REL: February 15, 2019

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

2171090

Christopher J. LaFontaine

v.

Yvonne D. LaFontaine

Appeal from Lee Circuit Court
(DR-16-900104)

MOORE, Judge.

Christopher J. LaFontaine ("the former husband") appeals from a judgment entered by the Lee Circuit Court ("the trial court") to the extent that it amended a judgment divorcing him

from Yvonne D. LaFontaine ("the former wife"). We affirm the trial court's judgment.

Procedural History

On March 29, 2016, the former wife filed a complaint seeking a divorce from the former husband; that action was assigned case number DR-16-900104. The former wife asserted:

> "[D]uring the [parties'] marriage (a) she provided travel expenses in the sum of $9,500 for [the former husband's] child from [his] first marriage, (b) paid child support for [the former husband] in the sum of $2,300.00 due to he was unemployed at that time ..., (c) [the former wife] and [the former husband] had a mutual agreement that he [would] pay back student loans in the sum of $28,750.00 that were taken out to pay household bills, (d) [the former husband] [had agreed to] reimburse [the former wife] monies that [had been] used to pay household bills when [the former husband] walked out of the marriage in the sum of $9,250.00.
>
> "8. [The former wife] further states that during the marriage, [the former wife] and [the former husband] enter[ed] into a rental lease agreement,(a) [the former husband] decided to vacate leaving [the former wife] to solely provide for her and his half in the sum of $5,490.00, (b) [the former husband] cut utilities off in his name leaving a balance of $214.32."

The former wife requested that the trial court divorce her and the former husband, that the trial court grant "any other relief that she is entitled to," and that the trial court order the former husband to pay her $660 monthly until such

time as he had reimbursed her, in full, for the travel-expense, child-support, loan, and rental-agreement amounts she was requesting.

Following ore tenus proceedings, the trial court entered a judgment on May 11, 2017, divorcing the parties and providing, in pertinent part:

> "The Court finds from the evidence that the parties entered into an agreement that during the marriage [the former wife] would remain employed by the U.S. Army and support the parties while the [former husband] went to school to finish his education, and thereafter the [former husband] would become and remain employed and support the parties while the [former wife] then separated from the U.S. Army and completed her education. The Court finds that the [former wife] upheld her end of the bargain and the [former husband] did not reciprocate. The evidence at trial established that the [former husband] only reported approximately $10,000 in total income during two of the four and a half years while the parties were married and living together. The Court finds that while employed full time and continuously, the [former wife], in addition to providing the overwhelming portion of monetary support for the parties, spent approximately $15,000 during this time on [the former husband's] child-support obligations ($5,400) and related child-visitation-travel expenses ($9,500) for and on behalf of the [the former husband's] child by a prior relationship. The Court acknowledges that the [the former wife] benefitted from a portion of the money spent on travel, as she traveled on some of the trips. In addition, the Court finds that during the marriage, the [former wife] borrowed sums of money, approximately $54,000, solely in her name, the loan proceeds for which were used to fund the

> parties' expenses while married. The Court finds that [the former husband] should reimburse the [former wife] half of those loan proceeds, the obligation for which remains outstanding. The Court finds that the [former husband] abandoned the marital home and over $10,000 was paid by [the former wife] for the remainder of the lease payments on the marital home. The Court finds that the [former husband] should reimburse [the former wife] for half of those lease payments. There was evidence that [the former wife] expended approximately $1,837 for private-investigator expenses in dealing with [the former husband's] custody battle with the mother of his child. The evidence revealed that after the separation. [The former husband] reneged on an agreement to pay half of an attorney fee ($275) for an attempt to resolve these divorce proceedings in an uncontested manner. Due to the foregoing, the Court finds that the [former wife] is due to be awarded a monetary property settlement from the [former husband]. As such, and taking the entirety of the evidence into consideration, the Court hereby Orders the [former husband] to pay to the [former wife] the sum of $45,000, as a property settlement, and the Court hereby enters judgment for the [former wife] and against the [former husband] for the sum of $45,000. This judgment shall be paid by [the former husband] at the rate of no less than $625 per month until paid in full."

