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SUPREME COURT OF ARKANSAS
No. CV-18-433

Opinion Delivered: June 13, 2019

JOHN DAVID MOORE
APPELLANT/CROSS-APPELLEE

V.

NANCY MOORE (NOW LEE)
APPELLEE/CROSS-APPELLANT

APPEAL FROM THE LOGAN
COUNTY CIRCUIT COURT
[NO. 42BDR-12-71]

HONORABLE DAVID H.
MCCORMICK, JUDGE

AFFIRMED ON DIRECT APPEAL;
REVERSED AND REMANDED ON
CROSS-APPEAL.

COURTNEY HUDSON GOODSON, Associate Justice

This is the second time this divorce case has come before us. In *Moore v. Moore*, 2016 Ark. 105, 486 S.W.3d 766 (*Moore I*), we reversed the Logan County Circuit Court’s division of certain property and award of alimony and remanded. Appellant John David Moore (“David”) appeals from the circuit court’s order on remand and argues that the circuit court erred in (1) dividing the marital property unequally, (2) valuing and dividing the marital livestock, and (3) holding him in contempt. Appellee Nancy Moore (now Lee) (“Nancy”) cross-appeals from the circuit court’s calculation of the amount that she was ordered to reimburse David for his payments on a parcel of real property referred to by the

parties as “Granny’s Place.” We affirm on direct appeal and reverse and remand on cross-appeal.

The parties were married on April 27, 2007, and separated on June 16, 2012. On June 18, 2012, Nancy filed a complaint for divorce, and David responded and counterclaimed for divorce. The parties litigated property division and alimony issues, and the circuit court entered a divorce decree on February 5, 2014. In the decree, the court awarded Nancy \$278,178.02 for one-half of the growth of David’s nonmarital business, Moore U.S. Mail Contractor, Inc., finding that the substantial increase in value was a marital asset based on the contributions and efforts of both parties. The court awarded the remaining marital property equally, including the marital livestock consisting of 10 bulls (3 of which had already been sold by David), 24 horses, 10 cows, and 7 calves. The parties were ordered to sell the livestock by agreement within sixty days, or if they were unable to agree on the manner in which to dispose of the animals, they were to be sold by the clerk of the court. The circuit court also awarded Nancy \$5,000 per month in alimony until she is sixty-five years old.

David appealed, arguing that the circuit court erred by awarding Nancy one-half of the growth of his business during the marriage and \$5,000 per month in alimony. The court of appeals dismissed the appeal for lack of a final order, *Moore v. Moore*, 2015 Ark. App. 115, and we granted the parties’ petition for review. On review, we held that the divorce decree was final and appealable and that the circuit court erred in finding that the growth in David’s business was a marital asset. *Moore I, supra*. We reversed and remanded,

stating that the circuit court must award David the growth of his business as his nonmarital property unless the court makes “a specific statutory finding to justify any distribution to Nancy.” *Id.* at 10, 486 S.W.3d at 773. This court also remanded the alimony issue for the circuit court to reconsider “when it redistributes the parties’ property.” *Id.* at 11, 486 S.W.3d at 774.

At an October 2016 status conference held on remand, the circuit court ordered the parties to list for private sale—within ninety days—certain real and personal property that was deemed marital under the terms of the divorce decree. The court further provided that if the property did not sell within ninety days, it would appoint the circuit court clerk to conduct the sale. An order to this effect was entered on February 7, 2017. Prior to the entry of this order, David sold eight calves at a livestock auction and claimed that seven of the calves were marital property. The proceeds from this sale—\$2,382.74—were tendered into the registry of the court.

On March 8, 2017, the circuit court ordered the circuit clerk to conduct a private sale of the parties’ remaining personal property, including the livestock, at David’s farm on April 21, 2017. The real property was ordered to be sold at the courthouse that same day, and all proceeds from the sale were to be deposited into the registry of the court.

