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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

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**Sandra Callahan Corriveau**

v.

**Roger Emile Corriveau**

**Appeal from Bibb Circuit Court  
(DR-16-900004)**

MOORE, Judge.

Sandra Callahan Corriveau ("the wife") appeals from a judgment of the Bibb Circuit Court ("the trial court") divorcing her from Roger Emile Corriveau ("the husband"). We reverse the trial court's judgment and remand the case with instructions.

Background

The parties married on June 28, 2014. Before the marriage, the wife had purchased a lot in Bibb County upon which she had constructed a house ("the marital residence"). On July 8, 2014, the wife conveyed by deed the marital residence to herself and the husband as joint tenants with the right of survivorship. The parties began residing in the marital residence in March 2015. On December 26, 2015, the parties separated after the husband was arrested following a physical altercation with a neighbor.

On January 14, 2016, the wife filed a complaint for a divorce from the husband. She asserted, among other things, that the parties were married on June 28, 2014, that there had been an irretrievable breakdown of the marriage, that the parties owned the marital residence jointly, and that there were no other debts or personal property to be divided between the parties. The husband filed an answer to the complaint on March 14, 2016.

The trial court conducted a trial on October 28, 2019, and, upon its conclusion, took the case under advisement. After receiving no ruling on

2200425

the case for almost a year, the wife filed a motion requesting the entry of a final judgment. The trial court ordered the parties to submit proposed judgments. Only the husband complied with that order. The trial court adopted the husband's proposed order as the final judgment. That judgment, among other things, divorced the parties, awarded each party his or her personal property and any associated debt in his or her name, and denied either party alimony. With regard to the marital residence, the judgment directed that the marital residence be sold, with each party to receive 50% of the net sales proceeds, or, in the alternative, ordered that the wife could pay the husband 50% of the fair-market value of the marital residence. The wife filed a motion to alter, amend, or vacate the trial court's judgment on November 3, 2020; that motion was denied by operation of law on February 1, 2021. See Rule 59.1, Ala. R. Civ. P. The wife timely filed her notice of appeal to this court on March 12, 2021.

### Issue

The wife argues that the trial court committed reversible error in awarding the husband a 50% interest in the marital residence because, she says, that award is inequitable under the circumstances.

Facts

The facts pertinent to the appeal are as follows. The wife purchased the land upon which the marital residence was built in 2008 at a cost of \$108,000. Between 2008 and 2012, the wife expended \$128,000 building the marital residence. Before the parties married, the wife owned and operated an antique business in Tuscaloosa County. At some point, the wife began a relationship with the husband, who owned and operated an automotive-repair business. They eventually married on June 28, 2014. The husband sold the mobile home in which he was residing for \$2,000 or \$3,000.

At some point, the parties decided that they would relocate their businesses to a joint location. The wife testified that the parties needed a loan for the business relocation and that, to secure sufficient collateral for that loan, which was to be taken out jointly, she conveyed to the husband an ownership interest in the marital residence. The husband maintained, however, that the wife conveyed an ownership interest in the marital residence to him because they had gotten married and she had wanted them to share all of their property, rejecting his suggestion that they enter

2200425

into a prenuptial agreement. The wife testified that she did not have any documentation explaining the reason for the conveyance; she also testified that the parties had been unable to secure a loan using the marital residence as collateral.

The husband did obtain a loan, with the wife as a cosigner, using the wife's automobile as collateral. The wife testified that, with interest, the loan totaled \$13,200 and that she had made most of the payments on the loan, and she asserted that the husband should pay her \$6,200 as his fair share of the loan payments. The parties relocated their businesses to a location in Coaling and resided there together until January 2015, when they began liquidating at an auction their inventory and goods, except for some of the husband's tools, which he had loaded into a small trailer. The husband testified that the parties received \$7,000 for the items that were sold at the auction; the wife testified that the husband received \$4,000 to \$5,000 as his share of the auction proceeds. The husband testified that the parties had sold other items after the auction for \$10,000, although he conceded that he was unsure of the actual amount because the wife had managed the parties' finances.

