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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

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**Audra Kline**

v.

**Lee Kline**

**Appeal from Coffee Circuit Court  
(DR-19-900197)**

EDWARDS, Judge.

In December 2019, Lee Kline ("the husband") filed a complaint in the Coffee Circuit Court ("the trial court") seeking a divorce from Audra Kline

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("the wife"). In March 2020, the trial court entered a pendente lite order, requiring the parties to pay the typical marital expenses and preventing the parties from depleting marital accounts or assets; the order further provided that both parties would continue to reside in the marital residence. On June 8, 2020, in response to a motion filed by the wife and after a hearing, the trial court entered an amended pendente lite order directing the husband to pay to the wife \$3,000 per month as pendente lite spousal support.

After a trial, the trial court entered a judgment on July 31, 2020, divorcing the parties ("the divorce judgment"). The trial court divided the parties' personal property, specifically awarding the wife a Honda Pilot automobile and a GMC truck, together with the debt associated with the Honda Pilot automobile. The trial court awarded the husband a Honda Accord automobile and an Audi automobile, together with the debts associated with those vehicles. The trial court awarded each party any bank accounts in his or her individual name and awarded the husband all joint bank accounts. The divorce judgment also divided the parties' debts, making the husband responsible for the debts associated with a pool, a

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Synchrony Bank credit card, a Tractor Supply credit card, a USAA credit card, and a Chase credit card. The trial court required the wife to be responsible for the debts associated with a Wells Fargo credit card, an Ulta credit card, a Kohl's credit card, an Old Navy credit card, and a Wayfair credit card. The trial court declined to divide the husband's thrift savings plan ("TSP") but awarded the wife 50% of the husband's eligible military-retirement benefits and ordered the husband to maintain a survivor's benefit plan naming the wife as beneficiary.

Regarding the parties' real property, which consisted solely of the marital residence, the divorce judgment provided:

"G. REAL PROPERTY: The Husband is awarded the marital home located [in] Enterprise, Alabama 36330. The Wife shall execute a quitclaim deed transferring her ownership interest in said property to the Husband. The Wife shall be permitted to remain living at the marital home until November 29, 2024, as described below in paragraph (H) of this [judgment]. The Wife shall not commit waste or allow any other third party to commit waste onto said property."

The trial court awarded the wife spousal support in the following provisions of the divorce judgment:

"H. ALIMONY/SPOUSAL SUPPORT: The Court finds there is great financial disparity between the parties. The

Husband currently makes approximately \$17,000.00 per month in gross income. The Wife is currently unemployed. The Court also recognizes the parties have considerable debt that limits the Husband's ability to pay alimony. Due to the length of the marriage and the disparity in incomes, the Wife is awarded rehabilitative alimony or alimony in gross as follows:

"a. Mortgage: The Husband shall continue to pay the monthly mortgage on the marital home while the Wife resides therein. The Wife shall have the right to remain living in the home for a period of four (4) years, ending on November 29, 2024, or thirty (30) days after the youngest child reaches the age of majority. The Husband shall take possession of the marital home on November 29, 2024, and the Wife shall vacate the premises. The Husband will not be responsible for the Wife's housing beyond that date.

"b. Utilities: The Husband shall continue to pay the monthly utilities (electric, gas, water, and trash) associated with the martial home while the Wife resides therein. The maximum monthly amount paid by the Husband for the utilities shall be capped at the amount paid in July 2020. In other words, the Wife will be responsible for monthly utility expenses that exceed those amounts billed in July 2020. It is the Court's intent to limit the amount of utility bills paid by the Husband. Cable television, internet access, cellular telephones, cleaning maids, dog care, nor lawn care are considered utility expenses under this paragraph.

"c. Groceries: The Husband shall pay no more than \$500.00 per month to the Wife for grocery expenses until the youngest child reaches the age of majority (19 years old). Groceries are described as non-alcoholic beverages, foods recommended by the USADA [sic], and basic household items such as cleaning supplies, trash bags, toilet paper, etc. The Husband is permitted to set up an expense account at a local grocery store for the Wife; or the Husband may require the Wife to provide an itemized list of needed grocery items.

d. GI Bill: The Wife is awarded the Husband's GI Bill education benefits. The Wife is Ordered to initiate the GI Bill education application process within thirty (30) days of this Order becoming final. The intent of this provision is to allow the Wife an opportunity to complete her college education to increase her income earning capability. The Wife is further Ordered to seek the maximum housing allowance authorized under the GI Bill. Upon approval of GI Bill housing allowance, the Wife shall pay the Husband rent in an amount of no more than \$1,500.00 per month if she remains living in the marital home. If the GI Bill housing allowance is less than \$1,500.00 per month, the Wife shall pay the Husband the entire amount awarded. If the Wife is not awarded GI Bill housing expenses, then she shall not be responsible for paying rent to the Husband."

