

Rel: March 15, 2024

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2023-2024

CL-2023-0532

David Lovering

v.

Dana Lovering

**Appeal from Elmore Circuit Court
(DR-19-40)**

EDWARDS, Judge.

David Lovering ("the husband") appeals from a divorce judgment entered by the Elmore Circuit Court ("the trial court") in favor of Dana Lovering ("the wife"). This is the second appeal involving these parties; the first appeal was dismissed because it was taken from a nonfinal

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judgment. See Lovering v. Lovering, [Ms. CL-2022-0717, April 7, 2023] ___ So. 3d ___ (Ala. Civ. App. 2023). This appeal likewise must be dismissed because it has been taken from a void judgment.

We will not repeat the facts and procedural history, which are set out in Lovering. This appeal involves the marital-property award in an initial divorce proceeding between the parties and the custody award as to the parties' twin children. Ore tenus proceedings were held on March 31, 2021, and April 1, 2021. On April 1, 2021, the trial court entered an order divorcing the parties on the ground of incompatibility of temperament and granting the parties' request to set the remaining issues in dispute (division of the marital property, etc.) for further hearing.

Additional ore tenus proceedings were held on February 15, 2022, as to the remaining issues. On March 23, 2022, the trial court entered an order addressing the custody of the parties' children and child support and purporting to divide the marital property. The husband filed a purported postjudgment motion, and, after a hearing on that motion, the trial court entered an order on April 28, 2022, amending the March 2022 order. The husband subsequently filed a notice of appeal to this court.

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We dismissed the husband's appeal in Lovering, stating: "[T]he March 2022 order did not make a final award as to the parties' personal property, but instead stated: 'Representation that all personal property being divided and distributed. If not, that issue is reserved to this Court.' Accordingly, no final judgment has been entered in this case." ___ So. 3d at ___. We also noted for the benefit of the parties and the trial court that "there [was] no order in this case addressing the parties' respective requests for attorney fees or the husband's contempt motion" and "that the wording of the paragraph in the March 2022 order regarding the disposition of the marital residence [was] ambiguous." ___ So. 3d at ___ n.1.

This court issued the opinion in Lovering on April 7, 2023. On April 12, 2023, the wife filed in the trial court a motion for a status conference, and the trial court entered an order granting that motion and setting a status conference for April 25, 2023. On April 25, 2023, the trial court noted this court's decision in Lovering and purported to enter an order denying the husband's request for 14 items of personal property on his exhibit list and awarding the wife possession of "any personal property not in the husband's possession"; declaring the marital-residence issue

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moot because "the same has been refinanced and proceeds split between the parties as per the attorneys"; denying the parties' respective attorney-fee requests; and denying the husband's contempt motion. This court issued our certificate of judgment in Lovering on April 26, 2023. On May 24, 2023, the husband filed in the trial court what purported to be a postjudgment motion, and the wife filed a response opposing that motion. The husband filed a notice of appeal from the April 25, 2023, order on July 26, 2023.

We do not reach the merits of the husband's appeal because we lack jurisdiction to do so.

""[J]urisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu." Nunn v. Baker, 518 So. 2d 711, 712 (Ala.1987). Generally, an appeal will lie only from a final judgment, and if there is not a final judgment then this court is without jurisdiction to hear the appeal. Hamilton ex rel. Slate-Hamilton v. Connally, 959 So. 2d 640, 642 (Ala. 2006). A judgment is not final if it fails to completely adjudicate all issues between the parties. Giardina v. Giardina, 39 So. 3d 204, 207 (Ala. Civ. App. 2009) (citing Butler v. Phillips, 3 So. 3d 922, 925 (Ala. Civ. App. 2008))."

Harley v. Anderson, 167 So. 3d 355, 361 (Ala. Civ. App. 2014) (quoting Sexton v. Sexton, 42 So. 3d 1280, 1282 (Ala. Civ. App. 2010)).

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The filing of the notice of appeal in Lovering divested the trial court of jurisdiction (except as to collateral matters) and invoked this court's jurisdiction to determine our own jurisdiction, at a minimum. See Lord Genesh, Inc. v. Valley Nat'l Bank, 375 So. 3d 1220, 1224 (Ala. 2022). This is based on the general rule that jurisdiction of a case can be in only one court at a time. Id. Also, it is well settled that a trial court does not have jurisdiction to enter an order in a case that is pending on appeal until the appellate court has entered its certificate of judgment. See, e.g., Poole v. Poole, 212 So. 3d 261, 264 (Ala. Civ. App. 2016). Because this court had not yet entered its certificate of judgment in Lovering when the trial court entered its April 25, 2023, order, that order was void for want of jurisdiction. This court does not have jurisdiction to review a void order, which will not support an appeal. See Poole, 212 So. 3d at 264.

Based on the foregoing, the husband's appeal is dismissed for lack of jurisdiction.

APPEAL DISMISSED.

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