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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2013-2014

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Cheri Denise Spuhl

v.

Robert Spuhl

Appeal from Madison Circuit Court  
(DR-10-649.81)

PER CURIAM.

This is the third time that Cheri Denise Spuhl ("the wife") and Robert Spuhl ("the husband") have been before this court in connection with the division of their marital property and the award of periodic alimony to the wife in

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their divorce case. See Spuhl v. Spuhl, 99 So. 3d 339 (Ala. Civ. App. 2012) ("Spuhl I"); and Spuhl v. Spuhl, 120 So. 3d 1071 (Ala. Civ. App. 2013) ("Spuhl II"). In Spuhl I, this court reversed the judgment of the trial court as to the property division and the award of periodic alimony and remanded the cause for the trial court to exercise its discretion in dividing the parties' marital assets, including the husband's military-retirement benefits, and in awarding periodic alimony. 99 So. 3d at 342.

In Spuhl II, the wife asserted that the trial court's failure to divide the husband's military-retirement benefits as a marital asset resulted in an inequitable division of the marital property. We agreed with the wife, noting that the purpose of a property settlement in a divorce action is to give "'each spouse the value of [his or her] interest in the marriage." Spuhl II, 120 So. 3d at 1075 (quoting Pattillo v. Pattillo, 414 So. 2d 915, 917 (Ala. 1982)). We explained:

"As to the 18-year marriage itself, the wife did not work outside of the home because of the responsibilities placed on her as a result of the husband's career. The parties both testified that the wife played an integral role in furthering the husband's military career. Moreover, the wife said that when the husband was required to be away from home for long periods, she oversaw all that was

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necessary to keep the household running, and she was the children's caretaker. We conclude that the trial court's failure to award the wife any part of the husband's military-retirement benefits -- by far the parties' largest marital asset -- resulted in an inequitable division of marital property. Accordingly, the judgment is due to be reversed."

Id. at \_\_\_\_\_. We then remanded the cause "for the trial court to equitably divide the marital assets" and, because the award of periodic alimony is considered in conjunction of marital property, Henderson v. Henderson, 800 So. 2d 595, 597 (Ala. Civ. App. 2000), "to reconsider its award of periodic alimony." Id.

On the second remand, the trial court held a hearing, allowing the parties to argue their positions before entering another judgment. On February 1, 2013, the trial court awarded the wife \$2,250 in monthly periodic alimony -- the same amount of periodic alimony it had initially ordered in the original divorce judgment. It also awarded the wife, as periodic alimony, "an additional amount equal to 28% of the [h]usband's disposable [military-]retirement benefits." Subsequently, in response to the husband's motion to alter, amend, or vacate the February 1, 2013, judgment, the trial court, on April 10, 2013, entered an amended judgment ("the

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April 2013 judgment") reducing the wife's periodic alimony to \$1,600 a month. The trial court also awarded the wife 28% of the husband's military-retirement benefits as a property settlement, as opposed to periodic alimony, payable to the wife each month when the husband received his retirement pay.

The wife appeals from the April 2013 judgment. In Spuhl I, we set forth the following facts relevant to this appeal:

"The parties married in January 1993. Two children ('the children') were born of the marriage. The wife had two other children from a previous marriage; they were adults at the time of this action. At trial, the wife contended that the husband had an affair, which was continuing at the time of the trial, and that the affair was what had caused the breakdown of the marriage. The husband, on the other hand, testified that he had asked the wife for a divorce as early as 2004. The evidence indicated that the parties frequently argued, yelling at each other and calling each other vulgar names. At times, the arguments turned physical. The husband testified to an incident in which he and the wife were arguing and the wife 'grabbed' his genitals and then scratched him.

