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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2018

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Boyd J. Landry

v.

Angela O. Landry

Appeal from Autauga Circuit Court
(DR-06-65.07)

MOORE, Judge.

Boyd J. Landry ("the former husband") appeals from a judgment entered by the Autauga Circuit Court ("the trial court") in favor of Angela O. Landry ("the former wife"). We

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dismiss the appeal in part, affirm the judgment in part, and reverse the judgment in part.

Procedural History

The parties were divorced by an October 18, 2007, judgment of the trial court, which incorporated an agreement of the parties. Among other things, that judgment required the former husband to maintain Prepaid Affordable College Tuition ("PACT") program accounts for the benefit of each of the parties' children until such time as each child enters the college of his or her choice, at which time the funds in that child's PACT program account are to be released to the college that that child is attending.

On November 30, 2016, the former wife filed a petition seeking an ex parte order prohibiting the former husband from disposing of marital assets. Specifically, the former wife alleged that the former husband had failed to maintain and/or had transferred the funds from the children's PACT program accounts. The former wife sought an order from the trial court directing the former husband to reinstate and/or to return the transferred funds to the children's PACT program accounts; restraining the former husband from disposing of,

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concealing, converting, or dissipating any funds in the PACT program accounts; and awarding her any additional relief as the trial court deemed proper. Also on November 30, 2016, the former wife filed a petition for contempt against the former husband, alleging that he had failed to maintain and/or had transferred the funds from the children's PACT program accounts; she sought, among other things, a finding of contempt against the former husband, attorney's fees, and an order directing the former husband to reinstate and/or to return the transferred funds to the children's PACT program accounts. The trial court entered an ex parte order on November 30, 2016, prohibiting the former husband from disposing of, concealing, converting, or dissipating the funds of the children's PACT program accounts and directing the College Savings Division of the Office of the Treasurer of the State of Alabama to reinstate the children's PACT program accounts and to ensure that they are maintained for the benefit of the parties' children.

On March 13, 2017, the former husband, who has appeared pro se throughout these proceedings, filed an affidavit of substantial hardship in the trial court. On March 15, 2017,

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the former husband filed, pro se, an answer to the former wife's contempt petition. On that same date, the former husband filed a motion seeking to extend the time to answer the former wife's contempt petition; the trial court granted that motion on March 20, 2017, and the former husband filed a "second answer" on April 7, 2017. The former husband also filed a "second motion to extend time to answer" on April 7, 2017. On April 13, 2017, the former wife filed a response to the former husband's second motion; she asserted, among other things, that the former husband was gainfully employed and had sufficient means to employ his own counsel. On that same date, the trial court determined that the former husband was not indigent and entered an order denying his request for appointed counsel. On April 26, 2017, the trial court denied the former husband's second motion to extend the time to answer. On that same date, the trial court entered an order, in response to a motion by the former wife, setting the case for a hearing on June 6, 2017.

The former husband filed a motion to reconsider the trial court's ruling on his affidavit of substantial hardship; the trial court denied that motion on May 15, 2017. The former

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husband filed an "emergency motion for continuance" on May 24, 2017. He asserted that he had "just been made aware of allegations of possible fraud in this case perpetrated, at a minimum, by the ... former wife and her attorney," which, he argued, would require subpoenas being issued to third-party individuals and for records, among other things. The trial court denied the former husband's motion to continue on May 30, 2017.

A hearing was conducted on June 6, 2017, after which the trial court entered a judgment that same date finding the former husband in direct criminal contempt and ordering that he be jailed for five days; that, upon his release from custody, the former husband pay \$15,378 to the parties' son's PACT program account and have that account, which had been transferred into the name of the former husband's niece, reinstated in the son's name; and that he pay \$2,638 to the former wife for attorney's fees and expenses.¹ On that same date, the former husband filed a motion seeking "to place all matters heard before the court on record"; the trial court

¹Apparently, by the time of the June 6, 2017, hearing and the entry of the trial court's contempt judgment, the parties' dispute regarding the PACT program accounts maintained in the names of their other children had been resolved.

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granted that motion. The former husband also filed on June 6, 2017, an "emergency motion for continuance pursuant to Rule 65(b) [, Ala. R. Civ. P.]." In that motion, he alleged that the trial court lacked subject-matter jurisdiction to hear the former wife's contempt petition because, he argued, the former wife's petition for ex parte relief was unresolved and a hearing was required on that petition, in accordance with Rule 65, Ala. R. Civ. P.

