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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2200064

Hannah C. Wood

v.

Daniel K. Gibson

**Appeal from Winston Circuit Court
(DR-18-900083.01)**

MOORE, Judge.

Hannah C. Wood ("the mother") appeals from a judgment of the Winston Circuit Court ("the trial court") modifying the custody of the

2200064

parties' child to award sole physical custody of the child to Daniel K. Gibson ("the father"). We dismiss the appeal as having been taken from a nonfinal judgment.

Procedural History

The parties were divorced by a judgment entered by the trial court on November 19, 2018; among other things, that judgment awarded the parties joint legal custody of the child and awarded the mother sole physical custody of the child, subject to the father's specified visitation, and ordered the father to pay child support in the amount of \$523 per month. On April 1, 2019, the mother filed in the trial court a petition to terminate the father's visitation with the child or, in the alternative, to modify his visitation. On May 9, 2019, the father filed an answer and a counterclaim, requesting sole physical custody of the child, "restricted visitation" between the mother and the child, and an award of child support. On July 25, 2019, the father amended his counterclaim to assert a contempt claim against the mother and to request pendente lite custody of the child, asserting that the mother had routinely refused to allow him

2200064

to exercise his visitation with the child. The mother filed a reply to the amended counterclaim on July 27, 2019.

After conducting a trial, the trial court entered an order on December 19, 2019, holding the mother in criminal contempt but not addressing the other aspects of the case. On January 21, 2020, the father submitted a proposed order to the trial court, which granted the father sole physical custody of the child subject to the mother's visitation as specified therein. On February 26, 2020, the trial court entered an order stating, in its entirety: "Proposed order filed by [the father] is hereby GRANTED." On June 18, 2020, the father filed a "proposed amended order," which incorporated the terms of the February 26, 2020, order and added a clause stating that "[t]he mother shall pay child support in accord with Rule 32 of the Alabama Rules of Judicial Administration" and noted that the mother "shall reimburse the [father] for any child support received since the entry of the previous order in this case." The trial court entered a judgment on June 24, 2020, adopting the proposed amended order.

2200064

On July 13, 2020, the mother filed a motion to alter, amend, or vacate the June 24, 2020, judgment or, in the alternative, a motion for a new trial; she asserted, among other things, that the trial court lacked jurisdiction over the father's counterclaim based on his alleged failure to pay a filing fee when he filed his counterclaim and that the trial court erred in modifying custody of the child. The mother also filed on July 13, 2020, a motion requesting that the trial court amend the judgment to reflect specific findings of fact and conclusions of law. See Rule 52(a), Ala. R. Civ. P. The father filed a response to the mother's motion to alter, amend, or vacate on July 25, 2020. The mother filed a notice of appeal to this court on October 20, 2020.¹

¹After the filing of the notice of appeal, the parties continued to file motions in the trial court, some of which the trial court purported to address despite the absence of jurisdiction. See Horton v. Horton, 822 So. 2d 431 (Ala. Civ. App. 2001) (holding that the filing of premature notice of appeal divests the trial court of jurisdiction to rule on any issues relating to the matters on appeal); P.I.M. v. Jefferson Cnty. Dep't of Hum. Res., 297 So. 3d 409, 411 (Ala. Civ. App. 2019) (explaining that, if a party fails to seek leave of an appellate court to file a Rule 60(b), Ala. R. Civ. P., motion during the pendency of an appeal in that court, the trial court does not acquire jurisdiction over that motion). We need not address those motions and orders further to dispose of this appeal.

Analysis

Before considering the merits of this appeal, this court must first consider whether we have jurisdiction over the appeal, specifically, whether the June 24, 2020, judgment is sufficiently final to support appellate review.

