Third District Court of Appeal

State of Florida

Opinion filed October 28, 2026.
Not final until disposition of timely filed motion for rehearing.

No. 3D26-1540
Lower Tribunal No. 24-18418-FC-04

Kristen Martinez,
Appellant,

vs.

Omar Guardia,
Appellee.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Charles Kenneth Johnson, Judge.

Maria del Carmen Calzon, for appellant.

Perez-Abreu & Martin-Lavielle, P.A., and Javier Perez-Abreu and Andy W. Acosta, for appellee.

Before MILLER, GOODEN, and REBULL, JJ.

MILLER, J.

This is a nonfinal appeal from an order denying the disqualification of counsel in a high-conflict dissolution proceeding. Appellant, Kristen Martinez, challenges an order denying her motion to disqualify trial court counsel for appellee, Omar Guardia. On appeal, she contends that by securing payment of their fees with a mortgage on disputed property, counsel ran afoul of rule 4-1.8 of the Rules Regulating The Florida Bar. We need not decide this issue because the trial court's finding that the motion was untimely is well supported.

I

A

Martinez and Guardia were once romantically involved. Since 2023, they have been embroiled in a series of legal disputes, including dissolution, ejectment, domestic violence, and partition proceedings. The case before us involves the dissolution action. Martinez has claimed that she and Guardia entered into a common law marriage in Colorado. Guardia has denied they were ever married and counter-petitioned to establish the paternity of Martinez's minor child.

Two properties are relevant to this appeal. The first is titled solely in Guardia's name. The second is owned jointly by the parties. In 2023, Guardia sued to partition the jointly owned property, which is also subject to

foreclosure proceedings because a secured loan held by PennyMac went unpaid. The partition action remains pending.

That same year, Guardia filed an ejectment action, seeking to oust Martinez from the property titled in his name. Months later, Martinez obtained a final injunction against domestic violence that awarded her sole possession of that very property. Guardia successfully moved to have the injunction modified to restore his exclusive possession. That injunction is the subject of a separate, pending appeal.

Now come the facts on which this appeal turns. In June 2025, Guardia granted his lawyers, Javier Perez-Abreu and Perez-Abreu & Martin-Lavielle, P.A. (collectively "Perez-Abreu") mortgages on both properties to secure his unpaid legal fees and costs. The mortgages were recorded the same month in the public records of Miami-Dade County.

Martinez discovered the mortgages. On December 9, 2025, she filed a quiet title action seeking to invalidate both mortgages, and that action remains pending. Later the same month, the parties proceeded to trial on the ejectment case. Final judgment of ejectment was entered against Martinez on January 20, 2026. That judgment is on appeal, as well.

On May 18, 2026, eleven months after the mortgages were recorded and five months after she moved to invalidate them, and four months after

she lost the ejectment trial, Martinez moved to disqualify Perez-Abreu in all seven cases. She claimed that counsel had improperly "obtain[ed] a financial interest in the properties through mortgages and notes issued by Guardia . . . without the knowledge of Martinez," and that Perez-Abreu would have to testify as material witnesses about their own financial stake. Martinez maintains that the conduct underlying each motion differs from "case to case." It does not. The seven motions are virtually identical.

Guardia filed an omnibus response, arguing, among other things, that the disqualification motion was untimely. At a multi-day hearing, Martinez first told the court that no evidentiary hearing was needed because the outcome hinged on legal argument. On the second day, she reversed course. The trial court declined to take evidence, as no one disputed that the security interests existed. See First Fid. Tr. Servs., Inc. v. Shelter Cove Condo. Ass'n, Inc., 329 So. 3d 222, 228 (Fla. 1st DCA 2021) ("It is true that 'where material facts are in dispute, an evidentiary hearing is required[;]' [h]owever, an evidentiary hearing is not required for a motion to disqualify counsel where the factual allegations warranting disqualification are not in dispute." (citations omitted)). The court denied the motion as untimely and legally insufficient under Lee v. Gadasa Corp., 714 So. 2d 610 (Fla. 1st DCA 1998). This appeal followed.

II

A

We review an order on a motion seeking the disqualification of counsel for abuse of discretion. See Young v. Achenbauch, 136 So. 3d 575, 580–81 (Fla. 2014); Schneider v. Tirikian, 410 So. 3d 79, 80 (Fla. 3d DCA 2025).

B

Martinez contends, as she did below, that the security interest in the property confers a stake in the litigation that requires disqualification and violates rule 4-1.8(i) of the Rules Regulating The Florida Bar. Perez-Abreu counters that Martinez waived disqualification by failing to act with "reasonable promptness," Lee, 714 So. 2d at 612 (quoting Transmark, U.S.A. v. State, Dep't of Ins., 631 So. 2d 1112, 1116 (Fla. 1st DCA 1994)), and alternatively argues that Martinez lacks standing, the security interest is consistent with rule 4-1.8(i), and Guardia could only encumber his own interest in the property, so Martinez's interest remains unaffected. Because it is dispositive on these facts, we write only to address timeliness.

