ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION II

CA08-625

February 11, 2009

APPEAL FROM THE BENTON COUNTY CIRCUIT COURT, [E 97-326-4]

DALE SHOUSE
APPELLANT

V.

HONORABLE JOHN R. SCOTT, JUDGE

CAROLYN HEGWOOD
APPELLEE

AFFIRMED

Appellant, Dale Shouse, and appellee, Carolyn Hegwood, were married on February 14, 1990. They purchased their marital home in June 1992, executing a promissory note, payable over thirty years, and secured by a mortgage in favor of appellee's uncle's living trust. On June 24, 1996, all parties to the note agreed to modify it, changing the due date from June 1, 2022, to ten years after the date of the uncle's death. The uncle died approximately six months later, in December 1996, making the note payable in December 2006. Appellant and appellee subsequently separated in February 1997 and were divorced by decree entered on June 19, 1997. Appellant was awarded the marital home by agreement in the decree. The provisions within the decree by which the parties agreed to handle the division of the house and the debt associated

with it later became the subject of dispute between the parties; appellee filed her complaint against appellant on March 29, 2007. The original judgment from the post-decree hearing was entered on December 28, 2007.

We find a jurisdictional issue. The timely filing of a notice of appeal is jurisdictional, and we are required to raise the issue of subject-matter jurisdiction on our own motion. *Weems v. Garth,* 338 Ark. 437, 993 S.W.2d 926 (1999); *see also Williams v. Hudson*, 320 Ark. 635, 898 S.W.2d 465 (1995). The jurisdictional difficulty that we have encountered in this appeal begins with appellant's premature motion for new trial and for reconsideration, which was filed on December 27, 2007, and is followed by a series of events occurring before the notice of appeal was filed on March 10, 2008. In the motion, appellant contended that he was entitled to a new trial pursuant to Rule 59(a) of the Arkansas Rules of Civil Procedure. Tracking the sub-provisions of this rule, he argued that excessive damages had been awarded, apparently under the influence of passion or prejudice; that there was an error in the assessment of the amount of recovery, whether too large or too small; and that the decision was clearly contrary to the preponderance of the evidence or contrary to the law. He further contended that the trial court should open the judgment, amend its findings of fact and conclusions of law and make new findings and conclusions, directing the entry of a new order. Finally, he listed what he regarded as undisputed evidence, and he then followed that presentation with a list of seven purported errors made by the trial court, including an assertion that the trial court "disregarded the evidence and testimony that [appellant] had made all monthly payments

under the divorce agreement and did not give [appellant] credit for any of the payments he had made in the sum of $354 per month over the last 10 years; thus giving [appellee] a windfall of over $30,000."

Rule 4(a) of our civil rules of appellate procedure provides in pertinent part that "[e]xcept as otherwise provided in subdivisions (b) and (c) of this rule, a notice of appeal shall be filed within thirty (30) days from the entry of the judgment, decree or order appealed from." Subsection (c) of Rule 4 deals with election cases and is not pertinent to this appeal. Subsection (b)(1) provides:

> (b) *Extension of time for filing notice of appeal.*
>
> (1) Upon timely filing in the circuit court of a motion for judgment notwithstanding the verdict under Rule 50(b) of the Arkansas Rules of Civil Procedure, a motion to amend the court's findings of fact or to make additional findings under Rule 52(b), a motion for a new trial under Rule 59(a), or any other motion to vacate, alter, or amend the judgment made no later than 10 days after entry of judgment, the time for filing a notice of appeal shall be extended for all parties. The notice of appeal shall be filed within thirty (30) days from entry of the order disposing of the last motion outstanding. However, if the circuit court neither grants nor denies the motion within thirty (30) days of its filing, the motion shall be deemed denied by operation of law as of the thirtieth day, and the notice of appeal shall be filed within thirty (30) days from that date.

In his December 27 motion, appellant specifically stated that he was entitled to a new trial pursuant to Rule 59(a), listing three grounds from that rule.

A motion for new trial pursuant to Rule 59(a) extends the time for filing a notice of appeal in the manner described above in Rule 4(b)(1). Appellant's motion was effective and treated as filed on December 29, 2007, the day after entry of the original judgment. Ark. R. Civ. P. 59(b). The thirty-day time period in which the trial court had jurisdiction

to act under Rule 59 on the motion started to run on December 29, too. That thirty-day period ended on January 28, 2008, after which the trial court lacked jurisdiction to grant any Rule 59 relief. *Upton v. Estate of Upton*, 308 Ark. 677, 828 S.W.2d 827 (1992).

