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4D22-2322

In the
District Court of Appeal of Florida
Fourth District

JAYNE GREENBERG, an individual,

Appellant/Plaintiff,

v.

COUNTRY ISLES SECTION ONE MAINTENANCE ASSOCIATION, INC. ETC. ET AL.

Appellees/Defendants.

Appeal from the Final Order Granting Defendant, Country Isles Section One Maintenance Associations, Inc.'s, Motion for Summary Judgment of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, rendered on July 25, 2022, at Case No. 2018-CA-021905 (Rodriguez, J.), entered in favor of Defendant/Appellee.

ANSWER BRIEF OF APPELLEE

COUNTRY ISLES SECTION ONE MAINTENANCE ASS'N, INC.

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INTRODUCTION

This is a never-ending dispute between Country Isles Section One Maintenance Association, Inc. (the Association), and Jayne Greenberg (the Homeowner) over a fence. The dispute has now been resolved multiple times in the last almost 15 years. Jayne Greenberg, however, brings this appeal raising six main issues, 16 issues, if you include sub-issues. None of which have merit.

The trial court properly determined that the Homeowner's claims were barred by either res judicata, collateral estoppel, and/or the statute of limitations. The trial court also afforded all parties procedural due process before entering judgment in the Association's favor. Affirmance is required because there was no genuine dispute as to any material fact, and the Association is entitled to judgment as a matter of law.

STATEMENT OF THE CASE AND FACTS

The Homeowner's statement of the facts and case is not a full and accurate reflection of the facts before the trial court. Therefore, the Association submits the following exceptions, corrections, and additions:

A. The 2009 Lawsuit

The Homeowner first filed a civil complaint against the Association, and her next-door neighbors, the Farrells (the Neighbors),[1] in 2009. [R. 1891-1896].[2] The Homeowner sought a declaratory judgment that the Neighbors' Outdoor Living Area Easement and erected privacy fence were invalid and unenforceable because it imposed an "undue burden" on her due to her disability. [R. 1895-1896]. Despite acknowledging that the Neighbors had a valid easement over the Homeowner's adjacent lot, the Homeowner sought to prevent enforcement of the easement, specifically alleging that "because of [her] disability, enforcement of the easement impose[d] an undue burden on [her] property." [R. 1892, 1894-1896]. The Homeowner sought a declaratory judgment that the easement was "invalid and/or unenforceable" and for the fence to be "immediately removed from the Homeowner's

[1] Although the Farrells are parties to the underlying lawsuit, the partial final judgment at issue does not involve them.

[2] References to the Record are cited as [R. xx] and refer to the PDF pagination number of the record.

property." [R. at 1896].

Prior to trial in the 2009 case, the parties entered into a stipulation. [R. 1852-1858]. Included were the following stipulated facts regarding the Neighbors' easement and privacy fence:

> d. The Covenants contain an Outdoor Living Area Easement (the "Easement"), which grants "an easement in favor of a Dominant Lot over and upon that area (the Servient portion) of an adjacent Servient Lot… which faces the Dominant Lot…."
>
> e. Specifically, the Easement provides that
>
> > Each Owner of a Dominant Lot, and each tenant, agent and invitee of such Owner, shall have a permanent, perpetual and exclusive easement for the sole and exclusive use (except as provided elsewhere herein to the contrary), as an outdoor living area, of the Outdoor Living Area Easement (all as defined and described in Article I hereof) over and upon the adjoining Servient Lot. The right to use such easement shall be appurtenant to and shall pass with the title to the Dominant Lot.
>
> f. Pursuant to the Covenants, the Greenberg Property is a Servient Lot to the Farrell Property, which is the Dominant Lot.
>
> l. In June 2009, Country Isles approved the Farrells' Architectural Review Committee ("ARC") application and permitted the fence to be erected with certain limitations and instructions.

[R. 1853-1854]. The Homeowner also stipulated that the following issues and facts were disputed and to be resolved in the action:

iv. Are the Covenants and other rules and regulations governing Country Isles applied uniformly throughout the community?

v. Does the Outdoor Living Area Easement improperly grant complete possession, dominion and use of Greenberg's Property to the Farrells, to the exclusion of Greenberg?

vi. As a result of the Outdoor Living Area Easement, is Greenberg improperly deprived of the use of the Greenberg Property?

vii. Is the exclusivity language of the Outdoor Living Area Easement subject to conflicting interpretations, thus rendering the Outdoor Living Area Easement ambiguous?

viii. In light of Greenberg's disability, does enforcement of the Outdoor Living Area Easement impose an undue burden on the Greenberg Property such that it should not be enforced against Greenberg?

[R. 1854-1859].

