occur within the next twenty (20) days; 2) respond to outstanding discovery; 3) reimburse the court reporter costs associated with the previously scheduled deposition; and (4) pay Plaintiff attorney's fees. Defendant failed to comply with this Order. The Order makes reference to having the deposition take place within 20 days "as Defendant is ill." There were no references to any illness of the Defendant in hearings that took place after May 23, 2024. Additionally, the record does not reflect any documentary evidence of any illness.
7. As a result, on June 18, 2024, after non-compliance with the May 28, 2024 Order, Plaintiff filed another Motion for Contempt and Sanctions.
8. On July 3, 2024, the Court entered an Order requiring Defendant to: 1) appear for deposition on July 24, 2024; 2) again pay Plaintiff the court reporter costs as previously ordered in the May 28, 2024 Order (with explicit language that no extensions are to be permitted); 3) pay attorney's fees to Plaintiff within ten (10) days of receipt of timesheets of Plaintiff.
  - a. This Order also contains the specific language that states: "**Shall Defendant continue to willfully disregard this Court's Orders, the Court may enter further sanctions as appropriate including the striking of Defendant's pleadings and the entry of a default.**"
  - b. "**A copy of this Order shall be provided to the Defendant by defense counsel within 24 hours after this Order is received.**"
9. On July 11, 2024, counsel for Plaintiff provided counsel for Defendant with timesheets reflecting the amount owed for attorney's fees in accordance with the July 3, 2024 Order.
10. Again at no time prior to the July 24, 2024 deposition did counsel for Defendant contact counsel for Plaintiff advising that nobody would be in attendance at the July 24, 2024 deposition, nor was any request to continue or re-coordinate the deposition made by Defendant or her counsel.
11. Defendant and her counsel failed to comply with the July 3, 2024 Order when: 1) Plaintiff was not paid the court reporter costs twice previously ordered; 2) Plaintiff was not paid the attorney's fees previously ordered; 3) Defendant and Defendant's counsel again failed to

appear for deposition on July 24, 2024 in which Plaintiff ultimately received a Certificate of Non-Appearance.

12. On July 25, 2024, again after total non-compliance with the July 3, 2024 Order, Plaintiff filed another Motion for Contempt and Sanctions. The hearing was held on August 27, 2024.
13. This Court has considered those factors enumerated in *Kozel v. Ostendorf*, 629 So.2d 817 (Fla. 1993). The *Kozel* factors considered by this Court are as follows: **1)** whether the attorney's disobedience was willful, deliberate, or contumacious, rather than an act of neglect or inexperience; **2)** whether the attorney has been previously sanctioned; **3)** whether the client was personally involved in the act of disobedience; **4)** whether the delay prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion; **5)** whether the attorney offered reasonable justification for noncompliance; and **6)** whether the delay created significant problems of judicial administration.
14. Having reviewed this matter and the considered the standards for imposing sanctions under *Kozel*, this Court finds that Defendant's counsel's actions were willful because: (a) counsel was at every hearing on the motions to compel and/or for contempt, (b) he Court's multiple Orders were detailed and specific as to what had to be done, and (c) there was a failure to comply with three (3) Court Orders (i.e., April 9; May 28; and July 3).
15. Defendant was previously sanctioned by this Court for the same behavior. See Orders dated May 28 and July 3, 2024. Defendant's counsel was aware of each of these Orders and was ordered to provide a copy of the July 3, 2024 Order to the Defendant.
16. The Defendant herself was personally involved in the acts of disobedience because these were her own depositions that she personally failed to appear at multiple times. In fact, she was personally provided with a copy of the July 3, 2024 Order. See Paragraph 8.
17. This Court has not been provided with any reasonable explanation whatsoever for the continued, willful disregard of multiple Court's Orders. In fact, the Court has not even been provided with an explanation at all other than a vague reference to some illness at a hearing held on May 23, 2024. See Paragraph 6 of this Order. There were hearings in this case after May 23, 2024 and there were no references (much less documentary proof) as to any illness of the Defendant that would explain the failures to appear and violations of this Court's multiple Orders.
18. Counsel for Defendant has been unable to adequately explain to this Court as to the failure comply with any of this Court's explicit Orders.

