

Rel: November 22, 2024

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2024-2025

CL-2024-0022

J.D.

v.

**E.C.H. n/k/a E.C.D., D.P.D., D.C.H., and Jerry S. Barclay as
guardian ad litem of S.H. and E.H., minor children**

**Appeal from Madison Circuit Court
(DR-20-305.80)**

HANSON, Judge.

J.D. ("the paternal grandmother") appeals from a judgment of the Madison Circuit Court ("the circuit court") awarding Jerry S. Barclay, the guardian ad litem appointed in this adoption case, an attorney's fee of \$9,760.

Facts and Procedural History

D.C.H. ("the father") and E.C.D. ("the mother") are the natural parents of S.H., born in 2011, and E.H., born in 2013 ("the children"). In 2016, the mother and the father divorced in Virginia following the father's arrest and conviction for crimes related to the sexual abuse of several minor victims (not including the children). The father was sentenced to 50 years in prison. The Virginia divorce judgment ("the Virginia judgment") awarded sole legal and sole physical custody of the children to the mother, but it also incorporated an agreement that awarded visitation rights to the paternal grandmother, who had intervened in and been made a party to the Virginia divorce action. In 2018, the mother married D.P.D. ("the husband"), and the mother, the husband, and the children have resided in Alabama since that time. On November 4, 2019, the husband filed petitions in the Madison Probate Court ("the probate court") seeking to adopt the children. In his petitions, the husband alleged that the father had impliedly consented to the adoptions by virtue of his criminal conviction and the resulting 50-year prison sentence. The husband's petitions also recognized the paternal grandmother's visitation rights with the children but requested

limitation of the paternal grandmother's continued visitation and of her communication with the children following the adoptions. On June 22, 2020, the paternal grandmother initiated an action in the circuit court against the mother seeking to formally register the Virginia judgment pursuant to § 30-3B-305, Ala. Code 1975, and to enforce or modify the visitation rights granted in the Virginia judgment. That same day, the paternal grandmother filed in the probate court a "petition to enforce" her visitation rights as provided in the Virginia judgment. On June 29, 2020, the husband filed a motion in the probate court seeking to dismiss the paternal grandmother's "petition to enforce."

On June 30, 2020, the probate court held a contested hearing on the husband's adoption petitions and entertained arguments on the husband's motion to dismiss the paternal grandmother's "petition to enforce;" on that same date, the probate court entered judgments in the adoption proceedings granting the husband's petitions to adopt the children and dismissing the paternal grandmother's "petition to enforce" her visitation rights with the children. The father, through new counsel, and the paternal grandmother each filed postjudgment motions in the probate court. The postjudgment motions were denied by operation of

law, and both the paternal grandmother and the father appealed to the circuit court from the probate court's judgments.

On August 11, 2020, the mother filed a motion in the circuit court to dismiss the paternal grandmother's action in that court on the claimed basis that the circuit court lacked subject-matter jurisdiction. Specifically, the mother argued that, under § 30-3-4.2(j), Ala. Code 1975, the "probate court's orders of adoption [had] superseded the [Virginia judgment's] custody and visitation provisions, rendering them null and void," and that the probate court had exclusive jurisdiction over postadoption grandparent-visitiation rights pursuant to former § 26-10A-30, Ala. Code 1975.¹ In support of the motion to dismiss, the mother submitted copies of the adoption judgments entered by the probate court. The mother also moved for an award of attorney's fees. On August 25, 2020, the circuit court entered a final judgment summarily dismissing the paternal grandmother's action and awarding the mother an attorney's fee in the amount of \$2,740. The paternal grandmother timely appealed from the circuit court's judgment to this court.

¹Section 26-10A-30, Ala. Code 1975, was repealed by Act No. 2023-92, Ala. Acts 2023. Section 26-10E-29, Ala. Code 1975, now addresses grandparent visitation in adoptions.