B. The 2016 Stipulated Final Order

After seven years of litigation, the Association, the Neighbors, and the Homeowner entered into a stipulated final order. [R. 1888-1890]. The final order specifically found that "the Parties agree, and the Court finds, the Outdoor Living Easement… is valid and enforceable." [R. 1890]. The order allowed the Homeowner to install "at her sole expense and liability, a gate on both sides of the Fence" but "only on the portion of the Fence located on Greenberg's servient Lot" and that the gates "shall be constructed and installed in compliance with [the Association's] architectural standards." [R.

1888-1889]. The order further prohibited the Homeowner from doing anything that impacts, restricts or otherwise impedes the Neighbors' easement. [R. 1889].

Based on these stipulations, the lower court dismissed the Homeowner's complaint with prejudice and closed the case. [R. 1890]. The lower court, however, specifically retained jurisdiction to enter "further orders that are proper for compliance with and/or enforcement of th[at] Order." [R. at 1890].

C. The 2018 Lawsuit

In 2018, the Homeowner filed another lawsuit against the Association and the Neighbors, reiterating the allegations contained in her 2009 complaint. [R. 21-113, 22-25]. The Homeowner sought injunctive relief to prevent the Association's actions taken in reference to the stipulated final order and unspecified allegations of "retaliatory and harassing conduct." [R. 29-30].

After the Association moved to dismiss and/or transfer the case because the allegations derived from the prior action and were bound by the terms of that stipulated final order, the Homeowner filed an amended complaint, adding a request for a declaratory judgment. [R. 134-139, 156]. Two years after the original complaint was filed, the Homeowner sought to

amend again to add a Federal Housing Act ("FHA") reasonable accommodation claim against the Association. [R. 264-377].

The lower court transferred the Homeowner's complaint to the original circuit civil division finding that the matter "[wa]s related to Case Number CACE09-018946, presently pending in Division 14 involving the same parties and the same or related issues." [R. 380]. The lower court then granted the Association's motion to dismiss the Homeowner's second amended complaint, allotted her 15 days to amend the complaint, and ordered her to "provide more specificity as to the violations allegedly issued by the Association." [R. 857]. Thereafter, the Homeowner filed her third amended complaint. [R. 871- 1110].

The Association answered the third amended complaint, raising ten affirmative defenses [R. 1468-1484]. Part of the affirmative defenses included that the Homeowner's claims were barred by collateral estoppel, res judicata, and the FHA's statute of limitations. [R. 1483].

After a hearing, the trial court dismissed with prejudice the Homeowner's two counts for injunctive relief against the Neighbors. [R. 1517-1520]. The court specifically stated that it "already resolved these issues between the parties in [the 2009 case]" in particular the easement, covenant, and fence issues. [R. 1517, 1518]. The court found the injunctive

relief both “insufficiently pled” and “the subject of and the resolution reached in the [2009 case].” [R. 1518].

D. The summary judgment proceedings

The Association then moved for summary final judgment on the Homeowner’s remaining counts seeking injunctive relief against the Association as well as unspecified damages under the FHA and for breach of covenants. [R. 1873-1897]. The Association asserted it was entitled to summary judgment because the Homeowner’s 2018 complaint was an impermissible attempt to re-litigate the same issues that were resolved by the 2016 stipulated final order. [R. at 1876]. Additionally, the Association alleged that the Homeowner’s new action was attempting to circumvent the stipulated final order that specifically retained jurisdiction of the matter “to enter such orders that are proper for compliance with and/or enforcement of this Order.” [R. 1874].

The Association argued that it was entitled to summary judgment because the Homeowner’s claims were barred by the doctrines of collateral estoppel and/or res judicata and that there were no genuine issues of material fact that would entitle the Homeowner to relief. [R. 1882-1886]. Additionally, the Association alleged that the Homeowner could not now raise a claim for relief under the FHA because it was barred by the Act’s two-

year statute of limitations. [R. 1886].

The trial court held a hearing on the Association's motion. [R. Supp. 5-72]. The Association argued that the subject matter and parties were identical to the 2009 case and thus barred by the doctrines of collateral estoppel and res judicata. [R. Supp. 9-10]. The Association additionally argued that counts IV and V were barred by the FHA's statutes of limitations. [R. Supp. 10].

The Association argued that the Homeowner's allegations arise from the Association's attempts to comply and enforce the court's 2016 stipulated final order regarding the easement that was the subject of the 2009 case. [R. Supp. 11, 26, 35]. Moreover, the Association argued that the Homeowner's FHA claims mimic the allegations she made in 2009 seeking to disregard the valid easement due to her disability. [R. Supp. 12]. Specifically, the "reasonable accommodation" the Homeowner now sought was also addressed in the Stipulated Final Order. [R. Supp. 26].

In response, the Homeowner acknowledged that the 2009 case was "relevant" to this matter. [R. Supp. 19]. When the court inquired as to what evidence the Homeowner filed in opposition, the Homeowner stated that she was relying only on her allegations in the third amended complaint. [R. Supp. 37, 40].