The circuit court entered an order in April 2017 reducing the judgment against David in the divorce decree by \$278,178.03 pursuant to this court’s ruling in *Moore I* that the increase in the value of David’s business was nonmarital. Nancy then filed a motion and an amended motion for an unequal division of marital assets, arguing that because this

court's decision significantly reduced her award, the circuit court should not divide the remaining marital property equally. Instead, she claimed that it should make some other division that is equitable considering the parties' health and station in life, occupation, amount of income, vocational skills, and employability. She also requested an increase in her alimony payments, either in addition to or as an alternative to her request to divide the marital property unequally.

Nancy also moved the circuit court to hold David in contempt because of the manner in which he had handled the marital livestock. She claimed that he sold 7 calves on January 12, 2017, without her agreement and below market value, and that the 4 bulls, 21 horses, and 7 cows sold at the court-ordered auction on April 21, 2017 were not the animals acquired during the marriage and were of lesser or inferior value than the marital animals. She asserted that David should be obligated to pay damages for the difference in the market value of the marital animals and the animals that he sold, plus \$10,000 for contempt of court and attorney's fees and costs. In addition, she alleged that the marital livestock in David's possession had produced offspring since the entry of the divorce decree and that she was entitled to an equitable amount of the value of these offspring.

David filed a petition for reimbursement of various expenses associated with the maintenance and sale of the marital property. These expenses included the costs of feeding and caring for the livestock, the costs incurred in hiring workers to prepare the animals for sale, real estate taxes on the two parcels of real property ordered sold, and payments toward the principal indebtedness on Granny's Place.

A hearing on these matters was held on September 7, 2017, and the circuit court instructed the parties to file posthearing briefs on the remaining, undecided issues. In her brief, Nancy asserted that out of the \$336,105.34 remaining in the registry of the court after the sale of the parties' property, she was entitled to \$30,281.95 for the marital-livestock offspring, \$43,833.32 for the value of the true marital animals that should have been sold, an unequal division of marital assets, an increase in alimony, a monetary award for David's contempt, and attorney's fees and costs. She denied that David should be reimbursed for the costs associated with the maintenance and sale of the marital property due to his contemptuous handling of this property. David requested in his brief that he be reimbursed \$31,866.08 in expenses before the proceeds were divided between the parties and an additional \$19,097.63 from Nancy's share of the marital property. He denied that he should be held in contempt or that Nancy was entitled to the amounts she requested for her portion of the marital livestock.

On January 17, 2018, the circuit court entered an order finding that, after considering our decision in *Moore I* and the pleadings, testimony, and exhibits introduced on remand, Nancy was entitled to an unequal distribution of marital property and should receive \$250,000 in addition to her one-half share of the marital assets; David should be held in contempt for his handling of the marital livestock and his failure to present for sale those animals previously determined to be marital livestock; Nancy was entitled to \$43,833.32 for her portion of the marital livestock and \$30,281.95 for her share of the offspring of the marital livestock; David was entitled to the \$2,382.74 he placed into the

registry of the court for the January 2017 sale of eight calves, which were not marital livestock; Nancy's award of \$5,000 per month in alimony would remain the same; David's requests for reimbursement were denied, with the exception of the real-estate taxes on Granny's Place, the loan payments of \$30,466.08 on Granny's Place, and the appeal costs in *Moore I*; and Nancy was awarded \$3,000 in attorney's fees and costs due to David's contempt and the equities in the case. The court distributed the \$336,105.34 in marital funds remaining in the registry of the court and issued Nancy a judgment against David in the amount of \$77,977.34, plus interest.

On January 26, 2018, David filed a motion for reconsideration or modification of the circuit court's order, which was deemed denied after thirty days. He filed a timely notice of appeal on March 1, 2018, from both the January 17, 2018 order and the denial of his posttrial motion. Nancy also filed a timely notice of cross-appeal.

I. *Whether the Circuit Court Erred by Dividing the Marital Property Unequally*

In his first point on appeal, David argues that the circuit court erred by dividing the marital property unequally. He contends that the circuit court exceeded this court's mandate in *Moore I* by doing so. Furthermore, he asserts that an unequal division was not justified and was inequitable under the facts in this case.