The divorce judgment further provided that the parties were to share joint legal and physical custody of the parties' children, but the trial

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court "declined" to award child support. The provisions of the divorce judgment relating to custody and child support read as follows:

"C. CHILD CUSTODY: The parties shall share joint legal custody and joint physical custody of the minor children, HJ.K., a daughter born February 13, 2002, and BJ.R., a son born October 29, 2005.

"D. CHILD VISITATION: The Court declines to Order a set visitation schedule at this time. The parties are hereby Ordered to ensure that each parent has frequent and regular contact with the children. Each parent shall have the right to be equally involved in the children's lives and shall continue to foster a loving and supportive environment for the children.

"Code of Alabama (1975) § 30-3-153, requires that, absent an agreement by the parents, the Court shall designate a primary authority for certain matters related to the minor children. Therefore, if the parties are unable to mutually agree on these particular matters, then, in that event the [husband] shall possess the primary authority and responsibility regarding their involvement in academics, civic, athletic activities, medical care and dental care. The grant of this primary authority is not intended to negate the responsibility of the parties to first notify and communicate with each other regarding these decisions. If, after conferring, the parties are unable to agree, the [husband] then has the tie-breaking authority to make the final decisions regarding matters referenced in this paragraph.

"The Court designates the [wife] as the primary authority regarding their involvement in religious, cultural, and spiritual activities. The grant of this primary authority is not intended to negate the responsibility of the parties to first

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notify and communicate with each other regarding these decisions. If, after conferring, the parties are unable to agree, the [wife] then has the tie-breaking authority to make the final decisions regarding matters referenced in this paragraph.

"E. CHILD SUPPORT: The Court declines to Order child support. It is the intent of this Court, however, to ensure the children are provided for by Ordering the [husband] to provide housing and other basic needs as set forth in this Order. The parties shall share equally any medical expenses not covered by insurance. The [husband] shall maintain medical insurance coverage for the minor children until they reach the age of 19 years old."

The wife filed a motion to clarify and a postjudgment motion directed to the divorce judgment. In her postjudgment motion, she complained that the award of unspecified "joint physical custody" would lead to the husband's "ensur[ing] that the [wife] has very little contact with the minor children" and complained that the award of the final decision-making authority to the husband in the areas of "academics, civic, athletic activities, medical care and dental care" had resulted in her being excluded from "knowledge and access to these things." The wife also challenged the "spousal support" provisions of the divorce judgment, complaining that, because she lacked any income and had relied on the husband's income throughout the marriage, she required further awards

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of periodic alimony or of the husband's TSP to assist her in meeting her financial needs. The trial court denied the wife's postjudgment motion but entered an order stating that, "[b]ecause of the tremendous amount of marital debt owed, the court was unable to balance the husband's income and debt to award periodic alimony." The wife timely appealed.

The testimony and documentary evidence admitted at trial established that the parties married in July 1995 and that two children were born of their marriage. The wife testified that she could no longer stay married to the husband based on his infidelity, but she produced very little evidence indicating that the husband had committed adultery.<sup>1</sup> She testified that she was unemployed and that, although she had attended college for some period, she had never completed a college degree. The wife said that she had last worked full-time in 2012 and that she had

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<sup>1</sup>In support of her claim of adultery, the wife testified that she had discovered a text message between the husband and another woman, that her suspicion was "based on a wedding that we went to and he was unreachable when we returned home," and that the "other woman" had sent a package to the husband at the marital residence; the package was described as containing a package of candy, dog treats, a bottle of "metabolic something or other," and face cream.



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worked "a few odd jobs" in retail since that time. She testified that she had submitted "numerous" job applications but that she had not been granted any interviews. However, she also testified that she had recently had two interviews at Planet Fitness and at Coldwell Banker; the wife did not indicate for what type of positions she had applied at those businesses.

According to the wife, she had been responsible for the family's finances until the parties began to have marital difficulties in late 2019. She admitted that she did not always timely pay the family's bills, commenting that, at times, the money was needed elsewhere. She said that, after the husband took over the family's finances in December 2019, she had used credit cards to purchase clothing at a Kohl's store and makeup at an Ulta store to prepare for her interviews.

