

Third District Court of Appeal

State of Florida

Opinion filed November 13, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-1908
Lower Tribunal Nos. 15-12276 & 15-24777

Magda Sanchez, k/n/a Magda Rodriguez,
Appellant,

vs.

Neymee Sanchez,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, George A. Sarduy, Judge.

Marro Law, P.A., and Meaghan K. Marro (Plantation), for appellant.

Nancy A. Hass, P.A., and Nancy A. Hass (Fort Lauderdale), for appellee.

Before FERNANDEZ, SCALES and LOBREE, JJ.

SCALES, J.

Appellant Magda Sanchez, known now as Magda Rodriguez, appeals an August 16, 2018 trial court order that denied her Florida Rule of Civil Procedure

1.540(b)(4) motion¹ filed on June 10, 2018. Appellant's rule 1.540(b)(4) motion asserted that the trial court lost subject matter jurisdiction of the case upon the entry of a June 18, 2015 final order of dissolution of marriage and a February 18, 2016 final order of adoption, and therefore, that all the orders regarding the divorced parties' adopted children entered by the trial court after entry of those judgments were void. Appellant asserts that the trial court erred by denying, as untimely, her motion to vacate these allegedly void orders. While we disagree with the trial court's characterization of the species of jurisdiction it both lost and retained, for the reasons stated herein, we nevertheless affirm the trial court's order denying appellant's rule 1.540(b)(4) motion.

I. Relevant Background

Appellant and appellee Neymee Sanchez were married in December 2014, but, shortly thereafter, their marriage ended, and a final dissolution judgment was entered by the lower court on June 18, 2015 (lower court case number FC15-012276). Despite the dissolution of their marriage, the couple, pursuant to chapter 63 of the Florida Statutes, pursued the process of adopting two minor children (lower

¹ Appellant's motion was filed pursuant to both rule 1.540(b)(4) and its family law rules counterpart, Florida Family Law Rule of Procedure 12.540(b)(4). The relevant portions of rule 12.540(b)(4) are identical to rule 1.540(b)(4), and motions filed under rule 12.540(b) are governed by the body of law applicable to rule 1.540(b). See Macar v. Macar, 803 So. 2d 707, 709 n.4 (Fla. 2001). For ease of reference, throughout this opinion, we will refer to the relevant motion simply as appellant's rule 1.540(b)(4) motion, without reference to its family law rules counterpart.

court case number FC15-24777). The June 2015 divorce decree did not reserve jurisdiction to adjudicate any matters regarding children.

On February 18, 2016, approximately eight months after the divorce decree was entered, the lower court entered the final judgment of adoption. This final judgment of adoption did not retain jurisdiction as to matters related to the parties and/or their newly adopted children. Despite the final adoption order not retaining jurisdiction for timesharing, contemporaneously with entry of the February 2016 final adoption judgment, the family court entered several orders referring the parties to mediation and to Family Court Services.²

The parties abided by the terms of these post-adoption judgment orders and actively participated in the Family Court Services program. Indeed, on June 22, 2016, Family Court Services filed a status report reflecting that the parties, as ordered by the trial court, had apparently resolved some timesharing issues. And, on July 12, 2016, during a court-ordered status conference, the trial court entered an order approving the parties' summer timesharing.

In the late spring of 2017, the parties had a disagreement regarding timesharing for the upcoming summer. Consequently, on June 5, 2017, appellee

² The Family Court Services unit of the Eleventh Judicial Circuit of Florida provides a number of court-ordered services in the family law realm, including, as in this case, coordinating and resolving co-parenting and timesharing issues.

filed a motion with the family law court³ to enforce, for summer 2017, the terms of the July 12, 2016 summer timesharing order. The record further reflects that, in March 2018, appellee filed a petition seeking to modify the decision-making for the children. In May 2018, appellant filed a response in opposition to this motion.

Then, on June 10, 2018 – over two years after both the entry of the final judgment of adoption and the entry of the challenged post-judgment orders – appellant filed her rule 1.540(b)(4) motion. Appellant’s rule 1.540(b)(4) motion alleged, and appellant argues on appeal, that upon entry of the February 18, 2016 final judgment of adoption, the trial court lost subject matter jurisdiction over the case, and that all orders entered after that date were void. On July 24, 2018, the trial court held a hearing on appellant’s rule 1.540(b)(4) motion, and, on August 28, 2018 entered the order on appeal denying, as untimely, appellant’s rule 1.540(b)(4) motion. Regarding jurisdiction, the trial court’s order contains the following conclusions:

The family court, in the adoption proceeding, may not have had subject matter jurisdiction following the Final Judgment of Adoption but because the Court continued to have personal jurisdiction over both parties and both parties were afforded due process, the Orders entered were not void but may have been voidable. . . . [T]he Court acknowledges that there was no subject matter jurisdiction in the dissolution of marriage proceedings and there may not have been a specific reservation in the adoption proceedings; however, the Court

³ While not entirely clear from the record, it appears that, sometime prior to June 5, 2017, the adoption case and the dissolution case were consolidated below before the same trial judge.

had personal jurisdiction over the parties, there was no timely challenge to any of the Orders entered in the adoption case on the date of the Final Judgment of Adoption or thereafter, and the parties' due process rights were not violated.

