REL: May 7, 2021

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2190712

Suresh Kumar Samayamanthula

v.

Swathi Patchipulusu

Appeal from Jefferson Circuit Court
(DR-17-901574)

EDWARDS, Judge.

Suresh Kumar Samayamanthula ("the husband") appeals from the April 18, 2020, judgment, as amended, entered by the Jefferson Circuit

Court ("the trial court") divorcing him from Swathi Patchipulusu ("the wife"). The husband challenges those parts of the judgment awarding sole physical custody of the parties' children to the wife, purportedly restricting him from traveling to India with the parties' children, dividing the marital property, and awarding attorney fees to the wife. We affirm the trial court's judgment.

The parties are from India, and, based on the testimony at trial, neither party is a United States citizen.[1] The husband has resided in the United States since approximately 2005, and, at one point, he was purportedly a student in Chicago. The parties married in India on November 13, 2011, in what they described as an arranged marriage, and, thereafter, the wife moved to Alabama on a dependent visa and resided with the husband, who had an H-1B visa. A few years later, the wife also obtained an H-1B visa; she began working outside the home in approximately 2015. The parties have two children, a son who was born

[1]A loan application introduced into evidence by the husband stated that he was a United States citizen, but that statement was apparently erroneous.

in December 2012 and a daughter who was born in August 2016; the children are United States citizens.

At the time of trial, the wife was approximately 33 years old and the husband was approximately 37 years old. The wife had been employed as a software engineer for approximately five years, and the husband, who is an electrical engineer, was employed in Birmingham by an out-of-state company that provides third-party consulting services. Based on a loan application submitted into evidence at trial, the husband had been employed by four separate employers since August 2010, except for a four-month period when he was unemployed from January 2017 through April 2017.[2] He began working for his present employer in March 2018. According to the wife, she and the husband can remain in the United States indefinitely, as long as they continue to work, and both parties indicated their intention to remain in the United States, with no definite plan to return to and to reside in India.

[2]At trial, the husband repeatedly testified that he had been unemployed for seven months, beginning one month after their daughter was born in August 2016, but he later stated that he did not remember the exact dates and periods.

The parties separated in early October 2017, either shortly before or after the wife obtained an ex parte protection-from-abuse ("PFA") order against the husband.[3] That PFA order remained in effect until April 29, 2019, when the PFA case was dismissed based upon an agreement of the parties. In the interim, on November 3, 2017, the wife filed a complaint for a divorce in the trial court. She alleged that the parties were of incompatible temperament and that the marriage was irretrievably broken; she also alleged that the husband had assaulted and battered her on numerous occasions. The wife sought "sole custody" of the children, child support, alimony, a division of the marital property, and an award of attorney fees for her divorce counsel.

At the parties' request, the trial court appointed a guardian ad litem to represent the interests of the children. The husband, who was opposed to a divorce, filed an answer denying the material allegations of the divorce complaint; he eventually filed a counterclaim for a divorce,

[3]There is some evidence indicating that the husband might have left the marital residence and temporarily moved to Georgia before the incident that gave rise to the entry of the PFA order.

purportedly to protect his rights. Based on the husband's testimony at trial, the husband wanted sole physical custody and sole legal custody of the children or, in the alternative, joint physical custody and joint legal custody of the children. He also stated that the wife should receive no marital property and no alimony.[4]

After ore tenus proceedings on January 29, 2020, and March 4, 2020, the trial court entered the divorce judgment. The divorce judgment divided the marital property and required the husband to pay the wife $17,050 for her attorney fees; neither party was awarded alimony. The

[4]According to the husband, his positions regarding those matters reflected what would occur if the divorce proceedings were to occur in India. Earlier in the divorce action, the husband had filed a motion to dismiss the divorce proceedings, arguing that the trial court lacked subject-matter jurisdiction because the parties were not citizens of the United States and their marriage was governed by the law of India. He contended that an Indian court would not recognize any divorce judgment entered by the trial court The trial court denied the husband's motion to dismiss, and on October 17, 2019, the husband filed a petition for a writ of mandamus with this court. He argued that the trial court had erred by denying his motion to dismiss. On October 18, 2019, this court entered an order denying the husband's petition. See Ex parte Samayamanthula (No. 2190061, Oct. 18, 2019), ___ So. 3d ___ (Ala. Civ. App. 2019) (table). The husband then filed a petition for a writ of certiorari with the supreme court, and that court entered an order dismissing that petition. See Ex parte Samayamanthula (No. 1190098, Nov. 27, 2019) (Ala. 2019).