The former husband thereafter filed in the trial court a "Suggestion of the Pendency of Bankruptcy Proceedings Under Chapter 13 of the Bankruptcy Code," notifying the trial court that he had, in fact, filed for Chapter 13 bankruptcy protection on February 9, 2018. On April 11, 2018, the trial court entered an order stating:

> "The post-judgment proceedings in this case are stayed pending the [former husband]'s Bankruptcy.
>
> "The [the former husband] is ORDERED to list the [the former wife] as a creditor in his Petition and Plan.
>
> "The [former husband] is to notify the Court and the [former wife] if and when the [former husband]/Debtor's case has been dismissed by the Bankruptcy Court for any reason, or the Bankruptcy Stay has been lifted for any reason."[1]

The former wife thereafter filed a motion for relief from the divorce judgment, which was assigned case number DR-16-900104.01.[2]

The trial court held a hearing on the former wife's motion for relief from the divorce judgment, at which the former wife testified that the former husband had filed for bankruptcy protection on February 9, 2018, that she had appeared at a hearing before the bankruptcy court on February 12, 2018, and that the bankruptcy judge had informed her at that hearing that, if her monetary judgment against the former

[1]It is unclear to what postjudgment proceedings the trial court was referring.

[2]Because the amended judgment was entered in the original divorce action, i.e., case number DR-16-900104, the appeal to this court was filed from that action, and, thus, the former wife's motion for relief from the divorce judgment is not in the record on appeal. Therefore, we do not know how the trial court disposed of that action.

husband did not specify that it was for support, the debt was dischargeable. At the hearing on the former wife's motion for relief from the divorce judgment, the trial court stated:

> "In looking at the -- looking back over the divorce decree, the Court went in to a long discussion about the monetary support [the former] wife provided to the two of you, and then it was with the understanding that at some point the tables would be turned and you would return some of that support and let her then pursue a college degree and the things that were brought up in the testimony. There is ample support in the order that the award -- that the sums discussed were support and as a matter of fact the word 'support' was used several times. So -- so it does seem to be justified and the Court can correct the Judgment of Divorce and declare that it's alimony in gross and not a property settlement. ... But based on the testimony and what I remember from the testimony in the first trial, the Court has looked back over its notes from the first trial that it used in crafting the divorce decree, it does appear that the Court intended for this to be spousal support which in Alabama we refer to as alimony in gross."

Thereafter, on July 25, 2018, the trial court entered an order in the original divorce action, stating:

> "The [former wife] filed a Motion for Relief From Judgment (actually filed in 43-DR-2016-900104.01), and a hearing was held this day on said Motion. The [former wife] appeared personally, and the [former husband] appeared with the Court's permission telephonically.
>
> "The Court took testimony from the parties and announced that, based on the Court's reading of the FINAL JUDGMENT AND DECREE OF DIVORCE, based on the

> Court's review of its trial notes, and based on the Court's reading of the applicable law, the Court finds that a clerical error occurred in the original FINAL JUDGMENT AND DECREE OF DIVORCE when monetary award was referred to as a property settlement.
>
> "The Court finds that the term 'property settlement' as used in the FINAL JUDGMENT AND DECREE OF DIVORCE was a mistake, a clerical error made by the Court, when the sums involved are most certainly spousal support, and thus should have been termed alimony in gross. As such,
>
> "The [former wife's] Motion is GRANTED. The FINAL JUDGMENT AND DECREE OF DIVORCE entered and filed on May 11, 2017, is hereby MODIFIED as follows:
>
> "The sums awarded ... are hereby declared to be alimony in gross, and not a property settlement."

(Capitalization in original.) On August 24, 2018, the former husband filed his notice of appeal.

Discussion

On appeal, the former husband first argues that the trial court effectuated an impermissible modification of the divorce judgment more than 30 days after the entry of that said judgment.

