

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 20, 2015 Session

STEVE HOLLAR v. DEICY C. HOLLAR

**Appeal from the Circuit Court for Pickett County
No. 2013-CV-1 John J. Maddux, Jr., Judge**

No. M2014-02370-COA-R3-CV – Filed November 30, 2015

In this divorce action, Husband appeals the trial court’s decision to invalidate the parties’ antenuptial agreement and the trial court’s classification and division of the marital estate. The trial court declined to enforce the antenuptial agreement because, *inter alia*, Wife could not read the agreement - she could not speak or read English - and she was not represented by counsel. Finding that the evidence does not preponderate against any of the trial court’s findings, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the Court, in which RICHARD R. DINKINS and W. NEAL MCBRAYER, JJ., joined.

Richard M. Brooks, Carthage, Tennessee, for the appellant, Steve Hollar.

Elizabeth L. Miller, Nashville, Tennessee, for the appellee, Deicy C. Hollar.

OPINION

Steve Hollar (“Husband”) and Deicy C. Hollar (“Wife”) began an internet courtship in February 2009. At that time, Wife resided in Colombia, South America, and Husband resided in Florida. Two months into their courtship, Husband traveled to Colombia to meet her for the first time. Because Wife does not speak or read English, and Husband does not speak or read Spanish, the parties used one of Wife’s neighbors to interpret so the couple could communicate. It was during this first in-person meeting that the parties decided to get married; however, Husband had to return to the United States before that could occur.

After returning to Florida, Husband hired a Florida attorney to draft an antenuptial agreement. Husband returned to Colombia in June 2009 to get married. He presented the antenuptial agreement to Wife on the day of the wedding or the day before. Because the agreement was written in English, Wife asked a young man to read the agreement and explain it to her. Without the advice of an attorney, Wife signed the agreement, and the parties married on June 19, 2009. Although the newlyweds planned to travel immediately to Florida and reside together, Wife was unable to enter the United States for eighteen months due to delays in obtaining her visa.

In May 2011, Husband and Wife moved to Pickett County, Tennessee. They subsequently moved back to Florida. The parties separated in December 2012, and Wife returned to Tennessee to reside in a domestic violence safe home in Cookeville.

Husband filed a complaint for divorce on January 2, 2013, in which he requested the enforcement of the antenuptial agreement. Wife filed an answer and a counterclaim for divorce on the grounds of Husband's inappropriate marital conduct and her forced withdrawal due to intolerable indignities. Wife also contested the enforceability of the antenuptial agreement.

The matter went to trial on September 24, 2013, during which both Husband and Wife testified concerning the circumstances surrounding the antenuptial agreement. Husband testified that he hired an attorney in Florida to draft an antenuptial agreement before he returned to Colombia. The agreement was written in English, and a Spanish translation was not provided to Wife. According to Husband, he presented Wife with the antenuptial agreement the day before the wedding, he provided Wife with funds to hire an interpreter, and an interpreter went over the agreement while both parties were present. Husband further testified that Wife said "she didn't care about the money, she didn't care about anything [Husband] had," and that she "wanted a good husband."

Wife testified that she was unaware of an antenuptial agreement until Husband presented it to her on the day of their wedding. Wife did not dispute that Husband provided funds to hire an interpreter; however, she testified that the so-called interpreter was a sixteen-year-old boy she had hired to assist with the wedding ceremony. She explained that the sixteen-year-old boy was a family friend, not an interpreter by profession, and that he provided little explanation of the purpose or contents of the antenuptial agreement. Wife testified that the young boy did not read the agreement to her, he merely looked at the front and back page and told her that it was "something about marriage" and "what [Husband] has in the United States." Nevertheless, Wife signed the agreement, and the parties got married.

The trial court found that Husband's testimony was not credible, that "some, but not all," of Wife's testimony was less than credible, that the marriage "was destroyed because of [Husband's] inappropriate conduct and abuse toward [Wife,]" and that Wife

proved grounds for a divorce pursuant to Tenn. Code Ann. § 36-4-101(a)(11) and (12). By order dated September 15, 2014, the trial court awarded Wife the divorce, found the antenuptial agreement unenforceable, classified some of the parties' property as separate property, and divided the material property. The trial court ordered Husband to pay Wife transitional alimony and \$850 for her attorney's fees. This appeal followed.

