REL: January 14, 2022

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

2200465

Hargis Jackson

v.

Sherry Jackson

Appeal from Talladega Circuit Court
(DR-16-900184.01)

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v.

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Appeal from Talladega Circuit Court
(DR-16-900184.02)

FRIDY, Judge.

Hargis Jackson ("the husband") appeals from two judgments of the Talladega Circuit Court ("the trial court") entered in connection with postdivorce proceedings between Sherry Jackson ("the wife") and him. For the reasons discussed below, we dismiss the appeals.

Background

The trial court entered a judgment ("the divorce judgment") on June 16, 2017, divorcing the parties. Although a copy of the divorce judgment is not included in the record on appeal, at trial the parties testified to its pertinent provisions, and it is undisputed that the trial court awarded the former wife $110,000 from the husband's retirement account with Honda Manufacturing of Alabama, Inc. ("Honda").

On January 23, 2018, the trial court apparently entered a Qualified Domestic Relations Order ("QDRO") to enable the wife to receive the

portion of the husband's retirement account with Honda. Neither party appealed from the QDRO. As with the divorce judgment, a copy of the QDRO is not included in the record on appeal. According to the wife, on May 1, 2018, she received notice from the Honda Benefits Service Center, which administers QDROs for Honda, that, as of April 25, 2017, she was entitled to only $87,785.67 from the husband's retirement plan.[1]

On October 8, 2018, the wife filed a petition seeking to hold the husband in contempt, which was assigned case number DR-16-900184.01 ("the .01 action"), alleging that the husband had refused to make up the approximately $22,000 difference between the $110,000 the trial court had awarded her from his retirement account and the $87,785.67 that she said Honda had determined was her share of that account. The husband filed an answer denying the wife's allegations and a counterclaim alleging fraud and misrepresentation in certain language contained in the wife's

[1]The divorce action was tried on April 10, 2017, and May 3, 2017. No explanation is provided in the record that indicates the significance of April 25, 2017, in determining the amount to which the wife is entitled under the QDRO.

petition. The trial court held a hearing on the parties' claims on September 30, 2020.

At the September 30 hearing, the husband admitted that, at the 2017 divorce trial, he had mistakenly testified that the balance of his retirement account with Honda was $275,000 when, in fact, it was only $190,979.79 as of April 25, 2017. He had since learned that $275,000 was the estimated amount of his Honda retirement account at his projected retirement date of June 1, 2024. He conceded that he did not check the actual balance of the retirement account before testifying. The husband testified that, based on the actual amount in his retirement account on April 25, 2017, Honda had determined that the wife was entitled to $76,391.47, which Honda had calculated as 40% of $190,979.79. That amount left the wife with a shortfall of $33,608.53 from than the $110,000 the trial court had awarded to her in the divorce judgment.

On October 8, 2020, after the trial but before the entry of a judgment, the husband filed a "petition to modify" in which he sought to end the periodic alimony he had been ordered to pay in the divorce

judgment. The husband's modification petition was assigned case number DR-16-900184.02 ("the .02 action").

On February 17, 2021, the trial court entered a judgment in the .01 action finding that it had awarded the wife $110,000 from the husband's retirement account with Honda based on the husband's testimony at the divorce trial that he had a vested balance of $275,000 in that account. The QDRO had been based on the actual balance of the husband's retirement account, the trial court said, and the wife had consequently received only $76,391.47, which was $33,608.53 less than the amount the trial court had awarded to her. After pointing out that it had the right to clarify and correct the judgment "to carry out its intent" regarding the property awarded to the parties, the trial court vacated the January 2018 QDRO and directed the entry of a new QDRO that would provide the wife with "the intended and correct amount" as stated in the divorce judgment. The judgment provided that the wife

> "should be awarded the sum of $95,489 in the new Qualified Domestic Relations Order as of April 25, 2017; and a judgment should be entered in favor of the [wife] and against the [husband] in the sum of $14,520.10. Should Honda Manufacturing of Alabama, Inc., fail to cooperate in the

> fulfillment of the new QDRO, then a judgment should be entered in favor of the [wife] and against the [husband] in the sum of $33,608.53."

In the judgment in the .01 action, the trial court did not hold the husband in contempt because, it said, Honda and not the husband was responsible for fulfilling the terms set forth in the divorce judgment regarding payment to the wife of a portion of the husband's Honda retirement account. The trial court also stated that the judgment was "not a modification of a property settlement as stated in the Judgment of Divorce. It is merely an alternative method to carry out the terms and provisions of the Court's original property award to the [wife]."

In a separate judgment entered on February 17, 2021, the trial court found that the .02 action should have been filed as a compulsory counterclaim and that it was due to be dismissed. However, the decretal paragraphs of the judgment -- that part of judgment that officially states or decrees what the trial court is ordering -- did not dismiss the action and failed to offer relief related to that action. Instead, it appears that the trial court inadvertently inserted the decretal paragraphs of its judgment in

the .01 action relating to the husband's Honda retirement account into the judgment in the .02 action.

