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# ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2020

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**Ex parte Luis Enriquez**

**PETITION FOR WRIT OF MANDAMUS**

**(In re: Cristina Sosa Enriquez**

**v.**

**Luis Enriquez)**

**(Montgomery Circuit Court, DR-19-900424)**

EDWARDS, Judge.

Luis Enriquez ("the husband") has filed a petition for the writ of mandamus requesting that this court direct the Montgomery Circuit Court ("the trial court") to dismiss the divorce action filed by Cristina Sosa Enriquez ("the wife").

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After considering the petition and the answer filed by the wife, together with the attachments filed in support of both, we deny the petition.

Based on the petition, the answer, and the attachments to both, the wife and the husband were divorced by a 2006 judgment of the trial court, which incorporated the parties' settlement agreement regarding child custody and the division of their jointly owned properties. In March 2014, the wife filed in the trial court a motion pursuant to Rule 60(b)(6), Ala. R. Civ. P., seeking to set aside the 2006 divorce judgment on the ground that she had been unaware of the contents or the import of the settlement agreement because of a language barrier. She further alleged in her Rule 60(b)(6) motion that she and the husband had continued to live together as husband and wife after the entry of the 2006 divorce judgment. Both the husband and the wife indicate that the trial court has not entered a judgment on the wife's Rule 60(b)(6) motion.<sup>1</sup>

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<sup>1</sup>The husband appears to believe that the wife's Rule 60(b)(6) motion was denied by operation of law; however, Rule 59.1, Ala. R. Civ. P., does not operate on Rule 60(b) motions, and, as a result, based on the information presented to this court, it appears that the Rule 60(b)(6) motion remains pending. See Banks v. Estate of Woodall, 129 So. 3d 294, 297

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In June 2019, the wife filed in the trial court a complaint seeking a divorce from the husband. In that complaint, the wife alleged that the parties had been divorced by a judgment entered in 2006 but that "they continued to live together as husband and wife and held themselves out as husband and wife to the public, thereby entering into a common-law marriage."<sup>2</sup> See Stringer v. Stringer, 689 So. 2d 194, 195 (Ala. Civ. App. 1997) (quoting Boswell v. Boswell, 497 So. 2d 479, 480 (Ala. 1986)) (setting out the elements of a valid common-law marriage, including "'public recognition of the relationship as a marriage and public assumption of marital duties and cohabitation'"). The wife further alleged

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(Ala. Civ. App. 2013) ("A Rule 60(b) motion, unlike a Rule 59 motion, is not subject to being denied by operation of law pursuant to Rule 59.1, Ala. R. Civ. P.").

<sup>2</sup>Although Alabama abolished common-law marriage as of January 1, 2017, see Ala. Code 1975, § 30-1-20, as we observed in Dunning v. Mayhew, 240 So. 3d 616, 616 n.1 (Ala. Civ. App. 2017):

"The [alleged] common-law marriage at issue in this case was [allegedly] entered into before January 1, 2017, the effective date of § 30-1-20, Ala. Code 1975, which provides that '[n]o common-law marriage may be entered into in this state on or after January 1, 2017,' but that '[a]n otherwise valid common-law marriage entered into before January 1, 2017, shall continue to be valid in this state.'"

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that the parties had continued to live together until 2011, when the husband moved out of their shared residence to live with his girlfriend.

The husband answered the wife's complaint and denied that he and the wife had remarried or that they had held themselves out as a married couple after the 2006 divorce judgment was entered. The husband made other allegations regarding the wife's intentions and conduct, which, he said, indicated that the wife did not believe them to have been married at common law. He attached to his answer his own affidavit; an undated affidavit of the wife, allegedly executed in 2014 and submitted with her Rule 60(b)(6) motion; a letter written by the wife's former attorney; an order of the Montgomery Juvenile Court dismissing a child-support action purportedly commenced by the wife; and a "notice of vacating house" executed by the wife in November 2018.

In November 2019, the husband filed a motion entitled "Former Husband's Motion for Judgment on the Pleadings" in which he argued that the parties had not entered into a common-law marriage. In that motion, the husband contended that his denial of any intent to enter into a common-law

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marriage with the wife in the affidavit he attached to his answer (and again to his motion) negated the need for "further analysis." He also contended that the wife's alleged failure to allege a common-law marriage in her "other pleadings" (presumably her Rule 60(b)(6) motion and the complaint in her child-support action) estopped her from alleging the existence of a common-law marriage in her 2019 divorce complaint. The husband attached to his motion for a judgment on the pleadings all the documents that he had attached to his answer.

The wife responded to the husband's motion by filing a verified response in which she stated that she had not understood the documents she had signed in 2006. She also stated that she and the husband had continued to live together after the entry of the 2006 divorce judgment until he had moved out in 2011. The wife further stated that the parties had maintained a joint bank account and had filed their income-tax returns as "joint, married" in 2008, 2009, 2010, and 2011. The wife attached copies of the tax returns to her verified response.

