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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs September 1, 2022

MARYAM SOBHI (SORYANA) MIKHAIL v. GEORGE AZIZ MIKHAIL

**Appeal from the Circuit Court for Wilson County
No. 2019-DV-123 Clara W. Byrd, Judge**

No. M2021-00500-COA-R3-CV

A wife sought a divorce after a long-term marriage. The trial court granted the wife a default judgment for divorce as a sanction for the husband's discovery abuses. After a trial, the court also valued and divided the marital estate and awarded the wife alimony *in futuro*. On appeal, the husband challenges the court's decisions on multiple grounds. Discerning no reversible error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and THOMAS R. FRIERSON II, J., joined.

George Aziz Mikhail, Nashville, Tennessee, pro se appellant.¹

Angelique P. Kane and Kayla M. Costley, Lebanon, Tennessee, for the appellee, Maryam Sobhi Mikhail.

OPINION

I.

A.

On March 1, 2019, Maryam Sobhi Mikhail ("Wife") filed a complaint for a divorce from George Aziz Mikhail ("Husband"), after 21 years of marriage. As grounds, she

¹ Appellant was represented by a series of different attorneys in the trial court. This Court granted his trial counsel permission to withdraw while this appeal was pending. Acting pro se, appellant filed his own brief.

alleged adultery, inappropriate marital conduct, and irreconcilable differences. *See* Tenn. Code Ann. §§ 36-4-101(3), (11), (14) (2021). She also asked the court for exclusive possession of the marital residence, an equitable division of the marital estate, temporary and permanent alimony, and an award of attorney's fees.

Husband filed his own countercomplaint for divorce. Like Wife, he claimed that he was entitled to a divorce on the grounds of adultery, inappropriate marital conduct, and irreconcilable differences.

Early on, Wife filed a motion for pendente lite support and other immediate relief. The parties resolved Wife's issues by agreement. And on March 22, 2019, the court entered an agreed order reflecting that agreement. Wife was granted exclusive possession of the marital residence. Husband agreed to continue to pay the parties' normal monthly household expenses, necessary home maintenance costs, car payments, and car insurance. He also agreed to pay Wife \$350 per week as pendente lite support.

The agreed order also addressed Wife's access to the family business and financial information under Husband's exclusive control. The order left Husband in charge of day-to-day business operations, but mandated that Wife "be given complete access to all bank accounts and daily business records of said business." It also required Husband to allow Wife or her designated agent access to the premises to perform an inventory. Husband was also directed to give Wife "immediate complete access" to other bank accounts in Husband's name so that Wife could monitor the use of marital assets.

Husband did not comply with the agreed order. At Wife's request, the court issued another order directing Husband to provide Wife with the passwords to all of his financial accounts. It also ruled that Wife would be in charge of the business when Husband was out of the country. Husband disobeyed this order as well. He took affirmative steps to prevent Wife from gaining access to the business and its records. Wife again turned to the court for relief. The court issued another order. But Wife was never able to monitor the business operations or to view the business records.

Husband displayed similar intransigence during discovery. All told, Wife filed four motions to compel discovery responses against Husband. The court set multiple deadlines for Husband to either respond to Wife's discovery requests or supplement his previous responses. Husband missed some deadlines and attempted to comply with others. Still, his responses remained deficient.

Trial was scheduled for mid-November 2020. At the hearing on Wife's fourth motion to compel, the court ordered Husband to provide complete responses by September 28, 2020 or face discovery sanctions. The court also set September 30, 2020 as the final date for the exchange of any discovery between the parties. Wife provided Husband with a list of all outstanding discovery items as well as a copy of her supplemental

discovery responses at the court hearing. Because Husband had failed to appear at his scheduled deposition, the court ordered both parties to attend depositions on October 14 and 15, 2020.

A month later, and two days before the scheduled depositions, Husband notified Wife that her supplementary discovery responses were insufficient. So he would not be attending the depositions. Wife, her counsel, and an interpreter appeared for the depositions ready to go forward. But Husband did not allow his counsel to participate.

