Rel: 7/15/16

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2016

2150021

Stuart C. Dubose

v.

Allison T. Dubose

Appeal from Clarke Circuit Court
(DR-08-30)

PER CURIAM.

Stuart C. Dubose ("the husband") appeals from a judgment of the Clarke Circuit Court ("the trial court") entered in this divorce case, which began eight years ago when, in March 2008, Allison T. Dubose ("the wife") filed a complaint for a

divorce from the husband. During the pendency of this litigation, the parties have been before this court on multiple occasions; however, a full procedural history is not necessary for the resolution of the issues in this appeal.[1] The instant appeal arises out of the judgment the trial court entered on remand, pursuant to this court's directive in Dubose v. Dubose, 172 So. 3d 233 (Ala. Civ. App. 2014) ("Dubose III").

We first note that, at the husband's request, the records from all of the proceedings below have been incorporated as part of the record on appeal in the instant case. In Dubose III, this court was unable to determine whether the "imputed child support of $645" the trial court calculated was the total child-support obligation for the parties' minor child or whether it was the husband's child-support obligation. We

[1]For those interested in the complete procedural history, see Dubose v. Dubose, 72 So. 3d 1210 (Ala. Civ. App. 2011); and Dubose v. Dubose, 132 So. 3d 17 (Ala. Civ. App. 2013). In addition to those appeals and the appeal in Dubose v. Dubose, 172 So. 3d 233 (Ala. Civ. App. 2014), the husband has submitted two petitions for a writ of mandamus to this court in this case. Both petitions were denied. See Ex parte Dubose (No. 2080900, July 10, 2009), 58 So. 3d 863 (Ala. Civ. App. 2009) (table); and Ex parte Dubose (No. 2130384, March 19, 2014), 177 So. 3d 485 (Ala. Civ. App. 2014) (table).

also could not determine from the record how the trial court had arrived at the amount of $645. Thus, we reversed the judgment on the issue of child support and remanded the cause for the trial court to enter a child-support judgment in compliance with Rule 32, Ala. R. Jud. Admin. Id. at 240.

We also remanded the cause for the trial court to make a determination as to the ownership of certain personal property, including firearms, a tractor, a bulldozer, a backhoe, and a bull, that the husband had contended belonged to his father, Melton Dubose ("Melton"). Upon making that determination, the trial court was then to make the appropriate disposition of that property in its judgment. Id. at 244.

Also in Dubose III, this court affirmed the award of an attorney fee to the wife; however, we reversed that portion of the judgment ordering the husband to pay "all attorney fees." On remand, the trial court was directed to take evidence regarding the amount and reasonableness of the wife's attorney fees and to establish a specific sum that the husband was required to pay toward the wife's attorney fees. Id. at 247. The remainder of the trial court's judgment, which, among

other things, divided marital property, was affirmed. Id. at 248.

The trial court complied with the mandate from this court, and on April 30, 2015, it entered a judgment on remand. In that judgment, the trial court determined that certain firearms, the bull, and the bulldozer were not marital assets subject to division. However, the trial court found, a 90-horsepower tractor and a Caterpillar backhoe were marital assets, and those two vehicles were awarded to the wife. In the judgment on remand, the trial court also awarded the wife $11,250 toward her attorney fees. Additionally, it imputed monthly gross income of $5,000 to the wife, it imputed monthly gross income of $6,300 to the husband, and it ordered the husband to pay $645 a month in child support retroactive to March 2010. All other provisions of the judgment that had been the subject of Dubose III remained in full force and effect.

The husband filed a timely motion to alter, amend, or vacate the judgment on remand. The trial court denied the motion without a hearing, and the husband filed a timely notice of appeal.

On appeal, the husband contends that the trial court erred in denying his postjudgment motion before affording him an opportunity to be heard on that motion. As the husband points out, Rule 59(g), Ala. R. Civ. P., provides that postjudgment "motions remain pending until ruled upon by the court (subject to the provisions of Rule 59.1) but shall not be ruled upon until the parties have had opportunity to be heard thereon." Additionally, this court has held that,

> "[g]enerally, a movant who requests a hearing on his or her postjudgment motion is entitled to such a hearing. Rule 59(g), Ala. R. Civ. P.; Flagstar Enters., Inc. v. Foster, 779 So. 2d 1220, 1221 (Ala. 2000). A trial court's failure to conduct a hearing is error. Flagstar Enters., 779 So. 2d at 1221."

Dubose v. Dubose, 964 So. 2d 42, 46 (Ala. Civ. App. 2007).

However,

> "this court has recognized an exception to the general rule that the denial of a postjudgment motion without conducting a requested hearing is reversible error. See Gibert v. Gibert, 709 So. 2d 1257, 1258 (Ala. Civ. App. 1998) ('A trial court errs by not granting a hearing when one has been requested pursuant to Rule 59(g); however, that error is not necessarily reversible error.'). 'On appeal, ... if an appellate court determines that there is no probable merit to the motion, it may affirm based on the harmless error rule.' Palmer v. Hall, 680 So. 2d 307, 307-08 (Ala. Civ. App. 1996); see also Lowe v. Lowe, 631 So. 2d 1040, 1041 (Ala. Civ. App. 1993) ('Denial of a Rule 59 motion without a hearing is reversible error if the movant

> requested a hearing and harmful error is found.'). The Alabama Supreme Court has stated:
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> > "'Harmless error occurs, within the context of a Rule 59(g) motion, where there is either no probable merit in the grounds asserted in the motion, or where the appellate court resolves the issues presented therein, as a matter of law, adversely to the movant, by application of the same objective standard of review as that applied in the trial court.'
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> "Greene v. Thompson, 554 So. 2d 376, 381 (Ala. 1989). However, '[w]hen there is probable merit to the motion, the error cannot be considered harmless.' Dubose [v. Dubose], 964 So. 2d [42] at 46 [(Ala. Civ. App. 2007)]."

Wicks v. Wicks, 49 So. 3d 700, 701 (Ala. Civ. App. 2010).

Each of the issues the husband raised in his postjudgment motion is also raised on appeal. Therefore, we will consider each issue to determine whether the refusal to hold a hearing on the postjudgment motion constituted harmless error or whether there is probable merit to any of the issues presented.

First, the husband contends that the trial court's finding that the 90-horsepower tractor and the backhoe were marital property subject to division is not supported by the

evidence.[2] Specifically, the husband asserts that both farm vehicles belonged to his father, Melton, and that, therefore, the trial court could not properly award them to the wife as part of the division of marital property.