This court consolidated the multiple appeals involving the children and held that the probate court's judgments granting the husband's petitions to adopt the children were void because they had been entered in a manner inconsistent with due process. See J.D. v. D.P.D., 348 So. 3d 423, (Ala. Civ. App. 2021). Regarding the paternal grandmother's appeal from the circuit court's judgment, this court concluded that the circuit court's judgment dismissing her action seeking enforcement or modification of an existing visitation award arising out of the Virginia judgment had been erroneous because the circuit court had had subject-matter jurisdiction to consider the paternal grandmother's request to modify and enforce the Virginia judgment under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), § 30-3B-101 et seq., Ala. Code 1975, because the children's home state was Alabama (where they and the mother had resided since 2018, and no parent of the children or person acting as a parent continued to live in Virginia). J.D. v. D.P.D., 348 So. 3d at 436. Finally, we held that the probate court's judgments dismissing the paternal grandmother's "petition to enforce" that she had filed in that court should be reversed. We concluded that the paternal grandmother was a proper party to the stepparent-adoption

petitions filed by the husband because the paternal grandmother, pursuant to the Virginia judgment, had visitation rights as to the children. Also, the husband had named the paternal grandmother as a party and had sought relief concerning her visitation rights. This court determined that the paternal grandmother's claims seeking enforcement of the Virginia judgment were cognizable in the probate court because, pursuant to former § 26-10A-30, the probate court has jurisdiction to grant or maintain grandparent-visitation rights when a child is adopted by a stepparent or another suitably close relative, and the adoption petitions in these cases included an express claim requesting a more limited award of visitation to the paternal grandmother than what was set forth in the Virginia judgment.

On remand, the circuit court again had before it the paternal grandmother's action seeking to enforce visitation awarded in the Virginia judgment (case number DR-20-305), and the probate court again had before it the husband's adoption petitions (case numbers 8325-A and 8326-A). On November 30, 2021, the paternal grandmother filed a motion in the probate court seeking to transfer the adoption petitions to the

circuit court, pursuant to former § 26-10A-21, Ala. Code 1975,² and to have them consolidated with her action seeking to enforce visitation. On December 20, 2021, the probate court signed an order transferring the adoption petitions to the circuit court. However, the probate court's order was mistakenly filed in the Madison Juvenile Court on December 28, 2021, and the adoption petitions were given juvenile-court case numbers. On December 29, 2021, the juvenile court entered an order noting that the probate court had ordered that the adoption petitions be transferred to the circuit court. The juvenile court's order stated that "'there is currently pending before the circuit court case number [DR-20-305] involving the same parties and it appears to this Court to be filed on the same issues as are presented in this present case. Therefore, this cause is to be consolidated with case number [DR-20-305].'" Ex parte D.C.H., 385 So. 3d 37, 42 (Ala. Civ. App. 2023).

On March 18, 2022, the husband filed, in the circuit court, a "Motion to Bifurcate and Transfer Adoption Proceedings to Probate Court." The husband argued that the adoption petitions should be retransferred to

²Section 26-10A-21, Ala. Code 1975, was repealed by Act No. 2023-92, Ala. Acts 2023. Section 26-10E-3, Ala. Code 1975, now addresses transfer of adoption proceedings.

the probate court. He argued that adoption proceedings are "primarily cognizable" in probate court, citing former § 12-12-35, Ala. Code 1975.³ The husband argued that former § 26-10A-21, Ala. Code 1975, was inapplicable because it allowed for a discretionary transfer from a probate court to a circuit court when a dispute was pending in another court involving the custody of a child, and, he argued, the circuit court in the current cases had before it an issue of grandparent visitation.

On March 23, 2022, the circuit court purported to grant the motion to retransfer the adoption petitions to the probate court. On April 7, 2022, the paternal grandmother filed a motion to vacate the order purportedly retransferring the adoptions to the probate court. She argued that she was not afforded a hearing on the matter and was not given time to respond, pursuant to Rule 6, Ala. R. Civ. P., before the motion was granted. The paternal grandmother also asserted that the husband had misrepresented the pertinent facts, caselaw, and statutes in his motion. She argued that this court's opinion in J.D. v. D.P.D., supra, had clearly stated that the Virginia judgment awarding her grandparent visitation

³Section 12-12-35, Ala. Code 1975, was repealed by Act No. 2023-92, Ala. Acts 2023. Section 26-10E-3, Ala. Code 1975, now address transfers of adoption proceedings.

