Rel: March 15, 2019

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

2171154

Philip Leyton McCarn

v.

Jaclyn McCarn Langan

Appeal from Shelby Circuit Court
(DR-18-6.01)

THOMPSON, Presiding Judge.

On January 9, 2018, Jacklyn McCarn Langan filed in the Shelby Circuit Court ("the trial court") a petition to modify the child-support provisions of an April 2014 judgment of the Mobile Circuit Court that divorced her from Philip Leyton

McCarn. The record indicates that two earlier orders of the Mobile Circuit Court had modified the visitation provision of the parties' 2014 divorce judgment. Both parties now live in Shelby County, and they have agreed that Shelby County was the proper venue in which to litigate this action.

In her 2018 modification petition, Langan alleged that McCarn had failed to make child-support payments as directed by the 2014 divorce judgment and that he owed a child-support arrearage. Langan also sought a modification of McCarn's child-support obligation. McCarn answered and opposed Langan's petition. The trial court conducted an ore tenus hearing on June 11, 2018.

On June 14, 2018, the trial court entered a judgment in which it found that McCarn was $4,698 in arrears in his child-support obligation. The trial court also modified McCarn's child-support obligation from $522 per month to $1,107 per month. The June 14, 2018, judgment was entered on the State Judicial Information System ("SJIS"). See Rule 58(c), Ala. R. Civ. P. ("An 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 State Judicial

Information System. An order or a judgment rendered electronically by the judge ... shall be deemed 'entered' ... as of the date the order or judgment is electronically transmitted by the judge to the electronic-filing system.").

On June 20, 2018, the trial court entered a second, identical copy of the June 14, 2018, judgment into the SJIS and the record. That judgment did not alter the substance of the June 14, 2018, judgment; it was merely a duplication of the original judgment. Accordingly, the June 14, 2018, judgment was the final judgment in this case from which any postjudgment motion or appeal must have been filed. Lyman v. Lyman, 753 So. 2d 1159, 1160 (Ala. Civ. App. 1999).

The time for taking a timely appeal may be tolled by the filing of a timely postjudgment motion. Bice v. SCI Alabama Funeral Home Servs., 764 So. 2d 1280, 1281 (Ala. Civ. App. 2000). McCarn filed a postjudgment motion, purportedly pursuant to Rule 59(e), Ala. R. Civ. P., on July 20, 2018. However, a valid Rule 59 motion must be filed within 30 days of the entry of the judgment. Rule 59(e); Burgess v. Burgess, 99 So. 3d 1237, 1239 (Ala. Civ. App. 2012) ("A timely postjudgment motion must be filed within 30 days of the entry

of the final judgment."). Thus, McCarn had 30 days from the entry of the June 14, 2018, judgment, or until July 16, 2018, to timely file a postjudgment motion pursuant to Rule 59(e).[1] McCarn's July 20, 2018, postjudgment motion was untimely filed, and it did not operate to extend the time for taking a timely appeal. McMurphy v. East Bay Clothiers, 892 So. 2d 395, 397 (Ala. Civ. App. 2004); Overy v. Murphy, 827 So. 2d 804, 806 (Ala. Civ. App. 2001); and Bice v. SCI Alabama Funeral Home Servs., 764 So. 2d at 1281.

The trial court entered an order purporting to deny McCarn's July 20, 2018, motion on September 11, 2018. That order was void, however, because McCarn's motion was not timely filed, and, therefore, the trial court did not have jurisdiction to rule on it. Burgess v. Burgess, 99 So. 3d at 1239-40.

A party has 42 days following the entry of a judgment to file a timely notice of appeal. Rule 4(a)(1), Ala. R. App. P. In this case, McCarn had until July 26, 2018, to appeal the June 14, 2018, judgment. McCarn filed a notice of appeal on

[1]The 30th day following June 14, 2018, was Saturday, July 14, 2018; therefore, McCarn had until Monday, July 14, 2018, to file a postjudgment motion. See Rule 6(a), Ala. R. Civ. P.

September 19, 2018. That notice of appeal was not timely filed within 42 days of the entry of the June 14, 2018, judgment, and it did not invoke the jurisdiction of this court. Therefore, we must dismiss the appeal. Rule 2(a)(1), Ala. R. App. P.; Kennedy v. Merriman, 963 So. 2d 86, 88 (Ala. Civ. App. 2007); see also Parker v. Parker, 946 So. 2d 480, 485 (Ala. Civ. App. 2006) ("[A]n untimely filed notice of appeal results in a lack of appellate jurisdiction, which cannot be waived.").

APPEAL DISMISSED.

