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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2022

2210040

Jeffrey Frohock, Sr.

v.

Christine C. Frohock

Appeal from Mobile Circuit Court
(DR-19-901472)

2210077

Christine C. Frohock

v.

Jeffrey Frohock, Sr.

Appeal from Mobile Circuit Court
(DR-19-901472)

FRIDY, Judge.

Jeffrey Frohock, Sr. ("the husband"), appeals from a judgment of the Mobile Circuit Court ("the trial court") divorcing him from Christine C. Frohock ("the wife") and dividing their marital assets. The wife cross-appeals, challenging the trial court's determination not to award her periodic alimony or to reserve the issue of periodic alimony. We reverse.

Background

The parties had been married thirty-six years when the husband filed a complaint for divorce. At the time of the trial, the wife was sixty-five years old, and the husband was sixty-eight years old. The parties had children from previous marriages; however, no children were born of their marriage to each other.

The husband testified that the wife's infidelity led to the breakdown of the marriage. He said that he believed that she was having affairs with two of her former classmates in southern Florida, where the wife was from. Beginning in September 2019, the husband said, the wife made numerous trips to south Florida. By March 2021, the trips were more frequent, he said, and the wife stayed in Florida up to three weeks at a time. The husband testified that he hired a private detective who, he said,

confirmed his suspicion that the wife was having affairs.¹ The husband said that he believed that at least one of the affairs was continuing at the time of the trial.

Although, at the outset of the trial, the wife had stipulated to having committed adultery and had admitted being at fault in the breakdown of the marriage, during her testimony she denied that she had engaged in the affairs of which the husband had accused her, saying that she had never slept with either man. She testified that, when she agreed to the stipulation about having committed adultery, she was relying on a definition of adultery that she had read online that included "any type of hug, a kiss, or anything like that." She said that adultery was not the problem in the marriage but a "symptom of the problem." The wife described her relationship with the husband as akin to being roommates, and she testified that she and the husband led separate lives, had separate money, and had no real common interests. At the time of the trial, the wife was in the process of moving back to southern Florida.

¹Although there is no need to recount in this opinion all the salacious details regarding the wife's alleged relationships with other men, we note that the documentary evidence submitted at trial tended to show that the wife had, in fact, engaged in such relationships.

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She said that one of the men with whom the husband alleged she had had an affair had invited her to move in with him, but, she said, that was not going to happen.

The husband operated All-Tech Machining ("the company"), a precision machine shop, throughout the marriage. He testified that the wife was listed as the president of the company in Alabama in the hope that the company would be eligible for "minority status," which, he said, could be helpful in obtaining contracts. The wife is also the sole shareholder of the company. However, the wife had no duties within the company, other than to sign contracts. The husband made all of the decisions concerning the company. The husband said that he was an employee of the company and that he received a "take-home" salary of \$2,000 each week. Of that amount, the husband said, he gave the wife \$900 for household expenses and put the rest "in his pocket." On cross-examination, the husband acknowledged, that the year before the trial, the company had paid him a bonus of \$50,000. The wife did not receive a salary from the company, but it paid for the wife's Lexus automobile, her cell phone, UPS service, and other perks, the husband said.

The parties' jointly filed federal tax returns indicated that they had an adjusted gross income of \$175,959 in 2019, \$164,750 of which was attributable to the husband's salary from the company, and \$232,441 in 2020, \$224,412 of which was attributable to the husband's salary.

At the time the parties married in 1985, the wife was working as a collection agent for the company Sears but soon after went to work for World Omni Financial Corp. ("World Omni"), which transferred her to Mobile in the early 1990s. Because of the wife's transfer, the husband said, he had moved the company from southern Florida to Mobile. The parties purchased a total of ten acres of contiguous property in three different parcels in Wilmer, outside of Mobile. They built a house on a three-acre parcel, and the company occupied two acres. The remaining five acres were unimproved. In 2009, the wife retired from World Omni.

When the husband filed the divorce complaint, the wife removed \$23,000 from a joint account but then returned it after the husband's attorney called her about the money. The parties divided that money between them. The husband said that he put his share in his money-market account, which, he said, was his only banking account because he primarily used cash. At the time of the trial, the husband said, the parties

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also had a joint account with World Omni that the husband said contained between \$10,000 and \$15,000. The wife testified that she had closed that account several months before the trial and that she had not told the husband she was doing so.

The husband said that the parties' marriage "was built on everything being separate for the most part." He testified that each party had a safe in which he or she kept cash. They did not share the combinations of the safes with each other. The husband said that he kept about \$10,000 in his safe, but that the amount fluctuated. He said that, based on "something he saw in a text," he believed that the wife had approximately \$18,000 in her safe at the time of the trial. The wife disputed the husband's testimony regarding the amounts of cash each had in his or her safe. She said that she could not account for all the money the husband had earned through the years and that she had seen "piles of money" in his safe when it was open. She said that she did not have any cash in her safe.

