REL: December 6, 2019

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2019-2020

2180367

A.M.

v.

M.G.M.

Appeal from Mobile Circuit Court
(DR-18-900075)

MOORE, Judge.

A.M. ("the wife") appeals from a judgment entered by the Mobile Circuit Court ("the trial court") divorcing her from M.G.M. ("the husband"). We affirm the judgment in part and reverse it in part.

Procedural History

On January 23, 2018, the husband filed a complaint seeking a divorce from the wife. The next day, the wife filed an answer and a counterclaim for a divorce.

On May 14, 2018, the trial court entered an order awarding the wife pendente lite physical custody of the parties' three children and awarding the husband pendente lite visitation with the three children. The trial court also ordered the husband to pay pendente lite child support in the amount of $2,000 per month and pendente lite spousal support in the amount of $4,000 per month. On June 26, 2018, the trial court modified the pendente lite order to award the parties "shared" custody. The trial court modified the pendente lite order again on August 9, 2018, to award physical custody of the children to the husband, with supervised visitation to the wife; the trial court subsequently suspended the husband's pendente lite child-support obligation. The trial court awarded the wife unsupervised visitation beginning on October 3, 2018.

After completion of the trial, the trial court entered a judgment divorcing the parties on November 2, 2018. The

judgment awarded "primary" physical custody[1] of the children to the husband and awarded the wife regular unsupervised visitation. The trial court did not order the wife to pay child support because, it said: "This is a deviation from Rule 32[, Ala R. Jud. Admin.,] due to the nature of the case and the fact that the income of one of the parties far exceeds the guideline capacity, and ... the [wife] is currently on Social Security Disability and her prospects for employment are marginal."

The trial court ordered that the marital home be sold and that any equity be divided equally between the parties. Specifically, the trial court's judgment provided:

> "6. THAT the Court hereby reaffirms the previous order dated October 3, 2018 in regards [to] the marital homeplace ... wherein the Court appointed a Commissioner to sell same. The Commissioner has the authority to select the price and sell same. Any and all equity that may come out of said homeplace shall be divided equally 50/50, if there is no equity in the homeplace the [husband] must make up any and all differences."

---

[1]We interpret that provision as vesting the husband with "sole physical custody," as defined in § 30-3-151(5), Ala. Code 1975. See Reeves v. Fancher, 210 So. 3d 595, 597 n.1 (Ala. Civ. App. 2016) (explaining that "primary physical custody" is not one of the five types of custody defined in § 30-3-151).

The judgment also ordered the husband to "be responsible for the line of credit on the marital homeplace ... if said line of credit is not paid in full by the sale of same." The trial court ordered that the funds paid to the parties by their homeowners' insurance company as a settlement for damage to the marital home be used to pay fees for the court-appointed guardian ad litem for the children and that, if any funds were remaining after the payment of those fees, the remaining funds be divided equally between the parties.

The trial court awarded the husband all the parties' interest in a business, which we shall refer to as "I.M.O.," and awarded the wife $25,000 for her interest in I.M.O. as a property settlement. The judgment awarded the wife 10% of the husband's 30% interest in another business, which we shall refer to as "I.M.T." The trial court ordered that the wife "is bound by Buy/Sell Agreements and/or Board of Directors resolutions concerning [I.M.T.]" and that, in the event I.M.T. "does not allow for the transfer of ten percent (10%) of [the husband's] stock to [the wife]," the husband shall pay the wife $75,000 for her interest. The husband owned an interest in a third company, "M.B.L.," which generated approximately

$3,000 per month in rental income to the husband. The trial court did not address that asset in the divorce judgment, so the husband's ownership in M.B.L. is unaffected by the divorce judgment. See Smith v. Smith, 892 So. 2d 384, 389 (Ala. Civ. App. 2003).

The trial court awarded the husband a Honda Pilot sport-utility vehicle, a Honda Odyssey van, and a boat; the trial court awarded the wife a GMC Yukon sport-utility vehicle. The judgment provided that each party was to pay any indebtedness associated with any vehicle that he or she was awarded. The judgment provided that the parties were to be equally responsible for their joint credit-card debt, and each party was ordered to pay the credit-card and other debts in his or her individual name. The trial court awarded the wife 40% of the husband's retirement account, which had a balance of approximately $362,722, and all of her own retirement account, which had a balance of approximately $5,000. The trial court also ordered the husband to pay to the wife rehabilitative alimony in the amount of $4,000 per month for 120 months.

