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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2007-2008

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Gary Preston Smith, Sr.

v.

Valorey Sue Smith

Appeal from Mobile Circuit Court
(DR-04-502205)

THOMPSON, Presiding Judge.

Gary Preston Smith, Sr. ("the husband") appeals from the trial court's January 30, 2007, judgment divorcing him from Valorey Sue Smith ("the wife"). The record shows that, on March 1, 2007, the husband filed a timely motion to alter,

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amend, or vacate the judgment pursuant to Rule 59(e), Ala. R. Civ. P. That motion was due to be denied by operation of law pursuant to Rule 59.1, Ala. R. Civ. P., on May 30, 2007.

On May 29, 2007, the parties filed a joint motion under Rule 59.1, requesting the trial court to extend the time for it to rule on the husband's postjudgment motion to June 8, 2007. The trial court granted the extension on May 30, 2007. On June 8, 2007, the parties again filed a joint motion requesting an extension of the time within which the trial court could rule on the husband's postjudgment motion. The parties stated that they "agreed to an extension of time for the [trial] court to hold a hearing and rule on the pending motion[] to Alter Amend or Vacate on or before July 12, 2007." The trial court granted that extension on June 11, 2007. The record shows that the husband's postjudgment motion was heard on July 9, 2007, and the trial court entered an order purporting to deny it on July 30, 2007. The husband filed a notice of appeal on September 8, 2007.

At the very latest, the husband's postjudgment motion was denied by operation of law, pursuant to Rule 59.1 and the parties' agreement, on July 12, 2007. The husband had 42 days

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from that date--i.e., until August 23, 2007--to appeal. Rule 4(a)(1), Ala. R. App. P. The husband appealed on September 8, 2007, after the time allowed by Rule 4(a)(1). Accordingly, the husband's appeal is untimely. We must dismiss an untimely appeal. See Rule 2(a)(1), Ala. R. App. P. ("An appeal shall be dismissed if the notice of appeal was not timely filed to invoke the jurisdiction of the appellate court."); Rudd v. Rudd, 467 So. 2d 964, 965 (Ala. Civ. App. 1985) ("The timely filing of [a] notice of appeal is a jurisdictional act.").

APPEAL DISMISSED.

Bryan, Thomas, and Moore, JJ., concur.

Pittman, J., concurs specially.

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PITTMAN, Judge, concurring specially.

I concur in the main opinion. Had the parties' June 8, 2007, motion sought an open-ended extension of time for the trial court to rule on the husband's postjudgment motion, rather than merely an extension to a date certain (i.e., July 12, 2007), the trial court would have had the discretion to grant such a motion for good cause. See Crowder v. Zoning Bd. of Adjustment of Birmingham, 409 So. 2d 837, 838 (Ala. Civ. App. 1981). However, because the parties sought and were granted more limited relief from the operation of Rule 59.1, Ala. R. Civ. P., the postjudgment motion was denied by operation of law as of July 12, 2007, the date specified in the motion for an extension, because the trial court did not expressly rule on the husband's postjudgment motion on or before that date.