

REL: October 23, 2020

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

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Zachariah Cowart

v.

Misty Cowart

Appeal from Mobile Circuit Court
(DR-15-900031)

DONALDSON, Judge.

Zachariah Cowart ("the husband") appeals from an order of the Mobile Circuit Court ("the trial court"). The order is not final, and, therefore, we dismiss the appeal.

Facts and Procedural History

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On January 12, 2015, Misty Cowart ("the wife") initiated an action ("the divorce action") by filing a complaint seeking a divorce from the husband. In her complaint, the wife sought, among other things, a property settlement, custody of the parties' child ("the child"), and child support. The husband filed an answer and a counterclaim seeking a divorce from the wife. The husband alleged that certain real property ("the real property") at issue did not belong to the parties. The wife filed an answer that, among other things, denied the husband's allegation that the real property did not belong to the parties.

On September 7, 2017, the trial court conducted a trial in the divorce action. On September 18, 2017, the trial court entered a judgment that, among other things, divorced the parties, granted the wife sole legal and physical custody of the child, and ordered the husband to pay child support. Among other relief, the trial court divided marital property and ordered the husband to reimburse the wife for medical bills she had paid and to pay for outstanding medical bills. The trial court found that CZE, LLC ("the LLC"), owned personal and real property that had been used for the benefit of the

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parties during the marriage and that the property had, therefore, become marital assets. The husband filed a notice of appeal to this court from the divorce judgment.

On January 19, 2018, the wife initiated another action ("the contempt action") by filing a complaint in the trial court seeking a finding of contempt against the husband. On May 23, 2018, the trial court entered a judgment in the contempt action. On June 7, 2018, the husband filed a notice of appeal to this court from the judgment in the contempt action.

On November 30, 2018, this court issued a decision in Cowart v. Cowart, 276 So. 3d 239 (Ala. Civ. App. 2018) ("Cowart I"), in which this court affirmed the divorce judgment in part and reversed the divorce judgment in part. The court "reverse[d] the portion of the trial court's judgment regarding real property and remand[ed] the cause for the trial court to consider whether an indispensable party should be joined in the action and, if so, whether the trial court's property division should be altered." 276 So. 3d at 243. We reversed the child-support award because we could not "discern the basis for the trial court's child-support award,

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which differ[ed] from the respective amounts proposed by the parties at the time of the trial" and "because evidence supporting the amount set by the trial court [was] absent from the record." 276 So. 3d at 247. We affirmed the portion of the judgment ordering the husband to pay for the wife's medical bills. In his appellate brief in Cowart I, the husband argued that the parties had reached a settlement agreement in a personal-injury action arising from a motor-vehicle incident and that the wife was not entitled to a double recovery for her injuries, which, he said, the trial court's judgment requiring him to pay for the wife's medical bills effectively allowed. We held that, "[i]n light of the ambiguity existing in the record before this court regarding the terms of the settlement agreement the husband relie[d] upon, we [were] in no position to overturn the trial court's decision." 276 So. 3d at 246.

On January 25, 2019, after our remand in Cowart I, the husband filed a motion in the trial court in the divorce action seeking an order declaring that the husband had satisfied the portion of the divorce judgment that had ordered him to pay for the wife's medical bills or seeking an order

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"canceling" that portion of the judgment. The husband argued that the parties had settled the wife's claims against him arising from a motor-vehicle incident and that the wife had released him from claims for damages, which included the amounts for the wife's medical bills.

On April 19, 2019, this court affirmed the judgment in the contempt action, without an opinion. Cowart v. Cowart (No. 2170838, April 19, 2019), 298 So. 3d 457 (Ala. Civ. App. 2019) (table). Upon the request of the parties, the trial court had stayed proceedings in the divorce action while the appeal was pending in the contempt action.

On April 25, 2019, the trial court entered an order in the divorce action. In the order, the trial court determined that the LLC was an indispensable party and assessed an amount for the husband's child-support obligation based on the evidence that had been submitted at the trial in the divorce action. The trial court further stated that the LLC must be added as a party and that it would conduct an evidentiary hearing after the LLC was joined in the divorce action.

