University of Miami Law Review

Volume 16 | Number 1 Article 7

10-1-1961

Setting Aside Default Judgments in Florida

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SETTING ASIDE DEFAULT JUDGMENTS IN FLORIDA

Introduction

A Florida attorney in the course of his practice may be confronted with the problem of a default judgment which has been entered against his client. If the client has a meritorious defense,[1] the attorney is then presented with the issue of what remedy to pursue. Until recently, there was no doubt that the trial courts of Florida had the inherent power to vacate, open, or set aside a default judgment.[2] The court had, within its discretion, the power to set aside a default judgment on any one of many grounds.[3]

The purpose of this comment is to determine whether or not Florida trial courts still have the power to set aside a regularly entered default judgment. This comment will, in large measure, concern itself with the recent case of *Ramagli Realty Co. v. Craver*.[4] After examining the implications of the *Ramagli* decision,[5] this writer will review the law in Florida as it existed before *Ramagli*, and as it exists today. Then, a less detailed analysis of this same problem as it stands in the federal courts and other jurisdictions will be made, and finally, a proposal to amend the existing law in Florida as it relates to a trial court's power over a regularly entered default judgment will be submitted.

The Ramagli Decision

The common law permitted trial courts, in the exercise of their discretion, to vacate any order or judgment entered during the term of court.[6] It has been said that during this period the order or judgment remained "in the breast of the court."[7] However, at the expiration of the term, the plenary power of the trial court to open, vacate, or set aside its orders or judgments ceased,[8] unless the order or judgment was void.[9]

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1. Perrin v. Enos, 56 So.2d 920 (Fla. 1951); State Bank v. Raymond, 103 Fla. 649, 138 So. 40 (1931).
2. Adelhelm v. Dougherty, 129 Fla. 680, 176 So. 775 (1937); Kroier v. Kroier, 95 Fla. 865, 116 So. 753 (1928); Alabama Hotel Co. v. J. L. Mott Iron Works, 86 Fla. 608, 98 So. 825 (1924).
3. Perrin v. Enos, 56 So.2d 920 (Fla. 1951) (mental incapacity of defendant); Coggin v. Barfield, 150 Fla. 551, 8 So.2d 9 (1942) (answer mailed to wrong county); St. Lucie Estates v. Palm Beach Plumbing Supply Co., 101 Fla. 205, 133 So. 841 (1931) (clerk entered judgment without authority).
4. 121 So.2d 648 (Fla. 1960).
5. *Ibid.*
6. Bronson v. Schulten, 104 U.S. 410 (1881); *In re* Ralph's Estate, 49 Ariz. 391, 67 P.2d 230 (1937); Alabama Hotel Co. v. J. L. Mott Iron Works, 86 Fla. 608, 98 So. 825 (1924); Sweeney v. Sweeney, 42 Nev. 431, 179 Pac. 638 (1919); Dedrick v. Charrier, 15 N.D. 515, 108 N.W. 38 (1906); Janssen v. Tusha, 68 S.D. 639, 5 N.W. 2d 684 (1942); Fullen v. Fullen, 21 N.M. 212, 152 Pac. 294 (1915); State v. Brown, 31 Wash. 397, 72 Pac. 86 (1903).
7. Fullen v. Fullen, 21 N.M. 212, 231, 153 Pac. 294, 300 (1915).
8. Cases cited note 6 *supra*.
9. Kroier v. Kroier, 95 Fla. 865, 116 So. 753 (1928); Stratton & Terstegge Co. v. Begley, 249 Ky. 632, 61 S.W.2d 287 (1933); Coulter v. Board of Comm'rs, 22 N.M. 24, 158 Pac. 1086 (1916).

The common law in Florida underwent a substantial change in the recent case of *Ramagli Realty Co. v. Craver.*[10] The court pursuant to a default rendered a final judgment for the plaintiff. The defendant moved to have the trial court set aside the default judgment on the grounds of deceit, surprise, and irregularity. Although the trial court did not expressly grant the defendant's motion on the above grounds, it did grant the motion. The motion was granted within the statutory period for taking an appeal.[11] After the appeal time had expired, the defendant's order was vacated and the default and final judgment were reinstated.

