REL: June 19, 2020

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2019-2020

2190288

Norma Jazmin Garduno Quintana

v.

Juan Flores Quiroz

Appeal from Chilton Circuit Court
(DR-19-900110)

EDWARDS, Judge.

In June 2019, Norma Jazmin Garduno Quintana ("the mother") filed a complaint in the Chilton Circuit Court ("the trial court") seeking a determination of the custody of her three children, A.F.G., J.A.F., and Y.F. ("the children"). The mother alleged that Juan Flores Quiroz ("the father") was the father of the children and that he was named on each

child's birth certificate. The mother also sought and received an ex parte custody order based on the father's alleged threat to abscond with the children to Mexico.

The father answered the mother's complaint on June 20, 2019, and he counterclaimed for a divorce from the mother, whom he alleged he had married in August 2007. Like the mother, the father sought an award of custody of the children; he also explicitly requested an award of child support. The father also apparently moved to vacate the ex parte custody order, but the record does not contain a copy of that motion. The trial court set aside the ex parte custody order on July 2, 2019, and awarded the mother and the father alternating weeks of physical custody. The trial court set the matter for a final hearing to be held on November 26, 2019.

The father and his counsel appeared at the November 26, 2019, trial setting, but neither the mother nor her counsel appeared. On that same date, the trial court entered an order of default against the mother for her failure to appear at trial and a judgment divorcing the parties. In its judgment of divorce, the trial court divorced the parties, awarded the father the vehicles owned by the parties, awarded custody of

the children to the father, awarded the mother visitation "at the digression of [the father],"[1] and ordered the mother to pay $4,500 in attorney fees to the father's attorney.[2]

On the following day, November 27, 2019, the mother, through counsel, filed a motion to set aside the divorce judgment, pursuant to Rule 55(c), Ala. R. Civ. P. In her motion, the mother alleged that her counsel had inadvertently confused the divorce action with a pending protection-from-abuse ("PFA") action between the parties and had inadvertently

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[1]We assume that the trial court meant to award the mother visitation "at the discretion of the father." Because we are dismissing this appeal as having been taken from a nonfinal judgment, and because the trial court will have to enter a new judgment adjudicating all the issues in controversy between the parties, we direct the trial court to the following authority indicating this court's disapproval of such visitation provisions: Pratt v. Pratt, 56 So. 3d 638, 643 (Ala. Civ. App. 2010); K.L.U. v. M.C., 809 So. 2d 837 (Ala. Civ. App. 2001); K.L.R. v. L.C.R., 854 So. 2d 124, 126 (Ala. Civ. App. 2003); and Bryant v. Bryant, 739 So. 2d 53, 56-57 (Ala. Civ. App. 1999).

[2]The divorce judgment recited that the mother and her counsel had failed to appear at trial despite having proper notice of the trial, but the judgment did not indicate that evidence was presented to the trial court to support the judgment. We note that a default judgment entered in a divorce action must be supported by "evidence to establish facts that would support the specific division of property, the award of child support, the custody determination, or any other specific relief ... awarded in the divorce judgment." Tucker v. Tucker, 60 So. 3d 891, 898 (Ala. Civ. App. 2010).

calendared the date of the trial in the divorce action based on a continuance that had been granted in the PFA action. The trial court set the mother's motion for a hearing, after which it denied the motion. The mother timely appealed, arguing that the trial court erred in failing to grant her motion to set aside the divorce judgment. However, in light of our determination, explained below, that the divorce judgment was not final, we pretermit deciding the issue whether the divorce judgment should have been set aside.[3] See Hathaway v. Foos, 254 So. 3d 230, 232 (Ala. Civ. App. 2017).

[3]We note, however, that this court favors the setting aside of default judgments entered in divorce actions, particularly because of the important issues decided in such judgments. See Harkey v. Harkey, 166 So. 3d 126, 127 (Ala. Civ. App. 2014) ("[T]he sensitive matter of child custody should, in the absence of extraordinary circumstances, be decided based on a thorough investigation of the best interests of the child."); Sumlin v. Sumlin, 931 So. 2d 40, 44 (Ala. Civ. App. 2005) (quoting Kirtland v. Fort Morgan Auth. Sewer Serv., Inc., 524 So. 2d 600, 605 (Ala. 1988)) ("Indeed, we can envision no species of case in which the 'strong bias' in favor of reaching the merits ... could be any stronger than in a case such as this involving custody of a minor child."); and Evans v. Evans, 441 So. 2d 948, 950 (Ala. Civ. App. 1983) ("We think that especially in the divorce context, a court should be particularly reluctant to uphold a default judgment (and thereby deprive a litigant of his day in court) because it means that such important issues as child custody, alimony, and division of property will be summarily resolved.").

> "'Even though this issue has not been addressed by either party, this court must first determine whether it has jurisdiction over this appeal. "'Jurisdictional matters are of such importance that a court may take notice of them ex mero motu.'" Naylor v. Naylor, 981 So. 2d 440, 441 (Ala. Civ. App. 2007) (quoting McMurphy v. East Bay Clothiers, 892 So. 2d 395, 397 (Ala. Civ. App. 2004)). "The question whether a judgment is final is a jurisdictional question, and the reviewing court, on a determination that the judgment is not final, has a duty to dismiss the case." Hubbard v. Hubbard, 935 So. 2d 1191, 1192 (Ala. Civ. App. 2006) (citing Jim Walter Homes, Inc. v. Holman, 373 So. 2d 869, 871 (Ala. Civ. App. 1979)). "[A] final judgment is a 'terminal decision which demonstrates there has been a complete adjudication of all matters in controversy between the litigants.'" Dees v. State, 563 So. 2d 1059, 1061 (Ala. Civ. App. 1990) (quoting Tidwell v. Tidwell, 496 So. 2d 91, 92 (Ala. Civ. App. 1986))."'

O.Y.P. v. Lauderdale Cty. Dep't of Human Res., 148 So. 3d 1081, 1082-83 (Ala. Civ. App. 2014) (quoting Butler v. Phillips, 3 So. 3d 922, 925 (Ala. Civ. App. 2008)).

The divorce judgment does not address child support, despite the father's request in his counterclaim for a divorce that he be awarded both custody and "support." The father recognizes in his brief on appeal that the trial court neglected to order the mother to pay child support. We have previously explained that, "[w]here a party has requested child support and the trial court's purported judgment

contains no conclusive assessment of the child-support obligation, the trial court has not completely adjudicated the matters in controversy between the parties." Anderson v. Anderson, 899 So. 2d 1008, 1009 (Ala. Civ. App. 2004); see also E.H. v. K.H., 221 So. 3d 485, 488 (Ala. Civ. App. 2016). The failure of the trial court to resolve the father's request for child support prevents the November 26, 2019, divorce judgment from being a final judgment capable of supporting an appeal. Accordingly, the mother's appeal is dismissed.

APPEAL DISMISSED.

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