IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 20, 2023 Session

DONNA BOOKER v. JAMES MICHAEL BOOKER

Appeal from the Chancery Court for Hamilton County
No. 20-0108 Jeffrey M. Atherton, Chancellor

No. E2022-01228-COA-R3-CV

This is an appeal from a divorce in the Chancery Court for Hamilton County (the "trial court"). Donna Booker ("Wife") and Mike Booker ("Husband") married for the first time in 1993 and divorced in 1998. They remarried shortly thereafter in February of 1999. The day of their second wedding, Husband and Wife executed a prenuptial agreement addressing Husband's interest in his family's steel erection business. Wife filed the current divorce action in the trial court in February of 2020, and a trial was held May 3 and 4, 2022, and July 6, 2022. The trial court ordered the parties divorced, divided the marital estate, and awarded Wife alimony in futuro. Finding that the prenuptial agreement was valid, the trial court determined that Husband's interest in his family business was separate property. Wife appeals. Following thorough review, we affirm in part, reverse in part, vacate in part, and remand the case for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed in part; Reversed in part; Vacated in part; Case Remanded

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which D. MICHAEL SWINEY, C.J., and THOMAS R. FRIERSON, II, J., joined.

Jillyn M. O'Shaughnessy and Lawson Konvalinka, Chattanooga, Tennessee, for the appellant, Donna Booker.

Jennifer H. Lawrence and David H. Lawrence, Chattanooga, Tennessee, for the appellee, James Michael Booker.

OPINION

FACTS & PROCEDURAL BACKGROUND

Husband and Wife married for the first time on June 19, 1993. At the time, Husband worked for his father's successful business, B&B Steel Erection Co., Inc. ("B&B"), and owned his own home in Hixson, Tennessee (the "First House"). The parties lived in the First House during their first marriage. Their oldest child, Blaine, was born in 1993.[1] A daughter was born in 1997 but, tragically, passed away in 1998. The parties divorced in November of 1998. As part of the 1998 divorce proceeding, Wife signed a marital dissolution agreement ("MDA") providing that "[e]ach of the parties acknowledges that a full disclosure of all assets and liabilities have been made to the other[.]"

The parties remarried on February 3, 1999. That day, prior to the ceremony, Husband presented Wife with a prenuptial agreement (the "Agreement") drafted by Husband's brother.[2] Husband claimed that his father would not consent to the marriage without the Agreement, and it is undisputed that the purpose of the Agreement was to prevent Wife from acquiring any interest in B&B. The Agreement provides:

> This agreement, entered into this the 3 day of February, 1999, by and between DONNA H. BOOKER and JAMES MICHAEL BOOKER who are contemplating marriage and desire freely, knowledgeably in good faith and without coercion, duress or undue influence upon the part of either to enter into this agreement.
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> 1. That parties agree that this [sic] a binding contract upon us and we make it binding upon our heirs, next of kin, successors, personal representatives and/or assigns. All of the terms of this agreement shall be fully enforced by all remedies available by the enforcement of breach of contract terms generally.
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> 2. The said DONNA H. BOOKER hereby covenants and agrees that she hereby releases and relinquishes all claims of every type, kind and nature and all right to inherit from JAMES MICHAEL BOOKER by decent [sic] and distribution, any stock in B & B STEEL ERECTION CO., INC. owned by said JAMES M. BOOKER, his personal representative, devises, his heirs and/or assigns.

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[1] All of the parties' children have reached the age of majority, and neither custody nor child support is at issue in this appeal.

[2] Husband's brother is not an attorney.

Wife signed the Agreement without the advice of counsel. She also admitted that she has difficulty recalling things in the year following her second child's death, including the first divorce and the remarriage. Husband testified, however, that he provided Wife a copy of the Agreement several weeks prior to its execution. Although he claims not to have known it at the time, Husband owned several non-voting shares of B&B when the Agreement was executed. The value of the shares was not disclosed in the Agreement, nor was the value of any of Husband's other separate property.

Following their second marriage, the parties welcomed two more sons, twins Brae and Blythe. The parties also decided to build a new family home. Husband's father deeded a parcel of land to Husband, located at 10690 Hixson Pike, originally asking Husband for $25,000 for the property. However, the parties dispute whether they actually took out a loan to pay Husband's father. Husband claims the property was a gift from his father and that the father never actually charged Husband anything. The new home (hereinafter, the "Marital Home") was financed by a construction loan, signed by both Husband and Wife, in the amount of $270,000.[3] When the construction loan ran low, Husband sold the First Home and used the equity to fund the rest of the Marital Home construction. According to Husband, the profits from the sale of the First Home totaled $155,000 and went towards completing the Marital Home. During the second marriage, the parties executed several deeds of trust secured by the Marital Home, all of which were signed by both Husband and Wife. The real property on which the Marital Home sits is 3.81 acres, and the value adduced at trial is $750,000.[4]

The parties acquired additional real property during the marriage, including several parcels in Alabama, which are primarily used by the parties' sons for hunting. Wife claims that the parties used marital funds to improve some of these additional properties during the marriage. At issue on appeal is one parcel located in Georgiana, Alabama, which the parties refer to as the "Ghost House." The parties purchased the Ghost House in 2018 for $29,500 and made improvements such as a porch, vinyl siding, and interior paint. Wife claimed that the funds used for improvement were drawn from a line of credit. Husband testified, however, that the cost of the improvements to the Ghost House were only $20,000 to $25,000, and only made the house habitable. Husband, a car enthusiast and mechanic by trade, also acquired and remodeled several antique cars during the marriage. At issue in this appeal are a 1955 Chevrolet Corvette, a 1956 Chevrolet Bel Air, and a 1969 Ford Bronco. Husband originally built the Corvette for Wife.

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[3] The construction loan documents are not in the record; nonetheless, Husband testified to the amount of the loan, and Wife does not dispute the figure.

[4] The trial court determined the real estate appraiser who testified at trial, Henry Glascock, to be credible and adopted Mr. Glascock's value of $750,000. Neither party asserts on appeal that this valuation was erroneous.

Husband's father passed away in either 2003 or 2005.[5] At that time, Husband and his brother acquired their father's remaining interest in B&B and continued running the business as officers and fifty-percent owners. Husband continued working at B&B throughout the marriage while Wife was a homemaker. Wife was primarily responsible for the household, as Husband undisputedly worked long hours and was constantly on call. When the twins were in sixth grade, Wife began home-schooling them and did so until their senior year. Husband's wages from B&B allowed the parties to maintain a comfortable lifestyle. For example, Husband earned $218,400 in 2018 and 2019, and $222,600 in 2020. The parties stipulated at trial that the increase in value of Husband's interest in B&B during the marriage was $992,750.

While both parties testified to experiencing some happy times during the marriage, it is also undisputed that the parties fought frequently. The record bears out Wife's claims that Husband was verbally abusive to Wife, and Wife's mother testified about seeing bruises on Wife on several occasions. Husband denied ever physically harming Wife and claimed that both parties yelled and called each other names throughout the marriage. Additionally, Wife concedes that she had a brief affair in 2019.

Wife filed for the divorce from Husband in the trial court on August 2, 2019, claiming irreconcilable differences, as well as inappropriate marital conduct by Husband, as grounds for divorce. It is undisputed that after only a few days following the filing of the 2019 divorce, Husband transferred the 1969 Bronco to the parties' son, Brae. The same day, Husband gave the 1955 Corvette to Blythe and the 1956 Bel Air to Blaine. Husband concedes that he did not discuss this with Wife beforehand. He also testified at trial he gave the vehicles away because he "didn't want [the man with whom Wife had an affair] driving something that [Husband] built." Husband further stated that he would rather have his sons driving the refurbished vehicles than another man.

Wife voluntarily dismissed the August 2019 divorce on October 28, 2019. Wife then filed the present divorce action in the trial court on February 6, 2020, again alleging irreconcilable differences or inappropriate marital conduct as grounds. Wife sought temporary support from Husband. Husband agreed to pay $1,200 per week in alimony pendente lite. Wife later filed a petition for contempt against Husband, asserting that he obtained a cash-out refinance on the Marital Home and deposited $259,711.48 into a checking account. She also claimed that Husband gave the antique cars to the parties' sons without informing Wife. Husband answered the petition for divorce on January 18, 2022, attaching the Agreement and arguing that Wife had no claim to Husband's interest in B&B. The enforceability of the Agreement, however, was not adjudicated prior to trial.