divorce judgment also awarded the wife sole physical custody of the children and awarded the parties joint legal custody of the children. The husband was awarded visitation during the school year from Thursday at 3:00 p.m. until Monday at 8:00 a.m. on the first and third weekends of each month and from Wednesday at 3:00 p.m. until Thursday at 8:00 a.m. during the second and fourth weeks of each month. The husband was also awarded visitation every other week during the summer when school is not in session and on certain holidays. The divorce judgment expressly stated that the wife was permitted to travel with the children to India and required the husband to cooperate with her regarding the children's passports and travel documentation. The husband was ordered to pay child support;[5] the parties were to equally divide the costs for the children's extracurricular expenses, school expenses, and noncovered medical expenses; and the wife was required to maintain medical

[5]The husband was required to pay the wife $1,200 per month as child support -- a "downward deviation" from the guidelines in Rule 32, Ala. R. Jud. Admin. Child support was computed based on the wife's monthly income of $8,375 and the husband's monthly income of $7,543. Absent the downward adjustment, the husband's child-support obligation would have been $1,535.33 per month.

insurance on the children. The divorce judgment also restrained the husband from "harassing, threatening, or contacting the [wife] in any way, except as to comply with" the divorce judgment, and denied all other requests for relief.

Each party filed a postjudgment motion. In part, the husband requested that the divorce judgment be amended to clarify that "both parties are allowed to take the minor children to India during the summer months," that "both parties be awarded video chat when either party is out of the country with the minor children," and that both parties be required to comply with the consent provisions regarding the childrens' passports and travel documentation. He also requested that he essentially be awarded joint physical custody of the children or additional visitation. Further, the husband requested that the trial court revisit the marital-property division and make a purportedly more equitable division, particularly in light of his claim that he could not pay the amounts ordered to be paid to the wife. The husband also requested that he be allowed to obtain additional personal property from the marital home -- in addition to the personal property he had already requested and had

received pursuant to a pendente lite order and the six suitcases of property that the wife testified he had removed from the home when he moved out in October 2017 -- and that certain clarifications be made regarding the return of the wife's jewelry, which the husband claimed he did not have. The husband stated that the value of the jewelry "equates to $1,951.22" and that, if the trial court did not believe the husband's claim that he did not have the jewelry and, thus, could not comply with the provision in the divorce judgment requiring that he give it to the wife, "he be allowed to pay [her] the cash value of $1,951.22 so that he is not in violation of [that] order." The husband also alleged that the attorney-fee award to the wife was excessive based on the parties' respective incomes and resources, although he admitted that he had been in contempt for failing to comply with certain discovery orders.

After a hearing on the postjudgment motions, the trial court, on June 15, 2020, entered an order amending the divorce judgment. That order stated that the parties would each "have the right to video chat" with the children when the children were out of the country and that the parties must cooperate with one another regarding the children's

passports and travel documentation, including providing consents and scheduling information. That order also capped the husband's obligation to pay child-care expenses not covered by child support at $1,000 per year and provided that he must pay the wife $1,951.22 for her jewelry that had been in the parties' safe-deposit box unless he delivered the jewelry to her within 10 days of the entry of the order

On June 23, 2020, the husband filed a notice of appeal to this court. On appeal, questions of law and the trial court's application of the law to the facts are subject to de novo review. Holly v. Huntsville Hosp., 925 So. 2d 160, 162 (Ala. 2005). As to questions of fact,

> " '[w]hen a trial court hears ore tenus testimony, its findings on disputed facts are presumed correct and its judgment based on those findings will not be reversed unless the judgment is palpably erroneous or manifestly unjust.' Philpot v. State, 843 So. 2d 122, 125 (Ala. 2002). ' "The presumption of correctness, however, is rebuttable and may be overcome where there is insufficient evidence presented to the trial court to sustain its judgment." ' Waltman v. Rowell, 913 So. 2d 1083, 1086 (Ala. 2005) (quoting Dennis v. Dobbs, 474 So. 2d 77, 79 (Ala. 1985))."

Fadalla v. Fadalla, 929 So. 2d 429, 433 (Ala. 2005). Moreover,

> "an appellate court reviewing a circuit court's judgment in a divorce action is not to substitute its judgment of the facts for

> that of the circuit court. ... Instead, the appellate court is 'simply to determine if there was sufficient evidence before the circuit court to support its decision against a charge of arbitrariness and abuse of discretion.' [Ex parte Smith, 673 So. 2d 420, 422 (Ala.1995)]."

Ex parte Elliott, 782 So. 2d 308, 311 (Ala. 2000).

> "[I]t is the duty of the trial court, which had the opportunity to observe the witnesses and their demeanors, and not the appellate court, to make credibility determinations and to weigh the evidence presented. Blackman v. Gray Rider Truck Lines, Inc., 716 So. 2d 698, 700 (Ala. Civ. App. 1998). The role of the appellate court is not to reweigh the evidence ...."

