

Rel: July 28, 2023

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# ALABAMA COURT OF CIVIL APPEALS

**SPECIAL TERM, 2023**

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**CL-2022-1235**

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**Mia Simone Curtis**

**v.**

**Barry G. Curtis**

**Appeal from Talladega Circuit Court  
(DR-11-202.03)**

FRIDY, Judge.

Mia Simone Curtis ("the former wife") appeals from a judgment that the Talladega Circuit Court ("the trial court") entered in a postdivorce-contempt action that she had brought against Barry G. Curtis ("the former husband"). We reverse and remand.

Background

This is the fifth time these parties have appeared before us. The former husband commenced a divorce action against the former wife in May 2011. On July 28, 2015, the trial court entered an order that, among other things, divorced the parties and divided their property but did not dispose of the former wife's then pending contempt claims against the former husband. The former husband appealed from that order, and this court dismissed his appeal as being from a nonfinal judgment in Curtis v. Curtis, 210 So. 3d 1120 (Ala. Civ. App. 2016).

On January 6, 2017, the trial court entered an order in the divorce action that denied all the claims in that action that the July 28, 2015, order had not adjudicated, which made the July 28, 2015, order ("the divorce judgment") a final judgment.

After the entry of the January 6, 2017, order had made the divorce judgment final, the former husband again appealed from the divorce judgment, and the former wife cross-appealed. While those appeals were pending, the former wife sought to execute on the divorce judgment. The former husband moved the trial court for a stay of execution on the divorce judgment pending the adjudication of his appeal. The trial court

granted the former husband's stay motion, and the former wife petitioned this court for a writ of mandamus directing the trial court to vacate its order staying execution on the divorce judgment. In Ex parte Curtis, 261 So. 3d 372 (Ala. Civ. App. 2017), this court granted the former wife's mandamus petition and issued the writ because the former husband had not filed a supersedeas bond to stay execution on the divorce judgment. Thereafter, in the former husband's appeal and the former wife's cross-appeal, this court affirmed the divorce judgment, without an opinion. Curtis v. Curtis (No. 2160315, Jan. 5, 2018), 272 So. 3d 1054 (Ala. Civ. App. 2018) (table); Curtis v. Curtis (No. 2160327, Jan. 5, 2018), 272 So. 3d 1054 (Ala. Civ. App. 2018) (table).

Thereafter, each party commenced contempt actions against the other. On September 14, 2020, the trial court entered a judgment in each action that granted each party's contempt claim in part and denied it in part. The former wife subsequently appealed from both judgments. In Curtis v. Curtis, [Ms. 2200282, Sept. 24, 2021] \_\_\_ So. 3d \_\_\_ (Ala. Civ. App. 2021) ("Curtis IV"), this court affirmed the trial court's judgments in part, reversed them in part, and remanded the causes to the trial court.

On September 14, 2020, the former wife brought the contempt claim in the case that is now before us. The divorce judgment contained the following pertinent provisions:

"13. Businesses:

"a. The [former husband] is hereby awarded the parties' interest in Sylacauga Ambulance Service and Sylacauga Cemetery and the [former husband] shall pay to the [former wife] the following as lump sum alimony for her interests in said businesses and for the salaries and/or income derived by the [former husband] as a passive owner/officer or employee:

"(i) The total amount of \$500,000.00 shall be payable in monthly installments of \$3,000.00 per month, due [on] or before the 5th day of each month, for a period of 167 months, such payment to commence the month following the day of the execution of this Judgment of Divorce.

"14. The [former husband] shall maintain the life insurance policy currently in effect on his life with a death benefit of \$500,000.00. The three children of the parties shall be named as irrevocable beneficiaries thereof entitling them to an equal one-third interest in the proceeds thereof. [The former husband] shall maintain said policy in full force and effect with the named beneficiaries as stated herein. [The former husband] shall maintain this policy at his own expense. The [former husband] shall furnish immediately and then annually to the [former wife] proof of insurance for said \$500,000.00 policy.

"....

"16. The [former wife] is awarded a sum in the amount of \$9,682.00, such amount being the amount of the federal income tax refund intercepted by the Internal Revenue

Service due to the [former husband's] failure to timely file and accurately report and pay income taxes relating solely to the income of the [former husband]. The [former husband] shall be responsible for the payment of any remaining amount owed to the Internal Revenue Service or the Alabama Department of Revenue for any outstanding tax liabilities, plus penalties and interest relating to any jointly filed tax return on or prior to the 2011 taxable year. The [former husband] shall hold the [former wife] harmless from the payment of any such tax liability.