Less than a month before trial, Husband filed a motion to compel Wife to supplement her discovery responses and renewed his previous motion to continue the trial. The court denied both motions.

At the outset of trial, the court considered Wife's pending motion for sanctions against Husband for his failure to abide by the court's orders. The court noted that Husband had twice failed to appear at his scheduled deposition. And he had repeatedly failed to comply with court orders to answer discovery, provide documentation, and provide access to his business records and accounts. He also failed to appear at court-ordered mediation. The court had previously warned Husband that he was subject to sanctions for his failure to cooperate in discovery.

Based on Tennessee Rules of Civil Procedure 37 and 41, the court precluded Husband from "put[ting] on any testimony or enter[ing] exhibits that supported his allegations." But the court allowed Husband's counsel to cross-examine Wife and her witnesses.

B.

Husband and Wife married in Egypt. Wife explained that, before her marriage, she had a job in billing or accounting in Egypt. But Husband did not want her to continue. So, after she married, she mostly helped Husband with his Egyptian business ventures. And she was the primary caregiver for their two children, Mena and Maryam.

In 2006, the family moved to the United States. Initially, Husband and Wife took jobs in the hospitality industry. Wife left her hospitality position after she injured her knee. Then she and Husband started Pyramids Wholesale & Distribution, LLC. Pyramids Wholesale sold cigarettes, vapes, hookahs, toilet paper, and similar items to tobacco stores and convenience stores in the area.

When not occupied with childcare duties, Wife worked alongside Husband in the business. She mostly dealt with the Egyptian customers as she was not proficient in English. According to Wife, the business had a lot of cash clients. And Husband did not report all the cash transactions on their income taxes.

Mena and Maryam, now adults, explained that they had also worked at Pyramids Wholesale. They were aware that many customers paid in cash. Mena reported that Husband regularly gave him \$30,000 to \$40,000 in cash to deposit in the bank. And Husband kept extra cash and gold in a safe on site. As for Maryam, she related that Husband often sent her to multiple cash-advance stores to purchase thousands of dollars in blank money orders for Husband's use.

According to Wife, Husband controlled the family finances. All bank accounts were solely in Husband's name. He paid Wife \$250 per week for her contributions to the business. He also gave her an allowance for household expenses. In 2018, Husband became violently angry with Wife over an incident at work and told her she could no longer work there. She never returned. She tried working as a substitute teacher. But without sufficient English, the job was too difficult. So she quit.

Wife and the children told the court that Husband's controlling behavior at work was mirrored in their home life. He was verbally and, sometimes, physically abusive toward Wife. In 2019, Wife filed for divorce.

Wife explained that Husband's abusive treatment led to her current diagnoses of anxiety and depression. She cried a lot and developed stomach issues, which often kept her in bed. She was seeing a therapist. But her mental state was still poor.

Wife claimed that her mental health problems, physical ailments, and poor English skills made it impossible for her to work. She had been unable to find another job working primarily with Egyptian customers. Her only potential option—her brother's tobacco business—was too far away.

Mena and Maryam agreed that Wife seemed depressed and anxious. They believed that she had been deeply affected by Husband's behavior during the marriage. Neither witness believed Wife could work outside the home given her mental health issues and lack of English skills.

As for the parties' assets, Wife claimed that Husband's obstructive behavior during discovery prevented her from completing a business appraisal. From her previous experience in the business, she knew that it brought in about \$10,000 to \$15,000 in cash every day. And she was able to obtain an unofficial valuation of the inventory on hand in early 2019. At that time, the business inventory was worth about \$293,000. Wife valued the business at \$514,659 based on the inventory value reported on Husband's 2018 tax return. Wife believed that this was a fair method of valuation given that Husband never provided a copy of his 2019 tax return.

Wife hoped to remain in the marital residence. She offered a recent tax appraisal as evidence that the home was worth \$234,800. She explained that it needed extensive repairs. Many appliances no longer worked. And she had recently learned that the HVAC system needed to be replaced. One shower had plumbing issues. There was also physical damage to both the interior and the exterior of the home.