"is a 'child-custody determination' as defined by the Uniform Child Custody Jurisdiction and Enforcement Act ('the UCCJEA'), § 30-3B-101 et seq., Ala. Code 1975, and that, pursuant to the UCCJEA, such a judgment 'must be recognized and enforced by Alabama courts.' See G.P. v. A.A.K., 841 So. 2d 1252, 1255 (Ala. Civ. App. 2002)." J.D. v. D.P.D., 348 So. 3d at 433. She also argued that the circuit court had the authority under former § 26-10A-21, Ala. Code 1975, to address both the adoption petitions and the visitation issues. The paternal grandmother further argued that the husband's arguments that the Alabama Grandparent Visitation Act, § 30-3-4.2, Ala. Code 1975, or Ex parte R.D., 313 So. 3d 1119 (Ala. Civ. App. 2020), were controlling contradicted the law of the case as set out in J.D. v. D.P.D., wherein this court held that the provisions of the Alabama Grandparent Visitation Act did not apply to the Virginia judgment.

On April 8, 2022, the father filed a motion opposing bifurcation, arguing that there was no law requiring the adoption matters to be heard first and that it would be better if one judge heard all the relevant issues involving the children. On April 11, 2022, the circuit court denied the paternal grandmother's motion to vacate the retransfer orders. On April

22, 2022, the father filed a notice of appeal. On October 14, 2022, this court entered an order treating the father's appeal as a timely filed petition for writ of a mandamus. See Ex parte Montgomery Cnty. Dep't of Hum. Res., 291 So. 3d 1194 (Ala. Civ. App. 2019) (holding that an appellate court may elect to treat an appeal from an interlocutory order as a petition for a writ of mandamus), and Ex parte K.R., 210 So. 3d 1106 (Ala. 2016) (holding that lack of subject-matter jurisdiction may be raised at any time, even in an otherwise untimely mandamus petition).

While the father's petition for writ of mandamus was pending in this court, the paternal grandmother, on September 20, 2022, filed a motion in the circuit court to appoint Barclay as the children's guardian ad litem. In her motion, the paternal grandmother stated that Barclay had been appointed by the probate court to represent the children in the pending adoption proceeding. On September 27, 2022, the circuit court denied the motion.

On April 21, 2023, this court decided Ex parte D.C.H., 385 So. 3d 37 (Ala. Civ. App. 2023). We held, as an initial matter, that the inadvertent transfer of the probate court adoption proceedings to the juvenile court, instead of to the circuit court, had not divested the circuit

court of jurisdiction over the transferred cases in which the husband had initiated the probate-court action seeking to adopt the mother's children and the paternal grandmother had initiated the circuit-court action to enforce her visitation with children pursuant to the Virginia divorce judgment. The probate court's order transferring the adoption petitions to the circuit court clearly had been inadvertently filed in the juvenile court, and the inadvertent filing in juvenile court was a ministerial error. See former § 26-10A-21, Ala. Code 1975. However, we also concluded that the circuit court could not properly have considered the husband's motion to retransfer the adoption petitions back to the probate court after the probate court had granted the paternal grandmother's motion to transfer the adoption petitions to the circuit court, in which her action to enforce grandparent visitation was pending, and, therefore, we held that the father was entitled to mandamus relief directing the circuit court to set aside its order re-transferring the adoption petitions to the probate court. Former § 26-10A-21, Ala. Code 1975, which had allowed the probate court to transfer the adoption petitions to the circuit court where the visitation proceedings were pending, did not provide for a "retransfer" of an action. Once the probate court had transferred the action to the

circuit court, the probate court could not then change its mind and vacate or set aside its transfer order or order the case returned.

On May 21, 2023, the circuit court entered an order appointing Barclay as guardian ad litem for the two children and ordered that the payment of Barclay's fees should be equally divided by the parties. On September 27, 2023, the paternal grandmother, the mother, the husband, and Barclay entered into a partial settlement agreement that provided, in pertinent part,

"This agreement is made, entered into and executed, on this the 27th day of September, 2023, by and between Plaintiff/Respondent, [E.C.D.], Petitioner, [D.P.D.], Petitioner/Respondent, [J.D.] hereinafter respectively referred to as Mother, Stepfather and Paternal Grandmother, and [Barclay,] the Guardian Ad Litem, hereinafter referred to as GAL, for and on behalf of the best interests of the children subject to these actions.

