

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 7, 2023 Session

| |
|--|
| FILED 10/11/2023 Clerk of the Appellate Courts |
|--|

JEREMY NATHANIEL GREENE v. LAURA E. GREENE ET AL.

**Appeal from the Chancery Court for Bedford County
No. 33,347 J. B. Cox, Chancellor**

No. M2022-01171-COA-R3-CV

This is a divorce case. Husband appeals the trial court’s valuation and division of marital property and its award of attorney’s fees as alimony *in solido* to Wife. We affirm the trial court’s valuation and division of marital property. We vacate the trial court’s award of attorney’s fees to wife as alimony *in solido* based on the lack of findings in the trial court’s order. Tenn. R. Civ. P. 52.01. The case is remanded for findings on the issue of whether an award of attorney’s fees is appropriate under the factors prescribed in Tennessee Code Annotated section 36-5-121 and, if so, whether the amount of attorney’s fees is reasonable.

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

KENNY ARMSTRONG, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and W. NEAL MCBRAYER, J., joined.

Stephen W. Pate and Heather R. Knott, Murfreesboro, Tennessee, for the appellant, Jeremy Nathaniel Greene.

Brad W. Hornsby and W. Stanley Bennett, Murfreesboro, Tennessee, for the appellee, Laura Greene.

OPINION

I. Background

The facts relevant to the issues presented are not disputed. Appellant Jeremy Nathaniel Greene (“Husband”) and Appellee Laura E. Greene (“Wife”) were married in February 2011. Wife was 27 years old at the time of the marriage, and Husband was 26. One child was born to the marriage in 2016. Husband is employed at a base annual salary

of \$92,000. In the year prior to trial, Husband earned overtime compensation of approximately \$11,000. Wife is employed at a salary of \$78,000.

In March 2021, Husband filed a complaint for divorce on the grounds of irreconcilable differences and unspecified inappropriate marital conduct. In relevant part, Husband asked: (1) for an award of divorce and equitable division of the parties' marital property; (2) that neither party be awarded alimony; and (3) for an award of his attorney's fees. In April 2021, Wife filed an answer admitting to irreconcilable differences and denying Husband's allegations of inappropriate marital conduct. She prayed, in relevant part, for an award of divorce and attorney's fees.¹ In 2022, Wife filed a counter-complaint for divorce and prayed for a divorce on the grounds of irreconcilable differences or, alternatively, inappropriate marital conduct. Wife asserted that Husband was guilty of adultery and had subjected Wife to such indignities as to render her position intolerable. She prayed for: (1) an absolute divorce; (2) an equitable division of marital property; (3) rehabilitative, transitional, *in solido*, and/or *in futuro* alimony; and (4) her attorney's fees.

In February 2022, Wife filed a motion to join Husband's parents ("the Greens") as indispensable parties. In May 2022, Wife filed an amended complaint and asserted that she was "pressured" into signing a quit-claim deed transferring a 55-acre tract of real property ("the 55-acre tract") to the Greens.² Wife prayed for the deed to be set aside on the ground of fraud or misrepresentation. On May 5, 2022, Wife filed a third-party complaint against the Greens; the Greens answered on May 12. The trial court granted Wife's motion to join the Greens as parties and, by order of August 2, 2022, the trial court determined that Wife had failed to prove any legal ground to set-aside the quit-claim deed. The trial court dismissed Wife's complaint against the Greens, and the trial court's judgment on this issue has not been appealed.

Husband acknowledged having an extramarital relationship, and following a hearing on May 12, 2022, the trial court awarded Wife a divorce on the ground of inappropriate marital conduct. The trial court determined that the value of the marital residence was \$817,000.00, and the parties had equity of \$474,118.34 in the home. The trial court awarded each party one-half of the equity value, *i.e.*, \$237,059.17. The trial court valued the total marital estate at \$704,201.48. The court's division of marital assets resulted in an award to Wife of \$400,528.41 and an award to Husband of \$303,673.09. The trial court found Wife's testimony regarding the marital estate to be "much more persuasive

¹ In May 2022, the parties entered an agreed parenting plan. By order entered on June 24, 2022, the trial court approved the plan as being in the best interest of the parties' child.