On May 25, 2019, the husband filed a "Motion for New Trial, or in the Alternative, Motion to Alter, Amend, or

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Vacate" in the divorce action. In the motion, the husband again argued that the trial court's order requiring him to pay the wife's medical bills resulted in "an unlawful double recovery."

On June 13, 2019, the wife filed a motion to join the LLC and Ashley Murphy as third parties in the divorce action. In the motion, the wife asserted that the husband had transferred title to certain property to Murphy. The trial court entered an order granting the wife's motion and ordering the wife to amend her pleading and to serve the third parties.

On June 27, 2019, the trial court conducted a hearing on the husband's "Motion for New Trial, or in the Alternative, Motion to Alter, Amend, or Vacate." On July 1, 2019, the trial court entered an order denying the husband's motion. On August 12, 2019, the husband appealed to this court from the order entered on April 25, 2019, in the divorce action.¹

Discussion

¹In the trial court, the husband filed a suggestion of bankruptcy, stating that he had filed for Chapter 13 bankruptcy protection. Because we determine that we have no jurisdiction over this appeal because the April 25, 2019, order is not final, we express no opinion on the effect of the bankruptcy filing on the proceedings in the trial court.

As a threshold matter, we must determine whether we have jurisdiction over this appeal. "[J]urisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu." Nunn v. Baker, 518 So. 2d 711, 712 (Ala. 1987). Ordinarily, an appeal can be taken only from a final judgment. § 12-22-2, Ala. Code 1975. "An order that does not dispose of all claims or determine the rights and liabilities of all the parties to an action is generally not final." Stone v. Haley, 812 So. 2d 1245, 1246 (Ala. Civ. App. 2001).²

In Cowart I, we reversed the portion of the divorce judgment regarding real property and remanded the cause with instructions to the trial court "to consider whether an indispensable party should be joined in the action and, if so, whether the trial court's property division should be altered." 276 So. 3d at 243. On remand, the trial court entered the April 25, 2019, order, determining that the LLC must be added as a party and stating that it would conduct an

²"The only exception to this rule of finality is when the trial court directs the entry of a final judgment pursuant to Rule 54(b), Ala. R. Civ. P." Tomlinson v. Tomlinson, 816 So. 2d 57, 58 (Ala. Civ. App. 2001). The April 25, 2019, order is not certified as final under Rule 54(b), Ala. R. Civ. P.

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evidentiary hearing after the joinder of the LLC as a party. In its June 13, 2019, order, the trial court granted the wife's motion to join the LLC and Murphy as third parties. The record does not indicate that the trial court has conducted an evidentiary hearing or ruled on the division of real property on remand. We note that Rule 4(f), Ala. R. Civ. P., provides:

"When there are multiple defendants and the summons (or other document to be served) and the complaint have been served on one or more, but not all, of the defendants, the plaintiff may proceed to judgment as to the defendant or defendants on whom process has been served and, if the judgment as to the defendant or defendants who have been served is final in all other respects, it shall be a final judgment. After the entry of judgment, if the plaintiff is able to obtain service on a defendant or defendants not previously served (except, however, defendants designated as fictitious parties as allowed by Rule 9(h), [Ala. R. Civ. P.,] who shall be deemed to have been dismissed voluntarily when the case was announced ready for trial against other defendants sued by their true names), the court shall hear and determine the matter as to such defendant or defendants in the same manner as if such defendant or defendants had originally been brought into court, but such defendant or defendants shall be allowed the benefit of any payment or satisfaction that may have been made on the judgment previously entered in the action."

Because the trial court has not adjudicated all the claims between the wife and the husband, Rule 4(f) is not applicable, and the record does not contain an order that can be

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considered a final judgment that would support the present appeal. See Naylor v. Naylor, 981 So. 2d 440, 441 (Ala. Civ. App. 2007) ("[A] nonfinal judgment will not support an appeal").

We asked the parties to provide letter briefs to address the finality of the April 25, 2019, order. On September 29, 2020, the husband submitted a brief asserting that that order is not final. We agree, and, because the husband has appealed from a nonfinal order, we dismiss the appeal.

APPEAL DISMISSED.

Thompson, P.J., and Moore, Edwards, and Hanson, JJ.,
concur.