IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 16, 2023 Session

ERIC TODD SPARKS v. RACHEL COLLINS SPARKS

Appeal from the Chancery Court for Bradley County
No. 2019-CV-347 Michael E. Jenne, Judge

No. E2022-00586-COA-R3-CV

Eric Todd Sparks ("Husband") and Rachel Collins Sparks ("Wife") were divorced by order of the Chancery Court for Bradley County (the "trial court") on December 2, 2021. In addition to $693 in monthly child support, the trial court ordered Husband to pay Wife $750 per month in alimony in futuro. The trial court also ordered that once the parties' minor child, who was nine years old at the time of trial, reached the age of majority, Husband's alimony in futuro obligation would automatically increase to $1,250 per month. Husband timely appealed to this Court. We affirm the trial court's decision to award Wife alimony in futuro, but, considering Husband's ability to pay and Wife's need, we vacate the trial court's ruling as to the monthly amount and remand for further proceedings. We also conclude that the trial court abused its discretion in ordering the automatic increase in Husband's alimony obligation upon the Child reaching the age of majority and vacate that portion of the trial court's order. Consequently, the trial court's ruling is vacated in part and affirmed in part. We decline to award Wife her attorney's fees incurred on appeal.

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

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which D. MICHAEL SWINEY, C.J., and JEFFREY USMAN, J., joined.

Phillip C. Lawrence, Chattanooga, Tennessee, for the appellant, Eric Todd Sparks.

James F. Logan, Jr., Cleveland, Tennessee, for the appellee, Rachel Collins Sparks.

OPINION

BACKGROUND

In this appeal arising from a divorce, Husband challenges the trial court's award of alimony in futuro to Wife. Most of the underlying facts are undisputed. The parties married in 2005 and have one minor child, a daughter born in 2012 (the "Child"). Husband is a United Parcel Service ("UPS") driver and Wife is a hairdresser who owns a salon in Cleveland, Tennessee. While Husband has a 401(k), health insurance, and other benefits through UPS, Wife has no benefits through her self-employment. Prior to their divorce, the parties shared expenses and lived a fairly comfortable lifestyle.

Husband filed the petition for divorce in the trial court on September 17, 2019, alleging irreconcilable differences and, in the alternative, inappropriate marital conduct by Wife. Wife did not expediently answer the complaint because the parties attempted to reconcile. When reconciliation failed, Husband filed a motion for default on August 21, 2020. Wife then filed an answer and counterclaim for divorce on August 28, 2020, also claiming inappropriate marital conduct, among other grounds. Wife claimed Husband was responsible for the breakdown of the parties' marriage. Wife sought alimony from Husband, which Husband denied was necessary.

The parties entered into a mediated agreement on December 28, 2020. The agreement provided that 1) the parties would sell the marital home and place the profits in trust until the final property division; 2) each party was awarded their respective vehicles and the debt associated therewith; 3) the parties agreed on how to divide personal belongings and furniture; 4) the parties agreed on how to divide marital debt (of which they had little), and 5) the parties would have 50/50 parenting time with the child.

The parties did not agree on alimony, however. They thus proceeded to a bench trial on September 9, 2021, at which the trial court heard testimony from both Husband and Wife. The proof showed, generally, that Husband vastly out-earned Wife during the marriage. Husband's tax returns reflected that, averaged over the prior three years, Husband earned $101,144 per year as a UPS driver. Husband's income fluctuated at times, however, based on his assigned driving route. The proof regarding Wife's income was difficult to discern because Wife owns her own business and receives a fair amount of cash income. Nonetheless, Wife's tax returns show that in the years 2016 through 2020, Wife tended to earn between $40,000 and $50,000. Wife also testified that, on average, she would earn an additional $200 per week in cash. Given the convoluted proof regarding Wife's income, the trial court ordered the parties to file post-trial briefs regarding the parties' respective monthly incomes and the alimony factors provided by Tennessee Code Annotated section 36-5-121(i). Wife filed a post-trial memorandum, claiming that her annual income ranges from $24,000 to $40,000, plus an additional $10,400 in cash income. Husband's post-trial brief, if one was filed, is not in the record; accordingly, it is unclear how Husband proposed Wife's income and expenses ultimately be calculated.