² Wife's allegations of fraud concerned 66 acres of real property purchased by the parties and the Greens in 2017. The parties contributed \$10,000 to the purchase price; the Greens contributed \$100,000. In 2018, the Greens deeded 16 acres to Husband and Wife. The parties built their marital home on the 16 acres. In January 2021, Husband and Wife executed a quit-claim deed transferring the remaining 55 acres to the Greens.

than that of [Husband]” and adopted Wife’s amended 1030 statement of assets. The trial court also awarded Wife her attorney’s fees as alimony *in solido* in an amount “consistent with” her counsel’s July 2022 affidavit of fees. Husband filed a timely notice of appeal.

II. Issues Presented

Husband raises the following issues, as stated in his brief:

1. Whether the trial court erred in its determination of the value of the marital assets and whether same created an inequitable division of the marital estate.
2. Whether the trial court erred in awarding Wife attorney’s fees.

Wife raises the additional issue of whether this appeal should be dismissed as frivolous and requests attorney’s fees on appeal.

III. Standard of Review

This case was tried without a jury. Accordingly, we review the trial court’s factual findings with a presumption of correctness, unless the evidence preponderates otherwise. *Phillips v. Hatfield*, 624 S.W.3d 464, 473-474 (Tenn. 2021) (citations omitted); Tenn. R. App. P. 13(d). Our review of the trial court’s conclusions on issues of law is *de novo* with no presumption of correctness. *Cooper v. Mandy*, 639 S.W.3d 29, 33 (Tenn. 2022) (citation omitted). Because ““trial courts are able to observe witnesses as they testify and to assess their demeanor,”” trial judges are best situated to evaluate witness credibility. *Geller v. Henry Cnty. Bd. Of Educ.*, 602 S.W.3d 876, 889 (Tenn. 2020) (quoting *Wells v. Tenn. Bd. of Regents*, 9 S.W.3d 779, 783 (Tenn. 1999)). Accordingly, when the trial court’s findings are based on witness credibility, we will not disturb those findings without clear and convincing evidence to the contrary. *Dog House Invs., LLC v. Teal Props., Inc.*, 448 S.W.3d 905, 912 (Tenn. Ct. App. 2014) (citation omitted).

IV. Analysis

We begin our discussion of the issues by noting that Rule 7 of the Rules of the Court of Appeals states, in relevant part:

- a) In any domestic relations appeal in which either party takes issue with the classification of property or debt or with the manner in which the trial court divided or allocated the marital property or debt, the brief of the party raising the issue shall contain, *in the statement of facts or in an appendix*, a table in a form substantially similar to the form attached hereto. This table shall list all property and debts considered by the trial court, including: (1) all separate property, (2) all marital property, and (3) all separate and marital debts.

Tenn. Ct. App. Rule 7 (emphasis added). It is well-settled that, under Rule 7, “in all cases where a party takes issue with the classification and division of marital property, the party *must* include in its brief a chart displaying the property values proposed by both parties, the value assigned by the trial court, and the party to whom the trial court awarded the property.” *Forbess v. Forbess*, 370 S.W.3d 347, 354 (Tenn. Ct. App. 2011) (emphasis added) (citation omitted); *Williams v. Williams*, No. E2021-00432-COA-R3-CV, 2022 WL 1043632, at *15 (Tenn. Ct. App. Apr. 7, 2022); *Akard v. Akard*, No. E2013-00818-COA-R3-CV, 2014 WL 6640294, at *4 (Tenn. Ct. App. Nov. 25, 2014). A fully compliant Rule 7 table is vital to appellate review of the trial court’s distribution of property. *Id.* (citation omitted).

