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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

2200503, 2200504, 2200505, and 2200506

Kim Pierson Kornegay

v.

Mona Ann Kornegay

**Appeals from Autauga Circuit Court
(DR-18-900233.00, DR-18-900233.01, DR-18-900233.02,
and DR-18-900233.03)**

MOORE, Judge.

Kim Pierson Kornegay ("the husband") appeals from a judgment entered by the Autauga Circuit Court ("the trial court") in favor of Mona Ann Kornegay ("the wife") on November 3, 2020. We dismiss the appeals.

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Procedural Background

The pertinent procedural history is as follows. On October 22, 2018, the wife commenced an action by filing a complaint for a divorce against the husband; that action was docketed as case number DR-18-900233.00 ("the divorce action"). The husband filed an answer to the complaint and a counterclaim for a divorce on November 8, 2018. On October 31, 2019, the trial court entered a nonfinal order labeled "Final Judgment of Divorce" ("the divorce judgment") that, among other things, divorced the parties, awarded the wife periodic alimony, and partially divided the marital estate.

Paragraph 4(c) of the divorce judgment provides, in pertinent part:

"(c) The property identified below shall be sold at fair market value and the net proceeds from the sale of the property identified below shall be divided evenly between the parties. ... These properties shall be sold not later than 180 days of the date of this Order.

"i. The house located in the Republic of Panama;

"ii. The teak farm located in the Republic of Panama;

"iii. The three lots located in the Republic of Panama."

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Paragraph 10 of the divorce judgment addressed the husband's claim that the wife had removed from his dental office documents containing protected health information concerning his patients, which, he said, had resulted in an investigation of his dental practice by the Office of Civil Rights ("OCR") pertaining to a potential violation of the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

Paragraph 10 provides as follows:

"The wife shall indemnify the husband against any and all fines, assessments, fees, or sanctions resulting from or touching upon her removal of documents, charts, files, records, or other materials subject to [HIPAA] and shall fully reimburse him for any such fines, assessments, fees, or sanctions assessed by any government entity. Likewise, the wife shall reimburse the husband's verified and reasonable attorney fees associated with or touching upon his defense of any prosecution under State or Federal statute or regulation resulting from her removal of said documents, charts, files, records, or other materials subject to the protection under [HIPAA]. Said fines, assessments, fees, or sanctions shall be reimbursed to the husband by the wife not later than 30 days of verified submission of same to her by the husband."

On November 27, 2019, the husband filed a motion to alter, amend, vacate, or clarify the divorce judgment. In that motion, the husband requested that the trial court modify or clarify Paragraph 4(c) of the divorce judgment. On December 19, 2019, the husband amended the

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motion to further request that the wife bear some of the costs associated with his travel to the Republic of Panama to facilitate the sale of the properties identified in Paragraph 4(c) of the divorce judgment ("the Panama properties"). On February 12, 2020, the trial court entered an order denying the husband's November 27, 2019, motion, as amended. On February 14, 2020, the husband filed a motion to reconsider the denial of the motion to alter, amend, vacate, or clarify; he included in the motion to reconsider a request that the trial court amend Paragraph 10 of the divorce judgment. The trial court denied the motion to reconsider on March 9, 2020. On May 29, 2020, the trial court entered an order completing the division of the marital property, thereby making the divorce judgment a final judgment.

On June 22, 2020, the husband filed in the divorce action a motion to enforce Paragraph 10 of the divorce judgment. In the motion, the husband requested that the trial court sanction the wife for failing to reimburse him for the expenses he had incurred in responding to the OCR's investigation of his dental practice. The wife characterized that motion as a postdivorce contempt petition and moved the trial court to

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dismiss the petition for lack of jurisdiction. The husband responded by commencing a new action ("the contempt action"), which was docketed as case number DR-18-900233.03, in which, on June 26, 2020, he filed a rule nisi and contempt petition to enforce Paragraph 10 of the divorce judgment. The husband claimed that the wife owed him \$180,657.26 as reimbursement for the expenses he had incurred in responding to the OCR investigation. The wife subsequently filed an answer denying any liability; she also counterclaimed, asserting that the husband should be held in contempt for violating other provisions of the divorce judgment.

