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

NIKITA R. THOMAS v. DONALD L. SMITH

Appeal from the Chancery Court for Cumberland County
No. 2021-CH-2011 Ronald Thurman, Chancellor

No. E2022-00964-COA-R3-CV

In this real property dispute, the petitioner brought an action to quiet title to and remove the respondent from a parcel of improved real property located in Cumberland County. Following a bench trial, the trial court ordered that the title of the property be fully vested in the petitioner. The trial court also ordered the respondent to vacate the premises within ten days. Following a damages hearing, the trial court entered an order awarding to the petitioner $8,000 in compensatory damages and $1,000 in attorney's fees. The respondent has appealed, and the petitioner has raised an issue alleging that this is a frivolous appeal. Because we are unable to discern from the trial court's judgment any consideration of the Tennessee Supreme Court Rule 8, Rule of Professional Conduct 1.5 factors ("RPC 1.5 factors"), we vacate the award of attorney's fees and remand for the trial court to make a new determination of a reasonable attorney's fee award to the petitioner based on the RPC 1.5 factors. We deny the petitioner's request for damages on appeal. We affirm the trial court's judgment in all other respects.

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

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

Scott D. Hall, Sevierville, Tennessee, for the appellant, Donald L. Smith.

Samantha I. Ellis, Knoxville, Tennessee, for the appellee, Nikita R. Thomas.

OPINION

I. Factual and Procedural Background

This case focuses on two competing deeds conveying ownership of a parcel of improved real property located in Crossville, Tennessee ("the Property"). The petitioner, Nikita R. Thomas, filed a petition on April 22, 2021, in the Cumberland County Chancery Court ("trial court"), seeking to quiet title to the Property. She also sought to remove the respondent, Donald L. Smith, who had been residing on the Property for several years. Ms. Thomas asserted ownership via a warranty deed ("the Warranty Deed") that was executed and recorded in July 2014. She alleged that Mr. Smith had fraudulently prepared a quitclaim deed ("the Quitclaim Deed"), dated 2012 and recorded in 2017, conveying title to the Property from Ms. Thomas to him. Ms. Thomas attached copies of both deeds to her petition. She requested that the trial court declare the Quitclaim Deed null and void, vest the Property solely in her name, order Mr. Smith "removed" from the Property, and award damages, including unspecified attorney's fees, to her.

Mr. Smith filed an "Answer and Counterpetition" on July 14, 2021, denying the fraud allegations, generally denying that Ms. Thomas was entitled to any relief, and requesting attorney's fees and expenses. In what he then entitled a "Countercomplaint" in the same pleading, Mr. Smith sought an absolute divorce from Ms. Thomas. However, Ms. Thomas had averred in her complaint that although the parties had been married previously, they had been divorced in 2004. Ms. Thomas filed an answer to the counter-complaint on August 17, 2021, stating that there was no pending divorce and asking that the counter-complaint be dismissed for failure to state a claim upon which relief may be granted.

The trial court conducted a bench trial on May 13, 2022. Ms. Thomas and Mr. Smith were the only witnesses who testified at trial. Ms. Thomas testified that she had been married to Mr. Smith from 2000 to 2004 and that they had previously resided in Florida. According to Ms. Thomas, the parties had divorced due to Mr. Smith's having an affair, and Mr. Smith had subsequently moved to Tennessee with his mistress. Ms. Thomas explained that Mr. Smith and she entered into an oral agreement that he would use profits from real estate investments that he had sold to buy a home in Tennessee for Ms. Thomas and her children. Ms. Thomas stated that she and her children had relocated from Florida to the Property in Tennessee in 2007.

Ms. Thomas testified that "from 2007-2011, [Mr. Smith] was under contract [for the Property] with Judy Swallows." Ms. Thomas further explained that on December 1, 2011, she had contracted to purchase the Property as a sole owner via a lease-to-own

agreement ("the December Contract") with Ms. Swallows, averring that Mr. Smith had relinquished any rights in the Property. Ms. Thomas had attached a copy of the December Contract to her petition, and presented it, along with the two deeds at issue, as exhibits at trial. The December Contract is signed by both Ms. Thomas and Mr. Smith, and it contains a provision directly above their signatures stating: "Donald L. Smith joins in this instrument to release any interest he might have in the above described property by previous contract." Ms. Thomas was known as "Nikita R. Wisor" at the time, which is how she signed the December Contract.

Ms. Thomas testified that Mr. Smith had initially moved into the home on the Property in 2011 "because he and his mistress split up" and that "he told [her] that he would sleep on [the] couch until he found a place." According to Ms. Thomas, she acquired a mortgage solely in her name from US Bank in 2014 to purchase the Property. She presented a record of payments associated with this mortgage at trial. She stated that Mr. Smith and she "had an agreement" that he would pay $550 in monthly rent until their son graduated from high school. She acknowledged that Mr. Smith began paying rent in 2018 but stated that he made payments in different amounts from month to month and that she had to make up the difference in order to meet the mortgage payment.

Ms. Thomas further testified that on July, 8, 2014, Ms. Swallows, along with her husband Dale Swallows, acknowledged and delivered the Warranty Deed to Ms. Thomas. The Warranty Deed was executed on July 8, 2014, and recorded by the Cumberland County Register of Deeds on July 18, 2014. It conveyed title to the Property from the Swallowses to Ms. Thomas, vested solely as her property under the name of Nikita R. Wisor. Ms. Thomas also testified that in 2017, she had left the Property unwillingly due to Mr. Smith's threats of physical violence. She alleged that he had "changed the locks, and he changed the mailbox to a locked mailbox."

Mr. Smith testified that he had mistakenly signed away his rights to the Property in the December Contract. He asserted that unbeknownst to him, "in the very last paragraph [of the December Contract] the mortgage holder inserted language that said that I gave up all rights to the property," adding, "[t]his was not what [I] intended at all." Mr. Smith claimed that Ms. Thomas and he had executed the Quitclaim Deed in February 2012 in order to "remedy the situation." Mr. Smith recorded the Quitclaim Deed with the Register of Deeds on July 5, 2017. The Quitclaim Deed purportedly bore the signatures of Mr. Smith, Ms. Thomas, and a notary. However, the Quitclaim Deed contained two notary expiration dates and lacked any page numbers. Ms. Thomas testified during trial that she had never signed the Quitclaim Deed and that Mr. Smith was "known to forge documents." As the trial court noted in its final order, the legal description of the Property attached to and incorporated into the 2012 Quitclaim Deed referenced the 2014 Warranty Deed.

