REL: 11/10/2011

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2011-2012

2100909

Carol Mahoney

v.

Loma Alta Property Owners Association, Inc.

Appeal from Baldwin Circuit Court
(CV-06-415)

PER CURIAM.

Carol Mahoney ("Mahoney") appeals from a judgment of the Baldwin Circuit Court awarding her $500 as an attorney fee and costs pursuant to the Alabama Litigation Accountability Act,

§ 12-19-270 et seq., Ala. Code 1975 ("ALAA"). We reverse and remand.

This is the fourth time these parties have been before this court. In Mahoney v. Loma Alta Property Owners Ass'n, [Ms. 2100104, May 6, 2011] ___ So. 3d ___ (Ala. Civ. App. 2011)("Mahoney III"), we set out the factual and procedural history of the case and the previous appeals thusly:

> "In Mahoney v. Loma Alta Property Owners Ass'n, 4 So. 3d 1130 (Ala. Civ. App. 2008)('Mahoney I'), we set out the facts and procedural history of the case as follows:
>
> > "'Loma Alta Property Owners Association, Inc. ("LAPOA"), sued Carol Mahoney in the Baldwin District Court, claiming breach of contract, account stated, and a property-owners-association lien on real estate occupied by Mahoney. LAPOA alleged that Ms. Mahoney was the owner of unit C-1 in Loma Alta Townhomes; that Ms. Mahoney was, therefore, bound by an agreement contained within the condominium declaration for the Loma Alta subdivision to pay property-owners-association fees, assessments, and late charges; and that Ms. Mahoney had failed to pay those fees, assessments, and charges. LAPOA asserted that it was entitled to recover from Ms. Mahoney damages, including late fees, interest, costs, and an attorney fee, and to have a lien on the real estate occupied by Ms. Mahoney.

"'Ms. Mahoney answered the complaint, admitted that she "owe[d] some money, but not the total amount claimed by [LAPOA]," and asserted that she was entitled to a setoff because LAPOA had failed to make needed repairs on the unit. On April 11, 2006, the district court entered a judgment in favor of LAPOA in the amount of $5,390, plus costs and an attorney fee of $500. Ms. Mahoney appealed that judgment to the Baldwin Circuit Court on April 25, 2006, for a trial de novo.

"'On May 19, 2006, Ms. Mahoney filed an amended answer in the circuit court, generally denying the allegations of LAPOA's complaint and asserting, among other things, that she did not have a contract with LAPOA. In addition, Ms. Mahoney asserted a claim under the Alabama Litigation Accountability Act ("ALAA"), § 12-19-270 et seq., Ala. Code 1975. On December 21, 2006, LAPOA amended its complaint, naming Ms. Mahoney's former husband, Joseph Mahoney, as a defendant. LAPOA alleged that Mr. Mahoney was the "owner" of unit C-1 in Loma Alta Townhomes and that Ms. Mahoney was a "resident" of the unit. LAPOA also added a claim alleging that, by virtue of the foreclosure of its property-owners-association lien, it was entitled to have Ms. Mahoney "evicted" from unit C-1.

"'The circuit court conducted a bench trial on January 26, 2007, at which only one witness -- Mary Garey, the secretary/treasurer of LAPOA -- testified. Garey explained that the property-owners-association fees and assessments represent the unit owners' proportionate share of the cost of

maintaining and preserving the common areas of the condominium. Garey testified that Ms. Mahoney had resided in unit C-1 of the condominium since March 2000 and that she had paid some of the fees and assessments but that she had stopped paying, contending that she was entitled to set off against the balance the cost of needed repairs that LAPOA had failed to make on the unit Ms. Mahoney was occupying. Garey stated that, according to the condominium declaration, repairs to a unit are the responsibility of the individual unit owner, not LAPOA. Garey identified a document showing the past-due fees and assessments that, LAPOA claimed, were owed by Ms. Mahoney. Garey testified that Ms. Mahoney had never returned the invoices for fees and assessments to Garey with a request that the invoices be forwarded to someone else. Nor, according to Garey, had Ms. Mahoney ever informed LAPOA that she was not the owner of the unit in which she resided. Garey testified that LAPOA, by virtue of its contract with the owner of each unit, has a lien on any unit for which there are unpaid fees and assessments. Garey said that LAPOA had foreclosed its lien on unit C-1.[1]

"'On cross-examination, Garey acknowledged that the owner of each unit is solely responsible for payment of the property-owners-association fees and assessments. Garey admitted that LAPOA had no deed showing that Ms. Mahoney was the owner of the unit in which she resided, that LAPOA had no contract with Ms. Mahoney, and that LAPOA had no document stating that someone other than the owner of the unit was responsible for payment of the fees and assessments on the unit that

Ms. Mahoney occupied. On redirect examination, Garey affirmed the truth of the following inquiry by LAPOA's counsel: "We're simply asking [the circuit court] to confirm that we've got a judgment on this unit, whether it's owned [by] Ms. Mahoney or whoever it is, because that unit has not paid any dues and assessments, is that right?"

"'The circuit court admitted the following documentary evidence offered by LAPOA: (1) the condominium declaration for the Loma Alta subdivision; (2) a statement of fees, assessments, and late charges sent by LAPOA to Ms. Mahoney on January 24, 2007, indicating a balance due of $6,150; and (3) a "Statement of Lien" filed in the Baldwin Probate Court on October 4, 2004, naming Carol Mahoney as the owner of "Lot C-1, Loma Alta, as recorded in Map Book 11, Page 176, in the Office of the Judge of Probate, Baldwin County, Alabama."

"'At the conclusion of Garey's testimony, LAPOA rested and Ms. Mahoney's counsel moved for a "directed verdict,"[2] arguing:

> "'"[T]here's been no proof of ownership [by] my client, Carol Mahoney, ... or that she's bound by any contract that they have failed to present in court showing that she's responsible for anything ....
>
> "'"[LAPOA has] gone against the wrong person, and that's why we move for a directed verdict and ask for award of reasonable

> attorney's fees for having to fight this."
>
> "'The circuit court denied the motion. On April 13, 2007, the court entered a judgment in favor of LAPOA and against Ms. Mahoney in the amount of $6,279.10 and awarded LAPOA an attorney's fee of $5,000. The court did not rule on Ms. Mahoney's ALAA counterclaim, but we conclude that it was implicitly denied. See Harris v. Cook, 944 So. 2d 977, 981 (Ala. Civ. App. 2006). On the same day, the circuit court entered a default judgment for the same amount in favor of LAPOA and against Joseph Mahoney. Ms. Mahoney filed a timely notice of appeal to this court on May 15, 2007.
>
> ---
>
> "'[1]Section 35-8-17(4), Ala. Code 1975, a part of a chapter entitled "Condominium Ownership," provides that "[l]iens for unpaid assessments may be foreclosed by an action brought in the name of the [property owners'] association in the same manner as a foreclosure of a mortgage on real property."
>
> "'[2]In actions tried without a jury, the proper motion is one for a judgment on partial findings, pursuant to Rule 52(c), Ala. R. Civ. P.'