[5] Husband could not recall the date specifically.

The trial took place over three days – May 3 and 4, 2022 and July 6, 2022.[6] Husband, Wife, a real estate appraiser, and Wife's mother testified. The trial court entered its final order on August 26, 2022, finding that the parties admitted to irreconcilable differences and declaring them divorced. As relevant to the issues on appeal, the trial court also found as follows: 1) the Agreement executed the day of the parties' second marriage is valid and enforceable, and the Agreement applies to all increase in value of Husband's ownership interest in B&B; 2) the Marital Home is worth $750,000, and $250,000 of that value is Husband's separate property; 3) the Ghost House is marital property worth $30,000; and 4) Husband did not fraudulently convey or dissipate assets by gifting the antique cars to the parties' sons. Regarding the overall valuation of the marital estate and the parties' respective separate property, the trial court summarized as follows:

> The total value of assets in the marital estate is $1,153,843.00 (plus 78.21% of the pension, which is $2,382.05 per month). This consists of real property worth $783,400.00 (the $500,000.00 marital portion of 10690 Hixson Pike plus the Alabama Properties), motor vehicles worth $87,500.00, bank accounts totaling $252,543.00, and other personal property worth $30,400.00 (guns, gun safes, and household furnishings).
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> The total liabilities of the marital estate are $661,565.00. This consists of $484,565.00 in mortgages between the marital residence and the hunting property in Alabama, $47,000.00 in credit debt between the Bass Pro account and the personal line of credit, and $130,000.00 in unpaid fees to attorneys and experts between the parties.
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> The net value of the marital estate, then, is approximately $492,278.00.
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> Husband's separate property is worth approximately $2,399,136.00 (plus 21.79% of the pension, which is $663.66 per month). This consists of his interests in 10590 Hixson Pike, 10704 Hixson Pike, and 10690 Hixson Pike, as well as firearms from his father and his 50% interest in [B&B] (the stipulated marital increase of $992,750.00, which the Court found above to be Husband's separate property under the prenuptial agreement, added to the parties' agreed value of $561,136.00 as his existing separate property).
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> Wife has no separate property.

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[6] The trial court's final order provides that trial occurred on May 10 and 11, 2022, and July 6, 2022. However, the transcript of the evidence provides that trial was held May 3 and 4, 2022, and July 6, 2022. This discrepancy does not affect our analysis.

Applying the factors found at Tennessee Code Annotated section 36-4-121(c), the trial court divided the marital property between the parties. The trial court awarded Husband the following assets and liabilities:

> The parties agree that Wife should not receive any of the real property in the marital estate. The Court awards the real property and the liabilities associated therewith to Husband. This includes the marital residence at 10690 Hixson Pike, the four (4) Alabama Properties, and the mortgages associated with the marital residence and the Hunting Farm. This is the full $783,400.00 in real property and the $484,565.00 in debt associated with such property. Thus, the net value of the real property to Husband is $298,835.00.
>
> The Court awards the vehicles, except the 2015 Tahoe, to [H]usband. The net value of the vehicles, all of which are unencumbered, to [H]usband is $62,500.00.
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> The Court awards Husband those home furnishings worth $5,200.00 as listed on Tr. Ex. 33.
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> The Court awards Husband the ten firearms worth $3,000.00 and the two gun safes worth $900.00.
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> The Court awards the Husband the First Volunteer Bank Checking account #5063 ($12.00), the First Volunteer Bank Money Market account #3743 ($8.00), the First Volunteer Bank Checking account #9074 ($261.00), and the First Volunteer Bank Checking account #4841 ($2,457.00). The total value of these accounts to Husband is $2,738.00.
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> The Court awards Husband $1,191.05, or roughly one-half (1/2) of the martial [sic] portion of the pension.
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> The Court awards Husband the Bass Pro debt of $12,000.00 as well as the personal line of credit owing $35,000.00. The Court finds that these debts were incurred by Husband, primarily for his own benefit and purposes, and that he is best able to repay these debts.
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> Under the same considerations, the Court also awards Husband the marital debt of approximately $80,000.00 in fees incurred by him in this litigation.

Husband's total net award, excluding pension income, is thus approximately $246,173.00.

Regarding Wife's distribution of the marital property, the trial court found:

> As noted above, no real property is awarded to Wife.
>
> The Court awards Wife the 2015 Chevrolet Tahoe worth $25,000.00.
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> The Court awards Wife those household furnishings listed on Tr. Ex. 33 worth $21,300.00.
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> Wife is awarded the First Volunteer Bank Money Market #0926 ($249,783.00) and the First Bank Checking #7700 ($22.00) accounts. The net value of these bank accounts to Wife is $249,805.00.
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> The Court awards Wife the $50,000.00 of marital debt reflecting the unpaid fees incurred by her throughout this litigation. These fees were incurred by her for her own benefit. Although Wife's earning potential and present income is less than Husband's, she is awarded a significant amount of cash, while Husband's award consists mostly of non-liquid assets and he bears the majority of the marital debt.
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> The Court awards [W]ife $1,191.00 of the monthly pension, which is roughly one-half (1/2) of the 78.21% of the marital portion of the pension.
>
> The net value of Wife's award is $246,105.00, except the monthly pension benefits. While these awards are not numerically equal (though nearly equal), the Court finds that they are equitable.

The trial court then awarded Wife $1,816.34 per month in alimony in futuro. The trial court reasoned that Wife's income should be imputed as the federal minimum wage, $7.25 an hour, for 52 weeks per year. Accordingly, the trial court found that Wife could earn $15,080 per year, or, approximately $1,256.66 per month. Based on Wife's expenses, the trial court determined that her monthly need was $1,816.34 per month, which Husband is able to pay. The trial court found Wife not credible with regard to her expenses. For example, while Wife listed her monthly phone bill as $425, the trial court determined that $65 per month is a more accurate figure, based on "the annoying and intrusive advertising this trier of fact is subjected to electronically, via radio and television, and even in its daily commute to work[.]"

The parties were ordered to each pay their respective attorney's fees. Wife timely appealed to this Court.

ISSUES

Wife raises the following issues on appeal:

1. Whether the trial court erred in declaring the prenuptial agreement valid.

2. Whether the trial court erred in determining that a portion of the Marital Home was Husband's separate property.

3. Whether the trial court erred by not ruling that Husband fraudulently conveyed or dissipated marital assets when he transferred three antique automobiles to the parties' sons without Wife's consent.

4. Whether the trial court erred in the amount of alimony awarded to Wife considering her need and Husband's ability to pay.

5. Whether the trial court erred in the division of marital assets by awarding Husband approximately half of the marital assets despite Husband's substantial separate property.

6. Whether the trial court erred in its valuation of the "Ghost House" property.

7. Whether the trial court erred in accounting for a marital debt twice.

8. Whether the trial court erred by ordering Wife to pay her attorney's fees.

9. Whether this Court should award Wife her attorney's fees for this appeal.

Husband raises no additional issues in his posture as appellee.

DISCUSSION

A. The prenuptial agreement

Wife first challenges the validity of the Agreement which, to reiterate, was signed the day of the parties' second marriage, February 3, 1999, and pertains only to Husband's interest in B&B.[7] Because this is an appeal from a bench trial, we review the trial court's

[7] Husband does not argue that the Agreement pertains to any other asset.

factual findings *de novo*, presuming their correctness unless the evidence preponderates otherwise. *See Boote v. Shivers*, 198 S.W.3d 732, 740 (Tenn. Ct. App. 2005); Tenn. R. App. P. 13(d). "[F]or the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect." *Boote*, 198 S.W.3d at 741. The presumption of correctness does not apply to the trial court's conclusions of law. *Id.* We ascribe great weight to the trial court's credibility determinations and will not re-evaluate those determinations absent clear and convincing evidence. *Id.* at 740 (citing *Est. of Walton v. Young*, 950 S.W.2d 956, 959 (Tenn. 1997)).

