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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

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Ex parte Reginald Jones

PETITION FOR WRIT OF MANDAMUS

(In re: Faith Jones

v.

Reginald Jones)

(Shelby Circuit Court, DR-15-900770)

FRIDY, Judge.

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Reginald Jones ("the husband") petitions this court for a writ of mandamus directing the Shelby Circuit Court ("the trial court") to enter an order vacating its February 5, 2021, order setting aside the October 15, 2020, judgment ("the divorce judgment") divorcing him from Faith Jones ("the wife") and scheduling the divorce action for trial on May 21, 2021. The husband also asks this court to direct the trial court to reinstate the divorce judgment, which incorporated the settlement agreement that the parties had reached. For the reasons set forth below, we deny the husband's petition.

Facts and Procedural History

The materials submitted to this court indicate the following information relevant to the disposition of the husband's petition. The husband and the wife married in June 1998; two children were born of the marriage. Both children were minors at the time the divorce judgment was entered. The parties separated in October 2015, and the wife filed a verified complaint for a divorce on November 24, 2015. During the course of the litigation, certain discovery disputes arose, and the wife filed a motion to compel discovery and a subsequent "motion for sanction." The

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materials before us do not demonstrate that the trial court ruled on either motion. The trial was scheduled for August 28, 2020.¹ On August 27, 2020, the trial court entered an order declaring that all pending motions would be addressed at the trial. In his petition, the husband asserts that, on August 28, 2020, "in lieu of the trial," the parties reached an agreement concerning all issues in the divorce action. A single handwritten page that sets forth the agreement is included in the materials, but some of the writing has been cut off of the copy, including some signatures, and no date is visible on the document. In her answer to the petition, the wife acknowledges that the parties signed the agreement.

On September 24, 2020, the husband filed an "answer and waiver and agreement of taking testimony" in which he denied each of the allegations included in the divorce complaint, but, citing Rules 43 and 28(d), Ala. R. Civ. P., he waived the requirement that testimony be taken

¹It appears that the litigation was delayed for a time after the wife was arrested in 2017 for embezzling money from the day-care center of which she was the director, which, it appears, was affiliated with the Greater Emmanuel Community Church, a church established by the parties.

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before the trial court. Instead, the husband agreed that testimony could be taken by affidavit and that the matter could "proceed to final judgment without further or other notice" to him. On September 25, 2020, the wife filed a document titled "testimony," in which she said that there had been an irretrievable breakdown of the marriage. She also explained:

"My husband and I have agreed on the matters of division of our property, attorney's fees and other matters that have been set forth in an agreement that both of us have signed and I ask the court to approve this agreement and make it a part of the final judgment of the divorce in this cause, should one be granted."

The wife did not advise the trial court of any outstanding issues that needed to be resolved.

A proposed divorce judgment is included in the materials, but it does not indicate who prepared it. In a postjudgment motion and in his petition to this court, the husband says that the wife's attorney prepared and submitted that proposed judgment, and the wife does not deny the assertion. On October 15, 2020, the trial court entered the divorce judgment, which, with minor exceptions not pertinent to the issue before us, is essentially identical to the proposed judgment.

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The divorce judgment awarded the parties joint legal custody of the children and awarded the wife sole physical custody subject to the husband's visitation. The husband was ordered to pay \$902 each month for child support, in compliance with the guidelines set forth in Rule 32, Ala. R. Jud. Admin. The divorce judgment also stated that the husband owed the wife \$25,712 for "past-due child support." It ordered the husband to "pay to the Greater Emmanuel Community Church [, a church established by the parties,] the sum of \$400 each month beginning November 1, 2020, which shall be applied to the amount the [wife] owes as restitution to the church pursuant to the Order entered in CC-2018-2558.² [The husband] shall also pay the sum of \$100 directly to the [wife] beginning on the 1st day of November, 2020." The payments were to continue until the arrearage and the interest thereon were paid in full. Neither party was required to pay alimony to the other.

²Although the materials do not specify the criminal matter to which this case number refers, it appears to be related to the charge of embezzlement referred to in note 1.

