**REL: May 8, 2020**



# ALABAMA COURT OF CIVIL APPEALS

**OCTOBER TERM, 2019-2020**

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**2180367**

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**A.M.**

**v.**

**M.G.M.**

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

On Second Application for Rehearing

MOORE, Judge.

This court's opinion of February 14, 2020, is withdrawn, and the following is substituted therefor.

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

[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).

> 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."

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 by counsel for the husband:

> "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."

Thus, 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] 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 erred in 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. 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 unduly 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, 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 first argument against admission of the evidence, which was not raised in the trial court; that argument is waived. See, e.g., Granberry v. Gilbert, 276 Ala. 486, 488-89, 163 So. 2d 641, 643-44 (1964). As to the argument that Dr. Arata's opinion was speculative, we conclude that Dr. Arata was not speculating because she had a sufficient foundation upon which to form her opinion based on her review and evaluation of the wife's mental-health records. As to the other argument that the diagnostic impression should have been excluded under Rule 403, Ala. R. Evid.,[2] we note that "[p]rejudice is 'unfair' if the evidence has 'an undue tendency to suggest decision on an improper basis,'" Gipson v. Younes, 724 So. 2d 530, 532 (Ala. Civ. App. 1998) (quoting 1972 Advisory Committee Notes to Rule 403, Fed. R. Evid.), and that, "'when reviewing a Rule 403 determination, [an appellate court's] task is not to reweigh the prejudicial and probative elements of the evidence, but

[2]Rule 403, Ala. R. Evid., provides: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

rather to determine if the [trial court] clearly abused its discretion in [admitting] the evidence.'" Gipson, 724 So. 2d at 533 (quoting Williams v. Nebraska State Penitentiary, 57 F.3d 667, 670 (8th Cir. 1995)). We hold that nothing in the record indicates that the trial court used the evidence of the diagnostic impression to render a custody determination on an improper basis. As we explain later in this opinion, in general, the mental health of a parent is a relevant consideration in a custody determination, and, in particular, the evidence relating to the wife's mental health bore significantly on the question of which parent should have physical custody of the children in this case. The trial court was advised of the limited nature of a diagnostic impression when it decided to admit the testimony of Dr. Arata and to consider that impression along with the other evidence regarding the wife's mental health. Given the sensitive nature of the child-custody inquiry, the trial court did not exceed its discretion in ruling that the diagnostic impression was relevant and that the probative value of the diagnostic impression exceeded any prejudice to 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 regarding custody, 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, 687 (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, a 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."[3] Dr. Arata, the psychologist appointed by the 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

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

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 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.[4] "In instances where the evidence shows

[4]Although the wife criticized the husband for relying on his mother and an au pair to assist him with caring for the

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 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.

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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.

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, and $150,088 in retirement benefits. The wife also argues that the judgment leaves the husband responsible for $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 order of sale entered during the pendency of the litigation. The husband testified that the marital home was worth between $820,000 and $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.[5] The wife argues that it should be deemed that the husband received $30,000 to $60,000 in equity and that she should have been awarded a portion of that equity.

The wife also complains that the husband retained his interest in M.B.L., which, she contends, should be valued at

[5]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. The order regarding the sale of the marital home provided that "each party shall have the first right of refusal to buy the other party's interest out once the marital homeplace is listed for sale with the Court appointed Commissioner." The trial court reaffirmed that order in the final judgment. The wife does not argue, however, that she was prejudiced by the lack of notice of the sale because she was denied an opportunity to exercise her right of first refusal. Instead, she argues that, as a result of the sale, she was denied a share of the equity in the marital home to which she was entitled.

