IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2011-CA-01709-COA

EDDIE J. COTTON **APPELLANT**

v.

FANNIE B. COTTON **APPELLEE**

DATE OF JUDGMENT:	09/17/2011
TRIAL JUDGE:	HON. VICKI B. COBB
COURT FROM WHICH APPEALED:	DESOTO COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	CHRISTIAN T. GOELDNER
ATTORNEY FOR APPELLEE:	LESLIE B. SHUMAKE JR.
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
TRIAL COURT DISPOSITION:	MOTION FOR INTERPRETATION OF DECREE GRANTED
DISPOSITION:	AFFIRMED - 12/11/2012
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

MAXWELL, J., FOR THE COURT:

¶1. In 2010, this court affirmed a judgment awarding Fannie Cotton forty percent of Eddie Cotton's retirement based on his employment at Solae LLC during their void marriage.[1] In this appeal, Eddie argues that the chancery court's order—which clarified that the affirmed judgment included an award to Fannie of forty percent of Eddie's retirement account with Baker and Confectionary Union (B&CU), an account he has not denied was based on his employment with Solae LLC—improperly changed the judgment in violation of our rules of civil procedure.

[1] *Cotton v. Cotton*, 44 So. 3d 371, 378 (¶¶20-23) (Miss. Ct. App. 2010).

¶2. But such clarification was necessary because Eddie neither listed the B&CU account on his Rule 8.05 financial declaration form[2] nor informed the chancery court of the name of his retirement account. We therefore find no abuse of discretion in the chancery court's order and affirm.

Background

¶3. In the previous appeal, this court acknowledged that Eddie had failed to list any retirement account or pension on his Rule 8.05 financial declaration form. *Cotton v. Cotton*, 44 So. 3d 371, 378 (¶20) (Miss. Ct. App. 2010); *see* UCCR 8.05 (requiring in all domestic matters involving property disputes that each party provide a detailed written disclosure of his or her financial status, specifically including retirement accounts). Until Eddie testified at trial, the chancellor was unaware that Eddie had accrued retirement income based on his employment with Solae LLC. Based on Eddie's testimony, the court's final decree "awarded forty percent of the Retirement of [Eddie] accumulated in the Solae, LLC, retirement account." Because Eddie had failed to provide specific details about his retirement, we found no error in the general award to Fannie of forty percent of Eddie's retirement. *Cotton*, 44 So. 3d at 378 (¶21).

¶4. The present appeal arises from Fannie's attempt to execute the judgment we affirmed. She attempted to do so by using a qualified domestic relations order (QDRO) to divide Eddie's retirement account with B&CU. When B&CU rejected her QDRO on the basis she

[2] UCCR 8.05.

had not been awarded a portion of the account,[3] Fannie filed a motion for interpretation with the chancery court, asking the court to specify that the property award included forty percent of the B&CU retirement account.

¶5. The chancellor granted the motion and entered an order interpreting the prior judgment. This order explained: (1) the prior judgment had not specifically mentioned Eddie's retirement account with B&CU because the only detail Eddie had provided about his retirement was that it was connected with his employment with Solae LLC; and (2) through the prior judgment, the court had intended to award Fannie forty percent of any retirement account or pension Eddie had. Thus, the court ordered that Fannie was entitled to forty percent of Eddie's B&CU retirement account.

¶6. Eddie appealed this order.

Standard of Review

¶7. "Chancellors are afforded wide latitude in fashioning equitable remedies in domestic relations matters[.]" *Henderson v. Henderson*, 757 So. 2d 285, 289 (¶19) (Miss. 2000). We will not disturb a chancellor's factual findings unless the chancellor was manifestly wrong or clearly erroneous or applied an improper legal standard. *Wallace v. Wallace*, 12 So. 3d 572, 575 (¶12) (Miss. Ct. App. 2009). But when reviewing a chancellor's interpretation and

[3] According to the letter B&CU sent Fannie, attached to Fannie's motion for interpretation, B&CU also rejected the QDRO based on the mistaken belief that Fannie was not entitled to a portion of Eddie's retirement because her marriage to Eddie had been found void. *But see Cotton*, 44 So. 3d at 377 (¶¶16-17) (holding that a member of a knowingly bigamous marriage was not prevented from receiving an equitable distribution of the property acquired during the void marriage).

application of the law, our standard of review is de novo. *Tucker v. Prisock*, 791 So. 2d 190, 192 (¶10) (Miss. 2001).

Discussion

¶8. We have already found no abuse of discretion in the chancery court's judgment awarding Fannie forty percent of Eddie's retirement income. *Cotton*, 44 So. 3d at 378 (¶21). While Eddie argues the Mississippi Rules of Civil Procedure provide no mechanism for changing the judgment, we find nothing in the chancellor's order interpreting the judgment that changes or contradicts the judgment we affirmed. Instead, the order merely clarified the scope of the judgment so that Fannie could execute a QDRO on the B&CU account.