The former wife filed a motion to alter, amend, or clarify on June 22, 2017, indicating that the former husband had failed to pay, upon his release from jail, the amount he was ordered to pay into the son's PACT program account. She requested that the trial court direct the former husband to pay the funds as directed within five days of the date of an amended order, to list the former wife as the owner of the son's PACT program account, to remove the former husband's niece as the beneficiary of the son's PACT program account, and to pay the attorney's fees and expenses previously ordered within five days of the entry of an amended order. On that same date, the former wife filed a motion to enforce the trial court's June 6, 2017, judgment and to hold the former husband

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in contempt for his failure to comply with that judgment. She sought a finding of contempt against the former husband, as well as the same relief she had sought in her motion to alter, amend, or clarify.

On June 23, 2017, Judge Sibley Reynolds, the second judge assigned to this case and the judge who entered the June 6, 2017, contempt judgment, entered an order recusing himself from the case. The judge who was reassigned the case entered an order on July 14, 2017, resetting the hearing on the former wife's pending motions for August 2, 2017. On the date of the hearing, the former husband filed a response to the former wife's postjudgment motion and a "counter motion to alter, amend, or vacate." On that same date, the former husband also filed a response to the former wife's motion to enforce the trial court's judgment and to hold the former husband in contempt; included in that response was the former husband's "motion for alternative relief," in which he suggested that the former wife and her attorney should be sanctioned for filing a frivolous motion, pursuant to Rule 11(a), Ala. R. Civ. P., and Rule 4.1, Ala. R. Prof'l Conduct.

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On August 14, 2017, the trial court entered an "order on motion to enforce and motion to clarify," directing the former husband to pay the attorney's fees and expenses ordered on June 6, 2017, within 90 days of the entry of its order; to list the former wife as the co-owner of the son's PACT program account within 5 days of the entry of its order; to remove his niece as the beneficiary of the son's PACT program account within 5 days of the entry of its order; and to not interfere with any PACT program account that exists for the benefit of the parties' son. On September 1, 2017, the former husband filed an "emergency motion to vacate and motion for sanctions." The former husband asserted that the trial court had failed to place the August 2, 2017, hearing on the record despite the previous order granting the former husband's motion to place all matters before the court on the record. He also requested that the former wife and her attorney be sanctioned for knowingly filing false documents; specifically, he alleged that the assertions in the former wife's June 22, 2017, motions were false. The trial court entered an order on September 1, 2017, setting a hearing on the former husband's emergency motion to vacate for September 20, 2017, noting that

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"[t]he parties shall be ready to argue all motions if the Order is set aside."

At the hearing on September 20, 2017, the trial court orally granted the former husband's motion to vacate, in part, noting that the failure to conduct the August 2, 2017, hearing on the record was inconsistent with a previous order of the court providing that all matters would be placed on the record. Accordingly, the trial court vacated its August 14, 2017, order. The former wife made a motion to strike the motions filed by the former husband on August 2, 2017, based on their alleged untimeliness. The former wife's attorney conceded that the former husband could respond to the former wife's postjudgment motions; he argued, however, that the portions of the former husband's motions seeking additional relief were due to be stricken as untimely filed postjudgment motions. The trial court orally granted the former wife's motion to strike to the extent the former husband sought postjudgment relief, but it noted that it would consider the former husband's responses to the former wife's postjudgment motion.

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Following the hearing on September 20, 2017, the former husband filed on that same date an "emergency motion to clarify and oppose in writing the former wife's motion to strike the former husband's countermotion to alter, amend, or vacate filed on August 2, 2017. He argued, for the first time, that the trial court should have treated his postjudgment motions as Rule 60(b)(4), Ala. R. Civ. P., motions. On that same date, the former husband filed a motion to set aside the June 6, 2017, contempt judgment as void, pursuant to Rule 60(b)(4), Ala. R. Civ. P. He asserted, among other things, that the judgment was void because the trial court had lacked subject-matter jurisdiction; that the trial court had lacked personal jurisdiction to conduct the June 6, 2017, hearing; and that his due-process rights had been violated. On October 1, 2017, the trial court denied the former husband's motion in opposition to the former wife's motion to strike. On that same date, it also entered an order denying the former husband's motion to set aside the June 6, 2017, contempt judgment. Also on that date, the trial court entered an order vacating its August 14, 2017, order because the August 2, 2017, hearing had not been placed on the record,

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thereby granting in part the former husband's emergency motion to vacate. Finally, the trial court entered an order on October 1, 2017, permitting the former wife to be listed as the owner of the parties' son's PACT program account, directing the former husband to pay the former wife's attorney's fees and expenses as previously ordered within 45 days of the entry of the October 1, 2017, order, and denying any outstanding requested relief not otherwise addressed by the order.