Analysis

We first review the husband's appeal in the .02 action, which we conclude is not supported by a final judgment. "It is well settled law that ' "jurisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu." ' " Pace v. Utilities Bd. of Foley, 752 So. 2d 510, 511 (Ala. Civ. App. 1999) (quoting Singleton v. Graham, 716 So. 2d 224, 225 (Ala. Civ. App. 1998)). "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 case." Hubbard v. Hubbard, 935 So. 2d 1191, 1192 (Ala. Civ. App. 2006).

As noted, the judgment entered in the .02 action did not bring that action to a close. Although the body of the judgment clearly expressed the trial court's intent to dismiss the action, the decretal portion of the judgment did not relate to the issues involved in the .02 action and, instead, provided for relief relating solely to the .01 action. The provision

of such relief, although apparently inadvertent, did not effectively dispose of the husband's claim seeking modification of his periodic-alimony obligation. See Stone v. Haley, 812 So. 2d 1245, 1246 (Ala. Civ. App. 2001) ("An order that does not dispose of all claims or determine the rights and liabilities of all the parties to an action is generally not final."). Because the judgment in the .02 action is not final, it will not support an appeal. Cowart v. Cowart, 324 So. 3d 1236, 1240 (Ala. Civ. App. 2020). Thus, the appeal in case number 2200466 is dismissed.

Turning to the husband's appeal in the .01 action, the wife contends that this court does not have jurisdiction over the appeal because, she says, the judgment entered in the .01 action is not final. Specifically, the wife says, because there is no indication that the trial court has entered a new QDRO, and thus no indication as to the amount of the shortfall between what Honda will pay to the wife from the husband's Honda retirement account, there has not yet been an end to the controversy between the parties. The husband did not submit a reply brief to this court responding to the wife's contention.

This court considered the finality of an order vacating a QDRO and ordering the entry of a new one in Romer v. Romer, 44 So. 3d 514 (Ala. Civ. App. 2009). In that case, this court dismissed an appeal of an order directing that a QDRO be vacated and a new QDRO entered because, we determined, that order effectively reopened the issue of the implementation of the trial court's divorce judgment, i.e., the order appealed from called for the entry of a new QDRO for the purpose of implementing the divorce judgment. 44 So. 3d at 514, 518-19.

In reaching that holding, this court quoted from James v. Alabama Coalition for Equity, Inc., 713 So. 2d 937 (Ala. 1997), explaining:

> " ' "Equity decrees may be partly final and partly interlocutory. A decree which ascertains and declares the rights of the parties and settles the equities is a final decree, although it provides for further proceedings under the direction of the court in order to carry the decree into effect. If there is a decree directing further proceedings under the direction of the court in order to make the final decree effective, such decree is interlocutory and remains within the control of the court because as to such decree and further

> proceedings thereunder the cause remains in fieri."
>
> " '[Newton v. Ware,] 271 Ala. [444,] 450, 124 So. 2d [664,] 670 [(1960)], quoted in Taylor [v. Taylor, 398 So. 2d 267 (Ala. 1981),] and Sexton [v. Sexton, 280 Ala. 479, 195 So. 2d 531 (1967)].
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> " 'Even more significantly from the point of view of this case, "[i]n equity cases there can be more than one final judgment from which an appeal may be taken." Norris v. Norris, 406 So. 2d 946, 948 (Ala. Civ. App.1981) (emphasis added); see also Chadwick v. Town of Hammondville, 270 Ala. 618, 621, 120 So. 2d 899, 902 (1960). This is so because "there may remain ... other matters in which the equities have not been settled or proceedings necessary to enforce the judgment previously entered. A court has inherent power to issue such orders or process as necessary to render its judgment effective." 406 So. 2d at 948; Monroe v. Monroe, 356 So. 2d 196 (Ala. Civ. App. 1978).'
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> "James, 713 So. 2d at 945. Moreover,' "our cases hold that a trial court has the inherent authority to interpret [or] implement ... its own judgments." ' Downs v. Downs, 978 So. 2d 768, 771 (Ala. Civ. App. 2007) (quoting Jardine v. Jardine, 918 So. 2d 127, 131 (Ala. Civ. App. 2005))."

Romer, 44 So. 3d at 518.

As in Romer, the trial court vacated the January 2018 QDRO and, thus, reopened the issue of the implementation of the divorce judgment.

Because there is no indication in the record that a new QDRO has been entered that would make the divorce judgment effective, the February 17, 2021, order vacating the January 2018 QDRO is interlocutory. Therefore, the husband's appeal in the .01 action is due to be dismissed as having been taken from an interlocutory order of the trial court. See White v. Drivas, 954 So. 2d 1119, 1121 (Ala. Civ. App. 2006) ("A nonfinal order will not support an appeal.").

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