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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2021

2200282 and 2200283

Mia Simone Curtis

v.

Barry G. Curtis

**Appeals from Talladega Circuit Court
(DR-11-202.01 and DR-11-202.02)**

FRIDY, Judge.

Mia Simone Curtis ("the former wife") appeals from two identical judgments the Talladega Circuit Court ("the trial court") entered in two

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separate actions. The first action was a contempt action she had commenced against Barry G. Curtis ("the former husband"). The second action was a contempt action the former husband had commenced against her. For the reasons set forth herein, we affirm the trial court's judgments in part, reverse them in part, and remand the causes to the trial court for further proceedings consistent with this opinion.

Background

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

On January 6, 2017, the trial court entered an order in the divorce action that denied all claims in that action that had not been adjudicated

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by the July 28, 2015, order, which made the July 28, 2015, order ("the divorce judgment") a final judgment.

After the entry of the January 6, 2017, order had made the divorce judgment final, the former husband again appealed from the divorce judgment, and the former wife cross-appealed. While those appeals were pending, the former wife sought to execute on the divorce judgment. The former husband moved the trial court for a stay of execution on the divorce judgment pending the adjudication of his appeal. The trial court granted the former husband's stay motion, and the former wife petitioned this court for a writ of mandamus directing the trial court to vacate its order staying execution on the divorce judgment. In Ex parte Curtis, 261 So. 3d 372 (Ala. Civ. App. 2017), this court granted the former wife's mandamus petition and issued the writ because the former husband had not filed a supersedeas bond to stay execution on the divorce judgment. Thereafter, in the former husband's appeal and the former wife's cross-appeal, this court affirmed the divorce judgment, without an opinion. Curtis v. Curtis (Nos. 2160315 and 2160327, Jan. 5, 2018), 272 So. 3d 1054 (Ala. Civ. App. 2018) (table).

Provisions of the Divorce Judgment
Pertinent to the Present Appeals

In pertinent part, the divorce judgment provided:

"6. The marital residence of the parties is ordered to be sold and the equity, if any, shall be split between the parties. The [former husband] is hereby ordered to pay the payments on said residence pending the sale of the residence and the [former husband] is hereby ordered to pay for the repairs that are recommended by a realtor to be made in order to facilitate the sale of the residence. If the parties are unable to agree on a realtor and price, then the court shall determine and select a realtor and a price. The [former wife] shall have the right to live in the residence until the residence is sold. The parties shall jointly select a realtor for the sale of the residence and in the event that the parties are unable to agree on a realtor and a price then the Court will pick a realtor and will set a price. [The former husband] shall be required to pay for and have completed within 365 days from the date of entry of this Order all repairs recommended by a realtor in order to make such residence marketable so as to facilitate a sale of the residence[.] [The residence] shall be sold within 365 days of such repairs being completed.

"13. Businesses:

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

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

"....

"....

"....

"16. The [former wife] is awarded a sum in the amount of \$9,682.00, such amount being the amount of the federal income tax refund intercepted by the Internal Revenue Service due to the [former husband's] failure to timely file and accurately report and pay income taxes relating solely to the income of the [former husband]. ...

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

"....

"20. The [former husband] shall pay the attorney's fees in the total sum of \$10,000.00 to the [former wife] for the services of her attorneys. A judgment is hereby entered against the [former husband] in favor of the [former wife] and [the former husband] shall be required to pay said judgment amount within ninety (90) days of the entry of this Judgment

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of Divorce. ... Attorney fees are taxed as cost and a judgment is hereby rendered against the [the former husband] for said sum.

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

Procedural History of the Present Actions

On May 11, 2018, the former wife commenced her contempt action, asking the trial court to hold the former husband in civil and criminal contempt for, among other things, failing to pay for repairs to the former marital residence ("the residence"), failing to pay in full all the installments of alimony in gross that had become due pursuant to paragraph 13 of the divorce judgment, failing to pay all of the \$9,682 awarded to her as reimbursement for the tax refund intercepted by the Internal Revenue Service ("the tax reimbursement") pursuant to paragraph 16 of the divorce judgment, and failing to pay the \$10,000 attorney fee awarded to her pursuant to paragraph 20 of the divorce judgment.

