FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-1613

SAMIRA GJOKHILA,

Appellant,

v.

SHAYNE SEYMOUR,

Appellee.

On appeal from the Circuit Court for Duval County.
Maureen Horkan, Judge.

October 6, 2022

JAY, J.

Samira Gjokhila ("Mother") appeals the trial court's denial of her motion to set aside a final judgment under Florida Rule of Civil Procedure 1.540(b)(1). We affirm.

I.

Mother and Shayne Seymour ("Father") are the parents of two minor children. Based on a mediated settlement agreement, the parents agreed to the entry of a "Consent Final Judgment of Paternity and Related Relief." Pertinent to this appeal, the Consent Judgment established Father's child support obligation based on the parties' incomes and their overall financial health. The support calculations included an income adjustment that

reflected a future increase in Mother's work hours based on her expected switch to full-time employment. Given the predicted differential in Mother's income, the agreement reflected a proportional reduction in Father's child support payments.

Appended to the judgment was a signed consent that ratified the parties' settlement agreement. The consent included the following language:

> The parties . . . consent to the terms of this Consent Final Judgment by affixing their signatures hereon [and] . . . agree that this document shall be construed and enforceable as a Settlement Agreement whether entered by this Court or not. . . . ***They understand that the provisions to which they have agreed may be different than would have been ordered if they submitted their case to the Court, but they instead have freely and voluntarily agreed to be bound by this Agreement***. (Emphasis added).

Nearly seven months later, Mother moved to set aside the Consent Judgment.[1] The motion alleged that Mother's employer did not increase her working hours as contemplated by the parties' agreement. The motion also asserted that Mother's enhanced future income was erroneously "imputed" to her by the trial court. In support of these claims, Mother relied on Florida Rule 1.540(b)(1), which allows a trial court to set aside a judgment based on mistake, inadvertence, or surprise. Father responded by arguing that the Consent Judgment did not contain the kind of mistake, inadvertence, or surprise that is contemplated by Rule

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[1] Mother's supplemental petition and motion to set aside, which she filed through new counsel, proposed two alternative remedies: (1) modifying the Consent Judgment's child support provision based on a substantial and material change in circumstances or (2) setting aside the Consent Judgment based on mistake, inadvertence, or surprise. In accordance with an earlier order of this Court, the scope of this appeal is limited to the trial court's denial of Mother's motion to set aside the Consent Judgment. *See* Fla. R. App. P. 9.130(a)(5).

1.540(b)(1) or its counterpart, Florida Family Law Rule of Procedure 12.540(b)(1).

The trial court ultimately denied Mother's motion. The court's amended order stated:

> Mother has not established her claim of a mistake, inadvertence, or excusable neglect to allow the Court to set aside the Consent [Final Judgment]. The Court did not "impute" an income to Mother. The Court merely adopted . . . Mother's own assessment of the income she was capable of earning if she worked full time.

This appeal followed.

II.

Mother asserts that the Consent Judgment violates Florida's child support statute because it improperly imputes future income based on anticipated increases in her prospective earnings. *See* § 61.30(2), Fla. Stat. (setting forth guidelines for determining a parent's income for child support purposes). Specifically, she alleges that the trial court committed error when it imputed income assumptions to her that far exceeded her past pattern of wages. She argues that these earning assumptions were "completely speculative," and constituted "a mistake, inadvertence, or surprise" under Rule 1.540(b)(1).

A.

"The standard of review for an order denying a motion for relief from judgment under Florida Rule of Civil Procedure 1.540(b) is whether there has been an abuse of discretion." *Buckman v. Beighley*, 128 So. 3d 133, 134 (Fla. 1st DCA 2013) (quotation omitted). Florida Rule of Civil Procedure 1.540(b)(1) and Florida Family Law Rule of Procedure 12.540(b)(1) use the same material language:[2]

[2] Rule 12.540(b) says "on" such terms as are just rather than "upon" such terms as are just. In all other respects, the rules are verbatim. As such, "motions filed under rule 12.540(b) are

> (b) On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons:
>
> > (1) mistake, inadvertence, surprise, or excusable neglect [.]