On November 30, 2018, the wife filed a postjudgment motion attacking the custody award and the division of the

property. On December 13, 2018, the trial court denied that motion. The wife, through new counsel, timely filed her notice of appeal on January 23, 2019.

Discussion

I. Custody

On appeal, the wife first argues that the trial court erred in awarding the husband sole physical custody of the parties' children. She initially argues that the trial court erred in several evidentiary rulings relating to the custody determination. The wife also argues that, as the primary caregiver for the children during the parties' marriage, she was presumptively entitled to their custody.

We reject the wife's contention that the trial court erroneously excluded the testimony of two counselors, A.H. and L.H. The trial court did not state that their testimony was excluded; rather, the trial court indicated that it had not given weight to their testimony, which was within the trial court's decision-making prerogative. See, e.g., Reed v. Board of Trs. for Alabama State Univ., 778 So. 2d 791, 795 (Ala. 2000). We also reject the wife's argument that the trial court erred in allowing her minister to testify to his

observations of her. Rule 505, Ala. R. Evid., and § 12-21-166, Ala. Code 1975, prohibit the disclosure of confidential communications made to a clergyman. However, in this case, the trial court correctly limited the minister's testimony to his observations made outside any confidential communications. The wife also argues that the trial court erred by allowing a school administrator to answer a question regarding her opinion as to whether the wife had shown a healthy level of concern over the oldest child's test scores. The administrator testified on direct examination:

> "Q. Was [the wife's] concern and displeasure about the ... scores, which were above average, was that a healthy level of concern that was misplaced in some way?
>
> "A. I was surprised and, no, I didn't -- I was very surprised that she was disappointed in that."

We conclude that the school administrator did not actually testify as to the wife's mental health, but, even if she did, Rule 701, Ala. R. Evid., provides that, "[i]f the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the

witness's testimony or the determination of a fact in issue." We conclude that the testimony of the school administrator was within the bounds of Rule 701.

The wife also argues that a portion of the school administrator's testimony was hearsay. She fails, however, to explain how any hearsay prejudiced her.

> "'"'... "... [A] a judgment cannot be reversed on appeal for an error [in the improper admission of evidence] unless ... it should appear that the error complained of has probably injuriously affected substantial rights of the parties."'"' Middleton [v. Lightfoot,] 885 So. 2d [111,] 113 [(Ala. 2003)] (quoting Mock[v. Allen], 783 So. 2d [828,] 835 [(Ala. 2000) (overruled on other grounds)], quoting in turn Wal-Mart Stores[, Inc. v. Thompson], 726 So. 2d [651,] 655 [(Ala. 1998)]). See also Rule 45, Ala. R. App. P. '"The burden of establishing that an erroneous ruling was prejudicial is on the appellant."' Middleton, 885 So. 2d at 113-14 (quoting Preferred Risk Mut. Ins. Co. v. Ryan, 589 So. 2d 165, 167 (Ala. 1991))."

Baldwin Cty. Elec. Membership Corp. v. City of Fairhope, 999 So. 2d 448, 453 (Ala. 2008). Because the wife did not meet her burden of establishing that any hearsay was prejudicial, we cannot reverse the trial court's judgment on this point.

The wife further argues that the trial court's allowing Dr. Catarina Arata, a psychologist appointed by the court to evaluate the custody of the children, to give a "diagnostic

impression" that the wife had a generalized anxiety disorder and a personality disorder with histrionic features was in error. The wife objected to Dr. Arata's testimony on the ground that Dr. Arata had not been appointed to make a psychiatric diagnosis of either party and that it would be prejudicial for Dr. Arata to give a "diagnostic impression" rather than a diagnosis, which would have required more rigorous examination of the wife. The trial court overruled the objection on the ground that Dr. Arata had reviewed the records of the wife's psychiatrist and her psychological counselors, and, thus, it concluded, Dr. Arata had a sufficient foundation to give her diagnostic impression. On appeal, the wife argues that Dr. Arata's opinion was not disclosed before trial, that it was irrelevant, that it was prejudicial, and that it was only speculation and conjecture. We do not consider the wife's arguments against admission of the evidence that were not raised in the trial court; those arguments are waived. See, e.g., Granberry v. Gilbert, 276 Ala. 486, 488-89, 163 So. 2d 641, 643-44 (1964). As to the arguments that Dr. Arata's opinion was speculative and prejudicial, we conclude that the wife has not challenged the