The district court of appeal reversed the trial court on the ground that the default judgment was improper, in that there had been a proper prior pleading, timely filed. The court held that the defendant's first answer was sufficient to stand over to the plaintiff's second amended complaint.[12]

The Supreme Court of Florida, on the plaintiff's writ of certiorari, reversed the district court of appeal, stating that the order setting aside the default judgment was improper, and thus, did not toll the time for the taking of an appeal. Therefore, since the defendant's appeal to the district court of appeal was filed more than sixty days after the rendition of the final judgment, the court of appeal was without jurisdiction to hear the cause. The court in explaining this decision found that rule 1.6(c) of the Florida Rules of Civil Procedure "to all intents and purposes eliminated the question of terms of court . . . ."[13]

This being so, the common law rule that a trial court has the inherent power to set aside a default judgment *during the term of court* no longer had a solid foundation. In addition, the court noted that the statutory right of a trial judge to reopen a default judgment had been repealed in 1953.[14] Finally, in language which seemed to indicate clearly that a trial court no longer has the *power* to set aside a default judgment, the court stated

> so it is that under the statutes and rules existing at the present time . . . there was no particular rule which related to the opening or setting aside of defaults . . . . A review, therefore, of the propriety of entering a default in any particular instance would be reviewable in the same manner and under the same circumstances as any other order of a trial court entered during the progress of the proceedings but prior to final judgment, that is to say, such order would be reviewable only on an appeal taken from the final judgment.[15]

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10. 121 So.2d 648 (Fla. 1960).
11. FLA. STAT. § 59.08 (1959).
12. Craver v. Ramagli Realty Co., 109 So.2d 187 (Fla. App. 1959).
13. Ramagli Realty Co. v. Craver, 121 So.2d 648, 653 (Fla. 1960).
14. Fla. Laws 1873, ch. 1938, § 6, repealed in 1953.
15. Ramagli Realty Co. v. Craver, 121 So.2d 648, 653 (Fla. 1960).

In referring to the orders setting aside the default judgment and reinstating the default judgment, the court said:

> These latter orders under *appropriate circumstances* may be reviewed by certiorari but any error in or preceding the final judgment can only be cured by an appeal prosecuted within the time provided by law.[16]

The only indication by the court as to what it meant by "appropriate circumstances" was contained in the following statement:

> The question of vacating orders or final judgments procured by fraud, deceit or other cause which would render it void is not involved in these proceedings. As between the parties any judgment or order procured from any court by the practice of fraud or deception may in appropriate proceedings be set aside at any time. A void judgment is a nullity . . . .[17]

This part of the *Ramagli* decision is consistent with the law as it had been in the past. Traditionally, a void judgment could be set aside at any time.[18] It follows then, that the fact that the *Ramagli* decision abolished the effect of terms of court, while retaining the common law rule pertaining to void judgments, in no way affected the trial court's power to vacate void judgments.[19]

Florida Law Prior to the Ramagli Decision

As early as 1887, in *Forcheimer v. Tarble*,[20] the Supreme Court of Florida announced that the trial court had the inherent power to set aside a judgment or order at any time during the term of court. However, at the expiration of the term, the court no longer had this power except as to judgments or orders which were void. Traditionally, Florida courts have readily opened defaults to permit a trial on the merits.[21]

The Florida legislature in 1873 passed a statute which specifically permitted trial courts to set aside default judgments upon a showing of good

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16. *Id.* at 652. (Emphasis added.)
17. *Id.* at 654.
18. Cases cited note 9 *supra*.
19. In the past the Florida Supreme Court has gone out of its way to accomplish substantial justice and has avoided applying the procedural rules when injustice would result. In *Ex parte* Welles, 53 So.2d 708 (Fla. 1951), the supreme court treated a petition for new trial as an application for a writ of coram nobis. The court stated that: "If rules of procedure have become so rigid and inflexible that an error like this cannot be corrected for fear of establishing a precedent that will plague us, then we have lost the creative faculty that we have always thought to be resident in the judiciary." *Id.* at 710. To one who has carefully read all of the papers filed on behalf of the defendant, it appears unfortunate that the *Ramagli* court did not apply this principle of law.
20. 23 Fla. 99, 1 So. 695 (1887); see also Waterson v. Seat, 10 Fla. 326 (1864).
21. See, *e.g.*, State Bank v. Raymond, 103 Fla. 649, 138 So. 40 (1931); see also 19 Fla. Jur. *Judgments and Decrees* § 457 (1958).