> "A divorce judgment that is based on evidence presented ore tenus is afforded a presumption of correctness. Brown v. Brown, 719 So. 2d 228 (Ala. Civ. App. 1998). This presumption of correctness is based upon the trial court's unique position to observe the parties and witnesses firsthand and to evaluate their demeanor and credibility. Brown, supra; Hall v. Mazzone, 486 So. 2d 408 (Ala. 1986). A judgment of the trial court based on its findings of facts will be reversed only where it is so unsupported by the evidence as to be plainly and palpably wrong. Brown, supra. However, there is no presumption of correctness in the trial court's application of law to the facts. Gaston v. Ames, 514 So. 2d 877 (Ala. 1987)."

Robinson v. Robinson, 795 So. 2d 729, 732–33 (Ala. Civ. App. 2001).

As to the property still in dispute, Melton testified that the husband had purchased the 90-horsepower tractor in November 2005 for $50,671 and that the husband had given that

[2]On remand, the trial court found that a bull and a bulldozer whose ownership was disputed belonged to Melton. Melton had testified that he had paid the husband $45,000 for the bulldozer. A check dated February 27, 2008, made payable to the husband from Melton corroborated Melton's testimony. The trial court also found that several specific firearms were not marital property.

tractor to Melton in 2006. Melton testified that the husband wanted to "write off" the tractor and that he had wanted Melton to have it. No further explanation was given as to how or why the husband intended to "write off" the tractor. Melton also testified that he had paid for substantial repairs to the backhoe. Melton said that, in May 2008, the husband had "turned the backhoe over in the creek." Melton hired someone to pull the backhoe out of the creek and paid about $9,000 for the repairs.

As we stated in Dubose III, "[t]he general rule is that a trial court in a divorce action lacks jurisdiction to divide property legally titled in the name of a third party not joined in the divorce action. Roubicek v. Roubicek, 246 Ala. 442, 449, 21 So. 2d 244, 251 (1945)." 172 So. 3d at 243. In this case, the evidence is undisputed that the husband purchased the 90-horsepower tractor, that Melton had not paid the husband for that tractor, and that it was no more than a year old when the husband allegedly gave it to Melton as a "write off." On the other hand, evidence--including corroborating documentary evidence--demonstrated that Melton did pay the husband $45,000 for an eight-year-old bulldozer

about two years later. See note 2, supra. The trial court could have determined that the husband had failed to demonstrate that Melton had obtained legal title to the 90-horsepower tractor and that, as a result, the tractor remained marital property. Similarly, the evidence is undisputed that the husband purchased the backhoe. There is no legal basis for the husband's apparent argument that, because Melton paid for repairs to the backhoe, Melton obtained an ownership interest in that piece of equipment. Again, the trial court could have concluded that, from the evidence presented, the husband had failed to show that the backhoe was not marital property.

Based on the record before us, we cannot say that the trial court's determination that the 90-horsepower tractor and the backhoe were marital property subject to division was so unsupported by the evidence as to be plainly and palpably wrong. See Robinson, supra. We also hold that, as to this issue, the trial court's failure to conduct a hearing on the husband's postjudgment motion constituted harmless error.

The husband also contends that, in the judgment on remand, the trial court erred in ordering the husband to pay

$11,250 toward the wife's attorney fees. In Dubose III, we held that the trial court had not abused its discretion in ordering the husband to pay at least a portion of the wife's attorney fees, but we remanded the cause for the trial court to establish a specific amount of the fees to be awarded. As we stated in Dubose III:

> "'"Whether to award an attorney fee in a domestic relations case is within the sound discretion of the trial court and, absent an abuse of that discretion, its ruling on that question will not be reversed. Thompson v. Thompson, 650 So. 2d 928 (Ala. Civ. App. 1994). 'Factors to be considered by the trial court when awarding such fees include the financial circumstances of the parties, the parties' conduct, the results of the litigation, and, where appropriate, the trial court's knowledge and experience as to the value of the services performed by the attorney.' Figures v. Figures, 624 So. 2d 188, 191 (Ala. Civ. App. 1993). Additionally, a trial court is presumed to have knowledge from which it may set a reasonable attorney fee even when there is no evidence as to the reasonableness of the attorney fee. Taylor v. Taylor, 486 So. 2d 1294 (Ala. Civ. App. 1986)."

> "'Glover v. Glover, 678 So. 2d 174, 176 (Ala. Civ. App. 1996).'
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> "Frazier v. Curry, 104 So. 3d 220, 228 (Ala. Civ. App. 2012)."

172 So. 3d at 245-46. See also Deas v. Deas, 747 So. 2d 332, 337 (Ala. Civ. App. 1999)("In determining whether to award an attorney fee [in a divorce action], the trial court considers equities similar to those which govern the division of property--the earning capacity of the parties, their financial circumstances, and the results of the litigation.").

After outlining the evidence presented in the case regarding the assets of the parties, much of which is set forth above, we then stated in Dubose III:

> "Furthermore, the trial court noted in the judgment that, during the course of the litigation,
>
> > "'the [husband] has been in violation of numerous discovery orders and has been in constant contempt throughout this divorce proceeding; has refused to engage in any discovery whatsoever claiming he did not have access to records or that the [wife] had them[,] and other action showing his utter contempt for these proceedings[,] which this court finds unacceptable and will deal with accordingly.'
>
> "Considering the length of the parties' marriage, the husband's conduct in hiding assets and in litigating this matter, and the husband's apparent financial ability to pay the wife's

> attorney fees, we cannot say that the trial court abused its discretion in ordering the husband to pay at least a portion of the wife's attorney fees. However, we agree with the husband that the trial court erred in not setting a specified sum as the amount the husband had to pay toward those attorney fees. This court has held that a trial court may not order one party to pay another party's attorney fees without first receiving evidence of the amount of those fees and then determining the reasonableness of that amount. A.B. v. J.B., 40 So. 3d 723, 735 (Ala. Civ. App. 2009). There is no evidence in the record indicating that the trial court considered the amount or reasonableness of the wife's attorney fees before ordering that the husband be responsible for paying those fees. Accordingly, that portion of the judgment ordering the husband to pay 'all attorney fees' is reversed. On remand, the trial court is directed to take evidence on the amount of fees, to consider the reasonableness of those fees, and to establish a specific sum that the husband must pay toward the wife's attorney fees."