Husband’s Rule 7 table was not included in his statement of facts or attached to his brief as an appendix. Rather, it appears from the appellate record that Husband separately filed a table of the trial court’s valuation and division of property and a table of his proposed division of property. Appellate records often contain numerous and complex filings, and this Court is under no obligation to search the appellate record to locate documents that should have been included in the party’s brief. *See Stine v. Jakes*, No. M2021-00800-COA-R3-JV, 2022 WL 2297647, at *9 (Tenn. Ct. App. June 27, 2022). Nevertheless, because Husband filed his table of the trial court’s division of property and his proposed division of property on the same day as his brief and proof of service—and Wife acknowledges and references those filings as Husband’s Rule 7 table—we will exercise our discretion to consider Husband’s filings as his Rule 7 table. *See Forbess*, 370 S.W.3d at 355 (under Rule 2 of the Tennessee Rules of Appellate Procedure, we may excuse the failure to include a Rule 7 chart in the appellate brief). However, we caution that compliance with Rule 7 is mandatory, and the failure to comply with the specific requirements of the Rule generally will result in waiver of issues regarding the trial court’s division of property. *Id.*

As Wife asserts, the contents of Husband’s property division chart are not a model of compliance with the Rule. However, the table is sufficient to permit our review of the trial court’s division of property, and Wife did not raise the issue in her Statement of the Issues. An issue not raised in the Statement of the Issues is waived, even if the issue is argued in the appellate brief. *Childress v. Union Realty Co.*, 97 S.W.3d 573, 578 (Tenn. Ct. App. 2002) (citation omitted). Accordingly, we turn to the issues raised for review.

A. Valuation and Division of Marital Property

Husband asserts that, after concluding that the 55-acre tract of real property quit-claimed to the Greenes is not marital property, the trial court “without explanation, other than a finding that [W]ife was more credible in her testimony than [H]usband, wholly adopted and accepted the valuations of [W]ife as it relates to the other marital assets contained in [W]ife’s 1030 form.” He further asserts that the values proposed by Wife

were “not supported by any appraisals and [were] based upon the opinion of [W]ife, and [were] without consideration of all relevant evidence regarding value, including any of [H]usband’s testimony or proof[.]” Husband argues that “[t]he impact of using all of [W]ife’s valuations . . . create[d] an inequitable division of the marital assets in favor of [W]ife.”

The trial court must divide marital property in an equitable manner without regard to fault and in light of the factors set out in Tennessee Code Annotated section 36-4-121(c). *Larsen-Ball v. Ball*, 301 S.W.3d 228, 231 (Tenn. 2010). An equitable division of marital property does not require a division that is precisely equal, but one that is fair. *Melvin v. Melvin*, 415 S.W.3d 847, 852 (Tenn. Ct. App. 2011). Additionally, “[t]rial courts are vested with a great deal of discretion when classifying and dividing the marital estate, and their decisions are afforded great weight on appeal.” *Id.* Therefore, we will not disturb the trial court’s decision unless it is contrary to the preponderance of the evidence or results from an error of law. *Id.*

Marital property must be valued as of a date that is as close as possible to the date of entry of the order dividing the property. Tenn. Code Ann. § 36-4-121(b)(2)(A). The burden is on the parties to provide competent evidence of value, and when the evidence is conflicting, the court may assign a value “that is within the range of the values represented by all the relevant valuation evidence.” *Owens v. Owens*, 241 S.W.3d 478, 486 (Tenn. Ct. App. 2007). The valuation of a material asset is a question of fact. *Melvin*, 415 S.W.3d at 852. Therefore, the trial court’s valuations “are entitled to great weight on appeal and will not be second-guessed unless they are not supported by a preponderance of the evidence.” *Id.*

In his proposed division of marital property table, Husband includes a 55-acre plot of real property valued at \$653,125 and values the parties’ marital estate at \$940,035.19. However, he proposes that the trial court should have valued the total marital estate at \$387,201.48 and should have awarded \$242,028.41 to Wife and \$145,173.09 to Husband. Additionally, as Wife submits, the trial court determined that: (1) the parties quit-claimed the 55-acre tract to Husband’s parents; (2) Wife failed to demonstrate any ground to set-aside the deed; and (3) the tract was not marital property. Wife did not include the plot in her amended statement of marital assets, and the trial court did not include the plot in its valuation or division of the marital estate. According to Husband’s property division table, the trial court valued the parties’ marital estate at \$704,201.48, awarded \$400,528.41 to Wife, and \$303,673.09 to Husband.

