Rel: November 2, 2018

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

2170694

Harry Robert Hummer, Jr.

v.

Virginia Loftis

Appeal from Choctaw Circuit Court
(DR-10-025.01)

2170695

Harry Robert Hummer, Jr.

v.

Virginia Loftis

Appeals from Choctaw Circuit Court
(DR-10-025.02)

THOMPSON, Presiding Judge.

Virginia Loftis ("the mother") and Harry Robert Hummer, Jr. ("the father"), were divorced by a June 2008 judgment of the Chancery Court of Tipton, Tennessee. The Tennessee divorce judgment, among other things, awarded custody of the parties' three minor children to the mother, awarded the father visitation, and ordered the father to pay child support.

In March 2010, the mother filed an action ("the 2010 modification action") in the Choctaw Circuit Court ("the trial court") seeking to modify the child-support provisions of the Tennessee divorce judgment and seeking an award of postminority support for the parties' disabled son. At that time, the parties' oldest child had reached the age of majority, and, therefore, the 2010 modification action pertained to the parties' younger two children. The 2010 modification action was assigned case no. DR-10-025.00. On March 16, 2011, the trial court entered an order granting a motion to withdraw a motion to dismiss filed by the father in the 2010 modification action and further granting the father's motion or agreement to submit to the trial court's jurisdiction in that action.

On February 2, 2012, the trial court entered a judgment in the 2010 modification action in which it, among other things, determined that the parties' son ("the adult disabled son"), who by then was 19 years old, had special needs that created a disability requiring that the father's child-support obligation continue past the son's age of majority. See Ex parte Brewington, 445 So. 2d 294 (Ala. 1983) (holding that a trial court may award postminority support for an adult child who is mentally or physically disabled and, therefore, not capable of self-support). Neither party appealed that February 2, 2012, judgment entered in the 2010 modification action.

On February 20, 2015, the mother filed in the trial court a petition seeking to enforce the father's child-support obligation for the parties' adult disabled son and the parties' youngest child, who, at that time, was still a minor. In that petition, the mother also mentioned seeking enforcement of the property-division portion of the Tennessee divorce judgment, but the record contains no other mention of that claim, and, therefore, it appears that the mother abandoned that claim. The mother also sought an award of an

attorney fee. The trial-court clerk assigned that action case no. DR-10-025.01.

The father answered in case no. DR-10-025.01, denying liability, and he counterclaimed, seeking a modification of his child-support obligation. In pertinent part, the father alleged that there had been a material change in circumstances because, he said, the adult disabled son was capable of self-support and was, therefore, no longer entitled to postminority support. The father also sought an award of an attorney fee.

As a part of his counterclaim, the father sought an independent psychiatric evaluation of the adult disabled son, and the trial court granted that request. A discovery dispute between the parties as to that evaluation occurred, and the father sought and obtained from the trial court an order compelling the mother's cooperation in obtaining the ordered evaluation. We note that each party sought to have the other held in contempt or sought sanctions with regard to the other's conduct during the pendency of this litigation and that, ultimately, in its judgment the trial court denied all pending contempt claims asserted by the parties.

On March 3, 2015, the father initiated a separate action in the trial court by filing a petition for a rule nisi seeking to have the mother held in contempt for her purported failure to comply with the visitation provisions of the Tennessee divorce judgment. That action was assigned case no. DR-10-025.02. The trial court, on the motion of the father, entered an order consolidating case no. DR-10-025.01 and case no. DR-10-025.02.

Later, on January 6, 2016, the father filed in case no. DR-10-025.01 an amended counterclaim in which he sought to modify the Tennessee divorce judgment by seeking an award of custody of the adult disabled son and seeking an award of postminority support from the mother. The mother opposed the father's January 6, 2016, amended counterclaim.

On July 26, 2017, the father amended his counterclaim in case no. DR-10-025.01 to seek the termination of his child-support obligation for the parties' youngest child, who had, at that time, reached the age of majority. On July 29, 2017, the mother and the father submitted to the trial court a signed agreement that specified that the father's child-support obligation should be $1,037 per month.