19. Plaintiff and Plaintiff's counsel have been prejudiced by the willful actions of Defendant and her counsel. Specifically, Plaintiff has had to incur costs by filing multiple motions to compel and/or for contempt, attend depositions that Defendant failed to attend, and attend multiple Court hearings on these motions. Additionally, Plaintiff has been forced to prepare for trial without the benefit of the Defendant's deposition solely because the Defendant deliberately failed to appear.
20. There has been no good faith explanation given to the Court as to the reasoning for the continued willful violations of this Court's Orders. This has created significant issues of judicial administration because the Court has been forced to hold at least three (3) hearings to address these willful and deliberate violations. Moreover, the Court has set this case for trial during the week of September 2, 2024 and given it priority over numerous other cases (including jury trials) because it is a 2013 case.
21. The Defendant and her counsel have been previously advised that the continued willful violations of this Court may result in the striking of all pleadings and the entry of a default. The Court has exhaustingly given Defendant and Defendant's counsel numerous opportunities to rectify this situation and all the Defendant has done is ignore and violate the Court's Orders without any explanation whatsoever.

As such it is:

**ORDERED and ADJUDGED** that:

1. Plaintiff's Fourth Motion for Contempt, Sanctions and for Attorney's Fees and Costs for Failure to Appear at Deposition and Failure to Comply with Court Orders be and the same is hereby **GRANTED**.
2. Defendant's pleadings, including the answer and all affirmative defenses, are hereby **STRICKEN** for the continued, willful, abusive, and blatant disregard of multiple Court Orders.
3. A judicial default is hereby entered against Defendant, Dania Hernandez. As a result, all allegations in the Plaintiff's complaint are deemed admitted.
4. The Court reserves as to additional attorney's fees and costs.

5. The trial remains set for **Tuesday, September 3, 2024 at 3:00 pm**. The trial will be held via Zoom and the focus will be on a sale date, the presentation and cancelation of the original note (if any), determination of attorney's fees and costs, and the entry of a Final Judgment.

**DONE** and **ORDERED** in Chambers at Miami-Dade County, Florida on this 30th day of August, 2024.



2013-030875-CA-01 08-30-2024 1:53 PM

Hon. Antonio Arzola

**CIRCUIT COURT JUDGE**

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

**Electronically Served:**

Alejandro L. Sixto, civilpleadings@gmail.com  
Alejandro L. Sixto, sixtostu@yahoo.com  
Alejandro L. Sixto, receptionist@clearwaterlegalcenter.com  
Ashley L Simon, eportal@kasslaw.com  
Bruce Jacobs Esq, efile@jakelegal.com  
Bruce Jacobs Esq, jacobs@jakelegal.com  
Carlos A. Triay, catpleadings@gmail.com  
Carlos A. Triay, catesther@cattriay.com  
Carols A. Triay, Esq., cat@cattriay.com  
Chad Thomas Sliger, tampapipgeico@geico.com  
Charline Calhoun, ecf@albertellilaw.com  
Charline Calhoun, afazchas@alaw.net  
Christian Savio, csavio@mls-pa.com  
Christian Savio, service@mls-pa.com  
Christian Savio, kvera@mls-pa.com  
Christopher Charles Lindhardt, ecf@albertellilaw.com  
Clay A Holtsinger, eportal@kasslaw.com  
Craig Phillip Rogers, ecf@albertellilaw.com  
David J Winker, dwinker@dwrlc.com  
David J Winker, davidjwinker@gmail.com

David J Winker, davidjwinker@gmail.com  
David Michael Dilts, ecf@albertellilaw.com  
Donisha Alexa Weightman, ecf@albertellilaw.com  
Edward B Pritchard, eportal@kasslaw.com  
Henry Quinn Johnson, ecf@albertellilaw.com  
JACOBS KEELEY, BRUCE@JAKELEGAL.COM  
JACOBS KEELEY, MELANICE@JAKELEGAL.COM  
Jennifer M Scott, eportal@kasslaw.com  
Justin Charles Ritchie, ecf@albertellilaw.com  
Kathy Achille, eportal@kasslaw.com  
Laura E Noyes, eportal@kasslaw.com  
Lindsay Alvarez, eportal@kasslaw.com  
Matthew B. Leider Esq., mleider@mls-pa.com  
Matthew B. Leider Esq., service@mls-pa.com  
Matthew B. Leider Esq., kvera@mls-pa.com  
Melisa Manganelli, MManganelli@mls-pa.com  
Melisa Manganelli, service@mls-pa.com  
Melisa Manganelli, kvera@mls-pa.com  
Michael Tebbi, forclosureservice@kasslaw.com  
Michael Tebbi, mtebbi@kaslaw.com  
Peter E Lanning, efiling@exllegal.com  
Peter E Lanning, ECCM-FL@provana.com  
Silver Jade Bohn, ecf@albertellilaw.com

**Physically Served:**