"Mahoney I, 4 So. 3d at 1131-33. In Mahoney v. Loma Alta Property Owners Ass'n, 52 So. 3d 510 (Ala. Civ. App. 2009)('Mahoney II'), this court further set out the facts and procedural history of the case as follows:

> "'[In Mahoney I,] [t]his court reversed the judgment in favor of Loma Alta Property Owners Association, Inc.

("LAPOA"), holding that LAPOA had wholly failed to prove that Ms. Mahoney was bound to pay the fees, assessments, and late charges claimed by LAPOA because LAPOA's contract obligated the owner of the condominium unit to pay those charges and the evidence conclusively established that Ms. Mahoney was not the owner of the unit. This court remanded the cause to the circuit court with instructions to adjudicate Ms. Mahoney's ALAA claim.

"'On remand, the circuit court vacated its judgment in favor of LAPOA, entered a judgment in favor of Ms. Mahoney, and summarily denied Ms. Mahoney's ALAA claim on September 17, 2008. Ms. Mahoney filed a postjudgment motion on October 2, 2008, complaining that the circuit court had, "without evidence or testimony entered a verdict for [LAPOA] as to the ALAA claim." She attached to her motion a foreclosure deed executed by LAPOA's attorney on October 10, 2006, and filed in the Baldwin Probate Court on October 16, 2006, averring that Joseph Mahoney had been the record title owner of the subject property since May 10, 2005.

"'Ms. Mahoney specifically requested a hearing on her postjudgment motion. The circuit court set the motion for a hearing on October 21, 2008. The record before us contains no transcript of the hearing. The parties agree, however, that Ms. Mahoney did not appear, that no evidence was presented, and that counsel for both parties presented oral argument to the trial court at the hearing. On October 28, 2008, the circuit court denied Ms. Mahoney's postjudgment motion. Ms. Mahoney timely appealed on November 13, 2008.'

"Mahoney II, 52 So. 3d at 513-14.

"In Mahoney II, we held that,

> "'[i]n the present case, as in Sanderson Group[, Inc. v. Smith, 809 So. 2d 823 (Ala. Civ. App. 2001)], the record shows indisputably that LAPOA's action against Ms. Mahoney was groundless in law. All four of LAPOA's claims against Ms. Mahoney -- breach of contract, account stated, property owner's lien, and eviction -- hinged upon its proving that Ms. Mahoney was the owner of the property. LAPOA not only failed to prove that Ms. Mahoney was the owner, but it also presented as its only witness at the circuit-court trial someone who acknowledged "that LAPOA had no deed showing that Ms. Mahoney was the owner" of the property. Mahoney [I], 4 So. 3d at 1132. LAPOA had access to its own condominium declaration, which
>
> > "'"makes it clear that LAPOA's remedy is strictly against the owner. As Article VII, Section 7, of the declaration, entitled 'Effect of Nonpayment of Assessments: Remedies of the Association,' states: 'No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.'"
>
> "'Mahoney [I], 4 So. 3d at 1134. In addition, the record conclusively demonstrates that LAPOA knew, before December 21, 2006, when it amended its complaint in the circuit court, that Ms.

> Mahoney's former husband, Joseph Mahoney, was the owner of the property because LAPOA's attorney had, on October 16, 2006, filed in the Baldwin Probate Court a foreclosure deed averring that Joseph Mahoney had been the record title owner of the subject property since May 10, 2005.'

"Mahoney II, 52 So. 3d at 517. We reversed the trial court's judgment denying Mahoney's ALAA claim and remanded the cause to the trial court to make an appropriate award pursuant to the ALAA. Id. at 517-18.

"LAPOA petitioned the Alabama Supreme Court for the writ of certiorari, which that court granted. Our supreme court affirmed our conclusion that the trial court had erred in denying Mahoney's claim for an award under the ALAA, noting that

> "'the determination that the claims asserted by LAPOA against Mahoney in the amended complaint were groundless results from recognition that ownership of the property was a required legal element of each claim and that, at the time LAPOA amended the complaint, LAPOA alleged that Mahoney's former husband, and not Mahoney herself, was the owner of the property.'

"Ex parte Loma Alta Prop. Owners Ass'n, 52 So. 3d 518, 524 (Ala. 2010).

"Justice Woodall and Justice Murdock dissented from the majority opinion in Ex parte Loma Alta. Both Justice Woodall and Justice Murdock opined in their respective dissents that they would have held that the trial court did not err in determining that LAPOA's lawsuit against Mahoney was not groundless in law or fact, vexatious, or interposed for any improper purpose; therefore, they opined, the trial

> court did not err in declining to award Mahoney an attorney fee and costs under the ALAA.
>
> "On remand, the trial court held a hearing, at which Mahoney presented testimony and evidence regarding the costs incurred by Mahoney as a result of LAPOA's lawsuit, the reasonableness of those costs, and other relevant factors that would support an award under the ALAA. LAPOA presented testimony and evidence regarding the reasonableness of Mahoney's counsel's charges and other factors that it felt would support only a minimal award.
>
> "Following the hearing, the trial court entered an order awarding Mahoney an attorney fee of $500. The trial court stated in its judgment that its award was based on 'the reasons set forth in the [Alabama] Supreme Court's dissents and [LAPOA's] recent submissions, [and] which is in line with the amount awarded [as an attorney fee on appeal] by the Court of Civil Appeals.'"

___ So. 3d at ___ - ___.

Mahoney appealed the circuit court's judgment awarding her $500 on her ALAA claim to this court. Id. In Mahoney III, we reversed the circuit court's judgment, holding that the circuit court did not state specific reasons for its award, as is required by § 12-19-273, Ala. Code 1975. Id. We also held that the basis stated by the circuit court in its judgment -- the reasoning of the dissents of Justice Woodall and Justice Murdock in Ex parte Loma Alta Property Owners Ass'n, 52 So. 3d 518 (Ala. 2010), and this court's award of $500 in attorney

fees in Mahoney v. Loma Alta Property Owners Ass'n, 52 So. 3d 510 (Ala. Civ. App. 2009)("Mahoney II") -- were not proper bases on which to determine the amount of its award pursuant to the ALAA. Id. We remanded the cause to the circuit court to enter a judgment on Mahoney's ALAA claim consistent with our opinion and with the issues as determined in Mahoney v. Loma Alta Property Owners Ass'n, 4 So. 3d 1130 (Ala. Civ. App. 2008)("Mahoney I") Mahoney II, Ex parte Loma Alta, and Mahoney III, because our supreme court's and our conclusions regarding the issues addressed in those appeals had become law of the case. See Auerbach v. Parker, 558 So. 2d 900, 902 (Ala. 1989)("'When a case is remanded to a trial court after a decision on appeal, "issues decided by the appellate court become law of the case and the trial court's duty is to comply with the appellate mandate...."'"(quoting Erbe v. Eady, 447 So. 2d 778, 779 (Ala. Civ. App. 1984), quoting in turn Walker v. Carolina Mills Lumber Co., 441 So. 2d 980, 982 (Ala. Civ. App. 1983))).

