

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

MARK T. PULTE, as personal representative
of the Estate of William J. Pulte, deceased,

Appellant,

v.

THE NEW COMMON SCHOOL FOUNDATION,

Appellee.

No. 2D20-3206

January 28, 2022

Appeal from the Circuit Court for Collier County; Lauren L. Brodie,
Judge.

Christopher D. Donovan of Roetzel & Andress, LPA, Naples, for
Appellant.

Kelly O'Keefe and Julie Fishman Berkowitz of Stearns Weaver Miller
Weissler Alhadoff & Sitterson, P.A., Tallahassee and Miami, for
Appellee.

ROTHSTEIN-YOUAKIM, Judge.

Mark T. Pulte (Pulte or Personal Representative), as personal
representative of his father's estate, appeals from the probate
court's order granting The New Common School Foundation's (the

Foundation) "Motion to Enforce Order Approving Settlement and Settlement Agreement." Because we conclude that the probate court lacked jurisdiction to enforce the settlement agreement, we reverse.

Developer and philanthropist William J. Pulte was the largest charitable donor to the Foundation, which ran Cornerstone Schools, a charter-school organization that provides an alternative to public education for low-income students in and around Detroit. Through the William J. Pulte Trust (the Trust), he pledged donations and guaranteed loans totaling millions of dollars to the Foundation.

After William J. Pulte's death in March 2018, his son, Pulte, was named personal representative of his estate (the Estate). When the Foundation filed timely creditor claims in the probate case with respect to the decedent's charitable pledges and loans, the Personal Representative objected, triggering the Foundation's deadline to independently bring suit. *See* § 733.705(5), Fla. Stat. (2018).

Ultimately, however, the Estate and the Foundation—along with the Trust, of which Pulte also is a trustee—negotiated what was, in effect, a presuit settlement of all claims. Pursuant to the

terms of the settlement agreement (the Agreement), the Personal Representative petitioned the probate court to approve the Agreement for the purpose of relieving him of any liability or responsibility for the compromised claims, as provided under section 733.708, Florida Statutes (2018).¹

The probate court entered an order (the Approval Order) finding the Agreement in the best interest of the Estate and its interested persons and authorizing the Personal Representative to enter into it. The Approval Order neither incorporated the Agreement nor reserved jurisdiction to enforce the Agreement.²

¹ That section provides, in part:

When a proposal is made to compromise any claim, whether in suit or not, by or against the estate of a decedent or to compromise any question concerning the distribution of a decedent's estate, the court may enter an order authorizing the compromise if satisfied that the compromise will be for the best interest of the interested persons. The order shall relieve the personal representative of liability or responsibility for the compromise.

² The order provided, in pertinent part:

1. The time for filing objections to claims against the Estate of William J. Pulte, also known as William J. Pulte, III, has expired.
2. Proper notice of the settlement agreement has been given to all interested persons.

Not long thereafter, a dispute arose, and the Trust ceased all payments to the Foundation. The Foundation then moved in the probate court to enforce the Approval Order against the Estate and the Trust. The Personal Representative opposed the motion on various grounds. After a hearing, the probate court granted the Foundation's motion and, for the first time, expressly retained jurisdiction to enforce the Agreement. This appeal followed.

On appeal, the Personal Representative argues, among other things, that reversal is warranted pursuant to *Paulucci v. General Dynamics Corp.*, 842 So. 2d 797, 799 (Fla. 2003). In that case, the supreme court held that "a court has jurisdiction to enforce a settlement agreement where the court has either incorporated the

3. The proposed settlement agreement will be in the best interests of the interested persons and the estate. It therefore is

ADJUDGED that MARK PULTE, as Personal Representative, is authorized to compromise and settle the claims of Archdiocese of Detroit, St. Scholastica Parish of Detroit, and New Common School Foundation that are identified in the Petition for Order Approving Settlement Agreement. Upon compromise of the claims pursuant to the terms of the settlement agreement that was attached to the Petition, the Personal Representative is relieved of all liability and responsibility in connection with these claims.

agreement into a final judgment or approved the agreement by order and retained jurisdiction to enforce it[s] terms." *Id.* The Personal Representative argues that because the probate court neither incorporated the Agreement into a final judgment nor retained jurisdiction to enforce its terms, the court lacked jurisdiction to enforce the Agreement; rather, the Foundation should have sought enforcement through a separately filed civil suit.

The Foundation argues that *Paulucci* does not mandate reversal because (1) the Personal Representative failed to raise this jurisdictional argument in the probate court and has therefore waived it, (2) the probate court incorporated the Agreement into the Approval Order, and (3) the probate court both approved the Agreement and implicitly retained jurisdiction to enforce its terms. We reject without further discussion the Foundation's latter two arguments because the Approval Order was not a "final judgment" and by its plain language neither incorporated the Agreement nor retained jurisdiction to enforce its terms.

