Cite as 2022 Ark. App. 449

ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-22-22

BETH COOK	APPELLANT	**Opinion Delivered** November 9, 2022
V.		APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, ELEVENTH DIVISION [NO. 60DR-21-1881]
KEITH COOK	APPELLEE	HONORABLE PATRICIA JAMES, JUDGE
		AFFIRMED

BRANDON J. HARRISON, Chief Judge

The record in this case is 27 pages. Keith Cook's verified two-page complaint for absolute divorce from Beth Cook alleges that "there are debt responsibilities and property issues to be adjudicated by this Court sh[ould] the parties not be able to come to an amicable agreement and division of the same." Beth was personally served June 17. She did not defend or appear.

Keith filed a terse deposition of a witness who verified that Keith had resided in Arkansas, and lived separate and apart from Beth, for the necessary time. In Keith's own deposition, he answers "yes" to the question, "Are all matters of custody, support and visitation addressed in the Divorce Decree?" In response to the question, "Are there any property rights or debt responsibilities to adjudicate?", he answers "There were limited

property rights and debt responsibilities of the parties that are divided by the Divorce Decree."

A detailed divorce decree was entered September 14. It awards joint custody of the parties' minor children, calculates and awards child support, and divides marital property. The decree appears mostly evenhanded on its face, but its face is all we have. Keith had not filed a motion for default judgment. Apart from a recitation in the preamble of the decree, which the circuit court dated and signed by hand, the record does not indicate that a hearing was noticed or held.

Beth appeals. Her opening brief argues the circuit court improperly determined custody and child support, and divided marital property, without evidence on those issues. But we cannot address those arguments because Beth did not request any relief in the circuit court first.

In *Arkansas Department of Human Services v. Egbosimba*, we held that because no error was raised and ruled on in the circuit court, no error could be raised on appeal. 2019 Ark. App. 608. We followed *Egbosimba* in *Banks v. Banks*, where an heir who was omitted from an order partitioning real property appeared in circuit court after the order was entered and asked us, in a timely appeal, to reverse for defects in the circuit court proceedings. 2022 Ark. App. 403. We could not address the appellant's arguments, though some were jurisdictional, because the appellant had done nothing in circuit court. *Id.*

Alerted to *Egbosimba* by Keith's brief, Beth contends that she could not have obtained relief in circuit court. She argues Rule 55 was not an option because divorce cannot be established by default, and the decree was based on evidence (albeit insufficient evidence),

so this was not a default judgment. For the same reason, she argues *Glover v. Glover*, 2020 Ark. App. 89, 595 S.W.3d 54, which Keith relied on for other arguments, did not involve a default judgment.

This court has recently addressed several appeals by parties who did not "plead or otherwise defend" a divorce complaint or "otherwise appear" in the proceeding, Ark. R. Civ. P. 55(a) & (b), and moved to set aside divorce decrees that were entered after hearings they did not attend. *Glover*, *supra*; *Riggs v. Riggs*, 2020 Ark. App. 381, 606 S.W.3d 588; *Jones v. Jone*s, 2019 Ark. App. 596, 591 S.W.3d 831. In each case we treated the divorce decree as a default judgment and addressed the merits of the appellant's otherwise preserved Rule 55 arguments for setting it aside. In fact, in *Jones* a six-judge majority of this court set aside a divorce decree under Rule 55(c)(4) because allegations of child abuse by the custodial parent were an "other reason justifying relief" from the decree. *Jones*, 2019 Ark. App. 596, at 7, 591 S.W.3d at 834–35.

It is not clear from those opinions whether anyone argued, as Beth does, that a divorce decree is not a default judgment. But we have, since at least 1962, treated divorce decrees like default judgments when they are entered on one party's evidence, against a party who did not appear.[1] We think Beth was required to seek relief in the circuit court under Rule 55, at minimum, before asking us to grant some relief.

[1]*See Kerr v. Kerr*, 234 Ark. 607, 353 S.W.2d 350 (Ark. 1962). In an opinion issued after this case was briefed, we refused to consider an argument that the circuit court should have granted a motion to set aside a divorce decree under Rule 55 because "the circuit court did not enter a default judgment; rather, it held a hearing at which evidence was presented, and it entered a decree on the merits of the case." *Hwang v. Northcutt*, 2022 Ark. App. 235, at 6, 646 S.W.3d 369, 373. We also noted, however, that the circuit court had not ruled on that motion, which was filed more than 10 days after judgment, and which the

Affirmed.

BARRETT and MURPHY, JJ., agree.

Richard E. Worsham, for appellant.

Wallace, Martin, Duke & Russell, PLLC, by: *Dale B. Duke*, for appellee.

appellant's notice of appeal was never amended to address. *Id.* at 6 & n.2, 646 S.W.3d at 373 & n.2.