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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2021

2200216 and 2200217

Jeremy Reeves

v.

Shana Deel Reeves

Appeals from Etowah Circuit Court (DR-15-900460.01 and DR-15-900460.02)

PER CURIAM.

Jeremy Reeves ("the former husband") appeals from orders entered by the Etowah Circuit Court ("the trial court") in two separate cases. We dismiss appeal number 2200217, arising from case number DR-15-900460.02, and we reverse the judgment in appeal number 2200216, arising from case number DR-15-900460.01.

Procedural History

On May 2, 2016, the trial court entered a judgment in case number DR-15-900460 ("the divorce judgment"), divorcing the former husband from Shana Deel Reeves ("the former wife") and incorporating their agreement as to a property settlement, custody of their child, visitation, and child support. Paragraph 2 of the divorce judgment provides as follows:

> "2. For a period of one year beginning March 2016[,] the [former husband] will pay to [the former wife] alimony in gross in the amount of $1,833 per month and for the next four years the [former husband] will pay to the [former wife] alimony in gross in the sum of $3,500 per month. Said alimony shall not be taxable to the [former wife] as income. In the event the [former wife] cohabitates [sic] with a member of the opposite sex not related to her by blood or marriage during this five-year time period, the [former husband's] alimony obligation shall cease."

On February 14, 2018, the former wife filed a verified petition, which was assigned case number DR-15-900460.01, seeking, among other things, enforcement of the alimony provision and modification of the custody, visitation and child-support awards in the divorce judgment. On April 23, 2018, the former husband filed a counterclaim, requesting, among other

things, that the trial court terminate his alimony obligation as a result of the former wife's alleged cohabitation with an unrelated male. In October 2018, the trial court conducted a trial of the former husband's counterclaim at which the former husband presented evidence designed to prove that the former wife had begun cohabiting with her paramour. On November 6, 2018, the trial court entered an order ("the November 6, 2018, order") denying the counterclaim, determining that the parties had intended that the former husband's alimony obligation would be "alimony in gross and is, therefore, non-modifiable and not subject to any terminating event," and directing the former husband to pay to the former wife the alimony awarded in the divorce judgment. The former husband subsequently filed a motion seeking to set aside the November 6, 2018, order and requesting a new trial, alleging that the former wife had remarried and had begun residing with her new husband.

On December 19, 2018, the former wife filed a motion seeking to hold the former husband in civil and criminal contempt, asserting, among other things, that the former husband had failed to pay the alimony as ordered and that he also had failed to pay child support as ordered in the

divorce judgment. The former wife renewed that motion on April 8, 2019. On April 17, 2019, the trial court entered an order ("the April 17, 2019, order") providing, in pertinent part:

> "2. The Court further finds that [the former husband] has willfully failed to abide by [the November 6, 2018, order] and is hereby found to be in civil and criminal contempt of Court for failure to pay child support and alimony in gross."

The trial court sentenced the former husband to 5 days in jail for each unpaid installment of child support and alimony and directed that the former husband could purge himself of contempt by paying the accrued installments within 30 days and paying all future installments as they became due.

On May 29, 2019, the former husband filed a notice of appeal. On appeal, this court determined that the former husband was attempting to appeal from the November 6, 2018, order, which we concluded was a nonfinal judgment, and we dismissed the appeal on November 13, 2019. See Reeves v. Reeves (No. 2180704, Nov. 13, 2019), 312 So. 3d 794 (Ala. Civ. App. 2019) (table).

On September 15, 2019, while his appeal was pending, the former husband filed a petition for a rule nisi against the former wife, which was assigned case number DR-15-900460.02, alleging that the divorce judgment required the former wife to pay him monthly child support, not vice versa, and that the former wife was in contempt of court for refusing to pay. The former wife answered the petition and filed a counterclaim asserting that the divorce judgment contained a scrivener's error and that the divorce judgment should be amended to reflect that the former husband was obligated to pay the former wife child support as intended by the parties. The former wife later amended the counterclaim to request that the trial court order the former husband to pay all past-due installments of child support.

