

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 2, 2016 Session

PAUL HARRISON GANT v. WANDA NORENE GANT

**Appeal from the General Sessions Court for Warren County
No. 8788 L. Thomas Austin, Judge**

No. M2015-02160-COA-R3-CV – Filed January 31, 2017

In this divorce action, Wife appeals contending the trial court erred in classifying Husband's interest in his family's business as his separate property and by failing to classify the appreciation in value of this asset as marital property. Wife contends she should have been awarded more than one-half of the marital estate, given that she is in poor health, unable to work and Husband has separate assets of significant value. She contends the award of alimony *in futuro* is insufficient and the trial court erred by requiring her to pay her attorney's fees and expenses. Husband contends the trial court erred by failing to award him certain items of personal property that are of sentimental value. We affirm the classification of Husband's interest in his family business as his separate property. We modify the division of the marital property by increasing Wife's share of the cash proceeds from the sale of the home, the adjoining land, cattle, and farm equipment from fifty (50%) percent to fifty-five (55%) percent. As for the specific items of tangible personal property Husband seeks to recover, we remand this issue to the trial court to make specific findings of fact and enter judgment accordingly. As for alimony *in futuro*, we have determined that Husband has the ability to pay more, and Wife has a need that is greater than what was awarded; therefore, we modify the award of alimony *in futuro* by increasing the amount to be paid monthly. We affirm the trial court's discretionary decision denying Wife's request to recover the attorney's fees she incurred at trial. As for the attorney's fees and expenses Wife incurred on appeal, we conclude that she should be awarded the reasonable and necessary attorney's fees and expenses she incurred in this appeal and remand for the trial court to make the award it deems appropriate in its discretion.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the General Sessions Court
Affirmed in Part; Modified in Part; and Remanded**

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the Court, in which ANDY D. BENNETT and W. NEAL MCBRAYER, JJ., joined.

Helen Sfikas Rogers and Siew-Ling Shea, Nashville, Tennessee, for the appellant, Wanda Norene Gant.

William Joseph Butler, McMinnville, Tennessee, for the appellee, Paul Harrison Gant.

OPINION

Paul Harrison Gant (“Husband”) and Wanda Norene Gant (“Wife”) married in October 1974. In January 2013, after nearly forty years of marriage, Husband filed a complaint for divorce in the General Sessions Court for Warren County asserting, *inter alia*, that irreconcilable differences existed between the parties. Wife filed an answer and counter-complaint for divorce in which she also alleged irreconcilable differences as grounds for divorce.

Prior to trial, the court entered an agreed order pursuant to which the parties were to sell their marital home, the adjoining land, cattle, and farm equipment. The parties completed this sale, and the proceeds—totaling \$614,444.63—were deposited with the court clerk. The case was tried on February 2 and 3, 2015. At the beginning of trial, the parties stipulated to a divorce under Tenn. Code Ann. § 36-4-129.

The evidence introduced at trial established that both spouses are in their mid-sixties and have adult children. Husband has a college degree and works as the Vice President and Director of Gant Oil Company (“Gant Oil”), a family-owned Tennessee C Corporation, where he has made between \$40,000.00 and \$67,000.00 per year since the mid-1980’s. Wife has a high-school education and served as a homemaker and stay-at-home parent for most of the marriage.

Husband testified that in 2010 he inherited 842 shares of stock in Exxon Mobile, 133 shares of stock in First McMinnville Corporation, a one-third interest in two parcels of real property, and approximately \$133,000.00 in cash. Husband additionally testified that he owns 767 shares in Gant Oil, constituting a 38% ownership interest in the company. He explained that he acquired 200 of these shares prior to the marriage, received 100 shares as a gift in 1976 from his father, and inherited an additional 467 shares from his mother in 2010. For these reasons, Husband argued that all of these shares are his separate property.

Wife acknowledged that Husband received 200 shares in Gant Oil before the marriage and that he inherited 184 shares from his mother in 2010. Wife agreed that these shares, which total 384, are Husband’s separate property. As for the remaining 383 shares, Wife contended the 100 shares Husband received in 1976 and 283 of the shares he received from his mother are marital property. In support of this contention, Wife relied on a promissory note entered into between Husband and his mother, whereby his mother agreed to sell 283 shares of Gant Oil to Husband for \$126,790.00.

Additionally, Wife presented expert testimony showing that the 200 shares Husband received prior to marriage and the 100 shares he received in 1976 had increased in value from \$75.00 per share at the time they were acquired to \$870.00 per share by 2014. Wife argued that the appreciation in value of these shares should be considered marital property based on Wife's contributions to Gant Oil and based on her substantial contributions as homemaker and primary caretaker of the parties' children.

As for Wife's mental and physical health, her psychiatrist testified by deposition that Wife has been diagnosed with bipolar disorder, suffers from severe depression and anxiety, and has been hospitalized on five occasions for mental health purposes. Further, Wife suffers from attention deficit disorder, fibromyalgia, and chronic fatigue syndrome. Wife's psychiatrist stated that she is unable to work given her cognitive impairment and needs treatment, therapy, and medication for the remainder of her life, preferably in an assisted living situation to ensure her physical and mental safety.

In support of Wife's claim for alimony, she presented proof showing that her post-divorce monthly expenses would be \$4,046.00 if she were to live independently and \$3,400.00 to \$5,000.00 per month for assisted living plus \$500.00 per month for personal expenses.

At the conclusion of the trial, the court designated the following as Husband's separate property: (1) all 767 shares of stock in Gant Oil, valued at \$575,250 based on \$750.00 per share; (2) the one-third ownership interests in the two parcels of real property inherited from his mother, valued at \$93,573.00 and \$35,000.00; (3) the shares of stock in Exxon Mobile and First McMinnville Corporation, valued at \$76,058.00 and \$7,686.00; (4) a tractor purchased with funds inherited from his mother, valued at \$25,000.00; and (5) two life insurance policies with cash surrender values of \$42,932.54 and \$3,075.75, respectively.¹ With respect to Wife's argument that the appreciation in value of the Gant Oil stock should be considered marital property, the court stated that it "totally rejects that [argument] as the proof has not shown any real or significant contributions by wife"

The court also awarded each spouse one of the two vehicles and one of the two burial plots owned by the parties.² Additionally, the court classified the parties' retirement accounts, valued at \$134,118.00; the 2013 tax return, valued at \$5,650.00; and the 2014 tax return, valued at \$8,442.00, as marital property to be divided equally

¹ Although at trial the parties placed different values on several of their assets, namely the shares in Gant Oil, the trial court's valuations were within the range of the evidence presented by the parties, and these valuations are not disputed on appeal.