trial court's reasoning that Dr. Arata had a sufficient foundation to form her opinion based on her review of all the mental-health records, and we hold that the trial court did not exceed its discretion in admitting the opinion with the understanding that Dr. Arata was not making a true diagnosis of the wife. See Carter v. Haynes, 267 So. 3d 861, 865 (Ala. Civ. App. 2018) ("'[T]he decision to admit or to exclude evidence is within the discretion of the trial judge, and we will not reverse such a decision absent an abuse of discretion.'" (quoting City of Birmingham v. Moore, 631 So. 2d 972, 974 (Ala. 1994))).

Addressing the wife's substantive argument, we hold that Alabama law does not afford a primary caregiver any favorable presumption in a custody dispute.

> "'When the trial court makes an initial custody determination, neither party is entitled to a presumption in his or her favor, and the "best interest of the child" standard will generally apply. Nye v. Nye, 785 So. 2d 1147 (Ala. Civ. App. 2000); see also Ex parte Byars, 794 So. 2d 345 (Ala. 2001). In making an initial award of custody based on the best interests of the children, a trial court may consider factors such as the "'characteristics of those seeking custody, including age, character, stability, mental and physical health ... [and] the interpersonal

> relationship between each child and each parent.'" Graham v. Graham, 640 So. 2d 963, 964 (Ala. Civ. App. 1994) (quoting Ex parte Devine, 398 So. 2d 686, 696-97 (Ala. 1981))..... Other factors the trial court may consider in making a custody determination include "the sex and age of the [children], as well as each parent's ability to provide for the [children's] educational, emotional, material, moral, and social needs." Tims v. Tims, 519 So. 2d 558, 559 (Ala. Civ. App. 1987). The overall focus of the trial court's decision is the best interests and welfare of the children.'
>
> "Steed v. Steed, 877 So. 2d 602, 604 (Ala. Civ. App. 2003)."

Morrow v. Dillard, 257 So. 3d 316, 324 (Ala. Civ. App. 2017).

In T.N.S.R. v. N.P.W., 170 So. 3d 684 (Ala. Civ. App. 2014), the father of a child born out of wedlock agreed to give the mother sole physical custody of the child after he moved out of the family's home when the child was approximately one year old. Five years later, the juvenile court awarded custody of the child to the father based on its finding that the mother had taken certain actions to alienate the child from the father. This court reversed the judgment, noting that the father had voluntarily transferred custody of the child to the mother and that, even in an initial custody case, "the juvenile court was required to consider 'the effect

on the child of disrupting or continuing an existing custodial status.' Ex parte Devine, 398 So. 2d 686, 697 (Ala. 1981)." 170 So. 3d at 687. This court said:

> "In this case, the mother acted as the primary caretaker of the child for years, a weighty consideration. See Kaiser v. Kaiser, 868 So. 2d 1095, 1101 (Ala. Civ. App. 2003) ('We agree that who the primary caregiver of a child has been is an important factor. Indeed, it may even be dispositive in an appropriate case.'). During that time, the child apparently received appropriate daily care from the mother, and the father failed to present any evidence rebutting the presumption of her fitness. See T.J. v. Calhoun Cnty. Dep't of Human Res., 116 So. 3d 1168, 1175 (Ala. Civ. App. 2013) ('[T]he law presumes that a custodial parent is fit in every respect to care for his or her children.'). A trial court should tread lightly when considering severing 'ties of affection resulting from years of association between the child and its custodian,' Dale v. Dale, 54 Ala. App. 505, 507, 310 So. 2d 225, 227 (Civ. App. 1975), and, ordinarily, a trial court should not disturb the 'stability in a child's environment and the child's relationships with those who have cared for and loved [him or her].' R.K. v. R.J., 843 So. 2d 774, 777 n.2 (Ala. Civ. App. 2002)."

170 So. 3d at 687. This court determined that the juvenile court had transferred custody from the mother to prevent the mother from alienating the child from the father, but this court held that the evidence did not support a finding of parental alienation. 170 So. 3d at 688. We reversed the

judgment, concluding that the juvenile court had misapplied the law to the undisputed evidence. 170 So. 3d at 689.

