

SUPREME COURT OF ALABAMA

Opinion of the Clerk No. 55

49 So. 3d 1170 (Ala. 2009) · Decided October 1, 2009

SUMMARY

The Clerk of the Alabama appellate courts addresses whether a filing fee is required when a respondent in a post-judgment custody-modification proceeding files a contempt motion alleging nonpayment of child support. The opinion concludes that the contempt motion constitutes a separate case filing under Rule 7, Alabama Rules of Judicial Administration, requiring a \$248 fee under Ala. Code § 12-19-71(a)(7), and overrules Opinions of the Clerk Nos. 37 and 44.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Esdale, Clerk
JURISDICTION	Alabama
DECIDED	October 1, 2009
DISPOSITION	other
PROCEDURAL POSTURE	The clerk issued an advisory opinion under Rule 7 of the Alabama Rules of Judicial Administration in response to a question submitted by a district judge concerning whether a filing fee is required for a contempt motion filed in response to a post-judgment custody-modification proceeding.
PRECEDENTIAL VALUE	published clerk's opinion

TOPICS

- family law procedure
- statutory interpretation
- civil procedure

PRACTICE AREAS

- family law
- civil procedure

QUESTIONS PRESENTED

- Whether a contempt motion alleging nonpayment of child support, filed in response to a pending post-judgment motion to modify custody, constitutes a separate filing or case requiring a docket fee under Rule 7 of the Alabama Rules of Judicial Administration.

2. Whether the applicable fee is the \$248 fee prescribed by § 12-19-71(a)(7), Alabama Code 1975.

HOLDINGS

1. In a post-judgment domestic-relations proceeding initiated by a motion to modify custody, a contempt motion alleging nonpayment of child support concerns a separate state of facts and constitutes the filing of a case under Rule 7, requiring payment of a docket fee even if the matters are heard together.
2. The required filing fee is \$248 under § 12-19-71(a)(7), which applies to cases filed in the domestic-relations docket seeking to modify or enforce an existing domestic-relations court order.
3. Opinion of the Clerk No. 37 was explicitly overruled by Opinion of the Clerk No. 49, and Opinion of the Clerk No. 44, which relied on Opinion No. 37, is also overruled.

KEY QUOTATIONS

“Therefore, it is my opinion that, in a postjudgment proceeding in a domestic-relations case, initiated by the filing of a motion to modify a custody provision in the final judgment, the filing of a contempt motion alleging nonpayment of child support is the “filing” of a case, within the meaning of Rule 7, Ala. R. Jud. Admin., which requires the payment of a docket fee pursuant to Rule 7.” (1172)

“Thus, my answer to the question is that a filing fee is to be charged when a respondent to a petition to modify a custody provision of a final judgment in a domestic-relations case files an answer that includes a motion for contempt for nonpayment of child support, and that fee is \$248, as required by § 12-19-71(a)(7).” (1172)

FACTUAL BACKGROUND

A post-judgment proceeding was pending on a motion to modify a custody provision in a final domestic-relations judgment. The respondent filed an answer that also included a contempt motion alleging nonpayment of child support and alimony under a different portion of the original judgment. Although the matters might be heard together, the contempt motion sought relief based on facts and obligations distinct from those involved in the custody-modification motion.

PROCEDURAL HISTORY

A district judge of the Twenty-Eighth Judicial Circuit asked whether a respondent's contempt motion alleging nonpayment of alimony and child support, filed with an answer to a pending motion to modify custody, required a separate filing fee. The clerk withdrew and substituted a prior clerk's opinion and answered that the contempt motion constitutes the filing of a separate case for purposes of Rule 7 and requires a \$248 docket fee under § 12-19-71(a)(7).

DISPOSITION

other

CASES CITED

- Opinion of the Clerk No. 37, 403 So. 2d 891 (Ala. 1981)

- Opinion of the Clerk No. 43, 450 So. 2d 1094 (Ala. 1984)
- Opinion of the Clerk No. 44, 450 So. 2d 804 (Ala. 1984)
- Opinion of the Clerk No. 52, 826 So. 2d 108 (Ala. 2001)
- Opinion of the Clerk No. 49, 613 So. 2d 882 (Ala. 1993)
- State v. Montevallo Coal Mining Co., 29 Ala. App. 318, 197 So. 82 (1940)
- Opinion of the Clerk No. 42, 445 So. 2d 905 (Ala. 1984)
- Ex parte Dothan-Houston County Airport Auth., 282 Ala. 316, 211 So. 2d 451 (1968)

OPINION

ESDALECLERK, J.