cause within sixty days from the rendition of the default "unless a term of court shall in the meantime be held, when such application must be made during such term."[22] The exceptions were judgments rendered as a result of fraud,[23] lack of jurisdiction of the court,[24] or clerical error.[25]

In *State Bank v. Raymond*,[26] the plaintiffs alleged that the defendant-bank had charged the plaintiffs' account without authorization. Upon the defendants' failure to answer, the plaintiffs had the court enter a default judgment. The trial court subsequently denied the defendants' motion to set aside the default.

On writ of error, the supreme court enumerated the requisite elements which would justify a trial court in the setting aside of a default.

> The general rule in this state, which is fairly well defined, is that in moving to vacate a default the defendant should at least present (1) facts reasonably excusing the failure to appear, (2) show by plea or affidavit or otherwise, facts which constitute a good defense to the merits of the case set up by the declaration, (3) and offer to go to trial at once upon a material issue.[27]

The court, in order to determine if the defendants' failure to appear was reasonable, looked to see if the defendants acted as cautious and prudent persons in failing to appear. The fact that service of process was wrongfully served upon the bank receiver's *wife* at the same time as a companion suit, "especially coming as a consequence of closing a bank under the financial condition of this state in 1928"[28] was sufficient to excuse the failure to appear. The court also found that the defendants offered to go to trial immediately, and that the allegations that the defendants were never indebted, nor did they promise as alleged, constituted a meritorious defense. In holding that the defendants met all the necessary requirements to vacate a default, the supreme court ruled that the trial court was in error in denying the defendants' motion.

The facts in *Perrin v. Enos*[29] vividly illustrate the court's application of the test for determining whether a trial court abused its discretion in the setting aside of a default judgment. The plaintiff's complaint alleged that the defendant was indebted to the plaintiff for money borrowed and goods received. The trial court rendered a default judgment in favor of

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22. Fla. Laws 1873, ch. 1938, § 6, repealed in 1953.
23. See, *e.g.*, Kellerman v. Commercial Credit Co., 138 Fla. 133, 189 So. 689 (1939); see generally 19 FLA. JUR. *Judgments and Decrees* § 462, at 497 (1958).
24. See *e.g.*, Frostproof State Bank v. Mallett, 100 Fla. 1464, 131 So. 322 (1930); see generally 19 FLA. JUR. *Judgments and Decrees* § 487 (1958).
25. FLA. R. CIV. P. 1.38; see generally 19 FLA. JUR. *Judgments and Decrees* § 61 (1958).
26. 103 Fla. 649, 138 So. 40 (1931).
27. *Id.* at 651, 138 So. at 41.
28. *Id.* at 652, 138 So. at 42.
29. 56 So.2d 920 (Fla. 1951).

the plaintiff upon the defendant's failure to answer. The defendant moved to have the trial court set aside the default judgment on the ground that the defendant was involved in an automobile accident which had left her mentally unstable and therefore unable to answer the plaintiff's complaint within the required time. In addition, the motion stated that the defendant had a meritorious defense and was ready to go to trial. The defendant also filed an answer which expressly denied that she had borrowed any money from the plaintiff or that the defendant had authorized the plaintiff to expend any money. The trial court within the statutory period,[30] granted the defendant's motion to vacate the default judgment.

The plaintiff, on writ of certiorari, contended that the order vacating the default judgment was "contrary to and a departure from the essential requirements of the law."[31]

The Supreme Court of Florida affirmed the trial court's order vacating the default judgment. The court then reviewed the Florida law pertaining to a trial court's power to set aside its orders and judgments.

