

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

TERRY SITARAM,

Appellant,

v.

Case No. 5D19-2536

NANDA BIBI ALLEY,

Appellee.

_____ /

Opinion filed March 20, 2020

Appeal from the Circuit Court
for Volusia County,
Stasia Warren, Judge.

Linda D. Carley, of Carley Law LLC,
Daytona Beach, for Appellant.

Elizabeth C. King, of Rice Law Firm,
P.A., Daytona Beach, for Appellee.

PER CURIAM.

Terry Sitaram (“Former Husband”) appeals the trial court’s order granting Nanda Alley’s (“Former Wife”) motion to enforce and granting Former Wife attorney’s fees. A motions panel of this Court previously denied Former Wife’s motion to dismiss. Having reviewed the record more thoroughly, we agree with Former Wife that Former Husband’s argument related to the motion to enforce was untimely appealed and that the order on attorney’s fees was a non-final, non-appealable order.

The parties dissolved their marriage in 2018, and the trial court incorporated a property settlement agreement into the amended final judgment of dissolution. On May 30, 2019, the trial court ordered the parties to list the marital home for sale within 30 days and cooperate toward that end. Former Wife subsequently moved to enforce the trial court's May 30 order, alleging that Former Husband refused to cooperate in listing and selling the marital home. On July 26, the trial court entered an order on Former Wife's motion to enforce, holding:

Former Husband is ordered to cooperate in the listing and sale of the [marital home].

Former Wife is entitled to reasonable attorney's fees and costs in an amount to be determined by the Court.

In the event Former Husband does not cooperate immediately in signing all documents necessary to effect the sale of the home, the Former Wife shall have sole authority to negotiate the contract and perform all steps necessary to effect the sale.

On August 26, Former Husband filed a notice of appeal from the July 26 order. One ground for dismissal raised by Former Wife was that the July 26 order was substantively the same as the May 30 order, such that Former Husband's arguments related to the sale of the marital home were untimely appealed. See Caldwell v. Wal-Mart Stores, Inc., 980 So. 2d 1226, 1229 (Fla. 1st DCA 2008). We agree.

Former Husband's first issue on appeal consists of two distinct arguments: (1) that the trial court erred in ordering the sale of the marital home and ordering that Former Wife receive the proceeds of the sale because it did not make a valid, specific reservation of jurisdiction in the amended final judgment of dissolution to modify the rights in the property settlement agreement, and (2) that the trial court erred in ordering the sale of the marital home because the order conflicted with the plain language of the property settlement

agreement, which provided that if Former Wife did not refinance and pay the mortgage, Former Wife would deed the home to Former Husband. Thus, Former Husband clearly presents this Court with two reasons why the trial court should not have ordered the forced sale of the marital home and awarded the sale proceeds to Former Wife. The trial court rendered those rulings in its May 30 order.

We reject Former Husband's argument that the July 26 order "revived" the portion of the May 30 order that he challenges. See DeGale v. Krongold, Bass & Todd, 773 So. 2d 630, 632 (Fla. 3d DCA 2000) (holding appeal from amended order was untimely where issue on appeal was "directed solely at alleged errors contained in the original judgment and order"). Former Husband is correct that the July 26 order included an additional ruling—that if he refused to cooperate with the sale, Former Wife would have sole authority to negotiate a sale contract and carry out the sale. However, the only statement in Former Husband's brief that pertained to the additional ruling in the July 26 order was:

[T]he trial court contravened the plain language by ordering acts which were not considered by the plain language—a sale of the property and granting of all proceeds from the sale to the Former Wife, ordering that the Former Husband comply with the sale and [sic] the Former Wife the sole authority to sell the home. The plain language of the settlement agreement does not consider a sale of the property, but rather a transfer of the property to the Former Husband.

Thus, Former Husband merely listed the trial court's rulings in the July 26 order; he makes no argument challenging the additional ruling. Furthermore, the inapplicability of his argument to the July 26 order is crystalized by his requested relief: that this Court "reverse and remand for the court to order a transfer of the property to the Former Husband pursuant to the plain language of the Property Settlement Agreement." Pursuant to Florida Rule of Appellate Procedure 9.110(b), Former Husband was required to appeal

the trial court's May 30 order within 30 days. Instead, Former Husband waited until August 26 to challenge those rulings. Consequently, Former Husband's first issue was untimely appealed.

Former Husband's second issue on appeal is that the trial court erred in granting Former Wife attorney's fees. Former Wife asserted in her motion to dismiss that the attorney's fees order was non-appealable because an order determining entitlement to attorney's fees without setting the amount is a non-final, non-appealable order. We agree. Mills v. Martinez, 909 So. 2d 340, 342 (Fla. 5th DCA 2005) ("An award of attorneys' fees does not become final, and, therefore, appealable until the amount is set by the trial court." (citing Sanders v. Palmieri, 849 So. 2d 417, 417 (Fla. 5th DCA 2003))); Igberaese v. Vill. of Stoneybrook II Condo. Ass'n, 239 So. 3d 1284, 1284 (Fla. 2d DCA 2018) (dismissing portion of appeal challenging trial court's determination of entitlement to attorney's fees because trial court reserved jurisdiction to determine amount of fees; issue was non-final and non-appealable).

Accordingly, this Court lacks jurisdiction to hear either issue raised by Former Husband.

DISMISSED.

ORFINGER, COHEN and EISNAUGLE, JJ., concur.