"A judgment is hereby rendered in favor of [the former wife] for the ... amount of \$9,682.00, being the amount enumerated in Paragraph 16. [The former husband] shall be required to pay the amount of \$9,682.00 within sixty (60) days of the date of the entry of this Judgment of Divorce.

"....

"18. The [former husband] shall be required to execute and deliver to the [former wife] the Pledge Agreement attached hereto as Exhibit 'A' which is incorporated herein (the Ambulance Service [Pledge] Agreement'). The Ambulance Service Pledge Agreement shall be executed and delivered to the [former wife] in order to secure the payment of all obligations of [the former husband] to the [former wife] set forth in this Decree. The [former husband] shall also be required to execute and deliver to the [former wife] the Pledge Agreement attached hereto as Exhibit 'B' which is hereby incorporated herein (the '[Sylacauga] Cemetery Pledge Agreement'). The [Sylacauga] Cemetery Pledge Agreement shall be executed and delivered to [the former wife] in order to secure the payment of all obligations of the [former husband] to the [former wife] as set forth in this Decree.

19. Periodic alimony is hereby reserved.

"....

"21. If either the [former husband] or the [former wife] has to file proceedings to enforce this decree, the other party shall be required to pay the court costs and attorney's fees of the successful party."

In pertinent part, each of the pledge agreements referred to in paragraph 18 of the divorce judgment provided:

"2. Pledge; Grant of Security Interest. The [former husband] hereby covenants to deliver to the [former wife] within thirty (30) days of the date hereof all the Pledged Stock and hereby grants to [the former wife] a first security interest in the Collateral, as collateral security for the prompt and complete payment and performance when due of the Obligations [the divorce judgment imposed on the former husband].

"3. Concurrently with the delivery to the [former wife] of each certificate representing one or more of the Pledged Stock, the [former husband] shall deliver an undated stock power covering such certificate, duly executed in blank.

"....

"14. Waivers and Amendments; Successors and Assigns; Governing Law. None of the terms and conditions of this Pledge Agreement may be waived, amended, supplemented, or otherwise modified except by a written instrument executed by the Pledgor and Pledgee; provided that any provision of this Pledge Agreement may be waived by the Pledgee in a letter or agreement executed by the Pledgee or by telex or facsimile transmission from the Pledgee.

"... This Pledge Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Alabama."

Both pledge agreements were dated July 30, 2018.

The former wife's contempt petition in this case alleged that the former husband had willfully violated paragraph 18 of the divorce judgment and paragraph 2 of each of the pledge agreements, which had been incorporated into the divorce judgment, by willfully refusing to deliver to her his stock certificates in Sylacauga Ambulance Service and Sylacauga Cemetery ("the stock certificates"). As relief, she sought a judgment finding that the former husband was in civil contempt, ordering him to deliver the stock certificates to her, and awarding her an attorney's fee pursuant to paragraph 21 of the divorce judgment. Although the record does not contain the former husband's answer to the petition, the former wife concedes in her brief that he filed an answer and that it asserted that the wife could not prevail on her contempt claim because, the former husband said, she did not have clean hands.

The former husband was the only witness called at the trial of this case. He testified that he is a licensed attorney, and he admitted that he had not delivered the stock certificates to the former wife as required by the pledge agreements. He stated that his reason for refusing to deliver the stock certificates to the former wife was his belief that she would sell

the stock to a third party and thereby deprive him of the income he derived from those businesses. He testified that he was willing to deliver the stock certificates to the clerk of the trial court or to the former wife's attorney instead of the former wife. In addition, he testified that the former wife did not have clean hands because, he said, she had not cooperated in listing the parties' residence for sale as required by the divorce judgment. Both parties submitted posttrial briefs.

