

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON  
November 8, 2022 Session

FILED  
03/10/2023  
Clerk of the  
Appellate Courts

**TERESA ARLENE SIMMONS PERKINS v. DENNIS ANDREW PERKINS**

**Appeal from the Chancery Court for Dyer County  
No. 20CV237      Tony Childress, Chancellor**

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**No. W2021-01246-COA-R3-CV**

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In this divorce case, the wife appeals the trial court’s division of the parties’ marital estate, while also challenging the amount of the trial court’s award to her of alimony in futuro. Although the husband contends that the trial court’s division of the marital estate was equitable, he also raises a challenge to the alimony award, albeit one that submits that the decision to award any alimony to the wife was in error. For the reasons discussed herein, we affirm the trial court’s division of the marital estate, modify the alimony award, and award the wife appellate attorney’s fees for defending against the husband’s raised issue.

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

ARNOLD B. GOLDIN, J., delivered the opinion of the Court, in which J. STEVEN STAFFORD, P.J., W.S., and KENNY ARMSTRONG, J., joined.

John C. Ryland, Memphis, Tennessee, for the appellant, Teresa Arlene Perkins.

David W. Camp,<sup>1</sup> Jackson, Tennessee, for the appellee, Dennis Andrew Perkins.

**OPINION**

**BACKGROUND**

This is an appeal from a divorce proceeding involving Teresa Arlene Simmons Perkins and Dennis Andrew Perkins.<sup>2</sup> For ease of reference and clarity, we will refer to

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<sup>1</sup> Mr. Camp represented Mr. Perkins on appeal; another attorney represented Mr. Perkins in the trial court.

<sup>2</sup> Although the record reflects that prior divorce actions were pursued—and then dismissed—in both Tennessee and Texas, the present litigation was commenced in the Dyer County Chancery Court in June 2020.

Ms. Perkins and Mr. Perkins herein as “Wife” and “Husband,” respectively.

The parties married in May 1987 in Dyersburg, Tennessee. Wife, who was 57 years old at the time of trial, graduated college from Union University in January 1987 with a major in management and marketing and a minor in office administration. Husband, who was 60 years old at the time of trial, graduated from the University of Alabama in 1983 with a degree in political science. Husband was a First Lieutenant in the Army at the time of the marriage, and by the time he retired from the Army in 2011, he had achieved the rank of Colonel. Husband is also a graduate from the Army War College, where he received a Master’s Degree in 2006.

The parties relocated many times during the marriage because of Husband’s military career, which required Wife to switch jobs several times during the marriage’s early years. During this time, Wife worked various minimum wage jobs, but she left the workforce in August 1993 in anticipation of the birth of the parties’ first child. She has not been employed since. Although three children were ultimately born during the parties’ marriage, all had attained majority prior to trial.

It is undisputed that Wife actively supported Husband’s military career. Husband specifically agreed, for instance, that Wife was “a poster child for a military wife” and that she “went above and beyond and met all expectations that one could expect of a military wife.” Following Husband’s retirement from the military, he began working at Raytheon, an opportunity he acknowledges is linked to his having reached the rank of Colonel.

According to the testimony, Husband’s base salary at Raytheon equaled \$237,000.00 per year at the time of trial, in addition to substantial yearly bonuses. Moreover, apart from his employment compensation, Husband receives a net amount of over \$6,000.00 per month in military pension benefits and over \$1,500.00 per month in military disability benefits.

The trial court found that the parties lived a comfortable lifestyle during their marriage. Although they focused on saving for retirement, they also took various trips, including to Europe. When Husband retired from the military and began working at Raytheon, their lifestyle improved somewhat, and they purchased a home in Sierra Vista, Arizona. They later sold this home in November 2019. According to Husband’s testimony, he and Wife have not lived together since that month.

