

affirm the order on appeal to the extent it denies Ms. Schlechter's motion but reverse to the extent it grants Luthy Family LLC's motion to enforce the settlement agreement.

FACTUAL BACKGROUND AND PROCEEDINGS BELOW

Ms. Schlechter filed this action against Community Housing Trust of Sarasota County, Inc. (CHT), and Luthy Family LLC (Luthy), raising two counts for declaratory judgment and one count for specific performance. The subject matter of the lawsuit concerns interests in real property in Sarasota.

After two years of litigation, the parties engaged in mediation, which resulted in all parties entering into a Mediated Settlement Agreement (MSA). One term of the MSA required the parties to execute a "Stipulation for an Order of Dismissal with Prejudice." All parties thereafter executed and submitted to the trial court a "Joint Stipulation for Entry of an Order of Dismissal with Prejudice." The one-sentence stipulation states simply that the parties "hereby stipulate to the entry of an Order of the Court, dismissing this matter, with prejudice, and with each side to bear their own attorney's fees and costs."

A proposed order approving the stipulation and dismissing the case with prejudice was also submitted. The ruling in the order reads in full: "The stipulation is approved, and this matter is hereby dismissed with prejudice, with all parties to bear their own attorney's fees and costs." The order does not reserve jurisdiction to the trial court for any purpose. The trial court signed the proposed order as submitted.

Neither the stipulation nor the order mentions the existence of the MSA or otherwise incorporates the agreement. In fact, our record does not reflect that the trial court was presented with the MSA at all before it entered the order dismissing the case

with prejudice.

Less than a month after the dismissal order was entered, Ms. Schlechter filed a "Motion to Set Aside Mediated Settlement Agreement," citing rule 1.540(b) and attaching the MSA. The motion alleges that "[e]ither through mutual mistake, or impossibility of performance, the [MSA] cannot be performed through no fault of the parties and should be set aside." The stated basis was that certain Federal Housing Administration rules, unknown to the parties at the time they entered into the MSA, prevented performance. The motion also asserts, without further elaboration, that "[i]f there exists fraud in the inducement, then the [MSA] should be set aside." Luthy filed a response opposing Ms. Schlechter's 1.540(b) motion.

Luthy also filed its own motion "to Enforce Settlement Agreement and to Issue Writ of Possession Within 90 Days of Execution of Settlement Agreement." Luthy's motion does not cite to rule 1.540(b) or any other legal authority. Instead, it simply asserts that the MSA's terms should be enforced.

The trial court held a nonevidentiary hearing on the competing motions. Despite having filed the rule 1.540(b) motion, Ms. Schlechter's counsel questioned the court's jurisdiction to rule on either motion in light of the dismissal with prejudice. The trial court reviewed the dismissal order and acknowledged that "sometimes the order will say the Clerk is directed to close the file but the Court retains jurisdiction to enforce settlement, and it doesn't here." Luthy's counsel asserted that the court "always" has jurisdiction to enforce a settlement agreement, but maintained that the court lacked jurisdiction to set aside the MSA here.

The court reserved ruling on the motions and issued its order the following

day. The order granted Luthy's motion to enforce the MSA and denied Ms. Schlechter's motion to set it aside. This appeal followed.

ANALYSIS

Ms. Schlechter contends that the trial court lacked jurisdiction to rule on the competing postdismissal motions because the case had previously been dismissed with prejudice. She argues in the alternative that, if the court did have jurisdiction, it should have granted her motion and denied Luthy's.

We conclude that the court had limited jurisdiction to consider Ms. Schlechter's rule 1.540(b) motion. But because the motion did not establish a colorable entitlement to relief, the trial court correctly denied it without an evidentiary hearing. By contrast, the trial court lacked jurisdiction to order enforcement of the settlement agreement and reversibly erred in doing so.

I. Ms. Schlechter's Rule 1.540(b) Motion

"[V]oluntary dismissals . . . are acts of finality that deprive the trial court of jurisdiction over the dismissed case." Pino v. Bank of N.Y., 121 So. 3d 23, 32 (Fla. 2013) (citing Randle-Eastern Ambulance Serv., Inc. v. Vasta, 360 So. 2d 68 (Fla. 1978)). The only recognized exception to this rule of "absolute finality" is "the existence of grounds justifying relief under rule 1.540(b)." Cottrell v. Taylor, Bean & Whitaker Mortg. Corp., 198 So. 3d 688, 690-91 (Fla. 2d DCA 2016) (quoting Miller v. Fortune Ins. Co., 484 So. 2d 1221, 1223 (Fla. 1986)). As this court has explained:

Because a trial court necessarily has jurisdiction to determine whether it has jurisdiction, the filing of a rule 1.540(b) motion after a case has been voluntarily dismissed vests the trial court with the limited authority to determine whether the grounds asserted by the movant justify relief under the rule.