On September 2, 2020, the trial court entered in case number DR-15-900460.01 an order finding, among other things, that the former husband was in contempt for failing to pay to the former wife child support and alimony that had accrued since the entry of the April 17, 2019, order. The trial court again sentenced the former husband to five days in jail for each unpaid installment of child support and alimony and again directed that

the former husband could purge himself of contempt by paying any arrearage and paying all future installments as they became due.

The parties entered into mediation to attempt to resolve their dispute, but that mediation proved unsuccessful. On October 30, 2020, the former wife filed in case number DR-15-900460.01 a "renewed motion for relief for contempt," requesting that the trial court enforce its previous contempt orders by incarcerating the former husband until he paid all past-due child support and alimony. At that time, several motions were pending before the trial court in both case number DR-15-900460.01 and case number DR-15-900460.02.

On December 3, 2020, the trial court entered, in both case number DR-15-900460.01 and case number DR-15-900460.02, an order adjudicating all motions pending in both cases, which it amended on December 4, 2020 ("the December 4, 2020, order"). In the December 4, 2020, order, the trial court, among other things, granted the former wife's "renewed motion for relief for contempt" that had been filed in case number DR-15-900460.01. The trial court found that the former husband

was in contempt for failing to pay past-due installments of child support. The trial court further found:

> "[The former wife's] Renewed Motion for Relief, as to contempt (filed in DR-15-900460.01) is hereby GRANTED. [The former husband] has previously been found to be in contempt by this Court on April 17, 20[19,] and September 2, 2020, and ordered to pay child support arrearage and delinquent alimony in gross payments. The Court directed that [the former husband] purge himself of contempt by timely paying his child support as well as alimony in gross payments as they became due by paying the child support arrearage and alimony in gross payments for which he is obligated. The Court again finds that [the former husband] had and has the ability to pay his child support and is hereby further found to be in contempt for his failure to pay child support from September 2019 to present, in the amount of $23,700.00 plus interest of $693.00, totaling $24,393.00. [The former husband] is hereby sentenced to serve 85 days in the Etowah County Detention Center.
>
> "The Court further finds that [the former husband] had and has the ability to pay all of his alimony in gross obligations, but has willfully failed to pay alimony in gross for a total of twenty-four (24)-months, in the amount of $84,000.00 plus interest, of $3,483.00, totaling $87,483.00. [The former husband] is hereby sentenced to serve 120 days in the Etowah County Detention Center for this finding of contempt related to his non-payment of alimony in gross as ordered and directed by this Court.
>
> "[The former husband] shall purge himself of contempt if, within twenty-one (21) days of this Order, he pays the sum of $111,876.00, representing the child support and alimony in gross payments for which he is obligated. Further, [the former

> husband] shall pay his child support and alimony in gross payments on the first of each month and shall faithfully comply with the Orders of this Court henceforth."

On December 21, 2020, the former husband filed a petition for the writ of mandamus with this court, requesting that this court "reverse" the trial court's contempt determination in regard to his failure to comply with the alimony provision of the divorce judgment. The former husband subsequently paid the child-support arrearage. The court elected to treat the petition for the writ of mandamus as an appeal. The trial court stayed enforcement of its orders requiring payment of alimony pending resolution of the appeal.

Discussion

Appeal Number 2200217

After receiving our order that the petition for the writ of mandamus would be treated as an appeal, the former husband filed a formal notice of appeal. In that notice, the former husband indicated that he was appealing from orders entered in both case number DR-15-900460.01 and case number DR-15-900460.02 insofar as those orders determine that he was in contempt of court for refusing to pay the former wife alimony.

Accordingly, the clerk of this court assigned two separate appeal numbers -- each one corresponding to one of the trial-court cases below. This court consolidated the appeals.