During the trial, Wife testified to multiple health problems she had endured during the marriage, including suffering from shingles and being diagnosed with Raynaud’s Syndrome and alopecia totalis. Wife asserted that her health problems caused her to experience depression and that she had consumed alcohol to cope. In the fall of 2019, while still in Arizona, she received inpatient treatment for alcohol abuse, and following her release from treatment, she traveled to Dyersburg to stay with her mother. In addition to

spending time in Tennessee, Wife spent significant time in Alabama following her separation from Husband, even renting a home in Birmingham. According to Wife's testimony, the parties' adult son also lived in the Birmingham home. Husband moved to Texas following the parties' separation.

In addition to the health concerns that are referenced above, Wife has experienced other health issues according to her testimony. These problems have included a torn rotator cuff and bicep, hip radiating pain caused by a bulging disc, Morton's Neuroma, and mixed connective tissue disease. Concerning the last of these ailments, which Wife explained was an incurable autoimmune disease, Wife testified that she experienced fatigue and muscle and joint pain. She testified that she has limitations because of her health problems, while also asserting that her mixed connective tissue disease impacts her ability to work, stating, "I have no energy and I would not be able [to be] a reliable employee based on the fatigue I have." In reference to medical records she introduced at trial, however, Wife acknowledged that she was unaware of any specific information where a doctor or medical professional said that she was unable to work.

As noted previously, Husband receives military disability benefits, and he testified as follows concerning the basis of his VA disability rating:

The VA disability is I sustained a broken hip on a parachute fall and so I have got arthritis in the hip, a lot of nerve damage in the hip and right leg from not only the injury but the resulting surgery from that. I have got a bulging disk, 3 of them in my back, just being in the Army running and jumping all of that for 28 years. So I have had facet injections into my back.

He explained the day-to-day impact was that he "just can't sit or stand for long periods of time without stretching out and getting in the hot tub."

Although Wife had testified during her pre-trial deposition that she planned on purchasing a home in Dyer County or Madison County after the divorce, she testified at trial that she planned on purchasing a home in Shelby County. She further represented that her anticipated living expenses would be close to \$11,000.00 per month. By way of contrast, during the pendency of the litigation when Wife noted she was residing with her mother in Dyersburg while also renting a residence in Alabama, Wife had submitted an affidavit listing her monthly expenses at over \$6,600.00 per month. Upon cross-examination during the trial, Wife acknowledged that a supplemental answer to Husband's interrogatories, filed a few months before trial, had estimated her monthly living expenses as \$7,781.00.

Ultimately, Wife proposed that she receive alimony payments in the amount of

\$5,000.00 per month,<sup>3</sup> based on the assumption that she would produce zero income for herself. Husband opposed Wife's pursuit of an award of alimony, and at trial, he called an expert who opined that Wife could receive no alimony but, based on investments and her receipt of half of Husband's military pension, still accumulate over a million dollars in assets by her assumed life expectancy. Of note, however, when this expert was asked if Wife could, pursuant to his calculations, enjoy a standard of living comparable to the standard of living during the marriage or to Husband's post-divorce standard of living, he responded in the negative. Moreover, whereas the calculations of Husband's expert were, among other things, predicated on the assumption that Wife could open a particular investment account with non-retirement assets, he acknowledged that the requisite funds for such an account would not be available if Wife was deemed responsible for the marital debts in her name.<sup>4</sup>

Following trial, the trial court entered an order granting the parties a divorce on stipulated grounds, while also adjudicating the parties' rights with respect to the marital estate and ruling on Wife's request for alimony. In pertinent part, Wife was awarded one-half of Husband's disposable military retired pay and received over \$921,000.00 in total marital property, which was approximately \$50,000.00 more than Husband was awarded. Yet, as is of dispute in the present appeal, Wife ultimately received a marginally lower percentage of the overall marital estate due to the trial court's decision to make her responsible for marital debts in her name. In addressing Wife's alimony request, the trial court decided to award Wife alimony in futuro on the following terms: \$4,000.00 per month for a period of fifty-three months, with alimony payments to Wife thereafter being reduced to \$750.00 per month. This appeal followed.