STANDARD OF REVIEW

Because this is an appeal from a decision made by the trial court itself following a bench trial, the now-familiar standard in Tenn. R. App. P. 13(d) governs our review.

In cases such as this where the action is "tried upon the facts without a jury." Tenn. R. App. P. 52.01 provides that the trial court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment. The underlying rationale for the Rule 52.01 mandate is that it facilitates appellate review by "affording a reviewing court a clear understanding of the basis of a trial court's decision," and in the absence of findings of fact and conclusions of law, "this court is left to wonder on what basis the court reached its ultimate decision." *In re Estate of Oakley*, No. M2014-00341-COA-R3-CV, 2015 WL 572747, at *10 (Tenn. Ct. App. Feb. 10, 2015) (citing *Lovlace v. Copley*, 418 S.W.3d 1, 35 (Tenn. 2013)), *no perm. app. filed*. Further, compliance with the mandate of Rule 52.01 enhances the authority of the trial court's decision because it affords the reviewing court a clear understanding of the basis of the trial court's reasoning. *Gooding v. Gooding*, __ S.W.3d __, No. M2014-01595-COA-R3-CV, 2015 WL 1947239, at *6 (Tenn. Ct. App. Apr. 29, 2015), *no perm. app. filed*; *In re Zaylen R.*, No. M2003-00367-COA-R3-JV, 2005 WL 2384703, at *2 (Tenn. Ct. App. Sept. 27, 2005) ("Findings of fact facilitate appellate review, *Kendrick v. Shoemake*, 90 S.W.3d 566, 571 (Tenn. 2002), and enhance the authority of the court's decision by providing an explanation of the trial court's reasoning.").

Our Supreme Court has explained the reasoning for the Rule 52.01 mandate as follows:

Requiring trial courts to make findings of fact and conclusions of law is generally viewed by courts as serving three purposes. First, findings and conclusions facilitate appellate review by affording a reviewing court a clear understanding of the basis of a trial court's decision. Second, findings and conclusions also serve "to make definite precisely what is being decided by the case in order to apply the doctrines of estoppel and res judicata in future cases and promote confidence in the trial judge's decision-making." A third function served by the requirement is "to evoke care on the part of the trial judge in ascertaining and applying the facts." Indeed, by clearly expressing the reasons for its decision, the trial court may well decrease the likelihood of an appeal.

Lovlace, 418 S.W.3d at 34-35 (internal citations and footnotes omitted).

There is no bright-line test by which to assess the sufficiency of the trial court's factual findings; nevertheless, the general rule is that "the findings of fact must include as much of the subsidiary facts as is necessary to disclose to the reviewing court the steps by which the trial court reached its ultimate conclusion on each factual issue." *In re Estate of Oakley*, 2015 WL 572747, at *10 (quoting *Lovlace*, 418 S.W.3d at 35).

In this case, we have the benefit of comprehensive and detailed findings of fact by the trial court, which fully comply with the Rule 52.01 mandate, and we review a trial court's factual findings de novo, accompanied by a presumption of the correctness of the finding of fact, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); see *Boarman v. Jaynes*, 109 S.W.3d 286, 289-90 (Tenn. 2003). For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect. See *Walker v. Sidney Gilreath & Assocs.*, 40 S.W.3d 66, 71 (Tenn. Ct. App. 2000); *Realty Shop, Inc. v. R.R. Westminster Holding, Inc.*, 7 S.W.3d 581, 596 (Tenn. Ct. App. 1999). We will also give great weight to a trial court's factual findings that rest on determinations of credibility and weight of oral testimony. See *Estate of Walton v. Young*, 950 S.W.2d 956, 959 (Tenn. 1997); *Woodward v. Woodward*, 240 S.W.3d 825, 828 (Tenn. Ct. App. 2007); *B & G Constr., Inc. v. Polk*, 37 S.W.3d 462, 465 (Tenn. Ct. App. 2000).

The presumption of correctness in Tenn. R. App. P. 13(d) applies only to findings of fact, not to conclusions of law. See *Boarman*, 109 S.W.3d at 289-90. Accordingly, no presumption of correctness attaches to the juvenile court's conclusions of law, and our review is de novo. *Blair v. Brownson*, 197 S.W.3d 681, 684 (Tenn. 2006) (citing *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000)).