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On August 21, 2018, the former husband commenced his contempt action against the former wife, asking the trial court to hold the former wife in civil and criminal contempt for, among other things, failing to cooperate with him in the selling the residence and failing to return certain items of personal property that the divorce judgment had awarded to him.

Although the trial court did not consolidate the former wife's and the former husband's contempt actions, it ultimately tried them together in an ore tenus hearing on June 30, 2020. On September 14, 2020, the trial court entered identical judgments in both the former wife's and the former husband's contempt actions. In pertinent part, those judgments stated:

"1. The Court makes the following findings of fact upon consideration of the testimony and evidence presented by both parties at the time of trial:

"....

"c. Since entry of the Final Judgment of Divorce, both [the former husband] and [the former wife] have failed to satisfy certain of their respective obligations, both financial and otherwise, under the Final Judgment of Divorce. Specifically, [the former husband] has failed to pay certain portions of the property settlement, tax reimbursement, and

attorney's fee due to [the former wife] under the Final Judgment of Divorce and [the former wife] has failed to cooperate with [the former husband] in the listing and selling of the parties' former marital residence, thus causing [the former husband] to incur significant expenses in his ongoing payment of the mortgage on said residence. As such, this Court finds that both parties come to the Court seeking relief with unclean hands.

"2. In consideration of the findings of fact made herein above, and the testimony and evidence presented by both parties and a third party witness, namely Greg Tubbs, at the time of trial, this Court does hereby ORDER, ADJUDGE, AND DECREE as follows:

"a. [The former husband's] Petition for Rule Nisi is granted, in part. The former marital residence shall be listed with realtor Greg Tubbs within thirty (30) days of entry of this Order. The residence and property shall be listed as-is and the realtor shall select the initial listing price as well as any future deviations therefrom unless the parties jointly agree otherwise. Both parties are ordered to sign any and all necessary listing agreements and/or contracts requested by the realtor for the purpose of listing the residence and property.

"b. [The former wife's] Petition for Rule Nisi is granted, in part. The Court finds that [the former husband] failed to pay the following sums to [the former wife] under the Final Judgment of Divorce:

"(1) \$98,887.57 under Paragraph 13(a)(i) of the Final Judgment of Divorce, interest included;

"(2) \$3,661.46 under Paragraph 16 of the Final Judgment of Divorce, interest included; and

"(3) \$12,500 under Paragraph 20 of the Final Judgment of Divorce, interest included.

"c. The Court further finds that the total sum set forth in Paragraphs [2.b.] (1), (2), and (3) above is due to be off-set in the amount of Twenty-Eight Thousand Five Hundred Dollars (\$28,500) as restitution for [the former husband's] continued satisfaction of the monthly mortgage payments on the marital residence in the amount of \$1,500 per month for nineteen (19) months after the latest date by which the marital residence was due to be sold under the Final Judgment of Divorce, i.e., January 2019. Taking this off-set into consideration, the Court finds that [the former husband] owes to [the former wife] the total of Eighty-Six Thousand Five Hundred Forty-Nine Dollars and 3/100 (\$86,549.03). [The former husband] shall pay said amount to [the former wife], in full, no later than sixty (60) days after entry of this Order.

"d. [The former husband's] payment in compliance with Paragraph 2(c), above, shall fully and completely satisfy his outstanding financial obligations to [the former wife] under the Final

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Judgment of Divorce through the date of entry of this Order.

"3. Both parties shall be responsible for his or her own attorney's fees and expenses incurred in pursuit of the above-styled action and the costs of court shall be taxed as paid."

(Capitalization in original.)

The former wife timely filed a postjudgment motion in each action, which the trial court denied. The former wife then timely filed a notice of appeal in each action.