> [A]ll judgments, decrees or other orders of the Court . . . are under the control of the Court which pronounced them *during the term* at which they are rendered . . . . But . . . after the term has ended all final judgments and decrees of the Court pass beyond its control . . . . Orders, decrees or judgments made through fraud, collusion, deceit or mistake may be opened . . . at any time on the proper showing made by the parties injured.[32]

In *Weisberg v. Perl*,[33] the supreme court was faced with a procedural problem similar to the *Ramagli* decision.[34] A summary judgment was entered against the plaintiff. The plaintiff duly moved for a petition for rehearing and for a new trial, both of which were denied. The plaintiff's appeal was within sixty days of the order denying the petition for rehearing, but was more than sixty days after the entry of the final judgment. The court, upon examining these facts, determined that a petition for rehearing after a summary judgment was unknown at common law. Although the court admitted that a motion for rehearing is provided for by statute, it is only applicable after the jury or the court has rendered a verdict based on issues of *disputed facts*. However, the court decided that a summary judgment is not based on disputed facts but is only rendered when there is no genuine issue of material fact. In light of these findings, the court held that a motion for rehearing after a summary judgment was an improper motion and thus, did not toll the time for taking an appeal. The reasoning was put in language very similar to the *Ramagli* decision.

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30. Fla. Laws 1873, ch. 1938, § 6, repealed in 1953.
31. Perrin v. Enos, 56 So.2d 920, 921 (Fla. 1951).
32. *Id.* at 922.
33. 73 So.2d 56 (Fla. 1954).
34. Ramagli Realty Co. v. Craver, 121 So.2d 648 (Fla. 1960).

> A motion for a new trial from the summary final judgment is not provided for by law or any rule of this Court. The only method for review after a summary final judgment has been entered is by direct appeal to this Court as provided for by the laws and rules governing appeals from a final judgment in common law actions.[35]

The court, although recognizing the *Ramagli* issue, refused to discuss it. "The question of tolling the statute pending the disposition of a motion filed during the term to set aside or vacate a final judgment is not presented by the record in this case."[36]

The *Weisberg* decision may be considered as the forerunner of the *Ramagli* case. Not only was the language of the *Weisberg* case similar to that of *Ramagli*, but the approach used was also similar. While the *Weisberg* case dealt with the *power* of a trial court to enter an order for rehearing after a summary judgment, the *Ramagli* decision determined the trial court's *power* to enter an order setting aside a default judgment. In both cases the Supreme Court of Florida concluded that the respective orders were improper and thus did not toll the time for taking an appeal.

FLORIDA DECISIONS AFTER THE RAMAGLI DECISION

The decisions which have appeared since *Ramagli*[37] have illustrated the confusion which might naturally have been expected from a decision which so sharply reversed a well established course of judicial conduct.

In *White v. Spears*,[38] the petitioner, upon writ of certiorari, sought review of an order setting aside a default judgment. Upon examining the *merits* of the order setting aside the judgment, the appellate court reversed the trial court, and reinstated the default. The court cited the *Ramagli* decision as standing for the proposition that: "It is well established that the writ will not ordinarily issue to review interlocutory orders at law which are reviewable upon appeal from the final decree."[39]

However, the court ruled that this case fell within an exception to this general proposition. This exception, or special circumstance, as it was referred to in the *Ramagli* decision, was not limited to void judgments, but was considered to be present when:

> the lower court acts without or in excess of jurisdiction, or where the interlocutory order does not conform to the essential requirements of law and may reasonably cause material injury throughout the subsequent proceedings for which the remedy by appeal will be inadequate.[40]

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35. Weisberg v. Perl, 73 So.2d 56, 58 (Fla. 1954).
36. *Ibid.*
37. Ramagli Realty Co. v. Craver, 121 So.2d 648 (Fla. 1960).
38. 123 So.2d 689 (Fla. App. 1960).
39. *Id.* at 690.
40. *Ibid.*

Thus, in this first case construing the *Ramagli* opinion, the court of appeal by reviewing the motion to vacate on the merits intimated that the trial court had the power to set aside a default judgment.