"Witneseth [sic]

"WHEREAS, these parties and GAL desire to define the relationship between these parties and the minor children subject to these actions for all times hereafter by entering into an agreement which provides for the best interests of said children as well as the proper disposition of rights previously existing between the aforementioned parties and the proper handling of each party's responsibilities going forward; and

"WHEREAS, this Agreement shall be, subject to the approval of the Court incorporated by reference into and made

a part of any Order resulting from the filing of actions between said parties.

"NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and of the recitals set forth above, it is agreed by and between the aforementioned parties and GAL as follows:

"1. The Virginia Divorce Decree registered with this Honorable Court on or about June 24, 2020[,] and consolidated into these causes shall be modified to terminate all obligations, contact and visitation between Paternal Grandmother and Mother as well as between Paternal Grandmother and the children who are subject to these actions.

"2. All claims of Paternal Grandmother in all actions before this Honorable Court as well as in all actions which have or may arise before the Madison County, Alabama Probate Court and involve the children subject to these actions shall be dismissed with prejudice.

"3. Paternal Grandmother shall not participate -- either directly or indirectly in the proceedings remaining in these actions, personally or through counsel.

"4. Each of the parties involved in this Settlement Agreement shall pay and be responsible for his/her own attorney fees. Costs paid by said parties shall be taxed as prepaid.

"5. Mother and Stepfather shall pay and be responsible for fifty percent (50%) of the reasonable, customary fees charged by the Guardian Ad Litem (GAL) through the date of entry of an Order incorporating the terms of this Settlement Agreement; Paternal Grandmother shall pay and be responsible for the other fifty percent (50%) of said fees. GAL shall first, however, provide said parties with a detailed,

itemized invoice for their review. Once said fees have been reviewed and approved by the parties, the Fifteen Thousand Dollars and no/100 (\$15,000.00) currently paid into the Madison County, Alabama Probate Court shall be released to the GAL for partial payment of said fees.

"6. The provisions for child custody shall constitute a 'custody decree' or 'custody determination' under the Uniform Child Custody Jurisdiction and Enforcement Act, Section 30-3B-101, et seq., Code of Alabama (1975).

"7. The parties to this Agreement (i.e., Mother, Stepfather and Paternal Grandmother) and GAL have participated fully in the negotiation and drafting of this Agreement. The Agreement has been prepared by all parties equally, and is to be interpreted according to its terms. No inference shall be drawn that the Agreement was prepared by or is the product of any particular party.

"8. The parties to this Agreement and GAL respectfully acknowledge that this Agreement constitutes the entire understanding between them with respect to the issues involving Mother, Stepfather, Paternal Grandmother and the children subject to these actions and supersedes all and any other prior agreements, if any, heretofore made between them other than those herein expressly set forth. They acknowledge that issues involving the remaining party to these actions -- [the father] -- and the children subject to these actions are not addressed in this Agreement.

"9. The parties to this Agreement and GAL further respectfully acknowledge that each has signed this Agreement freely and voluntarily. It is agreed between the parties that this Agreement shall be filed in the Circuit Court of Madison County, Alabama as well as in the Probate Court of Madison County, Alabama should any action be filed there; and, it is acceptable to the aforementioned parties and GAL that the provisions of this Agreement, if acceptable to the

Court, shall be incorporated into and made a part of the Order(s) of said Courts.

"10. By execution of this agreement, Mother and Stepfather release Paternal Grandmother from claims which have been asserted or could have been asserted for any and all actions occurring before the execution of this agreement and the incorporation of this agreement in a court decree. By execution of this agreement, Paternal Grandmother likewise releases Mother and Stepfather from all claims which have been asserted or could have been asserted for any and all actions occurring before the execution of this agreement and the incorporation of this agreement in a court decree."

On October 19, 2023, the paternal grandmother, the mother, and the husband filed a joint motion for entry of a final judgment pursuant to Rule 54(b), Ala. R. Civ. P., asserting that the partial settlement agreement had resolved all the claims among them and that the remaining pending claims did not require resolution of the same issues or same facts decided in the partial settlement agreement. On October 30, 2023, the circuit court entered an order incorporating the terms of the settlement agreement. The circuit court expressly stated that the child-custody provision in its decree was a "custody decree" or "custody determination" under the UCCJEA and directed the entry of a final judgment pursuant to Rule 54(b).

