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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2022-2023

CL-2022-0584

Bobby Rae Edwards

v.

Allison Leighann Edwards

**Appeal from Escambia Circuit Court
(DR-21-900062)**

MOORE, Judge.

Bobby Rae Edwards ("the husband") appeals from a December 22, 2021, judgment entered by the Escambia Circuit Court ("the trial court") divorcing him from Allison Leighann Edwards ("the wife"). We affirm in part and reverse in part.

Procedural History

In the final judgment, as amended by an order entered on April 12, 2022, the trial court, among other things, awarded the wife sole physical custody of the parties' children; ordered the husband to pay the wife \$1,348 per month in child support; ordered the husband to pay the premiums for medical, dental, and vision insurance covering the children and to pay 71% of any noncovered medical, dental, or vision expenses incurred on behalf of the children; divided the marital property; and awarded the wife \$1,000 per month in periodic alimony. The husband timely filed his notice of appeal to this court on April 19, 2022.

Issues

The husband argues that the trial court erred in calculating his child-support obligation, in failing to require the wife to reimburse him for past overpayments of child support, in dividing the marital property, and in awarding the wife periodic alimony. We address each issue in turn.

Analysis

A. Child-Support Obligation

The husband first argues that the trial court failed to adhere to the child-support guidelines outlined in Rule 32, Ala. R. Jud. Admin., when calculating the husband's pendente lite child-support obligation. We note, however, that, because the pendente lite order has been supplanted by the trial court's entry of a final judgment, this court cannot consider the propriety of the pendente lite support order in this appeal. See Person v. Person, 236 So. 3d 90, 95 (Ala. Civ. App. 2017). Therefore, we confine our review solely to the child-support award in the final judgment.

Rule 32 governs the calculation of child support. Rule 32(C)(1), Ala. R. Jud. Admin., requires a trial court to first determine the basic child-support obligation owed for the benefit of the children by ascertaining the combined monthly adjusted gross income of the parents and applying the schedule of basic child-support obligations contained in the appendix to the rule. Rule 32(C)(2), Ala. R. Jud. Admin., then requires the trial court to add in work-related child-care costs and health-insurance costs to

CL-2022-0584

ascertain the total child-support obligation, which is then multiplied by the percentage of each parent's share of the combined adjusted gross income to determine the obligor parent's child-support obligation. If the obligor parent is responsible for paying the health-insurance costs for the children, then that amount is subtracted from that parent's child-support obligation to determine the obligor parent's monthly child-support obligation. Rule 32(C)(3), Ala. R. Jud. Admin., requires the court to round up the resulting figure to the nearest whole dollar amount.

In this case, the trial court followed the child-support guidelines. Despite the husband's assertion to the contrary, the trial court completed a CS-42 form containing its calculation of the husband's child-support obligation. (C. 206). In the CS-42 form, the trial court determined that the husband's monthly adjusted gross income was \$8,759 and that the wife's monthly adjusted gross income was \$3,575, for a combined total of \$12,334, of which 71% was attributable to the husband. Applying the schedule of basic child-support obligations appended to Rule 32, the trial court determined the parties' basic child-support obligation to be \$1,723 per month. Pursuant to Rule 32(C)(2), the trial court then added \$303

CL-2022-0584

per month in work-related child-care costs and \$313 per month for health-insurance costs to determine that the total child-support obligation was \$2,339 per month. Multiplying the total child-support obligation by 71%, the husband's percentage share of the parties' combined adjusted gross income, and deducting \$313 to account for the husband's payment of the children's health insurance, the trial court determined the husband's child-support obligation to be \$1,347.69, which, in accordance with Rule 32(C)(3), it rounded up to \$1,348. We find no basis for the husband's argument that the trial court deviated from the child-support guidelines so as to require a written explanation for that deviation. See Rule 32(A), Ala. R. Jud. Admin.