Public policy favors prenuptial agreements.[8] *Perkinson v. Perkinson*, 802 S.W.2d 600, 601 (Tenn. 1990). These agreements are enforceable when entered into "freely, knowledgeably, and in good faith, without the exertion of duress or undue influence." *Randolph v. Randolph*, 937 S.W.2d 815, 819 (Tenn. 1996); *see also* Tenn. Code Ann. § 36-3-501. These elements must be established by a preponderance of the evidence by the party seeking enforcement of the agreement, and the "existence of each element is a question of fact to be determined from the totality of the circumstances surrounding the negotiation and execution of the [agreement]." *Boote*, 198 S.W.3d at 741 (citing *Randolph*, 937 S.W.2d at 821).

Here, Wife asserts that the Agreement was not entered knowledgeably or in good faith, primarily because Husband did not disclose the value of his then-owned stock in B&B. Husband maintains that he did not know he owned B&B stock at all when the parties entered the Agreement. The trial court credited Husband, finding:

> Although the prenuptial agreement here lacked an asset disclosure statement, this case is somewhat unique in that the parties had just finalized the First Divorce less than three months prior to the Second Marriage. In the Marital Dissolution Agreement (dated September 4, 1998 and attached to the November 17, 1998 judgment), the parties acknowledged "that a full disclosure of all assets and liabilities have been made to the other." Given this acknowledgment by the parties at the time, and the lack of testimony at trial as to any assets either thought to have been obtained or that may have actually been obtained by Husband in this brief period, taken also with the limited scope of the prenuptial agreement, the lack of disclosure as to "the nature, extent, and value of [Husband's] property and resources" is not dispositive here, though it may constitute a technical omission. *Randolph*, 937 S.W.2d at 821.
>
> * * *

[8] "Prenuptial agreements" are also known as "antenuptial or premarital agreements." *Ellis v. Ellis*, No. E2013-02408-COA-R9-CV, 2014 WL 6662466, at *4 (Tenn. Ct. App. Nov. 25, 2014).

> In this instance, the disclosure did not provide an "essentially accurate understanding" of Husband's holdings in the Company, but his failure to disclose was merely the result of his lack of knowledge and/or recollection of the assets. Moreover, as noted, the only property concerned was Husband's ownership interest in the Company—there was no failure with regard to Husband's overall financial condition, as he did not seek to protect anything other than his interest in the Company.
>
> Husband testified that it was not uncommon for [his father] to keep such transactions to himself and not inform others of such gifts. Husband could not have disclosed what he did not know. Even so, the ultimate purpose of the prenuptial agreement was to prevent Wife from receiving any ownership interest in the Company at any time from Husband. In other words, though his ownership at the time was not disclosed, the understanding of the parties was that Husband would obtain an ownership interest in the Company, and any such interest was contemplated by the agreement. The Court specifically finds Husband's testimony on this issue persuasive and credible.

(Record citations omitted).

Under the particular circumstances of this case, we respectfully disagree with the trial court that the Agreement is valid notwithstanding Husband's failure to disclose the value of his interest in B&B. Whether a party's asset disclosure is "full and fair" is fact-specific and

> varies from case to case depending upon a number of factors, including the relative sophistication of the parties, the apparent fairness or unfairness of the substantive terms of the agreement, and any other circumstance unique to the litigants and their specific situation. [Judith T. Younger, *Perspectives on Antenuptial Agreements: An Update*, 8 J. Am. Acad. Matrim. Law. 1, 25 (1992)]. While disclosure need not reveal precisely every asset owned by an individual spouse, at a minimum, full and fair disclosure requires that each contracting party be given a clear idea of the nature, extent, and value of the other party's property and resources. *Id.* Though not required, a fairly simple and effective method of proving disclosure is to attach a net worth schedule of assets, liabilities, and income to the agreement itself. *See, e.g.*, *Pajak v. Pajak*, 182 W.Va. 28, 385 S.E.2d 384, 388 (1989)[.]

Randolph, 937 S.W.2d at 821–22. The requirement of "full disclosure and good faith" rests on the principles that "an agreement to marry gives rise to a confidential relationship" and thus the parties do not deal with one another "at arms' length." *Sattler v. Sattler*, No. M2007-02319-COA-R3-CV, 2008 WL 4613589, at *4 (Tenn. Ct. App. Oct. 13, 2008)

(quoting *Randolph*, 937 S.W.2d at 819). Moreover, "requiring full disclosure or knowledge helps to level the bargaining power when there is a disparity between the parties." *Id.*

Applying the above factors, Wife was at a significant disadvantage when executing the Agreement. Wife was twenty years old when the parties met, and she dropped out of college upon becoming pregnant with the parties' first son. Husband always handled the parties' finances and, shortly after Blaine's birth, agreed that Wife should stay home with him; thus, Wife never had opportunity or reason during the first marriage to inquire into the parties' finances. While Husband has a high school education, he began working at B&B upon graduating and possesses business acumen. Consequently, although both parties are relatively unsophisticated, Husband is sophisticated in the context of running B&B. *See Ellis v. Ellis*, No. E2013-02408-COA-R9-CV, 2014 WL 6662466, at *6 (Tenn. Ct. App. Nov. 25, 2014) (addressing knowledgeability and noting that "[w]here one party's sophistication in financial matters heavily outweighs that of the other, our appellate courts have applied this fact as a factor supporting the invalidation of a prenuptial agreement." (citing *Randolph*, 937 S.W.2d at 822)).

Even entertaining Husband's claim that he lacked knowledge about his interest in B&B in February of 1999 does not change the requirement that "at a minimum," adequate disclosure for purposes of a prenuptial agreement requires "each contracting party be given a clear idea of the nature, extent, and value of the other party's property and resources." *Randolph*, 937 S.W.2d at 821. To the extent Husband truly lacked "a clear idea of the nature, extent, and value" of his own interest in B&B, it remains to be seen how Wife could gain that knowledge. *Id.*

Nonetheless, "[i]n the absence of full and fair disclosure, an antenuptial agreement will still be enforced if the spouse seeking to avoid the agreement had independent knowledge of the full nature, extent, and value of the other spouse's property and holdings." *Id.* at 822. Factors bearing on this question include "the parties' respective sophistication and experience in business affairs, the duration of the relationship prior to the execution of the agreement, the time of the signing of the agreement in relation to the time of the wedding, and the parties' representation by, or opportunity to consult with, independent counsel." *Id.* (citing *Norris v. Norris*, 419 A.2d 982, 985 (D.C. App. 1980)).

Here, the trial court found that Wife had independent knowledge about Husband's interest in B&B prior to her signing the Agreement due to the MDA the parties signed in November of 1998. The 1998 MDA provides that "[e]ach of the parties acknowledges that a full disclosure of all assets and liabilities have been made to the other[.]" We are unpersuaded by this, however, as Husband states in his brief that "[t]his Marital Dissolution Agreement is indicative of a lack of knowledge of Husband that he held any business interests at that time." Again, it is unclear how Wife could have gained knowledge from

Husband that Husband himself claims to lack. To the extent Husband and Wife entered the 1998 MDA lacking appropriate knowledge about Husband's assets, that fact serves only to undermine the 1998 MDA, not lend credence to the enforceability of the Agreement.

Further, the additional applicable factors weigh in favor of Wife. *See Randolph*, 937 S.W.2d at 821. As addressed already, Wife lacks sophistication in financial matters, and Husband has always managed the parties' finances. *See Ellis*, 2014 WL 6662466, at *6. The Agreement was signed the day of the parties' wedding. Wife testified that at the time, she was desperate to reunite her family because her son missed his father,[9] and both she and Blaine were distraught over the death of the parties' second child. Wife also testified that Husband threatened to litigate for custody of Blaine if Wife did not sign the Agreement, a claim Husband did not address in his own testimony. Wife had no separate property or income following the first divorce and lacked the resources to seek counsel. *See Boote*, 198 S.W.3d at 741–42 (While not dispositive, "the participation of independent counsel representing each party" is the "best assurance that the legal prerequisites will be met and that" the agreement will be enforceable).