The trial court entered an order on December 2, 2021, concluding that the parties stipulated to the grounds for divorce. As relevant to the issues on appeal, the trial court

also concluded that: 1) the proceeds from the sale of the marital home, totaling $117,000, would be divided equally; 2) Husband's 401(k), valued at $196,000, would be divided equally; 3) Wife's business, valued at $27,500, would be divided equally[1]; 4) Husband owed $693 per month in child support plus an arrearage; and 5) Wife was entitled to alimony in futuro in the amount of $750 per month. The trial court also found that once the Child reaches the age of majority, Wife's alimony in futuro automatically increases to $1,250 per month. The trial court reserved Wife's request for alimony in solido in the form of attorney's fees.

Husband filed a timely motion to alter or amend the trial court's order. Husband averred that the trial court did not adequately explain the reasoning behind the alimony "escalator" and that the trial court's calculation of Husband's total owed support was incorrect. Husband pointed out that the trial court ordered him to pay $693 per month in child support and $750 per month in alimony, meaning Husband's total monthly support responsibility is $1,443. The trial court's order, however, stated that Husband's total monthly obligation was $1,389. In response, Wife agreed that the trial court should clarify the mathematical error, but she maintained that the trial court correctly awarded Wife alimony in futuro.

The trial court entered an amended order on April 12, 2022. The trial court affirmed its alimony award but corrected its previous mathematical error, acknowledging that Husband's total monthly support obligation was $1,443. The trial court also awarded Wife an additional $8,899 for attorney's fees and $667.70 in discretionary costs. The essence of the trial court's alimony ruling is that Wife's income is less than half of Husband's and that she has no employment benefits, such as retirement or health insurance, through her employment. The trial court also reasoned that Husband has the ability to pay.

Husband timely appealed to this Court.

ISSUES

Husband challenges the type, duration, and amount of alimony awarded to Wife. In her posture as appellee, Wife raises the issue of whether she should be awarded her attorney's fees incurred on appeal.

STANDARD OF REVIEW

> [T]rial courts in Tennessee have broad discretion to determine whether spousal support is needed and, if so, to determine the nature, amount, and duration of the award. *See Gonsewski* [*v. Gonsewski*, 350 S.W.3d 99, 105

[1] Neither party disputes the trial court's valuation or division of any marital asset. Nor is child support or parenting time in dispute.

> (Tenn. 2011)]; *Bratton v. Bratton*, 136 S.W.3d 595, 605 (Tenn. 2004); *Burlew v. Burlew*, 40 S.W.3d 465, 470 (Tenn. 2001); *Crabtree v. Crabtree*, 16 S.W.3d 356, 360 (Tenn. 2000). Because a trial court's "decision regarding spousal support is factually driven and involves the careful balancing of many factors," *Gonsewski*, 350 S.W.3d at 105 (footnote omitted), the role of an appellate court is not to second guess the trial court or to substitute its judgment for that of the trial court, but to determine whether the trial court abused its discretion in awarding, or refusing to award, spousal support. *Id.* "An abuse of discretion occurs when the trial court causes an injustice by applying an incorrect legal standard, reaches an illogical result, resolves the case on a clearly erroneous assessment of the evidence, or relies on reasoning that causes an injustice." *Id.* (citing *Wright ex rel. Wright v. Wright*, 337 S.W.3d 166, 176 (Tenn. 2011); *Henderson v. SAIA, Inc.*, 318 S.W.3d 328, 335 (Tenn. 2010)). In determining whether the trial court abused its discretion, an appellate court "should presume that the trial court's decision is correct and should review the evidence in the light most favorable to the decision." *Gonsewski*, 350 S.W.3d at 105–06; *see also* Tenn. R. App. P. 13(d) ("[R]eview of findings of fact by the trial court in civil actions shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding[s], unless the preponderance of the evidence is otherwise.").

Mayfield v. Mayfield, 395 S.W.3d 108, 114–15 (Tenn. 2012) (some internal brackets omitted).