² Wife was awarded the 2009 Mercury valued at \$9,494.00, and Husband was awarded the 2011 Chevy valued at \$10,096.00. Each burial plot was valued at \$500.00.

between the spouses. The court awarded each spouse the items of personal property currently in their possession as well as the checking and savings accounts held in their individual names.³

With regard to the \$614,444.63 being held by the court clerk from the pre-trial sale of the parties' marital home, adjoining land, cattle, and farm equipment, the court's memorandum opinion accompanying its final order stated as follows:

[T]he Court is of the opinion that [Wife] is in desperate need of alimony and . . . hereby awards [Wife] sixty percent (60%) of the funds being held in the Circuit Court Clerk's office which arrived mainly from the sale of marital assets of the home, property, and cattle, which total \$614,444.63. [Husband] is awarded the balance of forty percent (40%). These figures would allow Wife to get \$368,666.77 and Husband to get \$245,777.86. Therefore in awarding this, the Court is allowing alimony *in solido* by granting the 60/40 division. Wife will receive \$122,888.91 more than the Husband. For the assets to be divided equally, the parties would each receive \$307,222.33.

Additionally, the court found that, given Wife's age, unemployment, mental illness, and health issues, an award of alimony *in futuro* was warranted. Specifically, the court's memorandum opinion stated,

In addition to the above stated alimony *in solido*, the Court further finds that [Wife] is entitled to alimony *in futuro*. This case is clear that the pre and post living standard of the parties have been considered by the Court. Given [Husband's] long-term employment income, significant assets (marital and separate), and [Wife's] lack of employment and poor mental health, [Wife] will certainly need to receive alimony to even appreciate the standard of living she formerly enjoyed during the marriage. The proof was clear in this case that [Wife] will be the economically disadvantaged spouse. This is a classic alimony *in futuro* case with a long-term marriage and a spouse that is economically disadvantaged. Wife has only earned a GED and has a tenth grade education. She has not been consistently employed outside the home in the 42 years of marriage. At age 64, [Wife] is now suffering from a mental health disorder and a cognitive impairment. She is completely unable to work outside the home according to medical

³ The trial court's original final order and memorandum opinion failed to address several issues including the division of the parties' household furniture and personal effects as well as several bank accounts held in the spouses' individual names. However, the trial court addressed this property, as well as several other issues, following Wife's motion to alter or amend the final order. Nevertheless, the trial court's order did not place a value on this property.

proof. Within two years of entry of the decree, [Wife] will draw Social Security of approximately \$993.10 per month based on [Husband's] earnings and \$1,172.50 off of [Husband's] social security record at age 66. However, these earnings cannot commence until two years after this divorce is final

Therefore, [Wife] is entitled to alimony *in futuro* in the sum of \$1,000 a month for the next two years beginning with the entry of the divorce decree. Said amount will be reduced to \$500.00 per month at the conclusion of the two years and will continue for the remainder of [Wife's] life or until she remarries. . . .

The court also ordered that each party was to pay their own attorney's fees and expert witness fees and expenses.

Wife timely filed this appeal. Generally stated, she raises the following issues: (1) whether the trial court erred by classifying the entirety of the Gant Oil stock as Husband's separate property and by failing to consider the appreciation of these shares as a marital asset; (2) whether the trial court erred by awarding Wife only one-half of the marital property; (3) whether the trial court awarded an insufficient amount of alimony *in futuro*; and (4) whether the trial court erred by requiring Wife to pay her attorney's fees and expenses. Additionally, Husband argues that the trial court should have awarded him certain furniture and family heirlooms which were in Wife's possession at the time of trial. We will address each issue in turn.

STANDARD OF REVIEW

"In all actions tried upon the facts without a jury, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment." Tenn. R. Civ. P. 52.01.⁴ If the trial court makes the required findings of fact, appellate courts review the trial court's factual findings *de novo* upon the record, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. *Kelly v. Kelly*, 445 S.W.3d 685, 692 (Tenn. 2014) (citing Tenn. R. App. P. 13(d)). "For the evidence to preponderate against a trial

⁴ The Tennessee Rules of Civil Procedure do not apply in general sessions court except in specific circumstances. *Ray v. Ray*, No. M2013-01828-COA-R3-CV, 2014 WL 5481122, at *16 n.15 (Tenn. Ct. App. Oct. 28, 2014) (citing *Masquerade Fundraising, Inc. v. Stott*, No. E2011-00309-COA-R3-CV, 2012 WL 444052, at * 1 (Tenn. Ct. App. Feb. 14, 2012), *no perm. app. filed*). However, the Rules do apply to "general sessions courts exercising civil jurisdiction of the circuit or chancery courts." *Id.* (citing Tenn. R. Civ. P. 1). In this divorce case, the general sessions court was exercising civil jurisdiction of the circuit and chancery courts, thus the Tennessee Rules of Civil Procedure were applicable. *See id.*; *Whitworth v. Whitworth*, No. E2008-01521-COA-R3-CV, 2009 WL 2502002, at *5 (Tenn. Ct. App. Aug. 17, 2009).

court's finding of fact, it must support another finding of fact with greater convincing effect." *State ex rel. Flowers v. Tenn. Trucking Ass'n Self Ins. Grp. Trust*, 209 S.W.3d 595, 598-99 (Tenn. Ct. App. 2006) (citations omitted).

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 v. Copley, 418 S.W.3d 1, 34-35 (Tenn. 2013) (internal citations and footnotes omitted).

While there is no bright-line test by which to assess the sufficiency of the trial court's factual findings, 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." *Id.* at 35. "Simply stating the trial court's decision, without more, does not fulfill [the Rule 52.01] mandate." *Gooding v. Gooding*, 477 S.W.3d 774, 782 (Tenn. Ct. App. 2015) (quoting *Barnes v. Barnes*, No. M2011-01824-COA-R3-CV, 2012 WL 5266382, at *8 (Tenn. Ct. App. Oct. 24, 2012)).