*1171 RULE 7, ALABAMA RULES OF JUDICIAL ADMINISTRATION ESDALE, Clerk. Clerk's Opinion No. 55 issued on September 14, 2009, is withdrawn, and the following is substituted therefor: The Honorable Michelle M. Thomason, a district judge of the 28th Judicial Circuit, has submitted the following question, seeking an opinion of the clerk: "I have read Opinions [of the Clerk No.]

37[, 403 So.2d 891 (Ala.1981)], 43[, 450 So.2d 1094 (Ala.1984)], and 44[, 450 So.2d 804 (Ala.1984)], regarding whether or not a new filing fee is required in certain domestic relations proceedings. Specifically, Opinion [No.] 43 [holds] that if a motion is filed in a pending case to hold a party in contempt for violations of an interlocutory or temporary order in that same case, a new case number need not be assigned, nor a filing fee assessed.

However, my question is whether a new filing fee needs to be paid where there is a pending post-judgment motion to modify (in this case, custody), and the defendant, upon filing an answer, also files a motion requesting relief that is unrelated to the initial motion or pending case — a motion for contempt for violations of the original [judgment] (in this case, for nonpayment of alimony and child support).

Most likely, regardless of whether the issues are related or whether separate case numbers are assigned, they will all be heard as one proceeding and tried together." This question requires an interpretation of Rule 7, Aa. R. Jud. Admin., which reads: "Rule 7. Fees for Miscellaneous Filings "Any filing for which there is no express cost under the consolidated fee *1172structure shall be treated as an original filing for cost purposes unless the payment of a docket or filing fee is specifically waived by law." The term "consolidated fee structure" in Rule 7 means the list of fees prescribed in § 12-19-71(a), Ala.Code 1975.

The terms "[a]ny filing" and "as an original filing for cost purposes," as used in Rule 7, are to be read in conjunction with the term "cases filed," appearing in § 12-19-71(a). Opinion of the Clerk No. 52, 826 So.2d 108 (Ala.2001); Opinion of the Clerk No. 49, 613 So.2d 882 (Ala.1993).

The word “case” has been defined as a “ ‘state of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice.’ ” *State v. Montevallo Coal Mining Co.*, 29 Ala.App. 318, 322, 197 So. 82, 85 (1940) (quoting appellee’s brief (emphasis omitted)); see also *Opinion of the Clerk No. 42*, 445 So.2d 905 (Ala.1984).

The consolidated fee structure in § 12-19-71(a) does not specifically provide a cost for filing the contempt motion described in Judge Thomason’s request; however, because the motion seeks to hold a party in contempt for violating a portion of the judgment not at issue in the initial postjudgment motion, it is a “case” that presents a “state of facts which furnishes occasion for the exercise” of a court’s jurisdiction.

The filing of the contempt motion confers lawful jurisdiction in the district court so that it may “ ‘entertain [the contempt motion], consider the merits, and render a binding decision thereon.’ ” *Opinion of the Clerk No. 49*, 613 So.2d at 883 (quoting *Ex parte Dothan-Houston County Airport Auth.*, 282 Ala. 316, 320-21, 211 So.2d 451, 454 (1968)).

Therefore, it is my opinion that, in a postjudgment proceeding in a domestic-relations case, initiated by the filing of a motion to modify a custody provision in the final judgment, the filing of a contempt motion alleging nonpayment of child support is the “filing” of a case, within the meaning of Rule 7, Ala. R. Jud. Admin., which requires the payment of a docket fee pursuant to Rule 7.

Further, it appears the filing of the contempt motion under these circumstances falls under § 12-19-71(a)(7): “(7) Two hundred forty-eight dollars (\$248) for cases filed in the domestic relations docket of the circuit court seeking to modify or enforce an existing domestic relations court order.” Thus, my answer to the question is that a filing fee is to be charged when a respondent to a petition to modify a custody provision of a final judgment in a domestic-relations case files an answer that includes a motion for contempt for nonpayment of child support, and that fee is \$248, as required by § 12-19-71(a)(7).

Additionally, with regard to the authorities cited in Judge Thomason’s request, I note that *Opinion of the Clerk No. 37*, 403 So.2d 891 (Ala.1981), was explicitly overruled by *Opinion of the Clerk No. 49*, 613 So.2d 882 (Ala.1993). *Opinion of the Clerk No. 44*, 450 So.2d 804 (Ala.1984), was decided on the authority of *Opinion of the Clerk No. 37*; therefore, *Opinion of the Clerk No. 44* is hereby overruled.