"When the parties married, the husband was in the United States Army. He had been in the army since December 1983. The husband retired from the army as a lieutenant colonel in 2005, and the family moved to Huntsville, where the husband worked as a civilian. At the time the husband filed this action, his gross monthly salary was \$8,993.81. From his employer, the husband also earned bonuses, his cellular-telephone phone bill was paid, and, in 2010, he received a \$4,800 distribution from his employer's 'SAR account.' In addition, the husband

received military-retirement benefits of \$3,802 each month, which included a Veterans Affairs' waiver of \$376. The husband's gross monthly income at the time of the trial was \$14,951.14; his average monthly net income was \$9,390.

"The wife did not work outside the home during the marriage. She testified that, because of the husband's deployments, she was often the only person available to care for the children. The wife said that between running the household and her responsibilities as a military spouse, which included assisting other military spouses with any number of difficulties they may encounter, she found it impossible to have a career outside the home. At the time of the trial, the wife worked as a receptionist in a doctor's office earning \$11 hourly. She worked approximately 30 to 32 hours each week.

"The parties did not own any real property at the time of the trial. They testified as to their personal property; the value of their various bank accounts, retirement accounts, and insurance policies; their three vehicles; and their debt.

"After considering the evidence, the trial court entered a judgment dividing the parties' personal property, their vehicles, and their various insurance policies, bank accounts, and retirement accounts, excluding the husband's military-retirement benefits. The husband was ordered to pay the wife \$2,250 each month in periodic alimony. The trial court stated that the amount of the wife's periodic alimony was to be equal to 28% of the husband's gross nondisability military-retirement benefits."

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As mentioned, on the second remand the trial court ultimately awarded the wife 28% of the husband's "disposable [military-]retirement benefits." The wife's share of the benefits are payable to her directly from the United States Army as retirement benefits are paid to the husband. The trial court ordered the wife to receive those payments until the death of the husband, at which time the wife is to receive benefits pursuant to the Survivor Benefit Plan, as mandated by the Uniformed Services Former Spouses' Protection Act, 10 U.S.C. § 1408. In addition to awarding the wife a portion of the husband's military-retirement benefits, however, the trial court also reduced the amount of the wife's monthly periodic alimony from \$2,250 to \$1,600. The wife filed this timely appeal.

"Our standard of review regarding a property division and an award of periodic alimony is well settled.

"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.'

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

"'The issues of property division and alimony are interrelated, and they must be considered together. Albertson v. Albertson, 678 So. 2d 118 (Ala. Civ. App. 199[5]). A property division is not required to be equal, but it must be equitable. Golden v. Golden, 681 So. 2d 605 (Ala. Civ. App. 1996). 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 and health; the length of the parties' marriage; and the source, value, and type of marital property. Robinson v. Robinson, [795 So. 2d 729 (Ala. Civ. App. 2001)]; Lutz v. Lutz, 485 So. 2d 1174 (Ala. Civ. App. 1986). 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, or, as here, where the trial court failed to specify the grounds upon which it based its divorce judgment. Ex parte Drummond, 785 So. 2d 358 (Ala. 2000); Myrick v. Myrick, 714 So. 2d 311 (Ala. Civ. App. 1998); Lutz v. Lutz, supra.'

"Pate v. Pate, 849 So. 2d 972, 976 (Ala. Civ. App. 2002)."

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Spuhl II, 120 So. 3d at 1074-75.

In this case, the wife asserts that the trial court erroneously based its award of periodic alimony on what it believed were the wife's "reasonable and necessary" monthly expenses, rather than by considering other relevant factors such as the parties' disparate incomes; their future prospects; their previous standard of living; and the reason for the breakdown of the marriage, which, she said, included the husband's affair. See Pate, 849 So. 2d at 976. In support of her assertion that the trial court used an improper standard in determining the amount of periodic alimony awarded to her, the wife points to the trial court's explanation for awarding the wife \$2,250 in periodic alimony in the original divorce judgment. In that judgment, the trial court wrote:

"Quite frankly, this court determined that both the [h]usband and the [w]ife submitted an unreasonable and inflated monthly expense budget into evidence in the trial of this case; and had to determine the [w]ife's reasonable and necessary monthly expenses, and therefore, her need for support for herself from the [h]usband; her own ability to earn income with which to meet, at least partially, those reasonable and necessary monthly expenses; and the ability of the [h]usband to contribute to her support, taking into consideration the other significant financial obligations imposed on him in the [judgment], as well as his own reasonable and necessary monthly expenses...."



