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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

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**Zachariah Cowart**

v.

**Misty Cowart**

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

FRIDY, Judge.

Zachariah Cowart ("the husband") appeals from an order of the Mobile Circuit Court ("the trial court") purporting to deny a motion

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seeking relief under Rule 60(b), Ala. R. Civ. P., that the husband filed in a divorce action ("the divorce action") that Misty Cowart ("the wife") brought against him. We dismiss the appeal because the trial court has not entered a final judgment in the divorce action and, therefore, the husband's motion seeking relief under Rule 60(b) has not ripened for a ruling.

### Background and Procedural History

This is the fourth time these parties have been before this court. In 2015, the wife sued the husband for a divorce. In 2016, she commenced a separate action ("the personal-injury action") against the husband in which she alleged that, on November 8, 2014, the husband had negligently or wantonly injured her by running over her with an automobile.

On September 7, 2017, the trial court conducted a trial in the divorce action, and, on September 18, 2017, it entered a judgment ("the divorce judgment") in that action. Among other things, the divorce judgment dissolved the parties' marriage; awarded the wife custody of the parties' child; ordered the husband to pay child support in the amount of \$944 per month; ordered the husband to pay the former wife \$11,376.73 for

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"medical bills she ha[d] paid"; ordered the husband to pay her \$11,774.49 for other "outstanding medical bills"; found that CZE, LLC ("the LLC"), owned real property that had been used for the benefit of the parties during the marriage and that, as a result, that property had become marital property; and made a property division that included not only the parties' property but also the property owned by the LLC. On October 18, 2017, the husband filed a postjudgment motion. He asserted among other things, that the trial court had erred in ordering him to pay the wife's medical bills because, he said, the parties had settled the personal-injury action and the settlement had already compensated the wife for those medical bills. The trial court held a hearing regarding the husband's postjudgment motion on December 14, 2017, and entered an order denying that motion on December 18, 2017. The husband then appealed from the divorce judgment.

On January 19, 2018, the wife commenced a contempt action ("the contempt action"). On May 23, 2018, the trial court entered a judgment against the husband in the contempt action. On June 7, 2018, the husband appealed from the contempt judgment.

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On November 30, 2018, this court released a decision in Cowart v. Cowart, 276 So. 3d 239 (Ala. Civ. App. 2018) ("Cowart I"), affirming the divorce judgment in part and reversing it in part. This 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[, i.e., the LLC,] 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, 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 divorce judgment ordering the husband to pay for the wife's medical bills. In Cowart I, the husband argued that the medical bills that the trial court had ordered him to pay in the divorce judgment were elements of the damages she had claimed in the personal-injury action, that the parties had settled the wife's claims in the personal-injury action, and that the trial court's ordering him to pay the medical bills in the divorce judgment

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would result in a double recovery for those medical bills. In affirming that aspect of the divorce judgment, we explained 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 in the divorce action a motion titled "Motion for Relief from Judgment, or in the Alternative, Notice of Satisfaction and Motion to Cancel Judgment" ("the January 25, 2019, motion"). In that motion, the husband again asserted that the trial court had erred in ordering the husband to pay the wife's medical bills because, he said, the parties had settled the personal-injury action and the settlement had already compensated the wife for those medical bills. Pursuant to Rule 60(b)(5), Ala. R. Civ. P., he sought an order satisfying or canceling the divorce judgment insofar as it had ordered him to pay 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, Apr. 19, 2019), 298 So. 3d 457 (Ala. Civ. App. 2019) (table) ("Cowart II").

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On April 25, 2019, the trial court entered an order in the divorce action determining that the LLC was an indispensable party and setting the husband's child-support obligation at an amount supported by the evidence introduced 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 wife had perfected service on the LLC.

On May 25, 2019, the husband filed in the divorce action a motion titled "Motion for New Trial, or in the Alternative, Motion to Alter, Amend, or Vacate" ("the May 25, 2019, motion"). Citing Rules 59 and 60, Ala. R. Civ. P., that motion again asserted that the settlement in the personal-injury action had already compensated the wife for the medical bills that the divorce judgment had ordered the husband to pay and that the trial court's ordering him to pay the medical bills in the divorce judgment would result in "an unlawful double recovery." As relief, the motion asked the trial court to vacate its April 25, 2019, order, which the husband erroneously interpreted as denying his January 25, 2019, motion

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and to order the divorce judgment satisfied insofar as it had ordered him to pay the medical bills.

