

Rel: November 9, 2023  
COR: December 18, 2025

**Notice:** This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0650), of any typographical or other errors, in order that corrections may be made before the opinion is published in Southern Reporter.

# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2023-2024

---

CL-2022-1230

---

**Richard D. Hollar**

v.

**Carrie A. Hollar**

**Appeal from Chilton Circuit Court  
(DR-19-900201)**

FRIDY, Judge.

Richard D. Hollar ("the husband") appeals from a judgment of the Chilton Circuit Court ("the trial court") divorcing him from Carrie A. Hollar ("the wife"). In the judgment, the trial court declined to vacate an interlocutory order entered in the action invalidating a postnuptial

agreement between the parties. The trial court awarded the parties joint legal custody and the wife sole physical custody of their two children; it ordered the husband to pay the wife child support; it awarded the wife alimony of \$2,500 per month for sixty months; and it divided the marital property. We reverse the judgment insofar as it awards the wife alimony and divides the marital property. We affirm the judgment insofar as it invalidates the postnuptial agreement. The husband has not challenged the disposition of the children's custody or the award of child support in the judgment.

### Background

The husband filed a complaint for a divorce in the current action on November 5, 2019, alleging, among other things, an irretrievable breakdown of the marriage. In the complaint, the husband asserted that, five years earlier, the parties had entered into a postnuptial agreement pertaining to the division of their assets and debts and the wife's waiver of support in the event of a divorce. The husband asked that the trial court incorporate the postnuptial agreement, a copy of which he attached to the complaint, into the divorce judgment. The wife moved the trial

court to strike the postnuptial agreement or, alternatively, to hold that it was invalid.

On July 6, 2020, the trial court held a hearing on the issue of the validity of the postnuptial agreement. Evidence adduced at the hearing indicated that the husband and the wife married in May 2009; it was the second marriage for both. The husband had one child from his previous marriage, but that child did not live with the parties. It is undisputed that the husband pleaded guilty to a charge of domestic violence involving his former spouse before he and the wife married.

The husband testified that the wife's spending became an issue during the marriage. He commenced a divorce action in December 2012 ("the 2012 divorce action"). At that time, the parties had one child together. The parties' second child was born in 2015. When the husband commenced the 2012 divorce action, the wife and their child moved from the marital residence in Chilton County to Walker County, where the wife's family lived. The wife lived in her grandfather's house and began working for the Alabama Department of Transportation in Walker County. The wife would visit the husband at the marital residence in Chilton County on weekends.

In March 2014, the husband said, the wife contacted him "about working the marriage out and [he] told her that with her history of finances, [a postnuptial agreement] is what it would take for [them] to move forward with the marriage." The husband said that, at first, the wife was hesitant about entering into a postnuptial agreement. According to the husband, they discussed the agreement again later, and, he said, she told him she would agree to it if he would agree to dismiss the 2012 divorce action.

The wife said that both parties had talked about reconciling. However, the wife testified that the first time she knew that the husband wanted her to enter into a postnuptial agreement was at the end of October 2014. On November 3, 2014, the wife sent the husband by email a handwritten note that she had scanned into a computer file with her "stipulations," i.e., the requests she made of him before she would agree to stay in the marriage. Her first request was that the parties never divorce and that they spend the rest of their lives together. The second request was that the husband not work with anyone related to Dorothy Hubbard, his accountant in Texas, although the wife indicated that the husband could continue to work with Hubbard. As part of that request,

the wife specifically mentioned Hubbard's daughter and her children, saying that they were to be "completely void out of [the husband's] life ... for infinity." The third request was that "everything be [the husband's]." It is not entirely clear what the wife meant by that final request. The handwritten note ended with the wife's statement that she acknowledged and understood the agreement. The husband said he forwarded the email to his attorney. He also said that, in October 2014, he had given the wife a draft of the postnuptial agreement for her to review. It is undisputed that the wife's "stipulations" were not memorialized in the postnuptial agreement.

On November 6, 2014, the husband said, he drove the wife to the Montgomery office of the attorney whom he had retained to represent him in the 2012 divorce action. The attorney testified that he had drafted the postnuptial agreement in September or October 2014. He said that he had had no discussions with the wife regarding the agreement beforehand. The husband testified that the wife knew that they were going to Montgomery to sign the agreement, which, he said, they had discussed before. On the drive, he said, he asked the wife if she had any

questions about the agreement and whether she was sure "this is what she wanted to do."