Id. at 691.

If the motion sets forth a colorable entitlement to relief, then the trial court should conduct an evidentiary hearing to determine whether such relief should be granted. Id. However, "where the allegations of a rule 1.540(b) motion do not give rise to a right to relief, an evidentiary hearing on those allegations is not required and the trial court's jurisdiction is limited to the entry of an order denying the motion." Id.

Ms. Schlechter's motion was timely and cited rule 1.540(b). Thus, the trial court was vested "with the limited authority to determine whether the grounds asserted" justified relief under rule 1.540(b). Id. However, the relief Ms. Schlechter sought in her motion is not cognizable under rule 1.540(b), which "authorizes motions seeking relief only from 'a final judgment, decree, order, or proceeding.'" Bennett's Leasing, Inc. v. First St. Mortg. Corp., 870 So. 2d 93, 97 (Fla. 1st DCA 2003) (first emphasis added) (quoting Fla. R. Civ. P. 1.540(b)). Ms. Schlechter's rule 1.540(b) motion does not seek relief from any judgment, decree, order, or proceeding. It does not mention, much less seek relief from, the dismissal order. Instead, it expressly asks the court to set aside an agreement between the parties, which had not been presented to the trial court and was not mentioned in any of the dismissal papers.

Even if the motion had sought relief from the dismissal order, it would not have presented a colorable entitlement to relief because rule 1.540(b)(1) is not an appropriate vehicle for a party to vacate a "dismissal of a suit based on its assertion that investigation conducted after the dismissal notice was filed revealed information the party wished it had known before filing it." Cottrell, 198 So. 3d at 693. The basis for relief alleged in Ms. Schlechter's rule 1.540(b) motion was that "none of the parties to

the Agreement were aware that the FHA lending regulations would bar the Luthy Mortgage." As this type of mistake is not a basis for relief under rule 1.540(b), Ms. Schlechter's rule 1.540(b) motion failed to set forth a colorable entitlement to relief and was properly denied.

II. Luthy's Motion to Enforce the MSA

Ms. Schlechter also argues that the trial court erred by granting Luthy's motion to enforce the MSA. She argues that, by virtue of the prior dismissal with prejudice—which did not incorporate the MSA or reserve any jurisdiction to the trial court—the court lacked jurisdiction to enforce the agreement. We agree.

As set forth above, when the trial court entered the parties' proposed order dismissing the case with prejudice, the court lost jurisdiction over the dismissed case. See Pino, 121 So. 3d at 32. Unlike Ms. Schlechter's motion, Luthy's motion to enforce the MSA did not cite to or purport to seek relief under rule 1.540. Luthy's motion thus falls outside the "one exception" to the "absolute finality" of a voluntary dismissal. Cottrell, 198 So. 3d at 690 (quoting Miller, 484 So. 2d at 1223).

Moreover, neither of the conditions for enforcing a settlement agreement has been met. "[A] court has jurisdiction to enforce a settlement agreement where the court has either incorporated the agreement into a final judgment or approved the agreement by order and retained jurisdiction to enforce it[s] terms." Paulucci v. Gen. Dynamics Corp., 842 So. 2d 797, 799 (Fla. 2003). Here, there was no final judgment below because the case was voluntarily dismissed with prejudice by order. And the order accepting the parties' stipulation neither referred to the MSA nor retained jurisdiction for any reason. Indeed, the record does not establish that the MSA or its

terms were ever presented to the trial court before the postdismissal proceedings.

Accordingly, the trial court did not have jurisdiction to enforce the MSA.

We affirm the order on appeal to the extent it denies Ms. Schlechter's rule 1.540(b) motion but reverse to the extent the order grants Luthy's motion to enforce the settlement agreement.

Affirmed in part, reversed in part, and remanded for further proceedings.

VILLANTI and SMITH, JJ., Concur.