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

VALENTINE EVELYN GE,

Appellant,

v. Case No. 5D21-262

SWEARINGEN & ASSOCIATES, INC., THE OAKS OF SUMMIT LAKE HOMEOWNERS ASSOCIATION, INC., RODOLPHUS JACKSON, DECEASED, SHARON D. CARTER AND SECRETARY OF HOUSING AND URBAN DEVELOPMENT,

Appellees.

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Opinion filed September 24, 2021

Nonfinal Appeal from the County Court
for Orange County,
Evellen H. Jewett, Judge.

David N. Glassman, of David N. Glassman, P.A., Orlando, for Appellant.

Bruce Hornstein, of Bruce Hornstein, P.A., Miami Beach, for Appellee, Swearingen & Associates, Inc.

No Appearance for Remaining Appellees.

EDWARDS, J.

Appellant, Valentine Evelyn Ge ("Ge"), appeals the county court's June 26, 2020 order ("2020 order") vacating its previous January 10, 2017 order ("2017 order") that, inter alia, disbursed surplus funds held by the Orange County Clerk of Court after an HOA lien foreclosure sale in which Ge significantly overpaid for the HOA's interest in the property. Appellee, Swearingen & Associates, Inc. ("S & A"), and Ge appealed the 2017 order to the circuit court which then sua sponte dismissed the appeal. Neither S & A nor Ge sought second-tier certiorari review in this Court of the dismissal of its appeal. Because the 2017 order was a final order, unaffected by S & A's dismissed appeal to the circuit court, the county court erred in entering the 2020 order. Accordingly, we reverse the 2020 order and remand this matter to county court for distribution of funds pursuant to the 2017 order.

Analysis

While the underlying facts are important to the parties and to our consideration of this case, a detailed recitation is unnecessary for the purpose of announcing and explaining our decision.

Following the foreclosure of the HOA's lien for unpaid assessments and fees, the county court rendered a final order in 2017 disbursing surplus funds remaining after the foreclosure sale. In its 2017 order, the county court ordered disbursements of those surplus funds to S & A, the HOA, and Ge.

The county court's 2017 order gave detailed instructions to the clerk of the court regarding the amount of money, specific payee on each check, and to whom the check should be delivered. Both S & A and Ge appealed to the circuit court.

When the circuit court sua sponte dismissed the appeal and neither side sought further appellate review, that had the effect of restoring the 2017 order to full effectiveness. "[W]here an appeal is dismissed, 'that dismissal leaves the trial court's judgment in the same status as if no appellate proceeding had ever been taken, and its effectiveness as an estoppel remains unimpaired.'" *Morley v. State*, 446 So. 2d 259, 260 (Fla. 1st DCA 1984); *accord Wander v. State*, 471 So. 2d 83, 84 (Fla. 5th DCA 1985). That has been the rule in Florida for quite some time. *See Collins v. Hall*, 157 So. 646, 648 (Fla. 1934) ("[W]hen this court then dismissed the writ of error, it left the original judgment of the circuit court in the same status as if no writ of error had ever been sued out."). That being the case, the 2017 order is res judicata, and the distributions it ordered must be carried out.

S & A does not contend that the county court had continuing jurisdiction in 2020 to alter, amend, or vacate the 2017 order, except pursuant to Florida Rule of Civil Procedure 1.540 if the 2017 order was void. In its 2020 motion to intervene and seeking disbursement, S & A did not assert that the 2017

judgment was void due to a lack of personal and subject matter jurisdiction. However, during the hearing held on its motion in 2020, it did raise those arguments.

S & A's claimed lack of personal jurisdiction cannot withstand scrutiny. Both S & A and Ge voluntarily and actively participated in the proceedings that led to entry of the 2017 order. Both filed motions seeking relief in the form of distribution of money held by the clerk, and both attended the evidentiary hearing preceding entry of the 2017 order.

"Personal jurisdiction can be conferred by consent." *Sowden v. Brea*, 47 So. 3d 341, 343 (Fla. 5th DCA 2010) (citing *Bush v. Schiavo*, 871 So. 2d 1012 (Fla. 2d DCA 2004)). "If a party takes some step in the proceedings which amounts to a submission to the court's jurisdiction, then it is deemed that the party waived his right to challenge the court's jurisdiction." *Bush*, 871 So. 2d at 1014 (internal quotation omitted). "[T]hose who participate in litigation by moving the court to grant requests materially beneficial to them, have submitted themselves to the court's jurisdiction." *Inglis v. Casselberry*, 137 So. 3d 389, 393 (Fla. 2d DCA 2013) (quotations omitted).

S & A's argument that the county court lacked subject matter jurisdiction to enter the 2017 order is likewise meritless. "Generally, 'a challenge to subject matter jurisdiction is proper only when the court lacks

authority to hear a class of cases, rather than when it simply lacks authority to grant the relief requested in a particular case.'" *Ricci v. Ventures Tr. 2013-I-H-R by MCM Cap. Partners, LLC*, 276 So. 3d 5, 7 (Fla. 4th DCA 2019) (quoting *In re Adoption of D.P.P.*, 158 So. 3d 633, 636–37 (Fla. 5th DCA 2014)). Obviously, county courts have jurisdiction to entertain this type or class of litigation, including distribution of any surplus funds on deposit with the clerk of the court from the court-ordered foreclosure sale. Therefore, there is no basis for the county court finding in the 2020 order that the 2017 order was void and vacating same pursuant to Florida Rule of Civil Procedure 1.540(b)(4).

Accordingly, we reverse the 2020 order that purported to vacate the 2017 order. We hold that under the circumstances of this case, the 2017 order remains in full force and shall be subject to enforcement according to its original terms. We remand this matter to the county court for further proceedings consistent with this opinion.

REVERSED and REMANDED.

WALLIS and SASSO, JJ., concur.