IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 5, 2023 Session

IN RE ESTATE OF ERVIN JACK QUINN

Appeal from the Chancery Court for Houston County
No. 2017-PR-226 Larry J. Wallace, Judge

No. M2022-00532-COA-R3-CV

A surviving spouse brought this action against the estate of her deceased husband and his ex-wife and children. The surviving spouse sought to set aside the decedent's *inter vivos* transfer of three properties to the ex-wife and children and/or to have the value of the transferred property included in the decedent's net estate under Tennessee Code Annotated § 31-1-105, which applies when a decedent transferred property "with an intent to defeat the surviving spouse's elective or distributive share." The decedent conveyed the properties within three days of his death by quitclaim deed for no consideration other than love and affection. One of the deeds was executed by the decedent, and the other two deeds were executed by the decedent's attorney-in-fact, his daughter. The chancellor referred all issues in dispute to a special master who found that the properties conveyed by the attorney-in-fact were conveyed with the intent to defeat the plaintiff's elective share but that the third tract, which was conveyed by the decedent, was not. The chancellor adopted the report and recommendations of the special master. This appeal followed. After considering the factors identified in *Finley v. Finley*, 726 S.W.2d 923 (Tenn. Ct. App. 1986) and the totality of the circumstances, we hold that all three properties were conveyed with the intent to defeat the plaintiff's elective share. Thus, we reverse, in part, the judgment of the trial court and remand for entry of a judgment consistent with this opinion, including a recalculation of the surviving spouse's elective share based on a net estate that includes all three properties at issue.

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

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the court, in which W. NEAL MCBRAYER and JEFFREY USMAN, JJ., joined.

Jim Sowell, Dickson, Tennessee, for the appellant, Elizabeth Carol Quinn.

Timothy V. Potter and Jennifer Foster, Dickson, Tennessee, for the appellees, Beverly Quinn, Wanda Jean Cooke, Dale Ervin Quinn, Shane Henry Quinn, David Nelson Quinn, and Wendell Quinn.

OPINION

FACTS AND PROCEDURAL HISTORY

Ervin Jack Quinn ("Decedent") and Elizabeth Carol Quinn ("Plaintiff") were married in New Hampshire in 1985. The following year, the couple moved to Erin, Tennessee, where they bought a 132-acre farm on Bledsoe Lane ("the Bledsoe Lane Property"). The couple resided there until 2001,[1] when Plaintiff moved out of the marital residence. Prior to moving out, Plaintiff quitclaimed her interest in the Bledsoe Lane Property to Decedent for nominal consideration.[2] Although they maintained separate homes until Decedent's death, Plaintiff and Decedent never divorced.

After the separation, Decedent bought two additional tracts of land. In 2001, he bought a 5-acre parcel on Keel Hollow Lane, and in 2008 he bought a 1-acre lot on Minor Lane.

Decedent subsequently reunited with his ex-wife, Beverly Quinn, with whom he had five adult children.[3] Thereafter, Decedent resided with Beverly Quinn on the Bledsoe Lane Property until his death in August 2017.

Six months before his death, in February 2017, Decedent filed a complaint for divorce against Plaintiff on the grounds of irreconcilable differences and separation of more than two years. The divorce complaint was still pending at the time of Decedent's death. Following his death, the divorce complaint was dismissed as moot.

Then, in June 2017, Decedent executed a will that devised a life estate in the Bledsoe Lane Property to Beverly Quinn, with the remainder interest going to three of his adult children—Wanda Cooke, Dale Quinn, and Shane Quinn. The will bequeathed the rest and residue of Decedent's estate to Wanda Cooke, Dale Quinn, and Shane Quinn. Decedent's will neither provided for nor mentioned Plaintiff. Contemporaneous with the execution of the will, Decedent executed a durable power of attorney that named his daughter, Wanda Cooke, as his attorney-in-fact.

On August 21, 2017, only three days before his death from a long illness, Decedent executed a quitclaim deed that conveyed the Bledsoe Lane Property to Ms. Cooke, Dale Quinn, Shane Quinn, and a fourth adult child, David Quinn. As in his will, Decedent

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[1] The record provides inconsistent dates for when they separated that range from 2000 to 2001. Plaintiff testified that she left on June 5, 2001 while Defendants contend they separated in 2000.

[2] The quitclaim deed was executed by Plaintiff on April 29, 1998.

