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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2023

CL-2022-0592

Kenneth Charles Laurendine

v.

Joi A'Nell Laurendine

CL-2022-0624

Joi A'Nell Laurendine

v.

Kenneth Charles Laurendine

**Appeals from Baldwin Circuit Court
(DR-18-900224)**

FRIDY, Judge.

Kenneth Charles Laurendine ("the husband") appeals from a judgment of the Baldwin Circuit Court ("the trial court") divorcing him from Joi A'Nell Laurendine ("the wife"), dividing the marital property, and awarding the wife periodic alimony. The wife cross-appeals. For the reasons set forth herein, the judgment is reversed.

Background

The husband and the wife married in September 1988. One child was born of the parties' marriage. The wife commenced an action seeking a divorce from the husband in February 2018. The case was tried over four days from December 2019 to July 2020. At the time the trial began, the parties had been married thirty-one years, the husband was sixty-one years old, the wife was fifty-eight years old, and the parties' child had reached the age of majority and was attending college.

The wife testified at the trial that she had commenced the divorce action because, she said, there had been changes in the husband's behavior and he was "generally remote." The husband said that the parties had discussed their relationship one Saturday morning and realized that neither was happy in the marriage. The wife moved from

the marital residence in 2018, saying that it was too awkward to remain in the same home with the husband and that she did not want to be there anymore. She moved into her father's house, where she still lived during the trial.

Because we find that the husband's argument regarding what he says was an improper award to the wife of survivor benefits from his federal civil-service retirement supports a reversal of the trial court's judgment, we set forth only those facts relevant to that issue. The husband worked for the United States Postal Service ("the USPS") beginning in 1981 and continuing throughout the marriage. When the trial was held, he was the postmaster in Foley earning \$100,648 per year. Because retirement for USPS employees is through the civil-service retirement system ("the CSRS"), it was undisputed that the husband would not be eligible to receive Social Security benefits when he retires. The wife would receive her own Social Security benefits, and she potentially was entitled to a portion of the husband's CSRS retirement benefits. See § 30-2-51(c), Ala. Code 1975.

Like the military, the CSRS offers spouses survivor benefits. A premium must be paid to secure those benefits for a surviving spouse. In

this case, the husband's monthly CSRS retirement pay would be reduced by between \$575 and \$600 to pay the premium. At trial, the wife requested survivor benefits; however, the husband objected to her receiving them.

On October 26, 2020, the trial court entered a judgment divorcing the parties, dividing their real and personal property, and awarding the wife periodic alimony of \$1,500 per month until the husband retired from the USPS. Thereafter, the husband was to pay the wife \$1,217 per month until the wife began to receive her own Social Security benefits or reached the age of sixty-five, whichever occurred first, at which time the husband's obligation to pay periodic alimony would end.

As part of the division of the parties' personal property, the trial court awarded the parties their respective retirement accounts. It also awarded the wife 31% of the total amount of the husband's USPS thrift-savings-plan account as of the day of entry of the judgment and a share of the husband's CSRS retirement benefits. Additionally, the trial court awarded the wife a survivor annuity under the CSRS, calculated as "[t]he maximum possible survivor annuity under the CSRS times a fraction, the numerator of which is 370 and the denominator of which is the number

of [the husband's] total months of service with the USPS at the time of his retirement."¹

The parties both filed motions to alter, amend, or vacate the judgment, which the trial court denied. The husband appealed from that judgment. This court reversed the judgment and remanded the cause for the trial court to comply with § 30-2-57, Ala. Code 1975, by making findings of fact relative to the alimony award. Laurendine v. Laurendine, 353 So. 3d 1148 (Ala. Civ. App. 2021). We did not reach the other issues the husband had raised in that appeal. On remand, the trial court entered an amended judgment on December 13, 2021, adding the required findings and leaving in place its original award of periodic alimony. All other provisions in the original divorce judgment remained the same.

Both parties again filed motions to alter, amend, or vacate the judgment. Those motions were denied by operation of law. The husband appeals from the amended divorce judgment, and the wife cross-appeals. Both parties have raised issues challenging the propriety of the trial

¹The trial court used a numerator of 370 to represent the number of months the parties had been married.

court's award of a share of the husband's CSRS retirement benefits to the wife.

