DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JOHN T. KENNEDY,
Appellant,

v.

ALISON KENNEDY,
Appellee.

Nos. 4D2025-2845 & 4D2026-1196

[October 7, 2026]

Consolidated appeals from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Darren Dunifon Shull, Judge; L.T. Case No. 502002DR001829DIFAMB.

John T. Kennedy, Porto Alegre, Brazil, pro se.

Jeffrey Begens of Law Office of Jeffrey Begens, P.A., Miami, for appellee.

GROSS, J.

The issue we address in this case is whether the federal Consumer Credit Protection Act precludes garnishment of over 25% of the former husband's disposable earnings to enforce a marital settlement agreement's nonmodifiable alimony obligation that was incorporated into a final dissolution judgment. Our answer to this question is no. We therefore affirm.

Background Facts

In 2003, the trial court entered a final judgment of dissolution of marriage, stating that the parties' Marital Settlement Agreement ("MSA") was "approved and incorporated herein by reference" but "shall not merge herein." The final judgment further stated: "The parties are ordered to comply with all of [the MSA's] provisions notwithstanding the fact that each provision is not set forth specially in this Final Judgment but is, rather, incorporated by reference." The final judgment also reserved jurisdiction to enter "such further orders as may be necessary."

At the time the parties executed the MSA, the former husband was earning a substantial income as an attorney. The MSA required him to pay the former wife alimony of $15,000 per month for a series of months, then $10,000 per month, then $7,000 per month, and finally $5,000 per month until the Husband's 65th birthday. The parties waived the right to seek modification and agreed that the alimony "shall not be modifiable for any reason . . . ."

In 2013, the Social Security Administration determined the former husband to be disabled.

In 2017, the trial court entered a money judgment against the former husband for $240,000 in alimony arrearages.

In 2020, the former wife moved for entry of an income withholding order, seeking to garnish a portion of the former husband's monthly social security disability payments. The trial court granted the motion and entered a separate Income Withholding Order (the "2020 IWO" or the "original IWO"), which garnished 65% of the former husband's disposable earnings.

The former husband appealed the 2020 IWO to this court, raising five issues in his initial brief that were all unrelated to the federal Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq. In his reply brief, however, the former husband argued for the first time that "[t]he maximum amount which is subject to garnishment is twenty five percent (25%) of the husband's disposable earnings" pursuant to 15 U.S.C. § 1673(a)(1).

We per curiam affirmed the 2020 IWO in case number 4D2020-1080 and denied the former husband's motion for rehearing.

The former husband's alimony obligation terminated when he turned 65 in April 2023.

In 2024, the former husband moved to modify the 2020 IWO, arguing that the order violated the 25% garnishment limitation in 15 U.S.C. § 1673 because his nonmodifiable alimony obligation was "determined by an Agreement, not by court order," and therefore did not meet the statute's narrow exception allowing higher garnishment percentages for support orders "issued by a court." The former husband later filed a supporting memorandum, elaborating on his legal objection to any garnishment that exceeded 25% of his disposable earnings.

The trial court denied the former husband's motion to modify the 2020 IWO. The former husband appealed this order in case number 4D2025-2845.

Later, following a hearing in March 2026, the trial court (1) granted the former wife's motion for a second final money judgment for alimony arrearages, (2) entered a second final money judgment against the former husband for $500,724.74, and (3) entered an Amended IWO garnishing 65% of the former husband's social security payments for past due spousal support. The former husband appealed these orders in case number 4D2026-1196.

We previously consolidated the two appeals for assignment to the same panel. We now consolidate them for disposition in this opinion.

The Former Husband's Arguments on Appeal

In both cases on appeal, the former husband raises the same argument challenging the income withholding orders. He contends that the original and amended income withholding orders both violate the federal Consumer Credit Protection Act, because the orders garnish 65% of his Social Security benefits, exceeding the general statutory limit of 25% of disposable earnings.