Maryam, who was in law school, still lived with Wife in the marital residence. She insisted that she paid her own expenses and contributed toward the household expenses as well. She agreed that the house was in disrepair. Beyond the problems with various appliances, she reported that it was “torn up from the dogs” the family owned. Mena agreed with Maryam’s assessment. In the children’s view, the home was worth, at best, \$200,000.

Wife also gave the court an estimated value for the remaining marital assets. And she asked the court to divide the marital estate evenly between the parties.

As for alimony, Wife asked for alimony *in futuro* of \$5,483.69 per month. Her income and expense statement evidenced her need for that amount. Lacking any income, Wife had not filed a tax return in 2018 or 2019.

By contrast, Husband appeared to enjoy an ample income. During the pendency of the divorce, he had spent freely. Wife claimed that he gave her around \$29,000 over and above the pendente lite support. She also had evidence that he had paid over \$13,000 to private investigators and at least \$20,000 in attorney’s fees. And he gave lavish cash gifts to the children and paid off the debt on their vehicles.

Mena and Maryam agreed with Wife’s testimony about Husband’s spending. They also recounted that in 2019, he gave them each large sums of cash to deliver to relatives in Egypt.

After Wife finished presenting her proof, the court amended its previous sanctions ruling. Instead of precluding Husband from presenting any evidence, the court granted Wife a divorce judgment by default on the grounds of inappropriate marital conduct. It allowed Husband to testify about the valuation and proposed distribution of the parties’ assets and debts, as well as his income and expenses. But the court did not permit Husband to testify about the grounds for divorce as that was no longer at issue.

Husband did not dispute Wife’s valuations of the marital assets except for the marital residence and Pyramids Wholesale. As for the home, Husband opined that it was worth at least \$330,000. He did not have a property appraisal. His valuation was based on reports from real estate agencies.

As for the business, Husband did not produce a business appraisal. He simply offered his opinion as the business owner. He believed that the name could be sold for

\$200,000. And he claimed the business inventory was only worth about \$100,000. And the remaining business assets had negligible value. He produced evidence of his business expenses, including employee salaries. He blamed the pandemic for the asserted loss in business value since 2018. Yet, he admitted that he had recently paid off a significant amount of business debt. Only \$80,000 remained.

Mena, who had recently opened his own retail vape store, gave contradictory testimony. He told the court that his business, which sold many items also included in Pyramids Wholesale's inventory, was thriving despite the pandemic.

As for alimony, Husband told the court to give Wife "whatever she had asked for." He admitted that he had given Wife cash in excess of his pendente lite support. He believed he had given her a total of \$50,000 in the last year, above and beyond his normal payments. He also agreed with the testimony about his cash payments to private investigators and attorneys while the divorce was pending.

C.

Ultimately, the trial court granted Wife a divorce and divided the marital estate evenly. The court awarded Wife the marital residence while Husband received the family business. It also divided the parties' remaining assets. To equalize the distribution of the marital estate, the court ordered Husband to make Wife a one-time payment of \$134,113.10. To secure the payment, the court ordered Husband to turn over his passport to ensure that he did not leave the country.

The court also ordered Husband to pay Wife alimony in the amount of \$5,000 per month for life. To secure the payment of alimony, the court granted Wife a security interest in the inventory, equipment, vehicles, and goods owned by the business. But the court denied Wife's request for attorney's fees.

II.

Husband raises multiple issues on appeal. He questions the court's discovery sanction, the valuation of certain marital assets, and the alimony award.² For her part, Wife requests an award of attorney's fees on appeal.

² Tennessee Rule of Appellate Procedure 27 requires an appellant to provide arguments setting forth "the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief." TENN. R. APP. P. 27(a)(7). "An issue may be deemed waived, even when it has been specifically raised as an issue, when the brief fails to include an argument satisfying the requirements of Tenn. R. App. P. 27(a)(7)." *Hodge v. Craig*, 382 S.W.3d 325, 335 (Tenn. 2012). Husband made no argument in support of one of the issues included in his statement of the issues. So we deem that issue waived.