In this case, the wife indisputably assumed the role of the primary caregiver for the children because the husband worked long hours, but the facts of this case are otherwise materially distinguishable from those in T.N.S.R. Unlike the father in T.N.S.R., the husband in this case did not leave the family and acquiesce in the wife's raising the children as their sole physical custodian for years before seeking to assert his rights to custody. Rather, the parties lived together with the children from the time of the children's births until the parties separated in early 2018. The trial court received evidence indicating that the parties separated because the wife falsely accused the husband of physically abusing one of the children. After their separation, the wife further alleged that the children had reported that the husband had committed sexual abuse against the parties' two daughters. The Alabama Department of Human Resources ("DHR") investigated those allegations and found them to be "not indicated."[2] Dr. Arata, the psychologist appointed by the

[2]"A 'not indicated' disposition denotes that 'credible evidence and professional judgment does not substantiate that

court to evaluate the custody of the children, testified that the wife's actions had contributed to the alienation of the children from the husband.

The wife suffers from a variety of mental-health problems. Some of the expert testimony indicated that the stress of the divorce had exacerbated those problems and had led the wife to misperceive the facts and to exaggerate her claims against the husband. Dr. Arata testified that the wife was "calmer of late," after the investigations had yielded no indications of abuse. The wife argues that the trial court should have determined from this evidence that, at the time of trial, she was in sufficient control to resume her previous role as the primary caregiver for the children and that its decision to deny her sole physical custody of the children was based on mere speculation and conjecture that her mental health might again deteriorate. We disagree.

The trial court was not bound to accept the wife's premise that her mental-health problems had resolved such that she would no longer interfere with the relationship between

---

an alleged perpetrator is responsible for child abuse or neglect.' § 26-14-8(a)(2)[, Ala. Code 1975]." Duran v. Buckner, 157 So. 3d 956, 962 (Ala. Civ. App. 2014).

the children and the husband. Even if the trial court did believe the wife, the trial court was not required to award her custody of the children based solely on her status as their former primary caregiver. The evidence showed that the husband was at least equally capable of caring for the children as the wife.[3] "In instances where the evidence shows that either parent is an appropriate custodian of the minor children, the appellate court is bound to defer to the trial court's custody decision based on the trial court's observations of the witnesses, its credibility determinations, and its resolution of conflicting evidence." Bates v. Bates, 678 So. 2d 1160, 1162 (Ala. Civ. App. 1996). As we stated in T.N.S.R., in some cases the fact that one parent has served as the primary caregiver for the child may be a dispositive factor in deciding custody, but that factor is not always controlling. The trial court obviously believed that the relationship between the children and the parents would be best preserved by awarding custody to the husband. The trial

[3]Although the wife criticized the husband for relying on his mother and an au pair to assist him with caring for the children, the wife testified that she also relied on third parties to assist her with child-care duties because of permanent physical limitations in her arms and vision.

court's judgment is entitled to a presumption of correctness that may be overcome only by a showing that the judgment is plainly and palpably wrong. See Ex parte Bryowsky, 676 So. 2d 1322, 1324 (Ala. 1996). Based on that standard of review, we find no ground for reversing the judgment insofar as it awarded sole physical custody of the children to the husband.

II. Division of Property and Award of Alimony

The wife argues that the trial court abused its discretion in dividing the parties' property and in awarding her only $4,000 per month in rehabilitative alimony for 10 years.

> "'Matters such as alimony and property division are within the sound discretion of the trial court. Ex parte Drummond, 785 So. 2d 358 (Ala. 2000); Parrish v. Parrish, 617 So. 2d 1036 (Ala. Civ. App. 1993); and Montgomery v. Montgomery, 519 So. 2d 525 (Ala. Civ. App. 1987). The issues of property division and alimony are interrelated, and they must be considered together on appeal. Albertson v. Albertson, 678 So. 2d 118 (Ala. Civ. App. 1996).
>
> "'In dividing property and awarding alimony, a trial court should consider "the earning abilities of the parties; the future prospects of the parties; their ages and health; the duration of the marriage; [the parties'] station[s] in life; the marital properties and their sources, values, and types; and the conduct of the

> parties in relation to the cause of the divorce." Russell v. Russell, 777 So. 2d 731, 733 (Ala. Civ. App. 2000). Also, a trial court is not required to make an equal division of the marital property, but it must make an equitable division based upon the particular facts and circumstances of the case. Golden v. Golden, 681 So. 2d 605 (Ala. Civ. App. 1996); and Brewer v. Brewer, 695 So. 2d 1 (Ala. Civ. App. 1996). "A property division that favors one party over another does not necessarily indicate an abuse of discretion." Fell v. Fell, 869 So. 2d 486, 496 (Ala. Civ. App. 2003) (citing Dobbs v. Dobbs, 534 So. 2d 621 (Ala. Civ. App. 1988))."
>
> "Turnbo v. Turnbo, 938 So. 2d 425, 429–30 (Ala. Civ. App. 2006)."

