

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs November 1, 2022

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Clerk of the  
Appellate Courts

**SHEILA MAE GRIDER v. GREGORY NEWMAN GRIDER**

**Appeal from the Circuit Court for Marion County**  
**No. 22201                      J. Curtis Smith, Judge**

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**No. M2022-00213-COA-R3-CV**

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In this divorce action, the parties have appealed the trial court's classification of certain assets as well as the court's overall marital property distribution. The husband has also appealed the trial court's award of attorney's fees to the wife in conjunction with her procurement and enforcement of an order of protection. Following review, we vacate the trial court's classification of certain real property assets as well as the court's overall marital property distribution. We remand this matter to the trial court for further evidence to be presented concerning the values of one unimproved lot of real property and the parties' retirement assets and for the court to value and equitably distribute all of the parties' marital assets, including the two real properties in Alabama previously classified as the husband's separate property and the various retirement accounts. We affirm the trial court's award of attorney's fees to the wife related to her procurement and enforcement of an order of protection against the husband.

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

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which ARNOLD B. GOLDIN and JEFFREY USMAN, JJ., joined.

Clayton Whittaker, Chattanooga, Tennessee, for the appellant, Gregory Newman Grider.

Thomas F. Bloom, Nashville, Tennessee, for the appellee, Sheila Mae Grider.

## OPINION

### I. Factual and Procedural Background

This divorce action originated with the filing of a complaint by the plaintiff, Sheila Mae Grider (“Wife”), in the Marion County Circuit Court (“trial court”) on April 18, 2019. Wife alleged that the defendant, Gregory Newman Grider (“Husband”), had engaged in inappropriate marital conduct or, in the alternative, that irreconcilable differences had arisen between the parties. The parties were married in 1992, and Wife averred that the parties’ child was an adult by the time of the complaint’s filing. Wife sought a declaration of divorce and equitable distribution of the parties’ marital assets and debts.

Wife concomitantly filed a motion seeking possession of the parties’ marital residence pending trial, alleging that Husband had recently had “several violent outbursts . . . resulting in damage to doors in the home and personal property of [Wife].” Wife included that Husband maintained an alternative place to live while she did not.

On May 13, 2019, Wife filed a petition seeking an order of protection against Husband. Wife claimed that Husband had engaged in violent behavior toward her, destroyed her personal property, and damaged items in the marital residence. Wife also claimed that her “emails [were] compromised” and that Husband had used “spoofing . . . on ADT and Ring security.” In addition, Wife averred that Husband followed her wherever she went and waited in the parking lot by her car. Wife sought a no-contact order and an order removing Husband from the home. She also requested that the trial court direct Husband to, *inter alia*, pay spousal support, attorney’s fees, and costs.

On May 16, 2019, the trial court granted an extended order of protection to Wife following a hearing. The court ordered Husband to vacate the marital residence within twenty-four hours and to follow the requirements of the attached form order, including having no contact with Wife, staying away from her home and workplace, relinquishing his firearms to a third party, and paying all court costs and attorney’s fees related to the order of protection.

On May 29, 2019, Wife filed a motion for default judgment predicated on Husband’s failure to file an answer to the complaint. Husband filed an answer on June 7, 2019, denying that he had been guilty of inappropriate marital conduct and stating that he did not desire a divorce.

Subsequently, on October 2, 2019, Husband filed an amended answer and counter-complaint. In his answer, Husband again denied that he had been guilty of inappropriate marital conduct and requested that Wife file a bill of particulars, pursuant to Tennessee Code Annotated 36-4-106, concerning all conduct that she considered to be

inappropriate. In his counter-complaint, Husband averred that Wife had been guilty of inappropriate marital conduct. He also acknowledged that the parties had irreconcilable differences. In addition to an equitable distribution of the marital assets and debts, Husband sought an award of alimony and attorney's fees.

On November 27, 2019, Wife filed a motion to compel concerning Husband's alleged failure to answer interrogatories and requests for production of documents. Wife filed another such motion on January 9, 2020. In both motions, Wife sought an award of attorney's fees.

On April 6, 2020, Wife filed a motion to extend the order of protection for an additional year. Wife claimed that Husband had continued to "harass, stalk, and threaten her" despite the issuance of the order of protection. Wife also averred that Husband had been arrested on June 19, 2019, for violating the order. According to Wife, the criminal charge against Husband was still pending at that time, and she attached a copy of the arrest report for proof. On June 12, 2020, the trial court entered an order extending the order of protection until further hearing. On August 4, 2020, the court entered an order allowing Husband's counsel to withdraw for cause.