On November 29, 2023, Barclay filed a motion seeking an award of fees for his service as guardian ad litem for the children. The motion provided in pertinent part:

"1. Pursuant to orders appointing him to serve as guardian ad litem to protect the interests of minor children in contested stepparent adoption proceedings and contested visitation proceedings, the undersigned attorney performed extensive services as guardian ad litem.

"2. In October, 2023, [J.D.], [the] paternal grandmother of the children, [E.C.D., the] mother of the children[,] and [D.D.], [the] stepfather of the children, entered into a written settlement agreement resolving their claims against one another. (That settlement agreement did not resolve claims asserted by or against another party to the litigation, the natural father of the children, [D.C.H.]

"3. The parties filed that partial settlement agreement with the court and requested that the court enter an order adopting and confirming the same. On October 30, 2023, the court did enter an order which confirmed, ratified and incorporated the partial settlement agreement and requiring the parties to obey the terms of same.

"4. That settlement agreement provided, in pertinent part, as follows: 'Mother and stepfather shall pay and be responsible for fifty percent (50%) of the reasonable, customary fees charged by the guardian ad litem (GAL) through the date of entry of an order incorporating the terms of this Settlement Agreement; Paternal Grandmother shall pay and be responsible for the other fifty percent (50%) of said fees, GAL shall first, however, provide said parties with a detailed, itemized invoice for their review. Once said fees have been reviewed and approved by the parties, the fifteen thousand dollars and no/100ths (\$15,000.00), currently paid

in to the Madison County, Alabama Probate Court shall be released to the GAL for partial payment of said fees.

"5. The quoted language constitutes a representation to the court and the guardian ad litem that the named parties had complied with previous orders entered by the probate court requiring deposits of fees with the clerk of that Court to ensure payment of the fees of the guardian ad litem. The probate court had ordered the mother and stepfather, on the one hand, and the paternal grandmother, on the other hand, to each deposit with the clerk of the Court two thousand five hundred dollars (\$2,500.00). The parties did make the required deposits.

"6. Thereafter the Probate Court ordered those parties to each deposit with the clerk of the Court the additional sum of five thousand dollars (\$5,000.00) to ensure payment of the fees of the guardian ad litem. The mother and stepfather made the required payment but it now appears that the paternal grandmother failed to comply with that Court's order and did not make that deposit.

"7. By email correspondence to counsel for the parties on October 18, 2023, the guardian ad litem provided the parties the required detailed, itemized invoice for his professional services. No party has filed any objection to the fees claimed in that invoice. A copy of that invoice is attached hereto, marked 'Exhibit A' and incorporated herein.

"8. The total amount of fees claimed by the guardian ad litem is twenty-four thousand five hundred twenty dollars (\$24,520.00). Under the terms of the Settlement Agreement incorporated within this court's October 30, 2023, order, the mother and stepfather are thus obligated to pay to the guardian ad litem fifty percent (50%) of that amount, that is twelve thousand two hundred sixty dollars (\$12,260.00) dollars, and the paternal grandmother is thus obligated to pay to the guardian ad litem fifty percent (50%) of that amount,

that is, twelve thousand two hundred sixty dollars (\$12,260.00) dollars.

"9. After giving credit to the parties for the sums paid into court as outlined above, the amount now due and owing from the mother and stepfather is four thousand seven hundred sixty (\$4,760.00) dollars, and the amount now due and owing from the paternal grandmother is nine thousand seven hundred sixty dollars (\$9,760.00).

"10. The guardian ad litem is satisfied that suitable arrangements will be made between the guardian ad litem and the mother and stepfather, through their counsel, to satisfy his claim for fees to be paid by them. The guardian ad litem is not satisfied that the paternal grandmother will make prompt payment of the fees she has agreed to pay, and the court has ordered her to pay, inasmuch as her counsel has communicated to the guardian ad litem, via email, that the paternal grandmother does not intend to pay the sums she is obligated to pay."

Barclay attached an itemized list of services "as guardian ad litem for [the children] in probate and circuit court matters." The services included time spent beginning on August 3, 2022, well before his appointment on May 21, 2023, as guardian ad litem by the circuit court.

