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IN THE ALABAMA COURT OF THE JUDICIARY

ALABAMA COURT OF THE JUDICIARY
Nathan P. Wilson
Secretary

IN THE MATTER OF: *
*
TRACIE TODD *
CIRCUIT COURT JUDGE *
BIRMINGHAM DIVISION *
CRIMINAL DIVISION *
JEFFERSON COUNTY, AL *

CASE NO. 61

**JUDICIAL INQUIRY COMMISSION’S RESPONSE IN
OPPOSITION TO MOTION TO MODIFY FINAL JUDGMENT**

COMES NOW, the Judicial Inquiry Commission (hereinafter “the Commission”) and hereby files this Response in Opposition to Judge Tracie A. Todd’s (hereinafter “Judge Todd”) Motion to Modify Final Judgment by Amending Term of Suspension. The Commission objects to Judge Todd’s motion and moves this Court to deny it for three reasons: (1) this Court has no jurisdiction to consider the motion, as Judge Todd’s sole remedy is an appeal to the Alabama Supreme Court; (2) even if this Court did have jurisdiction, Judge Todd’s motion is untimely, having been filed on the 37th day after entry of this Court’s Final Judgment; and (3) Judge Todd’s motion fails on the merits. As grounds for its opposition and motion to deny Judge Todd’s Motion to Modify Final Judgment, the Commission states as follows:

I. This Court does not have jurisdiction to consider Judge Todd’s Motion to Modify Final Judgment by Amending Term of Suspension.

Other courts in Alabama—under the Alabama Rules of Civil and Appellate Procedure—routinely (and properly) exercise their power to hear motions for reconsideration, as well as motions for postjudgment relief. But the rules governing the Court of the Judiciary simply do not allow for these kinds of motions. Though it is well settled that, except where otherwise provided, the Alabama Rules of Civil and Appellate Procedure apply to proceedings before the Court of the Judiciary,¹ Rule 16 of the Rules of Procedure for the Court of the Judiciary actually does provide otherwise. See R. P. for the Court of the Judiciary 16 (“The decision of the Court shall be final, subject to appeal rights contained in § 157, Ala. Const. 1901 (Off. Recomp.)” (emphasis added)).

As Rule 16 plainly contemplates, the finality of the decision of the Court of the Judiciary is not subject to a motion for reconsideration or a motion to alter, amend, or vacate—but only to the appeal rights contained in § 157. Nowhere in that constitutional section does it mention the availability of postjudgment relief. To the contrary, it states clearly

¹ See Rule D of the Rules Governing Appeals from the Ala. Ct. of the Jud.

that an aggrieved judge has a single remedy: “A judge aggrieved by a decision of the Court of the Judiciary may appeal to the Supreme Court. The Supreme Court shall review the record of the proceedings on the law and the facts.” § 157(b), Ala. Const. 1901.

Put simply, based on Rule 16, only the Alabama Supreme Court has jurisdiction to make any kind of ruling regarding the propriety of the final decision of the Court of the Judiciary. And though other Alabama courts routinely allow for this kind of postjudgment relief, it is “otherwise provided” for here.

II. Judge Todd did not file her Motion to Modify within the 30-day time frame, and this Court cannot now consider it.

Even if this Court had jurisdiction to consider Judge Todd’s Motion to Modify Final Judgment, the motion was untimely and cannot now be considered by this Court.

“Rule 59(e), Ala. R. Civ. P., provides that a motion to alter, amend, or vacate a trial court’s judgment ‘shall be filed not later than thirty (30) days after entry of the judgment.’” Kennedy v. Merriman, 963 So. 2d 86, 88 (Ala. Civ. App. 2007). Although a court “for cause shown may at any time in its discretion” generally permit enlargement of time to file motions, “it may not extend the time for taking any action under” Rule

59(e). Ala. R. Civ. P. 6(b) (emphasis added).