On October 1, 2020, Wife filed an answer to Husband's counter-complaint, denying that he was economically disadvantaged or entitled to alimony. The trial court subsequently entered an order directing that if Husband intended to hire an attorney, his attorney should file a notice of appearance no later than November 13, 2020. Following Husband's retention of new counsel, the trial was set for August 24, 2021.

The trial court conducted a bench trial on August 24, 2021, considering testimony from the parties as well as Joseph Scott Evans, the police officer who arrested Husband following his violation of the order of protection; Donna Raines, an investigator hired by Wife; and Jackie Thompson, a former friend of the parties. Both parties subsequently filed proposed findings of fact and conclusions of law at the trial court's direction.

On September 30, 2021, Husband filed an "Amended Motion to Amend Findings, for New Trial, or to Reopen Proof and to Stay Judgment" pursuant to Tennessee Rules of Civil Procedure 52, 59, and 62. Husband asserted that he had suffered a heart attack and required open heart surgery following trial and would require rehabilitation going forward. As such, Husband expressed uncertainty regarding his ability to maintain employment in the future. Husband concomitantly filed a motion seeking alimony *pendente lite*. Husband also filed his own affidavit and an affidavit from his treating cardiologist in support. In response, Wife filed a motion to strike the affidavits.

On October 18, 2021, the trial court entered an order with respect to the trial and the post-trial motions. The court found that from the time of the parties' separation until the date of trial, Husband had paid nothing toward the parties' debt obligations. The

court also determined that based on the proof presented, Wife was unable to pay spousal support. The court further found:

Husband's purposeful delay of this case and his actions both before and during the pendency of this divorce constitutes inappropriate marital conduct which entitles Wife be awarded a divorce in this case. Having observed Husband's demeanor over many months and many court appearances, the Court finds Husband is not a credible witness. Given his lack of credibility, any proof concerning Husband's physical condition must be submitted by live testimony or deposition. All other issues are reserved for further determination of this Court. The foregoing being the findings of this Court, it is so ORDERED.

Husband subsequently requested that the court set his pending post-trial motions for hearing and reconsider its decision concerning alimony.

Following additional filings by the parties, the trial court entered an order on January 21, 2022, concerning the remaining issues raised at trial and Husband's post-trial health concerns. The court elucidated that although it would consider Husband's post-trial heart bypass surgery in accordance with the factors relevant to the court's determination of an equitable division of marital property, the court ultimately concluded that Husband's health issues had no impact because Husband's earning capacity "has always been limited and will be so in the future." The court reiterated that Wife was unable to pay alimony due to the substantial marital debt she was ordered to pay.

The trial court determined that Wife had always worked full time during the marriage and that she had also taught yoga part time to earn extra income. As the trial court found, Husband "worked at various jobs during the marriage" and was out of work for an extended period, collecting unemployment benefits, "which Husband kept." Although Wife earned greater income than Husband during the marriage, the court found that Husband inherited funds from his father that "provided some income to the family." However, the court determined that the parcels of real property in Stevenson, Alabama, that were "inherited" by Husband would remain his separate property.

Upon making findings with respect to the statutory factors applicable to an equitable distribution of marital property, the trial court divided the marital assets as delineated in an exhibit to the court's order. The court awarded to Wife marital assets worth approximately \$151,587.64 and awarded to Husband marital assets valued at \$2,000.00.<sup>1</sup> Wife was ordered to pay all of the marital debts, totaling \$68,638.30, which

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<sup>1</sup> Although the trial court's exhibit lists the marital assets awarded to Wife as totaling \$169,587.64, the sum of the individual assets awarded to Wife is actually \$151,587.64. Accordingly, the trial court's exhibit appears to contain a mathematical error. In addition, the trial court appeared to award to Husband

included one-half of her attorney's fees. Husband was not assessed any marital debt; however, he was ordered to pay one-half of Wife's attorney's fees, which the court concluded had resulted from "the order of protection proceeding and the aftermath of that proceeding." Husband was awarded title to real properties in Alabama, valued at \$135,000.00, as his separate property, as well as his guns and other personalty. Wife was awarded her premarital equity in the marital residence, valued at \$10,000.00, as her separate property. Husband timely appealed.