[3] They married in 1960 and divorced in 1972.

reserved a life estate on the Bledsoe Lane Property for his ex-wife, Beverly Quinn. The next day, Ms. Cooke executed quitclaim deeds for the Minor Lane and Keel Hollow Lane properties under her power of attorney, conveying the properties to herself, Dale Quinn, Shane Quinn, and David Quinn. All three conveyances were made "FOR LOVE AND EFFECTION [sic] AND OTHER VALUBLE [sic] CONSIDERATION." The deeds were registered on August 22, 2017. Decedent died two days later, on August 24, 2017.

Decedent was 78 years old at the time of death. The death certificate stated that Decedent's cause of death was "carcinoma of the lungs" with an onset of "months." Although he was still married to Plaintiff when he died, Decedent's death certificate and obituary listed Beverly Quinn as his surviving spouse, and no one notified Plaintiff of his passing. Plaintiff learned about Decedent's death in October 2017 when she received a letter from the Social Security Administration.

The following month, on November 2, 2017, Plaintiff commenced this action in which she sought to open Decedent's estate and to set aside the three conveyances mentioned above as fraudulent. Specifically, she asserted that the properties were includable in Decedent's estate under Tennessee Code Annotated § 31-1-105, which applies when a decedent transfers property "with an intent to defeat the surviving spouse's elective or distributive share." Plaintiff also claimed a 40% elective share plus a one-year cash allowance, a cash homestead, and exempt property.[4] Beverly Quinn and Decedent's adult children (collectively "Defendants") filed a timely answer to the complaint denying the claim that the conveyances were fraudulent or intended to defeat Plaintiff's rights as the surviving spouse.

On August 21, 2018, Wanda Cooke filed a petition to probate Decedent's will ("the Will") and grant letters testamentary. Pending a hearing on the petition, the court entered an order opening a probate estate and appointing an interim administrator.

Plaintiff amended her complaint twice with leave of court. In July 2018, Plaintiff filed her First Amended Complaint, requesting that her homestead allowance of $5,000 in cash. In February of 2019, Plaintiff filed her Second Amended Complaint, requesting the court to bring the three properties back into the estate, determine the value of the estate, and enter judgment for Plaintiff's homestead allowance, personal property claim, year's support, and distributive share.

[4] Plaintiff also filed a motion for restraining order to prevent Defendants from selling or transferring the property that Decedent conveyed to them, which the court granted on November 3, 2017. The same day, Plaintiff recorded a lien lis pendens on the properties.

On March 25, 2019, the trial court entered an agreed order stating that Plaintiff was entitled to an elective share, one-year's support and maintenance, and a homestead allowance. The order also directed that Decedent's real and personal property be appraised.

Following a hearing, the court admitted the Will to probate, relieved the interim administrator, and appointed Ms. Cooke as the executrix of Decedent's estate. Thereafter, the parties stipulated to the values of Decedent's real and personal property, including the three disputed properties, which the court approved by order entered on June 17, 2019. The order also stated that Plaintiff would receive a forty percent (40%) elective share of the estate,[5] the amount of which to be determined later, a year's support in the amount of $19,033, and a homestead allowance of $5,000.

On July 15, 2019, Wanda Cooke filed a motion to exclude the Bledsoe Lane Property and the two smaller tracts from Decedent's net estate, arguing that he did not own them at the time of his death. Following a hearing on the motion and other pending matters, the chancellor referred the case to Special Master Mike Bullion "to resolve all disputed issues."

After an evidentiary hearing in which Plaintiff and Ms. Cooke were the only witnesses, the Special Master found that the two smaller tracts of real property—the Keel Hollow and Minor Lane properties—were conveyed with an intent to defeat Plaintiff's elective share. The Special Master found significant Ms. Cooke's testimony that she executed the deeds to the Keel Hollow and Minor Lane properties "because it was the way her father (the decedent) wanted it in his will, and that [was] how her father's prior lawyer wanted it done." As for the 132-acre tract, the Bledsoe Lane Property, the Special Master concluded that Decedent had executed the deed out of gratitude for and in consideration of Beverly Quinn's care of Decedent during his last illness, not with an intent to defeat Plaintiff's elective share. Based on these and other findings, the Special Master included the Keel Hollow and Minor Lane properties in Decedent's net estate but not the Bledsoe Lane Property.

As for Plaintiff's other spousal interests, the Special Master found that Plaintiff was entitled to a Ford truck and a stock trailer, each valued at $1,000, as well as $5,000 for her homestead allowance and approximately $19,000 for her one-year's support.

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[5] Pursuant to Tennessee Code Annotated § 31-4-101(a), the surviving spouse of an intestate decedent, or a surviving spouse who elects against a decedent's will, has a right to take an elective-share of the decedent's net estate in an amount determined by the length of the marriage. If the decedent and the surviving spouse were married 9 years or more, the surviving spouse is entitled to 40% of the net estate. *See* Tenn. Code Ann. § 31-4-101(a)(1). Plaintiff and Decedent were married more than nine years; thus, Plaintiff was entitled to 40% of the net estate as the parties agreed upon.

