rel: March 15, 2019

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

2170449 and 2170450

Matthew Kyle Casey

v.

Jeni Corley Casey

Appeals from Shelby Circuit Court
(DR-14-900777.01 and DR-14-900777.02)

DONALDSON, Judge.

Matthew Kyle Casey ("the father") appeals from two identical judgments entered by the Shelby Circuit Court ("the trial court"), one in case no. DR-14-900777.01 ("the .01 action") and the other in case no. DR-14-900777.02 ("the .02

action"). In appeal no. 2170449, we dismiss the father's appeal from the judgment entered in the .01 action. In appeal no. 2170450, we affirm the judgment entered in the .02 action.

Facts and Procedural History

In January 2015, the trial court entered a judgment divorcing the father and Jeni Corley Casey ("the mother"); that judgment incorporated a written agreement that had been entered into between the parties. The divorce judgment provided that the parties would have joint physical custody of their two children, a daughter born in 2008 ("the daughter") and a son born in 2009 ("the son"); that the father would have physical custody during the first and third full weeks of each month; and that the mother would have physical custody during the second and fourth full weeks of each month; but that, despite the general custody provisions recited above, the father would have physical custody on Father's Day, the mother would have physical custody on Mother's Day, and each parent would have physical custody of the children on each child's birthday every other year. The divorce judgment did not specify which party would have physical custody of the children during the Thanksgiving, Christmas, or Easter

holidays. The divorce judgment further provided that neither party would pay child support; however, the divorce judgment provided that the mother would be responsible for the cost of the children's clothes and shoes, that the father would provide medical and dental insurance for the children, and that each party would be responsible for one-half of various other expenses of the children. In addition, the divorce judgment provided that the parties would have joint legal custody with respect to the children but that, in the event the parties could not agree on academic, religious, civic, cultural, athletic, medical, or dental matters, the father would have primary authority with respect to academic and athletic matters and the mother would have primary authority with respect to religious, civic, cultural, medical, and dental matters. Finally, the divorce judgment prohibited each party from making disparaging remarks about the other party to the children or to other persons in the children's presence and prohibited each party from "be[ing] under the influence of alcohol or drugs during any [custodial] period, or when in the presence of [the daughter or the son]."

In October 2015, the mother commenced the .01 action by filing a complaint that stated a claim seeking modification of the divorce judgment and a claim seeking a finding of contempt against the father. The mother's modification claim sought a judgment providing that she would have sole physical and sole legal custody of the children, awarding her child support, and providing that each party would be responsible for providing clothes and shoes for the children to wear while they were living at that party's residence.

The mother's contempt claim alleged that the father had willfully violated the divorce judgment by making disparaging remarks about the mother to the children and by willfully refusing to pay his share of certain expenses of the children as required by the divorce judgment. Answering the mother's complaint, the father denied the material allegations of the mother's contempt claim and asserted that the mother's modification claim was due to be dismissed because, the father said, the mother had improperly joined it with her contempt claim.

Although the joinder of the mother's modification and contempt claims in a single action was proper, see Austin v.

Austin, 159 So. 3d 753, 757 (Ala. Civ. App. 2013) (rejecting a party's argument challenging the propriety of the other party's joinder of her post-divorce-modification claim and her contempt claim in a single action), the mother commenced the .02 action by filing another copy of the same complaint with which she had commenced the .01 action and by paying a second filing fee. Despite the fact that the complaints the mother had filed in the .01 action and the .02 action were identical, no issue was raised in the trial court regarding whether the commencement of the .02 action violated § 6-5-440, Ala. Code 1975, which prohibits a party from prosecuting two actions stating the same claim against the same party at the same time in the courts of this state. Moreover, none of the mother's claims were dismissed before the entry of the final judgments in the .01 action and the .02 action.

The father did not answer the mother's complaint in the .02 action. On July 29, 2017, the trial court implicitly consolidated the two actions for trial by setting each of them for trial at the same time on October 3, 2017. On October 3, 2017, the trial court held a bench trial at which it received evidence ore tenus.

