

FILED

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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs August 1, 2023

VICTOR LEE HYATT v. SUZANNE LEE HYATT

Appeal from the Circuit Court for Montgomery County
No. MC-CC-2005-CV-557 Matthew Joel Wallace, Judge

No. M2023-00037-COA-R3-CV

This appeal arises from a post-divorce petition for contempt. Because we conclude that the trial court's order failed to resolve all the issues before the court, we dismiss the appeal for lack of a final judgment.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which JOHN W. MCCLARTY and W. NEAL MCBRAYER, JJ., joined.

Gregory D. Smith, Clarksville, Tennessee, for the appellant, Victor Lee Hyatt.

Stacy A. Turner, Clarksville, Tennessee, for the appellee, Suzanne Lee Hyatt.

OPINION

I. FACTS & PROCEDURAL HISTORY

Victor Lee Hyatt ("Husband") and Suzanne Lee Hyatt ("Wife") were divorced in 2005. The final decree incorporated a marital dissolution agreement, which provided that Wife would receive fifty percent of Husband's monthly disposable military retirement pay upon his retirement. It also stated, "Husband agrees that he will not at any time refuse those military retirement benefits to which he is entitled."

Husband retired in 2014, and Wife began receiving direct payments for her share of his retirement pay. In 2016, Wife filed a petition for contempt, asserting that Husband had taken steps to convert a portion of his military retirement benefit to disability benefits, which had the effect of reducing her payment by approximately one-half. Notably, Wife's

petition for contempt asked the trial court to (1) find Husband in willful contempt; (2) sentence him to jail; (3) award her a money judgment for the portion of Husband's retirement she should have been receiving since the change was made; (4) order Husband to begin paying Wife the proper amount prospectively; and (5) award her attorney fees.

The hearing on the petition was held in January 2018. Thereafter, the parties submitted proposed findings of fact and conclusions of law. Inexplicably, however, the case sat dormant for the next several years. The original trial judge's term expired in 2022, and the case was reassigned to his successor. In December 2022, the successor trial judge entered a memorandum opinion and order. He noted that the matter was tried in 2018 but certified his familiarity with the record in this case. The order summarized the issues before the court as:

a.) whether the terms of the final decree as it relates to military retirement are enforceable and b.) whether Husband's waiver -- i.e., giving up a portion of his military retirement benefit to which he was entitled through DFAS, in exchange for other VA benefits -- violated the provisions of the final decree of divorce as it relates to military retirement? And, if said waiver does violate said provisions, how does the holding of the U.S. Supreme Court in *Howell v. Howell* 137 S.Ct. 1400 (2017), affect this matter?

After analyzing these substantive matters regarding military retirement pay, the trial court ultimately found:

Husband's actions in waiving -- or "refusing" -- a portion of his retirement pay so he could receive the nontaxable CRSC violated the contractually enforceable terms of the parties' final decree of divorce related to military retirement. Wife should still be receiving an amount equal to 50% of the Husband's original retired pay.

The court orders Husband to reimburse Wife funds she would have received had the Husband not waived a portion of his retirement pay. In reviewing the pay matrix, the court finds this reimbursement should be retroactive to October 2015.

However, the trial court did not make any finding regarding whether Husband was in contempt, it did not mention Wife's request that he be incarcerated, and the trial court did not resolve Wife's request for attorney fees. Husband filed a notice of appeal to this Court.

II. DISCUSSION

Generally, review on appeal extends only to the issues presented for review; however, "appellate courts must also consider 'whether the trial and appellate court have jurisdiction over the subject matter, whether or not presented for review.'" *Coleman v.*

Tenn. Bd. of Parole, No. M2016-00410-COA-R3-CV, 2016 WL 6248027, at *3 (Tenn. Ct. App. Oct. 25, 2016) (quoting Tenn. R. App. P. 13(b)). “Lack of appellate jurisdiction cannot be waived.” *Ingram v. Wasson*, 379 S.W.3d 227, 237 (Tenn. Ct. App. 2011).

“Unless an appeal from an interlocutory order is provided by the rules or by statute, appellate courts have jurisdiction over final judgments only.” *Bayberry Assocs. v. Jones*, 783 S.W.2d 553, 559 (Tenn. 1990). A final judgment resolves all issues and leaves “nothing else for the trial court to do.” *In re Estate of Henderson*, 121 S.W.3d 643, 645 (Tenn. 2003) (quoting *State ex rel. McAllister v. Goode*, 968 S.W.2d 834, 840 (Tenn. Ct. App. 1997)). An “order that adjudicates fewer than all of the claims, rights, or liabilities of all the parties is not final[.]” *Id.*

“A judgment of contempt fixing punishment is a final judgment from which an appeal will lie.” *Hall v. Hall*, 772 S.W.2d 432, 436 (Tenn. Ct. App. 1989) (citing *State v. Green*, 689 S.W.2d 189 (Tenn. Cr. App. 1984)). Here, however, the trial court’s order never states whether it found Husband in contempt. The six-page order analyzes several issues regarding military retirement pay, but it never once mentions the word contempt. Thus, it appears to this Court that the trial court has not fully resolved Wife’s petition, which was, after all, one for contempt. We also note that the trial court failed to resolve Wife’s request for attorney fees. “This Court has concluded on several occasions that an order that fails to address an outstanding request for attorney’s fees is not final.” *E Sols. for Buildings, LLC v. Knestrick Contractor, Inc.*, No. M2017-00732-COA-R3-CV, 2018 WL 1831116, at *2 (Tenn. Ct. App. Apr. 17, 2018) (quoting *City of Jackson v. Hersh*, No. W2008-02360-COA-R3-CV, 2009 WL 2601380, at *4 (Tenn. Ct. App. Aug. 25, 2009)). In the absence of a final judgment, this Court lacks jurisdiction to consider the appeal.

III. CONCLUSION

For the aforementioned reasons, this appeal is hereby dismissed. Costs of this appeal are taxed to the appellant, Victor Lee Hyatt, for which execution may issue if necessary.

CARMA DENNIS MCGEE, JUDGE