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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2011-2012

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Eddie W. Wilson

v.

Suzanne L. Wilson

Appeal from Mobile Circuit Court
(DR-07-500998)

On Return to Remand

PER CURIAM.

The trial court has entered an order as required by our instructions in our opinion on original submission. See Wilson v. Wilson, [Ms. 2100540, Nov. 18, 2011] ___ So. 3d ___

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(Ala. Civ. App. 2011). The trial court's order on remand reads, in its entirety, as follows:

"In compliance with [the appellate court's] order of November 18, 2011, with instructions to this Court, the following is submitted:

"In reaching the award set out in the Judgment of Divorce rendered herein, this Court considered the following evidence: testimony of all the witnesses as presented in open Court, the exhibits that were admitted into evidence, the demeanor of the witnesses, length of the marriage of the parties, the relative fault of the parties resulting in the divorce, the age, education, work experience, and health of the parties, the earning potential of the parties, the totality of the marital estate, to include the source and use of marital property.

"After considering the above, the Court determined a fair value of the marital estate and awarded an equitable, not necessarily equal, but equitable property award.

"In making the property award set forth in the Judgment of Divorce, the Court did not apply any specific figures as presented by the witnesses as the basis for its award nor make any mathematical calculations to determine what property would be awarded to the parties. Rather, the court considered the totality of the evidence as presented and arrived at an equitable property awarded [sic]."

The trial court's order fails to comply with our instructions that it "specify its findings as to (1) the fair value of the 158 shares of [Sea Pearl Seafood Company, Inc.,] stock; (2) the number of shares it determined to be divisible as marital

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property; (3) the reasons for excluding any shares from its property division, if it did; ... and (5) the calculations it used in reaching its award of \$120,000 in alimony in gross to [Eddie W. Wilson]." ___ So. 3d at ___.

As explained in our opinion on original submission, the value of the Sea Pearl Seafood Company, Inc. ("SPS"), stock was contested by the parties. In addition, the parties disagreed over whether all 158 shares of SPS stock were marital property. The trial court was required to determine whether all 158 or only 21 shares of the SPS stock were marital property and then to determine the value of the SPS stock in order to effect an equitable property division. The trial court has tacitly admitted that it did neither. Its failure to make the necessary conclusions or perform the necessary calculations required to determine the contents of and the value of the marital estate is not insulated by the ore tenus presumption. Neither this court nor the trial court could possibly determine that the award of \$120,000 in alimony in gross to Eddie W. Wilson ("the husband") is equitable without knowing how many shares of SPS stock were part of the marital estate and without knowing the value of that stock.

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Accordingly, because the trial court did not determine whether all or part of the SPS stock was included in the marital estate and because the trial court failed to determine the value of the stock, we have no recourse but to reverse the judgment of the trial court and to remand the cause for the trial court to make the necessary determinations and perform the necessary calculations to arrive at an equitable property division.

Because a decision on the issues raised by the husband on appeal but pretermitted by this court in our opinion on original submission could impact the trial court's review of the record evidence, we will address the husband's arguments that the trial court erred in (1) limiting his cross-examination of Suzanne L. Wilson ("the wife") and (2) in admitting testimony regarding the prior termination of the husband's employment with SPS.

The husband complains on appeal that the trial court erred in limiting his cross-examination of the wife regarding her friendship with Bruce Vest, SPS's accountant, with which the husband intended to prove bias on the part of Vest. The husband relies on the general principle that "a party is

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entitled to a thorough and sifting cross-examination of the witnesses against him." Perry v. Brakefield, 534 So. 2d 602, 607 (Ala. 1988). He also points out that "'[i]t is always competent on cross-examination to make such interrogation of a witness as would tend to test his interest, bias or prejudice or to illustrate or impeach the accuracy of his testimony.'" Ex parte Brooks, 393 So. 2d 486, 487 (Ala. 1980) (quoting Green v. State, 258 Ala. 471, 474, 64 So. 2d 84, 87 (1953)). Of course, a trial court may limit cross-examination "that is repetitious, irrelevant, harassing, annoying, or humiliating, or concerns wholly collateral matters." Riley v. City of Huntsville, 379 So. 2d 557, 560 (Ala. 1980). We note that "[t]he usual discretion vested in the trial court to control the extent of cross-examination is narrowed in proportion to the extent of the adverseness of the testimony of the witness and the value to the defendant of a disaccreditation of the witness." Hendrick v. State, 368 So. 2d 576, 578 (Ala. Crim. App. 1979).