If the trial court fails to explain the factual basis for its decisions, the appellate court "may conduct a de novo review of the record to determine where the preponderance of the evidence lies or remand the case with instructions to make the requisite findings of fact and conclusions of law and enter judgment accordingly." *Id.* at 783 (citing *Lovlace*, 418 S.W.3d at 36); *Ganzevoort v. Russell*, 949 S.W.2d 293, 296 (Tenn. 1997); *Nashville Ford Tractor, Inc. v. Great Am. Ins. Co.*, 194 S.W.3d 415, 424 (Tenn. Ct. App. 2005)).

Our review of a trial court's determinations on issues of law is de novo, without any presumption of correctness. *Lind v. Beaman Dodge, Inc.*, 356 S.W.3d 889, 895 (Tenn. 2011).

ANALYSIS

I. CLASSIFICATION AND DIVISION OF PROPERTY

Wife raises several issues regarding the trial court's classification and division of property. She contends the court erred by classifying all of the Gant Oil stock as Husband's separate property. She also contends the trial court erred by failing to consider her substantial contributions towards the appreciation of the shares in Gant Oil that are his separate property. Additionally, Wife contends she should have been awarded a greater share of the marital estate, given the parties' forty-year marriage, her serious medical and mental health conditions, and that she is unable to work or to accumulate assets in the future. We will consider each of these arguments in turn.

A. Classification of the Gant Oil Shares as Separate Property

Wife contends that the trial court erred in classifying all of Husband's 767 shares in Gant Oil as his separate property.

The division of a marital estate begins with the classification of the parties' property as either separate or marital property. *See Larsen-Ball v. Ball*, 301 S.W.3d 228, 231 (Tenn. 2010); *Snodgrass v. Snodgrass*, 295 S.W.3d 240, 246 (Tenn. 2009). This is necessary because separate property is not part of the marital estate; therefore, a party's separate property is not subject to division. *Snodgrass*, 295 S.W.3d at 246 (citing *Cutsinger v. Cutsinger*, 917 S.W.2d 238, 241 (Tenn. Ct. App. 1995)). "Thus, before equitably dividing the marital estate, the trial court must identify all of the assets possessed by the divorcing parties as either separate or marital." *Larsen-Ball*, 301 S.W.3d at 231 (citing *Snodgrass*, 295 S.W.3d at 246).

"Marital property" is defined in Tenn. Code Ann. § 36-4-121(b)(1)(A)-(E). "Separate property" is defined in Tenn. Code Ann. § 36-4-121(b)(2)(A)-(F). *See Jacobsen v. Jacobsen*, No. M2012-01845-COA-R3-CV, 2013 WL 1400618, at *9 (Tenn. Ct. App. Apr. 5, 2013) (generally stating that separate property is property that is not marital property).

Two rebuttable presumptions provide a starting point for classification of property as separate or marital. *Watt v. Watt*, No. M2014-02565-COA-R3-CV, 2016 WL 1730659, at *6 (Tenn. Ct. App. April 27, 2016), *no perm. app. filed*. First, there is a presumption that assets acquired by either spouse prior to the marriage are separate property. *Id.* (citing *Fox v. Fox*, No. M2004-02616-COA-R3-CV, 2006 WL 2535407, at *4 (Tenn. Ct. App. Sept. 1, 2006); Tenn. Code Ann. § 36-4-121(b)(2)(A)). However, property that

began as separate property can be converted into marital property by commingling or transmutation. *See Smith v. Smith*, 93 S.W.3d 871, 878 (Tenn. Ct. App. 2002).⁵

Second, “assets acquired by either spouse during the marriage are presumed to be marital property.” *Watt*, 2016 WL 1730659, at *6 (citing *Church v. Church*, No. M2004-02702-COA-R3-CV, 2006 WL 2168271, at *7 (Tenn. Ct. App. Aug. 1, 2006); Tenn. Code Ann. § 36-4-121(b)(1)(A)). This presumption may be rebutted by presenting evidence that the property falls into one of the categories listed in Tenn. Code Ann. § 36-4-121(b)(2)(B)-(F). *Watt*, 2016 WL 1730659, at *6 (citing *Fox*, 2006 WL 2535407, at *4). This list includes property acquired “by a spouse at any time by gift, bequest, devise or descent[.]” Tenn. Code Ann. § 36-4-121(b)(2)(D). “A party asserting that an asset acquired during marriage is separate property has the burden of proving by a preponderance of the evidence that the asset is separate property.” *Owens v. Owens*, 241 S.W.3d 478, 485-86 (Tenn. Ct. App. 2007).

It is undisputed that Husband acquired 200 shares in Gant Oil prior to the parties’ marriage. The trial court classified these shares as Husband’s separate property, and Wife does not challenge this decision. Further, Wife acknowledges that Husband inherited an additional 184 shares from his mother in 2010 and that these shares are also Husband’s separate property. Therefore, Wife acknowledges that 384 of Husband’s 767 shares in Gant Oil are his separate property; however, Wife insists that the remaining 383 shares are marital property.

Wife contends Husband “acquired” 100 of these shares in 1976, which was during the marriage, and they should be classified as marital property because Husband failed to rebut the presumption that property acquired during the marriage is marital property. At trial, Husband testified that the 100 shares he received in 1976 were a gift from his father; therefore, they are separate property. This testimony was corroborated by Husband’s brother, Winston Gant, who testified that their father gave each of them 100 shares of Gant Oil in 1976. Based on this evidence, the trial court found that these shares were a gift and the evidence in the record does not preponderate against this finding. Therefore, we affirm the trial court’s finding that the 100 shares given to Husband by his father in 1976 are his separate property.

