IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 20, 2013 Session

MARY ANN PEREIRA BROWN
v.
DWAIN ALLEN BROWN

Appeal from the Chancery Court of Montgomery County
No. 995030063 Laurence M. McMillan, Chancellor

No. M2012-02084-COA-R3-CV - Filed March 13, 2014

This appeal involves the grant of a Rule 60.02 motion to modify a default divorce decree entered nearly eight years prior. The husband filed a Tenn. R. Civ. P. 60.02 motion seeking relief from the parties' divorce decree; he argued primarily that the provision pertaining to his retirement benefits was inequitable. The trial court initially denied the motion, and the husband filed a timely notice of appeal. Almost two years later, the husband voluntarily dismissed his appeal. The trial court then entered an order setting aside its prior denial of the husband's Rule 60.02 motion, held an evidentiary hearing on the motion, and eventually entered an order granting the husband's Rule 60.02 motion. The wife now appeals. We hold that the effect of the dismissal of the earlier appeal was to affirm the trial court's denial of the husband's Rule 60.02 motion, so the trial court was precluded under the law of the case doctrine from reconsidering its earlier denial of the Rule 60.02 motion. Consequently, we vacate the trial court's order setting aside its prior denial of the husband's Rule 60.02 motion, as well as the order granting the husband the relief requested.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court is Vacated

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which ALAN E. HIGHERS, P.J. W.S., and DAVID R. FARMER, J., joined.

W. Michael Morgan, Clarksville, Tennessee, for Plaintiff/Appellant Mary Ann Pereira Brown

Patricia A. Rust, Clarksville, Tennessee, for Defendant/Appellee Dwain Allen Brown

OPINION

FACTS AND PROCEEDINGS BELOW

This is the second appeal filed in this matter. Defendant/Appellee Dwain Allen Brown ("Husband") and Plaintiff/Appellant Mary Ann Pereira Brown ("Wife") married in October 1987. In 1976, prior to the parties' marriage, Husband enlisted in the Army; he served in the Army throughout their marriage, for a total of 28 years.

After approximately 12 years of marriage, Wife filed divorce proceedings in the Chancery Court of Montgomery County, Tennessee. Husband apparently received Wife's petition for divorce while he was stationed in Texas. He chose not to engage an attorney and filed no response to Wife's petition.

In May 1999, the Chancery Court entered a default decree in the parties' divorce. A few days later, again while Husband was stationed in Texas, he received in the mail the default divorce decree. The default divorce decree ordered Husband to pay Wife $500 per month in alimony; upon Husband's retirement from the military, the alimony was to cease and Wife would instead receive 50% of Husband's miliary retirement pay. Husband again chose not to consult an attorney and took no action as to the default divorce decree. Neither party appealed the May 1999 decree.

In 2001, the parties reconciled. Eventually they began living together again, though they never remarried. It appears Husband continued to pay Wife alimony after the parties reconciled and were living together. In August 2004, Husband retired from the Army and stopped paying Wife the alimony required in the parties' divorce decree. Within 60 days after Husband retired, Wife began receiving half of his retirement benefits, by automatic payments. Neither party consulted an attorney during this time and the payments continued, apparently without controversy.

In 2005, the parties apparently had a significant disagreement. As a result, Husband had to leave the parties' home. The automatic payments to Wife of half of Husband's retirement benefits continued unabated.

After that, Husband became restive and dissatisfied. In August 2006, he finally consulted an attorney. Now represented by counsel, Husband filed a lawsuit against Wife in the Montgomery County Circuit Court, based at least in part on events that occurred while the parties were divorced but living together. The Circuit Court lawsuit asserted, among other things, claims based on unjust enrichment; Husband asked the Circuit Court to declare a constructive trust.