2200425

In March 2015, the parties moved into the marital residence. The wife testified that the parties had used the auction proceeds and her savings to pay their living expenses. The wife testified that the husband did not work over the course of the next nine months, except to perform various odd jobs and mechanic work. During that period, the husband did grade the driveway and fill in some areas around the marital residence with dirt, which, the wife testified, he had obtained for free. The wife testified that the husband also paid \$1,759 to replace the transmission in her automobile; she denied, however, that he had contributed financially to build, maintain, or repair the marital residence.

On December 26, 2015, the husband engaged in a physical altercation with a neighbor for which he was arrested and charged with a crime. The wife testified that the parties separated after that incident because she was afraid of the husband; she testified that he had a very bad temper, had exhibited violent outbursts and rages, had broken things, and had threatened her and her family. The wife stated that she had filed a petition for protection from abuse and for a divorce against the husband

2200425

while he was in jail. She testified that, when the husband was released from jail, he began living with his former wife.

The wife testified that she had made improvements to the marital residence after the husband had moved out. According to the wife, the marital residence has a drainage problem, which has affected the concrete foundation and has caused structural problems, the results of which can be seen in the ceiling and in the sheetrock on the inside of the house. She testified also that the marital residence does not have a water source, that the well on the property had collapsed 4 years before the trial, and that she catches rainwater to use as her water source via 6 275-gallon containers, 4 of which had been acquired by the former husband shortly after the parties' separation. She testified that she had had an appraisal performed on the marital residence in 2017, which, she said, had estimated its value as \$85,000. The husband presented documents from the Bibb County tax assessor's office valuing the marital residence at \$108,000 in 2017 and at \$99,000 in 2018.

### Standard of Review

This court reviews a trial court's division of marital property following ore tenus proceedings with a presumption of correctness, but a judgment dividing marital property may be reversed when the trial court abuses its discretion. See Sumerlin v. Sumerlin, 964 So. 2d 47 (Ala. Civ. App. 2007). "In examining whether the trial court's property division amounts to an abuse of its discretion, the proper question to be resolved is whether the property division was equitable under the facts of the case." Id. at 49.

### Analysis

Section 30-2-51(b)(1) , Ala. Code 1975, provides that "[t]he marital estate is subject to equitable division and distribution." The purpose of equitable division and distribution is to give "each spouse the value of [his or her] interest in the marriage. Each spouse has a right, even a property right in this." Pattillo v. Pattillo, 414 So. 2d 915, 917 (Ala.1982). The interest of a spouse in marital property is not controlled by legal title, so a spouse holding title to the marital residence jointly with a right of survivorship is not automatically entitled to an equal share of the



2200425

residence upon divorce. See Phillips v. Phillips, 52 Ala. App. 234, 291 So. 2d 322 (Civ. 1974); Allen v. Allen, 49 Ala. App. 200, 203, 269 So. 2d 914, 916 (Civ. 1972) ("There is no requirement that a division of property in a divorce decree be divided into equal shares, even though the property be owned jointly."). Even when marital property is titled jointly between the spouses, the trial court is required "to make such division or settlement of the interests of the parties as equity requires." Phillips, 49 Ala. App. at 236, 291 So. 2d at 324.

In the final judgment, the trial court emphasized that the husband had regularly used the marital residence and that he had made improvements to the marital residence. A spouse may obtain an interest in real property, although it was acquired by the other spouse wholly from his or her own funds before the marriage, when that real property is regularly used as the marital residence for the common benefit of the parties during the marriage. See Ala. Code 1975, § 30-2-51(a); see also Harris v. Harris, 59 So. 3d 731 (Ala. Civ. App. 2010). Likewise, when a spouse makes improvements to the marital residence during the marriage, a trial court may award that spouse an interest in the marital residence on

2200425

that basis. See, e.g., Smith v. Smith, 423 So. 2d 884 (Ala. Civ. App. 1982). Again, however, a spouse does not automatically acquire an equal interest in a marital residence purchased solely by the other spouse by regularly residing in the marital residence and making improvements to the marital residence. The extent of the interest of the nonpurchasing spouse still depends upon the equities of the case. See Morgan v. Morgan, 322 So. 3d 531, 546 (Ala. Civ. App. 2020) (Moore, J., concurring in part and dissenting in part).