On October 5, 2017, the former husband filed an "emergency motion to dismiss" the trial court's order on outstanding motions, asserting that the trial court had lost subject-matter jurisdiction to rule on the former wife's postjudgment motions. On October 10, 2017, the trial court entered an order allowing the former wife to respond to the former husband's motion to dismiss. The former wife filed a response on October 22, 2017, asserting that her postjudgment motions were properly classified as Rule 60, Ala. R. Civ. P., motions and, as a result, that the trial court's order thereon was not barred by the operation of Rule 59.1, Ala. R. Civ. P. On October 25, 2017, the trial court denied the former

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husband's emergency motion to dismiss. On October 27, 2017, the former husband filed a reply to the former wife's response to his motion. The former husband filed his notice of appeal to this court on November 13, 2017. The husband filed a motion in the trial court seeking to proceed with the appeal in forma pauperis on that same date. The trial court denied the former husband's motion on November 16, 2017.

Analysis

The former husband raises the following issues on appeal: (1) whether the trial court lacked personal jurisdiction or subject-matter jurisdiction over him as a result of the reassignment of the case to a different circuit-court judge, (2) whether the trial court violated the former husband's due-process rights when it failed to allow him adequate time to prepare for the hearing on the former wife's contempt petition, (3) whether the trial court erred in failing to conduct a hearing on the former wife's ex parte motion, (4) whether the trial court erred in admitting, over his objection, certain exhibits offered by the former wife at the hearing on her contempt petition, (5) whether the trial court erred in granting the former wife's motion to strike the

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former husband's postjudgment motion as untimely filed, and (6) whether the former wife's June 22, 2017, motion was a Rule 59, Ala. R. Civ. P., motion and, thus, was denied by operation of law before the trial court entered an order ruling on the motion. We address the issues raised by the former husband out of turn.

Whether the Trial Court Erred in Granting the
Former Wife's Motion to Strike the Former Husband's
Postjudgment Motion as Untimely Filed

A.

We first consider the former husband's argument that the trial court erred in granting the former wife's motion to strike the former husband's postjudgment motion as untimely filed. We note first that, although the trial court orally announced its intention to grant the former wife's motion to strike, it did not subsequently render and enter a written order ruling on that motion, and the oral announcement did not dispose of the motion. See Rule 58(a), Ala. R. Civ. P.; and Powers v. Nikonchuk, 142 So. 3d 713, 715 (Ala. Civ. App. 2013). Instead, the former wife's motion to strike was denied by the trial court's October 1, 2017, order that was entered

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on outstanding motions and directed that any and all outstanding requested relief was denied.

B.

The former husband also argues that the trial court should have treated his August 2, 2017, postjudgment motion as having been filed pursuant to Rule 60(b)(4), Ala. R. Civ. P. In his motion, the former husband argued that the June 6, 2017, hearing was scheduled in violation of Rule 40(a), Ala. R. Civ. P.; that the trial court lacked subject-matter jurisdiction when Judge Reynolds conducted the June 6, 2017, hearing; that the trial court lacked subject-matter jurisdiction as a result of its denial of his affidavit of substantial hardship; that the former wife's attorney should have been sanctioned for alleging in the former wife's contempt petition that the parties' children and the former wife continued to reside in Autauga County; that the trial court erred in prohibiting the former husband from presenting evidence indicating that the former wife's hands were "dirty"; that the trial court erred in allowing the former wife to present evidence that had not been authenticated; and that the trial court's November 30, 2016, ex parte order was void for

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lack of due process. Because much of the substance of the former husband's motion sought relief from the trial court's June 6, 2017, contempt judgment on the basis that it is void, we consider that motion as having been filed pursuant to Rule 60(b)(4). See T.K.W. v. State Dep't of Human Res., 119 So. 3d 1187, 1194 (Ala. Civ. App. 2013) (concluding that, in substance, postjudgment motions had been filed pursuant to Rule 60(b)(4), Ala. R. Civ. P.). Accordingly, that motion was also denied by the trial court's October 1, 2017, orders, in which it denied the former husband's motion to set aside and denied all outstanding motions. The former husband filed his notice of appeal within 42 days of the denial of his Rule 60(b)(4), motion; thus, this court may review the denial of the former husband's Rule 60(b)(4) motion. See Rule 4(a), Ala. R. App. P.

