

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

STEPHEN V. SCHMIDT and SCHMIDT FARMS, INC.,

Appellants,

v.

JJTB, INC.,

Appellee.

Nos. 2D21-1213, 2D21-2752
CONSOLIDATED

February 8, 2023

Appeal from the Circuit Court for Hillsborough County; Emily A. Peacock, Judge.

Jesse L. Ray of Jesse Lee Ray Attorney at Law, P.A.; and Edward William Collins of The Law Office of William Collins, P.A., Tampa, for Appellants.

John L. Marchione and Kristen M.J. Johnson of Taylor Johnson, PL, Winter Haven, for Appellee.

LaROSE, Judge.

In this consolidated appeal, Stephen Schmidt and Schmidt Farms, Inc. (collectively, Schmidt), appeal a final foreclosure judgment and an attorneys' fee order entered in favor of JJTB, Inc. We have jurisdiction. See Fla. R. App. P. 9.030(b)(1)(A).

Because the trial court lacked case jurisdiction, we reverse both orders on appeal. We certify conflict with the Fourth District on whether a party may waive case jurisdiction.

I. Background

JJTB filed a foreclosure action against Schmidt in Hillsborough County in April 2011. The trial court found that the underlying promissory notes and mortgages were valid and enforceable. But, the trial court also found that JJTB failed to prove that Schmidt had defaulted. Upon JJTB's motion for entry of a final judgment, the trial court entered a written order denying a foreclosure judgment in July 2015. JJTB appealed. We per curiam affirmed that final order. *JJTB, Inc. v. Schmidt*, 197 So. 3d 50 (Fla. 2d DCA 2016).

In December 2016, JJTB filed a new action against Schmidt on the promissory note in Polk County, based on alleged 2015 and 2016 payment defaults. The trial court entered a summary judgment against JJTB in October 2018 because the statute of limitations barred the note claim.

Thereafter, and over two years after issuance of our mandate in the Hillsborough County case, JJTB sought leave to amend its Hillsborough County foreclosure complaint to allege a cause of action on the promissory note and add a cause of action for new and separate defaults.¹ JJTB stated:

In light of the Polk County Court's holding that the statute of limitations would bar a new action on the Note in Polk County, it is necessary for the Plaintiff to amend its Complaint on the Note and Mortgage in Hillsborough County to account for these new and continuing defaults.

¹ It is unclear from the record whether JJTB paid any court fees or costs when filing the amended complaint. See § 28.241(1)(a)2, Fla. Stat. (2018) (filing fees).

Schmidt moved to dismiss the amended complaint. JJJTB countered that the original foreclosure action "remained open and pending before [the trial court]," and that the amended complaint related back to the original complaint. JJJTB argued that it was entitled to foreclose on the mortgage "[w]hether [JJJTB] [was] permitted to proceed with the mortgage foreclosure in its First Amended Complaint, or whether it [was] required to bring a separate case."

The trial court dismissed the claim on the note and permitted the amended complaint. Ultimately, it entered a foreclosure judgment against Schmidt. JJJTB requested attorneys' fees under the mortgage. Schmidt moved for rehearing based, in part, on the trial court's lack of jurisdiction. The trial court denied Schmidt's rehearing motion but awarded JJJTB attorneys' fees and costs.

II. Discussion

A. Jurisdiction

Because of our affirmance of the July 2015 final order in the Hillsborough County case, Schmidt argues that the trial court lacked subject matter jurisdiction or other legal authority to proceed on JJJTB's amended complaint. JJJTB contends that the trial court had subject matter jurisdiction. It also maintains that Schmidt waived any objection to case jurisdiction² by participating in the proceedings and failing to raise a jurisdictional challenge until filing a rehearing motion.

Our cases dictate that a party cannot waive a challenge to subject matter or case jurisdiction. *See Pulte v. New Common Sch. Found.*, 334 So. 3d 677, 680 (Fla. 2d DCA 2022) (providing that "our precedent dictates that" a party cannot waive a subject matter or case jurisdictional

² Case jurisdiction is also referred to as procedural jurisdiction and continuing jurisdiction. *Renovaship, Inc. v. Quatremain*, 208 So. 3d 280, 283 n.6 (Fla. 3d DCA 2016).

challenge by failing to raise it below), *review dismissed*, No. SC22-415, 2022 WL 2663058, at *1 (Fla. July 11, 2022); *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) ("While at least one district court has held that certain defects of [case] jurisdiction are waivable, precedent from this Court requires us to hold that the type of jurisdictional challenge presented in this case cannot be waived and may be raised for the first time on appeal." (footnote omitted)). *But see MCR Funding v. CMG Funding Corp.*, 771 So. 2d 32, 35 (Fla. 4th DCA 2000) (holding that MCR could not challenge the trial court's case jurisdiction for the first time on appeal after "having willingly submitted itself, and the dispute, to the court's authority").