Ex parte Hayes, 70 So. 3d 1211, 1215 (Ala. 2011); see also, e.g., Pate v. Pate, 849 So. 2d 972, 976 (Ala. Civ. App. 2002) (noting "the trial court's unique position of being able to observe the witnesses and evaluate their demeanor and credibility"). " 'It is also well established that in the absence of specific findings of fact, appellate courts will assume that the trial court made those findings necessary to support its judgment, unless such findings would be clearly erroneous.' " Ex parte Patronas, 693 So. 2d 473, 475 (Ala. 1997) (quoting Ex parte Bryowsky, 676 So. 2d 1322, 1324 (Ala. 1996)). Further, " 'we are required to review the evidence in a light most favorable to the prevailing part[y].' " Architectura, Inc. v. Miller, 769

So. 2d 330, 332 (Ala. Civ. App. 2000) (quoting Driver v. Hice, 618 So. 2d 129, 131 (Ala. Civ. App. 1993)).

The husband first argues that the evidence does not support a conclusion that an award of sole physical custody of the children to the wife was in the best interests of the children. According to him, the trial court erred by not awarding "rotating custody," i.e., equal custodial periods, year-round rather than awarding the wife primary physical custody and him certain weekend and weekday visitation during the school year. Section 30-3-152(a), Ala. Code 1975, provides:

> "(a) The court shall in every case consider joint custody but may award any form of custody which is determined to be in the best interest of the child. In determining whether joint custody is in the best interest of the child, the court shall consider the same factors considered in awarding sole legal and physical custody and all of the following factors:
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> > "(1) The agreement or lack of agreement of the parents on joint custody.
> >
> > "(2) The past and present ability of the parents to cooperate with each other and make decisions jointly.
> >
> > "(3) The ability of the parents to encourage the sharing of love, affection, and contact between the child and the other parent.

> "(4) Any history of or potential for child abuse, spouse abuse, or kidnapping.
>
> "(5) The geographic proximity of the parents to each other as this relates to the practical considerations of joint physical custody."

Additionally,

> "[t]he primary concern in making an initial determination of child custody incident to a divorce action is the best interests of the children. See [Ex parte] Couch, 521 So. 2d [987,] 989 [(Ala.1988)]; see also C.B.B. v. J.S.D., 831 So. 2d 620, 621 (Ala. Civ. App. 2002). To that end, the trial court is given wide discretion in awarding custody and establishing visitation, and its determination of such matters will not be reversed absent a showing of a clear abuse of discretion. See Kovakas v. Kovakas, 12 So. 3d 693, 697 (Ala. Civ. App. 2008); see also Kent v. Green, 701 So. 2d 4, 5 (Ala. Civ. App. 1996).
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> "The ore tenus rule is based, in part, on the unique position of the trial court to personally observe the parties and witnesses and to assess their demeanor and credibility. See Ex parte Fann, 810 So. 2d 631, 633 (Ala. 2001); see also Kent, 701 So. 2d at 5. Additionally, '"[i]n child custody cases especially, the perception of an attentive trial judge is of great importance."' Fann, 810 So. 2d at 633 (quoting Williams v. Williams, 402 So. 2d 1029, 1032 (Ala. Civ. App. 1981)). Factors to be considered in making a child-custody award include the age and sex of the children; their emotional, social, moral, material, and educational needs; and the characteristics of those seeking custody, including their age, character, stability, mental and physical health, and their respective home environments. See Ex parte Devine, 398 So. 2d 686, 696-97 (Ala. 1981)."

Lowery v. Lowery, 72 So. 3d 701, 704-05 (Ala. Civ. App. 2011).

Considering the testimony and evidence in a light most favorable to the wife, see Architectura, Inc., supra, the husband was controlling[6] and verbally abusive to her throughout their marriage and began physically abusing her approximately two years before the parties' separated. She provided details regarding several purported incidents that did not involve the children, which we see no need to discuss. However, certain incidents of abuse against her were apparently witnessed by the children. For example, the wife stated that, on one occasion, she had talked with a male friend while their children played together at a park. According to the wife, on the drive home from the park, the husband began hitting her, and, she said, the children were in the vehicle and observed that incident.

[6]According to the wife, the husband reviewed her e-mails, installed a spy camera under their bed, attempted to prevent her from talking with her parents, and would review her telephone records daily and question her about any discussions she might have had with her parents or his parents. The wife also testified that, on one occasion, the husband had made her leave the marital home with the children because she was not following his instructions. According to the wife, the husband told her to leave and never come back and she and the children stayed in a hotel that evening.

The wife stated that the physical abuse continued after the parties' reached their house. The wife further testified that, in October 2017, before the entry of the PFA order, her parents attempted to talk with the husband about the parties' marriage. According to the wife, the husband refused to discuss the matter with her father and began

> "aggressively shouting and screaming, and he hit my dad with [a coffee mug] -- he was drinking coffee or something at that point, and he hit him, and my dad also got an injury on his foot. And he also hit my mom and he hit me. And we all were running out of the house because it was very scary."