Appellant timely appealed this order.

II. Analysis⁴

The issue on appeal is whether the trial court reversibly erred by denying appellant's rule 1.540(b)(4) motion.

A. Introduction: rule 1.540

Rule 1.540(b) identifies five limited, specific grounds authorizing a trial court to vacate a final judgment, decree or order. These grounds for relief are purposely limited in number in order to preserve the important value of finality in judgments. U.S. Bank Nat'l Ass'n v. Anthony-Irish, 204 So. 3d 57, 62 n.5 (Fla. 5th DCA 2016). The rule's five grounds are summarized as follows: (1) mistake or excusable neglect, (2) newly discovered evidence, (3) fraud, (4) the subject final order is void, and (5) it is no longer equitable that the subject final order have prospective application. See Fla. R. Civ. P. 1.540(b).

⁴ Generally, we review a trial court's order denying a rule 1.540(b) motion for abuse of discretion. Rinconcito Latino Cafeteria, Inc. v. Ocampos, 276 So. 3d 525, 527 (Fla. 3d DCA 2019). Whether an order is void, though, is a question of law that we review *de novo*. Llanos v. Gomez de Cordova, 263 So. 3d 137, 139 (Fla. 3d DCA 2018). As explained herein, both standards are implicated in this appeal.

Under the rule, all motions seeking relief “shall be filed within a reasonable time” after entry of the challenged final order, and motions seeking relief based on categories (1), (2), or (3) must be filed within one year of entry of the final order. Id.⁵ Florida courts have held, though, that a rule 1.540(b)(4) motion seeking to vacate an order that is void for lack of subject matter jurisdiction may be filed *at any time* because lack of subject matter jurisdiction goes to the foundation of the court’s power to adjudicate the case presented. Anthony-Irish, 204 So. 3d at 60. So, a rule 1.540(b)(4) motion seeking to vacate a final order entered without subject matter jurisdiction can be brought at any time, while rule 1.540(b) motions based upon other grounds “must be filed within a reasonable time.”⁶

B. Appellant’s rule 1.540(b)(4) motion

Appellant brought her rule 1.540(b) motion by invoking ground (4) and asserting that the orders rendered by the trial court after the entry of the final judgment of adoption were void. According to appellant, the trial court entered these orders after it lost subject matter jurisdiction over the case. While appellant’s rule

⁵ While not relevant to this case, we note that, under Florida Family Law Rule of Procedure 12.540(b)(3), a motion seeking relief based on fraudulent financial affidavits in marital or paternity cases is not subject to the one-year time limit otherwise imposed on a motion brought pursuant to rule 12.540(b)(3).

⁶ We review a trial court’s determination of what constitutes a “reasonable time” under an abuse of discretion standard. Franklin v. Franklin, 573 So. 2d 401, 404 (Fla. 3d DCA 1991).

1.540(b)(4) motion was brought well over a year after the entry of any of the orders the motion sought to vacate,⁷ appellant argues that her motion may be brought at any time because the orders she seeks to vacate are void, having been entered without subject matter jurisdiction. Hence, a determination of whether the post-judgment orders are void is critical, because only a void order may be challenged at any time.

C. The Anthony-Irish decision

While Anthony-Irish is not “on all fours” with the instant case, we find both the facts of Anthony-Irish analogous to those in our case and our sister court’s reasoning to be instructive and applicable on the relevant issues presented here. In Anthony-Irish, the trial court entered a 2009 final foreclosure judgment for the bank, but also, on the same day it entered the final judgment – and without specifically reserving jurisdiction in the final judgment – it ordered the parties to mediation. 204 So. 3d at 58-59. Over a year later, Anthony-Irish filed a motion in the trial court essentially asserting that the bank had failed to conduct post-judgment settlement negotiations in good faith. The trial court then entered an order finding the bank had violated the mediation order, vacated the 2009 final foreclosure judgment, and dismissed the action with prejudice as to all defaults prior to the order. Id. at 59.

⁷ The orders appellant seeks to vacate in her June 10, 2018 motion were all entered between February and July of 2016, approximately two years prior to her rule 1.540(b)(4) motion.

The bank neither filed a motion for rehearing nor an appeal. Instead, more than four years later, in 2015, the bank filed a rule 1.540(b)(4) motion seeking to vacate all orders entered by the trial court after entry of the 2009 final foreclosure judgment. Id. The bank claimed, as appellant claims in the instant case, that all of the trial court’s post-judgment orders were void because the trial court lacked subject matter jurisdiction over the case once it entered the 2009 final foreclosure judgment without reserving jurisdiction to enforce mediation agreements. The trial court summarily denied the bank’s motion. Id.