Subject matter jurisdiction involves the trial court's power "to deal with a class of cases to which a particular case belongs." *Cunningham v. Standard Guar. Ins.*, 630 So. 2d 179, 181 (Fla. 1994). Circuit courts, generally, have subject matter jurisdiction over foreclosure cases. *See* art. V, § 5(b), Fla. Const.; § 26.012(2)(a), (c), (g), Fla. Stat. (2018); § 34.01(1)(c), Fla. Stat. (2018); *Alexdex Corp. v. Nachon Enters., Inc.*, 641 So. 2d 858, 862 (Fla. 1994).

However, the issue here is more properly considered a question of case jurisdiction. "[Case] jurisdiction refers to a trial court's jurisdiction to act in a case over which it had subject matter jurisdiction" *Pulte*, 334 So. 3d at 680 (quoting *Kozel v. Kozel*, 302 So. 3d 939, 945 (Fla. 2d DCA 2019)). A trial court loses case "jurisdiction upon the rendition of a final judgment and expiration of the time allotted for altering, modifying or vacating the judgment." *Ross v. Wells Fargo Bank*, 114 So. 3d 256, 257 (Fla. 3d DCA 2013) (citing *Patin v. Popino*, 459 So. 2d 435, 436 (Fla. 3d DCA 1984)), *construed in Renovaship, Inc. v. Quatremain*, 208 So. 3d 280, 283 n.6 (Fla. 3d DCA 2016) (clarifying that the issue in *Ross*

involved case jurisdiction). The trial court "retains jurisdiction to the extent such is specifically reserved in the final judgment or to the extent provided by statute or rule of procedure." *Id.* (first citing *Ross v. Damas*, 31 So. 3d 201, 203 (Fla. 3d DCA 2010); and then citing *Harrell v. Harrell*, 515 So. 2d 1302, 1304 (Fla. 3d DCA 1987)).

Unquestionably, the trial court entered a final order in the initial Hillsborough County case without reserving jurisdiction over any matter. JJJTB unsuccessfully appealed that final order. See Fla. R. App. P. 9.030(b)(1)(A); *JJJTB, Inc.*, 197 So. 3d 50; see generally *SCI, Inc. v. Aneco Co.*, 410 So. 2d 531, 532 (Fla. 2d DCA 1982) ("The test to be used by appellate courts in determining finality of an order, judgment or decree is whether there has been an end to the judicial labor below and nothing further remains to be done to terminate the dispute between the parties directly affected." (citation omitted)). Our mandate did not authorize JJJTB to amend its pleadings. To do so could deride the "finality" of our appellate decisions. See generally *Taneja v. First St. & Fifth Ave., LLC*, 338 So. 3d 362, 363 (Fla. 2d DCA 2022) ("[A] procedure which allows an appellate court to rule on the merits of a trial court judgment and then permits the losing party to amend his initial pleadings to assert matters not previously raised renders a mockery of the 'finality' concept in our system of justice." (alteration in original) (quoting *Dober v. Worrell*, 401 So. 2d 1322, 1324 (Fla. 1981))); *Don Suntan Corp. v. Tanning Rsch. Lab'ys, Inc.*, 505 So. 2d 35, 36 (Fla. 5th DCA 1987) ("In order to prevent later events in the trial court from circumventing or 'mooting' the binding aspect of an appellate adjudication, the general rule is that once an appeal has been taken, the decision on appeal becomes 'the law of the case,' and, on remand, amendments to the pleadings cannot be made to present new and different issues of fact or law unless the appellate court in its opinion has authorized such amendments.").

Consequently, the trial court lacked case jurisdiction to proceed with JJJTB's amended foreclosure complaint. *See Garcia v. Christiana Tr.*, 208 So. 3d 176, 178 (Fla. 3d DCA 2016) ("As the foreclosure (between Eduardo Garcia and the Bank) was already final at the time Rocketrider filed its June 6, 2013 appeal from the post-judgment sale, the Final Judgment of Foreclosure cannot be reversed nor, for that matter, can it be re-opened."); *Magloire v. Bank of N.Y.*, 147 So. 3d 594, 595 (Fla. 4th DCA 2014) (agreeing with homeowners' argument that "the trial court erred in granting the bank's motion for summary judgment after the trial court previously dismissed the case for lack of prosecution"); *Ross*, 114 So. 3d at 257 (holding that "the trial court acted in the absence of jurisdiction" when it permitted the party to file a supplemental complaint to add an omitted party after its final judgment (first citing *Travelers Cas. & Sur. of Am. v. Sidman*, 103 So. 3d 900, 902 (Fla. 2d DCA 2012); and then citing *Damas*, 31 So. 3d at 203; and then citing *Palin*, 459 So. 2d at 436)); *Derma Lift Salon, Inc. v. Swanko*, 419 So. 2d 1180, 1181 (Fla. 3d DCA 1982) (holding that the trial court erred in reopening the case because its case jurisdiction terminated when it denied plaintiff's rehearing motion).