## II. Issues Presented

Husband presents the following issues for this Court's review, which we have restated slightly:

1. Whether the trial court erred by including separate property in its division of marital assets and debts.
2. Whether the trial court's division of marital assets and debts was equitable.
3. Whether the trial court erred in awarding attorney's fees to Wife when such claim was not pled in her complaint.

Wife presents the following additional issue:

4. Whether the trial court erred by classifying the Alabama real properties as Husband's separate property.

## III. Standard of Review

With respect to a trial court's classification, valuation, and distribution of parties' assets, this Court has elucidated:

Dividing a marital estate necessarily begins with the classification of the property as either separate or marital property. The definitions of "separate property" and "marital property" in Tenn. Code Ann. § 36-4-121(b) (1996) provide the ground rules for the task. Once the property has been classified, the trial judge's goal is to divide the marital property in an essentially equitable manner. A division is not rendered inequitable simply

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a vehicle valued at \$2,000.00 as well as funds that he withdrew from the parties' home equity line of credit in the amount of \$4,017.00. However, the trial court ultimately found that Husband had used the \$4,017.00 to pay his attorney. This amount was presumably included in the total amount owed by the parties for the home equity line of credit, which was dealt with as a debt rather than an asset and assessed to Wife.

because it is not precisely equal, *see Cohen v. Cohen*, 937 S.W.2d 823, 832 (Tenn. 1996); *Ellis v. Ellis*, 748 S.W.2d 424, 427 (Tenn. 1988), or because each party did not receive a share of every piece of marital property. *See Brown v. Brown*, 913 S.W.2d 163, 168 (Tenn. Ct. App. 1994).

Dividing a marital estate is not a mechanical process but rather is guided by considering the factors in Tenn. Code Ann. § 36-4-121(c). Trial judges have wide latitude in fashioning an equitable division of marital property, *see Fisher v. Fisher*, 648 S.W.2d 244, 246 (Tenn. 1983); *Brown v. Brown*, 913 S.W.2d at 168, and appellate courts accord great weight to a trial judge's division of marital property. *See Wilson v. Moore*, 929 S.W.2d 367, 372 (Tenn. Ct. App. 1996); *Edwards v. Edwards*, 501 S.W.2d 283, 288 (Tenn. Ct. App. 1973). Thus, we will ordinarily defer to the trial judge's decision unless it is inconsistent with the factors in Tenn. Code Ann. § 36-4-121(c) or is not supported by a preponderance of the evidence.

\* \* \*

The valuation of a marital asset is a question of fact. It is determined by considering all relevant evidence, and each party bears the burden of bringing forth competent evidence. *See Wallace v. Wallace*, 733 S.W.2d 102, 107 (Tenn. Ct. App. 1987). If the evidence of value is conflicting, the trial judge may assign a value that is within the range of values supported by the evidence. *See Ray v. Ray*, 916 S.W.2d 469, 470 (Tenn. Ct. App. 1995); *Wallace v. Wallace*, 733 S.W.2d at 107. On appeal, we presume the trial judge's factual determinations are correct unless the evidence preponderates against them. *See Jahn v. Jahn*, 932 S.W.2d 939, 941 (Tenn. Ct. App. 1996).

*Kinard v. Kinard*, 986 S.W.2d 220, 231 (Tenn. Ct. App. 1998) (other internal citations omitted). As our Supreme Court has previously explained, we give "great weight to a trial court's decisions regarding the division of marital assets, and we will not disturb the trial court's ruling unless the distribution lacks proper evidentiary support, misapplies statutory requirements or procedures, or results in some error of law." *Snodgrass v. Snodgrass*, 295 S.W.3d 240, 245 (Tenn. 2009).

We review 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); *In re Estate of Greenamyre*, 219 S.W.3d 877, 886 (Tenn. Ct. App. 2005) ("[A] trial court will be found to have 'abused its discretion' only when it applies an incorrect legal standard, reaches a decision that is illogical, bases its decision on a clearly erroneous assessment of the evidence, or employs reasoning that causes an injustice to the complaining party.") (internal citations omitted)).

#### IV. Classification and Distribution of Property

Husband posits that the trial court erred in its method of dividing the parties' property because the trial court failed to segregate the parties' separate property before dividing the parties' marital assets and debts and instead combined both types of property into one amalgamated distribution. Wife contends that the Alabama real properties should have been classified as marital property to be equitably divided rather than as Husband's separate property. As such, both parties argue that the ultimate property distribution was inequitable in some aspect.