Donaldson, Edwards, and Hanson, JJ., concur.

Moore, J., concurs specially.

MOORE, Judge, concurring specially.

I concur that the appeal should be dismissed.

In Lyman v. Lyman, 753 So. 2d 1159, 1160 (Ala. Civ. App. 1999), this court determined that, when a trial court mistakenly enters a duplicate judgment, the time for filing a postjudgment motion or a notice of appeal runs from the date of the entry of the original judgment. In Ball v. McDowell, 288 S.W.3d 833, 837 (Tenn. 2009), the Tennessee Supreme Court explained the reasoning behind that rule:

> "When analyzing which of multiple judgments constitutes the final judgment, federal law likewise focuses on the substantive rights affected by each judgment. In FTC v. Minneapolis-Honeywell Regulator Co., 344 U.S. 206, 73 S.Ct. 245, 97 L.Ed. 245 (1952), the Supreme Court concluded that the limitations period for filing a notice of appeal should begin to run from a subsequent judgment only if the subsequent judgment affects the 'legal rights and obligations' that have been 'plainly and properly settled with finality' by the first judgment. Id. at 211-12, 73 S.Ct. 245. It has thus become well-settled in federal law that '[w]here a judgment is reentered, and the subsequent judgment does not alter the substantive rights affected by the first judgment, the time for appeal runs from the first judgment.' Farkas v. Rumore, 101 F.3d 20, 22 (2d Cir. 1996) (citing Minneapolis-Honeywell Regulator Co., 344 U.S. at 211-12, 73 S.Ct. 245); see also United States v. Doe, 374 F.3d 851, 853-54 (9th Cir. 2004); United States v. Cheal, 389 F.3d 35, 52 & n.20 (1st Cir. 2004); United States v. Aiken, 13 Fed. Appx. 348, 350-52 (6th Cir. 2001); Air Line Pilots Ass'n v. Precision Valley Aviation,

> Inc., 26 F.3d 220, 223 & n.2 (1st Cir. 1994); Whittington v. Milby, 928 F.2d 188, 191–92 (6th Cir. 1991). This approach promotes finality and reflects 'the principle that litigation must at some definite point be brought to an end.' Minneapolis–Honeywell Regulator Co., 344 U.S. at 213, 73 S.Ct. 245; cf. Harris v. Chern, 33 S.W.3d 741, 745 (Tenn. 2000).
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> "To determine which of the judgments entered in this case constitutes the final judgment, we must focus on whether the second judgment affected any of the parties' substantive rights and obligations settled by the first judgment. In this case, the first judgment resolved all of the parties' claims, leaving nothing for the trial court to adjudicate. See In re Estate of Henderson, 121 S.W.3d [643] at 645 [(Tenn. 2003)]. The second judgment was identical in substance to the first judgment, with only the signature of Defendants' counsel added. We therefore conclude that the first judgment constituted the final judgment that triggered the thirty-day period for filing post-trial motions. The trial court therefore lacked jurisdiction to rule on the motion to alter or amend. The Court of Appeals similarly lacked jurisdiction because Defendants' notice of appeal was filed within thirty days of the denial of the untimely motion to alter or amend and not within thirty days of the first judgment."

In Alabama, like in Tennessee, a final judgment is a judicial order that puts an end to the proceedings and leaves nothing for further adjudication. Ex parte Wharfhouse Rest. & Oyster Bar, Inc., 796 So. 2d 316, 320 (Ala. 2001). In this case, the judgment entered by the Shelby Circuit Court on June 14, 2018, resolved all the claims of the parties and put an end to the proceedings, leaving nothing further for

adjudication. The judgment entered on June 20, 2018, being identical in every material aspect to the first judgment, did not alter any of the substantive rights of the parties. Therefore, the first judgment is the final judgment. Philip Leyton McCarn had 30 days from the entry of the first judgment, or to and including July 16, 2018, to file a postjudgment motion, which he did not do.[2] Under the authorities cited in the main opinion, the time for taking an appeal was not tolled by the tardy postjudgment motion McCarn filed on July 20, 2018. McCarn, thus, had to file his notice of appeal within 42 days of the entry of the first judgment, i.e., on or before July 26, 2018, which he did not do. He, thus, failed to timely file his notice of appeal so as to invoke the appellate jurisdiction of this court. See Rule 2(a)(1), Ala. R. App. P. Our rules of procedure do not provide any relief to a party who has untimely filed a notice of appeal based on a mistake as to the last day for the filing of that notice, even if that mistake has been induced by a judicial error. Accordingly, I agree with the main opinion that this appeal is due to be dismissed.

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[2]See note 1 in the main opinion.