The trial court adopted the Special Master's report verbatim over Plaintiff's objections and entered its final order as to Plaintiff on March 30, 2022. This appeal followed.

ISSUES

Plaintiff raises three issues on appeal, which we have restated as follows:

1. Whether the court erred when it approved the finding of the Special Master that Decedent's conveyance of the Bledsoe Lane Property was not made fraudulently with the intent to defeat Plaintiff's elective share.

2. Whether the court erred when it approved the finding of the Special Master that the surviving spouse was to receive only personal property valued at $2,000 rather than an additional $48,000 in contravention of Tennessee Code Annotated § 30-2-101.

3. Whether the court erred when it approved the finding of the Special Master that Plaintiff's elective share was only $20,984.40.

Defendants do not raise any issues. Significantly, they do not challenge the findings that Decedent fraudulently transferred the two smaller tracts of real property—the Keel Hollow and Minor Lane properties—with an intent to defeat Plaintiff's elective share and that the Keel Hollow and Minor Lane properties be included in Decedent's net estate.

STANDARD OF REVIEW

Typically, whether a decedent transferred property with a fraudulent intent to defeat the surviving spouse's statutory share is a question of fact that we review under a preponderance of the evidence standard. *See, e.g.*, *Sherrill v. Mallicote*, 417 S.W.2d 798, 803–04 (Tenn. Ct. App. 1967) (holding that evidence did not "preponderate against" trial court's finding that "transfer was made with the fraudulent intent to defeat the widow of her distributive share"); *cf. Naifeh v. Valley Forge Life Ins. Co.*, 204 S.W.3d 758, 770 (Tenn. 2006) (the "question of intent . . . is a question of fact"). This standard is set forth in Rule 13(d) of the Tennessee Rules of Appellate Procedure, which reads: "Unless otherwise required by statute, review of findings of fact by the trial court in civil actions shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. R. App. P. 13(d).

That said, pursuant to Tennessee Code Annotated § 27-1-113, "[c]oncurrent findings of fact made by [a] chancellor and special master and supported by material evidence are binding upon the appellate court." Thus, we typically review concurrent findings of fact by a special master and trial court to determine "if there is any material

evidence to support the trial court's concurrence." *Tennison Bros., Inc. v. Thomas*, 556 S.W.3d 697, 724 (Tenn. Ct. App. 2017).[6]

In this case, however, the parties identify the preponderance of the evidence standard in Rule 13(d) as the appropriate standard for us to apply. Also, the parties frame their arguments based on this standard of review.[7] Our Supreme Court faced a similar standard of review dilemma in *City of Memphis v. Hargett*, 414 S.W.3d 88 (Tenn. 2013). In that matter the parties agreed that the courts should employ the equal protection "strict scrutiny" standard of review to analyze the constitutionality of the photographic identification requirements in Tenn. Code Ann. § 2–7–112. *Id*. at 102. Furthermore, their arguments were based on that standard. *Id*. After noting that "the United States Supreme Court has rejected the notion that strict scrutiny applies to every statute imposing a burden on the right to vote under the United States Constitution," the Court decided, "[b]ased on

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[6] The "material evidence" standard of review does not apply to "issues not proper to be referred, findings based on an error of law, [and] mixed questions of fact and law." *Fayne v. Vincent*, 301 S.W.3d 162, 170 (Tenn. 2009). Issues not proper to be referred include "the main issues of a controversy and the principles on which these issues are to be adjudicated." *Archer v. Archer*, 907 S.W.2d 412, 415–16 (Tenn. Ct. App. 1995) (citing *State v. Bolt*, 169 S.W. 761, 762 (Tenn. 1914); *Ingram v. Stein*, 126 S.W.2d 891, 892 (Tenn. Ct. App. 1938)). "Collateral, subordinate, and incidental issues and the ascertainment of ancillary facts are matters properly referred to a special master." *Ingram*, 126 S.W.2d at 892.

Here, the Chancellor referred "all the disputed issues" to the Special Master and then concurred in and adopted his findings. There is no indication in the record that either party made an objection to this broad reference, but it is implicit from the parties' agreement that the "material evidence" standard of review is not applicable to the issues on appeal. In any event, we shall review the issues presented pursuant to the standard of review agreed upon by the parties.