The wife denied that the husband had told her they were going to Montgomery to sign the postnuptial agreement that day. She said that she believed that they were going to Montgomery to run errands and to eat at a restaurant to celebrate their reconciliation.

The husband testified that, once they arrived at his attorney's office, the attorney gave the husband and the wife copies of the postnuptial agreement for them to review and then left them alone. The husband testified that, while the attorney was out of the room, the wife asked him what the agreement meant and that he told her "[t]hat basically what was hers at the time of the marriage was hers and what was [his] was [his]." When the wife had finished reviewing the agreement, the husband called the attorney back into the room. The husband said that the attorney went over the postnuptial agreement with the parties and asked them if they had any questions. No one had any questions, the husband said, and he and the wife initialed each page of the agreement and then signed it in front of witnesses and a notary.

The wife did not dispute that she had signed the postnuptial agreement at the attorney's office. She testified that the husband was "very controlling, bullying, intimidating." She said that if she did not follow his rules, he would throw things at her and the children and that he was also mentally and verbally abusive. She said that the husband's past behavior had played a part in her decision to sign the agreement. When they arrived at the attorney's office, the wife said, the husband told her, "You're good, understood?" She said that she had taken that to mean that she was to agree with him. She said that she had felt "scared for [her] life" if she did not sign the postnuptial agreement. She also said that she did not know what would happen to her when she got home if she did not sign the agreement. She conceded, however, that, at the time she signed the agreement, the husband did not control where she lived, she had a job, and she had the protection of her family in Walker County. When asked during the hearing on the validity of the postnuptial agreement if she had voluntarily signed the agreement, the wife responded, "Yes." She also said that she had acknowledged to the notary that she freely signed the agreement but then stated that she had lied under oath to the notary when she said that. She also said that she had

understood the terms of the agreement when she signed it. When asked why she had wanted to reconcile with a man whom she professed to be afraid of, she said that she had wanted to get back together with the husband "for the protection of [her] child."

Members of the attorney's staff witnessed and notarized the postnuptial agreement. The attorney and his staff members testified that, when the wife was in the attorney's office the day of the signing, she had appeared to be calm and had showed no signs of distress. The attorney said that the atmosphere in the room had been friendly and businesslike and that he did not have a sense that there was any disagreement over signing the agreement. He said that the wife had not asked any questions, had not asked for more time to review the agreement, and had not asked to have her own attorney, although he had advised her that he represented the husband and not her. It is undisputed that, when the agreement was written and executed, the wife did not have an attorney; the attorney who had been representing her in the 2012 divorce action had withdrawn from his representation of her in the spring of 2014.

The husband said that the wife never showed any signs of regret or remorse after leaving his attorney's office and that she never told the husband that she believed that the postnuptial agreement was unfair. The husband's attorney said that the wife never expressed to him any remorse about signing the agreement.

The terms of the postnuptial agreement provided that, in consideration of ten dollars and covenants and promises contained therein, the husband and the wife each agreed to certain waivers. In the postnuptial agreement, the husband and the wife agreed that, upon the death of the other, each would give up any right to make a claim against the other's retirement accounts, pension plans, retirement plans, and any other deferred-compensation or benefit plan. Each party also agreed to give up any rights or interest he or she had acquired in the other's property because of their marriage and any claim for alimony, support, or separate maintenance.

The husband submitted into evidence two handwritten lists that the wife had compiled that were used to develop the lists of her assets and liabilities included in the postnuptial agreement. The first list included a boat and a trailer, a truck, a bedroom suite, a gun cabinet,

various guns, and a mini fridge. The wife said that she had provided the husband with the first list, not in anticipation of the preparation of the agreement but because, she said, the husband had wanted to know what he was to bring from the house where the wife was living back to the marital residence in Chilton County. The wife denied that the list had anything to do with the preparation of the agreement, saying that she had more assets than those listed.

The second list contained the names of nineteen banks and stores to whom the wife owed a debt. The wife testified that she had prepared that list for the husband because, she said, he had wanted to know her financial situation so that he could pay off her debts when they got back together. The debts were never discussed as part of the postnuptial agreement, the wife said. The husband's attorney testified that the wife had not objected to anything that was included in the final, typewritten list of the wife's assets and liabilities that his office had created from the wife's handwritten lists.