On remand, the circuit court, on June 23, 2011, entered a judgment again awarding Mahoney $500 on her ALAA claim. The circuit court's judgment contained extensive findings of fact

and conclusions of law. Mahoney subsequently appealed to this court.

The amount of an award of attorney fees under the ALAA is within the sound discretion of the trial court. § 12-19-273; Williams v. Capps Trailer Sales, Inc., 607 So. 2d 1272, 1275 (Ala. Civ. App. 1992).

On appeal, Mahoney argues that many of the factual findings in the circuit court's June 23, 2011, judgment are not supported by the record.

> "'When ore tenus evidence is presented, a presumption of correctness exists as to the trial court's findings on issues of fact; its judgment based on these findings of fact will not be disturbed unless it is clearly erroneous, without supporting evidence, manifestly unjust, or against the great weight of the evidence. J & M Bail Bonding Co. v. Hayes, 748 So. 2d 198 (Ala. 1999).'"

Farmers Ins. Co. v. Price-Williams Assocs., Inc., 873 So. 2d 252, 254 (Ala. Civ. App. 2003)(quoting City of Prattville v. Post, 831 So. 2d 622, 627 (Ala. Civ. App. 2002)).

Mahoney first challenges the correctness of the circuit court's findings concerning whether Loma Alta Property Owners Association, Inc.("LAPOA"), had a valid claim against her and whether it had made efforts to ensure the validity of its

claim against her for past-due homeowners' association fees. In its June 23, 2011, judgment, the circuit court stated:

> "This Court notes that with regards to the original issue of property owners association fees and assessments, [LAPOA] had exercised due diligence in researching the public records and divorce settlement of the Mahoneys, [LAPOA] had determined the validity of its claim before asserting it, [LAPOA] had prosecuted its claim in good faith and for a proper purpose, the issues of fact determinative of [LAPOA's] claims were reasonably in conflict as evidenced by [LAPOA's] success in two lower courts, and [LAPOA] had no reason to believe that its claims were improper because it had succeeded in securing a judgment at the district court level and at the circuit court level in a trial de novo, and had Carol Mahoney been present at trial [LAPOA] could have cross-examined her with the divorce settlement evidence later submitted by [LAPOA,] without objection by Carol Mahoney's counsel, which demonstrated that Carol Mahoney had in fact received ownership in the Loma Alta unit pursuant to her divorce decree."

As Mahoney points out, there is no evidence in the record that supports the circuit court's findings that LAPOA had validated its claim by performing a search of the public records. In fact, we stated in Mahoney I that "Garey[, the secretary/treasurer for LAPOA,] admitted that LAPOA had no deed showing that Ms. Mahoney was the owner of the unit in which she resided, that LAPOA had no contract with Ms. Mahoney, and that LAPOA had no document stating that someone

other than the owner of the unit was responsible for payment of the fees and assessments on the unit that Ms. Mahoney occupied." 4 So. 3d at 1132. In addition, the circuit court found in its June 23, 2011, judgment that, "on cross-examination, Garey conceded that the deed of public record was in Joseph Mahoney's name despite Carol Mahoney being the sole resident of the unit ...." Furthermore, in Mahoney II this court held that

> "the record conclusively demonstrates that LAPOA knew, before December 21, 2006, when it amended its complaint in the circuit court, that Ms. Mahoney's former husband, Joseph Mahoney, was the owner of the property because LAPOA's attorney had, on October 16, 2006, filed in the Baldwin Probate Court a foreclosure deed averring that Joseph Mahoney had been the record title owner of the subject property since May 10, 2005."

52 So. 3d at 517. Therefore, it is apparent that any search of the public records would have shown that LAPOA's claim against Mahoney was not valid.

The circuit court's findings regarding the Mahoneys' divorce judgment also are without any basis in the record. LAPOA did not enter the divorce judgment into evidence during the trial on the merits of its action or at any subsequent hearing. The only testimony presented concerning the

Mahoneys' divorce judgment was at the July 27, 2010, hearing on Mahoney's ALAA claim. At that hearing, LAPOA's counsel testified:

> "[S]ince all these matters went up on appeal [in Mahoney I], Your Honor, and I couldn't supplement the record at the time, I, at my own expense, have gone and pulled the divorce decree from the Pi[k]e County Courthouse. And that decree set out that Ms. Mahoney would end up with a residence out of the divorce. I would submit to the Court that I believe that that is just, in fact, this residence."

LAPOA's counsel's testimony is far from conclusive. In fact, it only states his belief that the Loma Alta property is the property awarded to Mahoney in the divorce judgment. As such, his testimony is mere speculation. "[M]ere speculation cannot support a finding of fact." Greater Mobile Chrysler-Jeep, Inc. v. Atterberry, 11 So. 3d 835, 844 (Ala. Civ. App. 2008)(citing ArvinMeritor, Inc. v. Handley, 12 So. 3d 669, 685 (Ala. Civ. App. 2007)(opinion on return to remand)). Therefore, the circuit court's findings that the divorce judgment proved that Mahoney owned the Loma Alta property and that that divorce judgment served to validate LAPOA's claims against Mahoney are not supported by the record.

Moreover, even if LAPOA's counsel's testimony had amounted to more than mere speculation concerning Mahoney's

alleged ownership of the Loma Alta property, it is apparent from his testimony that he did not obtain the divorce judgment until after the case was on appeal -- well after the trial on the merits of LAPOA's claims against Mahoney. Thus, LAPOA's claims could not have been founded on information contained in the Mahoneys' divorce judgment.

Furthermore, this court has already held in Mahoney II, which holding was affirmed in our supreme court's opinion in Ex parte Loma Alta, that LAPOA's claims against Mahoney were groundless in law. Thus, the doctrine of law of the case prevents the circuit court from now determining that LAPOA had a valid basis on which to pursue its claims against Mahoney. See Auerbach, 558 So. 2d at 902.