In his brief to this court, the former husband reiterates that he is appealing only the adjudication of the contempt claim in regard to his nonpayment of alimony. After carefully reviewing the pleadings and motions in the record on appeal, we conclude that the contempt claim relating to the former husband's refusal to pay alimony was raised, litigated, and adjudicated in only case number DR-15-900460.01. The trial court did enter the December 4, 2020, order in case number DR-15-900460.02, but only because, in that order, it ruled on all motions pending in both cases, not because the alimony contempt claim had become part of both cases. The former husband does not raise or argue any issue in regard to the claims asserted in case number DR-15-900460.02 or the orders or judgments relating to those claims; therefore, we dismiss appeal number 2200217, which arises from case number DR-15-900460.02, as moot. See J.H. v. N.H., 301 So. 3d 128, 132 (Ala. Civ. App. 2020).

Appeal Number 2200216

In appeal number 2200216, the former husband maintains that the trial court erred in interpreting the alimony provision of the divorce judgment as imposing upon him an obligation to pay the former wife alimony in gross and in concluding that his obligation was not terminable upon the former wife's cohabiting with an unrelated member of the opposite sex. The former husband maintains that the divorce judgment unambiguously provides that any alimony payable to the former wife, however designated, was terminable upon her cohabitation with an unrelated member of the opposite sex and that he could not be in contempt for refusing to pay the former wife alimony after she began cohabiting with the man whom she later married. The former husband therefore contends that the trial court erred in finding him in contempt and in imposing sanctions for his contempt.

The former wife maintains that the former husband has not properly appealed the November 6, 2018, order, and, thus, she says, he cannot challenge the correctness of the trial court's interpretation of the alimony provision of the divorce judgment contained therein. The former wife is

correct that the former husband cannot directly appeal from the November 6, 2018, order, which remains interlocutory in nature because the order did not dispose of numerous other claims that are still being litigated by the parties. See generally Johnston v. Rice, 217 So. 3d 903 (Ala. Civ. App. 2016).[1] We do not agree, however, that the former husband cannot challenge the correctness of the November 6, 2018, order in this appeal.

Rule 70A(g), Ala. R. Civ. P., provides a party the right to appeal from a contempt adjudication. See Gilbert v. Nicholson, 845 So. 2d 785 (Ala. 2002). In McCarron v. McCarron, 171 So. 3d 22, 27 (Ala. Civ. App. 2015), this court stated that, upon an appeal from a contempt order arising from the refusal to pay alimony, an obligor spouse could not raise the issue of the correctness of the divorce judgment establishing the alimony obligation. However, this court ultimately reversed the contempt judgment on the ground that the obligee spouse had failed to present

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[1]The former husband moved the trial court to certify the November 6, 2018, order as a final judgment pursuant to Rule 54(b), Ala. R. Civ. P., but, according to both parties, the trial court did not grant that motion.

sufficient evidence indicating that the obligor spouse had the financial ability to pay the awards. 171 So. 3d at 28. Thus, any statement by this court limiting the scope of review of the contempt determination amounted to nothing more than dicta, lacking any binding authority in subsequent cases. See Ex parte Patton, 77 So. 3d 591, 596 (Ala. 2011).

The decisions of this court are governed by the decisions of the Alabama Supreme Court. See Ala. Code 1975, § 12-3-16. Our review of relevant cases indicates that the supreme court has addressed the ability of a party to raise the incorrectness of an order as a defense to a contempt claim in a few cases. Most notably, in Walker v. City of Birmingham, 279 Ala. 53, 181 So. 2d 493 (1966), aff'd, 388 U.S. 307 (1967), the Jefferson Circuit Court entered an injunction based on a local ordinance to prohibit Dr. Martin Luther King, Jr., and others from parading in Birmingham to demonstrate against segregation. After Dr. King and the others violated that injunction, the Jefferson Circuit Court entered a criminal-contempt order against them. Dr. King and the others appealed, arguing that their criminal-contempt convictions should be overturned because the

injunction was unconstitutional. Our supreme court declined to entertain the constitutional argument. The court explained:

> "We hold that the circuit court had the duty and authority, in the first instance, to determine the validity of the ordinance, and, until the decision of the circuit court is reversed for error by orderly review, either by the circuit court or a higher court, the orders of the circuit court based on its decision are to be respected and disobedience of them is contempt of its lawful authority, to be punished. Howat v. State of Kansas, 258 U.S. 181, 42 S. Ct. 277, 66 L. Ed. 550 [(1922)]."