On appeal, Husband cites *Wilson v. Moore*, 929 S.W.2d 367, 372 (Tenn. Ct. App. 1996) (footnotes omitted), for the proposition that "in the absence of fraud or overreaching, the inadvertent failure to disclose an asset or the unintentional undervaluation of an asset will not invalidate a prenuptial agreement as long as the disclosure that was made provides an essentially accurate understanding of the party's financial holdings." *Wilson* is distinguishable from the case at bar, however. In that case, the husband's premarital assets included, *inter alia*, real estate, farm equipment, a boat, bank accounts, and stocks. *Id.* at 371–72. "While [the husband] did not provide [the wife] with a detailed list of these assets and their value prior to the execution of the prenuptial agreement, he attempted as best he could to familiarize her with his holdings." *Id.* at 372. For example,

> [s]ometime after the engagement, [the husband] removed each of his financial files from a filing cabinet in his bedroom, described each one of his accounts to [the wife], and even gave her an estimate of the current value of the assets. [The husband] unintentionally overlooked a $5,000 certificate of deposit and 250 shares of stock in First Pikeville Bank because he did not have folders for these assets. He also overvalued his Sherson Lehman account by approximately $13,000 because he mistook the maturity value of the bonds in the account for their current market value.

[9] When the parties separated the first time, Wife moved out and back in with her parents. Wife was awarded primary custody of Blaine.

Id. at 372. Under those circumstances, the parties' prenuptial agreement was valid, as the husband's "inadvertent omission of two assets whose value comprised ten to fifteen percent of the total value of his holdings was not material or significant enough to prevent [enforcement]." *Id.*

The same cannot be said in the present case. While in *Wilson* the husband took meaningful efforts to apprise Wife of his assets, here, Husband took zero efforts to apprise Wife of his interest in B&B. Rather, Husband maintains that he did not know he had any interest in B&B until exchanging discovery in the present divorce, more than twenty years after the fact. The key language in *Wilson*, as quoted in Husband's brief, is "as long as the disclosure that was made provides an *essentially accurate understanding* of the party's financial holdings." *Id.* at 371 (emphasis added). No disclosure of Husband's interest in B&B occurred in this case, much less "an essentially accurate" one. *Id.*

While public policy favors prenuptial agreements, "'[a]n engagement to marry creates a confidential relation between the contracting parties and an antenuptial agreement . . . must be attended by the utmost good faith[.]'" *In re Est. of Davis*, 184 S.W.3d 231, 238 (Tenn. Ct. App. 2004) (quoting *Bratton v. Bratton*, 136 S.W.3d 595, 601 (Tenn. 2004)). "[T]he parties to an antenuptial agreement are 'coadventures, subject to fiduciary duties akin to those of partners . . . the punctilio of an honor the most sensitive, is then the standard' which we shall apply to their agreements." *Id.* (quoting *Meinhard v. Salmon*, 164 N.E. 545, 546 (N.Y. 1928)). Here, Husband failed to disclose any information about his ownership interest in B&B and did not satisfy his burden of proving that the Agreement was entered into knowledgeably. *See* Tenn. Code Ann. § 36-3-501. The trial court erred, and the Agreement is unenforceable.[10] Accordingly, the trial court's ruling on this issue is reversed.

B. Property valuation & distribution

Wife also raises several issues with regard to the trial court's valuation and distribution of real and personal property. The classification of property as either separate or marital is "a question of fact to be determined in light of all relevant circumstances." *Snodgrass v. Snodgrass*, 295 S.W.3d 240, 245 (Tenn. 2009) (citing *Langford v. Langford*, 421 S.W.2d 632, 634 (Tenn. 1967)). The trial court's findings of fact are reviewed *de novo* with a presumption of correctness and "we must honor those findings unless there is evidence which preponderates to the contrary." *Id.* at 245 (quoting *Keyt v.*

[10] In her principal appellate brief, Wife notes at various points that Husband did not enter the Agreement in good faith. However, she appears to address Husband's failure to give a full and fair disclosure of his assets as fatal to both the knowledgeability and good faith elements. In any event, we conclude that the Agreement is unenforceable because the parties did not enter it knowledgeably, and we need not address any of the other requisite elements for an enforceable prenuptial agreement. *See* Tenn. Code Ann. § 36-3-501.

Keyt, 244 S.W.3d 321, 327 (Tenn. 2007)). Conclusions of law, however, are reviewed *de novo* with no presumption of correctness. *Id.* at 245–46. Finally, the trial court's division of assets is afforded great weight on appeal, and that decision will not be disturbed "unless the distribution lacks proper evidentiary support, misapplies statutory requirements or procedures, or results in some error of law." *Id.* at 245.

Wife raises issues regarding both the trial court's classification and valuation of certain property, as well as the overall division of the marital estate. We first address the issues regarding classification and valuation.

1. The Marital Home – 10690 Hixson Pike

On appeal, the parties dispute whether the full value of the Marital Home is marital property, as it is undisputed that Husband put some of his separate assets towards the home's construction.[11] While neither party challenges the trial court's valuation of the Marital Home at $750,000, they disagree about the trial court's conclusion that $250,000 of that total remains Husband's separate property. Specifically, the trial court found as relevant:

> Wife argues that Husband's separate property interest was transmuted, relying on *Anderson v. Anderson*, No. M2018-01248-COA-R3-CV, 2019 WL 3854663, at *6 (Tenn. Ct. App. Aug. 16, 2019), where the Court of Appeals found that the marital residence built upon the husband's separate property transformed an entire tract into marital property. However, the present case is not analogous, as this is not an instance where "one or both properties would be destroyed or damaged or left with a gaping deficiency or defect if the properties were separated." *Id.* Nor does the doctrine of commingling apply here, as the Court is satisfied that this "separate property can be traced into its product." *Eldridge*, 137 S.W.3d at 14. Accordingly, the Court finds that the 10690 Hixson Pike property is part of the marital estate only to the extent of the increase in value beyond Husband's initial $250,000.00 of separate property. In other words, there is $500,000.00 of marital value in this property.

While Wife maintains that the entire value of the Marital Home is marital property, Husband defends the trial court's ruling and argues that Husband's premarital contribution is traceable to Husband's separate property. Under the circumstances, we agree with Wife.

[11] The parties disagreed at trial about the exact date upon which construction completed. Husband claims that it was shortly after the parties remarried in 1999, while Wife adamantly maintained that the parties moved into the Marital Home in September of 2001.

During divorce, trial courts must classify parties' property as either separate or marital prior to dividing the property between them. *Eldridge v. Eldridge*, 137 S.W.3d 1, 13 (Tenn. Ct. App. 2002); *see also Owens v. Owens*, 241 S.W.3d 478, 485 (Tenn. Ct. App. 2007) ("Dividing a marital estate necessarily begins with the systematic identification of all of the parties' property interests." (citing 19 W. Walton Garrett, *Tennessee Practice: Tennessee Divorce, Alimony and Child Custody* § 15:2, at 321 (rev. ed. 2004))). Only marital property is subject to property division, so "it is of primary importance for the trial court to classify property as separate or marital." *Eldridge*, 137 S.W.3d at 13 (citing Tenn. Code Ann. § 36-4-121(a) (2001)); *see also Brown v. Brown*, 913 S.W.2d 163, 166 (Tenn. Ct. App. 1994) ("The division of a marital estate necessarily begins with the classification of the parties' property as either marital or separate property."). Separate property is, *inter alia*, "[a]ll real and personal property owned by a spouse before marriage[.]" Tenn. Code Ann. § 36-4-121(b)(2)(A). Separate property also includes "[p]roperty acquired by a spouse at any time by gift, bequest, devise or descent." Tenn. Code Ann. § 36-4-121(b)(2)(D).[12] Marital property is, *inter alia*, "all real and personal property, both tangible and intangible, acquired by either or both spouses during the course of the marriage[.]" *Id.* at 36-4-121(b)(1)(A). Generally, assets acquired prior to marriage are presumed separate, and assets acquired during the marriage are presumed marital. *Owens*, 241 S.W.3d at 485.