Mahoney next challenges the circuit court's findings as they relate to Mahoney's credibility. In its June 23, 2011, judgment, the circuit court stated:

> "This Court finds that because [Mahoney] never again appeared before this Court after her district court answer and testimony, because [Mahoney] failed to appear at the circuit court trial and failed to appear at numerous, subsequent hearings wherein there was adequate opportunity for testimony to be heard as well as for cross-examination by [LAPOA], that [Mahoney's] attorney purposefully kept [Mahoney] away from all proceedings so that the Court and/or [LAPOA] could not examine her regarding

> the new defense she had asserted which was contrary to her assertions and testimony in district court; this Court finds that [Mahoney] misled [LAPOA] and the Court and is wholly lacking in credibility in that her own sworn pleadings and testimony are completely contrary, inconsistent, and not credible or due to be considered due to her willful refusal to participate in the proceeding, thereby precluding any examination of her by [LAPOA] or the Court."

The circuit court made much of the fact that Mahoney changed her position between the district court proceeding and the circuit court proceeding by adding a defense that she was not the record owner of the unit, both in the above passage and elsewhere in its judgment, where it stated that "[t]his Court heard undisputed evidence and testimony from [LAPOA] that [Mahoney] stated to the District Court under oath and while represented by the same lawyer that the unit belonged to her and that she owed some of the monies claimed but not all of them ...." We note that "'[a] trial de novo means that the slate is wiped clean and a trial in the Circuit Court is had without any consideration being given to prior proceedings in another court.'" Ex parte Dison, 469 So. 2d 662, 665 (Ala. 1984)(overruled on other grounds by Ex parte City of Dothan, 501 So. 2d 1136 (Ala. 1986))(quoting Yarbrough v. City of Birmingham, 353 So. 2d 75, 78 (Ala. Crim. App. 1977)).

Therefore, Mahoney was not precluded from adding an additional defense in the circuit court proceedings. Additionally, the record in the circuit court proceedings does not contain any evidence of testimony given by Mahoney in the district court. Because the circuit court is to view an appeal for a trial de novo on the merits of the information presented to it during that proceeding, rather than in light of any purported testimony in the district court, and because the transcript of the July 26, 2007, hearing in the circuit court contains no reference to Mahoney's testimony or pleadings in the district court, the circuit court's finding that Mahoney is not credible because she added a new defense that may have conflicted with her pleadings or testimony in the district court is not supported by the record and is without foundation.

The circuit court further appears to take great issue with the fact that Mahoney did not appear at the July 26, 2007, hearing in the circuit court or at any subsequent hearings, citing her absence as a reason to doubt her credibility. However, Mahoney was under no obligation to appear at any of the hearings in the circuit court -- the

record does not contain a subpoena requiring her presence. Moreover, the circuit court's findings that Mahoney's testimony lacks credibility and that Mahoney never appeared in the circuit court are difficult to reconcile. It is clear from the record that Mahoney never testified in the circuit court, either in person or by way of affidavit. Therefore, we see no support for the circuit court's finding that Mahoney's testimony, of which there was none, lacks credibility.

The circuit court also attacked the credibility of Mahoney's counsel, stating that

> "when this Court asked several questions of [Mahoney's] counsel regarding the reason for [Mahoney's] failure to appear that counsel for [Mahoney] responded that she would lose her job, that she worked for an attorney in Mobile, and that his name was Joseph last name unknown; this Court later and independently learned that counsel for [Mahoney] was aware of the identity of Mahoney's employer at the time but did not provide his identity to the Court."

The circuit court also stated that "Mahoney's attorney purposely kept [Mahoney] away from all proceedings so that the Court and/or [LAPOA] could not examine her regarding the new defense she had asserted which was contrary to her assertions and testimony in district court." These findings are wholly unsupported by the record. The record contains no evidence

that could lead to an inference that Mahoney's counsel misled the circuit court regarding Mahoney's employer or that he had purposely kept Mahoney from appearing in the circuit court. Moreover, as we concluded above, Mahoney was under no obligation to appear in the circuit court.

It further appears from the circuit court's judgment that the circuit court believed that LAPOA had valid claims against Mahoney and should have prevailed on the merits of its claims. The circuit court stated in its June 23, 2011, judgment that,

> "despite [LAPOA's] prevailing at both the district court and circuit court levels based on [Mahoney's] actions over several years holding herself out to the public and [LAPOA] as the responsible party and Owner, the [Court of Civil Appeals] reversed the judgment in favor of [LAPOA] based on the issue of record ownership stating that [LAPOA] did not have a contract with [Mahoney]."

(Emphasis added.) In other parts of its judgment, the circuit court stated that Mahoney had "misled" LAPOA and the circuit court and that Mahoney's defense was "disingenuous."[1]

[1]We note that the defense -- that Mahoney was not the record owner of the unit -- which defense the circuit court labels as "disingenuous," is the very defense upon which this court based its reversal of the circuit court's judgment in Mahoney I. It is also the same defense that this court used as a basis for its holding in Mahoney II that LAPOA's claims against Mahoney were groundless in law, and upon which our supreme court based its affirmance of our opinion in Mahoney

Regardless of the circuit court's view of the case, the issue of Mahoney's ownership of the unit has been conclusively decided by this court's opinion in Mahoney I. The doctrine of law of the case precludes the circuit court from disregarding our opinion in Mahoney I and determining that Mahoney owned the Loma Alta property. See Auerbach, 558 So. 2d at 902.

Mahoney also challenges some of the circuit court's factual findings relating to the issue of the reasonableness of Mahoney's counsel's attorney fees. The circuit court stated in its June 23, 2011, judgment:

> "[O]n cross-examination, [Mahoney's] second witness testified that attorney's fees in excess of $30,000.00 were not reasonable since the amount in controversy in this case was only approximately $5,000.00 to $6,000.00 of past due property owners association fees. [Mahoney's] second witness testified that attorney's fees in the amount of approximately $10,000.00 would be reasonable for the trial process and appeals process ...."

Mahoney's second witness was David Hudgens, a local attorney. A review of Hudgens's testimony shows that his testimony does not support these findings by the circuit court. The following exchange occurred during the cross-examination of Hudgens at the July 27, 2010, hearing on the

---

II in Ex parte Loma Alta.

issue of the reasonableness of Mahoney's claimed attorney fees:

> "[LAPOA's counsel]: Is it your testimony to Judge Wilters that approximately $30,000 legal fee is an appropriate fee and a reasonable request in a case that sought approximately 5 or $6,000 in back property owners association dues?
>
> "[Hudgens]: Well, ... normally, I would say no. But I think this is a real unusual case, in that to start with she was sued when there was, as I see it, no basis for suing her. I believe Court of Civil Appeals said there was no basis for suing her.
>
> "And in order to obtain the result that his client -- in order to compensate his client for the expenses that she spent on the litigation and the efforts it took to get a court order to enforce those rights, that is to get a court order -- the writ of mandamus, through the writ of mandamus that basically got us where we are, unfortunately, I do think that's a reasonable fee."