As this is a nonjury case, our review of the trial court’s factual findings is de novo upon the record, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. *See* TENN. R. APP. P. 13(d). We give great deference to the trial court’s credibility assessments. *Watson v. Watson*, 309 S.W.3d 483, 490 (Tenn. Ct. App. 2009). We do not disturb “factual findings based on witness credibility unless clear and convincing evidence supports a different finding.” *Coleman Mgmt., Inc. v. Meyer*, 304 S.W.3d 340, 348 (Tenn. Ct. App. 2009). Our review of questions of law is de novo, with no presumption of correctness. *Armbrister v. Armbrister*, 414 S.W.3d 685, 692 (Tenn. 2013).

A.

We review a trial court’s decision to impose discovery sanctions for an abuse of discretion. *Mercer v. Vanderbilt Univ., Inc.*, 134 S.W.3d 121, 133 (Tenn. 2004). A court abuses its discretion when it applies the wrong legal standard, reaches “an illogical or unreasonable decision,” or bases its decision “on a clearly erroneous assessment of the evidence.” *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010).

Husband challenges the court’s decision to impose discovery sanctions on multiple grounds. First, he argues that the trial court committed a clear error of law in granting Wife a divorce by default because she did not request such relief in her complaint. Husband is correct that “a default judgment may not award relief different from or greater than that demanded in the complaint.” *Qualls v. Qualls*, 589 S.W.2d 906, 909 (Tenn. 1979); TENN. R. CIV. P. 54.03 (“A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment.”). This is because “it would be fundamentally unfair to have the complaint lead defendant to believe that only a certain type and dimension of relief was being sought and then, . . . allow the court to give a different type of relief or a larger damage award.” *Qualls*, 589 S.W.2d at 909-10 (quoting CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2663, at 99-100 (1973)). But that did not occur here.

Wife clearly sought a divorce in her complaint. It was styled as a “Complaint for Absolute Divorce” and cited the relevant statutory law for a divorce petition. Tenn. Code Ann. § 36-4-106 (2021). In the body of the complaint, Wife alleged multiple “statutory grounds for divorce,” including “irreconcilable differences . . . between the parties.” *Id.* § 36-4-101(a)(14) (2021). And she asked to “be released from the bonds of matrimony.” *Id.* § 36-4-119 (2021). In her demand for judgment, Wife also sought approval of a marital dissolution agreement, if any; an immediate accounting of the parties’ assets; an equitable division of the marital property and debts; temporary and permanent alimony; exclusive possession of the marital residence, and an injunction restraining Husband from disposing of marital property during the pendency of the divorce action. *See id.* § 36-4-106(a)(1) (2021) (allowing a complainant to seek “a divorce and such other and further relief to which the complainant may think to be entitled”).

In granting Wife a default judgment for divorce, the court awarded relief that was within the scope of her pleadings. *See Brown v. Brown*, 281 S.W.2d 492, 497 (Tenn. 1955) (“[A] judgment or a decree which is beyond the fair scope of the pleadings is void.”). So the default judgment did not violate Rule 54.03.

B.

Husband also contends that such an extreme sanction was not justified under the circumstances. A default judgment is an appropriate sanction when “there has been a clear record of delay or contumacious conduct,” such as presented here. *Shahrdar v. Glob. Hous., Inc.*, 983 S.W.2d 230, 236 (Tenn. Ct. App. 1998) (quoting *In re Beckman*, 78 B.R. 516, 518 (M.D. Tenn. 1987)); *see also Murray v. Christian Methodist Episcopal Church*, 153 S.W.3d 371, 377-80 (Tenn. Ct. App. 2004) (collecting cases). Twice, Husband failed to appear at his scheduled deposition. *See* TENN. R. CIV. P. 37.04. He also failed to appear at court-ordered mediation. And he repeatedly failed to comply with the court’s discovery orders. *See id.* 37.02. He missed court-ordered deadlines for answering Wife’s discovery requests. And the answers he provided were incomplete. He also disobeyed orders requiring him to allow Wife access to his business and banking records. Husband’s conduct impeded Wife’s ability to prepare for trial. The court gave Husband multiple chances to comply with its orders. And it warned him that he could be sanctioned for his behavior. Yet Husband’s obstructive behavior persisted.