In the more recent case of *Bursten v. Cooper*,[41] the defendant appealed, under Florida Appellate Rule 3.2(b), from the trial court's order denying his motion to vacate a default judgment. In a per curiam opinion, the district court of appeal cited the *Ramagli* case for the principle that "there being no appeal from the final judgment, the order denying the motion to set aside the default and default judgment was not reviewable upon an appeal."[42] In addition, the court ruled that the order to set aside the default judgment was not within the rule allowing an interlocutory appeal.[43] Therefore, the court in order to rule on the *merits* of the order, treated the notice of appeal as a writ of certiorari.[44] The court held that the trial court did not abuse its discretion in denying the defendant's order to set aside the default judgment.

In the most recent case of *Barber v. North Shore Hospital, Inc.*[45] the appellate court stated:

> The Ramagli opinion, supra, holds that there is no procedure, either statutory or under the Rules of Civil Procedure, to control the power of a trial court to vacate its interlocutory orders, but this opinion does not determine that the trial court has lost the jurisdiction over interlocutory orders through its inherent or common law authority.[46]

Although this appears to be dicta because the court held that the trial court was in error in opening the default judgment, it is the first positive statement by the appellate court that appears to be in direct conflict with the supreme court's decision in the *Ramagli* case.

In the three previously cited cases, the court of appeal did not vacate the default judgment. Thus, not until the court of appeal affirms a trial court's order setting aside a default judgment, will a writ of certiorari to the Florida Supreme Court to test its correctness settle the confusion in this area of the law.

Comparison of the Federal and Florida Rules of Civil Procedure: The Reopening of Default Judgments

Since the Federal Rules of Civil Procedure were adopted almost in toto by Florida in 1954, it will be helpful to examine the federal rules, and

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41. 127 So.2d 134 (Fla. App. 1961); see also Hoedl v. Adams Engineering Co., 125 So.2d 308 (Fla. App. 1961).
42. Bursten v. Cooper, 127 So.2d 134, 135 (Fla. App. 1961).
43. Fla. App. R. 4.2(a).
44. Fla. Stat. § 59.45 (1959).
45. Case No. 60-585, Fla., 3d Dist. Ct. App., October 2, 1961.
46. *Ibid.*

federal court decisions rendered under these rules, in order to determine the extent of a trial court's power to set aside a default judgment in a jurisdiction construing the same situation.

Prior to the adoption of the federal rules, a federal district court generally was without the power to vacate a final judgment after the expiration of the term of court.[47] Although Rule 6(c) of the Federal Rules of Civil Procedure does not abolish terms of court, to all intents and purposes, it abolishes their effect.[48] In other words, the court's power over its orders and judgments is no longer determined by terms of court. Rather, the trial court's powers are specifically enumerated by the Federal Rules of Civil Procedure.[49] The court, in *Reed v. South Atl. S.S. Co.*,[50] succinctly stated this change, *i.e.*, the law before and after the adoption of the Federal Rules of Civil Procedure, when it said:

> With certain exceptions which need not be gone into here, at common law all judgments regularly entered became final at the end of the term at which they were entered. . . . It was the intention of the framers of the rules by Rule 6(c) to abolish the effect of the expiration of the term upon the power of the court over its final judgments. . . . "Although the court, by virtue of Rule 6(c), has the power, in its sound discretion, to revise its judgment irrespective of the expiration of a term of court, its power is subject to the Federal Rules . . . ."[51]

The *Reed* decision appears to indicate that if Rule 6(c) stood alone, it would permit the trial court to exercise its discretion at any time. This view is diametrically opposed to the view expressed in the *Ramagli* decision,[52] which eliminated this power of the trial court, except when void judgments are involved.

Historically, terms of court were for the purpose of giving finality to judgments.[53] However, under certain circumstances ancillary remedies permitted the common law courts to act beyond their terms of court; *i.e.*, coram nobis,[54] coram vobis,[55] audita querela,[56] and the independent action

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47. Zimmern v. United States, 298 U.S. 167 (1936); *In re* Metropolitan Trust Co., 218 U.S. 312 (1910); *but see* Sorenson v. Sutherland, 27 F. Supp. 44 (S.D.N.Y. 1939) (vacating void judgment).

