REL: March 29, 2019

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

2170876

Mario J. Espinosa

v.

Tamarie Espinosa Hernandez

Appeal from Madison Circuit Court
(DR-04-803.01)

EDWARDS, Judge.

Mario J. Espinosa ("the father") appeals from a January 31, 2018, order entered by the Madison Circuit Court ("the trial court") requiring him to pay $27,956.02 as a child-support arrearage to his former wife, Tamarie Espinosa

Hernandez ("the mother"). Because we conclude that the father's appeal is from a void judgment, we dismiss his appeal.

Facts and Procedural History

The father and the mother married on July 17, 1993, in Moca, Puerto Rico. They eventually moved to Alabama, but stopped residing together in March 2004. They have two children: Mario Jr., who was born on July 14, 1995, and Alex, who was born on October 13, 1998. The mother was diagnosed with multiple sclerosis when she was 19 years old, while she and the father were dating.

On June 28, 2004, the trial court entered a judgment divorcing the father and the mother and adopting a settlement agreement they had reached as to property division, custody, the payment by the father of $1,850 per month as periodic alimony to the mother, and the payment of child support to the mother. The June 2004 divorce judgment awarded the father and the mother joint custody of the children. As to child support, the parties' settlement agreement provided that the father would pay $1,400 per month "toward the support and

maintenance of the parties' minor children" and that the father's monthly child-support payments

> "shall commence on the 1st day of the month immediately following the signing of this Agreement and shall be due and payable on the 1st day of each month thereafter, until said child shall reach the age of majority according to the State of Alabama, shall marry, die, or otherwise become emancipated."[1]

The judgment noted that the child-support award deviated from the child-support guidelines. See Rule 32(A)(1), Ala. R. Jud. Admin.

---

[1]The sentence preceding the quoted language references both children by name. It is unclear what the father's child-support obligation was to be when "said child" attained majority. See, e.g., Woods v. Woods, 851 So. 2d 541, 547-48 (Ala. Civ. App. 2002) ("[T]he divorce judgment required the husband to pay $1,006 per month for both children, rather than specifying an amount of support for each child; therefore, one child's obtaining the age of majority did not work to automatically terminate the husband's child-support obligation."); State ex rel. Killingsworth v. Snell, 681 So. 2d 620, 621 (Ala. Civ. App. 1996) ("A parent may not unilaterally reduce court-ordered child support payments when the judgment does not provide for a reduction in child support. ... In those cases in which the order establishing the amount of child support to be paid does not designate a specific amount for each child, events such as a child's reaching the age of majority or a child's marriage may be considered if a party seeks a modification of child support payments; however, 'neither [event] automatically modifies a child support judgment.' Alred v. State ex rel. Hill, 603 So. 2d 1082 (Ala. Civ. App. 1992).").

On February 12, 2009, the mother filed a petition seeking to hold the father in contempt for noncompliance with the June 2004 divorce judgment. According to the mother's petition, the father was wrongfully deducting certain expenses from his alimony and child-support payments. The father filed an answer denying the mother's allegations, and he filed a counterpetition seeking to terminate his periodic-alimony obligation and to modify his child-support obligation.[2] The mother filed a reply to the father's counterpetition on May 12, 2009, and she later amended her contempt petition to include a request for an increase in the father's periodic-alimony obligation based on an alleged increase in the father's income and in the mother's medical and living expenses.

Trial on the mother's amended contempt petition and the father's counterpetition was continued several times, and ore tenus proceedings were conducted on October 28, 2009, and April 12, 2010. On November 29, 2010, the trial court entered an order ("the November 2010 order") denying the mother's

[2]The record does not include a copy of the father's counterpetition. However, the November 29, 2010, order, see infra, and other materials in the record indicate that the father had filed a counterpetition.

request for an increase in periodic alimony and declaring that the father was not in arrears as to his periodic-alimony obligation or his child-support obligation. Further, the November 2010 order required the father to pay the oldest child's private-school tuition, but authorized him to deduct the tuition payment from his $1,400 per month child-support obligation. The November 2010 order continued:

> "The maximum amount to deduct shall be the advertised rate of monthly tuition as published by Catholic High School for a given calendar year. In the event the parties obtain a deferment and the [father] pays an amount less than that of the published rate of monthly tuition for a given year then he shall only reduce the child support monthly by that lesser amount. Verification of the tuition shall be provided each year.
>
> "This reduction shall continue until the child graduates from Catholic High School, should the child['s] graduation from Catholic High School [occur] prior to his nineteenth birthday the [father] shall pay to the [mother] the amount of One Thousand Dollars ($1,000.00) per month in child support until such time as the child reaches the age of nineteen, dies, remarries, or otherwise becomes self supporting."[3]

---

[3]We are uncertain of the amount the trial court intended as the father's child-support obligation after the oldest child attained the age of majority in July 2014 -- i.e., whether the father's child-support obligation would continue at $1,000 per month or would resume at $1,400 per month until the youngest child attained the age of majority in October 2017. See Woods and Snell at note 1, supra.