At trial, a witness testified that the father had consumed whiskey while trick-or-treating with the children on Halloween night in 2016 and that, by the time the children had finished trick-or-treating, the father was slurring some of his words when he spoke. The witness further testified that she had sent the mother a text message informing her that the father had been consuming alcohol on that occasion and stating that the witness did not think his doing so was appropriate. The parties' daughter testified that, during a trip to the beach in July 2017, the father had taken the children to a restaurant to eat and that he had drunk "a bunch of beers" at the restaurant. The parties' daughter further testified that there were occasions when the father had drunk "[b]eer after beer after beer after beer." She testified that he did not drink beer every night but that he drank beer more often than one night per month. The father testified that, aside from a single margarita he had drunk during the July 2017 beach trip, he had not consumed any alcohol in the presence of the children. The trial court's comments to the father upon the conclusion of the evidence at trial indicate that the trial

court did not find the father's denials that he had consumed alcohol in the presence of the children to be credible.

The mother testified that she was concerned about the children's hygiene while they were in the father's custody and gave examples of her complaints. The father also admitted that the mother had complained to him that the children were not well groomed when they returned from his custody; however, he testified that he disagreed with the mother's opinion on that issue.

The mother testified that the father had excluded her from participating in at least one meeting with the daughter's teacher by coming to the school before the appointed time for the meeting and meeting with the teacher by himself before the mother had arrived. The mother also testified that she had filled out a contact form for the children's school and had sent it to the father for him to add his contact information; however, the father had not merely added his contact information to the form -- he had also scratched out the mother's contact information before he turned it into the school so that the school would contact only him about the children. The mother testified that, when the school sends

written information home with the children during the father's custodial weeks, he never shares it with her and that she has to contact the school to find out if there are any upcoming field trips or other school activities. The mother also testified that, because the father did not share information with her concerning the children's schooling and school-related activities and because he had excluded her from school-parent communications, she was not able to be as involved in the children's schooling and school-related activities as she wanted to be. The mother further testified that the father had made decisions and had taken action that affected the children without consulting her first. As an example of the father's acting unilaterally without first consulting her, she cited the father's signing the son up for "travel" soccer without consulting either her or the son. The father testified that the son had quit travel soccer because the mother would not take him to practice; however, the son testified that he had quit travel soccer because he did not want to play travel soccer and instead wanted to play recreational soccer.

The mother testified that the son had told her that he also wanted to play baseball and that she had told the father but that the father had refused to allow the son to play baseball because, according to the father, "it's a dying sport and it's boring and all they do is stand around." The father admitted that the son had told the father that the son wanted to play baseball and that the father had refused to allow the son to play baseball despite the mother's telling the father that she thought the son should be allowed to play baseball if he wanted to. In response to a question posed by the trial court, the mother testified that the deadline for signing up for baseball had already passed.

The father admitted that he had refused to pay any portion of the cost of uniforms and costumes the children needed for extracurricular activities, citing the provision of the divorce judgment requiring the mother to pay for the children's clothing and shoes as his justification for the refusal. Both parties testified that the clothing the children were to wear while in the father's custody had been a source of dispute. The mother testified that she had agreed to be responsible for the children's clothing and shoes in the

parties' written agreement because she was afraid the father would not clothe the children appropriately. She further testified that she did not want the children to have to live out of a suitcase while they were at the father's residence and, therefore, had asked the father to buy a set of clothing for the children to wear while they were at his residence. She testified that the father had refused, citing the provision of the divorce judgment making the mother responsible for the children's clothes and shoes. The mother testified that she did not think that she should be obligated to provide two sets of clothing and shoes for each child as suggested by the father. The father admitted that he had refused to buy any clothes for the children to keep at his residence. He testified that he washes the clothing the children have worn while at his residence and that he returns that clothing to the mother between 6:15 and 6:30 a.m. on the Monday of her custodial weeks. The mother testified that the father returns the clothing wadded up in the children's suitcases and that she cannot determine whether it has been washed.

After the trial had been completed on October 3, 2017, the trial court, that same day, entered two orders in both the

.01 action and the .02 action that granted relief pendente lite. Among other things, those orders required the father to be randomly tested for alcohol and illicit drugs four times per month, required the mother to have the children at school on time when they were in her custody, required the parties to file CS-41 and CS-42 child-support forms, and ordered: "effective immediately, the parties' [son] shall be enrolled in [a recreational soccer league]. Both parties shall split said costs of ALL expenses including uniform and all attire associated with the league. Both parties shall transport the minor child on the week that they have custody."

