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## ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2012-2013

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2110061

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Carol Renee Hitt

v.

Melvin Loy Roden

Appeal from Lawrence Circuit Court  
(DR-03-190.02)

PER CURIAM.

In a 2005 judgment divorcing Melvin Loy Roden ("the former husband") from Carol Renee Hitt ("the former wife"), the Lawrence Circuit Court ("the trial court"), among other

2110061

things, awarded the former wife periodic alimony of \$3,500 per month and alimony in gross of \$525,000 (representing a 35% interest in the former husband's business, Roden Surplus Imports, Inc.). The trial court made the alimony-in-gross award payable over a 13-year period at 4% interest per annum, with monthly payments of \$4,321.36. To secure the payment of the alimony-in-gross award, the trial court granted the former wife "a lien on all real property [owned by the former husband], other than the [former husband's] residence."

On June 1, 2010, the former husband filed a petition to modify the divorce judgment, seeking a reduction in his periodic-alimony obligation. The former wife answered and counterclaimed, alleging that the former husband had failed to pay periodic alimony and seeking a finding of contempt. In November 2010, the trial court granted the former wife leave to amend her counterclaim to seek a finding of contempt as to the former husband's having interfered with her lien by selling real property without remitting the sale proceeds to her. The case was tried on May 24, 2011.

The evidence indicated that, after December 2009, the former husband made four partial periodic-alimony payments of

2110061

\$1,000 each, after which he made no further periodic-alimony payments through the date of the trial. Between January 2010 and September 2010, the former husband made only 5 of 9 scheduled alimony-in-gross payments of \$4,321.36.

In September 2010, the former husband sold two parcels of real property. The wife received the net proceeds from the sale of the first parcel, i.e., \$27,300.47. The attorney who handled the closing of the sale of the second parcel failed in his search of the title to the property to discover the former wife's lien on the property, and, as a result, the former husband received the net proceeds from the sale of the second parcel, i.e., \$133,283.54. In October 2010, the former husband paid the former wife \$21,606.80, which, he said, represented 5 payments of alimony in gross. The evidence was undisputed that, after October 2010, the former husband made all his monthly alimony-in-gross payments but made no monthly payments of periodic alimony.

On May 31, 2011, the trial court entered a judgment finding the former husband in contempt for his failure to have timely and fully paid periodic alimony on 17 separate occasions for the period January 2010 through May 2011; the

2110061

trial court sentenced the former husband to incarceration in the county jail until he purged himself of that contempt, but suspended the sentence

"so long as [the former husband] successfully purges his contempt by compliance with the following orders: (a) in addition to his regular periodic alimony payment, the [former] husband shall pay to the [former] wife the monthly sum of \$1,750 per month, each and every month commencing July 1, 2011, to be applied to the judgment entered herein, until the same is satisfied with interest; (b) timely pay all other periodic-alimony payments due and as modified herein; and (c) timely pay the attorney's fee award entered herein."

The trial court reduced the former husband's periodic-alimony obligation from \$3,500 per month to \$1,750 per month; found the former husband in contempt of court for interfering with the former wife's lien on his real property; and awarded the former wife a judgment in the amount of \$134,871.56, interest of \$8,092.29, and an attorney fee of \$6,500. The trial court stated that "[t]his judgment reflects all sums due from the [former] husband to the [former] wife for periodic alimony, monthly alimony-in-gross, and unremitted lien proceeds."

In its judgment, the trial court first determined that the former husband's periodic-alimony and alimony-in-gross arrearage, including applicable postjudgment interest, for the

2110061

nine-month period from January 2010 through September 2010 totaled \$46,173.93. The trial court then determined that the \$27,300.47 in proceeds that the former wife had received from the sale of the first parcel "should be applied to any then outstanding and due sums owed by the [former] husband for current monthly obligations, before any application to the unpaid principal of the lump-sum alimony-in-gross award." After subtracting \$27,300.37<sup>1</sup> from \$46,173.93, the trial court determined that the former husband's total arrearage for both his periodic-alimony and alimony-in-gross obligations at the end of September 2010 had been reduced to \$18,873.56.

The trial court next determined that the former husband should have tendered the entirety of the net proceeds derived from the sale of the second parcel, i.e., \$133,283.54, to the former wife and that his failure to do so constituted a contempt of the trial court's orders. The trial court stated:

"The court further rules that the [former] wife is due a judgment for the amount not thus far remitted but that the total amount is due to be deducted from the lump-sum alimony-in-gross total, thus reducing in the long run the number of payments due under the divorce [judgment]. The amount of this judgment,

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<sup>1</sup>The closing statement for the sale of the property indicates that \$27,300.47 was paid "on lien to Carol Hitt."