On November 30, 2023, the circuit court entered an order directing the mother and the husband to pay Barclay \$4,760 and requiring the paternal grandmother to pay Barclay \$9,760. That same day, the paternal grandmother filed a motion to vacate the order, stating that, in accordance with the parties' agreement, on November 21, 2023, the

paternal grandmother had notified Barclay, in writing, that she was not in agreement with the fee statement that he had presented because, she said, (1) Barclay had not been appointed by the circuit court as the children's guardian ad litem until May 22, 2023, and the paternal grandmother did not approve of the payment of any fees incurred before May 21, 2023; (2) although the probate court had purported to appoint Barclay as guardian ad litem in that proceeding, the probate court had lacked jurisdiction to do so in light of this court's jurisdictional holding in Ex parte D.C.H., 385 So. 3d 37; (3) \$400 per hour for services as a guardian ad litem, in the paternal grandmother's view, was excessive; (4) the circuit court failed to consider the criteria for an award of attorney fees set forth in Roberts v. Roberts, 189 So. 3d 79 (Ala. Civ. App. 2015), and Shinaberry v. Wilson, 326 So. 3d 1037 (Ala. 2020); (5) Barclay's motion for fees had not been verified or supported by an affidavit; and (6) the circuit court had failed to afford the paternal grandmother 5 days to respond to Barclay's motion as required by Rule 6.

On December 19, 2023, the circuit court denied the paternal grandmother's motion. On January 19, 2024, the paternal grandmother filed a timely notice of appeal.

Discussion

The paternal grandmother argues that Barclay was not entitled to any fees for acting as guardian ad litem before May 22, 2023, because, she says, there were no valid orders appointing Barclay as guardian ad litem for the children before that date. She asserts that the probate court had lacked jurisdiction over the case when it purported to appoint Barclay as guardian ad litem. Further, the paternal grandmother argues that the circuit court erred in awarding Barclay fees without considering the 12 factors set forth in Roberts and Shinaberry. The paternal grandmother also argues that the circuit court erred in awarding Barclay fees that, she says, were not supported by a sworn statement or an affidavit. Last, the paternal grandmother argues that Barclay's claimed hourly rate for his services was excessive for a Madison County guardian ad litem because he had attended only one court hearing in person and three meetings by teleconference, and that the fees were excessive fees for a guardian ad litem in Madison County.

In response, Barclay argues that the record was insufficient to support the grandmother's contention that Barclay was not entitled to the fee award entered by the circuit court because, he says, the record

does not show when the the probate court appointed him. Barclay argues that the agreement did not limit him to compensation for services that he provided after his formal appointment as guardian ad litem by the circuit court. Barclay also argues that although certain criteria apply to the award of attorney fees to a guardian ad litem, the circuit court did not have to make express findings of fact as to each of those criteria.

The parties in the present case entered into a settlement agreement that set forth, among other things, the terms under which the guardian ad litem's fee would be paid. The circuit court incorporated the settlement agreement into its October 30, 2023, Rule 54(b) order. Cf. Ex parte Peake, 357 So. 3d 1192 (Ala. Civ. App. 2021) (holding that a settlement agreement that is incorporated into a divorce decree is in the nature of a contract and should be interpreted or construed as other written instruments are interpreted or construed).

In Bridges v. Bridges, 69 So. 3d 885 (Ala. Civ. App. 2011), this court analyzed the terms of a settlement agreement incorporated into a divorce judgment, stating:

""[A] settlement agreement which is incorporated into a divorce decree is in the nature of a contract.' Smith v. Smith, 568 So. 2d 838, 839 (Ala. Civ.

App. 1990). A divorce judgment should be interpreted or construed as other written instruments are interpreted or construed. Sartin v. Sartin, 678 So. 2d 1181 (Ala. Civ. App. 1996). 'The words of the agreement are to be given their ordinary meaning, and the intentions of the parties are to be derived from them.' Id. at 1183. Whether an agreement is ambiguous is a question of law for the trial court. Wimpee v. Wimpee, 641 So. 2d 287 (Ala. Civ. App. 1994). An agreement that by its terms is plain and free from ambiguity must be enforced as written. Jones v. Jones, 722 So. 2d 768 (Ala. Civ. App. 1998). An ambiguity exists if the agreement is susceptible to more than one meaning. Vainrib v. Downey, 565 So. 2d 647 (Ala. Civ. App. 1990). However, if only one reasonable meaning clearly emerges, then the agreement is unambiguous. Id. Finally, if a provision of an agreement is certain and clear, it is the duty of the trial court to determine its meaning, and the court's determination is afforded a heavy presumption of correctness and will not be disturbed unless it is clearly erroneous. Id."