ANALYSIS

Husband's issues on appeal pertain to the enforceability of the antenuptial agreement and the trial court's classification of marital property and resulting division of the marital estate. We will begin our analysis with the enforceability of the antenuptial agreement.

I. ANTENUPTIAL AGREEMENT

We note from the outset that the antenuptial agreement at issue contains a choice of law provision stating that the agreement “shall be governed by Florida law.”¹ With respect to antenuptial agreements, Florida law is not appreciably different from Tennessee law.

In Tennessee, antenuptial or prenuptial agreements are favored by public policy. *Perkinson v. Perkinson*, 802 S.W.2d 600, 601 (Tenn. 1990). Moreover, courts are statutorily required to uphold such agreements provided they “have been entered into by such spouses freely, knowledgeably and in good faith and without exertion of duress or undue influence upon either spouse.” Tenn. Code Ann. § 36-3-501; *Randolph v. Randolph*, 937 S.W.2d 815, 819 (Tenn. 1996).

Similarly, under Florida law, “even unreasonable nuptial agreements regarding post-dissolution property and support, *if freely executed*, are enforceable.” *Lashkajani v. Lashkajani*, 911 So. 2d 1154, 1157 (Fla. 2005) (citing *Casto v. Casto*, 508 So.2d 330, 334 (Fla. 1987)) (emphasis added). The circumstances that would justify invalidating an otherwise-enforceable antenuptial agreement under Florida law are also similar to those outlined by Tennessee law:

First, the agreement may be set aside or modified by a court if it was “reached under *fraud, deceit, duress, coercion, misrepresentation, or overreaching*.” Second, if the agreement is “*unfair or unreasonable . . . given the circumstances of the parties*,” and the trial court finds the agreement “disproportionate to the means of the defending spouse,” then the rebuttable presumption is that “there was either concealment by the defending spouse or a . . . lack of knowledge by the challenging spouse of the defending spouse’s finances at the time the agreement was reached.” Further, incompetence of counsel is not a ground to set aside a valid nuptial agreement.

Lashkajani, 911 So. 2d at 1157 (quoting *Casto*, 508 So.2d at 333-34) (internal citations omitted) (emphasis added).

Moreover, when deciding whether to enforce a prenuptial agreement, trial courts must “carefully examine the circumstances” surrounding the agreement because parties to a prenuptial agreement are not “dealing at arm’s length.” *Id.* at 1158 (quoting *Casto*, 508 So.2d at 334). “The critical test in determining the validity of marital agreements is whether there was fraud or overreaching on one side, or, assuming unreasonableness,

¹ The trial court recognized that “[i]n both Florida and Tennessee contract law generally applies for antenuptial agreement[s].” Although both Husband and Wife cite to Tennessee law in their respective briefs, at oral argument neither party disputed that Florida law controls.

whether the challenging spouse did not have adequate knowledge of the marital property and income of the parties at the time the agreement was reached.” *Casto*, 508 So. 2d at 334.

Turning to the present case, the trial court concluded the antenuptial agreement was unenforceable, finding the evidence did not show Wife received any type of explanation as to the meaning of the terms in the antenuptial agreement and that the parties did not deal at “arm’s length.” Specifically, the trial court’s order states:

There is no evidence the document was shown to [Wife] in Spanish, nor did [Wife] have an attorney or an interpreter to explain the significance of signing the document. [Husband’s] allegation that [Wife] knew what [Wife] was signing because [Wife] could get the English terms translated into Spanish over the internet is not acceptable to this court.

The evidence does not preponderate against these findings. Husband unilaterally procured the antenuptial agreement and presented it to Wife either the day before or the day of the wedding ceremony, with no prior discussion of Husband’s intent or the agreement’s purpose. Moreover, although Husband knew Wife could not speak or read English, he did not provide her with a Spanish version or advise her to consult an attorney. Moreover, the interpreter at the parties’ wedding ceremony was unable to translate the document for Wife in its entirety. The trial court also found Husband’s allegation that Wife entered into the agreement knowingly because he did not mislead Wife and because she could have translated the English version into Spanish over the internet “not acceptable.” In expressly rejecting Husband’s allegation, the trial court noted that Wife could not speak or read English, was not sophisticated in legal or financial matters, and received little information as to the contents and purpose of the antenuptial agreement.