On April 2, 2020, the trial court denied the husband's motion. He then filed this petition for the writ of mandamus,

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arguing that the trial court was required to grant his "motion for judgment on the pleadings" because, he claims, the trial court lacks subject-matter jurisdiction over the wife's 2019 divorce action because they are not married. He supports that conclusion with his assertion that he established that the parties did not enter into a common-law marriage because, he says, he "presented ample evidence to show [that] the [wife] had knowledge that the parties were divorced in 2006" and because, he says, the wife did not allege a common-law marriage in her Rule 60(b)(6) motion, which the husband believes was denied. He also complains that the trial court failed to hold a hearing on his "motion for judgment on the pleadings," although he relies on Rule 56(d), Ala. R. Civ. P., which governs motions for a summary judgment, in order to do so.<sup>3</sup> Finally, the husband argues that the wife failed to present "clear and convincing evidence of a mutual agreement to enter the marital relationship," which is required to prove a common-law marriage. See Stringer, 689 So. 2d at 195 (quoting Boswell, 497 So. 2d at 480) (explaining that one

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<sup>3</sup>In fact, the husband does not cite Rule 12(c), Ala. R. Civ. App., or any authority relating to judgments on the pleadings in his mandamus petition.

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element of a valid common-law marriage is the "'present, mutual agreement to permanently enter the marriage relationship to the exclusion of all other relationships'"). Based on his several arguments, the husband argues that this court should "reverse" the trial court's order denying his "motion for judgment on the pleadings" because, he says, it "lacks jurisdiction to continue."

We begin our review of the husband's petition by observing that

"[m]andamus is a drastic and extraordinary writ to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court."

Ex parte Adams, 514 So. 2d 845, 850 (Ala. 1987).

The husband seeks a writ directing the trial court to grant his motion for a judgment on the pleadings. Thus, we must inquire into whether the husband proved his entitlement to a judgment on the pleadings.

"When a motion for judgment on the pleadings is made by a party, 'the trial court reviews the pleadings filed in the case and, if the pleadings show that no genuine issue of material fact is presented, the trial court will enter a judgment for the party entitled to a judgment according to the law.' B.K.W.

Enters., Inc. v. Tractor & Equip. Co., 603 So. 2d 989, 991 (Ala. 1992). See also Deaton, Inc. v. Monroe, 762 So. 2d 840 (Ala. 2000). A judgment on the pleadings is subject to a de novo review. Harden v. Ritter, 710 So. 2d 1254, 1255 (Ala. Civ. App. 1997). A court reviewing a judgment on the pleadings accepts the facts stated in the complaint as true and views them in the light most favorable to the nonmoving party. Id. at 1255-56. If matters outside the pleadings are presented to and considered by the trial court, then the motion for a judgment on the pleadings must be treated as a motion for a summary judgment. See Rule 12(c), Ala. R. Civ. P. Otherwise, in deciding a motion for a judgment on the pleadings, the trial court is bound by the pleadings. See Stockman v. Echlin, Inc., 604 So. 2d 393, 394 (Ala. 1992)."

Universal Underwriters Ins. Co. v. Thompson, 776 So. 2d 81, 82-83 (Ala. 2000). The trial court cannot enter a judgment on the pleadings if the pleadings demonstrate the existence of a genuine issue of material fact. Thompson, 776 So. 2d at 85. Because we cannot be certain whether the trial court considered the matters outside the pleadings presented by the parties, we presume that it did not do so and will review the trial court's order as if it disposed of a motion for a judgment on the pleadings. See id. at 83 (reviewing an order as one disposing of a motion for a judgment on the pleadings when it was not apparent that the trial court had considered matters outside the pleadings in making its ruling).



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The wife's divorce complaint alleges that the parties entered into a common-law marriage after the entry of the 2006 divorce judgment by continuing to live together and by holding themselves out as husband and wife. The husband denies the existence of a common-law marriage in his answer. The conflict between the facts asserted in the complaint and those asserted in the answer is clear. The facts in dispute are material to whether the parties entered into a common-law marriage and, ultimately, to whether the trial court has jurisdiction to divorce the parties. Therefore, because material facts are in dispute, the trial court properly denied the husband's motion for a judgment on the pleadings. See B.K.W. Enters., Inc. v. Tractor & Equip. Co., 603 So. 2d 989, 991 (Ala. 1992) (explaining that a judgment on the pleadings is inappropriate if "factual disputes within the pleadings" exist).

The husband has not established that he was entitled to a judgment on the pleadings, and his petition for the writ of mandamus is therefore denied.

PETITION DENIED.

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