On October 8, 2017, the trial court entered identical judgments in the .01 and the .02 actions. In pertinent part, each of those judgment provides:

> "1. The parties shall both maintain joint legal and physical custody of both of the parties' minor children. However, during the academic school year, the minor children shall reside with the [mother] during the school week. However, the [father] shall pick up the minor children each day from the bus stop and have them in his care, custody and control each day until 6:00 p.m. The father shall transport the minor children to the home of the [mother] each evening at 6:00 p.m.
>
> "2. During the summer months that the children are not in school, the parties' week off/week on custodial arrangement as ordered in the final

judgment of divorce shall be in full force and effect with the [father] having the first full week of summer.

"3. The fall break each year shall be spent entirely with the [mother]. The week long spring break each year shall be spent entirely with the [father].

"4. During the academic school year, the [father] shall have visitation the first, third and fifth weekends of each month beginning after school on Friday until 6:00 p.m. on Sunday. The [father] shall transport the children to the home of the [mother] after each visitation period.

"....

"6. The current tiebreakers [regarding disputes in legal-custody matters] listed in the final judgment of divorce are hereby modified as follows:

"A. Academic: [mother]
B. Religious: [mother]
C. Civic: [mother]
D. Cultural: [father]
E. Athletic: [father]
F. Medical: [mother]
G. Dental: [father]

"The assignment of said tiebreakers is in no way intended to negate the court-ordered directive [that] both parties ... communicate with the other and reach a compromise regarding the best interests of the minor children.

"7. Clothing: Each party shall be responsible for having a full supply of clothing and shoes for each child at [his or her] home[]. Neither party shall be expected or required to wash, dry, transport or provide clothing to the other party with one exception. If the minor children wear

> clothing belonging to the other party to or from visitation, the parties shall wash, dry, fold and return said clothing to the other party within 48 hours. If said clothing is not hand-delivered to the other party and the clothing is returned via mail, it shall be mailed timely to arrive to the other party within 72 hours of the return from said visit.
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> "....
>
> "10. Neither party shall consume alcohol in the presence of the minor children or while the children are in the care, custody and control of either parent. Neither party shall drive with the minor children in the[ir] care while under the influence of any mind-altering substance. The court-ordered random drug testing of the [father] shall cease February 1, 2018.
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> "17. Based on the evidence of income, joint legal and physical custody, payment of health insurance, and court-ordered transportation for visitation, neither party is hereby ordered to pay child support.
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> "....
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> "19. [The mother's contempt claim] is hereby denied.
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> "....
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> "22. Any and all requested relief not specifically addressed herein is hereby denied. Any part of the final judgment of divorce not expressly modified or altered herein shall remain in full force and effect."

On October 24, 2017, the father timely filed a Rule 59(e), Ala. R. Civ. P., motion to alter, amend, or vacate the

judgment entered in the .02 action only; he did not file a postjudgment motion in the .01 action. In pertinent part, the Rule 59(e) motion the father filed in the .02 action alleged:

> "3. The Court in its order of Modification of the Final Judgment of Divorce in part reads as follows:
>
> > "'1. The parties shall both maintain joint legal and physical custody of both of the parties' minor children. However, during the academic school year, the minor children shall reside with the [mother] during the school week. However, the [father] shall pick up the minor children each day from the bus stop and have them in his care, custody and control each day until 6:00 p.m. The father shall transport the minor children to the home of the [mother] each evening at 6:00 p.m.
> >
> > "'2. During the summer months that the children are not in school, the parties' week off/week on custodial arrangement as ordered in the final judgment of divorce shall be in full force and effect with the [father] having the first full week of summer.
> >
> > "'3. The fall break each year shall he spent entirely with the [mother]. The spring break each year shall be spent entirely with the [father].'
>
> "The Court did not address Christmas Holidays or Thanksgiving so under the Court's current order the [father] is not allowed to see his children on these very special holidays.
>
> "....

> "5. It is not in 'the best interest of the minor children' to modify the Final Judgment of Divorce. No material change of circumstances has occurred since the date of the divorce."

On October 26, 2017, the mother filed a motion in the .02 action only; that motion asked the trial court to hold the father in contempt because, she alleged, the father had willfully violated the judgment entered in the .02 action by consuming alcohol while the children were in his care. On November 5, 2017, the father filed a response to the mother's contempt motion in the .02 action only; in that response, he denied that he had violated the judgment entered in the .02 action. He also filed a countermotion in the .02 action only; his countermotion asked the trial court to hold the mother in contempt for allegedly violating the judgment entered in the .02 action by discussing the litigation between the parties with the children.