$288,000.[6] The parties presented evidence indicating that the husband purchased his shares in M.B.L. for $83,500. The evidence further shows that the husband receives approximately $3,000 per month from that business. The wife asks this court to extrapolate from that figure a $288,000 value for M.B.L. In a letter filed with this court on September 9, 2019, the wife asserted that her original brief on appeal contained a sentence that was inadvertently cut short. We interpret that letter as a motion to amend her appellate brief, and we grant the motion. The wife asserts that this court should value M.B.L. at $288,000 based on the following formula: "5 years x 38,000 [(representing the yearly stream of income received from M.B.L.)] ($190,000) + the purchase price ($84,000)." We note first that the calculation presented by the wife appears to be incorrect because $190,000 + $84,000 = $274,000; however, even if it was correctly calculated, the wife fails

[6]We note that the wife does not argue on appeal that the trial court erred in awarding M.B.L. solely to the husband. The husband testified before the trial court that, to be a member of M.B.L., one must be a participating physician; the wife acknowledged in her testimony that she could not own an interest in M.B.L. Thus, her argument on appeal is limited to the proper calculation of the value of M.B.L. with regard to her assertion that the trial court's property division between the parties is inequitable.

to cite any authority indicating that her method of valuation is a proper way to value the business. See Rule 28(a)(10), Ala. R. App. P. The wife also argues, however, that, at a minimum, M.B.L. should be valued using the purchase price, and she also points this court to the husband's testimony regarding his interest in M.B.L. The husband testified, in pertinent part, that, according to the 2018 partnership distributions of M.B.L., he owns 4.3% of the shares; that, at the time he purchased his shares, each share was worth $22,300; that he had recouped his investment many times over since he had purchased the shares; and that it had been a good investment. Thus, evidence was presented from which the trial court could have assigned a value to M.B.L. in dividing the parties' property. We note, however, that the trial court's judgment is silent with regard to M.B.L.

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 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 GMC Yukon she was awarded, she does not point to evidence indicating that amount. Beck v. Beck, 142 So. 3d 685, 694 (Ala. Civ. App. 2013) ("The burden of proving the value of marital property rests with both parties.").

The husband also was awarded a 27% interest in I.M.T., with the wife receiving a 3% interest. The record contains an appraisal indicating that the value of 1% of I.M.T. was $290,000. The wife asserts that, based on the evidence presented, the husband's shares in I.M.T. are valued at $7,830,000, while the wife's shares are worth only $870,000. The husband testified, however, 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. The husband argues on appeal that, based on that testimony, the trial court could have concluded that I.M.T.

had as low as zero value. Although the trial court did not assign a value to the shares of I.M.T., it directed that, if I.M.T. does not allow for the transfer of the husband's stock to the wife, the husband shall pay to the wife the amount of $75,000 at the rate of $7,500 per month until the $75,000 is paid in full.[7] The wife argues that this portion of the trial court's judgment indicates that it valued 1% of I.M.T. at $25,000, which, she argues, is speculative and capricious.

Despite the husband's argument that, because I.M.T. has no current cash value and will become viable only after certain hurdles have been cleared, the business has no value, I.M.T.'s accounting firm provided a calculated value of $290,000 per share. The evidence indicates that the accounting firm used a "calculation engagement," and this court has observed that such a calculation is a reliable basis for determining the value of a business. See Rohling v. Rohling, 266 So. 3d 51, 70 (Ala. Civ. App. 2018). Moreover, in Blasdel v. Blasdel, 110 So. 3d 865, 872 (Ala. Civ. App. 2012), this court observed, in pertinent part, that "'"[i]t is

[7]We note that the wife and the husband both agree that the operating agreement of I.M.T. does not prohibit the transfer of the shares.

basic valuation theory that the value of a business is equal to the present worth of the future benefits of ownership."'" (Quoting Shewbart v. Shewbart, 19 So. 3d 223, 232 n.6 (Ala. Civ. App. 2009), quoting in turn Robert J. Rivers, Jr., "The 'Double-Dipping' Concept in Business Valuation For Divorce Purposes," Massachusetts Bar Association (2006).) This court has also stated that,

