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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

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English H. Gonzalez

v.

Carlos A. Gonzalez

Appeal from Shelby Circuit Court
(DR-16-900025)

MOORE, Judge.

English H. Gonzalez ("the former wife") appeals from a judgment of the Shelby Circuit Court ("the trial court") amending its judgment divorcing her from Carlos A. Gonzalez

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("the former husband"), pursuant to Rule 60(b), Ala. R. Civ.

P. We reverse the trial court's judgment.

On January 18, 2016, the former wife filed a complaint for a divorce from the former husband. On January 21, 2016, the former husband filed an answer to the complaint and also counterclaimed for a divorce. On February 11, 2016, the former wife filed a reply to the counterclaim. On September 20, 2016, the trial court entered a judgment divorcing the parties and incorporating an agreement entered between the parties. That agreement provided, in part:

"E. Life Insurance for the Use and Benefit of the Minor Child. The parties shall each maintain by paying the required monthly premiums the existing whole life insurance policy on the life of the [former husband] to fund a special needs trust for [T.G.], the special needs minor child [of the parties]. The monthly payment to maintain said policy shall be paid by each party with the [former husband] paying 50% of the premiums and the [former wife] paying 50% of the premiums. The ownership of said life insurance policy shall be transferred to the Special Needs Trust of [T.G.] as the owner and the beneficiary of such life insurance policy. The loan due on the [former husband's] life insurance policy in the amount of \$73,000.00 shall be paid by the [former wife] and will be considered a satisfaction of a percentage of the equity from the marital residence ... that is due the [former husband]. The parties shall be required to maintain such life insurance policy until the earlier of the death of [T.G.] or the death of the [former husband]. [The former husband] and [the former wife]

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shall both have access to information concerning the above life insurance policy at all times, as requested by either party. If either party is not able to make the above required full payment upon the date the same is due, said party will notify the other party so that there are not any lapses in coverage. Any additional payments made by one party for the other party will be considered as a loan that must be reimbursed to the party that makes the payment...."

On December 8, 2016, the former husband filed a motion for relief from the divorce judgment, pursuant to Rule 60(b)(1) and (2), Ala. R. Civ. P. The former husband challenged the above-quoted provision of the divorce judgment concerning the funding of the special-needs trust for the benefit of T.G. ("the trust") with his whole-life-insurance policy ("the life-insurance policy"); he argued that that provision of the divorce judgment did not comply with the intent of the parties. On January 3, 2017, the former wife filed a response to the former husband's motion.

On May 24, 2018, the trial court held a trial on the Rule 60(b) motion. The former husband testified that, when he signed the divorce agreement that was incorporated into the divorce judgment, he had not intended to transfer the life-insurance policy to the trust during his lifetime. He testified that he had not read that provision of the parties'

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agreement before he signed the agreement. The former husband also testified, however, that he had complied with the divorce judgment and had signed a document transferring the life-insurance policy to the trust.

Lindsey Allison, the attorney representing the former husband, testified that she had spoken to the attorney who had drafted the trust document and that that attorney had informed her that there was a problem with the trust. Allison testified that the trust is unworkable now that the parties are divorced but that she did not know what part of the trust was unworkable.

The former wife testified that she had not been informed that the trust was unworkable before the trial on the former husband's Rule 60(b) motion. She testified that, if there was a problem with the trust, she would be amenable to having any needed changes made.

On June 4, 2018, the trial court entered an order stating, in part:

"[T]he court finds that the [former husband] did agree to ... provision 'E' titled 'Life insurance for the Use and Benefit of the Minor Child.' The Court finds that through excusable neglect and mistake the [former husband] did not fully understand the provision and its application upon execution of the final [divorce judgment].

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Therefore, regarding Section 'E' of the final judgment of divorce, the Court finds the parties did not have mutual assent and/or a meeting of the minds. It is hereby ORDERED that all provisions of the final judgment of divorce shall remain in full force and effect unless altered herein. Provision 'E' contained on page 12 of the final judgment of divorce shall be omitted from the final [judgment] in its entirety and be permanently stricken from the final judgment of divorce. The removal of said provision shall apply retroactively and date back to the entry of the final judgment of divorce. Both parties shall sign the appropriate documents in accordance with this Order including any reversal or repayment of any documents or monies that have been made in compliance with Section 'E' of the final judgment of divorce."

On July 12, 2018, the former wife filed her notice of appeal.

Initially, this court requested letter briefs addressing whether there was an absence of an indispensable party to this action. Although an absence of an indispensable party does not affect subject-matter jurisdiction, it is reversible error that a court may raise on its own motion in consideration of equitable principles. See, e.g., Chandler v. Branch Banking & Trust Co., [Ms. 2160999, Oct. 19, 2018] ___ So. 3d ___, ___ (Ala. Civ. App. 2018).

"'Indispensable parties' are persons who not only have an interest in the controversy but an interest of such a nature that a final [judgment] cannot be made without either affecting that interest or leaving the controversy in such a

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condition that its final determination may be wholly inconsistent with equity and good conscience.'" Frander & Frander, Inc. v. Griffen, 457 So. 2d 375, 377 (Ala. 1984) (quoting 1 Champ Lyons, Alabama Practice, Rules of Civil Procedure, at 389 (1973)).

In English v. Miller, 370 So. 2d 968 (Ala. 1979), our supreme court considered the issue whether the children who were beneficiaries of a trust at issue in that case were indispensable parties to the action. Our supreme court reasoned:

"The potential interest of the children as beneficiaries of the trust established in their behalf makes them indispensable parties under Rule 19(a)[, Ala. R. Civ. P.], which provides:

"'A person who is subject to jurisdiction of the court shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties If he has not been so joined, the court shall order that he be made a party.'

"The possibility that the children's interest, if any, is adverse to the interest of those made parties, including their mother, ... necessitates the appointment of a guardian ad litem, as prescribed by Rule 17(c)[, Ala. R. Civ. P.]:

"'... The court shall appoint a guardian ad litem (1) for an infant defendant, or (2) for an incompetent person not otherwise represented in an action and

may make any other orders it deems proper for the protection of the infant or incompetent person. . . . Moreover, if a case occurs not provided for in these rules in which an infant is or should be made a party defendant, or if service attempted upon any infant is incomplete under these rules, the court may direct further process to bring him into court or appoint a guardian ad litem for him without service upon him or upon anyone for him.'"

370 So. 2d at 969.¹

In the present case, T.G., the child of the parties, is the beneficiary of the trust. The divorce judgment ordered the former husband and the former wife to each pay 50% of the premium to maintain the life-insurance policy, which was to be transferred to the trust. Subsequent to the entry of the divorce judgment, the former husband transferred the life-insurance policy to the trust in accordance with the judgment; therefore, the trust was the owner of that policy for the benefit of T.G. In his Rule 60(b) motion, the former husband sought to regain ownership of the life-insurance policy that he had transferred to the trust. T.G. is, thus, an indispensable party to the case. Id. Because the interests

¹Rule 19(a) and Rule 17(c), Ala. R. Civ. P., have been amended since English was decided; however, the amendments were not substantive.

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of the former husband and the former wife, who were both obligated to maintain the life-insurance policy, are possibly adverse to the interests of T.G., a guardian ad litem was required to be appointed to represent the interests of T.G. Id.

Based on the foregoing, we reverse the trial court's order granting the former husband's Rule 60(b) motion, and we remand the cause for further proceedings in accordance with this opinion and our supreme court's opinion in English, supra.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Donaldson, Edwards, and Hanson, JJ., concur.

Thompson, P.J., concurs in the result, without writing.