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

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

JOHN R. ARNOLD, JR., J. ROBERT ARNOLD, AND JJJR PROPERTIES, LLC,

Appellants,

v. Case No. 5D20-1498

JOHN R. ARNOLD, M.D., JOHN R. ARNOLD, INC., ARNOLD GROVES AND RANCH, LTD., KATHRYN F. PITTS, SUSAN P. ARNOLD, AND JEFFERY C. ARNOLD,

Appellees.
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Opinion filed September 24, 2021

Appeal from the Circuit Court
for Orange County,
John E. Jordan, Judge.

Patrick A. McGee, of McGee & Powers, P.A., Orlando, for Appellants, John R. Arnold, Jr., J. Robert Arnold and JJJR Properties, LLC.

Daniel J. O'Malley and David H. Simmons, of de Beaubien Simmons, Knight, Mantzaris, & Neal, LLP, Orlando, for Appellee, John R. Arnold, M.D., Alexander S. Douglas, II, and Loren M. Vasquez, of Shuffield, Lowman & Wilson, P.A., Orlando,

for Appellees, John R. Arnold, M.D., and John R. Arnold, Inc., and Scott R. Rost, of South Milhausen, P.A., Orlando, for Appellees, Arnold Groves and Ranch, LTD, Kathryn F. Pitts, Susan R. Arnold, and Jeffrey C. Arnold.

NARDELLA, J.

Appellants, John R. Arnold, Jr., J. Robert Arnold, and JJJR Properties, LLC, appeal a post-judgment order mandating that Appellants return property the trial court declared was wrongly conveyed. We affirm in all respects and write to explain why the filing of a notice of appeal does not divest the trial court of jurisdiction to enforce its declaratory decree.

This case concerns a family dispute over ranch and grove properties accumulated over three decades by John R. Arnold, M.D. ("Dr. Arnold"). Before January 18, 2018, the ranch and grove properties, as well as other assets including orange groves and cattle, were owned by Arnold Groves and Ranch, LTD. ("AGR"). Dr. Arnold gave each of his five children an ownership interest in AGR as limited partners. For reasons that are disputed, Dr. Arnold, a general partner of AGR, initially agreed to trigger an administrative dissolution of AGR and then transfer away its assets—assets which would ultimately be owned by a newly created company, JJJR Properties, LLC ("JJJR").

Only two of Dr. Arnold's five children, John Arnold, Jr., and Robert Arnold, owned an interest in JJJR. Dr. Arnold's three other children received a promissory note instead of an ownership interest and, dissatisfied with the exchange, joined a lawsuit against Appellants seeking declaratory relief.

In the lawsuit, Dr. Arnold, AGR, and three of Dr. Arnold's children (collectively "Appellees") asked the lower court to declare that the dissolution of AGR did not have the necessary consent of all general partners, that AGR's reinstatement related back to the date of its purported dissolution, and that the transfers and conveyances done pursuant to a plan of dissolution were null and void and should be set aside. After the lower court granted the requested declaratory relief, Appellants filed a notice of appeal asking this Court to reverse the lower court's Amended Final Summary Judgment ("Final Judgment").

While the appeal of the Final Judgment was pending, Appellees filed a motion in the lower court to enforce the declaratory decree. Appellants objected to enforcement, arguing that the lower court lacked jurisdiction to enforce a declaratory decree while the Final Judgment was still on appeal. The lower court held an evidentiary hearing and thereafter entered a post-judgment Order Granting Plaintiffs' Motion to Enforce Compliance with October 11, 2019, Order and June 2, 2020, Amended Final Summary

Judgment ("Enforcement Order"). Appellants responded by unsuccessfully asking the lower court for a stay and appealing the lower court's Enforcement Order.

In this appeal, Appellants argue that "[a]fter the final declaratory decree was appealed, the trial court was divested of jurisdiction to 'implement' or to 'enforce' its declaratory decree absent a relinquishment of jurisdiction by this Court for that purpose." We disagree.

For more than thirty years, this Court has held that absent a stay pending appeal, a lower court can proceed in matters related to the final judgment so long as it does not affect the subject matter of the appeal. *See Casavan v. Land O'Lakes Realty, Inc. of Leesburg*, 526 So. 2d 215, 215–16 (Fla. 5th DCA 1988); *Randolph v. Randolph*, 618 So. 2d 770, 771 (Fla. 5th DCA 1993). As a result, while a lower court cannot amend, modify, or vacate a final judgment while the appeal is pending, the lower court is free to take lawful action necessary to enforce the final judgment. *See Ruby Mountain Constr. & Dev. Corp. v. Raymond*, 409 So. 2d 525, 526 (Fla. 5th DCA 1982). This includes the power to entertain and rule upon motions seeking enforcement of final orders presently on appeal. *Randolph*, 618 So. 2d at 771.