¶9. Such clarification was necessary because Eddie failed to identify, either on his Rule 8.05 financial declaration form or at trial, the name of his pension-fund manager. At trial, Eddie testified that he had worked for Solae LLC and that he received retirement income based on that employment. But he was unable to give any further details about his retirement account, in particular what entity managed his retirement account. When it was brought to the chancery court's attention that Eddie's retirement was managed by B&CU, the chancery court clarified that the B&CU retirement account *was* the Solae LLC retirement account, of which Fannie had been awarded forty percent. Quite telling is the fact that Eddie has not argued the B&CU retirement account has nothing to do with his employment with Solae LLC, but instead has argued various procedural rules prohibit Fannie from collecting her property award.

¶10. In clarifying that the prior judgment included the B&CU account, the chancery court neither exceeded its authority nor abused its discretion. Because we find the order is neither

an improper reconsideration nor an alteration of the prior judgment, we affirm.

¶11. **THE JUDGMENT OF THE DESOTO COUNTY CHANCERY COURT IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT**.

LEE, C.J., GRIFFIS, P.J., BARNES, ISHEE, CARLTON AND FAIR, JJ., CONCUR. RUSSELL, J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY IRVING, P.J., AND ROBERTS, J.

RUSSELL, J., DISSENTING:

¶12. The majority finds that the chancery court's order interpreting its prior judgment was necessary for purposes of clarifying the judgment. I find that no interpretation was needed, as the prior judgment was valid and clear on its face. The chancery court's order is unauthorized under the Mississippi Rules of Civil Procedure; and, amending the prior judgment to add an additional retirement account was an abuse of discretion. For these reasons, I respectfully dissent.

DISCUSSION

¶13. I am compelled to address several of the majority's factual statements that are unsupported by the record in this case. The majority states that Eddie neither listed the B&CU retirement account on his Uniform Chancery Court Rule 8.05 financial disclosure statement nor informed the chancery court of the account.[4] However, the record shows that

[4] The majority contends that the B&CU and Solae LLC accounts are somehow the same account of which Fannie was awarded forty percent. However, the record does not show any correlation between the two retirement accounts. In fact, the order interpreting the prior judgment addresses the accounts separately. The record indicates that Fannie entered a qualified domestic relations order which B&CU refused to recognize, but she did not encounter the same issue with Solae LLC. Thus, based on the record, as well as the language in the chancellor's order, the Solae and B&CU retirement accounts are controlled by two separate entities.

during trial, Eddie disclosed all information about his retirement and pension of which he was aware. Eddie also testified that he submitted to his lawyer all of his financial information, including all known information about his pension. In addition, the majority seems to ignore the fact that neither Eddie nor Fannie have submitted a Rule 8.05 financial disclosure statement to this Court for our review in this appeal or the previous one. This is imperative considering that the contents of Eddie's Rule 8.05 statement, which we do not have, are relied on so heavily by the majority in affirming the chancery court's order. During trial, Eddie testified that the only information regarding his pension of which he was aware was that he received two checks from the pension every month; one for $200, and the other for $1,700. Eddie stated multiple times that he had no access to his pension account, and was unaware of its total cash value. The following colloquy between Eddie and the plaintiff's counsel occurred during the original hearing before the chancellor:

> COUNSEL: Did you provide your attorney with information about your pension plan?
>
> EDDIE: Yes. Yes.
>
> COUNSEL: Do you understand that you are requested in discovery to tender any documents specifically regarding that pension plan?
>
> EDDIE: Well, I didn't have knowledge of the account of the plan at the time.
>
> COUNSEL: Do you have it now?
>
> EDDIE: No.
>
> . . . .
>
> COUNSEL: Are you telling this Court under oath that you don't have any idea [of] what's in your pension?

EDDIE: Yes, sir.

COUNSEL: And you expect this Court to believe you?

EDDIE: Well . . . I don't have access to . . . my pension[.] I don't know what's in that pension. All I know is what I get a month.

. . . .

EDDIE: I don't have the . . . exact figures of what the pension has. I don't know. They send me a check. I get a $200.00 check. I get a $1,700.00 check.

¶14. The majority also relies on our prior judgment from Eddie's previous appeal. *See Cotton v. Cotton*, 44 So. 3d 371, 378 (¶¶20-23) (Miss. Ct. App. 2010) (affirming the judgment of the chancery court awarding Fannie a forty percent interest in Eddie's Solae LLC retirement account). The majority contends that in the previous appeal, we found no error in the general award to Fannie of forty percent of Eddie's retirement. However, we affirmed the judgment concerning a specific award, not a general award to include any retirement later disputed. The award specifically listed Solae as the only retirement account of which Fannie was granted forty percent interest. The record indicates that the order interpreting the prior judgment was drafted by Fannie's lawyer. Therefore, Fannie had the opportunity to request an interest in *any* retirement acquired by Eddie, but the record shows that she did not.