The Propriety of the Trial Court's Denial
of the Former Husband's Rule 60(b)(4) Motion

"The proper standard of review of the denial of a Rule 60(b)(4) motion is as follows:

""The standard of review on appeal from the denial of relief under Rule 60(b)(4) is not whether there has been an abuse of discretion. When the grant or denial of relief turns on the validity of the judgment, as under Rule 60(b)(4),

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discretion has no place. If the judgment is valid, it must stand; if it is void, it must be set aside. A judgment is void only if the court rendering it lacked jurisdiction of the subject matter or of the parties, or if it acted in a manner inconsistent with due process.'"

"Bank of America Corp. v. Edwards, 881 So. 2d 403, 405 (Ala. 2003) (quoting Image Auto, Inc. v. Mike Kelley Enters., Inc., 823 So. 2d 655, 657 (Ala. 2001), quoting in turn Insurance Mgmt. & Admin., Inc. v. Palomar Ins. Corp., 590 So. 2d 209, 212 (Ala. 1991)); Ex parte N.B., 66 So. 3d 249, 254 (Ala. 2010)."

Looney v. State, 60 So. 3d 293, 296 (Ala. Civ. App. 2010).

The former husband argued in his motion, as he argues on appeal, that the trial court violated his due-process rights when it failed to allow him adequate time to prepare for the hearing on the former wife's contempt petition. He cites Rule 40(a), Ala. R. Civ. P., which provides that "[t]he trial of actions shall be set by entry on a trial docket or by written order at least sixty (60) days before the date set for trial." Rule 40(a) provides certain exceptions to that rule, including "where a shorter period of time serves the ends of justice in domestic relations cases." 40(a)(4).

The former husband cites PC & All, Inc. v. Maxie, 66 So. 3d 796 (Ala. Civ. App. 2011), in support of his argument on

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this issue. In that case, the circuit court made a notation on the case-action-summary sheet stating "'[d]efault set aside, case set for hearing,'" with the time and date of the hearing, and the clerk of the court mailed copies of that notation to the parties' attorneys. 66 So. 3d at 797. On the date of the hearing, the circuit court entered a final judgment in the case, stating that the case had been called and that the parties had been present with their attorneys. Id. PC & All, Inc., the plaintiff in that case, moved the circuit court to vacate the judgment on the ground that the circuit court had not given adequate notice that the hearing would be a trial on the merits of the case, but the circuit court denied the motion. Id. In addressing the issue on appeal, this court stated, in pertinent part:

"In Isler v. Isler, 870 So. 2d 730 (Ala. Civ. App. 2003), James Paul Isler ('the husband') sued Halee Denise Isler ('the wife') for a divorce on January 18, 2002. On February 5, 2002, the wife filed three motions: (1) a motion for a [temporary restraining order], (2) a motion for a protective order, and (3) a motion for temporary custody of the parties' child. On February 7, 2002, two days after the wife had filed her motions, the trial court made a notation on the case-action summary, stating "'[t]his case is set for hearing on March 1, 2002 at 8:30 AM.'" 870 So. 2d at 731. Between February 7, 2002, and March 1, 2002, the wife answered the husband's complaint and asserted a counterclaim

against the husband, and the husband answered the wife's counterclaim. At the hearing on March 1, 2002, the trial court, over the wife's objection, proceeded to conduct the trial on the merits of the action. Thereafter, the trial court entered a final judgment, and the wife appealed to this court. Although Rule 40(a)(4)[, Ala. R. Civ. P.,] authorizes a trial court to shorten the time for notice of the trial setting 'where a shorter period of time serves the ends of justice in [a] domestic relations case[],' this court nonetheless reversed the judgment of the trial court. We explained:

"We conclude that the trial court abused its discretion in shortening the time for notice of the trial setting; under the particular facts of this case, the notice shortening the time for trial did not sufficiently inform the wife that the trial court had shortened the time for trial and that it intended to conduct a trial on the merits on March 1, 2002.'