DISCUSSION

At issue on appeal is Wife's award of $750 per month in alimony in futuro, plus the automatic increase to $1,250 per month once the Child reaches the age of majority.

"In any action for divorce . . . the court may award alimony to be paid by one spouse to or for the benefit of the other . . . according to the nature of the case and the circumstances of the parties." Tenn. Code Ann. § 36-5-121(a). Tennessee recognizes four types of alimony: alimony in futuro, alimony in solido, transitional alimony, and rehabilitative alimony. *Id.* § 36-5-121(d)(1). There is a legislative preference for rehabilitative alimony, which is awarded to help an "economically disadvantaged spouse[]" achieve a standard of living post-divorce that is "reasonably comparable to the standard of living enjoyed during the marriage[.]" *Id.* § 36-5-121(d)(2); *see also Robertson v. Robertson*, 76 S.W.3d 337, 340–41 (Tenn. 2002) (quoting *In re Marriage of Grauer*, 478 N.W.2d 83, 85 (Iowa Ct. App. 1991) ("Rehabilitative alimony serves to support an economically dependent spouse 'through a limited period of re-education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting.'").

In this case, however, the trial court awarded alimony in futuro, "also known as periodic alimony," which "is a payment of support and maintenance on a long term basis or until death or remarriage of the recipient." Tenn. Code Ann. § 36-5-121(f)(1). Alimony in futuro may be awarded when

> the court finds that there is relative economic disadvantage and that rehabilitation is not feasible, meaning that the disadvantaged spouse is unable to achieve, with reasonable effort, an earning capacity that will permit the spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.

Id. A trial court's award of spousal support is governed by Tennessee Code Annotated section 36-5-121(i), which provides:

> In determining whether the granting of an order for payment of support and maintenance to a party is appropriate, and in determining the nature, amount, length of term, and manner of payment, the court shall consider all relevant factors, including:
>
> (1) The relative earning capacity, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and all other sources;
>
> (2) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earnings capacity to a reasonable level;
>
> (3) The duration of the marriage;
>
> (4) The age and mental condition of each party;
>
> (5) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;
>
> (6) The extent to which it would be undesirable for a party to seek employment outside the home, because such party will be custodian of a minor child of the marriage;
>
> (7) The separate assets of each party, both real and personal, tangible and intangible;

(8) The provisions made with regard to the marital property, as defined in § 36-4-121;

(9) The standard of living of the parties established during the marriage;

(10) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;

(11) The relative fault of the parties, in cases where the court, in its discretion, deems it appropriate to do so; and

(12) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

Id. § 36-5-121(i). "Although each of these factors must be considered when relevant to the parties' circumstances, 'the two that are considered the most important are the disadvantaged spouse's need and the obligor spouse's ability to pay.'" *Gonsewski*, 350 S.W.3d at 110 (quoting *Riggs v. Riggs*, 250 S.W.3d 453, 457 (Tenn. Ct. App. 2007)).

In this case, the trial court analyzed the relevant statutory factors as follows:

Number one, the relative earning capacity, obligations, need, and financial resources of the parties, including the retirement plans, which I discussed. I find that Husband's income and earnings is greater than Wife basically double or more than double.

Number two: The education and training of the parties and the ability of the parties to pursue education and training and further their education. As I stated, each party has a high school degree. Husband is 42, Wife is 39. Both parties are settled into their careers and the ability and opportunity to secure more education and training is not likely.

Number three: The duration of the marriage. The Court finds that this is a 16-year marriage, relatively one of long duration.

The physical condition of each party. I find that both parties' physical condition is good. Father, who participates in ironman competitions, physical condition is excellent.

