

Rel: November 22, 2024

Appendix A

Writ of
Certiorari

Post Complaint
Judicial
Complaint

Notice: This unpublished memorandum is being issued to the parties and to the trial-court judge. The memorandum is not subject to publication and shall not be made a part of the public court record by the trial-court clerk. This unpublished memorandum should not be cited as precedent. See Rule 54, Ala. R. App. P. Rule 54(d) states, in part, that this memorandum "shall have no precedential value and shall not be cited in arguments or briefs and shall not be used by any court within this state, except for the purpose of establishing the application of the doctrine of law of the case, res judicata, collateral estoppel, double jeopardy, or procedural bar."

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2024-2025

CL-2024-0376

Miriam Pope

v.

Chetan Patel, formerly known as Hitesh Patel

Appeal from Cleburne Circuit Court
(DR-24-900007)

5.10.24
Clerk
of
Court
of
Civil
Appeals
Alabama

Brown - Hannon
Act
Legislation

MOORE, Presiding Judge.

✓ Miriam Pope ("the wife") appeals from a judgment entered by the Cleburne Circuit Court ("the circuit court") divorcing her from ^{*}Chetan Patel, formerly known as Hitesh Patel ("the husband"). We affirm the judgment by unpublished memorandum. See Rule 54, Ala. R. App. P.

Hitesh Patel, A/K/A,
Chetan Patel

Background

On January 25, 2024, the husband filed in the circuit court a complaint seeking a divorce from the wife and an equitable distribution of the marital property. The wife, acting pro se, filed an answer and a counterclaim to the complaint, which the circuit court treated, in part, as ^{*}a motion to dismiss for lack of personal jurisdiction. The circuit court set a hearing on the motion to dismiss.

✓ On March 4, 2024, the date scheduled for the hearing on the motion to dismiss, the parties informed the circuit court that they had reached a settlement agreement, and the husband's counsel read the agreement ^{*}in part into the record. The wife agreed to the terms as dictated by the husband's counsel. To confirm its jurisdiction and the parties' assent to the settlement terms, the circuit court took testimony from the parties. The husband testified that the parties had married in Georgia in 2015, that he was 35 years old and had been residing in Heflin since 2022, that he

What about the
issue of the name?

was seeking a divorce from the wife due to their incompatibility and irreconcilable differences, and that he agreed to the terms of the settlement as dictated into the record. The wife testified that she was 49 years old and was a resident of Monticello, Georgia, that she was waiving personal jurisdiction, that she and the husband had irreconcilable differences and that their marriage was irretrievably broken, that no children had been born of the marriage and she was not pregnant, that she agreed to the settlement terms as dictated into the record, and that she understood that the settlement was final.¹

(Later in the day on March 4, 2024, the circuit court entered an order ("the March 4, 2024, order") providing, in pertinent part: "An agreement was recited onto the record and the same is to be reduced to an order prepared by counsel for the [husband] and submitted within 10 days of this order." The record does not disclose whether the husband complied with that order. On April 2, 2024, the circuit court entered a judgment ("the final judgment") divorcing the parties, dividing the marital

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¹In her brief to this court, the wife recites a litany of facts without citation to the record and attaches three exhibits that were not submitted as evidence during the March 4, 2024, hearing. This court disregards the exhibits and those facts that are dehors the record. See Martin v. Martin, 623 So. 2d 1167, 1170 (Ala. Civ. App. 1993) ("We are bound by the record and cannot consider any evidence or assertion dehors the record.").

I specifically stated these were not evidence but a basis to explain the

3/1

property, and awarding the wife rehabilitative alimony according to the terms of their settlement.

(4) On April 19, 2024, the wife filed a motion to vacate the March 4, 2024, order and a motion to hold the husband in contempt. The wife alleged that she had not received a copy of the proposed order that the circuit court had ordered the husband's counsel to prepare and file and that the husband was in contempt of court for not complying with the March 4, 2024, order. The wife requested that the circuit court vacate the March 4, 2024, order so that she could have a trial by jury. Additionally, the wife asserted that the husband had perjured himself by failing to provide the circuit court with his legal name and immigrant status. The wife requested sanctions and attorney's fees, as well as all other relief to which she claimed she was entitled.

(On May 3, 2024, the circuit court denied the motion to vacate and ordered the wife to file her contempt motion under a new point designator and to pay a filing fee. On May 23, 2024, the wife filed a notice of appeal of the final judgment.

(On appeal, the wife argues that the circuit court erred in entering the final judgment and in denying her motion to vacate and her request

for a jury trial; she also argues that the circuit court violated her right to procedural due process. And

⑦ As to her first issue, the wife argues that the circuit court entered the final judgment without first providing her an opportunity to review the proposed judgment and without receiving her signed "seal of consent" to the terms. The wife did not raise this issue to the circuit court in her motion to vacate or otherwise, and we cannot consider that issue for the first time on appeal. See Andrews v. Merritt Oil Co., 612 So. 2d 409 (Ala. 1992). Even if we could, the wife presents no relevant legal authority that a divorce settlement agreement must be signed with a seal of consent to be binding.² See Rule 28(a)(10), Ala. R. App. P. *Common law?*

"Rule 47, Ala. R. App. P., specifically provides that 'agreements made in open court or at pretrial conferences are binding, whether such agreements are oral or written.' Pursuant to Rule 47, the parties made a valid, binding settlement agreement. See Porter v. Porter, 441 So. 2d 921, 923 (Ala. Civ. App. 1983)."

