

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

LINDA MARY LYKKEBAK,

Appellant,

v.

Case No. 5D20-1927

DONALD ALAN LYKKEBAK,

Appellee.

_____ /

Opinion filed June 18, 2021

Nonfinal Appeal from the Circuit
Court for Orange County,
Vincent S. Chiu, Judge.

Dorothy J. McMichen, of McMichen,
Cinami & Demps, PLLC, Orlando, for
Appellant.

Lisabeth Fryer, of Lisabeth J. Fryer,
P.A., Sanford, for Appellee.

SASSO, J.

Linda Mary Lykkebak (“Wife”) appeals the nonfinal order denying her motion for contempt against Donald Alan Lykkebak (“Husband”). For the reasons that follow, we affirm in part and reverse in part.

FACTS AND BACKGROUND

This appeal arises from a dissolution of marriage proceeding. A few weeks after Husband filed his petition for dissolution of marriage, Wife filed a motion for contempt, arguing Husband had willfully failed to abide by paragraphs 7 and 10 of an administrative order requiring parties in dissolution proceedings to pay certain expenses as they were during the intact marriage until further order of the court or written agreement of the parties. Wife requested the trial court to find Husband in contempt for violating paragraphs 7 and 10 of the administrative order and to award her attorney's fees and costs.

At a hearing on Wife's motion for contempt, the trial court first clarified the only matter that would be heard was the contempt motion. The trial court then took testimony from Husband and Wife. Husband testified that he intended on paying bills during the pendency of the lawsuit but was unable to do so because Wife, prior to the date he filed the petition, had taken approximately \$86,000 from a business operating account, leaving him with insufficient funds to pay the bills. Husband also acknowledged that he transferred approximately \$140,000 from joint accounts into an account in his name only before he filed his petition.

After hearing testimony, the trial court denied the motion for contempt based on failure to pay bills “because of the admitted taking of assets that would be used to do that.” However, the trial court then drew the parties’ attention to a separate provision of the administrative order, paragraph 9, which states “[n]either party may conceal, damage, or dispose of any asset” and “[n]either party may conceal, hoard or waste jointly-owned funds . . . except funds may be spent for the necessities of life.”

Relying on that provision, the trial court ordered both parties to place marital assets where “the parties have joint access to them,” at which point Husband would continue to pay household expenses. The trial court reiterated that the motion for contempt was denied, requested a draft order, and ended the hearing.

The trial court entered a written order on Wife’s motion for contempt on August 11, 2020, denying the motion but directing the parties to return marital assets to a joint account, directing Wife to return the \$86,000 to Husband’s operating account, and directing Husband to pay normal marital obligations once the funds were restored.

Wife moved for reconsideration on August 26, 2020, arguing in part that the only issue properly before the trial court was the issue of whether Husband willfully violated paragraphs 7 and 10 of the administrative order.

Because she did not request judicial relief regarding any violations of paragraph 9, and Husband did not request any affirmative relief, Wife requested the trial court vacate its directive that the parties return marital assets to a joint account.

On September 10, 2020, Wife filed her notice of appeal. Four days later, the trial court entered its order on Wife's motion for reconsideration. The trial court granted the motion in part, setting aside the portion of the order directing the parties to return marital assets to a joint account.

ANALYSIS

As an initial matter, Wife argues, and Husband appropriately concedes, that the trial court lacked jurisdiction to enter an order on Wife's motion for reconsideration. We agree. See *Stoppa v. Sussco, Inc.*, 943 So. 2d 309, 314 (Fla. 3d DCA 2006) (concluding the trial court was without jurisdiction to consider a nonfinal order while the subject of that order was pending on appeal and that "[w]hether the trial court lacks jurisdiction depends . . . on the nature of the action being taken by the trial court in relation to the subject matter of the pending appeal" (citing *Bailey v. Bailey*, 392 So. 2d 49, 52 (Fla. 3d DCA 1981))); accord *Richardson v. Watson*, 611 So. 2d 1254, 1255 (Fla. 2d DCA 1992) ("Unlike an authorized and timely motion directed to a final order, a motion for reconsideration or rehearing of

a nonfinal order does not toll the time for filing a notice of appeal or petition for a writ.”).

Because the trial court lacked jurisdiction, its order granting in part Wife’s motion for reconsideration is a nullity. *See Rivera v. State*, 913 So. 2d 769, 770 (Fla. 5th DCA 2005). We therefore review the trial court’s written order as it was originally entered on August 11, 2020. We have jurisdiction. *See Fla. R. App. P. 9.130(a)(3)(C)(iii)a.*

As to the August 11, 2020 order, Wife presents several arguments, one of which has merit. The trial court erred when it directed the parties to return marital assets to joint accounts, despite that relief not being requested nor tried by consent.¹ *See, e.g., Doddapaneni v. Doddapaneni*, 46 Fla. L. Weekly D1054 (Fla. 5th DCA May 7, 2021) (holding trial court improperly granted relief not requested by Wife when it ordered Husband’s individual bank accounts to be placed in both parties’ names but the sole issue before the court was Wife’s request for an order freezing Husband’s accounts).

¹ We reject Husband’s argument that his response to Wife’s Motion for Contempt, which referenced Wife removing money from his operating account, served as notice that relief may be awarded based on violations of paragraph 9. Likewise, the parties did not have the opportunity to be heard where the issue was first raised *sua sponte* by the court as it was concluding the hearing.

Accordingly, we reverse the August 11, 2020 order in part and instruct the trial court to strike its directive relating to the transfer of funds. We do not address Wife's argument that the trial court abused its discretion in failing to award attorney's fees as the trial court did not enter an order on that issue. In all other respects, we affirm.

AFFIRMED in part; REVERSED in part, with instructions.

WALLIS and HARRIS, JJ., concur.