She later clarified that the husband threw the coffee mug, which broke and cut her father's foot. She introduced a photograph of her father's foot, which shows a cut along the side of the instep, as an exhibit. During his testimony, the husband admitted that was holding the parties' daughter when the incident with the wife's father occurred, but he claimed that the coffee cup was on the kitchen island and was knocked off when the wife pushed her hip into him. He stated that the wife's father then stepped on a piece of the shattered coffee cup. The wife also testified that the husband had verbally abused the son and that, on one occasion in 2017, "when [the husband] was hitting me, my son put me inside a room and he

was trying to lock the door saying, 'Mama, you'll be fine.' Then [the husband] forcefully opened the door and hit him saying, 'Do you think you're a hero to save your mom?' "

The wife testified that she had been the childrens' primary caregiver and that they are "her life." Nevertheless, the wife stated that the children seemed fine with the pendente lite visitation arrangement, which essentially resembled the visitation awarded to the husband in the divorce judgment, and that that custody arrangement seemed like it was working, although she later added that the every-other-week midweek visitation disturbed the children's schedule. During questioning by the childrens' guardian ad litem, the wife stated that the children had been tardy for school on two occasions when the husband had exercised his midweek, overnight visitation with them; school documents and the guardian ad litem's colloquy with the husband appear to confirm that that was the case, despite the husband's denial. The wife also noted that the husband had missed the parent-teacher meeting regarding their son, and she testified that, when the parties had attempted to stop the husband's midweek visitation and, in lieu of that visitation, add an additional

overnight visit to his weekend visitation, the parties' daughter had become anxious. According to the wife, the problem was that the change involved the daughter's being away from her for too many nights.

The husband apparently participated in and completed a parenting class, and the wife stated that she thought that the husband was a good father and that the children love him and he loves the children. She added that she was concerned about the husband's lack of kindness, about the moral values he might instill in the children, and about his lack of patience and diligence with the children regarding their school work. Also, the wife's work arrangements were more stable than those of the husband, and she noted that he had been required to work in other states for extended periods during the marriage. The wife stated that, during those times, the husband had come home approximately twice a month, although sometimes he apparently had been able to return home each weekend. The husband admitted that his employment at the time of trial might require travel, but, he said, it generally had not required him to travel.

A further discussion of the testimony and evidence regarding the issue of custody is unnecessary. Although the testimony was in dispute, the evidence would support the conclusions that the custody arrangement provided in the divorce judgment more closely resembles how the children were cared for during the marriage than would a joint-physical-custody arrangement; that the wife had been the primary caregiver and was the superior caregiver for the children; that the parties had some difficulties cooperating without third-party involvement; that the husband had a history of spousal abuse, intimidation, and vindictiveness; that the husband would not be as attentive as the wife to the children's educational needs; and that the husband's moral character was more questionable than the wife's. The husband's custody argument essentially requests that this court reweigh the evidence, particularly relying on his version of who and what should and should not be believed, and conclude that his preferred custody arrangement, rather than the custody arrangement provided in the divorce judgment, is in the best interests of the children. However, this court cannot reweigh the evidence on appeal or substitute our judgment for that of the trial court. See Ex parte Patronas, 693 So.

2d at 475. "Appellate courts do not sit in judgment of disputed evidence that was presented ore tenus before the trial court in a custody hearing." Ex parte Bryowsky, 676 So. 2d at 1324. Accordingly, we cannot conclude that the trial court erred regarding its custody award.[7]

The husband next argues that the trial court exceeded its discretion by not expressly stating in the divorce judgment, as amended, that he could travel to India with the children, as it had stated regarding the wife. This argument simply reflects the husband's misunderstanding of the divorce judgment, as amended. First, we note that the apparent reason for the inclusion of the statement regarding the wife's right to travel to India with the children is that, at one point during the divorce proceedings, the husband had filed a motion to prevent her from taking the children with her on a vacation to India. Second, although it is true that the trial court did not, as the husband requested in his postjudgment

[7]The husband makes the contingent argument that, assuming we hold the trial court in error regarding the custody award, we also should reverse the divorce judgment regarding the child-support award. Because we have rejected the husband's custody argument, we need not address the child-support issue.

motion, add an equivalent statement regarding his right to travel with the children to India, the wife had not requested any restriction regarding the children's travel with the husband, and the amendments made to the divorce judgment, as discussed above, support the conclusion that the husband may take the children with him to India during his custodial periods. Furthermore, the husband's argument reflects the erroneous assumption that the trial court's failure to expressly state that he could take the children to India implies that he could not take the children to India, but the fact is that, absent a restriction being placed on his custodial rights, he may take the children to India with him during his custodial periods with them, just as the wife may take them to India during her custodial periods.[8] We cannot hold the trial court in error based on the husband's erroneous reading of the divorce judgment, as amended. Thus, we reject this argument.