As for the remaining 283 shares, Wife contends the trial court erred in finding that these shares are Husband’s separate property. She argues that these shares are marital property because they were purchased with marital funds. In support of this argument,

⁵ Under the theory of commingling, separate property becomes marital property if it is inextricably mingled with marital property or with the separate property of the other spouse. *Smith*, 93 S.W.3d at 878 (citing 2 Homer H. Clark, *The Law of Domestic Relations in the United States* § 16.2 at 185 (1987)). Transmutation occurs when separate property is treated in such a way as to give evidence of an intention that it become marital property. *Id.*

Wife relies on a 1998 promissory note which states that Husband agreed to purchase 283 shares of Gant Oil from his mother, Katherine Gant, for the price of \$126,790.00.⁶

Husband denied that he purchased any of these shares from his mother. Although he acknowledged that he entered into a promissory note with his mother, he explained that the agreement fell apart before he could purchase any of his mother's shares in Gant Oil. Husband testified that his mother, Katherine Gant, inherited shares in Gant Oil from her husband, his father. Thereafter, Katherine Gant wanted to "gift" a significant portion of her shares to their three children. After receiving estate planning advice to avoid gift tax consequences, she presented a plan to her children whereby each child could purchase 283 shares of Gant Oil for the sum of \$126,790.00. So that each of her children would have sufficient funds to pay the purchase price, they would each sign a promissory note in that amount and she would gift \$40,000 annually to each of her children's families.⁷ Upon receipt of the annual gifts, each child would remit \$40,000 to Katherine Gant, which would be applied to the balance each child owed on the promissory note. This procedure was to be repeated each year until the balance was paid on the promissory note, at which time one stock certificate for 283 shares of Gant Oil stock would be issued to the child who satisfied his or her obligation under the note. Husband acknowledged that he and his two siblings agreed to the plan and each of them signed a separate promissory note.

Husband testified that the exchange of checks took place as agreed in the first year. Specifically, Husband testified that he, his wife and their two adult children each received a check for \$10,000, each endorsed their check over to Husband, and Husband remitted \$40,000 to his mother as agreed upon. However, the plan fell apart in the second year. After receiving the four checks payable to Husband, Wife, and their two adult children, Wife and Husband's daughter refused to endorse the checks over to Husband. As a consequence, Husband was not able to remit the required annual payment. Instead, he returned the unendorsed checks to his Mother and informed her that he would not be able to pay off the promissory note in order to purchase the shares. As a consequence, Husband did not purchase any shares from his mother.

⁶ Neither Wife nor Husband presented the promissory note or a copy at trial or in discovery. Instead, Wife relied on a letter from Katherine Gant wherein Katherine Gant states that she is "the owner of a promissory note in the amount of \$126,790.00 made by [Husband] to me as part of the consideration for the purchase of 283 shares of Gant Oil Co., Inc. stock."

⁷ The \$40,000 gift from Katherine Gant was remitted to Husband's family unit as follows. Each of Katherine Gant's children received a check for \$10,000, his or her spouse received a check for \$10,000, and, in Husband's case, his two adult children each received a check for \$10,000. In order to remit the required \$40,000 annual payment to Katherine Gant to "purchase" the stock, Husband's children and Wife were required to negotiate the checks to Husband who would then remit the required payment to his mother.

When Katherine Gant died, she owned 825 shares of Gant Oil, which included the 283 shares she planned to sell to Husband. To make up for her inability to “gift” 283 shares to Husband inter vivos, and realizing that her other two children each received 283 each pursuant to the annual \$40,000 gift protocol, she included a specific bequest in her will. The will, which was presented at trial, stated that all personal property, and the entirety of Katherine Gant’s residuary estate, would go to a revocable living trust upon her death and, in pertinent part, the trust provided that,

Upon the death of [Katherine Gant], Trustee shall divide the trust property . . . as follows:

1. Specific Bequest and Devise

[Katherine Gant] is the owner of shares in Gant Oil Co., Inc. Two hundred and eighty-three (283) of [Katherine Gant’s] shares in Gant Oil Co., Inc. shall be distributed to Paul Harrison Gant [Husband], outright and free of trust. . . .

Husband’s testimony, including the description of the arrangement between Husband’s siblings and their mother, was corroborated by Husband’s brother, Winston Gant. As for her testimony, Wife acknowledged that she and her daughter each received a \$10,000.00 check from Husband’s mother on one occasion, which they signed over to Husband at his request. She did not recall receiving any checks from Husband’s mother other than this one occasion.

The trial court found that the 283 shares at issue were not purchased by Husband with marital assets but were inherited from his mother in 2010. The evidence in this record does not preponderate against these findings. Therefore, we affirm the trial court’s determination that all of Husband’s Gant Oil shares are his separate property.

B. Appreciation in Value of Husband’s Interest in Gant Oil

Wife contends the trial court erred in failing to recognize that some of the appreciation in value of Husband’s shares was due to her substantial contributions and in failing to classify that portion of the appreciation as marital property.

An increase in value of property determined to be separate property will be classified as marital property if “each party substantially contributed to its preservation and appreciation” during the marriage. *Summer v. Summer*, 296 S.W.3d 57, 62 (Tenn. Ct. App. 2008) (citing Tenn. Code Ann. § 36-4-121(b)(1)(B); *Keyt v. Keyt*, 244 S.W.3d 321, 328-29 (Tenn. 2007)). A “substantial contribution” may include, *inter alia*, “the direct or

indirect contribution of a spouse as homemaker, wage earner, parent or family financial manager” Tenn. Code Ann. § 36-4-121(b)(1)(D). However,

increases in the value of separate property during a marriage will not be considered marital property unless both parties “substantially contributed” to the appreciation in the value of the property. Tenn. Code Ann. § 36-4-121(b)(1)(B); *Harrison v. Harrison*, 912 S.W.2d 124, 127 (Tenn. 1995). While these contributions may be either “direct” or “indirect,” Tenn. Code Ann. § 36-4-121(b)(1)(D), they must satisfy two requirements. *McFarland v. McFarland*, No. M2005-01260-COA-R3-CV, 2007 WL 2254576, at *6 (Tenn. Ct. App. Aug. 6, 2007). First, the contributions must be “real and significant.” *Id.*; *Brown [v. Brown]*, 913 S.W.2d [163, 167 (Tenn. Ct. App. 1994)]. “Second, there must be some link between the spouses’ contributions and the appreciation in the value of the separate property.” *McFarland*, 2007 WL 2254576, at *6; *Langschmidt [v. Langschmidt]* 81 S.W.3d [741, 746 (Tenn. 2002)]. Whether a spouse made a “substantial contribution” to the preservation and appreciation of separate property is a question of fact. *Sherrill v. Sherrill*, 831 S.W.2d 293, 295 (Tenn. Ct. App. 1992).