We review divorce cases de novo on appeal. *Kelly v. Kelly*, 2014 Ark. 543, 453 S.W.3d 655. The circuit court's findings pertaining to the division of property will not be reversed unless they are clearly erroneous or against the preponderance of the evidence. *Id.* A finding is clearly erroneous when the reviewing court, on the entire evidence, is left with

a definite and firm conviction that a mistake has been made. *Jones v. Jones*, 2014 Ark. 96, 432 S.W.3d 36. We also give due deference to the circuit court’s determination of the credibility of the witnesses and the weight to be given to their testimony. *Id.*

David first argues that the circuit court exceeded this court’s mandate in *Moore I* by dividing the marital property unequally on remand. He asserts that the issues raised in the first appeal concerned only alimony and the circuit court’s award to Nancy of one-half of the increased value of his nonmarital business during their marriage. David contends that our reversal and remand in *Moore I* did not authorize the circuit court to re-divide the marital property. He therefore claims that the circuit court lacked jurisdiction to make such an award.

“The mandate is the official notice of action of the appellate court, directed to the court below, advising that court of the action taken by the appellate court, and directing the lower court to have the appellate court’s judgment duly recognized, obeyed, and executed.” *Ingle v. Ark. Dep’t of Human Servs.*, 2014 Ark. 471, at 5–6, 449 S.W.3d 283, 287. We have long held that the circuit court must execute the mandate on remand, and under the mandate rule, “an inferior court has no power or authority to deviate from the mandate issued by an appellate court.” *Id.* at 6 (quoting *Dolphin v. Wilson*, 335 Ark. 113, 118, 983 S.W.2d 113, 115 (1998)). We have further observed that the lower court is vested with jurisdiction only to the extent conferred by the appellate court’s opinion and mandate. *City of Dover v. Barton*, 342 Ark. 521, 525, 29 S.W.3d 698, 700 (2000). Thus, the question of whether the lower court followed the mandate is not simply one of whether the

lower court was correct in its construction of the case but also involves a question of the lower court's jurisdiction. *Ingle, supra*. When a case is remanded for a specific act, the entire case is not reopened; rather, the lower tribunal is only authorized to carry out the appellate court's mandate and may be powerless to undertake any proceedings beyond those specified. *Id.* If an appellate court remands with specific instructions, those instructions must be followed exactly to ensure that the lower court's decision is in accord with that of the appellate court. *Id.* at 6-7. The lower court must implement both the letter and spirit of the mandate, taking into account the appellate court's opinion and the circumstances it embraces. *City of Dover, supra*.

This court's mandate in *Moore I* stated that "[a]fter due consideration, it is the decision of the Court that the judgment of the circuit court is reversed and remanded . . . for the reasons set in the attached opinion." In the opinion, we held that because David's business was acquired before his marriage to Nancy, it was a nonmarital asset, and "the circuit court erred by considering it marital property and awarding Nancy half of the growth of the business." *Moore I*, 2016 Ark. 105, at 9, 486 S.W.3d at 773. In reaching this conclusion, we overruled a line of cases applying the "active appreciation" rule, on which the circuit court had relied in making this award. *Id.* at 8, 486 S.W.3d at 772. We stated that the active-appreciation analysis conflicted with the plain language in the statute governing the division of property, Arkansas Code Annotated section 9-12-315 (Repl. 2015), which itself "provides our courts with broad discretion and flexibility to redistribute marital and nonmarital property to achieve an equitable distribution." *Id.*

We also recognized that subsection (a)(2) of this statute clearly permits the division of nonmarital property if the circuit court deems it equitable after taking into consideration the factors set forth in section 9-12-315(a)(1)(A). *Id.* at 9, 486 S.W.3d at 773. However, we indicated that the circuit court did not make the necessary findings to justify a distribution of nonmarital property and that it instead considered the increase in David’s business to be marital property. *Id.* at 10, 486 S.W.3d at 773. Significantly, the error noted was due to the circuit court’s lack of statutory findings. We reversed and remanded for the circuit court to award David the growth of his business as his nonmarital property unless it makes a “specific statutory finding to justify any distribution to Nancy.” *Id.* Further, because this court noted that “property division and alimony are complementary devices that the circuit court may utilize in combination to make the dissolution of marriage equitable,” we remanded that issue as well for “the circuit court to reconsider alimony when it redistributes the parties’ property.” *Id.* at 12, 486 S.W.3d at 774.

