

458 So.2d 411
(Cite as: 458 So.2d 411)

District Court of Appeal of Florida,
 Fourth District.

Jim WHARTON and ETH-WHA, INC., Appellants,
 v.
 Georgia F. DuBOSE, Appellee.
No. 84-1074.

Nov. 7, 1984.

Appeal was taken of an order of the Circuit Court, Indian River County, William L. Hendry, J., granting a motion for rehearing. The District Court of Appeal, Glickstein, J., held that the trial court's order granting a motion for rehearing was an interlocutory appeal of which the District Court of Appeal lacked jurisdiction.

Dismissed.

West Headnotes

Appeal and Error 30 ↪ 78(6)

30 Appeal and Error

30III Decisions Reviewable

30III(D) Finality of Determination

30k75 Final Judgments or Decrees

30k78 Nature and Scope of Decision

30k78(6) k. On Motion for New Trial

or in Arrest of Judgment. Most Cited Cases

Grant of a motion for rehearing is clearly not a final order and because it also falls outside the rubrics of the rule specifying immediately appealable nonfinal orders, the District Court of Appeal lacks jurisdiction to hear an appeal of a grant of a motion for rehearing.

West's F.S.A. R.App.P.Rule 9.130(a)(3).

***411** G. Russell Petersen of G. Russell Petersen, P.A., Vero Beach, for appellants.

Clifford M. Miller of Miller & Miller, Vero Beach, for appellee.

ON MOTION TO DISMISS

GLICKSTEIN, Judge.

We dismiss this appeal of the trial court's order granting a motion for rehearing because it is an interlocutory appeal of which this court lacks jurisdiction. The First District Court of Appeal dismissed a similar appeal on the same ground in *Ford Motor Company v. Averill*, 355 So.2d 220 (Fla. 1st DCA 1978). We are aware of no change in the law since the *Averill* decision that would affect the outcome.

Appellant contends that an order granting a motion for rehearing either is a final order and thus immediately appealable, or is the equivalent of an order for a new trial, governed by section 59.04, Florida Statutes (1983), and post-*Averill* revisions of Rules 9.130(a)(4) and 9.140(c)(1)(C), Florida Rules of Appellate Procedure, as explicated by *In re Emergency Amendments to Rules of Appellate Procedure*, 381 So.2d 1370 (Fla.1980). We are not persuaded. Grant of a motion for rehearing is clearly not a final order, nor is it within the contemplation of the above authorities cited by appellant. Because it also falls outside the rubrics of Rule 9.130(a)(3), Florida Rules of Appellate Procedure, which specifies immediately***412** appealable non-final orders, we cannot hear this appeal at this time.

DOWNEY and LETTS, JJ., concur.

Fla.App. 4 Dist.,1984.

Wharton v. DuBose

458 So.2d 411

END OF DOCUMENT