Nowhere in his testimony did Hudgens state that Mahoney's counsel's attorney fee was unreasonable. On the subject of the $10,000 in attorney fees that LAPOA's counsel stated that he had accrued, Hudgens replied that he thought it was "amazing" that LAPOA's counsel had accrued such a meager fee during the entire course of the case. Therefore, we find no support for the circuit court's above-stated findings.

Because the circuit court's judgment contains numerous findings of fact that are clearly erroneous, and because the

circuit court's judgment contains conclusions of law that run afoul of the doctrine of the law of the case, we again reverse the judgment of the circuit court.

The judgment that was before us in Mahoney III and the judgment that is before us now indicate that the original trial judge is having difficulty putting aside his original view of the ALAA claim, which we held was erroneous in Mahoney II.

In C.D.S. v. K.S.S., 978 So. 2d 782 (Ala. Civ. App. 2007), which involved an analogous situation, this court stated:

> "'In cases where there is no proof of personal bias, the Second Circuit has persuasively enumerated factors which should be considered by an appellate court in deciding whether to exercise its supervisory authority to reassign a case. These criteria include:
>
> > "'"(1) whether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously-expressed views or findings determined to be erroneous or based on evidence that must be rejected, (2) whether reassignment is advisable to preserve the appearance of justice, and (3) whether reassignment would entail waste

> and duplication out of proportion to any gain in preserving the appearance of fairness."
>
> "'United States v. Robin, 553 F.2d 8, 10 (2d Cir. 1977) (en banc). ...'

"[United States v. White,] 846 F.2d [678] at 696 [(11th Cir. 1988)]. ... We adopt and apply the factors set out in United States v. Robin, 553 F.2d 8 (2d Cir. 1977), to this matter. In doing so, we are mindful of the statement the United States Court of Appeals for the Second Circuit made in Robin, i.e., that reassignment on remand 'does not imply any personal criticism of the trial or sentencing judge.' 553 F.2d at 10. That being noted,

> "'[i]n the rare case where a judge has repeatedly adhered to an erroneous view after the error is called to his attention, see, e.g., United States v. Brown, 470 F.2d 285, 288 (2d Cir. 1972) (court twice used improper sentencing procedure), reassignment to another judge may be advisable in order to avoid "an exercise in futility in which the Court is merely marching up the hill only to march right down again." United States v. Tucker, 404 U.S. 443, 452, 92 S.Ct. 589, 594, 30 L.Ed.2d 592 (1972) (Blackmun, J., dissenting).'

"Robin, 553 F.2d at 11. Applying the Robin factors to this case, we have determined that reassignment of this case to a different circuit court judge is warranted because it is likely that '"the original judge would have difficulty putting his previous views and findings aside."' United States v. Martin, 455 F.3d 1227, 1242 (11th Cir. 2006)(quoting United States v. Torkington, 874 F.2d 1441, 1447 (11th Cir. 1989)). The reassignment of this case to a different circuit court judge is also 'advisable to preserve

> the appearance of justice.' Robin, 553 F.2d at 10. Additionally, we do not believe that reassigning this case to a different circuit court judge would entail 'waste ... out of proportion to any gain in preserving the appearance of fairness.' White, 846 F.2d at 696."

978 So. 2d at 790-91.

Based on the authority of C.D.S., we remand the case with instructions that it be reassigned to another circuit judge for the determination of an appropriate award pursuant to the ALAA.

Mahoney's and LAPOA's requests for an attorney fee on appeal are denied.[2]

REVERSED AND REMANDED WITH INSTRUCTIONS.

Pittman and Bryan, JJ., concur.

Moore, J., concurs in the rationale in part and concurs in the result, with writing.

Thomas, J., concurs in part and dissents in part, with writing, which Thompson, P.J., joins.

---

[2]Our denial of Mahoney's request for an attorney fee on appeal should not be viewed as a conclusion by this court that Mahoney is not due any award for the attorney fee she incurred in prosecuting this appeal; rather, the trial court should consider the added fee incurred by Mahoney during this appellate proceeding when it determines a proper award under the ALAA.

MOORE, Judge, concurring in the rationale in part and concurring in the result.

I concur with the main opinion insofar as it reverses the judgment of the trial court and remands the case with instructions that it be reassigned to another judge, but I do not concur entirely with its rationale for doing so.

In Mahoney v. Loma Alta Property Owners Ass'n, [Ms. 2100104, May 6, 2011] ___ So. 3d ___ (Ala. Civ. App. 2011) ("Mahoney III"), this court reversed the judgment of the Baldwin Circuit Court ("the trial court") awarding Carol Mahoney $500 in attorney's fees under the Alabama Litigation Accountability Act ("the ALAA"), § 12-19-270 et seq., Ala. Code 1975. This court held that, in limiting its award to $500, the trial court (1) had failed to base its judgment on the 12 factors listed in § 12-19-273, Ala. Code 1975; (2) had impermissibly relied on the dissents in Ex parte Loma Alta Property Owners Ass'n, 52 So. 3d 518, 525-27 (Ala. 2010) (Woodall and Murdock, JJ., dissenting); (3) had impermissibly relied on this court's award to Mahoney of $500 in attorney's fees on appeal in Mahoney v. Loma Alta Property Owners Ass'n, 52 So. 3d 510 (Ala. Civ. App. 2009) ("Mahoney II"); and (4)

had erroneously failed to specify its other reasons for limiting the amount of the award based on the "recent submissions" of the Loma Alta Property Owners Association, Inc. ("LAPOA"). This court reversed the judgment and remanded the case for the trial court "to make a determination of an award pursuant to the ALAA." Mahoney III, ___ So. 3d at ___.

On remand, the trial court entered a new six-page judgment that set forth in detail its reasons for limiting the award of attorney's fees to $500. In the new judgment, the trial court addressed many of the factors set out in the ALAA, omitted any express reference to the dissents in Ex parte Loma Alta Property Owners Ass'n, omitted any reference to the award of $500 in attorney's fees to Mahoney on appeal in Mahoney II, and identified the "recent submissions" of LAPOA and their effect on its award. On appeal, Mahoney argues that the new judgment contains multiple erroneous findings of fact relating to the ALAA factors and that the trial court has again relied on impermissible reasons for its award. I agree.