Facts

The parties and realtor Greg Tubbs testified during the ore tenus hearing. The former wife testified that, after this court affirmed the divorce judgment, the parties decided to list the residence for sale with Tubbs. The former wife stated that, in approximately June 2017, Tubbs had walked through the residence and then sent both parties a list of items that needed to be repaired or replaced. The former wife introduced that list into evidence at the hearing. The former wife also identified several photographs of the residence taken in 2018 and testified that the photographs accurately depicted the state of disrepair of the residence

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when they were taken. She stated that "the pictures show the rot, the decay, the hole and the roof leaking on the inside and where you see the rafters, the floor above that where I have to put [large plastic containers], four actually, when it rains to catch the water that falls in our house." The former wife stated that one of the photographs showed the pool at the residence, but she testified that, because snakes, turtles, possums, and mosquitos had been getting in it, she had had the pool repaired herself. The former wife stated that the pool repairs cost \$5,600 and that the former husband had not reimbursed her for those repairs. The former wife also stated that she had scraped and painted the front-door columns on the front of the residence because she was embarrassed by how they looked. The former wife testified that she believed that the problems with the residence depicted in the photographs needed to be repaired to make the residence marketable and that the residence was never listed with Tubbs because the repairs were never made. The former wife stated that she had recommended other realtors to the former husband but that she had insisted that the repairs still had to be made before the residence

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could be listed. She said that she was asking the trial court to order the former husband to make the repairs so that they could sell the residence.

The former wife admitted that the former husband had asked her to sign a listing agreement, but she said that she had not done so. She testified that she did not remember receiving a letter from the former husband's attorney in 2017 about the need to sell the residence and that she was unaware that they had "missed a few buyers." The former wife identified a text the former husband had sent her on or about February 19, 2018, in which he stated that Tubbs had called and said that they had missed two people who wanted to see the residence and that someone else was interested in the residence. The former husband told the former wife she had to "sign the contract for him to show it." The former wife replied:

"The decree states you're supposed to make repairs before we list the house. I will not put it on the market until the repairs are made. I'm willing to work with you until you get your finances in order to make the repairs, but I cannot afford to lose money with the shape that the house is in."

The former wife introduced a copy of a listing agreement Tubbs had sent her sometime in 2017. However, she said, the gross price in the agreement

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was left blank and no other blanks were completed. She testified that she had never been presented with a listing agreement to sign that had been filled out by either the former husband or Tubbs. Moreover, she said, she would not agree to sign a listing agreement, whether completed or not, with the residence still appearing as it did in the photographs she had taken.

The former husband testified that, in his opinion, the divorce judgment did not state that repairs to the residence had to be made before it was listed, but he agreed with the former wife's counsel that the judgment stated that he was to complete all repairs recommended by a realtor within 365 days to make the residence marketable. When asked whether the former wife's photographs depicted the residence in marketable condition, the former husband replied: "In need of repair." The former husband stated that he had not made any repairs to the residence "[o]ther than the contact with Mr. Tubbs and his repairman." Tubbs brought a repairman twice to inspect the roof damage to the residence and to do a little work on the roof. The former husband acknowledged that Tubbs had sent him the list of items to be repaired or replaced, which had

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a total estimated cost of \$12,000 when the list was made. The former husband stated that he had assumed that the roof had been repaired in 2018, and he testified that it was not his understanding that all the suggested repairs on Tubbs's list had to be completed before the residence could be listed. In addition, he testified that the former wife had told him that he "had to put \$60,000 into [the] marital residence before she would sign a listing agreement for it."

When Tubbs was asked whether the parties had agreed to hire him to sell the residence, he responded: "[Y]es and no." He testified that he and the former wife had walked through the residence to identify needed repairs. He described the list he had made as identifying "repairs that needed to be done to the house prior to putting it on the market." However, when asked whether he thought all the repairs needed to be done before someone could look at the residence, he answered no, that a house could be sold "as is." When asked whether the residence was marketable, he replied: "Basically, yes. It's a good location. It's a great, charming house." Tubbs also testified that two or three people within the past few years had wanted to see the residence but that he had not been

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able to show it to them because he did not have a listing agreement with the parties. Tubbs denied that he had ever told either of the parties that all the repairs on his list had to be completed before the residence could be listed, but he said that making the repairs he thought were needed "would improve the opportunity to sell, yes." When asked whether, in his professional opinion, the residence would have been marketable "at some price" two years ago, he answered that "everything is marketable at some price. I don't care what condition it's in."