The husband maintains that the trial court erred in determining his adjusted gross income. For the purposes of Rule 32, "adjusted gross income" means "gross income less preexisting child-support obligations, less preexisting periodic alimony actually paid by a parent to a former spouse." Rule 32(C)(1). "Gross income includes income from any source, and includes, but is not limited to, salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities,

CL-2022-0584

capital gains, Social Security benefits, veteran's benefits, workers' compensation benefits, unemployment-insurance benefits, disability-insurance benefits, gifts, prizes, and preexisting periodic alimony." Rule 32(B)(2). In determining "gross income," a trial court may include overtime income in the determination of a parent's child-support obligation to the extent that such income is not speculative or uncertain. State ex rel. Smith v. Smith, 631 So. 2d 252, 254 (Ala. Civ. App. 1993).

In this case, the trial court received into evidence the husband's pay stub dated June 11, 2021, showing his year-to-date gross income to be \$46,947.05. That amount included overtime, holiday pay, and an annual bonus of \$4,700. The trial court divided the gross amount of \$46,947.05 by 5.36, the number of months in the year as of June 11, 2021, to determine that the husband had earned \$8,759 per month in 2021. See Faust v. Knowles, 96 So. 3d 829, 832 (Ala. Civ. App. 2012) (recognizing that adjusted gross income could be computed based on pay stub).

We reject the husband's argument that the trial court improperly relied on his pay stub because it included overtime pay, which, the husband testified, would fluctuate. Based on the evidence in the record,

CL-2022-0584

the trial court could have determined that the overtime amounts represented on the husband's pay stub were representative of the husband's overtime earnings throughout the year. See D.W. v. W.C., 266 So. 3d 1108, 1112 (Ala. Civ. App. 2018) (concluding that overtime earned once or twice a month constitutes "substantial and continuing" overtime that should have been considered as income).

However, we agree with the husband that the trial court erred in its treatment of the husband's annual bonus pay. Before dividing the total amount of the year-to-date gross income on the husband's June 11, 2021, pay stub, by the number of months in the year as of June 11, 2021, the \$4,700 bonus amount should have first been subtracted ($\$46,947.05 - \$4,700 = \$42,247.05$). Only then should that amount -- $\$42,247.05$ -- have been divided by 5.36, i.e., the total number of months in the year as of June 11, 2021, to calculate his average income for that period ($\$42,247.05 \div 5.36 = \$7,881.91$). After having multiplied that amount by 12 to determine the husband's annual income amount ($\$7,881.91 \times 12 = \$94,582.95$), the annual bonus amount should have then been added back in ($\$94,582.95 + \$4,700 = \$99,282.95$) before that total amount was

CL-2022-0584

divided by 12 to determine the husband's average monthly gross income ($\$99,282.95 \div 12 = \$8,273.58$, or $\$8,274$ when rounded up). By factoring in the annual bonus as it did, the trial court improperly imputed additional income to the husband that is not supported by the evidence. That error results in a decrease in the parties' combined adjusted gross income from $\$12,334$ to $\$11,849$, of which 70%, not 71%, would be attributable to the husband.

We, therefore, reverse the judgment insofar as it determines the husband's monthly child-support obligation, and we remand the cause with instructions to the trial court to recalculate the husband's child-support obligation based on the correct combined adjusted gross income. Furthermore, because the trial court based its division of the responsibility for the children's noncovered medical, dental, and vision expenses on an incorrect determination of each parent's percentage share of the combined adjusted gross income, we also reverse that portion of the trial court's judgment to allow it to reconsider the allocation of the payment of the children's noncovered healthcare expenses in light of this opinion.

Reimbursement of Overpayments of Child Support

The husband contends that he should be reimbursed for overpayments of child support he made to the wife. In the final judgment entered on December 22, 2021, the trial court determined that the husband owed \$1,660 per month in child support, which the husband paid. When the trial court amended the judgment on April 12, 2022, to lower the child-support obligation to \$1,348 per month, the trial court did not order the wife to reimburse the husband for the overpayments of child support he had made between January and April 2022. The husband also complains that he is continuing to overpay child support based on the calculation error committed by the trial court and that he should be reimbursed for those overpayments upon this court's reversal of the judgment.