[7] Plaintiff, who is the appellant in this matter, identifies the standard of review in her brief as follows: "Review of findings of fact by the Trial Court in civil actions shall be de novo upon the record of the Trial Court, accompanied by a presumption of the correctness of the findings unless the preponderance of the evidence is otherwise. T.R.A.P. 13(d)." Similarly, Defendants, who are the appellees in this matter, identify the standard of review as follows:

> The standard of review of a trial court sitting without a jury is de novo upon the record. There is a presumption of correctness as to the trial court's findings of fact, unless the preponderance of evidence is otherwise. "In order to preponderate, the evidence must have the greater convincing effect on the trier of fact." However, no presumption of correctness attaches to a trial court's conclusions on issues of law.

(Citations omitted).

the parties' agreement," that it "will assume, rather than decide, that strict scrutiny applies."[8] *Id*.

Following the Supreme Court's lead, while we typically apply a different standard of review to concurrent findings by a special master and chancellor, we defer to the parties' identification of the standard of review based on the "principle of party presentation," as discussed in detail by our Supreme Court in *State v. Bristol*, 654 S.W.3d 917 (Tenn. 2022):

> [A]n appellate court's authority "generally will extend only to those issues presented for review." This "principle of party presentation" is a defining feature of our adversarial justice system. It rests on the premise that the parties "know what is best for them, and are responsible for advancing the facts and argument entitling them to relief." In our adversarial system, the judicial role is not "to research or construct a litigant's case or arguments for him or her," but rather to serve as "arbiters of legal questions presented and argued by the parties before them."
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> The party-presentation principle helps preserve several fundamental values of our judicial system. It promotes impartiality by ensuring that courts retain the passive "role of neutral arbiter of matters the parties present." A decision maker's passivity, or "detachment," helps to ensure even-handed adjudication and preserves litigant and public confidence in the impartiality of the judiciary. By contrast, a decision maker that takes a more active or inquisitorial role may be "perceived as partisan rather than neutral."
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> Limiting review to the issues presented by the parties promotes fairness by ensuring that litigants have a meaningful opportunity to participate in the adjudicative process. As one scholar has observed, deciding cases "outside the framework of the argument" renders "all that was discussed or proved at the hearing irrelevant" and the parties' participation in the decision meaningless, contributing to a negative perception of our judicial system.

Id. at 923–24 (citations omitted).

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[8] In a concurring opinion, Justice Koch noted that the choice of the correct standard of review is a question of law for the court to decide. *City of Memphis v. Hargett*, 414 S.W.3d 88, 112 (Tenn. 2013) (J. Koch, concurring). He also noted that the standard of review can be "influential, if not dispositive." *Id*. (quoting *Schwimmer v. Sony Corp. of Am.,* 459 U.S. 1007, 1009, 103 S.Ct. 362, 74 L.Ed.2d 398 (1982)) (White, J., dissenting from the denial of certiorari).[5] "Because of their importance, the choice of the applicable standard of review should be the starting point for the resolution of the issues on appeal." *Id*.

Accordingly, acting on the premise that the parties "know what is best for them, and are responsible for advancing the facts and argument entitling them to relief," and recognizing that under our adversarial system, the judicial role is not "to research or construct a litigant's case or arguments for him or her," but rather to serve as "arbiters of legal questions presented and argued by the parties before them," we shall review the issues presented pursuant to the standard of review agreed upon by the parties. *See id*.

ANALYSIS

I. DECEDENT'S NET ESTATE

The primary issue on appeal is whether the trial court erred by adopting the Special Master's finding that Decedent did not intend to defeat Plaintiff's elective share when he conveyed the Bledsoe Lane Property for no monetary consideration within three days of his death. *See* Tenn. Code Ann. § 31-1-105.

Generally, "[t]he owner of property has a right to make any disposition of it he desires so long as he violates no rule of public policy." *Davis v. Mitchell*, 178 S.W.2d 889, 910 (Tenn. Ct. App. 1943). This principle extends to testators, who may generally direct the disposition of their property "regardless of any perceived injustice that may result from such a choice." *Cantrell v. Cantrell*, No. M2002-02883-COA-R3-CV, 2004 WL 3044907, at *5 (Tenn. Ct. App. Dec. 30, 2004) (citing *In re Est. of Eden*, 99 S.W.3d 82, 92 (Tenn. Ct. App. 1995)). However, Tennessee has a long-standing policy of not allowing a testator "to completely disinherit his or her surviving spouse." *Id*. (citing Andra J. Hedrick, *Protection Against Spousal Disinheritance: A Critical Analysis of Tennessee's New Forced Share System*, 28 U. Mem. L. Rev. 561, 562 (1998)). This policy is reflected in Tennessee Code Annotated § 31-4-101, which permits surviving spouses to dissent from the decedent's will and "to take an elective-share amount equal to the value of the decedent's net estate."[9]