On July 17, 2020, the husband filed in the divorce action a "motion for accounting of expenses incurred on Panama properties," in which he requested that the trial court determine the costs incurred by the husband for traveling to and from Panama and in preparing the Panama properties for sale and order that the parties would equally share those expenses. The husband later supplemented that motion to claim that the expenses he had incurred totaled \$141,529.01 and to request that the trial court order the wife to reimburse him \$70,764.50 of that amount and enter an order requiring regular accountings until the Panama

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properties were sold. The wife objected to that motion. The wife argued that Paragraph 4(c) required the parties to divide "the net proceeds" from the sale of the Panama properties and that any accounting would have to be conducted after the sale. The wife contended that, in seeking a presale accounting, the husband was, in substance, requesting that the trial court modify Paragraph 4(c) of the divorce judgment. The wife maintained that the trial court had lost jurisdiction to modify the property division of the divorce judgment. See Culverhouse v. Culverhouse, 389 So. 2d 937 (Ala. Civ. App. 1988).

On September 14, 2020, the trial court entered an order in the divorce action scheduling a trial on all pending motions and petitions. The trial court consolidated the divorce action and the contempt action for the purpose of conducting that trial. At the trial, which was conducted on October 2, 2020, the wife voluntarily dismissed her counterclaim filed in the contempt action, and the parties presented evidence solely relating to the husband's contempt petition. On November 3, 2020, the trial court entered a judgment in the contempt action denying the husband's petition. The judgment also purported to deny the husband any relief on

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his motion for an accounting of expenses relating to the Panama properties on the ground that "the Court is without subject matter jurisdiction to entertain any modification of previously Ordered property division."

On December 1, 2020, the husband filed in the divorce action a postjudgment motion challenging the November 3, 2020, judgment. On January 25, 2021, the wife responded by arguing that the divorce action had already been concluded and that any postjudgment motion should have been filed in the contempt action. On February 28, 2021, the husband filed a "supplemental" postjudgment motion in both the divorce action and the contempt action. On March 9, 2021, the trial court entered an order in the contempt action, purporting to deny the postjudgment motion. On April 5, 2021, the husband filed a notice of appeal, listing the case numbers of four separate actions in the trial court, including the divorce action and the contempt action. This court docketed four separate appeals and consolidated those appeals ex mero motu.

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Analysis

As noted above, the husband filed a notice of appeal relating to four separate actions. We have discussed the divorce action and the contempt action. In addition, the trial-court clerk docketed two other actions involving the parties -- case numbers DR-18-900233.01 and DR-18-900233.02 -- and the husband took appeals from both of those actions, which this court has designated as appeal numbers 2200504 and 2200505, respectively. The husband did not identify any order or judgment entered in those actions on his notice of appeal; instead, he referred to only the November 3, 2020, judgment that was entered in only the contempt action. See Rule 3(c), Ala. R. App. P. We have reviewed the records from those cases and find no order or judgment that would sustain an appeal. "Because no appealable order was entered in [those actions], we lack jurisdiction as to [those] appeal[s], and [they are] therefore dismissed." Ex parte Peake, [Ms. 2190952, Sept. 24, 2021] ___ So. 3d ___ (Ala. Civ. App. 2021) (citing Meek v. Meek, 54 So. 3d 389, 394 (Ala. Civ. App. 2010)). Accordingly, we dismiss appeal numbers 2200504 and 2200505.

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The trial court entered the November 3, 2020, judgment only in the contempt action. Insofar as the November 3, 2020, judgment adjudicated the husband's contempt claim, the trial court followed the proper procedure. In Decker v. Decker, 984 So. 2d 1216, 1220 (Ala. Civ. App. 2007), this court determined that, once a trial court enters a final divorce judgment, the court loses jurisdiction to enforce the judgment through its contempt powers; rather, a party to the judgment claiming the opposing party is in contempt of court for violating the provisions of a final divorce judgment must file a new complaint or petition and pay a separate filing fee in order to properly invoke the jurisdiction of the court. When the husband filed his motion to enforce Paragraph 10 of the divorce judgment in the divorce action, the wife, relying on Decker, objected, asserting that the trial court had lost jurisdiction over the divorce action for purposes of adjudicating a contempt claim alleging noncompliance with the divorce judgment. Four days later, the husband commenced a new action, the contempt action, by paying a filing fee and filing his contempt petition. From that point forward, the parties litigated the claims asserted in the

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husband's contempt petition and in the wife's counterclaim only in the contempt action.