In its December 6, 2017, judgment, the trial court modified the father's child-support obligation for the parties' adult disabled son, establishing that obligation at $1,037 per month.[1] In that judgment, the trial court also purported to deny the father's custody-modification claim and purported to modify the terms of the father's visitation with the adult disabled son. The trial court denied all pending contempt claims, and it specified that any claims not addressed in that judgment were denied.

The father filed a January 5, 2018, postjudgment motion to alter, amend, or vacate the judgment or, in the alternative, to dismiss the actions. In that motion, the father argued for the first time that the trial court lacked subject-matter jurisdiction over the actions. On March 9, 2018, the trial court entered an order denying the father's January 5, 2018, motion, concluding that it had jurisdiction over the parties' claims and making specific findings of fact

[1]Neither the July 29, 2017, agreement between the parties nor the December 6, 2017, judgment specifies that the father's child-support obligation for the parties' youngest child was terminated. We conclude that, because the parties' youngest child had reached the age of majority, such a conclusion is implicit in the December 6, 2017, judgment.

in support of its December 6, 2017, judgment. The father timely appealed.

On appeal, the father asserts two separate arguments in support of his contention that the trial court lacked subject-matter jurisdiction to enter its December 6, 2017, judgment. The father first contends that the trial court never obtained subject-matter jurisdiction over the parties under the Uniform Interstate Family Support Act ("the UIFSA"), § 30-3D-101 et seq., Ala. Code 1975. In order for a court to enforce or modify a child-support order from another state, the UIFSA requires that the foreign order be registered in Alabama. § 30-3B-601, Ala. Code 1975. The procedure for registering a foreign child-support order is set forth in § 30-3D-602, Ala. Code 1975, and § 30-3D-611, Ala. Code 1975, sets forth the authority for modifying a foreign child-support order.[2]

A foreign child-support order may be registered under § 30-3D-602, Ala. Code 1975, which states, in part:

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[2]At the time of the 2010 modification action in which the mother sought to modify the Tennessee divorce judgment, the UIFSA was codified at § 30-3A-101 et seq., Ala. Code 1975. The provisions in effect at that time are the same as those now set forth but renumbered in § 30-3D-101 et seq., Ala. Code 1975.

"(a) Except as otherwise provided in Section 30-3D-706, [Ala. Code 1975,] a support order or income-withholding order of another state or a foreign support order may be registered in this state by sending the following records to the appropriate tribunal in this state:

"(1) a letter of transmittal to the tribunal requesting registration and enforcement;

"(2) two copies, including one certified copy, of the order to be registered, including any modification of the order;

"(3) a sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

"(4) the name of the obligor and, if known:

"(A) the obligor's address and Social Security number;

"(B) the name and address of the obligor's employer and any other source of income of the obligor; and

"(C) a description and the location of property of the obligor in this state not exempt from execution; and

"(5) except as otherwise provided in Section 30-3D-312, [Ala. Code 1975,] the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted. ..."

In Alabama, courts have held that compliance with the registration provisions of the UIFSA is necessary for a court to exercise subject-matter jurisdiction. Ex parte Reynolds, 209 So. 3d 1122, 1126 (Ala. Civ. App. 2016) (citing Herzog v. Stonerook, 160 So. 3d 340, 345 (Ala. Civ. App. 2014); Ex parte Ortiz, 108 So. 3d 1046, 1050 (Ala. Civ. App. 2012); and Ex parte Davis, 82 So. 3d 695, 701 (Ala. Civ. App. 2011)). The father argues that the mother did not comply with the requirements for registering a foreign judgment under the UIFSA. The record currently before this court contains little information about the parties' filings and jurisdictional arguments in the 2010 modification action initiated by the mother. In support of his postjudgment motion in which he raised jurisdictional issues for the first time, the father submitted only a few pleadings and an order from the 2010 modification action. Those pleadings include the mother's complaint seeking a modification of child support and an award of postminority support pursuant to Ex parte Brewington, supra, for the parties' adult disabled son. Attached to that complaint is a certified copy of the Tennessee divorce judgment. Although it is clear that the father moved to