Husband argues Wife engaged in similar behavior yet was not sanctioned. But the record does not support his argument. The court ordered Wife to provide supplemental discovery responses on two occasions. She complied with the court’s discovery orders. Wife also came prepared to participate in mediation and depositions. And there is no indication in this record that Wife disobeyed any of the court’s other orders.

Husband also complains that he was unfairly prejudiced by the court’s refusal to allow him to present evidence at trial. We disagree. The court allowed Husband “to testify about the parties’ assets and debts and their valuations, . . . how [he] wanted the assets and debts distributed and divided, and . . . [his] income and expenses.” The court even admitted his packet of exhibits, overruling Wife’s objection that the documents had not been disclosed during discovery. The court only prevented Husband from testifying about matters that were no longer at issue.

The trial court’s decision to impose sanctions was not an abuse of discretion. The court identified and applied the correct law. The evidence in the record supports the factual basis for its decision. And the court’s choice was within the range of acceptable dispositions.

C.

Husband also challenges the trial court's valuation of some of the marital property.³ Before the court may fashion an equitable division of the marital property, it must "place a reasonable value on each piece of property." *Owens v. Owens*, 241 S.W.3d 478, 486 (Tenn. Ct. App. 2007). "The value of a marital asset is determined by considering all relevant evidence regarding value." *Wallace v. Wallace*, 733 S.W.2d 102, 107 (Tenn. Ct. App. 1987). We will not question a court's valuation so long as it is "within the range of the evidence submitted." *Id.* We presume the trial court's factual determinations regarding the valuation of a marital estate are correct unless the evidence preponderates against them. *Kinard v. Kinard*, 986 S.W.2d 220, 231 (Tenn. Ct. App. 1998).

1. Pyramids Wholesale & Distribution, LLC

Husband asserts that the court's valuation of Pyramids Wholesale was too high. Neither party presented an expert business appraisal. Wife maintained that Husband stymied her efforts to value the business by blocking her access to his business records. But she submitted the sparse documentary evidence she was able to discover. According to Husband's 2018 tax return, the business had over two million dollars in gross sales that year. After expenses, the business generated around \$100,000 in net income. The inventory alone was worth around \$514,000. An unofficial inventory list created in early 2019 reflected a \$293,000 value. According to the most recent bank statements she obtained in discovery, the business had around \$32,000 in available cash.

Wife claimed that the business was worth \$514,659 based on the reported value of the business inventory on the 2018 tax return. Husband testified that the pandemic had adversely impacted the business. The inventory value had plummeted to around \$100,000. Husband valued the business at around \$200,000. But he did not submit proof of his asserted business losses. And Mena testified that the pandemic had not affected his vape business, which sold similar products.

The court's value of \$320,000 fell in between the values asserted by the parties. The court specified that this number represented the net value of the company, which included the cash in the business accounts and the safe, the remaining debt, vehicles, equipment, inventory, name and good will. The court rejected Husband's testimony that the pandemic had decimated Pyramid Wholesale's value, including the inventory. The court determined that the current inventory value was closer to \$240,000. We will not disturb the court's credibility finding on this record. *Coleman Mgmt., Inc.*, 304 S.W.3d at 348. The court

³ Husband also argues that an Egyptian timeshare awarded to Wife was not properly valued because the parties shared ownership with a family member. Any diminution in value would harm Wife rather than Husband. And she did not appeal the court's valuation. So we decline to reach the issue.

also accepted Wife's testimony that the business generated a significant amount of unreported cash income. Husband's recent spending demonstrated that the business still generated a significant income. The evidence does not preponderate against these findings.

2. Marital Residence

Conversely, Husband argues that the court's valuation of the marital residence was too low. The parties offered conflicting opinions as to the home's value. Husband opined it was worth at least \$330,000. Wife valued the residence at \$234,800. The court ultimately accepted Wife's value as well as her testimony about the home's need for extensive repairs.