The wife also testified that she primarily drove the Honda Pilot automobile, on which the monthly payment was \$1,050; she said that she did not know the total amount of the indebtedness owed on the Pilot. She said that she had purchased a GMC truck from her father and that she had used money from an inheritance to do so. Thus, she contended that

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the GMC truck was not marital property despite the fact that the parties had used it to haul grass clippings and trash.

At trial, the wife requested that she be awarded custody of the children because she had been their primary caretaker when the husband had been deployed for as much as 13 months at a time between 2003 and 2012 and when he had worked in Huntsville between 2016 and 2018. She complained that the husband had degraded her to the children by calling her "too fancy," by saying that her food was "too much" and "too expensive," by saying that she was not a good wife, and by telling the children that she would not have sexual relations with him. She also said that he reminded her regularly that she was obese. The wife testified that she had undergone a gastric surgery to lose weight, in part to become more attractive to the husband and in part for her health.

The wife testified that she would require over \$6,000 per month to maintain her standard of living. That amount included anticipated rent of \$1,900 for a three-bedroom house, basic utilities of \$650, \$200 for cable, \$200 for cellular telephones, \$1,000 for groceries, \$300 for clothing, and \$400 for miscellaneous spending. That amount also included her \$1,050

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automobile payment and \$380 for automobile insurance and eye and dental insurance.

The wife specifically requested that she be awarded half of the full value of the husband's TSP and half of the husband's retirement benefits. She also requested that the husband be required to provide her TriCare insurance and that he maintain a survivor benefit plan with her named as beneficiary. Finally, the wife requested that she be allowed to use the husband's GI Bill benefits to complete at least a two-year degree or to learn a trade.

The husband testified that he was retired from the military and that he was currently employed by the United States government in a civilian position at Fort Rucker. He testified that his monthly gross income, including both retirement income and his employment income, is \$16,878.<sup>2</sup> He explained that he had previously worked in a civilian position in

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<sup>2</sup>It appears that the parties calculated the husband's monthly gross income by multiplying his bimonthly civilian pay of \$4,546 by two and adding to that product (\$9,092) his monthly retirement pay of \$4,186 and \$3,600. We note that the husband's retirement statement indicates that he receives \$3,588.98 per month and not \$3,600.

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Huntsville, where he had earned more, but that he had left that position when the children began receiving truancy letters. He admitted that the wife should be awarded half of his military-retirement pay, but he contended that she should not be awarded any portion of his TSP, which, he said, was valued at approximately \$62,600.

The husband said that the parties had purchased the marital residence for \$317,500 and that they still owed \$293,000 on the house. The husband explained that they had also put in a pool for \$40,000 and that they still owed \$39,900 on that debt. In addition to the sizeable debt associated with the marital residence, the parties had significant credit-card debt, including \$15,200 owed to USAA, \$560 owed to Synchrony Bank, \$472 owed to Tractor Supply, \$2,100 owed to Chase, \$1,600 owed to Wells Fargo, \$2,500 owed to Wayfair, \$1,400 owed to Ulta, \$200 owed to Old Navy, and \$150 owed to Kohl's. The husband said that the parties had done two debt consolidations and that he had borrowed over \$24,000 against his TSP to pay off a debt of \$16,000 on the USAA credit card only to have the balance on that card increase to \$15,200 by the time of trial.

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According to the husband, he still owed over \$16,500 on that loan, on which he pays \$205 every other week.

Regarding the expenses associated with the marital residence, the husband presented a July 2020 budget. The cost for the utilities for the month of July 2020 totaled \$547.83. That sum included \$311.42 for the electric bill, \$38.86 for the gas bill, \$15.00 for the trash bill, and \$182.55 for the water bill.

The husband testified that the parties' joint bank account had been overdrawn 25 times in 2019 and that he had received a collection call regarding the Wayfair credit-card account in late 2019. He explained that the wife has a spending habit, that she wants to "keep up with the Joneses," and that she "just spends and spends and spends and wants more high quality stuff all the time to have better and more." The husband said that he had only \$66 in his checking account at the time of trial.

The husband and the parties' oldest child, H.J.K. ("the daughter"), testified about the state of the marital residence. The husband said that the house was always in "disarray" and that the wife spent her time on

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social media. The daughter said that the house was dirty, but not filthy, and that she avoided having friends over because of the mess. Like the husband, the daughter complained that the wife was always playing games on her cellular telephone. She also said that the wife would go to bed around 2:00 a.m. and awake at about 10:00 or 11:00 a.m. The daughter also complained that the wife had not been proactive in assisting her in receiving a medical diagnosis for her health issues; she admitted that she had missed so many days of school that she had been expelled but that the husband had negotiated her readmittance into school.