In March 2007, while the Circuit Court lawsuit was pending, Husband filed a motion in the Chancery Court pursuant to Rule 60.02 of the Tennessee Rules of Civil Procedure, asking the Chancery Court to set aside the divorce decree it had entered almost eight years earlier. The Rule 60.02 motion asserted that the provision in the divorce decree setting the percentage of retirement benefits to be paid to Wife was inequitable because, at the time of the parties' divorce, they had been married only 12 years and Husband's retirement benefits were earned over a period of 28 years of military service.

In response to Husband's motion, Wife filed an "Answer and Counterclaim." In her response, Wife asked the trial court to dismiss Husband's Rule 60.02 motion. Wife's response also asserted a "counterclaim" that stated that, if the Chancery Court chose to grant Husband's Rule 60.02 motion, Wife wanted the alimony reinstated to make up for the loss of the share of Husband's retirement benefits awarded to her in the original divorce decree. The "counterclaim" stated in part:

> 11.02 If former husband is granted the relief he requests in the March 20th, March 29th, and September 17th motions, former wife will be in need of alimony in an amount not less than the share of military retired pay she is presently receiving.
>
> 11.03 If former husband is granted the relief he requests in the March 20th, March 29th, and September 17th motions, former husband will have the ability to pay the alimony needed by former wife.
>
> . . .
>
> 11.06 Former wife has incurred and will continue to incur attorney's fees and other expenses and costs resulting from this action, the same are a necessity, and she is without sufficient resources to pay the same.
>
> FORMER WIFE'S DEMANDS FOR JUDGMENT ARE AS FOLLOWS:
>
> A. *If former husband is granted the relief he requests in the March 20th, March 29th, and September 17th motions*, that she be awarded alimony in an amount not less than: the share of miliary retired pay she is presently receiving less the amount of the share of the military retired pay to which the Court deems she is entitled.
>
> B. That she be awarded attorney's fees, the cost of this action (discretionary and otherwise), and any other litigation expenses.

C. That former wife be awarded such other and further relief as justice may require.

(Emphasis in original).

On December 7, 2007, the Chancery Court held a hearing on Husband's Rule 60.02 motion as well as other motions. The appellate record does not contain a transcript of this hearing. On January 3, 2008, the Chancery Court entered an order dismissing all of Husband's motions, including his Rule 60.02 motion, "upon the statements and argument of counsel for each party, and upon the entire record of this action, and after due consideration of the same." The order did not award attorney fees to either party.

On January 31, 2008, Husband filed a timely Rule 3 notice of appeal to this Court, appealing the Chancery Court's denial of his Rule 60.02 motion. He also filed an appropriate cash appeal bond.

In the wake of Husband's appeal of the Chancery Court's denial of his motions, the parties engaged in a series of disputes regarding a statement of the evidence for the hearing on the motions.[1] For reasons that are not apparent from the record, the Chancery Court permitted the parties to engage in discovery. Also for reasons that are not apparent in the record, on February 13, 2009, the Chancery Court entered an order scheduling a trial. Meanwhile, Husband's appeal to this Court remained pending.

The appellate record indicates that the Chancery Court held some sort of proceeding on Husband's Rule 60.02 motion on April 25, 2009. However, the appellate record does not indicate what took place at this proceeding.

To further complicate matters, on July 17, 2009, the Circuit Court in which Husband filed his unjust enrichment and constructive trust lawsuit - apparently acting *sua sponte* - entered an order "consolidating" the Circuit Court lawsuit with the proceedings in the Chancery Court. The order specified that future proceedings would be heard in the Chancery Court. More discovery in the Chancery Court ensued.

On November 24, 2009, this Court entered an Order dismissing Husband's appeal of the Chancery Court's denial of his Rule 60.02 motion. This Court's order stated: "Upon the

[1]The appellate record does not include a statement of the evidence approved by the trial court regarding the December 2007 hearing. ***See*** Tenn. R. App. P. 24(f).

unopposed motion[2] of the appellant [Husband] and pursuant to Tenn. R. App. P. 15(a),[3] this appeal is hereby dismissed. The appellant and his surety are taxed with the costs for which execution may issue."