## DISCUSSION

Based on the issues raised in the parties' briefs, this appeal requires us to consider two significant decisions by the trial court: the trial court's division of the marital estate and the trial court's award of alimony. Also at issue is the question of whether Wife should be entitled to her attorney's fees incurred on appeal. We will deal with each of these concerns in turn.

### *Trial Court's Division of the Marital Estate*

As noted earlier, and as referenced by the Rule 7 tables<sup>5</sup> prepared by the parties in

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<sup>3</sup> Wife testified that her requested amount of alimony was the bare minimum that she would need based on her estimated expenses, even claiming she would still have a deficit.

<sup>4</sup> As it turns out, and as discussed *infra*, the trial court held Wife responsible for the marital debts in her name, a ruling which Husband does not challenge on appeal.

<sup>5</sup> Rule 7 of the Rules of the Court of Appeals of Tennessee provides in part that "[i]n 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

connection with this appeal, Wife received over \$921,000.00<sup>6</sup> in total marital property pursuant to the divorce. Although this amount was approximately \$50,000.00 more than Husband was awarded in total marital property, Wife received a slightly lower overall percentage of the net marital estate due to the manner in which the trial court adjudicated issues relating to marital debt. Indeed, as Wife notes on appeal, “Husband received approximately 52% of the net marital estate while Wife only received approximately 48% of the net marital estate.” To support her position that such a division “was inequitably skewed in Husband’s favor,” Wife takes specific umbrage at the trial court’s decision to assign her the marital debts that were in her name, including debts she owed to her mother and sister. For his part, Husband contends that the trial court did not commit any error incident to its division of the marital estate.

Trial courts have “broad discretion” in dividing the marital estate, *Flannary v. Flannary*, 121 S.W.3d 647, 650 (Tenn. 2003), and we accordingly accord great weight on appeal to trial courts’ divisions. *Altman v. Altman*, 181 S.W.3d 676, 683 (Tenn. Ct. App. 2005). “Thus, we will ordinarily defer to the trial court’s division of the parties’ marital estate unless it is inconsistent with the factors in Tenn. Code Ann. § 36-4-121(c) or is not supported by a preponderance of the evidence.” *Id.* “The division of the marital estate includes both the division of the marital property and the allocation of the marital debt,” *Owens v. Owens*, 241 S.W.3d 478, 490 (Tenn. Ct. App. 2007), and when allocating marital debts, the following factors are to be taken into account: “(1) the debt’s purpose; (2) which party incurred the debt; (3) which party benefitted from incurring the debt; and (4) which party is best able to repay the debt.” *Alford v. Alford*, 120 S.W.3d 810, 814 (Tenn. 2003). Careful application of such factors will, among other things, “protect the spouse who did not incur the debt from bearing responsibility for debts that are the result of personal excesses of the other spouse.” *Id.* As it concerns the division of the marital estate itself, it is important to keep in mind that the law demands an *equitable* division, not necessarily an equal one. *See, e.g., Manis v. Manis*, 49 S.W.3d 295, 306 (Tenn. Ct. App. 2001) (noting that a division “is not rendered inequitable simply because it is not precisely equal”). “In the final analysis, the justness of a particular division of the marital property and allocation of marital debt depends on its final results.” *Yattoni-Prestwood v. Prestwood*, 397 S.W.3d 583, 594 (Tenn. Ct. App. 2012).

As noted above, Wife’s principal grievance concerning the division of the marital estate is in relation to the debts that were assigned to her. In discussing these debts, which

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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.” Rule 7 further provides that “[e]ach entry in the table must include a citation to the record where each party’s evidence regarding the classification or valuation of the property or debt can be found and a citation to the record where the trial court’s decision regarding the classification, valuation, division, or allocation of the property or debt can be found.”