The husband next argues that the evidence does not support the division of the marital property or the determination that he has the

[8]The divorce judgment also encouraged the parties to cooperate regarding additional custodial time.

financial ability to pay the monetary amounts he was ordered to pay. Property division is a matter within the sound discretion of the trial court. See, e.g., Whaley v. Whaley, 261 So. 3d 386, 392 (Ala. Civ. App. 2017). As this court has stated, "[a]fter determining the property within the marital estate, a trial court must ascertain the value of that property, equitably divide the property, and implement a fair method for distributing the property." McCarron v. McCarron, 168 So. 3d 68, 75 (Ala. Civ. App. 2014); see also Ala. Code 1975, § 30-2-51 (addressing the division of marital property); Ala. Code 1975, § 30-2-57 (addressing alimony). "A court has no fixed standard to follow in ... dividing marital property. Rather, the ... division need only be equitable and be supported by the particular facts of the case." Ex parte Elliott, 782 So. 2d 308, 311 (Ala. 2000).

> "In making an equitable division of property, a trial court should consider not only the length of the parties' marriage and the source of the parties' property, but also the parties' respective ages, health, station in life, contribution to the marriage, and future prospects. In addition, the trial court should consider the value and type of property owned, the standard of living to which the parties have become accustomed during the marriage, and the parties' potential for maintaining that standard of living after the divorce."

Antepenko v. Antepenko, 549 So. 2d 1357, 1359 (Ala. Civ. App. 1989); see also Ex parte Elliott, 782 So. 2d at 311-12 (stating that the appellate court is not to substitute its judgment for that of the trial court).

> " '[T]he trial court may also consider the conduct of the parties with regard to the breakdown of the marriage, even where the parties are divorced on the basis of incompatibility, or where, as here, the trial court failed to specify the grounds upon which it based its divorce judgment. Ex parte Drummond, 785 So. 2d 358 (Ala. 2000); Myrick v. Myrick, 714 So. 2d 311 (Ala. Civ. App. 1998). ...'
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> "Baggett v. Baggett, 855 So. 2d 556, 559-60 (Ala. Civ. App. 2003). In addition ..., the trial court may also consider the spouses' relative economic and noneconomic contributions to the marriage in dividing the marital property and awarding periodic alimony. Weeks v. Weeks, 27 So. 3d 526, 532-33 (Ala. Civ. App. 2008)."

E.A.B. v. D.G.W., 127 So. 3d 422, 431 (Ala. Civ. App. 2012). "The weight or importance assigned to any one of these factors is primarily left to the trial court's discretion when apportioning property. This discretion will not be disturbed on appeal unless found to be plainly and palpably wrong." Antepenko, 549 So. 2d at 1359. "A property division that favors one party over another does not necessarily indicate an abuse of discretion by the trial court." Fell v. Fell, 869 So. 2d 486, 496 (Ala. Civ. App. 2003).

The divorce judgment, as amended, does not include specific value determinations regarding most of the marital property that the trial court divided between the parties. However, the following discussion reflects those values that, based on the testimony and evidence presented at trial, are most favorable to upholding the divorce judgment. See Architectura, Inc., supra. We also note that the husband thwarted the wife's discovery attempts regarding financial matters; he only selectively disclosed financial information, such as portions of certain credit-card statements that did not reflect the expenditures that he claimed were marital expenditures; and he repeatedly provided misleading, if not false, testimony at trial. For example, he stated that he did not provide his employment-income information to the wife "because I'm on visa. ... So I was not furnishing those basically to provide it to you guys." In fact, during the January 2020 hearing, the trial court declared that it was going to hold the husband in the Jefferson County jail until he produced certain requested financial documents because the husband had "snubbed his nose at [the trial court] long enough," and, after a break, the husband produced the particular documents under discussion, which, the trial court

stated, "ha[d] been requested for months."[9] The trial court attributed the delay caused by the husband's noncompliance as the reason for needing a second day of trial in March 2020. As a further example of the husband's evasive and untruthful responses, the husband repeatedly stated that the $1,450 rental payment from rental property the parties' owned in Georgia was insufficient to pay the mortgage on that property, which the husband had refinanced, and that he had to pay an additional $800 out of pocket each month to cover the mortgage. The mortgage documentation and billing statement for the refinanced mortgage reflects, however, that the monthly mortgage payment for that property (including amounts paid into an escrow account) was $1,362.12. Also, the husband

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[9]Regarding a Georgia rental property that is discussed, infra, the wife stated that the husband

