

Rel: September 16, 2022

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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2022

2200984

William Anthony Johnson, Sr.

v.

Mindy Reed Johnson

**Appeal from Washington Circuit Court
(DR-20-900083)**

HANSON, Judge.

William Anthony Johnson, Sr. ("the husband"), appeals from a judgment entered by the Washington Circuit Court ("the trial court") divorcing him from Mindy Reed Johnson ("the wife"). The husband specifically alleges that the trial court erred in the dividing the parties'

marital property, awarding the wife rehabilitative alimony, and calculating child support. We affirm the trial court's judgment in part, reverse it in part, and remand the cause.

Procedural History

In October 2020, the wife filed a complaint requesting that the trial court divorce the parties based on incompatibility of temperament; equitably divide the parties' marital property; and award her rehabilitative alimony, custody of the parties' child, and child support. The husband filed a response to the wife's divorce petition denying the wife's allegations. After a trial, the trial court divorced the parties based on incompatibility of temperament; directed the husband to pay the wife \$907.30 per month in child support and \$350 per month for 36 months in rehabilitative alimony; and awarded the wife \$10,000 in equity from the marital residence, \$23,500 from the husband's retirement account, two specific vehicles, and, among other things, personal items that the wife and the parties' child used. The trial court awarded the husband the remaining marital property, including the marital residence, two specific vehicles, and any other vehicle titled in his name. The husband timely filed a notice of appeal.

Facts

The parties married in August 2008 and separated in September 2020. In 2010, the parties purchased the marital residence. When the parties separated, the wife moved into her aunt's residence because, the wife said, she could not afford her own place. At the time of trial, the parties had \$16,000 in equity in the marital residence. During the marriage, the wife had not been employed. At trial, the wife testified that she believed that she was entitled to a portion of the funds in the husband's retirement account because, throughout the marriage, she had stayed at home, caring for the parties' child and tending to the home, and did not have a retirement account of her own. The wife also testified that the husband had transferred \$3,000 out of her personal bank account, to which he was only a signatory, without her authorization.

The husband testified that, after the parties had separated, he had withdrawn approximately \$45,000 from his retirement account and had gambled away the entire amount. The husband admitted that he had a gambling addiction. At trial, the husband testified that his year-to-date gross income for the first 10 months of 2020 was \$112,886.12. The husband admitted that he did not have any problem with providing

insurance and child support for the parties' child. The wife stated that her current gross income was \$2,483 per month.

Division of Marital Property and Award of Rehabilitative Alimony

On appeal, the husband argues that the trial court erred in its division of the parties' marital property because, he says, the division was unfair and inequitable. He also asserts that the trial court erred by awarding the wife rehabilitative alimony. We disagree.

"In reviewing a trial court's judgment in a divorce case where the trial court has made findings of fact based on oral testimony, we are governed by the ore tenus rule. Under this rule, the trial court's judgment based on those findings will be presumed correct and will not be disturbed on appeal unless it is plainly and palpably wrong. Hartzell v. Hartzell, 623 So. 2d 323 (Ala. Civ. App. 1993). Matters of alimony and property division are interrelated, and the entire judgment must be considered in determining whether the trial court abused its discretion as to either of those issues. Willing v. Willing, 655 So. 2d 1064 (Ala. Civ. App. 1995). Furthermore, a division of marital property in a divorce case does not have to be equal, only equitable, and a determination of what is equitable rests within the sound discretion of the trial court. Golden v. Golden, 681 So. 2d 605 (Ala. Civ. App. 1996). In addition, the trial court can 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. Ex parte Drummond, 785 So. 2d 358 (Ala. 2000). Moreover, in Kluever v. Kluever,

656 So. 2d 887 (Ala. Civ. App. 1995), this court stated, "[a]lthough this court is not permitted to substitute its judgment for that of the trial court, this court is permitted to review and revise the trial court's judgment upon an abuse of discretion." Id. at 889.'