Keyt, 244 S.W.3d at 328-29.

For example, in *Herbison v. Herbison*, the husband owned a medical equipment company, which the wife occasionally worked for during the marriage. *Herbison v. Herbison*, No. M2008-00658-COA-R3-CV, 2009 WL 1634914, at *1 (Tenn. Ct. App. June 10, 2009). The wife’s duties at the company included answering the phone, cleaning the office, picking up lunch for the employees, and hosting parties for the husband’s business associates. *Id.* After the parties’ divorce, the wife argued that the appreciation of the business should be marital property, given her contributions to the company. On appeal, we affirmed the trial court’s conclusion that, because the wife’s duties were that of a low or mid-level employee, the evidence was not sufficient to show that she “substantially contributed” to the increase in value of the company. *Id.* at *6.

In this case, it is undisputed that the value of Gant Oil increased during the course of the parties’ forty-year marriage. However, as discussed above, in order for this appreciation to be considered marital property, Wife must prove that she substantially contributed to an increase in the value of the stock. *See Ballard v. Ballard*, No. M2008-00713-COA-R3-CV, 2009 WL 152576, at *6 (Tenn. Ct. App. Jan. 21, 2009).

Wife testified that she helped Husband with certain aspects of the operation of Gant Oil. Specifically, Wife stated that she ran errands for the business, took food and clothes to Husband at work, and did whatever Husband needed to support his business career. Wife also testified that she has taken products to customers, accompanied

Husband on business trips, and on one occasion helped Husband pick up a gas truck in Nashville. Further, Wife testified that her home phone number was listed along with the numbers for Gant Oil and that she occasionally fielded phone calls and relayed messages to Husband.

After reviewing this evidence, we believe that Wife's direct contributions to the operation of Gant Oil are similar to those of the wife in *Herbison*. Although Wife occasionally ran errands, answered the phone, and relayed messages to Husband concerning Gant Oil, these tasks resemble those performed by a low-level employee.

In addition to the foregoing, Wife contends her contributions as homemaker and caregiver for the parties' children indirectly contributed to the increase in value of Husband's business. Wife testified that she worked outside the home for two years before quitting her job at Husband's request just before the birth of their first child. Thereafter, Wife served as a homemaker with responsibilities such as cooking, cleaning, taking the children to and from school, helping with homework, and washing clothes. Wife testified that Husband worked around 50 hours a week at Gant Oil, but acknowledged that, since the decline in her health, Husband has done more to help around the house.

Husband acknowledged that Wife helped raise the children and served as homemaker during the marriage, but testified that he also contributed at home. Husband stated he helped take care of the children, cooked, washed clothes, did household cleaning, mowed the lawn, and made repairs in the house as needed. Husband estimated that, throughout the marriage, he did around 40-50% of the household tasks.

The parties' adult son, Jonathan Gant, testified that when he lived at home Husband worked 50 to 60 hours per week at Gant Oil and an additional 20 to 25 hours per week on the farm. Regarding the division of household responsibilities, Jonathan Gant testified that "[e]verybody did work inside the house." He stated that his mother cooked, cleaned, washed dishes, and washed clothes, and that his father "did the same things [Wife] did." When asked to compare the amount of time that his father and mother worked around the house he stated,

Give or take, it was probably about the same. Different days he would be more [sic]; different days she would be more [sic]. Overall, he probably did a little bit more than she did, because sometimes when I'd come, she wouldn't be there and he would, but that's from what I saw when I was there myself.

It is evident from this record that Wife made significant contributions to the marriage; however, the record also shows that the spouses contributed to the household in roughly equal part throughout the marriage. Therefore, the evidence does not preponderate against the trial court's finding that Wife did not substantially contribute to

the appreciation of Gant Oil. Accordingly, we affirm the trial court's determination that all of the appreciation of the value of Husband's shares in Gant Oil is Husband's separate property.

C. Division of the Marital Property

Additionally, Wife argues that the division of marital property is inequitable, given that she has serious medical and mental health needs, is unemployable, and cannot accumulate assets in the future.

After classifying the parties' assets as either separate or marital, the trial court must divide the marital estate in an equitable manner. *Larsen-Ball*, 301 S.W.3d at 234; Tenn. Code Ann. § 36-4-121(a)(1). Such a division does not require that the property be divided equally. *Robertson v. Robertson*, 76 S.W.3d 337, 341 (Tenn. 2002). "Dividing 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 v. Kinard*, 986 S.W.2d 220, 230 (Tenn. Ct. App. 1998).

In this case, the trial court classified and valued the following items as marital property: two vehicles, valued at \$9,494.00 and \$10,096.00 each; two burial plots, each valued at \$500.00; retirement accounts with a total value of \$134,118.00; and tax return refunds valued at \$14,092.00. The court also classified the \$614,444.63 cash proceeds from the sale of the marital home, adjoining property, cattle, and farm equipment as marital property.⁸

Wife was awarded the vehicle valued at \$9,494.00, Husband was awarded the vehicle valued at \$10,096.00, and each spouse was awarded one burial plot. The remaining marital assets were divided equally, including the retirement accounts of \$134,118.00, the tax refunds of \$14,092.00, and the \$614,444.63 in cash on deposit with the clerk. Based on the values found by the trial court, Wife was awarded marital assets valued at \$391,321.32 and Husband was awarded marital assets valued at \$391,923.32, a difference of only \$602.⁹

⁸ The trial court also classified miscellaneous tangible personal property, such as clothing, jewelry, and household furnishings, and awarded to each spouse the items that were in his or her possession at the time of trial. The court did not place a value on this property. However, we note that the parties have the duty to come forward with competent valuation evidence. *Owens*, 241 S.W.3d at 486 (citing *Kinard*, 986 S.W.2d at 231; *Wallace v. Wallace*, 733 S.W.2d 102, 107 (Tenn. Ct. App. 1987)). In this case, the parties failed to provide evidence of the value of this property; therefore, we find no fault with the trial court not placing a value on the property.

⁹ These totals require a bit of explanation. The trial court stated in its order that Wife was awarded \$368,666.77 of the cash on deposit with the clerk, which represents 60% of this asset and allowed Wife to "receive \$122,888.91 more than Husband." However, the characterization of this as
(continued...)