172 So. 3d at 246-47.

On appeal, the husband argues that, despite our conclusion in Dubose III that the trial court had not abused its discretion in awarding the wife an attorney fee, the award was improper because, he says, the wife failed to demonstrate that she had a financial need for the award.

We first point out that our holding that the trial court did not abuse its discretion in ordering the husband to pay at least a portion of the wife's attorney fees became law of the

case. The trial court was directed only to establish the amount of the attorney fees to be awarded.

> "'Under the doctrine of the "law of the case," whatever is once established between the same parties in the same case continues to be the law of that case, whether or not correct on general principles, so long as the facts on which the decision was predicated continue to be the facts of the case.' Blumberg v. Touche Ross & Co., 514 So. 2d 922, 924 (Ala. 1987). See also Titan Indem. Co. v. Riley, 679 So. 2d 701 (Ala. 1996). 'It is well established that on remand the issues decided by an appellate court become the "law of the case," and that the trial court must comply with the appellate court's mandate.' Gray v. Reynolds, 553 So. 2d 79, 81 (Ala. 1989)."

Southern United Fire Ins. Co. v. Purma, 792 So. 2d 1092, 1094 (Ala. 2001).

The trial court complied with this court's directive on remand. The wife's attorney submitted to the trial court an itemized billing statement reflecting the work he had done from the inception of this matter in March 2008 through the trial that was held in November 2009. The total amount of attorney fees for that time was $49,813. In its judgment on remand, the trial court stated:

> "This Court has reviewed the attorney fee bill submitted in this case and the [husband's] response thereto, along with the evidence and testimony received throughout this case; based upon same, the Court finds a reasonable amount [the husband] shall

> pay towards attorney fees incurred by the [wife] is $11,250."

The judgment on remand does not indicate that the trial court intended to award the wife an attorney fee solely based on her financial need. As mentioned, there are a number of other reasons the trial court could have believed the husband should pay a share of the wife's attorney fees. For example, the record indicates that the husband refused to comply with a number of discovery requests, which resulted in the wife's having to file motions to compel his compliance. The wife also sought to have the husband held in contempt of court for his refusal to abide by court orders. The trial court granted the wife's requests. The trial court made reference to the husband's conduct in the judgment of March 3, 2014--the judgment at issue in Dubose III, supra--saying:

> "[T]he [husband] has been in violation of numerous discovery orders and has been in constant contempt throughout this divorce proceeding; has refused to engage in any discovery whatsoever claiming he did not have access to records or that the [wife] had them[,] and other action showing his utter contempt for these proceedings[,] which this court finds unacceptable and will deal with accordingly."

Further, the record on appeal in Dubose v. Dubose, 72 So. 3d 1210 (Ala. Civ. App. 2011), the first appeal of this case,

which, as noted earlier, is included in the record in the instant appeal, comprises more than 4,500 pages, which is an extraordinarily large record in a divorce action. Based on the record before us, the trial court reasonable could have believed that the husband's conduct during the litigation unnecessarily prolonged the matter or increased litigation costs, including attorney fees.

In his brief on appeal, the husband does not argue that the trial court abused its discretion in awarding the wife an attorney fee based on grounds other than financial need, such as the conduct of the parties or the results of the litigation. Thus, any argument the husband could have made on appeal challenging the award of the attorney fee on other grounds is deemed waived. See Gary v. Crouch, 923 So. 2d 1130, 1136 (Ala. Civ. App. 2005) ("[T]his court is confined in its review to addressing the arguments raised by the parties in their briefs on appeal; arguments not raised by the parties are waived."); see also Palmer v. Palmer, [Ms. 2140466, Aug. 14, 2015] ___ So. 3d ___ (Ala. Civ. App. 2015) (same).

Moreover, because the trial court did not set out the factual basis for its award of an attorney fee, we cannot

conclude that the trial court failed to consider the wife's financial need in making the award. The evidence indicated that the wife earned approximately $70,000 a year. Although the wife has apparently been able to support herself on her income alone, the attorney fees she incurred during the first two years this matter was pending is more than two-thirds of her annual salary. The trial court ordered the husband to pay the wife approximately 23% of the total attorney fees she had incurred through the initial trial of this case. Again, based on the record before us, even if the trial court did consider the wife's financial need in making its attorney-fee award, we cannot conclude that the trial court abused its discretion in doing so. Accordingly, we hold that the trial court did not abuse its discretion in ordering the husband to pay the wife $11,250 toward her attorney fees. As to this issue, we again conclude that the trial court's failure to hold a hearing on the husband's postjudgment motion constituted harmless error.

On appeal, as he did in his postjudgment motion, the husband argues that the trial court erred in its award of child support. The husband correctly notes that the wife did not submit a CS-41 child-support-obligation income

statement/affidavit form as directed and that the trial court did not complete a CS-42 child-support-guidelines form to determine child support, as required by Rule 32, Ala. R. Jud. Admin. Instead, the trial court imputed monthly income of $5,000 to the wife and "a minimum of" $6,300 a month to the husband based on the information in the record. The husband argued that the trial court should not have imputed income to the wife, but should have determined her actual income, and that the trial court should not have imputed income to the husband because he was not voluntarily unemployed and no evidence supported the imputed-income amount. See Rule 32(B)(5), Ala. R. Jud. Admin. The wife subsequently submitted a CS-41 form containing the imputed-income amounts determined by the trial court in the judgment on remand before the trial court ruled on the postjudgment motion.

The husband's arguments against the child-support determination appear to have merit. The trial court imputed income of $5,000 to the wife even though it had received undisputed evidence indicating that her actual income exceeded that amount. Nothing in Rule 32 allows a trial court to reduce the actual income of a parent for any reason when

computing child support. The wife could not submit a CS-41 form after the entry of the judgment to provide a basis for the trial court's plainly incorrect $5,000 income amount. The trial court impliedly found the husband to be voluntarily unemployed, which it could do despite the fact that the husband later qualified for Social Security disability benefits. See Hudson v. Hudson, 178 So. 3d 861 (Ala. Civ. App. 2014). However, the evidence in the record does not support a finding that the husband can earn monthly income of $6,300 based on his current circumstances. The trial court can consider income produced from financial and other assets in determining child support, but the record does not contain any evidence of the income produced from the assets the husband maintains. Perhaps the trial court could impute income to the husband from the assets he has concealed, but the trial court would have had to comply with Rule 32(A), Ala. R. Jud. Admin., in order to deviate from the child-support guidelines, which it did not do, and the record would have to contain some evidence indicating that the assets could produce income at the rate imputed.