On November 29, 2017, the trial court held a hearing regarding the father's Rule 59(e) motion. Thereafter, on December 21, 2017, the trial court entered an order in the .02 action only; in pertinent part, that order stated that the judgment entered in the .02 action "shall be modified to include all holiday visitation in accordance with the Shelby

County standard visitation schedule" and purported to rule that the mother's contempt motion was denied. The order did not purport to rule on the father's contempt countermotion. On January 30, 2018, the father filed notices of appeal in both the .01 and the .02 actions.

Jurisdictional Issue in
Appeal No. 2170449

"'The timely filing of [a] notice of appeal is a jurisdictional act.' Rudd v. Rudd, 467 So. 2d 964, 965 (Ala. Civ. App. 1985); see also Parker v. Parker, 946 So. 2d 480, 485 (Ala. Civ. App. 2006) ('an untimely filed notice of appeal results in a lack of appellate jurisdiction, which cannot be waived')." Kennedy v. Merriman, 963 So. 2d 86, 88 (Ala. Civ. App. 2007). Although neither party has raised an issue regarding whether this court has jurisdiction in appeal no. 2170449, "'jurisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu.'" Stone v. Haley, 812 So. 2d 1245, 1245-46 (Ala. Civ. App. 2001) (quoting Wallace v. Tee Jays Mfg. Co., 689 So. 2d 210, 211 (Ala. Civ. App. 1997)).

The trial court entered the final judgments in both the .01 action and the .02 action on October 8, 2017. Pursuant to

Rule 4(a)(1), Ala. R. App. P., the period for the father to file his notices of appeal in the .01 action and the .02 action was 42 days from the entry of the final judgments. Rule 4(a)(3), Ala. R. App. P., provides that the timely filing of a Rule 59 motion will toll the running of the time for filing a notice of appeal; however, this court has held that the filing of a Rule 59 motion in one consolidated case will not toll the running of the time for filing a notice of appeal in the other. E.g., Cox v. Cox, 218 So. 3d 1215, 1219-20 (Ala. Civ. App. 2016).[1] The father filed a Rule 59 motion in the .02

[1]In Hanner v. Metro Bank & Protective Life Insurance Co., 952 So. 2d 1056 (Ala. 2006), our supreme court held that, unless a judgment resolving fewer than all consolidated actions had been certified as a final judgment pursuant to Rule 54(b), Ala. R. Civ. P., it could not be appealed until all the actions consolidated with it had been adjudicated. In Nettles v. Rumberger, Kirk & Caldwell, P.C., [Ms. 1170162, Aug. 31, 2018] ___ So. 3d ___ (Ala. 2018), however, our supreme court overruled Hanner, holding that, once a final judgment has been entered in an action, it is immediately appealable, regardless of whether that action is consolidated with one or more other actions that have not been adjudicated. Our supreme court decided Nettles after the judgments in the .01 and the .02 actions had been entered and made the application of its decision in that case prospective only. ___ So. 3d at ___ n.1. Therefore, Hanner is applicable to the appeals now before us. Nonetheless, because the judgments in the .01 and the .02 actions were entered on the same day, they both became immediately appealable at the same time under Hanner. The postjudgment motion filed in the .02 action tolled the running of the appeal period in that action but, under the

action, but neither he nor the mother filed one in the .01 action. Consequently, the time for appealing from the judgment entered in the .01 action was not tolled by the Rule 59 motion filed in the .02 action and began to run on October 9, 2017, the day after the entry of the judgment in that action on October 8, 2017; it expired on November 20, 2017. See Rule 4(a) and Rule 26(a), Ala. R. App. P.[2] The father filed his notice of appeal in the .01 action on January 30, 2018, well after the 42-day period for filing that notice of appeal had expired. Therefore, we dismiss appeal no. 2170449. See Rule 2(a)(1), Ala. R. App. P. ("An appeal shall be dismissed if the notice of appeal was not timely filed to invoke the jurisdiction of the appellate court."); and Cox, supra.

Finality of the Judgment Entered

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holding in Cox, supra, did not toll the running of the appeal period in the .01 action.

