

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2017-CA-01734-COA

MARY ALICE STUBBS

APPELLANT

v.

JAMES LEE STUBBS

APPELLEE

DATE OF JUDGMENT: 11/13/2017
TRIAL JUDGE: HON. GERALD MARION MARTIN
COURT FROM WHICH APPEALED: COVINGTON COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT: W. TERRELL STUBBS
ATTORNEY FOR APPELLEE: DEWITT LANGSTON FORTENBERRY III
NATURE OF THE CASE: CIVIL - DOMESTIC RELATIONS
DISPOSITION: AFFIRMED: 01/29/2019
MOTION FOR REHEARING FILED:
MANDATE ISSUED:

BEFORE GRIFFIS, C.J., WILSON AND WESTBROOKS, JJ.

GRIFFIS, C.J., FOR THE COURT:

¶1. Mary and James Stubbs were married on December 2, 1978. In January 1996, Mary was granted a divorce on the ground of desertion. The judgment of divorce awarded Mary custody of their four children and ordered James to pay \$400 in monthly child support, provide health insurance for the minor children, and pay attorney’s fees. Mary did not assert a claim for any of James’s property, retirement benefits, or financial accounts, and the order provided for no division of such property.

¶2. In May 2017, twenty-one years after the divorce, Mary filed a “petition to allocate and disburse retirement funds.” In the petition, Mary sought fifty percent of the funds in James’s employer’s retirement account. James filed a motion to dismiss the petition with prejudice,

which the chancellor granted. Mary’s subsequent motion to alter, amend, or reconsider was denied. Mary now appeals and argues that the chancellor erred in dismissing her petition and denying her motion to alter, amend, or reconsider.

STANDARD OF REVIEW

¶3. This Court is limited in its review of domestic relations matters. *Carrow v. Carrow*, 741 So. 2d 200, 202 (¶9) (Miss. 1999). We will not disturb the findings of a chancellor unless the chancellor was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied. *Owen v. Owen*, 798 So. 2d 394, 398 (¶10) (Miss. 2001). When reviewing a chancellor’s denial of a motion to dismiss, our standard of review is de novo. *Benson v. Neshoba Cty. Sch. Dist.*, 102 So. 3d 1190, 1192 (¶8) (Miss. Ct. App. 2012).

ANALYSIS

I. Whether the chancellor erred in dismissing Mary’s petition.

¶4. Mary first argues the chancellor erred in dismissing her petition to allocate and disburse retirement funds. Pursuant to Mississippi Code Annotated section 15-1-43 (Rev. 2012), “all actions founded on any judgment or decree rendered by any court of record in this state shall be brought within seven (7) years next after the rendition of such judgment or decree, or last renewal of judgment or decree, whichever is later.” Also, under Mississippi Rule of Civil Procedure 60(b), “[o]n motion and upon such terms as are just, the court may relieve a party . . . from a final judgment . . . ,” provided the motion for relief is filed within a reasonable time and not more than six months after the judgment was entered for cases of

“fraud, misrepresentation, or other misconduct of an adverse party,” “accident or mistake,” or “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial”

¶5. Under Mississippi law, retirement income that is obtained during the marriage is considered marital property. *Parrish v. Parrish*, 245 So. 3d 519, 524 (¶12) (Miss. Ct. App. 2017) (citing *Gregg v. Gregg*, 31 So. 3d 1277, 1281 (¶16) (Miss. Ct. App. 2010)). However, if a party does not assert the right to the marital property, the party may be estopped from asserting a later claim to the property. *Allen v. Smith*, 158 So. 2d 750, 751 (Miss. 1963) (noting that had the parties not both had an independent interest in a vehicle, the chancellor would be correct in finding that one party was estopped from asserting a later claim to the vehicle).

¶6. Mary waited twenty-one years before asserting a claim to James’s retirement account, despite the fact that James was employed by Helmrich & Payne Inc. during the course of the marriage. As a result, pursuant to section 15-1-43 and Rule 60(b), Mary is now prohibited from asserting her once potential claim long after the final divorce decree. Accordingly, we find no error in the chancellor’s dismissal of Mary’s petition to allocate and disburse retirement funds.

II. Whether the chancellor erred in denying Mary’s motion to alter, amend, or reconsider.

¶7. Mary further argues the chancellor erred in denying her motion to alter, amend, or reconsider. We find this issue is procedurally barred. Mary fails to cite any law to support

her contention. “[I]f an appellant fails to support her allegation of error with argument or authority, this Court need not consider the issue.” *Jordan v. State*, 995 So. 2d 94, 103 (¶14) (Miss. 2008).

¶8. **AFFIRMED.**

BARNES AND CARLTON, P.JJ., WILSON, GREENLEE, WESTBROOKS, TINDELL, McDONALD AND LAWRENCE, JJ., CONCUR. McCARTY, J., CONCURS IN RESULT ONLY WITHOUT SEPARATE WRITTEN OPINION.