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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

2210091

Ex parte Margaret Baumgardner-Pickle

PETITION FOR WRIT OF MANDAMUS

(In re: Margaret Baumgardner-Pickle

v.

Timothy Pickle)

(Lauderdale Circuit Court, DR-21-900246)

EDWARDS, Judge.

On September 17, 2021, Margaret Baumgardner-Pickle ("the wife") filed a complaint in the Lauderdale Circuit Court ("the trial court")

2210091

seeking a divorce from Timothy Pickle ("the husband"). On September 23, 2021, the wife filed a "Motion to Dismiss," in which she stated that she no longer desired to seek a divorce and requested that the divorce action be dismissed. On September 24, 2021, the husband filed an answer to the wife's divorce complaint and a counterclaim for a divorce. On the same date, the trial court set the wife's "motion to dismiss" for a hearing to be held in February 2022.

In response to the trial court's September 24, 2021, order setting a hearing on her "motion to dismiss," the wife filed a "motion to vacate" that order, arguing that the hearing was unnecessary under Rule 41(a)(1)(i), Ala. R. Civ. P. In that same motion, the wife also requested that the trial court strike or "dismiss" the husband's counterclaim because it had been filed after her divorce action had been dismissed pursuant to Rule 41(a)(1)(i). The husband filed a motion seeking pendente lite relief on September 28, 2021.

The trial court, on October 5, 2021, entered an order "granting," in part, the wife's "motion to vacate," stating that her divorce action was dismissed. However, the trial court further stated in the October 5, 2021,

2210091

order that the husband's counterclaim could proceed; set a hearing on the husband's request for pendente lite relief for December 7, 2021; set the case for a status conference in February 2022; and, sua sponte, appointed a guardian ad litem for the parties' child. On October 6, 2021, the wife filed a second "motion to vacate" directed to the October 5, 2021, order, in which she again argued that the divorce action had been dismissed, that the October 5, 2021, order was void, and that the trial court lacked the power to proceed further with the action. The trial court did not rule on the wife's second "motion to vacate"; instead, on October 18, 2021, it entered an order relating to discovery.

The wife filed a petition for the writ of mandamus with this court on October 28, 2021. We called for answers to the petition, and the husband filed his answer on November 19, 2021.

" 'Mandamus is an extraordinary remedy and will be granted only where there is "(1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court." '

2210091

"Ex parte Ocwen Federal Bank, FSB, 872 So. 2d 810, 813 (Ala. 2003)(quoting Ex parte Alfab, Inc., 586 So. 2d 889, 891 (Ala. 1991)). Mandamus will lie to direct a trial court to vacate a void judgment or order. Ex parte Chamblee, 899 So. 2d 244, 249 (Ala. 2004)."

Ex parte Sealy, L.L.C., 904 So. 2d 1230, 1232 (Ala. 2004).

In her petition, the wife contends that her "motion to dismiss" was, in actuality, a notice of voluntary dismissal pursuant to Rule 41(a)(1)(i) and that it effectuated a dismissal of the divorce action on the date it was filed. We agree. Rule 41(a)(1) provides, in pertinent part:

"(1) Subject to the provisions of Rule 23(e), [Ala. R. Civ. P.,] of Rule 66, [Ala. R. Civ. P.,] and of any statute of this state, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs"

Our supreme court has clearly explained that a Rule 41(a)(1)(i) dismissal does not require court action to be effective; instead, it is the plaintiff's filing of a notice of dismissal before the defendant has filed either an answer or a motion for a summary judgment that effectuates the dismissal. Riverstone Dev. Co. v. Nelson, 91 So. 3d 678, 681 (Ala. 2012). A plaintiff's right to dismiss his or her action is unfettered at that early

2210091

stage of the proceeding, and the defendant can take no action to reinstate the action. Reid v. Tingle, 716 So. 2d 1190, 1193 (Ala. Civ. App. 1997).

