

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA08-1136

WHIT WALLER

APPELLANT

V.

MALA WALLER

APPELLEE

Opinion Delivered September 16, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. DR2004-5694]

HONORABLE MACKIE M.
PIERCE, JUDGE

DISMISSED

JOSEPHINE LINKER HART, Judge

This case concerns a decision of the Pulaski County Circuit Court denying appellant Whit Waller’s motion to reconsider the disposition of a Washington Mutual Funds Account (the account). In the parties’ divorce decree, the trial court found the account to be non-marital property and awarded it to appellee Mala Waller. Two issues are presented on appeal: whether the trial court erred in its determination that the account was nonmarital property and whether the trial court had jurisdiction to rule on the motion to reconsider after thirty days had elapsed. Because we conclude that the trial court did not have jurisdiction to rule on the motion, we must dismiss this appeal.

The legally significant facts are not in dispute. A “final” decree styled “AMENDED DECREE OF DIVORCE,” in which the trial court found that the account was Mala’s premarital property, was filed for record on May 4, 2007. On May 14, 2007, Whit filed a

motion styled “MOTION TO RECONSIDER,” which sounded under Rule 59 of the Arkansas Rules of Civil Procedure in that it sought the court’s permission to “submit newly discovered evidence” regarding the account. The motion was subsequently amended, but the basis for the motion was not changed. A hearing on the motion was scheduled but continued at Mala’s request. The hearing was not held until March 13, 2008. After the hearing, in an order filed on April 3, 2008, the trial court recited that it had considered the “newly discovered evidence,” but nonetheless reaffirmed its earlier finding that the account was Mala’s premarital property. On May 2, 2008, Whit filed a notice of appeal.

Whit acknowledges that the trial court did not render a decision on his motion to reconsider within thirty days as required by Rule 4 of the Arkansas Rules of Appellate Procedure–Civil. However, he contends that, “because of the particular circumstances of this case,” Rule 59 of the Arkansas Rules of Civil Procedure and Rule 4 of the Arkansas Rules of Appellate Procedure–Civil did not “require” a ruling within thirty days. Whit notes that a ruling on the motion to reconsider was not rendered within thirty days, at least in part, because Mala received a continuance and changed attorneys. He asserts that “equity must play a role somewhere in the ‘deemed-denied’ context.”

We reject Whit’s argument. Mala asserts, and we agree, that this case is controlled by the supreme court’s decision in *Wal-Mart Stores, Inc. v. Isely*, 308 Ark. 342, 823 S.W.2d 902 (1992). There, the supreme court held that the trial court lost jurisdiction to decide a new-trial motion by failing to rule on it within thirty days of filing. Significantly, Wal-Mart, which

opposed Isely's new-trial motion, benefitted by securing a continuance for the hearing on the motion until after thirty days had elapsed.

As in *Isely*, the trial court in the case at bar failed to rule on Whit's new-trial motion within thirty days. In *Isely*, the supreme court did not attach any significance to the fact that the party benefitting from the trial court's loss of jurisdiction, Wal-Mart, had moved for a continuance that pushed the hearing date outside of the thirty-day time limit imposed by Rule 4 of the Arkansas Rules of Appellate Procedure. Accordingly, the fact that Mala first requested the continuance is of no moment.

Finally, we reject Whit's assertion, made without citation of authority, that "equity must play a role somewhere in the 'deemed-denied' context." We are unaware of any case that so holds. Likewise, we can find no such distinction in our rules of civil and appellate procedure. To the contrary, our rules of procedure declare that they apply equally to all civil actions. Rule 81(a) of the Arkansas Rules of Civil Procedure states in pertinent part that our civil procedure rules "shall apply to all civil proceedings cognizable in the circuit courts of this state except in those instances where a statute which creates a right, remedy or proceeding specifically provides a different procedure," and Rule 1 of the Arkansas Rules of Appellate Procedure—Civil states in pertinent part, "These rules shall govern the procedure in civil appeals to the Arkansas Supreme Court or Court of Appeals."

Dismissed.

VAUGHT, C.J., and GRUBER, J., agree.