"Mar[ital] residences present unique and complex challenges, both financial and emotional, when it comes time to classify and divide the parties' marital property." *Fox v. Fox*, No. M2004-02616-COA-R3-CV, 2006 WL 2535407, at *5 (Tenn. Ct. App. Sept. 1, 2006). Marital homes

> should not be classified as marital property simply because the parties have lived in it. However, as a general matter, a marital residence acquired by the parties during the marriage and owned by the parties jointly should be classified as marital property. *See, e.g.*, *Altman v. Altman*, 181 S.W.3d 676, 680-81 (Tenn. Ct. App. 2005). Even a marital residence that was separate property prior to the marriage or that was purchased using separate property should generally be classified as marital property if the parties owned it jointly because joint ownership gives rise to a rebuttable presumption that the property is marital, rather than separate, property.

Id. (citing *Eldridge*, 137 S.W.3d at 14). Moreover, separate property can become marital property through transmutation or commingling. Our Supreme Court has explained transmutation and commingling as follows:

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[12] We apply the version of section 36-4-121 in effect when the complaint for this divorce was filed in February of 2020. *Long v. Long*, 642 S.W.3d 803, 825 (Tenn. Ct. App. 2021).

> Separate property becomes marital property by commingling if inextricably mingled with marital property or with the separate property of the other spouse. If the separate property continues to be segregated or can be traced into its product, commingling does not occur.... Transmutation occurs when separate property is treated in such a way as to give evidence of an intention that it become marital property.... The rationale underlying these doctrines is that dealing with property in these ways creates a rebuttable presumption of a gift to the marital estate. This presumption is based also upon the provision in many marital property statutes that property acquired during the marriage is presumed to be marital. The presumption can be rebutted by evidence of circumstances or communications clearly indicating an intent that the property remain separate.

Langschmidt v. Langschmidt, 81 S.W.3d 741, 747 (Tenn. 2002) (citing 2 Homer H. Clark, *The Law of Domestic Relations in the United States* § 16.2 at 185 (2d ed. 1987)) (brackets omitted). The doctrines of transmutation and commingling rest on the principle that separate property is not "indelibly separate," but rather can be "treated 'in such a way as to give evidence of an intention' that it is to become marital property." *Carter v. Browne*, No. W2019-00429-COA-R3-CV, 2019 WL 424201, at *9 (Tenn. Ct. App. Feb. 4, 2019) (quoting *Smith v. Smith*, 93 S.W.3d 871, 878 (Tenn. Ct. App. 2002)); *see also Eldridge*, 137 S.W.3d at 13 ("[S]eparate property can become part of the marital estate due to the parties' treatment of the separate property."). For example, transmutation often occurs when a spouse purchases real property prior to the marriage and the parties then use the property as the marital residence and undertake significant improvements to the property during the marriage. *See Dover v. Dover*, No. E2019-01891-COA-R3-CV, 2020 WL 7224368, at *5 (Tenn. Ct. App. Dec. 8, 2020) (collecting cases).

Likewise, when spouses construct a marital residence on an otherwise separate parcel of land using marital funds, the entire parcel may become marital property. *See Fox*, 2006 WL 2535407, at *5. In such cases, the operative question remains, with reference to the transmutation factors listed above, whether the parties treated the entire parcel as marital property. For example, in *Fox*, the wife came into the 1993 marriage with substantial assets, while the husband "brought minimal assets into the marriage." *Id.* at *1. The parties' first home was purchased entirely with the wife's separate assets and was titled in her name only. *Id.* The parties constructed a second house on land that the wife acquired prior to the marriage, and the wife "used her separate funds to pay for the construction of the house." *Id.* Although "[m]ost of the funds for the construction of the house came from [the wife's] separate property . . . payments for the construction expenses were made from a joint account that also contained [the husband's] funds." *Id.* at *6. The parties divorced in 2004 following a bench trial, and the trial court determined that 75% of the value in both the first and second homes belonged to the wife, and that 25% of the homes' values belonged to the husband.

On appeal, this Court determined that "the trial court's methodology for classifying the parties' interests in these two pieces of property was flawed and that these properties should have been classified as marital property." *Id.* at *2. In addressing the second home, which was built on the wife's separate real property spanning 29 acres, this Court started from the presumption that the home was marital property because it was constructed during the marriage. We then analyzed the parties' treatment of the home, including 1) the use of joint assets to pay some of the construction expenses; 2) the use of joint assets to add a pool and other improvements; 3) the use of joint assets to pay taxes and insurance premiums; and 4) the husband's efforts to preserve and maintain the home. We ultimately concluded that "[w]hile the 29-acre tract was [the wife's] separate property when the [parties] married, it became marital property when they decided to construct their marital home on the property and then lived in the home for approximately six years before the divorce." *Id.* at *6.

This Court reached a similar conclusion in *Anderson v. Anderson*, No. M2018-01248-COA-R3-CV, 2019 WL 3854663 (Tenn. Ct. App. Aug. 16, 2019), the case relied upon by the trial court in holding that Husband retained $250,000 as his separate interest in the Marital Home. In *Anderson*, the parties built their marital home on a large tract of land owned by the husband before the marriage. *Id.* at *1. When the parties divorced in 2018, the husband maintained that the tract was his separate property, while the wife urged that the tract "transformed into marital property during the marriage under the doctrine of transmutation" and, alternatively, that the "propert[y's] increase in value during the marriage was marital property" due to her contributions. *Id.* at *2. The trial court agreed with the husband, finding that the house itself was marital property but that the real property, which was 197 acres, remained the husband's separate property.

This Court reversed the trial court's decision, explaining that "the trial court should have focused its inquiry on the intention of the parties in deciding whether any or all of the 197 acres transmuted to marital property." *Id.* at *5. We again applied the well-established transmutation factors, noting that "'the ultimate test is how the property was treated by the parties.'" *Id.* (quoting *Strickland v. Strickland*, No. M2012-00603-COA-R3-CV, 2012 WL 6697296, at *17 (Tenn. Ct. App. Dec. 21, 2012)). We further explained that "buildings erected on land generally become part of the real property, and recogniz[ed] that the parties intended for the marital residence to be a family home[.]" *Id.* at *6. As such, "it [was] apparent the parties intended for the land, or at least that portion of the land used in conjunction with the marital residence, to be marital property." *Id.* Relying on a D.C. Court of Appeals case, we then recognized that "a trial court may treat separate property as 'transformed' when '(1) the two items of property came to be used as one property and (2) one or both properties would be destroyed or damaged or left with a gaping deficiency or defect if the properties were separated[.]'" *Id.* (quoting *Araya v. Keleta*, 65 A.3d 40, 56 (D.C. 2013)).

Because the tract of real property at issue in *Anderson* was so large, we remanded the case to the trial court "so the trial court [could] identify the portion and value of the land that became a part of the marital residence and estate." *Id.* at *7. We expressed no opinion, however, on how much of the 197 acres transmuted to marital property.

Finally, this Court most recently addressed a similar factual scenario in *Hill v. Hill*, No. E2021-00399-COA-R3-CV, 2023 WL 3675829, at *5 (Tenn. Ct. App. May 26, 2023), *no perm. app. filed*, in which the parties constructed their marital home on unimproved real property gifted to the husband by his parents prior to the marriage. In classifying the home as marital property, the trial court noted "that (1) the property was used as the parties' marital residence during the entirety of the marriage, (2) [the w]ife had contributed to the ongoing maintenance of the home by being the primary income earner for the family since 2004, (3) the home had fallen into disrepair after [the w]ife left, and (4) [the h]usband had refused to place [the w]ife's name on the title to the home despite the fact that she was making payments for the mortgage and home equity line of credit ("HELOC") as well as providing upkeep." *Id.* at *4. This Court affirmed on appeal, rejecting the husband's claim that his refusal to put the wife's name on the deed evidenced an intent to keep the home separate property. *Id.* at *11.