The last paragraph of the November 2010 order states: "All other provisions of the previous Orders of this Court shall remain in full, force and effect. All other further, and different relief is denied."

On December 10, 2010, the mother filed a motion to alter, amend, or vacate the November 2010 order or, in the alternative, to grant the mother a new trial. In her postjudgment motion, the mother argued that the November 2010 order was inconsistent with the evidence presented at trial. She also argued that the circumstances that existed at the time of the trial in April 2010 had changed by the time the trial court entered the November 2010 order, particularly as to the impact of the oldest child's

> "enrollment in Catholic High for the 2010-2011 school year. For the 2010-2011 year, [the mother] enrolled [the oldest child] in Catholic High. Because of her low income, [the mother] received a tuition assistance grant ... for the 2010-2011 school year in the amount of $5,900. Therefore, [the mother] owed just $83.33 [a month] toward [the oldest child's] tuition at Catholic High for the 2010-2011 school year. ...
>
> "However, after entry of the [November 2010] order, ... the [father] proceeded to take that order to Catholic High. Catholic High thereupon re-evaluated [the oldest child's] tuition assistance grant based on the [father's] income, because the order stated that the [father] is responsible for

paying for [the oldest child's] tuition at Catholic High. As a result, [the oldest child's] tuition was increased from $83.33 a month to $625.00 a month. Not only is this a pointless increase in tuition that can be corrected by amendment to this Court's order, it further reduces [the mother's] child support without justification. A letter from Catholic High providing the new total due for 2010-2011 is attached as Exhibit B hereto.

"This new evidence is extremely important because it completely alters the equities of the situation and undermines the basis of the Court's decision. The effect of the Court's order is to increase [the oldest child's] tuition at Catholic High and to drastically reduce [the mother's] child support. As the order currently stands, [the mother's] child support is reduced by $625.00. Thus, instead of [the mother] receiving $1,400.00 a month in child support to support the minor children, [she] is now going to receive $775.00.

"This unwarranted reduction will be disastrous for [the mother] because she is using the child support she receives to cover the tuition of [the youngest child] at Catholic Middle School, and all the expenses and activities in which the children are involved. After payment of schooling, there will be inadequate child support remaining to feed and clothe the minor children. Additional child support could be used to support the minor children if the Court's order simply provided that [the mother] is responsible for paying [the oldest child's] tuition at Catholic High.

"For all of these reasons, if the Court refuses to amend its order based upon this new evidence alone, it must grant the alternative motion for a new trial in order to consider this recently discovered evidence that was not available at an earlier time."

The mother's postjudgment motion further argued that the trial court's denial of her request to increase her periodic alimony was inconsistent with the evidence presented at trial because, she said, she was unable to work due to her multiple sclerosis and because the father's income had substantially increased, as had the mother's living expenses. The mother requested a hearing on her postjudgment motion, and she subsequently filed a separate motion requesting a hearing, but the State Judicial Information System ("SJIS") case-action-summary sheet does not reflect a ruling on the motion for a hearing.

The parties appeared before the trial court on March 4, 2011, on the mother's postjudgment motion.[4] On that date, the trial court made a handwritten entry on the first page of the mother's postjudgment motion. That entry states:

> "3/4/11
>
> "[The mother's] motion to alter or amend [the November 2010 order] of modification of the [June 2004 divorce judgment] is hereby granted. A hearing will be set to determine the exact terms of altering or amending said Order on 3/15/11 at 9:30 a.m."

[4]The mother states in a subsequent motion that, "[w]hile the parties' were present on March 4, 2011, a hearing was not held in open court." Also, in a response filed by the father on March 31, 2015, he states that "[s]aid hearing was held in chambers." See discussion, infra.

The entry is followed by the signature of Madison Circuit Judge Laura Hamilton, the judge to whom the case originally was assigned.[5] According to an SJIS case-action-summary-sheet entry of March 4, 2011, an order on the mother's postjudgment motion was "scanned" on March 4, 2011. Also, the record includes a copy of the mother's postjudgment motion that reflects that the motion was filed in the trial court on March 9, 2011.[6] Both March 4, 2011, and

[5]Judge Hamilton retired at the end of January 2012.

[6]The record also includes another copy of the mother's postjudgment motion that includes a "SCANNED" stamp and an additional "filed" stamp of the circuit-court clerk; the stamp appears to include a date of March 9, 2011, but the image is somewhat illegible because it is inverted and intermingled with the text of the postjudgment motion. Although some error appears to have been made by the circuit-court clerk either in making the March 4, 2011, SJIS entry or in not making a March 9, 2011, SJIS entry, the presence of the trial judge's handwritten order, on a document reflecting that it was filed with the circuit-court clerk after the handwritten order was made, indicates that the order was delivered to the circuit-court clerk for entry no later than March 9, 2011.