48. Safeway Stores, Inc. v. Coe, 136 F.2d 771 (D.C. Cir. 1943); Preveden v. Hahn, 36 F. Supp. 952 (S.D.N.Y. 1941); United States v. Schaeffer, 33 F. Supp. 547 (D. Md. 1940).

49. FED. R. CIV. P. 50(b) (judgment notwithstanding the verdict); FED. R. CIV. P. 52(b) (to amend or make additional findings of fact); FED. R. CIV. P. 55(c) (setting aside default judgments); FED. R. CIV. P. 59 (new trial or to alter or amend the judgment); FED. R. CIV. P. 60(a) (correction of clerical errors); FED. R. CIV. P. 60(b) (vacating a final judgment).

50. 2 F.R.D. 475 (D. Del. 1942).

51. *Id.* at 476.

52. Ramagli Realty Co. v. Craver, 121 So.2d 648 (Fla. 1960).

53. 2 MOORE, FEDERAL PRACTICE § 6.09, at 1489 (1948).

54. See generally 7 MOORE, FEDERAL PRACTICE § 60.14 (1948).

55. *Ibid.*

56. See generally 7 MOORE, FEDERAL PRACTICE § 60.13 (1948).

in equity.[57] These common law ancillary remedies have been replaced, by and large, by specific federal rules which provide the same grounds for setting aside judgments as were available under the common law.[58] In addition, definite time limits were imposed, so that as to judgments rendered at the end of a term, the court would have the same length of time to set them aside as judgments which were rendered in the beginning of the term.[59]

Although Florida has specifically adopted Federal Rule 6(c)[60] it has not adopted Federal Rule 60(b), which provides that a motion must be made for certain forms of relief within a reasonable time, not to exceed one year, while certain other grounds are subject only to the limitation of reasonable time. Nor did Florida adopt Federal Rule 55(c) which provides that for good cause the trial court may set aside a default judgment. Therefore, it would seem that the common law post-judgment remedies affecting judgments (coram nobis, coram vobis, audita querela, and the independent action in equity) are still available in Florida.

The Setting Aside of Default Judgments in Other Jurisdictions

The many jurisdictions which have abolished terms of court entirely have their trial courts sit in continuous session.[61] The great majority of these jurisdictions have held that the common law rule which gave the trial court inherent power over its judgments no longer has any founda-

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57. See generally 7 Moore, Federal Practice § 60.12 (1948) (independent action in equity still available under Fed. R. Civ. P. 60(b).

58. Fed. R. Civ. P. 60(b): "Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake . . . (2) newly discovered evidence . . . (3) fraud . . . (4) the judgment is void; (5) the judgment has been satisfied . . . (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment . . . . This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment . . . . Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action."

59. *Ibid.*

60. Fed. R. Civ. P. 6(c): "Unaffected by Expiration of Term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it." See Fla. R. Civ. P. 1.6(c).

61. Pate v. State, 244 Ala. 396, 14 So.2d 251 (1943); *In re* Ralph's Estate, 49 Ariz. 391, 67 P.2d 230 (1937); Wiggin v. Superior Court, 68 Cal. 398, 9 Pac. 646 (1886); People v. Wells, 255 Ill. 450, 99 N.E. 606 (1912); Hutchinson v. Hutchinson, 293 Ky. 270, 168 S.W.2d 738 (1943); Grant v. Schmidt, 22 Minn. 1 (1875); Union Motor Co. v. Williams, 8 La. App. 391 (1928); Whitbeck v. Montana Cent. Ry., 21 Mont. 102, 52 Pac. 1098 (1898); Sweeney v. Sweeney, 42 Nev. 431, 179 Pac. 638 (1919); Fairchild v. United Serv. Corp., 52 N.M. 289, 197 P.2d 875 (1948); Bank of Inkster v. Christenson, 49 N.D. 1047, 194 N.W. 702 (1923); Janssen v. Tusha, 68 S.D. 639, 5 N.W.2d 684 (1942); Joy v. Young, 194 S.W.2d 159 (Tex. Civ. App. 1946); Gordon v. Hillman, 102 Wash. 411, 173 Pac. 22 (1918).

tion.[62] Most of these jurisdictions have enacted statutes to replace the common law rule. These statutes not only provide the time in which the court may act, but also specify the grounds upon which the judgment may be set aside.[63]

At least one jurisdiction has taken the view that since terms of court have been abolished, a court may reopen a judgment at *any time*, unless limited by statute.