After the dismissal of Husband's appeal, the record indicates that the Chancery Court resumed the scheduled "trial" that apparently began on April 25, 2009. It appears the matter was not resolved at that time and a second hearing, a continuation of the April 2009 proceeding, was held on January 15, 2010. The appellate record does not reflect what occurred at either of these proceedings.

On February 25, 2010, the Chancery Court entered a cursory order. It stated: "The cause to be heard before Laurence M. McMillan, Chancellor, on two separate days, April 25, 2009 and January 15, 2010 and during these two separate hearings the Court stated the Order of January 3, 2008 should be set aside and a full hearing conducted on [Husband's] Motions." The order then stated: "It is therefore ordered, adjudged and decreed the Order dismissing [Husband's] Motion entered January 3, 2008 is hereby set aside." (Bolding and some capitalization omitted).

The "full hearing" to which the Chancery Court referred in its February 25, 2010 order was held on November 9, 2010. After that, on September 23, 2011, the Chancery Court entered a Memorandum Opinion and Order, referring to the "trial on the merits" held on November 9, 2010. The Memorandum Opinion and Order included Findings of Fact and Conclusions of Law by the Chancery Court. The Order noted that Husband contended that he received insufficient notice of Wife's motion for default judgment but admitted that he received her divorce petition and the default divorce decree within a few days after it was entered in May 1999 and that he took no action for approximately eight years. Despite all of this, the Chancery Court went on to hold that the percentage of Husband's retirement benefits awarded to Wife in the divorce decree was inequitable. The Chancery Court then held that the 1999 divorce decree "should be set aside and modified to award wife 20.68% of

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[2]The record does not contain a copy of the motion Husband filed in the appellate court.

[3] Rule 15(a) of the Tennessee Rules of Appellate Procedure states as follows:

> (a) Where to File Dismissal. An appeal may be dismissed by filing in the appellate court a stipulation for dismissal signed by all parties or on motion and notice by appellant. Any party wanting to litigate appellate issues despite dismissal of the original appeal must provide notice of such intent in a response to the motion to dismiss. A copy of the dismissal shall be filed by the clerk of the appellate court with the clerk of the trial court. If the record has not been filed with the clerk of the appellate court, the clerk of the trial court shall file a copy of the appeal bond with the clerk of the appellate court.

Tenn. R. App. P. 15(a) (2013).

husband's retired pay."[4] The Chancery Court went on to hold that, "due to husband's delay in seeking relief from this court, the modification of the Final Decree should be applied prospective[ly] only beginning October 2011."

On November 14, 2011, Wife filed a motion asking the Chancery Court to grant a new trial, alter or amend its order, or set aside and vacate its order. In the motion, Wife argued that the Chancery Court was without subject matter jurisdiction to enter the order, in light of Husband's first appeal and the appellate court's dismissal of Husband's appeal. Husband disputed Wife's argument and filed a motion asking the Chancery Court to award him attorney fees. On August 22, 2012, the Chancery Court entered an order summarily denying "all Motions by both parties. . . ." Wife then filed a timely notice of appeal.

On appeal, this Court entered a show cause order on January 17, 2013, directing the parties to show cause why the appellate court should not hold that the order appealed was not a final and appealable order, in light of the Chancery Court's failure to address the "counterclaim" in Wife's response to Husband's Rule 60.02 motion or the "consolidated" claims in Husband's Circuit Court lawsuit. Subsequently, Wife provided an October 13, 2011 order demonstrating that Husband's Circuit Court claims had been dismissed, and the Chancery Court entered an order on June 7, 2013 dismissing Wife's "counterclaim." After the parties supplemented the appellate record to include these orders, the appeal proceeded.

ISSUES ON APPEAL AND STANDARD OF REVIEW

On appeal, Wife contends that the Chancery Court abused its discretion in granting Husband's Rule 60.02 motion and in modifying the retirement pay portion of the parties' divorce decree. Wife contends that Husband's delay in seeking relief was unreasonable, willful, and resulted in prejudice to her. In response, Husband argues that the Chancery Court's modification of the divorce decree was warranted because Wife failed to follow the applicable procedural rules.