The Alabama Supreme Court has stated that the effectiveness of a judgment depends on its being signed by the trial judge and "'filed with the clerk,'" at which point "'the ministerial duty of the clerk under Rule 58[, Ala. R. Civ. P.,] is triggered.'" Jakeman v. Lawrence Grp. Mgmt. Co., 82 So. 3d 655, 658 (Ala. 2011) (quoting Rollins v. Rollins, 903 So. 2d 828, 833 (Ala. Civ. App. 2004)); see also Rule 58, Ala. R. Civ. P., Committee Comments on 1973 Adoption ("'[E]ntry' of the judgment is the ministerial act of the clerk in recording the judgment duly rendered by the judge."). As Jakeman notes,

see 82 So. 3d at 658 n.3, Rule 58(c), Ala. R. Civ. P., was amended, effective September 19, 2006, and, as a result of that amendment, now provides that "[a]n order or a judgment shall be deemed 'entered' within the meaning of these Rules ... as of the actual date of the input of the order or judgment into the [SJIS]." The rule also requires the clerk to "forthwith enter [a rendered] order or judgment in the court record." Id. The Committee Comments to Amendment to Rule 58 Effective September 19, 2006, state that

> "the Committee recommends making the electronic entry in the existing State Judicial Information System ('SJIS') the official entry of judgment. The date of entry will be the actual date of input, with the expectation that this date ordinarily will accurately and automatically accompany the entry. The word 'actual' is used to allow proof that the apparent date is not the actual date, if that is in fact the case, for example if an entry is manually backdated. The Committee is informed that such manual backdating is not possible in the SJIS, but the rule is nevertheless written to protect against such an event."

Those Committee Comments also state: "This amendment to Rule 58(c) reinstates the distinction between the substantive, judicial act of rendering a judgment and the procedural, ministerial act of entering a judgment." See also Holmes v. Powell, 363 So. 2d 760, 761 (Ala. 1978) ("The phrase 'entry of judgment' refers to the ministerial act of the clerk in spreading the judgment upon the record, as opposed to the 'rendition of judgment' which is the judicial act of the court in pronouncing a judgment or an order. ... Filing the judgment or order in the office of the clerk (or register) or compliance otherwise under Rule 58(c), [Ala. R. Civ. P.,] constitutes 'entry of the judgment' for purposes of computing the time within which notice of appeal must be filed.").

Based on the record before us, we are satisfied that the circuit-court clerk's filing of a copy of the postjudgment motion that included the trial court's handwritten order was

March 9, 2011, were within 90 days of December 10, 2010. See Rule 59.1, Ala. R. Civ. P. Apparently, no hearing was held on March 15, 2011, "to determine the exact terms of altering or amending" the November 2010 order.

On September 20, 2011, the mother filed a motion noting the time that had elapsed since March 4, 2011, and requesting that the trial court set a "hearing to determine whether a new trial should be had ... as well as the potential amendment to the" November 2010 order. The mother's September 2011 motion was set for a hearing to be held on November 7, 2011, but thereafter the hearing was continued on motion of the father. The hearing was again continued on several occasions, additional discovery occurred between the parties, and the mother was permitted to amend her petition seeking to hold the father in contempt for noncompliance with the June 2004 divorce judgment.

On July 18, 2012, the father filed a motion to continue a hearing set for July 23, 2012. The father's motion to continue states, in pertinent part:

> "This matter was originally before the court on [the mother's] motion for a new trial. The Honorable

---

sufficient to show a timely entry of that order.

> Laura Jo Hamilton granted said motion in part prior to her retirement. At the time of her retirement, this matter had not been resolved. Therefore, this honorable court ruled in May 2012 that it was appropriate to retry the entire action. In addition, this court allowed [the mother] to amend the complaint to seek other relief. Following that ruling, [the father] supplemented his response to the discovery and requested [the mother] do the same in the letter dated June 5, 2012. Unfortunately, [the mother] has not supplemented her discovery responses and that information is necessary to proceed to trial for all issues that are before the court. The court indicated in a status conference in May 2012 that if either party needed additional time to prepare considering the fact that the court would be retrying all issues, as well as addressing the new issues, ... the court would entertain such a request. While the undersigned counsel does not make this request lightly, considering the time that this matter has been pending, the supplemental discovery is necessary in order for her to adequately prepare her case."

The trial court granted the father's motion to continue and set the matter for a trial to be held on December 17, 2012. The trial date was subsequently continued.

An ore tenus hearing was held on October 17, 2013. At that hearing, the trial court stated:

> "Previously Judge Hamilton had issued an order of modification and then the [mother] moved to alter, amend or vacate or I guess for a new trial, which Judge Hamilton granted that motion, ... and I thought was going to hold a hearing on that, but I don't believe that hearing was ever held. And so we are here to address then the issues raised in the

> initial and amended pleadings by both parties in this modification action."

