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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

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Ex parte Debra S. Laymon

PETITION FOR WRIT OF MANDAMUS

(In re: Daniel Keith Laymon

v.

Debra S. Laymon)

(Calhoun Circuit Court, DR-06-1010.02)

MOORE, Judge.

Debra S. Laymon ("the former wife") petitions this court for a writ of mandamus directing the Calhoun Circuit Court ("the trial court") to

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vacate its order denying the former wife's motion to dismiss a petition for clarification filed by Daniel Keith Laymon ("the former husband") and to enter an order dismissing the former husband's petition. We deny the former wife's mandamus petition.

Procedural History

The parties were divorced by a judgment entered by the trial court on April 2, 2007; that judgment incorporated an agreement of the parties that provided, among other things, that the former wife would receive 50% of the funds in the former husband's civil-service retirement/pension plan associated with his employment with the federal government, with the effective date of the division being September 26, 2006. On October 4, 2018, the former husband filed a petition for clarification asserting that the wording of the parties' agreement had caused confusion with the administrator of his retirement plan regarding the amount that was to be awarded to the former wife and that "said wording is in need of clarification." The former husband requested that the trial court enter an order "clarifying the exact amount of the [former husband's] retirement benefits that are awarded to the [former wife] each month." The former

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wife filed a response to the former husband's petition, denying that the wording of the parties' agreement had caused confusion to the administrator of the retirement plan and asserting, among other things, that she had retained an attorney to prepare a qualified domestic-relations order, that she had received an approval letter from the United States Office of Personnel Management on November 13, 2007, and that she had received a letter from the United States Office of Personnel Management Court Ordered Benefits Branch on August 15, 2018, eight months after the former husband's retirement date, showing the "formula for determining monthly retirement payment and amount due plus retroactive payment due."

The mandamus petition indicates that the trial court directed the parties to file letter briefs addressing the issue whether the trial court had subject-matter jurisdiction over the former husband's petition for clarification. The former wife filed a letter brief asserting that the former husband was seeking a modification of the substantive terms of the divorce judgment, which the trial court lacked authority to grant. The former husband asserted, however, that the requested relief sought a

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clarification, rather than a modification, of the divorce judgment and that the trial court did not lack jurisdiction to address his request. On December 1, 2020, the trial court entered an order denying the former wife's motion to dismiss the former husband's petition and setting the matter for a trial. According to the former wife, the parties appeared for trial on February 18, 2021, and she renewed her motion to dismiss at that time. The trial court entered an order on March 5, 2021, denying the former wife's renewed motion to dismiss. The former wife filed her petition for the writ of mandamus with this court on April 13, 2021.

Standard of Review

" "A writ of mandamus is an extraordinary remedy that is available when a trial court has exceeded its discretion. Ex parte Fidelity Bank, 893 So. 2d 1116, 1119 (Ala. 2004). A writ of mandamus is 'appropriate when the petitioner can show (1) a clear legal right 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) the properly invoked jurisdiction of the court.' Ex parte BOC Group, Inc., 823 So. 2d 1270, 1272 (Ala. 2001)." "

Ex parte Brown, 963 So. 2d 604, 606-07 (Ala. 2007) (quoting Ex parte Rawls, 953 So. 2d 374, 377 (Ala. 2006), quoting in turn Ex parte Antonucci, 917 So. 2d 825, 830 (Ala. 2005)).

Analysis

The former husband argues that the former wife's petition for the writ of mandamus was untimely filed. Rule 21(a)(3), Ala. R. App. P., provides that a petition for the writ of mandamus must be filed within a reasonable time and that "[t]he presumptively reasonable time for filing a petition seeking review of an order of a trial court or of a lower appellate court shall be the same as the time for taking an appeal." In domestic-relations cases, a party aggrieved by an order of a circuit court generally has 42 days from the date of the entry of that order to file a petition for the writ of mandamus, see Ex parte Jenkins, [Ms. 2190272, Aug. 14, 2020] ___ So. 3d ___, ___ n.2 (Ala. Civ. App. 2020); however, this court may consider a petition for the writ of mandamus filed outside the presumptively reasonable time when the petition asserts that the trial court lacks subject-matter jurisdiction. See Ex parte Madison Cnty. Dep't of Hum. Res., 261 So. 3d 381, 385 (Ala. Civ. App. 2017) (citing Ex parte K.R., 210 So. 3d 1106, 1112 (Ala. 2016)). Although we agree with the former husband that the trial court effectively denied the former wife's motion to dismiss on December 1, 2020, and that the "renewed" motion to

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dismiss amounted to nothing more than a motion to reconsider that order, which did not toll the time for filing the petition for the writ of mandamus, see Ex parte Fiber Transp., L.L.C., 902 So. 2d 98, 100 (Ala. Civ. App. 2004), we nevertheless conclude that this court may consider the former wife's mandamus petition because it challenges the subject-matter jurisdiction of the trial court. See Ex parte Montgomery Cnty. Dep't of Hum. Res., 291 So. 3d 1194, 1198 (Ala. Civ. App. 2019).

In regard to the jurisdiction of a circuit court over the property-division aspects of a divorce judgment, this court has held:

"A trial court loses jurisdiction to modify a property division in a divorce judgment 30 days after the entry of the judgment. Hocutt v. Hocutt, 491 So. 2d 247, 248 (Ala. Civ. App. 1986). This court has held, however, that if the provisions of a property settlement are vague or ambiguous, a judgment interpreting or clarifying the property settlement does not constitute a modification of the property settlement. Williams v. Williams, 591 So. 2d 879, 880 (Ala. Civ. App. 1991); see also Granger v. Granger, 804 So. 2d 217, 219 (Ala. Civ. App. 2001); Grayson v. Grayson, 628 So. 2d 918 (Ala. Civ. App. 1993). Further, a trial court has the inherent power to interpret, clarify, and enforce its orders and judgments. Granger v. Granger, supra; Patterson v. Patterson, 518 So. 2d 739, 742 (Ala. Civ. App. 1987)."