As the property owner, Husband was qualified to give an opinion as to the property's value. *Stinson v. Stinson*, 161 S.W.3d 438, 446 (Tenn. Ct. App. 2004). Husband based his opinion on reports from real estate agencies. The court noted several deficiencies in the reports. Most importantly, none of the agents had been inside the home. And none of the reports accounted for the cost of necessary repairs. *See Airline Const. Inc. v. Barr*, 807 S.W.2d 247, 256 (Tenn. Ct. App. 1990) ("There must be some evidence, apart from mere ownership, that this 'value' is a product of reasoned analysis.").

Husband also questions whether the repairs were necessary as well as the proof of repair costs.⁴ The court's finding that the residence needed \$50,000 in repairs was based on testimony from Wife and the children. The court found this testimony to be credible. And Husband offered no contrary evidence. We discern no basis to overturn the court's finding on this record. *Watson*, 309 S.W.3d at 490.

3. Other Marital Assets

Husband challenges the court's valuation of the household goods and furnishings in the marital residence. Wife estimated that these items were worth \$5,000. Husband did not dispute that value at trial.⁵ The court determined that Wife's value was overly optimistic and \$1,000 was more realistic. Given the testimony about the condition of the

⁴ Husband also complains that he did not have any prior notice of these damages, and thus, he was prevented from taking steps to mitigate the damage to preserve the home's value. He did not make this argument in the trial court, so we deem it waived. *See Lawrence v. Stanford*, 655 S.W.2d 927, 929 (Tenn. 1983) ("It has long been the general rule that questions not raised in the trial court will not be entertained on appeal.").

⁵ Husband seeks to use his estimate of the value of the household furnishings in his discovery responses as competing evidence of value. But his discovery responses were not introduced as an exhibit at trial.

marital residence as a whole, we cannot say that the evidence preponderates against the court's finding.

He also asserts that the court overvalued the Wyndham timeshare. The court valued the timeshare at \$10,000 based on Wife's testimony. Husband did not dispute Wife's valuation at trial.⁶ "The burden is on the parties to produce competent evidence of value, and the parties are bound by the evidence they present." *Wallace*, 733 S.W.2d at 107.

In sum, the court relied on competent evidence in valuing the marital assets. The court's valuations were within the range of the competence evidence submitted at trial. *See id.* And the evidence does not preponderate against the court's findings.

D.

The trial court has broad discretion to fashion an equitable division of the marital estate. *See* Tenn. Code Ann. § 36-4-121(a)(1) (2021); *Flannary v. Flannary*, 121 S.W.3d 647, 650 (Tenn. 2003). The factors in Tennessee Code Annotated § 36-4-121(c) should guide the court's decision. *Larsen-Ball v. Ball*, 301 S.W.3d 228, 234 (Tenn. 2010); *Batson v. Batson*, 769 S.W.2d 849, 859 (Tenn. Ct. App. 1988). To reach an equitable division, the trial court must weigh the relevant factors in light of the proof at trial. *Larsen-Ball*, 301 S.W.3d at 234; *Batson*, 769 S.W.2d at 859.

Husband does not challenge the court's analysis of the statutory factors or its decision to divide the marital estate equally. But he asserts that the court's valuation errors shifted the court's division in Wife's favor, rendering it inequitable. Because we conclude that the trial court did not err in its valuation of the marital assets, we need not address this complaint.

Husband argues that the court incorrectly calculated each spouse's share of the division. In dividing the marital estate, the court awarded the marital residence to Wife and the family business to Husband. Husband contends that the court erred in using the net equity value of the marital residence in calculating the value of Wife's share. And the court's failure "to separate the asset from the debt," unfairly skewed the distribution of the estate in favor of Wife.

⁶ On appeal, Husband challenges the court's valuation based on "new evidence" he claims to have discovered after the trial. The trial court declined to consider his newly discovered evidence. We discern no abuse of discretion in the court's decision. *See Discover Bank v. Morgan*, 363 S.W.3d 479, 487 (Tenn. 2012). Husband offered no evidentiary support for his claim that the Wyndham timeshare had expired. And he has not shown why he could not have discovered this evidence before trial. *See Stovall v. Clarke*, 113 S.W.3d 715, 721 (Tenn. 2003).