The mother and the father testified at the October 2013 hearing, and they introduced numerous exhibits as to their respective claims.

On April 21, 2014, the mother filed a motion requesting that the trial court set a hearing to consider "new developments" before issuing a final order. The trial court set the matter for a hearing to be held on July 21, 2014, and that hearing subsequently was rescheduled on several occasions.

On February 4, 2015, the mother filed a motion requesting that the trial court enter a final order or a pendente lite order confirming that the father's periodic-alimony and child-support obligations had not been reduced and that he was not authorized to make deductions from the payments he was required to make under the June 2004 divorce judgment.

On March 17, 2015, the trial court entered an order that states, in pertinent part:

> "1. The Court finds that [the father's] obligations for child support and alimony have not been changed since the entry of the [June 2004 divorce judgment] and the incorporated Settlement Agreement therein.

> "2. The Court finds that [the June 2004 divorce judgment] require[s] the [father] to pay [the mother] $1,400.00 per month in child support and $1,850.00 per month in periodic alimony.
>
> "3. The Court notes for the parties that failure to pay as ordered by the Court shall be deemed contempt of court ....
>
> "For clarity, as was relayed in a status conference with both counsel previously in November 2014, [the father] is not allowed to deduct sums from his child-support and alimony payments for any purposes (i.e., uncovered medical expenses, school expenses, etc.).
>
> "....
>
> "5. Within 14 days of entry of this order, each party shall submit to the Court, and to opposing counsel, its accounting of sums paid by [the father] to [the mother] for child support and alimony since the entry of the [June 2004 divorce judgment] and its alleged arrearage totals.
>
> "6. Considering the prior evidence of [the father's] high income, evidence of [his] continued purchase of rental properties during the pendency of this action while not paying support as ordered, [the mother's] multiple sclerosis and inability to work, and the apparent failure of [the father] to pay as instructed even since the instruction of the Court at the last status conference, it is the intention of this Court to award [the mother] a judgment for arrearages owed and require a timely lump-sum payment of same by [the father] upon review of each party's accounting."

On March 31, 2015, the father filed his accounting and a response to the March 2015 order. In part, the father alleged

that, per the November 2010 order, he had fully complied with his alimony and child-support obligations and that

> "[t]he issues with payment of child support verses tuition and other expenses did not arise until after the previous trial court issued an Order on March 4, 2011, stating that the motion to alter, amend or vacate the [November 2010 order] was granted and that a hearing would be held to determine the exact terms of altering or amending. Said hearing was held in chambers with the previous trial court yet no order was entered. Therefore the [father] would respectfully submit that he has not been at any point in willful contempt of this Court. He has done his best to pay the expenses of the minor children. The original amount of child support was agreed to by the parties and upon his eldest child reaching the age of majority is due to be reduced."

On July 31, 2015, the father filed an additional response that states, in pertinent part:

> "On or about March 4, 2011, the previous trial court issued a handwritten order partially setting aside the [November 2010] order. Upon the issuance of this Order [the father] continued paying alimony at the rate ordered in the decree and began paying a lesser amount in child support and paying the tuition for the children, as directed. Upon doing so, the school of the children back charged more than $7,000.00 in financial aid that had been granted to the mother and increased the tuition. No party herein could have foreseen this action. [The father] paid all of said $7,000.00 plus complied with paying child support and tuition. Therefore, [the father] would respectfully submit that he has not been at any point in willful contempt of this Court. He has done his best to pay the expenses of the minor children and follow the direction of this Court."

The final hearing on the mother's contempt petition was rescheduled several times. On December 1, 2016, the trial court conducted an ore tenus proceeding as to all outstanding issues. At the beginning of that hearing, the following colloquy occurred:

> "[THE FATHER'S COUNSEL]: In this matter, the original order that was entered by Judge Hamilton was entered on November the 29th, 2010. According to SJIS, there was a motion cover sheet filed on 12/10/2010 purporting to be the [mother's] motion for a new trial or in the alternative a motion to alter, amend, or vacate. That particular motion at no point on SJIS, in our opinion, shows up in the timely thirty days that it should have been. The motion that shows up on SJIS appears to have a notation by the trial court that was made on March the 4th, 2011.
>
> "Also on SJIS there is on September 12th, 2011, an order that indicates that it is the order on the [mother's] motion to alter, amend, or vacate.
>
> "Our position would be that both the [mother's] motion to alter, amend or vacate was filed outside the thirty days as -- and the order granting a portion of [the mother's] motion to alter, amend, or vacate as indicated on SJIS is filed outside the ninety day time line as required by Rule 59[, Ala. R. Civ. P.].
>
> "And we would submit that Rule 58[, Ala. R. Civ. P.,] is the rule that you rely upon when determining the date that those orders were entered in to SJIS.
>
> "....
>
> "THE COURT: Do you want to respond ....