As this Court has explained concerning property distribution incident to divorce:

Dividing a marital estate necessarily begins with the systematic identification of all of the parties' property interests. The second step is to classify each of these property interests as either separate or marital property. *Flannary v. Flannary*, 121 S.W.3d 647, 650 (Tenn. 2003); *Conley v. Conley*, 181 S.W.3d 692, 700 (Tenn. Ct. App. 2005); *Anderton v. Anderton*, 988 S.W.2d 675, 679 (Tenn. Ct. App. 1998). Tennessee is a "dual property" state. *Smith v. Smith*, 93 S.W.3d 871, 875-76 (Tenn. Ct. App. 2002). Accordingly, property cannot be included in the marital estate unless it fits within the definition of "marital property" in Tenn. Code Ann. § 36-4-121(b)(1)(A) (2005). By the same token, "separate property," as defined in Tenn. Code Ann. § 36-4-121(b)(2), should not be included in the marital estate.

*Fox v. Fox*, No. M2004-02616-COA-R3-CV, 2006 WL 2535407, at \*2 (Tenn. Ct. App. Sept. 1, 2006) (other internal citations omitted); *see Dunlap v. Dunlap*, 996 S.W.2d 803, 814 (Tenn. Ct. App. 1998) (explaining that a "trial court first must classify the parties' property as either marital or separate property because only marital property is subject to the trial court's powers of equitable distribution"); *Kinard*, 986 S.W.2d at 231. Similarly, when considering these property issues on appeal, this Court should first determine whether the parties' property was accurately classified by the trial court. *See Erdman v. Erdman*, No. M2018-01668-COA-R3-CV, 2019 WL 6716305, at \*2 (Tenn. Ct. App. Dec. 10, 2019). We will therefore address Wife's classification issue before considering whether the marital property and debts were equitably divided.

In support of her position that the Alabama real properties should have been classified as marital property and equitably divided, Wife relies on evidence that the money Husband inherited when his father passed away was placed into a joint savings account and treated as marital funds. According to Wife, the Alabama real properties were then purchased with funds that were withdrawn from this joint account. Wife contends that because the funds used to purchase the real properties had been transmuted

to marital funds, the properties, which were purchased during the marriage, were marital assets as well.

As this Court has previously explained:

Whether an asset is separate property or marital property is generally a question of fact. Thus, a trial court's classification decisions are entitled to great weight on appeal. These decisions will be presumed to be correct unless the evidence preponderates otherwise, *Hardin v. Hardin*, 689 S.W.2d 152, 154 (Tenn. Ct. App. 1983), or unless they are based on an error of law. *Mahaffey v. Mahaffey*, 775 S.W.2d 618, 622 (Tenn. Ct. App. 1989).

*Avery v. Avery*, No. M2000-00889-COA-R3-CV, 2001 WL 775604, at \*3 (Tenn. Ct. App. July 11, 2001) (other internal citations omitted).

The trial court's findings of fact contained in the court's January 21, 2022 order state that the Alabama "home and property was purchased with money inherited by Husband." The court also found that funds from Husband's inheritance "provided some income to the family." In a subsequent section of the order, the court determined that the Alabama real properties, valued at \$135,000.00, were Husband's separate property because they were "acquired by Husband from his father's estate." The trial court did not address the doctrine of transmutation.

In order to ascertain whether the evidence preponderates against the trial court's classification of the Alabama real properties as Husband's separate property, we must examine the facts concerning how the properties were acquired. Following our thorough review of the evidence presented at trial, we have gleaned the following undisputed facts concerning the procurement of these properties: (1) Husband's father died intestate in July 2004, during the parties' marriage; (2) Husband inherited \$312,000.00 from his father's estate, which he deposited into a savings account titled in both parties' names in October 2004; (3) Wife enjoyed equal access to this account and made regular withdrawals from it for the benefit of both parties during the marriage; and (4) the joint savings account was closed by Wife when she filed for divorce, and she split the remaining funds (approximately \$2,000.00) with Husband at that time.

Other undisputed facts are pertinent to this issue concerning the procurement of title to the Alabama real properties. For example, in June 2005, almost one year following his father's death, Husband purchased real property improved with a home that was located in Alabama from his mother. This property was described as having been Husband's father's family home ("Home Property"). Wife testified that she went to the bank and withdrew \$64,000.00 for the purchase of the Home Property from the parties' joint savings account. Husband did not dispute this testimony. Following this purchase,

the property was titled solely in the name of Husband. The Home Property had formerly belonged to Husband's father and had been inherited by Husband's mother upon Husband's father's death. Therefore, Husband did not inherit the property; rather, the parties purchased it from Husband's mother for \$64,000.00. At the time of trial, the Home Property was valued at \$105,000.00.