2110061

which shall be so credited against the lump-sum alimony in gross award and shall further be a component of a total judgment to be entered against the [former] husband in these proceedings, is \$115,998.00. This is in contrast to the disposition of the \$27,300.[4]7 in proceeds received since they were applied to the [former] husband's then accruing judgments."

Following the denial of her postjudgment motion, the former wife appealed.

On appeal, the former wife argues that the trial court miscalculated the amount of the award owed to her. Specifically, the former wife argues that the figure used by the trial court, \$115,998, as "a component of [the] total judgment" is not supported by the evidence. This court cannot discern how the trial court determined that \$115,998 was a "component" of the "total judgment." We perceive that \$115,998, when added to \$18,873.56 (the amount the trial court determined the former husband owed for periodic-alimony and alimony-in-gross arrearages as of September 30, 2010), totals \$134,871.56 (which is the amount of the judgment, exclusive of interest from November 1, 2010, thru May 31, 2011, the trial court awarded to the former wife against the former husband for past-due periodic-alimony payments, past-due alimony-in-gross payments, and unremitted lien proceeds), but we cannot

2110061

determine how the trial court arrived at \$115,998 as a component of its total award.<sup>2</sup>

In Blasdel v. Blasdel, 65 So. 3d 428, 433 (Ala. Civ. App. 2010), this court reasoned:

"Our review of the evidence presented by the parties fails to lead us to evidence supporting the trial court's judgment. Although the trial court is generally afforded broad discretion in making factual determinations in ore tenus proceedings, we are unable to ascertain, from our review of the record, how the trial court determined that the value of the wife's 51% interest in TEC was \$100,000. Accordingly, we must reverse that aspect of the divorce judgment and remand the cause with instructions to the trial court to reconsider its valuation of the wife's interest in TEC and to enter a new judgment indicating the method by which the value of the wife's 51% interest in TEC is determined. Cf. Mullins v. Sellers, 58 So. 3d 817, 823 (Ala. Civ. App. 2010) (reversing a judgment awarding child-support arrearage because this court could not determine from the record on appeal how the trial court arrived at its child-support-arrearage award)."

Similarly, in the present case, because we cannot determine how the trial court arrived at \$115,998 as a component of its total award, we reverse the trial court's judgment determining the amount of the former husband's periodic-alimony and

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<sup>2</sup>In her postjudgment motion, the former wife concedes that the trial court's calculation of \$18,873.56 in arrearages being owed as of September 30, 2010, is correct.

2110061

alimony-in-gross arrearages, and we remand the cause for the trial court to reconsider its award and to enter a new judgment determining the amount of the former husband's arrearages and indicating how it calculated that amount. Id.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Thompson, P.J., and Bryan and Moore, JJ., concur.

Pittman, J., dissents, with writing, which Thomas, J., joins.



2110061

PITTMAN, Judge, dissenting.

I respectfully dissent because I do not believe that Blasdel v. Blasdel, 65 So. 3d 428, 433 (Ala. Civ. App. 2010), is authority for reversing the judgment and remanding the cause to the trial court. In Blasdel, the appellant/husband specifically argued that the trial court's valuation of his business was erroneous because it did not follow the business-valuation method set out in Shewbart v. Shewbart, 19 So. 3d 223, 232 (Ala. Civ. App. 2009).

In the present case, the former wife does not make a cogent argument, supported by authority, as to why the trial court's judgment is incorrect. Although I agree that one "cannot discern how the trial court determined that \$115,998 was a 'component' of the 'total judgment,'" \_\_\_ So. 3d at \_\_\_ (emphasis added), the actual judgment -- \$134,871.56, plus interest of \$8,092.29 -- appears to be "in the ballpark" of what the former husband owes the former wife and the former wife has not demonstrated in what manner the trial court erred in its computations. I would affirm the judgment because an appellate court "will not assume error, and the burden is on the appellant 'to affirmatively demonstrate from the record

2110061

that an error was committed by the trial court.'" Empiregas, Inc. of Ardmore v. Hardy 487 So. 2d 244, 251 (Ala. 1985) (quoting Chestnut Hills Civic Ass'n v. Dobbins, 361 So. 2d 1043, 1044 (Ala. 1978)).

Thomas, J., concurs.