"[R.G. v. G.G., 771 So. 2d 490, 494 (Ala. Civ. App. 2000)]. See also Ex parte Littlepage, 796 So. 2d 298, 301 (Ala. 2001); Van Allen v. Van Allen, 812 So. 2d 1276, 1277 (Ala. Civ. App. 2001); and Granger v. Granger, 804 So. 2d 217, 219 (Ala. Civ. App. 2001).

"Alabama appellate courts have stated that a court will not look beyond the four corners of a written instrument unless the instrument contains latent ambiguities. E.g., Martin v. First Nat'l Bank of Mobile, 412 So. 2d 250, 253 (Ala. 1982). "[A] latent ambiguity is one that 'appear[s] only as the result of extrinsic or collateral evidence showing that a word, thought to have but one meaning, actually has two or more meanings.'" [Meyer v. Meyer, 952 So. 2d [384] at 392 [(Ala. Civ. App. 2006)] (citing 11 Richard A. Lord, Williston on Contracts § 33:40, at 816 (4th ed. 2003))."

"Judge v. Judge, 14 So. 3d 162, 165-66 (Ala. Civ. App. 2009). Moreover, '[i]f the terms of a judgment are not ambiguous, then they must be given their usual and ordinary meaning and their "legal effect must be declared in the light of the literal meaning of the language used" in the judgment.' State Pers. Bd. v. Akers, 797 So. 2d 422, 424 (Ala. 2000) (quoting Wise v. Watson, 286 Ala. 22, 27, 236 So. 2d 681, 686 (1970))."

In the present case, the parties' settlement agreement did not limit their duty to pay their shares of Barclay's fees as guardian ad litem to fees incurred after his appointment as guardian ad litem by the circuit court. The paternal grandmother waived her right to object to Barclay's fees incurred while he represented the children in the probate court by agreeing to the broad settlement provision regarding fees. The settlement agreement expressly refers to a \$15,000 deposit paid into the

probate court during the proceedings involving the paternal grandmother, the mother, the father, and the husband.

The parties further agreed that following the receipt of a detailed, itemized invoice and the review and approval of the fees therein, the grandmother "shall pay 50% of the reasonable, customary fees charged" by Barclay, the guardian ad litem. The paternal grandmother reviewed, but did not approve, the fees charged by Barclay. In her November 30, 2023, postjudgment motion, the paternal grandmother argued, among other things, that an award of \$400 per hour for services as a guardian ad litem was excessive and that the circuit court had failed to consider the criteria for an award of attorney fees set forth in Roberts, and Shinaberry.

The paternal grandmother did agree that she would pay 50% of the "reasonable" fees customarily charged by the children's guardian ad litem. Although the record indicates that Barclay customarily charges \$400 per hour, the paternal grandmother asserted that that fee was not reasonable in this case, and we conclude that the paternal grandmother only agreed in this case to pay reasonable charges.

Appellate courts are sometimes called upon to review the reasonableness of fees charged or hours billed by a guardian ad litem in an adoption case. See T.E.B. v. C.A., [Ms. CL-2023-0572, Apr. 26, 2024] ___ So. 3d ___ (Ala. Civ. App. 2024); T.C.M. v. W.L.K., 248 So. 3d 1, 9 (Ala. Civ. App. 2017). When a party contests the reasonableness of a guardian ad litem fee, the paternal grandmother correctly asserts that Roberts and Shinaberry require a trial court to consider the criteria established in Peebles v. Miley, 439 So. 2d 137 (Ala. 1983), before awarding fees and to set out the trial court's reasoning to assure meaningful appellate review. The paternal grandmother did not waive her right to have the circuit court consider and set the appropriate amount of fees based on the Peebles standards by agreeing to pay half of any "reasonable, customary fees" in the parties' settlement agreement.

Conclusion

Based on the foregoing, we hold that the circuit court acted outside its discretion in awarding Barclay's attorney's fee without express consideration of the Peebles criteria. We reverse the circuit court's judgment and remand the case to the circuit court for it to reconsider the fee in accordance with this opinion.

CL-2024-0022

REVERSED AND REMANDED.

Moore, P.J., and Edwards, Fridy, and Lewis, JJ., concur.