"870 So. 2d at 735.

"Like the notice at issue in Isler, which merely stated that "[t]his case is set for hearing on March 1, 2002 at 8:30 AM," 870 So. 2d at 731, the notice in the action now before us, which merely stated '[d]efault set aside, case set for hearing 12-15-09 @ 9:00,' did not sufficiently inform PC that the trial court had shortened the time for notice of a trial on the merits. Accordingly, we reverse the judgment of the trial court and remand the action to the trial court for further proceedings consistent with this opinion."

66 So. 3d at 798.

In both Maxie and Isler v. Isler, 870 So. 2d 730 (Ala. Civ. App. 2003), the respective circuit court made a notation

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on the case-action-summary sheet indicating that the case was set for a hearing. In Maxie, the hearing was scheduled to take place two weeks after the setting and notice of the hearing, and in Isler the hearing was to take place approximately three weeks after the date of the notice. In Isler, this court noted that the order setting the hearing was entered only three weeks after the husband had filed his complaint, only one week after the wife had been served with the complaint, before the wife had filed her answer and counterclaim, before the time had expired for the wife to file an answer, and almost immediately after the wife had filed three motions for interim relief. 870 So. 2d at 734.

In the present case, the former wife filed a motion on April 13, 2017, requesting that the trial court set the matter for a final hearing. The trial court entered an order in response to that motion on April 26, 2017, setting the case for a hearing on June 6, 2017, 41 days later. On the date of the hearing, the former husband appeared pro se and requested that the hearing be conducted on the former wife's ex parte petition, rather than on her contempt petition. The trial court directed the former husband to proceed with his

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presentation with regard to the former wife's contempt petition. The former husband failed to object or to otherwise indicate that proceeding on the merits of the former wife's contempt petition would prejudice him based on the trial court's failure to allow him more time before the hearing was conducted. He also fails to argue on appeal that he lacked sufficient time to prepare for the hearing. Thus, any such argument is waived. See Gary v. Crouch, 923 So. 2d 1130, 1136 (Ala. Civ. App. 2005) ("[T]his court is confined in its review to addressing the arguments raised by the parties in their briefs on appeal; arguments not raised by the parties are waived."). Accordingly, the former husband's argument on this issue does not merit reversal of the trial court's October 1, 2017, orders.

The former husband next argued in his Rule 60(b)(4) motion, as he does on appeal, that the trial court lacked subject-matter jurisdiction and personal jurisdiction over him as a result of the reassignment of the case to a different circuit-court judge. Specifically, he argues that the trial court lacked jurisdiction when Judge Sibley Reynolds conducted the June 6, 2017, hearing because, he says, the case had

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originally been assigned to Judge Ben Fuller on November 30, 2016, and Judge Fuller had issued the order on March 20, 2017, extending the time for the former husband to answer the former wife's contempt petition. The former husband cites Rule 13(B), Ala. R. Jud. Admin., in support of his argument. Rule 13(B) provides:

"Assignments of judges by the presiding circuit judge shall be in writing and shall be sent to the assigned judge as soon as practicable. The presiding judge or his designee may orally notify the judge of his assignment and this notification shall be sufficient until such time as written notification can be prepared and delivered to the assigned judge. A copy of each written assignment pursuant to this rule shall be filed with the administrative director of courts ... and in the office of the clerk or register of the court to which such assignment is made."

In the present case, the State Judicial Information System case-action-summary sheet indicates that the case was assigned to Judge Fuller on November 30, 2016. It also indicates, however, that the case was reassigned to Judge Reynolds on April 18, 2017, before being reassigned to Judge Bill Lewis on June 26, 2017, as a result of Judge Reynolds's recusing himself. Thus, the case was assigned to Judge Reynolds when the June 6, 2017, hearing took place, and Judge Reynolds

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properly heard the case at that time, without objection by the former husband.

The former husband argues that his right to due process was violated "when the case was reassigned from the Honorable Ben Fuller to the Honorable Sibley Reynolds without it being requested by the Honorable Ben Fuller, on motion of the parties[,] or in writing by the presiding judge," which, he argues, "is required by Rule 13(B)." We note, however, that Rule 13(B) does not require that a judge be assigned to a case only upon request by another judge or on motion of the parties. Instead, the Comment to Rule 13 provides, in part, that "[t]he presiding circuit judge may temporarily assign circuit or district judges in the circuit to service in either the circuit or district court if, in his [or her] discretion, he [or she] deems such reassignment necessary to assist in the orderly administration of justice within the circuit." In the present case, the presiding judge did not temporarily assign Judge Reynolds to temporary service in the circuit; rather, Judge Reynolds was already serving as a circuit judge in the circuit, and the case was merely transferred from another

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judge within that same circuit. Thus, we conclude that Rule 13(B) is inapplicable in this case.