We believe there may be some authority justifying the husband's position on both points; however, the husband has failed to cite that authority, in contravention of Rule 28(a)(10), Ala. R. App. P. See City of Birmingham v. Business Realty Inv. Co., 722 So. 2d 747, 752 (Ala. 1998) ("When an appellant fails to cite any authority for an argument on a

CL-2022-0584

particular issue, this Court may affirm the judgment as to that issue, for it is neither this Court's duty nor its function to perform an appellant's legal research."). Accordingly, we decline to reverse the trial court's judgment for failing to compensate the husband for the overpayments of child support made between January and April 2022, and we decline to specify in our remand instructions that the husband shall be reimbursed for any overpayments made as a result of the calculation error made by the trial court.

Property Division and Alimony

We next consider the husband's arguments that the trial court's division of the marital property and its award of alimony to the wife are not supported by the evidence.

"The issues of property division and alimony are interrelated, and, therefore, they must be considered together on appeal. Albertson v. Albertson, 678 So.2d 118, 120 (Ala.Civ.App.1996). When the trial court fashions a property division following the presentation of ore tenus evidence, its judgment as to that evidence is presumed correct on appeal and will not be reversed absent a showing that the trial court exceeded its discretion or that its decision is plainly and palpably wrong. Roberts v. Roberts, 802 So. 2d 230, 235 (Ala. Civ. App. 2001); Parrish v. Parrish, 617 So. 2d 1036, 1038 (Ala. Civ. App. 1993); and Hall v. Mazzone, 486 So. 2d 408, 410 (Ala. 1986). A property division is required to be

equitable, not equal, and a determination of what is equitable rests within the broad discretion of the trial court. Parrish, 617 So. 2d at 1038. In fashioning a property division and an award of alimony, the trial court must consider factors such as the earning capacities of the parties; their future prospects; their ages, health, and station in life; the length of the parties' marriage; and the source, value, and type of marital property. Robinson v. Robinson, 795 So. 2d 729, 734 (Ala. Civ. App. 2001)."

Stone v. Stone, 26 So. 3d 1232, 1236 (Ala. Civ. App. 2009).

In the final judgment, the trial court awarded the wife the marital residence and the debt associated therewith, a 2015 Toyota 4Runner and the debt associated therewith, and the contents of the marital residence, with the exception of those items specifically awarded to the husband. The husband was awarded a camper; the 2014 GMC Sierra truck; his 401(k) account; any remaining proceeds derived from the sale of a boat, motor, trailer, and go-cart; and certain personal property. The trial court made each party responsible for various marital debts. The trial court also ordered the husband to pay the wife \$1,000 in periodic alimony and directed the husband to pay to the wife \$5,500 in attorney's fees.

The husband argues that, in dividing the marital property, the trial court failed to properly consider the value of the marital residence. He

CL-2022-0584

asserts that the trial court lacked sufficient evidence to determine the value of the marital residence, noting that there was no evidence submitted as to that value other than the testimony of the parties. The husband fails, however, to cite to any authority suggesting that the testimony of the parties alone was insufficient for the trial court to determine that value. See Rule 28(a)(10), Ala. R. App. P., and City of Birmingham, supra. He also argues that the trial court erred in failing to consider the value of certain "assets" inside the marital residence, which he valued at \$60,000. We note, however, that the parties did not present evidence at the trial related to the value of the contents of the marital residence; thus, we cannot consider the husband's asserted value therefor on appeal. See Ex parte State ex rel. Morris, 571 So. 2d 1146, 1148 (Ala. Civ. App. 1990) ("We are bound by the record and cannot consider a statement or evidence that was not before the trial court.").