> "[THE MOTHER'S COUNSEL]: Judge, this is new to me. I do believe that it appears clear that the motion was filed appropriately. It's time stamped and that appears on copies that we see. I don't know about the order entered by the judge and what specific date it appears on SJIS and so -- this case, we've plugged on along and we've taken testimony since then, including a several hour hearing in 2013.
>
> "THE COURT: And let me say here's something else that I just noticed, and I'm just going to note this for the record for appeal purposes.
>
> "There's -- on the motion itself there is a handwritten note at the bottom, it's dated 3/4/2011, and then later in September of 2011, September the 20th, of 2011, [the mother's counsel] filed a motion on that date saying she wanted a hearing on the original 12/10/2010 motion and she says that on or about March 4th, 2011, the Court granted the [mother's] motion to alter or amend but no order -- a hearing was not held and no order had been made. So that's another complicating factor. And this was -- this was on September the 20th, of 2011, but in Alacourt -- well, that's the date it shows. That's the date that it showed up in Alacourt. So that's where we are.
>
> "All right. So the argument's made."

Thereafter, the mother testified at the December 2016 hearing, and she submitted a spreadsheet exhibit reflecting her calculations as to the father's alleged child-support payment history from June 2004 through November 2016. The mother's child-support-arrearage calculation assumed that the father was required to continue to pay her $1,400 per month after the

entry of the November 2010 order and after the oldest child attained the age of majority in August 2014. The mother's spreadsheet exhibit reflects no child-support arrearage before January 2011, but an increasing cumulative arrearage each month thereafter based on the varying amounts of the monthly child-support payments made by the father. Also, the spreadsheet exhibit reflects that, as of August 2014, when the oldest child attained the age of majority, the father began deducting $700 per month from his child-support payments; on a few months, even more was deducted. The mother's spreadsheet exhibit indicates that, as of November 2016, the father's cumulative child-support arrearage, including interest, totaled $69,216.93. The mother's spreadsheet exhibit was limited to child-support arrearage -- no periodic-alimony arrearage was included in the figures -- and the calculation accounted for the change in interest rate on judgments from 12 percent per annum to 7.5 percent per annum, effective September 1, 2011. See Ala. Code 1975, § 8-8-10. The father made no objection to the mother's spreadsheet exhibit or the calculations reflected on that exhibit.

The father also testified at the December 2016 hearing, and, like the mother, he introduced into evidence an exhibit that purported to reflect payments he had made to the mother and expenses he argued he should be allowed to deduct from his child-support payments. The father's payment history covered only the period from January 2011 through March 2015, and the exhibit combined the father's periodic-alimony payments and child-support payments into a single figure for each month. Based on the combined figures for periodic alimony and child support, it is clear that the father was not paying the full amount owed to the mother for both periodic alimony and child support under the terms of the June 2004 divorce judgment, absent his entitlement to the deductions he claimed he was authorized to take either by law or pursuant to the November 2010 order. For example, in January 2011, the father paid $2,000 of his combined obligation of $3,250 ($1,850 periodic alimony plus $1,400 child support); the mother's spreadsheet exhibit reflects that the father paid only $150 as child support for that month ($2,000 minus $1,850 equals $150). Also, as to some of the expenses the father claimed he should be entitled to deduct from his child support, the father

conceded during his testimony that the mother had also paid similar extra expenses for the children, including some of the tuition for the children's respective schools.[7]

On January 31, 2018, the trial court entered an order finding that the father had no periodic-alimony arrearage, apparently because the court credited all payments to periodic alimony first. As to the father's child-support arrearage, the January 2018 order states:

> "It is undisputed that [the father] did not, at all times, pay the required child support of $1,400.00 per month. [The father] contends that his child-support obligations should be offset by amounts he paid on behalf of his children for other things, such as education.
>
> "It is without dispute that [the father] would have been entitled to a recalculation of child support as of August 2014, when the parties' oldest son reached the age of majority. It is also without dispute that [the father] did pay expenses for the children not required by court order.
>
> "[The mother] has requested that [the father] be required to pay an arrearage in the neighborhood of $70,000. On the other hand, [the father] contends

[7]The mother testified that, in addition to some tuition, she had "paid for any uniforms, shoes, books, everything that was required for them to be in school. All the supplies, any uniforms for sports, shoes, anything related with sports, also glasses, visit to the doctors." She further stated that she had continued to pay some of the oldest child's private-school tuition even after the entry of the November 2010 order.

> that he should be responsible for no arrearage at all.
>
> "The Court concludes that equitable principles must prevail in this case, and that in consideration of all evidence and circumstances in this case, it is equitable to hold [the father] responsible for the [child-support] arrearage existing at the time the oldest child reached the age of majority, and not beyond. According to [the mother's] exhibit ..., that amount is $27,956.02. Judgment is hereby entered in favor of [the mother] and against [the father] for $27,956.02, plus costs."[8]

The January 2018 order denied all other claims for relief.