Under the ALAA, a trial court must use its "sound discretion" in determining the amount of attorney's fees to be

awarded. See § 12-19-273. That discretion is to be guided by consideration of various statutory factors, including:

> "(1) The extent to which any effort was made to determine the validity of any action, claim or defense before it was asserted;
>
> "(2) The extent of any effort made after the commencement of an action to reduce the number of claims being asserted or to dismiss claims that have been found not to be valid;
>
> "(3) The availability of facts to assist in determining the validity of an action, claim or defense;
>
> "....
>
> "(6) Whether or not issues of fact, determinative of the validity of a parties' claim or defense, were reasonably in conflict;
>
> "....
>
> "(10) The extent to which a reasonable effort was made to determine prior to the time of filing of an action or claim that all parties sued or joined were proper parties owing a legally defined duty to any party or parties asserting the claim or action; and
>
> "(11) The extent of any effort made after the commencement of an action to reduce the number of parties in the action."

§ 12-19-273. Those factors all relate to "whether the plaintiff or the plaintiff's attorney made a reasonable inquiry prior to or after commencement of the suit," "the

availability of facts to the plaintiff or the plaintiff's attorney," or "whether there were factual issues 'reasonably in conflict.'" Tidwell v. Waldrop, 583 So. 2d 243, 244 (Ala. 1991) (emphasis added).

In its findings of fact, the trial court essentially determined that LAPOA had undertaken diligent efforts to ascertain the validity of its claims against Mahoney before instituting an action against her and that, throughout the litigation, it had acted with a good-faith belief as to the validity of its claims in maintaining that action. In reaching that factual conclusion, the trial court noted that, before it filed its action in the Baldwin District Court ("the district court"), LAPOA had information indicating that Mahoney owned the condominium unit at issue because (1) Mahoney had resided alone in the condominium unit for many years and (2) Mahoney had consistently paid the fees owed by the condominium owner, without objection or condition. The trial court further found that, in the district-court proceedings, Mahoney had admitted that she owed some money to LAPOA that only the owner of the condominium unit would owe and had not specifically denied that she owned the condominium

unit. Notably, Justice Murdock cited that very same evidence in his dissent in Ex parte Loma Alta Property Owners Ass'n in asserting that LAPOA had not filed a claim against Mahoney that was "groundless in fact." 52 So. 3d at 526-27. In our remand order in Mahoney III, this court specifically ordered the trial court not to consider Justice Murdock's dissent. By merely deleting the express reference to that dissent, but maintaining its reasoning, the trial court failed to comply with our mandate.

In Mahoney III, this court instructed the trial court not to rely on the dissents in Ex parte Loma Alta Property Owners Ass'n because they did not express the opinion of a majority of our supreme court. ___ So. 3d at ___. In Ex parte Loma Alta Property Owners Ass'n, 52 So. 3d at 524, the supreme court affirmed this court's holding in Mahoney II that LAPOA's action against Mahoney was "groundless in law" because Mahoney indisputably was not the owner of the condominium unit at any time. As this court determined in Mahoney v. Loma Alta Property Owners Ass'n, 4 So. 3d 1130 (Ala. Civ. App. 2009) ("Mahoney I"), the covenants upon which LAPOA based its claims required only that the "record owner" pay the homeowners'

association dues. 4 So. 3d at 1134. Thus, as a matter of law, LAPOA could maintain a valid claim only against that person identified by record as the owner of the property. By its own covenants, LAPOA could not, in good faith, premise its claims on other, less formal, indicia of ownership, as Justice Murdock's dissent and the trial court maintained.

Nevertheless, because the trial court relied so heavily on Mahoney's failure to raise her nonownership of the condominium unit at the district-court level, that factor warrants some discussion. In its judgment, the trial court reasoned that LAPOA had a good-faith basis for believing that Mahoney owned the condominium unit because Mahoney did not indicate otherwise during the district-court proceedings, instead raising the issue for the first time during the circuit-court proceedings. The undisputed evidence contradicts that chronology.

The record indicates that Mahoney did not formally raise her nonownership of the condominium unit in the district-court proceedings. Mahoney originally filed her answer, pro se, on November 14, 2005, on a form supplied by the district court; she marked a line on the form indicating that she owed some

money to LAPOA, and, in a lower area on the form, she entered a typewritten plea of setoff for LAPOA's alleged failure to perform repairs on the condominium unit. She later retained an attorney, in January 2006, to represent her. Mahoney's attorney contacted LAPOA's attorney, and, based on their conversation, Mahoney's attorney believed the parties had resolved the case until he received a March 27, 2006, letter from LAPOA's attorney suggesting otherwise. At that point, because the trial in the district court was scheduled for April 11, 2006, Mahoney's attorney filed a motion to continue and sent LAPOA's attorney a letter dated April 7, 2006, requesting an accommodation "so that [he could] also file the appropriate answer and counterclaim." In that letter, Mahoney's attorney wrote: "If for some reason the case is not continued as requested, we, of course, will file an appeal." The district court denied the motion to continue, and Mahoney did not file an amended answer or counterclaim before the scheduled trial.

However, it is undisputed that Mahoney did informally notify LAPOA that she was not the record owner of the condominium unit. The record shows, without dispute, that, on

April 11, 2006, just before the commencement of the district-court trial, Mahoney's attorney hand-delivered to LAPOA's attorney a copy of the warranty deed showing that Mahoney was not the record owner of the condominium unit. LAPOA's attorney expressly acknowledged in a letter written later that he became aware that Mahoney was disputing her ownership of the condominium unit when Mahoney's attorney "presented me with a document at the [d]istrict [c]ourt trial that purports to vest ownership to the property in the name of [Mahoney's ex-]husband." Despite that information, the parties proceeded with the trial, and LAPOA obtained a judgment against Mahoney on that date. The record does not contain the evidence presented to the district court.

Contrary to the findings of the trial court, the undisputed evidence shows that Mahoney notified LAPOA that she was not the record owner of the condominium unit on April 11, 2006, before the trial began in the district court. Although it is true that Mahoney did not formally assert her nonownership in the pleadings before that trial, Mahoney's attorney plainly indicated that, if the case was not continued, Mahoney would certainly appeal, which, of course,

would give Mahoney the right to amend her pleadings at that time. Thus, LAPOA was on notice during the district-court proceedings that Mahoney was claiming that she was not the record owner of the condominium unit. In light of those circumstances, LAPOA could not reasonably have believed thereafter on the premise that Mahoney was conceding her ownership of the condominium unit.