As Husband states in his brief, the parties’ primary asset was their marital home—a 3,600-square-foot, 3-bedroom, 4-bathroom home. The home was constructed in 2019 and is situated on approximately 16 acres. Further, although Husband argues that the trial court used “all of Wife’s valuations[.]” from his property division table, it appears that, other than the marital residence, the parties assigned the same or substantially equal values

to the majority of their assets. Further, in his proposed property division, Husband identifies only one proposed amendment to the trial court's division of property, *i.e.*, the value of the marital residence and the coinciding reduction of the one-half equity awarded to the parties. We now turn to whether the trial court erred in its valuation of the marital residence.

Wife asserts, and the trial court determined, that the value of the marital residence was \$817,000.00, and the parties' equity in the property was \$474,118.34. As noted above, the trial court awarded each party one-half of the equity in the home, *i.e.*, \$237,059.17. In his proposed property division, Husband asserts that the total equity in the property was \$157,118.34, and each party should be awarded \$78,559.17.³

At the May 12, 2022 hearing, Husband sought to introduce evidence of value based on a July 2021 appraisal of the home. The appraisal was denied as hearsay. Husband testified that the mortgage payment on the property was "about \$3,000 a month," but he "[did not] know the exact amount" owed on the mortgage. Husband estimated that the amount of indebtedness was "probably 330 – 340,000." Husband also testified that the closing-cost worksheet from his attempt to refinance the property indicated a value of \$500,000. In his appellate brief, Husband submits that this testimony "confirmed that his opinion as to the value of the property is \$500,000." Husband additionally testified that the home is "just under 2700 square feet[.]" However, contrary to his testimony, in his brief, Husband states that the home is "approximately 3600 square feet[.]" On the other hand, Wife testified that, in her opinion, the value of the home and 16-acres was \$817,000.

In its August 2, 2022 final order, the trial court stated:

In regard to the equitable division of the remainder of the marital estate; the [c]ourt finds the testimony of [Wife] much more persuasive than that of [Husband].⁴ The [c]ourt adopts, as findings of fact and conclusions of law, [Wife's] proposed division of said property as outlined in her Amended 1030 statement, attached and modified to exclude the 55[-]acre tract and to ensure that Husband's pension includes only that amount which was earned during the marriage. This division is equitable in light of the testimony of the parties.

The trial court assigned a specific value of \$817,000 to the marital home.

³ We observe that Husband's proposed division of property table is somewhat unclear with regard to whether the assigned values reflect total value or equity value of some assets. Although Husband lists the equity value proposed by the parties with respect to the marital home, in his brief and proposed division table, Husband asserts that Wife assigned a value of \$7,000 to the parties' Mitsubishi BS3F. However, Wife's statement of assets recites an equity value of \$3,500, and the trial court adopted this value.

⁴ The trial court specifically excluded the 55-acre tract that the parties quit-claimed to Husband's parents from its valuation and division of the marital estate.

As Husband noted, the trial court found Wife's testimony to be more credible than Husband's. As noted above, when the trial court's findings are based on witness credibility, we will not disturb those findings without clear and convincing evidence to the contrary. *Dog House Invs.*, 448 S.W.3d at 912 (citation omitted). From the evidence in record, and in view of the trial court's credibility finding, there is insufficient evidence to preponderate against the trial court's determinations with respect to the value of the parties' assets or the division of the marital estate. Accordingly, we affirm the trial court's judgment on this issue.