We note that the $27,956.02 figure referenced in the January 2018 order is the cumulative child-support arrearage as of August 2014 that is reflected on the mother's spreadsheet exhibit. That figure on the spreadsheet exhibit does not include the alleged accrued interest on the father's child-support arrearage as of August 2014 ($2,717.52), and that figure does not include the alleged child-support

[8]To the extent that the payment histories reflected on the mother's spreadsheet exhibit and the father's spreadsheet exhibit covered the same periods, the exhibits are, with a few exceptions, consistent in reflecting what the principal of the father's child-support arrearage would be assuming all payments by the father were applied first to his $1,850 per month periodic-alimony obligation and assuming he was required to pay the mother $1,400 per month as child support.

Also, we note that the record includes no information as to whether the father made any child-support payments after the December 2016 hearing.

arrearage that existed as of the date § 8-8-10 was amended, September 1, 2011 ($7,582.00), or the accumulated interest on that child-support arrearage ($3,048.68). Also, we note that the child-support arrearage reflected on the mother's spreadsheet exhibit all accrued after the father filed his counterpetition and after the entry of the November 2010 order.

On March 1, 2018, the father filed a postjudgment motion, arguing in part, as he had at the December 2016 hearing, that the trial court's handwritten order granting the mother's postjudgment motion was not timely entered in the SJIS and that November 2010 order was a final judgment. The father further contended:

> "The parties herein hold joint legal and physical custody, sharing their time with the children equally; therefore, Rule 32[, Ala. R. Jud. Admin.,] Guideline Support does not apply. The undisputed testimony and evidence submitted showed that [the father] paid private-school tuition, the cost of automobiles, vehicle insurance, fees for applications to college and college expenses for the children, in addition to those sums identified as child support in the Court Order. The [father] would submit that the joint custody combined with the extraordinary expenses he pays further supports his position that there were no monies due. The judgment issued against [the father] is contrary to the great weight of the evidence."

The father requested that the trial court alter, amend, or vacate the January 2018 order, and he requested a hearing on his postjudgment motion.

On May 24, 2018, the father filed a motion to stay enforcement of the January 2018 order pending a ruling on his postjudgment motion and a ruling on any appeal. On May, 29, 2018, the trial court granted the father's motion to stay. Thereafter, the father's postjudgment motion was denied by operation of law. See Rule 59.1, Ala. R. Civ. P. On June 27, 2018, the father filed a notice of appeal.

Analysis

The father first contends that the January 2018 order is void because, he says, the trial court failed to timely adjudicate the mother's December 2010 postjudgment and, therefore, the postjudgment motion was denied by operation of law. Thus, the father contends, the November 2010 order became a final judgment from which the mother did not appeal. We agree that the mother's December 2010 postjudgment motion was denied by operation of law. Specifically, we conclude that the language used in the trial court's handwritten order

of March 4, 2011, did not dispose of the mother's postjudgment motion as required by Rule 59.1, Ala. R. Civ. P.

The father raised the issue of the trial court's jurisdiction at the December 2016 hearing and in his postjudgment motion. However, even if he had not raised the issue, a lack of appellate jurisdiction or trial-court jurisdiction cannot be waived and can be raised by an appellate court ex mero motu. See, e.g., Smith v. Smith, 4 So. 3d 1178, 1180-81 (Ala. Civ. App. 2008); see also McMinn v. Derrick, 268 Ala. 604, 606, 109 So. 2d 710, 712 (1959) (court was without jurisdiction either to set aside or amend the final judgment); Johnson v. Foust, 242 Ala. 659, 659-60, 7 So. 2d 864, 864-65 (1942) (discussing previous procedural rules and noting that the trial court "lost jurisdiction" to rule on the postjudgment motion after the pertinent time for ruling expired).[9]

[9]The Alabama Supreme Court stated in Ex parte Seymour, 946 So. 2d 536, 538 (Ala. 2006), that "[s]ubject-matter jurisdiction concerns a court's power to decide certain types of cases. Woolf v. McGaugh, 175 Ala. 299, 303, 57 So. 754, 755 (1911) ('"By jurisdiction over the subject-matter is meant the nature of the cause of action and of the relief sought."' (quoting Cooper v. Reynolds, 77 U.S. (10 Wall.) 308, 316, 19 L. Ed. 931 (1870)))." A proceeding to modify child support is a type of case over which a circuit court has subject-matter jurisdiction. However, as the United States Supreme Court has

Rule 59.1 states:

---

stated:

> "It is as easy to give a general and comprehensive definition of the word jurisdiction as it is difficult to determine, in special cases, the precise conditions on which the right to exercise it depends. This right has reference to the power of the court over the parties, over the subject-matter, over the res or property in contest, and to the authority of the court to render the judgment or decree which it assumes to make.
>
> "By jurisdiction over the subject-matter is meant the nature of the cause of action and of the relief sought; and this is conferred by the sovereign authority which organizes the court, and is to be sought for in the general nature of its powers, or in authority specially conferred.
>
> "Jurisdiction of the person is obtained by the service of process, or by the voluntary appearance of the party in the progress of the cause.
>
> "Jurisdiction of the res is obtained by a seizure under process of the court, whereby it is held to abide such order as the court may make concerning it. The power to render the decree or judgment which the court may undertake to make in the particular cause, depends upon the nature and extent of the authority vested in it by law in regard to the subject-matter of the cause."