Concerning the former husband's payment of alimony in gross, the former wife stated that, after the divorce judgment became final, the former husband had not paid her the \$3,000 monthly payments as ordered. She testified that, from January 2017 to May 2018, he had paid nothing; that, from May 2018 through March 2019, he had paid \$1,500 monthly; and that, in April 2019, he had begun paying \$3,000 monthly and had continued to do so since then. The former wife stated that the former husband's father had died in approximately April 2019.

The former husband readily admitted that he had failed to pay certain financial obligations pursuant to the divorce judgment, including

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a number of alimony-in-gross payments, the tax reimbursement, and the attorney fee awarded to the former wife in the divorce judgment. He testified that he had started paying \$1,500 per month toward the alimony in gross in May 2018 when his middle child finished college and that he had paid \$1,500 per month until April 2019. He said that his father had died in March 2019 and that he had received an inheritance that enabled him to begin paying \$3,000 per month as ordered. The former husband agreed that nothing in the divorce judgment allowed him to offset his legal obligations to the former wife with any other obligation, whether to his children or someone else.

The former husband stated that he was asking for an offset against the amount of alimony in gross he owed the former wife based on her alleged misconduct and contempt, as well as an offset for the payments he had made on the mortgage on the residence. The former husband stated that he had continued to make all the mortgage payments since the parties were divorced even though the former wife would not cooperate with him in selling the residence. Those payments were \$1,422 per month

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through 2017, \$1,515 per month through 2018, \$1,598 per month through 2019, and \$1,607 per month through the first half of 2020.

The former wife stated that she was seeking an award of an attorney fee in the contempt action based on paragraph 21 of the divorce judgment. The former wife testified at the hearing that she had incurred attorney fees because of the former husband's failure to comply with the divorce judgment, and she asked the trial court to "uphold the divorce decree and force [the former husband] to pay the attorney fees." The former husband testified at the hearing that he also had incurred attorney fees to enforce the divorce judgment.

The former husband acknowledged that the divorce judgment ordered him to pay \$10,000 of the former wife's attorney fees within 90 days. He admitted that he had not paid anything toward the attorney-fee award.

With regard to the tax reimbursement, the former wife testified that in April 2020, as a result of garnishments she had filed, she had recovered \$8,409.24 of the \$9,682 the former husband owed on the tax reimbursement. However, the former wife said, that amount did not

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satisfy the tax reimbursement in full and the former husband had made no further payments. The former husband recalled that money had been garnished from him and paid to the former wife in partial satisfaction of the amount he owed for the tax reimbursement, but he admitted that, as of the date of the hearing, he had not made any other payments toward the remaining balance he owed the former wife on the tax reimbursement.

Because the evidence at trial indicated that the parties disagreed regarding the date when interest had begun accruing on the former husband's financial obligations, the trial court requested that the parties submit posttrial briefs on that issue. After the former husband filed his brief, the former wife filed a response in which she conceded that the earliest date from which interest on the various arrearages could have begun accruing was January 6, 2017, the date the divorce judgment had become final.

Standard of Review

A judgment based on disputed evidence presented ore tenus is generally afforded a presumption of correctness on appeal. See Sconyers v. Sconyers, 808 So. 2d 61, 63 (Ala. Civ, App. 2001). A trial court in an ore

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tenus proceeding is in a singular position to observe witnesses and to evaluate their demeanor and credibility. See Ex parte T.V., 971 So. 2d 1, 4 (Ala. 2007). An appellate court will affirm a trial court's judgment in such a proceeding if, under any reasonable view of the testimony, there is credible evidence to support the judgment, and it will not disturb the findings of the trial court unless they are clearly erroneous, without supporting evidence, manifestly unjust, or against the great weight of the evidence. See L.S. v. A.S., 272 So. 3d 169, 179 (Ala. Civ. App. 2018).

When a party argues that the trial court erred as a matter of law, however, this court will review the judgment de novo. See Espinoza v. Rudolph, 46 So. 3d 403, 412 (Ala. 2010). The ore tenus rule does not extend a presumption of correctness to a trial court's conclusions of law or its application of the law to the facts. Id.