When Ms. Thomas's counsel questioned Mr. Smith regarding why he had waited over five years to record the Quitclaim Deed, he responded: "I was not sure how that process worked because I know nothing about it. I don't know about deeds."[1] When subsequently presented by Ms. Thomas's counsel with copies of four quitclaim deeds that Mr. Smith had recorded within a week's time in Florida in 2004, Mr. Smith responded: "I didn't do four. I actually did six quitclaim deeds." He then began laughing on the stand. Shortly thereafter, the trial court halted Mr. Smith's testimony, stating: "Get him off the stand! Draw up the Order. [The Quitclaim Deed] is as phony as a three-dollar bill. You're lucky I don't refer you to the State Attorney."

On May 27, 2022, the trial court entered an order declaring the Quitclaim Deed null and void, determining the Warranty Deed to be "in full force and effect," and finding title to the Property to be fully vested in Ms. Thomas. The court expressly found that Mr. Smith was not a credible witness. The May 2022 order also required Mr. Smith to leave the Property within ten days. Eleven days later, on June 7, 2022, the trial court issued a Writ of Possession to remove Mr. Smith from the Property, which was executed on June 8, 2022.

On the next day, June 9, 2022, the trial court conducted a hearing concerning damages. Ms. Thomas, Mr. Smith, and their son, Ryan Wisor, who had been living with Mr. Smith, were the only witnesses who testified at this hearing. During her testimony, Ms. Thomas referenced photographs of the Property that she stated were stored on her cell phone.[2] She described:

> [T]he house was filthy, the carpets in all bedrooms smelled so bad of mildew they had to be removed. There was mildew underneath on the subflooring. The upstairs toilet was leaking sewage and was dripping down to the first floor that had caused mildew and damaged walls. The downstairs shower was leaking from the faucets. The outside faucet was stripped and was leaking. All this water had created a major mildew issue. All the appliances were taken from my home. Large hole in ceiling and large gouges in walls. Carpet had grease stains and wood floor had large scratches in them. The air conditioning unit is not working. Screens are missing from windows and porch screen had holes and tears in them. Cut

[1] As will be explained more fully through subsequent procedural history in this Opinion, no verbatim transcripts of the trial proceedings are in the appellate record. The quotations of testimony included here are taken from a statement of the evidence submitted by Ms. Thomas and approved by the trial court, with revisions made, pursuant to Tennessee Rule of Appellate Procedure 24.

[2] It appears from the record that these photographs were never introduced into evidence.

> plumbing pipes upstairs. Hot water tank is leaking on the floor in laundry room. Gutters are damaged outside. Porch steps are damaged and rotted out from all the water pouring on them due to gutters. Outside there are broken down vehicles, tires, large signs, screen doors, and windows. It looks like a junk yard out there.

When Ms. Thomas's counsel asked Ms. Thomas how much she thought it would cost to replace the damaged items, Mr. Smith's counsel objected regarding Ms. Thomas's qualification to testify as to the estimates, and the trial court overruled the objection. Ms. Thomas presented an itemized list of costs for repairs, replacements, and unpaid rent payments due from Mr. Smith. She stated that she had researched the cost of replacement appliances the night before but would have to get professional estimates concerning the mildew damage. The record indicates that Ms. Thomas requested over $11,000 in total damages. She described the list as her "best estimate" because she had "just got into the house last night[.]"

During the hearing related to damages, Mr. Smith testified that he had "purchased the metal [roof] and gutters and installed them in 2013-2014." He also stated that "[t]he AC unit hasn't worked since 2012." Mr. Smith claimed that no mildew had been present in the house when he vacated it. As to the appliances, Mr. Smith maintained that all the appliances had been in the home while he was living there. He acknowledged that he had taken the appliances but added that he "replaced the refrigerator with one [he] had in storage." He acknowledged that he did not own the stove, washer, or dryer but asserted that he had purchased the other appliances, including the hot water tank. When questioned regarding why "the pipes in the upstairs bathroom [were] cut and stuffed with socks[,]" Mr. Smith replied: "There was a leak, and I didn't know how to fix it."

In response, Ms. Thomas presented a receipt indicating that "Jackson Heating & Cooling" had serviced the air conditioning unit in 2012 and 2013 and that it had been operating normally. Ms. Thomas also presented documents reflecting that the metal and gutters were purchased from "Watson's" on April, 25, 2014.

Lastly, Ryan Wisor testified. When responding to questions regarding the appliances, whether there was mildew in the house, when the roof was installed, and in response to many of the questions asked, Mr. Wisor simply answered, "I don't know." When questioned about the upstairs sink, he stated, "It is leaking." He also stated that the "[c]arpets were normal wear and tear, and the wood floor has a couple of scratches" and "[o]ne of the marks on the walls was from moving stuff out – I hit the wall with a dresser." Mr. Wisor further testified that he did not think anything was damaged intentionally. Finally, Mr. Wisor testified: "The old vehicles and tires are mine, and I'll move them. The rest of the stuff in the yard belongs to my dad."

In an order entered on June 23, 2022, the trial court directed Mr. Smith to pay Ms. Thomas $8,000 in compensatory damages and $1,000 in attorney's fees. The court also found, *inter alia*, that "[Mr. Smith's] testimony was no more credible at this hearing than it was at the last hearing." Mr. Smith subsequently filed a notice of appeal on July 18, 2022.

On September 15, 2022, Mr. Smith filed a statement of the evidence. On September 21, 2022, Ms. Thomas's trial counsel sought, with Ms. Thomas's consent, to withdraw as counsel on appeal. Ms. Thomas's appellate counsel filed a notice of appearance on September 27, 2022. Ms. Thomas subsequently filed a motion for extension of time with this Court on September 29, 2022, stating that she needed time "to file an objection and response to the statement of the evidence filed by [Mr.] Smith on September 15, 2022[.]" This Court entered an order on September 30, 2022, granting Ms. Thomas's motion for an extension and noting that her objections to Mr. Smith's statement of the evidence would be filed in the trial court. Following a hearing conducted on October 24, 2022, pursuant to Tennessee Rule of Appellate Procedure 24, the trial court approved a statement of the evidence that Ms. Thomas had filed as an alternative to Mr. Smith's initially submitted statement.