Marital property is to be equitably divided “prior to any determination as to whether it is appropriate” to award alimony. *Wilkerson*, 1998 WL 397373, at *2 (quoting Tenn. Code Ann. § 36-4-121(a)(1)). Therefore, although the trial court co-mingled the award of alimony *in solido* to Wife with the division of marital assets, we will address the division of marital property separately from and “prior to any determination” as to the award of alimony *in solido*. See *Wilkerson*, 1998 WL 397373, at *2.

As discussed above, in assessing whether a division of property is equitable, courts are guided by the factors in Tenn. Code Ann. § 36-4-121(c). *Kinard*, 986 S.W.2d at 230. These factors include:

- (1) The duration of the marriage;
 - (2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities, and financial needs of the parties;
 - (3) The contributions by one (1) party to the education, training, or increased earning power of the other party;
 - (4) The ability of each party for future acquisitions of assets and income;
 - (5)(A) The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party as homemaker, wage earner or parent with the contribution of a party as homemaker or wage earner to be given the same weight as if each party has fulfilled its role;
- ...

being part of the division of the marital property is confusing and incorrect. Here, the trial court co-mingled the division of marital property with the consideration of spousal support. Specifically, the court stated that it was awarding an unequal division of the cash held with the clerk to “allow[] alimony *in solido*” in favor of Wife. Therefore, Wife did not receive \$122,888.91 more in *marital property* than Husband. To the contrary, it is evident from the trial court’s order that the parties received an equal share of this cash as marital property, and Wife was awarded alimony *in solido* of \$61,444.46 that was to be paid from Husband’s share of this asset. In other words, the parties each received 50% of the cash on deposit, or \$307,222.32, as marital property, after which 10% of this asset, or \$61,444.46, was awarded to Wife as alimony *in solido* to be paid from Husband’s share. This distinction is significant because marital property is to be equitably divided “*prior to* any determination as to whether it is appropriate” to award alimony. See *Wilkerson*, 1998 WL 397373, at *2 (citing Tenn. Code Ann. § 36-4-121(a)(1)) (emphasis added). Accordingly, when calculating the total amount of *marital property* awarded to each party, the \$61,444.46 award of alimony *in solido* should not be considered.

- (6) The value of the separate property of each party;
- (7) The estate of each party at the time of marriage;
- (8) The economic circumstances of each party at the time the division of property is to become effective;
- (9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of an asset, and other reasonably foreseeable expenses associated with the asset;
- (10) The amount of social security benefits available to each spouse;
- (11) Such other factors necessary to consider the equities between the parties.

Tenn. Code Ann. § 36-4-121(c).

In this case, the parties were married for approximately forty years and were both 64 years old at the time of trial. Husband has a college degree and works as Vice President of his family-owned company, Gant Oil, where he earns between \$40,000 and \$67,000 per year. He also owns 38% of the company. The value of his share of Gant Oil is estimated to be \$575,250, and the value of all of his separate property is approximately \$775,000.¹⁰ Husband is also in good physical health and has no present plan to retire.

Conversely, Wife has only a high-school education and has not worked outside the home in 38 years. She has both physical and mental health concerns and has been diagnosed with bipolar disorder, severe depression and anxiety, attention deficit disorder, fibromyalgia, and chronic fatigue syndrome. Wife's mental health concerns have required her to be hospitalized on five occasions. Additionally, given her cognitive impairment, Wife is unable to work and will require treatment, therapy, and medication for the remainder of her life and may require an assisted living environment in the not too distant future. Further, unlike Husband, Wife has very little separate property and none of it is income producing.

¹⁰ Husband's separate property includes the following: an ownership interest in Gant Oil, valued at \$575,250.00; a one-third ownership interest in two parcels of real property, valued at \$93,573.00 and \$35,000.00; shares of stock in Exxon Mobile and First McMinnville Co., valued at \$76,058.00 and \$7,686.00; a tractor, valued at \$25,000.00; and two life insurance policies with cash surrender values of \$42,932.54 and \$3,075.75, respectively. Thus, the aggregate value of Husband's separate property is \$774,831.24.

Based on the trial court's findings on the disparity between the parties' respective physical and mental health, earning capacity, financial needs, and the value of their separate property, which findings are supported by the evidence, we conclude that the trial court misapplied the statutory requirements for division of the marital estate. *See Snodgrass*, 295 S.W.3d at 245 (citing *Keyt*, 244 S.W.3d at 327) ("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."). Applying the relevant statutory factors to the facts of this case, we have concluded that an equal division of the marital estate is not equitable to Wife.

Having concluded that the equal division of the marital estate was not equitable to Wife, we remand with instructions for the trial court to modify the division of the marital estate by awarding Wife 55% of the \$614,444.63 on deposit with the clerk, the product of which is \$337,944.55. The remaining 45% of this asset is awarded to Husband, the product of which is \$276,500.08.¹¹ The division of the other marital assets is affirmed. In addition to the above, Husband shall retain 100% of the property the court classified as his separate property. Thus, the total value of Wife's share of the marital estate is \$422,043.55, the total value of Husband's share of the marital estate is \$361,201.08, and Husband retains his separate property valued at approximately \$775,000.

II. ALIMONY IN SOLIDO

As for the award of alimony *in solido* in the amount of \$61,444.46, neither party challenges this award.¹² Moreover, we find no error with the trial court's decision. Therefore, we affirm the award of alimony *in solido* to Wife in the amount of \$61,444.46. In order to avoid confusion, it should be understood that this award is in addition to the marital assets awarded to Wife, as modified. Further, we agree with the trial court that the alimony *in solido* is to be paid to Wife out of Husband's share of the funds on deposit with the clerk.

III. ALIMONY IN FUTURO

Additionally, Wife contends that the trial court's award of alimony *in futuro* is insufficient.

We review an award of alimony under the abuse of discretion standard of review. *See Herrera v. Herrera*, 944 S.W.2d 379, 388 (Tenn. Ct. App. 1996). Appellate courts

¹¹ As discussed, Husband's share of this asset is subject to the award of alimony *in solido* of \$61,444.46, which is to be paid out of his share of this marital asset.