Thereafter, the parties engaged in a conversation to attempt to resolve the case. After some discussion, the Association offered to agree to the Homeowner's request for aluminum gables on the gate if it resolved the entire case. [R. Supp. 49]. Although the Homeowner initially told the trial court that she thought it was "inappropriate" to resolve the case in front of the court [R. Supp . 49], counsel then told the court that she "appreciate[d] the stipulation" and that she "accepts the agreement" but still claimed it did not "resolve the entirety of the lawsuit." [R. Supp. 50]. The court then asked the Homeowner what the remaining issues were, to which the Homeowner cited to maintenance of trees and strictly enforcing the covenants against the Neighbors. [R. Supp. 50, 53-54, 73]. The Association agreed to both. [R. Supp. 51, 54, 55]. The Homeowner also requested that any fines from prior violations be withdrawn. [R. Supp. 57].

The Homeowner then accepted the court's suggestion to take a recess to discuss the matters further with her client. [R. Supp. 59]. Upon returning from the recess, the Homeowner provided the court with her additional issue that "has to do with the easement, the dog feces around my client's property… the aluminum gate. **I think that's everything**." [R. Supp. 61-62] (emphasis added).

The court then gave the parties another ten-minute recess to get the remaining issues "ironed out." [R. Supp. 62]. The Homeowner replied, "Thank you, Your Honor." [R. Supp. 62].

After the second recess, the Association confirmed that there were no "pending violations" directed to the Homeowner. [R. Supp. 64, 63, 72-73]. The Homeowner responded that the prior violation was in regards to the fence, to which the Court stated "[i]f [the Homeowner] didn't comply with the Order, I'm certainly not going to suggest that they have to waive any fines related to moving the fence as indicated before." [R. Supp. 65]. The Association then stipulated that it would provide the Homeowner $2,000 "in order to not be before the court" again. [R. Supp. 70]. The Association agreed they would allow her to have aluminum gates installed, and the gates would be approved so long as the Homeowner lives on the property, and so long as it is the same color brown as the other gates. [R. Supp. 70, 71].

After addressing the Homeowner's alleged outstanding violations and agreeing to let her install the aluminum gates she requested, the Homeowner still claimed to have "monetary damages." [R. Supp. 73]. The court then asked what monetary damages she had since the Association had just agreed to eliminate the trees and outstanding violations, as well as allow her to install her requested gates. [R. Supp. 73]. The Homeowner's only

response was in regards to a prior violation for painting the fence the wrong color. [R. Supp. 74].

At the conclusion of the hearing, the trial court granted the Association's motion for final summary judgment. [R. Supp. 74]. The trial court specifically found that the FHA claim about the aluminum gate was **already addressed in the prior stipulated final order** that required her to pay for it. [R. Supp. 75] (emphasis added). The trial court found that because the Association had agreed there were no outstanding penalties and had agreed to do the maintenance requested, an injunction was not needed. [R. Supp. 75]. Then the trial court stated, "**as far as the rest of this case, it's already been done. It's already been decided."** [R. Supp. 75] (emphasis added). The trial court then rendered a written order granting final summary judgment. [R. 2089-2092].

Thereafter, the Homeowner filed a 421-page motion for rehearing, attaching numerous new exhibits and raised issues that were not raised prior to or during the hearing. [R. Supp. 2107-2528]. The trial court denied the rehearing motion, specifically finding that that the motion improperly attempted to introduce evidence that "was available to [the Homeowner] before the summary judgment hearing" and was "never presented in writing

to opposing counsel or to the Court at any time before the summary judgment hearing." [R. 2557-2561, 2557].

The court also responded to the Homeowner's claims that its oral ruling was inconsistent with the final judgment by clarifying that the cited statements relied on were not "rulings" but merely a Socratic method discussion about potentially undisputed or no longer disputed factual issues. [R. 2559]. The trial court's ruling was that the evidence is "such that a reasonable jury could not return a verdict for the Plaintiff on liability and that the matter has been fully litigated in the 2009 case or is barred by the statute of limitations." [R. 2559].

This appeal followed.

STANDARD OF REVIEW

The Association agrees with the Homeowner that this Court's standard of review, of the trial court's entry of summary judgment and any argument about an alleged denial of procedural due process, is *de novo*. Initial Br. at 21.

SUMMARY OF THE ARGUMENT

Summary judgment was warranted because the Homeowner and the Association agreed to the stipulated final order in prior litigation, which bound the trial court in this case. The Homeowner's attempts to separate her 2018 Complaint from the prior proceedings and its binding final order is exactly what the doctrines of collateral estoppel and res judicata seek to prevent. The trial court also correctly determined that the Homeowner's newly pled FHA violation was similarly barred by the statute of limitations.