On July 6, 2022, the trial court entered a judgment ordering the former husband to file the pledge agreements and the stock certificates with the clerk of the trial court, denying the former wife's civil-contempt claim, and denying the former wife's claim for an attorney's fee. On August 4, 2022, the former wife filed a postjudgment motion in which she asserted, among other things, that the trial court had erroneously modified the parties' property settlement and that the trial court had erroneously failed to enforce the clear and unambiguous language of paragraphs 2 and 14 of the pledge agreements. As relief, the motion asked the trial court to amend its judgment to hold the former husband in civil contempt for his failure to deliver the stock certificates to her and to award her an attorney's fee pursuant to paragraph 21 of the divorce



judgment. Following a hearing, the trial court, on November 1, 2022, entered an order denying the former wife's postjudgment motion. The former wife then timely appealed to this court.

### Analysis

The former wife first argues that the trial court erred in denying her contempt claim because, she says, the clear and unambiguous language of the pledge agreements required the former husband to deliver the stock certificates to the wife within thirty days after July 30, 2018, and the undisputed evidence indicated that he had willfully refused to do so.

The former husband, on the other hand, argues that the trial court did not err in denying the former wife's contempt claim because, he says, he testified at the trial of this case that the wife did not have clean hands because, he said, she had not cooperated in listing the parties' residence for sale as required by the divorce judgment. In Curtis IV, this court affirmed a judgment of the trial court insofar as it found that the wife did not have clean hands for purposes of asserting a contempt claim against the former husband based on his failure to make repairs to the parties' residence because she had wrongfully refused to cooperate in listing the

residence for sale as required by the divorce judgment. However, our supreme court has held that "[t]he misconduct which falls within the clean hands maxim must relate directly to the transaction concerning which complaint is made .... "Powell v. Mobile Cab & Baggage Co., 263 Ala. 476, 480, 83 So. 2d 191, 194 (1955) (quoting 30 C.J.S. Equity § 98 pp. 491-92). The former wife's refusal to cooperate in listing the parties' residence for sale does not directly relate to her complaint that the former husband refused to deliver to her the stock certificates. Therefore, the former husband's clean-hands argument has no merit.

Civil contempt is defined as a "willful, continuing failure or refusal of any person to comply with a court's lawful writ, subpoena, process, order, rule, or command that by its nature is still capable of being complied with." Rule 70A(a)(2)(D), Ala. R. Civ. P. The determination whether a party is in contempt is within the sound discretion of the trial court, and an appellate court will not reverse the trial court's determination on that issue absent a showing that the trial court exceeded the limits of its discretion. See Reed v. Dyas, 28 So. 3d 6, 8 (Ala. Civ. App. 2009). When, as in the present case, the undisputed evidence indicates that a party willfully violated a judgment, denying the other

party's contempt claim based on that violation is not within the trial court's discretion. Therefore, we reverse the trial court's judgment insofar as it denied the former wife's contempt claim.

The former wife next argues that, because she was entitled to prevail on her contempt claim, the trial court erred in denying her claim for an attorney's fee. We agree. Because we have determined that the wife was entitled to prevail on her contempt claim and that the trial court erred in denying that claim, we reverse the trial court's judgment insofar as it denied her request for an attorney's fee pursuant to paragraph 21 of the divorce judgment.

Finally, the former wife argues that the trial court erred in ordering that the pledge agreements and the stock certificates be filed with the clerk of the trial court because, the former wife says, that portion of the trial court's judgment violates paragraph 14 of the pledge agreements. We agree. A court interprets or construes a divorce judgment as other written instruments are interpreted or construed. See Reeves v. Reeves, [Ms. 2200216, Oct. 1, 2021] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Civ. App. 2021). The court should give the words of the instrument their ordinary meaning, and the intentions of the parties are to be derived from them. Id. A court

must enforce an instrument that is plain and free from ambiguity as it is written. Id. In the present case, paragraph 2 of the pledge agreements plainly and unambiguously required the former husband to deliver the stock certificates to the former wife. Paragraph 14 of the pledge agreements plainly and unambiguously provided that the pledge agreements could not be modified or amended without the former wife's agreement. It is undisputed that the former wife did not agree to a modification or amendment of the pledge agreements. Consequently, by ordering the former husband to file the pledge agreements and the stock certificates with the clerk of the trial court instead of delivering them to the former wife, the trial court erroneously modified the pledge agreements without the former wife's agreement and erroneously failed to enforce the pledge agreements as they were written. Therefore, we reverse the trial court's judgment insofar as it ordered the former husband to file the pledge agreements and the stock certificates with the clerk of the trial court instead of delivering them to the former wife, and we remand the cause for further proceedings consistent with this opinion.

**REVERSED AND REMANDED.**

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