

IN THE COURT OF APPEALS OF TENNESSEE

SHARON TRALECE JA'ANINI,)	C/A NO. 03A01-9509-CV-00320
)	HAMILTON COUNTY CIRCUIT COURT
Plaintiff-Appellee,)	
)	
)	
)	
v.)	HONORABLE SAMUEL H. PAYNE,
)	JUDGE
)	
)	
MICHAEL ZAKARIA JA'ANINI,)	
)	
Defendant-Appellant.)	AFFIRMED AND REMANDED

<p>FILED</p> <p>January 11, 1996</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>

PHILLIP C. LAWRENCE of POOLE, LAWRENCE, THORNBURY, STANLEY & MORGAN, Chattanooga, for Appellant

JAY KU, Chattanooga, for Appellee

O P I N I O N

Susano, J.

This is a divorce case. The appellant challenges the jurisdiction of the trial court to enter an order after the final divorce judgment was entered on January 24, 1995. He apparently contends that relief was not appropriate under either Tenn. R. Civ. P. 59 or 60. We hold that the trial court had jurisdiction under Tenn. R. Civ. P. 59 to grant the relief attacked on this appeal.

The record before us is skimpy. It is confined to the pleadings and orders that we will mention later in this opinion; but there is a sufficient record to reach the issue raised by the appellant.

On April 11, 1994, the trial court entered a judgment divorcing the parties, granting other relief not pertinent on this appeal, and referring this matter to a special master "to determine the assets that the parties own, the liabilities that the parties owe, the value of the assets, and a proposed division of said assets and liabilities." On January 24, 1995, and after the special master had filed his report, the trial court entered its "Final Judgment" in which, among other things, it awarded the appellant a subdivision lot in Hamilton County. This piece of property was apparently the site of the parties' marital residence.

On February 17, 1995, and within 30 days of the entry of the final judgment, the appellee, plaintiff below, filed a pleading that she denominated "Motion for Reimbursement." In her motion, the appellee sought reimbursement from the appellant for

"monies . . . borrowed to keep the residence from going into foreclosure."

Before an order was entered on the appellee's "Motion for Reimbursement," she filed another motion she designated as a "Motion for Equitable Relief." This second motion was filed on March 7, 1995. It cited Tenn. R. Civ. P. 60.02 as authority for its filing and asked for the identical relief sought by the "Motion for Reimbursement."

On March 17, 1995, the trial court entered an order denying the "Motion for Reimbursement"; but on May 15, 1995, it entered an order "on [appellee's] Motion for Equitable Relief" and awarded the appellee \$2,088. In the preamble to the latter order the court noted "that [appellant] has failed to keep the mortgage current on the parties' real estate and [appellee] has paid the sum of \$2,088 to bring the said payments current and to prevent foreclosure."

The appellant argues that the "Motion for Equitable Relief" is not a proper motion under Tenn. R. Civ. P. 60. We do not find it necessary to reach this issue, because we agree with the appellant's statement in his brief that

[t]he "Motion for Equitable Relief" is an obvious attempt to obtain an alteration or amendment of the final judgment of divorce,
. . .

In other words, the appellee sought, by her "Motion for Equitable Relief," to alter or amend the final judgment, i.e., she asked for relief under Tenn. R. Civ. P. 59.04.

Within 30 days of the entry of the final divorce judgment, the appellee filed what amounted to a Tenn. R. Civ. P. 59.04 motion to alter or amend. The fact that she denominated it as a "Motion for Reimbursement" and did not specifically refer to Rule 59.04 is immaterial. In determining the true nature of pleadings, courts look to their substance and not their form. *Cf. Aaron v. Aaron*, 909 S.W.2d 408, 412 (Tenn. 1995).

Before the appellee's Rule 59.04 motion was formally acted upon by the order entered March 17, 1995, the appellee filed her motion styled "Motion for Equitable Relief." The fact that the latter motion referred to Rule 60.02 is also immaterial. It was within the prerogative of the trial court to focus on the relief sought and ignore the procedural rule relied upon by the appellee. We cannot be sure that this is what the trial judge did. He may have thought that Rule 60.02 was a proper procedural foundation for the relief that he found to be appropriate. What the trial court thought in this regard is also essentially immaterial; what is important is that when the "Motion for Equitable Relief" was filed, the trial court still had jurisdiction of this matter under Tenn. R. Civ. P. 59. He had not then formally acted on the first motion by the entry of an order. This matter was then still within the "bosom" of the court. The trial court could properly treat the second motion as merely an amendment or extension of the first motion, which first motion was clearly filed in a timely manner.

It is not clear from the record before us why the trial court denied the "Motion for Reimbursement" and subsequently granted the "Motion for Equitable Relief," since they both sought the same relief. Each of the parties argues facts that are not in the record before us touching on this question; but we are limited to the record in our consideration of this matter. **State v. Bennett**, 798 S.W.2d 783, 789 (Tenn. Cr. App. 1990). The only real issue before us is whether the court had jurisdiction, under Tenn. R. Civ. P. 59, to entertain the motion on which relief was granted. We hold that it did.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the appellant. This case is remanded for such further action as may be appropriate consistent with this opinion.

Charles D. Susano, Jr., J.

CONCUR:

Houston M. Goddard, P.J.

Herschel P. Franks, J.