"Rule 28(a)(10), Ala. R. App. P., requires that arguments in an appellant's brief contain "citations to the cases, statutes, other authorities, and parts of the record relied on." Jimmy Day Plumbing & Heating, Inc. v. Smith, 964 So. 2d 1, 9 (Ala. 2007). 'When an appellant fails to cite any authority for an argument on a particular issue, this Court may affirm the judgment as to that issue, for it is neither this Court's duty nor its function to perform an appellant's legal research.' City of Birmingham v. Business Realty Inv. Co., 722 So. 2d 747, 752 (Ala. 1998)."

Salter v. Moseley, 101 So. 3d 242, 247 (Ala. Civ. App. 2012).

Because the former husband has failed to properly support his arguments that the trial court lacked jurisdiction or that he was deprived of due process as a result of the reassignment of the case, we decline to further address those arguments. Accordingly, we conclude that the trial court did not err to reversal in declining to grant the former husband's Rule 60(b)(4) motion based on those arguments.

The former husband next argued in his Rule 60(b)(4) motion that the denial of his affidavit of substantial hardship resulted in the trial court's lack of subject-matter jurisdiction. We note that "[a] petition for the writ of mandamus 'is the proper method by which to compel the circuit

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court to proceed on an in forma pauperis petition.'" Ex parte Carter, 807 So. 2d 534, 536 (Ala. 2001) (quoting Goldsmith v. State, 709 So. 2d 1352, 1353 (Ala. Crim. App. 1997)). The former husband failed to petition this court for a writ of mandamus directing the trial court to vacate its order denying the former husband's affidavit of substantial hardship. Because the former husband's argument on this point does not affect the trial court's subject-matter jurisdiction² and the former husband failed to timely seek this court's review of the trial court's denial of his affidavit of substantial hardship, we may not further consider that argument on appeal because that ground was not a proper basis for seeking relief from the June 6, 2017, judgment under Rule 60(b)(4). See T.K.W., supra. Similarly, the former husband's motion for sanctions against the former wife's attorney is not a basis for relief under Rule 60(b)(4) because an award of sanctions

²We recognize that § 12-19-70, Ala. Code 1975, requires that a filing fee be collected "from a plaintiff" at the time a complaint is filed in circuit court and that the payment of that fee or the filing of a court-approved verified statement of substantial hardship may affect a trial court's jurisdiction at the commencement of an action in certain cases. See De-Gas, Inc. v. Midland Resources, 470 So. 2d 1218, 1222 (Ala. 1985). In the present case, however, the former husband is not situated as the plaintiff. Accordingly, § 12-19-70 has no application.

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would not invalidate the trial court's judgment. To the extent the former husband argued in his Rule 60(b)(4) motion that the trial court erred in prohibiting him from presenting certain evidence or in admitting certain evidence that had not been authenticated at the June 6, 2017, hearing on the former wife's contempt petition, which argument the former husband reasserts on appeal from the denial of his Rule 60(b)(4) motion, we note that that argument addresses the propriety of the June 6, 2017, judgment, not whether that judgment is void. See Halstead v. Halstead, 53 Ala. App. 255, 256, 299 So. 2d 300, 301 (1974) ("The simple fact that the court has erroneously applied the law does not render its judgment void."). Moreover, to the extent the former husband's argument could be construed as seeking review of the June 6, 2017, contempt judgment, we note that

"an appeal from the denial of a Rule 60(b)(4) motion does not vest the court to which the appeal is taken with jurisdiction to review the judgment challenged by the Rule 60(b)(4) motion; rather, it vests the court to which the appeal is taken with jurisdiction to review only the propriety of the lower court's ruling on the Rule 60(b)(4) motion."

Ex parte J.L.P., 230 So. 3d 396, 399 (Ala. Civ. App. 2017).

