IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2003-CA-01416-COA

THOMAS ALFRED MOODY **APPELLANT**

v.

LAURA MARIE SHEIN MOODY **APPELLEE**

DATE OF TRIAL COURT JUDGMENT:	6/16/2003
TRIAL JUDGE:	HON. SEBE DALE, JR.
COURT FROM WHICH APPEALED:	LAMAR COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	WILLIAM R. WRIGHT
ATTORNEY FOR APPELLEE:	DAVID ALAN PUMFORD
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
TRIAL COURT DISPOSITION:	JUDGMENT OF CONTEMPT OF COURT
DISPOSITION:	REVERSED AND REMANDED - 07/13/2004
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	

BEFORE SOUTHWICK, P.J., MYERS AND CHANDLER, JJ.

SOUTHWICK, P.J., FOR THE COURT:

¶1. The chancery court denied Thomas Moody's motion for entry of supplemental judgment of divorce and at the same time found Mr. Moody to be in contempt of court. On appeal, Mr. Moody argues that a new final judgment needed to be entered. We find there is merit to his argument. Consequently, we reverse the decision not to enter a new final judgment and remand.

¶2. In 2002, Thomas and Laura Moody consented to a divorce based on irreconcilable differences. The following sequence of events is of importance:

September 4, 2002 - Chancery judge's memorandum opinion

September 18, 2002 - Final judgment of divorce entered
September 25, 2002 - Ms. Moody files motion for new trial or in the alternative, motion to alter and amend pursuant to M.R.C.P. 59
November 18, 2002 - Chancery judge's amended memorandum opinion
February 20, 2003 - Ms. Moody's petition for citation of contempt
April 14, 2003 - Mr. Moody's response to contempt petition
May 23, 2003 - Mr. Moody files motion for entry of supplemental judgment of divorce
June 23, 2003 - Final judgment of contempt and denial of motion for new judgment
June 30, 2003 - Mr. Moody files notice of appeal on the denial of new judgment

¶3. Mr. Moody appeals from that part of the June 23 judgment that denied his motion for entry of a new final judgment.

DISCUSSION

1. Contempt of court

¶4. The November 18, 2002 amended memorandum opinion stated, among other things, that Ms. Moody was entitled to one-half interest in an IRA that was in Mr. Moody's name; Mr. Moody was to pay the college tuition of their oldest son; Mr. Moody was to pay Ms. Moody and the children's medical expenses not covered by insurance; and Mr. Moody was to have a life insurance policy naming Ms. Moody as trustee. Mr. Moody failed to comply fully with these orders and the June 2003 finding of contempt was based upon this fact.

¶5. Even though we find in the next section of this opinion that no final judgment of divorce is in effect, Mr. Moody was still obligated to follow a court order until amended or reversed. He did not when he failed to make the required payments. The chancellor was correct to find contempt. *Rogers v. Rogers*, 662 So. 2d 1111, 1114 (Miss. 1995).

2. Final judgment of divorce

¶6. A final judgment of divorce was entered on September 18, 2002. Attached to this judgment was the memorandum opinion dated September 4, 2002. This opinion described the issues of the divorce

including visitation, child support, alimony, and distribution of marital assets. The November 18, 2002 amended memorandum opinion modified some of the details of the divorce. The chancellor stated that "the Memorandum Opinion issued in this cause under date of 4 September 2002 shall remain and be the findings, opinions, conclusions, directions, orders and judgment of the Court except to the extent altered, amended and modified as herein stated." Thus the only actual amendment was to a memorandum that had later become an exhibit attached to the final judgment. The amendment stated that the September 4 opinion would *remain* the "judgment of the Court," but the earlier opinion was never the court's judgment. Moreover, the previous final judgment of September 18, 2002, cannot itself remain the final judgment since it was now dated two months prior to the modifications to the findings. A new judgment with a new date which would set the calendar for the deadlines for appeal that might follow was still needed.

¶7. The Rules of Civil Procedure countenance amendments to trial court opinions: "the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment." M.R.C.P. 59(a). Some of what is permitted under that rule occurred: in effect new findings and conclusions were entered. What was not done was to utilize the last part of the quoted Rule language, which is to direct the entry of a new judgment.

¶8. The importance of a document entitled "judgment" appears from another procedural rule. "Every judgment shall be set forth on a separate document which bears the title of 'Judgment.'" M. R.C.P. 58. The only document complying with Rule 58 is a "judgment" that predates the revisions to the chancellor's opinion. No document entitled "Judgment" was entered simultaneously or subsequently to the amendments to the court's opinion in November 2002.

¶9. Ms. Moody argues that the November 2002 amended memorandum opinion was intended to be and was a final judgment of divorce. The chancellor held the same opinion. However, Rule 58 is clear when it states that "[e]very judgment shall be set forth on a separate document which bears the title of 'Judgment.'" Rule 59 requires the entry of a new judgment after amendments to other relevant parts of the court's decision, such as the findings and conclusions. The comment to Rule 58 explains that the purpose of this rule is to provide an unarguable point from which appellate and other obligations will then be measured. By such a document, parties may be certain that there is a final judgment and that the appeal process has begun. M.R.C.P. 58. Whether Mr. Moody was misled or not by the failure to enter a new judgment is irrelevant. The clarion call that a judgment has been entered never sounded. Rule 58 assures that all litigants are undeniably on notice that the first day of the calendar for an appeal has been reached. Once the chancellor amended his findings and conclusions in this way, it became error to treat those changes as a final judgment. We remand for entry of such judgment as the chancellor now believes to be necessary.

¶10. An appellate procedural ambiguity exists. There was a final judgment; then there was an order by the chancellor to amend the findings. No new final judgment was then entered, which arguably makes this technically an interlocutory appeal. We do not explore that possibility but rely on the chancellor's insistence that a final judgment had been entered. Once the trial judge states that there is a final judgment and refuses a request to do more, the appeal is from a final judgment until a higher court says otherwise. We will treat this as a procedurally proper appeal.

¶11. There was no error in the contempt finding. That remains undisturbed.

¶12. **THE ORDER OF THE CHANCERY COURT OF LAMAR COUNTY DENYING THE MOTION TO ENTER A FINAL JUDGMENT IS REVERSED AND THE CAUSE IS**

REMANDED FOR ENTRY OF A FINAL JUDGMENT. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLEE.

KING, C.J., BRIDGES, P.J., LEE, IRVING, MYERS, CHANDLER AND GRIFFIS, JJ., CONCUR.