dismiss that complaint based on jurisdictional grounds, the father did not include that motion to dismiss in his materials submitted to the trial court in these cases and it is not contained in the record in this court. Thus, this court is unable to determine whether the father raised the issue of jurisdiction under the UIFSA during the 2010 modification action. The trial court's March 16, 2011, order referencing the father's motion to dismiss indicates that the father withdrew his motion to dismiss the 2010 modification action and that he also then moved to submit to the jurisdiction of the trial court.[3]

We note that, in his appellate brief, the father represents that his motion to dismiss filed in the 2010 action "referred to personal jurisdiction." However, because the father did not include that motion to dismiss from the 2010 action among the documents he attached in support of his postjudgment motion and/or motion to dismiss filed in the

[3]The March 16, 2011, order states, in pertinent part:

> "The [father's] oral Motion to Withdraw his Motion to Dismiss and his Motion submitting himself to the Jurisdiction of the Circuit Court of Choctaw County, Alabama, are hereby granted."

actions currently on appeal, there is no evidence in the record to support the father's allegation that his arguments in the 2010 modification action pertained only to personal jurisdiction.

> "'It is well settled that an appellant has the burden of presenting a record containing sufficient evidence to show error by the trial court.' Leeth v. Jim Walter Homes, Inc., 789 So. 2d 243, 246 (Ala. Civ. App. 2000). Additionally, '"it is the appellant's duty to ensure that the appellate court has a record from which it can conduct a review. Further, in the absence of evidence in the record, this Court will not assume error on the part of the trial court."' Dunlap v. Regions Fin. Corp., 983 So. 2d 374, 377 n. 3 (Ala. 2007) (quoting Zaden v. Elkus, 881 So. 2d 993, 1009 (Ala. 2003))."

C.C. v. B.L., 142 So. 3d 1126, 1128 (Ala. Civ. App. 2013) (emphasis added).

In Ex parte Reynolds, 209 So. 3d at 1128, this court overruled earlier precedent and held that substantial compliance with the registration requirements of the UIFSA is sufficient to afford an Alabama trial court subject-matter jurisdiction. In his appellate brief filed in this court, the father has not addressed Ex parte Reynolds, supra, and he has not argued that there was not substantial compliance with the UIFSA registration requirements during the litigation in the 2010 modification action. The trial court ruled in 2011 that

it had jurisdiction over the 2010 modification action, and the father did not challenge that determination by appealing the February 2, 2012, judgment entered in that action. When the father first raised this issue in the trial court in his March 9, 2018, postjudgment motion, the trial court again rejected the father's jurisdictional argument. Given the scant materials from the 2010 modification action that the father submitted to the trial court and included in the record on appeal, as well as the father's failure to address the issue of whether those documents he did provide are sufficient to establish that there was not substantial compliance with the UIFSA, this court is unable to say that the trial court erred in determining that the father failed to demonstrate that it lacked subject-matter jurisdiction under the UIFSA to address the parties' child-support-modification claims.

We must reach a different result with regard to the parties' claims concerning issues of child custody. The father argues in his appellate brief that the trial court lacked jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act ("the UCCJEA"), § 30-3B-101 et seq., Ala. Code 1975, to address issues pertaining to

custody of the parties' adult disabled son. The UCCJEA requires that a foreign custody judgment be registered in an Alabama trial court before that court may enforce or modify the terms of the custody or visitation award contained with the foreign judgment. § 30-3B-306, Ala. Code 1975; Krouse v. Youngblood, 171 So. 3d 49 (Ala. Civ. App. 2015). There is no precedent establishing that substantial compliance with the UCCJEA registration requirements is sufficient to establish subject-matter jurisdiction over child-custody issues, and the parties in these appeals have not addressed that issue. Rather, this court has recently held that,

> "[b]efore an Alabama court can enforce a child-custody order issued by another state, the order must be registered in Alabama pursuant to the procedure outlined in the [UCCJEA]. A failure to properly register the foreign child-custody order under the UCCJEA deprives an Alabama trial court of subject-matter jurisdiction to enforce the custody order. Garrett v. Williams, 68 So. 3d 846, 848 (Ala. Civ. App. 2011)."