In the circuit court’s January 2018 order, it indicated that this court had “remanded the case for a new determination as to the division of the remaining marital property and on the issue of alimony.”¹ Nancy contends that the circuit court’s interpretation of *Moore I* and its decision to award the marital property unequally on remand were consistent with and did not exceed our mandate. She refers to this court’s directive to the circuit court to

¹The divorce decree had already distributed certain marital property, such as the parties’ checking and IRA accounts, and the January 2018 order did not affect the distribution of this property.

reconsider the alimony award when it “*redistributes the parties’ property.*” *Id.* (emphasis added).

We agree with Nancy that the circuit court did not violate our mandate by distributing the marital property unequally on remand. To the contrary, we expressly invited the circuit court to do so by specifically referencing a “redistribution of the parties’ property” when we remanded the issue of alimony to the circuit court. *Id.* In addition, while we noted in reversing the award of the increased value of David’s nonmarital business that the circuit court could distribute the nonmarital property to Nancy if the court simply made the requisite statutory findings, our prior opinion contained no language preventing the circuit court from dividing the remaining marital property in an equitable manner by relying on those very same statutory findings. Not only was this unequal distribution not prohibited by the plain language in *Moore I*, it was also reasonable for the circuit court to conclude that it had this authority given that we have emphasized, both in *Moore I* and in other cases, that a circuit court has “*broad discretion and flexibility to redistribute marital and nonmarital property to achieve an equitable distribution.*” *Id.* at 8, 486 S.W.3d at 772 (emphasis added); *see also Kelly, supra; Jones, supra; accord Harvey v. Harvey*, 295 Ark. 102, 747 S.W.2d 89 (1988) (holding that reversing the alimony award would give the circuit court appropriate flexibility in reconsidering the distribution of marital property if it chose to do that on remand rather than readopt and provide an explanation for its unequal distribution). Notably, our prior opinion in no way limited the circuit court’s broad discretion to make an equitable division of marital and nonmarital property.

While David argues that Nancy failed to assert her entitlement to an unequal division of marital assets in *Moore I*, she had no reason to raise this issue when she was the prevailing party and had been awarded a one-half share of the increased value of the business as a marital asset. See *Kelly, supra* (holding that the law-of-the-case doctrine did not bar the wife on remand from seeking an unequal distribution of stock after this court had reversed the circuit court's classification of the stock as nonmarital property in the first appeal). Accordingly, we conclude that the circuit court followed both the letter and the spirit of this court's mandate in *Moore I* and that it had jurisdiction to order an unequal award of marital assets on remand.

David next argues that, even if the circuit court had jurisdiction to redistribute the marital assets unequally on remand, it erred in doing so. Pursuant to Arkansas Code Annotated section 9-12-315(a), all marital property shall be distributed one-half to each party unless the court finds such a division to be inequitable. In that event, the court is to make some other division that it deems equitable, taking into consideration the length of the marriage; the age, health, and station in life of the parties; the occupation of the parties; the amount and sources of income; vocational skills; employability; the estate, liabilities, and needs of each party and opportunity of each for further acquisition of capital assets and income; the contribution of each party in acquisition, preservation, or appreciation of marital property, including services as a homemaker; and the federal income tax consequences of the division of property. Ark. Code Ann. § 9-12-315(a)(1)(A). When marital property is divided unequally, the circuit court must state its basis and

reasons therefore. Ark. Code Ann. § 9-12-315(a)(1)(B). However, it is not required to list each factor in its order or to weigh each factor equally. *Kelly, supra*. Further, the specific enumeration of the factors in the statute does not preclude a circuit court from considering other relevant factors, where exclusion of other factors would lead to absurd results or deny the intent of the legislature to allow for the equitable division of property. *Id.*

In support of its decision to order an unequal division of the remaining marital property, the circuit court stated that, while the parties' marriage was relatively short, Nancy was disabled, and other than alimony, her income consisted only of disability benefits. The court also found that David's business was valued in excess of \$1 million in 2012 and at \$2.4 million in 2016 and that his discretionary cash flow was substantially greater than Nancy's. The court stated that according to the statutory factors, its analysis of the documentary evidence, the testimony of the parties and their respective experts, and the equities in the case, Nancy was entitled to \$250,000 in addition to her one-half share of the marital assets.