Moreover, under Tennessee Code Annotated § 31-1-105, if the decedent transferred property during life "with an intent to defeat the surviving spouse of the surviving spouse's distributive or elective share," the value of the transferred property may be included in the net estate, and the conveyance may be set aside if necessary:

> Any conveyance made fraudulently to children or others, with an intent to defeat the surviving spouse of the surviving spouse's distributive or elective share, is, at the election of the surviving spouse, includable in the decedent's

[9] "In 1976, the Tennessee General Assembly abolished dower and curtesy and repealed the statutes allowing widows and widowers to dissent from their spouses' wills, replacing these statutes with provisions entitling a surviving spouse to an elective share of the decedent's estate." Hedrick, *supra*, at 586–87 (footnote omitted).

> net estate under § 31-4-101(b), and voidable to the extent the other assets in the decedent's net estate are insufficient to fund and pay the elective share amount payable to the surviving spouse under § 31-4-101(c).

Tenn. Code Ann. § 31-1-105.

To establish a claim under § 31-1-105, the surviving spouse must prove that the decedent "was acting under scienter, i.e., 'guilty knowledge,' that his actions would deny [the surviving spouse] of her spousal share of his estate, and that he acted with the intent to do so." *Simpson v. Fowler*, No. W2013-02109-COA-R3-CV, 2014 WL 1601137, at *8 (Tenn. Ct. App. Apr. 22, 2014). Because "[d]ecedents rarely leave behind direct evidence of their motives for disposing of property," our courts "have identified a number of factors to aid them in discovering the decedent's motives in a particular transaction." *Horne v. Est. of Horne*, No. 01-A-019101-PB-00005, 1992 WL 187641, at *4 (Tenn. Ct. App. Aug. 7, 1992) (citations omitted).

In *Finley v. Finley*, we identified seven factors to be considered in determining whether a conveyance has been made with the intent to deny the surviving spouse of his or her elective share:

> 1. Whether the transfer was made with or without consideration.
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> 2. The size of the transfer in relation to the [decedent spouse]'s total estate.
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> 3. The time between the transfer and the [decedent spouse]'s death.
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> 4. Relations which existed between the [spouses] at the time of the transfer.
>
> 5. The source from which the property came.
>
> 6. Whether the transfer was illusory.
>
> 7. Whether the [surviving spouse] was adequately provided for in the will.

726 S.W.2d at 924.

However, we are not limited to considering these seven factors alone. *See Warren v. Compton*, 626 S.W.2d 12, 17 (Tenn. Ct. App. 1981). "Circumstances which establish fraudulent intent are as varied as the ingenuity of the human mind may devise." *Id.*[10] Thus,

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[10] This totality-of-the-circumstances test is akin to those used in several other states. *See, e.g.*, *Carmack v. Carmack*, 603 S.W.3d 900, 910 (Mo. Ct. App. 2020); *In re Est. of Thompson*, 434 S.W.3d 877, 882 (Ark. 2014); *Sanditen v. Sanditen*, 496 P.2d 365, 368 (Okla. 1972); *Klosiewski v. Slovan Bldg. & Loan*

"[a]ll facts and circumstances surrounding the transfer must be considered." *Id.* Furthermore, because "there can be no fixed rule of determining when a transfer or gift is fraudulent . . . each case must be determined on its own facts and circumstances." *Sherrill*, 417 S.W.2d at 802.

Here, the Special Master discussed each of the seven *Finley* factors and made findings of fact and conclusions of law as to each. In summary, the Special Master found that Decedent conveyed "a large portion" of his estate for no monetary consideration just days before his death without otherwise providing for Plaintiff in his will. Neither party disputes these findings on appeal.

But the Special Master also found no evidence that Decedent and Plaintiff were "bitter toward each other" or that Decedent had a vindictive motive when he conveyed the Bledsoe Lane Property. To the contrary, the Special Master found Decedent "had legitimate donative intent" because he conveyed the property "in light of his loving and close relationships with his 4 adult children and his former wife." The Special Master also found significant the fact that Plaintiff conveyed her interest in the Bledsoe Lane Property to Decedent when they separated, "thus overtly transmuting the [property] to [Decedent]'s separate (non-marital) property." And while "there was testimony that [Decedent]'s former wife had been taking care of [Decedent] while he was sick," the Special Master found no evidence that Decedent "was anticipating his death" at the time of the transfers.

