

**IN THE COURT OF APPEALS OF TENNESSEE  
WESTERN SECTION AT NASHVILLE**

---

<b>GEORGIA NORMAN FUQUA,</b>	)	
	)	
Plaintiff/Appellee,	)	Robertson County Domestic No. 8690
	)	
<b>vs.</b>	)	
	)	
<b>EDWARD DENTON FUQUA,</b>	)	Appeal No. 01A01-9510-DR-00464
	)	
Defendant/Appellant.	)	

APPEAL FROM THE ROBERTSON COUNTY DOMESTIC RELATIONS COURT  
AT SPRINGFIELD, TENNESSEE

THE HONORABLE BURTON D. GLOVER, JUDGE

For the Plaintiff/Appellee: \_\_\_\_\_ For the Defendant/Appellant:

Philip E. Smith  
Nashville, Tennessee

John B. Link, III  
Nashville, Tennessee

<b>FILED</b>
<b>October 11, 1996</b>
<b>Cecil W. Crowson Appellate Court Clerk</b>

**AFFIRMED AS MODIFIED**

HOLLY KIRBY LILLARD, JUDGE

CONCUR:

W. FRANK CRAWFORD, P.J., W.S.

ALAN E. HIGHERS, J.

## OPINION

In this divorce case, Defendant-Appellant, Edward Denton Fuqua (Husband), has appealed the trial court's order requiring him to pay periodic alimony to Plaintiff-Appellee, Georgia Norman Fuqua (Wife), in the amount of \$725 per month for ten years, \$600 per month for the next ten years, and \$300 per month for the following five years, to terminate upon death or Wife's remarriage. Husband also appeals the trial court's equitable division of the marital estate. We affirm the decision of the trial court, with the duration of the alimony modified as set forth below.

Husband and Wife were married in 1967. Both Husband and Wife worked prior to the birth of the parties' first child in 1972. From 1972 to 1988, Husband continued his work, while Wife raised the parties' two children and worked in various part-time jobs. In 1988, Wife began working full-time for the Military Department of the State of Tennessee.

Over the course of their twenty-eight year marriage, the parties' relationship became strained. Both parties admit several extramarital affairs. Wife's indiscretions were limited to a one-year period in which she and Husband participated in a "swingers" club. Wife maintains that her outside relationships were sanctioned by Husband because he wanted to participate in club activities. Husband admits that he engaged in extramarital affairs throughout the parties' marriage and that several of these were without Wife's knowledge or consent.

Wife first sued Husband for divorce in 1993. The trial court granted Wife a divorce, distributed the marital estate, and awarded alimony and child support. In *Fuqua v. Fuqua*, No. 01A01-9403-DR-00143, 1994 WL 441041 (Tenn. App. Aug. 17, 1994), this Court reversed the decision of the trial court because Wife had failed to include a statutory oath in her divorce complaint.

Wife refiled for divorce in 1994. At the time of the second trial, Husband was forty-seven years old and earned a net monthly income of \$1999.28. Wife was forty-six years old and earned a net monthly income of \$877.70.

After hearing the parties' testimony, the trial court granted a divorce to Wife on the ground of inappropriate marital conduct and ordered Husband to pay periodic alimony *in futuro* to Wife of \$725 per month for ten years, \$600 per month for the second ten years, and \$300 per month for the following five years, to terminate upon death or Wife's remarriage. In deciding to award periodic alimony, the trial court found that Husband has "a greater chance of making more income in the future"; that Wife has a "very limited income earning capacity"; and that "Wife should not be left

in a worse financial situation because of the inappropriate marital conduct of the Husband.” In addition, the trial court distributed the marital estate.

Husband appeals the decision of the trial court, alleging that the trial court erred in not awarding rehabilitative alimony instead of periodic alimony, that the periodic alimony awarded was excessive and for too long a duration, and that the trial court erred in the award of certain items of personal property. Wife seeks her attorney’s fees and costs on appeal.