B. Award of Attorney's Fees

We turn next to the trial court's award of attorney's fees to Wife as alimony *in solido* in the amount of \$31,368.75. The purpose of alimony *in solido* "is to provide financial support to a spouse, to enable the court to equitably divide and distribute marital property, or both." Tenn. Code Ann. § 36-5-121(h)(1)(A). The determination of whether attorney's fees are warranted as an award of alimony *in solido* is within the sound discretion of the trial court. *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 113 (Tenn. 2011). However,

[a]s with any alimony award, in deciding whether to award attorney's fees as alimony *in solido*, the trial court should consider the factors enumerated in Tennessee Code Annotated section 36-5-121(i). A spouse with adequate property and income is not entitled to an award of alimony to pay attorney's fees and expenses. Such awards are appropriate only when the spouse seeking them lacks sufficient funds to pay his or her own legal expenses or the spouse would be required to deplete his or her resources in order to pay them. Thus, where the spouse seeking such an award has demonstrated that he or she is financially unable to procure counsel, and where the other spouse has the ability to pay, the court may properly grant an award of attorney's fees as alimony.

Id.

Husband asserts that there is no proof to demonstrate that Wife does not have adequate property and income to pay her attorney's fees. He further asserts that Wife withdrew \$14,000 from marital funds to pay attorney's fees, thereby reducing the marital estate. Husband also argues that the trial court erred by awarding Wife attorney's fees generated by her unsuccessful third-party action against the Greens.

In his affidavit of fees, Wife's counsel states that the "total fees for the services rendered in this matter through the trial date of May 12, 2022, and drafting of the final order are \$31,368.75." As Husband asserts in his brief, Wife testified that she withdrew \$14,000 from marital assets to pay her attorney's fees in January 2022.

In its final decree, the trial court awarded Wife her attorney’s fees in an amount “consistent with” her counsel’s affidavit of fees, but made no findings regarding Wife’s need, Husband’s ability to pay, or the factors set-forth in Tennessee Code Annotated section 36-5-121. Tenn. Code Ann. § 36-5-121(h)(1)(B) (“When determining whether attorney fees and expenses should be awarded as alimony in solido, the court **shall** consider the following [factors].”) (emphasis added). Despite the mandatory language requiring the court to consider the relevant statutory factors, here, the trial court simply awarded Wife her fees without findings or explanation. Furthermore, “[a] trial court evaluating the reasonableness of an award of attorney’s fees must consider the factors provided in Tennessee Supreme Court Rule 8, RPC 1.5. *Ellis v. Ellis*, 621 S.W.3d 700, 708 (Tenn. Ct. App. 2019). Here, the trial court made no determination regarding the reasonableness of Wife’s attorney’s fees or whether counsel’s affidavit included a credit for her January 2022 payment. As this Court recently explained:

[In] the context of alimony awards, this Court has emphasized the importance of trial courts making adequate findings. We have therefore often chosen to vacate the trial court’s ruling and remand for the entry of a new order, rather than undertake an independent review of the record. *See Griffin v. Griffin*, No. M2019-01113-COA-R3-CV, 2020 WL 4873251, at *13 (Tenn. Ct. App. Aug. 19, 2020) (citation omitted) (“In light of the trial court’s failure to make sufficient findings of fact regarding Husband’s ability to pay the amount of alimony awarded to Wife, we vacate the award of alimony . . . and remand the case for reconsideration of the amount of alimony.”). For example, in *Cain-Swope v. Swope*, 523 S.W.3d 79 (Tenn. Ct. App. 2016), when the trial court failed to make adequate findings as to ability to pay in particular, we vacated the judgment and “remanded for reconsideration of the amount of alimony, if any, to be awarded.” *Id.* at 100. We reiterated that “[w]hen a trial court fails to make sufficient findings of fact, we are unable to presume there is a factual basis for the underlying decision. . . . Moreover, because the court did not state sufficient findings of fact and conclusions of law, we [were] deprived of one of the primary purposes of Rule 52.01, which is to facilitate appellate review by ‘affording a reviewing court a clear understanding of the basis of a trial court’s decision.’” (citations omitted). *Id.* at 99. We therefore directed the trial court “to make findings of fact as to the reasonableness of each party’s expenses, to ascertain the amount of alimony needed by [h]usband and the amount of alimony [w]ife is able to pay, and direct the entry of a judgment setting the appropriate amount of alimony in futuro.” *Id.* (noting that “[w]hether to reopen the proof concerning this issue is left to the discretion of the trial court”).