In addition, Husband subsequently purchased or otherwise obtained two unimproved lots of real property in Alabama during the parties' marriage. In June 2005, Husband obtained title to a lot of unimproved real property ("Lot 25"), which had been previously owned by his father and which appears to have passed to Husband and his brother upon their father's death. The deed to this property, which was presented as an exhibit at trial, identifies Husband, "individually and in his capacity as Administrator of the Estate of" his father, and his brother as the grantors and Husband as the grantee. Wife initially testified that Husband paid his brother \$8,000.00 for this lot and that the funds came from the parties' joint account. However, Wife later testified that Husband inherited Lot 25 outright and paid nothing for it. Husband's testimony concerning the procurement of this lot was unclear.

Subsequently, in 2012, the parties purchased an adjoining lot of unimproved real property ("Lot 26") from Husband's brother. Husband was again listed as the sole grantee while his brother was identified as the sole grantor. Regarding this asset, Wife testified that the parties paid Husband's brother \$8,000.00 for the parcel. Husband acknowledged that he had paid his brother \$8,000.00 for one of the lots, stating that he could not identify which one. The funds for this purchase came from the parties' joint account. The parties valued Lot 25 and Lot 26 together as one asset, agreeing that the total value was \$30,000.00 at the time of trial. Ironically, Husband listed these parcels as marital property on his list of assets and liabilities presented as an exhibit at trial, although he testified that he believed all of the Alabama real properties were his separate property.

Husband stated at trial that he had expressed to Wife during the marriage his intent to maintain all of the Alabama real properties as his separate property; however, Wife denied that this conversation occurred. Wife related that the parties had always treated Husband's inherited funds and the Alabama real properties as marital. Wife further reported that she paid the taxes and other expenses associated with the Alabama real properties from either the parties' joint savings or joint checking account. Husband did not dispute that the expenses related to these properties had been paid from joint funds.

As our Supreme Court has explained:

[S]eparate 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.

*Snodgrass*, 295 S.W.3d at 256 (quoting *Langschmidt v. Langschmidt*, 81 S.W.3d 741, 747 (Tenn. 2002)). Here, it is undisputed that Husband inherited funds following his father's death and that he deposited those funds into a jointly titled account. It is also undisputed that Wife enjoyed equal access to the account and the funds therein and that she regularly made withdrawals over the course of the next several years for marital purposes. Wife testified that in addition to withdrawing funds to purchase and maintain the Alabama real properties, she also withdrew funds to pay marital bills on a consistent basis when Husband was not working. As previously referenced, the proof demonstrated that the joint savings account was closed by Wife when she filed for divorce and that she split the remaining funds with Husband at that time.

Based on the proof presented, we agree with Wife's postulate that the funds contained in the parties' former joint savings account had been transmuted into marital property. See *Hoggatt v. Hoggatt*, No. E2013-00508-COA-R3-CV, 2014 WL 1901019, at \*5 (Tenn. Ct. App. May 12, 2014) (determining that the wife's inherited funds were transmuted into marital property when they were deposited into the parties' joint checking and savings accounts and later applied to reduce the mortgage on the marital home); *Ghorashi-Bajestani v. Bajestani*, No. E2009-01585-COA-R3-CV, 2010 WL 3323743, at \*13 (Tenn. Ct. App. Aug. 24, 2010) (determining that placing both parties' names on previously separate certificates of deposit transmuted those accounts into marital funds); *Smith v. Smith*, No. M2008-00732-COA-R3-CV, 2009 WL 2707401, at \*5 (Tenn. Ct. App. Aug. 27, 2009) (determining that separate funds deposited into a joint account had been transmuted to marital property). Insofar as Wife proved that Husband had willingly deposited the inherited funds into a joint account and had allowed both parties to utilize those funds for marital purposes, a rebuttable presumption arose that Husband had gifted those funds to the marital estate. See *Snodgrass*, 295 S.W.3d at 256 (explaining that "when separate property is treated in such a way as to give evidence of an intention that it become marital property," it "creates a rebuttable presumption of a gift to the marital estate"). The burden then shifted to Husband to rebut the presumption by presenting evidence of circumstances or communications clearly indicating his intent that his inherited funds would remain separate. *Id.* Although Husband testified that he had communicated such an intent to Wife, Wife denied any such communication and

maintained that the parties had treated the funds as marital and utilized them for marital purposes throughout the marriage. Of significance, the trial court found that Husband was not a credible witness. *See Gaskill v. Gaskill*, 936 S.W.2d 626, 633 (Tenn. Ct. App. 1996) (“Trial courts are normally in the best position to judge the credibility of the witnesses since they have seen and heard the witnesses testify.”). We accordingly conclude that Husband failed to rebut the presumption that he made a gift to the marital estate by depositing his inherited funds into a joint account and giving Wife equal access thereto. *See Smith*, 2009 WL 2707401, at \*5.