The husband did not itemize his assets and liabilities but, instead, prepared a list of what he said was "the basic bottom line," adding that if he listed his assets individually, "it would be a thick, thick book." He said

that he had a bank account with a value of \$1,050; real estate with a value of \$300,000; automobiles with a total value of \$16,000; furniture and fixtures with a value of \$15,000; and interest in his businesses, Weston Transportation and WT Truck Brokerage, with a value of \$400,000. He testified that he had no category of property that did not appear on the list, and he stated that his assets totaled \$732,050. He listed total liabilities in the amount of \$311,169.03.

On July 6, 2020, the same day as the hearing on the validity of the postnuptial agreement, the trial court entered an order finding that "the entire transaction [was] not fair, just, and equitable" from the wife's point of view and that there had not been adequate consideration. Based on those findings, it invalidated the postnuptial agreement.

At the trial, held over four days in January, February, and April 2022, the wife provided brief testimony on the issue of the validity of the postnuptial agreement. She said that the husband had paid her debts when they reconciled in 2014. She also testified that, during the parties' separation after the commencement of the 2012 divorce action, she had still loved the husband and that they had still been intimate. She believed

that she became pregnant with the parties' second child before they signed the agreement.

The trial court entered the final judgment in the current divorce action on September 21, 2022, and denied a motion the husband had filed to vacate the trial court's interlocutory order invalidating the postnuptial agreement. The trial court entered an amended final judgment the next day, but that amended judgment did not contain anything related to the interlocutory order. The husband filed a motion to alter, amend, or vacate the judgment, which the trial court denied. The husband timely filed his notice of appeal to this court.

### Analysis

On appeal, the husband argues that the judgment must be reversed and the cause remanded because the trial court did not make the express findings required by § 30-2-57, Ala. Code 1975, when it awarded the wife alimony of \$2,500 per month for sixty months. The wife joins the husband's argument as to this issue.

We agree with the parties that the trial court failed to make the required findings, which include whether the wife's estate was insufficient to enable her to acquire the ability to preserve, to the extent

possible, the economic status quo that existed during the marriage, whether the husband could afford to pay alimony without undue economic hardship, and whether an award of alimony was equitable under the circumstances. § 30-2-57(a). Thus, based on our holding in Laurendine v. Laurendine, 353 So. 3d 1148 (Ala. Civ. App. 2021), we reverse the judgment insofar as it awards the wife alimony and remand the cause with instructions to the trial court to enter a new judgment that complies with § 30-2-57.<sup>1</sup> In addition, because "the question of alimony is intertwined with the issue of the division of the marital property," Grocholski v. Grocholski, 89 So. 3d 123, 133 (Ala. Civ. App. 2011), we also reverse the judgment insofar as it divides the marital property. On remand, the trial court should reconsider its division of the parties' marital property in conjunction with its alimony determination, Lopez v. Rodriguez, [Ms. 2210320, Jan. 20, 2023] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Civ. App. 2023). Because the trial court must consider the entire property division on remand, we will not consider at this time the husband's

---

<sup>1</sup>We note the husband's argument that a remand is unnecessary because, he says, the evidence does not support an award of alimony. We will defer any consideration of that issue and allow the trial court to reconsider its award of alimony in a manner that complies with § 30-2-57.

contention that the trial court erred in dividing the investment accounts that he says were held for the parties' children under the Texas Uniform Transfers to Minors Act.

Because the validity of the parties' postnuptial agreement bears directly on the issues of alimony and the division of the parties' marital property, we will address the husband's challenge to the trial court's determination that the agreement was invalid. Our standard of review of this issue is well settled. In a case in which the evidence is presented to the trial court ore tenus, such as this one, the findings of the trial court are presumed correct and will not be set aside unless they are plainly and palpably wrong or unjust. Knox Kershaw, Inc. v. Kershaw, 552 So. 2d 126 (Ala. 1989).

In its interlocutory order invalidating the postnuptial agreement, the trial court found "that the entire transaction is not fair, just and equitable from the [wife's] point of view and there is not 'adequate consideration.'" The trial court also found that the husband's attorney had provided the wife with adequate notice that he did not represent her. The trial court did not set forth the basis for its findings.

Both prenuptial and postnuptial agreements are valid in Alabama, but courts will scrutinize them to ensure that they are just and reasonable. Northington v. Northington, 257 So. 3d 326, 330 (Ala. Civ. App. 2017); §§ 30-4-9 and 43-8-72, Ala. Code 1975. The standard for scrutinizing prenuptial and postnuptial agreements is the same. Nelson v. Estate of Nelson, 53 So. 3d 922, 927 (Ala. Civ. App. 2010).