Walker, 279 Ala. at 62-63, 181 So. 2d at 502. Accordingly, the supreme court declined to consider the challenge to the constitutionality of the injunction, which it characterized as a collateral attack on that judgment. On petition for a writ of certiorari, the United States Supreme Court affirmed the decision. See Walker v. City of Birmingham, 388 U.S. 307 (1967).

Walker has been cited as the leading example of the "collateral-bar rule," pursuant to which an appellate court generally may not consider a challenge to the merits of the underlying order on appeal of a conviction for criminal contempt of that order. See John R.B. Palmer, Note, Collateral Bar and Contempt: Challenging A Court Order After

Disobeying It, 88 Cornell L. Rev. 215, 216 (2002). Our supreme court has consistently applied the collateral-bar rule in appeals from criminal-contempt orders, see Ex parte Purvis, 382 So. 2d 512, 514 (Ala. 1980); Ex parte Richardson, 380 So. 2d 831, 831 (Ala. 1980); see also Fields v. City of Fairfield, 273 Ala. 588, 591, 143 So. 2d 177, 180 (1962) (applying the collateral-bar rule before Walker), but has never applied the rule on appeal of a civil-contempt adjudication.

The collateral-bar rule that is applied in Alabama is identical to the rule that is applied in federal courts. See Walker v. City of Birmingham, 388 U.S. at 321 n.16. The federal collateral-bar rule does not apply to civil-contempt orders. See Palmer, 88 Cornell L. Rev. at 234 (citing United States v. United Mine Workers, 330 U.S. 258 (1947)). The rationale for the disparate application of the collateral-bar rule has been explained as follows:

> "[I]f one looks at collateral bar in the context of collateral attacks on judgments in general, the reason that the rule does not apply to civil contempt ... becomes much clearer: when a party attacks a court order to avoid coercive and compensatory sanctions, he or she is not seeking simply to avoid the effects of the order, but rather to overturn the order itself. If the order falls, there is nothing to coerce the defendant into doing, and

> there is no injury to other parties requiring compensation. Such an attack appears to be more in the nature of a direct attack than a collateral one, and so, by definition, neither collateral bar nor any of the other rules surrounding collateral attack should apply. ... In other words, if the character and purpose of a particular sanction a court seeks to impose is coercive or compensatory, the court should still allow the defendant to challenge the order itself ...."

Palmer, 88 Cornell L. Rev. at 237 (footnote omitted). We are persuaded that our supreme court would follow the lead of the federal courts to allow a party to challenge the correctness of the underlying order in an appeal from civil-contempt proceedings arising from that order.

The December 4, 2020, order contains elements of both criminal and civil contempt. See State v. Thomas, 550 So. 2d 1067, 1072 (Ala. 1989) (explaining distinction between civil and criminal contempt). To the extent that the trial court imposed sanctions on the former husband in order to compel or coerce compliance with the November 6, 2018, order, and established that the contempt could be purged through the payment of the alimony awarded in the divorce judgment, the contempt adjudication would be considered civil in nature. Id. The collateral-bar rule does not foreclose the former husband from challenging the

correctness of the November 6, 2018, order as a defense to the civil-contempt purge condition requiring payment of the alimony.