The husband argued to the trial court, and he again asserts on appeal, that the trial court had not lost jurisdiction to consider his motion to enforce Paragraph 10 of the divorce judgment in the divorce action because, he asserted, the divorce judgment itself was not final. After meticulously reviewing the record, we reject that contention. The divorce judgment was not final when it was entered on October 31, 2019, because it did not adequately describe the furniture each party would receive. See Alabama Dep't of Revenue v. WestPoint Home, LLC, 256 So. 3d 1197, 1200 (Ala. Civ. App. 2018) (requiring that, for judgment to be final, it must clearly define the rights of each party). However, the trial court subsequently finalized the divorce judgment when it entered an order on May 29, 2020, rectifying that omission by specifying the furniture to be awarded to each party. See Oliver v. Townsend, 534 So. 2d 1038, 1046 (Ala. 1988) ("Claims adjudicated in a previous non-final order become final, and therefore subject to appeal, at the time the last party or claim is disposed of."). We acknowledge that the parties continued to litigate

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matters involving the meaning and enforcement of the divorce judgment, but that continuing litigation did not render the divorce judgment nonfinal. A divorce judgment may be final even though it also "continue[s] to be interlocutory in nature in the event it [becomes] essential to augment, refine, clarify, or enforce provisions regarding the final disposition of property and the division of the proceeds." Garris v. Garris, 643 So. 2d 993, 995 (Ala. Civ. App. 1994); see also Boyd v. Boyd, 447 So. 2d 790, 793 (Ala. Civ. App. 1984) (holding that divorce judgment is final although the court retains jurisdiction to enter such orders as necessary to implement sale of real property as provided in judgment); Bridges v. Bridges, 69 So. 3d 885, 891 (Ala. Civ. App. 2011) (addressing noncompliance with life-insurance provision in postdivorce-enforcement proceeding).

We have not located any authority addressing the effect of an indemnity provision, like Paragraph 10 of the divorce judgment, on the finality of a divorce judgment. In general, an indemnity clause is a provision through which "one party agrees to answer for any specified or unspecified liability or harm that the other party might incur." Black's

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Law Dictionary 919 (11th ed. 2019) (emphasis added). At the time of the entry of the divorce judgment, OCR had not completed its investigation and it was uncertain whether the husband or his dental practice would be prosecuted and sanctioned for a HIPAA violation as a result of the wife's conduct. In Paragraph 10 of the divorce judgment, the trial court provided that the wife should have to answer for any fines imposed for any HIPAA violations and that she should reimburse the husband for any fees he might incur as a result of her conduct.

We believe Paragraph 10 adequately ascertains the rights and liabilities of the parties regarding the specified fines and fees by shifting responsibility from the husband to the wife. Paragraph 10 establishes the right of the husband to indemnity and reimbursement from the wife and specifies the conditions that will activate the wife's duty to indemnify and reimburse the husband. The only matters left for further proceedings concerned the interpretation, implementation, and enforcement of the provision upon the occurrence of the stated contingencies, which matters would not destroy the finality of the divorce judgment. See Garris, supra.

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In reaching this determination, we note that divorce judgments commonly contain indemnity and hold-harmless provisions. See, e.g., Kizale v. Kizale, 254 So. 3d 233 (Ala. Civ. App. 2017) (addressing judgment requiring former husband to indemnify former wife, and to hold her harmless, regarding specified debts of the parties); Barnes v. Barnes, 28 So. 3d 800 (Ala. Civ. App. 2009) (addressing judgment requiring former husband to indemnify former wife, and to hold her harmless, regarding mortgage debt). If the inclusion of an indemnity provision automatically precludes the finality of a divorce judgment, the parties to the judgment would remain married and the other terms of the judgment would be rendered unenforceable until the issue of indemnity, which might not arise at all, is resolved. Furthermore, any such judgment would be incapable of being reviewed on appeal as a final judgment. See Chappell v. Chappell, 148 So. 3d 741, 743 (Ala. Civ. App. 2014) (holding that this court does not have jurisdiction over a nonfinal judgment of divorce). However, we have not uncovered any decisions from this or any other jurisdiction dismissing an appeal from a divorce judgment containing an indemnity provision even though appellate

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courts are required to examine divorce judgments for finality to assure jurisdiction over the appeal. See generally Hubbard v. Hubbard, 935 So. 2d 1191, 1192 (Ala. Civ. App. 2006). We, therefore, conclude that the divorce judgment was final even though the husband's indemnity and reimbursement rights under Paragraph 10 had not yet been enforced.