On November 3, 2022, Mr. Smith moved to correct and modify the statement of the evidence submitted by Ms. Thomas. He submitted handwritten changes to Ms. Thomas's statement, as well as typed pages from his own statement. He also requested that a printed transcript of a voicemail and an email exchange between his trial and appellate attorneys be introduced as exhibits. Ms. Thomas responded to Mr. Smith's motion on November 11, 2022. She asserted that his modifications were "inaccurate and conflicting" and "worse yet . . . unauthenticated and not certified as being a fair and accurate summary, in accordance with Rule 24(c) of Tennessee's Rules of Appellate Procedure." Ms. Thomas also asserted that Mr. Smith had failed to provide the court with an appropriate summary of the proceedings and was now "trying to get a second bite at the apple[.]" With her response, Ms. Thomas submitted a slightly revised statement of the evidence. The only revisions Ms. Thomas made were the inclusion of Mr. Smith's objection to Ms. Thomas's testimony regarding damages and a few minor words and phrases. Following a hearing, the trial court ultimately approved Ms. Thomas's revised statement of the evidence on November 29, 2022, pursuant to Tennessee Rule of Appellate Procedure 24, and this appeal proceeded.

II. Issues Presented

Mr. Smith presents the following issues for this Court's review, which we have reordered and restated slightly as follows:

1. Whether the trial court erred by finding that the Quitclaim Deed conveying title to the Property to Mr. Smith was null and void as a result of fraud.

2. Whether the trial court erred by discontinuing the trial and declining to allow Mr. Smith to present further evidence or explanation.

3. Whether the trial court erred by admitting Ms. Thomas's purported evidence of damages based on Ms. Thomas's testimony alone.

4. Whether the trial court erred by awarding attorney's fees to Ms. Thomas.

Ms. Thomas raises the following additional issue on appeal, which we have similarly restated:

5. Whether Ms. Thomas is entitled to damages, pursuant to Tennessee Code Annotated § 27-1-122, because this appeal is frivolous or taken solely for delay.

III. Standard of Review

We review a non-jury case *de novo* upon the record with a presumption of correctness as to the findings of fact unless the preponderance of the evidence is otherwise. *See* Tenn. R. App. P. 13(d); *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000). "In order for the evidence to preponderate against the trial court's findings of fact, the evidence must support another finding of fact with greater convincing effect." *Wood v. Starko*, 197 S.W.3d 255, 257 (Tenn. Ct. App. 2006). We review questions of law *de novo* with no presumption of correctness. *See Bowden*, 27 S.W.3d at 916 (citing *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 924 (Tenn. 1998)); *see also In re Estate of Haskins*, 224 S.W.3d 675, 678 (Tenn. Ct. App. 2006). The trial court's determinations regarding witness credibility are entitled to great weight on appeal and shall not be disturbed absent clear and convincing evidence to the contrary. *See Morrison v. Allen*, 338 S.W.3d 417, 426 (Tenn. 2011); *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002).

Regarding evidentiary issues this Court has explained:

> Trial courts are given wide latitude on evidentiary decisions and we will only overturn the trial court's decision upon a showing of an abuse of discretion. *Danny L. Davis Contractors, Inc. v. Hobbs*, 157 S.W.3d 414, 419 (Tenn. Ct. App. 2004). "The abuse of discretion standard requires us

> to consider: (1) whether the decision has a sufficient evidentiary foundation; (2) whether the trial court correctly identified and properly applied the appropriate legal principles; and (3) whether the decision is within the range of acceptable alternatives." *Id.* (citing *Crowe v. First Am. Nat'l Bank*, No. W2001-00800-COA-R3-CV, 2001 WL 1683710, at *9 (Tenn. Ct. App. Dec. 10, 2001)).

McGarity v. Jerrolds, 429 S.W.3d 562, 566 (Tenn. Ct. App. 2013). Likewise, this Court reviews a trial court's award of attorney's fees according to an abuse of discretion standard. *See Wright ex rel. Wright v. Wright*, 337 S.W.3d 166, 176 (Tenn. 2011).

IV. Quiet Title Action

The trial court found the Quitclaim Deed "to be as 'phony as a three-dollar ($3) bill'" and determined it "to be null and void and of no effect." Mr. Smith contends that the trial court erred in this finding because Ms. Thomas did not present clear and convincing evidence of forgery. Upon thorough review of the record and applicable authorities, we conclude that the trial court did not err in finding the Quitclaim Deed to be null and void by clear and convincing evidence.

"A forged deed is 'null and void upon its execution.'" *Mynatt v. Lemarr*, No. E2013-02347-COA-R3-CV, 2014 WL 4412346, at *9 (Tenn. Ct. App. Sept. 9, 2014) (quoting *Beazley v. Turgeon*, 772 S.W.2d 53, 59 (Tenn. Ct. App. 1988)). *See Tenn. State Bank v. Mashek*, 616 S.W.3d 777, 806 (Tenn. Ct. App. 2020) ("It is true that a forged signature on a deed invalidates the deed."). As our Supreme Court has explained:

> The Uniform Commercial Code does not define "forgery," and instead the courts look to the definition of the offense in the criminal code. *See McConnico v. Third Nat'l Bank*, 499 S.W.2d 874, 884-85 (Tenn. 1973).
>
> Under current law, a person commits forgery when he or she "forges a writing with intent to defraud or harm another." Tenn. Code Ann. § 39-14-114(a). Thus, a necessary element of the act of forgery is an intent to defraud. *State v. Rounsaville*, 701 S.W.2d 817, 819-20 (Tenn. 1985).

Bd. of Prof'l Responsibility v. Curry, 266 S.W.3d 379, 393 (Tenn. 2008) (footnote omitted). Tennessee Code Annotated § 39-14-114(b)(1)(A)(i) (2018) defines "forge" in relevant part as to "[a]lter, make, complete, execute or authenticate any writing so that it purports to [b]e the act of another who did not authorize the act[.]"

"The burden of proof necessary to establish forgery in order to set aside a written document is that of 'clear, cogent and convincing' evidence." *Chorazghiazad v. Chorazghiazad*, No. M2018-01579-COA-R3-CV, 2019 WL 1976032, at *9 (Tenn. Ct. App. May 3, 2019) (quoting *Estate of Acuff v. O'Linger*, 56 S.W.3d 527, 556 (Tenn. Ct. App. 2001)). Clear and convincing evidence eliminates any serious or substantial doubt concerning the correctness of the conclusions to be drawn from the evidence. *See Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992). It should produce in the fact-finder's mind a firm belief or conviction with regard to the truth of the allegations sought to be established. *In re Estate of Armstrong*, 859 S.W.2d 323, 328 (Tenn. Ct. App. 1993); *Brandon v. Wright*, 838 S.W.2d 532, 536 (Tenn. Ct. App. 1992); *Wiltcher v. Bradley*, 708 S.W.2d 407, 411 (Tenn. Ct. App. 1985). In evaluating whether a deed has been forged, this Court has utilized "the testimony and evidence including the attendant circumstances surrounding the drafting and signing of the Quitclaim Deed, as well as the Trial Court's credibility determinations[.]" *Chorazghiazad*, 2019 WL 1976032, at *1.