For these reasons, we conclude that there is probable merit to the issues regarding the computation of the husband's child-support obligation. Therefore, the trial court erred in refusing to hold a hearing on those issues, which were raised in the husband's postjudgment motion. Accordingly, we reverse the judgment on remand as to the issue of child support, and we remand the cause for the trial court to conduct a hearing on the issues related to child support that the husband raised in his postjudgment motion. See, e.g., Weiss v. Nave, 148 So. 3d 1086, 1089 (Ala. Civ. App. 2014); Henderson v. Henderson, 123 So. 23, 974, 979 (Ala. Civ. App. 2013). Those portions of the judgment on remand that divided the marital property and awarded the wife an attorney fee are affirmed.

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

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

Pittman and Donaldson, JJ., concur.

Moore, J., concurs in part and concurs in the result in part, with writing.

Thompson, P.J., concurs in part and dissents in part, with writing.

Thomas, J., concurs in part and dissents in part, with writing.

MOORE, Judge, concurring in part and concurring in the result in part.

Following the remand of this case by this court in Dubose v. Dubose, 172 So. 3d 233 (Ala. Civ. App. 2104) ("Dubose III"), the Clarke Circuit Court ("the trial court") entered a judgment ("the amended judgment") clarifying the property within the marital estate, explaining its child-support order, and specifying the amount of attorney's fees awarded to Allison T. Dubose ("the wife"). Stuart C. Dubose ("the husband") filed a postjudgment motion under Rule 59, Ala. R. Civ. P., arguing that the trial court had made various errors in the amended judgment and requesting oral argument on that motion. Specifically, the husband maintained that the trial court had erred (1) in classifying a 90-horsepower tractor as marital property contrary to the evidence, (2) in classifying a backhoe as a marital asset contrary to the evidence, (3) in imputing income to the parties when determining child support, and (4) in awarding the wife an amount of attorney's fees contrary to the evidence. Determining that it had complied with this court's mandate in Dubose III, the trial court denied the postjudgment motion without a hearing.

The husband argues as the first point in his appellant's brief to this court that the trial court committed reversible error in ruling on his postjudgment motion without conducting a hearing. Generally speaking, after a trial court amends a judgment, a party has a right to file a postjudgment motion to contest any prejudice to his or her substantive rights resulting from the amendments. See Ex parte Dowling, 477 So. 2d 400, 404 (Ala. 1985). That rule applies when a trial court amends a final judgment in compliance with remand instructions from an appellate court. Vinson v. Piedmont Hous., Inc., 198 Ga. App. 814, 815, 403 S.E.2d 96, 97 (1981). "[I]f a party requests a hearing on its motion[] for a new trial, the court must grant the request. Rule 59(g), Ala. R. Civ. P." Flagstar Enters., Inc. v. Foster, 779 So. 2d 1220, 1221 (Ala. 2000). However, any error in failing to grant a hearing on a postjudgment motion would not require reversal if the error is harmless.

> "Harmless error occurs, within the context of a Rule 59(g)[, Ala. R. Civ. P.,] motion, where there is either no probable merit in the grounds asserted in the motion, or where the appellate court resolves the issues presented therein, as a matter of law, adversely to the movant, by application of the same objective standard of review as that applied in the trial court."

Greene v. Thompson, 554 So. 2d 376, 381 (Ala. 1989). Thus, I analyze each ground asserted in the husband's postjudgment motion according to the same objective standard of review used by the trial court in order to determine whether the trial court committed reversible error in denying the postjudgment motion without a hearing as to that ground. See Terminix Int'l Co., Ltd. v. Scott, 142 So. 3d 512 (Ala. 2013) (remanding for hearing on issue of arbitrator bias, which had probable merit, but ruling that issue of arbitrator error in failing to apply limitation of remedies and damages contained in termite-services contract would not need to be addressed on remand because it lacked probable merit).

Property Division

In his postjudgment motion, the husband maintained that undisputed evidence proved that his father, Melton Dubose, had legitimately acquired ownership of the backhoe and the 90-horsepower tractor awarded to the wife. The husband contended that the trial court had violated the due-process rights of Melton by awarding the wife his property in a case in which he was only a witness, not a party. See Bonner v. Bonner, 170 So. 3d 697 (Ala. Civ. App. 2015).

Rule 61, Ala. R. Civ. P., provides:

> "No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."

(Emphasis added.) The husband did not allege that the error in classifying the backhoe and the tractor as marital property adversely affected his substantial rights, such as by rendering the property division inequitable. He asserted only that the ownership rights of Melton, a nonparty, had been impaired. According to Rule 61, the trial court must have disregarded that alleged error in ruling on the husband's postjudgment motion.[3] Applying that same objective standard of review on appeal, this court must also disregard that alleged error. Moreover, we lack jurisdiction to independently consider the point because the husband does not

[3]I note that, because Melton was a nonparty, he is not bound by the amended judgment. See Boswell v. Boswell, 189 So. 3d 854, 861 (Ala. 1966)

have standing to assert on appeal Melton's rights. See J.S. v. Etowah Cty. Dep't of Human Res., 72 So. 3d 1212, 1223-24 (Ala. Civ. App. 2011) (a party does not have standing to assert on appeal that the underlying judgment prejudices the rights of a third party). I therefore concur that the property-division provision of the amended judgment should be affirmed, but not for the reasons stated in the main opinion.

Child Support

In his postjudgment motion, the husband noted that the wife did not submit a CS-41 child-support-obligation income statement/affidavit form as directed and that the trial court did not complete a CS-42 child-support-guidelines form to determine child support, as required by Rule 32, Ala. R. Jud. Admin. Instead, the trial court imputed monthly income of $5,000 to the wife and "a minimum of" $6,300 a month to the husband based on the information in the record. The husband argued that the trial court should not have imputed income to the wife, but should have determined her actual income, and that the trial court should not have imputed income to the husband because he was not voluntarily unemployed and no evidence supported the imputed-income amount. See Rule

32(B)(5), Ala. R. Jud. Admin. The wife subsequently submitted a CS-41 form containing the imputed-income amounts determined by the trial court in the amended judgment before the trial court ruled on the postjudgment motion.

