NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

JAMES S. WEBB, Appellant, v. PEGGY J. WEBB, Appellee.	)	Case No. 2D19-3089

Opinion filed August 28, 2020.

Appeal from the Circuit Court for Collier County; Scott H. Cupp, Judge.

Michael M. Shemkus and E.F. Murphy of Long, Murphy & Zung, P.A., Naples, for Appellant.

Mark V. Silverio and Parker R. Hall of Silverio & Hall, P.A., Naples, for Appellee.

LUCAS, Judge.

James Webb (the Former Husband) appeals from a final judgment that awarded Peggy Webb (the Former Wife) nearly one million dollars in arrearage arising from the nearly twenty-year-old judgment that had dissolved the parties' marriage and

incorporated their marital settlement agreement.[1] The Former Husband maintains that the Former Wife's motion to enforce, which precipitated the judgment he now appeals, was barred by the statute of limitations. The question we must decide is whether enforcement of a marital settlement agreement's equitable distribution, when incorporated into a final judgment that reserved jurisdiction for its enforcement, is generally subject to the five-year statute of limitations governing written contracts or the twenty-year statute of limitations for enforcing judgments. The circuit court deemed it was the latter, and so do we. We write to explain why.

In March of 1997, Mr. and Ms. Webb entered into a marital settlement agreement that divvied up a number of assets, debts, and business interests. Among the provisions in the agreement was one that required the Former Husband to pay the Former Wife $487,060 by either (1) a lump sum payment that would be due on January 1, 2001, or (2) five principal payments of $97,412 plus interest (set at the rate of prime plus one). Under the second option, each of the five principal and interest payments would become due "on December 31 of each year beginning December 31, 2001."

The Webbs' marital settlement agreement provided that it would be incorporated into a final judgment that would dissolve their marriage. And, on April 25, 1997, it was. The circuit court entered a final judgment (the Divorce Judgment) that dissolved the parties' marriage, fully "approved and incorporated . . . by reference" the

[1]The term "marital settlement agreement" is used in this opinion to reflect the modern nomenclature for the kind of contract the parties executed. The actual agreement Mr. and Ms. Webb entered into, dated March 28, 1997, was entitled "Property Settlement and Marital Rights Agreement."

marital settlement agreement, and, as is not uncommon, reserved jurisdiction to enforce the Divorce Judgment.

Time went by. The deadlines all passed, and the Former Husband failed to pay any part of the provision to the Former Wife. More time went by, a good deal more. And still, the Former Husband failed to pay what the provision required.[2] On April 24, 2017, one day before the Divorce Judgment's twentieth year, the Former Wife filed a sworn motion to enforce the Divorce Judgment.

The matter came before the circuit court in June 2019. The principal issue in contention was which statute of limitations applied to the Former Wife's motion to enforce. The circuit court concluded it was twenty years under section 95.11(1), Florida Statutes (2017), because her motion to enforce was "an action on a judgment or decree of a court of record in this state." In so ruling, the court rejected the Former Husband's argument that section 95.11(2)(b)'s five-year limitation on actions on written agreements should govern her claim. The court determined that the Former Husband had not complied with the Divorce Judgment. It then entered a separate money judgment (the Arrearage Judgment) in the amount of $997,160.46, which reflected the agreed upon principal amount in the marital settlement agreement and accrued interest (at the rate

[2]According to the Former Wife's filings, the Former Husband repeatedly acknowledged his obligation, asked the Former Wife to "hold off" suing him, and promised to pay her once his business affairs allowed it. She further stated that he made a partial payment of $20,000 on May 5, 2017, and another on March 23, 2018, towards the provision. The Former Husband has not pressed his laches defense as an argument in this appeal, and so we make no comment upon that issue.

set forth in the agreement).[3] In this appeal, the Former Husband continues his argument that the Former Wife's claim was barred by section 95.11(2)(b).