Mr. Smith argues that Ms. Thomas's evidence did not meet the clear and convincing standard required for forgery. He relies on *Mynatt*, claiming that under Tennessee law, a notary's acknowledgement on a deed cannot "be overthrown by the unsupported testimony of the grantor[.]" *See Mynatt*, 2014 WL 4412346, at *7 (quoting *Kyle v. Kyle*, 74 S.W.2d 1065, 1067 (Tenn. Ct. App. 1934)). However, the full context of that passage, which was originally from *Kyle v. Kyle*, 74 S.W.2d 1065, 1067-68 (Tenn. Ct. App. 1934) and was quoted in full with approval in *Mynatt* is as follows:

> In Kennedy v. Security Building & Savings Association . . . it was held that a deed of trust should not be set aside on the unsupported testimony of the complainant, a married woman, that she did not appear before the officer and acknowledge the deed, and that his certificate was false. The notary public taking the acknowledgment acts judicially and the duty is imposed upon him by law of ascertaining the truth of the matters about which he is to certify. In the opinion in that case it is recited that in Lickmon v. Harding, 65 Ill. 505, a deed properly certified and acknowledged on its face was assailed on the ground that the certificate of acknowledgment was false and a forgery, and that the party never appeared before the officer; that the Court held that the certificate could not be overthrown by the unsupported testimony of the grantor, saying: "Public policy requires that such an act should prevail over the unsupported testimony of an interested party, otherwise there would be but slight security in titles to land. If the magistrate, in taking the acknowledgment, acts judicially, the duty is imposed upon him by law of ascertaining the truth of the matters about which he is certifying. Parties act on the faith of

> this certificate, and, in the absence of fraud and collusion, it must be entitled to full credit."
>
> In this state it has been definitely held that the act of the certifying officer is in the nature of a judicial act, an essential part of the conveyance, and the probate of it can only be attack[ed] for fraud. *Shields v. Netherland*, 73 Tenn. 193, 5 Lea. 193.

Mynatt, 2014 WL 4412346, at *7 (emphasis added) (quoting *Kyle*, 74 S.W.2d at 1067-68). In *Kyle*, this Court refused to find that a certified deed had been forged based solely on the grantor's testimony that he had not signed it when "[t]he deed in question dated May 13, 1916, is in all respects regular on its face." *Kyle*, 74 S.W.2d at 1068 (emphasis added).

Similarly, in *Mynatt*, a father had executed a deed, which the son disputed. *Mynatt*, 2014 WL 4412346, at *7. The father had passed away, and a handwriting expert testified that the signature on the disputed deed was not the father's. *Id.* at *4-5. The trial court found that the deed was not forged, reasoning:

> This Court is convinced that if the grantor himself cannot overthrow a deed by testifying that he did not appear before the notary and that he did not sign the deed, the same result must follow when a expert witness, based upon his examination of the document, testified that someone else must have signed the deed because it could not have been signed by the grantor.

Id. at *7. In affirming the trial court's ruling, this Court relied on the trial court's appraisal of the witnesses, stating "The uncontroverted proof reveals that Father was physically present at the execution of the 1991 deed." *Id.* at *9.

In contrast, the Quitclaim Deed in the case at bar is undeniably not regular on its face. First, the Quitclaim Deed, purportedly executed on February 3, 2012, references the Warranty Deed, which was executed on July 8, 2014. The derivation clause is typed using a different font than any other text in the Quitclaim Deed and reads as follows:

> Being the same property conveyed to Nikita R. Wisor by virtue of a Warranty Deed dated July 8, 2014 from Judy G. Swallows and husband, Dale A. Swallows, of record in Book 1433, Page 1673, Register's Office, Cumberland County, Tennessee.

Both Mr. Smith's testimony and the deed itself reflect that he prepared the Quitclaim Deed. According to the record, Mr. Smith did not explain why a deed executed in 2012

would include language indicating the exact book and page numbers of a deed recorded in 2014.

Furthermore, the notary's acknowledgment on the Quitclaim Deed is also irregular on its face. Tennessee Code Annotated § 8-16-115 (2016) states:

> Every certificate of acknowledgement officially executed by a Tennessee notary public shall include the true date of the notary's commission expiration. Failure to include the commission expiration date shall not render void or invalidate such certificate of acknowledgement.

However, the Quitclaim Deed does not lack an expiration date but rather bears two conflicting expiration dates. One commission expiration date, which appears adjacent to the notary's seal stamp, is clearly dated December 8, 2018. The second expiration date, which appears just below the notary's signature, is dated January 7. For this second date, however, the handwriting is not perfectly legible regarding its year. In her brief, Ms. Thomas avers that the year is 2015, but no evidence at trial established this fact. For our analysis, although the conflicting expiration dates are concerning, the unproven year of this commission expiration date is not dispositive of this issue. Tennessee Code Annotated § 8-16-103 (2016) provides: "The term of office of notaries public shall be four (4) years, such term to begin on the date of the issuance of their commissions by the governor." The Quitclaim Deed bears an execution date of February 3, 2012. Accordingly, if the notary had received her commission the day that the Quitclaim Deed had been executed, the latest possible notary commission expiration date would have been approximately February 3, 2016. Mr. Smith did not offer any evidence justifying the commission expiration date of December 2018.

In its May order to quiet title, the trial court found that Mr. Smith "had no credibility as a witness." We reiterate that we defer to the trial court's findings regarding the credibility of witnesses. *See Morrison*, 338 S.W.3d at 426; *Jones*, 92 S.W.3d at 838. Moreover, the record supports the trial court's credibility finding. On cross-examination, Mr. Smith claimed that he had paid all the bills and paid for repairs to the house. When presented with several documents indicating that Ms. Thomas had paid for the installation of a hot water tank and heating and air conditioning maintenance and that all utilities had been in her name, Mr. Smith offered no explanation.[3] Mr. Smith also testified that he had signed the December Contract but at the time had been unaware of the clause releasing him of any interest in the Property. He further claimed that a few months later, in February 2012, Ms. Thomas and he had executed the Quitclaim Deed to "remedy the situation." Mr. Smith testified that the reason he had not recorded the

[3] We note that these documents regarding the utilities were not admitted as exhibits.