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In Spuhl II, this court "remand[ed] this cause for the trial court to equitably divide the marital assets and to reconsider its award of periodic alimony." 120 So. 3d at 1076.

This court noted:

"The issues of property division and alimony are interrelated, and they must be considered together. Albertson v. Albertson, 678 So. 2d 118 (Ala. Civ. App. 199[5]). A property division is not required to be equal, but it must be equitable. Golden v. Golden, 681 So. 2d 605 (Ala. Civ. App. 1996). 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 and health; the length of the parties' marriage; and the source, value, and type of marital property. Robinson v. Robinson, [795 So. 2d 729 (Ala. Civ. App. 2001)]; Lutz v. Lutz, 485 So. 2d 1174 (Ala. Civ. App. 1986). In addition, the trial court may also consider the conduct of the parties with regard to the breakdown of the marriage.... Ex parte Drummond, 785 So. 2d 358 (Ala. 2000); Myrick v. Myrick, 714 So. 2d 311 (Ala. Civ. App. 1998); Lutz v. Lutz, supra.'

"Pate v. Pate, 849 So. 2d 972, 976 (Ala. Civ. App. 2002)."

Id. at 1074-75.

The transcript of the proceedings conducted following the second remand shows that the trial court followed this court's

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mandate in rendering the April 2013 judgment, i.e., the trial court divided the military-retirement benefits and correspondingly reconsidered the award of periodic alimony. The resulting awards are within the discretion afforded to the trial court. A trial court's discretionary ruling must be affirmed if it is supported by "any credible evidence." Ex parte D.W.W., 717 So. 2d 793, 795 (Ala. 1998). To reverse such a ruling, we must determine that the trial court "'committed a clear or palpable error, without the correction of which manifest injustice will be done.'" D.B. v. J.E.H., 984 So. 2d 459, 462 (Ala. Civ. App. 2007) (quoting Clayton v. State, 244 Ala. 10, 12, 13 So. 2d 420, 422 (1942), quoting in turn 16 C.J. 453)). The record does not indicate that the property-division and alimony awards are clearly or palpably erroneous or that manifest injustice will result from the awards, and any correction of the awards by this court would require reweighing the evidence or substituting this court's judgment for that of the trial court. Ex parte R.T.S., 771 So. 2d 475, 476-77 (Ala. 2000) (noting that the appellate court must not engage in fact-finding or "reweigh the evidence and substitute its judgment for that of the trial court"). The trial court's

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awards might be different than the awards this court would have rendered, but, under these facts, they should be affirmed "regardless of our own view of that evidence or whether we would have reached a different result had we been the trial judge." Young v. Young, 376 So. 2d 737, 739 (Ala. Civ. App. 1979) (citing Hawkins v. Hawkins, 346 So. 2d 967 (Ala. Civ. App. 1977)).

The husband's request for an attorney fee on appeal is denied. The wife's request for an attorney fee on appeal is also denied.

AFFIRMED.

Pittman, Thomas, and Donaldson, JJ., concur.

Moore, J., concurs specially.

Thompson, P.J., dissents, with writing.

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MOORE, Judge, concurring specially.

In her third appeal to this court, Cheri Denise Spuhl ("the wife") argues that the Madison Circuit Court ("the trial court") erred (1) by using the wrong legal standard to determine the amount of periodic alimony to be paid to her by Robert Spuhl ("the husband") and (2) by awarding her insufficient periodic alimony. I conclude that the wife has failed to demonstrate legal error as to either argument.