> "refinanced and he took 100K out of it. So I don't know how much is left in that, and I don't know what he did with that hundred grand. ... [T]hat is why we have been fighting for the past two years to get these document because I want -- I know that definitely he had like 40K at the time of separation[, before he refinanced the Georgia rental property,] and now with the latest bank statement, ... I see only $2,000. So I don't know. Because he's not producing for the past two or three years ...."

claimed that "[i]t's a very short mortgage too, so I have to pay from my pocket," despite the fact that the refinanced mortgage was a 30-year cash-out mortgage for $186,750, bearing a 5.125% interest rate, that had been used to refinance a mortgage with an outstanding balance of $70,569.80, bearing a 3.5% interest rate, that would have been paid in full in April 2024. With the foregoing in mind, we turn to consideration of the testimony and evidence regarding the division of the marital property.

In pertinent part, the trial court awarded the wife a 2011 Toyota Highlander sport-utility vehicle valued at $14,000 and a 2003 Honda Civic automobile valued at $3,000; her 401(k) account valued at $37,672.07; her bank accounts that, based on the wife's testimony, totaled approximately $50,000; all personal property in her possession or that was in the parties' safe-deposit box, making specific reference to her jewelry, which was subsequently valued at $1,951.22;[10] the marital home, which, based on the

[10]Except as discussed in this opinion, the record includes no valuation information regarding the personal property. Pursuant to a pendente lite order, the husband had received personal property that he had requested at one point, and the wife testified that he had taken six suitcases of personal property (including one suitcase purportedly containing financial documentation) with him when he moved from the

wife's testimony, had a fair-market value of $320,000 and equity of approximately $120,000; and $85,000 for the wife's one-half interest in the equity in the parties' Georgia rental property, to be paid in a lump sum of $43,000 within 30 days of the entry of the divorce judgment, followed by installments of $1,000 per month beginning June 1, 2020, until the amount was paid in full.[11] The divorce judgment also awarded the wife

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marital home in October 2017. The divorce judgment stated that, "[e]xcept as provided herein, the parties have separated any and all personal property and make no claim to that of which is in the possession of the other." Although the husband testified at trial that he wanted additional personal property, particularly certain of his art work and art supplies, among other items, from the marital home, the trial court was not required to believe his testimony that the wife had that property. Further, the trial court may have considered it equitable for the wife to retain such items in light of the husband's actions regarding the wife's jewelry.

As for the safe-deposit box, according to the wife, her jewelry was in the husband's safe-deposit box, and she provided a list of that jewelry. She also testified that the husband had told her at one time that he had $10,000 in gold in the safe-deposit box, but she did not know whether the gold was still there or what the husband might have done with it. The husband denied that he had a safe-deposit box. As noted above, the divorce judgment, as amended, provided that the husband must pay the wife $1,951.22 for her jewelry that had been in the safe-deposit box unless he delivered the jewelry to her within 10 days.

[11]The husband refinanced the mortgage on the Georgia rental property in August 2018, without informing the wife. According to his

loan application, the Georgia rental property had a fair-market value of $249,000 at that time, although the husband claimed at trial that that property had a value of $200,000. As noted above, the husband replaced the existing mortgage with a remaining principal balance of $70,569.80 that was to be paid off in April 2024 with a 30-year mortgage in the amount of $186,750; the refinance reduced the monthly mortgage payment by approximately $120. In March 2020, the new mortgage had a remaining principal balance of $183,593.80. Thus, before the refinance, the Georgia rental property had equity of $178,430.20 ($249,000 minus $70,569.80), one-half of which is $89,215.10; after the refinance, the Georgia rental property had equity of $62,250 ($249,000 minus $186,750), which had grown to $62,406.20 ($249,000 minus $183,593.80) as of March 2020.

Regarding the proceeds from the mortgage refinancing, in addition to paying off the existing mortgage and closing costs for the refinance, the husband also paid off a $21,654 personal loan from and received $87,703.05 in cash, hence the wife's reference to the husband's having received "100K" from the refinancing. See note 9, supra. According to the husband, he used that cash to pay marital debts, and it appears that in September and October 2018 he did pay off two of his Bank of America credit-card accounts ($8,802 and $7,803, respectively) and apparently two of his five American Express credit-card accounts ($9,172 and $12,167.51, respectively), for a total of $37,944.51. However, the husband provided no documentation substantiating that the amounts that had been charged on those credit cards or that the personal loan from Discover were actually for marital debts, and he provided no documentation regarding the source of funds used to pay off the credit-card accounts.

Based on the foregoing, the trial court could have concluded that, because the husband had done a cash-out refinance in the midst of the divorce proceedings without discussing the matter with the wife, had liquidated over one-half of the equity in the Georgia rental property and

$17,050 in attorney fees. The wife was ordered to pay her individual debts and the mortgage debt on the marital home (approximately $200,000), which had a monthly mortgage payment of $1,998.92. The wife was also ordered to pay her credit-card debts, which totaled approximately $3,000.