" '[J]urisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu.' Nunn v. Baker, 518 So. 2d 711, 712 (Ala. 1987). Generally, an appeal will lie only from a final judgment, and if there is not a final judgment then this court is without jurisdiction to hear the appeal. Hamilton ex rel. Slate-Hamilton v. Connally, 959 So. 2d 640, 642 (Ala. 2006). A judgment is not final if it fails to completely adjudicate all issues between the parties. Giardina v. Giardina, 39 So. 3d 204, 207 (Ala. Civ. App. 2009) (citing Butler v. Phillips, 3 So. 3d 922, 925 (Ala. Civ. App. 2008))."

Sexton v. Sexton, 42 So. 3d 1280, 1282 (Ala. Civ. App. 2010).

This court entered an order on December 15, 2020, directing the parties to file letter briefs regarding whether the trial court had entered a final judgment from which the mother's appeal could lie. The mother filed a letter brief in response to this court's order, arguing that the trial court's judgment became final on June 24, 2020, when the trial court entered the judgment adopting the proposed amended order, which, she

2200064

argues, addressed child support and "completed the resolution of all issues presented to the trial court by the parties." On February 8, 2021, apparently in lieu of a letter brief, the father filed in this court a motion to dismiss the mother's appeal, asserting that the trial court's February 26, 2020, order was a final judgment and that the trial court had lacked jurisdiction to consider the proposed amended order and other filings submitted after that time. Accordingly, the father asserts, the mother's appeal was untimely and is due to be dismissed.

We reject the father's contention that the February 26, 2020, order adjudicated all the claims presented to the trial court. In his counterclaim, the father specifically requested child support. The February 26, 2020, order did not address that claim. Thus, the February 26, 2020, order was merely interlocutory in nature, subject to revision by the trial court. See Warren v. Warren, 94 So. 3d 392 (Ala. Civ. App. 2012). The trial court did, in fact, amend the February 26, 2020, order on June 24, 2020, when it adopted the proposed amended order as its judgment. See generally General Motors Acceptance Corp. v. City of Red Bay, 825

2200064

So. 2d 746, 749 (Ala. 2002). However, that judgment is likewise deficient in failing to conclusively adjudicate the father's child-support claim.

In Turner v. Turner, 883 So. 2d 233, 233-34 (Ala. Civ. App. 2003), an order was entered directing the parties to, among other things, recalculate the child-support obligation owed for the parties' minor child in compliance with the child-support guidelines of Rule 32, Ala. R. Jud. Admin., based on the parties' respective monthly incomes as found by the trial court in that case. In its order, the trial court in that case had made no finding as to the proper amount of child support to be paid in the future but, instead, had noted that, "[i]f the parties further need the court's guidance, a hearing can be set to clarify any of the above." 883 So. 2d at 234. This court concluded that the order was not a final judgment that would support an appeal because it contained "no conclusive assessment of any amounts owed by the father and therefore does not represent a complete determination of the matters in controversy between the parties." Id.

In this case, the June 24, 2020, judgment ordered the mother to pay child support in accordance with Rule 32, Ala. R. Jud. Admin.; however,

2200064

the judgment failed to specify the amount of child support to be paid. Like in Turner, supra, the proposed amended order, which the trial court adopted as its judgment, did not contain a conclusive assessment of the amount of child support owed by the mother and, therefore, did not represent a complete determination of the matters in controversy between the parties. Accordingly, because the trial court's judgment does not dispose of the issue of the amount of child support to be paid by the mother, that judgment is not a final judgment, and, thus, this court cannot reach the merits of this appeal.² Tomlinson v. Tomlinson, 816 So. 2d 57, 58 (Ala. Civ. App. 2001).

APPEAL DISMISSED.

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

²We note that, to the extent that the mother argues on appeal that the trial court lacked jurisdiction to consider the father's counterclaim based on his failure to pay a filing fee at the time he filed the counterclaim, this court has stated that "the failure to pay a filing fee does not divest the trial court of jurisdiction over a counterclaim." Hudson v. Hudson, 178 So. 3d 861, 869 (Ala. Civ. App. 2014). Because we conclude that this court does not have jurisdiction to consider the mother's appeal, we decline to further address this issue.