Standard of Review

Dividing marital property and determining whether to award alimony are matters within the sound discretion of the trial court, and the judgment of the trial court based on its factual findings is presumed correct when those findings rest on testimony heard ore tenus. Ex parte Durbin, 818 So. 2d 404, 408 (Ala. 2001). No such presumption attaches to the trial court's determinations of law, however, which this court reviews de novo. See Whaley v. Whaley, 261 So. 3d 386, 392 (Ala. Civ. App. 2017).

Analysis

The husband contends that the trial court erred in awarding the wife what he says is more than half of his retirement benefits and by not deducting the portion of those retirement benefits that he says accrued before the marriage. He makes a number of arguments to bolster those contentions, but we conclude that our resolution of one of his arguments requires a reversal of the trial court's judgment.

The husband argues that the award to the wife of a survivor benefits reduces his CSRS retirement benefits and potentially allows the wife to receive more than 50% of his retirement benefits. In the judgment, the trial court stated that it was awarding the wife a survivor annuity under the CSRS as permitted by 5 U.S.C. § 8341(h)(1), which provides:

"Subject to paragraphs (2) through (5) of this subsection, a former spouse of a deceased employee, Member, annuitant, or former Member who was separated from the service with title to a deferred annuity under section 8338(b) of this title is entitled to a survivor annuity under this subsection, if and to the extent expressly provided for in an election under section 8339(j)(3) of this title, or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree."

The trial court then set forth the method by which the amount of the survivor annuity was to be calculated under the CSRS.

In support of his contention that the trial court's award of survivor benefits to the wife constitutes reversible error, the husband cites Wheeler v. Wheeler, 831 So. 2d 629 (Ala. Civ. App. 2002), and Capone v. Capone, 962 So. 2d 835 (Ala. Civ. App. 2006). He argues that those cases require the reversal of a judgment designating a spouse as a beneficiary of a survivor benefit because, he says, such a designation in a divorce judgment violates § 30-2-51, Ala. Code 1975, by potentially awarding the

beneficiary spouse more than 50% of the retirement benefits of the spouse who owns the retirement account.

This court decided Wheeler and Capone under a former version of § 30-2-51(b) that gave a trial court discretion, when dividing marital assets, to "include in the estate of either spouse the present value of any future or current retirement benefits, that a spouse may have a vested interest in or may be receiving" on the date the divorce complaint was filed if three conditions were met: the parties' marriage had lasted at least ten years, the retirement benefits were acquired during the marriage, and the total amount of the retirement benefits payable to the noncovered spouse did not exceed 50% of the retirement benefits that the court could consider. In 2017, that statute was amended, and it now provides, in pertinent part:

"(b)(1) The marital estate is subject to equitable division and distribution. Unless the parties agree otherwise, and except as otherwise provided by federal or state law, the marital estate includes any interest, whether vested or unvested, either spouse has acquired, received, accumulated, or earned during the marriage in any and all individual, joint, or group retirement benefits including, but not limited to, any retirement plans, retirement accounts, pensions, profit-sharing plans, savings plans, annuities, or other similar benefit plans from any kind of employment, including, but not limited to, self employment, public or private employment, and military employment.

"(2) Notwithstanding the foregoing, unless the parties agree otherwise, the total amount of the retirement benefits payable to the noncovered spouse shall not exceed 50 percent of the retirement benefits that may be considered by the court."

§ 30-2-51(b)(1) and (2), Ala. Code 1975 (Emphasis added.)

In Wheeler, a husband argued that the trial court in that case had erred by directing him to name his wife as the beneficiary of his retirement plan, if the plan permitted such a designation. 831 So. 2d at 635. This court agreed, holding that "[t]his provision violates § 30-2-51, because it is not based on 'present value,' and it could potentially operate to award the noncovered spouse an amount in excess of 50% of the husband's retirement benefits." Id. (emphasis added).