[2]The 42d day was Sunday, November 19, 2017, but Rule 26(a) provides, in pertinent part:

> "In computing any period of time prescribed by these rules, ... the day of the act, event, or default from which the designated period of time begins to run shall shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period extends until the end of the next day that is not a Saturday, Sunday, or legal holiday ...."

in the .02 Action

After the entry of the judgment in the .02 action and after the father had filed his Rule 59(e) motion in the .02 action, the mother filed a motion asking the trial court to hold the father in contempt for allegedly violating that judgment. The father then filed a countermotion asking the trial court to hold the mother in contempt for allegedly violating that judgment. The trial court's amended judgment purported to deny the mother's motion but did not purport to rule on the father's countermotion. This raises the issue whether the absence of a ruling on the father's countermotion deprives the trial court's judgment in the .02 action of finality. In Fox v. Arnold, 127 So. 3d 417, 421 (Ala. Civ. App. 2012), this court held that contempt petitions filed after the entry of the final judgment and after the filing of the parties' postjudgment motions did not deprive the judgment appealed from in that case of finality. This court held that the contempt petitions were nullities because they should have been treated as pleadings commencing a new action for which a new filing fee should have been paid. Id. Based on the holding in Fox, we conclude that, in the present case, both the

mother's contempt motion and the father's contempt countermotion that were filed after the entry of the final judgment and after the filing of the father's Rule 59 motion were nullities and, therefore, that the absence from the record of a ruling on the father's contempt countermotion does not deprive the judgment entered in the .02 action of finality.

The Merits of Appeal No. 2170450

The father first argues that the trial court committed reversible error by modifying the provisions of the divorce judgment relating to physical custody of the children because, he says, the mother failed to prove that a material change in circumstances had occurred since the entry of the divorce judgment and that a modification of the physical-custody provisions of the divorce judgment was in the best interests of the children. The trial court made no specific findings of fact; therefore,

> "this Court will assume that the trial court made those findings necessary to support its judgment. Transamerica Commercial Fin. Corp. v. AmSouth Bank, N.A., 608 So. 2d 375 (Ala. 1992); Fitzner Pontiac-Buick-Cadillac, Inc. v. Perkins & Associates, Inc., 578 So. 2d 1061 (Ala. 1991). When a trial court's judgment is based upon ore tenus evidence and that judgment is supported by the

> evidence, the judgment is presumed correct. This Court will reverse only if it finds the judgment to be plainly and palpably wrong, after considering all of the evidence and making all inferences that can logically be drawn from the evidence. Fitzner, supra. This Court will affirm the trial court's judgment if, under any reasonable aspect of the testimony, there is credible evidence to support that judgment. Watson v. Lazy Six Corp., 608 So. 2d 389 (Ala. 1992); Martin v. First Federal Savings & Loan Association of Andalusia, 559 So. 2d 1075 (Ala. 1990); Clark v. Albertville Nursing Home, Inc., 545 So. 2d 9 (Ala. 1989)."

Jantronic Sys., Inc. v. Brock, 646 So. 2d 1337, 1337-38 (Ala. 1994). Moreover,

> "'[i]n ore tenus proceedings the trial court is the sole judge of the facts and of the credibility of witnesses,' and 'we are required to review the evidence in a light most favorable to the prevailing part[y],' that is, the [mother]. Driver v. Hice, 618 So. 2d 129, 131 (Ala. Civ. App. 1993); see also First Health, Inc. v. Blanton, 585 So. 2d 1331, 1332 (Ala. 1991) (reviewing evidence in the light most favorable to the prevailing party where the trial court's judgment was entered after an ore tenus proceeding)."

Architectura, Inc. v. Miller, 769 So. 2d 330, 332 (Ala. Civ. App. 2000).

> "'Where, as in the present case, there is a prior judgment awarding joint physical custody, "'the best interests of the child'" standard applies in any subsequent custody-modification proceeding. Ex parte Johnson, 673 So. 2d 410, 413 (Ala. 1994) (quoting Ex parte Couch, 521 So. 2d 987, 989 (Ala. 1988)). To justify a modification

> of a preexisting judgment awarding custody, the petitioner must demonstrate that there has been a material change of circumstances since that judgment was entered and that "'it [is] in the [child's] best interests that the [judgment] be modified'" in the manner requested. Nave v. Nave, 942 So. 2d 372, 376 (Ala. Civ. App. 2005) (quoting Means v. Means, 512 So. 2d 1386, 1388 (Ala. Civ. App. 1987))."

"Ex parte Blackstock, 47 So. 3d 801, 804-05 (Ala. 2009).