Plaintiff contends these findings are either unsupported by the evidence or in derogation of the applicable law. Accordingly, she contends the totality of the circumstances establish that Decedent conveyed the Bledsoe Lane Property with an intent to defeat her elective share. We will consider each of her arguments in turn.

A. Relationship Between the Spouses

A strained marital relationship is probative of fraudulent intent because it could "logically motivate [the decedent] to attempt to deprive his or her spouse of any share in an estate in favor of a child or other loved one." *In re Est. of Parsley*, 864 S.W.2d 36, 41 (Tenn. Ct. App. 1988) (citing *McClure v. Stegall*, 729 S.W.2d 263 (Tenn. Ct. App.

Ass'n, 230 A.2d 285, 287 (Md. 1967); *Hamm v. Piper*, 201 A.2d 125, 127 (N.H. 1964). Some states, however, look solely to whether the decedent intended "to divest himself of the ownership of the property," i.e., whether the transfer was illusory. *See Jeruzal's Est. v. Jeruzal*, 130 N.W.2d 473, 481 (Minn. 1964) ("[I]t appears that in Minnesota a motive to deprive one's spouse of the statutory inheritance by inter vivos transfers generally is irrelevant, the only test being whether the transaction is real."); *accord In re Montague's Est.*, 170 A.2d 103, 105 (Pa. 1961).

1987)).[11] The relevant period for the purposes of a claim under § 31-1-105 is "at the time of the transfer." *Warren*, 626 S.W.2d at 16 (citing *Reynolds v. Vance*, 48 Tenn. 344 (1870)).

The Special Master found that Decedent and Plaintiff separated "in an amicable manner" and "had a non-traditional marriage" in which they lived "as a divorce[d] couple would live, without actually getting a divorce," i.e., they "lived their own separate life's [sic]—not depending on each other in any significant manner, keeping their property separate, while having very little contact with each other." But the Special Master made no express finding as to the state of Plaintiff's relationship with Decedent at the time of the transfers, instead noting the lack of evidence that Decedent and Plaintiff were "bitter toward each other."

Plaintiff contends that, by the time the conveyances occurred, "the relationship between [Decedent] and [Plaintiff] was not good and was quite strained." As evidence of this, she points to undisputed evidence that Decedent was cohabitating "with a paramour"—Beverly Quinn—and that Decedent's petition for divorce was pending.

The special master's findings do not fully grapple with Decedent seeking a divorce at the time of the transfer. The divorce complaint was premised on "irreconcilable differences" and "separation of more than a year," and there is nothing in the record to suggest Decedent's pursuit of divorce did not reflect a strained relationship. The Plaintiff and Decedent had been separated for more than a decade "while having very little contact with each other." These relational circumstances are more consistent with providing support for the conclusion that Decedent was trying to defeat the surviving spouse's elective share than that he was not.

Consequently, we find no error in the trial court's findings on this factor.

B. Quitclaim Deed

The Special Master found it significant that Decedent and Plaintiff purchased the Bledsoe Lane Property together shortly after they married and that Plaintiff quitclaimed her interest to Decedent in 1998. The Special Master reasoned that Decedent had "the legal

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[11] In *Warren v. Compton*, 626 S.W.2d 12 (Tenn. Ct. App. 1981) we observed that "a strained marriage relationship is a sword which cuts two ways" because "[t]he surviving spouse could have been so inconsiderate, cold, and self-centered as to justify a transfer of property by the other spouse to those in whom he found solace, comfort, and care." *Id.* at 18. But there is no exception in § 31-1-105 for transfers that were "justified." *See Simpson*, 2014 WL 1601137, at *8, 10 (explaining that the dispositive issue under § 31-1-105 is whether the decedent "was acting under scienter, i.e., 'guilty knowledge,' that his actions would deny [the surviving spouse] of her spousal share of his estate, and that he acted with the intent to do so").

right to convey or transfer [the Bledsoe Lane P]roperty" because the quitclaim deed "overtly transmut[ed] the 132-acre tract to [Decedent]'s separate (non-marital) property." Plaintiff argues that the 1998 quitclaim deed "is of no consequence" because it "did not convey her spousal interests in [Decedent's] estate."[12]

As we have noted in prior cases, husbands and wives are generally entitled to individually dispose of their separate property during their lifetimes by sale or by inter vivos gift. *Sherrill*, 417 S.W.2d at 804. "An important exception to the principles of testamentary freedom and free alienability of property, however, is that a testator is not entitled to completely disinherit his or her surviving spouse." *Cantrell*, 2004 WL 3044907, at *5 (citing Hedrick, *supra*, at 562).