<sup>6</sup> Wife acknowledges this total does not include the value of Husband’s military pension benefits, which were divided equally between the parties.

were collectively more than \$125,000.00, the trial court observed that Wife had incurred them during the post-separation period from November 2019 to August 2021 when she had also used over \$183,000.00 in marital funds for her expenses. As to the nature of the debts themselves, the trial court further observed that the majority of the debts at issue related to litigation costs Wife had incurred. Although the trial court complimented the efforts of Wife's counsel, acknowledged that Wife's litigation costs in this case should have been more than Husband's, and noted that it was awarding Wife *more* funds from one of the parties' accounts to cover the costs of certain attorney's fees that had not already been paid for with marital funds, the trial court also opined that the issues in this case were not complex ones. In connection with its conclusion about this matter, the trial court determined that only certain of Wife's litigation expenses were reasonable, and the court thus in effect decided to make Wife solely responsible for bearing the balance of her litigation expenses. Notably, although Wife generally argues that Husband took "unreasonable positions" in this litigation, she does not actually appear to advance any specific challenge to the trial court's effective finding that a significant portion of her litigation costs were not reasonable.<sup>7</sup> This renders her efforts to take issue with the debt allocation ultimately somewhat incomplete in scope given that, again, the trial court's findings pertaining to the reasonableness of Wife's litigation costs informed its decision about how debts relating to such costs should be allocated.

Although Wife argues that she should have received "at least 50% of the net marital estate," states that an "equal division of the net marital estate was warranted," and claims that the trial court committed an abuse of discretion by effectively awarding her only 48% of the net marital estate, we discern no abuse of discretion attendant to the trial court's division. Wife was awarded significant assets in this divorce (more than Husband in fact), and although she received a slightly lower overall percentage of the net estate, this was, as evident from the discussion above, largely attributable to the trial court's decision to make her responsible for litigation expenses the court found were not reasonable. As to Wife's argument that an "equal division . . . was warranted" because this case involved a long-term marriage, we observe that the very case Wife references in support of her position on this matter, *Grant v. Grant*, No. M2014-01835-COA-R3-CV, 2016 WL 2898434 (Tenn. Ct. App. May 12, 2016), involved this Court's affirmance of a marital estate division in which a husband received 51.83% of the marital estate involved, with the wife in that case thus receiving 48.17%. *Id.* at \*8-9. Although in *Grant* we countenanced the

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<sup>7</sup> An affidavit of Wife's counsel attested to Wife having incurred over \$150,000.00 for fees, expenses, and advances prior to trial. By way of contrast, when Husband was testifying to his own litigation expenses, he testified that he had expended \$11,000.00 for an attorney in connection with prior proceedings in Texas, paid about \$7,000.00 for certain accounting experts, paid another \$5,000.00 to one of his experts, and, in reference to his fees for the present litigation, paid \$15,812.50. An affidavit from his trial counsel reflected that Husband had incurred approximately \$6,600.00 in fees for a prior Tennessee lawsuit, and another affidavit from counsel reflected that Husband had incurred \$6,575.00 in unbilled attorney's fees, with the same affidavit estimating that Husband would incur an additional \$4,000.00 for two days of trial. The affidavit also attested to Husband having incurred \$1,785.70 in certain other expenses.

appropriateness of an “essentially equal division” when there is a long marriage, *id.* at \*8, we obviously did not require mathematical equality between spouses. An equitable division is simply required. Finding the overall division here to be equitable in its final results, we respectfully hold that Wife’s issue regarding the trial court’s marital estate division is without merit.