The record shows that the parties voluntarily entered into their divorce settlement agreement, including the alimony provision, and that neither party has petitioned the trial court to have the settlement agreement vacated or set aside for fraud, mistake, or other good cause. See Holder v. Holder, 86 So. 3d 1001, 1002 (Ala. Civ. App. 2011) (quoting Grantham v. Grantham, 656 So. 2d 900, 901 (Ala. Civ. App. 1995), quoting in turn Brocato v. Brocato, 332 So. 2d 722, 724 (Ala. 1976)) ("'Agreements between parties to divorce actions are generally binding, and such agreements will not be set aside "except for fraud, collusion, accident, surprise or some other ground of this nature."'"). "When a trial court adopts a [settlement] agreement, it is merged into the final judgment of divorce." Wimpee v. Wimpee, 641 So. 2d 287, 288 (Ala. Civ. App. 1994).

> "'"'[A] settlement agreement which is incorporated into a divorce decree is in the nature of a contract.' Smith v. Smith, 568 So. 2d 838, 839 (Ala. Civ. App. 1990). A divorce judgment should be interpreted or construed as other written instruments are interpreted or construed. Sartin v. Sartin, 678 So. 2d 1181 (Ala. Civ. App. 1996). 'The words of the agreement are to be given their ordinary meaning, and the

> intentions of the parties are to be derived from them.' Id. at 1183. ... An agreement that by its terms is plain and free from ambiguity must be enforced as written. Jones v. Jones, 722 So. 2d 768 (Ala. Civ. App. 1998). An ambiguity exists if the agreement is susceptible to more than one meaning. Vainrib v. Downey, 565 So. 2d 647 (Ala. Civ. App. 1990). However, if only one reasonable meaning clearly emerges, then the agreement is unambiguous. Id." ' "

Bridges v. Bridges, 69 So. 3d 885, 889 (Ala. Civ. App. 2011) (quoting Judge v. Judge, 14 So. 3d 162, 165 (Ala. Civ. App. 2009), quoting in turn R.G. v. G.G., 771 So. 2d 490, 494 (Ala. Civ. App. 2000)); see also Ex parte Littlepage, 796 So. 2d 298, 301-02 (Ala. 2001). "[J]ust because the parties allege different constructions of an agreement, it does not necessarily mean that the agreement is ambiguous." Yu v. Stephens, 591 So. 2d 858, 859-60 (Ala. 1991).

The alimony provision of the divorce judgment states that the former husband shall pay the former wife "alimony in gross" in monthly installments of varying amounts between March 2016 and March 2021 but that, if the former wife cohabits with an unrelated member of the opposite sex during that period, "the ... alimony obligation shall cease." The former wife argues that the alimony provision of the divorce judgment is

ambiguous because, she says, the first clause awards her alimony in gross, which, she says, is not modifiable, but the last clause inconsistently purports to terminate the alimony-in-gross award in the event of her cohabitation with an unrelated member of the opposite sex. See Meyer v. Meyer, 952 So. 2d 384, 391 (Ala. Civ. App. 2006) (describing a "patent ambiguity" as "one that is apparent upon the face of the instrument, arising by reason of inconsistency or uncertainty in the language employed").

We do not necessarily agree that the alimony provision of the divorce judgment awards the former wife alimony in gross. Under Alabama law, alimony in gross is an allowance paid from the estate of the payor spouse to the recipient spouse in final settlement of the recipient spouse's property rights upon divorce. See Boley v. Boley, 589 So. 2d 1297, 1299 (Ala. Civ. App. 1991) ("[A]n award of alimony in gross is intended to effect a final termination of the property rights of the parties and attempts to compensate the wife for the loss of inchoate property rights in her husband's estate."). To qualify as alimony in gross, the award "must satisfy two requirements, (1) the time of payment and the amount must

be certain, and (2) the right to alimony must be vested." Cheek v. Cheek, 500 So. 2d 17, 18 (Ala. Civ. App. 1986). In Hughes v. Hughes, 703 So. 2d 352, 354 (Ala. Civ. App. 1996), this court held that a clause making alimony terminable upon the occurrence of a contingency, such as remarriage, "makes determination of an exact amount due impossible" and renders the alimony award periodic in nature. In Hager v. Hager, 293 Ala. 47, 54, 299 So. 2d 743, 750 (1974), this court held that "the term 'vested' simply signifies that an award of 'alimony in gross' is not subject to modification." In this case, the last clause of the alimony provision of the divorce judgment expressly subjects the alimony award to modification. Based on that discrepancy, the monetary award may well be characterized as periodic alimony, which is always modifiable. See Ex parte Murphy, 886 So. 2d 90 (Ala. 2003). However, we need not decide the precise nature of the alimony award because we conclude that, under the terms of the parties' agreement as incorporated into the divorce judgment, an award of alimony in gross would terminate upon the former wife's cohabitation with an unrelated member of the opposite sex.