The trial court did not use an incorrect legal standard to determine the amount of periodic alimony it awarded to the wife. Recently, this court set out the standard to be used by trial courts in awarding periodic alimony:

"Under Alabama law, periodic alimony consists of regular installment payments made from one spouse to another to enable the recipient spouse, to the extent possible, to maintain his or her standard of living as it existed during the marriage, i.e., the 'economic status quo.' Orr v. Orr, 374 So. 2d 895, 897 (Ala. Civ. App. 1979). ...

"... This court and our supreme court have enumerated the many factors trial courts must consider when weighing the propriety of an award of periodic alimony, Edwards v. Edwards, 26 So. 3d 1254, 1259 (Ala. Civ. App. 2009), which include: the length of the marriage, Stone v. Stone, 26 So. 3d 1232, 1236 (Ala. Civ. App. 2009); the standard of living to which the parties became accustomed during the marriage, Washington v. Washington, 24 So. 3d 1126, 1135-36 (Ala. Civ. App. 2009); the relative

fault of the parties for the breakdown of the marriage, Lackey v. Lackey, 18 So. 3d 393, 401 (Ala. Civ. App. 2009); the age and health of the parties, Ex parte Elliott, 782 So. 2d 308, 311 (Ala. 2000); and the future employment prospects of the parties, Baggett v. Baggett, 855 So. 2d 556, 559 (Ala. Civ. App. 2003). In weighing those factors, a trial court essentially determines whether the petitioning spouse has demonstrated a need for continuing monetary support to sustain the former, marital standard of living that the responding spouse can and, under the circumstances, should meet. See Gates v. Gates, 830 So. 2d 746, 749-50 (Ala. Civ. App. 2002); Hewitt v. Hewitt, 637 So. 2d 1382, 1384 (Ala. Civ. App. 1994) ('The failure to award alimony, although discretionary, is arbitrary and capricious when the needs of the wife are shown to merit an award and the husband has the ability to pay.').

"A petitioning spouse proves a need for periodic alimony by showing that without such financial support he or she will be unable to maintain the parties' former marital lifestyle. See Pickett v. Pickett, 723 So. 2d 71, 74 (Ala. Civ. App. 1998) (Thompson, J., with one judge concurring and two judges concurring in the result). As a necessary condition to an award of periodic alimony, a petitioning spouse should first establish the standard and mode of living of the parties during the marriage and the nature of the financial costs to the parties of maintaining that station in life. See, e.g., Miller v. Miller, 695 So. 2d 1192, 1194 (Ala. Civ. App. 1997); and Austin v. Austin, 678 So. 2d 1129, 1131 (Ala. Civ. App. 1996). The petitioning spouse should then establish his or her inability to achieve that same standard of living through the use of his or her own individual assets, including his or her own separate estate, the marital property received as part of any settlement or property division, and his or her own wage-earning capacity, see Miller v. Miller, supra, with the last factor taking into account the age, health, education, and

work experience of the petitioning spouse as well as prevailing economic conditions, see DeShazo v. DeShazo, 582 So. 2d 564, 565 (Ala. Civ. App. 1991), and any rehabilitative alimony or other benefits that will assist the petitioning spouse in obtaining and maintaining gainful employment. See Treusdell v. Treusdell, 671 So. 2d 699, 704 (Ala. Civ. App. 1995). If the use of his or her assets and wage-earning capacity allows the petitioning spouse to routinely meet only part of the financial costs associated with maintaining the parties' former marital standard of living, the petitioning spouse has proven a need for additional support and maintenance that is measured by that shortfall. See Scott v. Scott, 460 So. 2d 1331, 1332 (Ala. Civ. App. 1984).