Any doubt as to Mahoney's formal position would have been erased when, after appealing the district court's judgment, Mahoney amended her answer on May 19, 2006, denying every allegation contained in LAPOA's complaint, including its allegation that Mahoney owned the condominium unit, and asserting as an affirmative defense that LAPOA did not have any contract with Mahoney. Mahoney also stated a counterclaim against LAPOA under the ALAA for filing an action "to force [Mahoney] to pay a debt which she did not owe." Mahoney thereafter sent discovery to LAPOA, requesting any evidence supporting its claim that Mahoney owed the delinquent association dues. When LAPOA did not immediately respond to her discovery requests, Mahoney filed a motion to compel. At the hearing on the motion to compel on October 17, 2006,

Mahoney's attorney requested that LAPOA's attorney write a letter setting out "the facts and specifics on [LAPOA]'s grounds for filing this lawsuit against [Mahoney]."

Armed with the knowledge that Mahoney contended that she did not owe the delinquent association dues because she was not the record owner of the condominium unit, in October 2006 LAPOA proceeded to foreclose on a lien that it had secured on the property. LAPOA's attorney prepared a foreclosure deed that recited the entire title history of the condominium unit. That history set out that the title to the condominium unit had first been vested in Bahama Island Surf & Racquet Club, Inc., in 1988, and that it had since been transferred to Joseph Mahoney II, Mahoney's ex-husband, on May 10, 2005. The foreclosure deed, which was dated October 13, 2006, identified Mahoney solely as "the occupant" of the condominium unit. Subsequently, on December 21, 2006, LAPOA amended its complaint to name Joseph Mahoney II as a defendant and as the "owner" of the unit and to designate Mahoney solely as a "resident" of the unit. See Mahoney I, 4 So. 3d at 1134. Despite having all the foregoing information, LAPOA did not dismiss Mahoney as a defendant, see § 12-19-273(2) (requiring

a trial court to consider efforts to dismiss "claims that have been found not to be valid"), and persisted in its efforts to obtain a judgment and to enforce that judgment against her.

In its new judgment entered on remand following this court's decision in Mahoney III, the trial court excused LAPOA's conduct on the ground that LAPOA had, in fact, exercised due diligence in searching the public records and discovering a divorce-settlement document that indicated that Mahoney owned condominium unit. LAPOA did conduct a title search at some point during the pendency of the circuit-court proceedings. As stated above, a subsequent title search revealed that Mahoney had never been the record owner of the condominium unit. Furthermore, it is undisputed that LAPOA's attorney did not obtain the divorce-settlement document until after LAPOA had secured a judgment against Mahoney in the trial court and that LAPOA did not rely on that document in prosecuting the action against Mahoney. Even more to the point, LAPOA could not have relied on the divorce-settlement document to support the validity of its claims. After testifying in the hearing on remand from our decision in Mahoney III that he had only inferred from his reading of some

language in the divorce-settlement document that Mahoney had obtained ownership in the condominium unit in the divorce settlement,[3] LAPOA's attorney acknowledged that the "public record" still showed "that Joseph Mahoney owns this unit." Hence, the existence of the divorce-settlement document did not alter the fact that Mahoney was not the "record owner" of the condominium unit -- i.e., the only party from whom LAPOA could properly seek association dues under its covenants.[4]

---

[3]Apparently, that testimony was the main part of the "recent submissions" from LAPOA upon which the trial court relied.

[4]The main opinion points out that the invalidity of LAPOA's claims has already been decided by this court and that the trial court violated the law-of-the-case doctrine by considering that the divorce-settlement document proved that Mahoney did, in fact, own the condominium unit. ___ So. 3d at ___. Under the law-of-the-case doctrine, "whatever is once established between the same parties in the same case continues to be the law of that case, whether or not correct on general principles, so long as the facts on which the decision was predicated continue to be the facts of the case." Blumberg v. Touche Ross & Co., 514 So. 2d 922, 924 (Ala. 1987) (emphasis added). At the time this court decided in Mahoney II that LAPOA had no valid claim against Mahoney, this court did not have before it any evidence relating to Mahoney's divorce-settlement document. Apparently, the trial court believed that that document changed the facts by proving that Mahoney had obtained ownership of the condominium unit; however, as explained above, even if substantial evidence supported a finding that Mahoney did obtain an ownership interest in the condominium unit through her divorce settlement, which is highly questionable, see ___ So. 3d at

See Touchstone v. Peterson, 443 So. 2d 1219 (Ala. 1983) (holding that property-division provisions of divorce judgment give equitable title to lands described therein and that party awarded such lands becomes "record owner" only upon obtaining valid deed).

The trial court further excused LAPOA's conduct on the ground that Mahoney had intentionally made herself unavailable for questioning regarding her ownership of the condominium unit. As the main opinion holds, ___ So. 3d at ___, the record does not contain any evidence to substantiate that Mahoney or her attorney willfully evaded such questioning or any evidence from which the trial court reasonably could have inferred that Mahoney failed to appear in bad faith so that her position as to ownership lacked credibility. The record also does not indicate that LAPOA ever noticed Mahoney's deposition or that the trial court issued any subpoena compelling her attendance at trial. At any rate, the trial court does not adequately explain how Mahoney's appearance at

---

___, it does not change the crucial fact that Mahoney did not acquire record ownership. Hence, I concur that the trial court was precluded from reconsidering the validity of LAPOA's claims under the law-of-the-case doctrine.

trial would have validated LAPOA's claims. The trial court maintains that LAPOA could have cross-examined Mahoney as to the contents of her divorce settlement and proven that she had acquired ownership of the condominium unit; however, LAPOA did not discover the divorce-settlement document until long after the trial had been completed, and, as set out above, LAPOA's attorney later acknowledged that the divorce settlement did not make Mahoney the "record owner" of the condominium unit. It seems that whatever testimony Mahoney would have provided would not have changed the fact that Joseph Mahoney II was the record owner of the condominium unit, a fact LAPOA did not even attempt to dispute at trial.[5] See § 12-19-273(6) (requiring court of record to consider "[w]hether or not issues of fact, determinative of the validity of a [party's] claim or defense, were reasonably in conflict").

In summary, the undisputed evidence shows that, before LAPOA asserted its claims against Mahoney in the district court, it made no effort to ascertain whether she was the record owner of the condominium unit, see § 12-19-273(1) &

[5]In fact, LAPOA obtained a default judgment against Joseph Mahoney II based, in part, on its allegation that he was the sole record owner of the condominium unit.

(10), although such evidence was available in the public record,[6] see § 12-19-273(3), and LAPOA did not dismiss Mahoney as a defendant after it acquired irrefutable information before and during the circuit-court proceedings that she was not the record owner of the unit. See § 12-19-273(2), (6), and (11). The trial court thus erred in finding that LAPOA had made a reasonable inquiry as to Mahoney's record ownership "prior to or after commencement of the suit." Tidwell, 583 So. 2d at 244.