> Number six: The extent to which it would be undesirable for either party to seek employment outside the home due to taking care of the minor child. I find this factor not applicable as both parties are gainfully employed.
>
> Number seven: The separate assets of each party. The Court did not hear any proof regarding separate assets so this factor [is] not applicable. The provisions made for division of the marital property. The parties, to the credit of them, had a relatively healthy marital estate to divide -- $117,000 in house proceeds, 196,000-dollar 401(k), and 27,500-dollar business.
>
> Number nine: The standard of living established by the parties during the marriage, I find that money was not a problem during the marriage. The parties lived a relatively comfortable lifestyle with little to no debt to the credit of the parties.
>
> Number ten: The extent to which each party has made tangible and intangible contributions to the marriage, not only financially but as a homemaker. I find that each party contributed financially to this marriage, but Wife contributed a greater percentage as a homemaker due to Husband's third shift work schedule.
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> Number eleven: The relative fault of the parties. I do not find this to be a factor as the parties stipulated to divorce.
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> And any other factor is number twelve regarding the tax consequences of the parties. I do not find this to be a meaningful factor based upon the proof.
>
> So therefore[,] the Court awards that Husband's alimony in futuro obligation is to be $750 a month until the minor child ages out. That's $750 per month together with the 693-dollar per month child support obligation will be a total support obligation of $1,389[2] per month until the child ages out. Once the child ages out, his alimony in futuro obligation is $1,250 per month.

By and large, the record supports the trial court's findings. *See Gonsewski*, 350 S.W.3d at 105–06 (explaining that under the abuse of discretion standard, appellate courts review the evidence in alimony cases in the "light most favorable to the [trial court's] decision"). It is undisputed that the parties are both gainfully employed and left the marriage with a healthy allotment of marital assets. Specifically, the trial court equally divided the profits from the sale of the marital home, Husband's 401(k), and the value of

[2] This mathematical error was later addressed in an amended order.

Wife's business.[3] Consequently, both parties left the marriage with approximately $170,250 in assets. There was no proof regarding separate assets, but it is undisputed that there is little to no marital debt. The parties' tax records show that during the marriage, Husband consistently and vastly out-earned Wife. While Husband's income tends to increase each year, Wife's annual income remained steady between $40,000 and $50,000 from 2016 through 2020. Further, as the trial court found, Wife will have to account for health insurance and a retirement plan, as her self-employment affords her no additional benefits. It was also undisputed at trial that Wife drives a 2007 or 2008 Chevrolet Tahoe that would need replacing in the near future.

Under all of these circumstances, the trial court did not abuse its discretion in awarding alimony in futuro. The proof shows that the parties are entrenched in their current circumstances, and there is no indication that Wife will be able to increase her earnings so as to achieve a reasonably comparable standard of living to that enjoyed during the marriage.[4] *See* Tenn. Code Ann. § 36-5-121(f)(1). Indeed, Husband presented no proof at trial, nor does he make an argument on appeal, as to how Wife can be rehabilitated beyond her current circumstances. Rather, Husband's argument on appeal is essentially that he disagrees with the trial court's decision and that "[a]limony in futuro 'is not . . . a guarantee that the recipient spouse will forever be able to enjoy a lifestyle equal to that of the obligor spouse.'" *Gonsewski*, 350 S.W.3d at 108 (quoting *Riggs*, 250 S.W.3d at 456 n.2). To this, we are persuaded by Wife's averment that "[t]he [trial] court did not make any unrealistic attempt to provide Wife with a financial situation equal to Husband's; rather, the court properly awarded her with a more closely balanced level of support that was primarily in consideration of [H]usband's ability to pay."

Reversal on the type of alimony awarded is not warranted given the standard of review in this case. *See Gonsewski*, 350 S.W.3d at 105–06. While reasonable minds could disagree with the trial court's decision, the abuse of discretion standard "'reflects an awareness that the decision being reviewed involved a choice among several acceptable alternatives.'" *Id*. at 105 (quoting *Henderson*, 318 S.W.3d at 335).

Aside from the type of alimony awarded, Husband also takes issue with the amount, which is $750 per month until the Child reaches the age of majority. The trial court found as follows regarding the parties' monthly income and expenses:

[3] The trial court ordered Wife to pay Husband half of the value of the salon, which is undisputedly a marital asset. This money owed by Wife, however, was ultimately applied as a credit towards Husband's child support arrearage.

[4] Husband claims in his brief that "[t]here was absolutely no testimony in the trial of the case that describes the standard of living the parties enjoyed during their marriage." We disagree. For example, the parties had minimal debt, and Husband testified that the parties could eat out when they so desired. The Child plays extracurricular sports and enjoys private hitting lessons for softball. Wife testified that the home she now rents is less than a thousand square feet and that the Child frequently states that she misses the larger marital home, which Husband testified was 2900 square feet.

