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IN THE COURT OF APPEALS OF INDIANA

MARK S. PRIEST,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A04-0612-CV-709
	)	
DENISE PRIEST,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D02-0408-DR-00766

DECEMBER 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Mark S. Priest ("Mark") attempts to appeal from the trial court's property distribution decree. Plaintiff-Appellee Denise Priest ("Denise") cross appeals. We dismiss Mark's appeal and affirm the trial court's decree.

ISSUES

The following issues are dispositive:

I. Whether Mark's appeal should be dismissed because he failed to comply with the Indiana Rules of Appellate Procedure.

II. Whether the trial court abused its discretion in not addressing certain marital debts.

DISCUSSION AND DECISION

I. DISMISSAL

The dissolution of Mark and Denise's marriage was initially heard by a Master Commissioner. The Master Commissioner made findings of fact and conclusions of law, which were approved and entered as a final judgment on June 7, 2006. Mark filed a motion to reconsider on June 28, 2006. On September 11, 2006, the trial court appeared to rule upon that motion but granted it only to the extent of ordering Denise to transfer title to three vehicles to Mark.[1] The motion was in all other respects denied. On October 11, 2007, Mark filed a "Notice of Intent to Appeal." (Emphasis supplied).

[1] The September 11, 2006 entry is not contained in the Appellant's Appendix.

Mark's "Notice of Intent to Appeal" does not satisfy the requirements of Indiana Rule of Appellate Procedure 9(F). Subsection F specifies that the Notice of Appeal must contain several things, and Mark's filing contains none of these required items. It states merely:

> Comes now the Respondent Mark S. Priest and notifies all parties of his intent to appeal the Final Judgment in this matter.
>
> WHEREFORE, Respondent Mark S. Priest files his Notice of Intent to Appeal.

Appellant's App. at 94.

Mark has never filed an appropriate or cognizable Notice of Appeal so as to initiate this purported appeal. For this reason alone, this purported appeal is subject to dismissal.

Even if the "Notice of Intent to Appeal" was construed to be the Notice of Appeal required by the Appellate Rules, it was filed beyond the thirty-day period permitted by App.R. 9(A). In this regard, we note that "[i]t has long been held that the time for appeal is not extended by. . . motions to reconsider." Strate v. Strate, 269 N.E.2d 568, 569 (Ind. Ct. App. 1971) (citations omitted).

Furthermore, Indiana Rule of Trial Procedure 53.4 specifically provides that no such reconsideration shall "extend the time for any further required or permitted action, motion, or proceedings under these rules." Such motions to reconsider are appropriately filed and ruled upon only prior to entry of final judgment. See Hubbard v. Hubbard, 690 N.E.2d 1219 (Ind. Ct. App. 1998).

Additionally, it is clear that the trial court did not consider the motion to reconsider to be in lieu of or the equivalent of a motion to correct error, nor did Mark request that the court, in the alternative, do so. In any event, under the circumstances of this case, we are of the view that the trial court was not compelled to treat the motion to reconsider as a motion to correct error. This case differs from Hubbard, wherein the Appellant filed a motion to reconsider after entry of a final judgment but requested in the alternative that if the court determined that it could not reconsider the judgment, the motion be treated as a motion to correct error.

According to the September 11, 2006 approved Findings and Conclusions, which, as noted, are not contained in the record before us but which are included in Mark's Case Summary filed with this Court, the trial court specified that it had "reviewed [Mark's] motion to reconsider" and entered its findings with respect to the three vehicles.

Even if the motion to reconsider were considered to be a motion to correct error, the court's ruling thereon was in effect a denial of the motion. The only provision of the ruling was to order Denise to transfer title to the three vehicles to Mark. This was nothing more than a directive to Denise to take the steps necessary to effect the previous provision of the final judgment setting those vehicles over to Mark. It was merely a follow-up instruction to Denise, which, in the event of non-compliance, would subject her to contempt. See Dawson v. Dawson, 800 N.E.2d 1000 (Ind. Ct. App. 2003). That order was not an impermissible modification

prohibited by Ind. Code § 31-15-7-9.1. See Bitner v. Hull, 695 N.E.2d 181 (Ind. Ct. App. 1998).

There is yet another troubling aspect to this case which originated with this Court's June 22, 2007 order striking Mark's initial appellant's brief "due to its inflammatory and scandalous language." Mark was granted leave to file an "Amended Appellant's Brief that removes all scandalous and vituperative language . . . ." Mark did file a "revised" brief but that filing reflects an inability or unwillingness to understand or comply with the applicable appellate rules, the commonly accepted principles of appropriate and responsible advocacy, and most clearly, with the prior specific order of this Court.

In her Appellee's brief, Denise appropriately and accurately sets forth several blatant examples of Appellant's recalcitrance and obstinacy. The following example is demonstrative. In his initial brief Mark wrote, "[t]he Trial Court exhibited an egregious prejudice in withholding its inevitable decision . . . . The Trial Court is bound to have known better from the outset." (Appellant's Brief at 16). In his "revised" brief he says, "[t]he Trial Court exhibited prejudice in withholding its inevitable decision . . . . The Trial Court is bound to have known better from the outset." ("Revised" Appellant's Brief at 16). The briefs reflect unmistakable allegations of collusion between opposing trial counsel and the trial court, allegations that the trial court ignored the law and "went to a logical miasma," and a claim that the court had a pre-disposition to rule for Denise. See "Revised" Appellant's Brief at 15.

Mark's "Revised" Brief is hereby stricken, and, for the various reasons stated, this appeal is hereby dismissed with prejudice.

II. PROPRIETY OF THE COURT'S FINDINGS AND CONCLUSIONS

There remains, however, the matter of the issue presented by Denise upon her cross-appeal. We hold that this issue is not lost by virtue of our dismissal of Mark's appeal. See generally 4 C.J.S, Appeal and Error, § 21

Denise claims that the trial court erred in failing to include a $2500 debt owed to her brother as a liability in considering distributable assets of the marital pot. Mark admitted that he had borrowed that amount from Denise's brother and had no problem with paying one-half of that debt because the amount was used to make mortgage payments on the residence in order to save it from foreclosure. In addition, Denise asserts that the court erred in directing Mark to reimburse her for only one-half of the $7,000 she paid their son upon a loan made to Mark.

Although the trial court found that neither Denise's brother nor their son had standing in the dissolution proceeding to assert debts owed to each of them, the court did order Mark to pay Denise one-half of the amount she paid their son on his debt. We do not find this to be an abuse of discretion. Furthermore, we conclude that one-half of the $2500 debt owed to Denise's brother is de minimus in the context of the entire case.[2]

[2] To the extent that there are undischarged debts remaining unpaid to Denise's brother and/or their son, as creditors they are at liberty to proceed with a collection effort or efforts against either or both of the parties to the dissolution.

CONCLUSION

The appeal by Mark Priest is hereby dismissed and the judgment of the trial court is in all respects affirmed.

SHARPNACK, J., and BAILEY, J., concur.