As for the other factors set out in § 12-19-273, the trial court did not make any finding relative to the financial position of the parties, see § 12-19-273(4), except insofar as it recited, without supporting evidence, that "the financial position of [LAPOA] is in jeopardy due to nonpayment of dues because it is a not-for-profit entity ...." The legislature obviously intended that courts of record would inquire as to the financial position of the parties relative to their respective abilities to pay an award of attorney's fees. In that regard, LAPOA presented no evidence regarding its

[6]The trial court specifically found that the deed upon which Mahoney relied to show that she was not the record owner of the unit was "a matter of existing public record."

financial condition or the impact any award of attorney's fees would have on its treasury, so the trial court had no basis for limiting its award based on financial reasons.

The trial court found that LAPOA did not prosecute the action against Mahoney in bad faith or for an improper purpose. See § 12-19-273(5) (requiring court of record to consider "[w]hether or not the action was prosecuted or defended, in whole or in part, in bad faith or for improper purpose"). In her brief to this court, Mahoney points out that LAPOA maintained its action against her long after it realized that she was not the record owner of the condominium unit and that LAPOA even sought in its claims against her the delinquent association dues owed by the previous owner of the condominium unit. LAPOA does not dispute either contention in its brief to this court. Even if LAPOA had been proceeding under an innocent misunderstanding as to the current record ownership of the condominium unit, which contention has been thoroughly rejected by this court, it certainly would have been improper for LAPOA to attempt to recover dues owed by the previous owner. The trial court erred in finding otherwise.

The trial court was also required to determine "[the extent to which the party prevailed with respect to the amount of and number of claims or defenses in controversy." § 12-19-273(7). In its judgment, the trial court noted that LAPOA had prevailed on its three claims at both the district-court and the circuit-court levels. Ultimately, however, this court and our supreme court determined that LAPOA did not have any valid claims against Mahoney. Thus, it was Mahoney, not LAPOA, who prevailed on all three claims. The trial court erred in failing to recognize that fact and in basing its limited award, in part, on the erroneous district-court and circuit-court judgments.

Section 12-19-273(9), Ala. Code 1975, requires a court of record to consider "[t]he amount or conditions of any offer of judgment or settlement in relation to the amount or conditions of the ultimate relief granted by the court." The evidence in the record indicates that Mahoney offered to settle the case by paying in full the delinquent dues owed by Joseph Mahoney II, but that LAPOA insisted on additional payment of a portion of its attorney's fees, and that the parties did not consummate any settlement. In light of the fact that this

court determined that Mahoney did not owe any dues, that statutory factor weighs heavily in favor of Mahoney. The trial court mentioned the settlement positions of the parties in its judgment, but it is apparent that it did not consider those positions in light of the ultimate outcome of the case. In that regard, the trial court erred.

The trial court further erred regarding the reasonableness of the amount of the attorney's fees incurred by Mahoney. In addition to the errors noted in the main opinion, ___ So. 3d at ___, the trial court erred in relying on the fact that Mahoney presented no documentary evidence indicating that she had paid her attorney the full amount of the requested fees. As this court stated in Mahoney III, "an award under the ALAA is designed as a sanction to discourage lawsuits that are groundless in law." ___ So. 3d at ___. The ALAA provides that an award should be "reasonable" in amount in light of the factors set out in § 12-19-273, as well as other relevant factors. Neither the purpose of the award nor the language of the ALAA requires that a movant prove that he or she actually paid the requested amount.

The trial court also erred in concluding that the amount of the attorney's fee should relate to the amount in controversy. See Willow Lake Residential Ass'n v. Juliano, [Ms. 2081099, Aug. 27. 2010] ___ So. 3d ___, ___ (Ala. Civ. App. 2010) (rejecting similar argument). Rather, in addition to the factors set out in the ALAA, the trial court should have applied the criteria established in Peebles v. Miley, 439 So. 2d 137 (Ala. 1983), which include:

> "'(1) the nature and value of the subject matter of the employment; (2) the learning, skill, and labor requisite to its proper discharge; (3) the time consumed; (4) the professional experience and reputation of the attorney; (5) the weight of his responsibilities; (6) the measure of success achieved; (7) the reasonable expenses incurred; (8) whether a fee is fixed or contingent; (9) the nature and length of a professional relationship; (10) the fee customarily charged in the locality for similar legal services; (11) the likelihood that a particular employment may preclude other employment; and (12) the time limitations imposed by the client or by the circumstances.'"

Willow Lake Residential Ass'n, ___ So. 3d at ___ (quoting Van Schaack v. AmSouth Bank, N.A., 530 So. 2d 740, 749 (Ala. 1988)). Mahoney presented evidence, from both her own attorney and an expert witness, relating to the Peebles factors. As Mahoney argues, their testimony was largely undisputed. Although LAPOA's attorney asserted that he had

never charged a client more than the amount in controversy and that he had incurred only $10,000 in attorney's fees throughout the litigation, LAPOA did not attack the amount requested by Mahoney as being unreasonable in any respect.

The foregoing errors all necessitate reversal of the judgment of the trial court. Given the prolonged appellate history of this case, as well as the relatively undisputed nature of the evidence in the case, I strongly considered whether I would recommend that this court should simply render an attorney's fee award for Mahoney, as she requests in her brief. However, I find no binding precedent for such an unusual procedure. I further considered whether I would recommend remanding the case with specific instructions to the trial court as to how to apply the appropriate factors to the evidence. In the end, however, I am convinced by the reasoning set out in the main opinion that the best course of action is to direct that this case be reassigned to another trial judge for the purposes of determining an appropriate award of attorney's fees based on the appropriate statutory and other factors.

THOMAS, Judge, concurring in part and dissenting in part.

I concur with the main opinion insofar as it reverses the judgment of the circuit court; however, I respectfully dissent insofar as it orders reassignment of the case to a new circuit court judge on remand.

In my view, the forced reassignment of a case should be used only in extraordinary circumstances and is not warranted at this time in this case. With this court's latest opinion, which clearly establishes what findings of fact and conclusions of law are settled by the law-of-the-case doctrine, to serve as a guide, the original circuit court judge in this case should be given an additional opportunity to follow the mandates of this court and the Alabama Supreme Court in crafting an award under the ALAA. Therefore, I would remand the cause to the original circuit court judge with instructions to enter an award that complies with our appellate mandates in Mahoney I, Mahoney II, Mahoney III, and the main opinion in this appeal, along with the Alabama Supreme Court's opinion in Ex parte Loma Alta.

Thompson, P.J., concurs.