To the extent the former husband raises on appeal the issue of the admissibility of the evidence presented at the June 6, 2017, hearing, we also note that the former husband failed to timely appeal from the trial court's June 6, 2017, judgment and that his Rule 60(b) motion did not toll the time for filing a notice of appeal. See Rule 60(b); and Alabama Farm Bureau Mut. Cas. Ins. Co. v. Boswell, 430 So. 2d 426, 428 (Ala. 1983). The time for filing a notice of appeal was tolled, however, by the filing of the former wife's motion to alter, amend, or clarify. See Rule 4(a)(3), Ala. R. App. P. That motion was denied by operation of law, however, on September 20, 2017. See Rule 59.1, Ala. R. Civ. P.³ Rule 4(a)(1), Ala. R. App. P., provides that a notice of appeal shall be filed within 42 days of the date of the entry of the judgment or order appealed from. In the present case, the former husband was required to file his notice of appeal

³The former husband argues on appeal that the trial court had lost jurisdiction to rule upon the former wife's motion to alter, amend, or clarify such that its October 1, 2017, order ruling on that motion was a nullity. We address that argument later in this opinion. To the extent the former wife's motion to alter, amend, or clarify sought to amend the trial court's judgment, pursuant to Rule 59, Ala. R. Civ. P., we agree with the former husband that that motion was denied by operation of law on September 20, 2017, pursuant to Rule 59.1, Ala. R. Civ. P.

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within 42 days of September 20, 2017, i.e., on or before November 1, 2017. See Rule 4(a)(1), Ala. R. App. P. The former husband failed to file his notice of appeal within that 42-day period, instead filing his notice of appeal to this court on November 13, 2017. Because the former husband's notice of appeal was not timely filed so as to properly invoke this court's jurisdiction regarding those arguments that were improperly argued in his Rule 60(b)(4), motion, we must dismiss this appeal. See Smith, supra. Accordingly, we dismiss that portion of the former husband's appeal addressing the trial court's admission of certain evidence at the June 6, 2017, hearing as untimely filed.

The former husband last argued in his Rule 60(b)(4) motion, as he argues again on appeal, that the trial court's ex parte order was void for lack of due process. Specifically, on appeal he asserts that the trial court erred in failing to conduct a hearing on the former wife's ex parte motion. He also asserts that the trial court's November 30, 2016, ex parte order, which prohibited the former husband "from disposing [of], concealing, converting or dissipating any PACT funds effective immediately pending further order of

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this court," is "void for lack of due process." The former husband cites Rule 65(b), Ala. R. Civ. P., which provides, in pertinent part:

"A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record, and shall expire by its terms within such time after entry not to exceed ten (10) days, as the court fixes (except in domestic relations cases, the ten- (10-) day limitation shall not apply), unless within the time so fixed the order for good cause shown is extended or unless the party against whom the order is directed consents that it may be extended for a longer period."

In Ex parte Bamberg, 580 So. 2d 1363, 1364-65 (Ala. Civ. App. 1991), this court explained, in pertinent part:

"Rule 65(b), Alabama Rules of Civil Procedure, allows the issuance of a temporary restraining order, in certain circumstances, without notice to the adverse party. Ex parte Williams, 474 So. 2d 707 (Ala. 1985). ... Once a temporary order is issued, the method of attack by the restrained party is a motion to dissolve or modify. The restrained party should make an effort to have a hearing set on

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the motion or upon his motion for dissolution. See Committee Comments, Rule 65, A[1a]. R. Civ. P."

In the present case, the trial court's ex parte order, which we construe as a temporary restraining order, was entered on November 30, 2016. The former husband failed to file a motion before the trial court seeking to dissolve or to modify that order. Moreover, the former husband failed to file a petition for a writ of mandamus with this court seeking to invalidate the trial court's order. Rather, the former husband first challenged the ex parte order in the trial court following the entry of the trial court's judgment on the former wife's contempt petition on June 6, 2017. By that time, the trial court had considered the merits of the issues raised in the former wife's ex parte petition at the June 6, 2017, hearing, in which the former husband participated, and entered a judgment that effectively replaced the trial court's ex parte order; thus, any issue regarding the propriety of the ex parte order was rendered moot by the trial court's June 6, 2017, judgment. See L.S. v. A.S., [Ms. 2160987, June 8, 2018] ___ So. 3d ___, ___ (Ala. Civ. App. 2018). Accordingly, the former husband's due-process argument does not merit Rule 60(b)(4) relief from the trial court's June 6, 2017, judgment

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and the trial court did not err in denying the former husband's Rule 60(b)(4) motion on the basis of that argument.