Consequently, precedent shows that when dealing with a marital residence constructed on a parcel of land owned separately by one spouse, the proper analysis is application of the transmutation factors. *See Hill*, 2023 WL 3675829; *Anderson*, 2019 WL 3854663; *Fox*, 2006 WL 2535407. Instead of engaging in the correct analysis, the trial court wholly rejected Wife's argument by determining that the present case is distinguishable from *Anderson*. The trial court's final order provides that "the present case is not analogous, as this is not an instance where 'one or both properties would be destroyed or damaged or left with a gaping deficiency or defect if the properties were separated.'" This was not the crux of *Anderson*, however. When making the above point in *Anderson*, the Court was explaining that because the marital home at issue was affixed to real property, at least some portion of the attached 197-acre tract transmuted to marital property. *See Anderson*, 2019 WL 3854663, at *6 ("Because the marital residence became part of the land, and conversely at least some of the land became part of the marital estate, we respectfully reverse the trial court's determination that the entire 197-acre tract on Highland Road remained [the h]usband's separate property."). Respectfully, *Anderson* does not stand for the proposition that trial courts should ignore the long-applied transmutation factors in favor of asking whether "one or both properties would be destroyed or damaged or left with a gaping deficiency or defect if the properties were separated[.]" *Id.*

In any event, the record shows that in this case, Husband and Wife always treated the entirety of the Marital Home, including the lot purportedly given to Husband by his

father,[13] as marital property. *See Hill*, 2023 WL 3675829, at *11 ("Rather, the focus of the transmutation analysis is 'how the parties treated the property.'" (quoting *Lewis v. Lewis*, No. W2019-00542-COA-R3-CV, 2020 WL 4668091, at *5 (Tenn. Ct. App. Aug. 11, 2020))); *see also Fox*, 2006 WL 2535407, at *5 ("Even a marital residence that was . . . purchased using separate property should generally be classified as marital property if the parties owned it jointly because joint ownership gives rise to a rebuttable presumption that the property is marital, rather than separate, property." (citing *Eldridge*, 137 S.W.3d at 14)).

While Husband used some separate funds from the sale of his first home to construct the Marital Home, the bulk of the house was paid for with a construction loan that both parties signed for. The parties designed the home together. It is undisputed that Wife was a homemaker the entire time the parties resided in the Marital Home, even home-schooling the parties' children for several years. Wife contributed to the Marital Home's maintenance by cleaning and handling the bulk of the household chores while Husband worked long hours for B&B. Further, the parties borrowed against the house, in both of their names, several times throughout the marriage. Husband has put forth nothing evincing his intent to keep a portion of the Marital Home his separate property. Absent any additional evidence from Husband, it appears his "intent to keep [a portion of the home] as his separate property surfaced only after the demise of the marriage." *Phipps v. Phipps*, No. E2014-00922-COA-R3-CV, 2015 WL 335843, at *5 (Tenn. Ct. App. Jan. 27, 2015).

Accordingly, the trial court erred in concluding that $250,000 of the Marital Home's value is Husband's separate property, and that ruling is reversed. The entire value of the Marital Home is marital property.

2. The antique cars

Wife also asserts that the trial court erred in concluding that the 1955 Chevrolet Corvette, the 1956 Chevrolet Bel Air, and the 1969 Ford Bronco were not part of the marital estate and therefore not subject to equitable distribution. The trial court reached this conclusion because the cars were transferred prior to the filing of the current divorce on February 6, 2020, and rejected Wife's argument at trial that Husband either dissipated marital assets or fraudulently conveyed them by transferring three high-value assets in anticipation of divorce.

[13] Husband claims that the parties never paid Husband's father the requested $25,000 for the lot. In the record, however, there is a deed of trust for $25,000, secured by the marital home, that was executed by the parties around the time Wife claims the home was completed. Notwithstanding this factual dispute, and even in the event that Husband received the property as a gift, it would not sway our conclusion that the entire lot became marital property by virtue of the parties' conduct.

Whether a party has dissipated assets is relevant to the equitable distribution of property:

> (c) In making equitable division of marital property, the court shall consider all relevant factors including:
>
> * * *
>
> (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 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;
>
> (B) For purposes of this subdivision (c)(5), dissipation of assets means wasteful expenditures which reduce the marital property available for equitable distributions and which are made for a purpose contrary to the marriage either before or after a complaint for divorce or legal separation has been filed[.]

Tenn. Code Ann. § 36-4-121(c)(5).

Regarding dissipation of assets, our Supreme Court has previously explained:

> Whether dissipation has occurred depends on the facts of the particular case. 24 Am. Jur. 2d Divorce and Separation § 526 (2009). The party alleging dissipation carries the initial burden of production and the burden of persuasion at trial. *Burden v. Burden*, 250 S.W.3d 899, 919 (Tenn. Ct. App. 2007), *perm. to app. denied*, (Tenn. Feb. 25, 2008). Dissipation of marital property occurs when one spouse wastes marital property and thereby reduces the marital property available for equitable distribution. *See Altman v. Altman*, 181 S.W.3d 676, 681–82 (Tenn. Ct. App. 2005), *perm. to app. denied*, (Tenn. Oct. 31, 2005). Dissipation "typically refers to the use of funds after a marriage is irretrievably broken," *Broadbent v. Broadbent*, 211 S.W.3d 216, 220 (Tenn. 2006), is made for a purpose unrelated to the marriage, and is often intended to "hide, deplete, or divert" marital property. *Altman*, 181 S.W.3d at 681–82. In determining whether dissipation has occurred, trial courts must distinguish between dissipation and discretionary spending. *Burden*, 250 S.W.3d at 919–20; 24 Am. Jur. 2d Divorce and Separation § 526 (2009). Discretionary spending might be ill-advised, but unlike dissipation, discretionary spending is typical of the parties'

> expenditures throughout the course of the marriage. *Burden*, 250 S.W.3d at 919–20.

Larsen-Ball v. Ball, 301 S.W.3d 228, 235 (Tenn. 2010). Whether dissipation has occurred is a fact-specific analysis, but the most common factors to consider include:

> (1) whether the expenditure benefitted the marriage or was made for a purpose entirely unrelated to the marriage; (2) whether the expenditure or transaction occurred when the parties were experiencing marital difficulties or were contemplating divorce; (3) whether the expenditure was excessive or de minimis; and (4) whether the dissipating party intended to hide, deplete, or divert a marital asset.

Altman, 181 S.W.3d at 682 (footnote omitted) (citing *Halkiades v. Halkiades*, No. W2004-00226-COA-R3-CV, 2004 WL 3021092, at *4 (Tenn. Ct. App. Dec. 29, 2004)).

Here, Husband is hoist with his own petard. It is undisputed that Husband gave the three antique cars to the parties' sons, respectively, just days after Wife filed for divorce in August of 2019.[14] Husband admitted at trial that he made at least one of the transfers to keep the cars away from Wife's "paramour":

> A. I told [Wife] I built it for her. It was never titled in anyone's name.
>
> Q. And now you've given that vehicle to one of your other sons, correct?
>
> A. I didn't want [Wife's paramour] driving something that I built.
>
> Q. So rather than having it be a part of the marital assets of this case, you gave it to your son to try to prevent it from being divided in some way in this marital estate?
>
> A. I would rather my son have that vehicle than [Wife's paramour].
>
> * * *
>
> Q. What did you tell your three boys about giving them those vehicles?
>
> A. I just told them I wanted them to have them.

[14] The parts Husband used to build all three cars were acquired during the marriage. Husband does not argue on appeal that the cars are separate property.

Q. Did they know you were going through a divorce with their mother?

A. Yes, they knew that.

Husband also testified that he did not discuss making the transfers with Wife prior to doing so. Under all of these circumstances, it is clear that Husband made the transfers for reasons unrelated to the marriage, and after his relationship with Wife was "irretrievably broken." *Larsen-Ball*, 301 S.W.3d at 235 (quoting *Broadbent*, 211 S.W.3d at 220). Husband disputes this in his brief, arguing that the parties attempted to reconcile after Wife dismissed the 2019 divorce. Nonetheless, Husband's own testimony at trial belies that claim, inasmuch as Husband admitted to giving the cars to his sons to keep them away from Wife because Husband suspected or knew of Wife's affair. Husband also argues on appeal that the current divorce was not pending when the transfers were made; nonetheless, section 36-4-121(c)(5)(B) provides that dissipation can occur "either before or after a complaint for divorce or legal separation has been filed." As such, we are unpersuaded by this argument.

The trial court erred in rejecting Wife's argument that Husband dissipated marital assets, and the trial court should have considered this dissipation by Husband in its distribution of property.[15] While the trial court valued the Bronco at $100,000 based upon Husband's testimony, the trial court did not value the Corvette or the Bel Air, as it determined that none of the vehicles belonged to the marital estate. The trial court must determine the value of the Corvette and the Bel Air on remand.