Analysis

The former wife first argues that the record does not support the trial court's finding that she sought relief from the trial court with unclean hands. The former wife insists that she had a good-faith belief

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that the repairs suggested by Tubbs were necessary to make the residence marketable.

The purpose of the clean-hands doctrine is to prevent a party from asserting his, her, or its rights under the law when that party's own wrongful conduct renders the assertion of such legal rights contrary to equity and good conscience. See Neny v. Neny, 989 So. 2d 565, 568 (Ala. Civ. App. 2008). The clean-hands doctrine is an affirmative defense, Bekken v. Greystone Residential Ass'n, 227 So. 3d 1201, 1222 (Ala. Civ. App. 2017), rather than a theory of recovery or a basis for imposing liability. Whether a party has unclean hands is a determination that is vested in the sound discretion of the trial court. See Hilson v. Hilson, 598 So. 2d 955, 956 (Ala. Civ. App. 1992).

The former wife does not explicitly articulate what relief the trial court denied her as a result of its finding that she sought relief with unclean hands, but her brief implies that the relief she was denied was a finding that the former husband was in contempt for failing to make the repairs to the residence suggested by Tubbs.

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Paragraph 6 of the divorce judgment contains two sentences pertaining to the former husband's obligation to make repairs to the residence. The first sentence states: "The [former husband] is hereby ordered to pay the payments on said residence pending the sale of the residence and the [former husband] is hereby ordered to pay for the repairs that are recommended by a realtor to be made in order to facilitate the sale of the residence." The second sentence states: "[The former husband] shall be required to pay for and have completed within 365 days from the date of entry of this Order all repairs recommended by a realtor in order to make such residence marketable so as to facilitate a sale of the residence[.]" The first sentence is vague and imprecise, without any indication of what is meant by "facilitate the sale." The second sentence is more specific and indicates that the repairs referred to in the first sentence are the repairs required "to make such residence marketable so as to facilitate a sale of the residence[.]" The plain and ordinary meaning of the language in the second sentence indicates that the repairs that will facilitate a sale are those that will make the residence "marketable." In

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pertinent part, Black's Law Dictionary 1161 (11th ed. 2019), defines the word "marketable" as "fit for sale and in demand by buyers."

Divorce judgments are interpreted according to the rules of construction applicable to other written instruments. See Frye v. Frye, 115 So. 3d 932, 936 (Ala. Civ. App. 2012). Separate provisions of judgments, like separate provisions of other written instruments, should be construed in pari materia. Id. Moreover, when interpreting possibly conflicting provisions in a judgment, a specific provision is given more weight than is a more general provision. Id. at 937. Applying those principles, we conclude that the second sentence pertaining to the former husband's obligation to make repairs to the residence in paragraph 6 of the divorce judgment should be given more weight than the first sentence because the second sentence is more specific than the first. Accordingly, we conclude that paragraph 6 required the former husband to make those repairs recommended by a realtor that would make the residence marketable.

Tubbs testified that the residence was marketable without the repairs he suggested. Based on the definition of the word "marketable"

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and Tubbs's testimony, the trial court, as the sole judge of the facts and witness credibility, see Woods v. Woods, 653 So. 2d 312, 314 (Ala. Civ. App. 1994), reasonably could have found that the former wife's insistence that all the repairs suggested by Tubbs be made before the residence was listed for sale, as well as her insistence that the former husband "put \$60,000 in" the residence before she would allow the residence to be sold, violated the terms of paragraph 6 of the divorce judgment and that, therefore, she did not have clean hands.

The dissent contends that, when the divorce judgment was entered, the parties and the trial court contemplated that repairs to the residence were necessary to make the residence marketable and that this is evidenced by the inclusion in paragraph 6 of the two sentences referring to repairs. The trial court presided at the trial of the divorce action and had firsthand knowledge regarding what it and the parties' contemplated regarding repairs when the divorce judgment was entered, knowledge that this court does not have. If, as the dissent suggests, the trial court and the parties had contemplated that it was a certainty that repairs to the residence would have to be made to make it marketable, the judgment

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would have specified the repairs that had to be made. Instead, the divorce judgment stated that the repairs, if any, that would have to be made were those that might be suggested in the future by a realtor to make the residence marketable. The language of paragraph 6 leaves open the possibility that a realtor might determine that no repairs were necessary to make the residence marketable, which ultimately proved to be the case according to Tubbs's testimony.