Husband also argues Wife entered into the agreement freely and in good faith because prior to signing the agreement she allegedly stated that she “didn’t care about the money” and “just wanted a good husband.” We find no merit to this assertion because a spouse’s relative indifference to the other spouse’s finances for marriage purposes is a distinct concept from indifference to finances for the purposes of disclosure in the context of the willingness to sign an antenuptial agreement. *See Stancil v. Stancil*, No. E2011-00099-COA-R3-CV, 2012 WL 112600, at *6 (Tenn. Ct. App. Jan. 13, 2012).

After a careful examination of the circumstances surrounding the antenuptial agreement, *Lashkajani*, 911 So.2d at 1158, it is clear that Wife did not enter into the antenuptial agreement knowingly, in good faith, or have adequate knowledge of the marital property and income of the parties at the time the agreement was reached. *Casto*, 508 So. 2d at 334. Moreover, the trial court found that Husband was not a credible witness, and as noted earlier, this court gives great weight to a trial court’s factual

findings that rest on determinations of credibility and weight of oral testimony. *Estate of Walton*, 950 S.W.2d at 959; *Woodward*, 240 S.W.3d at 828; *B & G Constr., Inc.*, 37 S.W.3d at 465.

The foregoing considered, we affirm the trial court's ruling that the antenuptial agreement is invalid and unenforceable. We will now address Husband's arguments concerning the division of the marital estate.

II. DIVISION OF MARITAL ESTATE

The division of the parties' marital estate begins with the classification of the property as separate or marital property. *Miller v. Miller*, 81 S.W.3d 771, 775 (Tenn. Ct. App. 2001). Tennessee is a "dual property" state; thus, property cannot be included in the marital estate unless it is deemed "marital property." *Smith v. Smith*, 93 S.W.3d 871, 875-76 (Tenn. Ct. App. 2002). The definition of "marital property" is found in Tenn. Code Ann. § 36-4-121(b)(1)(A). "Separate property," as defined in Tenn. Code Ann. § 36-4-121(b)(2)(A)-(F), is not marital property. Therefore, separate property should not be included in the marital estate. *Snodgrass v. Snodgrass*, 295 S.W.3d 240, 246 (Tenn. 2009). The classification of particular property as either separate or marital is a question of fact to be determined in light of all relevant circumstances. *See Langford v. Langford*, 421 S.W.2d 632, 634 (Tenn. 1967); *Cutsinger v. Cutsinger*, 917 S.W.2d 238, 241 (Tenn. Ct. App. 1995). Thus, we review the trial court's classification using the familiar standard of review in Tennessee Rule of Appellate Procedure 13(d).

Once property has been classified as marital property, the court should place a reasonable value on property that is subject to division. *Edmisten v. Edmisten*, No. M2001-00081-COA-R3-CV, 2003 WL 21077990, at *11 (Tenn. Ct. App. May 13, 2003). The parties have the burden to provide competent valuation evidence. *Kinard v. Kinard*, 986 S.W.2d 220, 231 (Tenn. Ct. App. 1998). When valuation evidence is conflicting, the court may place a value on the property that is within the range of the values presented. *See Watters v. Watters*, 959 S.W.2d 585, 589 (Tenn. Ct. App. 1997). Decisions regarding the value of marital property are questions of fact; thus, they are not second-guessed on appeal unless they are not supported by a preponderance of the evidence. *Kinard*, 986 S.W.2d at 231.