Appellee filed her response to the motion on January 11, 2008; a hearing on the motion was held on January 16, 2008; and an amended judgment was filed on February 20, 2008, beyond the January 28, 2008 deadline. Appellant's motion was deemed denied on January 28, 2008, because the trial court had neither granted nor denied the motion by that date. Accordingly, the thirty-day time limit for filing an appeal from the original judgment, which would bring up the merits of the entire case, began on January 28, 2008, and ended on February 27, 2008. Appellant did not file a timely notice of appeal from the judgment. We therefore lack jurisdiction to consider all of the trial court's rulings embodied in the original judgment.

Our analysis, however, does not end here. In examining our jurisdiction to hear an appeal, we construe motions liberally and are not blinded by titles, looking instead to the substance of the motions and the circuit court's actions. *See Davidson Properties, LLC v. Summers*, 368 Ark. 283, 244 S.W.3d 674 (2006); *Slaton v. Slaton*, 330 Ark. 287, 956 S.W.2d 150 (1997).

Here, we are convinced that Rule 60, rather than Rule 59, of the Arkansas Rules of Civil Procedure applies to the circuit court's amended judgment and affects our jurisdictional analysis. Rule 60 provides in pertinent part:

> (a) *Ninety-Day Limitation*. To correct errors or mistakes or to prevent the miscarriage of justice, the court may modify or vacate a judgment, order or decree on motion of the court or any party, with prior notice to all parties, within ninety days of its having been filed with the clerk.

Thus, pursuant to Rule 60 a trial court has ninety days after the entry of a judgment, order, or decree to modify or vacate it, on the trial court's own motion or that of any party, in order to correct errors or mistakes or to prevent the miscarriage of justice. We conclude that, in substance, that was what occurred in this case.

At the hearing on appellant's motion, which was held on January 16, 2008, the following colloquy occurred in pertinent part:

> THE COURT: Well, Mr. Johnson [appellant's counsel], my decision on December 7th of 2007 specifically said that the plaintiff [appellant] was to receive credit for payments made pursuant to Defendant's [appellee's] Exhibit 4. Are you claiming that that mathematical calculation is incorrect?
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> MR. JOHNSON: Well, if that was the Court's decision, the mathematical in the judgment is wrong because of that, that's correct.
>
> . . . .
>
> THE COURT: Well, let me repeat what I said last month. It is my finding that the amount of the debt on January 9th, 1999, was $67,133.13. The defendant [appellee] is awarded judgment for that amount with prejudgment interest and the plaintiff [appellant] is to receive credits for all payments that he has made since that time, along with the remainder of my order.
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> . . . .
>
> MR. CAMPBELL [APPELLEE'S ATTORNEY]: Your Honor, then the judgment is incorrect.
>
> THE COURT: Okay.
>
> MR. CAMPBELL: It does not give them credit for those payments.

THE COURT: He's entitled to have credit for those monthly payments.

MR. CAMPBELL: My figure does not provide for that.

THE COURT: Okay.

MR. CAMPBELL: So I'm in error.

THE COURT: Okay. Well why don't you - -

MR. CAMPBELL: I didn't understand that at the time and I don't know if Jim [appellant's counsel] did.

MR. JOHNSON: No, I didn't either.

MR. CAMPBELL: I don't think - -

THE COURT: Well, if I didn't say it, I meant to say it. I'll put it like that. How's that?

MR. CAMPBELL: Then we need to correct it. It's not correct.

From reviewing what transpired at the hearing on appellant's motion, it is clear that the substance of what occurred was to correct a mistake in the original judgment and to thereby prevent a miscarriage of justice. The trial court's window of time to take such action was ninety days pursuant to Rule 60(a) of the Arkansas Rules of Civil Procedure. The original judgment was entered on December 28, 2007. The hearing on appellant's motion was held in January, and the amended judgment was filed on February 20, 2008, well within the ninety-day window provided by Rule 60(a). Appellant's notice of appeal from the amended judgment was filed on March 10, 2008, which was within thirty days of entry of the amended judgment.

While we have jurisdiction, it is limited. We may consider only whether the trial court abused its discretion in amending the original judgment pursuant to Rule 60. *Holt Bonding Co. v. State*, 353 Ark. 136, 141, 114 S.W.3d 179, 183 (2003). We do not have jurisdiction to reach the merits of the case as a whole, which is where appellant directs all of his arguments on appeal. *Id.* Because no one questions on appeal the propriety of the trial court's actions in amending the judgment to correct the court's mistake in not giving credit for the appellant's undisputed payments on the note, and because we have no jurisdiction to address any other matter, we therefore affirm the February 20, 2008 amended judgment.

Affirmed.

KINARD and MARSHALL, JJ., agree.