Here, the heart of Mother's appeal is her argument that "the trial court's entry of the [Consent Final Judgment] was . . . erroneous as a matter of law." It is well-established in Florida that a court's legal errors—such as the one Mother alleges the trial court committed here—are not subject to correction under Rule 1.540(b)(1). *See Curbelo v. Ullman*, 571 So. 2d 443, 445 (Fla. 1990) ("Mistakes which result from oversight, neglect or accident are subject to correction under rule 1.540(b)(1). However, judicial error such as a mistaken view of the law is not one of the circumstances contemplated by the rule.") (quotation omitted); *Bland v. Mitchell*, 245 So. 2d 47, 48 (Fla. 1970) (the "denial (or granting) of a motion to vacate a final judgment cannot on appeal bring up for review the merits of the final judgment sought to be vacated."); *Theodorides v. Theodorides*, 201 So. 3d 141, 144 (Fla. 3d DCA 2015) (Rule 1.540(b) does not exist to "remedy errors in the **substance** of what is decided by the order or judgment.") (quotation omitted); *Bortz v. Bortz*, 675 So. 2d 622, 624 (Fla. 1st DCA 1996) (Rule 1.540(b) is not a substitute for a motion for rehearing or for direct appellate review); *see, e.g.*, *Constant v. Tillitson*, 214 So. 2d 91, 93 (Fla. 1st DCA 1968) ("Even if appellee's contention were well founded . . . the alleged mistake by the county judge in the initial order rendered by him would have been one of law and not of fact, which is not subject to correction under the theory of inadvertence or mistake as permitted by the rules of civil procedure.") (citing Rule 1.540).

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governed by the body of law applicable to rule 1.540(b)." *Sanchez v. Sanchez*, 285 So. 3d 969, 971 n.1 (Fla. 3d DCA 2019) (citing *Macar v. Macar*, 803 So. 2d 707, 709 n.4 (Fla. 2001)).

Recently, the United States Supreme Court addressed whether Federal Rule of Civil Procedure 60(b)(1)[3]—the federal corollary to Florida's Rule 1.540(b)(1)—encompasses a trial court's legal errors as "mistakes" that are correctable under that rule. *See Kemp v. United States*, 142 S. Ct. 1856 (2022). The Court held that the term "mistake" as used in Rule 60(b)(1) can include a judge's errors of law.[4] *Id.* at 1858. We are mindful of the textual overlap between the federal and Florida rules, and therefore, aware that *Kemp*'s holding could have future implications on how Florida courts interpret Rule 1.540(b)(1). However, we need not consider that question today because even if Rules 1.540(b)(1) and 12.540(b)(1) allowed a Florida court to set aside a final judgment based on a court's legal error, Mother still would not be entitled to relief.

B.

First, contrary to Mother's argument, we are not persuaded that the trial court erred when it entered the Consent Judgment. Consent judgments are common in family law cases. *See Eaton v. Eaton*, 238 So. 2d 166, 168 (Fla. 4th DCA 1970) ("it is not unusual for parents who become involved in a divorce suit to enter into an agreement pertaining to the custody and support of the minor child or children."); *Sedell v. Sedell*, 100 So. 2d 639, 642 (Fla. 1st DCA 1958) ("Separation agreements . . . usually provide for . . . support and custody of children; and for settlement of property rights existing between the parties. When such agreements are fairly

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[3] Federal Rule 60(b)(1) provides that a court "may relieve a party or its legal representative from a final judgment, order, or proceeding" because of "mistake, inadvertence, surprise, or excusable neglect [.]"

[4] While the *Kemp* Court held that judicial errors can be corrected as "mistakes" under Rule 60(b)(1), the Court also noted that litigants must file Rule 60(b) motions "within a reasonable time," and that federal courts have found Rule 60(b)(1) motions to be untimely when the moving party should have challenged the alleged legal error sooner (such as in a timely appeal). *See id.* at 1864.

entered into and are not tainted by fraud, overreaching or concealment, they will be respected by the courts."). Indeed, so long as the child's best interests are served, parents are free to enter into agreements that determine child support obligations. *See Lester v. Lester*, 736 So. 2d 1257, 1259 (Fla. 4th DCA 1999); *Brock v. Hudson*, 494 So. 2d 285, 287 n.3 (Fla. 1st DCA 1986).

Here, after going through mediation, the parties agreed to a monthly support obligation for Father—$374.04 for three months and then $281.77 per month thereafter. The parties calculated these payments using the Guidelines Worksheet and relied on income figures that were supplied by both parties. As part of this process, Mother provided a reasonable assessment of her future earning capacity. There is no allegation of any misrepresentation or fraud. Thus, it was lawful for the trial court to ratify the parties' agreement. *See Ballantyne v. Ballantyne*, 666 So. 2d 957 (Fla. 1st DCA 1996); *Malone v. Malone*, 637 So. 2d 76, 77 (Fla. 5th DCA 1994).

Also, the trial court did not "impute" income to Mother. Imputation is a remedy that a court imposes when a party is voluntarily suppressing his or her earnings. It is used "[t]o counteract the tendency of parties to under-report or actually suppress their own incomes[.]" Steven S. Stephens, 23 Fla. Prac., *Florida Family Law* § 13:11 (2021). "True imputation occurs when the party is earning less than . . . she could earn using best reasonable efforts." *Id.* That is, "[a] higher level of income could exist, but due to a deliberate choice by the party, it does not." *Id.*; *see also Swain v. Swain*, 932 So. 2d 1214, 1215 (Fla. 1st DCA 2006). Here, the court accepted an earnings level that the parties stipulated to in their mediated settlement agreement. That anticipated income level was based on a reasonable estimate by Mother. The court's acceptance of that estimated amount was not imputation.