¹² Please refer to footnote 9 for an explanation of the amount of alimony *in solido*.

afford the trial court “broad discretion to determine whether spousal support is needed and, if so, the nature, amount, and duration of the award.” *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 105 (Tenn. 2011). The abuse of discretion standard does not permit reviewing courts to substitute their discretion for that of the trial court. *Id.* Nevertheless, the abuse of discretion standard of review does not immunize a lower court’s decision from any meaningful appellate scrutiny. *Id.*

[R]eviewing courts should review a [trial] court’s discretionary decision to determine (1) whether the factual basis for the decision is properly supported by evidence in the record, (2) whether the [trial] court properly identified and applied the most appropriate legal principles applicable to the decision, and (3) whether the [trial] court’s decision was within the range of acceptable alternative dispositions. When called upon to review a lower court’s discretionary decision, the reviewing court should review the underlying factual findings using the preponderance of the evidence standard contained in Tenn. R. App. P. 13(d) and should review the lower court’s legal determinations de novo without any presumption of correctness.

Lee Med., Inc. v. Beecher, 312 S.W.3d 515, 524-25 (Tenn. 2010) (internal citations omitted).

Tennessee recognizes four different types of alimony, or spousal support: (1) rehabilitative alimony; (2) transitional alimony; (3) alimony *in solido*; and (4) alimony *in futuro*. *Mayfield v. Mayfield*, 395 S.W.3d 108, 115 (Tenn. 2012) (citing Tenn. Code Ann. § 36-5-121(d)(1)). There is a statutory preference for rehabilitative or transitional alimony, *see* Tenn. Code Ann. § 36-5-121(d)(2), but “[t]his statutory preference does not entirely displace the other forms of spousal support when the facts of the case warrant long-term or more open ended support.” *Henderson v. Henderson*, No. M2013-01879-COA-R3-CV, 2014 WL 4725155, at *3 (Tenn. Ct. App. Sept. 23, 2014).

When determining whether to award alimony and the “nature, amount, length, and manner of payments,” courts are required to consider the factors set forth in Tennessee Code Annotated § 36-5-121(i).¹³ *Gonsewski*, 350 S.W.3d at 109-110. While a trial court

¹³ These factors include, but are not limited to the following: the relative earning capacity, obligations, needs, and financial resources of each party; the relative education and training of each party; the duration of the marriage; the age, mental condition and physical condition of each party; the separate assets of each party; the provisions made with regard to the marital property; the standard of living of the parties established during the marriage; the extent to which each party has made such tangible and intangible contributions to the marriage; the relative fault of the parties; and such other factors as are necessary to consider the equities between the parties. *See* Tenn. Code Ann. § 36-5-121(i).

should consider all the relevant factors under the circumstance, the two most important factors to consider are the disadvantaged spouse's need and the obligor spouse's ability to pay. *Id.* (citing *Riggs v. Riggs*, 250 S.W.3d 453, 457 (Tenn. Ct. App. 2007); *Bratton v. Bratton*, 136 S.W.3d 595, 605 (Tenn. 2004); *Robertson v. Robertson*, 76 S.W.3d 337, 342 (Tenn. 2002); *Burlew v. Burlew*, 40 S.W.3d 465, 470 (Tenn. 2001)).

In this case, the trial court made the following findings regarding Wife's need for alimony *in futuro*:

At this time, [Wife] is unemployed and has diminished health. She is 64 years old and is not employable as a result of her poor health. Accordingly, [Wife] is not capable of rehabilitation as defined in T.C.A. § 36-5-121(d)(2) and (e)(1). [Husband] is the shareholder for stock for Gant Oil, which is a company started by [Husband's] father, and is where he has worked the entire length of the marriage for forty-two (42) years. [Husband's] 767 shares of Gant Oil is [sic] valued at \$575,250.00 as of September 30, 2014. [Husband] has supported [Wife] financially throughout the course of the marriage.

...

[T]he court finds that [Wife] is entitled to alimony *in futuro*. This case is clear that the pre and post living standard of the parties have been considered by the Court. Given [Husband's] long-term employment income, significant assets (marital and separate), and [Wife's] lack of employment and poor mental health, [Wife] will certainly need to receive alimony to even appreciate the standard of living she formerly enjoyed during the marriage. The proof was clear in this case that [Wife] will be the economically disadvantaged spouse. . . . Wife has only earned a GED and has a tenth grade education. She has not been consistently employed outside the home in the 42 years of her marriage. At age 64, [Wife] is now suffering from a mental health disorder and a cognitive impairment. She is completely unable to work outside the home according to medical proof. Within two years of entry of the decree, [Wife] will draw Social Security of approximately \$993.10 per month based on [Husband's] earnings and \$1,172.50 off of [Husband's] social security record at age 66. However, these earnings cannot commence until two years after this divorce is final. . . .

Therefore, [Wife] is entitled to alimony *in futuro* in the sum of \$1,000 a month for the next two years beginning with the entry of the divorce decree. Said amount will be reduced to \$500.00 per month at the conclusion of the two years and will continue for the remainder of [Wife's] life or until she remarries. . . .

The trial court did an excellent job in stating its findings of fact and identifying the relevant legal principles to support its determination that Wife is economically disadvantaged and incapable of rehabilitation. *See* Tenn. R. Civ. P. 52.01 (“In all actions tried upon the facts without a jury, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment.”). However, as for the amount of alimony awarded—that being \$1,000.00 per month for two years and \$500.00 per month thereafter—the trial court did not state the reasoning behind its decision to award these specific sums. The trial court simply ruled that Wife “is entitled to alimony *in futuro* in the sum of \$1,000 a month for the next two years,” with the amount to “be reduced to \$500.00 per month at the conclusion of the two years”¹⁴ *See Gooding*, 477 S.W.3d at 782 (simply stating the trial court’s decision, without more, does not fulfill the requirements of Rule 52.01).

For these reasons, we conclude that alimony of \$1,000 a month for two years and \$500 a month thereafter is not within the range of a reasonable award based on the facts as found by the trial court.