Krouse v. Youngblood, 171 So. 3d at 50. Similarly, an Alabama trial court lacks jurisdiction to modify a foreign child-custody judgment if that judgment has not been properly registered pursuant to § 30-3B-306 of the UCCJEA. See § 30-3B-306(b), Ala. Code 1975 ("A court of this state shall

recognize and enforce, but may not modify, except in accordance with Article 2, a registered child custody determination of a court of another state.").

The father sought to enforce the visitation provisions of the Tennessee divorce judgment in his March 3, 2015, petition for a rule nisi filed in case no. DR-10-025.02. The father asserted a custody-modification claim in case no. DR-10-025.01 in his January 6, 2016, amended counterclaim. However, before filing either of those claims pertaining to the issue of child custody, the father failed to seek to register the Tennessee court's June 2008 divorce judgment containing the child-custody and visitation provisions in the trial court. Further, the trial court erred in concluding in its March 9, 2018, postjudgment order that it had earlier determined, in its March 16, 2011, order, that it had jurisdiction over custody issues. The March 16, 2011, order was entered in the 2010 modification action in which only issues pertaining to child support, and not to child custody, were at issue. Therefore, the issue of the trial court's jurisdiction to consider child-custody claims was not at issue and not decided

in either the March 16, 2011, order or the February 2, 2012, judgment entered in the 2010 modification action.

The father's failure to properly register the Tennessee divorce judgment rendered his claims seeking to modify the custody and visitation provisions of that foreign judgment void ab initio, and the trial court did not obtain subject-matter jurisdiction over those claims. Krouse v. Youngblood, 171 So. 3d at 52. The trial court did not have jurisdiction over case no. DR-10-025.02, concerning the enforcement of the visitation provisions of the Tennessee divorce judgment, and, therefore, we dismiss appeal no. 2170695, which is taken from that part of the trial court's December 6, 2017, judgment purporting to address that action. See Rush v. Rush, 163 So. 3d 362, 368 (Ala. Civ. App. 2014) (a void judgment will not support an appeal); M.E.W. v. J.W., 142 So. 3d 1168, 1171 (Ala. Civ. App. 2013). Also, the trial court never obtained subject-matter jurisdiction to address the father's counterclaim in case no. DR-10-025.01 seeking to modify custody of the parties' adult disabled son, and, therefore, we dismiss that part of appeal no. 2170694 addressing the

December 6, 2017, judgment insofar as it pertained to the child-custody counterclaim in case no. DR-10-025.01.

The father next contends that the trial court did not have jurisdiction over the issue of postminority support for the parties' adult disabled son. The father cites Ex parte Christopher, 145 So. 3d 60 (Ala. 2013), which overruled Ex parte Bayliss, 550 So. 2d 986 (Ala. 1989). Ex parte Bayliss, supra, had allowed, under certain circumstances, a trial court to award postminority-educational support for a child of divorced parents who had reached the age of majority but was attending college. In reaching its holding in Ex parte Christopher, supra, our supreme court determined that the term "child," for child-support purposes, was limited to children, i.e., those under the age of majority. However, the court expressly stated that the issue of whether parents might have "an obligation to support disabled children past their majority" was not an issue before the court at that time. Ex parte Christopher, 145 So. 3d at 66; see also Knepton v. Knepton, 199 So. 3d 44, 47 (Ala. Civ. App. 2015) (recognizing that Ex parte Brewington remained good law).