Once a trial court determines that a contract or judgment is ambiguous, the determination of its meaning is for the trial court, as the fact-finder, to determine. See Creative Leasing, Inc. v. Cannon, 496 So. 2d 79, 81 (Ala. Civ. App. 1986). When a trial court determines that a contract or judgment is ambiguous and receives parol evidence regarding its meaning in an ore tenus proceeding, the trial court's express or implied findings of fact regarding the meaning of the contract "are to be accorded a heavy presumption of correctness, and they will not be disturbed unless palpably wrong." Id. In the present case, the trial court, by finding that the former wife had unclean hands and ordering the residence sold "as is," impliedly found that the meaning of the ambiguous language in paragraph

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6 of the divorce judgment was that the former husband was required to make only those repairs necessary to make the residence marketable and that Tubbs's testimony established that no such repairs were necessary. Because those implied findings of fact are supported by the testimony of the former husband and Tubbs, we cannot hold that they are palpably wrong.

The former wife next challenges the setoff in the amount of \$28,500 the trial court granted the former husband. Specifically, the former wife argues that the \$28,500 setoff was erroneous because, she says, the trial court miscalculated the amount of the setoff and the setoff constituted an impermissible modification of the property provisions of the divorce judgment.

The trial court's judgments indicate that the trial court calculated the amount of the \$28,500 setoff by multiplying a \$1,500 approximation of the amount the former husband paid each month on the mortgage by 19 months, which, the trial court said, commenced after January 2019. The actions were tried on June 30, 2020, seventeen months after January 2019. Although approximately two more months elapsed between the date

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of the trial and September 14, 2020, the date the trial court entered the judgments, the trial court did not have before it any evidence indicating that the former husband had made payments on the mortgage in July and August 2020. Therefore, the trial court could have used a maximum period of seventeen months in calculating the setoff.

Moreover, the evidence did not indicate that the former husband paid the trial court's approximation of \$1,500 per month during that seventeen-month period; rather, the evidence indicated that the former husband paid \$1,598 per month during the eleven months of 2019 that elapsed after January 2019 and that he paid \$1,607 per month during the six months that elapsed between the end of 2019 and June, 30, 2020, the date of the trial. Thus, the mortgage payments the former husband made during the pertinent seventeen-month period totaled \$27,220 rather than \$28,500. Accordingly, we reverse the trial court's judgments insofar as they calculated the amount of the setoff they granted the former husband and remand the causes for further proceedings consistent with this opinion.

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With respect to the former wife's argument that granting a setoff against the unpaid alimony in gross and the unpaid tax reimbursement constituted an impermissible modification of the property provisions of the divorce judgment more than thirty days after the entry of that judgment, we note that this court stated in Hughes v. Hughes, 429 So. 2d 1077, 1079 (Ala. Civ. App. 1983), that, because more than 30 days had elapsed since the entry of the divorce judgment in that case, granting the spouse who owed alimony in gross in that case a setoff against the alimony in gross he had not paid would constitute an impermissible modification of the property provisions of the parties' divorce judgment; however, we note that the force of that statement is undermined by the fact that this court determined that there was no factual basis for awarding a setoff in that case. Accordingly, we find no merit in the former wife's argument that the trial court's granting a setoff against the unpaid alimony in gross and the unpaid tax reimbursement constituted an impermissible modification of the property provisions of the divorce judgment more than thirty days after the entry of that judgment.