> "Under Rule 60(a), [Ala. R. Civ. P.,] a trial court may amend a judgment to correct a clerical error. Thorsen v. Thorsen, 406 So. 2d 949 (Ala. Civ. App. 1981) (trial court properly amended its judgment to incorporate the parties' settlement agreement; the parties and the court had considered the agreement part of the judgment and had complied

> with the agreement for over two years). However, while it authorizes a court to amend a judgment to correct a clerical error, Rule 60(a) does not authorize the court to render a different judgment. Hurst v. Hurst, 582 So. 2d 1144 (Ala. Civ. App. 1991).
>
> "A trial court possesses an inherent power over its own judgments that enables it to interpret, implement, or enforce those judgments. Patterson v. Patterson, 518 So. 2d 739 (Ala. Civ. App. 1987). Generally, a property provision in a divorce judgment is not modifiable more than 30 days after the judgment is entered. Martin v. Martin, 656 So. 2d 846, 848 (Ala. Civ. App. 1995). However, if the court finds that a provision dividing property is ambiguous, the court has the power to clarify the judgment, and such a clarification is not considered a modification. Williams v. Williams, 591 So. 2d 879 (Ala. Civ. App. 1991)."

Mullins v. Mullins, 770 So. 2d 624, 625-26 (Ala. Civ. App. 2000) (holding that amended judgment ordering the parties to divide the household goods in accordance with an agreement was an impermissible modification of that part of the divorce judgment that awarded the household goods to the wife).

In the present case, the trial court entered an order amending the divorce judgment by stating that the monetary award to the former wife in the divorce judgment was, in fact, an award of "alimony in gross" instead of a property settlement.

Section 30-2-51(a), Ala. Code 1975, provides for the award of a property settlement for the support of a spouse. That subsection states:

> "If either spouse has no separate estate or if it is insufficient for the maintenance of a spouse, the judge, upon granting a divorce, at his or her discretion, may order to a spouse an allowance out of the estate of the other spouse, taking into consideration the value thereof and the condition of the spouse's family."

This court has held that alimony in gross may be awarded as a form of property settlement.

> "Alimony in gross is considered 'compensation for the [recipient spouse's] inchoate marital rights [and] ... may also represent a division of the fruits of the marriage where liquidation of a couple's jointly owned assets is not practicable.' [Hager v.] Hager, 293 Ala. [47,] 54, 299 So. 2d [743,] 749 [(1974)]. An alimony-in-gross award 'must satisfy two requirements, (1) the time of payment and the amount must be certain, and (2) the right to alimony must be vested.' Cheek v. Cheek, 500 So. 2d 17, 18 (Ala. Civ. App. 1986). It must also be payable out of the present estate of the paying spouse as it exists at the time of the divorce. [Hager], 293 Ala. at 55, 299 So. 2d at 750. In other words, alimony in gross is a form of property settlement. [Hager], 293 Ala. at 54, 299 So. 2d at 749. An alimony-in-gross award is generally not modifiable. Id."

TenEyck v. TenEyck, 885 So. 2d 146, 151-52 (Ala. Civ. App. 2003); see also Laminack v. Laminack, 675 So. 2d 479, 481 (Ala. Civ. App. 1996) ("[A]limony in gross is nonmodifiable

and is in the nature of 'a property settlement award.'" (quoting Hager v. Hager, 293 Ala. 47, 55, 293 So. 2d 743, 751 (1974))).

Because alimony in gross is, in fact, a form of property settlement, which, pursuant to § 30-2-51(a), is for the purpose of the maintenance of a former spouse, we conclude that the trial court did not actually effect a change to the divorce judgment but, instead, merely clarified its own judgment regarding the property division, which was within its inherent power. Mullins, 770 So. 2d at 625-26; King v. Barnes, 54 So. 3d 900, 905 (Ala. Civ. App. 2010). Therefore, we cannot conclude that the trial court committed reversible error.

Conclusion

Based on the foregoing, we affirm the trial court's judgment.

AFFIRMED.

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

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