¶15. Even more troubling is the evidence in the record indicating that Fannie knew about the B&CU retirement account prior to the annulment and had previously executed a waiver of any interest in the account. This matter was not addressed by the majority or the chancellor. I find that expanding the scope of the award so broadly to include any and all

property that may subsequently come into question without first determining its value, and whether it is in fact marital property subject to equitable distribution, is error.

¶16. "There are only three ways to reopen, amend and/or alter a final judgment entered by a court of competent jurisdiction." *Adcock v. Van Norman*, 917 So. 2d 86, 89 (¶9) (Miss. 2005).

> First, [a party] may file an appeal to the [Mississippi] Supreme Court. . . . The Mississippi Rules of Civil Procedure provide the other two procedures under which a judgment may be altered: (1) under Rule 59(e), a party may [file] a motion to alter or amend a judgment; and (2) under Rule 60, a litigant may receive relief from a judgment if one of the following is shown: a clerical mistake; fraud, misrepresentation or other misconduct; accident or mistake; newly discovered evidence; void judgment; discharge of judgement; or "any other reason justifying relief."

Adcock, 917 So. 2d. at 89 (¶9) (citing M.R.C.P. 59, 60).

I. The chancery court's order is unauthorized under the Mississippi Rules of Civil Procedure.

¶17. The majority finds that the chancery court's order was neither an improper reconsideration nor an alteration of the prior judgment. I disagree. The relevant portion of the prior judgment states:

> The Plaintiff . . . is hereby awarded forty percent (40%) of the [r]etirement of the Defendant accumulated in the Solae[ ] LLC[ ] retirement account. . . . [T]he attorneys for the parties are hereby directed to prepare any necessary paperwork, including a Qualified Domestic Relations Order, to effectuate the transfer of the said monies to the Plaintiff.

¶18. "[W]here the words of a its prior judgment are plain and unambiguous, the power thereby conferred cannot be extended beyond the plain meaning of the language used." *Howard v. McMurchy*, 175 Miss. 328, 336, 166 So. 917, 919 (1936). Here, the chancellor amended the prior judgment by adding a retirement account that was not previously listed

to be split between the parties. Nothing in the record suggests that such an amendment is authorized under the Rules. There is nothing unclear about the prior judgment that would warrant a declaratory judgment under Mississippi Rule of Civil Procedure 57. A declaratory judgment is proper where its entry will terminate any uncertainty or controversy giving rise to the proceeding. *See* M.R.C.P. 57(a). Here, there is no uncertainty or actual controversy that requires clarification. The chancellor cannot simply change her mind and make new findings.

¶19. The only other avenue through which such an amendment would be permitted under the Rules is if the chancellor had entered a Rule 60(b) order based on fraud. However, the order fails under this exception, as well. There was never a finding of fraud in the chancery court, nor was there ever a finding of fraud by this Court during the previous appeal. The majority states that the chancery court's order amending its prior judgment was proper because Eddie failed to list any information regarding his retirement account or pension in his Rule 8.05 financial declaration form. However, without Eddie's Rule 8.05 financial declaration form included in the record for our review, I feel that we cannot make such a determination. Further, I find that, without evidentiary support, this allegation cannot serve as justification for the chancellor's alteration of a prior judgment.

II. The chancery court's order was based on a procedurally barred motion.

¶20. It is well established that a motion to alter or amend a judgment must be filed no later than ten days after the entry of the judgment, and this ten-day period may not be extended under any circumstances. *See* M.R.C.P. 59(e). Fannie's motion for interpretation of decree

was filed on June 29, 2011, over three years after the final judgment was entered, and over one year after this Court affirmed that judgment. As discussed above, there are exceptions that permit a party, or the court on its own initiative, to seek or issue relief from a prior judgment notwithstanding the time requirement. Yet there is nothing in the record that shows where any of these exceptions are applicable. Thus, the chancery court's order interpreting its prior decree was based on a procedurally barred motion.

¶21. I find that the chancery court abused its discretion in amending the prior judgment to add an additional retirement account. The final its prior judgment was valid and clear on its face, and needed no interpretation. Here, the chancellor arbitrarily changed her mind and added an additional retirement account that has yet to be accounted for to a its prior judgment that needed no interpretation or clarification. In addition, Fannie failed to identify any other reason to remove the time-bar to her motion. For these reasons, I would reverse and render the chancery court's order.

IRVING, P.J., AND ROBERTS, J., JOIN THIS OPINION.