"Once the financial need of the petitioning spouse is established, the trial court should consider the ability of the responding spouse to meet that need. See Herboso v. Herboso, 881 So. 2d 454, 458 (Ala. Civ. App. 2003). The ability to pay may be proven by showing that the responding spouse has a sufficient separate estate, following the division of the marital property, see § 30-2-51(a), Ala. Code 1975, and/or sufficient earning capacity to consistently provide the petitioning spouse with the necessary funds to enable him or her to maintain the parties' former marital standard of living. Herboso, supra. In considering the responding spouse's ability to pay, the trial court should take into account all the financial obligations of the responding spouse, including those obligations created by the divorce judgment. See O'Neal v. O'Neal, 678 So. 2d 161, 164 (Ala. Civ. App. 1996). The trial court should also consider the impact an award of periodic alimony will have on the financial condition of the responding spouse and his or her ability to maintain the parties' former marital lifestyle for himself or herself. Id. A responding spouse obviously has the ability to pay if the responding spouse can satisfy the entirety of the

petitioning spouse's needs without any undue economic hardship. See, e.g., MacKenzie v. MacKenzie, 486 So. 2d 1289, 1292 (Ala. Civ. App. 1986). In most cases, however, simply due to the fact that, after separation, former spouses rarely can live as well and as cheaply as they did together, Gates, 830 So. 2d at 750, a trial court will find that the responding spouse cannot fully meet the financial needs of the petitioning spouse. Walls v. Walls, 860 So. 2d 352, 358 (Ala. Civ. App. 2003). In those cases, the trial court should endeavor to determine the amount the responding spouse can fairly pay on a consistent basis. See Rubert v. Rubert, 709 So. 2d 1283, 1285 (Ala. Civ. App. 1998).

"After being satisfied that the petitioning spouse has a need for periodic alimony and that the responding spouse has some ability to meet that need, the trial court should consider the equities of the case. The length of the marriage does not determine the right to, or amount of, periodic alimony. Hatley v. Hatley, 51 So. 3d 1031, 1035 (Ala. Civ. App. 2010). However, the longer the parties have maintained certain living and financial arrangements, the more fair it will seem that those arrangements should be maintained beyond the divorce to the extent possible. See Edwards v. Edwards, 410 So. 2d 91, 93 (Ala. Civ. App. 1982). The trial court should also give due regard to the history of the marriage and the various economic and noneconomic contributions and sacrifices made by the parties during the marriage. See Hanna v. Hanna, 688 So. 2d 887, 891 (Ala. Civ. App. 1997). In light of those factors, the trial court should endeavor to avoid leaving the parties in an unconscionably disparate financial position. Jones v. Jones, 596 So. 2d 949, 952 (Ala. Civ. App. 1992). However, the trial court can consider whether the marriage, and its attendant standard of living, ended due to the greater fault of one of the parties, and, if so, the trial court can adjust the award accordingly. Yohey v. Yohey,

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890 So. 2d 160, 164-65 (Ala. Civ. App. 2004). Lastly, the trial court should consider any and all other circumstances bearing on the fairness of its decision. See Ashbee v. Ashbee, 431 So. 2d 1312, 1313-14 (Ala. Civ. App. 1983)."

Shewbart v. Shewbart, 64 So. 3d 1080, 1087-89 (Ala. Civ. App. 2010).

In its first order entered on second remand, the trial court explicitly set out the manner in which it determined the amount of periodic alimony it awarded to the wife by stating that it

"had to determine the Wife's reasonable and necessary monthly expenses, and, therefore, her need for support for herself from the Husband; her own ability to earn income with which to meet, at least partially, those reasonable and necessary monthly expenses; and the ability of the Husband to contribute to her support, taking into consideration the other significant financial obligations imposed on him in the Final Decree, as well as his own reasonable and necessary monthly expenses, in setting the amount of periodic alimony to be paid to her by the Husband."

The trial court repeatedly reiterated that formula during the hearing on second remand. I find nothing in the language used by the trial court that violates Alabama law.