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Finally, the former wife argues that the trial court erred in denying her claim for an attorney fee and reimbursement of court costs under paragraph 21 of the divorce judgment. Paragraph 21 provides: "If either the [former husband] or [the former wife] has to file proceedings to enforce this Decree the other party shall be required to pay the Court costs and attorney's fees of the successful party." (Emphasis added.) In the present cases, the former wife was partially successful. She prevailed on her claims seeking payment of the unpaid alimony in gross, the unpaid tax reimbursement, and the unpaid attorney fee awarded to her in the divorce judgment; however, she was unsuccessful insofar as she sought an order compelling the former husband to pay for all the repairs to the residence suggested by Tubbs. The former husband was also partially successful in that he prevailed on his claim seeking a finding of contempt against the former wife based on her violating paragraph 6 of the divorce judgment by refusing to cooperate with him in selling the residence. Paragraph 21 of the divorce judgment does not provide for a situation in which both of the former spouses are partially successful and partially unsuccessful; rather, it provides only for a situation in which only one of the former spouses is

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successful. Therefore, we find no merit in the former wife's argument that she was entitled to an award of an attorney fee and reimbursement of court costs pursuant to paragraph 21 of the divorce judgment.

In summary, we reverse the trial court's judgments insofar as they calculated the amount of the setoff granted the former husband, we affirm the judgments in all other respects, and we remand the causes for further proceedings consistent with this opinion.

2200282 -- AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

2200283 -- AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Thompson, P.J., and Hanson, J., concur.

Edwards, J., concurs in the result, without writing.

Moore, J., dissents, with writing.

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MOORE, Judge, dissenting.

I respectfully dissent. The judgment divorcing Mia Simone Curtis ("the former wife") and Barry G. Curtis ("the former husband") provides, in pertinent part:

"The marital residence of the parties is ordered to be sold and the equity, if any, shall be split between the parties. The [former husband] is hereby ordered to pay the payments on said residence pending the sale of the residence and the [former husband] is hereby ordered to pay for the repairs that are recommended by a realtor to be made in order to facilitate the sale of the residence. If the parties are unable to agree on a realtor and price, then the court shall determine and select a realtor and a price. The [former wife] shall have the right to live in the residence until the residence is sold. The parties shall jointly select a realtor for the sale of the residence and in the event that the parties are unable to agree on a realtor and a price then the Court will pick a realtor and will set a price. [The former h]usband shall be required to pay for and have completed within 365 days from the date of entry of this Order all repairs recommended by a realtor in order to make such residence marketable so as to facilitate a sale of the residence [sic] shall be sold within 365 days of such repairs being completed."

(Emphasis added.)

The first emphasized clause above very clearly orders the former husband to pay for any repairs recommended by a realtor "to be made in order to facilitate the sale of the residence." It is undisputed that Gregory

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Tubbs, a realtor, made a list of repairs that he recommended be made to facilitate the sale of the marital residence. It is also undisputed that, except for possibly patching a leak in the roof, none of the recommended repairs were made. Therefore, the former husband did not comply with the terms of that clause.

The former husband basically maintained that the last clause emphasized above relieved him of the duty of making the repairs recommended by Tubbs because, he said, it required him to pay only for repairs that were necessary to make the marital residence "marketable" and that, as attested to at trial by Tubbs, the marital residence was "marketable" "as is" without any repairs.

Judgments are to be interpreted "like other written instruments: the rules of construction for contracts are applicable for construing judgments." Boykin v. Law, 946 So. 2d 838, 848 (Ala. 2006) (citing Hanson v. Hearn, 521 So. 2d 953, 954 (Ala. 1988), and Moore v. Graham, 590 So. 2d 293, 295 (Ala. Civ. App. 1991)). A written instrument shall be construed to give full effect to each and every provision contained in context so that no part of the instrument shall be rendered meaningless.

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See Sullivan, Long & Hagerty v. Southern Elec. Generating Co., 667 So. 2d 722, 725 (Ala. 1995). In Cockrell v. Cockrell, 40 So. 3d 712, 715 (Ala. Civ. App. 2009), this court stated:

"[D]ivorce judgments should 'be interpreted or construed like other written instruments.' Sartin v. Sartin, 678 So. 2d 1181, 1183 (Ala. Civ. App. 1996); see also Springer v. Damrich, 993 So. 2d 481, 488 (Ala. Civ. App. 2008).