> In this state [North Dakota] there are no terms of . . . court, in the common law sense of the word . . . . It follows that the . . . court can exercise its inherent power to grant relief, on motion, from an irregular judgment or order, at *any time* unless the time for doing so has been limited by law. We can find no statute . . . .[64]

It is interesting to note that some other jurisdictions have given special treatment to vacating default judgments without the aid of statute.

In *Appeal of Pennsylvania Stave Co.*,[65] the Supreme Court of Pennsylvania stated: "Judgments by confession or upon default remain indefinitely within the control of the court, and upon proper cause shown may be opened up or vacated at *any* time; but not so with respect to judgments obtained adversely."[66]

From the foregoing, it appears that Florida's position is unique. Florida could have followed any one of the other jurisdictions which have abolished terms of court; it could have enacted a statute to replace the common law power of trial courts;[67] it could have permitted trial courts to set aside their orders and judgments at any time;[68] or it could have treated default judgments with special favor.[69] Instead, Florida chose not

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62. See, *e.g.*, *In re* Ralph's Estate, 49 Ariz. 391, 394, 67 P.2d 230, 231 (1937): "[I]t was necessary to establish some statutory rule to take the place of the common-law rule, which no longer had a foundation upon which it could be based."

63. See, *e.g.*, ALA. CODE tit. 7, §§ 568-73 (1958); ARIZ. R. CIV. P. 60(a) and(b); CAL. CIV. PROC. CODE § 473.

64. Martinson v. Marzolf, 14 N.D. 301, 309-10, 103 N.W. 937, 940 (1905) (Emphasis added.); see also Bank of Inkster v. Christenson, 49 N.D. 1047, 194 N.W. 702 (1923); Dedrick v. Charrier, 15 N.D. 515, 517-18, 108 N.W. 38, 39 (1906): "The common law practice that judgments could not generally be set aside or amended after the term at which rendered is not in vogue in this state. The right to apply for the amendment or the opening up of a judgment exists after term time in this state . . . ."

65. 255 Pa. 178, 73 Atl. 1107 (1909).

66. *Id.* at 180, 73 Atl. at 1108 (Emphasis added.); see also *In re Koehler's* Estate, 102 N.J. Eq. 133, 134, 140 Atl. 15, 16 (1928): "[D]uring the term judgments are . . . in the breast of the judges, and in that time they may make a new decision, reverse or modify their views on the merits, and . . . after the term the record alone speaks. Judgments by confession or default are exceptions to the rule; they remain indefinitely within the court's control, apparently, because the causes are uncontested and never reach the 'breast of the judges.' "

67. See notes 61-62 *supra*.

68. See note 63 *supra*.

69. See note 64 *supra*.

to adopt any of these views, but rather, has decided that trial courts no longer have any power over default judgments once entered, unless the judgment is void.

CONCLUSION

Even though the *Ramagli* decision appears to eliminate the trial court's power to set aside default judgments, it would appear that some courts in Florida have continued to reaffirm this power. Florida attorneys, therefore, should be chary of the use of any motion to alter, amend, or set aside a default judgment, as this may prove to be an instance in which *Ramagli* is given the full force and effect that its language dictates.

This writer suggests that the least contentious means of avoiding this entire dilemma would be for Florida to adopt Federal Rule 60(b). As indicated earlier, this rule provides the grounds upon which the trial court may act and the time within which the trial court may exercise its discretion. As it stands today in Florida, an attorney is confronted with an almost insurmountable task when he must determine if the circumstances of his case warrant the application of a common law post-final judgment remedy. In fact "few courts ever have agreed as what circumstances would justify relief under these old [common law] remedies."[70] The adoption of Federal Rule 60(b) would take the Florida courts one step closer to providing an orderly procedure for the administration of this vital area of justice.

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70. Klapprott v. United States, 335 U.S. 601, 614 (1949).