"Generally, 'the issue of whether [a] claim is barred by the statute of limitations is a question of law subject to de novo review.' " Lexon Ins. Co. v. City of Cape Coral, 238 So. 3d 356, 358 (Fla. 2d DCA 2017) (alteration in original) (quoting Access Ins. Planners, Inc. v. Gee, 175 So. 3d 92 v1, 924 (Fla. 4th DCA 2015)). In determining which potential statute of limitations ought to apply to a litigant's claim we must be mindful that statutes of limitations do not adjudicate the merits of substantive rights, but are "in essence, a limitation on the availability of a remedy." Nat'l Auto Serv. Ctrs., Inc. v. F/R 550, LLC, 192 So. 3d 498, 509 (Fla. 2d DCA 2016). "[W]here there is a reasonable doubt as to legislative intent, the preference is to allow the longer period of time." Baskerville-Donovan Eng'rs, Inc. v. Pensacola Exec. House Condo. Ass'n., 581 So. 2d 1301, 1303 (Fla. 1991); cf. Tehrani v. 1st Source Ins., Inc., 232 So. 3d 499, 501-02 (Fla. 2d DCA 2017) (applying Indiana law and observing that "[w]here either of two statutes of limitations may apply to a claim, any doubt should be resolved in favor of applying the longer limitation" (alteration in original) (quoting Wells v. Stone City Bank, 691 N.E. 2d 1246, 1249 (Ind. Ct. App. 1998))).

Although no Florida court has made a definitive pronouncement on this precise point, our case law seems to have leaned in the direction of the circuit court's ruling. For example, in Preudhomme v. Bailey, 211 So. 3d 127, 133 (Fla. 4th DCA

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[3]The Former Husband also challenges the circuit court's calculation of interest in the Arrearage Judgment on much the same grounds that he challenges the court's ruling on his statute of limitations defense. For the reasons stated in this opinion, we do not find merit in this argument either and so affirm that part of the circuit court's judgment without further comment.

2017), the Fourth District reversed a trial court's dismissal of a former wife's civil complaint against her former husband for fraudulent conveyance, accounting, conversion, and unjust enrichment that appeared to stem from the parties' prior dissolution judgment. Rejecting the former husband's argument that the four-year statute of limitations ran from the date of the judgment's entry, the Preudhomme court remarked "the statute of limitations for an action to enforce a judgment is twenty years." Id. And in Janovic v. Janovic, 814 So. 2d 1096 (Fla. 1st DCA 2002), the First District had occasion to observe that "[w]here a party only seeks to receive what is contemplated by the property settlement agreement incorporated into the final dissolution judgment, the relief sought is enforcement rather than modification." Id. at 1101 (citing Work v. Provine, 632 So. 2d 1119, 1121 (Fla. 1st DCA 1994)).

We agree with what was implicit in these comments and now make it explicit. When a marital settlement agreement is incorporated into a final judgment and the court entering the judgment retains jurisdiction to enforce it, enforcement of the agreement through the judgment is generally subject to section 95.11(1)'s twenty-year statute of limitations. When considering which statute of limitations should apply, it is the nature of the relief a party seeks—in this case, enforcement of a judgment—that forms an essential query. See Nat'l Auto, 192 So. 3d at 509. Here, the Former Wife's motion was entitled "Motion to Enforce Final Judgment," and it asked the court to enforce the Divorce Judgment. The fact that the precise provision she sought enforcement of was found within an agreement that was incorporated by reference into the Divorce Judgment did not in any way eclipse her ability to enforce that judgment as a judgment. See Davis v. Fisher, 391 So. 2d 810, 811 (Fla. 5th DCA 1980) ("Because

the property settlement agreement was ratified by the court and incorporated in the judgment, it rises to the dignity of that judgment . . . ."); Mendel v. Mendel, 257 So. 2d 293, 296 (Fla. 3d DCA 1972) ("When the agreement which the parties to this cause had entered into was made a part of the divorce judgment by incorporation therein by reference, the provisions of the agreement . . . became those of the judgment."). Indeed, the Florida Supreme Court has explained,

> when a court incorporates a settlement agreement into a final judgment or approves a settlement agreement by order and retains jurisdiction to enforce its terms, the court has the jurisdiction to enforce the terms of the settlement agreement even if the terms are outside the scope of the remedy sought in the original pleadings.

Paulucci v. Gen. Dynamics Corp., 842 So. 2d 797, 803 (Fla. 2003).