The daughter also testified that her parents had both discussed with her the fact that the husband had contemplated suicide. She said that the wife had first broached the issue and that the husband had not mentioned his mental health until the wife had. The daughter also said that the wife had told the children that the husband was unstable. She testified that she would prefer to live with the husband because he was more stable and had more rules.

On appeal, the wife raises four arguments. She complains that the trial court erred in dividing the parties' property and in failing to award

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her periodic alimony. She also challenges the award of joint custody and the failure to order the husband to pay child support.

As we have often explained, we consider the issues of property division and alimony together. Wright v. Wright, 19 So. 3d 901, 911 (Ala. Civ. App. 2009) ("Matters of alimony and property division are interrelated and a reviewing court must consider the entire judgment in determining whether the trial court exceeded its discretion on either issue."). A property division need not be equal but it must be equitable. Yokley v. Yokley, 231 So. 3d 355, 360 (Ala. Civ. App. 2017) (quoting Golden v. Golden, 681 So. 2d 605, 608 (Ala. Civ. App. 1996)). The factors a trial court may consider when making a division of property include

"the length of the parties' marriage, their ages, health, station in life, and future prospects; the sources, value, and type of property owned; the standard of living to which the parties have become accustomed during the marriage and the potential for maintaining that standard; and, in appropriate situations, the conduct of the parties with reference to the cause of divorce."

Currie v. Currie, 550 So. 2d 423, 425 (Ala. Civ. App. 1989).

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Our review of alimony awards is now governed by Ala. Code 1975, § 30-2-57,<sup>3</sup> which outlines the considerations that govern the award of rehabilitative alimony or periodic alimony in a divorce:

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

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

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

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

"(b) If a party has met the requirements of subsection (a), the court shall award alimony in the following priority:

"(1) Unless the court expressly finds that rehabilitative alimony is not feasible, the court shall award rehabilitative alimony to the party for a limited duration, not to exceed five years, absent extraordinary circumstances, of an amount to

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<sup>3</sup>Section 30-2-57 "govern[s] actions for divorce, legal separation or annulment filed on or after January 1, 2018." Ala. Code 1975, § 30-2-58.



enable the party to acquire the ability to preserve, to the extent possible, the economic status quo of the parties as it existed during the marriage.

"(2) In cases in which the court expressly finds that rehabilitation is not feasible, a good-faith attempt at rehabilitation fails, or good-faith rehabilitation only enables the party to partially acquire the ability to preserve, to the extent possible, the economic status quo of the parties as it existed during the marriage, the court shall award the party periodic installments of alimony for a duration and an amount to allow the party to preserve, to the extent possible, the economic status quo of the parties as it existed during the marriage as provided in subsection (g).

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"(d) In determining whether a party has a sufficient separate estate to preserve, to the extent possible, the economic status quo of the parties as it existed during the marriage, the court shall consider any and all relevant evidence, including all of the following:

"(1) The party's own individual assets.

"(2) The marital property received by or awarded to the party.

"(3) The liabilities of the party following the distribution of marital property.

"(4) The party's own wage-earning capacity, taking into account the age, health, education, and

work experience of the party as well as the prevailing economic conditions.

"(5) Any benefits that will assist the party in obtaining and maintaining gainful employment.

"(6) That the party has primary physical custody of a child of the marriage whose condition or circumstances make it appropriate that the party not be required to seek employment outside the home.

"(7) Any other factor the court deems equitable under the circumstances of the case.

"(e) In determining whether the other party has the ability to pay alimony, the court shall consider any and all evidence, including all of the following:

"(1) His or her own individual assets, except those assets protected from use for the payment of alimony by federal law.

"(2) The marital property received by or awarded to him or her.

"(3) His or her liabilities following the distribution of marital property.

"(4) His or her net income.

"(5) His or her wage-earning ability, considering his or her age, health, education, professional licensing, work history, family commitments, and prevailing economic conditions.

"(6) That he or she has primary physical custody of a child of the marriage whose condition or circumstances make it appropriate that he or she not be required to maintain employment outside the home.

"(7) Any other factor the court deems equitable under the circumstances of the case.

"(f) In determining whether the award of rehabilitative or periodic alimony is equitable, the court shall consider all relevant factors including all of the following:

"(1) The length of the marriage.