“[M]arital debts are subject to equitable division in the same manner as marital property.” *Alford v. Alford*, 120 S.W.3d 810, 813 (Tenn. 2003). The court allocated the mortgage debt associated with the marital residence to Wife and the business debt to Husband. *See Kinard*, 986 S.W.2d at 233 (noting that marital debts “frequently follow their related assets”). Instead of calculating the gross value of all assets awarded to each spouse and then subtracting the debts allocated to that spouse, the court used net equity figures to arrive at a total value. As the court used the same method in calculating both spouse’s shares, we discern no unfairness here.

E.

Husband also contests the court’s alimony award. He concedes that Wife demonstrated a need for alimony on a short-term basis. Yet he contends that an award of \$5,000 per month in alimony *in futuro* was not appropriate. “[T]rial courts have broad discretion to determine whether spousal support is needed and, if so, the nature, amount, and duration of the award.” *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 105 (Tenn. 2011). In exercising that discretion, the court must consider a non-exclusive list of statutory factors found in Tennessee Code Annotated § 36-5-121(i). *Id.* at 109-10. Alimony decisions are factually driven and “involve[] the careful balancing of many factors.” *Id.* at 105. The two most important factors are the disadvantaged spouse’s need and the obligor spouse’s ability to pay. *Id.* at 110.

Alimony *in futuro* is “intended to provide support on a long-term basis until the death or remarriage of the recipient.” *Id.* at 107; Tenn. Code Ann. § 36-5-121(f)(1) (2021). It may be awarded when the court finds that one spouse is relatively economically disadvantaged and rehabilitation is not feasible. *Id.* Rehabilitation is not feasible if,

the disadvantaged spouse is unable to achieve, with reasonable effort, an earning capacity that will permit the spouse’s standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.

Id. Even though awards of this type of spousal support are disfavored, alimony *in futuro* may be awarded under the proper circumstances. *Bratton v. Bratton*, 136 S.W.3d 595, 605 (Tenn. 2004); *Gonsewski*, 350 S.W.3d at 109.

As the court noted, this was a long-term marriage. Tenn. Code Ann. § 36-5-121(i)(3). Husband did not want Wife to continue her separate employment after the marriage. She devoted herself to raising the couple’s two children and helping Husband in his various business ventures. Wife’s only significant work experience since moving to the United States has been in the family business. Even then, she could only help the

Egyptian customers due to her poor English skills. The court determined that Husband had a far greater earning capacity than Wife. *Id.* § 36-5-121(i)(1). He controlled the family business, which provided him with a lucrative income. But Wife did not receive sufficient liquid assets or income-producing property in the division to meet her demonstrated need. *Id.* § 36-5-121(i)(8). Wife also suffered from anxiety and depression. Her poor mental state caused chronic stomach issues and “her nerves were shot.” *Id.* § 36-5-121(i)(4), (5). Although she was in therapy, she was unable to work in a traditional environment.

Husband contends that Wife can be rehabilitated with additional training and/or English lessons. So rehabilitative alimony, rather than alimony *in futuro*, would be more appropriate here. He points out that Wife has a college degree in accounting and extensive experience managing “a large wholesale business with revenues over a million dollars per year.” And she has worked in the hospitality industry and as a substitute teacher.

But Wife’s work experience outside the family business was either many years ago or short-lived. And this record contains no evidence that Wife could support herself with her business skills. *See Lubell v. Lubell*, No. E2014-01269-COA-R3-CV, 2015 WL 7068559, at *18 (Tenn. Ct. App. Nov. 12, 2015) (noting that Wife’s work experience at business operated with Husband may not easily transfer to post-divorce employment). Nor do we find any evidence that English lessons or some sort of additional training would enable Wife to earn an income reasonably comparable to the standard of living she enjoyed during the marriage⁷ or the standard Husband will enjoy after the divorce.