Pursuant to Shewbart, in awarding periodic alimony, a trial court may award only monetary support that is reasonably related to, and necessary for, maintaining the former marital



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standard of living. The trial court must also consider the ability of the responding spouse to pay periodic alimony based, in part, on the reasonable costs the responding spouse needs to expend in order to maintain the former marital standard of living for himself or herself. Nothing in the language used by the trial court indicates that it used the terms "reasonable and necessary monthly expenses" in some other more limited context, as the wife contends. More specifically, the wife has not demonstrated that the trial court considered only the basic necessities of life, such as food and rent, when determining the "reasonable and necessary monthly expenses" upon which the award of periodic alimony could be based. Rather, the judgment reflects that the trial court properly applied the correct standard from Shewbart by considering the reasonable amount of support the wife would need in order to meet the monthly expenses associated with maintaining the former marital standard of living as nearly as possible.

The trial court also did not commit legal error in awarding the wife \$1,600 in periodic alimony.

"The determination of whether the petitioning spouse has a need for periodic alimony, of whether

the responding spouse has the ability to pay periodic alimony, and of whether equitable principles require adjustments to periodic alimony are all questions of fact for the trial court, Lawrence v. Lawrence, 455 So. 2d 45, 46 (Ala. Civ. App. 1984), with the last issue lying particularly within the discretion of the trial court. See Nolen v. Nolen, 398 So. 2d 712, 713-14 (Ala. Civ. App. 1981). On appeal from ore tenus proceedings, this court presumes that the trial court properly found the facts necessary to support its judgment and prudently exercised its discretion. G.G. v. R.S.G., 668 So. 2d 828, 830 (Ala. Civ. App. 1995). That presumption may be overcome by a showing from the appellant that substantial evidence does not support those findings of fact, see § 12-21-12(a), Ala. Code 1975, or that the trial court otherwise acted arbitrarily, unjustly, or in contravention of the law. Dees v. Dees, 390 So. 2d 1060, 1064 (Ala. Civ. App. 1980)."

Shewbart, 64 So. 3d at 1089. Those principles of appellate review require affirmance of the award in this case. The trial court reasonably could have concluded, under the evidence presented and the equities of the case, that the husband should pay the wife no more than \$1,600 a month in periodic alimony.

The wife introduced an exhibit in which she claimed that she would incur \$5,000 per month in expenses; however, the trial court expressly concluded that the wife had inflated her budget and that her needs were actually less than as set out in her exhibit. Nothing in the record indicates that the

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trial court exceeded its discretion in making that determination. Hence, this court cannot assume that the wife needs \$5,000 per month in order to maintain the former marital standard of living. The wife has also failed to show that the trial court committed error by adjusting her periodic alimony downward from \$2,250 to \$1,600 per month following its decision to award her a portion of the husband's military-retirement benefits as a property settlement. This court's holding in Shewbart specifically provides that, when determining periodic alimony, a trial court must consider the impact of any property settlement on the ability of the petitioning spouse to meet his or her financial need. 64 So. 3d at 1088. The trial court followed the law when it reduced the periodic-alimony award to account for the property settlement it awarded to the wife. The trial court could have determined that the periodic-alimony award should remain the same as before, but it certainly did not exceed its discretion in concluding otherwise.

The wife pointedly argues that the trial court should have found the facts differently in order to increase the periodic-alimony award. The evidence was in much dispute as

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to the cause of the breakdown of the marriage and other equitable factors affecting the periodic-alimony award. As the main opinion correctly notes, this court cannot reweigh the evidence to overrule the trial court's determination of the facts. \_\_\_ So. 3d at \_\_\_. Therefore, I concur that the judgment should be affirmed.

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THOMPSON, Presiding Judge, dissenting.

I believe the judgment of the trial court awarding Cheri Denise Spuhl ("the wife") 28% of the military-retirement benefits of Robert Spuhl ("the husband") but reducing the amount of the wife's periodic-alimony award from \$2,250 to \$1,600 each month is plainly and palpably wrong. Therefore, I respectfully dissent from the main opinion.