At oral argument in this appeal, this Court *sua sponte* raised the issue of the Chancery Court's subject matter jurisdiction to issue the orders that are the subject of this appeal. At oral argument, the parties were directed to file supplemental briefs on this issue.

As to substantive issues raised on appeal, we review a motion for relief from a judgment pursuant to Rule 60.02 under an abuse of discretion standard. ***Rogers v. Estate of Russell*,**

[4]We presume for purposes of this appeal that the Chancery Court intended to set aside only the portion of the divorce decree setting forth the percentage of Husband's retirement benefits that Wife would receive.

50 S.W.3d 441, 444 (Tenn. Ct. App. 2001). A trial court abuses its discretion only when it "applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining." ***Beason v. Beason***, 120 S.W.3d 833, 839 (Tenn. Ct. App. 2003) (quoting ***State v. Shirley***, 6 S.W.3d 243, 247 (Tenn. 1999)).

Rule 13(b) of the Tennessee Rules of Appellate Procedure provides that appellate review "generally will extend only to those issues presented for review." Tenn. R. App. P. 13(b) (2013). It adds, however, that the appellate court is to "also consider whether the trial and appellate court have jurisdiction over the subject matter, whether or not presented for review." Tenn. R. App. P. 13(b). Whether a court has jurisdiction is a question of law, and thus, on appeal, the issue is reviewed de novo with no presumption of correctness given to the ruling of the lower court. ***Button v. Waite***, 208 S.W.3d 366, 369 (Tenn. 2006); ***McQuade v. McQuade***, No. M2010-00069-COA-R3-CV, 2010 WL 4940386, at *4 (Tenn. Ct. App. Nov. 30, 2010).

ANALYSIS

In this case, we perceive that the question of whether the Chancery Court had jurisdiction is determinative of the appeal, so we address it at the outset. ***See*** Tenn. R. App. P. 13(b); ***Osborn v. Marr***, 127 S.W.3d 737, 739 (Tenn. 2004). Subject matter jurisdiction implicates a court's lawful authority to adjudicate a particular case or controversy. ***See Osborn***, 127 S.W.3d at 739 (citing ***Northland Ins. Co. v. State***, 33 S.W.3d 727, 729 (Tenn. 2000)). In the absence of subject matter jurisdiction, a court cannot enter a valid, enforceable order. ***Earls v. Mendoza***, No. W2010-01878-COA-R3-CV, 2011 WL 3481007, at *5 (Tenn. Ct. App. Aug. 10, 2011). Therefore, subject matter jurisdiction may be raised at any time by the parties or by the appellate court, *sua sponte* on appeal. ***Id.*** (citing ***County of Shelby v. City of Memphis***, 365 S.W.2d 291, 292 (Tenn. 1963); ***McQuade***, 2010 WL 4940386, at *4). When subject matter jurisdiction is questioned, the court must first determine the nature of the case and then ascertain whether the Tennessee Constitution, the Tennessee General Assembly, or the common law have conferred on it the power to adjudicate the case before it. ***Staats v. McKinnon***, 206 S.W.3d 532, 542 (Tenn. Ct. App. 2006); ***McQuade***, 2010 WL 4940386, at *4.

In her supplemental brief, Wife argues that the Chancery Court did not have subject matter jurisdiction to enter either its order setting aside the January 3, 2008 denial of Husband's Rule 60.02 motion or its September 23, 2011 order modifying the parties' divorce decree. Wife contends that the Chancery Court was without jurisdiction because, when the April 25, 2009 hearing was held, Husband's first appeal was still pending; Husband did not file a motion to voluntarily dismiss his first appeal until shortly before the appellate court entered its November 2009 order of dismissal.