The trial court awarded the husband a 2007 BMW automobile valued at $3,000 and an Infiniti vehicle (the record does not reflect the year or the value[12]); his bank accounts, which, as of the second trial date in March 2020, totaled approximately $4,000;[13] his retirement accounts,

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had used it as he chose, and had not substantiated the nature of any debts he may have paid off, the wife was entitled to one-half of the equity from that property, as it existed before the August 2018 refinance.

[12]At trial, the husband denied owning an Infiniti, although the wife testified that he had stated that he had the BMW and "another car." In his appellate brief, the husband admits that the parties owned an Infiniti "at the time of the divorce."

[13]In addition to the $4,000 balance, a bank statement that the husband presented also reflected a $4,700 cash withdrawal the day before the first trial date in January 2020. In general, the husband provided limited financial documentation regarding his bank accounts and credit-card accounts. Based on the information included in the limited documentation he provided, and on his refusal to comply with the wife's discovery requests, and on the fact that the wife testified that the husband had controlled both of their salaries and the payment of their expenses before the parties' separated (with the exception of child-care expenses, which the wife paid), the trial court could have determined that the husband had hidden financial assets.

which apparently included a 401(k) account that was valued at $40,000 before the parties separated;[14] all personal property in his possession (unknown value); a rental home in Birmingham that was purchased in 2012 and in which the husband resided at the time of trial, which had a fair-market value of $162,000 and equity of $112,000; the Georgia rental property, which had a fair-market value of $249,000 and equity of $65,406.20, but see note 11 supra; and two real properties that the husband had purchased in India in 2014 and 2016, respectively, for which no values were given, although the husband claimed he owed $50,000 for one of the properties. Also, the husband was ordered to pay his individual debts and the mortgages on the Birmingham rental property where he resided ($1,483.17 per month) and on the Georgia rental property ($1,362.12 per month), the latter of which is less than the rent the husband receives for that property. Based on the documents submitted

[14]The wife testified that the husband had a 401(k) account and that, "before the separation[,] he used to have around 40K or something, but I'm not a hundred percent sure." The husband denied "having" any retirement account or "maintaining" any type of 401(k) or individual retirement account at the time of trial.

at trial, the husband had numerous credit-card accounts, only two of which had a significant outstanding balance at the time of trial, a Discover credit card with an outstanding balance of $22,328.62 as of February 2020, and a Bank of America credit card with an outstanding balance of $936.64 as of March 2020.[15]

Considering the testimony and evidence regarding the marital property and particularly taking into account (1) the equity that was available in the Georgia property as of August 2018, (2) the husband's failure to provide discovery and substantiating documentation, (3) the testimony and evidence regarding the husband's abuse of the wife, and (4) the wife's financial and nonfinancial contributions to the marriage, we cannot conclude that the division of the marital property was inequitable. The fact that the division may favor the wife does not reflect an abuse of the trial court's discretion, see Fell, 869 So. 2d at 496, and this court

[15]When the husband paid off his personal loan with Discover upon refinancing the mortgage on the Georgia property, the Discover credit card had had an outstanding balance of $4,816.

cannot reweigh the evidence on appeal or substitute our judgment for that of the trial court. Antepenko, 549 So. 2d at 1359.

As part of his argument challenging the trial court's division of marital property, the husband contends that he was ordered to pay the wife monetary awards that exceeded his available assets. As this court stated in McCarron:

> " 'The disadvantage of a monetary award is that it can be used only where there are sufficient funds or liquid resources in the marital estate. If the amount of the desired award is greater than the resources available to pay it with, a monetary award is obviously not feasible.' 3 Brett R. Turner, Equitable Distribution of Property, § 9:9 (3d ed. 2005).
>
> > " 'It is not error per se to make an award greater than the payor's liquid assets, if the payor can sell or refinance property to meet the obligation.... Such an award is not ideal, however, for there are various disadvantages to compelling sale in the divorce case. ... Because of these disadvantages, an immediate monetary award which exceeds the value of the payor's liquid assets is a remedy of last rather than first resort.... A better option would be division in kind (if division can be accomplished without violating the rule against co-ownership), or a monetary award deferred over sufficient time for liquid funds to be accumulated without sale. If the payor cannot reasonably sell assets or borrow liquid funds to pay

> an immediate monetary award, the making of such an award is error.' "

168 So. 3d at 80 (second ellipsis added).

We must reject the husband's argument for several reasons: (1) his failure to account for his lack of credibility at trial, particularly regarding financial matters; (2) the fact that the trial court could have concluded that the husband had substantial hidden financial assets based on the parties' past incomes and his behavior as to discovery; and (3) the husband's treatment of the mortgage refinancing on the Georgia rental property and the obvious fact that the trial court carefully considered the husband's financial situation because it used a long-term payment schedule to defer approximately one-half ($42,000) of the husband's $85,000 payment obligation to the wife regarding her interest in that property. Even taking some of the husband's testimony at face value, particularly where it is not in substantial conflict with the wife's testimony or documentary evidence, the trial court could have concluded that any issue regarding the husband's payment obligations to the wife was of the husband's own making as a result of his unilateral decisions

and actions regarding the refinancing of the Georgia rental property while the divorce action was pending and his use of the proceeds obtained from that refinancing. Based on the foregoing, we must affirm the divorce judgment as to the division of the marital property.