Dunn v. Dunn, 12 So. 3d 704, 709 (Ala. Civ. App. 2008).

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In the present case, the former husband invoked the continuing jurisdiction of the trial court to clarify the terms of the parties' divorce judgment relating to the division of the former husband's retirement benefits. In Jardine v. Jardine, 918 So. 2d 127 (Ala. Civ. App. 2005), the judgment of divorce incorporated an agreement of the parties that, among other things, provided for the distribution of the funds in the parties' retirement accounts, directed that the balances of the retirement accounts be determined as of a certain date, and awarded the wife 45% of the total amount of funds in the accounts. 918 So. 2d at 128-29. The investments in the parties' accounts declined significantly in value after the specified date in the divorce judgment, and the trial court ultimately determined that the valuation of the retirement accounts as of a later date than that specified in the divorce judgment, minus any postdivorce contributions, accurately reflected the postdivorce earnings and losses of the retirement accounts and that the division of the funds in those accounts, as directed in the divorce judgment, should be based on the more current valuation. Id. at 130. In concluding that the trial court had not erred in clarifying

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and enforcing the intent of its divorce judgment, this court observed, in pertinent part:

"[O]ur cases hold that a trial court has the inherent authority to interpret, implement, or enforce its own judgments. E.g., Hallman v. Hallman, 802 So. 2d 1095, 1098 (Ala. Civ. App. 2001). In Filer v. Filer, 502 So. 2d 698, 700-01 (Ala. 1987), the trial court was held to have the inherent authority to interpret, implement, and enforce its order providing for the sale and division of a marital home, in light of postjudgment changes in the valuation of the home that resulted in proceeds of the sale being less than contemplated by the judgment. See also, e.g., Garris v. Garris, 643 So. 2d 993, 995 (Ala. Civ. App. 1994) (holding that the trial court could clarify and enforce its judgment as necessary to effect the unspoken intent of that judgment). The trial court's authority is not, however, 'so broad as to allow substantive modification of an otherwise effective and unambiguous final order.' George v. Sims, 888 So. 2d 1224, 1227 (Ala. 2004).

"Whether a settlement agreement or a resulting divorce judgment is ambiguous is a question of law for the trial court. Wimpee v. Wimpee, 641 So. 2d 287, 288 (Ala. Civ. App. 1994) (explaining also that '[w]hen a trial court adopts a separation agreement, it is merged into the final judgment of divorce')."

918 So. 2d at 131. This court acknowledged in Jardine that, at the time the divorce judgment was entered, neither the parties nor the trial court anticipated a material delay in the implementation of the aspects of the judgment related to the division of the funds in the parties' retirement

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accounts, and, as a result, we concluded that the divorce judgment was ambiguous to the extent that it did not state how the funds in the parties' retirement accounts were to be divided in the event of a delay in the execution of the judgment, during which the values of the accounts declined to the point that the total value of the accounts as of the date specified in the divorce judgment was no longer available to allow the wife to receive 45% of that value and the husband to receive 55% of that value. 918 So. 2d at 132. Accordingly, we concluded that the trial court's judgment was due to be affirmed. Id. at 137. Jardine illustrates that a circuit court retains jurisdiction to clarify any ambiguities regarding the division of retirement benefits contained in a divorce judgment issued by that court.

The former wife contends that the petition filed by the former husband seeks not a clarification of the divorce judgment, but an impermissible modification of that judgment. We disagree. The former husband's petition requests only that the trial court determine the specific amount of retirement benefits each party shall receive according to the terms of the divorce judgment. The former husband has not requested

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that the trial court modify the terms of that judgment; rather, he has requested only that it implement those terms. The trial court clearly has jurisdiction to take any and all such actions necessary to resolve any ambiguity in the divorce judgment and to ascertain the exact amount of the former husband's retirement benefits to be allocated to each party. See Ex parte Montgomery, 79 So. 3d 660 (Ala. Civ. App. 2011).

The former wife argues in her mandamus petition that the parties' divorce judgment is not ambiguous and, therefore, is due to be enforced as written. As stated in Jardine, however, "[w]hether a settlement agreement or a resulting divorce judgment is ambiguous is a question of law for the trial court." 918 So. 2d at 131. The trial court in the present case has not yet ruled on whether the divorce judgment is ambiguous and has not yet determined whether the former husband is entitled to any relief. In any event, that concern does not affect the jurisdiction of the trial court; instead, it affects the manner in which the trial court exercises that jurisdiction. Should the trial court commit any error in construing the divorce judgment to the prejudice of the former wife, or should the trial court erroneously modify the divorce judgment as the former wife

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speculates it will, we conclude that the former wife has an adequate remedy by way of an appeal to correct those errors. See Ex parte Montgomery, 97 So. 3d 148, 157 (Ala. Civ. App. 2012) ("The question whether the trial court improperly ... substantively modified the property-division terms of the parties' divorce judgment has not yet been addressed by this court, and we will not consider that question at this time because such a question is reviewable by appeal.").

The former wife does not present authority indicating that the trial court lacks jurisdiction to determine the issue raised in the former husband's petition. Moreover, we cannot agree with the former wife that the trial court lacks jurisdiction to consider the former husband's petition in light of the trial court's inherent authority to interpret, implement, or enforce its own judgments. See Jardine, supra. Because the former wife has failed to show a clear legal right to the relief requested, a refusal by the trial court to perform as required by law, and the lack of another adequate remedy, Ex parte Brown, supra, her petition for the writ of mandamus is denied.

PETITION DENIED.

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