### *Trial Court’s Alimony Award*

We now shift our attention to the trial court’s award of alimony. “There are no hard and fast rules for spousal support decisions.” *Anderton v. Anderton*, 988 S.W.2d 675, 682 (Tenn. Ct. App. 1998). In fact, “[t]rial courts have broad discretion to determine whether spousal support is needed and, if so, its nature, amount, and duration.” *Id.* We are therefore “generally disinclined to second-guess a trial court’s spousal support decision unless it is not supported by the evidence or is contrary to the public policies reflected in the applicable statutes.” *Id.* “Alimony decisions require a careful consideration of the relevant factors in Tenn. Code Ann. § 36–5–121(i) and typically hinge on the unique facts and circumstances of the case.” *Cain-Swope v. Swope*, 523 S.W.3d 79, 95 (Tenn. Ct. App. 2016). An award of alimony must be based on the factors known at the time of the hearing. *Diffie v. Diffie*, No. M2018-00267-COA-R3-CV, 2019 WL 1785683, at \*13 (Tenn. Ct. App. Apr. 23, 2019). “Questions involving ‘reaching far into the future’ are best ‘left to future judicial determination rather than crystal-ball gazing.’” *Naylor v. Naylor*, No. W2016-00038-COA-R3-CV, 2016 WL 3923790, at \*12 (Tenn. Ct. App. July 15, 2016) (quoting *Sprenger v. Superior Court In & For Sacramento Cnty.*, 268 Cal. App. 2d 857, 867, 74 Cal. Rptr. 638, 643 (1969)).

Although there is a legislative preference for awarding transitional alimony or rehabilitative alimony as opposed to alimony in solido or alimony in futuro, *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 109 (Tenn. 2011), long-term support can be appropriate in specific cases. Alimony in futuro, which the trial court awarded in this case, “may be awarded when the court finds that there is relative economic disadvantage and that rehabilitation is not feasible.” Tenn. Code Ann. § 36-5-121(f). Indeed, “the purpose of this form of alimony is to provide financial support to a spouse who cannot be rehabilitated.” *Burlew v. Burlew*, 40 S.W.3d 465, 471 (Tenn. 2001). Although a form of long-term support, an award of alimony in futuro is subject to modification. *Id.*

The trial court made specific findings in this case that Wife was an economically disadvantaged spouse in relation to Husband and was not capable of being rehabilitated, and we agree with the trial court that long-term in futuro support is appropriate given consideration of the factors in Tennessee Code Annotated section 36-5-121(i) and the facts of this case.<sup>8</sup> The main points of inquiry on appeal regarding the alimony award, as we see

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<sup>8</sup> Although Husband has asserted that alimony was not needed by Wife and attempts to rely on his trial expert’s calculations in support of his position, we find Husband’s argument to be lacking in merit for

it, are in relation to the sufficiency of what was actually awarded to Wife for spousal support. As to this concern, Wife raises two points of alleged error. First, she contends that the trial court erred in only initially awarding her \$4,000.00 per month as opposed to her requested amount of \$5,000.00 per month. Second, Wife maintains that the trial court erred in ordering that Husband's alimony payments be reduced to \$750.00 per month after fifty-three months.

We first address Wife's criticism of the trial court's failure to award her \$5,000.00 per month. The Tennessee Supreme Court has noted that the need of the spouse seeking support is the single most important factor when determining the amount of alimony, *see Aaron v. Aaron*, 909 S.W.2d 408, 410 (Tenn. 1995), and here, the trial court clearly concluded that Wife's need was not as significant as she asserted. First, aside from its general finding that some of the expenses Wife claimed were not reasonable in their amounts, the trial court further did not countenance Wife's efforts at trial<sup>9</sup> to base her specific expenses on a hypothetical residence in Shelby County. Although Wife no doubt takes issue with this, the trial court was not mandated to find that Wife's actual expenses would be in relation to a Shelby County residence, because the court was obviously not required to accredit Wife's testimony that a planned relocation to Shelby County would, in fact, occur. It is apparent to us that the court found such a proposition unduly speculative,<sup>10</sup> as it noted, "it is not reasonable to base [Wife's] expenses on an area where she *may* live in the future." (emphasis added) Given its lack of conviction that Wife would be in Shelby County and corresponding treatment of a proposed life in Shelby County as a mere future possibility,<sup>11</sup> we discern no error on the part of the trial court with respect to this point. As we referenced earlier, alimony must be based on the facts known at the hearing, and questions reaching far into the future are best left to future determination. *See Diffie*, 2019 WL 1785683, at \*13; *Naylor*, 2016 WL 3923790, at \*12.