We recognize that, generally, an award of alimony in gross is not modifiable. See TenEyck v. TenEyck, 885 So. 2d 146, 152 (Ala. Civ. App. 2003). Section 30-2-55, Ala. Code 1975, provides, in pertinent part:

> "Any decree of divorce providing for periodic payments of alimony shall be modified by the court to provide for the termination of such alimony upon petition of a party to the decree and proof that the spouse receiving such alimony has remarried or that such spouse is living openly or cohabiting with a member of the opposite sex."

Because § 30-2-55 expressly applies to "periodic" alimony, and because an award of alimony in gross generally is not modifiable, this court has held that the statute does not empower a court to modify an award of alimony in gross based on the cohabitation of the recipient spouse with an unrelated member of the opposite sex. See Higginbotham v. Higginbotham, 367 So. 2d 972, 974 (Ala. Civ. App. 1979); Hartsfield v. Hartsfield, 384 So. 2d 1097, 1098 (Ala. Civ. App. 1980), overruled on other grounds by Ex parte Reuter, 623 So. 2d 737 (Ala. 1993). However, neither this court nor our supreme court has ever held that the parties cannot freely contract for the modification or termination of alimony in gross that is payable in installments upon the cohabitation of the recipient spouse with an unrelated member of the opposite sex.

Generally speaking, a provision in a divorce settlement agreement is enforceable even if it is inconsistent with statutory law or caselaw. See Ex parte Smallwood, 811 So. 2d 537 (Ala. 2001) (holding that federal-law limit on award of military-retirement benefits did not prohibit enforcement of the parties' agreement entitling the wife to all of the husband's military-retirement pay); Jackson v. Nelson, 686 So. 2d 338, 339 (Ala. Civ. App. 1996) ("[I]t has long been recognized that parties may agree between themselves to pay support beyond a child's minority, and that such agreements are enforceable."); and Epperson v. Epperson, 437 So. 2d 571, 573 (Ala. Civ. App. 1983) (holding that a party cannot complain that the periodic-alimony award was in excess of that permitted by law when the divorce judgment was based on an agreement between the parties). Furthermore, in Hager v. Hager, supra, our supreme court explained that, although an award of alimony in gross generally cannot be modified, a court can expressly reserve jurisdiction to modify the award in the same manner as periodic alimony:

> "Thus, on rendering a final decree for divorce, the trial court could satisfy a wife's inchoate rights in her husband's estate (dower, homestead, etc.) and provide for her future

> maintenance and support, considering the value of the husband's estate with regard to the former, and the husband's future earning capacity with regard to the latter. That part of the award terminating the wife's inchoate property rights could be made in gross, payable presently or in installments, as directed; that part of the award allocable to future support could be made in a lump sum or in periodic payments; the decree could use a combination of both methods. If the decree was silent as to reservation of control by the court, any award, regardless of the form or source of payment, was final and not subject to modification. If control was reserved, either kind of payment was modifiable up until the time payment was due. Smith v. Rogers, [215 Ala. 581, 112 So. 90 (1927)]."

293 Ala. at 52, 299 So. 2d at 747 (emphasis altered). Specifically, the supreme court stated that, "[i]f a decree did reserve control, even an award in gross, computed on the value of the wife's inchoate rights in her husband's estate, was modifiable up until the time an installment became due." Id. Under Hager, a court can incorporate into a judgment an agreement of the parties allowing for modification or termination of alimony in gross that is payable in installments.