B. Waiver

JJJTB argues that Schmidt waived the jurisdictional issue by participating below and failing to timely raise the issue in the trial court. JJJTB cites *Carlton v. Zanzazi*, 266 So. 3d 243 (Fla. 2d DCA 2019). In *Carlton*, the parties voluntarily dismissed the former wife's dissolution petition. *Id.* at 244. She then filed a new petition with the original case number. *Id.* at 244. The trial court entered a final dissolution judgment with the original case number. *Id.* at 245. We held that "[t]he use of [an] original case number on a new and separate petition is more in the nature of a scrivener's error than a jurisdictional defect" and the former

husband waived the issue by agreeing to the final judgment and seeking affirmative relief. *Id.* at 247-48.

Unlike the former wife in *Carlton*, JJTB did not use the old case number to file a new foreclosure complaint. Rather, it sought to revive its long-resolved first action in Hillsborough County, as well as to add a new claim. This was no scrivener's error. Our record demonstrates that JJTB knew the difference between amending a complaint and filing a new action. Unfortunately for JJTB, it did not choose wisely.

Given JJTB's experience in the initial Hillsborough County suit and its subsequent Polk County suit, we can only surmise that JJTB sought to avoid a statute of limitations defense. *See generally Sch. Bd. of Broward Cnty. v. Surette*, 394 So. 2d 147, 154 (Fla. 4th DCA 1981) ("Although amendments should be permitted liberally, one cannot defeat the bar of the statute of limitations by filing a new cause of action labelled as an amended complaint. The rule of liberality does not authorize a new cause of action." (first citing *Cox v. Seaboard Coast Line R.R. Co.*, 360 So. 2d 8, 10 (Fla. 2d DCA 1978); and then citing *Versen v. Versen*, 347 So. 2d 1047, 1050 (Fla. 4th DCA 1977))).

We are mindful that the trial court dismissed JJTB's claim on the note, entered a judgment on the new foreclosure claim, but did not amend or vacate its July 2015 final order. Due to the lack of case jurisdiction, however, the trial court was powerless to proceed. *See Trerice v. Trerice*, 250 So. 3d 695, 698 (Fla. 4th DCA 2018) ("The concept of 'the power of the court over a particular case' is rooted in the notion that given the *procedural posture of the case*, the court is without authority to act."). Thus, we must reverse. *See Pulte*, 334 So. 3d at 680-681; *84 Lumber Co. v. Cooper*, 656 So. 2d 1297, 1299-1300 (Fla. 2d DCA 1994).

III. Conclusion

We reverse the final foreclosure judgment and remand for further proceedings consistent with this opinion. *See Pulte*, 334 So. 3d at 680-681; *84 Lumber Co.*, 656 So. 2d at 1299-1300. Consequently, we also reverse the attorneys' fee order. *See generally Marty v. Bainter*, 727 So. 2d 1124, 1125 (Fla. 1st DCA 1999) ("Once a final judgment is reversed and remanded by an appellate court, there can be no prevailing party for purposes of an award of prevailing party attorney's fees. Consequently, an award of attorney's fees and costs predicated on a reversed or vacated final judgment also must be reversed.").

We certify conflict with the Fourth District's decision in *MCR Funding*, 771 So. 2d at 35-36, as we did in *Pulte*. *See Pulte*, 334 So. 3d at 681 (certifying conflict), *review dismissed*, No. SC22-415, 2022 WL 2663058, at *1 ("The parties having filed a proper stipulation for dismissal pursuant to Florida Rule of Appellate Procedure 9.350(a), it is ordered that the petition for review is hereby voluntarily dismissed."); *see also Schroeder v. MTGLQ Invs., L.P.*, 290 So. 3d 93, 97 (Fla. 4th DCA 2020) ("[S]imilar to the situation we addressed in *MCR Funding*[], 771 So. 2d 32], any fundamental error was waived by Appellant having willingly submitted herself to the trial court's authority to decide the dispute."), *review denied*, No. SC20-368, 2020 WL 3525940, at *1 (Fla. June 30, 2020).

Reversed and remanded with directions; conflict certified.

BLACK and LUCAS, JJ., Concur.

Opinion subject to revision prior to official publication.