The husband had a retirement account in his own name with New York Life. At the time of the trial, the husband said, that account contained approximately \$260,000. The wife had not contributed to the

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husband's New York Life account, which, he said, he had funded with the proceeds from the sale of his Florida house after the parties moved to Mobile. The wife had a retirement account with Sears that, she said, paid her \$43 a month, and she received \$2,300 a month in Social Security retirement benefits. The wife also had a retirement account in her name with New York Life. At the time of trial, that account contained approximately \$850,000, from which the wife said she received an annuity payment of \$640 a month. The wife said that the account originated as her profit-sharing plan with World Omni and that, when she retired in 2009, she rolled it over into a New York Life account. The husband acknowledged that he had not contributed to that account and had not advised the wife on her investments.

The husband testified that the parties had agreed that, during the marriage, he would use cash to pay for the things they wanted so they could remain debt-free, that the wife would contribute to her retirement account, and that they would use the money in her retirement account when they retired. For example, the husband said, he had paid off the \$70,000 owed on the marital residence, he had paid for the parties' vacations, he had paid to add 1,000 square feet to the marital residence,

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and he had purchased additional acreage, while the wife had saved money. He agreed that the wife had contributed half the down payment on the marital residence using the proceeds from the sale of a house she had owned in Florida.

The husband testified that he was a member of a hunting club with annual dues of \$5,000. In addition, he said that he had taken many hunting trips out of the country, including at least one trip to Mexico and five trips to Argentina. The parties owned a time-share on Marco Island, Florida, and a boat for which they had paid \$60,000. The parties disagreed on the current value of the boat.

At the time of the trial, the marital residence had a tax-appraised value of \$201,800. The husband said that he believed that the house and acreage were never worth more than \$350,000. A separate appraisal had been performed on the property, but that appraisal was not entered into evidence at the trial.

As to the company, the husband said that he estimated that it was worth between \$400,000 and \$500,000, without considering the \$350,000 to \$400,000 in debt the company carried. When considering that debt, the company has a value of between \$50,000 and \$100,000, according to the

husband. At the wife's request, the trial court appointed Mark Pawlowski as an expert to provide an estimate of the value of the company. A document that appears to be Pawlowski's report, which was admitted into evidence over the husband's objection that the document had not been properly authenticated, estimated that the fair value of 100% of the outstanding common stock in the company was \$477,000.

On August 2, 2021, the trial court entered a judgment divorcing the parties and dividing their marital property. In the judgment, the trial court ordered that the three parcels of property the parties owned, which included the marital residence and the property on which the company was located, could be sold separately or together and that the net proceeds derived from the sale were to be divided equally between the parties. Each party was given the right of first refusal to purchase the property at fair-market value.

The trial court awarded the company to the husband, but it directed him to pay the wife \$240,000 as her share of the equity in the company. The trial court gave the husband the option of paying that amount in a lump sum or in \$4,000 monthly installments for 60 months. The trial court awarded each party their respective retirement account with New

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York Life, and it awarded the wife her retirement account with Sears. It awarded each party the money in his or her safe and the money in his or her individual bank accounts, and it ordered that any existing joint banking account be closed and the proceeds divided equally between the parties.

The trial court awarded the wife the Lexus automobile that she had been driving; it awarded the husband the Ford F350 pickup truck that he had been driving, as well as a 1997 Toyota Tundra. It awarded the husband the time-share on Marco Island, as well as a pool table, and it awarded the wife a pinball machine and a Pac-Man gaming machine. The parties had agreed on a division of all other personal property before the trial. The judgment expressly denied alimony to either party.

The parties filed motions to alter, amend, or vacate the judgment. After a hearing on the motions, the trial court amended the judgment, directing the parties to sell the boat and divide the proceeds equally. The husband filed a notice of appeal, and the wife filed a notice of cross-appeal.

Analysis

In his appeal, the husband contends that the trial court abused its discretion by overwhelmingly favoring the wife in its division of the marital property. He argues, among other things, that the trial court erred by awarding the wife \$240,000 in "equity" in the company because the only evidence on which the conclusion such equity existed in the company was the document that appears to be the valuation report Pawlowski prepared, which, the husband argues, was unauthenticated and should not have been admitted into evidence. We agree with the husband that the trial court erred in admitting the document.

"It is an established rule of evidence that, to admit any document into evidence over objection, the party offering the evidence must show that the document is genuine or authentic." Hampton v. Bruno's, Inc., 646 So. 2d 597, 599 (Ala. 1994). Rule 901(a), Ala. R. Evid., provides that "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." The Advisory Committee's Notes further explain:

"Rule 901 embraces the historic requirement that the proponent of real or demonstrative evidence (all nontestimonial evidence, such as writings, objects, etc.) lay a threshold foundation, as a prerequisite to admissibility,

sufficient to show that the evidence is what it is represented to be. ... When a writing is offered as evidence, Rule 901 continues the necessity for laying a foundation to authenticate the document as genuine."

"Authentication may be established by testimony from a witness with knowledge 'that a matter is what it is claimed to be.'" Ex parte Jefferson Cnty., 330 So. 3d 830, 838 (Ala. Civ. App. 2021) (quoting Rule 901(b)(1), Ala. R. Evid.).

