

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JULY TERM 2006

NORMAN A. SVOBODA,

Appellant/Cross-Appellee,

v.

Case No. 5D05-2296 and  
5D05-4057

BAYER CORPORATION, ETC., ET AL.,

Appellee/Cross-Appellant.

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Opinion filed December 29, 2006

Appeal from the Circuit Court  
for Seminole County,  
Nancy F. Alley, Judge.

Timothy M. O'Brien, of Levin, Papantonio,  
Thomas, Mitchell, Echsner & Proctor, P.A.,  
Pensacola, for Appellant/Cross-Appellee.

Patricia E. Lowry and Barbara Bolton Litten, of  
Squire, Sanders & Dempsey, L.L.P., West  
Palm Beach, and Terry O. Tottenham and  
Lana K. Varney of Fulbright & Jaworski, LLP,  
Austin, Texas, for Appellee/Cross-Appellant.

Donald E. Scott, of Bartlit Beck Herman  
Palenchar & Scott LLP, Denver, Colorado, for  
Appellee/Cross-Appellant, appearing Pro Hac  
Vice.

PER CURIAM.

Norman A. Svoboda appeals from a final judgment in favor of Bayer Corporation and Eckerd Corporation of Florida following a products liability trial. Mr. Svoboda argues for reversal, claiming that several evidentiary rulings made by the trial court

constituted prejudicial error. Having examined each of the claimed errors carefully, we disagree and affirm without further discussion.

On cross-appeal, Bayer argues that the trial court erred as a matter of law in holding that the time for filing its motion to tax costs expired thirty days after the jury's verdict, rather than thirty days after the judgment was filed. We agree. Florida Rule of Civil Procedure 1.525 provides that "[a]ny party seeking a judgment taxing costs, attorney's fees, or both shall serve a motion *no later than thirty days after filing of the judgment . . .*" (Emphasis added). Bayer filed a motion for enlargement of time to file a motion to tax costs less than thirty days after the final judgment was filed. As such, Florida Rule of Civil Procedure 1.090(b) controls. In pertinent part, that rule provides:

**(b) Enlargement.** When an act is required or allowed to be done at or within a specified time by order of court, by these rules, or by notice given thereunder, for cause shown, the court at any time in its discretion (1) with or without notice, may order the period enlarged if request therefor is made before the expiration period originally prescribed or as extended by a previous order, or (2) upon motion made and notice after the expiration of the specific period, may permit the act to be done when failure to act was the result of excusable neglect . . . .

Fla. R. Civ. P. 1.090(b).

Bayer's motion for an extension of time to file its motion to tax costs was timely, as it was served within thirty days after the final judgment was filed. Consequently, the trial judge erred in concluding that Bayer's motion was untimely. On remand, the trial judge should grant Bayer's motion if good cause is shown as required by rule 1.090(b).<sup>1</sup>

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.

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<sup>1</sup> Contrary to Mr. Svoboda's assertion, excusable neglect is not an issue for the trial court's consideration of Bayer's timely motion. Excusable neglect would be relevant only if Bayer's motion had been untimely. See Fla. R. Civ. P. 1.090(b).

ORFINGER, LAWSON and EVANDER, JJ., concur.