Pursuant to the applicable ore tenus standard of review, "a judgment based on findings of fact based on [ore tenus] testimony will be presumed correct and will not be disturbed on appeal except for a plain and palpable error." Smith v. Muchia, 854 So. 2d 85, 92 (Ala. 2003) (quoting Allstate Ins. Co. v. Skelton, 675 So. 2d 377, 379 (Ala. 1996)). Furthermore, a presumption of correctness attaches to the trial court's conclusions regarding issues of fact, and this court will not disturb those conclusions unless they are clearly erroneous and against the great weight of the evidence. See Fort Morgan Civic Ass'n v. City of Gulf Shores, 100 So. 3d 1042, 1045 (Ala. 2012). I believe the conclusions the trial court reached as the basis for its award to the wife of periodic alimony and a portion of the husband's military-

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retirement benefits are clearly erroneous and against the great weight of the evidence.

The record indicates that both parties were 48 years old at the time of the trial. During the parties' 18-year marriage, the wife did not pursue a career outside the home so that she could move with the husband each time he was stationed somewhere new and so that she could fulfill the responsibilities her husband's career demanded of her as a military wife. She also managed the parties' household and was the only parent available to care for their children when the husband's job required him to be away from home for long periods. The husband acknowledged the wife's contribution to his career. Evidence also indicates that both parties share the blame for the breakdown of the marriage.

The trial court determined that, at the time of the trial, the husband, who has a master's degree in "space operations program management," was earning a net monthly income of approximately \$9,390 and was earning a gross monthly income of \$14,951.14. The wife, who has an associate's degree, was working as a receptionist at a doctor's office earning \$11 an hour and working 30 to 32 hours each week. The trial court

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determined that the wife's gross monthly income was \$1,430. In other words, the husband's gross monthly income is more than ten times greater than the wife's gross monthly income.

At trial, the wife presented evidence indicating that her monthly expenses were more than \$5,000. The husband presented evidence indicating that his monthly expenses, including his child-support obligation, were approximately \$7,050, \$1,500 of which is attributable to child support. The husband testified that his health is poor, but he offered no corroborating evidence. Even if we were to assume that the husband does have health issues, he still earns significantly more income than does the wife. In considering the parties' respective incomes, educations, earning potentials, and their lifestyle before the divorce, we find no evidence to support the trial court's decision to reduce the wife's award of periodic alimony from \$2,250 to \$1,600.

I recognize that a division of marital property and an award of periodic alimony are to be considered together. See Pate v. Pate, 849 So. 2d 972, 976 (Ala. Civ. App. 2002). However, the division of marital property and the awarding of periodic alimony serve two separate functions. In Spuhl v.

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Spuhl, 120 So. 3d 1071, 1075 (Ala. Civ. App. 2013) ("Spuhl II"), this court stated that the purpose of a property settlement in a divorce action, that is, the division of marital property, is intended to give "'each spouse the value of [his or her] interest in the marriage." (Quoting Pattillo v. Pattillo, 414 So. 2d 915, 917 (Ala.1982).) On the other hand, periodic alimony

"'is an allowance for the future support of the [recipient spouse] payable from the current earnings of the [paying spouse].' [Hager v. Hager], 293 Ala. [47] at 55, 299 So. 2d [743] at 750 [(1974)]. Its purpose '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) (emphasis added)."

TenEyck v. TenEyck, 885 So. 2d 146, 152 (Ala. Civ. App. 2003).

In Spuhl II, we held that denying the wife a share of the husband's military-retirement benefits--the parties' largest marital asset--resulted in an inequitable division of marital property because it deprived the wife from receiving an equitable share of her interest in the marriage. 120 So. 3d at 1076. I do not believe that providing her with that equitable share can come at the expense of reducing the



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periodic alimony intended to support her and to allow her, to the extent possible, to maintain the status she enjoyed during the marriage.

In reviewing the record in its entirety, I conclude that the amount of periodic alimony and the portion of the husband's military-retirement benefits awarded to the wife as part of the division of marital property is inequitable under the circumstances in this case. Accordingly, I would reverse that portion of the judgment reducing the wife's periodic alimony to \$1,600 a month.