On appeal, the Fifth District began its analysis by identifying the three principal types of jurisdiction: subject-matter jurisdiction, procedural jurisdiction and personal jurisdiction.⁸ Id. at 60. “Subject matter jurisdiction” refers to the power of a court to decide matters within a general category of cases. Id. “Personal jurisdiction” – which is not implicated in this appeal – simply entails a court’s authority to subject a particular person to the court’s adjudicatory process. Wiggins v. Tigrent, Inc., 147 So. 3d 76 (Fla. 2d DCA 2014). “Procedural jurisdiction” (also

⁸ We recognize that practitioners and courts – even this Court – have used the term “jurisdiction” loosely, even interchangeably, and at times improperly. See Renovaship, Inc. v. Quatremain, 208 So. 3d 280, 283 n.6 (Fla. 3d DCA 2016). Our extensive discussion in this case regarding the distinction between subject matter jurisdiction and procedural jurisdiction, in the context of rule 1.540(b)(4), is intended to convey the importance of characterizing the various jurisdictional concepts with precision.

known as “continuing jurisdiction” or “case jurisdiction”) refers to the “power of the court over a particular case that is within its subject matter jurisdiction.” Anthony-Irish, 204 So. 3d at 60 (quoting Tobkin v. State, 777 So. 2d 1160, 1163 (Fla. 4th DCA 2001)).

The Anthony-Irish court then applied a jurisdictional analysis to the facts of that case. Specifically, our sister court determined that, because the trial court obviously had subject matter jurisdiction to adjudicate the general category of mortgage foreclosure cases, the bank’s rule 1.540(b)(4) motion really challenged “a procedural defect related to a court’s power over a specific dispute, not a defect in the court’s subject-matter jurisdiction.” Id. 61-62. That is, the bank had collaterally attacked a final judgment (i.e., the post-judgment order vacating the 2009 final foreclosure judgment) entered without procedural jurisdiction. Id.

As mentioned above, an order entered without subject matter jurisdiction is void and can be challenged at any time under rule 1.540(b)(4). See Quinones v. Quinones, 569 So. 2d 884, 885 (Fla. 3d DCA 1990). An order entered over a person without personal jurisdiction is, likewise, void and can be challenged at any time under rule 1.540(b)(4). See Wiggins, 147 So. 3d at 81. In Anthony-Irish, our sister court concluded an order entered without procedural jurisdiction is *not* void, but expressly declined to address “whether defects in procedural jurisdiction that could otherwise be remedied on direct appeal are even cognizable under rule 1.540(b)(4).”

204 So. 3d at 62, n.4. Instead, noting that all motions seeking relief under rule 1.540(b) must be brought within “a reasonable time,” the Fifth District held that because the bank’s rule 1.540(b)(4) motion was filed more than four years after the trial court’s order vacating the 2009 final foreclosure judgment, the bank’s motion was untimely and, therefore, properly denied. *Id.* at 62.

D. *The instant case*

In our case, while the trial court might have, upon entry of the final adoption order, lost procedural jurisdiction, the trial court did not lose subject matter jurisdiction. Plainly, a Florida circuit court has subject matter jurisdiction to determine timesharing and other issues regarding the child of a couple whose marriage has been dissolved. See *Tepedino v. Baker*, 212 So. 3d 497, 498 (Fla. 3d DCA 2017). The orders that appellant sought to vacate in its rule 1.540(b)(4) motion, therefore, are not void for want of subject matter jurisdiction.⁹ Thus, we

⁹ As mentioned above, despite denying appellant’s rule 1.540(b)(4) motion, the trial court appears to have: (i) suggested that the trial court “may not have had subject matter jurisdiction following the Final Judgment of Adoption” to issue post-judgment orders; and (ii) “acknowledge[ed] that there was no subject matter jurisdiction in the dissolution of marriage proceeding.” As we stated above, the trial court plainly had subject matter jurisdiction to make timesharing determinations. Although the trial court might have mischaracterized the type of jurisdiction implicated by its entry of orders after the entry of a final judgment, we may nevertheless affirm the trial court’s decision, despite this incorrect suggestion. *Chase v. Cowart*, 102 So. 2d 147, 150 (Fla. 1958) (“We are required to uphold the lower court if valid grounds exist therefor. While the grounds or reasoning used by the trial court . . . are frequently helpful to an appellate court on review, they are not controlling. The decision of the appellate court must be made, not on the basis of

follow the reasoning of Anthony-Irish and, employing an abuse of discretion standard, we affirm the trial court's order denying Appellant's rule 1.540(b)(4) motion for the same reasons the Anthony-Irish court affirmed the trial court's order denying the bank's rule 1.540(b)(4) motion in that case: appellant's motion was untimely because it was filed more than a year after the challenged orders were entered.¹⁰

III. Conclusion

Under these facts, we conclude that the trial court did not abuse its discretion by denying appellant's rule 1.540(b)(4) motion.

Affirmed.

whether the trial court . . . traveled the proper route, used proper reasoning, or laid his conclusion on proper grounds, but rather on whether his conclusion is correct or incorrect.”).

¹⁰ It bears noting, however, that none of rule 1.540(b)'s specified grounds expressly authorize a trial court to vacate an order entered without procedural jurisdiction. Like our sister court, we save for another day, and express no opinion on, whether a motion seeking to vacate an order entered by a trial court without procedural jurisdiction is cognizable under rule 1.540(b). Anthony Irish, 204 So. 3d at 62, n.4.