Another consideration to Wife's need relates to her ability, or lack thereof, to earn some type of income. When this issue was broached through questioning by a member of the judicial panel at the oral argument of this matter, counsel for Wife stated that the trial court "did not really expressly make a finding in that regard" concerning Wife's claimed inability to work and make income. Counsel for Wife then suggested that there was an

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reasons stated later in this Opinion.

<sup>9</sup> As outlined earlier, although Wife asserted her expenses would be almost \$11,000.00 per month, she acknowledged that a discovery response submitted just months before trial had estimated her monthly living expenses in a much lower amount.

<sup>10</sup> As it turns out, although not determinative in any way of our review of this issue, we observe that Wife's counsel made a statement during oral argument that indicated that his client did not, in fact, live in Shelby County.

<sup>11</sup> "[T]rial courts are in the most favorable position to resolve factual disputes hinging on credibility determinations," *Wells v. Tenn. Bd. of Regents*, 9 S.W.3d 779, 783 (Tenn.1999), and it was accordingly entirely within the province of the trial court to be unconvinced that Wife's residence, upon divorce, would be in Shelby County.



“implied finding” that Wife was incapable of working. When the same member of the judicial panel inquired further to seek clarity as to Wife’s position and asked Wife’s counsel if he was assuming that the trial court believed that his client was unable to work, counsel agreed. Respectfully, we direct Wife’s counsel to certain findings that the trial court made concerning Wife’s ability to work and earn income. In pertinent part, the trial court stated as follows in the below oral findings that were incorporated into the final decree:

The wife has some medical issues that will limit her in the future but those issues will not render her unproductive or unable to participate in the workforce in at least some capacity, so she is capable of earning at least an income of some sort. That income, however, will not be anywhere in the range of what the husband currently earns and will be marginal at best.

Although obviously the trial court did not conclude that Wife would be capable of earning any type of significant income relative to Husband, it was dismissive of the notion that her income would be zero. Wife, though, has failed to challenge that finding that she is capable of some type of minimal employment.

In view of these foregoing considerations regarding Wife’s need and our review of the record as a whole, we discern no abuse of discretion on the part of the trial court in choosing to award Wife \$4,000.00 per month in alimony instead of the \$5,000.00 per month she had requested. We are in agreement with Wife, however, that the trial court erred in subjecting her alimony payments to an automatic reduction after fifty-three months. Wife has argued that there is no evidence to support such a decision, and to be frank, the trial court’s action appears to us to be entirely arbitrary. Tellingly, when a member of the judicial panel asked Husband’s counsel at oral argument whether he had any idea as to why alimony was reduced after fifty-three months, Husband’s counsel responded that he had “tried to determine that” but could “only speculate.” Counsel then continued with this transparency, stating, “I don’t know the answer to that quite honestly.” Because the contemplated reduction in Husband’s obligation after fifty-three months appears to be a completely arbitrary action,<sup>12</sup> we conclude that the trial court abused its discretion and hereby modify the alimony award to eliminate the contemplated reduction. *See State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 191 (Tenn. 2000) (“An abuse of discretion exists when the reviewing court is firmly convinced that the lower court has made a mistake in that it affirmatively appears that the lower court’s decision has no basis in law or in fact and is therefore arbitrary, illogical, or unconscionable.”). Of course,

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<sup>12</sup> Even if we assume that the trial court’s action was not completely arbitrary, but rather, assume that the trial court was speculating that Husband’s ability to pay alimony might be lower in the future or that Wife’s need for alimony might somehow be lessened, such speculation would run afoul of the principle already discussed herein, i.e., that “[q]uestions involving ‘reaching far into the future’ are best ‘left to future judicial determination rather than crystal-ball gazing.’” *Naylor*, 2016 WL 3923790, at \*12 (quoting *Sprenger*, 74 Cal. Rptr. at 643).

although such action is required in this appeal, this is not to suggest that the \$4,000.00 monthly alimony award to Wife is in any way permanently fixed. As we briefly referenced earlier, awards of alimony in futuro are subject to modification. *Burlew*, 40 S.W.3d at 471.