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Additionally, the divorce judgment divided the parties' marital assets. The marital home was to be sold and the proceeds divided equally between the husband and the wife after certain litigation costs were paid. The judgment also provided that, "[i]f any property belonging to the [Greater Emmanuel Community Church] on August 28, 2020 (real or personal) is sold, at any time after the date of the execution of the Settlement Agreement on August 28, 2020, [the husband] shall provide to [the wife] all documentation regarding said sale." It further provided that if the husband, "or any entity other than the [Greater Emmanuel Community Church], in which the husband holds an interest, receives any proceeds from any sale of the above stated property, [the husband] shall pay to [the wife] one-half of said proceeds."

On November 13, 2020, the wife filed a motion to alter, amend, or vacate the divorce judgment, in which she asserted that, despite the terms of the parties' settlement agreement, the trial court should have awarded her the marital residence. Additionally, she protested that the trial court had not awarded her periodic alimony, although she had requested it in the divorce complaint. At the very least, she said, the trial court should

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have reserved the issue of periodic alimony. She also claimed that the provisions in the divorce judgment regarding the division of proceeds from the sale of property belonging to the Greater Emmanuel Community Church ("the GECC") or the husband or entity other than GECC in which the husband holds an interest were "created based on deceptions and misrepresentations" of the husband. The wife continued:

"Specifically, based on information and belief, there was [sic] various pieces of property that were transferred by the [husband] to the GECC during the marriage that were actually acquired during the marriage. Some of which, based on information and belief, were executed by someone other than the [wife]. In other words, the [husband] signed the [wife's] name to transfer real property."

The wife attached to her postjudgment motion what she asserted was her "affidavit," with exhibits, but that "affidavit" was not notarized. In that document, the wife explained that she, the husband, and the parties' older child were the "incorporators" of GECC and that she had never been "removed as an incorporator." She said that the husband had taken it upon himself to make decisions regarding the purchase or sale of real property without consulting her and that she had "just recently learned" that the husband had transferred property from GECC without

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authorization from the "incorporators." She said that there were occasions "of which [she] just recently learned that the [husband] had signed her name to real property without [her] consent transferring property from the two of [them] to the church." The wife also said that all the properties in the name of GECC should be considered marital property and that, in her opinion, "any and all properties that have been transferred by the [husband] to himself or others without [her] consent was done fraudulently and should be included in the marital property prior to any final judgment." She also said that none of the properties that were in GECC's name were "used in the negotiations for a final settlement agreement." Based on those unsworn assertions, the wife said, the final judgment should be set aside.

The husband opposed the wife's postjudgment motion, arguing that the wife had agreed to the settlement reached before the trial. He pointed out that the wife's attorney had drafted the proposed judgment that incorporated the settlement agreement and that was adopted, essentially verbatim, by the trial court. On December 9, 2020, the husband filed a motion pursuant to Rule 60(a) and (b), Ala. R. Civ. P., pointing out that

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the pendente lite support he had been ordered to pay was spousal support and not child support and that the \$25,712 award to the wife should have been characterized as alimony in gross rather than as a child-support arrearage. He requested that the divorce judgment be modified to move the requirement that he pay \$25,712 from the section of the divorce judgment dealing with child support and to make clear that his monthly payments to GECC and to the wife are to be credited against that amount.

The trial court held a hearing on the parties' postjudgment motions. A transcript of the hearing is not included in the materials before us. On February 5, 2020, the trial court, relying on the motions and the oral arguments of the attorneys at the hearing, entered an order setting aside the divorce judgment in its entirety. It also set the divorce action for a trial on May 21, 2021. On March 19, 2021, the husband filed his petition for a writ of mandamus.

Analysis

The writ of mandamus is an extraordinary writ that applies "where a party seeks emergency and immediate appellate review of an order that is otherwise interlocutory and not appealable." Rule 21(e)(4), Ala. R. App.

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P. This court will issue a writ of mandamus when the petitioner has demonstrated that 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 Alfab, Inc., 586 So. 2d 889, 891 (Ala. 1991).