As to the first argument, we agree with the Foundation that the Personal Representative failed to raise this jurisdictional

argument in the probate court: arguing primarily that the court lacked personal jurisdiction over the Trust and that the Agreement had been fraudulently induced, he never invoked *Paulucci* in name or in principle, and he never otherwise clearly articulated an objection to the probate court's subject matter jurisdiction (or continuing jurisdiction, as discussed below) over the Foundation's motion to enforce. *See Lincare Holdings Inc. v. Ford*, 307 So. 3d 905, 912 (Fla. 2d DCA 2020) ("[T]o be preserved for appeal, 'the specific legal ground upon which a claim is based must be raised at trial and a claim different than that will not be heard on appeal.' " (alteration in original) (quoting *Aills v. Boemi*, 29 So. 3d 1105, 1109 (Fla. 2010))). Apart from arguments challenging subject matter jurisdiction, which can never be waived, *see 84 Lumber Co. v. Cooper*, 656 So. 2d 1297, 1298 (Fla. 2d DCA 1994) ("[T]he fact that the lack of [subject matter] jurisdiction is never presented to a trial court does not preclude an appellate court from considering the issue."), the failure to preserve an argument for appeal generally precludes our consideration of that argument on appeal, *see Estate of Herrera v. Berlo Indus., Inc.*, 840 So. 2d 272, 273 (Fla. 3d DCA 2003) ("[I]ssues not presented in the trial court cannot be raised for

the first time on appeal."). We also agree with the Foundation that whether the probate court retained jurisdiction to enforce the Agreement is more properly considered a question of "continuing jurisdiction" than of "subject matter jurisdiction." As we observed in *Kozel v. Kozel*, 302 So. 3d 939, 945 (Fla. 2d DCA 2019), "[s]ubject matter jurisdiction refers to a trial court's constitutional or statutory authority to decide a class of cases, while continuing jurisdiction refers to a trial court's jurisdiction to act in a case over which it had subject matter jurisdiction, but which it finally resolved with the entry of a judgment." See also *Paulucci*, 842 So. 2d at 801, n.3 (explaining differences between subject matter jurisdiction and continuing jurisdiction).

Regardless of nomenclature, however, our precedent dictates that the Personal Representative did not waive this jurisdictional challenge by failing to raise it below. See, e.g., *Dandar v. Church of Scientology Flag Serv. Org.*, 190 So. 3d 1100, 1103 (Fla. 2d DCA 2016) ("Once the voluntary dismissal with prejudice was filed, no authority remained for the exercise of jurisdiction, and the fact that Dandar raised this issue almost a year after Scientology moved to enforce the settlement agreement is neither a bar nor a waiver."); 84

Lumber Co., 656 So. 2d at 1298–99 (concluding that the court was "obligated to consider 84 Lumber's contention that the trial court had no subject matter jurisdiction in the dismissed case to enter the order under review" notwithstanding 84 Lumber's failure to raise that contention in the trial court (citing *Walt v. Walt*, 574 So. 2d 205 (Fla. 1st DCA 1991)); *see also MTW Jordan, Inc. v. Baskerville*, 323 So. 3d 331, 333, n.1 (Fla. 5th DCA 2021) (stating that the appellant could raise analogous jurisdictional challenge on appeal for the first time); *cf. 14302 Marina San Pablo Place SPE, LLC v. VCP-San Pablo, Ltd.*, 92 So. 3d 320, 321 (Fla. 1st DCA 2012) (Ray, J., concurring) (urging that "lack of [continuing] jurisdiction should merely render the court's act *voidable*, and under appropriate circumstances, subject to consent, waiver, or estoppel" but recognizing that the First District's precedent required the holding "that the type of jurisdictional challenge presented in [that] case cannot be waived and may be raised for the first time on appeal"). *But see MCR Funding v. CMG Funding Corp.*, 771 So. 2d 32, 35–36 & n.2 (Fla. 4th DCA 2000) (concluding that MCR had waived its challenge to the trial court's continuing jurisdiction to enforce the parties' settlement agreement by failing to object in the

trial court and by asking court to decide the dispute over the agreement; certifying conflict with *84 Lumber Co.*, 656 So. 2d at 1297). And because the probate court's order approving the Agreement did not retain jurisdiction to enforce its terms, *see Paulucci*, 842 So. 2d at 799, the court lacked jurisdiction to do so.

We therefore reverse and remand for the probate court to vacate its order granting the Foundation's enforcement motion and to dismiss the motion for lack of jurisdiction. We also certify conflict with the Fourth District's decision in *MCR Funding*, 771 So. 2d at 35–36 & n.2.

Reversed and remanded with directions; conflict certified.

MORRIS, C.J., and KHOUZAM, J., Concur.

Opinion subject to revision prior to official publication.