Although the above discussion mentions our opinion that the trial court's decision to award in futuro support to Wife was appropriate given the facts of this case, we formally close our discussion on alimony by specifically responding to the independent issue Husband raised in this appeal, i.e., that no alimony should have been awarded. In a prior footnote, we previewed our conclusion that Husband's position is without merit, and we address it in full here.

Notwithstanding Wife's clear economic disadvantage and her significant contributions to Husband's career and current earning power, Husband attempts to have this Court reverse her alimony award by arguing that the property division effectuated by the trial court is sufficient to support her needs. For instance, he states that "with no alimony the wife's needs are still met through her portion of the military pension as well as the return on investments awarded her in the divorce." The problem with Husband's argument is that it relies on the calculations of his trial expert. Why this is misguided given the present posture of the case and Husband's own arguments about the trial court's marital estate division will soon be clear.

Husband's expert, who was used in an attempt to show that Wife could live sufficiently without alimony, openly acknowledged at trial errors in his calculations, and even indicated that his calculations would not allow Wife to enjoy a standard of living comparable to the standard of living during the marriage or to Husband's post-divorce standard of living. Husband's present reliance on his expert is particularly curious in light of this latter point, but even putting that issue and a discussion of other acknowledged errors aside, we note, as we did earlier in this Opinion, that the expert's calculations were predicated on the assumption that Wife could open a particular investment account with non-retirement assets. Significantly, the expert acknowledged that the requisite funds for such an account *would not be available* if Wife was deemed responsible for the marital debts in her name. Husband took no issue with the trial court's division of the marital estate, nor do we in this Opinion, and the result is that Wife is responsible for the marital debts in her name. Of course, if Wife is responsible for the marital debts in her name, this undermines a factual premise of Husband's expert's calculations, even if we ignore the other demonstrated concerns. Husband's relied-upon evidence, therefore, simply does not prove what he claims it does in terms of Wife's alleged lack of a need for alimony considering the estate division that occurred. We reject Husband's issue and conclude that the trial court's alimony award, as modified herein, is justified.

#### *Appellate Attorney's Fees*

In closing, we address Wife's pursuit of attorney's fees in connection with this

appeal, including in relation to her defense of Husband's raised issue concerning alimony. An award of appellate attorney's fees is within the discretion of this Court. *Culbertson v. Culbertson*, 455 S.W.3d 107, 158 (Tenn. Ct. App. 2014). Among other things, we consider the requesting party's ability to pay, the requesting party's success on appeal, and whether the appeal was taken in good faith. *Id.* We also note that we are statutorily permitted to award attorney's fees to a party in the position as an appellee if we regard the other party's appeal to be frivolous. See Tenn. Code Ann. § 27-1-122 ("When it appears to any reviewing court that the appeal from any court of record was frivolous or taken solely for delay, the court may, either upon motion of a party or of its own motion, award just damages against the appellant, which may include, but need not be limited to, costs, interest on the judgment, and expenses incurred by the appellee as a result of the appeal.").

Pursuant to our review of this appeal, we deem it appropriate to award Wife attorney's fees incurred in relation to her defense of Husband's issue. Respectfully, we regard the argument that Husband offered on appeal to be a frivolous one. As discussed herein, Husband's position was based in reliance on his trial expert's calculations, and those calculations, even if we are to ignore other various issues with them, presupposed a factual predicate not available under the trial court's estate division. Moreover, Husband did not challenge the estate division, and yet through this appeal he still posited his expert's calculations as demonstrating Wife's lack of need for alimony. We hereby remand to the trial court to award Wife her reasonable attorney's fees for defending against Husband's raised appellate issue.

## CONCLUSION

Consistent with the foregoing discussion, we affirm the trial court's division of the marital estate, modify the alimony award to eliminate the contemplated reduction in payment after fifty-three months, award Wife appellate attorney's fees for defending against Husband's raised issue, and remand for further proceedings consistent with this Opinion.

s/ Arnold B. Goldin  
ARNOLD B. GOLDIN, JUDGE