Once the trial court finalized the divorce judgment on May 29, 2020, the trial court lost jurisdiction to consider a contempt motion in the divorce action. See Decker, supra. The husband's motion, which was filed in the divorce action on June 22, 2020, specifically requested that the trial court sanction the wife for willfully violating Paragraph 10 of the divorce judgment, which is the essence of a contempt action. See Rule 70A, Ala. R. Civ. P. Because that motion was filed in the divorce action, it was a legal nullity. See Hall v. Hall, 122 So. 3d 185, 192 (Ala. Civ. App. 2013); see also Ex parte Standard Furniture Mfg. Co., [Ms. 2200251, Feb. 26, 2021] ___ So. 3d ___, ___ (Ala. Civ. App. 2021) (Moore, J., concurring in part and concurring in the result in part as to appeal number 2200252) ("[A]ny pleading or motion that purports to initiate a contempt proceeding after entry of a final judgment and without the payment of a

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filing fee is treated as a legal nullity." The husband did not invoke the trial court's jurisdiction to enforce Paragraph 10 until he commenced the contempt action by filing his petition in that case. The trial court properly adjudicated the petition in the contempt action because that was the only action in which it had jurisdiction.

The November 3, 2020, judgment was a final judgment insofar as it adjudicated all the claims of the parties in the contempt action. See generally McCarron v. McCarron, 213 So. 3d 591, 593 (Ala. Civ. App. 2016). A party ordinarily has 42 days to appeal a circuit-court judgment, see Rule 4(a)(1), Ala. R. App. P., but that deadline is tolled by the filing of a postjudgment motion under Rule 59, Ala. R. Civ. P., within 30 days of the entry of the judgment. See Rule 4(a)(3), Ala. R. App. P. On December 1, 2020, the husband filed in the divorce action a postjudgment motion directed at the November 3, 2020, judgment. This court has held that a postjudgment motion filed in a related, but separate, case does not toll the time for filing a notice of appeal. See Fields v. Fields, 304 So. 3d 1185, 1197 (Ala. Civ. App. 2020).

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In RCH IV-WB, LLC v. Wolf Bay Partners, L.L.C., 78 So. 3d 395 (Ala. 2011) ("RCH IV-WB I"), the Baldwin Circuit Court entered a judgment in a case docketed as case number CV-2009-900753.00. The supreme court reversed the judgment, and, on remand, the clerk of the trial court assigned the case a case number containing a new suffix: CV-2009-9000753.80. The trial court entered a new judgment under the new case number. The defendants then filed a postjudgment motion under the original case number on April 4, 2012, exactly 30 days later. Realizing their error, the defendants filed the same postjudgment motion the next day under the new case number. In a second appeal, the supreme court treated the postjudgment motion as having been properly and timely filed. The court explained:

"Following remand, this case proceeded under a new docket number, CV-2009-900753.80 as opposed to CV-2009-900753.00. However, the record reveals that, post-remand, parties on both sides nevertheless continued to make filings under the original docket number -- CV-2009-900753.00. For all that appears, those filings were considered by the trial court, which has also granted the appellants' motion to supplement the record in CV-2009-900753.80 to include the April 4 motion filed in CV-2009-900753.00. On the basis of all these facts, we consider the appellants' appeal to be timely filed because the April 4 motion tolled the time for filing the notice of appeal."

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R&G, LLC v. RCH IV-WB, LLC, 122 So. 3d 1253, 1257 (Ala. 2013) ("RCH IV-WB II").

In this case, the trial court specifically informed the parties at the October 2, 2020, trial that it was treating the contempt action as a separate action from the divorce action, which it considered to have been concluded. On January 25, 2021, the wife filed in the contempt action a response to the husband's postjudgment motion, asserting that the motion was a nullity because it had been filed in the divorce action. The husband did not thereafter move the trial court to correct the record to treat the December 1, 2020, postjudgment motion as properly filed in the contempt action, see J.H. v. N.H., 301 So. 3d 128 (Ala. Civ. App. 2020), or file a Rule 60(b)(1), Ala. R. Civ. P., motion to set aside the November 3, 2020, judgment for excusable neglect; instead, the husband filed only a "supplemental" postjudgment motion in the contempt action on February 28, 2021, 117 days after the November 3, 2020, judgment had been entered. We consider the facts of this case to be substantially different from those in RCH IV-WB I and RCH IV-WB II, which, despite two different case numbers, really involved only one case. The filing of the

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postjudgment motion in the divorce action did not toll the time for appealing the November 3, 2020, judgment entered in the contempt action.

The husband did not file his notice of appeal in the contempt action until April 5, 2021, well beyond the 42-day deadline set out in Rule 4(a)(3). The postjudgment motion filed in the divorce action on December 1, 2020, did not toll the time for filing the notice of appeal in the contempt action. The "supplemental" postjudgment motion filed in the contempt action on February 28, 2021, more than 30 days after entry of the November 3, 2020, judgment, did not invoke the jurisdiction of the trial court. See Burgess v. Burgess, 99 So. 3d 1237, 1241 (Ala. Civ. App. 2012). The trial court lacked jurisdiction to conduct a hearing on or to rule on that postjudgment motion. Id. The trial court did not err in failing to conduct a hearing on that postjudgment motion. On March 9, 2021, the trial court entered an order purporting to deny that postjudgment motion, but that order was void and did not extend the time for filing the notice of appeal in the contempt action. Id. We therefore dismiss the husband's appeal from the judgment entered in the contempt action,

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which this court has docketed as appeal number 2200506. See Rule 2(a)(1), Ala. R. App. P. (stating that an appeal shall be dismissed if the notice of appeal is not timely filed to invoke the jurisdiction of the appellate court).