In Capone, a husband challenged the directive of the trial court in that case that he name his wife the beneficiary of his military survivor-benefit plan because, he said, that directive violated § 30-2-51(b). This court reversed that provision of the divorce judgment, writing: "[W]e have held that the award of survivor benefits potentially violates § 30-2-51(b), partly because such an award could potentially award one spouse an amount in excess of 50% of the other spouse's retirement benefits. Wheeler v. Wheeler, 831 So. 2d 629, 635 (Ala. Civ. App. 2002)." Capone,

962 So. 2d at 841 (per Crawly, P.J., with two judges concurring in the result).

Although, as noted above, the language of § 30-2-51(b) has been amended since this court decided Wheeler and Capone, the legislature carried forward the prohibition on an award of more than 50% of a spouse's retirement benefits into the present statute, and it is that prohibition that prevented the survivor-benefit awards in those cases. See also 3 Brett R. Turner, Equitable Distribution of Property § 10:2.3 (4th ed. 2023) (noting that "the statute has been construed to forbid division of survivor benefits, as such division could theoretically award the nonowning spouse more than 50% of the benefits"); 1 Judith S. Crittenden & Charles P. Kindregan, Jr., Alabama Family Law 16:24 (2d ed. 2015) ("Since the enactment of § 30-2-51(b), because an award of survivor benefits may result in violation of the statutory limits imposed, courts may not require a spouse to name the other spouse as a beneficiary of a military retirement benefit plan"). We see no difference in substance from the awards of survivor benefits in Wheeler and Capone and the award of a survivor benefits in this case. As a result, based on Wheeler and Capone, we conclude that the trial court erred in awarding

the wife a survivor benefits from the husband's CSRS retirement benefits, and we reverse the judgment on that basis. On remand, the trial court is to reconsider the property division and alimony award in light of the removal of survivor benefits from consideration. Dunn v. Dunn, 891 So. 2d 891 (Ala. Civ. App. 2004).

Although we are reversing the judgment for the trial court to reconsider the award of alimony and the division of marital property, the husband raises an issue that warrants discussion because it pertains to the marital property and may affect the way in which the trial court crafts the division of the marital estate.

The trial court found that the marital residence, including the land it sits on, was marital property subject to division. Because the marital residence was situated on a 2.5-acre parcel of property that had been in the husband's family for more than 200 years, the husband argues, the trial court abused its discretion in ordering that the residence be sold. He contends that the wife could have been awarded a portion of the equity in the marital residence, which was built during the marriage, but not in the land itself because he received that land as a gift from his father in 1983.

The husband made this argument to the trial court at the hearing on the parties' postjudgment motions. At the hearing, the judge said that if the property at issue was an operating farm where the house could be separated from the land, the husband's position might have merit. However, the judge said, "this is a home place" where the house and land were a "single thing." The judge also stated that he did not feel confident enough in the value of the marital residence to determine the amount of equity that existed, and so it ordered that the marital residence and the land it sits on be sold for fair market value and that, after the payment of certain expenses related to the sale, any remaining proceeds from the sale be divided equally between the parties.

A trial court is granted broad discretion in determining whether property one spouse receives before marriage through gift or inheritance was regularly used for the common benefit of the marriage and, thus, is subject to division as a marital asset. Nichols v. Nichols, 824 So. 2d 797, 802 (Ala. Civ. App. 2001). In support of his assertion that the trial court erred in ordering the sale of the marital residence, the husband cites Morgan v. Morgan, 322 So. 3d 531, 540 (Ala. Civ. App. 2020). In Morgan, this court held that, when dividing marital assets, a trial court may

consider property one spouse acquired before the marriage by gift or inheritance and used for the common benefit of the marriage but that it is not required to do so. We concluded in that case that the trial court had not abused its discretion in refusing to include in the marital estate a house the husband had been gifted before the parties separated and that had been in his family for 100 years. 322 So. 3d at 542.

Here, although the parcel of land on which the marital residence was built had been in the husband's family for 200 years, the residence itself was built during the marriage. The parties were married for more than thirty years, and the marital residence was their largest single marital asset. Based on the record, we cannot say that the trial court abused its discretion in finding that the marital residence, including the land it sits on, was a marital asset subject to division.

For the reasons set forth above, the judgment is reversed insofar as it awarded the wife a survivor benefits from the husband's CSRS retirement benefits, and the cause is remanded for the trial court to reconsider the property division and alimony award without the inclusion of survivor benefits for the wife. Dunn v. Dunn, 891 So. 2d 891 (Ala. Civ. App. 2004).

CL-2022-0592 and CL-2022-0624

CL-2022-0592 -- REVERSED AND REMANDED WITH
INSTRUCTIONS.

CL-2022-0624 -- REVERSED AND REMANDED WITH
INSTRUCTIONS.

Moore and Hanson, JJ., concur.

Thompson, P.J. and Edwards, J., concur in the result, without
opinions.