The wife's failure to properly label her September 23, 2021, motion as a "notice of dismissal" is of no consequence. Synovus Bank v. Mitchell, 206 So. 3d 568, 571 (Ala. 2016). Our caselaw provides that the nomenclature of a motion is not binding and that courts should instead consider the substance of the motion. Synovus Bank, 206 So. 3d at 571. This court has specifically held that a document that "gives notice of the plaintiff's desire to dismiss the action[] and ... [is] filed with the clerk's office" is sufficient under Rule 41(a)(1)(i) to serve as a notice of dismissal. Reid, 716 So. 2d at 1193. Our supreme court has specifically observed that the United States Court of Appeals for the Eleventh Circuit, in applying Rule 41(a)(1)(A)(i), Fed. R. Civ. P., which is substantially similar to our Rule 41(a)(1)(i), has construed a "motion to dismiss" filed by a plaintiff as a notice of voluntary dismissal when it was filed by a plaintiff before the filing of an answer or a motion for a summary judgment by the defendant. Synovus Bank, 206 So. 3d at 571 (citing Matthews v. Gaither, 902 F.2d 877, 880 (11th Cir. 1990)). The wife's "motion," although

2210091

incorrectly labeled as a "motion to dismiss," indicated clearly that she desired to dismiss her divorce action, and that document was filed in the clerk's office; thus, we conclude that the wife's "motion to dismiss" was effective as a notice of dismissal under Rule 41(a)(1)(i).

That being determined, we must consider whether, as the wife contends, the trial court, in its October 5, 2021, order, impermissibly allowed the continuation of the action by permitting the husband to proceed on his counterclaim. As our supreme court explained in Walker Brothers Investment, Inc. v. City of Mobile, 252 So. 3d 57, 62 (Ala. 2017):

"Although cases involving a Rule 41(a)(1) dismissal "are not perfectly analogous to cases in which the ... court lacks subject matter jurisdiction, both contexts present the question of the court's continuing power over litigants who do not, or no longer, have a justiciable case before the court." Chemiakin v. Yefimov, 932 F.2d 124, 128 (2d Cir. 1991). Thus, it is sometimes stated that a Rule 41(a)(1) dismissal deprives the trial court of "jurisdiction" over the "dismissed claims." Duke Energy Trading & Mktg., L.L.C. v. Davis, 267 F.3d 1042, 1049 (9th Cir. 2001); see Safeguard Business Sys., Inc. v. Hoeffel, 907 F.2d 861, 864 (8th Cir. 1990); see also Gambale v. Deutsche Bank AG, 377 F.3d 133, 139 (2d Cir. 2004); Netwig v. Georgia Pacific Corp., 375 F.3d 1009, 1011 (10th Cir. 2004); Meinecke v. H & R Block of Houston, 66 F.3d 77,

82 (5th Cir. 1995); Williams v. Ezell, 531 F.2d 1261, 1264 (5th Cir. 1976) ("The court had no power or discretion to deny plaintiffs' right to dismiss or to attach any condition or burden to that right. That was the end of the case and the attempt to deny relief on the merits and dismiss with prejudice was void.").

" 'Similarly stated, "[t]he effect of a voluntary dismissal without prejudice is to render the proceedings a nullity and leave the parties as if the action had never been brought." In re Piper Aircraft Distrib. Sys. Antitrust Litig., 551 F.2d 213, 219 (8th Cir. 1977).'

"Ex parte Sealy[, L.L.C.], 904 So. 2d [1230] at 1235-36 [(Ala. 2004)] Stated differently, the effect of a plaintiff's voluntary dismissal pursuant to Rule 41(a)(1)(i) is that it "ipso facto deprived the trial court of the power to proceed further with the action and rendered all orders entered after its filing void." ' Synovus [Bank v. Mitchell], 206 So. 3d [568,] 571 [(Ala. 2016)] (quoting Sealy, 904 So. 2d at 1236)."

(Emphasis added.)

The wife's action had been automatically dismissed, without the need for court action, the day before the husband filed his answer, and, thus, it is as if her action had never been brought. Ex parte Sealy, 904 So. 3d at 1236. The filing of the husband's answer and counterclaim could not revive the wife's action; nor could the husband seek to reinstate the wife's

2210091

action, Walker Bros. Inv., 252 So. 3d at 66. Moreover, "[o]nce the notice of dismissal has been filed, the district court loses jurisdiction over the dismissed claims and may not address the merits of such claims or issue further orders pertaining to them." Duke Energy Trading & Mktg., L.L.C. v. Davis, 267 F.3d 1042, 1049 (9th Cir. 2001). Thus, the trial court's September 24, 2021, October 5, 2021, and October 18, 2021, orders, each of which was entered after the dismissal of the wife's action on September 23, 2021, are nullities. Synovus Bank, 206 So. 3d at 571. Accordingly, the wife has established a clear legal right to the relief she seeks, and we grant her petition. The trial court is instructed to set aside its September 24, 2021, October 5, 2021, and October 18, 2021, orders as void.

PETITION GRANTED; WRIT ISSUED.

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