Quitclaim Deed for approximately five years was because he lacked knowledge about the recording process. However, in response to Ms. Thomas's counsel's question regarding four quitclaim deeds that Mr. Smith had recorded in Florida in 2004, Mr. Smith stated: "I didn't do four. I actually did six quitclaim deeds." It was at this point that Mr. Smith began to laugh on the witness stand and, according to the statement of the evidence, continued to laugh even after the trial court terminated his testimony.

Regarding circumstances attendant to the execution and recordation of the deeds at issue, Ms. Thomas recorded the Warranty Deed in the same month as its execution. However, Mr. Smith waited five years to record the Quitclaim Deed even though, per his own testimony, he had experience registering deeds in Florida. Mr. Smith's recording of the Quitclaim Deed coincided with Ms. Thomas's vacating the Property in 2017. Ms. Thomas testified that she had not left the Property willingly and had been forced out by Mr. Smith's threats. Ms. Thomas owed a mortgage encumbering the Property while Mr. Smith did not. Moreover, the 2012 Quitclaim Deed explicitly referenced the Warranty Deed two years prior to the Warranty Deed's existence.

Based upon the face of the Quitclaim Deed, testimonies of the parties, attendant circumstances, and the trial court's credibility findings, we agree with the trial court that clear and convincing evidence proved the Quitclaim Deed to be a forgery, rendering it null and void. *See Chorazghiazad*, 2019 WL 1976032, at *1. Under the applicable statutory definition, Mr. Smith completed and executed the Quitclaim Deed so that it would purport to be the act of Ms. Thomas, and the trial court credited Ms. Thomas's testimony that she did not authorize that act. *See* Tenn. Code Ann. § 39-14-114(b)(1)(A)(i). Additionally, Mr. Smith's completion, execution, and recordation of the Quitclaim Deed evinced an intent to "'defraud or harm'" Ms. Thomas by depriving her of title to the Property. *See Curry*, 266 S.W.3d at 393 (quoting Tenn. Code Ann. § 39-14-114(a)). We affirm the trial court's ruling that Ms. Thomas's purported signature on the Quitclaim deed was a forgery.

V. Termination of Mr. Smith's Testimony

Mr. Smith contends that the trial court abused its discretion by terminating his testimony and thereby excluding additional testimony or other evidence he may have presented. In response, Ms. Thomas asserts that the trial court "properly exercised its discretion to limit Mr. Smith's testimony" when he began laughing on the stand concerning the various quitclaim deeds he had recorded in Florida. Furthermore, Ms. Thomas propounds that Mr. Smith failed to submit an offer of proof to indicate any additional proof he would have presented through his testimony. Upon careful review of the record, we agree with Ms. Thomas and discern no abuse of discretion in the trial court's limiting of Mr. Smith's testimony.

As this Court has previously explained concerning a trial court's exclusion of evidence:

> An erroneous exclusion of evidence requires reversal only if the evidence would have affected the outcome of the trial had it been admitted. *Pankow v. Mitchell*, 737 S.W.2d 293, 298 (Tenn. Ct. App. 1987). Reviewing courts cannot make this determination without knowing what the excluded evidence would have been. *Stacker v. Louisville & N. R.R. Co.*, 106 Tenn. 450, 452, 61 S.W. 766 (1901); *Davis v. Hall*, 920 S.W.2d 213, 218 (Tenn. Ct. App. 1995); *State v. Pendergrass*, 795 S.W.2d 150, 156 (Tenn. Crim. App. 1989). Accordingly, the party challenging the exclusion of evidence must make an offer of proof to enable the reviewing court to determine whether the trial court's exclusion of proffered evidence was reversible error. Tenn. R. Evid. 103(a)(2); *State v. Goad*, 707 S.W.2d 846, 853 (Tenn. 1986); *Harwell v. Walton*, 820 S.W.2d 116, 118 (Tenn. Ct. App. 1991). Appellate courts will not consider issues relating to the exclusion of evidence when this tender of proof has not been made. *Dickey v. McCord*, 63 S.W.3d 714, 723 (Tenn. Ct. App. 2001); *Rutherford v. Rutherford*, 971 S.W.2d 955, 956 (Tenn. Ct. App. 1997); *Shepherd v. Perkins Builders*, 968 S.W.2d 832, 833-34 (Tenn. Ct. App. 1997).
>
> As stated, an offer of proof must contain the substance of the evidence and the specific evidentiary basis supporting the admission of the evidence. Tenn. R. Evid. 103(a)(2). These requirements may be satisfied by presenting the actual testimony, by stipulating to the content of the excluded evidence, or by presenting an oral or written summary of the excluded evidence. Neil P. Cohen, *et al. Tennessee Law of Evidence* § 103.4, at 20 (3d ed. 1995).

Hampton v. Braddy, 270 S.W.3d 61, 65 (Tenn. Ct. App. 2007) (quoting *Thompson v. City of LaVergne*, No. M2003-02924-COA-R3-CV, 2005 WL 3076887, at *9 (Tenn. Ct. App. Nov. 16, 2005). "[T]he failure of [a party] to make an offer of proof constitutes a waiver of the right to challenge the exclusion of this testimony." *Id.* (emphasis added).

In the case at bar, there is no indication in the record that Mr. Smith made an offer of proof regarding excluded testimony or witnesses during trial. *See* Tenn. R. Evid. 103(a)(2). The record indicates that Mr. Smith raised no objection when removed as a witness and failed to allude to any other witnesses who would have testified. Mr. Smith did not describe the substance of any evidence or testimony that he was prevented from

presenting during trial or in his appellate brief.[4] During the November 2022 hearing regarding the statement of the evidence, the trial court stated: "I didn't preclude anyone from calling any other proof" and "I just said, I didn't need to hear any more of [Mr. Smith's] testimony because he was not credible." Inasmuch as Mr. Smith did not provide an offer of proof concerning what evidence his additional testimony may have provided, we conclude that he waived his right to challenge the exclusion of additional testimony or evidence on appeal. *See Hampton*, 270 S.W.3d at 65.