I agree with the main opinion that the husband's arguments against the child-support determination appear to have merit. The record suggests that the trial court incorrectly reduced the actual income of the wife without any lawful basis. The trial court, concluding that the husband was voluntarily unemployed, also imputed monthly income of $6,300 to the husband without any evidence indicating that he is able to earn that income. Rule 32(B)(5), Ala. R. Jud. Admin., provides, in pertinent part:

> "If the court finds that either parent is voluntarily unemployed or underemployed, it shall estimate the income that parent would otherwise have and shall impute to that parent that income; the court shall calculate child support based on that parent's imputed income. In determining the amount of income to be imputed to a parent who is unemployed or underemployed, the court should determine the employment potential and probable earning level of that parent, based on that parent's recent work history, education, and occupational qualifications, and on the prevailing job opportunities and earning levels in the community."

"In cases of voluntary underemployment, the amount of income to be imputed to the parent is a question of fact to be decided based on the evidence presented to the trial court." Stone v. Stone, 26 So. 3d 1228, 1231 (Ala. Civ. App. 2009) (emphasis added).

In this case, the amended judgment suggests that the trial court believed that the husband could work, but the amended judgment does not explain how the trial court determined from the evidence that the husband could earn as much as $6,300 per month given his disbarment and physical problems. As the main opinion concludes, the trial court could have imputed income from the assets that the husband concealed. ___ So. 3d at ___. The judges who dissent as to this issue, relying on law from other jurisdictions, argue that the trial court could have imputed a reasonable interest rate that could be derived from those assets or could have deviated from the child-support guidelines by imputing income that could be derived from liquidating the husband's assets. ___ So. 3d at ___ (Thompson, P.J., concurring in part and dissenting in part); see also ___ So. 3d at ___ (Thomas, J., concurring in part and dissenting in part). Even if Alabama

law permitted the trial court to adopt an interest rate without any evidence, which has never been decided, the amended judgment does not express that the trial court did so in this case. Also, the trial court did not comply with Rule 32(A), which requires any deviation from Rule 32 to be explained in writing in the record. Obviously, it would be unjust to deprive a child of child support from income a parent conceals, but the trial court must comply with the law when correcting that injustice. Given the circumstances, at a minimum, the husband is entitled to a hearing on his postjudgment motion to question the method by which the trial court calculated his income.

Attorney Fees

In Dubose III, this court reviewed the trial court's order that the husband pay all of the wife's attorney's fees. The court determined that the trial court had not erred "in ordering the husband to pay at least a portion of the wife's attorney fees," 172 So. 2d at 247, but remanded the case because the trial court did not consider the amount or reasonableness of the fees. On remand from this court's decision in Dubose III, the trial court ordered the wife's

attorney to submit an itemized bill for the services he had rendered in the divorce action. The wife's attorney submitted a billing statement, dated November 30, 2009, itemizing his services from March 18, 2008, through November 25, 2009, totaling $49,813.50, which had accumulated at an hourly rate of $175. Evidence in the record shows that the wife had paid $5,000 of those fees and that the wife's attorney had disbursed to himself three amounts totaling $17,000 from his attorney's trust account, which was funded by the sale of coins collected by the husband. The trial court ordered the husband to pay $11,250 as "a reasonable amount" of the wife's attorney's fees. The husband argued in his postjudgment motion that the evidence did not show that the wife had a need for him to pay her attorney's fees or that he had the ability to pay those fees.

I agree with the main opinion that the trial court could have awarded the wife attorney's fees without regard for "financial need" if such an award of fees constituted a sanction for contempt, see Ala. Code 1975, § 30-2-54, or for the violations of the trial court's discovery orders. See Rule 37(b)(2)(D), Ala. R. Civ. P. In the amended judgment,

the trial court did not specify the basis for the award of attorney's fees, but, in his postjudgment motion, the husband did not seek clarification on that point, make any argument that he was not in contempt, or make any argument that he had not violated the discovery orders. Even if he had, those arguments, having not been raised in his previous appeal, would have been barred under the law-of-the-case doctrine. See Scrushy v. Tucker, 70 So. 3d 289 (Ala. 2011) (party that did not raise issue in original appeal could not later raise issue in subsequent proceedings). The evidence shows that the husband has the ability to pay the fees awarded to the wife. Under these circumstances, the husband failed to show probable merit in his postjudgment motion.

However, I do not join any aspect of the main opinion implying that a trial court can, independently of § 30-2-54 or Rule 37(b)(2)(D), award attorney's fees solely on the basis that one party's "conduct during the litigation unnecessarily prolonged the matter or increased litigation costs, including attorney fees." ___ So. 3d at ___. I also do not agree that, in assessing the wife's need for the husband to pay her attorney's fees, a court should consider only the wife's

salary and not any of her assets. ___ So. 3d at ___. Because the husband's postjudgment lacked probable merit under the posture of this case, I do not explain the reason for my disagreement at length other than to say that those propositions are not supported by the law on attorney's fees in divorce cases as established by our supreme court. See McNutt v. Beaty, 370 So. 2d 998, 1000 (Ala. 1979); Silver v. Silver, 269 Ala. 517, 520, 113 So. 2d 921, 924 (1959); Couch v. Couch, 247 Ala. 70, 72, 22 So. 2d 599, 600 (1945); Savage v. Savage, 246 Ala. 389, 392, 20 So. 2d 784, 786 (1945); Mancil v. Mancil, 240 Ala. 404, 405, 199 So. 810, 811 (1941); Brady v. Brady, 39 So. 237, 144 Ala. 414 (1905); and Ex parte Smith, 34 Ala. 455 (1859).

Conclusion

I concur that the amended judgment should be affirmed as to the property division and the attorney's fees awarded, but not for all the reasons stated in the main opinion. I also concur that the case should be remanded for a hearing on the husband's postjudgment motion in regard to the child-support award.

THOMPSON, Presiding Judge, concurring in part and dissenting in part.

On appeal, as he did in his postjudgment motion, Stuart C. Dubose ("the husband") argues that the evidence does not support the trial court's determinations that, for the purposes of calculating child support, Allison T. Dubose ("the wife") had an imputed monthly income of $5,000 and that he had an imputed monthly income of $6,300. Specifically, the husband states that evidence indicated that the wife earned $5,500 a month and that he has had no income at all since 2008. He also states that no evidence was presented that would support a conclusion that he could earn $6,300 a month.