Cooper v. Reynolds, 77 U.S. (10 Wall.) 308, 316-17 (1870). Whether the jurisdiction referred to in precedents such as Smith, McMinn, and Johnson is implicit in the concept of subject-matter jurisdiction or simply beyond "the nature and extent of authority vested in [the circuit court] by law" as to its altering or amending previous judgments, id. at 317, our precedents clearly treat the matter as a nonwaivable jurisdictional defect.

> "No postjudgment motion filed pursuant to Rules 50, 52, 55, or 59 shall remain pending in the trial court for more than ninety (90) days, unless with the express consent of all the parties, which consent shall appear of record, or unless extended by the appellate court to which an appeal of the judgment would lie, and such time may be further extended for good cause shown. A failure by the trial court to render an order disposing of any pending postjudgment motion within the time permitted hereunder, or any extension thereof, shall constitute a denial of such motion as of the date of the expiration of the period."

(Emphasis added.) Rule 58(a), Ala. R. Civ. P., states that "[a] judge may render an order or a judgment ... by endorsing upon a motion the words 'granted,' 'denied,' 'moot,' or words of similar import, and dating and signing or initialing it." (Emphasis added.)

The trial court's March 4, 2011, handwritten order states: "[The mother's] motion to alter or amend [the November 2010] order of modification of the [June 2004 divorce judgment] is hereby granted. A hearing will be set to determine the exact terms of altering or amending said Order on 3/15/11 at 9:30 a.m." (Emphasis added.) Reading Rule 58(a) and Rule 59.1 in pari materia, the question is whether the language used in the March 4, 2011, handwritten order was "[a] failure by the trial court to render an order disposing

of" the mother's postjudgment motion. As to that issue, Rule 58(b), Ala. R. Civ. P., states that

> "[a]n order or a judgment need not be phrased in formal language nor bear particular words of adjudication. A written order or a judgment will be sufficient if it is signed or initialed by the judge ... and indicates an intention to adjudicate, considering the whole record, and if it indicates the substance of the adjudication."

In determining whether a judgment indicates an "intention to adjudicate," "[w]e are free to review 'all the relevant circumstances surrounding the judgment,' and 'the entire judgment ... should be read as a whole in the light of all the circumstances as well as of the conduct of the parties.' Hanson [v. Hearn], 521 So. 2d [953,] 955 [(Ala. 1988)]." Boykin v. Law, 946 So. 2d 838, 848 (Ala. 2006).

This court has addressed cases in a similar posture and concluded that language such as that appearing in the handwritten order in this case is not sufficient to dispose of a postjudgment motion. For example, in Smith, supra, the trial court entered a judgment on July 31, 2007, modifying Phillip A. Smith's child-support obligation. Smith

> "filed a postjudgment motion on August 30, 2007. On September 4, 2007, the trial court entered an order stating: 'Motion for new trial filed by [Smith] is hereby granted in part. Set for a hearing.' On

> October 22, 2007, the trial court conducted a hearing to consider the issues raised in [Smith's] postjudgment motion, but the court did not expressly rule on the postjudgment motion within 90 days after it was filed, and that motion was automatically denied on November 28, 2007. See Rule 59.1, Ala. R. Civ. P. One day later, the trial court purported to deny [Smith's] postjudgment motion. [Smith] filed his notice of appeal on January 10, 2008, which was 42 days after the trial court had purported to expressly deny his postjudgment motion ...."

4 So. 3d at 1180.

As we stated in Smith, "Rule 59.1, Ala. R. Civ. P., provides that a postjudgment motion that remains pending for 90 days is deemed denied by operation of law, and the trial court loses jurisdiction to rule on that motion." 4 So. 3d at 1181.[10] "'"[T]he operation of Rule 59.1 makes no distinction based upon whether the failure to rule appears to be 'inadvertent [or] deliberate.'"' Ex parte Chamblee, 899 So. 2d 244, 247 (Ala. 2004) (quoting Ex parte Johnson Land Co., 561 So. 2d 506, 508 (Ala. 1990), quoting in turn Howard v. McMillian, 480 So. 2d 1251, 1252 (Ala. Civ. App. 1985))." Smith, 4 So. 3d at 1181. This court then stated:

> "In this case, the trial court timely conducted a hearing on [Smith's] motion; however, the trial

[10]The 90-day period may be extended pursuant to the methods described in Rule 59.1, but no effort was made to extend the 90-day period in the present case.