Although we are dismissing the appeal arising from the contempt action, out of an abundance of caution we have considered the merits of the husband's appeal and have determined that the trial court did not commit any reversible error in denying the husband's contempt petition. The husband argues that the trial court erred in denying his motion to continue the trial on the contempt petition and in allowing the wife's HIPAA expert to testify over his objection that the wife had failed to comply with Rule 26(b)(5), Ala. R. Civ. P., governing discovery and disclosure of expert-witness testimony. The trial court did not exceed its discretion in denying the husband's request for a continuance, see State v. Thomas, 189 So. 3d 94 (Ala. Civ. App. 2015), or in allowing the wife's HIPAA expert to testify. See Erwin v. Sanders, 294 Ala. 649, 320 So. 2d 662 (1975). To the extent that the husband argues that the trial court erred in denying his contempt petition, we hold that the trial court

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received sufficient evidence to sustain its findings and ultimate conclusion that the wife was not in contempt of court by refusing to reimburse the husband for the expenses he had incurred as a result of the OCR investigation. See Stack v. Stack, 646 So. 2d 51, 56 (Ala. Civ. App. 1994) ("[W]hether a party is in contempt of court is a determination committed to the sound discretion of the trial court, and, absent an abuse of that discretion or unless the judgment of the trial court is unsupported by the evidence so as to be plainly and palpably wrong, this court will affirm.").

Finally, we address the husband's claim requesting an accounting of the expenses associated with the sale of the Panama properties. The trial court treated the claim as a request to modify Paragraph 4(c) of the divorce judgment and determined that it lacked jurisdiction over the claim. See Hocutt v. Hocutt, 491 So. 2d 247 (Ala. Civ. App. 1986) (holding that a trial court loses jurisdiction to modify a property division in a divorce judgment 30 days after the entry of the final judgment). A court that has lost jurisdiction over a case may enter only a judgment dismissing the case. See Ex parte Blankenship, 893 So. 2d 303, 307 (Ala.

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2004). In this case, the trial court evidently intended to dismiss the accounting claim, but the trial court rendered its dismissal order in the November 3, 2020, judgment, which, as explained above, was entered in only the contempt action. The record shows, however, that the husband did not raise the accounting claim in the contempt action but, rather, raised it only through motions filed in the divorce action.

A judgment becomes final and appealable only upon entry as governed by Rule 58(c), Ala. R. Civ. P. See Bolden v. Wise Alloys, LLC, 5 So. 3d 1287 (Ala. Civ. App. 2008). That rule provides, in pertinent part,

"Upon rendition of an order or a judgment as provided in subdivision (a)(1-4) of this rule, the clerk shall forthwith enter such order or judgment in the court record. An order or a judgment shall be deemed 'entered' within the meaning of these Rules and the Rules of Appellate Procedure as of the actual date of the input of the order or judgment into the State Judicial Information System."

By including the language "in the court record," we interpret Rule 58(c) to mean that a judgment adjudicating a claim raised in a particular case is "entered" only when that judgment is input into the State Judicial Information System on the case-action-summary sheet for that case. Because the trial court did not enter an order dismissing the accounting

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claim in the divorce action, the trial court did not effectively adjudicate the accounting claim. Without the entry of a final judgment in the divorce action adjudicating that claim, we do not have jurisdiction to review the appeal arising from the divorce action, which we have designated as appeal number 2200503; thus, we dismiss that appeal. See Bolden, supra. Consequently, we do not address the merits of the husband's argument that the trial court erred in determining that it lacked jurisdiction over the accounting claim.

Conclusion

We dismiss all four appeals for the various reasons set forth above. The wife has filed a motion to dismiss the appeals, which we deny as moot. We also deny any claim for attorney's fees asserted by the parties, although we direct the clerk of this court to tax the costs of the appeals to the husband.

2200503 -- APPEAL DISMISSED.

2200504 -- APPEAL DISMISSED.

2200505 -- APPEAL DISMISSED.

2200506 -- APPEAL DISMISSED.

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Edwards, Hanson, and Fridy, JJ., concur.

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