Portions of the procedural history of this case are helpful to an understanding of the issues related to the calculation of the husband's child-support obligation. In the first appeal of this case, this court dismissed the appeal in April 2011 because the appeal was not from a final judgment. Specifically, we determined that the trial court had not calculated the husband's child-support obligation. Dubose v. Dubose, 72 So. 3d 1210 (Ala. Civ. App. 2011) ("Dubose I"). The order at issue in that appeal was entered on March 29, 2010. In Dubose I, we wrote:

"With regard to the calculation of child support in this case, the trial court's order stated:

> "'Child support shall be paid to the [wife] in accordance with Rule 32[, Ala. R. Jud. Admin.,] modification tables effective January 1, 2009. The income for the parties will be[,] for the [wife,] her 2007 tax return showing a gross income of $70,292[,] and the [husband's] gross income as defined by said Rule 32 shall be the average of [his] gross income for his 2006, 2007, and 2008 income-tax years. The [husband] will provide to the [wife]'s attorney these tax returns prior to the signing of this agreement for the calculation of child support. This ... figure will be divided by 12 for a monthly income that will be used along with the [wife's] income to establish a monthly child support for [the minor child].
>
> "'An interim child-support amount shall be set at $400 per month for the parties' minor child, by agreement of the [husband]. The court reserves the right to raise or lower this amount upon motion of any party and proof of [the husband]'s income.
>
> "'[The husband] shall submit the above information within 30 days.'

"Thus, although the order required the husband to pay child support and provided the manner in which child support ultimately was to be calculated, the order did not provide the exact amount of the husband's child-support obligation beyond providing for an 'interim' amount of child support pending the ordered calculations. We also note that a subsequent paragraph of the order provided that

> 'neither party shall pay monthly child support payment[s].'"

72 So. 3d at 1211-12.

Moreover, the record indicates that when she filed her complaint in 2008, the wife filed a Form CS-42, part of the documentation necessary under the child-support guidelines set out in Rule 32, Ala. R. Jud. Admin. That form, dated March 24, 2008, indicates that, at that time, the wife's monthly gross income was $5,500 and the husband's monthly gross income was $8,621.54.

In the third appeal of this case, we again reversed the judgment of the trial court on, among other issues, the issue of child support. Dubose v. Dubose, 172 So. 3d 233, 239-40 (Ala. Civ. App. 2014) ("Dubose III"). Regarding the child support awarded in the trial court's judgment of March 3, 2014, we wrote:

> "The husband contends that the trial court erred when it imputed 'child support' rather than imputing 'income' in the judgment. The husband asserts that the undisputed evidence indicated that, other than Social Security disability benefits, he had not earned any income since 2009 and that, because of his physical condition, he cannot be gainfully employed. The husband contends that the wife did not present evidence to refute his inability to work.

"In the judgment, the trial court pointed out that the husband testified that he had no income, while other evidence indicated that, up until 2008, the husband had earned income of approximately $2 million. Accordingly, the trial court 'impute[d] child support in the amount of $645' a month, which was to be applied retroactively from March 5, 2010, the date the trial court rendered an order (the order was not actually entered until March 29, 2010) setting an interim amount of child support of $400 a month, until the child's 19th birthday in November 2011.

"Rule 32(C)(2), Ala. R. Jud. Admin., sets forth the manner in which child support is calculated, stating:

> "'A total child-support obligation is determined by adding the basic child-support obligation, work-related child-care costs, and health-insurance costs. The total child-support obligation shall be divided between the parents in proportion to their adjusted gross incomes. The obligation of each parent is computed by multiplying the total child-support obligation by each parent's percentage share of their combined adjusted gross income. The custodial parent shall be presumed to spend his or her share directly on the child.'

"The judgment does not make clear whether the 'imputed child support' referenced in the judgment is the total child-support obligation or whether it is the amount the trial court deemed to be the husband's share. To complicate matters, the next paragraph of the judgment states that 'neither party shall pay monthly child support payment,' and it sets forth the procedure the trial court will use 'if in the future it is determined [child support is] to be due.' The same paragraph indicates that

the wife's attorney had completed the income affidavits and other forms required pursuant to Rule 32, Ala. R. Jud. Admin. However, during the hearing on the issue of child support after this court dismissed the husband's first appeal in this case, the wife's attorney told the trial court he had not prepared the required forms but that he could prepare an income affidavit to provide to the court. The husband states in his appellate brief that neither the wife nor the trial court submitted the forms required by Rule 32 for determining child support. In our review of the voluminous record in this case, we could not locate an income affidavit from the wife or a standardized 'child-support-guidelines form' (Form CS-42), both of which are required to be included in the record. Rule 32(E), Ala. R. Jud. Admin. The wife has not provided this court with a brief on appeal; thus, the husband's assertion that the proper child-support forms were not completed is not refuted.

"Even if the required forms are not contained in the record, this court may affirm a child-support award if we are able to determine, from the evidence in the record, how the trial court reached its child-support calculation. Hayes v. Hayes, 949 So. 2d 150, 154-55 (Ala. Civ. App. 2006). In this case, however, this court is unable to determine from the evidence in the record how the trial court determined the husband's child-support obligation. Moreover, we note that in its order of March 29, 2010, the trial court ordered the husband to pay interim child support of $400 a month for the parties' youngest child. That child reached the age of 19 years in November 2011, more than two years before the final judgment was entered. Accordingly, we reverse the judgment as to this issue, and we remand the case for the trial court to enter a child-support judgment that complies with Rule 32, Ala. R. Jud. Admin., enabling this court, if a subsequent appeal is filed, to determine how the

> trial court calculated the husband's child-support obligation and to provide a meaningful review as to the propriety of that obligation. C.M.M. v. S.F., 975 So. 2d 975, 982 (Ala. Civ. App. 2007); Wilkerson v. Waldrop, 895 So. 2d 347, 348-49 (Ala. Civ. App. 2004)."

Dubose III, 172 So. 3d at 239-40.

In the instant appeal, the husband has again challenged the child support ordered in the judgment entered on remand from Dubose III. In the judgment on remand, dated April 30, 2015, the trial court wrote:

> "The [husband] has submitted a CS-41 form to assist the Court in making a child support determination. The [wife] has not. However, the record contains sufficient income information to determine the parties' income and impute same. This Court imputes income to the [wife] of $5,000 (44%) monthly gross income. Additionally, the record contains income and other relevant information sufficient for this Court to impute a minimum income to the [husband] of $6,300 (56%) monthly gross income. Therefore, the monthly child-support amount for the [husband] is $645 per month applied retroactively from March 29, 2010."

The main opinion concludes that "the evidence in the record does not support a finding that the husband can earn monthly income of $6,300 based on his current circumstances." ___ So. 3d at ___. I respectfully disagree.