In making an equitable division and distribution of the marital property, a trial court should take into account, among other factors, the source, value, and type of property within the marital estate, the length of the marriage, and the economic and noneconomic contributions of the parties to the marriage. See Weeks v. Weeks, 27 So. 3d 526, 529 (Ala. Civ. App. 2008). In this case, the parties agree that the marital residence was the sole marital asset subject to division. The undisputed evidence in the record indicates that the wife invested \$236,000 to acquire the marital residence while the husband did not pay any part of the consideration for its acquisition. The evidence in the record indicates that, by 2018, the

2200425

marital residence had a fair-market value of between \$85,000 and \$99,000. During the marriage, the husband had graded the driveway and had filled in some parts of the land surrounding the marital residence with dirt. After the parties separated, the husband also acquired and installed on the property four containers for collecting water. However, the husband did not present any evidence as to the value of those improvements, not even the purchase price for the containers. Nothing in the record substantiates that those improvements increased the value of the marital residence so significantly as to justify a determination that the husband should receive 50% of the value of the marital residence in compensation.

The undisputed evidence shows that the parties had been married for only 16 months before they separated and that they had resided together in the marital residence for only 9 months. The record fairly indicates that the husband made relatively little financial contribution to the marriage. The wife testified, without dispute, that the husband had brought into the marriage between \$2,000 and \$3,000 from the sale of his mobile home and between \$4,000 and \$5,000 from the auction of his business property. The husband testified that the parties jointly received \$10,000 from the sale of

2200425

other property, but he did not testify as to the portion of the \$10,000 that was attributable to the sale of his property. The parties testified that the husband had used that money to pay some of the household expenses, but the wife testified that she had paid the higher share of those expenses. The record indicates that the husband had earned approximately \$1,000 per month as an automobile mechanic, but the husband did not dispute that he had worked only sporadically after the parties moved into the marital residence. Additionally, the husband had incurred a \$13,200 debt that the wife testified she had mainly paid, and she asserted during the trial that the husband should be required to pay her \$6,200 to compensate her. The husband did not present any evidence as to any noneconomic contributions he had made to the marriage. The award of a 50% interest in the marital residence equates to an award of between \$42,500 and \$49,500. Nothing in the record indicates that the husband contributed nearly that amount of money during the marriage.

In addition to the factors outlined above, the trial court may also consider the conduct of the parties leading to the breakdown of the marriage and the spouse's need for support, taking into account the

2200425

parties' ages, health, and earning capacities. See Courtright v. Courtright, 757 So. 2d 453, 456 (Ala. Civ. App. 2000). The trial court divorced the parties on the grounds of incompatibility and irretrievable breakdown of the marriage. The wife testified that the husband's anger issues had precipitated the breakdown of the marriage; the husband testified that he had been acquitted of the criminal charges against him arising from the December 26, 2015, incident and that the wife was not really afraid of him because, he said, she had continued to interact with him even after they separated. Regardless, the husband did not assign any fault for the breakdown of the marriage on any misconduct of the wife. The evidence does not support any conclusion that the husband required support from the wife. Before the marriage, the husband had owned and operated his own automotive-repair business, which, according to his testimony, he had resumed after the parties separated. Although the husband sold his mobile home, he has since acquired a suitable residence on land he jointly owns with his former wife. The husband presented no evidence as to his age, health, or earning capacity that would justify the award.

2200425

Although the husband came into the marriage with few assets and although he made relatively small contributions to the marriage, by the terms of the judgment he exits from the parties' 16-month marriage with an asset worth between \$42,500 and \$49,500. Meanwhile, the wife, who supplied the husband with a residence and paid most of the parties' expenses, leaves the marriage at least \$42,500 poorer than when she entered the marriage and with the prospect of losing the marital residence altogether through a forced sale through no fault of her own. Equitable division and distribution involves the "fair ... allocation" of marital property. Black's Law Dictionary 679 (11th ed. 2019) (defining "equitable distribution" and "equitable division"). We perceive nothing fair about the award allocating the husband a 50% interest in the marital residence. That award is inequitable in light of the circumstances of this case.

For the foregoing reasons, we reverse the judgment and we remand the case to the trial court with instructions that it vacate that part of the judgment dividing the marital residence and that it reconsider the equities of the case and enter a new judgment consistent with this opinion. Based

2200425

on our disposition, we pretermitt discussion of any other ground for reversal of the property-division provisions of the judgment.

**REVERSED AND REMANDED WITH INSTRUCTIONS.**

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