The language the trial court used in its order invalidating the postnuptial agreement is taken from the standard that has come to be known as the Barnhill tests, which this court established in Barnhill v. Barnhill, 386 So. 2d 749 (Ala. Civ. App. 1980). According to that standard, a party seeking to enforce a prenuptial agreement must show "that the consideration was adequate and that the entire transaction was fair, just, and equitable" from the other party's point of view or "that the agreement was freely and voluntarily entered into ... with competent independent advice and full knowledge of [any] interest in the estate and its approximate value." Barnhill, 386 So. 2d at 751. "Meeting the requirements of either of the above tests is sufficient to give effect" to a prenuptial or postnuptial agreement. Id.

The husband argues that the trial court erred in finding that he had failed to meet the first Barnhill test, i.e., in finding that there had not been adequate consideration and that the entire transaction was not fair, just, and equitable from the wife's point of view. In Tibbs v. Anderson, 580 So. 2d 1337, 1339-40 (Ala. 1991), our supreme court discussed the application of the first Barnhill test to a postnuptial agreement. In analyzing whether the consideration in that case had been adequate, the Tibbs court wrote that Mr. Tibbs's relinquishment of any right to his wife's estate in the agreement at issue in that case "could also be considered adequate consideration for the [wife] to sign the agreement." 580 So. 2d at 1339.

Here, in the postnuptial agreement the husband agreed to give up any right or interest he had in the wife's separate property before the marriage and the property obtained during the marriage that was in her name, "including all interest, dividends, rents, profits, appreciation, and depreciation which may accrue or derive from the property and interests in any manner." He also waived the right to make a claim against any retirement account, pension plan, retirement plan, or any other deferred-compensation or benefit plan the wife had. As to property the parties

jointly held, the husband agreed to divide that property pursuant to a formula contained in the postnuptial agreement. Under Tibbs, the husband's waiver of any rights he had to the wife's separate property and to certain jointly owned property constitutes sufficient consideration. Therefore, we conclude that the trial court erred in determining that the husband had failed to provide adequate consideration for the agreement.

Our inquiry does not end there, however. The second prong of the first Barnhill test requires a prenuptial agreement to be fair, just, and equitable from the point of view of the spouse against whom it is sought to be enforced. Barnhill, 386 So. 2d at 751. We consider this issue in tandem with the husband's contention that he established the validity of the postnuptial agreement under the second Barnhill test, that is, "that the agreement was freely and voluntarily entered into ... with competent independent advice and full knowledge of [any] interest in the estate and its approximate value." Id. At 751. As the husband notes in his opening brief, courts have sometimes considered elements used to demonstrate that an agreement is fair, just, and equitable -- a prong of the first Barnhill test -- when determining whether a postnuptial agreement has been freely and voluntarily entered into. Stated differently, since

Barnhill, "the elements of the second test are considered as proof of the overall fairness required by test one." Lemaster v. Dutton, 694 So. 2d 1360, 1363 (Ala. Civ. App. 1996) (plurality opinion). Therefore, if the husband failed to demonstrate that the wife freely and voluntarily entered into the postnuptial agreement, he will also have failed to demonstrate that the agreement was fair, just, and equitable from the wife's point of view. See, e.g., Woolwine v. Woolwine, 519 So. 2d 1347, 1350 (Ala. Civ. App. 1987) (concluding that entire prenuptial transaction had been fair, just, and equitable from wife's point of view when there was "absolutely no evidence of fraud or duress in the execution of the agreement," wife had voluntarily agreed to sign it, wife had been advised of the content and effect of the agreement, and wife was provided with the opportunity to seek independent advice).

