

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

MTW JORDAN, INC., JORDAN AVE
MANAGEMENT, INC., MARKEE
WHITE, INDIVIDUALLY, AND TANYA
WHITE, INDIVIDUALLY,

Appellants,

v.

Case No. 5D20-525

TANYA BASKERVILLE,
WALTRELL WITHERSPOON
F/K/A WALTRELL LEE, AND
TNT EDUCATORS, INC. D/B/A
APPLE ACADEMY,

Appellees.

Opinion filed June 18, 2021

Appeal from the Circuit Court
for Orange County,
Chad K. Alvaro, Judge.

Tanya S. White, of TW Law Group,
PLLC, Winter Park, for Appellants.

Jennifer A. Englert, of The Orlando Law
Group, PL, Orlando, for Appellees.

HARRIS, J.

Appellants, MTW Jordan, Inc., Jordan Ave Management, Inc., Markee White, individually, and Tanya White, individually, appeal the trial court's final judgment entered in favor of Appellees, Tanya Baskerville, Waltrell Witherspoon f/k/a Waltrell Lee, and TNT Educators, Inc. d/b/a Apple Academy. Appellants argue that the trial court lacked jurisdiction to rule on matters following the parties' respective notices of voluntary dismissal. We agree with Appellants that the trial court was without jurisdiction to entertain any motion or enter final judgment after the parties voluntarily dismissed their claims. Therefore we reverse the final judgment entered in favor of Appellees and remand with instructions to the trial court to enter an order of dismissal.

In 2015, Appellees brought a shareholder's derivative suit against Appellants, claiming breach of shareholder's agreement, breach of duty of good faith, accounting against Appellants, derivative and direct fraud, breach of contract, conversion, civil theft, and unjust enrichment. Appellants raised two counterclaims, alleging breach of fiduciary responsibilities and invocation of the indemnity clause. Competing motions for summary judgment were denied and the case proceeded to trial.

On the last day of trial, the court notes reflect that the parties reached a stipulation outside of court and no further action was taken. Appellants filed

a Motion to Enforce Settlement Agreement and Dismissal Based on Terms of Agreement, requesting that the matter be dismissed pursuant to the parties' stipulated settlement agreement. However, there is no order in the record granting or denying that motion. Appellants filed a notice of voluntary dismissal of their counterclaims and Appellees subsequently filed a notice of voluntary dismissal as to their complaint.

Approximately two years later, Appellees filed a Motion for Entry of Stipulation to Consent Final Judgment based on Appellants' failure to fulfill their obligations under the settlement agreement. The motion attached the Full and Final Settlement Agreement and a Stipulation to Consent Final Judgment. After the conclusion of the hearing on Appellees' motion, the court entered final judgment, ordering Appellants to pay over \$95,000 to Appellees. In this appeal, Appellants argue that the notice of voluntary dismissal, without a ratifying or approving court order, divested this trial court of jurisdiction. We agree.

In Pino v. Bank of New York, 121 So. 3d 23, 32 (Fla. 2013), the Florida Supreme Court noted that a "voluntary dismissal serves to terminate the litigation, to instantaneously divest the court of its jurisdiction to enter or entertain further orders that would otherwise dispose of the case on the merit, and to preclude revival of the original action." There are some

exceptions to this rule. For example, a distinction exists between a party filing a simple voluntary dismissal and an order by the trial court dismissing an action but reserving jurisdiction or incorporating the parties' settlement agreement. The Florida Supreme Court explained:

Once parties to a lawsuit have reached settlement, the common resolution is an agreement by the plaintiff to dismiss the pending lawsuit in exchange for other mutual agreements between the parties. Sometimes these other agreements may take some time to complete, and are not contemplated to be completed prior to the plaintiff's dismissal of the lawsuit. If there is a breach of the settlement agreement by any one of the parties, there may yet be a need for judicial involvement in the dispute. If the litigants have presented their settlement to the judge, who in turn incorporated or relied upon that settlement agreement and entered an order of dismissal predicated on the parties' settlement agreement, the litigants may later file a motion in the dismissed case seeking enforcement of the settlement agreement. . . .

On some occasions . . . settlement is reached, and dismissal is later achieved by the parties without an order of court pursuant to Florida Rule of Civil Procedure 1.420. **When this is the route taken and the parties have neither presented the settlement agreement to the judge nor obtained an order of dismissal predicated upon the same, a party will not be able to obtain enforcement of the settlement agreement by simply filing a motion in the now-dismissed case if one of the other parties to the agreement objects.** By voluntarily dismissing their suit, the litigants have removed their dispute from the judge's consideration. . . . In this instance, the parties would ordinarily have to pursue

a new breach of contract action to enforce the settlement agreement.

Paulucci v. Gen. Dynamics Corp., 842 So. 2d 797, 802 (Fla. 2003) (quoting MCR Funding v. CMG Funding Corp., 771 So. 2d 32 (Fla. 4th DCA 2000) (emphasis added)). Similarly in Dandar v. Church of Scientology Flag Service Organization, Inc., the Second District held that a voluntary dismissal with prejudice of a wrongful death action following the parties' execution of a confidential settlement agreement, divested the trial court of jurisdiction over the action. 190 So. 3d 1100, 1103 (Fla. 2nd DCA 2016). Because the parties did not obtain an order of dismissal incorporating the settlement agreement nor an order reserving jurisdiction to enforce terms of agreement, the court held that the trial court lacked jurisdiction to rule on a motion to enforce the settlement agreement. Id.

Similarly, in this case, the parties neither presented the settlement agreement to the trial court nor obtained an order of dismissal predicated upon the same; therefore, jurisdiction was divested once the parties entered their notices of voluntary dismissal. Because the trial court lacked jurisdiction to entertain or rule on Appellees' motion to enforce the settlement

agreement, we reverse the order below and remand this matter back to the trial court with instructions to enter a final order of dismissal.¹

REVERSED and REMANDED with instructions.

TRAVER and NARDELLA, JJ., concur.

¹ We note that neither party raised the issue of subject matter jurisdiction with the trial court, and accordingly, it had no opportunity to address the arguments Appellant raises before us. But parties cannot consent or agree to subject matter jurisdiction, and Appellant can raise this issue for the first time on appeal. See Dandar, 190 So. 3d at 1103 (citing 84 Lumber Co. v. Cooper, 656 So. 2d 1297, 1298 (Fla. 2d DCA 1994)).