> Per [Husband's] 2021 pay stub, I find that his net monthly income is $5,501 a month when you do not consider the voluntary payments that he's currently making for the minor [C]hild's college fund.[5] I find that [Husband's] reasonable expenses, although some numbers may be inflated and fluctuating from month to month and changing, are $4,309. Therefore, with a net income of 5,501 per month and expenses of 4,309 per month, I find that his minimum monthly ability to pay alimony is $1,192 a month.
>
> As to Wife's income, as reflected by both parties in their post-trial briefs as well as the testimony at trial and the exhibits, [Wife's] income is more difficult to calculate. There are inconsistencies with her actual income, cash income, booth rent income, bank deposits, and expenses. I credit Wife's testimony that accounting is not her strong point; but that said, in 2018 on Exhibit 10 Wife represented her income to be $40,000 a year. In Wife's post-trial brief, Wife agreed to set her income at $40,000 a year, which includes all of her income for booth rent and cash. This is in line with [Husband's] post-trial brief and his advocacy as to what Wife's income should be. And $40,000 per year is 4,000 more than the roughly $36,000 imputed income for females when there is no reliable proof of income pursuant to the child support guidelines.
>
> Therefore, [Wife's] income is set at $40,000 per year, $3,333 per month. I find her net income to be $2,398 per month. I find that her reasonable expenses, current expenses without a car payment is $2,974 a month. So when you look at her net income of $2,398 a month and her expenses of $2,974 a month, she has a minimal need of $576 a month.

Neither party argues on appeal that the trial court's factual findings about their monthly income and expenses are incorrect. Rather, in his brief Husband "contends that, under the record of this case, Wife does not have a need for alimony; but, if any need has been demonstrated, it does not exceed $576 per month, and the award to Wife, if any, should be reduced to meet her financial need."

For the reasons addressed above, we disagree that Wife has no need for alimony. Nor do we disturb the trial court's ruling that Wife should receive alimony in futuro. Nonetheless, we agree that the amount awarded by the trial court warrants a second look, as it is unclear from the record that the trial court accounted for Husband's child support obligation prior to setting spousal support. And "the amount of child support awarded materially affects whether spousal support is appropriate and the amount of spousal support awarded." *Bolt v. Bolt*, No. E2017-02357-COA-R3-CV, 2018 WL 5619733, at *7 (Tenn.

[5] The trial court found that it was within Father's discretion whether to continue the deductions for the Child's college fund. Neither party challenges this on appeal.

Ct. App. Oct. 30, 2018) (citing *Anderton v. Anderton*, 988 S.W.2d 675, 679 (Tenn. Ct. App. 1988)); *see also Marcel v. Marcel*, No. M2021-00594-COA-R3-CV, 2022 WL 17335655, at *9 (Tenn. Ct. App. Nov. 30, 2022) (vacating and remanding alimony decision for re-calculation in light of decision to vacate and remand child support finding, because "child support has an effect on [h]usband's ability to pay").

While the parties were separated and the divorce was pending, Husband did not pay child support, and no temporary child support order was ever entered. Consequently, Father did not factor in child support on his income and expense sheet. Moreover, neither the trial court's first order nor its order resolving Father's motion to alter or amend clarify whether the trial court accounted for the $693 obligation in considering Father's ability to pay alimony.

Rather, the trial court merely found that Father's net monthly income is $5,501 and that his expenses are $4,309. The trial court then found that Father's "minimum monthly ability to pay alimony is $1,192 a month." In its amended order entered on April 12, 2022, the trial court affirmed this finding, noting that Father's total monthly obligation was $1,443. In this second order, the trial court also found that "as set forth in the judgment, the [F]ather's income is $101,144.00 a year or $8,428.00 per month versus the [M]other's income of $40,000.00 a year or $3,333.00 a month."