3. The "Ghost House"

The parties purchased the Ghost House, which is located in Alabama, in 2018 for use as a hunting property for the parties' sons. While there is no dispute the Ghost House is marital property, Wife agues on appeal that the trial court's assigned value of $30,000 is in error.

> In the face of conflicting opinions regarding the value of a marital asset, the trial court may place a value on the asset that is within the range of the values presented by the competent evidence. *Kinard v. Kinard*, 986 S.W.2d [220, 231 (Tenn. Ct. App. 1998)]; *Wallace v. Wallace*, 733 S.W.2d [102, 107 (Tenn. Ct. App. 1987)]. Since valuation evidence is inherently subjective, a trial court's valuation decisions need not coincide precisely with the valuation opinions offered into evidence. *Waits v. Waits*, No.

[15] Wife also argued that the car transfers were fraudulent conveyances. Having determined that Husband dissipated marital assets by giving away the cars, however, we need not address this argument.

01A01-9207-CV-00288, 1993 WL 49564, at *3 (Tenn. Ct. App. Feb. 26, 1993) (No Tenn. R. App. P. 11 application filed).

Owens, 241 S.W.3d at 489. The value given an asset by the trial court is a question of fact that we afford "great weight on appeal." *Powell v. Powell*, 124 S.W.3d 100, 103 (Tenn. Ct. App. 2003) (citing *Wallace v. Wallace*, 733 S.W.2d 102, 107 (Tenn. Ct. App. 1987)); *see also Byrd v. Byrd*, No. W2021-00926-COA-R3-CV, 2022 WL 16548578, at *22 (Tenn. Ct. App. Oct. 31, 2022), *no perm. app. filed*, ("When it comes to the valuation of marital interests, 'the applicable standard of review is deferential.'" (quoting *Telfer v. Telfer*, 558 S.W.3d 643, 656 (Tenn. Ct. App. 2018))).

An asset's value is assigned "by considering all relevant evidence regarding value[,]" keeping in mind that the parties bear the burden of producing competent evidence of value. *Powell*, 124 S.W.3d at 104. When the parties offer conflicting evidence of value, the trial court "may assign a value that is within the range of values supported by the evidence." *Id.* at 106 (citing *Ray v. Ray*, 916 S.W.2d 469, 470 (Tenn. Ct. App. 1995)).

In this case, the parties disagree about the value of the Ghost House because it is undisputed that they made improvements to the house following the purchase. Husband testified that the parties paid $29,500 for the house and put $20,000 to $25,000 towards improvements. Improvements included a new roof, vinyl siding, adding a porch, and interior painting. Husband maintained that because the improvements only served to make the house livable, he believed the value was only $30,000. Wife disagreed, testifying as follows:

> Q. Now, yesterday, if I understood you correctly on number 2, the ghost house, where you said there was $125,000 in improvements, just where did you get that knowledge?
>
> A. $75,000 of it was knowledge from seeing it coming out of our line of credit.
>
> Q. Okay. And the other 50,000, where did --
>
> A. The other $50,000 honestly was a guess, and probably a generous one.

Wife presented no other evidence regarding the value of the Ghost House, and she admitted that she does not have access to the house. The trial court credited Husband's testimony regarding the Ghost House over Wife's.

In light of the deferential standard of review we apply to valuation of assets, we take no issue with the trial court's finding. As a whole, the record demonstrates that Husband

has more knowledge of the parties' finances and assets, and the Ghost House is no different. Wife admitted that she was, at least in part, guessing with regard to her proposed value of the Ghost House, and there is nothing in the record suggesting that Husband's testimony on this particular topic is not credible. Accordingly, we affirm the trial court's finding that the Ghost House is a marital asset worth $30,000.

C. Equitable distribution of the marital estate

Wife next argues that the trial court did not equitably divide the marital estate. Wife notes that Husband leaves the marriage with substantially more separate property than Wife, who has zero separate property, and that Husband has a higher income earning ability than Wife.

"The division of marital property is essentially a three-step process." *Melvin v. Johnson-Melvin*, No. M2004-02106-COA-R3-CV, 2006 WL 1132042, at *10 (Tenn. Ct. App. Apr. 27, 2006) (Koch, J. concurring). The first step, which we have already addressed, requires the trial court to classify the parties' property as separate or marital, and the second step is to value the marital property. *Id.* The final step is to equitably divide the marital property in accordance with the factors provided in Tennessee Code Annotated section 36-4-121(c). *Id.* "Following this approach generally yields consistent and equitable results." *Id.* In dividing a marital estate, trial courts have broad discretion but are guided by the statutory factors provided in Tennessee Code Annotated section 36-4-121(c). *Hill*, 2023 WL 3675829, at *12. The applicable version of section 36-4-121(c) 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)(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 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;
> (B) For purposes of this subdivision (c)(5), dissipation of assets means wasteful expenditures which reduce the marital property available for

> equitable distributions and which are made for a purpose contrary to the marriage either before or after a complaint for divorce or legal separation has been filed;
> (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, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;
> (10) In determining the value of an interest in a closely held business or similar asset, all relevant evidence, including valuation methods typically used with regard to such assets without regard to whether the sale of the asset is reasonably foreseeable. Depending on the characteristics of the asset, such considerations could include, but would not be limited to, a lack of marketability discount, a discount for lack of control, and a control premium, if any should be relevant and supported by the evidence;
> (11) The amount of social security benefits available to each spouse; and
> (12) Such other factors as are necessary to consider the equities between the parties.
>
> Appellate courts
>
> give great weight to [a] trial court's division of marital property and "'are disinclined to disturb the trial court's decision unless the distribution lacks proper evidentiary support or results in some error of law or misapplication of statutory requirements and procedures.'" *Keyt v. Keyt*, 244 S.W.3d 321, 327 (Tenn. 2007) (quoting *Herrera v. Herrera*, 944 S.W.2d 379, 389 (Tenn. Ct. App. 1996)).

Larsen-Ball, 301 S.W.3d at 234.

In this case, however, there are several problems with the trial court's division of the parties' marital estate. First, several high-value assets were misclassified. Because the parties' prenuptial agreement is invalid, there remains an outstanding question as to Wife's potential interest in B&B. While a portion of Husband's interest in B&B is premarital, Wife may have an interest in the "increase in the value during the marriage" if Wife "substantially contributed to its preservation and appreciation." Tenn. Code Ann. § 36-4-121(b)(1)(B)(i). And "'substantial contribution' may include, but not be limited to, the direct or indirect contribution of a spouse as homemaker[.]" *Id.* § 36-4-121(b)(1)(D). Moreover, Husband acquired more of an interest in B&B during the marriage once Husband's father passed away. Consequently, depending upon how Husband acquired the

rest of his interest in B&B, that portion may be marital property. If it is separate property by way of inheritance, the same question regarding Wife's substantial contribution also applies to any increase in value. *See id.* It is undisputed that the increase in value of Husband's shares in B&B is $992,750.

Moreover, we have also determined that Husband dissipated marital assets by giving away three antique cars to the parties' sons after Wife filed for divorce in August of 2019. While the value of the three cars was not settled by the trial court, the parties seem to agree that one of the cars alone is worth $100,000. Consequently, over a million dollars in assets remain to be addressed by the trial court.

This Court takes different approaches when reviewing cases in which the classification of major assets changes on appeal. In some situations, the entire marital estate distribution is vacated and remanded because the "addition[s] to the marital estate may change the manner in which the trial court would choose to divide the rest of the parties' assets and debts." *Hayes v. Hayes*, No. W2010-02015-COA-R3-CV, 2012 WL 4936282, at *13 (Tenn. Ct. App. Oct. 18, 2012); *see also Smith*, 93 S.W.3d at 880 (remanding in order for the trial court to reconsider its equitable distribution of the parties' marital property where holdings on appeal reduced size of marital estate and significantly increased the value of one party's separate property); *Anderson*, 2019 WL 3854663, at *10 (following the change in classification of a large tract of land, we explained that on remand "the trial court should also consider whether the change in value necessitates a revision of the equitable division of the marital estate and, if so, enter judgment accordingly"); *Dover*, 2020 WL 7224368, at *13 (vacating and remanding ruling on division of property where "several assets of substantial value have changed classification on appeal").