Contrary to the Homeowner's claims on appeal, she was afforded due process and a meaningful opportunity to be heard. The Homeowner was given ample time and multiple recesses during the hearing. Not only did she not contemporaneously and specifically object to preserve the issue for appellate review, but she affirmatively participated in the settlement discussions she now contests on appeal.

This Court should reject the Homeowner's arguments on appeal and affirm the final judgment entered in favor of the Association.

ARGUMENT

I. The trial court afforded the Homeowner due process when it ruled on the Association's summary judgment motion, where the Homeowner had notice and a meaningful opportunity to be heard. (The Homeowner's Issue II, rephrased).

The Homeowner's argument that she was denied procedural due process is unsupported by both the law and the record on appeal. The summary judgment hearing was in accordance with Florida Rule of Civil Procedure 1.510 and the Homeowner's failure to prepare to address the merits of her case at the hearing cannot be construed as a due process violation.

Procedural due process serves as a vehicle to ensure fair treatment through the proper administration of justice where substantive rights are at issue. *Keys Citizens for Responsible Gov't, Inc. v. Fla. Keys Aqueduct Auth.*, 795 So. 2d 940 (Fla. 2001). It requires that each litigant be given proper notice and a full and fair opportunity to be heard. *Carmona v. Wal-Mart Stores, East, LP*, 81 So. 3d 461, 463 (Fla. 2d DCA 2012).

"To be sufficient, the notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Carmona,* 81 So. 3d at 463. The proceeding itself must only be "essentially fair." *Id.*

Here, the Homeowner was afforded both proper notice and a meaningful opportunity to be heard. It is undisputed that the Homeowner had notice of the proceedings and the record demonstrates that she did not seek a continuance to respond to the summary judgment motion or to submit counter-evidence either before, or during, the hearing.

The Homeowner claims that the lower court violated her due process rights when it "expanded the hearing" to address the merits of the issues raised in her lawsuit. Initial Br. 22. The Homeowner complains that she was "entitled to present evidence on her claims, which she was not given fair notice or a real opportunity to do" and therefore she was denied due process. Initial Br. 25. The Homeowner, however, admits in her initial brief that she was unprepared to address or present evidence on the merits of her claims at the summary judgment hearing. Initial Br. 24-25. This is not a due process violation, but rather the Homeowner's attempt to circumvent her failure to adequately prepare for the summary judgment hearing under the amended rule.

The entire purpose of a summary judgment motion is to rule on the merits of the lawsuit and to determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so

one-sided that one party must prevail as a matter of law." *Mane FL Corp. v. Beckman*, 355 So. 3d 418 (Fla. 4th DCA 2023).

When seeking summary judgment, the moving party must identify "each claim or defense--or the part of each claim or defense--on which summary judgment is sought." Fla. R. Civ. P. 1.510(a). Once the party moving for summary judgment satisfies this initial burden, the burden then shifts to the nonmoving party to come forward with evidence demonstrating that a genuine dispute of material fact exists. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986) (noting that the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial").

To that effect, under the new summary judgment rule, a party asserting there is a genuinely disputed material fact *must* support the assertion by citing to particular parts of materials in the record or other materials; or showing that the materials cited do not establish the absence of a genuine dispute. Fla. R. Civ. P. 1.510(c)(5) (emphasis added). In addition, there is no wiggle room in the word "must" and therefore the filing of the response is mandatory, by requiring the nonmoving party to take a definite, detailed

position on the motion. *Lloyd S. Meisels, P.A. v. Dobrofsky*, 341 So. 3d 1131, 1135 (Fla. 4th DCA 2022).

While the Homeowner filed a response to the motion for summary judgment, she did not direct the court to any evidence or materials sufficient to support her claim. [R. 2051-2058]. The only references to the record the Homeowner made were to her own complaint and the stipulated final order. [R. 2052]. Despite Rule 1.510's plain language requiring the nonmovant to *support* her assertion that there is a genuinely disputed material fact, the Homeowner admitted that she had not submitted any evidence for the hearing and that she was relying solely on the allegations in her verified complaint. [R. Supp. 37, 40].

The newly amended summary judgment rule makes it clear that her own pleadings and affidavits are no longer sufficient to show there is a genuine issue for trial. *Romero v. Midland Funding, LLC,* 358 So. 3d 806 (Fla. 3d DCA 2023). Under the new rule, "[i]f the evidence [presented by the nonmovant] is merely colorable, or is not significantly probative, summary judgment may be granted." *In re Amends. to Fla. R. of Civ. P. 1.510*, 309 So. 3d 192, 193 (Fla. 2020) (quoting *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 249-250, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)).

Yet, all the Homeowner chose to do for the summary judgment hearing was rely on her own verified statements. The Homeowner cannot ignore her obligation under the new rule to present evidentiary support, and then complain a due process violation occurred because she was unprepared.