In his supplemental brief, Husband argues that because his first appeal was voluntarily dismissed prior to the Chancery Court's February 25, 2010 order setting aside the January 3, 2008 order denying Husband's Rule 60.02 motion, the Chancery Court maintained continuing jurisdiction over the matter. Husband appears to contend that the Chancery Court retained continuing jurisdiction because, had he pursued his first appeal, the case would have been remanded back to the Chancery Court as an appeal from a non-final judgment because Wife's "counterclaim" remained pending in the Chancery Court and was not adjudicated or dismissed until June 7, 2013.

We first dispense with Husband's argument that his first appeal was from a non-final judgment because of Wife's "counterclaim" filed in response to Husband's Rule 60.02 motion. In viewing the pleading filed by Wife in response to Husband's Rule 60.02 motion, we "look[] to the substance, and not to form, when determining whether a pleading is an answer or a counterclaim." ***Williams v. Coffey,*** No. E2007-01476-COA-R3-CV, 2008 WL 1788060, at *5 (Tenn. Ct. App. Apr. 21, 2008) (citing ***American Actuaries, Inc. v. Mid Amer. Diversified Serv., Inc.***, Shelby Equity No. 10, 1988 WL 31964, at *3 (Tenn. Ct. App. Apr. 7, 1988); ***Rule v. Bell***, 617 S.W.2d 885, 887 (Tenn. 1981)). While Wife's responsive pleading was denominated as an "Answer and Counterclaim," clearly it was simply a response to Husband's Rule 60.02 motion. There was no complaint pending in the Chancery Court to which a party would file either an answer or a counterclaim. Moreover, Wife's "counterclaim" was contingent; it asked the Chancery Court to reinstate her alimony only "*if former husband is granted the relief he requests.*" (Emphasis in original). The January 3, 2008 order appealed by Husband in the first appeal denied Husband's Rule 60.02 motion, so the request for relief contained in Wife's responsive pleading was mooted. The Chancery Court's failure to expressly address Wife's response to Husband's motion did not mean that Husband's first appeal was from a non-final judgment.[5] Because the Chancery Court's denial of Husband's Rule 60.02 motion in January 2008 was a final judgment, there was nothing to "consolidate" with Husband's Circuit Court lawsuit; rather, the separate Circuit Court lawsuit was simply transferred to the Chancery Court and likewise did not mean that Husband's first appeal was from a non-final judgment.

We next address the Chancery Court proceedings while Husband's first appeal was pending. In his first appeal, the record indicates that Husband filed a timely notice of appeal and posted a cash appeal bond, thus perfecting the appeal. ***First Am. Trust Co. v.***

[5]In this Court's January 17, 2013 show cause order entered in this second appeal, the Court did not determine whether the Chancery Court's failure to expressly address Wife's "counterclaim" meant that the appeal was from a non-final judgment; rather, it held that, based on the appellate record, the Court could not determine whether the trial court entered a final, appealable judgment. The Chancery Court later entered an order expressly dismissing Wife's "counterclaim," and the appellate record was supplemented to include that order. This made it unnecessary for this Court to address the issue at that time.

Franklin-Murray Dev. Co., L.P., 59 S.W.3d 135, 141 n. 7 (Tenn. Ct. App. 2001) ("Perfecting an appeal consists of filing a timely notice of appeal and either an appeal bond or affidavit of indigence.") (citing ***Blue Cross-Blue Shield of Tenn. v. Eddins***, 516 S.W.2d 76, 77 (Tenn. 1974) (holding that an appeal is perfected when the appeal bond is filed). Once Husband perfected his appeal from the Chancery Court's denial of his Rule 60.02 motion, the Chancery Court lost jurisdiction to act further on the matter that was the subject of the appeal, absent leave from the appellate court.[6] "[O]nce a party perfects an appeal from a trial court's final judgment, the trial court effectively loses its authority to act in the case without leave of the appellate court – perfecting an appeal vests jurisdiction over the case in the appropriate appellate court." ***Malmquist v. Malmquist***, 415 S.W.3d 826, 837 (Tenn. Ct. App. 2011); ***First Am. Trust Co.***, 59 S.W.3d at 141 ("It should now be plain that once a party perfects an appeal from a trial court's final judgment, the trial court effectively loses its authority to act in the case without leave of the appellate court.") (footnote omitted)); ***Spann v. Abraham***, 36 S.W.3d 452, 461 (Tenn. Ct. App. 1999). ***See also In re M.J.H.***, No. W2012-01281-COA-R3-JV, 2013 WL 3227044, at *13 (Tenn. Ct. App. June 25, 2013).