As Decedent's surviving spouse, Plaintiff had a right to dissent from Decedent's will and claim an elective share of "the **value** of [D]ecedent's net estate." Tenn. Code Ann. § 31-4-101(a)(1) (emphasis added). "The value of the net estate includes all of the decedent's real property . . . and personal property subject to disposition under the decedent's will or the laws of intestate succession." *Id.* § 101(b). In other words, the surviving spouse "has a right to an elective share of [decedent]'s **separate property**." *Cantrell*, 2004 WL 3044907, at *3. Thus, the classification of the Bledsoe Lane Property as Decedent's separate property, which may be significant in a divorce case, is of little significance here.[13] As Decedent's surviving spouse, Plaintiff had a right to an elective share of the value of Decedent's net estate. *See id.* at *3. Plaintiff's quitclaim deed to the Bledsoe Lane Property simply prevents her from claiming a separate interest in the property. *See id.* (considering whether surviving spouse had an equitable interest in property in addition to her equitable share of the decedent's estate).

C. Donative Intent

The Special Master found Decedent's transfer of the Bledsoe Lane Property was not illusory because there was "no proof that [Decedent] retained any ownership or control." Instead, the Special Master found it was "reasonable to infer [that Decedent] had legitimate donative intent in conveying the 132-acre tract" because he conveyed the property "in light of his loving and close relationships with his 4 adult children and his former wife—to

[12] In their brief, Defendants do not dispute the Special Master's finding that Plaintiff did not convey her elective share interest by her prior quitclaim deed; however, they rely on the fact that, at the time of the conveyance, the Bledsoe Lane Property was titled solely in Decedent's name.

[13] In divorce cases, our courts have relied on the doctrine of transmutation when considering the "source of the [property]." *See In re Est. of Grass*, No. M2005-00641-COA-R3-CV, 2008 WL 2343068, at *15 (Tenn. Ct. App. June 4, 2008) (invoking doctrine of transmutation to determine whether funds in bank account came from marital or separate sources), *overruled on other grounds by In re Est. of Fletcher*, 538 S.W.3d 444 (Tenn. 2017).

insure his former wife, (who took care of him while he was sick), and 4 of his adult children . . . were provided for."

Plaintiff does not dispute that Decedent conveyed a life estate in the Bledsoe Lane Property to Beverly Quinn in consideration of her care for him while he was ill. But she contends that the transfer was illusory because "there was an attempt to control the possession of the property by creating a life estate" for Beverly Quinn, which benefitted Decedent while Beverly Quinn cared for him. We agree.

A property transfer is illusory when "the transferor retained such elements of ownership and control over the property as renders the purported transfer deceptive, incomplete and misleading," i.e., "a pretended transfer rather than a real transfer." *Warren*, 626 S.W.2d at 19. The elements of ownership include "(1) the right of possession, enjoyment and use; (2) the unrestricted right of disposition; and (3) the power of testimonial disposition." *State ex rel. Elvis Presley Int'l Mem'l Found. v. Crowell*, 733 S.W.2d 89, 96 (Tenn. Ct. App. 1987) (citations omitted).

By the time he transferred the Bledsoe Road Property, Decedent had been residing with Beverly Quinn for six years, and he relied on her for care and comfort as he was suffering from a lengthy battle with lung cancer. Because of the life estate, Beverly Quinn had the sole right to the use and possession of the Bledsoe Road Property. Thus, there is at least circumstantial evidence to support the finding that Decedent's conveyance of title to the Bledsoe Road Property was illusory because he continued to reside with his ex-wife on the property while she cared for him during his final illness.

Accordingly, we find the evidence preponderates in favor of a finding that the conveyance was illusory.

D. Time Between Transfer and Death

The time between a transfer and the decedent's death is evidence of "whether, and to what extent[,] the donor-spouse was anticipating death." *McClure*, 729 S.W.2d at 266; *see Sherrill*, 417 S.W.2d at 802 (finding facts and circumstances supported the chancellor's finding of fraudulent intent when, *inter alia*, "the transfer was made shortly prior to death and with the evidence that death could have been anticipated").

The Special Master found that Decedent transferred the Bledsoe Lane Property just three days before he died. But the Special Master also found that "the proof failed to establish whether [Decedent] was anticipating his death" when he made the transfer. Plaintiff contends this was error because Decedent executed a will in June 2017 and his death certificate shows the cause of death as "carcinoma of the lungs" with an onset of "months." Based on these facts, Plaintiff contends that Decedent "knew that death was eminent when he executed his Will and the deeds were signed and recorded." We agree.