While Appellants recognize this rule, they argue that it does not apply here because Appellees obtained a "mere declaration" in the Final Judgment. Contrary to Appellants' position, the lower court's authority to enforce its orders after a notice of appeal is filed also extends to declaratory decrees.

Florida's declaratory judgment statutes provide for ancillary or subsequent coercion to make an original declaratory judgment effective. Specifically, section 86.061, Florida Statutes (2020), states:

> Further relief based on a declaratory judgment may be granted when necessary or proper. The application therefor shall be by motion to the court having jurisdiction to grant relief. If the application is sufficient, the court shall require any adverse party whose rights have been adjudicated by the declaratory judgment to show cause on reasonable notice, why further relief should not be granted forthwith.

The "further relief" permitted by section 86.061 carries out the principle that the lower court has power to enforce its own decrees.

We note that this view has long been held by the federal courts interpreting a similar supplemental relief statute in the Declaratory Judgment Act.[1] *See United Teacher Assocs. Ins. Co. v. Union Labor Life Ins. Co.*, 414

[1] "Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any

F.3d 558, 572–73 (5th Cir. 2005) (holding that the act of lodging an appeal of a declaratory judgment does not nullify the prevailing party's right to seek further relief under section 2202 while that appeal is pending); *Horn & Hardart Co. v. Nat'l Rail Passenger Corp.*, 843 F.2d 546, 548 (D.C. Cir. 1988) (holding that under section 2202 the district court had jurisdiction to grant further relief because the statute clearly anticipates ancillary or subsequent coercion to effectuate an original entered declaratory judgment because "[t]o rule otherwise would allow the party against whom a declaratory judgment is rendered to nullify her adversary's right to [section] 2202 relief merely by lodging an appeal"); *Burford Equip. Co., Inc. v. Centennial Ins. Co.*, 857 F. Supp. 1499, 1502–03 (M.D. Ala. 1994) (explaining that while a declaratory judgment is on appeal, the district court had jurisdiction to rule on the insured's motion for further relief under the Declaratory Judgment Act); *In re Bicoastal Corp.*, 156 B.R. 327, 330–31 (Bankr. M.D. Fla. 1993) (explaining that while an appeal was pending in a declaratory judgment action, the court ruled it had jurisdiction over a motion for further relief because the relief

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adverse party whose rights have been determined by such judgment." 28 U.S.C.A. § 2202 (2020).

sought was supplemental and therefore, would not hinder the appellate court's ruling over whether its prior order was appropriate).

Moreover, we find Appellants' reliance on the Second District Court of Appeal's decision in *Hudson v. Hofmann*, 471 So. 2d 117 (Fla. 2d DCA 1985) unpersuasive. While the court in *Hudson* held that a declaratory decree cannot be enforced after a notice of appeal is filed, the authority originally relied upon in *Hudson* to support that holding is no longer good law.[2]

Appellants have not demonstrated that the lower court here did anything more than properly exercise its jurisdiction to enforce the Final Judgment on appeal. As recognized by the lower court in its Enforcement Order, this action is specifically contemplated by Florida's declaratory judgment statutes and is consistent with the longstanding principle permitting lower courts to enforce a judgment pending appeal. Therefore, even though

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[2] *Hudson* relies almost exclusively on an earlier Second District Court of Appeal case, *Wilson Realty, Inc. v. David,* 369 So. 2d 75 (Fla. 2d DCA 1979), for the proposition that absent relinquishment a lower court cannot procced with matters "related to" the final judgment. This is an imprecise and overly broad statement of the law, as was recognized later by the Second District's en banc decision in *Bernstein v. Berrin*, 516 So. 2d 1042 (Fla. 2d DCA 1987). Notably, our Court expressed agreement with *Bernstein shortly after it was decided,* explaining that "the test to determine loss of jurisdiction is not whether the trial court is proceeding in matters *related to* the final judgment, but rather the proper test is whether the trial court is proceeding in a matter which *affects* the subject matter on appeal." *Casavan,* 526 So. 2d at 215–16.

Appellees obtained a “mere declaration” in the Final Judgment, the lower court retained jurisdiction to enforce the Final Judgment on appeal pursuant to section 86.061 absent a stay or supersedeas bond. *See Randolph*, 618 So. 2d at 771.

For the foregoing reasons, we affirm.

EISNAUGLE, and SASSO, JJ., concur.