Because each of the former husband's arguments in his Rule 60(b)(4) motion lacked merit, as discussed herein, we conclude that any error by the trial court in failing to consider those arguments or in denying the former husband's motion amounted to only harmless error. See Rule 45, Ala. R. App. P.

Whether the Former Wife's Postjudgment Motion
Was Denied by Operation of Law

The former husband last argues on appeal that the former wife's June 22, 2017, motion was a Rule 59, Ala. R. Civ. P., motion and, thus, was denied by operation of law before the trial court entered an order ruling on the motion. As discussed above, we agree with the former husband that the former wife's motion to alter, amend, or clarify was subject to the limitations of Rule 59.1, Ala. R. Civ. P., and was denied by operation of law on September 20, 2017. We note, however, that, in addition to filing a motion to alter, amend, or clarify, the former wife also filed on June 22, 2017, a motion to enforce the trial court's June 6, 2017, judgment, in which she sought the same relief as she sought in her motion

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to alter, amend, or clarify. In both motions, the former wife requested that the former husband be required to pay the funds required to reinstate the PACT program account for the parties' son, to remove the former husband's niece as the beneficiary of that account, and to pay attorney's fees and expenses as ordered within five days of the entry of the trial court's order.

In Grayson v. Grayson, 628 So. 2d 918 (Ala. Civ. App. 1993), this court observed that, when a trial court had ordered the husband in that case to pay certain debts pursuant to a judgment of divorce but had failed to specify the manner in which those debts were to be paid, a subsequent judgment entered against the husband for an amount equal to the amount of the unpaid debts "'did no more than enforce the original judgment, as [the court] was empowered to do.'" 628 So. 2d 919 (quoting Filer v. Filer, 502 So. 2d 698, 701 (Ala. 1987)). Similarly, in the present case, the former wife's requests that the trial court direct the former husband to comply with its previous judgment within a certain period sought only to enforce the trial court's judgment; thus, those requests were not subject to denial pursuant to Rule 59.1, Ala. R. Civ. P. See Grayson, supra. In an October 1, 2017, order, the trial

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court ordered the former husband to pay attorney's fees and expenses as previously ordered within 45 days. That portion of the trial court's order also "'did no more than enforce the original judgment, as [the court] was empowered to do.'" Grayson, 628 So. 2d at 919 (quoting Filer, 502 So. 2d at 701).

The former wife also requested in her motion to enforce, however, that the trial court order the former husband to list her as the owner of the parties' son's PACT program account. The trial court's June 6, 2017, judgment did not contemplate that relief. Thus, that portion of the former wife's motion to enforce the judgment sought to amend or modify the trial court's judgment, rather than to enforce it. The trial court lost jurisdiction to amend the judgment, however, on September 20, 2017, 90 days after the former wife filed her motion. See Rule 59.1, Ala. R. Civ. P. (providing that a failure by a trial court to render an order disposing of any pending postjudgment motion filed pursuant to Rule 59 within 90 days of its filing shall constitute a denial of the motion); and Grayson, 628 So. 2d at 919. Accordingly, we conclude that that portion of the trial court's October 1, 2017, order that permitted the former wife to be listed as the owner of the parties' son's PACT program account amounted to an improper

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modification of the original judgment. See Grayson, supra. Because the trial court no longer had jurisdiction to modify its judgment at that time, that portion of the trial court's order is a nullity. Thomas v. Menefield, 81 So. 3d 354, 355 (Ala. Civ. App. 2011).

Conclusion

Based on the foregoing, we dismiss as untimely that portion of the former husband's appeal that seeks to reverse the trial court's June 6, 2017, judgment in this action. We reverse that portion of the trial court's October 1, 2017, order directing that the former wife be listed as the owner of the parties' son's PACT program account, and we remand the cause with instructions to the trial court to vacate that portion of its October 1, 2017, order. In all other respects, the October 1, 2017, orders are affirmed.

The former husband's request for "costs of the appeal plus reasonable expenses associated with the appeal" is denied. The former wife's request for attorney's fees on appeal is denied.

APPEAL DISMISSED IN PART; JUDGMENT AFFIRMED IN PART AND REVERSED IN PART; AND CAUSE REMANDED WITH INSTRUCTIONS.

Thompson, P.J., and Pittman, Thomas, and Donaldson, JJ., concur.