At the 2008 hearing during which the wife testified as to her salary, which is the amount the husband wants the courts

to use when calculating child support, the husband testified that his net monthly income was approximately $4,800. The child-support form dated March 24, 2008, which the wife submitted when she filed the divorce complaint, indicated that, at that time, the husband's monthly gross income was $8,621.54. However, the husband contends that he is disabled as the result of injuries to his back and neck, which he suffered in 2003. In the accident, the recliner in which the husband was sitting collapsed, ejecting him and consequently breaking his neck and back. The husband claims that he has been in constant pain since that time. It is also undisputed that, despite his disability, the husband campaigned for and was elected to the circuit bench in 2006 and took office in January 2007. The husband was removed from his position as a circuit judge and was disbarred from the practice of law in 2008. The husband asserts that he has had no income since 2008. Dubose III, 172 So. 3d at 236.

However, as set forth in Dubose III, there was evidence indicating that the husband had accrued assets of nearly $2 million from 2006 through 2008, the year the divorce complaint was filed. The wife presented evidence indicating that, in

2007, the husband had deposits of $1,121,374.90 apart from his judge's salary. Dubose III, 172 So. 3d at 237-38. At the hearing, the husband denied knowing the source of all of the money, asserting that loan proceeds accounted for some of the deposits. Id. Despite the general rule that the obligor's ability to pay is always considered when establishing or modifying an award of child support, Rule 32 provides a trial court the authority to impute income to a parent if that court finds that the parent is voluntarily unemployed or underemployed. See Rule 32(B)(5), Ala. R. Jud. Admin. ("If the court finds that either parent is voluntarily unemployed or underemployed, it shall estimate the income that parent would otherwise have and shall impute to that parent that income; the court shall calculate child support based on that parent's imputed income.").

> "'The trial court is afforded the discretion to impute income to a parent for the purpose of determining child support, and the determination that a parent is voluntarily unemployed or underemployed "is to be made from the facts presented according to the judicial discretion of the trial court."' Clements v. Clements, 990 So. 2d 383, 394 (Ala. Civ. App. 2007) (quoting Winfrey v. Winfrey, 602 So. 2d 904, 905 (Ala. Civ. App. 1992), and citing Rule 32(B)(5), Ala. R. Jud. Admin.)."

Bittinger v. Byrom, 65 So. 3d 927, 934 (Ala. Civ. App. 2010).

In a footnote to the judgment on remand in which the trial court imputed income of $6,300 a month to the husband, the trial court stated:

> "Testimony and evidence revealed that the [husband] has advanced degrees, farming, boat racing, investments, etc., that produce income for and on behalf of the [husband]. Testimony also pointed out that the [husband] continued to be active despite his alleged physical condition prohibiting him from working; [the husband] continued to engage in physical activities and was/is not so physically disabled that he cannot hold a job."

Thus, the trial court implicitly, if not expressly, found that the husband is voluntarily unemployed. "A trial court may validly impute income to a parent pursuant to Rule 32(B)(5) without expressly finding that the parent is voluntarily unemployed or underemployed." G.B. v. J.H., 915 So. 2d 570, 574 (Ala. Civ. App. 2005).

As mentioned, the husband contends that he is unable to work because he is disabled and has been disbarred. This court has held that a parent's reasons for being unemployed are matters for consideration in determining his or her ability to pay child support. See, e.g., Alred v. Alred, 678 So. 2d 1144, 1146 (Ala. Civ. App. 1996) (in a proceeding to modify child support, the fact that the father was unemployed

and incarcerated was a matter for consideration in determining his ability to pay child support). However, if the parent "nevertheless has property or funds available to him [or her], support may be awarded therefrom." Id. (citing Smith v. Smith, 631 So. 2d 252 (Ala. Civ. App. 1993)). See also Rule 32(B)(2), Ala. R. Jud. Admin. (defining "gross income" to include "income from any source," including, but not limited to, employment-related income, and income derived from sources such as dividends, interest, trusts, gifts, and prizes).

In the judgment of March 3, 2014, the trial court expressly stated that it did not find believable the husband's testimony that he did not have access to approximately $1.3 million in gold and other precious metals. The trial court also found that there had been deposits of more than $2,302,234.39 made to the husband's bank account from 2005 through 2008. Additionally, the trial court noted that, during the time the husband said he was disabled, he ran for circuit judge and was elected to that position. As discussed in Dubose III, those findings were supported by the evidence.

Based on the record before us, in my opinion, in entering the judgment on remand, the trial court did not err in finding

that the husband is able to work, albeit not as an attorney. I note that the gross monthly income of $6,300 a month that the trial court imputed to the husband is $2,321.54 less than the gross monthly income of $8,621.54 that the husband was earning at the time the divorce complaint was filed. Additionally, the evidence indicates that the husband has sufficient assets from which child support may be awarded. Smith, supra. Accordingly, based on the facts of this case, I cannot say that the trial court abused its discretion in imputing gross monthly income of $6,300 to the husband.

The main opinion also seems to suggest that any assets or resources the husband has from which he can pay child support must be incoming-producing assets that provide income at the rate the trial court imputed to the husband. Id.

> "A child has a fundamental right under our law to support from that child's parents that the parents themselves cannot waive. State ex rel. Shellhouse v. Bentley, 666 So. 2d 517 (Ala. Civ. App. 1995). 'All minor children have a fundamental right to parental support and that right is deemed to be a continuing right until the age of majority.' Ex parte State ex rel. Summerlin, 634 So. 2d 539, 541 (Ala. 1993); see also Bank Independent v. Coats, 591 So. 2d 56, 60 (Ala. 1991) ('[T]he public policy of this state [provides] that parents cannot abrogate their responsibilities to their minor children by mutual agreement between themselves so as to deprive their

> minor children of the support to which they are legally entitled.')."

Hawkins v. Cantrell, 963 So. 2d 103, 105-06 (Ala. Civ. App. 2007). Just as parents cannot waive child support by mutual agreement, I do not believe that a parent with significant assets can avoid his or her child-support obligation merely because those assets do not produce income. I agree with the Maryland Court of Special Appeals' well reasoned explanation as to why a trial court should have discretion to consider non-income-producing assets when determining child support:

> "[I]f a parent voluntarily decreases his or her income in order to avoid support payments, a court may find that a parent has become voluntarily impoverished, and impute income based on assets readily adaptable to income production. Alternatively, in instances where the income of a parent is not adequate to provide support to a child sufficient to meet the standard of living established during the marriage, and the parent has assets that could be converted into income-producing assets, a court might look to the parent's assets to determine above-the-guidelines support. We do not agree, however, that the mere ownership of non-income-producing assets alone constitutes a basis for reliance upon those assets in determining child support. Moreover, the decision to devote assets to capital growth, rather than income production, should be within the discretion of a parent, as long as the children are provided reasonable support, consistent with that provided during the marriage or other relationship."