Under the circumstances, an award of alimony *in futuro* is appropriate. After the marriage, Husband’s standard of living will remain relatively unchanged. Wife, on the other hand, must begin anew with few marketable skills, diagnosed mental health issues, and a significant language barrier. Other than minimum wage jobs, her only potential source of income was a small amount of rent from the one Egyptian commercial property she received in the divorce. While Husband questions the proof of Wife’s mental health, Wife, Mena, and Maryam gave similar testimony about Wife’s condition. Wife “cried all the time” and had chronic stomach pains that precluded her from working. *Cf. Riggs v. Riggs*, 250 S.W.3d 453, 459 (Tenn. Ct. App. 2007) (rejecting a wife’s claim of physical disability when there was no evidence, “medical, or other[wise],” from which the court could determine the severity of the wife’s condition and there was ample evidence to support a finding that the wife was “able-bodied”).

We also discern no abuse of discretion in the amount awarded. Wife’s income and expense statement shows a monthly need for at least \$5,484 in alimony. Husband

⁷ Contrary to Husband’s arguments on appeal, there is ample evidence in the record of the family’s high standard of living during the marriage. Tenn. Code Ann. § 36-5-121(i)(9). Mena and Maryam described growing up in a nice home with expensive designer dogs. They took frequent trips to Egypt. Each child received a new car at high school graduation, and Husband paid for their college educations. As adults, Husband continued to give them lavish gifts, such as gold jewelry and cash.

complains that Wife listed attorney's fees among her expenses. And he asserts that her claimed expense for auto insurance "seems high." But the court did not award Wife the full amount she requested. She will need to work part-time or use some of the liquid assets she received in the division of the marital estate to make up any shortfall. The court determined that Wife was capable of earning a small income from part-time work.

By contrast, the court had "no doubt" that Husband had the ability to pay \$5,000 a month in alimony. The evidence does not preponderate against that finding. As Husband acknowledges in his brief, the family business generates revenues of "over a million dollars per year." And Husband had no difficulty supporting Wife during the pendency of the divorce. He admittedly gave her significant sums above and beyond his court-ordered support obligation.

F.

Wife seeks an award of the attorney's fees she incurred on appeal on two grounds. First, she seeks fees for a frivolous appeal. *See* Tenn. Code Ann. § 27-1-122 (2017). Second, she requests that we award her fees as a prevailing party. *See id.* § 36-5-103(c) (2021).

As to Wife's first ground, the statute authorizing an award of damages for a frivolous appeal "must be interpreted and applied strictly so as not to discourage legitimate appeals." *See Davis v. Gulf Ins. Grp.*, 546 S.W.2d 583, 586 (Tenn. 1977). A frivolous appeal is one "utterly devoid of merit." *Combustion Eng'g, Inc. v. Kennedy*, 562 S.W.2d 202, 205 (Tenn. 1978). This appeal was not devoid of merit. Husband "made legitimate arguments and cited to relevant law and facts." *See Coolidge v. Keene*, 614 S.W.3d 106, 120 (Tenn. Ct. App. 2020). His appeal was unsuccessful, not frivolous. *See id.*

Wife's alternative ground for an award of attorney's fees is Tennessee Code Annotated § 36-5-103(c). Appellate courts have discretion to award a prevailing party fees incurred on appeal. *Pippin v. Pippin*, 277 S.W.3d 398, 407 (Tenn. Ct. App. 2008); *Shofner v. Shofner*, 181 S.W.3d 703, 719 (Tenn. Ct. App. 2004). In exercising our discretion, "we should consider, among other factors, the ability of the requesting party to pay his or her own attorney's fees, the requesting party's success on appeal, and whether the requesting party has been acting in good faith." *Shofner*, 181 S.W.3d at 719.

Considering the above factors, we decline to award Wife her attorney's fees on appeal. While Wife was the prevailing party, she and Husband each received one-half of the marital estate. And Wife will receive \$5,000 per month in alimony. Like the trial court, we conclude that wife can pay her attorney's fees out of her alimony or the property she received in the divorce.

III.

The trial court's decision to impose discovery sanctions was not an abuse of discretion. And we discern no reversible error in the court's valuation and division of the marital estate or its decision to award alimony *in futuro*. So we affirm.

s/ W. Neal McBrayer
W. NEAL McBRAYER, JUDGE