

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JANUARY TERM 2011

KARA JOANNE HILL,

Appellant,

v.

Case No. 5D10-549

DAVID ALAN HILL,

Appellee.

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Opinion filed July 8, 2011

Appeal from the Circuit Court for  
St. Johns County,  
Clyde E. Wolfe, Judge.

Nancy A. Johnson and Sharina T.  
Romano of McGuirewoods, LLP,  
Jacksonville, for Appellant.

Lester Makofka of Makofka &  
Makofka, Jacksonville, for Appellee.

PER CURIAM.

Appellant, Kara Joanne Hill, challenges the trial court's dismissal of her petition for partition. For the reasons expressed below, we remand to allow the trial court to treat Appellant's petition as a motion for relief from judgment pursuant to Florida Rule of Civil Procedure 1.540(b).

The parties agreed to, and the trial court entered, a consent supplemental final judgment dissolving the marriage and equitably distributing the property of Appellant and Appellee, David Alan Hill. Relevant to this appeal, the consent supplemental final

judgment provided that Appellee would have exclusive use and possession of the parties' rental home. It required Appellee to submit three bona fide applications to refinance the property and, if approved, to pay Appellant \$90,000 for her interest. However, if Appellee did not obtain financing, the property was to be sold and the parties would split the proceeds equally.

After submitting one application and being pre-approved, Appellee did not submit any other financing applications or otherwise obtain financing. Appellant filed a motion for contempt, requesting the trial court order Appellee to submit applications for financing or, alternatively, grant her power of attorney to sell the property. Instead, the trial court granted Appellant a \$90,000 judgment. Appellant then filed a petition to partition the property, but the trial court dismissed it with prejudice because she did not request partition before being granted the \$90,000 judgment. In essence, the trial court reasoned that Appellant was precluded from seeking partition by virtue of receiving the \$90,000 judgment.

The trial court erred in awarding Appellant a \$90,000 judgment because that was not the relief sought in the former wife's motion for contempt. Granting Appellant a money judgment also conflicted with the terms of the consent supplement final judgment: that the property be sold if Appellee did not obtain financing. Appellee undisputedly did not obtain financing and, therefore, the parties and the trial court were bound by the consent supplemental final judgment's terms. See Bridges v. Bridges, 848 So. 2d 403, 404 (Fla. 2d DCA 2003) (holding a court usually has no jurisdiction to modify property rights after those rights have been adjudicated in a final judgment of dissolution); DePeyster v. DePeyster, 629 So. 2d 221, 224 (Fla. 4th DCA 1993) (holding

the trial court lacked jurisdiction to order a postjudgment sale when the parties' settlement agreement provided for partition).

Instead of filing a petition for partition, Appellant should have either sought relief from the judgment pursuant to 1.540(b) or, alternatively, appealed the entry of the money judgment. However, under the facts and circumstances of this case, we believe the appropriate course of action is to treat the petition for partition as a motion for relief from judgment and remand the matter to the trial court for enforcement of the terms of the consent judgment.

REVERSED and REMANDED.

ORFINGER, C.J., and COHEN, J., concur.  
PALMER, J., dissents with opinion.

I respectfully dissent. If the appellant believed that the trial court erred in awarding her a \$90,000.00 judgment, her remedy was to appeal that judgment. She did not file a direct appeal; therefore, that judgment is final.

The majority opinion acknowledges that the appellant erred in filing her request for relief from the \$90,000.00 final judgment as a separate petition seeking partition. However, the majority seeks to correct the appellant's error by sua sponte treating her partition petition as a motion for relief from judgment, pursuant to Florida Rule of Civil Procedure 1.540(b). However, re-characterizing appellant's petition does not entitle her to obtain relief from the \$90,000.00 judgment.

Rule 1.540(b) does not provide for relief from judicial errors of law which must be appealed. Curbelo v. Ullman, 571 So. 2d 443, 445 (Fla. 1990). Instead, the rule provides very specific and narrow grounds upon which post-judgment relief can be granted. The rule provides that the trial court can only relieve a party from a final judgment for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) that the judgment or decree is void; or (5) that the judgment or decree has been satisfied, released, or discharged, or a prior judgment or decree upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or decree should have prospective application. None of these grounds was established in appellant's partition petition. The only ground that could even be argued

as being applicable would be that the \$90,000.00 judgment is void. However, such is not the case. The trial court clearly possessed jurisdiction to consider the appellant's motion for enforcement of the parties' dissolution of judgment and to enter an order providing such relief. Compare Wright v. Lewis, 870 So. 2d 179 (Fla 4th DCA 2004) (recognizing that a void judgment is subject to collateral attack).

Accordingly, I would affirm.