Furthermore, this case does not involve a trial court's entirely barring a witness from testifying. In fact, the trial court allowed Mr. Smith to testify extensively during trial. The record reveals that on direct examination, Mr. Smith answered several questions related to when he had resided at the Property, whether he had paid for the Property's utilities and repairs, and circumstances surrounding execution of the December Contract and Quitclaim Deed. However, on cross-examination, Mr. Smith contradicted himself regarding his knowledge of the recording process. The trial court subsequently ordered Mr. Smith removed as a witness, later explaining, "I didn't need to hear any more of his testimony because he was not credible." This statement implied that the trial court found it would have been a "waste of time" for the court to hear any more of Mr. Smith's testimony. *See* Tenn. R. Evid. 403. Mr. Smith was allowed to present his version of the events to the trial court, and the court only removed him as a witness when it determined that he was not credible. Given the specific circumstances of this case, we determine that the trial court did not abuse its discretion by terminating Mr. Smith's testimony when it did.

VI. Compensatory Damages

Mr. Smith also contends that the trial court erred in its award to Ms. Thomas of $8,000 in compensatory damages because Ms. Thomas's calculation of the damages was based on hearsay and lacked evidentiary support. Mr. Smith specifically argues that Ms. Thomas was not qualified to testify regarding damages to the Property because she "was not qualified as an expert in construction, home repair, and/or home maintenance" and provided no evidence that she had experience, knowledge, or training in home repair.

[4] During oral argument, Mr. Smith's counsel contended that had Mr. Smith not had his testimony terminated, he would have explained that he added the derivation clause to comply with a recording statute that had been passed subsequent to the purported 2012 execution of the Quitclaim Deed. However, because this argument was raised neither during trial nor in Mr. Smith's appellate brief, we decline to address it in this Opinion. *See Dorrier v. Dark*, 537 S.W.2d 888, 890 (Tenn. 1976) ("This is a court of appeals and errors, and we are limited in authority to the adjudication of issues that are presented and decided in the trial courts . . . ."); *see also Heatherly v. Merrimack Mut. Fire Ins. Co.*, 43 S.W.3d 911, 916 (Tenn. Ct. App. 2000) ("As a general matter, appellate courts will decline to consider issues . . . that were not raised and considered in the trial court.").

Ms. Thomas asserts that her testimony regarding damages "was based on her personal knowledge and did not require expert testimony" and that the compensatory damages award was supported by sufficient evidence. We agree with Ms. Thomas on this point and discern no abuse of discretion in the trial court's award of $8,000 in compensatory damages.

We emphasize that "[g]enerally, 'the admissibility of evidence is within the sound discretion of the trial court'" *Borne v. Celadon Trucking Services, Inc.*, 532 S.W.3d 274, 294 (Tenn. 2017) (quoting *Mercer v. Vanderbilt Univ., Inc.*, 134 S.W.3d 121, 131 (Tenn. 2004)). Concerning review of a damages award, this Court has explained:

> An award for damages requires proof of damages within a reasonable degree of certainty. *Western Sizzlin*, [*Inc. v. Harris*,] 741 S.W.2d [334,] 336 [(Tenn. Ct. App. 1987)] (citation omitted). "This 'reasonable certainty' standard applies to evidence regarding the existence of damages," not the "amount of damages." *Tennison Brothers v. Thomas*, No. W2016-00795-COA-R3-CV, 2017 WL 6403888, at *17-18 (Tenn. Ct. App. Dec. 15, 2017) (citing *Waggoner* [*Motors, Inc. v. Waverly Church of Christ*], 159 S.W.3d [42,] 58 [(Tenn. Ct. App. 2004)]).

Jones v. Reda Homebuilders, Inc., No. M2020-00597-COA-R3-CV, 2021 WL 2375883, at *2 (Tenn. Ct. App. June 10, 2021). "As to the amount of damages, '[w]hen there is substantial evidence in the record and reasonable inferences may be drawn from the evidence[,] mathematical certainty [as to the amount of damages] is not required.'" *Id.* at *3 (quoting *Cummins v. Brodie*, 667 S.W.2d 759, 765 (Tenn. Ct. App. 1983)).

As to whether a witness's personal knowledge is sufficient to testify, Tennessee Rule of Evidence 602 provides:

> A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness's own testimony. This rule is subject to the provisions of Rule 703 relating to opinion testimony by expert witnesses.

Although Mr. Smith appears to argue that expert witness testimony would be required to establish proof of damages in this matter, "[i]t has long been accepted as a general rule that a property owner's opinions as to such figures is competent proof of the owner's damages." *See Lee v. Stanfield*, No. E2008-02168-COA-R3-CV, 2009 WL 4250155, at *12 (Tenn. Ct. App. Nov. 30, 2009) (citing *Merritt v. Nationwide Warehouse Co.*, 605 S.W.2d 250, 256 (Tenn. Ct. App. 1980)).

Additionally, Tennessee Rule of Evidence 701 provides regarding a lay witness:

> (a) Generally. If a witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are
>
> (1) rationally based on the perception of the witness and
>
> (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.
>
> (b) Value. A witness may testify to the value of the witness's own property or services.

(Emphasis added.) As this Court has explained:

> In accordance with Tenn. R. Evid. 701, the fact that a witness is not qualified as an expert witness does not prevent that witness from rendering an opinion, so long as the court determines that the testimony is based on the perception of the witness and is helpful to an understanding of the testimony or the determination of the facts at issue.

Highlands Physicians, Inc. v. Wellmont Health Sys., 625 S.W.3d 262, 292 (Tenn. Ct. App. 2020) (quoting *Smartt v. NHC Healthcare/McMinnville, LLC*, No. M2007-02026-COA-R3-CV, 2009 WL 482475, at *18 (Tenn. Ct. App. Feb. 24, 2009)).

Although the case at bar is not a dispute involving marital property, we find this Court's decision in *Mikhail v. Mikhail*, No. M2021-00500-COA-R3-CV, 2023 WL 3855285, at *1 (Tenn. Ct. App. June 7, 2023) to be illustrative. In *Mikhail*, a divorce case, the husband disputed the trial court's valuation of certain marital property when the trial court "ultimately accepted Wife's value as well as her testimony about the home's need for extensive repairs." *Mikhail*, 2023 WL 3855285, at *6-7. Furthermore, the *Mikhail* trial court's finding that the residence needed $50,000 in repairs was based on testimony from the wife and the children, which the trial court had found to be credible while noting that the husband had offered no contrary evidence. *Id.* at *7. This Court affirmed, concluding: "Given the testimony about the condition of the marital residence as a whole, we cannot say that the evidence preponderates against the [trial] court's finding." *Id.*

In this case, the trial court stated in its June 2022 order that it was basing its ruling regarding the value of home repairs and household items on Ms. Thomas's testimony and that it had considered "the testimony of witnesses, arguments of counsel, the evidence presented, and the record as a whole." Ms. Thomas had resided at the Property from 2007 until 2017 and was found by the trial court to be its rightful owner. She testified that she had laid down new flooring in 2016 and had maintained the heating and cooling system annually. Mr. Smith acknowledged that Ms. Thomas owned the washer and dryer. The record provides sufficient evidence of Ms. Thomas's personal knowledge of the Property. *See* Tenn. R. Evid. 602.