C.

Second, even if it had been error for the trial court to enter the Consent Judgment, Mother induced the error by asking the court to ratify the parties' mediated agreement.

Mother negotiated the agreement with Father and asked the court to enter a judgment memorializing the parties' settlement. The agreement included Mother's stipulation as to her anticipated future income. Several months later, Mother moved to set aside the Consent Judgment, arguing that the court should have refused to approve the agreement that Mother asked the court to accept. In doing so, Mother claimed that the court failed to protect her from her own commitment—a commitment that she "freely and voluntarily agreed to be bound by." Based on these facts, it was reasonable for the court to deny Mother's Rule 1.540(b)(1) motion.

On this point, federal authorities are helpful. *See Wilson v. Clark*, 414 So. 2d 526, 531 (Fla. 1st DCA 1982) ("Because the Florida Rules of Civil Procedure are modeled after the Federal Rules of Civil Procedure, federal decisions are highly persuasive in ascertaining the . . . operative effect of various provisions of the rules."). Federal courts have repeatedly held that a trial court should not grant a motion to set aside a judgment when the judgment was brought about by the movant's freely negotiated agreement or stipulation. *See Ackermann v. United States*, 340 U.S. 193, 198 (1950) ("There must be an end to litigation someday, and free, calculated, deliberate choices are not to be relieved from [under Rule 60(b)]."); *Andrulonis v. United States*, 26 F.3d 1224, 1235 (2d Cir. 1994) ("Because [a movant's] hindsight assessment of its bargain is not a permissible ground for Rule 60(b) relief, we hold that the district court did not abuse its discretion in denying the motion."); *United States v. Bank of N.Y.*, 14 F.3d 756, 759 (2d Cir. 1994) ("When a party makes a deliberate, strategic choice to settle, she cannot be relieved of such a choice merely because her assessment of the consequences was incorrect."); *Nemaizer v. Baker*, 793 F.2d 58, 59–60, 62 (2d Cir. 1986) ("The legal consequences of a stipulation incorporated in a court order may not be undone simply because, with the benefit of hindsight, stipulating turns out to have been an unfortunate tactic. . . . Mere dissatisfaction in hindsight with choices deliberately made . . . is not grounds for finding the mistake, inadvertence, surprise or excusable neglect necessary to justify Rule 60(b)(1) relief."); *accord Good Luck Nursing Home, Inc. v. Harris*, 636 F.2d 572, 577 (D.C. Cir. 1980) ("a party that has stipulated to certain facts . . . cannot ordinarily avail itself on rule 60(b) after an adverse judgment has been handed down.").

This proposition—that a court does not abuse its discretion by refusing to set aside a consent judgment that a party freely negotiated and asked the court to enter—is analogous to the doctrine of invited error. "Under the doctrine of invited error, a party cannot successfully complain . . . of error for which he is himself responsible, or of rulings that he has invited the trial court to make." *Alexander v. Quail Pointe II Condo.*, 170 So. 3d 817, 822 (Fla. 5th DCA 2015) (quotation omitted). In such circumstances, fault is not attributable to the trial court; instead, it is placed upon the party or attorney who led the court into the error. *Id.*

Here, Mother alleges the Consent Judgment is unlawful because it contains a graduated income provision. However, Mother agreed to that provision, which is based on a reasonable assumption as to her future income. Mother contends that the trial court erred when it ratified the agreement containing that income assumption—an agreement that she asked the court to approve. That is a bridge too far. The invited error doctrine precludes appellate relief under these circumstances. *See, e.g.*, *Beckstrom v. Beckstrom*, 183 So. 3d 1067, 1069 (Fla. 4th DCA 2015) ("[T]he former husband agreed to purchase a $100,000 life insurance policy and included such a provision in his proposed final judgment. He cannot now complain that the trial court erred in including such a provision in the final judgment."); *Tate v. Tate*, 91 So. 3d 199, 204 (Fla. 2d DCA 2012) (in an equitable distribution case, to whatever extent the trial court's treatment of the parties' credit card liabilities was erroneous, the appellant invited the error by proposing that treatment in her proposed final judgment); *Mohammad v. Mohammad*, 371 So. 2d 1070, 1072 (Fla. 1st DCA 1979) ("The trial court simply accepted the offer of the appellant [to pay for his children's college expenses] and he may not now be heard to urge that the court erred in doing so. If such provision was error, then it was invited, induced by the appellant and he may not be heard to complain here.").

III.

Accordingly, we hold that the trial court did not abuse its discretion when it denied Mother's motion to set aside the Consent Judgment under Rule of Civil Procedure 1.540(b)(1).

AFFIRMED.

MAKAR and NORDBY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

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