In so holding, we must acknowledge that the courts of our sister states have not been of one mind on this issue. Compare Peabody v. DiMeglio, 856 N.W.2d 245, 249 (Mich. Ct. App. 2014) (holding that "because plaintiff and the decedent's property settlement, which plaintiff seeks to enforce, was expressly incorporated by reference into the divorce judgment, the" statute of limitations for enforcement of judgments, not contracts, applied), and Moseley v. Smith, 180 So. 3d 667, 673 (Miss. Ct. App. 2014) (holding that contempt action was not for breach of marital settlement agreement, but rather an action to enforce a judgment, and therefore the statute of limitations for the enforcement of judgments applied), and Pettitt v. Pettitt, 704 S.W.2d 921, 923 (Tex. Ct. App. 1986) (holding that, "[w]hile property settlement agreements incorporated in divorce decrees are subject to interpretation according to the laws relating to contracts, '[o]nce the agreement of the parties has been approved by the court and made a part of its judgment, the agreement is no longer merely a contract

between private individuals but is the judgment of the court,' " and therefore the statute of limitations for enforcement of judgments applied (second alteration in original) (quoting Ex parte Gorena, 595 S.W.2d 841, 844 (Tex. 1979))), with Meadors v. Meadors, 946 S.W.2d 724, 725 (Ark. Ct. App. 1997) (holding that a contempt motion on a settlement agreement incorporated into a final judgment was not governed by the statute of limitations for judgments because "the agreement was an independent contract, and while it was incorporated into the decree, it did not, under settled law, merge into the decree"), and MacMillan v. Schwartz, 250 P.3d 1213, 1218 (Ariz. Ct. App. 2011) (holding that when a property settlement is incorporated but not merged into a divorce decree, "the agreement retains its independent contractual status and is subject to the rights and limitations of contract law"); and McMahon v. McMahon, 612 A.2d 1360, 1363 (Pa. Super. Ct. 1992) ("The divorce decree states on its face that the agreement is incorporated by reference but does not merge with it. As such, we cannot interpret this agreement as an order of court . . . ."). The Former Husband urges us to follow the latter course of case law here. We will conclude by addressing his argument and then explain why we must respectfully reject it.

The Former Husband maintains that unless the marital settlement agreement was merged into the Divorce Judgment (as opposed to merely incorporated), the agreement's terms could not be enforced as a judgment, but only as a contract. This argument is built upon two premises, both of which may be correct, followed by a logical assertion that is clearly not.

First, as the Former Husband points out, when a settlement agreement is merged (as opposed to incorporated) into a final judgment, the provisions in the

agreement cease to have an independent legal existence. That may be correct. See 25A Fla. Jur. 2d Family Law § 661 (2020) ("Where the effect of the court's approval and ratification of a separation agreement is to merge the agreement into the final judgment, the agreement loses its independent effectiveness and is superseded by the decree, thus judgment remedies, rather than contract remedies, are then available for its enforcement."); cf. Aluia v. Dyck-O'Neal, Inc., 205 So. 3d 768, 774 (Fla. 2d DCA 2016) ("The final judgment is the instrument on which the deficiency action is based because the note and mortgage merge into the foreclosure judgment . . . ."); Zlotzvier v. Zlotzvier, 83 A.2d 429, 431 (Pa. Super. Ct. 1951) (holding that where a husband and wife entered into a separation agreement, and where the wife subsequently secured a final judgment for specific performance of that agreement, neither party could, after the judgment became final, sue on the agreement, which had been supplanted by and merged with the final judgment). Second, since a merged agreement loses its independent legal existence, the agreement's provisions can only be enforced through the judgment into which they were merged. That may also be correct. Cf. Whitehurst v. Camp, 699 So. 2d 679, 683-84 (Fla. 1997) (holding that, under the doctrine of merger, it was proper for the trial court to impose a postjudgment interest rate of eight percent rather than ten percent interest rate established in underlying agreement); Prod. Credit Ass'n of Madison v. Laufenberg, 420 N.W.2d 778, 779 (Wis. Ct. App. 1988) ("By operation of merger, upon entry of judgment, the contract sued upon loses all of its vitality and ceases to bind the parties to its execution. . . . 'In its place is substituted a new cause of action on the judgment . . . .' " (quoting Waukesha Concrete v. Capitol Indem., 379 N.W.2d 333, 379 (Wis. Ct. App. 1985))). Thus, in the Former Husband's view, it

necessarily follows that if an agreement was *not* merged into a final judgment it could *not* be enforced through a final judgment, even if the agreement was incorporated by reference. That is incorrect. In fact, it is a textbook example of the inverse fallacy (or denying the antecedent).