At trial, Ms. Thomas requested over $11,000 in damages. The trial court determined $8,000 to be appropriate, setting the award well within the range of the evidence presented. In his testimony during the damages hearing, Mr. Smith disagreed with Ms. Thomas concerning the need for some of the repairs. However, the trial court expressly found in its order that "[Mr. Smith's] testimony was no more credible at this [damages] hearing [than] it was at [trial]." *See Morrison*, 338 S.W.3d at 426 ("Because trial courts are able to observe the witnesses, assess their demeanor, and evaluate other indicators of credibility, an assessment of credibility will not be overturned on appeal absent clear and convincing evidence to the contrary."). We determine that the trial court did not abuse its discretion in awarding to Ms. Thomas $8,000 in compensatory damages.

VII. Attorney's Fees at Trial

Mr. Smith asserts that the trial court erred by awarding to Ms. Thomas $1,000 in attorney's fees, arguing in part that because no statute or agreement between the parties provided for attorney's fees, no fees should have been awarded pursuant to the American rule. Mr. Smith also argues that the court erred because Ms. Thomas presented no evidence regarding "[h]ow the attorney fee was calculated, what it was based upon, the fee standard, and/or the attorney's standard fee." In response, Ms. Thomas argues that Mr. Smith waived this issue by failing to object to her request for attorney's fees before the trial court or object to the award during the damages hearing. Ms. Thomas also posits that as an exception to the American rule, attorney's fees may be awarded as damages when a party has claimed title to property in bad faith, and she asserts that there was "more than ample evidence in the record supporting the trial court's limited award of damages." We agree with Ms. Thomas that attorney's fees may be awarded as damages in an action such as the one at bar. However, we must agree with Mr. Smith that in entering the award, the trial court failed to provide an analysis of the RPC 1.5 factors that are to be utilized in determining a reasonable amount of attorney's fees.

At the outset, we address Ms. Thomas's argument that Mr. Smith waived the issue of the attorney's fees award. As Ms. Thomas notes, she requested damages, inclusive of

an unspecified amount of attorney's fees, in her petition. In his answer to the petition, Mr. Smith denied that Ms. Thomas was entitled to any relief and also requested damages inclusive of attorney's fees. We do not find that it was necessary for Mr. Smith to specifically "object" to Ms. Thomas's request for attorney's fees at the pleading stage in order to avoid waiving the issue in the future. Following trial, according to the statement of the evidence related to the damages hearing, the trial court entered its final order, inclusive of the $1,000 award of attorney's fees. The statement of the evidence does not indicate that Ms. Thomas presented any evidence specific to attorney's fees, and it is unclear when Mr. Smith's counsel would have objected to the $1,000 award prior to entry of the final judgment. We therefore determine Ms. Thomas's waiver argument concerning attorney's fees to be unavailing.

In considering claims for attorney's fees, Tennessee courts adhere to the "American rule," under which "a party in a civil action may recover attorney fees only if: (1) a contractual or statutory provision creates a right to recover attorney fees; or (2) some other recognized exception to the American rule applies, allowing for recovery of such fees in a particular case." *Cracker Barrel Old Country Store, Inc. v. Epperson*, 284 S.W.3d 303, 308 (Tenn. 2009). The Tennessee Supreme Court has elucidated why attorney's fees are generally not awarded to a party simply for prevailing:

> The American rule, which has been described by this Court as "firmly established in this state," *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 194 (Tenn. 2000), is based on several public policy considerations. First, since litigation is inherently uncertain, a party should not be penalized for merely bringing or defending a lawsuit. *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714, 718, 87 S. Ct. 1404, 18 L. Ed. 2d 475 (1967), *superseded by statute on other grounds*, Act of Jan. 2, 1975, Pub. L. No. 93-600, 88 Stat. 1955. Second, the poor might be unjustly discouraged from instituting actions to vindicate their rights if the penalty for losing included paying the fees of their opponent's lawyer. *Id.* Third, requiring each party to be responsible for their own legal fees promotes settlement. *Allstate Ins. Co. v. Huizar*, 52 P.3d 816, 818 (Colo. 2002). Fourth, the time, expense, and difficulty inherent in litigating the appropriate amount of attorney's fees to award would add another layer to the litigation and burden the courts and the parties with ancillary proceedings. *Fleischmann* [*Distilling Corp. v. Maier Brewing Co.*], 386 U.S. [714,] 718, 87 S. Ct. 1404 [(1967)]. Thus, as a general principle, the American rule reflects the idea that public policy is best served by litigants bearing their own legal fees regardless of the outcome of the case.

House v. Estate of Edmonson, 245 S.W.3d 372, 377 (Tenn. 2008).

Ms. Thomas's argument in support of the attorney's fee award focuses on a recognized exception to the American rule. It is undisputed that the parties had no contractual agreement regarding attorney's fees, and Ms. Thomas has not referenced any pertinent statutory provision. *See Cracker Barrel Old Country Store*, 284 S.W.3d at 308. Ms. Thomas relies on this Court's decision in *Kinzel Springs P'ship v. King*, No. E2008-01555-COA-R3-CV, 2009 WL 2341546, at *15 (Tenn. Ct. App. July 30, 2009), wherein this Court explained that "[a]n exception to the general [American] rule exists in cases involving libel of title" (footnote omitted). The *Kinzel Springs* Court quoted with approval this Court's previous rationale for why an exception to the American rule applies to libel of title actions but not those involving defamation of character:

> When a cloud has been cast upon the title to property . . . the sole way of dispelling another's wrongful assertion of title is by hiring an attorney and litigating. If the defamed party were to simply speak out in denial, as he might with a character attack, he could risk completely losing title by adverse possession. The plaintiffs here were forced into court by the defendants' actions. They were required to hire counsel, take depositions, arrange for court reporters, and run up numerous other expenses. These costs, which represented the only possible course of action to clear their title, flow directly and proximately from the defendants' conduct.

Id. at *16 (quoting *Ezell v. Graves*, 807 S.W.2d 700, 703 (Tenn. Ct. App. 1990)).