> "....
>
> "'In order to prove a material change of circumstances, the noncustodial parent must present sufficient evidence indicating (1) that there has been a change in the circumstances existing at the time of the original custody judgment or that facts have been revealed that were unknown at the time of that judgment, see Stephens v. Stephens, 47 Ala. App. 396, 399, 255 So. 2d 338, 340-41 (Civ. App. 1971), and (2) that the change in circumstances is such as to affect the welfare and best interests of the child. Ford v. Ford, 293 Ala. 743, 310 So. 2d 234 (1975). The noncustodial parent does not have to prove that the change in circumstances has adversely affected the welfare of the child, but he or she may satisfy the first element ... by proving that the change in circumstances materially promotes the best interests of the child.'

"C.D.K.S. v. K.W.K., 40 So. 3d 736, 740 (Ala. Civ. App. 2009). 'A material change of circumstances occurs when important facts unknown at the time of the initial custody judgment arise that impact the

> welfare of the child.' K.E.W. v. T.W.E., 990 So. 2d 375, 380 (Ala. Civ. App. 2007)."

E.F.B. v. L.S.T., 157 So. 3d 917, 923-24 (Ala. Civ. App. 2014).

Because the mother was the prevailing party in the trial court and because the trial court made no specific findings of fact, we must assume that the trial court resolved all the conflicts in the evidence in favor of the mother. See Jantronic and Architectura, supra. Viewed in that manner, the record contains evidence from which the trial court reasonably could have found that the father had violated his agreement, which was incorporated into the divorce judgment, to refrain from being under the influence of alcohol when the children were in his custody. From the comments the trial court made upon the close of the evidence at trial and from its pendente lite order requiring the father to undergo random testing for the presence of alcohol and drugs in his system, we can infer that the trial court found that the father had placed himself under the influence of alcohol while the children were in his custody in violation of the divorce judgment. Moreover, the trial court reasonably could have found that, since the entry of the divorce judgment, the father had failed to ensure that

the children's hygiene was appropriate, that the father had sought to prevent the mother from receiving information from the children's school, and that the father had made unilateral decisions regarding the son's participation in sports without consulting either the mother or the son. In addition, the trial court could have found that there have been numerous conflicts between the father and the mother regarding the children's clothing, school activities, and extracurricular activities. "We find that the trial court could have properly reasoned that these events, when taken as a whole, constituted a material change in circumstances justifying modification of the [divorce judgment]." Reuter v. Neese, 586 So. 2d 232, 234 (Ala. Civ. App. 1991). Moreover, the trial court reasonably could have inferred that it was in the children's best interests to spend less time in the custody of a parent who had demonstrated a propensity for placing himself under the influence of alcohol and for failing to ensure that the children's hygiene was appropriate when they were in his custody.

The father next argues that the trial court committed reversible error in transferring his primary decision-making

authority in academic matters to the mother; however, we cannot consider that argument because it was not presented to the trial court. See Andrews v. Merritt Oil Co., 612 So. 2d 409, 410 (Ala. 1992) ("[An appellate court] cannot consider arguments raised for the first time on appeal; rather, [an appellate court's] review is restricted to the evidence and arguments considered by the trial court.").

The father also argues that the trial court committed reversible error because it did not award him a specified "visitation" schedule that was independent of the mother's discretion; however, the only argument he presented to the trial court relating to that subject was his assertion in his Rule 59(e) motion that "[t]he [trial] Court [had] not address[ed] Christmas Holidays or Thanksgiving so under the Court's current order the [father] is not allowed to see his children on these very special holidays." The trial court amended its final judgment to specify that the parties' custodial periods on holidays would be in accordance with the Shelby County standard-visitation schedule. Thus, the trial court adopted a specified schedule that was not subject to the mother's independent discretion with respect to the Christmas

and Thanksgiving holidays. Insofar as the father argues that the trial court did not award him a specific schedule with respect to other periods, we cannot consider his argument because he did not present it to the trial court. See Andrews, supra.

Finally, the father argues that the trial court committed reversible error because, he says, the trial court did not comply with Rule 32, Ala. R. Jud. Admin., in ruling that neither party would be obligated to pay child support; however, we cannot consider that argument because it was not presented to the trial court. Id.

Conclusion

For the reasons discussed above, in appeal no. 2170449, we dismiss the father's appeal from the judgment entered by the trial court in the .01 action, and, in appeal no. 2170450, we affirm the judgment entered by the trial court in the .02 action. The mother's request for an attorney's fee on appeal is denied.

2170449 -- APPEAL DISMISSED.

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

2170450 -- AFFIRMED.

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

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