" 'Separate provisions of judgments, like provisions of contracts, should be construed in pari materia, and the entire judgment -- all provisions considered -- should be read as a whole in the light of all the circumstances, as well as of the conduct of the parties.... Further, if the terms of a judgment are not ambiguous, they should be given their usual and ordinary meaning.' "

"Ex parte Snider, 929 So. 2d 447, 456-57 (Ala. 2005) (quoting Moore v. Graham, 590 So. 2d 293, 295 (Ala. Civ. App. 1991)); see also Wall v. Borosky, 850 So. 2d 351, 354 (Ala. Civ. App. 2002)."

When interpreting a judgment, appellate courts "are free to review "all the relevant circumstances surrounding the judgment," and "the entire judgment ... should be read as a whole in the light of all the circumstances as well as of the conduct of the parties." ' " Downs v. Downs, 978 So. 2d

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768, 773 (Ala. Civ. App. 2007) (quoting Boykin v. Law, 946 So. 2d at 848, quoting in turn Hanson v. Hearn, 521 So. 2d at 955).

At trial, the former wife testified extensively about the condition of the marital residence and its state of disrepair at the time of the entry of the divorce judgment. The former husband conceded, when questioned about photographs depicting the condition of the marital residence, that the marital residence was indeed "in need of repair." At the time the divorce judgment was entered, all concerned parties contemplated that repairs needed to be made to the marital residence to make it more appealing to potential buyers and to increase its value, i.e., marketability, before it would be sold and that the former husband would cover the cost of those repairs necessary to facilitate its sale. Viewing the divorce judgment in the context in which it was entered, the parties and the trial court plainly did not consider the marital residence to be "marketable" "as is" or believe that the marital residence should be sold without any repairs being made; otherwise, there would have been no need to insert a provision addressing repairs at all. In my opinion, the divorce judgment cannot reasonably be interpreted, as the main opinion holds, to impose

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upon the former husband only an illusory obligation in regard to the repair of the marital residence.

Based on the foregoing, I conclude that the trial court erred in applying the unclean-hands doctrine against the former wife. That doctrine contemplates that the party against whom it is asserted has been guilty of "morally reprehensible, willful misconduct," Retail Developers of Alabama, LLC v. East Gadsden Golf Club, Inc., 985 So. 2d 924, 932 (Ala. 2007), or of fraudulent purpose. See Le Furgey v. Beck, 244 Ala. 281, 284, 13 So. 2d 179, 182 (1943). Giving full effect to each and every provision of the divorce judgment, the former wife was correct in her understanding that the former husband was obligated to make those repairs to the marital residence recommended by Tubbs to make it "marketable" and to facilitate its sale. The former wife did not disobey any provision of the divorce judgment by insisting that the former husband carry out his obligation to make the recommended repairs, which, again, he acknowledged he did not do. To the contrary, the former husband, by refusing to make the repairs as ordered, was the only party in violation of the divorce judgment.

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I conclude that the trial court abused its discretion by determining that the former wife had acted inequitably in refusing to proceed with the sale of the marital residence and by ordering her to pay restitution to the former husband. The remedy of restitution is founded upon the principle of avoiding unjust enrichment of one at the expense of another. Shaffer v. Reed, 456 So. 2d 1082, 1086 (Ala. 1984). The former wife has not been unjustly enriched in any sense. The former husband refused to make the repairs to the marital residence as ordered, thereby preventing the sale of the residence. The second emphasized clause from the quoted portion of the divorce judgment provides that the former wife is entitled to reside in the marital residence until its sale, which has not yet happened because of the refusal of the former husband to make the repairs necessary to facilitate its sale. The divorce judgment further requires the former husband to "pay the payments" on the marital residence pending its sale. Any mortgage payments he has made have been made pursuant to his obligation under the divorce judgment and not due in any part to the former wife's alleged violation of that judgment.

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Lastly, the trial court should have concluded that the former wife was entitled to attorney's fees for enforcing the judgment. As explained above, in my opinion, the former wife correctly construed the divorce judgment to require the former husband to make the repairs to the marital residence, which he refused to do. The trial court should have ordered the former husband to make the repairs. The former wife was required to commence a civil action and to incur attorney's fees to enforce the divorce judgment. In my opinion, as the wholly successful party, under the plain terms of the divorce judgment, she was entitled to attorney's fees.