The Homeowner also complains that she was "not provided with her procedural due process rights" because the stipulations and resolutions addressed in the summary judgment order was "outside the original scope of the hearing." Initial Br. 23-25. This argument is similarly unpersuasive since amended Rule 1.510(f), specifically gives the trial court the discretion to "grant the motion on grounds not raised by a party" or "consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute."

Under the plain language of the rule, the trial court was permitted to go outside the four corners of the motion when ruling on summary judgment. As stated below and incorporated herein, the Homeowner fully engaged in these discussions and the multiple recesses the court permitted. Not once did the Homeowner request a continuance of the hearing or object to the multiple recesses to address these issues.

The Homeowner was afforded reasonable notice and an opportunity to be heard, and therefore no due process violation occurred. Thus, this argument is without merit, and the Court should affirm the final judgment.

II. The summary judgment order was consistent with the trial court's oral ruling at the conclusion of the summary judgment hearing. (The Homeowner's Issue III, rephrased).

The trial court's final order was consistent with it oral pronouncement and therefore should be affirmed. It is true that when there is an unambiguous conflict between the trial court's oral pronouncement and its written order, the oral pronouncement controls. *R.W. v. Dep't of Children & Families*, 147 So. 3d 631, 632 (Fla. 3d DCA 2014) (holding written order finding abandonment unambiguously conflicted with oral pronouncement that abandonment was not proven). This can occur when the lower court's written order does not address a specific ruling pronounced at the hearing. *Joramo Partners, Ltd. v. 4326 Ocean Dr., LLC*, 310 So. 3d 50, 52 (Fla. 4th DCA 2020) (concluding reversal was appropriate when trial court orally pronounced a ruling on damages claim, but its written judgment did not address it). It can also occur when the trial court's written order grants relief on an issue not addressed at the hearing. *R.W.*, 147 So. 3d at 632 (holding reversal required when final order based on ground not pled). None of those circumstances, however, is present in the record.

Here, the trial court's oral pronouncement does not conflict with the written order. The Homeowner's claim that the final order is inconsistent with the trial court's oral pronouncement is based on her ultimate disagreement with the result. The Homeowner attempts to impute the court's earlier discussions in the hearings as "findings" to boost her argument. As the trial court clarified in the order denying her motion for rehearing, those were not findings but merely on the record discussions. [R. 2559].

The trial court's actual *rulings* on the record were that the case had already been resolved, that the FHA claims and the other issues were already addressed in the prior litigation and controlled by the prior final order or resolved, leaving no disputed material facts. [R. Supp. 75]. In its final order, the trial court's reasoning was expanded with the benefit of the hearing transcript, but it did not conflict with its oral pronouncement. [R. Supp. 2089-2093]. The trial court did not grant relief on a ground not raised in the motion for summary judgment, nor did its finding that there were no remaining material disputed facts contradict its oral pronouncement. Just like the first argument, this argument is also without merit. Thus, this Court should affirm.

III. The summary judgment order appropriately included the parties' agreed upon stipulations. (The Homeowner's Issue IV, rephrased).

On appeal, the Homeowner selectively recites portions of the transcript to create an argument that she did not actually agree to the stipulations included in the final judgment. Initial Br. 32-38. When evaluating the transcript in its entirety, it is clear the Homeowner participated in the stipulations discussion and engaged in multiple recesses in an attempt to resolve the matter without objection.

Although the Homeowner initially told the trial court she thought it was "inappropriate" to resolve her issues in front of the judge, the Homeowner did not make a specific legal objection. After her lone comment, the Homeowner willingly participated in those discussions and received concessions to her benefit, without objection. Not once did the Homeowner contemporaneously object. Therefore, it is improper for the Homeowner to now seek appellate review based on her purported "objections." *Aills v. Boemi*, 29 So. 3d 1105, 1109 (Fla. 2010) (holding that in order to be preserved for further review by a higher court, an issue must be presented to the lower court at the time of the alleged error); *Noel v. Broward Gen. Med. Ctr.*, 725 So. 2d 438, 439 (Fla. 4th DCA 1999) (concluding a general, unspecified objection does not preserve an issue for appeal).

The record is clear that the Association made several concessions for the Homeowner to resolve the lawsuit completely. The Homeowner did not make any argument, lest a specific legal argument, during those discussions. Instead, the Homeowner allowed the settlement discussions to proceed as part of the hearing. Following that one comment, the Homeowner did not raise any specific and contemporaneous objections to the stipulations during the hearing. *Rich v. Rich*, 337 So. 3d 138, 148 (Fla. 2d DCA 2022) (citing *Heath v. Thomas Lumber Co.*, 140 So. 2d 865, 866 (Fla. 1962) (holding petitioner waived any objection she might have had by her stipulation during the hearing). Therefore, she cannot raise them on appeal.