Certainly, the husband had a general right to attempt to establish bias on the part of Vest through cross-examination. However, Vest's testimony was confined to basic financial

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information regarding SPS based on documents in evidence and to the issue whether the wife had paid for the stock she had acquired in SPS. The fact that Vest's testimony regarding the wife's failure to pay for the stock was identical to testimony from the wife and her father, Joseph Ladnier, on that subject renders Vest's testimony merely cumulative. Pipeline Technic, L.L.C. v. Mason, 6 So. 3d 1176, 1181 (Ala. Civ. App. 2008); Yeomans v. State, 641 So. 2d 1269, 1272 (Ala. Crim. App. 1993) ("Testimony that may be apparently inadmissible may be rendered innocuous by subsequent or prior lawful testimony to the same effect or from which the same facts can be inferred."). "'The exclusion of admissible evidence does not constitute reversible error where the evidence "would have been merely cumulative of other evidence of the same nature, which was admitted."' " Jordan v. Calloway, 7 So. 3d 310, 315 (Ala. 2008) (quoting Houston v. State, 565 So. 2d 277, 281 (Ala. Crim. App. 1990), quoting in turn Ex parte Lawson, 476 So. 2d 122, 122 (Ala. 1985)). Thus, any error on the part of the trial court in limiting the husband's ability to prove that Vest was biased in favor of the wife was harmless error not affecting the husband's substantial rights. See Rule 45,

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Ala. R. App. P.; see also Hendrick, 368 So. 2d at 578 (reversing because the trial court failed to allow a thorough cross-examination but noting specifically that "[s]uch testimony would not have been cumulative").

The husband further argues that the trial court erred in admitting testimony regarding his being terminated from his employment with SPS in 1976, when he was approximately 18 years old, after being accused of stealing money and shrimp from SPS. The husband objected at trial to the relevancy of the testimony. On appeal, however, he argues that the testimony should have been excluded because it involved a matter that was remote and because it constituted improper impeachment evidence on a collateral matter. We cannot consider the husband's arguments regarding any error in the admission of this testimony on appeal.

"The statement of specific grounds of objection waives all grounds not specified, and the trial court will not be put in error on grounds not assigned at trial.' Ex parte Frith, 526 So. 2d 880, 882 (Ala. 1987); see also State v. Holloway, 293 Ala. 543, 307 So. 2d 13 (1975); Scarborough v. State, 528 So. 2d 890 (Ala. Crim. App. 1988). In other words, 'if only a specific objection is made and overruled, the appellate court will not consider any other grounds of objection.' C. Gamble, McElroy's Alabama Evidence, § 426.01(11) (3d ed. 1977)."

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B.A.S.S. Coal, Inc. v. Black Warrior Minerals, Inc., 579 So. 2d 1325, 1327 (Ala. 1991). The husband's relevancy objection waived any other ground for objection, and the husband's failure to argue the relevancy of the challenged testimony on appeal prevents us from considering whether the trial court erred in admitting it.

In our opinion on original submission, we concluded that the trial court was precluded from relying on the stock-valuation testimony provided by Jack D. Carney. We have further concluded that we cannot consider the husband's argument relating to the testimony regarding the termination of his 1976 employment with SPS and that any error committed by the trial court in limiting the husband's cross-examination of the wife was harmless error. However, the trial court's admitted failure to determine whether all or part of the SPS stock was part of the marital estate and its failure to determine the value of that stock makes it impossible for this court to determine whether the trial court's \$120,000 award of alimony in gross to the husband was equitable. Therefore, we reverse the trial court's judgment awarding the husband \$120,000 in alimony in gross, and we remand the cause to the

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trial court for it to reconsider its property division based on the evidence of record and to enter a new judgment containing a property division consistent with this opinion and our opinion on original submission.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Thompson, P.J., and Pittman and Thomas, JJ., concur.

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

Bryan, J., recuses himself.