Counsel for the wife offered the document that appears to be Pawlowski's valuation report into evidence during his cross-examination of the husband, and the husband's counsel, after first indicating that she was not contending that the report was not authentic, immediately changed her position and objected to the admission of the report on the ground of a lack of authentication. The wife did not thereafter provide any evidence to support a finding that the document was what her counsel claimed it was. Despite this lack of an evidentiary foundation, the trial court overruled the husband's objection and admitted the document into evidence.

We conclude that, in admitting the document that appears to be Pawlowski's valuation report into evidence, the trial court erred. The wife offered no evidence, and the wife's counsel elicited no evidence from the

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husband, indicating that the offered document was, in fact, the report Pawlowski had prepared. In the absence of such evidence, the document was not properly authenticated and should have been excluded from evidence. See B.H. ex rel E.D.E. v. R.E., 988 So. 2d 565, 571-72 (Ala. Civ. App. 2002) (holding that, in paternity action, juvenile court erred in relying on genetic-test results filed with the court when no attempt had been made to authenticate the tests or the results); see also Morris v. Young, 585 So. 2d 1374, 1377 (Ala. 1991) (stating that if motion to strike medical records or affidavit based on those records had been made, such motion would have been properly granted on ground that the medical records were inadmissible because they were unauthenticated).

The trial court's improper admission of the document that appears to be Pawlowski's valuation report was not harmless. Without that document, the only evidence of the value of the company was provided by the husband, who opined that, after considering the company's debts, the company had a value of between \$50,000 and \$100,000. The trial court awarded the wife \$240,000 for what it said was her share of the equity in the company. To support an award of that amount, the trial court had to have relied on the document's estimate of \$477,000 as the fair value of

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the common stock in the company, which, as noted, was not properly before it.

Because the only evidence properly before the trial court shows that the trial court's award to the wife of \$240,000 of the "equity" in the company far exceeded the value of the equity in the company based on the evidence admitted at trial, we must reverse the trial court's judgment. See Shewbart v. Shewbart, 19 So. 3d 223, 232-33 (Ala. Civ. App. 2009) (reversing divorce judgment based on improper value of business and remanding the cause for trial court to consider proper value of sole proprietorship when fashioning property division). Because we are reversing the award to the wife of cash representing a portion of the equity in the company, we must reverse the entire division of the marital property. See Sutton v. Sutton, 217 So. 3d 937, 941 (Ala. Civ. App. 2016). On remand, the trial court should enter a new judgment that reflects a division of the parties' marital property based on a consideration of only the evidence properly before it.

Because we are reversing the trial court's judgment insofar as it divided the marital property, we pretermitt consideration of the other arguments the husband raises on appeal relating to that division, such

as the wife's culpability in the ending of the marriage, save one. The husband contends that the trial court impermissibly admitted an appraisal containing evidence regarding the value of the marital residence. However, the trial court did not admit into evidence the actual appraisal at issue, and no witness testified as to the value of the residence reflected in that appraisal. In addition, the trial court did not establish a value for the marital residence in the judgment. Instead, it permitted each party the right of first refusal to buy the marital residence "at fair market value," failing which the marital residence would be sold "for the best possible price" and the net proceeds divided equally between the parties. Thus, to the extent that there was any evidence admitted improperly regarding the appraised value of the marital residence, that testimony did not injuriously affect the substantial rights of the parties and constituted harmless error. Rule 45, Ala. R. App. P.

Turning to the wife's cross-appeal, the wife contends that the trial court erred in denying her an award of alimony or in failing to reserve the issue of periodic alimony. "[A] trial court's division of marital assets and its award of periodic alimony are interrelated and must be considered together." Sutton, 217 So. 3d at 941. Because of this

interrelationship, when we reverse that part of a divorce judgment dividing the parties' marital property, we likewise will reverse that part of the judgment relating to alimony so that the trial court can reconsider those issues together. See id. ("Because we have concluded that the trial court erred in its award to the wife of more than 50% of the husband's vested retirement benefits, ... we must also reverse the trial court's judgment with regard to its division of the remainder of the marital property and its award of periodic alimony to the wife."). We do so here, given that the trial court's reconsideration of the division of the marital property may, but not necessarily will, cause the trial court to reconsider whether to award the wife alimony, assuming without deciding that the evidence admitted during the trial could support such an award.² See Shewbart, 19 So. 3d at 233.

Conclusion

²We reject the husband's argument that the trial court did not have the authority to award the wife periodic alimony because she did not file an answer or counterclaim requesting that relief. As this court has previously held, "where the record reveals evidence which supports an award of alimony, the trial court is not precluded from making such an award, even though it was not specifically requested." Beason v. Beason, 571 So. 2d 1155, 1156 (Ala. Civ. App. 1990).

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Based on the foregoing, we reverse the trial court's judgment, and we remand the cause for the entry of a new judgment consistent with this opinion.

2210040 -- REVERSED AND REMANDED WITH INSTRUCTIONS.

2210077 -- REVERSED AND REMANDED WITH INSTRUCTIONS.

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