The husband next argues that the trial court's division of the marital property disproportionately favors the wife and is due to be reversed. We disagree. The parties disputed the value of the marital residence, and the trial-court judge indicated that he did not accept the

CL-2022-0584

husband's valuation. Accepting the wife's valuation of the marital residence at \$95,000, the marital residence, which was encumbered by a \$62,000 mortgage, had an equitable value of \$33,000. The wife was also awarded her 2015 Toyota 4Runner, which the trial court could have concluded from the wife's testimony had an equitable value of \$12,205. Thus, the trial court could have concluded that the total equitable value of the assets awarded to the wife was \$45,205. Conversely, the husband was awarded the camper, which the parties agreed had a value of \$5,000; his personal vehicle valued at \$12,000; his 401(k), which, according to the wife's testimony, had an equitable value of \$21,724.69; and the proceeds from the sale of the boat, motor, trailer, and go-cart, which, according to the husband, amounted to \$4,000. Thus, the trial court could have concluded that the total equitable value of the assets awarded to the husband was \$42,724.69. Based on those totals, the trial court awarded 51% of the marital assets to the wife and awarded 49% of the marital assets to the husband. We cannot conclude that that distribution is inequitable; therefore, we affirm the trial court's division of the marital property. Because the distribution is equitable, we conclude that the

CL-2022-0584

husband's argument that the trial court erred in declining to order that the marital residence be sold, and the proceeds divided equally between the parties is similarly without merit.

The husband last argues that the trial court erred in awarding the wife periodic alimony. Section 30-2-57(a), Ala. Code 1975, provides, in pertinent part:

"Upon granting a divorce or legal separation, the court shall award either rehabilitative or periodic alimony as provided in subsection (b), if the court expressly finds all of the following:

"(1) A party lacks a separate estate or his or her separate estate is insufficient to enable the party to acquire the ability to preserve, to the extent possible, the economic status quo of the parties as it existed during the marriage.

"(2) The other party has the ability to supply those means without undue economic hardship.

"(3) The circumstances of the case make it equitable."

In the April 12, 2022, order amending the final judgment, the trial court made the express findings required by § 30-2-57. Compare Merrick v. Merrick, [Ms. 2200188, Oct. 29, 2021] ___ So. 3d ___ (Ala. Civ. App. 2021) (reversing judgment for failing to make express findings of fact

CL-2022-0584

regarding award of alimony). The evidence in support of those findings indicates that the wife is earning \$43,482 annually as an insurance agent and that her monthly expenses total \$5,259.48 and that the husband, whose income the trial court properly could have concluded was \$99,282.95, was sufficient to allow him to pay \$1,000 per month in periodic alimony without undue hardship. The parties married in 2007 and separated in 2021 and, thus, the trial court could have determined that it would be equitable for the husband to contribute to her support.

The majority of the husband's arguments regarding the trial court's award of periodic alimony to the wife rely on calculations of his income and expenses that were either not properly presented as evidence or were rejected by the trial court or by this court. To the extent the husband argues on appeal that the trial court erred in awarding periodic alimony to the wife for a duration longer than the length of the parties' marriage, we note that the husband failed to present that argument to the trial court at any time and we cannot consider it for the first time on appeal. See Andrews v. Merritt Oil Co., 612 So. 2d 409, 410 (Ala. 1992) ("[An appellate] court cannot consider arguments raised for the first time on

CL-2022-0584

appeal; rather, our review is restricted to the evidence and arguments considered by the trial court.").

Conclusion

We reverse the trial court's calculation of the husband's child-support obligation, and we remand the case for the trial court to recalculate the award in a manner consistent with this opinion. We also reverse that portion of the trial court's judgment allocating the parties' responsibility for the children's non-covered medical, dental, and vision expenses and remand the case to allow the trial court to reconsider that award in light of the recalculated child-support award. Otherwise, the trial court's judgment is affirmed.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH INSTRUCTIONS.

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

Edwards, J., concurs in the result, without opinion.