Barton v. Hirshberg, 137 Md. App. 1, 20, 767 A.2d 874, 884 (2001)(emphasis added).

More recently, the Nebraska Supreme Court has also considered whether non-income-producing assets should be considered in determining child support. That court wrote:

> "Other courts have recognized that the parties' assets--including those that are not currently producing income--are relevant to the support calculation.
>
> "Courts generally factor non-income-producing assets into the child support calculation in one of two ways. First, courts sometimes impute to the parent's income a hypothetical reasonable rate of return from a nonproducing or underproducing asset. The rationale is that funds devoted to unproductive assets have untapped earning potential. Courts do not have to defer to a parent's investment decisions, and the parent's choice to devote resources to growth instead of income must sometimes yield to the child's best interests.
>
> "The second way courts consider non-income-producing assets is as a reason to deviate from the presumptive child support formula. For deviations, the theory is that parents should sometimes liquidate assets to meet their paramount obligation to support their children. Relevant factors include the obligor's total wealth, the custodial parent's total wealth, the children's needs, and whether liquidating the asset would interfere with the obligor's livelihood or ability to earn income."

Stekr v. Beecham, 291 Neb. 883, 888-89, 869 N.W.2d 347, 351-52 (2015)(footnotes deleted).

In this case, the trial court found that the husband had hidden significant assets. Those assets are currently not producing income. The husband should not be able to insulate his financial resources, which in this case appear to be considerable, simply because he elects not to place those assets in income-producing ventures. Accordingly, I also disagree with the main opinion's holding that, before the husband's assets can be considered in determining child support, evidence must be presented "indicating that the assets could produce income at the rate imputed." ___ So. 3d at ___.

Because I conclude that substantial evidence supports that trial court's decision to impute $6,300 a month to the husband, I believe that the trial court's failure to hold a hearing on the husband's postjudgment motion as to this issue is harmless error.

The husband also challenges on appeal the trial court's decision to impute income to the wife. The record indicates that, on June 17, 2015, approximately six weeks after the judgment on remand was entered, the wife filed child-support forms indicating that her monthly gross income was $5,000. On

the CS-41 form, the wife's attorney noted that the form was "prepared in accordance with income figures of [the wife] and [the husband] determined by Judge McMillian in Order on Remand dated April 30, 2015. Also in accordance with Orders of this Court said amount of child support is retroactive to March 2010." Furthermore, in her brief to this court in the current appeal, the wife again states that she filed the CS-41 form "that conforms to her monthly gross income of $5,000 as determined by the trial court in the Order on Remand."

The sequence for determining the amount of child support to be awarded is reversed in this case. The trial court is to determine the amount of child support owed by reviewing the parties' affidavits regarding the amount of money they earn. The parties are not to complete their forms based on the income the trial court "imputes" to them.

On appeal, the husband asserts that the trial court cannot impute income to the wife when there is evidence of her income and there is no suggestion that she is voluntarily unemployed or underemployed. I agree. Rule 32(C), Ala. R. Jud. Admin., sets forth the way child support is to be calculated, using the combined monthly gross income of both

parents. Rule 32(B)(5), Ala. R. Jud. Admin., allows the trial court to estimate or impute income "[i]f the court finds that either parent is voluntarily unemployed or underemployed." That rule further provides:

> "In determining the amount of income to be imputed to a parent who is unemployed or underemployed, the court should determine the employment potential and probable earning level of that parent, based on that parent's recent work history, education, and occupational qualifications, and on the prevailing job opportunities and earning levels in the community."

Rule 32(B)(5).

Because there is no contention or evidence to suggest that the wife is unemployed or underemployed, I agree with the conclusion in the main opinion that the trial court must calculate child support using the wife's actual income. There is no basis for imputing income to the wife in this case.

As to the amount of income the trial court purported to "impute" to the wife, the record shows that, in the March 29, 2010, judgment, the trial court found that the wife's 2007 gross annual income (the last full year before she filed for divorce in March 2008) was $70,292. That annual income results in a monthly gross income of $5,857.66. At a hearing on April 7, 2008, the wife testified that she earned $325 a

day doing title research and reports. Later in that same hearing, the wife said that she earned a net income of between $2,000 and $3,000 a month. She also acknowledged that her monthly income for 2007 ranged from a low of $5,200 to a high of $7,150. Most months, the wife earned at least $6,000.

Because the wife improperly completed her income affidavit to reflect the amount of income the trial court had imputed to her rather than stating her actual income, and because this court cannot determine how the trial court derived the figure of $5,000 to use as the wife's gross monthly income, the record clearly demonstrates that the trial court erred in calculating the husband's child-support obligation by imputing income of $5,000 a month to the wife. However, because the record clearly demonstrates the basis for the trial court's error as to this issue, and this court can and should reverse the judgment for that reason, I believe that remanding the cause for the trial court to reconsider the judgment in light of the facts set forth herein is a better alternative in this case than remanding the cause for the trial court to hold a hearing on the husband's postjudgment motion.

This case has been in litigation since 2008, and there has yet to be a final judgment of divorce that has been affirmed on appeal. Under the circumstances of this case, I would reverse the trial court's judgment insofar as it determined child support, but I would provide a thorough explanation as to how the trial court erred in imputing income rather than remand the cause for a hearing on the husband's postjudgment motion. Therefore, I dissent as to this issue. As to the remaining issues addressed in the main opinion, I concur.

THOMAS, Judge, concurring in part and dissenting in part.

I write to express my agreement with Presiding Judge Thompson's analysis regarding the significant "hidden assets" of Stuart C. Dubose ("the husband"). In determining child-support obligations, I believe that trial courts should be able to consider financial resources that are not currently producing income if those assets could be income-producing ventures. Like Presiding Judge Thompson, I find persuasive the reasoning of Barton v. Hirshberg, 137 Md. App. 1, 20, 767 A.2d 874, 884 (2001), and Stekr v. Beecham, 291 Neb. 883, 888-89, 869 N.W.2d 347, 351-52 (2015). Accordingly, I disagree with the determination of the main opinion that there was not sufficient evidence supporting consideration of the husband's assets in determining his child-support obligation. In all other respects I concur in the main opinion.