On June 13, 2019, the wife filed a motion to join the LLC and Ashley Murphy as third parties in the divorce action.<sup>1</sup> That same day, 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 May 25, 2019, motion. On July 1, 2019, the trial court entered an order denying that motion. On August 12, 2019, the husband appealed to this court from the order entered on April 25, 2019, in the divorce action. On October 23, 2020, this court released a decision dismissing the husband's appeal from the April 25, 2019, order because, this court determined, that order was not a final judgment that would support an appeal. Cowart v. Cowart, 324 So. 3d 1236 (Ala. Civ. App. 2020) ("Cowart III").

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<sup>1</sup>In the contempt action, the trial court had entered an order on May 23, 2018, finding that the husband had given Murphy, the husband's girlfriend, \$60,000 in an effort to hide assets and to defraud the court and that Murphy had used the \$60,000 to buy all-terrain vehicles, a scooter, a trailer, and other items.

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On February 24, 2021, the husband filed in the trial court a "Renewed Motion to Dismiss, or in the Alternative, Notice of Satisfaction and Motion to Cancel Judgment" ("the renewed motion") in which he again sought relief under Rule 60(6) and asserted that the trial court had erred in ordering him to pay the wife's medical bills because, he said, the parties had settled the personal-injury action and funds from that settlement had already compensated the wife for those medical bills. He also asserted that the trial court did not have subject-matter jurisdiction to order him to pay the wife's medical bills because, he said, those medical bills were the subject of the separate personal-injury action.

On February 26, 2021, the trial court erroneously entered in the contempt action (which had been concluded by this court's decision in Cowart II on April 19, 2019) a judgment purporting to dispose of all pending claims in the divorce action.

The trial court initially set the renewed motion for a hearing on March 15, 2021. On March 15, 2021, the trial court entered an order resetting the hearing on the renewed motion for March 25, 2021. On March 25, 2021, the trial court entered an order reciting that the husband



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and his counsel had not appeared at the March 25, 2021, hearing on the renewed motion and purporting to deny that motion. On May 6, 2021, the husband filed a notice of appeal to this court.

On September 7, 2021, after the husband had filed his notice of appeal, the trial court entered in the divorce action the same judgment it had entered in the contempt action on February 26, 2021. The judgment it entered in the divorce action on September 7, 2021 ("the September 7, 2021, judgment") purported to deny the husband's January 25, 2019, motion 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 "canceling" that portion of the judgment. The September 7, 2021, judgment also purported to dismiss the wife's claims against the LLC and Murphy and purported to deny all other claims for relief that the September 7, 2021, judgment had not specifically addressed.

### Discussion

On appeal, the husband seeks review of the trial court's March 25, 2021, order purporting to deny the renewed motion. He argues that the

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renewed motion sought relief under Rule 60(b)(5) and that, therefore, the March 25, 2021, order purporting to deny that motion was an appealable judgment. However, no final judgment had been entered in the divorce action on March 25, 2021; as explained below, no judgment has been entered that resolves the issues identified in Cowart III. Thus, the husband's renewed motion had not ripened for a ruling on March 25, 2021. See Dubose v. Dubose, 964 So. 2d 42, 45 (Ala. Civ. App. 2007) ("[A] Rule 60(b) motion that is filed before a judgment becomes final, i.e., before the expiration of 30 days after the entry of the judgment or before a timely postjudgment motion is denied, is considered premature; however, a prematurely filed Rule 60(b) motion quickens upon the trial court's loss of jurisdiction over the judgment at the expiration of the 30-day period after its entry or after the denial of a postjudgment motion filed pursuant to Rule 50, 52, 55, or 59 (Ala. R. Civ. P)."). The trial court's entry in the contempt action of a judgment purporting to dispose of the remaining claims in the divorce action on February 26, 2021, was void because this court's decision in Cowart II had already concluded the contempt action and, therefore, the trial court lacked jurisdiction to enter a second

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judgment in that action. See A.L. v. Morgan Cnty. Dep't of Hum. Res., 102 So. 3d 394, 396 (Ala. Civ. App. 2012) (holding that, because a juvenile court had entered a judgment denying a custody petition, the juvenile court did not have jurisdiction to hold a trial and enter a second judgment). Moreover, once the husband filed his notice of appeal on May 6, 2021, the trial court lost jurisdiction to rule on the remaining issues in the divorce action. See Pilgrim's Pride v. Smith, [Ms. 2181055, Dec. 31, 2020] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Civ. App. 2020) (holding that, although the filing of a notice of appeal was premature, it nonetheless deprived the trial court of jurisdiction). Therefore, the trial court did not have jurisdiction to enter the September 7, 2021, judgment. Accordingly, the trial court has not entered a final judgment in the divorce action, and the husband's Rule 60(b) motion has not yet quickened. See Dubose. When an appellate court determines that an order appealed from is not a final judgment, it is the duty of the appellate court to dismiss the appeal ex mero motu. Id. Therefore, we dismiss the father's appeal.

APPEAL DISMISSED.

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