Walker v. Walker, 216 So. 3d 1262, 1270-71 (Ala. Civ. App. 2016).

The wife maintains that the husband received approximately 90% of the marital assets. To reach that conclusion, the wife argues that it should be deemed that the husband received $30,000 to $60,000 in equity in the marital home, $7,830,000 as his interest in I.M.T., $50,000 as his interest in I.M.O., $288,000 as his interest in M.B.L., $217,633 in retirement benefits, a $24,500 boat, and two cars valued at $25,000, while the wife received no equity in the marital home, $75,000 to $870,000 as her interest in I.M.T.,

$25,000 as her interest in I.M.O., no interest in M.B.L., a car with no equity, $150,088 in retirement benefits, and a country-club bond worth $4,000. The wife also argues that the judgment leaves the husband responsible for "only" $20,000 to $60,000 in student-loan debt, but makes the parties jointly responsible for $63,000 in line-of-credit and credit-card debts, and inequitably makes her solely liable for $24,000 in credit-card debt in her own name.

The judgment ordered the marital home to be sold in accordance with an earlier order of sale entered during the pendency of the litigation. The husband testified that the marital home was worth $820,000 to $850,000 in its unrepaired condition. After the entry of the divorce judgment, the husband purchased the home for $790,000, the outstanding mortgage balance, and, as a result, the parties did not realize any equity from the sale.[4] The wife argues that it should be deemed that the husband received $30,000 to $60,000

[4]The wife complains that the husband purchased the marital home without notice to the wife or her attorney and without affording the wife a right to object. However, the sale provision did not require prior notice or an opportunity to object. The wife does not develop any argument that the trial court erred in failing to include such conditions, so we do not consider that point further.

in equity and that she should have been awarded a portion of that equity. We do not address the merits of that argument, however, for the reason explained below.

The wife complains that the husband retained his interest in M.B.L., which, she contends, should be valued at $288,000. However, no evidence was produced at trial regarding the value of the husband's interest in M.B.L. The parties presented evidence indicating only that the husband receives approximately $3,000 per month from the business. The wife asks this court to extrapolate from that figure a $288,000 value for the husband's interest in M.B.L. "The burden of proving the value of marital property rests with both parties." Beck v. Beck, 142 So. 3d 685, 695 (Ala. Civ. App. 2013). Because no valuation evidence was presented, we cannot determine the value on appeal. Id.

The judgment awarded the husband all the parties' interest in I.M.O., but requires the husband to pay the wife $25,000 for her interest in I.M.O. That amount was one-half of the purchase price of the business and is the only evidence from which the value of I.M.O. could be ascertained.

The husband also was awarded a 27% interest in I.M.T., with the wife receiving a 3% interest. Some evidence presented indicated that the value of 1% of I.M.T. was $290,000. However, the husband testified that the only real asset of I.M.T. is a patent for a medical device that cannot be utilized without approval from the United States Food and Drug Administration, which will require clinical testing and trials. From that testimony, the interest in I.M.T. would be considered a contingent asset, because its value depends on the occurrence of future conditions. In Mosley v. Mosley, 747 So. 2d 894, 901 (Ala. Civ. App. 1999), this court indicated that "contingent assets and contingent liabilities are not included in the computation of the parties' net worth, but are assessed (and divided) separately from other marital 'property.'" Considering the contingent nature of the only real asset of I.M.T., we cannot conclude that the trial court erred in awarding the husband a greater interest than the wife in I.M.T.[5]

[5]The wife also points out that the trial court ordered that, if the shares of stock in I.M.T. are not transferrable to her under the I.M.T. operating agreement, the husband must pay her $75,000 as payment for her shares. We note, however, that the wife and the husband both agree that the operating agreement does not prohibit the transfer of the shares. Thus,

The husband was awarded a boat, which the parties had, at one point, agreed to sell for $24,500, a Honda Odyssey van that the wife valued at $10,000, and a Honda Pilot sport-utility vehicle, for which no value was assigned. The wife was awarded a GMC Yukon sport-utility vehicle, for which no value was assigned. Although the wife asserts that there is debt associated with the Yukon she was awarded, she does not point to evidence indicating that amount. Beck, 142 So. 3d at 694 ("The burden of proving the value of marital property rests with both parties.").