There is no indication “that there is a ‘good cause’ exception to the timely filing of” this type of motion. Holman v. State Dep’t of Indus. Rels., 668 So. 2d 817, 818 (Ala. Civ. App. 1995). Regardless, Judge Todd has offered no cause at all—good or otherwise—for failing to file her Motion to Modify Final Judgment within the prescribed 30-day time frame.

This Court does not have the ability to consider Judge Todd’s untimely filed motion, and therefore, it must be denied.

III. This Court appropriately sanctioned Judge Todd for violating Canon 1 by refusing to fully comply with this Court’s order to return to work, and Judge Todd offers no compelling reason to modify that sanction.

Thirty-seven days ago, this Court found “that Judge Todd violated Canon 1 by refusing to fully comply with this Court’s December 2021 judgment ordering her to return to service on December 6, 2021,” and thus ordered her to be “suspended, without pay, for a period of 120 days.” Final Judgment at 4, *In re Todd*, No. 61 (Ala. Ct. Jud. Oct. 18, 2022).

The decision to deny a motion to alter, amend, or vacate will not be disturbed unless “there has been a manifest abuse of discretion,” which “is found only where there has been a breach of a legal right and where the record plainly shows that the trial court erred.” Opry S. Land Inv.

Grp., Ltd. v. Price, 679 So. 2d 1083, 1085 (Ala. Civ. App. 1996) (quoting Tatum v. Kelley, 481 So. 2d 1132, 1136 (Ala. 1985)).

Judge Todd has not shown a breach of a legal right or that this Court plainly erred. In fact, she has not even made the argument. On the contrary, Judge Todd “fully respects and accepts the Court’s judgment” and “does not intend to appeal.” Mot. to Modify at 1. Judge Todd raises no specific issues with any of this Court’s findings.

Rather, Judge Todd simply states that she has completed eight hours of Continuing Legal Education, some of which were specifically tailored for judges. While commendable, by nature of her position, Judge Todd is already required to complete a minimum of twelve hours of continuing judicial education.² Indeed, if Judge Todd fails to complete the required hours, the Alabama Supreme Court (as they would with any other judge) will report her to the Commission.³ Judge Todd should not be given special consideration for completing the requirements of continuing education that are mandated for every Alabama judge.

² See Rules for Mandatory Continuing Judicial Education for Supreme Court Justices, Appellate Court Judges, Circuit Court Judges, and District Court Judges of Alabama, Rule 1(a).

³ See id., Rule 4(d).

Judge Todd also argues that shortening her suspension will allow her “to assist her fellow judges in the very busy Jefferson County Circuit Court Criminal Division,” as her absence has had a “cascading effect on the workload of each of the other judges.” Mot. to Modify at 3.

While commendable that Judge Todd now wishes to alleviate the burden on her fellow judges, her overture rings hollow. She decidedly did not show the same concern when ordered to return to work on December 6, 2021. As this Court found in its Final Judgment, Judge Todd “refus[ed] to fully comply with this Court’s December 2021 judgement ordering her to return to service on December 6, 2021.” Final Judgment at 4, In re Todd, No. 61 (Ala. Ct. Jud. Oct. 18, 2022). If Judge Todd’s true concern was her fellow judges, she had the opportunity to demonstrate that in December 2021. Her past actions belie her current entreaty.

WHEREFORE, premises considered, because this Court has no jurisdiction to consider the motion, as Judge Todd’s sole remedy is an appeal to the Alabama Supreme Court, because Judge Todd’s motion is untimely, having been filed on the 37th day after entry of this Court’s Final Judgment, and because Judge Todd’s motion fails on the merits, the Commission respectfully requests that this Honorable Court deny the

Motion to Modify Final Judgment by Amending Term of Suspension.

Respectfully submitted this the 23rd day November, 2022.

/s/ John A. Selden

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/s/ Elizabeth C. Bern

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CERTIFICATE OF SERVICE

I hereby certify that I have, on this 23rd day of November, 2022, electronically filed the foregoing with the Court of the Judiciary, and that I have further served a copy upon the following via email as follows:

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