Once the marital property has been valued, the trial court is to divide the marital property in an equitable manner. Tenn. Code Ann. § 36-4-121(a)(1); *Miller*, 81 S.W.3d at 775. A division of marital property in an equitable manner does not require that the property be divided equally. *Robertson v. Robertson*, 76 S.W.3d 337, 341 (Tenn. 2002). Moreover, the division of a marital estate "is not a mechanical process but rather is guided by considering the factors in Tennessee Code Annotated § 36-4-121(c)." *Kinard*, 986 S.W.2d at 230. "Trial courts have wide latitude in fashioning an equitable division of marital property." *Id.* Therefore, this court gives great weight to a trial court's decisions

regarding the division of marital assets, and we will not disturb the trial court's ruling unless the distribution lacks proper evidentiary support, misapplies statutory requirements or procedures, or results in some error of law. *Keyt v. Keyt*, 244 S.W.3d 321, 327 (Tenn. 2007). As to the trial court's findings of fact, "we review the record de novo with a presumption of correctness, and we must honor those findings unless there is evidence which preponderates to the contrary." *Id.* However, we accord no presumption of correctness to the trial court's conclusions of law. *Id.*

In this case, the marital property and corresponding values assigned by the trial court consisted of the following: (a) the marital residence, equity valued at \$60,000; (b) the IRA Husband opened on January 2, 2013, valued at \$35,432.04; (c) the 2012 Ford F150, valued at \$4,709; (d) the household furniture and furnishings, valued at \$2,000; and (e) one-third of Husband's Boilermaker-Blacksmith National Pension Trust ("Pension") that went into pay status during the marriage without regard to substantial contributions by either spouse, valued at \$789 monthly. The trial court did not find any separate property, other than the implicit finding that two-thirds of Husband's monthly Pension was his separate property.

In dividing the marital estate, the trial court awarded Wife: (a) 30% of the equity in the marital residence; (b) 40% of the value of the IRA; (c) 10% of the equity in the 2012 Ford F150; (d) 50% of the household furniture and furnishings; (e) 50% of the distributions from Husband's Pension determined to be marital property, which is \$394.50 per month, to be paid to Wife during Husband's lifetime, and upon Husband's death, Wife shall receive a monthly survivor's benefit of \$1,184.31 for her lifetime from the Pension.

Husband contends the trial court erred by not dividing the property in a way that, as nearly as possible, placed the parties in the same position they would have been in had they never married. Alternatively, Husband contends the estate was not divided equitably.

Husband's first contention is premised on the fact the marriage lasted less than four years and our holding in *Batson v. Batson*, 769 S.W.2d 849, 859 (Tenn. Ct. App. 1988). In *Batson*, the parties had been married seven years, and we held, "[i]n cases involving a marriage of relatively short duration, it is appropriate to divide the property in a way that, as nearly as possible, places the parties in the same position they would have been in had the marriage never taken place." *Id.* at 859 (citation omitted). However, aside from brief testimony regarding Wife's ownership of a home in Columbia, in which the value of the home was not discussed, the trial court was not presented with evidence as to Wife's financial position and net worth at the time of marriage. Moreover, Husband's reliance on the antenuptial agreement to demonstrate that his "net worth was much greater" than that of Wife is defective in that, as noted earlier, Wife was not afforded the opportunity to understand what she was signing or that she needed to provide a list of her assets within the document. Thus, Husband failed to show the net worths of the parties at

the time they married or how the division he demands would restore each party to his or her financial condition as it was at that time. *Woodward v. Woodward*, 240 S.W.3d 825, 830 (Tenn. Ct. App. 2007). Accordingly, we find no error with the trial court's decision not to restore the parties to their premarital status.

Husband's alternative contention that the estate was not divided equitably is principally based on his assertion that the trial court erred in the classification and/or valuation of the marital residence, the IRA, and the Pension. We will address each asset challenged by Husband in turn.

A. Marital Residence

Husband contends the marital residence was his separate property; therefore, the trial court erred in classifying it as marital property and awarding Wife thirty percent of the equity in the home. Alternatively, Husband contends the trial court erred in valuing the equity in the home at \$60,000.

In his appellate brief, Husband merely states that “[a]t the risk of over-simplifying the issue; the land and home are the separate property of the Husband, and should be awarded as such.” Husband asserts that the plot of land was granted to him prior to the marriage, and that he entered into a construction loan on April 17, 2009, prior to the marriage, to build a home on the land. However, the record reflects that Husband obtained the construction loan with the intent to build a home that would be the parties' marital residence. *See Langschmidt v. Langschmidt*, 81 S.W.3d 741, 747 (Tenn. 2002) (“[Transmutation] occurs when separate property is treated in such a way as to give evidence of an intention that it become marital property.”). Specifically, Husband obtained the construction loan around the time he first visited Wife in Colombia, which is when they decided to get married. Furthermore, Husband and Wife resided in the home, and the mortgage was paid for throughout the duration of the marriage from income earned during the marriage. Although Wife did not contribute financially, she made contributions to the marriage by maintaining the household, preparing their meals, doing his laundry, and other household responsibilities.