Relying upon *Naedel v. Naedel*, 693 A.2d 60 (Md. Ct. Spec. App. 1997), he says that his spousal support obligation—which was "incorporated, but not merged" into the dissolution judgment—does not fall within the statutory exception to the 25% limit for support orders meeting certain strict guidelines. He asserts that because his alimony obligation is nonmodifiable and derives from an MSA rather than a court order, it is not an order for support issued by a court, established by state law, and subject to judicial review, and thus fails the requirements of 15 U.S.C. § 1673(b)(1)'s narrow exception to the 25% limit.

The Law of the Case Doctrine Does Not Apply

Although we affirmed the 2020 IWO garnishing 65% of the former husband's social security in case number 4D2020-1080, the law of the case doctrine does not preclude us from considering the former husband's argument.

"The doctrine of the law of the case requires that questions of law actually decided on appeal must govern the case in the same court and the trial court, through all subsequent stages of the proceedings." *Fla.*

Dep't of Transp. v. Juliano, 801 So. 2d 101, 105 (Fla. 2001). The "law of the case applies only to proceedings within the same case," and "it bars consideration only of those legal issues that were actually considered and decided in a former appeal[.]" *Id.* at 107. "Moreover, even as to those issues actually decided, . . . an appellate court has the power to reconsider and correct an erroneous ruling that has become the law of the case where a prior ruling would result in a 'manifest injustice.'" *Id.* at 106 (quoting *Strazzulla v. Hendrick*, 177 So. 2d 1, 5 (Fla. 1965)).

Here, the law of the case doctrine does not apply because the issue of whether the 2020 IWO violated the federal Consumer Credit Protection Act was not decided in the prior appeal in case number 4D2020-1080. The former husband did not raise that issue in his initial brief in that case.

Although the former husband raised that issue in his reply brief in that case, we would not have considered an argument raised for the first time in a reply brief. *See United Auto. Ins. Co. v. Hollywood Injury Rehab Ctr.*, 27 So. 3d 743, 744 n.1 (Fla. 4th DCA 2010) (explaining that an issue raised for the first time in a reply brief will not be considered by the appellate court).

The IWOs Authorizing the Withholding of Over 25% of the Former Husband's Disposable Earnings Do Not Violate the Federal Consumer Credit Protection Act

We conclude that the IWOs authorizing the withholding of over 25% of the former husband's disposable earnings do not violate the federal Consumer Credit Protection Act.

Under 15 U.S.C. § 1673(a)(1), the general rule is that "the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed (1) 25 per centum of his disposable earnings for that week[.]"

Exceptions to this general rule are set forth in section 1673(b). Relevant to this appeal, section 1673(b)(1)(A) provides that "[t]he restrictions of subsection (a) do not apply in the case of (A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review."

Section 1673(b)(2), in turn, establishes higher garnishment limits—between 50% and 65%, depending upon whether the obligor is supporting another spouse or dependent child and whether the support obligation is

in arrears—for enforcement of a court order or administrative order for child support or alimony. 15 U.S.C. §§ 1673(b)(2)(A)–(B).

As originally enacted in 1968, the exception in section 1673(b)(1)(A) simply applied to "any order of any court for the support of any person." Consumer Credit Protection Act, Pub. L. No. 90-321, § 303, 82 Stat. 146, 163 (1968). In 1977, however, Congress amended section 1673(b)(1)(A) into its current form, which now includes support orders issued pursuant to "an administrative procedure." Tax Reduction and Simplification Act of 1977, Pub. L. No. 95-30, tit. V, § 501(e), 91 Stat. 126, 161–62 (1977).

In light of this statutory history and the rule of the last antecedent, we conclude that the clause "which is established by State law, which affords substantial due process, and which is subject to judicial review" applies only to the phrase "an administrative procedure." *See City of St. Petersburg v. Nasworthy,* 751 So. 2d 772, 774 (Fla. 1st DCA 2000) (explaining that the doctrine of the last antecedent provides that "relative and qualifying words, phrases and clauses are to be applied to the words or phrase immediately preceding, and are not to be construed as extending to, or including, others more remote").