In *Kinzel Springs*, the defendants had recorded a quitclaim deed when "[t]hey clearly knew or should have known the recording of their quitclaim deed . . . would cloud the title to the property at issue in this case." *Kinzel Springs*, 2009 WL 2341546, at *17. Because the plaintiffs had been successful in their libel of title action, the *Kinzel Springs* Court upheld the trial court's award to them of attorney's fees. *Id.* at *17-18.

In the case at bar, Mr. Smith recorded the Quitclaim Deed. He knew or should have known that it would cloud Ms. Thomas's title to the Property, given that he referenced the Warranty Deed in the derivation clause of the Quitclaim Deed. Having affirmed the trial court's finding that the Quitclaim Deed was forged, we further determine that Mr. Smith caused a cloud to be cast on Ms. Thomas's title to the Property. Ms. Thomas was therefore not barred from collecting attorney's fees in the instant action pursuant to the applicable exception to the American rule.

However, Mr. Smith also contends that the trial court erred by entering the attorney's fee award without explaining the basis of the award and without evidence in the record to support the reasonableness of the amount. We agree that the existence of an

exception to the American rule does not justify an arbitrary award of attorney's fees. "[A] trial court evaluating the reasonableness of an award of attorney's fees must consider the factors provided in Tennessee Supreme Court Rule 8, RPC 1.5." *Ellis v. Ellis*, 621 S.W.3d 700, 708 (Tenn. Ct. App. 2019) (citing *Wright ex rel. Wright v. Wright*, 337 S.W.3d 166, 185 (Tenn. 2011)). That rule provides in pertinent part:

> The factors to be considered in determining the reasonableness of a fee include the following:
>
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
>
> (8) whether the fee is fixed or contingent;
>
> (9) prior advertisements or statements by the lawyer with respect to the fees the lawyer charges; and
>
> (10) whether the fee agreement is in writing.

Tenn. Sup. Ct. R. 8, RPC 1.5(a). In *Wright*, our Supreme Court provided additional guidance:

> [T]he trial court should develop an evidentiary record, make findings concerning each of the factors, and then determine a reasonable fee that "depend[s] upon the particular circumstances of the individual case." To

> enable appellate review, trial courts should clearly and thoroughly explain the particular circumstances and factors supporting their determination of a reasonable fee in a given case.

Wright, 337 S.W.3d at 185-86 (citations omitted). This Court previously has remanded cases for reconsideration when a trial court has not followed this prescribed procedure. For example, in *First Peoples Bank of Tenn. v. Hill*, the Court stated:

> Where a trial court awards a fee, but there is nothing in the record to indicate that the trial court actually evaluated the amount of the fee to see if it is reasonable in light of the appropriate factors, the correct approach is to vacate the award and "remand [the] case to the trial court for a new determination of an attorney's fee award under [Supreme Court Rule 8, RPC 1.[5]] and the applicable case law." *Ferguson Harbour Inc. v. Flash Market, Inc.*, 124 S.W.3d 541, 553 (Tenn. Ct. App. 2003).

340 S.W.3d 398, 410 (Tenn. Ct. App. 2010). *See Rivera v. Westgate Resorts, Ltd., L.P.*, No. E2017-01113-COA-R3-CV, 2018 WL 1989620 (Tenn. Ct. App. Apr. 27, 2018) (vacating the trial court's award of attorney's fees because it did not expressly discuss or analyze the RPC 1.5 factors in its final judgment and remanding with the instructions to apply the factors in determining a reasonable fee).

In *Ellis*, "the trial court did not make a finding of reasonableness, nor did it refer to Rule 1.5 or any of its factors; it simply awarded Wife an amount of fees with no further findings or explanation." *Ellis*, 621 S.W.3d at 709. The *Ellis* Court subsequently vacated the trial court's order of attorney's fees and remanded for a new determination on the issue with instructions that the court, should it find attorney's appropriate, include findings reflecting the RPC 1.5 factors. *Id.*

In awarding attorney's fees in this case, the trial court stated only: "This Court is awarding [Ms. Thomas] an additional $1,000 in attorney's fees for this hearing." Although this statement appears to indicate that the trial court was awarding attorney's fees specific to Ms. Thomas's counsel's work related to the damages hearing, the court offered no further explanation and indicated no basis for calculating the amount of fees awarded. We therefore vacate the attorney's fee award and remand for the trial court to make a new determination of reasonable attorney's fees based on consideration of the RPC 1.5 factors. The trial court may conduct a limited evidentiary hearing as needed for this purpose.

VIII. Damages for Frivolous Appeal

Finally, Ms. Thomas contends that Mr. Smith's appeal is frivolous such that she should be awarded damages on appeal pursuant to Tennessee Code Annotated § 27-1-122 (2017), which provides:

> When it appears to any reviewing court that the appeal from any court of record was frivolous or taken solely for delay, the court may, either upon motion of a party or of its own motion, award just damages against the appellant, which may include but need not be limited to, costs, interest on the judgment, and expenses incurred by the appellee as a result of the appeal.

This Court has previously explained:

> Parties should not be forced to bear the cost and vexation of baseless appeals. Accordingly, in 1975, the Tennessee General Assembly enacted Tenn. Code Ann. § 27-1-122 to enable appellate courts to award damages against parties whose appeals are frivolous or are brought solely for the purpose of delay. Determining whether to award these damages is a discretionary decision.
>
> A frivolous appeal is one that is devoid of merit or one that has no reasonable chance of succeeding.

Young v. Barrow, 130 S.W.3d 59, 66-67 (Tenn. Ct. App. 2003) (internal citations omitted).

Notwithstanding the overall outcome of this appeal, and particularly considering Mr. Smith's partial success on the issue of attorney's fees, we determine that this appeal was not so devoid of merit as to be deemed frivolous. Therefore, we exercise our discretion to deny Ms. Thomas's request for damages on appeal.

IX. Conclusion

For the foregoing reasons, we vacate the trial court's award to Ms. Thomas of $1,000 in attorney's fees. We affirm the trial court's judgment in all other respects, including the vesting of title to the Property in Ms. Thomas and the award of $8,000 in compensatory damages. We deny Ms. Thomas's request for damages on appeal. This case is remanded, pursuant to applicable law, for the trial court to (1) make a new determination of reasonable attorney's fees to be awarded to Ms. Thomas upon

consideration of the RPC 1.5 factors, (2) enforce the trial court's judgment, and (3) collect costs below. The trial court may conduct a limited evidentiary hearing as needed to determine the reasonable attorney's fees to be awarded. Costs on appeal are assessed to the appellant, Donald L. Smith.

s/ Thomas R. Frierson, II
THOMAS R. FRIERSON, II, JUDGE