David argues that this award was inequitable because it distributed virtually all of the marital estate to Nancy, in addition to her alimony payments. However, as the circuit court found, the largest asset owned by either party was David's nonmarital business. The court noted that, according to the testimony of Nancy's expert, the value of this business had increased dramatically both during and after the marriage, and David's discretionary income had increased to as much as \$800,000 in 2016. In comparison, the court found that Nancy had no sizable assets and that she was disabled and could not return to her

premarital employment. While David asserts that it was erroneous for the circuit court to consider the postdivorce increase in his income and assets, the statutory factors clearly indicate that these are proper considerations. See Ark. Code Ann. § 9-12-315(a)(1)(A)(i)-(ix). The circuit court did not clearly err in determining that it was equitable to award Nancy an unequal division of marital assets under the circumstances in this case, and we therefore affirm this award.

II. *Whether the Circuit Court Erred with Respect to the Division of Marital Livestock*

In his second point on appeal, David contends that the circuit court erred with respect to its division of the marital livestock. Specifically, he argues that the court erred in crediting Nancy's valuation of the marital animals and in awarding her one-half of the value of the presumed offspring of the marital livestock.

David first challenges the circuit court's award of \$43,833.32 for Nancy's one-half of the value of the 10 (3 of which were sold prior to the divorce decree) marital bulls, 24 marital horses, 10 marital cows, and 7 marital calves. Nancy presented evidence that, despite the circuit court's order in the decree to sell these marital animals within sixty days by agreement of the parties, no animals were sold until January 2017, when David sold eight calves, seven of which he claimed were marital. Nancy asserted that these calves were sold without her agreement and that they were clearly not the marital "calves," given that the sale occurred nearly three years after the decree was entered. Further, at the court-ordered auction in April 2017, David presented only 4 bulls, 7 cows, and 21 horses. He testified at the hearing that 3 bulls and 4 horses had died prior to the sale. The 4 bulls sold

for a total of \$1,400, and there were no bids on either the cows or the horses, so David bought them for \$1 each. Before the sale had begun, Nancy objected to the circuit court, arguing that the animals presented for sale were not the marital animals and were of lesser or inferior quality. The court instructed the parties to continue with the sale. However, she introduced evidence at the hearing to support her contention that the animals sold at the auction were not the marital animals, and she presented expert testimony, which was essentially unrefuted, as to the value of those marital animals.

The circuit court indicated in the divorce decree that the division of the marital livestock was one of the more contentious issues in this case, and as we discuss further below, the court ultimately held David in contempt for his handling of the animals. The circuit court credited Nancy's testimony that David had not presented the true marital animals for sale and also accepted her evidence as to their value. David's primary argument with respect to this award is that he owned a rodeo operation and a working ranch and that the livestock "came and went." He asserted that the marital livestock were never specifically identified in the decree. The circuit court rejected this argument as not convincing, finding that even David did not dispute that he had failed to present for sale all of the marital livestock that the court had previously ordered sold. In addition, the court found that the fact that no one bid on the animals at the auction was further evidence of the inferior quality of the animals presented. The court also noted that David had kept no records relating to the marital livestock and that he "presented no testimony or evidence as to the value of the animals at the time of the divorce." We give due

deference to the circuit court's determination of the credibility of witnesses. *Jones, supra*. The circuit court did not clearly err in its valuation and division of the marital livestock, and we affirm this award as well.

David also argues that the circuit court erred by awarding Nancy an additional \$30,281.95 for the value of the offspring of the marital livestock. At the hearing, Nancy presented testimony and exhibits demonstrating that the 24 marital horses would have produced at least 18 offspring in the three years since the divorce decree had been entered, that the 10 marital cows would have produced at least 21 calves, and that the 7 marital calves would also have produced offspring. The circuit court found that this evidence was unrefuted and that Nancy was entitled to the requested amount.