In his appellate brief, the father seeks to expand the holding of Ex parte Christopher, supra, to prohibit awards of postminority support for adult disabled children of divorced parents. The father also asserts an argument pursuant to the Equal Protection Clause of the United States Constitution in support of his argument against awards of postminority support made pursuant to Ex parte Brewington, supra.

However, the trial court's December 6, 2017, judgment did not make its initial award of postminority support for the parties' adult disabled son. Rather, that award of postminority support for the parties' adult disabled son was established in the February 2, 2012, modification judgment. In the December 6, 2017, judgment from which the remaining appeal in this matter arises, the trial court ruled on the parties' respective claims seeking to modify that 2012 award of postminority support for their adult disabled son.

In Hamaker v. Seales, 227 So. 3d 32, 40 (Ala. Civ. App. 2016), the trial court entered a 2012 judgment awarding custody of a child to the father and, in pertinent part, awarding the child's mother and the child's maternal grandmother visitation with the child. The grandmother sought

to enforce and modify the visitation provisions of the 2012 judgment, and the father counterclaimed, seeking to terminate the grandmother's visitation rights. The trial court modified the periods during which the mother and the grandmother could visit the child and denied all other requested relief. 227 So. 3d at 36. The father appealed, arguing that the trial court had erred in failing to terminate the grandparent-visitation award because, he maintained, an award of visitation to a nonparent infringed on his constitutional rights and he had not been shown to be an unfit parent. Id. This court rejected those arguments, holding that, because the father had failed to appeal the earlier judgment awarding the grandmother visitation, the grandmother's entitlement to that visitation became the law of the case. Hamaker v. Seales, 227 So. 3d at 40.

In McQuinn v. McQuinn, 866 So. 2d 570, 575 (Ala. Civ. App. 2003), a Tennessee divorce judgment awarded the father visitation with the two children born of the parties' marriage and the father's stepson, i.e., a son born of the mother's relationship with another man. No appeal was taken from that divorce judgment. An Alabama trial court entered a judgment

in a modification action filed in that court and, among other things, reaffirmed the visitation provision referring to all three children but modified the visitation periods. 866 So. 2d 571-72. The mother appealed and argued, among other things, that the trial court in that case had erred in allowing the continuation of the father's visitation with the stepson. A majority of this court affirmed as to that issue, stating that "[t]he mother did not appeal from the Tennessee judgment; therefore, except as it may be subject to modification upon a change in circumstances, the right of the father to visitation with the stepson became the law of the case." McQuinn v. McQuinn, 866 So. 2d at 575.

In this case, the father did not appeal the February 2, 2012, judgment that created his obligation to pay postminority support for the parties' adult disabled son. Therefore, the imposition of liability for postminority support for the parties' adult disabled son became the law of the case. Hamaker v. Seales, supra; McQuinn v. McQuinn, supra. See also Thompson v. Ladd, 207 So. 3d 76, 79 n. 3 (Ala. Civ. App. 2016) (holding that the failure to appeal a judgment containing an error rendered the erroneous holding in that judgment the law

of the case); S.B. v. Lauderdale Cty. Dep't of Human Res., 142 So. 3d 716, 720 (Ala. Civ. App. 2013) (holding that a parent's failure to appeal an earlier judgment precluded the courts from considering, in an appeal of a later judgment, an issue resolved in that earlier judgment); and N.T. v. P.G., 54 So. 3d 918, 920 (Ala. Civ. App. 2010) (holding that an earlier judgment awarding visitation became the law of the case and that, in a modification action, the mother in that case could not overturn the visitation award established in that earlier judgment). The father's failure to appeal that part of the February 2, 2012, judgment establishing his liability for postminority support for the parties' adult disabled son rendered that award the law of the case, and it prevented the father from attempting a collateral attack on the imposition of the obligation to pay postminority support for his adult disabled son in this appeal. "On a petition to modify visitation, a court does not reexamine the evidence to determine if its original judgment was correct; rather, it decides whether modification is warranted based on changed circumstances." N.T. v. P.G., 54 So. 3d at 920. Accordingly, this court may not consider the father's arguments seeking to

overturn the award of postminority support for the adult disabled son.