In the traditional "If *P* then *Q*" formulary, the Former Husband's premises would be stated as follows: "(*P*) If an agreement is merged into a judgment, then (*Q*) the agreement must be enforced as the judgment." The inverse—not *P*, therefore, not *Q*—would be as follows: "If an agreement is not merged into a judgment then the agreement must not be enforced as a judgment." That is the argument the Former Husband brings before us. But in logic, the mere negation of an antecedent, by itself, is not a valid form of proof, because while the inverse of a true proposition might also be true, it does not have to be, and so it proves nothing on its own. Cf. Capitol Records, Inc. v. Naxos of Am., Inc., 372 F.3d 471, 480 (2d Cir. 2001) (characterizing an appellee's argument as "an example of the logical fallacy of assuming that the inverse of a proposition is true" (citing Raymond J. McCall, Basic Logic 125-26 (2d ed. 1952))); Merritt v. Mackey, 827 F.2d 1368, 1376 (9th Cir. 1987) ("But it is a well known principle of logic that a statement need not be true merely because its inverse is true.").[4]

So, too, here, the inversion of the proposition that an agreement merged into a final judgment must be enforced through that judgment is fallacious because it does not address, much less foreclose, circumstances that Florida law would clearly allow. Under the law, a marital settlement agreement's provisions, when incorporated

[4]To illustrate, take the proposition, "If Matt lives in Tampa, he lives in Florida." The inverse—"If Matt does not live in Tampa, he does not live in Florida"—can easily be false. Matt might live in Tallahassee or Gainesville or South Pasadena.

into a judgment that dissolves a marriage and reserves jurisdiction for enforcement, can be enforced, either through the agreement or through the judgment. See Paulucci, 842 So. 2d at 803 (holding that courts have jurisdiction to enforce settlement agreements where the court has either incorporated the agreement into the final judgment or approved the agreement and retained jurisdiction to enforce its terms); Kozel v. Kozel, No. 2D15-4364, 2019 WL 6333806, at *7 (Fla. 2d DCA Nov. 27, 2019) (explaining the distinction between enforcing a settlement agreement and a judgment and holding that "when a court orders compliance with the terms of [an incorporated] settlement agreement—i.e., when it requires a party to perform an obligation stated in the agreement—it is engaged in proper postjudgment enforcement over which it has continuing jurisdiction"); Dawkins v. Dawkins, 172 So. 2d 633, 634 (Fla. 2d DCA 1965) (noting that "fair and equitable agreements which are not violative of public policy may be incorporated into a divorce decree"); cf. Peabody, 856 N.W.2d at 250 (holding that a settlement agreement that had been incorporated by reference into a final judgment could be enforced as either a contract or a judgment because "[t]he clear intent of parties entering into such an agreement would be to make the agreement enforceable both as a court order and as an ordinary contract").

The mere fact that a marital settlement agreement retains some legal existence apart from a dissolution judgment that incorporates it does not denude the judgment of its efficacy. The Former Husband has not articulated any reason why it should. Nor do any of the case authorities he has marshalled offer any clue. We can think of no reason why the continued legal existence of a marital settlement agreement that expressly authorized its incorporation into a court judgment should deprive a party

of the ability to enforce the resulting judgment, *qua* judgment, where, as here, the court both incorporated the agreement and reserved jurisdiction to enforce its terms. For us to hold otherwise would require us to depart from settled Florida precedent, diminish the family court's continuing jurisdiction to enforce its judgments, and deprive these parties of the benefit of their bargain. We decline the invitation to do so and affirm the circuit court's judgment in all respects.

Affirmed.

CASANUEVA and SMITH, JJ., Concur.