Based on the numbers above, we cannot discern how the trial court ultimately reached the decision that Husband has the ability to pay $750 per month in alimony in futuro. The finding that Father's "minimum monthly ability to pay [ ] is $1,192" is not correct if Father's child support obligation was unaccounted for which, again, is not evident from the trial court's orders. Inasmuch as child support was not accounted for in Father's proffered monthly income and expenses, one plausible way to understand the record before us is that Father's actual monthly ability to pay alimony is reduced by $693, leaving $499 available for monthly spousal support to Wife, not $750.[6]

The confusion as to this issue does not appear to be the trial court's fault, as the proof regarding the parties' income and expenses was convoluted at best. Nonetheless, the two most important factors in setting alimony are need and ability to pay, two questions that this record simply does not provide clarity on.

Under the circumstances, we deem it prudent to vacate the trial court's ruling as to the amount of monthly spousal support awarded. On remand, the trial court is ordered to enter an order clarifying the ruling on Father's monthly income and expenses and how the $693 monthly child support obligation affects Father's ability to pay spousal support.

[6] This is assuming that the trial court correctly found that Father's monthly surplus is $1,192.

Finally, Husband asserts that the trial court abused its discretion in ordering an automatic increase in his alimony upon the Child reaching the age of majority. Addressing this issue in its amended final order, the trial court expounded:

> The $1,250.00 is a $193.00 reduction in the [Husband's] total child support obligation being the difference of $1,443.00 to $1,250.00. The case law provides that the purpose of child support is to help pay for the minor child's necessities such as a home and shelter which also includes rent, mortgage, utilities, cable, transportation getting the child to and from activities and the like. When the minor child graduates high school, the court recognizes that there would no longer be expenses directly for the benefit of the minor child such as food, but [Wife] in this case still has rent, mortgage, utilities, cable, gas costs and the like. Therefore, the court reduced [Husband's] total obligation from the $1,443.000 to $1,250.00. When the minor child graduates, the [Wife] is still going to have a need, and [Husband] is still going to have an ability to pay, and the court finds that [Husband's] ability to pay will actually increase because he will no longer be directly paying for some of the minor child's expenses that are set forth on his income and expense statement that the court credits that he pays.
>
> The court also finds that [Husband's] income is more than double [Wife's] income as of the date of trial which the court has to look at. If these circumstances change, the court certainly has the ability to increase or decrease the amount.

Automatic increases in alimony are not unheard of but are "generally not appropriate." *Longstreth v. Longstreth*, No. M2014-02474-COA-R3-CV, 2016 WL 1621094, at *6 (Tenn. Ct. App. Apr. 20, 2016). In defending the trial court's ruling, Wife relies on two cases involving automatic alimony increases. In *Erwin v. Erwin*, No. W1998-00801-COA-R3-CV, 2000 WL 987339, at *2 (Tenn. Ct. App. June 26, 2000), the parties married in 1967 and divorced in 1998. They had one minor child at the time of divorce, but the child was seventeen years old and set to graduate from high school the following year. The wife worked in a doctor's office earning $2,817 per month.

> At the conclusion of the trial, the trial court awarded the divorce to [w]ife, finding [h]usband at fault for the demise of the marriage. Husband was ordered to pay $1,000 per month in child support until the parties' daughter graduated from high school, as well as $500 per month as alimony *in futuro.* The order provided that when [h]usband's child support obligation ended, less than a year after entry of the order, the alimony *in futuro* payable to [w]ife would increase to $1,000 per month.

Id. at *2. On appeal, the husband asserted that there was no proof the wife's "need for alimony would increase upon the daughter's graduation from high school." *Id.* This Court disagreed with the husband and affirmed the trial court, noting that the husband's "ability to pay alimony is directly affected by the termination of his child support obligation." *Id.*

Likewise, in *Bloom v. Bloom*, the parties divorced after eighteen years of marriage and had a fifteen-year-old child. No. W1998-00365-COA-R3CV, 2000 WL 34410140, at *2 (Tenn. Ct. App. Sept. 14, 2000). Inasmuch as the husband was a successful financial consultant and the wife had been a homemaker since before the child's birth, the trial court awarded the wife alimony in addition to child support. The order provided:

> Defendant shall pay to Plaintiff as rehabilitative alimony the sum of $2,500.00 per month to be paid by automatic bank deposit by the fifteenth (15th) day of each and every month, commencing October 15, 1997, until the parties' minor child reaches the age of 18 and his class graduates from High School whichever occurs last. The first month after Defendant's obligation to pay child support ceases, Defendant shall pay Plaintiff the sum of $4,000 per month as rehabilitative alimony. Said payments of rehabilitative alimony shall continue for a total period of sixty (60) months from October 1, 1997, unless Defendant dies, Plaintiff dies or remarries, whichever shall occur first, in which event Defendant's obligation to pay rehabilitative alimony for sixty (60) months shall terminate.