Immediately after Husband filed his notice of appeal, the initial skirmishing was over the statement of the evidence for the hearing on the parties' motions. This, of course, was appropriate, as the trial court is the arbiter of the statement of the evidence for its proceedings. Tenn. R. App. P. 24(f). After that, however, the proceedings in the Chancery Court went awry; the Chancery Court apparently permitted discovery related to Husband's Rule 60 motion and no statement of the evidence for Husband's appeal was ever finalized. As the above authorities indicate, after Husband perfected his appeal, under the facts of this case, the Chancery Court was without jurisdiction to conduct the proceedings that went beyond its consideration of a statement of the evidence for Husband's appeal. ***See Spence v. Allstate Ins. Co.,*** 883 S.W.2d 586, 595 (Tenn. 1994) (trial court "has no jurisdiction to consider a [Rule 60] motion after a notice of appeal has been filed."); ***Born Again Church & Christian Outreach Ministries, Inc. v. Myler Church Bldg. Sys. of the Midsouth, Inc.***, 266 S.W.3d 421, 425 (Tenn. Ct. App. 2007) ("[O]nce the notice of appeal was filed, the jurisdiction of [the appellate] court attached, and, correlatively, the trial court lost jurisdiction."); ***see also State v. Peele,*** 58 S.W.3d 701, 704 (Tenn. 2001) ("After the trial court loses jurisdiction, generally it retains no power to amend a judgment."); ***State v. Irwin,*** 962 S.W.2d 477, 479 (Tenn. 1998).

We next address the effect of Husband's voluntary dismissal of his first appeal. Generally, the voluntary dismissal of an action pending in the trial court is a dismissal without prejudice; the action can be re-filed absent another bar such as a statute of limitations. Tenn. R. Civ. P.

[6] Nothing in the appellate record indicates that leave from the appellate court was either sought or granted.

41.01 (2013); ***Lacy v. Cox***, 152 S.W.3d 480, 484-85 (Tenn. 2004). In contrast, a voluntary dismissal of an appeal generally is *with* prejudice.[7] "[A]n appellant seeking to voluntarily dismiss its appeal is not entitled to a dismissal without prejudice." ***Jackson-Madison Cnty. Gen. Hosp. Dist. v. Tennessee Health Facilities Comm'n***, No. M1999-02804-COA-R3-CV, 2001 WL 1504745, at *4 (Tenn. Ct. App. Nov. 28, 2001) (citing ***Banks v. Kentucky Live Stock Ins. Co.***, 7 Tenn. Civ. App. (Higgins) 419, 429 (Tenn. 1916)); ***see also Rayburn v. Bd. of Prof'l Responsibility of the Supreme Court***, 300 S.W.3d 654, 662 (Tenn. 2009) (Tenn. R. App. P. 15(a) does not include entitlement to dismissal without prejudice). "When an appellant voluntarily dismisses its appeal, the appellate court, at its option, may either affirm the lower court's judgment or simply dismiss the appeal, thereby leaving the lower court's judgment in place and returning the parties to where they were before the appeal was filed." ***Jackson-Madison Cnty. Gen. Hosp. Dist.***, 2001 WL 1504745, at *4 (citing ***Banks***, 7 Tenn. Civ. App. (Higgins) at 429; ***Fort v. Fort***, 101 S.W. 433, 436 (Tenn. 1907); ***Maskall v. Maskall***, 35 Tenn. (3 Sneed) 207, 208-09 (Tenn. 1855)). Thus, "[t]he effect of the dismissal of an appeal . . . is to affirm the judgment of the lower court." ***Fort***, 101 S.W. at 436.