C

It is long established that disqualification of a party's chosen counsel is "an extraordinary remedy—one that should be rare." Phinney v. Phinney, 427 So. 3d 1041, 1042 (Fla. 3d DCA 2025). Courts view motions to

disqualify with disfavor and skepticism, and for good reason. Such motions interfere with a party's right to the lawyer of his choice and may be misused to frustrate and delay the proceedings. See Alexander v. Tandem Staffing Sols., Inc., 881 So. 2d 607, 608–09 (Fla. 4th DCA 2004). The movant bears the burden of establishing that disqualification is obligatory. See State v. De La Osa, 28 So. 3d 201, 203 (Fla. 4th DCA 2010).

The motion must be timely. "A motion to disqualify should be made with reasonable promptness after the party discovers the facts which lead to the motion." Lee, 714 So. 2d at 612 (quoting Transmark, 631 So. 2d at 1116). We acknowledge that "[t]here is no bright-line rule governing the amount of time within which a party can be found to be reasonably prompt." See Glob. Lab Partners, LLC v. Patroni Enters., LLC, 327 So. 3d 453, 457 (Fla. 1st DCA 2021). The inquiry instead turns on the facts.

The purpose of requiring "reasonable promptness" is evident. Undue delay suggests a strategic motive, and disqualification is not a means for a litigant "to deprive his opponent of counsel of his choice after completing substantial preparation of the case." Transmark, 631 So. 2d at 1116.

In evaluating whether a disqualification motion is timely, courts consider (1) when the movant learned of the grounds for disqualification; (2) whether the movant kept litigating rather than moving for disqualification; and

(3) whether the nonmovant would suffer prejudice. See Zayas-Bazan v. Marcelin, 40 So. 3d 870, 872–73 (Fla. 3d DCA 2010) ("A party can waive his right to seek disqualification of the opposing party's counsel by failing to promptly move for disqualification upon learning of the facts leading to the alleged conflict."); Glob. Lab Partners, 327 So. 3d at 457 (holding the circumstances did not support a finding of waiver where the motion to disqualify was filed "between pleadings and discovery, a natural demarcation in the proceedings, and the motion was not preceded by a great deal of work done by either side's counsel"); Case v. City of Miami, 756 So. 2d 259, 261 (Fla. 3d DCA 2000) ("Under the circumstances in this case, the disqualification of retirees' counsel would result in a serious injustice to their case.").

D

Here, the factors support the trial court's decision. Martinez had constructive knowledge of the purported conflict as soon as the mortgages were recorded in June 2025, eleven months before she filed her motions to disqualify. This knowledge is imputed by Florida's recording statute. See Fla. Stat. § 695.11 (entitled "Instruments deemed to be recorded from time of filing"); see also Tikhomirov v. Bank of N.Y. Mellon, 223 So. 3d 1112, 1114 n.2 (Fla. 3d DCA 2017) (quoting Whitburn, LLC v. Wells Fargo Bank, N.A.,

190 So. 3d 1087, 1091 (Fla. 2d DCA 2015) ("The act of recording an instrument in accordance with [Florida's recording] statute constitutes constructive notice of a prior encumbrance on the property which is the subject of the instrument.") (citing Fla. Stat. § 695.11)). But we need not rely on constructive knowledge alone, since Martinez's own quiet title complaint established that she had actual knowledge no later than December 2025, six months before she filed her disqualification motions.

Despite this knowledge, Martinez continued litigating on multiple fronts. She tried the ejectment case to verdict; and it was only after losing that case and the injunction modification that she finally moved for disqualification. This course of action supports a finding of waiver. See Transmark, 631 So. 2d at 1116 (holding a ten-month delay sufficient to waive right to seek disqualification of opposing counsel); L.E.B. v. D.D.C., 304 So. 3d 54, 58 (Fla. 2d DCA 2020) (holding a fourteen-month delay sufficient to waive a motion for disqualification).

The record further supports an inference of prejudice to Guardia, the nonmovant. The dissolution docket contains 215 entries; 198 predate the disqualification motions. Of those, 121 entries appear between the recording of the mortgages and the filing of the motions. In that period, the parties conducted substantial discovery, agreed to timesharing orders, attended

mediation, filed numerous motions, and noticed depositions. This is the "great deal of work" by counsel that weighs in favor of a finding of prejudice and against disqualification. Glob. Lab Partners, 327 So. 3d at 457. We therefore find ample support for the conclusion that the motion was a thinly veiled attempt to obtain a strategic advantage, and we affirm the order under review.

Affirmed.