According to David, it was an error of law for the court to award Nancy one-half of the value of offspring that were not born at the time of the divorce decree because these animals were not marital property. He concedes that there is no authority directly on point but contends that offspring born after a divorce are analogous to a marital asset that increases in value after a divorce, in which case he asserts that the parties cannot come back and claim a portion of the increased value.

We affirm the circuit court's award of the marital offspring. No value was placed on the marital livestock when the divorce decree was entered, and the court ordered them sold within sixty days, with the proceeds to be equally divided between the parties. The livestock were not sold in compliance with the decree, and David instead retained possession and use of these animals. The circuit court found that, if it did not award

Nancy her portion of the value of the offspring, it “would result in [David] keeping marital property for three and one-half (3 ½) years and using that property to his benefit and keeping all of the proceed[s] generated from his actions. This court does not find the arguments of Mr. Moore on this point convincing and believes that it can consider the increase in the number of livestock specifically attributable to the number and kinds of livestock which it previously found to be marital property.” As we emphasized earlier, the circuit court is granted broad powers in distributing both nonmarital and marital property to achieve an equitable division. *Kelly, supra*. Under the circumstances in this case, we do not find that the circuit court clearly erred in its award of this property.

III. *Whether the Circuit Court Erred by Holding David in Contempt*

In David’s third and final point on appeal, he argues that the circuit court erred by holding him in contempt for his handling of the marital livestock and awarding Nancy \$3,000 in attorney’s fees. In deciding a contempt issue, we must first determine whether the contempt was civil or criminal. “Criminal contempt preserves the power of the court, vindicates its dignity, and punishes those who disobey its orders.” *Conlee v. Conlee*, 370 Ark. 89, 96, 257 S.W.3d 543, 550 (2007). We have stated that criminal contempt punishes, while civil contempt coerces. *Id.* Because civil contempt is designed to coerce compliance with the court’s order, the contemnor may free himself or herself by complying with the order; however, criminal contempt carries an unconditional penalty and cannot be purged. *Id.*

As David asserts, the contempt finding in this case was criminal because it sought to punish him for disobeying the circuit court's order. We have held that willful disobedience of a valid order of a court is contemptuous behavior. *Id.* Before one can be held in contempt for violating a court order, the order must be definite in its terms and clear as to what duties it imposes. *Id.* On appeal from a finding of criminal contempt, we view the record in the light most favorable to the circuit court's decision and affirm if it is supported by substantial evidence. *Id.*

David contends that he should not have been held in contempt because the divorce decree did not command him to segregate the marital livestock and did not clearly identify which animals were marital. As discussed above, the circuit court rejected this contention as not convincing. The court found that David kept no records relating to the marital livestock, that he used some of the animals to generate income from his rodeo business, that he allowed both marital and nonmarital livestock to graze on marital property, and that he made a unilateral determination as to which animals in his possession were ultimately sold without regard to whether they were marital or nonmarital and without consulting Nancy or obtaining permission from the court. Furthermore, David admitted that the calves sold in January 2017 were not the marital calves and that not all of the animals presented at the April 2017 auction were marital. Thus, the circuit court's finding that David was in contempt of its prior order was supported by substantial evidence, and we affirm on this issue.

IV. *Nancy's Cross-Appeal*

On cross-appeal, Nancy asserts that the circuit court erred by awarding David his request for reimbursement of \$30,466.08 for payments he made toward the principal indebtedness on the parcel of real property referred to as Granny's Place. She contends that the divorce decree indicated that \$22,067.51 was owed on this loan as of July 31, 2013, and that per the terms of the decree, the proceeds from the sale of that property were to be applied as follows: (1) pay any debt that remains on the property; (2) pay the costs of the sale; (3) reimburse David an amount equal to the amount of principal indebtedness that he had paid since "this date"; and (4) any sums remaining will be awarded three-fourths to David and one-fourth to Nancy. Nancy argues that the reference to "this date" was either the date the divorce decree was signed, which was October 29, 2013, or the date the decree was filed, which was on February 5, 2014. Thus, Nancy contends that David is entitled to an amount less than \$22,067.51.