The Homeowner is attempting to circumvent her lack of preservation by claiming that she never actually stipulated to the Association's offers. Initial Br. at 32. The record contradicts her assertions and shows that the parties orally agreed to several outstanding issues in exchange for the matter to finally conclude.

The Homeowner relies on a footnote in a four-decade old case decided under former Florida Rule of Civil Procedure 1.030(d) to support her argument that her "silence" cannot be construed as agreeing to the stipulations. Initial Br. at 32. This argument is misplaced.

In *Miami Herald Publishing Company v. Payne,* 358 So. 2d 541 (Fla. 1978), the Florida Supreme Court noted that a "party's silence in response to the court's suggestion at a motion hearing can be construed as a 'stipulation'" because it would be "at odds with Florida Rule of Civil Procedure 1.030(d)." *Id*. at 543 n.5. However, Rule 1.030(d) was repealed effective July 1, 1979. *Sockolof v. Eden Point N. Condo. Ass'n, Inc.*, 421 So. 2d 716, 718 (Fla. 3d DCA 1982). While that Rule had been construed to require that substantive settlements be in writing, substantive settlements are no longer required to be in writing and an oral agreement made before the the court is enforceable. *See Roskind v. Roskind*, 552 So. 2d 1155, 1156 (Fla. 3d DCA 1989) ("A stipulation properly entered into the record, where there is a clear understanding of the finality of that agreement, is an effective and enforceable settlement.").

Notwithstanding, the record contradicts the Homeowner's claims on appeal that she did not agree with the stipulations that were included in the final order. The Association offered to allow the Homeowner to have her requested aluminum gates "if the case goes away." [R. Supp. 49]. After counsel remarked that she found it "inappropriate" to resolve the case in front of the court, counsel then went on to say that she "appreciate[d] the stipulation" and "**accept[ed] the agreement**," but claimed it did not resolve

the entirety of the lawsuit. [R. Supp. 50] (emphasis added). Then, the Homeowner brought up her issues regarding the trees, her prior violations, and the neighbor's alleged breach of covenants, all of which the Association agreed to address in order to resolve the matter.

Not once during the hearing did the Homeowner express disagreement with the terms set forth by the Association in exchange for the case ending. After addressing the Homeowner's issues, the trial court asked what else there was, to which counsel replied:

> MS. GENET: Well, we have -- it has to do with the easement, the dog feces around on my client's property, including --
>
> THE COURT: They've already agreed they're going to strictly enforce that rule.
>
> MS. GENET: Okay.
>
> The aluminum gate. I think that's everything.

It was not until after the Homeowner participated in the discussions and assented to the Association's concessions that she claimed those agreements "doesn't resolve our monetary damages." [R. Supp. 73].

The record directly contradicts the Homeowner's assertions on appeal that the she remained "silent" in response to the court's suggestions. Rather, the Homeowner fully participated in the settlement discussions and accepted the terms on the record. Thus, there was nothing improper about the stipulations being included in the final order. The Court should reject these arguments and affirm the final judgment, which included those stipulations.

IV. Summary judgment was proper because there was no issue of material fact remaining that would entitle the Homeowner to relief and the Association was entitled to summary judgment as a matter of law. (The Homeowner's Issue V and VI, rephrased).

The trial court correctly determined there was no genuine issue of material fact that would entitle the Homeowner to relief. While the Homeowner raises multiple points of perceived legal error, she does not once cite to what issue of material fact remained. Other than a general assertion to an unspecified amount of damages, the initial brief is void of any reference to what *material* disputed facts remain that would have thwarted the granting of the summary judgment motion.

Summary judgment is no longer precluded by the existence of *any* competent evidence "creating an issue of fact, however credible or incredible, substantial or trivial." *Olsen v. First Team Ford, Ltd.*, 359 So. 3d 873, 877 (Fla. 5th DCA 2023). The focus is on "whether the evidence

presents a sufficient disagreement to require submission to a jury." *Id*. "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment." *Anderson*, 477 U.S. at 247–248. If the nonmovant's evidence is not significantly probative, summary judgment may be granted." *In re Amends.*, 309 So. 3d at 193 (quoting *Anderson*, 477 U.S. at 249–50).

In the initial brief and below, the Homeowner acknowledges the court's finding that injunctive relief was no longer needed because there were no outstanding penalties and the Association's agreement to do the maintenance she had requested. [Initial Br. 24; R. Supp. 75]. During the hearing, the Homeowner engaged in multiple recesses and conversations with the trial court and the Association to have her outstanding issues resolved. The written order expanded on the findings, citing to specific portions of the record addressing the Homeowner's complaints about the fence gates, her outstanding maintenance requests, and pending violations. [R. 2089- 2092].

