

ALABAMA COURT OF CIVIL APPEALS

Susan Nixon Bailey v. David Keith Nixon

Bailey v. Nixon · No. CL-2025-0299 · Decided January 9, 2026

SUMMARY

The Alabama Court of Civil Appeals held that a divorce judgment unambiguously awarded the former wife one-half of the former husband's retirement benefits accumulated during the marriage through the divorce date, payable upon his retirement. The trial court erred by treating the husband as though he had retired at age fifty and imposing a theoretical early-retirement penalty on the former wife's share. The judgment was reversed and remanded for recalculation of the former wife's monthly benefit and arrearage.

CASE DETAILS

COURT	Alabama Court of Civil Appeals
WRITING FOR THE COURT	Fridy, J.; Moore, P.J.; Hanson, J.; Bowden, J.; Edwards, J.
JURISDICTION	Alabama Court of Civil Appeals
DECIDED	January 9, 2026
DOCKET	CL-2025-0299
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The former wife appealed from a Russell Circuit Court judgment that held the former husband in contempt, awarded her \$252.20 per month from his retirement benefits, and awarded \$6,052.80 in arrearages.
STANDARD OF REVIEW	Ore tenus factual findings are presumed correct and will not be reversed unless palpably erroneous or manifestly unjust, but that presumption may be overcome by insufficient evidence. Conclusions of law and incorrect applications of law to facts are reviewed without that presumption. Questions of law and the interpretation of an agreement incorporated into a divorce judgment are reviewed de novo.
PRECEDENTIAL VALUE	Published
PARTIES	Susan Nixon Bailey v. David Keith Nixon

TOPICS

- equitable distribution
- divorce
- contract interpretation
- appellate procedure
- family law procedure

PRACTICE AREAS

Family law

Divorce

Retirement-benefit property division

Appellate procedure

Contract interpretation

QUESTIONS PRESENTED

1. Whether the divorce judgment unambiguously awarded the former wife one-half of the retirement benefits accumulated during the marriage through the date of divorce, payable upon the former husband's actual retirement.
2. Whether the trial court improperly imposed a hypothetical early-retirement penalty on the former wife's share even though the former husband retired at age fifty-five and incurred no early-retirement penalty.
3. Whether the trial court's calculation of the former wife's arrearages was erroneous because it was based on the incorrect retirement-benefit calculation.
4. Whether the former husband's challenge to the contempt judgment was properly before the appellate court without a cross-appeal.

HOLDINGS

1. The divorce judgment unambiguously awarded the former wife one-half of the former husband's retirement benefits accumulated from the date of marriage through the date of entry of the divorce judgment, with payment beginning when the former husband retired.
2. The trial court could not impose a theoretical early-retirement penalty on the former wife's share because the former husband actually retired at age fifty-five and no early-retirement penalty was applied to his benefits.
3. The trial court's arrearage calculation was erroneous because it depended on the incorrect calculation of the former wife's share of the retirement benefits.
4. The former husband's challenge to the contempt judgment was not properly before the appellate court because he did not file a cross-appeal.

KEY QUOTATIONS

“The divorce judgment expressly entitles the former wife to one-half of the retirement benefits that the former husband accumulated during the marriage through the date of the entry of the divorce judgment and directs that payment of that portion of the retirement benefits is to begin when the former husband retires.” (17)

“The divorce judgment did not authorize the trial court to impose a theoretical early-retirement penalty on the former wife's share when the former husband did not, in fact, retire early.” (19-20)

“REVERSED AND REMANDED WITH INSTRUCTIONS.” (21)

FACTUAL BACKGROUND

The parties married on April 9, 1992, and divorced in March 2013. Their divorce judgment incorporated a mediated agreement awarding the former wife 50% of the former husband's City of Columbus retirement proceeds accumulated during the marriage through the date of the divorce decree, payable when he retired. The

former husband retired at age fifty-five in November 2022 after more than thirty-two years of service and began receiving \$2,746 per month, but he made no payments to the former wife. The trial court calculated her share using a hypothetical retirement at age fifty and imposed a 70% reduction, resulting in a monthly award of \$252.20 and \$6,052.80 in arrearages.

PROCEDURAL HISTORY

The parties' 2013 divorce judgment incorporated a mediated agreement awarding the former wife 50% of the former husband's retirement proceeds accumulated during the marriage, payable upon his retirement. After the former husband retired in November 2022 without making payments, the former wife filed a contempt complaint. Following a December 2024 trial, the Russell Circuit Court awarded her 50% of 30% of the retirement benefits accumulated as of the divorce judgment, held the former husband in contempt, and awarded arrearages and attorney's fees. The former wife's postjudgment motion was denied, and she timely appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must enter a new judgment awarding the former wife one-half of the portion of the former husband's retirement benefits earned from the date of marriage through the date of entry of the divorce judgment, without imposing a theoretical early-retirement penalty. The trial court must also recalculate and award a new arrearage amount based on the corrected retirement-benefit calculation.

CASES CITED

- Philpot v. State, 843 So. 2d 122, 125 (Ala. 2002)
- Waltman v. Rowell, 913 So. 2d 1083, 1086 (Ala. 2005)
- Dennis v. Dobbs, 474 So. 2d 77, 79 (Ala. 1985)
- Fadalla v. Fadalla, 929 So. 2d 429, 433 (Ala. Civ. App. 2005)
- Gore v. White, 96 So. 3d 834, 841 (Ala. Civ. App. 2012)
- Beaty v. Head Springs Cemetery Ass'n, 413 So. 2d 1126, 1128 (Ala. 1982)
- Moore v. Graham, 590 So. 2d 293, 295 (Ala. Civ. App. 1991)
- Reeves v. Reeves, 363 So. 3d 996, 1004 (Ala. Civ. App. 2023)
- ERA Commander Realty, Inc. v. Harrigan, 514 So. 2d 1329, 1334 (Ala. 1987)
- South Cent. Bell Tel. Co., 466 So. 2d 928, 931 (Ala. 1985)
- Crowder v. Crowder, 166 So. 3d 135, 138 n.1 (Ala. Civ. App. 2014)
- International Harvester Co. v. Bostick's Int'l, Inc., 365 So. 2d 84, 87 (Ala. Civ. App. 1978)