

court's division of the marital assets. Upon consideration, we are of the opinion that the judgment of the trial court fails to provide for an equitable division of property between the parties. Accordingly, we remand the case to the trial court with instructions.

The appellant states her issues as follows:

1. Did the court err in awarding the plaintiff all of the cash assets of the parties?
2. Did the court err in the amount of periodic alimony awarded to the defendant?
3. Did the court err in failing to award the defendant attorney's fees or sufficient property from which to pay the same?

This was a marriage of some sixteen years duration. At the time of the marriage, the appellee (husband) was sixty-three years of age and the appellant (wife) fifty-seven years of age. During the marriage, both parties had regular income, however, the income of the husband exceeded that of the wife. Both parties brought separate properties into the marriage.

In making a division of the marital property, the court in its memorandum opinion divided the property as follows:

With regard to the parties marital property, the most valuable items of marital property are the enhanced

values of the separate real property owned by the parties prior to the marriage. There are other items of marital property which consist of some personal property which have little, if any, value when compared to the increased values of the parties real estate. The court finds that an equitable division of the parties' marital assets shall be that each party shall be awarded the increase in value of his or her separate real property, free from any claim of the other. Further, each party shall retain all personal property in his or her respective possessions including any and all furniture and furnishings, moneys, and/or bank accounts.

Subsequent to the entry of the court's final judgment, the wife filed a motion asking the court to amend its findings and to make additional findings relating to the parties cash accounts, a debt owed to them by a third party and various other items of personal property. The motion to alter or amend was overruled in all material respects. The court made additional findings as follows:

... The court does find that at the time of the marriage the defendant [wife] did have a bank account which was her separate property. The court further finds that the plaintiff [husband] had separate accounts and other assets which were substantially greater than the defendant's at the time of the marriage. The court further finds that the cash in the banks at the time of the separation was a marital asset, but **because of the amount of greater assets brought into the marriage by the plaintiff than the defendant and the greater amount of the source of income of the plaintiff than the defendant during the marriage, that an equitable division of this cash should be in favor of the plaintiff and the plaintiff should be awarded the same.** {Emphasis ours}.

It is well-settled law that an equitable division is not necessarily an equal one. Barnhill v. Barnhill, 826 S.W2d 443, 456 (Tenn. App. 1991). In that regard this court in Barnhill stated:

Trial courts are afforded wide discretion in dividing the interests of parties in jointly owned property. Accordingly, the trial court's distribution will be given great weight on appeal, and will be presumed to be correct unless we find the preponderance of the evidence is otherwise.

Id. At 449.

Further, our review of the judgment of the trial court in a non-jury case is de novo with a presumption of correctness unless the evidence preponderates otherwise. Rule 13(d), Tennessee Rules of Appellate Procedure. However, no presumption attaches to conclusions of law. Adams v. Dean Roofing Co., 715 S.W2d 341, 343 (Tenn. App. 1986).

Upon consideration of the record, we are of the opinion that the evidence preponderates against the judgment of the trial court insofar as the division of the marital assets are concerned. The legislature enacted T.C.A. § 36-4-121(c) for our guidance in making an equitable division of marital property. It provides:

(c) In making equitable division of marital property, the court shall consider all relevant factors including:

(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 each of the parties;

(3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;

(4) The relative ability of each party for future acquisitions of capital assets and income;

(5) The contribution of each party to the acquisition, preservation, appreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;

(6) The value of the separate property of each party;

(7) The estate of each party at the time of the 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; and

(10) Such other factors as are necessary to consider the equities of the parties.

While we agree with the findings of the trial court that the cash in the banks at the time of the separation was marital property, we are of the opinion that the court placed too much emphasis on assets brought into the marriage and income during the marriage. We further are of the opinion that the debt owed to the parties by Bill Garner is marital property. The cash and indebtedness owed to the parties is a classic case for the application of the doctrine of "transmutation." See McClelland v. McClelland, 873 S.W2d 350 (Tenn. App. 1993).

We are of the opinion that all the cash assets of the parties at the time of their separation, including \$16,000.00 being held by the husband's attorney together with the debt owed to the parties by Bill Garner should be equally divided between the parties. There appears to be no substantial dispute between the parties as to valuations placed on the various accounts by themselves. Since, however, the court made no findings respecting the total amount of cash and the amount of the indebtedness, we feel it necessary to remand the case to the trial court for a determination of the exact amount of cash and the amount of the debt owed by Bill Garner, and after so doing, the court shall make an equal division thereof as of the date of the court's original decree together with any interests earned on the accounts since that date.¹

The remaining issues are directed toward attorney's fees and alimony and as such are interrelated to such an extent that we will deal with them together. It is well-settled that the amount of alimony and attorney's fees to be awarded in a divorce suit is largely in the discretion of the trial judge and the appellate courts will not interfere except upon a clear showing of abuse of such discretion. Aaron v. Aaron, 909 S.W 2d 408 (Tenn. 1995). The allowance of alimony is a discretionary question for the trial court, and the appellate courts are disinclined to review the

¹The approximate amount of the cash assets appears to be approximately \$61,500.00 at the time of the divorce with all being awarded to the husband.

exercise of that discretion unless its exercise was clearly erroneous. Hall v. Hall, 772 S.W2d 432 (Tenn. App. 1989).

In view of our disposition of the first issue relating to the division of marital property, we are of the opinion that the award of attorney's fees and alimony are acceptable. We find no abuse of discretion by the trial court. Accordingly, we find the last two issues to be without merit.

That portion of the trial court's final judgment awarding all cash assets to the husband is vacated. Costs are taxed to the appellee and this cause is remanded to the trial court with instructions and entry of a decree consistent with this opinion.

Don T. Murray, Judge

CONCUR:

Herschel P. Franks, Judge

Charles D. Susano, Jr., Judge

IN THE COURT OF APPEALS

HARRY WRIGHT McCLURG,)	BLOUNT GENERAL SESSIONS
)	C. A. NO. 03A01-9611-GS-00348
)	
Plaintiff - Appellee)	
)	
)	
)	
)	
vs.)	HON. WILLIAM R. BREWER
)	JUDGE
)	
)	
)	
)	VACATED IN PART AND
ANNIE LOU SMITH McCLURG,)	REMANDED WITH INSTRUCTIONS
)	
Defendant - Appellant)	

JUDGMENT

This appeal came on to be heard upon the record from the General Sessions Court of Blount County, briefs and argument of counsel. Upon consideration thereof, this Court is of the opinion that there was error in the trial court.

That portion of the trial court's final judgment awarding all cash assets to the husband is vacated. Costs are taxed to the appellee and this cause is remanded to the trial court with instructions and entry of a decree consistent with this opinion.

PER CURIAM