As a threshold matter, this court must consider whether the issue the husband raises is one that should be decided on a petition for the writ of mandamus or, instead, whether the husband would have an adequate remedy by appeal after the entry of a final judgment. In arguing that a mandamus petition is the proper vehicle by which to seek review of the order setting aside the divorce judgment, the husband says that he "has a legal right" to have the divorce judgment reinstated in its entirety and argues that he "has no other means to request the trial court to reinstate" the divorce judgment and cancel the May 21, 2021, trial date.

Our supreme court has held that a writ of mandamus is an extraordinary remedy that is appropriately issued only in a limited number of situations. Ex parte U.S. Bank Nat'l Ass'n, 148 So. 3d 1060,

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1065 (Ala. 2014). Those well recognized situations include making sure that an action is brought in the correct court (e.g., subject-matter jurisdiction and venue) and by and against the correct parties (e.g., personal jurisdiction and immunity), reviewing limited discovery rulings (e.g., patently irrelevant discovery), and reviewing erroneous decisions by a trial court when there is a compelling reason not to wait for an appeal (e.g., abatement). Id.³ The review of an order granting a motion to vacate a judgment pursuant to Rule 59 is not included among the situations our supreme court has deemed proper for mandamus review.

In his petition, the husband does not develop a legal argument demonstrating that mandamus review is appropriate in this situation. The practical effect of the trial court's order is that the divorce action will now be litigated for the first time. In a comparable context, our supreme court observed in Ex parte Sanderson, 263 So. 3d 681, 688 (Ala. 2018), that "the drastic and extraordinary remedy of a writ of mandamus is not

³In Ex parte U.S. Bank Nat'l Ass'n, 148 So. 3d at 1064, our supreme court provided a list of specific situations that have been found to be within the scope of mandamus review.

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available merely to alleviate the inconvenience and expense of litigation for a defendant whose motion to dismiss or motion for a summary judgment has been denied." The Sanderson court continued:

"Thus, in cases where no recognized exception is applicable and in cases where it is not clear from the face of the complaint that a defendant has a clear legal right to a dismissal or a judgment in its favor, this Court has declined to issue the extraordinary writ and has held that an appeal following a final judgment is an adequate remedy." Id.

This court reached a similar conclusion in Moore v. Strickland, 54 So. 3d 906 (Ala. Civ. App. 2010), in which we dismissed an appeal from an order granting a motion to set aside a default judgment. We explained that an order granting a motion to set aside a default judgment was not a final judgment because it revived the matters in controversy between the parties. Id. at 908. This court then declined to exercise its discretion to treat the appeal from that unappealable order as a petition for a writ of mandamus "because Moore has failed to demonstrate that he does not have an adequate remedy by way of appeal once a final judgment is entered in the action." Id. at 909.

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In refusing to hold that an appellant had waived his right to appeal from an interlocutory order or ruling by not filing a mandamus petition at the time the interlocutory order was entered, our supreme court stressed that "it is the rare case in which this Court will review by mandamus petition an interlocutory order that may be later reviewed upon appeal." R.E. Grills, Inc. v. Davison, 641 So. 2d 225, 229 (Ala. 1994). Here, as in Moore, the husband has failed to demonstrate that he does not have an adequate remedy by way of appeal once a final judgment is entered, nor has he demonstrated that, under the circumstances of this case, a petition for the writ of mandamus is the proper method to seek review of the trial court's order setting aside the divorce judgment. Accordingly, we deny the husband's petition for the writ of mandamus seeking to have us direct the trial court to set aside the order granting the wife's motion to vacate the divorce judgment. We hasten to add, however, that this "denial does not operate as a binding decision on the merits" of the issue the husband has raised in his petition and that the issue would remain subject to review on an appeal from a final judgment in this action. See R.E. Grills, Inc., 641

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So. 2d at 229. See also Delchamps v. Delchamps, 449 So. 2d 1249 (Ala. Civ. App. 1984); and Seal v. Seal, 390 So. 2d 639 (Ala. Civ. App. 1980).

The wife's request for an attorney fee in connection with the petition is denied.

PETITION DENIED.

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