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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2009-2010

1081405

Madison County Department of Human Resources

v.

**T.S., by her mother and next friend F.M., and F.M.,
individually**

**Appeal from Limestone Circuit Court
(CV-08-292)**

On Return to Remand

STUART, Justice.

The Madison County Department of Human Resources ("DHR"), the legal guardian of T.S., appealed the trial court's judgment approving the settlement of a personal-injury claim

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involving T.S. and approving an attorney fee for the attorney who represented T.S. in the amount of \$262,500, plus litigation expenses. On October 23, 2009, we remanded the case with directions, stating:

"In this case, the trial court's order approving an attorney fee in the amount of \$262,500 plus litigation expenses in the amount of \$29,315.99 provides no indication as to whether the trial court considered the criteria set forth for determining the reasonableness of an attorney fee as detailed in Pharmacia [Corp. v. McGowan, 915 So. 2d 549 (Ala. 2004)], nor does it indicate how the trial court calculated the attorney fee. Although the trial court states that its decision is based on the evidence, it provides no detailed application of the facts regarding [Doug] Fees's fee to the factors set forth in Pharmacia. Additionally, although the record is filled with explanation for the litigation expenses, the record contains no evidence detailing the attorney fee for Fees. For instance, it does not contain any document detailing the time Fees spent working on the case. As we stated in Pharmacia, '[i]t is generally recognized that the "first yardstick that is used by the trial judges [in assessing the reasonableness of an attorney-fee request] is the time consumed." Peebles v. Miley, 439 So. 2d 137, 141 (Ala. 1983).' 915 So. 2d at 553. Additionally, we note that sole reliance on F.M.'s execution of the contingency-fee contract providing that the attorney fee would be 33 1/3% plus expenses to establish the reasonableness of the attorney fee is misplaced. See Ex parte Peck, 572 So. 2d 427 (Ala. 1990) (recognizing that although a parent can contract for payment of a reasonable fee for legal services on behalf of a minor, a trial court may review and reduce the agreed-upon attorney fee if it concludes that the attorney fee is unreasonable). Without some explanation by the

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trial court with regard to its consideration of the 12 factors set out in Van Schaack v. AmSouth Bank, N.A., 530 So. 2d 740, 749 (Ala. 1988), and discussed in Pharmacia and how it calculated the attorney fee, we cannot ascertain whether the trial court exceeded its discretion in awarding that fee. Therefore, we remand this cause to the trial court for the entry of an order explaining its decision and articulating its reasons for that decision. Due return shall be made to this Court within 42 days of the date of this opinion."

Madison County Dep't of Human Res. v. T.S., [Ms. 1081405, Oct. 23, 2009] ___ So. 3d ___, ___ (Ala. 2009) (emphasis added).

The trial court has made timely return of the case; however, on remand the trial court exceeded the scope of remand. Specifically, the trial court, on remand, was to explain, from the evidence already before it, its attorney-fee award. Instead, the trial court conducted a hearing and took new evidence. The trial court on remand was not free to consider new evidence to support its determination, and, in so doing, the trial court exceeded its limited jurisdiction on remand. This Court did not reverse the trial court's judgment on original submission; this Court remanded the case for the trial court to explain how it reached the conclusions stated in its order. Ex parte Queen, 959 So. 2d 620, 622 (Ala. 2006) ("[A] trial court does not have the authority to reopen

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for additional testimony a case that has been remanded to it, except where expressly directed to do so."); Ex parte Edwards, 727 So. 2d 792, 794 (Ala. 1998) (holding that when an appellate court remands a case, the trial court's authority is limited to compliance with the directions provided by the appellate court).

We have no alternative but to remand this case for the trial court to comply with this Court's mandate in Madison County Department of Human Resources v. T.S., supra. Based on the evidence presented to it at the original hearing, the trial court must explain its decision awarding the attorney who represented T.S. a fee of \$262,500 and articulate its reasons for that decision. Due return shall be made to this Court within 42 days of the date of this opinion.

REMANDED WITH DIRECTIONS.

Cobb, C.J., and Lyons, Woodall, Smith, Bolin, Parker, Murdock, and Shaw, JJ., concur.