Id. at *2. The husband argued on appeal that the alimony increase was an abuse of the trial court's discretion, but this Court disagreed. We noted that the husband's monthly income was $9,566 while the wife had "no monthly income outside the support received from [the] [h]usband." *Id.* at *4. We relied on *Erwin* in affirming the automatic increase, concluding that the trial court did not abuse its discretion in "requiring [h]usband to pay additional rehabilitative alimony when he is no longer obliged to pay child support." *Id.* at *5.

On the other hand, this Court has explained that the circumstances of *Erwin* and *Bloom* are unique because in both cases the child support obligation was soon to terminate. We distinguished *Erwin* and *Bloom* on that basis in *Anderson v. Anderson*, No. M2005-02029-COA-R3-CV, 2007 WL 957186, at *9 (Tenn. Ct. App. Mar. 29, 2007). In that case, the trial court ordered the husband to pay $250 in rehabilitative alimony for thirty-six months, and then $350 per month in alimony in futuro until the parties' two children "came of age." *Id.* at *2. The trial court further ordered that after the children came of age, the husband's alimony in futuro obligation would increase to $450 per month.

The husband challenged, inter alia, the automatic alimony increase on appeal and this Court agreed with him. We explained:

> In enacting Tenn. Code Ann. § 36-5-121, the legislature has granted the courts broad powers to shape alimony awards "according to the nature of the case and the circumstances of the parties." Tenn. Code Ann. § 36-5-121(a). It appears to us that those powers are expansive enough to include such automatic increases where the circumstances warrant. We do not believe, however, that such an automatic increase is warranted under the circumstances of the present case.
>
> We note that the children were both just a few weeks short of their ninth birthdays on August 1, 2005, when the trial court entered its final decree. They will not reach the age of eighteen until nine years later, at which time the automatic increase is scheduled to take effect. The intervening time is long enough to make it likely that there will be other substantial changes in the circumstances of the parties, although we can not know as yet what those changes will prove to be.
>
> We note that in the *Erwin* case, *supra,* the minor child was seventeen years old. In the *Bloom* case, *supra,* he was fifteen. Thus, the inclusion in those cases of an automatic increase in the alimony awards allowed the trial court to shape the award in such a way as to closely track a change in the obligor's ability to pay resulting from a relatively imminent event. By doing so, the court spared the parties the additional expense and trouble that they would have otherwise incurred from having to re-open the question of alimony so soon after the court's decree.
>
> In the present case, the length of time before the increase is scheduled to go into effect is so long that any predictive advantage is likely to be overcome by the effects of other events, at this point quite unpredictable, such as changes in the employment, income and health of either or both parties. The statutory provisions for modification of alimony awards cited by [h]usband and set out in Tenn. Code Ann. §§ 36-5-121(a) and 36-5-121(f)(2)(A) would appear to furnish the most appropriate vehicle for dealing with those events, and would relieve the trial court from having to base its judgment on an act of clairvoyance. *See Crabtree v. Crabtree,* 16 S.W.3d at 360. We accordingly vacate the automatic increase.

Id. at *8–9.

> Finally, we addressed the interplay of *Erwin*, *Bloom*, and *Anderson* in 2016:
> [W]e have approved automatic increases in alimony in limited circumstances, such as when a minor child will soon reach majority and the obligor is no longer required to pay child support. *See Bloom v. Bloom*, No. W1998-00365-COA-R3-CV, 2000 WL 34410140, at *5 (Tenn. Ct. App.