In this case, even assuming that the parties and the trial court did intend that the former wife would receive installments of alimony in gross, the insertion of the last clause of the alimony provision of the divorce judgment does not create an inconsistency or ambiguity by

providing that the installments would cease upon the former wife's cohabitation with an unrelated member of the opposite sex. The trial court should have bound the parties to their agreement and applied the plain and unambiguous terms of the alimony provision of the divorce judgment, including the last clause. "[A] contract must be construed as a whole and, whenever possible, effect must be given to all its parts. The court will look to all of the provisions and the object to be accomplished." Land Title Co. of Alabama v. State ex rel. Porter, 292 Ala. 691, 698, 299 So. 2d 289, 295 (1974). Generally, each word of a contract "must be regarded as adding something of substance," and

> "[c]ourts will not presume that the parties 'make use of words in their contracts to which no meaning is attached by them.' McGoldrick v. Lou Ana Foods, Inc., 649 So. 2d 455, 458 (La. Ct. App. 1994). In other words, 'parties to a contract will not be imputed with using language that is meaningless or without effect.' Id. See also Royal Ins. Co. of America v. Thomas, 879 So. 2d 1144, 1154 (Ala. 2003) (' "It being presumed that every condition was intended to accomplish some purpose, it is not to be considered that idle provisions were inserted. Each word is deemed to have some meaning, and none should be assumed to be superfluous." ' (quoting Hall v. American Indem. Group, 648 So. 2d 556, 559 (Ala. 1994)))."

Black Diamond Dev., Inc. v. Thompson, 979 So. 2d 47, 51 (Ala. 2007). The insertion of the last clause in the alimony provision evidences the parties' intent that the former husband's alimony obligation, however characterized, would cease upon the former wife's cohabitation with an unrelated member of the opposite sex, and that contractual term should have been given its intended effect.

In his counterclaim, the former husband asserted that his alimony obligation had ceased because the former wife had begun cohabiting with her paramour, the man she later married. The former wife denied that she was cohabiting with her paramour. The trial court conducted a trial in October 2018, during which the parties litigated solely the issue whether the former wife was cohabiting with her paramour. The parties submitted trial briefs. In her trial brief, the former wife asserted that, even if she was cohabiting with her paramour, the alimony-in-gross award could not be terminated as a matter of law. In the November 6, 2018, order, the trial court erroneously concluded that the alimony awarded in the divorce judgment could not be modified under any circumstances, so it abstained from making any factual determination as to whether, in fact,

the former wife was cohabiting with her paramour. Having concluded that the former husband owed the alimony regardless of whether the former wife was cohabiting with her paramour, the trial court ordered the former husband to pay all past and future installments of alimony and repeatedly held him in contempt for refusing to do so. However, under a correct interpretation and application of the alimony provision of the divorce judgment, if the former wife had been cohabiting with her paramour, the alimony obligation would have ceased and the former husband would not have been in civil contempt for refusing to pay. See Rule 70A(a)(1)(D) (" 'Civil contempt' means willful, continuing failure or refusal of any person to comply with a court's lawful writ, subpoena, process, order, rule, or command that by its nature is still capable of being complied with.").

Based on the foregoing, we reverse the December 4, 2020, order and remand the case for the trial court to adjudicate the cohabitation issue.[2] We recognize that the current trial-court judge did not preside over the

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[2]Based on this disposition, we pretermit discussion of the other issues raised and argued by the former husband.

October 2018 trial on the cohabitation issue, so we direct that, on remand, the case shall proceed in accordance with Rule 63, Ala. R. Civ. P. ("If a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. In a hearing or trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness."). Based upon its determination of the cohabitation issue, the trial court shall reconsider whether the former husband committed civil contempt and adjudicate that claim.

2200216 -- REVERSED AND REMANDED WITH INSTRUCTIONS.

2200217 -- APPEAL DISMISSED.

Moore, Edwards, and Fridy, JJ., concur.

Thompson, P.J., and Hanson, J., concur in the result, without writings.