Holden v. Holden, 387 So. 3d 1163, 1167-68 (Ala. Civ. App. 2023).

Through her testimony, the wife clearly and unequivocally assented to

²The wife cites Ala. Code 1975, § 8-7A-18, a part of the Alabama Monetary Transmission Act, Ala. Code 1975, § 8-7A-1 et seq., for the proposition that a consent judgment must be signed by the parties. Needless to say, that statutory provision does not apply to divorce cases.

CL-2024-0376

the settlement in open court; no further written confirmation of her assent was required, see Porter v. Porter, 441 So. 2d 921, 924 (Ala. Civ. App. 1983), regardless of her pro se status. See L.E.W. v. M.J.L., 200 So. 3d 1171, 1174 (Ala. Civ. App. 2015); Asam v. Devereaux, 686 So. 2d 1222, 1224 (Ala. Civ. App. 1996) ("[A] party acting pro se must comply with legal procedure and court rules and may not avoid the effect of the rules because of unfamiliarity."). The circuit court did not err by entering the final judgment based on the parties' settlement agreement made orally in open court.

What about the Court ordering it entered within 10 days?

⑧ The circuit court also did not err by denying the wife's motion to vacate and her request for a trial by jury. In that motion, the wife argued solely that the March 4, 2024, order should be vacated because the husband's counsel had not prepared and filed a proposed order as the circuit court had directed. The wife apparently contended that, due to the husband's noncompliance with the March 4, 2024, order, the settlement was no longer binding, so she requested a trial by jury. The wife cites no legal authority for the proposition that the failure of the husband to timely submit a proposed order negates a settlement agreement reached in open court. See Rule 28(a)(10), Ala. R. Civ. P. As stated above, Alabama law makes oral agreements made in open court

binding. Moreover, the wife did not have a right to have the settlement agreement vacated because she wanted a jury trial; there is no right to a jury trial in a divorce proceeding. Coggins v. Coggins, 601 So. 2d 109, 110 (1992); see also Shelton v. Shelton, 376 So. 2d 740 (Ala. Civ. App. 1979) (holding that there is no constitutional right to a jury trial in divorce cases). ✓

⑨ On appeal, the wife argues that the husband should have circulated any proposed order to her so that she could have revised it before the circuit court entered the proposed order as the final judgment. The wife also challenges several provisions of the final judgment as being inconsistent with the oral settlement agreement and because it fails to address the issues raised in the pleadings and contains factual errors. The wife additionally suggests that the circuit court erred by failing to hold a hearing to address those issues. However, the wife did not file a motion to vacate the final judgment; she only filed a motion to vacate the March 4, 2024, order, in which she did not raise those points or request a hearing. We cannot consider any arguments as to why the final judgment should have been vacated that were not raised in the circuit court. See Andrews v. Merritt Oil Co., supra.

How could it?

How could I raise these issues?

(P)

We recognize that this court can consider arguments relating to the subject-matter jurisdiction of the circuit court for the first time on appeal. See, e.g., Wright v. Wright, 55 Ala. App. 112, 313 So. 2d 540 (Civ. App. 1975). In this case, however, the circuit court had subject-matter jurisdiction because the husband had resided in Alabama for more than six months, which fact was not contested during the March 4, 2024 hearing, and the parties testified to the grounds for the divorce. See Ala. Code 1975, § 30-2-1 and § 30-2-5. The wife did not contest personal jurisdiction,³ so the circuit court met all the jurisdictional prerequisites to sustain the final judgment. The wife contends that she was denied procedural due process, but lack of due process is a separate concept from a lack of subject-matter jurisdiction, and any argument that a judgment was entered in a manner inconsistent with due process may not be raised for the first time on appeal. See J.M.L. v. Tuscaloosa Cnty. Dep't of Hum. Res., [Ms. CL-2023-0765, Apr. 26, 2024] ___ So. 3d ___ (Ala. Civ. App. 2024). We do not perceive that the wife was denied due process, but, even if she was, we cannot address that alleged error because it was not raised

³The wife also did not contest the venue of the proceedings, so she waived any objection to the circuit court's hearing the case. See Rule 12(h)(1), Ala. R. Civ. P.

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CL-2024-0376

during the proceedings below. The wife has raised some concerns that may be best addressed through a motion for relief from the final judgment pursuant to Rule 60(b), Ala. R. Civ. P., but which this court cannot consider in this appeal.

Conclusion

Because the wife has not preserved for appellate review most of the issues raised in her brief, and because those issues that have been properly preserved do not merit reversal, we affirm the final judgment.

AFFIRMED BY UNPUBLISHED MEMORANDUM.

Edwards, Hanson, Fridy, and Lewis, JJ., concur.

Why?
If they would have proceeded?
Allowed?