In Treadway v. Treadway, 324 So. 3d 842 (Ala. Civ. App. 2020), a case factually similar to the current case, this court affirmed a trial court's judgment invalidating the postnuptial agreement the parties had entered into when they reconciled during the pendency of a previous divorce action. The trial court had found that the wife in that case had not freely and voluntarily entered into the postnuptial agreement and

that the agreement was not fair and equitable to the wife. Id. at 852. In that case, the wife presented evidence indicating that she had signed the postnuptial agreement during the course of a heated divorce action, that both parties had sought criminal domestic-abuse charges against the other, and that the wife had signed the postnuptial agreement because the husband in that case had isolated her from her family and then had threatened to leave her without a place to live and to take custody of the parties' older child unless she signed it. The wife also presented evidence indicating that she had not been given the opportunity to talk with the attorney who had drafted the agreement at the husband's request and that she had not been given the opportunity to have her own attorney review the agreement before she signed it. Id. at 853. In affirming the trial court's judgment, we held that, although the husband had given a different account regarding the creation and signing of the postnuptial agreement, it was the trial court's duty to reconcile conflicts in the evidence and that there was sufficient evidence to support the finding of the trial court. Treadway, 324 So. 3d at 853 (citing Caseco, LLC v. Dingman, 65 So. 3d 909, 925 (Ala. Civ. App. 2010), and Hornaday Transp., LLC v. Fluellen, 116 So. 3d 236, 246 (Ala. Civ. App. 2012)).

In this case, the trial court did not state in its order invalidating the postnuptial agreement why it found that the entire agreement was not fair, just, and equitable from the wife's point of view. However, when the trial court in a nonjury case enters a judgment without making specific findings of fact, the appellate court "will assume that the trial judge made those findings necessary to support the judgment." Transamerica Com. Fin. Corp. v. AmSouth Bank, 608 So. 2d 375, 378 (Ala. 1992). Moreover, "[u]nder the ore tenus rule, the trial court's judgment and all implicit findings necessary to support it carry a presumption of correctness." Id.

As in Treadway, the trial court in this case heard conflicting evidence regarding the creation and signing of the postnuptial agreement. The wife testified that she had not been aware that the parties were going to Montgomery to sign the agreement until they arrived at the office of the husband's attorney. Upon arriving, the wife said, the husband told her, "You're good, understand?," which she understood to mean that she was to agree with the husband about the terms of the postnuptial agreement. She also testified that the husband had been abusive in the past and that she was afraid of what the husband

would do if she did not agree with him while in the attorney's office. In fact, she said, she had feared for her life if she did not sign the agreement.

Additionally, the wife testified that, when she created her lists of assets and liabilities, she was not aware that the husband intended to use them as part of the postnuptial agreement. She believed that the assets she listed were items that the husband was going to bring from the house where she was living in Walker County back to the marital residence in Chilton County. She testified that she had more assets than those she had included in that list. As to her liabilities, she said that she had created that list in the belief that it reflected her personal debts that the husband was going to pay off when they reconciled, and, in fact, he did pay off her debts after they reconciled.

The trial court appears to have believed the wife's testimony that, based on her experiences with the husband, she had been afraid of what he would do if she did not sign the postnuptial agreement and that that is why she signed it. The husband argues that duress in the execution of agreements must be proven by clear and convincing evidence. In support of his argument, he cites cases involving attempts to set aside divorce settlement agreements or divorce judgments. The second Barnhill test

itself requires only that a prenuptial or postnuptial agreement be entered into "freely and voluntarily," *id.* at 751; it does not invoke fraud or duress as the only grounds upon which the agreement can be invalidated, and the husband cites no authority that would require such a finding to invalidate a prenuptial or postnuptial agreement.

Furthermore, even if clear and convincing evidence of duress were required -- and, to be clear, we do not resolve that question today -- the wife testified that, based on the husband's previous abusive behavior toward her, she had feared for her life if she did not sign the postnuptial agreement just as it was presented to her in the husband's attorney's office. The trial court reasonably could have been clearly convinced that the wife's fear vitiated the husband's claim that the wife had freely and voluntarily entered into the agreement.

Based on the record before us, we conclude that the evidence was such that the trial court could have found that husband failed to meet his burden of demonstrating that the wife had voluntarily and freely entered into the postnuptial agreement and that the agreement was fair, just, and equitable from the wife's point of view. Thus, we cannot say that the

trial court's implicit determination that the postnuptial agreement was invalid under both of the Barnhill tests is plainly and palpably wrong.

Conclusion

For the reasons set forth above, we reverse the judgment to the extent that it awards the wife alimony and divides the parties' marital property, including the investment accounts that the husband contends were held for the parties' children under the Texas Uniform Transfer to Minors Act, and we remand the cause for the entry of a new judgment that reconsiders those issues in a manner that complies with § 30-2-57. We affirm the judgment insofar as it invalidates the postnuptial agreement.

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

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