"(2) The standard of living to which the parties became accustomed during the marriage.

"(3) The relative fault of the parties for the breakdown of the marriage.

"(4) The age and health of the parties.

"(5) The future employment prospects of the parties.

"(6) The contribution of the one party to the education or earning ability of the other party.

"(7) The extent to which one party reduced his or her income or career opportunities for the benefit of the other party or the family.

"(8) Excessive or abnormal expenditures, destruction, concealment, or fraudulent disposition of property.

"(9) All actual damages and judgments from conduct resulting in criminal conviction of either spouse in which the other spouse or child of the marriage was the victim.

"(10) Any other factor the court deems equitable under the circumstances of the case.

"(g) Except upon a finding by the court that a deviation from the time limits of this section is equitably required, a person shall be eligible for periodic alimony for a period not to exceed the length of the marriage, as of the date of the filing of the complaint, with the exception that if a party is married for 20 years or longer, there shall be no time limit as to his or her eligibility.

"(h) An order awarding rehabilitative or periodic alimony may be modified based upon application and a showing of material change in circumstances.

"(I) Rehabilitative or periodic alimony awarded under this section terminates as provided in Section 30-2-55, [Ala. Code 1975,] or upon the death of either spouse."

As the trial court remarked, the parties have significant marital debt, approximately one quarter of which is unsecured credit-card debt. The testimony would support a conclusion that the wife is a spendthrift and that she contributed significantly to the amassed credit-card debt.

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The husband was awarded the parties' largest asset, the marital residence, the Accord and Audi automobiles, and his TSP. Combined, those assets have an approximate value of just over \$422,000. However, the husband was also ordered to assume the debts associated with those assets, which total approximately \$358,000. In addition, the husband was ordered to assume several of the unsecured marital debts, which total just over \$58,200. Although the wife was awarded only two assets, the Honda Pilot automobile and the GMC truck, which, combined, are valued at approximately \$55,000, she was required to assume \$53,850 in debt, the largest portion of which was the \$48,000 debt associated with her automobile. Thus, although the division of the parties' property and liabilities is not quite equal, the resulting property division, which favors the husband by approximately \$4,700, appears equitable under the circumstances. Accordingly, we affirm the divorce judgment insofar as it divided the parties' property.

The wife's argument relating to alimony is that the trial court abused its discretion in failing to award her periodic alimony and also in failing to reserve the right to award her periodic alimony in the future.

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However, the trial court awarded the wife rehabilitative alimony.<sup>4</sup>

Paragraph H of the divorce judgment provides that the husband is to pay approximately \$2,800 per month (mortgage payments of approximately

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<sup>4</sup>Paragraph H of the divorce judgment states that the wife is awarded "rehabilitative alimony or alimony in gross." However, the award to the wife in paragraph H cannot be alimony in gross, which must be payable out of the estate of the payor spouse at the time of the entry of the divorce judgment and has as one of its characteristics that the amount to which the recipient spouse is entitled be certain.

"An alimony-in-gross award 'must satisfy two requirements, (1) the time of payment and the amount must be certain, and (2) the right to alimony must be vested.' Cheek v. Cheek, 500 So. 2d 17, 18 (Ala. Civ. App.1986). It must also be payable out of the present estate of the paying spouse as it exists at the time of the divorce. [Hager v.] Hager, 293 Ala. [47], 55, 299 So. 2d [743], 750 [(1974)]. In other words, alimony in gross is a form of property settlement. [Hager v.] Hager, 293 Ala. at 54, 299 So. 2d at 749."

TenEyck v. TenEyck, 885 So. 2d 146, 151-52 (Ala. Civ. App. 2003).

Because the amount of the mortgage payment and the utilities the husband was ordered to pay may vary each month and, in light of the provisions of subparagraph H.d., which requires that the wife pay an amount of rent to the husband up to \$1,500 if she is awarded a housing allowance under the GI Bill, the amount of "alimony" the husband is required to pay is uncertain. In addition, as explained in our discussion of the propriety of the property division, the husband has no present estate out of which he may pay alimony in gross.

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\$1,840, utilities of approximately \$550, and \$500 in groceries) as "alimony/spousal support."<sup>5</sup> Although she cites to and even quotes from § 30-2-57, she does not develop an argument specifically based on the requirements of that statute. Instead, she complains generally that, in light of the award of one-half of the husband's retirement benefits to her, the husband's income is reduced by approximately \$2,000 per month, which is less than the \$3,000 per month he paid to her pendente lite, and that he therefore still has income from which he can pay her alimony.

