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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2016-2017

2150948

Veronica D. Exum

v.

Ronnie G. Exum

**Appeal from Houston Circuit Court
(DR-10-977.02)**

PITTMAN, Judge.

Veronica D. Exum ("the mother") appeals from a judgment of the Houston Circuit Court modifying a prior custody judgment so as to award Ronnie G. Exum ("the father")

2150948

"primary" physical custody of the parties' minor child ("the child"). We dismiss the appeal as having been taken from a nonfinal judgment.

The parties were divorced by a judgment entered by the trial court in 2010. Pursuant to that judgment, the parties were awarded joint legal custody of the child and the mother was awarded "primary" physical custody of the child. In December 2015, the father filed a petition requesting the trial court to hold the mother in contempt for allegedly violating the divorce judgment. He later amended that petition to request the trial court to award him physical custody of the child.

After a trial at which ore tenus evidence was presented, the trial court entered a judgment declining to hold the mother in contempt but awarding the father "primary" physical custody of the child. In addition, the trial court stated in its judgment that the parties were to submit, pursuant to Rule 32, Ala. R. Jud. Admin., "Child-Support-Obligation Income Statement/Affidavit" forms (Form CS-41) and a "Child-Support Guidelines" form (Form CS-42). The trial court stated further

2150948

that, once those documents were submitted, it would "issue a separate [child] support order."

It appears that counsel for the father submitted a Form CS-41 on the father's behalf, as well as a Form CS-42. The record also contains an unsigned Form CS-41 stating that the mother is unemployed but also purporting to impute to the mother a monthly income of \$1,257. It is not entirely clear, however, who submitted that form. Thereafter, an attorney entered a notice of appearance on behalf of the mother and filed a motion to set aside the custody-modification judgment, which the trial court denied. After the denial of that motion, the mother filed a notice of appeal without the trial court's having entered a ruling regarding child support. On appeal, the mother argues that she was not properly served with the father's petition to modify custody, that the trial court lacked jurisdiction over the modification action, that the trial court applied the wrong legal standard in determining whether to modify custody, and that the trial court erred in failing to hold a hearing on the mother's motion to set aside the custody-modification judgment.

2150948

"[M]atters of jurisdiction are of such importance that a court may consider them ex mero motu." Reid v. Reid, 844 So. 2d 1212, 1214 (Ala. Civ. App. 2002). "An appeal ordinarily lies only from a final judgment." Tomlinson v. Tomlinson, 816 So. 2d 57, 58 (Ala. Civ. App. 2001). The trial court in Tomlinson, like the trial court in the present case, had modified a prior custody judgment, had directed the parties to submit CS-41 forms, and had stated that a child-support award would be made after submission of those forms. The mother in Tomlinson, however, appealed before the trial court had entered any further orders regarding child support. Because the issue of child support had not been resolved, this court dismissed the appeal as having been taken from a nonfinal judgment. 816 So. 2d at 58. See also Turner v. Turner, 883 So. 2d 233, 234 (Ala. Civ. App. 2003) (lower court's failure to determine an amount of child support owed by a party rendered a judgment nonfinal). In the present case, like in Tomlinson, the child-support issue remained pending when the

2150948

mother appealed. Thus, the trial court's judgment was not a final judgment, and this appeal is due to be dismissed.¹

APPEAL DISMISSED.

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

¹It is noteworthy that the father did not request an award of child support in his petition for modification of custody and, during the trial, testified that he was "ask[ing] nothing for child support." As noted, however, the father's counsel submitted Forms CS-41 and CS-42 suggesting that the father did indeed request a child-support award. In any event, we do not believe the ambiguity regarding the father's child-support request renders the trial court's judgment, which specifically stated that a determination regarding child support would be made after submission of the relevant forms, final. See also Blasdel v. Blasdel, 27 So. 3d 1288, 1290 n.4 (Ala. Civ. App. 2009) ("Although the husband did not request an immediate order for child support in his complaint for a divorce, our supreme court has held that "'the right to support of a child from its parents is inherent and cannot be waived by the parents even by agreement.'" Ex parte State ex rel. Summerlin, 634 So. 2d 539, 542 (Ala. 1993) (quoting Willis v. Levesque, 402 So. 2d 1003, 1004 (Ala. Civ. App. 1981)).").