"Langley v. Langley, 895 So. 2d 971, 973 (Ala. Civ. App. 2003). 'Trial judges enjoy broad discretion in divorce cases, and their decisions are to be overturned on appeal only when they are "unsupported by the evidence or [are] otherwise palpably wrong.'" Ex parte Bland, 796 So. 2d 340, 344 (Ala. 2000) (quoting Ex parte Jackson, 567 So. 2d 867, 868 (Ala. 1990))."

Cottom v. Cottom, 275 So. 3d 1158, 1163 (Ala. Civ. App. 2018).

Additionally,

"[w]hen dividing marital property and determining a party's need for alimony, a trial court should consider several factors, including ' "the length of the marriage, the age and health of the parties, the future employment prospects of the parties, the source, value, and type of property owned, and the standard of living to which the parties have become accustomed during the marriage."' Ex parte Elliott, 782 So. 2d 308 (Ala. 2000) (quoting Nowell v. Nowell, 474 So. 2d 1128, 1129 (Ala. Civ. App. 1985)) (footnote omitted). In addition, the 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 Ex parte Drummond, 785 So. 2d 358 (Ala. 2000); Myrick v. Myrick, 714 So. 2d 311 (Ala. Civ. App. 1998)."

Baggett v. Baggett, 855 So. 2d 556, 559-60 (Ala. Civ. App. 2003).

"Although marital property generally includes property purchased or otherwise accumulated by the parties during the marriage, it may also include the property acquired before the

marriage or received by gift or inheritance during the marriage when it is used, or income from it is used, regularly for the common benefit of the parties during their marriage. See § 30-2-51(a), Ala. Code 1975."

Nichols v. Nichols, 824 So. 2d 797, 802 (Ala. Civ. App. 2001). Finally, "[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).

Additionally, the purpose of rehabilitative alimony is to allow a spouse to become self-supporting. Alfred v. Alfred, 89 So. 3d 786, 790 (Ala. Civ. App. 2012). "This court has defined rehabilitative alimony as 'a sub-class of periodic alimony' that allows a spouse 'time to reestablish a self-supporting status.'" Fowler v. Fowler, 773 So. 2d 491, 495 (Ala. Civ. App. 2000) (quoting Jeffcoat v. Jeffcoat, 628 So. 2d 741, 743 (Ala. Civ. App. 1993), overruled on other grounds by Crenshaw v. Crenshaw, 816 So. 2d 1046 (Ala. Civ. App. 2001)). Regarding periodic alimony, this court stated in Korn v. Korn, 867 So. 2d 338, 345-46 (Ala. Civ. App. 2003):

"Under Alabama law, periodic alimony 'is to support the former dependent spouse and enable that spouse, to the extent possible, to maintain the status that the parties had enjoyed during the marriage, until that spouse is self-supporting or maintaining a lifestyle or status similar to the one enjoyed during the marriage.' O'Neal v. O'Neal, 678 So. 2d 161, 164 (Ala. Civ. App. 1996)."

See also § 30-2-57, Ala. Code 1975.

The record before us indicates that the parties had been married for approximately 12 years and had had a child together. During the marriage, the wife stayed at home tending to the home and caring for the parties' child. The trial court awarded the wife \$10,000 of the \$16,000 of equity in the marital residence, but the trial court awarded the husband the marital residence. Although the trial court awarded the wife two vehicles, the trial court also awarded the husband two vehicles and any other vehicles titled in his name. Apparently considering the fact that the wife had stayed at home to tend to the home and care for the parties' child for over 10 years, the trial court directed the husband to pay the wife the sum of \$350 per month in rehabilitative alimony for 36 months. See § 30-2-57(b)(1). Further, based upon the fact that the wife had been unemployed during the marriage, the trial court properly exercised its discretion by awarding the wife half the amount of funds that were in the husband's retirement account when the parties separated, which was \$23,500. See § 30-2-51(b), Ala. Code 1975. Although the husband argued that there was no longer any money in his retirement account because he had gambled it away, he cites no authority that would have compelled

the trial court to credit him for that loss. Accordingly, there is sufficient evidence and testimony in the record to support the trial court's division of the marital property and its award of rehabilitative alimony to the wife.