Regardless of the fact that the award of postminority support is the law of the case in this matter, the father could, and did, seek to modify that obligation. In his counterclaim regarding postminority support, the father alleged that the adult disabled son no longer needed support pursuant to Ex parte Brewington, supra, because, the father stated, the son was capable of being self-supporting. We note that the report of the independent evaluator stated that the adult disabled son could not live independently and that he would need an adult guardian to assist him in managing his daily life. The trial court ultimately determined that the parties' adult disabled son remains disabled and in need of postminority support, although it modified the amount of the father's monthly postminority-support obligation. The father has not argued on appeal that the evidence did not support the amount of postminority support or that the parties' adult disabled son was no longer disabled such that the award of postminority support was not supported by the evidence. Therefore, any argument the father might have asserted with

regard to those issues has been waived. Jackson v. Brewer, [Ms. 2160099, Aug. 25, 2017] ___ So. 3d ___, ___ n. 2 (Ala. Civ. App. 2017) (citing Boshell v. Keith, 418 So. 2d 89, 92 (Ala. 1982), and Gary v. Crouch, 923 So. 2d 1130, 1136 (Ala. Civ. App. 2005)).

The father next argues that the trial court erred in failing to hold the mother in contempt for her failure to comply with certain discovery requests and with two orders compelling her compliance with those requests. The father argues that the mother should be held in contempt for her failure to appear at the originally scheduled independent psychiatric evaluation for the parties' adult disabled son. The trial court ordered that the psychiatric evaluation take place, that the father schedule and pay for the evaluation, and that the father coordinate the scheduling with the mother. The father filed a motion to compel, alleging that the mother had not appeared with the adult disabled son at the scheduled evaluation; that motion to compel contained allegations about the reason the mother had not appeared. The mother filed a motion objecting to the counselor chosen by the father to evaluate the adult disabled son, and, apparently, to the need

for an additional evaluation, given the extensive documentation of the adult disabled son's mental-health condition.

On November 3, 2015, the trial court entered an order overruling the mother's objection to the evaluation, ordering her to make every effort to ensure the adult disabled son's presence at the evaluation, and denying the father's motion to compel as moot "so long as the mother complies with the terms" of the November 3, 2015, order. There is no allegation that the mother again failed to appear for the scheduled psychiatric evaluation of the parties' adult disabled son.

The father also argues that the mother did not comply with an order to compel her to respond to certain discovery requests. Specifically, the father alleged that the mother's response to an interrogatory asking the mother to produce "papers, pay statements, or written memoranda" concerning the mother's income sources was "incomplete." The father alleged that he had issued a subpoena for those records but had been informed by the Social Security Administration that the adult disabled son had to sign the release. The father sought to have the trial court require the mother to sign that release.

The father did not submit any documentation or evidence in support of that motion.

However, on November 18, 2016, the trial court ordered the mother to execute that release within seven days. The father filed a motion for sanctions on January 18, 2017, alleging that the mother had not executed that release. It is not clear when the father received the requested documents, but, during an ore tenus hearing, he cross-examined the mother using documents he had received from the Social Security Administration concerning the adult disabled son.

> "'Rule 70A, Ala. R. Civ. P., has governed contempt proceedings in civil actions since July 11, 1994. Rule 70A(a)(2)(D) defines "civil contempt" as a "willful, continuing failure or refusal of any person to comply with a court's lawful writ, subpoena, process, order, rule, or command that by its nature is still capable of being complied with."'

"Stamm v. Stamm, 922 So. 2d 920, 924 (Ala. Civ. App. 2004). Moreover, to hold a party in contempt under Rule 70A(a)(2)(D), Ala. R. Civ. P., the trial court must find that the party willfully failed or refused to comply with a court order. See T.L.D. v. C.G., 849 So. 2d 200, 205 (Ala. Civ. App. 2002).

