

1. Divorce ⇨183

Appellate review of amended final judgment of dissolution was limited to any errors appearing on face of such judgment, where husband failed to provide trial transcript in connection with his appeal.

2. Divorce ⇨183

In reviewing amended final judgment of dissolution of marriage, reviewing court would take into account clarification stated by trial court in hearing on husband's motion for new trial, rehearing, or both, where husband included transcript of such hearing in record on appeal.

3. Divorce ⇨252.5(1), 277

Trial court's award to wife of husband's equity in marital residence was within its discretion, where husband's child support arrearages exceeded his equity in the property.

Sheldon Zipkin, North Miami Beach, for appellant.

Schweitzer & Schweitzer-Ramras, and Darlene Schweitzer-Ramras, Miami, for appellee.

Before COPE, C.J., and WELLS, J., and SCHWARTZ, Senior Judge.

PER CURIAM.

[1-3] John Anthony Wyche appeals an amended final judgment of dissolution of marriage. Because there is no trial transcript, our review is limited to any errors which may appear on the face of the amended final judgment. *See Prymus v. Prymus*, 753 So.2d 742 (Fla. 3d DCA 2000); *Katowitz v. Katowitz*, 684 So.2d 256, 257 n. 1 (Fla. 3d DCA 1996). We also take into account the clarification stated by the trial court in the hearing on the former husband's motion for new trial and/or re-

hearing, for which hearing there was a transcript. We find no error in the trial court's treatment of the marital home for equitable distribution purposes. Further, the trial court's decision to award the former husband's equity in the home to the former wife was within the trial court's discretion, where the child support arrearages exceeded the former husband's equity in the property.

Affirmed.



Rocky and Mary GIRON, Appellants,

v.

**UGLY MORTGAGE, INC.,
et al., Appellees.**

No. 06-644.

District Court of Appeal of Florida,
Third District.

Aug. 2, 2006.

Background: Home mortgagors brought motion to set aside a foreclosure judgment and judicial sale of real property, alleging defective constructive service of process. The Circuit Court, Miami-Dade County, Scott M. Bernstein, J., denied the motion. Mortgagors appealed.

Holding: The District Court of Appeal, Suarez, J., held that constructive service of process, by publication, on mortgagors was not defective.

Affirmed.

1. Process ⇨86, 90

Constructive service of process by publication is proper only if personal ser-

vice cannot be obtained and only in the kinds of cases listed in the statute authorizing constructive service of process by publication. West's F.S.A. § 49.011.

2. Process ⇐90, 96(4)

If there is a challenge to constructive service of process by publication, the trial court has the duty of determining not only if the affidavit of diligent search is legally sufficient but also whether the plaintiff conducted an adequate search to locate the defendants. West's F.S.A. § 49.011.

3. Appeal and Error ⇐1024.3

The standard of review regarding the trial court's resolution of a challenge to constructive service of process determines whether there was competent substantial evidence to support the decision of the trial judge. West's F.S.A. § 49.011.

4. Mortgages ⇐440

Constructive service of process by publication, on mortgagors, was not defective, in mortgage foreclosure action; affidavit of diligent search was legally sufficient, and mortgagee conducted adequate search to locate mortgagors before constructive service. West's F.S.A. § 49.011.

Devine Goodman Pallot & Wells and Guy A. Rasco, Miami, for appellants.

Hite Baldwin and Bruce Baldwin; Jary C. Nixon and Victor H. Veschio and Tary L. Nixon; Hicks and Kneale and Dinah Stein, Miami, for appellees.

Before RAMIREZ, SUAREZ, and
ROTHENBERG, JJ.

SUAREZ, J.

The Girons appeal the denial of their motion to set aside a foreclosure judgment and judicial sale of real property based on

defective constructive service of process. We affirm.

The Girons purchased the real property in question in 1996. Thereafter, they entered into a second mortgage which was eventually assigned to Ugly Mortgage Company. The Girons stopped paying on the second mortgage. The Girons claim to have moved from the residence the day prior to Hurricane Katrina and claim not to have moved back due to extensive damage. They also claim to have visited the property daily during the time period that Ugly Mortgage claims to have been attempting service of process.

Ugly Mortgage filed an action to foreclose the mortgage. Ugly Mortgage alleges it was unable to personally serve the Girons. It filed an affidavit of diligent search and claimed to have perfected constructive service pursuant to section 49.011, Florida Statutes (2005). A Final Summary Judgment of Foreclosure was entered and the property was sold pursuant to court order. The Girons then filed a Motion to Set Aside the Foreclosure arguing the Affidavit of Diligent Search filed by Ugly Mortgage was defective and, therefore, constructive service of process was improper. At the first hearing, the trial judge ordered that title to the property not be transferred, and ordered discovery taken as to constructive service. After an evidentiary hearing, the trial judge denied the Girons' Motion to Set Aside the Foreclosure. He issued a lengthy detailed order finding the affidavit legally sufficient and finding that the mortgage company conducted an adequate search. The trial judge also detailed in his order that he did not find credible the Girons' testimony that they had a contract pending to sell the house as well as other portions of their testimony. The Girons appealed.

[1–4] Constructive service of process is proper only if personal service cannot be obtained and only in the kinds of cases listed in section 49.011, Florida Statutes (2005). If there is a challenge to constructive service, the trial court has the duty of determining not only if the affidavit of diligent search is legally sufficient but also whether the plaintiff conducted an adequate search to locate the defendants. *See Southeast & Assoc., Inc. v. Fox Run Homeowners Assoc., Inc.*, 704 So.2d 694 (Fla. 4th DCA 1997). Our standard of review determines whether there was competent substantial evidence to support the decision of the trial judge. *Hudson v. Pioneer Fed. Sav. & Loan Assoc.*, 516 So.2d 339 (Fla. 1st DCA 1987). We affirm the trial court's order concluding that the Affidavit of Diligent Search is legally sufficient, and we find the trial court's well reasoned decision that the Plaintiffs conducted an adequate search to locate the Girons prior to constructive service is supported by more than competent substantial evidence.

Affirmed.



1

Ismael SANCHEZ, Petitioner,

v.

The STATE of Florida, Respondent.

No. 3D06–589.

District Court of Appeal of Florida,
Third District.

Aug. 2, 2006.

A Case of Original Jurisdiction—Writ of Mandamus.

Ismael Sanchez, in proper person.

Charles J. Crist, Jr., Attorney General,
and Richard L. Polin, Assistant Attorney
General, for respondent.

Before GREEN, RAMIREZ, and
SHEPHERD, JJ.

PER CURIAM.

Ismael Sanchez seeks mandamus relief to compel the circuit court to rule on a motion for rehearing filed on or about November 17, 2005. The State's response to our order to show cause fails to describe any circumstances that would justify the continuing delay at this point. Accordingly, we grant the petition for writ of mandamus, and direct the circuit court to enter an order within thirty days either granting or denying Sanchez's motion.

Petition for Writ of Mandamus Granted.



2

Trabon MARION, Appellant,

v.

The STATE of Florida, Appellee.

No. 3D06–661.

District Court of Appeal of Florida,
Third District.

Aug. 2, 2006.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami–Dade County, William Thomas, Judge.

Trabon Marion, in proper person.