Under the facts in this case, the effect of Husband's voluntary dismissal of his first appeal was to affirm the Chancery Court's denial of his Rule 60.02 motion. Consequently, because the appellate court had in effect affirmed the lower court's denial of Husband's Rule 60.02 motion, under the law of the case doctrine, the Chancery Court was precluded from reconsidering that decision.[8] ***Creech v. Addington,*** 281 S.W.3d 363, 383 (Tenn. 2009) ("Under the law of the case doctrine, an appellate court's decision on an issue of law is binding in later trials and appeals of the same case if the facts . . . are substantially the same as the facts in the first trial or appeal . . . [and] applies to issues that were actually before the appellate court in the first appeal and to issues that were necessarily decided by implication."); ***In re Estate of Boote,*** 265 S.W.3d 402 (Tenn. Ct. App. 2007); ***Ladd by Ladd v. Honda Motor Co., Ltd.,*** 939 S.W.2d 83, 90 (Tenn. Ct. App.1996) ("Under the law of the case doctrine, an appellate court's decision on an issue of law becomes binding precedent to be followed in later trials and appeals of the same case involving the same issues and facts."). ***See also*** Robert

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[7] There are exceptions, such as a dismissal of the appeal because the appeal is from a non-final judgment.

[8] *Res judicata* is "closely related" to the law of the case doctrine. ***See Creech***, 281 S.W.3d at 383. The trial court in the case at bar was precluded from reconsidering its denial of Husband's Rule 60.02 motion under either doctrine. ***See Boatmen's Bank of Tenn. v. Dunlap***, No. 02A01-9607-CH-00166, 1997 WL 793507, at *8; 1997 Tenn. App. LEXIS 939, at *22-23 (Tenn. Ct. App. Dec. 30, 1997) (order denying Rule 60.02 motion is final order; second motion to set aside was barred by doctrine of *res judicata*) (citing ***Stacks v. Saunders***, 812 S.W.2d 587, 590 (Tenn. Ct. App. 1990); ***Lee v. Hall***, 790 S.W.2d 293, 294 (Tenn. Ct. App. 1990) (*res judicata* is "based on the public policy favoring finality in litigation and does not depend upon correctness or fairness, as long as the underlying judgment is valid.")).

Banks, Jr. and June F. Entman, Tennessee Civil Procedure § 12-3(d) (3rd ed. LexisNexis Matthew Bender) (Rule 60.02 "may not be used to seek reconsideration of denial of a prior post-judgment motion."). Therefore, regardless of the Chancery Court's conviction that the percentage of Husband's retirement allocated to Wife in the eight-year-old default divorce decree was inequitable, once Husband's first appeal was dismissed, the Chancery Court was precluded under the doctrine of law of the case from reconsidering its order denying Husband's Rule 60.02 motion. ***See Boote***, 265 S.W.3d at 413 (law of the case doctrine is intended "to promote finality and efficiency in litigation, to ensure consistent results in the same litigation, and to assure that lower courts follow appellate decisions.").

Under these circumstances, we are left little choice but to vacate all of the Chancery Court's orders pertaining to Husband's Rule 60.02 motion entered after January 3, 2008. All other issues raised on appeal are pretermitted by this decision.

CONCLUSION

The judgment of the trial court and all orders entered by the trial court after January 3, 2008 pertaining to the Rule 60.02 motion filed by Respondent/Appellee Dwain Allen Brown are vacated, as set forth in this Opinion. Costs on appeal are assessed against Respondent/Appellee Dwain Allen Brown, for which execution may issue if necessary.

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HOLLY M. KIRBY, JUDGE