> "under Alabama law, a trial court must determine the value of property with the only limitation being that the value must be equitable under the circumstances of the particular case. See generally Yohey v. Yohey, 890 So. 2d 160 (Ala. Civ. App. 2004). That standard implies that the valuation must be fair to all parties concerned. See generally Black's Law Dictionary 578 (8th ed. 2004) (defining 'equitable distribution' as the 'fair ... allocation' of marital property). In cases in which a divorce court does not contemplate the sale of a business in which one of the spouses holds a minority interest but, instead, intends that the business shall remain a going concern, it makes little sense to determine fair value by the measuring stick of a hypothetical sales price. That methodology would artificially reduce the value of the marital asset in almost every case, which would be unfair, i.e., inequitable, to the party receiving only a portion of the reduced value or the property equivalent to that reduced value but would be advantageous to the party retaining the business interest, including its actual value to him or her as the holder."

Grelier v. Grelier, 44 So. 3d 1092, 1097 (Ala. Civ. App. 2009).

The husband cites Weeks v. Weeks, 27 So. 3d 526 (Ala. Civ. App. 2008), and E.A.B. v. D.G.W., 127 So. 3d 422 (Ala. Civ. App. 2012), in support of his assertion that, regardless of the value assigned to I.M.T. by the trial court, the division of that business and of the remainder of the marital property is equitable. In Weeks, this court affirmed a division of property awarding approximately 88.3% of the marital estate to the husband, Michael Weeks, and only 11.7% to the wife, Deborah Weeks. 27 So. 3d at 532-33. In concluding that the division of property was equitable in that case, this court considered that Deborah had made only an insignificant economic contribution to the marriage, using her income primarily as her separate money and paying for her personal expenses, and had made no significant noneconomic contribution to the marriage. Id. at 532. In the present case, however, the evidence indicated that the wife had contributed the entirety of the settlement proceeds she had received from a lawsuit that she had initiated regarding the purchase and repair of the parties' previous marital home and that she had deposited her Social Security disability payments into the parties' joint checking account, which had been used

for the benefit of the parties and their children. Regarding the wife's noneconomic contribution to the parties' marriage, the evidence indicated that the wife had been a stay-at-home mother and had cared for the parties' children, had maintained the marital home, and had managed the parties' finances. Additionally, in Weeks, both parties were disabled, whereas, in the present case, the husband earns a significant amount of income from both his salary and additional avenues, while the wife is disabled, having lost the use of one of her eyes and one of her arms in addition to having other physical and mental ailments from which she suffers, and, according to the trial court's judgment, her prospects for employment are marginal.

In E.A.B., this court affirmed a judgment awarding the husband, D.G.W., Jr., approximately 75% of the total net value of the marital assets for which the record indicated a value. In that case, both parties were generally in good health and the wife, E.A.B., was younger and capable of earning a living, although her future employment prospects were significantly less than those of D.G.W., Jr. The evidence also indicated that D.G.W., Jr., had become the primary caregiver for the

parties' children, that E.A.B. had been primarily responsible for the breakdown of the parties' marriage based, in part, on her negative attitude toward one of the parties' children, and that D.G.W., Jr., had made greater contributions toward salvaging the marriage than had E.A.B. 127 So. 3d at 432. In the present case, although the evidence was such that the trial court could have made certain findings supporting a division of property favoring the husband, including the wife's behavior that contributed to the breakdown of the marriage and the husband's significant economic contributions to the marriage, E.A.B. is distinguishable in a number of respects. In E.A.B., the trial court clearly rejected E.A.B.'s assertion regarding the breakdown of the marriage and made clear findings of fact regarding E.A.B.'s prospects for employment, imputing income to E.A.B. for the purposes of awarding alimony and child support; moreover, in E.A.B. this court was able to assign a value to each of the marital assets in considering whether the division of property between the parties was equitable.

