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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2190490

Allen Turner, Jr.

v.

Kinya Isaac Turner

**Appeal from Greene Circuit Court
(DR-18-900008)**

HANSON, Judge.

Allen Turner, Jr. ("the husband"), appeals from a judgment of the Greene Circuit Court ("the trial court") divorcing him from Kinya Isaac

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Turner ("the wife") and dividing the parties' marital assets. For the following reasons, we dismiss the appeal as having been taken from a nonfinal judgment.

On August 11, 2018, the husband filed a divorce complaint against the wife, and the wife, in turn, filed a counterclaim for a divorce. Each party requested an equitable division of the marital assets. A bench trial was conducted on October 31, 2019. The evidence indicated that the parties had been married on April 13, 2002. At the time of trial, the husband was employed by Alabama Power Company ("Alabama Power"), by whom he had been continuously employed for 26 years. The husband testified that, throughout the marriage, he had been a participant in an Alabama Power retirement-benefits program. The husband, however, provided no further information regarding his retirement account, claiming to have no knowledge as to the value of his retirement benefits or how such information could be obtained. The wife testified that she had seen an account statement relating to the husband's retirement account with Alabama Power, and she submitted photographs of what she claimed was that statement. The photographs, however, merely depicted

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a portion of what appeared to be an investment-account statement; they did not display the account holder's name, the account number, or other identifying information or context from which the trial court could have determined the value of the husband's retirement account. No further evidence or testimony regarding the husband's retirement account was provided.

On February 4, 2020, the trial court entered a judgment divorcing the parties and dividing the marital property. As part of its division of the marital assets, the trial court awarded the wife the marital residence and required the husband to make mortgage payments on that home for 36 months. It also awarded several of the parties' motor vehicles to the wife. With regard to the husband's retirement account, the trial court made the following award:

"The [wife] is to be awarded one third (1/3) of the [husband]'s retirement account from Alabama Power from the couple's date of marriage of April 13, 2002 until October 31, 2019. Said amount shall include all 401(k) retirement accounts, stocks, shares, or any other items of monetary value issued to the [husband] as a result of his employment with Alabama Power. The [husband] is to provide the Court and [the wife]'s attorney with an accounting of the value of said retirement account for the dates of marriage certified by his

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employer. The Court reserves the right to amend this award and make an equitable award since neither [the husband] or [the wife] provided the Court with the value or documentation of the retirement account of [the husband]."

(Some emphasis added.) The husband filed a timely notice of appeal from the judgment.

On appeal, the husband argues, among other things, that the trial court's division of marital property was inequitable. Before we can address the equity of the property division, however, we must first address the finality of the judgment. "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 [appeal]." Hubbard v. Hubbard, 935 So. 2d 1191, 1192 (Ala. Civ. App. 2006). A final judgment has been defined as

" 'a terminative decision by a court of competent jurisdiction which demonstrates there has been a complete adjudication of all matters in controversy between the litigants within the cognizance of that court. That is, it must be conclusive and certain in itself... All matters should be decided; damages should be assessed with specificity leaving the parties with nothing to determine on their own.' "

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Hubbard, 935 So. 2d at 1192 (quoting Jewell v. Jackson & Whitsitt Cotton Co., 331 So. 2d 623, 625 (Ala. 1976)).

In Verren v. Verren, 5 So. 3d 611 (Ala. Civ. App. 2008), a wife filed a divorce complaint seeking, among other things, an equitable division of the marital property, which property, it was shown, had included her husband's retirement plan. No evidence was presented at trial, however, establishing the present value of the husband's vested retirement benefits, a prerequisite to an award of retirement benefits under then-existing Alabama law.¹ Nevertheless, the trial court in Verren awarded the wife in that case one-half of the husband's vested retirement benefits but ordered that the exact amount of the vested benefits was to be determined at a future date by an "appropriate" governmental agency. On appeal, this court determined that the judgment was not final because it had not

¹Former § 30-2-51, Ala. Code 1975, required that, to support an award to one spouse of a portion of the other spouse's retirement benefits, the party seeking the award was required to provide evidence establishing the "present value" of the benefits vested at the time the divorce complaint was filed. See Brattmiller v. Brattmiller, 975 So. 2d 359, 362 (Ala. Civ. App. 2007). Section 30-2-51 was amended by Act No. 2017-162, Ala. Acts 2017, to, among other things, include nonvested retirement benefits in the marital estate.

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adjudicated the amount of the retirement benefits to which the wife in that case was entitled, instead purporting to leave that determination to an external agency. This court further noted that the judgment at issue not only left issues relating to the award of retirement benefits unresolved, but also prevented a determination as to whether the property division as a whole was equitable. We explained:

"[W]e note that Alabama law requires an 'equitable' distribution of marital property upon termination of the marriage, which may include a division of retirement benefits. See Wilkinson v. Wilkinson, 905 So. 2d 1, 9-10 (Ala. Civ. App. 2004). The fairness of the property division cannot be properly assessed without knowing the exact amount of the retirement benefits, if any, the wife will receive. Id.

"Because the trial court has failed to resolve the outstanding issues regarding the husband's retirement benefits, we conclude that its judgment is nonfinal."

Verren, 5 So. 3d at 615. Accordingly, this court dismissed the appeal as having been taken from a nonfinal judgment.

Similarly, in this case, the trial court determined that the husband's retirement account was marital property subject to division, and it indicated that the wife should receive a 1/3 share of the husband's retirement benefits. Nevertheless, because the trial court was unable,

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from the evidence presented at trial, to determine the value of the husband's retirement account, it sought to fill that evidentiary "gap" by requiring the husband to submit "an accounting of the value of said retirement account for the dates of marriage certified by his employer," and the trial court suggested that, once that information was submitted, it would thereafter evaluate the fairness of the award. Thus, as in Verren, there are in this case disputed issues material to the division of the marital property that remain to be adjudicated. Accordingly, under the authority of Verren, we conclude that the trial court's judgment under review is not final, and the appeal from that judgment must, therefore, be dismissed.

APPEAL DISMISSED.

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