Following the on the record discussions, the trial court correctly determined that there were no remaining disputed facts that would entitle the Homeowner to relief. *See Fision Corp. v. Frueh*, 2023 WL 5418440, at *3 (Fla. 2d DCA Aug. 23, 2023) ("[O]nly disputes over facts that might affect the

outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.). The Homeowner even conceded as such during the hearing when after the stipulations discussions she told the court "I think that's everything." [R. Supp. 61-62]. Thus, the trial court properly granted summary judgment, where there were no genuine issues of dispute as well as the three other affirmative defenses: statute of limitations, res judicata, and collateral estoppel.

A. Summary judgment was proper on the Homeowner's FHA claim because the claim was barred by the FHA's two-year statute of limitations.

The record is clear that the Homeowner's 2009 complaint sought a reasonable accommodation for her disability and sought to disregard the easement due to her disability. The entire subject of the litigation was the Homeowner's complaint against the Neighbors for erecting a privacy fence that impeded her access due to her disability. Despite seven years of litigation resulting in a stipulated final order, the Homeowner re-raised her claim in her third amended complaint filed in this case, again seeking declaratory judgment regarding the privacy fence due to her disability. [R. 893].

The trial court correctly found that the Homeowner's newly raised FHA claim was barred by the statute of limitations. Pursuant to 42 U.S.C. § 3613(a)(1)(A), an aggrieved person cannot commence a civil action for relief under the FHA more than "2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this subchapter, whichever occurs last." Here, the record is uncontroverted that the entire basis of the 2009 lawsuit was the Homeowner's request for an accommodation due to her disability. That matter was litigated and adjudged fully by the stipulated order.

The FHA's statute of limitations begins to run as soon as "facts supportive of the cause of action are or should be apparent to a reasonably prudent person similarly situated." *Telesca v. Vill. of Kings Creek Condo. Ass'n, Inc.*, 390 Fed. Appx. 877, 882 (11th Cir. 2010). Here, the 2009 complaint and stipulated final order were based on the Homeowner's request for a reasonable accommodation in contravention of the Neighbors' lawful easement. The entire subject of the litigation turned on the Homeowner's request for an accommodation due to her disability. Now, the Homeowner again seeks an accommodation due to her same disability regarding the same privacy fence. This is well outside the FHA's statute of limitations and "exactly the sort of claim that Congress intended to bar by the ... limitation

period.” *Roberts v. Gadsden Mem'l Hosp.*, 850 F.2d 1549 (11th Cir. 1988). Thus, the trial court properly granted summary judgment on the FHA claims since they were barred by the statute of limitations.

B. Summary judgment was proper because the Homeowner’s claims were barred by res judicata.

The trial court correctly concluded that the Homeowner’s claims were also barred by res judicata. This argument was raised below and was appropriately before the court.

Res judicata is the doctrine that a “judgment on the merits rendered in a former suit between the same parties or their privies, upon the same cause of action, by a court of competent jurisdiction, is conclusive not only as to every matter which was offered and received to sustain or defeat the claim, but as to every other matter which might with propriety have been litigated and determined in that action.’ ” *Fla. Dep't of Transp. v. Juliano*, 801 So. 2d 101, 105 (Fla. 2001).

The record is clear that the Homeowner sued the same parties from the 2009 action, utilizing the same causes of action, and concerning the same subject matter. The stipulated final order is unambiguous that these issues were specifically litigated and adjudged, and that all actions related to enforcement and any further complaints were to be brought as part of the

prior case. Therefore, the prior litigation resulted in a judgment that conclusively determined all matters, which were or could have been determined, including enforcement and compliance issues. *Gomez-Ortega v. Dorten, Inc.*, 670 So. 2d 1107, 1108 (Fla. 3d DCA 1996). The stipulated final order already adjudged how those issues would be handled. It was improper for the Homeowner to disregard the stipulated order and ask for a new manner of redress for enforcement and compliance issues.

To allow the Homeowner to proceed on a new cause of action every time she disagrees with the Association's attempts to comply with the stipulated final order would violate "the rule against splitting causes of action," which is an aspect of the doctrine of res judicata. *Froman v. Kirland*, 753 So. 2d 114, 116 (Fla. 4th DCA 1999). "[T]he rule is founded upon the plainest and most substantial justice-namely, that litigation should have an end and that no person should be unnecessarily harassed with a multiplicity of suits." *Gaynon v. Statum*, 10 So. 2d 432, 433 (1942); *see also Lobato–Bleidt v. Lobato*, 688 So. 2d 431 (Fla. 5th DCA 1997).