Concerning the classification of the Alabama real properties, with the exception of Lot 25, the remaining Alabama real properties (the Home Property and Lot 26) were undisputedly purchased by the parties during the marriage with marital funds from the above-referenced joint account. As such, these properties would be considered marital property regardless of their legal title. *See* Tenn. Code Ann. § 36-4-121(b)(2)(A) (Supp. 2022) (defining “marital property” as “all real and personal property . . . acquired by either or both spouses during the course of the marriage”); *see also Fox*, 2006 WL 2535407, at \*4 (explaining that the statute creates a presumption that “all assets acquired by either spouse during the marriage are presumed to be marital property” and that classification depends “on the conduct of the parties, not the record title of the asset”).

As with the inherited funds, Husband could have rebutted the presumption that these real properties were marital by presenting evidence demonstrating that he intended for the properties to be his separate property, but he failed to do so. *See Fox*, 2006 WL 2535407, at \*4. Instead, the proof demonstrated that the property taxes were paid annually by Wife, utilizing funds from the parties’ joint checking or joint savings account. Wife testified that the parties treated the properties as marital and paid expenses related to the properties from their joint funds. Husband proffered that he had informed Wife of his intention for the properties to be his separate property, but the trial court found Husband’s testimony not credible. As such, the evidence at trial preponderates against the trial court’s classification of the Home Property and Lot 26 as Husband’s separate property.

With respect to Lot 25, although the evidence regarding its procurement was somewhat conflicting, Wife did acknowledge during cross-examination that Husband had inherited the property from his father’s estate and had not paid anything for it. Therefore, the evidence does not preponderate against the trial court’s classification of Lot 25 as Husband’s separate property. *See* Tenn. Code Ann. § 36-4-121(b)(4)(D) (providing that property acquired by a spouse by “gift, bequest, devise or descent” is separate property).

Having determined that the Home Property and Lot 26 should be included in the marital estate for distribution, we must now address the parties’ issues concerning an equitable distribution of marital assets and debts. We note, however, that following proper classification, the trial court “should place a reasonable value on each piece of

property subject to division.” *Owens v. Owens*, 241 S.W.3d 478, 486 (Tenn. Ct. App. 2007). Moreover, the parties “must come forward with competent valuation evidence.” *Id.* “The value placed on marital property should, as near as possible, reflect the value of the property on the date that it is divided.” *Id.* at 487.

Our review of the trial court’s distribution of marital assets herein is hampered by the court’s failure to assign values to all of the parties’ assets. We reiterate that the trial court’s marital property distribution appears to award Husband one marital asset worth \$2,000.00 while awarding Wife marital assets worth \$151,587.64. The trial court then ostensibly added the value of each party’s separate property to the respective marital asset awards, which would be improper. *See Dunlap*, 996 S.W.2d at 814 (instructing that “only marital property is subject to the trial court’s powers of equitable distribution”); *Fox*, 2006 WL 2535407, at \*2 (explaining that separate property should not be included in the marital estate). However, in addition to this error, the trial court also failed to assign values to various assets, including separate values for Lot 25 and Lot 26 and the parties’ various retirement assets.

Clearly, our reclassification of the Home Property and Lot 26 as marital assets will increase the total value of the marital estate. Insofar as the value of Lot 26 is concerned, however, the only evidence presented by the parties valued both Lot 25 and Lot 26 together as one asset worth \$30,000.00. Therefore, we have no means by which to assign separate values to each of these parcels, one of which is separate property and the other marital. For the purposes of an equitable distribution of marital property, Lot 26 must be valued independently. As this Court has previously stated, despite the fact that the responsibility to provide a separate value for this asset lies at the feet of the parties, “who have a duty to provide competent evidence of property values,” “the trial judge may resolve any disagreement amongst the parties by assigning property values within the acceptable range of values that the evidence supports.” *See Green v. Green*, No. W2019-01416-COA-R3-CV, 2021 WL 1343569, at \*7 (Tenn. Ct. App. Apr. 12, 2021). “Indeed, the trial court should do so in order to aid our appellate review.” *Id.*