The trial court specifically found that Husband has long-term employment income and significant separate assets in contrast to Wife who is suffering from a mental health disorder and cognitive impairment and “is completely unable to work outside the home according to medical proof.” Yet, Wife was only awarded alimony of \$1,000 a month for two years and \$500 a month thereafter when she started receiving social security income of \$2,165.60 a month. Moreover, there is no explanation for why the court concluded that \$1,000 of support without any other income for two years was appropriate, but two years later Wife should be awarded \$500 a month to supplement her social security income of \$2,165.60.¹⁵ *See Lovlace*, 418 S.W.3d at 34 (noting that “affording a reviewing court a clear understanding of the basis of a trial court’s decision” is one of the primary purposes of Rule 52.01). The trial court’s rationale as to the amount of alimony to be awarded is also elusive because Husband has income of up to \$67,000 a year and separate assets of \$775,000 in addition to his share of the marital assets.

¹⁴ We fully acknowledge that the monthly award was reduced after two years because that was when Wife would start receiving social security income of \$2,165.60. What we do not have the benefit of knowing is how the trial court decided to award \$1,000 and \$500, respectively.

¹⁵ When a trial court fails to make sufficient findings of fact, we are unable to presume there is a factual basis for the underlying decision. *See Crabtree v. Crabtree*, 16 S.W.3d 356, 360 (Tenn. 2000). Moreover, when a court does not state sufficient findings of fact and conclusions of law relative to its ruling, we are 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.” *Lovlace*, 418 S.W.3d at 34.

Having considered the facts of this case and the relevant legal principles, we conclude that the amount of alimony *in futuro* is not within the range of reasonable alternatives, principally because Wife has a need that is greater than the support awarded and Husband has the ability to pay more. *See Gonsewski*, 350 S.W.3d at 110 (The two most important factors in an award of alimony are the obligee spouse's need and the obligor spouse's ability to pay). Therefore, the award of alimony *in futuro* must be modified.

Accordingly, we remand with instructions for the trial court to award Wife alimony *in futuro* in the sum of \$2,500.00 a month for two years, beginning with the entry of the divorce decree, which award shall be reduced to \$1,000.00 per month at the conclusion of the two years and continue for the remainder of Wife's life or until she remarries or Husband's death, whichever occurs first.

IV. ATTORNEY'S FEES

Wife argues that she should have been awarded alimony *in solido* to pay for her attorney and expert fees from trial.

Attorney's fees in a divorce action constitute alimony *in solido*. *Wilder v. Wilder*, 66 S.W.3d 892, 894 (Tenn. Ct. App. 2001); *Herrera*, 944 S.W.2d at 390; *Houghland v. Houghland*, 844 S.W.2d 619, 623 (Tenn. Ct. App. 1992); *Storey v. Storey*, 835 S.W.2d 593, 597 (Tenn. Ct. App. 1992). An award of attorney's fees is appropriate when the disadvantaged spouse's income is not sufficient to pay the spouse's attorney's fees and the divorce fails to provide the spouse with a revenue source, such as from the property division or assets from which to pay the spouse's attorney's fees. *Yount v. Yount*, 91 S.W.3d 777, 783 (Tenn. Ct. App. 2002). When determining whether to award attorney's fees, the trial court must consider the relevant factors regarding alimony set forth in Tenn. Code Ann. § 36-5-121(i). Moreover, trial courts are afforded wide discretion in determining whether there is a need for attorney's fees as alimony *in solido*, and the trial court's decision will not be disturbed on appeal absent an abuse of discretion. *Gonsewski*, 350 S.W.3d at 105.

In this case, both parties incurred substantial fees and expenses throughout the course of litigation. Nevertheless, the trial court found that each spouse had been awarded sufficient cash from which to pay these expenses. After reviewing the record, we do not believe that the trial court abused its discretion in reaching this decision. Therefore, we affirm the trial court's decision with regard to attorney's fees and expenses incurred at trial.

Additionally, Wife requests an award of attorney's fees on appeal. Whether to award attorney's fees on appeal is within this court's sole discretion. *Wills v. City of Memphis*, 457 S.W.3d 30, 51 (Tenn. Ct. App. 2014) (citing *Archer v. Archer*, 907 S.W.2d

412, 419 (Tenn. Ct. App. 1995)). When considering a request for attorney’s fees, we will consider “the requesting party’s ability to pay, the requesting party’s success on appeal, whether the appeal was taken in good faith, and any other relevant equitable factors.” *Culbertson v. Culbertson*, 455 S.W.3d 107, 158 (Tenn. Ct. App. 2014) (citing *Moran v. Willensky*, 339 S.W.3d 651, 666 (Tenn. Ct. App. 2010)).

Applying the *Culbertson* and *Moran* factors, we note that Wife has prevailed on significant issues on appeal. She continues to be disadvantaged economically due in pertinent part to her physical and mental health, inability to work, the fact her post-divorce expenses currently exceed her alimony *in futuro*, and she is expected to incur additional expenses in the future as her health deteriorates, including the cost of assisted living. For these reasons, we conclude that she should be awarded the reasonable and necessary attorney’s fees and expenses she incurred on appeal. Accordingly, we remand this issue for the trial court to make the award it deems appropriate in its discretion.

V. HUSBAND’S PERSONAL PROPERTY

In this case, the trial court awarded each party “those items of personal property in their possession.” On appeal, Husband argues that the trial court erred by failing to award him certain items of personal property that were in Wife’s possession at the time of trial. Specifically, Husband argues that he should have been awarded the following items: a dresser, a bookcase, a desk, a nightstand, photographs of Husband’s grandparents and great-grandparents, pictures of wildlife, and a diary from World War II.

Although the trial court’s order fails to classify this property as marital or separate, our review of the transcript of evidence indicates that some, if not all, of these items were family heirlooms received by Husband through inheritance or by gift and, therefore, were Husband’s separate property. *See* Tenn. Code Ann. § 36-4-121. However, since this matter is being remanded for other reasons, we believe the best course is to allow the trial court the opportunity to make specific findings of fact with respect to the classification of the items of personal property listed above, award to Husband those items deemed to be Husband’s separate property, and equitably divide the remaining items.

IN CONCLUSION

The judgment of the trial court is affirmed in part, modified in part and remanded for further proceedings consistent with this opinion. Costs of appeal are assessed against the appellee, Paul Harrison Gant.

FRANK G. CLEMENT, JR., P.J., M.S.