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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2200136

Robert Brannon

v.

Avis Brannon

**Appeal from Covington Circuit Court
(DR-20-900089)**

MOORE, Judge.

Robert Brannon ("the husband") appeals from a judgment entered by the Covington Circuit Court ("the trial court") dismissing the divorce

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action he had commenced against Avis Brannon ("the wife"). We reverse the trial court's judgment.

Procedural History

On June 19, 2020, the husband filed in the trial court a complaint seeking a divorce from the wife. The husband asserted that the parties had married on August 2, 1994, and had separated on or about December 15, 2002. The husband also asserted that both parties had been domiciled in the State of Alabama for at least six months immediately preceding the filing of his complaint and that the parties had no minor children. In addition to requesting a divorce from the wife, he requested that the trial court award each party "any and all personal property they have in their possession" and "[g]rant such other, further and general relief as may seem proper."

On August 3, 2020, the wife filed a limited notice of appearance for the purpose of contesting jurisdiction; she also filed a motion to dismiss for, among other things, lack of personal jurisdiction, pursuant to Rule 12(b)(2), Ala. R. Civ. P. The wife asserted that she "is not, nor has [she] ever been, a resident of the State of Alabama" and that she does not "have

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the 'minimal contacts' necessary to subject h[er]self to the jurisdiction of this State."

A hearing was held on October 8, 2020. At that hearing, the wife did not dispute that the husband was a resident of Covington County. However, she again asserted that, because she was not an Alabama resident and had no contacts with the State of Alabama, the husband's complaint was due to be dismissed. The husband argued that the only relief he was requesting was a divorce from the wife and that, to his knowledge, there was no property to divide.¹ The husband argued that, pursuant to Ala. Code 1975, 30-2-4, the trial court had the authority to divorce the parties despite the nonresident status of the wife.

After the hearing, the trial court entered a judgment on October 22, 2020, granting the wife's motion to dismiss. The husband filed a postjudgment motion on November 2, 2020; that motion was denied on November 3, 2020. On November 13, 2020, the husband filed his notice of appeal.

¹The wife, on the other hand, asserted that the parties had retirement accounts that were subject to division.

Discussion

On appeal, the husband argues that the trial court had jurisdiction to divorce the parties, notwithstanding the wife's status as a nonresident.²

Section 30-2-4, Ala. Code 1975, provides:

"Complaints for divorce may be filed in the circuit court of the county in which the defendant resides, or in the circuit court of the county in which the parties resided when the separation occurred, or if the defendant is a nonresident, then in the circuit court of the county in which the other party to the marriage resides."

Section 30-2-5, Ala. Code 1975, provides that, "[w]hen the defendant is a nonresident, the other party to the marriage must have been a bona fide resident of this state for six months next before the filing of the complaint, which must be alleged in the complaint and proved."

²The husband does not argue that the trial court erred by granting the wife's motion to dismiss as to his request that the trial court award each party "any and all personal property they have in their possession" or otherwise divide the parties' property. Therefore, the husband has waived that argument. See Gary v. Crouch, 923 So. 2d 1130, 1136 (Ala. Civ. App. 2005) ("[T]his court is confined in its review to addressing the arguments raised by the parties in their briefs on appeal; arguments not raised by the parties are waived.).

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In Burke v. Burke, 816 So. 2d 498, 500 (Ala. Civ. App. 2001), this court explained:

"[I]f the complaining party has been a resident of this state for the six months before the filing of a complaint for divorce, Alabama courts have jurisdiction over that party and, therefore, also have jurisdiction over the marital res. See § 30-2-5, Ala. Code 1975, and Sena [v. Sena], 709 So. 2d [48] at 50 [(Ala. Civ. App. 1998)]. However, the marital res is a very restricted entity. 'The res over which the jurisdiction of the court is limited is the marital status of a citizen of Alabama.' Gee v. Gee, 252 Ala. 103, 105, 39 So. 2d 406, 408 (1949). Our supreme court has held that 'a sufficient part of the marriage res accompanies the domiciliary complainant, and authorizes an in rem action to determine the status of such res.' Billingsley v. Billingsley, 285 Ala. 239, 241, 231 So. 2d 111, 113 (1970)."

See also Sena v. Sena, 709 So. 2d 48, 50 (Ala. Civ. App. 1998) ("Alabama statutes do not require in personam jurisdiction over both parties to grant a divorce.").

In Burke, the wife in that case appealed from a judgment divorcing her from her husband and dividing their property. The wife argued that the trial court had lacked personal jurisdiction over her and that the trial court's judgment divorcing her from her husband and dividing their property was void. This court concluded that the trial court had lacked

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personal jurisdiction over the wife and that "that portion of the [judgment] dealing with the division of property is declared void." 816 So. 2d at 501. However, we concluded that, based upon the husband's residency in Alabama and the trial court's resulting jurisdiction over the marital res, "[t]hat part of the judgment divorcing the husband and wife is due to be affirmed." Id.

In the present case, there is no dispute that the husband is a resident of the State of Alabama. Although the wife is a nonresident, that fact does not prevent the trial court from exercising jurisdiction over the marital res. Burke, 816 So. 2d at 500. Therefore, we conclude that, to the extent that the husband sought a divorce from the wife, the trial court erred in dismissing his complaint.³

Conclusion

Based on the foregoing, the trial court's judgment is reversed to the extent that it dismissed that portion of the husband's complaint seeking

³Because we are reversing the trial court's judgment based on the husband's first argument, we pretermitt discussion of the husband's argument that the trial court erred by failing to hold a hearing on his postjudgment motion.

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a divorce from the wife, and the cause is remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED WITH INSTRUCTIONS.

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