Moreover, the trial court divided the parties’ retirement accounts, including their respective Tennessee Consolidated Retirement System (“TCRS”) plans, by permitting each party to retain his or her account(s) without assigning a value to those assets. Such approach has previously been rejected by this Court. *See id.* The parties’ retirement accounts largely accrued during their twenty-nine-year marriage, thus rendering them marital property subject to distribution. However, the retirement accounts likewise must be valued in order to be equitably distributed and to enable this Court to review that distribution. As elucidated in *Green*:

Wife is correct that marital property includes vested and unvested retirement benefits that accrue during a marriage. *See Cohen v. Cohen*, 937 S.W.2d 823, 830 (Tenn. 1996). Our supreme court has provided extensive

guidance for how retirement benefits are to be valued, including that their values “must be determined at a date as near as possible to the date of the divorce.” *Id.* Additionally, “[t]he choice of valuation method remains within the sound discretion of the trial court to determine after consideration of all relevant factors and circumstances.” *Id.* at 831. The two valuation techniques used most often by courts are the “present cash value method” and the “deferred distribution” method (also known as the “retained jurisdiction” method). *See id.* (citations omitted).

Here, the trial court awarded Husband the entirety of his TCRS benefits, but did not place any value on this significant asset. As detailed above, however, the trial judge should have exercised its discretion to choose the method by which to calculate the value of the parties’ retirement benefits. Even were we to agree that the trial court did not err in assigning the entirety of the TCRS benefits to Husband, the trial court’s failure to assign a value to this asset hinders our ability to determine whether the overall property division is equitable. *Cf. Morton v. Morton*, 182 S.W.3d 821, 834 (Tenn. Ct. App. 2005) (“Husband, as is often the case in appeals to this Court concerning a division of marital property, wishes to focus on whether the division as to particular assets was equitable rather than whether the overall property distribution was equitable. We decline to do so as the goal is an overall equitable marital property distribution.”). As when a trial court fails to assign values to other types of marital property, we typically do not “soldier on” in the face of a trial court’s failure to assign values to marital retirement benefits. Instead, we typically vacate and remand for the trial court to make the proper findings and for the parties to present additional evidence as is necessary to aid the trial court in executing this duty. *See Cohen*, 937 S.W.2d at 832 (“Rather than choose the valuation method on this record, we remand to allow the parties to present additional evidence pertinent to the valuation of the account. After hearing the evidence, the trial court shall determine the appropriate valuation method and shall make appropriate orders distributing the portion of the parties’ marital property.”); *see also Kirby [v. Kirby]*, [No. M2015-01408-COA-R3-CV,] 2016 WL 4045035, at \*7 [(Tenn. Ct. App. July 25, 2016)] (citing Tenn. R. Civ. P. 52.01). Here, the parties provided the trial court with at least some evidence related to their retirement incomes. For example, Husband provided a statement showing his monthly TCRS benefits and Wife provided a breakdown of her expected monthly benefits from FERS upon turning sixty-two years old. However, other evidence may be necessary for the trial court to properly assign values to all of the relevant retirement assets, depending on which valuation method is employed. For example, evidence regarding the parties’ life expectancies is not in the record, and may be necessary. Therefore, should the trial court

need more evidence to properly value the relevant retirement benefits, it is well within its discretion to order the parties to present such evidence.

In sum, the trial court should have classified and valued all of the relevant property in this case, because without the trial court's assigned classifications and values, we are unable to determine if the property distribution was equitable. This is especially relevant as to Husband's TCRS retirement benefits, as the parties dispute whether the trial court's division of this property was equitable given the other property divided. In order to determine this issue, it is essential that the trial court value this property under one of the methods outlined by the Tennessee Supreme Court. *See, e.g., Cohen*, 937 S.W.2d at 830-31, 833; *see also Kendrick v. Kendrick*, 902 S.W.2d 918, 926, 927-28 (Tenn. Ct. App. 1994).

*Id.* at \*7-8.