> "'The issue whether to hold a party in contempt is solely within the discretion of the trial court, and a trial court's contempt determination will not be reversed on appeal absent a showing that the trial

> court acted outside its discretion or that its judgment is not supported by the evidence. Brown v. Brown, 960 So. 2d 712, 716 (Ala. Civ. App. 2006) (affirming a trial court's decision not to hold a parent in contempt for failure to pay child support when the parent testified that he had deducted from his monthly child-support payment the amount he had expended to buy clothes for the children).'
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> "Poh v. Poh, 64 So. 3d 49, 61 (Ala. Civ. App. 2010)."

Jesse Stutts, Inc. v. Hughey, 154 So. 3d 155, 163–64 (Ala. Civ. App. 2014).

The father testified that he incurred additional attorney fees in seeking to compel the mother to ensure the adult disabled son's presence at the psychiatric evaluation and in obtaining the records from the Social Security Administration. However, he did not question the mother regarding her failure to comply with the pertinent orders, and the record contains no evidence concerning the reasons for those failures. "[I]n order to hold a party in contempt under Rule 70A(a)(2)(D), the trial court must find that the party willfully failed or refused to comply with a court order." Kreitzberg v. Kreitzberg, 131 So. 3d 612, 628 (Ala. Civ. App. 2013).

The determination whether to find the mother in contempt for discovery violations was within the discretion of the trial court. Jesse Stutts, Inc. v. Hughey, 154 So. 3d at 163-64; Jacobs v. Jacobs, [Ms. 2160340, Dec. 15, 2017] ___ So. 3d ___, ___ (Ala. Civ. App. 2017). Given the record on appeal, and the lack of evidence presented to the trial court, we cannot say that the father has demonstrated that the trial court erred in refusing to find the mother in contempt with regard to these issues. Nail v. Jeter, 114 So. 3d 844, 850-51 (Ala. Civ. App. 2012).

The father has also asserted an argument that the trial court erred in failing to find the mother in contempt for her purported failure to comply with the visitation provisions of the Tennessee divorce judgment. As already indicated, however, the father failed to properly register the Tennessee divorce judgment in the trial court pursuant to the UCCJEA before he sought modify or enforce the custody and visitation provisions of that judgment. Accordingly, the trial court lacked subject-matter jurisdiction over those issues, and we do not reach his argument pertaining to contempt as it concerns visitation issues.

The father also argues that the trial court erred in failing to award an attorney fee to him. "A trial court should consider the following criteria in setting an attorney fee: (1) the results of the litigation; (2) the nature of the conduct of the parties; (3) the financial circumstances of the parties; and (4) the earning capacity of the parties." West v. Rambo, 786 So. 2d 1138, 1142 (Ala. Civ. App. 2000). The father cites what he contends was the mother's repeated failure to comply with discovery requests and orders, which is a factor to consider in determining whether to award an attorney fee. However, the trial court could have determined that the other factors weighed against an attorney-fee award. In her petition, the mother sought a modification of postminority support for the parties' adult disabled son and child support for the parties' youngest child before that child reached the age of majority. The mother prevailed on her claim seeking the modification of postminority support. The father's claims were denied, and, as this court has determined, because of the father's failure to register the Tennessee divorce judgment under the UCCJEA, the trial court did not have jurisdiction over the claims upon which the

parties focused, i.e., custody and visitation. The mother was not employed at the time of the hearing on the merits, and the father has regular employment with a government agency in addition to his military-retirement income. Given the foregoing, we cannot say that the trial court erred in denying the father's request that the mother be required to pay his attorney fee. We affirm as to this issue.

The father's requests for attorney fees on appeal are denied.

2170694--APPEAL DISMISSED IN PART; AFFIRMED.

2170695--APPEAL DISMISSED.

Pittman, Thomas, Moore, and Donaldson, JJ., concur.