In E.A.B., this court also considered whether the interest of D.G.W., Jr., in his law firm and in a partnership

that owned real property used by the law firm had been deemed by the trial court to have no value for the purposes of the property division because their value was offset by the contingent liability of D.G.W., Jr., for debt of the law firm. 127 So. 3d at 430. We concluded that it was clear from the record that the interest of D.G.W., Jr., in the law firm and in the partnership had been valued as part of the marital estate without consideration of the contingent liability of D.G.W., Jr., and that the contingent liability had been considered separately. See Mosley v. Mosley, 747 So. 2d 894, 901 (Ala. Civ. App. 1999) (noting that, in another jurisdiction, "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'").

In the present case, it is unclear whether the trial court considered the husband's interest in I.M.T. to have no value; whether the trial court considered the husband's interest in I.M.T. to be a marital asset; and what value, if any, the trial court assigned to I.M.T. The only indication of the value assigned by the trial court to I.M.T. is the

trial court's direction that, if the transfer of the shares to the wife is not allowed, the husband shall pay to the wife $75,000 for her interest. We agree with the wife, however, that, to the extent the trial court valued each share of I.M.T. at $25,000, there was no evidence to support that valuation. Although the husband testified that certain events would need to occur for the business to become viable, the husband did not offer any evidence indicating that I.M.T. was properly valued at $25,000 per share or that the patent itself had no value such that I.M.T. had no value whatsoever as a marital asset.

In Wilson v. Wilson, 93 So. 3d 122, 128-29 (Ala. Civ. App. 2011), this court stated, in pertinent part:

> "Generally, in the absence of specific findings of fact, this court will assume that the trial court made those findings necessary to support its judgment. See Ex parte Fann, 810 So. 2d 631, 636 (Ala. 2001). However, when, after reviewing the record and the language of the judgment, this court is unable to determine the precise nature of the factual findings of the trial court as to the classification and value of marital property, thereby inhibiting this court's ability to determine whether a property division is equitable, this court should remand the cause for further clarification from the trial court. See Wilhoite v. Wilhoite, 897 So. 2d 303, 308-09 (Ala. Civ. App. 2004); and Giardina v. Giardina, 987 So. 2d 606, 622-23 (Ala. Civ. App. 2008)."

Because, in the present case, this court cannot discern, among other things, the value assigned by the trial court to M.B.L., whether the trial court considered any amount of equity in the marital home following the husband's purchase thereof in dividing the marital property, and the classification and value assigned by the trial court to I.M.T. in formulating its property division, we reverse the trial court's judgment insofar as it divided the parties' property and remand the cause for the trial court to reconsider its property division. In doing so, the trial court is directed to make findings of fact with regard to the classification of, and the method of valuation used in dividing, both M.B.L. and I.M.T. to achieve an equitable division of the marital property as a whole. Because the assertions raised by the wife on appeal relating to the assignment of the marital debts might be affected by the trial court's actions following this court's reversal of the property division, we pretermit discussion of those arguments.

The wife also argues on appeal that the trial court exceeded its discretion in limiting the award of rehabilitative alimony to 120 months. We note, however,

that, "because property-division and alimony awards are considered to be interrelated, we often reverse both aspects of the trial court's judgment so that it may consider the entire award again upon remand." Redden v. Redden, 44 So. 3d 508, 513 (Ala. Civ. App. 2009). Accordingly, we reverse the alimony provision of the trial court's judgment and remand the cause to the trial court to revisit its award of alimony in conjunction with its property division. We note that the trial court 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, also reverse that aspect of the judgment for the trial court to correct the error to the extent the trial court intends to maintain that assignment of debt to the husband upon its reconsideration of the property division and its award of alimony.

Conclusion

We reverse that part of the trial court's judgment addressing and dividing the parties' property, and we remand the cause for the trial court to reconsider its property division and alimony award 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.

APPLICATION GRANTED; OPINION OF FEBRUARY 14, 2020, WITHDRAWN; OPINION SUBSTITUTED; AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH INSTRUCTIONS.

Donaldson, Edwards, and Hanson, JJ., concur.

Thompson, P.J., concurs in the result, without writing.