“The weight, faith and credit to be given to any witness's testimony lies in the first instance with the trier of fact. The credibility accorded will be given great weight by the appellate court.” *Koch v. Koch*, 874 S.W.2d 571, 577 (Tenn. Ct. App. 1993) (citing *Town of Alamo v. Forcum-James Co.*, 205 Tenn. 478, 327 S.W.2d 47 (Tenn. 1959); *Sisk v. Valley Forge Ins. Co.*, 640 S.W.2d 844 (Tenn. Ct. App. 1982)). In this case, the trial court found that Husband was not a credible witness and that “some, but not all of” Wife's testimony was less than credible. Based upon our review of the record, we find the evidence does not preponderate against the trial court's finding that the marital residence was marital property. We also find no abuse of discretion in awarding Wife thirty percent of the equity in the home in the division of marital property.

As for the value of the marital home, the parties have the burden to provide competent valuation evidence. *Kinard*, 986 S.W.2d at 231. Two appraisals of the home were submitted into evidence at trial: 1) the construction loan appraisal conducted April 4, 2009, which projected that the home would be worth \$206,000 upon completion; and 2) the 2013 State real estate tax appraisal which valued the home at \$179,100. As to the debt on the home, the evidence established that the remaining balance on the mortgage at the time of trial was \$138,795.78. The trial court relied upon the 2009 appraisal, which provided more detail in its report as to the basis for the valuation than the tax appraisal, and valued the equity in the marital residence at \$60,000.

Although Husband contends the trial court erred in its valuation of marital assets, we are not persuaded by this argument because he failed to refer to evidence in the record that preponderates in favor of a different valuation of the marital assets.² Moreover, when valuation evidence is conflicting, as is the case here, the court may place a value on the property that is within the range of the values presented. *Kinard*, 986 S.W.2d at 231. The trial court determined that the value of the equity in the home was \$60,000, which is within the range of the values presented. Therefore, we affirm the value assigned for the equity in the marital residence.

B. Pension

The trial court found that Husband's Pension that went into pay status during the marriage was marital property without regard to substantial contributions by either spouse. The trial court valued the Pension benefit at \$2,368.62 monthly, and found that one-third, or \$789, was marital property.³ In arriving at this percentage, the trial court considered Husband's contributions both before and during the marriage. Specifically, the trial court acknowledged that Husband began paying into the Pension in 2001 and paid through 2012, for a total of twelve years, and that Husband and Wife were married

² We also find it peculiar that Husband argues the trial court erred in valuing the marital home because his own evidence indicates the equity in the residence is double the value assigned by the trial court. Specifically, in the antenuptial agreement, Husband declared the value of the residence to be \$260,000 and the debt thereon to be \$145,000. Based on Husband's representations, the equity in the marital residence on the day of the marriage would have been \$115,000.

³ At the time of trial, Husband was 62 years of age, and, based on the Tennessee Mortality Tables, the trial court found Husband's life expectancy to be 76 years and that the payments he expected to receive over the remainder of his lifetime totaled \$397,824. Due to insufficient marital assets to offset the percentage of the total pension payments to which Wife was entitled, the trial court found Wife should be awarded a percentage of the monthly benefit. Husband does not raise an issue as to the trial court's valuation of this amount, or its decision that Wife's awarded percentage be paid from his monthly Pension payments.

for four of those twelve years; thus, 4/12, or one-third. The trial court further found that Wife was entitled to fifty percent of the \$789.

Husband contends three-fourths of his Pension is separate property; therefore, the trial court erred in classifying one-third as marital property. To support this contention, Husband argues that because the parties' were married for "just over three" of the twelve years he made contributions to the Pension, the trial court should have rounded down to three years of marriage instead of rounding up to four years of marriage. Husband does not cite to any legal authority to support his argument.

