

RENDERED: OCTOBER 25, 2024; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2023-CA-1112-MR

TROY ALLEN HORTON

APPELLANT

v. APPEAL FROM BRECKINRIDGE CIRCUIT COURT  
HONORABLE KENNETH H. GOFF, II, JUDGE  
ACTION NO. 23-CI-00045

TAREENA JOY HORTON

APPELLEE

OPINION  
AFFIRMING

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BEFORE: THOMPSON, CHIEF JUDGE; ACREE AND CALDWELL, JUDGES.

THOMPSON, CHIEF JUDGE: Troy Allen Horton (“Appellant”) appeals from an order of the Breckinridge Circuit Court denying his motion to alter, amend, or vacate a decree of dissolution of marriage previously entered in Jackson Circuit Court. Appellant argues that the Jackson Circuit Court failed to apply Kentucky Revised Statutes (“KRS”) 403.190 to the evidence and testimony taken at the final hearing. After careful review, we conclude that Appellant’s motion to alter, amend, or vacate the decree of dissolution was not timely, as it was not filed within

10 days of entry of the decree as required by Kentucky Rules of Civil Procedure (“CR”) 59.05. Accordingly, we find no error and affirm the order on appeal.

### **FACTS AND PROCEDURAL HISTORY**

Tareena Joy Horton (“Appellee”) filed a petition for dissolution of marriage and motion for child custody in Jackson Circuit Court. Her husband, Appellant, was served but did not attend the custody hearing noticed for February 11, 2022.

The matter proceeded in Jackson Circuit Court, with a final hearing conducted on May 17, 2022. Appellant was not present at the hearing and was not represented by counsel. The Jackson Circuit Court rendered its findings of fact, conclusions of law, and decree of dissolution on July 27, 2022.<sup>1</sup>

Various motions were filed, and hearings conducted, over the months that followed the entry of the decree. On October 3, 2022, the Jackson Circuit Court rendered an order finding that Appellant failed to abide by the decree, failed to cooperate on the sale of properties as ordered by the court, and failed to hand over a tractor to Appellee as so ordered. In order to facilitate the sale of certain real property, Appellee moved to transfer venue to Breckinridge County where the property was situated. On March 14, 2023, the Jackson Circuit Court entered an order transferring the action to the Breckinridge Circuit Court.

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<sup>1</sup> The Jackson Circuit Court proceedings are found at 20-CI-00011.

On June 14, 2023, Appellant filed a motion in Breckinridge Circuit Court to alter, amend, or vacate the decree of dissolution. In support of the motion, he argued that through mistake or inadvertence, the decree improperly characterized certain real property as marital. Appellant's motion cited deeds which predated the marriage as evidence that the property was non-marital.

In adjudicating the motion to alter, amend, or vacate the decree, the Breckinridge Circuit Court found that Appellant failed to advise the court that the property was mortgaged prior to the parties' November 6, 2005 marriage. It also found that the property had been repeatedly mortgaged during the parties' marriage. Citing *Crawford v Crawford*, 358 S.W.3d 16 (Ky. App. 2011), the Breckinridge Circuit Court determined that the Jackson Circuit Court properly characterized the property in question as marital because marital funds were used to pay the various mortgages during the marriage.

The Breckinridge Circuit Court went on to note that Appellant did not attend the May 27, 2022 final hearing. It found that he never filed a verified disclosure statement asserting any property claims, and that the court had to rely solely on the testimony of Appellee as to when various properties were acquired, the nature and amount of improvements, and the refinancing and payment of various mortgages. Based on these findings, the court denied Appellant's motion to alter, amend, or vacate the decree on this issue. The court corrected what it

characterized as an obvious typographical error in the decree, and otherwise overruled any pending motions filed by Appellant. This appeal followed.

### **STANDARD OF REVIEW**

We review the denial of a motion to alter, amend, or vacate for abuse of discretion. *Ipock v. Ipock*, 403 S.W.3d 580, 583 (Ky. App. 2013).

### **ANALYSIS**

“A motion to alter or amend a judgment, or to vacate a judgment and enter a new one, shall be served not later than 10 days after entry of the final judgment.” CR 59.05. The Jackson Circuit Court’s findings of fact, conclusions of law, and decree of dissolution were entered on July 27, 2022. Per CR 59.05, Appellant’s motion to alter, amend, or vacate the findings of fact, conclusions of law, and decree should have been filed, if at all, no later than August 6, 2022. Appellant filed his motion to alter, amend, or vacate on June 14, 2023 – more than 10 months after the closing of the CR 59.05 filing window. As such, the motion was not timely.

In addition, orders denying CR 59.05 motions “are interlocutory, *i.e.*, non-final and non-appealable and cannot be made so by including the finality recitations.” *Tax Ease Lien Investments 1, LLC v. Brown*, 340 S.W.3d 99, 103 (Ky. App. 2011) (footnote omitted). While there are circumstances under which we may consider such an appeal as “properly taken from the final judgment that

was the subject of the CR 59.05 motion[,]” *id.* at n.5 (citation omitted), such circumstances are not present herein due to the months-long passage of time between the decree and the motion to alter, amend, or vacate. Allowing the motion to alter, amend, or vacate to relate back to the entry of the decree would render meaningless the requirement that an appeal from an order or judgment be brought within 30 days of its date of judgment. *See* Kentucky Rules of Appellate Procedure (“RAP”) 3(A)(1).

The order before us also corrected a typographical or clerical error in the findings of fact, conclusions of law, and decree of dissolution.<sup>2</sup> The correction was proper despite the passage of time, as such errors “may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.” CR 60.01.

### **CONCLUSION**

Appellant’s motion to alter, amend, or vacate the findings of fact, conclusions of law, and decree of dissolution was not timely, having been filed many months after the closing of the 10-day window for such a motion per CR 59.05. Though a lack of timeliness was not the basis for the Breckinridge Circuit Court’s denial of Appellant’s motion, we may affirm the ruling of the circuit court

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<sup>2</sup> The decree at paragraph 14 incorrectly referred to Petitioner/Appellee rather than Respondent/Appellant as being entitled to proceeds remaining after reimbursement and payoff of the mortgages, taxes, and costs of sale of certain real property.

for any reason reasonably supported by the record. *Emberton v. GMRI, Inc.*, 299 S.W.3d 565, 576 (Ky. 2009). Further, a motion to alter, amend, or vacate is interlocutory and not appealable, absent a limited exception which is not present herein. In lieu of dismissing Appellant's appeal because it was taken from an interlocutory and non-appealable order, and was not timely, we affirm the order on appeal because it properly corrected a clerical error. We find no abuse of discretion. *Ipock, supra*. For these reasons, we affirm the order of the Breckinridge Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

Jill Osborne Edwards  
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