Considering the above, we conclude that the wife has not proven that the husband received 90% of the noncontingent assets of the marital estate. The husband received $277,133 in liquid assets for which a value was ascertainable ($25,000 for his interest in I.M.O. + $217,633 in retirement benefits + $34,500 for cars and boat = $277,133), or approximately 61% of the marital estate, while the wife received $179,088 ($25,000 for her interest in I.M.O. + $150,088 in retirement benefits + $4,000 country-club bond = $179,088), or

---

we conclude that the wife was not harmed by the alternative provision of the $75,000 buyout in the judgment. See Rule 45, Ala. R. App. P.

approximately 39% of the marital estate. Even adding to the husband's assets either the lower amount or the higher amount the wife argues the husband should be deemed to have received for the equity in the marital home, as discussed supra, the result would be that the husband was awarded between 63% and 65% of the marital property, not the 90% the wife claims.

As for the marital debt, the husband paid off all of the wife's student loans, which were substantial because the wife had obtained a Master's degree in nursing, and, pursuant to the divorce judgment, the wife owes nothing further on the $790,000 mortgage on the marital home. The husband remains liable for the payment of his own student loans, totaling between $20,000 and $60,000. The trial court also ordered the husband to be solely responsible for paying off the $45,000 debt on the parties' line of credit. In the judgment, the trial court refers to that line of credit as "the line of credit on the marital homeplace"; however, it was undisputed that the only line of credit opened by the parties was not secured by the marital home. The parties brought this error to the attention of the trial court in postjudgment proceedings, but the trial court did not correct that clerical

error. We, therefore, reverse that aspect of the judgment for the trial court to correct the error.

The parties were ordered to be equally responsible for their joint credit-card debt and to each be responsible for the debts in his or her individual name. The wife argues that she should not have to pay one-half of the joint credit-card debt because the husband had traditionally paid that debt off every month during the marriage. She also argues that she should not have to pay the credit-card charges incurred in her individual name. She argues that, in light of the disparity of the parties' incomes, the husband should be responsible for those debts. We note, however, that, at least after May 14, 2018, the husband was required to pay the wife $4,000 in pendente lite spousal support. He was also required to pay her $2,000 per month in child support from that date until after he was awarded physical custody of the children in August 2018. The wife was also awarded $4,000 in rehabilitative alimony and a monetary property settlement from which she can make debt payments. The wife also receives Social Security disability benefits in the amount of $3,300 per month. Considering all the evidence, we cannot conclude

that the trial court exceeded its discretion in ordering the wife to be responsible for a portion of the parties' debts.

Based on the foregoing, we conclude that the trial court did not exceed its discretion in dividing the marital property and assigning the marital debts. Although the trial court awarded the husband a greater share of the marital assets, the trial court also relieved the wife of almost all marital debt, a fact she overlooks in arguing the equities of the case. Considering the totality of the circumstances, the division of property is not so disproportionate that it may be deemed inequitable.

The wife also argues that the trial court exceeded its discretion in limiting the award of rehabilitative alimony to 120 months. We note, however, that the trial did not make specific findings of fact with regard to the rehabilitative-alimony award, and the wife did not challenge the sufficiency of the evidence as to that issue in her postjudgment motion.

> "[I]n a nonjury case in which the trial court makes no specific findings of fact, a party must move for a new trial or otherwise properly raise before the trial court the question relating to the sufficiency or weight of the evidence in order to preserve that question for appellate review."

New Props., L.L.C. v. Stewart, 905 So. 2d 797, 801-02 (Ala. 2004). Accordingly, we cannot consider the wife's argument on this issue. Even if we could, we do not discern any palpable error in the award, given the circumstances of the case.

Conclusion

We reverse the trial court's judgment to the extent that it ordered the husband to "be responsible for the line of credit on the marital homeplace" and remand the cause for the trial court to correct that provision in accordance with this opinion. The judgment is affirmed in all other respects.

The wife's motion for an award of attorney's fees on appeal is denied.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH INSTRUCTIONS.

Thompson, P.J., and Donaldson, Edwards, and Hanson, JJ., concur.