The Homeowner attempts to seek injunctive relief and a declaratory judgment in this action regarding the same easement and privacy fence that the trial court dealt with and ruled upon in the prior action. The Homeowner's issues with the Association's enforcement and compliance of the prior court

order should have been raised in the prior case, as dictated by the final order. Therefore, the trial court correctly determined that the Homeowner's 2018 complaint was barred by the doctrine of res judicata. Thus, the trial court correctly granted summary judgment as a matter of law, and this Court should affirm on that basis as well.

C. Summary judgment was proper because the doctrine of collateral estoppel prevents the Homeowner from litigating the same issues in a new cause of action.

The trial court properly granted summary judgment as a matter of law when it determined that the Homeowner's claims were barred by collateral estoppel.

The doctrine of collateral estoppel—which is also known as issue preclusion and estoppel by judgment—bars relitigation of the same issues between the same parties in connection with a different cause of action. *M.C.G. v. Hillsborough Cnty. Sch. Bd.*, 927 So. 2d 224, 226 (Fla. 2d DCA 2006). Collateral estoppel generally "comes into play in a case when, in an earlier proceeding involving a different cause of action, the 'same parties' litigated the 'same issues' that are presented once again for decision." *Kovar Law Group, PLLC v. Benchmark Consulting, Inc.*, 332 So. 3d 47, 52 (Fla. 2d DCA 2021).

Collateral estoppel bars re-litigation of the same issue between the same parties, which has already been determined by a valid judgment. *Zikofsky v. Mktg. 10*, Inc., 904 So. 2d 520, 525 (Fla. 4th DCA 2005). Judgment in the first suit only estops the parties from litigating in the second suit issues—that is to say points and questions—common to both causes of action and which were adjudicated in the prior litigation. *Stogniew v. McQueen*, 656 So. 2d 917, 919 (Fla. 1995). Collateral estoppel prevents repetitious litigation of what is essentially the same dispute. *Zimmerman v. Office of Ins. Reg.*, 944 So. 2d 1163, 1168 (Fla. 4th DCA 2006).

Here, the dispute is essentially the same – the Homeowner's discontent with the Neighbors' valid easement and privacy fence on her property that was adjudged in 2016 by the stipulated final order. The overlap between the 2009 complaint and the underlying cause of action is "so substantial that preclusion is plainly appropriate." *M.C.G.*, 927 So. 2d at 227.

The Homeowner attempts to distinguish the cases with new allegations against the Association for enforcing the order, even though enforcement proceedings were also addressed in the stipulated final order. Nevertheless, any alleged distinctions are minor because it involves the same core issue, the easement and issues adjudged in the stipulated order. *GLA & Assoc.,*

Inc. v. City of Boca Raton, 855 So. 2d 278, 281 (Fla. 4th DCA 2003) (holding that minor distinctions will not preclude the application of collateral estoppel).

The Homeowner incorrectly asserts that collateral estoppel cannot bar her claim because the 2016 final order was "stipulated" and not fully litigated" for collateral estoppel purposes. Initial Br. 46. The only Fourth District case she cites for this proposition is distinguishable.

In *Hanover Insurance Company v. Marriott International, Inc.*, 685 So. 2d 894 (Fla. 4th DCA 1996), an insurer sued a hotel to recover over $42,000.00 it had paid to the hotel's guests to compensate for property losses they had sustained while guests at the hotel. *Id*. at 895. In a prior suit between only the hotel and the guests, the trial court had limited the hotel's liability to five-hundred dollars in an "agreed order granting partial summary judgment." *Id*. This Court reversed, finding that collateral estoppel did not apply because the agreed order was not a final order, nor was the issue therein actually litigated. *Id*.

Conversely, here there was a final order entered after seven years of litigation. Florida policy strongly favors finality of judgments whether a judgment is reached through contest or consent. *Champlovier v. City of Miami*, 667 So. 2d 315, 316 (Fla. 1st DCA 1995). A consent judgment is a judicially approved contract, rather than a judgment entered after litigation.

Gallagher v. Dupont, 918 So. 2d 342, 347 (Fla. 5th DCA 2005). Even if the prior final order was stipulated to, it is a final judgment nonetheless and entitled to the same preclusive effect as any other judgment issued by a Florida court.

The trial court properly found that the Homeowner's claims were barred by collateral estoppel and therefore summary judgment was appropriate. This Court should affirm on this basis as well.

CONCLUSION

Based on the above reasons, Country Isles Section One Maintenance Association, Inc., respectfully requests that this Court affirm the trial court's Final Summary Judgment entered in its favor and against the Homeowner, Jayne Greenberg.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 15th day of September, 2023, I electronically filed a true and correct copy of the foregoing via the Florida Courts E-filing Portal, which served a copy via electronic mail to the following:

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Answer Brief was prepared using 14-point Arial font, in accordance with Florida Rule of Appellate Procedure 9.045(b). This brief is also within the word limits allowed by Florida Rule of Appellate Procedure 9.100(k).

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