Under other circumstances, we reversed the classification of particular assets and remanded for the trial court to "equitably divide the [assets] at issue according to the factors set forth in Tenn. Code Ann. § 36-4-121(c)." *Law v. Law*, No. E2021-00206-COA-R3-CV, 2022 WL 1221084, at *20 (Tenn. Ct. App. Apr. 26, 2022), *no perm. app. filed.* We explained that "[i]n doing so, the trial court must consider those assets already awarded to the parties and not addressed [on] appeal." *Id.* On the other hand, we have previously adjusted the division of a marital estate following our decision to reclassify certain assets on appeal. *See Fox*, 2006 WL 2535407, at *8–9 (increasing the wife's award of marital assets from 52.4% of the marital estate to 74.5% of the marital estate).

As such, how to deal with the overall division of a marital estate following the reclassification or revaluation of assets is within this Court's discretion. In this case, the assets to be divided are high value and require further consideration, especially the B&B stock. Thus, under the particular circumstances of this case, we deem it prudent to vacate and remand for a new and equitable division of the marital estate.

D. Alimony

1. Alimony in futuro

Wife next argues that the trial court erred in awarding Wife $1,816.34 per month in alimony *in futuro*. However, we conclude that because the trial court erred in its classification of major assets and must reconsider equitable division of the marital estate on remand, the spousal support determination should also be vacated and remanded.

When a trial court determines whether and to what extent alimony is appropriate, it must apply the statutory factors enumerated in Tennessee Code Annotated section 36-5-121(i). Rather than tax the length of this opinion with a discussion of these factors, we note at the outset that one of the alimony factors is "[t]he provisions made with regard to the marital property, as defined in § 36-4-121[.]" Tenn. Code Ann. § 36-5-121(i)(8). The trial court must consider the manner in which the marital estate is divided when determining alimony, and "the trial court may award spousal support only after the court has equitably divided the parties' marital property...." *Trezevant v. Trezevant*, 568 S.W.3d 595, 624 (Tenn. Ct. App. 2018); *see also Dover*, 2020 WL 7224368, at *16 (vacating and remanding for reconsideration of spousal support where classification of several major assets was reversed). As such, it is sometimes necessary to remand a trial court's decision on alimony "by virtue of the need to re-evaluate the marital estate." *Trezevant*, 568 S.W.3d at 624.

In the present case, our decision to remand this matter for reconsideration of the division of marital property substantially alters the equities between the parties. Accordingly, Wife's need for, and Husband's ability to pay, alimony may change on remand. Consequently, we vacate and remand the trial court's decision as to Wife's award of alimony *in futuro* to be reconsidered once the marital estate is equitably divided.

2. Alimony in solido

Wife also argues that the trial court erred in refusing to grant Wife her attorney's fees as alimony in solido. The trial court found that "[g]iven the evidence presented and in light of the allocation of marital debts noted above, the Court declines to award a separate *alimony in solido* award for attorneys fees to either party."

The applicable version of Tennessee Code Annotated section 36-5-121 provides that "[a]limony in solido, also known as lump sum alimony, is a form of long term support" that "may include attorney fees, where appropriate." Tenn. Code Ann. § 36-5-121(h)(1).

Under this version of the statute,[16] "the court's decision must be guided by consideration of the relevant statutory factors." *Webb v. Webb*, No. W2021-01227-COA-R3-CV, 2023 WL 568331, at *4 (Tenn. Ct. App. Jan. 27, 2023), *no perm. app. filed* (citing *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 113 (Tenn. 2011); Tenn. Code Ann. § 36-5-121(i)). The two most important considerations are need and ability to pay. *Webb*, 2023 WL 568331, at *4 (citing *Gonsewski*, 350 S.W.3d at 110). We review the trial court's decision under the "deferential abuse of discretion standard." *Id.*

As with the award of alimony in futuro, it is prudent under the circumstances to vacate the trial court's decision regarding Wife's request for alimony in solido. Again, the equities between the parties are likely to change following a new division of marital property, and the trial court must consider "[t]he provisions made with regard to the marital property, as defined in § 36-4-121[.]" Tenn. Code Ann. § 36-5-121(i)(8).

E. Remaining issues

1. Husband's expert witness fees

Wife next argues on appeal that the trial court "erred by accounting for a marital debt twice," in reference to Husband's attorney's fees and expert witness fees. Husband's income and expense sheet shows that at the time of trial, Husband had $65,000 in outstanding attorney's fees. Husband testified that his expert cost $40,000 and that Husband had taken out a personal line of credit to pay the expert. Husband still owed $35,000 on the line of credit, which had a high interest rate. However, the expert was paid in full by the time of trial.

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[16] Section 36-5-121 was amended after Wife filed the operative complaint for divorce. While attorney's fees are still awardable as alimony in solido under the amended version of section 36-5-121, the courts must consider the following factors in making such an award:

> (i) The factors enumerated in subsection (i);
>
> (ii) The total amount of attorney fees and expenses incurred and the total amount of attorney fees and expenses paid by each party in connection with the proceedings;
>
> (iii) Whether the attorney fees and expenses requested are reasonable under the factors set forth in Rule 1.5 of the Tennessee Rules of Professional Conduct; and
>
> (iv) Whether the attorney fees and expenses were necessary.

This amendment does not affect Wife's request for alimony in solido, as we apply the version of section 36-5-121 in effect when the complaint was filed. *See Long*, 642 S.W.3d at 825; *Webb*, 2023 WL 568331, at *4 n.5.

In its final order, the trial court found that Husband owed $35,000 on the line of credit and "approximately $80,000.00 in fees incurred by him in this litigation." Accordingly, Wife maintains that the trial court increased Husband's litigation costs by adding $15,000 to $65,000, despite the fact that Husband had paid off the remaining $15,000 owed to his expert by the time of trial. Wife thus asserts that the trial court gave Husband credit for a "phantom debt that was not owing."

Husband does not necessarily dispute Wife's contention on appeal. Rather, Husband asserts that

> the Trial Court should have accounted for Wife's expenditure of $25,000 of marital funds for her attorney's fees and expert fees during this litigation and before trial.
>
> * * *
>
> Wife received a total of $25,000 in marital funds during the litigation that Wife used to pay her attorney and her expert. However, Wife was not charged with the receipt of these funds in the division of the marital estate.
>
> As a result, any error of the trial court in regard to accounting should be offset by the $25,000 Wife received.

Consequently, Husband concedes that the trial court made a mathematical error in calculating his debt, but he asserts that it is harmless error. Inasmuch as we have already determined that the trial court's division of the parties' marital estate should be vacated and remanded, the trial court will also have to consider allocation of the parties' debt on remand. Wife is thus free to raise this argument on remand.

2. Wife's appellate attorney's fees

Finally, Wife asserts that she is entitled to her attorney's fees incurred on appeal. "The determination of whether to award attorney's fees on appeal is within the sole discretion of the appellate court." *Trezevant*, 568 S.W.3d at 641 (citing *Moses v. Moses*, No. E2008-00257-COA-R3-CV, 2009 WL 838105, at *10 (Tenn. Ct. App. Mar. 31, 2009)).

> When considering a request for attorney's fees on appeal, we also consider the requesting party's ability to pay such fees, the requesting party's success on appeal, whether the requesting party sought the appeal in good faith, and any other equitable factors relevant in a given case."

Cooley v. Cooley, 543 S.W.3d 674, 688 (Tenn. Ct. App. 2016) (citing *Chaffin v. Ellis*, 211 S.W.3d 264, 294 (Tenn. Ct. App. 2006)).

In this case, Wife prevailed on most of the issues raised in her appeal, and the issues were raised in good faith. On the other hand, Husband prevailed on one issue, and several rulings are vacated and remanded for further consideration. Thus, we conclude, in our discretion, that Wife is not awarded her appellate attorney's fees.

CONCLUSION

The judgment of the Chancery Court for Hamilton County is hereby affirmed in part, reversed in part, and vacated in part; and this case is remanded for further proceedings consistent with this opinion. Costs on appeal are assessed to the appellee, James Michael Booker, for which execution may issue if necessary.

KRISTI M. DAVIS, JUDGE