> Sept. 14, 2000); *Erwin v. Erwin*, No. W1998-00801-COA-R3-CV, 2000 WL 987339, at *2 (Tenn. Ct. App. June 25, 2000). In these unique cases, we reasoned that automatic modification was appropriate because a spouse's ability to pay alimony was directly affected by the termination of child support. *See Erwin*, 2000 WL 987339, at *2. Since the ability to pay alimony is one of the most important factors in determining the amount of alimony, an automatic increase may be appropriate when child support is no longer required. *See id.* Importantly, the facts in *Ewing* [sic] and *Bloom* were unique because the minor children were approaching the age of majority; therefore, the modification of alimony was certain to occur shortly after the order was issued. By including the automatic modification provision, the trial courts in these cases "spared the parties the additional expense and trouble that they would have otherwise incurred from having to re-open the question of alimony *so soon after the court's decree*." *Anderson v. Anderson*, No. M2005-02029-COA-R3-CV, 2007 WL 957186, at *8 (Tenn. Ct. App. Mar. 29, 2007) (emphasis added).
>
> Except in cases involving unique circumstances that are expected to occur in the near future, automatic modifications are generally not appropriate. *See id*.

Longstreth, 2016 WL 1621094, at *6 (some citations omitted).

Here, we are unpersuaded by Wife's reliance on *Erwin* and *Bloom*; indeed, *Anderson* is far more factually analogous to the present case. The Child in this case was only nine years old at the time of trial, and will not reach majority for another nine years. *See Anderson*, 2007 WL 957186, at *8 ("The intervening time is long enough to make it likely that there will be other substantial changes in the circumstances of the parties, although we can not know as yet what those changes will prove to be."). As the *Anderson* and *Longstreth* courts held, we conclude that "the statutory provisions governing alimony modification are better tools to manage Husband's alimony obligation than an attempt to predict the status of all the relevant modification factors at a distant point in the future." *Longstreth*, 2016 WL 1621094, at *6 (citing *Anderson*, 2007 WL 957186, at *8–9).

This Court has held that alimony increases such as the one created by the trial court are "generally not appropriate" and should be used only in "limited circumstances." *Longstreth*, 2016 WL 1621094, at *6. Such limited circumstances are not present in this case. Consequently, the trial court abused its discretion in ordering that Husband's alimony in futuro obligation will increase upon the Child reaching majority. *See Gonsewski*, 350 S.W.3d at 105 (citing *Wright*, 337 S.W.3d at 176) (providing that an abuse of discretion occurs when "the trial court causes an injustice by applying an incorrect legal standard" or "relies on reasoning that causes an injustice"). This portion of the trial court's ruling is vacated.

Finally, Wife argues that she should be awarded her attorney's fees incurred on appeal pursuant to Tennessee Code Annotated section 36-5-103(c). Section 36-5-103(c) provides that a prevailing party in any "proceeding to enforce, alter, change, or modify any decree of alimony, child support, or provision of a permanent parenting plan order" may, in the court's discretion, recover attorney's fees on appeal from the non-prevailing party. *See also Eberbach v. Eberbach*, 535 S.W.3d 467, 477 (Tenn. 2017) (citing Tenn. Code Ann. § 36-5-103(c)) ("Thus, when appellate attorney's fees are requested pursuant to statutes like . . . section 36-5-103(c), which expressly permit the court to exercise its discretion, the Court of Appeals should analyze any such request by exercising its discretion to determine whether an award to the prevailing party is appropriate."). Under all of the circumstances of this case, we decline to grant Wife's request for her attorney's fees on appeal.

To conclude, we affirm the trial court's decision awarding Wife alimony in futuro, but the trial court's ruling as to the monthly amount is vacated and must be clarified on remand. The portion of the trial court's order requiring an automatic increase in Husband's alimony obligation upon the Child reaching majority is also vacated. This case is remanded for proceedings consistent with this opinion.

CONCLUSION

The ruling of the Chancery Court for Bradley County is vacated in part, affirmed in part, and remanded. Costs on appeal are assessed equally to the appellant, Eric Todd Sparks, and the appellee, Rachel Collins Sparks.

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KRISTI M. DAVIS, JUDGE