We agree. The terms of the divorce decree clearly and unambiguously allow David to be reimbursed for only those amounts paid toward the loan since the date of the divorce decree, not from the date of the parties' separation as requested by David in his motion for reimbursement. David did not appeal this provision in the decree, and the circuit court did not have jurisdiction to modify the decree after ninety days. Ark. R. Civ. P. 60(a) (2018). Because an order is not effective until filed of record, the applicable date for calculating the reimbursement for the loan payments is February 5, 2014, the date the

decree was entered. See Ark. R. Civ. P. 58 (2018); Ark. Sup. Ct. Admin. Order No. 2 (2018). Accordingly, we reverse and remand on cross-appeal for the circuit court to determine the correct amount that David should be reimbursed for his payments toward the principal indebtedness on Granny's Place.

Affirmed on direct appeal; reversed and remanded on cross-appeal.

WOOD and WOMACK, JJ., concur in part and dissent in part.

SHAWN A. WOMACK, Justice, concurring in part and dissenting in part. I agree with the majority's decision to affirm the circuit court's division of livestock as a marital asset and find David in contempt. I also agree with the majority's decision to reverse on cross-appeal for the circuit court to determine the correct amount that David should be reimbursed for his payments toward principal indebtedness on Granny's Place. However, I disagree with the majority's decision to affirm the circuit court's redistribution of the other marital property.

When David brought his appeal before this court in *Moore v. Moore*, 2016 Ark. 105, 486 S.W.3d 766 (*Moore I*), David sought review of the circuit court's finding that the growth of his business was a marital asset, along with the \$5,000 per month alimony award. David did not appeal the circuit's court's equal division of the remaining marital assets, and Nancy did not cross-appeal. On review, we held that the circuit court erred in finding that the growth in David's business was a marital asset. We reversed and remanded, instructing the circuit court "to enter an order awarding David the growth of his business as his nonmarital property absent a specific statutory finding to justify any distribution to

Nancy.” *Id.* at 13, 486 S.W.3d at 773. Regarding the alimony award, we stated that “we consider property division and alimony complementary devices that the circuit court may utilize in combination to make the dissolution of marriage equitable, [and] we remand this issue to the circuit court to **reconsider alimony** when it redistributes the parties’ property.” *Id.* at 17, 486 S.W.3d at 774 (emphasis added). This court’s mandate in *Moore I* simply states that “[a]fter due consideration, it is the decision of the court that the judgment of the circuit court is reversed and remanded . . . for the reasons set out in the attached opinion.”

A trial court must implement both the letter and spirit of the mandate, taking into account the appellate court’s opinion and the circumstances it embraces. *City of Dover v. Barton*, 342 Ark. 521, 29 S.W.3d 698 (2000). In *Moore I*, the growth in David’s business was to be awarded to David absent a statutory finding by the circuit court to justify any distribution to Nancy. On remand, the circuit court did not consider whether any evidence justified an award of David’s nonmarital property to Nancy. In fact, in a separate order that predates the order from which the parties now appeal, the circuit court ordered that \$278,178.03, which equaled the growth of David’s business, be returned to David because it was nonmarital property. At that point, if the circuit court believed that the distribution of that separate property to David was inequitable, it could have made “some other division that the court deems equitable.” Ark. Code Ann. § 9-12-315(a)(2). It did not, and because Nancy failed to appeal the division of the nonmarital property, that distribution is final. Instead, the circuit court redistributed the remaining marital property unequally. The majority states that this court expressly invited the circuit court to distribute marital

property on remand by referencing a “redistribution of the parties’ property” when we remanded the issue of alimony to the circuit court. However, it is apparent that the property to be redistributed on remand is the growth in David’s nonmarital business. Notably this court’s opinion in *Moore I* instructed the circuit court to “reconsider alimony,” but neither it nor its accompanying mandate includes an instruction to redivide the remaining marital property.

When the circuit court redistributed the remaining marital property, it lacked jurisdiction to do so because it had exceeded the scope of this court’s mandate. For this reason, I would reverse the circuit court’s decision to award marital property unequally on remand.

WOOD, J., joins.