Finally, the husband argues that the trial court erred as to the attorney-fee award because, he says, the amount was excessive and he lacked the financial ability to make the required payment. We reject the financial-ability argument for the reasons discussed above. Regarding the amount of the wife's attorney fees, the wife's divorce complaint specifically requested an order requiring the husband to "pay the costs of [her] attorney's fees ... in this action." At the close of trial, the wife's counsel stated: "I have my pending motion for attorney's fees, but I think that's the only other thing we have sitting out there ...." The trial court responded: "And I ask that you submit a fee affidavit." The husband made no objection.

On March 5, 2020, the wife's attorney filed his affidavit averring that he had accrued 85.25 hours in the divorce proceedings, that he billed at a rate of $200 per hour, and that his total fee was $17,050. The

husband filed an objection to the fee request, noting that the trial had been completed on March 4, 2020, and that the affidavit in support of the wife's attorney-fee request was not filed until March 5, 2020. The husband also contended that the wife's attorney-fee request "was for fees for contempt issues and costs to obtain records" rather than for the entire divorce action, that the wife had "more money ... in the bank" than him, and that he had a negative net worth. As noted, the trial court awarded the wife $17,050 as attorney fees. In his postjudgment motion, the husband argued, in part, that the award was excessive in light of the parties' comparative assets, income, and debt obligations.

On appeal, the husband continues to operate under the faulty impression that the attorney-fee award must be limited to situations involving contempt. The divorce judgment, however, indicates that the award was for the wife's attorney fees for the entire proceeding, as she had requested in the divorce complaint, and it is well settled that, even in the absence of a finding of contempt, "[a]s an exception to the 'American rule,' a trial court may order one spouse in a divorce action to pay the attorney's fees of the opposing spouse on the same principles as alimony,

pursuant to its equitable jurisdiction. See Ex parte Smith, 34 Ala. 455 (1859)." Turner v. Turner, 210 So. 3d 603, 612-13 (Ala. Civ. App. 2016).

Further, as this court stated in Turner:

> "'"'Factors to be considered by the trial court when awarding [attorney] fees include the financial circumstances of the parties, the parties' conduct, the results of the litigation, and, where appropriate, the trial court's knowledge and experience as to the value of the services performed by the attorney.' Figures v. Figures, 624 So. 2d 188, 191 (Ala. Civ. App. 1993)."'
>
> "Lackey v. Lackey, 18 So. 3d 393, 402 (Ala. Civ. App. 2009) (quoting Glover v. Glover, 678 So. 2d 174, 176 (Ala. Civ. App. 1996))."

210 So. 3d at 613. "[A] trial court is presumed to have knowledge from which it may set a reasonable attorney fee even when there is no evidence as to the reasonableness of the attorney fee." Glover v. Glover, 678 So. 2d 174, 176 (Ala. Civ. App. 1996). Also, a trial court

> "'is not required to set forth a detailed analysis of all the applicable factors considered by it in exercising its discretion in establishing a reasonable attorney fee. However, where the trial court's order does not articulate the basis for its attorney-fee award, we are left to search the record for the basis for the award. The record "must allow for meaningful appellate review by articulating the

> decisions made, the reasons supporting those decisions, and how it calculated the attorney fee." Pharmacia [Corp. v. McGowan], 915 So. 2d [549] at 553 [(Ala. 2004)].'
>
> "Diamond Concrete & Slabs, LLC v. Andalusia-Opp Airport Auth., 181 So. 3d 1071, 1076 (Ala. Civ. App. 2015)."

Turner, 210 So. 3d at 613.

We have carefully reviewed the record and considered the husband's argument. In light of the husband's conduct in regard to the marriage, the parties' relative financial situations, the husband's misbehavior during discovery, the fact that the husband had caused unnecessary delays in the divorce proceedings and the need for additional responses from the wife, including the need for a second day of trial, we cannot conclude that the award of $17,050 for the wife's attorney fees was excessive.

Based on the foregoing, the divorce judgment, as amended, is affirmed.

AFFIRMED.

Thompson, P.J., and Hanson and Fridy, JJ., concur.

Moore, J., concurs in the result, without writing.