We find no merit to Husband's assertion that the trial court was required to round down the years of marriage when calculating a percentage of the Pension to assign as marital property. The classification of particular property as either separate or marital is a question of fact to be determined in light of all relevant circumstances. *Snodgrass v. Snodgrass*, 295 S.W.3d 240, 245 (Tenn. 2009). As noted earlier, the trial court is vested with wide discretion in its classification of property, and its decision in that regard is given great weight on appeal. *McKin v. McKin*, No. E2010-01061-COA-R3-CV, 2011 WL 529287, at *3 (Tenn. Ct. App. Feb. 14, 2011) (citing *Whitley v. Whitley*, No. M2003-00045-COA-R3-CV, 2004 WL 1334518 (Tenn. Ct. App. June 14, 2004)). The evidence does not preponderate against the trial court's finding that one-third of the Pension was marital property. Accordingly, we affirm the trial court's determination that one-third of Husband's monthly pension benefit is marital property.

Husband's monthly pension benefit is \$2,368.62; one-third of that is \$789 per month. The court awarded Wife \$349.50 per month, which is one-half of the amount that was classified as marital property. Considering all relevant factors, we find no abuse of discretion in awarding Wife \$349.50 per month. Thus, we affirm this award.

C. IRA

The trial court concluded the value of the IRA was \$35,432.04, and found that Wife was entitled to forty percent of that amount. Husband contends the trial court erred, as a matter of law, in valuing the account near the filing for divorce, rather than near the date of the parties' divorce. *See* Tenn. Code Ann. § 36-4-121(b)(1)(A) (stating that marital property should be "valued as of a date as near as reasonably possible to the final divorce hearing date.").

Two values of the IRA were submitted into evidence at trial: (1) a bank statement indicating an issue value of \$35,432.04, on January 2, 2013; and (2) Husband's testimony that the account had an approximate value of \$8,000 at the time of trial, September 24, 2013. Husband insists the trial court should have valued the IRA at \$8,000, because that was the value Husband testified remained in the account at the time of trial. Husband testified that the account decreased by \$27,432.04 within seven months because he used

\$5,509 from the IRA to purchase a boat in January 2013, and he spent approximately \$880 per month to pay for health insurance for himself and Wife, plus ten percent in taxes for any withdrawal from the IRA. As noted earlier, the trial court specifically stated that it did not find Husband to be a credible witness, and the trial court's decision to value the IRA based on the bank statement, rather than Husband's testimony, arises from a credibility determination to which we give great weight. *See Koch*, 874 S.W.2d at 577.

Given the fact that Husband opened the IRA on the same day he filed his action for divorce, that he depleted the account's funds following the parties' separation, and that Husband presented no documentation regarding the value of the account at the time of trial – other than his testimony, which the trial court expressly found to not be credible – we hold that the trial court was well within its discretion in addressing the value of the IRA around the time of the of the divorce filing and factoring in the use of those funds as a part of its reasoning in determining an equitable division. Further, the trial court's valuation of \$35,432.04 was within the range of the values presented. Accordingly, we find no reason to disturb the trial court's valuation of the IRA. We also find no abuse of discretion in awarding Wife forty percent of the value of the IRA in the division of marital property.

III. ATTORNEY'S FEES

Lastly, Wife requests her attorney's fees for this appeal. Whether to award attorney's fees on appeal is within this court's sole discretion. *Wilson v. Wilson*, No. M2008-02073-COA-R3-CV, 2009 WL 1037943, at *4 (Tenn. Ct. App. April 17, 2009) (citing *Archer v. Archer*, 907 S.W.2d 412, 419 (Tenn. Ct. App. 1995)). In considering a request for attorney's fees, we examine “the ability of the requesting party to pay the accrued fees, the requesting party's success in the appeal . . . and any other equitable factor that need be considered.” *Dulin v. Dulin*, No. W2001-02969-COA-R3-CV, 2003 WL 22071454, at *10 (Tenn. Ct. App. Sept. 3, 2003) (citing *Folk v. Folk*, 357 S.W.2d 828, 829 (Tenn. 1962)). After considering these factors, we respectfully decline to award Wife her attorney's fees on appeal.

CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against the appellant, Steve Hollar.

FRANK G. CLEMENT, JR., JUDGE