Lucy v. Lucy, No. W2020-01275-COA-R3-CV, 2021 WL 2579763, at *4 (Tenn. Ct. App. June 23, 2021). Because the trial court failed to make findings under Tennessee Code

Annotated section 36-5-121, and further failed to consider the factors relevant to the reasonableness of the award of attorney's fees to Wife, we vacate the award of attorney's fees and remand for further proceedings and sufficient findings on this issue. *Id.*; see further *Bewick v. Bewick*, No. M2015-02009-COA-R3-CV, 2017 WL 568544, at *12 (Tenn. Ct. App. Feb. 13, 2017) ("Given the absence of proper findings with regard to Wife's needs, we find it appropriate to vacate the alimony award and remand the issue to the trial court for reconsideration in light of the factors presented in Tennessee Code Annotated section 36-5-121(i), including Wife's needs. In revisiting the issue of alimony on remand, the trial court should make findings of fact and conclusions of law pursuant to Rule 52.01 of the Tennessee Rules of Civil Procedure.").

In a separate issue, Wife asserts that Husband's appeal is frivolous such that this Court should award her attorney's fees accrued in defense of the appeal. The law on frivolous appeals is well-settled:

Parties should not be forced to bear the cost and vexation of baseless appeals. *Davis v. Gulf Ins. Group*, 546 S.W.2d 583, 586 (Tenn. 1977); *Jackson v. Aldridge*, 6 S.W.3d 501, 504 (Tenn. Ct. App. 1999); *McDonald v. Onoh*, 772 S.W.2d 913, 914 (Tenn. Ct. App. 1989). Accordingly, in 1975, the Tennessee General Assembly enacted Tenn. Code Ann. § 27-1-122 to enable appellate courts to award damages against parties whose appeals are frivolous or are brought solely for the purpose of delay. Determining whether to award these damages is a discretionary decision. *Banks v. St. Francis Hosp.*, 697 S.W.2d 340, 343 (Tenn. 1985).

A frivolous appeal is one that is devoid of merit, *Combustion Eng'g, Inc. v. Kennedy*, 562 S.W.2d 202, 205 (Tenn. 1978), or one that has no reasonable chance of succeeding. *Davis v. Gulf Ins. Group*, 546 S.W.2d at 586; *Jackson v. Aldridge*, 6 S.W.3d at 504; *Industrial Dev. Bd. v. Hancock*, 901 S.W.2d 382, 385 (Tenn. Ct. App. 1995).

Young v. Barrow, 130 S.W.3d 59, 66–67 (Tenn. Ct. App. 2003). As a discretionary decision, "[i]n determining whether to award attorney's fees on appeal, we consider the ability of the requesting party to pay the accrued fees, the requesting party's success in the appeal, whether the requesting party sought the appeal in good faith, and any other equitable factor that should be considered." *Ellis*, 621 S.W.3d at 709. In view of our holdings, we conclude that Husband's appeal is not so devoid of merit as to warrant a finding that it is frivolous. As such, we decline Wife's request for attorney's fees on appeal.

V. Conclusion

For the foregoing reasons, we affirm the trial court's judgment with respect to the valuation and division of marital property. The trial court's award of attorney's fees as

alimony *in solido* to Wife is vacated. The case is remanded to the trial court for findings under Tenn. R. Civ. P. 52.01 on the issue of whether an award of attorney's fees, as alimony in solido, is appropriate under the factors prescribed in Tennessee Code Annotated section 36-5-121 and, if so, the reasonableness of the amount of attorney's fees billed by Wife's counsel. To this end, the trial court is not precluded from reopening proof. Wife's request for appellate attorney's fees is denied. Costs of the appeal are taxed one-half to Appellant, Jeremy Nathaniel Greene, and one-half to Appellee, Laura E. Greene, for all of which execution may issue if necessary.

s/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE