

In this appeal we are asked to review the trial court's determination relating to the division of marital property, child support and custody. We affirm the judgment of the trial court.

These parties were married in 1979. Two children were born to the marriage, Hannah, age eleven at the time of the divorce, and Joshua, age eight at the time of the divorce. Both parties are well educated. Ms. Thurman taught school for seven years prior to the births of their children and returned to teaching three years before the divorce. She is presently employed as a guidance counselor with the Etowah City Schools. Mr. Thurman is a certified public accountant employed by G. T. Rush and Company.

Ms. Thurman instituted this divorce action alleging inappropriate marital conduct on the part of Mr. Thurman. Mr. Thurman answered the complaint, denied inappropriate conduct on his part, and filed a counterclaim for divorce alleging inappropriate marital conduct on the part of Ms. Thurman, or in the alternative, irreconcilable differences.

During the trial both parties testified regarding the deterioration of their relationship. Additional testimony was adduced regarding the suitability of each to be the custodial parent and matters relating thereto, income, marital property and other property.

At the conclusion of the trial, the chancellor awarded a divorce to Ms. Thurman and chose to take the remaining issues under advisement. He subsequently filed a memorandum opinion in which he established the assets that were marital property and that which he deemed to be separate property. The chancellor divided the marital property between the parties. Finally, the chancellor awarded Ms. Thurman sole custody of the two children with reasonable rights of visitation for M. Thurman. Child support was set at \$2,000 per month.¹

M. Thurman, the appellant, presents the following issues for our review:

1. The chancellor erred in determining the value of the partnership stock.
2. The chancellor erred in determining that the certificate of deposit was the wife's separate property.
3. The chancellor erred in awarding sole custody of the minor children to the wife and awarding the father insufficient visitation.

We enter upon our review cognizant of our duty pursuant to Rule 13(d), T. R. A. P. "Unless otherwise required by statute, review of findings of fact by the trial court in civil actions shall be de

¹After a motion for "reconsideration and Additional Findings by the Court" and a "Motion to Fix Attorney Fees," the court issued a second memorandum opinion. In the second opinion, the court granted to the appellant specific visitation privileges with the children, granted to the appellant certain items of personal property and established attorney fees to be paid by the appellant at \$5,000. We do not consider the changes to be materially significant.

novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." We note that no such presumption attaches to conclusions of law. Adams v. Dean Roofing Co., 715 S.W2d 341 (Tenn. Ct. App. 1986).

The value of the G. T. Rush stock was sharply disputed. Mr. Thurman placed a value on it of \$3,353.00, while Ms. Thurman placed a value on it of \$34,200.00. Mr. Thurman argues that the chancellor erred in failing to determine the present cash value and then awarding Ms. Thurman her share of that amount.² In his brief Mr. Thurman argues that there are two methods for determining value and dividing the funds —the present value method and the retained jurisdiction method. Mr. Thurman relies upon Kendrick v. Kendrick, 1994 WL 642775, an unreported opinion by this court filed November 16, 1994 at Nashville. While we agree that the court could have used either the present value method or the retained jurisdiction method, the court is not bound by the precision of generally accepted accounting principles in dividing marital assets. The requirement is that the division must be equitable. Trial courts have wide discretion concerning the manner in which they divide the parties' marital estate. Wallace v. Wallace, 733 S.W2d 102 (Tenn. App. 1987). On appeal, a trial court's division of the marital property is entitled to great weight and is presumed

²Mr. Thurman apparently concedes that these funds are marital property since this issue is not mentioned.

to be proper unless the evidence is otherwise. Batson v. Batson, 769 S.W2d 849 (Tenn. App. 1988); Lancaster v. Lancaster, 671 S.W2d 501 (Tenn. App. 1984). We cannot say that the division made by the trial court relating to the G. T. Rush stock is inequitable. We find no error in this issue.

Mr. Thurman's second issue deals with the certificate of deposit. The court found that a certificate of deposit which belonged to the wife prior to the marriage was her separate property. The evidence reflects, however, that after the marriage, Mrs. Thurman placed Mr. Thurman's name on the certificate. The evidence also revealed that some of the money from the certificate of deposit was used to finance home improvements. We are of the opinion that the certificate of deposit was marital property by virtue of the doctrine of transmutation.

[Transmutation] occurs when separate property is treated in such a way as to give evidence of an intention that it become marital property. One method of causing transmutation is to purchase property with separate funds but to take title in joint tenancy. This may also be done by placing separate property in the names of both spouses. . . .

2 H. Clark, *The Law of Domestic Relations in the United States* § 16.2, at 185 (1987).

Batson v. Batson, supra.

Since, however, the appellant failed to comply with Rule 15, Rules of the Court of Appeals and the value of the certificate at the time of trial was nominal, (\$1,253.00), we are unwilling to say that failure to award Mr. Thurman any of these funds renders the court's division of property inequitable.³ This issue is without merit.

The appellant lastly challenges the action of the trial court in awarding custody of the parties' children to Ms. Thurman. He also complains of insufficient visitation privileges. The presumption of correctness which ordinarily attaches to the trial judge's findings in a bench trial applies to issues of child custody. Bah v. Bah, 668 S.W2d 663 (Tenn. App. 1983); Scarborough v. Scarborough, 752 S.W2d 94 (Tenn. App. 1988). Additionally, trial courts are vested with wide discretion in matters of child custody and reviewing courts will not interfere except upon a showing of an abuse of discretion. Grant v. Grant, 39 Tenn. App. 539, 286 S.W2d 349 (1954). We find no error concerning the issue of custody and visitation.

In addition to the issues raised by Mr. Thurman, Ms. Thurman has raised an issue regarding the amount of child support awarded

³Rule 15. **Briefs in Domestic Relations Cases.** - In domestic relations appeals where the issues involve the amount or the disposition of the marital property, the appellant's brief shall contain in the statement of facts or in an appendix, an orderly tabulation of all marital property in a form substantially like the form attached hereto. All entries in the table as to value and to whom the property was awarded shall be accompanied by a citation to the record where the information may be found.

by the chancellor. The chancellor found that Mr. Thurman's base salary was \$77,000 and that frequently Mr. Thurman earns bonuses of varying amounts. These amounts were not disputed at trial. After hearing all the evidence regarding income, the chancellor set Mr. Thurman's child support obligation at two thousand dollars per month for two children. It would appear to this court that the chancellor merely rounded upwards the maximum support obligation called for by the guidelines based upon the prior three years average income. We are of the opinion that this was appropriate under the circumstances. The appellant argues that his base income is \$77,000.00 and that the additional income is from bonuses which are not guaranteed and which he may or may not receive. We simply note that if, in the future, there becomes a significant variance in the amount of child support required by the guidelines, either party may petition the court for an adjustment.

Ms. Thurman insists that based upon Mr. Thurman's income, an educational trust fund should be established for the children. We are of the opinion that to establish a trust fund in addition to the child support which has been established under the guidelines a deviation upward from the guidelines would be required. A deviation upward is not justified by the evidence. Appellee insists that the court erred in excluding from the income of the appellant nominal interest and dividends and gambling winnings of \$15,376.00. We are of the opinion that this was not error. The

gambling winnings were offset by corresponding losses. Therefore, there was no real income from gambling. Further, most of the stock on which the appellant received dividends was awarded to the wife and she will hereafter receive the dividends. Insofar as the interest is concerned, the bank accounts upon which interest accrued have either been depleted or awarded to the wife. We find no merit in this issue.

The judgment of the trial court is affirmed in all respects. Costs of this appeal are taxed to the appellant and this case is remanded to the trial court for the collection thereof.

Don T. Murray, J.

CONCUR:

Charles D. Susano, Jr., J.

William H. Inman, Sr. Judge

IN THE COURT OF APPEALS

DEBRA LYNN ROBERSON THURMAN,)	M M N N CHANCERY
)	C. A. NO. 03A01-9507-CH 00222
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Plaintiff - Appellee)	
)	
)	
)	
)	
vs.)	HON. EARL H. HENLEY
)	CHANCELLOR
)	
)	
)	
)	
WILLIAM GROVER THURMAN,)	AFFIRMED AND REMANDED
)	
Defendant - Appellant)	

ORDER

This appeal came on to be heard upon the record from the Chancery Court of McMinn County, briefs and argument of counsel. Upon consideration thereof, this Court is of opinion that there was no reversible error in the trial court.

The judgment of the trial court is affirmed in all respects. Costs of this appeal are taxed to the appellant and this case is remanded to the trial court for the collection thereof.

PER CURIAM