We must presume the trial court’s findings of fact are correct unless the evidence preponderates against it. Rule 13(d) of Tenn. Rules of App. Proc. In determining whether the trial judge’s award of alimony is correct, we first analyze the facts of this case under the controlling statute, Tenn. Code Ann. § 36-5-101, and applicable case law. Under Tenn. Code Ann. § 36-5-101, there is a preference for rehabilitative alimony. Tenn. Code Ann. § 36-5-101(d) (1991 & Supp. 1995). However, where rehabilitation is not feasible, a court may grant alimony *in futuro*, also termed periodic alimony. *Id.*; *Self v. Self*, 861 S.W.2d 360, 361 (Tenn. 1993).

From the record in this case, the evidence preponderates in support of the trial court’s decision to award periodic alimony to Wife in lieu of rehabilitative alimony. Wife is forty-six years old and has neither a college degree nor substantive work experience. Wife’s contribution in raising the parties’ two children allowed Husband to achieve a higher income level. While Wife is currently employed, it is doubtful that she will ever have Husband’s earning capacity, and it is evident that she will never enjoy a standard of living comparable to that which the parties enjoyed during the marriage. As such, Wife is at a great “economic disadvantage” relative to Husband, and rehabilitation is not feasible in “consideration of all relevant factors.” *Franklin v. Franklin*, 746 S.W.2d 715, 718 (Tenn. App. 1987). Therefore, the trial court’s award of periodic alimony instead of rehabilitative alimony is affirmed.

Husband also seeks review of the amount and duration of the periodic alimony awarded. “The amount of alimony to be allowed in any case is a matter for the discretion of the trial court in view of the particular circumstances.” *Ingram v. Ingram*, 721 S.W.2d 262, 264 (Tenn. App. 1986). Although there is no formula for determining the amount of alimony, “the real need of the spouse seeking the support is the single most important factor.” *Cranford v. Cranford*, 772 S.W.2d 48, 50 (Tenn. App. 1989). In addition, courts consider the ability of the obligor spouse to provide support. *Aaron v. Aaron*, 909 S.W.2d 408, 410 (Tenn. 1995). The amount of alimony should be determined

so “that the party obtaining the divorce [is not] left in a worse financial situation than he or she had before the opposite party's misconduct brought about the divorce.” *Shackleford v. Shackleford*, 611 S.W.2d 598, 601 (Tenn. App. 1980). Although alimony is not to provide a former spouse with financial ease, it should be awarded in such a way that the former spouses are in equitable positions. *Aaron*, 909 S.W.2d at 411. In the instant case, Wife’s statement of income and expenses reflected a monthly net income of \$877 and a monthly shortfall of more than \$1,400. Husband’s statement shows a monthly net income of \$1,999 and a monthly shortfall of \$26.22. A significant portion of Husband’s monthly expenses are accountable to discretionary automobile costs taken on by Husband after Wife’s first application for divorce. Given the relative financial positions of both parties, the record supports the amount of periodic alimony awarded by the trial court. However, given the age of both parties, the duration of the periodic alimony appears excessive. Consequently, the award of periodic alimony is modified as follows: Husband is required to pay \$725 per month for ten years, \$600 per month for the next five years, and \$300 per month for the following five years to terminate upon death or Wife’s remarriage.

\_\_\_\_\_ Husband alleges further that the trial court inequitably divided the parties' marital estate and asks that he be granted more pieces of antique furniture from the parties' marital residence. A trial court has wide discretion in the division of marital property. *Harrington v. Harrington*, 798 S.W.2d 244, 245 (Tenn. App. 1990); *Marmino v. Marmino*, 238 S.W.2d 105, 107 (Tenn. App. 1950). The trial court's decision is given great weight, *Kelly v. Kelly*, 679 S.W.2d 458, 460 (Tenn. App. 1984), and will be reversed only upon a finding of abuse of discretion. *Marmino*, 238 S.W.2d at 107. We find no abuse of discretion on this issue, and the decision of the trial court is affirmed.

Wife has requested her attorney's fees for this appeal. Considering the entire record and the situation of the parties, the parties should each bear the expense of their own attorney's fees for this appeal.

Affirmed as modified. Costs on appeal are taxed against the Appellant, for which execution may issue if necessary.

---

HOLLY KIRBY LILLARD, J.

CONCUR:

---

W. FRANK CRAWFORD, P.J., W.S.

---

ALAN E. HIGHERS, J