

Rel: 03/17/2017

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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2016-2017

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Robert Charles Blackmon IV

v.

Angelia Deniese Blackmon

Appeal from Mobile Circuit Court  
(DR-05-501684.03)

THOMPSON, Presiding Judge.

Robert Charles Blackmon IV ("the husband") appeals from a judgment of the Mobile Circuit Court ("the trial court") dismissing his motion, filed pursuant to Rule 60(b), Ala. R. Civ. P., to set aside the trial court's judgment of September

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4, 2012 ("the 2012 judgment"), which was entered in a postdivorce proceeding between the husband and Angelia Deniese Blackmon ("the wife").<sup>1</sup> The motion was filed on September 2, 2015. The grounds for the motion were "fraud perpetrated by [the wife] and her counsel as well as fraud upon the court by the [wife] and the [husband's] previous attorney(ies)."

On October 15, 2015, the wife filed a motion to dismiss the husband's motion to set aside the 2012 judgment. On January 29, 2016, the trial court entered a judgment dismissing the husband's motion. The husband filed a motion to set aside the January 29, 2016, ruling on his Rule 60(b) motion. On April 15, 2016, the trial court held a hearing on the husband's motion to set aside the judgment dismissing his request to set aside the 2012 judgment. At that hearing, the husband again argued that the 2012 judgment was due to be set aside "under Rule 60(b)(3)," on the ground of fraud perpetrated on the court, the same ground that formed the basis of the initial Rule 60(b) motion. That same day, the trial court entered an order denying the husband's motion to

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<sup>1</sup>This court affirmed the 2012 judgment on July 12, 2013, without issuing a written opinion.

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set aside the January 29, 2016, ruling. The husband filed his notice of appeal on May 27, 2016.

It has long been the law in Alabama that,

"[a]fter a trial court has denied a postjudgment motion pursuant to Rule 60(b), that court does not have jurisdiction to entertain a successive postjudgment motion to 'reconsider' or otherwise review its order denying the Rule 60(b) motion, and such a successive postjudgment motion does not suspend the running of the time for filing a notice of appeal. We note ... that the Alabama Rules of Civil Procedure do not contain any provision for a 'motion to reconsider' a ruling on a Rule 60(b) motion."

Ex parte Keith, 771 So. 2d 1018, 1022 (Ala. 1998).

"'In other words, a party who has previously filed an unsuccessful motion seeking relief under Rule 60(b) may not properly file a second motion in the trial court that, in effect, requests the trial court to revisit its denial of the first motion, such as by reasserting the grounds relied upon in the first motion. See Wadsworth v. Markel Ins. Co., 906 So. 2d 179, 182 (Ala. Civ. App. 2005) ("Successive Rule 60(b) motions on the same grounds are generally considered motions to reconsider the original ruling and are not authorized by Rule 60(b).")."

"Pinkerton Sec. & Investigations Servs., Inc. v. Chamblee, 934 So. 2d 386, 390-91 (Ala. Civ. App. 2005)."

Vardaman v. Vardaman, 203 So. 3d 113, 116 (Ala. Civ. App. 2016).

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Once the trial court denied the husband's first Rule 60(b) motion on January 29, 2016, it lost jurisdiction to rule on any successive Rule 60(b) motion or any postjudgment motion filed pursuant to Rule 59, Ala. R. Civ. P., based upon the same grounds. Therefore, the trial court's April 15, 2016, judgment is void and incapable of supporting an appeal. See Vardaman, supra.

The husband had until March 11, 2016, which was 42 days from January 29, 2016, to file a timely notice of appeal pursuant to Rule 4, Ala. R. App. P., and he failed to do so.

'Although neither party has questioned this court's appellate jurisdiction, a lack of appellate jurisdiction resulting from a party's failure to timely file a notice of appeal "cannot be waived"; indeed, "this court can raise the issue ex mero motu." Carter v. Hilliard, 838 So. 2d 1062, 1063 (Ala. Civ. App. 2002), and Moragne v. Moragne, 888 So. 2d 1280, 1283 (Ala. Civ. App. 2004); see also Rule 2(a)(1), Ala. R. App. P. (stating that an appeal shall be dismissed if the notice of appeal is not timely filed to invoke the jurisdiction of the appellate court).'

"Smith v. Smith, 4 So. 3d 1178, 1180-81 (Ala. Civ. App. 2008)."

Venturi v. Venturi, [Ms. 2150279, Sept. 16, 2016] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Civ. App. 2016).

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Because the husband's notice of appeal was untimely, this court did not acquire jurisdiction to consider the appeal. Therefore, the appeal must be dismissed.

The wife's request for an attorney fee on appeal is granted in the amount of \$1,000.

APPEAL DISMISSED.

Pittman, Thomas, Moore, and Donaldson, JJ., concur.