Child-Support Award

The husband next argues that the trial court's judgment with respect to child support is due to be reversed because a "Child Support Guidelines" form (Form CS-42) is not in the record. See Rule 32(E), Ala. R. Jud. Admin.

"Rule 32(E), Ala. R. Jud. Admin., states in pertinent part: 'A standardized Child Support Guidelines Form and Child Support Obligation Income Statement/Affidavit Form shall be filed in all actions to establish or modify child-support obligations.' (Emphasis added.) That rule further provides that 'in stipulated cases the court may accept the filing of a Child Support Guideline Notice of Compliance Form.'

"The Alabama Rules of Judicial Administration were promulgated by our Alabama Supreme Court. Our supreme court has held that the word 'shall' usually indicates that the requirement is mandatory. Ex parte Brasher, 555 So. 2d 192 (Ala. 1989). 'However, "shall" may also be construed as being permissive where the intent of the legislature would be defeated by making the language mandatory.' Id. at 194. Here, however, we are not concerned with legislative intent. Instead, we are concerned with the plain language of our supreme court. Our supreme court has consistently held that the word 'shall' is mandatory when used in a rule promulgated by that court. See Waites v. University of Alabama Health

Services Foundation, 638 So. 2d 838 (Ala. 1994); Ex parte Head, 572 So. 2d 1276 (Ala. 1990); Jefferson County Commission v. F.O.P., 543 So. 2d 198 (Ala. 1989). 'The decisions of the supreme court shall govern the holdings and decisions of the court of appeals....' (Emphasis added.) § 12-3-16, Alabama Code 1975.

"We hold, therefore, that the word 'shall' in Rule 32(E), Ala. R. Jud. Admin., mandates the filing of a standardized Child Support Guidelines Form and a Child Support Obligation Income Statement/Affidavit Form. In stipulated cases, however, the trial court may accept the filing of a Child Support Guideline Notice of Compliance Form. We further hold that stipulated cases, i.e., where the parties have agreed upon a child support amount in compliance with the guidelines, are the only exception to the requirement of filing a child support guideline form and income affidavit forms. See Comment, Rule 32, Ala. R. Jud. Admin. We presume that if the parties have agreed upon an amount for child support in compliance with Rule 32, then, if an appeal is taken by either party, the amount of child support will not be an issue before an appellate court. Without the child support form and the income statement forms, it is difficult and sometimes impossible for an appellate court to determine from the record if the trial court did or did not correctly apply the guidelines in establishing or modifying child support obligations."

Martin v. Martin, 637 So. 2d 901, 902-03 (Ala. Civ. App. 1994).

The record does not reflect the submission of any "Child-Support-Obligation Income Statement/Affidavit" (Form CS-41) or a "Child Support Guidelines" form, in which the parties might have set forth their sources of income and expenses so as to allow this court to determine whether the trial court had correctly applied the child-support

guidelines. As a result, we cannot determine how the trial court calculated the child-support award. The husband testified and provided documentation from his employer indicating that his year-to-date gross income for the first 10 months of 2020 was \$112,886.12; thus, the trial court could have properly concluded that the husband's gross monthly income was no less than \$11,288. The wife testified that her current gross income was \$2,483 per month. Because we cannot determine, based on the evidence of the parties' combined gross monthly income, how the trial court calculated the \$907.30 monthly child-support award, the trial court's judgment regarding child support is due to be reversed, and we remand this case for the trial court to fully comply with Rule 32, Ala. R. Jud. Admin., especially Rule 32(E), in making a determination of child support.

Conclusion

For the reasons set forth herein, the judgment of the court is affirmed with respect to the division of the marital property and the award of rehabilitative alimony but is reversed with respect to the child-support award. The cause is remanded for the entry of a judgment regarding child support that is consistent with this opinion.

2200984

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

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

Moore and Edwards, JJ., concur in the result, without opinions.