Similarly, in the case at bar, the trial court failed to place any value on the parties' retirement assets in accordance with our Supreme Court's directive in *Cohen v. Cohen*, 937 S.W.2d 823, 831 (Tenn. 1996). *See Thompson v. Thompson*, No. M2020-01293-COA-R3-CV, 2022 WL 386159, at \*7 (Tenn. Ct. App. Feb. 9, 2022) (specifically concerning valuation of TCRS benefits). We note that although the parties provided evidence concerning the respective amounts that Husband and Wife would draw in monthly benefits, the parties failed to provide the court with evidence of the value of the various accounts. As such, we have no option but to "vacate and remand for the trial court to make the proper findings and for the parties to present additional evidence as is necessary to aid the trial court in executing this duty." *See Green*, 2021 WL 1343569, at \*7.

Inasmuch as the parties failed to provide the trial court with proper valuation information concerning certain assets and the trial court's distribution lacks respective valuation information, we conclude that the trial court's marital property distribution should be vacated and remanded for further evidence to be presented concerning the values of Lot 26 and the parties' retirement assets. The trial court can then value and equitably distribute all of the parties' marital assets, including the Home Property, Lot 26, and the various retirement accounts.

#### V. Attorney's Fees

Husband asserts that the trial court erred by awarding to Wife a portion of her attorney's fees incurred in this matter. In support of his position, Husband relies on the fact that Wife did not specifically state a claim for attorney's fees in her initial complaint. We note, however, that Wife did request an award of attorney's fees in conjunction with the filing of her petition for an order of protection in May 2019.

As our Supreme Court explained in *New v. Dumitrache*, 604 S.W.3d 1, 21 (Tenn. 2020), one of the purposes of the statute providing for orders of protection in domestic abuse situations is to “provide enhanced protection to domestic abuse victims.” This includes ensuring that “domestic abuse victims should not be required to bear the financial burdens of legal action made necessary by a domestic abuse perpetrator.” *Id.* Accordingly, Tennessee Code Annotated § 36-3-617 (2021) provides in pertinent part:

Notwithstanding any other law to the contrary, no domestic abuse victim, stalking victim, sexual assault victim, or victim of a felony offense under title 39, chapter 13, part 1, 2, 3, or 5 shall be required to bear the costs, including any court costs, filing fees, litigation taxes or any other costs associated with the filing, issuance, registration, service, dismissal or nonsuit, appeal or enforcement of an ex parte order of protection, order of protection, or a petition for either such order, whether issued inside or outside the state. If the court, after the hearing on the petition, issues or extends an order of protection, all court costs, filing fees, litigation taxes and attorney fees shall be assessed against the respondent.

Tenn. Code Ann. § 36-3-617(a)(1).

In this action, the trial court granted Wife’s petition for an order of protection on May 16, 2019, and extended that order of protection on June 12, 2020. The evidence demonstrated that Husband violated the order of protection in June 2019, was arrested, and faced criminal charges. Wife testified that in conjunction with Husband’s violation of the order of protection and his arrest, she was required to meet with the district attorney numerous times and to testify against Husband during his criminal hearing. In doing so, Wife stated that she required the assistance of her attorney and incurred associated attorney’s fees.

When questioned regarding the amount of attorney’s fees she had incurred, Wife indicated that she had incurred fees totaling \$24,000.00. She claimed that 75% of her attorney’s fees were attributable to obtaining the order of protection and the aftermath of Husband’s violation of same. The trial court ultimately awarded Wife attorney’s fees in the amount of \$12,000.00, finding that this amount “was the result of the order of protection proceeding and the aftermath of that proceeding.”

We determine that the trial court properly awarded Wife her reasonable attorney’s fees related to the order of protection proceedings in accordance with Tennessee Code Annotated § 36-3-617(a)(1). Wife, a victim of domestic abuse, should not be forced to bear the cost of obtaining and enforcing an order of protection against Husband. *See New*, 604 S.W.3d at 21. We therefore conclude that Husband’s issue concerning attorney’s fees is without merit.

## VI. Conclusion

For the foregoing reasons, we vacate the trial court's classification of the Home Property and Lot 26 and the court's overall distribution of the parties' assets and debts. We remand this matter to the trial court for further evidence to be presented concerning the values of Lot 26 and the parties' retirement assets and for the court to value and equitably distribute all of the parties' marital assets, including the Home Property, Lot 26, and the various retirement accounts. We affirm the trial court's award of attorney's fees to Wife respecting her procurement and enforcement of an order of protection against Husband. The costs of this appeal are assessed to Husband, Gregory Newman Grider.

s/ Thomas R. Frierson, II

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THOMAS R. FRIERSON, II, JUDGE