A different approach was taken in *Naedel*. There, the Maryland court held that a nonmodifiable alimony obligation arising from an agreement incorporated but not merged into a divorce judgment was not a court order for support under the section 1673(b)(1) exception to garnishment limits. 693 A.2d at 62. The Maryland court reasoned that "the trial court did not order appellant's alimony obligation," but rather the obligation stemmed "from the Agreement, a contract the parties voluntarily entered into." *Id.* The Maryland court also reasoned that the alimony obligation was not "subject to judicial review" because the agreement made the obligation nonmodifiable. *Id.* at 62 & n.3. Finally, the Maryland court ruled that "using the conjunctive 'and' between the provisions of § 1673(b)(1)(a) makes clear that each element must be complied with in order to invoke this exception." *Id.* at 62. Accordingly, the Maryland court held that because "the elements 'a court order' and 'subject to judicial review' are not here present, the trial court erred in ordering that 60% of appellant's wages be withheld to satisfy his alimony obligation." *Id.*

Under Florida law, by contrast, "a court has jurisdiction to enforce a settlement agreement where the court has either incorporated the agreement into a final judgment or approved the agreement by order and retained jurisdiction to enforce it[s] terms." *Paulucci v. Gen. Dynamics Corp.*, 842 So. 2d 797, 799 (Fla. 2003). Accordingly, "a marital settlement agreement's provisions, when incorporated into a judgment that dissolves

a marriage and reserves jurisdiction for enforcement, can be enforced, either through the agreement or through the judgment." *Webb v. Webb*, 302 So. 3d 1039, 1044 (Fla. 2d DCA 2020).

In *Webb*, for example, the Second District held that "[w]hen a marital settlement agreement is incorporated into a final judgment and the court entering the judgment retains jurisdiction to enforce it, enforcement of the agreement through the judgment is generally subject to section 95.11(1)'s twenty-year statute of limitations" for enforcement of judgments, not the five-year statute of limitations governing written contracts. *Id.* at 1041–42. *Webb* expressly rejected the argument that "unless the marital settlement agreement was merged into the Divorce Judgment (as opposed to merely incorporated), the agreement's terms could not be enforced as a judgment, but only as a contract." *Id.* at 1043.

Here, the trial court did not err in garnishing 65% of the former husband's social security payments to enforce his alimony obligation.[1] The dissolution judgment constituted an "order for the support of any person issued by a court of competent jurisdiction" within the meaning of section 1673(b)(1)'s exception to the 25% garnishment limit because the dissolution judgment: (1) incorporated the parties' MSA, even though the MSA was not merged into the judgment, (2) ordered the parties to comply with all the provisions of the MSA, which included the nonmodifiable alimony provision, (3) reserved jurisdiction for enforcement, and (4) was entered by a court of competent jurisdiction—the circuit court of Florida's Fifteenth Judicial Circuit. As noted above, the clause "which is established by State law, which affords substantial due process, and which is subject to judicial review" applies only to the phrase "an administrative procedure," which is not at issue here.

Although *Naedel* supports the former husband's argument, we find its reasoning to be unpersuasive.

Under Florida law, an MSA's provisions, when incorporated into a dissolution judgment that reserves jurisdiction for enforcement, may be enforced as a judgment. The dissolution judgment in this case expressly stated that the parties were "ordered to comply" with all the MSA's provisions, which included the alimony provision. We cannot conceive of a clearer expression of an "order for the support of any person issued by a court of competent jurisdiction" than a circuit court's dissolution

[1] The former husband does not raise any argument that the garnishment to satisfy his alimony arrearages should be limited to 55% under section 1673(b)(2) on the ground that he supports another spouse or dependent child.

judgment that orders the parties to comply with an MSA's alimony provision.

For these reasons, we affirm the orders on appeal in case numbers 4D2025-2845 and 4D2026-1196.

Affirmed.

MAY and CIKLIN, JJ., concur.

* * *

Not final until disposition of timely-filed motion for rehearing.