> court did not enter an order denying [Smith's] postjudgment motion until 1 day after the 90-day period set forth in Rule 59.1 had expired. We further note that the trial court's order entered on September 4, 2007, did not toll the running of the 90-day period, nor was it a 'ruling' as contemplated by Rule 59.1. As stated in Ex parte Johnson Land Co.,[561 So. 2d 506 (Ala. 1990),] '"the ruling that Rule 59.1 requires to be entered within ninety days is one which (1) denies the motion, or (2) grants the motion."' 561 So. 2d at 508 (quoting French v. Steel, Inc., 445 So. 2d 561, 563 (Ala. 1984)). Thus, the trial court's order ostensibly 'granting' [Smith's] postjudgment motion 'in part' but actually only setting the postjudgment motion for a hearing was not a ruling on the merits. To be timely, [Smith's] notice of appeal had to have been filed on or before January 9, 2008. After reviewing the record and the applicable legal authorities, we must conclude that [Smith's] notice of appeal, filed on January 10, 2008, was not timely filed so as to properly invoke this court's jurisdiction."

4 So. 3d at 1181 (emphasis added); see also Radetic v. Murphy, 71 So. 3d 642, 647 n.9 (Ala. 2011) (citing Smith with approval and noting that "Rule 59.1 provides, in pertinent part, that '[n]o postjudgment motion filed pursuant to Rules 50, 52, 55, or 59 shall remain pending in the trial court for more than ninety (90) days, unless with the express consent of all the parties,' and that the trial court's failure to dispose of such a pending postjudgment motion 'shall constitute a denial of such motion as of the date of the expiration of the period'"); Venturi v. Venturi, 233 So. 3d 982, 983 (Ala. Civ.

App. 2016) (An "order 'granting' the father's postjudgment motion 'in part[]' ... did no more than set the supervised-visitation issue raised in the father's postjudgment motion for a later hearing" and "was not effective to toll the running of the 90-day period in Rule 59.1."); and Eight Mile Auto Sales, Inc. v. Fair, 25 So. 3d 459, 462 (Ala. Civ. App. 2009) (An "order stating that [the postjudgment] motion was 'granted in part' and setting the motion for a hearing" "did not grant any substantive relief or rule on the merits of the motion.").

The mother's postjudgment motion requested multiple forms of relief from the November 2010 order, and it also requested alternative relief, a new trial. The trial court's March 4, 2011, handwritten entry, however, states only that the trial court was granting the mother's postjudgment motion and setting a hearing to determine what parts of the November 2010 order were to be altered or amended. The handwritten order did not state that the November 2010 order was vacated, that the mother's request for the alternative relief of a new trial was granted, or that the mother's postjudgment motion was denied. Such entries would have indicated a decision

disposing of the postjudgment motion in its entirety and would have indicated an "intention to adjudicate" and "the substance of [the trial court's] adjudication." Rule 58(b). Instead, the March 4, 2011, handwritten order purports to grant the mother's postjudgment motion while simultaneously setting for another time the determination of what portion or portions of the mother's postjudgment motion would be granted or denied. Such language does not reflect the rendition of "an order disposing of" the postjudgment motion, Rule 59.1, but, rather, indicates the trial court's postponement of the decision on the disposal of the postjudgment motion. To conclude otherwise would permit a trial court to easily evade the limited methods of extending the 90-day period for ruling on a postjudgment motion merely by purporting to grant a motion without any indication as to what decision is being made on the merits of the postjudgment motion.

As the Committee Comments on the 1973 Adoption of Rule 59.1, note, the "Rule is designed to remedy any inequities arising from [the] failure of the trial court to dispose of post-trial motions for unduly long periods." The present case perfectly demonstrates why Rule 59.1 was needed. What started

as a ruling to "grant" the mother's postjudgment motion so that the trial court could later decide what portions of the November 2010 order should be altered or amended turned into a later decision to simply conduct a new trial and a purported adjudication approximately seven years later based on evidence regarding a child-support arrearage that all accrued after the postjudgment motion was filed.

The November 2010 order adjudicated all pending claims filed by the father and the mother as of that date. Because the trial court failed to render an order disposing of the mother's postjudgment motion as required by Rule 59.1, her motion was denied by operation of law. Thereafter, the trial court had no jurisdiction to alter, amend, or vacate the November 2010 order or to grant the mother a new trial, and, the January 2018 order entered by the trial court is void. "[S]ince a void judgment will not support an appeal, it follows that the appeal is due to be dismissed." Underwood v. State, 439 So. 2d 125, 128 (Ala. 1983).

APPEAL DISMISSED.

Thompson, P.J., and Moore and Hanson, JJ., concur.

Donaldson, J., concurs in the result, without writing.