We consider the divorce judgment to have substantially complied with § 30-2-57(a) because the trial court awarded the wife rehabilitative alimony based on its determinations (1) that the wife had no assets or income and therefore no means to enable her to acquire the ability to preserve, to the extent possible, the economic status quo of the parties during the marriage, (2) that the husband had only a limited ability to

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<sup>5</sup>We recognize that this amount might be offset by the payment of rent by the wife if she is awarded a housing allowance under the GI Bill. The housing allowance would be a benefit to the wife afforded her by the husband's military service; we perceive no inequity in requiring the wife to use any such allowance to reimburse the husband for paying the mortgage payment.

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supply those means because of the significant debt the parties had amassed, and (3) that, in light of the wife's lack of income and assets, it would be equitable to have the husband assist the wife as much as possible with the limited means he had available. Those determinations were based on evidence of the parties' respective assets and liabilities after the division of those assets and liabilities in the divorce judgment, § 30-2-57(d) (1)-(4) and (e)(1) - (5); the wife's wage-earning prospects, § 30-2-57(d)(4); the benefits that the wife could acquire by use of the GI Bill to enable her to further her education and find employment, § 30-2-57(d) (5); the husband's income, § 30-2-57(e)(5); the significant length of the parties' marriage, § 30-2-57(f)(1); and the wife's spendthrift habits. § 30-3-57(f)(8). As a result of its consideration of those factors and its resulting determinations, the trial court properly awarded rehabilitative alimony for a period of four years as a means to assist the wife in securing education and future employment. § 30-2-57(b)(1). Although the husband might have some income available to pay additional rehabilitative alimony, we cannot conclude that the trial court was required to make the husband expend every available dollar on the wife, especially in light of



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our reversal of the divorce judgment insofar as it declined to award child support. See discussion, infra. We find no abuse of discretion in the award of rehabilitative alimony, and we affirm the divorce judgment insofar as it awarded the wife rehabilitative alimony.

The wife next argues that the custody provisions of the divorce judgment are inconsistent because, she says, they award "joint custody in the husband's name only." The wife asserts that the award of joint custody in paragraph C of the divorce judgment is, in fact, belied by the trial court's decision to award the husband final decision-making authority in nearly all aspects of the children's lives in paragraph D. Furthermore, the wife complains that the trial court did not actually award joint custody because it failed to set a parenting-time schedule.

We agree with the wife that the trial court erred in making its award of custody in the present case. As we explained in Ford v. Ford, 3 So. 3d 872 (Ala. Civ. App. 2008), Ala. Code 1975, § 30-3-153, requires that the parents agree on, or that the trial court supply, the details of any joint-custody arrangement. Although the trial court complied with § 30-3-153(a)(6) and (b) by setting out which parent has the final decision-making

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authority in each of several aspects of the children's lives, it did not set out "which parent [had the right to exercise] physical custody of the children on any given day, § 30-3-153(a)(1), [or] which parent ha[d] the right to physical custody of the children on any particular holiday, § 30-3-153(a)(3)." Ford, 3 So. 3d at 874-75. Thus, we reverse the divorce judgment insofar as it awarded the parties joint custody without properly setting out a plan for the exercise of that joint custody, and we remand the cause with instructions to the trial court to set out a custodial plan as required by § 30-3-153(a)(3).

Finally, we consider the wife's argument that the trial court erred by not awarding child support. We mentioned in Ford that child support is a part of the joint-custody plan required by § 30-3-153. See § 30-3-253(a)(4). Although an award of joint custody may, in certain instances, be a basis for deviating from the Child Support Guidelines set out in Rule 32, Ala. R. Jud. Admin., see Rule 32(a)(1)(a), the trial court did not comply with Rule 32 in any manner. The record does not contain child-support-guideline forms from the parents, see Rule 32(E), so we cannot be certain whether the trial court imputed income to the wife, see Rule 32(B)(5), and

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the trial court's decision to "decline" to award child support is not supported by an express finding indicating that application of the guidelines would be "manifestly unjust or inequitable." Rule 32(A)(ii). Without the necessary findings, we certainly cannot discern how an award of child support would be inequitable in this case, especially in light of the sharp disparity in the parties' incomes. Accordingly, insofar as the divorce judgment declined to award child support, that portion of the divorce judgment is reversed and the cause is remanded for the trial court to apply Rule 32.

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

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