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ARKANSAS COURT OF APPEALS

DIVISION I
No. CA11-340

	Opinion Delivered November 16, 2011
BRENDA A. BROWNING APPELLANT	APPEAL FROM THE FAULKNER COUNTY CIRCUIT COURT,
V.	[NO. DR-07-38]
DAVID BROWNING APPELLEE	HONORABLE DAVID L. REYNOLDS, JUDGE
	REVERSED and REMANDED

WAYMOND M. BROWN, Judge

Appellant Brenda Browning appeals from the December 8, 2010 order, which amended a prior order of the court setting child support. The December 2010 order reduced David's child-support obligation to $139 per week, made the reduction retroactive to the date David filed his petition for reduction of child support, and resulted in David's having an over $8,000 credit against future child-support payments. Brenda appeals arguing that the court did not have jurisdiction to modify the prior order, that the court erred by imputing an income of $452 to David for child-support purposes, and that the court abused its discretion in ordering that the reduced child support be retroactively applied. We reverse and remand.

The parties were divorced by a decree of the circuit court entered on February 20, 2007. The divorce decree incorporated the parties' settlement agreement, which, among other things, covered child custody and support. As per the settlement agreement, David was

to pay Brenda child support in the amount of $250 per week. Over the next couple of years, Brenda and David filed numerous motions regarding child custody, support, and visitation. On April 16, 2009, David filed a petition for reduction of child support contending that his earnings for child-support purposes had decreased. Brenda filed a motion for contempt on November 30, 2009, alleging that David had accumulated $3,000 in arrearage at the time the motion was filed. A hearing on the motions was set for April 20, 2010. The hearing was continued to June 22, 2010, on the motion of David's "tentative defense counsel," William Velek. After another continuance, the hearing took place on August 9, 2010. Neither David nor his counsel showed up for the hearing on the motions. The court entered an order that same day setting child support at $250 per week and finding David in contempt for failing to pay child support. The court found that David was $9,500 in arrears, and it entered a judgment against him for that amount. David was ordered to pay statutory attorney fees of $950 and an additional $6,000 in attorney fees to Brenda. The total judgment against David was $16,450, to be paid in four installments over the next three months.

David, through his attorney, Max Horner, filed a motion to set aside the order pursuant to Rule 60, contending that counsel did not receive notice of the new hearing date. According to the motion, the order should be set aside to prevent a miscarriage of justice. Brenda filed a response on September 10, 2010, contending that the court should deny and dismiss the motion. Brenda included a copy of a letter addressed to counsel's home dated June 23, 2010, in support of her response. On two occasions, body attachments were issued against David and released following significant payments. The court conducted a hearing on

the merits of David's motion on November 23, 2010. At the beginning of the hearing, David's counsel stated:

> We ask that the Court reconsider based on Rule 60, which states that to correct errors or mistakes or to prevent miscarriage of justice, the Court may modify or vacate an order on motion of a party with prior notice to all parties within ninety days of it having been filed with the clerk. I also submit as the Court mentioned that the motion to set aside based on Rule 60 was filed on September 10th well within the ninety days set out in the order. It is our intent to put on evidence that Mr. Browning, through his attorney, did not receive notice of the hearing. Further, because the Court did not hear from the defendant at all at the hearing, it entered an order which created and continues to propagate a substantial miscarriage of justice toward Mr. Browning.

The parties argued their case before the court. There was no oral ruling from the bench. The court entered the December 8, 2010 order, from which Brenda appeals.

For her first point, Brenda argues that the court was without jurisdiction to modify the August 9, 2010 order under Ark. R. Civ. P. 60 after the lapse of ninety days. We agree. David does not dispute that the court entered the December 8 order more than ninety days after the contempt and child-support order. Instead, David argues that Rule 60 was inapplicable because the August 9 order was not a final order. David's argument is without merit.

Ark. R. Civ. P. 60(a)[1] states that a court may modify or vacate an order or judgment within ninety days of its having been filed with the clerk to correct errors or mistakes or to prevent the miscarriage of justice. A trial court may modify or set aside its order beyond the ninety-day limitation contained in Rule 60(a) if the specifically enumerated conditions listed

[1](2010).

in Rule 60(c) exist. After ninety days, without the showing of one of the exceptions contained in Rule 60(c), a court has no power to modify or set aside an order. Although the court has continuing jurisdiction to modify child support and custody orders, the moving party must demonstrate a change in circumstances requiring modification.[2]

Here, David did not plead a ground that would have allowed the court to modify the August 9 order after ninety days had elapsed. Because the new order was entered outside of the ninety-day limitation period, the court lacked jurisdiction to enter it. Additionally, the court's continuing jurisdiction over child-support cases was not invoked. In David's September 10, 2010 motion, he contended that the August 9 order should be modified to prevent the miscarriage of justice; he did not state that circumstances had changed such that modification was required.[3]

We hold that, since the trial court was without jurisdiction to amend the August 9, 2010 order, the December 8, 2010 order is void. Accordingly, we reverse and remand this case to the trial court with instructions to reinstate the August 9, 2010 order.[4]

Reversed and remanded.

WYNNE and ABRAMSON, JJ., agree.

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[2] *See Slaton v. Slaton*, 330 Ark. 287, 956 S.W.2d 150 (1997).

[3] *Id.*

[4] Because we are reversing and remanding this case to the trial court to reinstate the August 9, 2010 order, we do not address Brenda's other points on appeal.