The death certificate shows that Decedent, then 78 years old, died of lung cancer that he had endured for "months." Further, the testimony of Beverly Quinn and Wanda Cooke was that Decedent was dependent on the care of Beverly Quinn, who was residing with and caring for Decedent due to his declining state of health. Moreover, Ms. Cooke admitted that Decedent transferred the Bledsoe Lane Property in August 2017 because he "knew he was dying and that his divorce would not be finalized before his death."

For these reasons, the evidence preponderates in favor of a finding that Decedent conveyed the Bledsoe Lane Property in anticipation of his death.

E. Totality of the Circumstances

A surviving spouse challenging the validity of a conveyance bears the burden of proving fraudulent intent by a preponderance of the evidence. *Finley*, 726 S.W.2d at 924–25; *Simpson*, 2014 WL 1601137, at *11. Such a determination is to be based on the consideration of the totality of the circumstances, giving appropriate weight to the *Finley* factors. *Simpson*, 2014 WL 1601137, at *11.

In his final analysis, the Special Master found that any inference of fraud was negated by Decedent's relationship with Plaintiff, the fact that the Bledsoe Lane Property was Decedent's separate property, and the fact that Decedent conveyed the property in light of Beverly Quinn's care for him.[14] But as discussed above, several of the Special Master's findings were either based on facts that are not supported by a preponderance of the evidence or based on a misapprehension of the law.

We also take notice of several undisputed facts in the record that were not discussed by the Special Master. Most significantly, Ms. Cooke admitted that Decedent transferred the Bledsoe Lane Property in August 2017 because "Dad knew he was dying and that his divorce would not be finalized before his death[.]"

We also find it significant that Decedent had already executed a will that devised the Bledsoe Lane Property to his children with a life estate for his ex-wife. Thus, they would have inherited the properties pursuant to his Will.[15]

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[14] Although Plaintiff does not dispute whether Beverly Quinn provided care and comfort to Decedent, she correctly points out that a transfer supported by consideration may still be set aside if it was nonetheless made with an intent to defeat the surviving spouse's statutory share of the estate. *See In re Est. of Parsley*, 864 S.W.2d at 40.

[15] In the Will, Decedent left the Bledsoe Lane Property to three of his children with a life estate reserved for Beverly Quinn. In the quitclaim deed, Decedent conveyed the Bledsoe Lane Property to four of his children with a life estate reserved for Beverly Quinn. We find this difference immaterial for the purposes of determining Decedent's intent.

Based upon the preponderance of the evidence and considering the totality of circumstances, including but not limited to the above findings, as well as the admission by Wanda Cooke, we find that the evidence preponderates against the Special Master's finding that Decedent did not intend to defeat Plaintiff's statutory share of his estate when he transferred the Bledsoe Lane Property. Instead, the evidence preponderates in favor of a finding that Decedent knew his divorce would not be finalized before he died, took matters into his own hands, and transferred the property *inter vivos* with an intent to keep it safe from the claims of his estranged spouse. At the same time, Decedent reserved a life estate for his ex-wife, Beverly Quinn—with whom he lived and upon whom he depended—thereby retaining his ability to reside on the property until his death. Accordingly, we hold that Decedent's conveyance of the Bledsoe Road Property was fraudulent with the intent to defeat Plaintiff's elective share. *See Simpson*, 2014 WL 1601137, at *11.

For these reasons, we reverse the ruling of the trial court and remand with instructions to include the Bledsoe Road Property in calculating Decedent's net estate for the purpose of calculating Plaintiff's elective share. *See* Tenn. Code Ann. § 31-4-101. Furthermore, if the court determines that the assets included in the Decedent's estate are insufficient to fund Plaintiff's elective share, the court has the authority to void the conveyances pursuant to Tennessee Code Annotated § 31-1-105.

II. EXEMPT PERSONAL PROPERTY

In her second issue on appeal, Plaintiff argues that the Special Master erred by finding that Plaintiff "was to receive only personal property valued at $2,000." Her argument on this issue is sparse; Plaintiff simply states that she is entitled to an additional $48,000 in cash to bring her to the maximum amount set forth in the statute, which is $50,000. Significantly, she fails to identify any personal property she should have received.

Tennessee Code Annotated § 30-2-101 allows surviving spouses who elect against a decedent's will to receive certain "[t]angible personal property" and vehicles from the estate:

> (a)(1) The surviving spouse of an intestate decedent, or a spouse who elects against a decedent's will, is entitled to receive from the decedent's estate the following exempt property having a fair-market value (in excess of any indebtedness and other amounts secured by any security interests in the property) that does not exceed fifty thousand dollars ($50,000):
>
> (A) Tangible personal property normally located in, or used in or about, the principal residence of the decedent and not used primarily in a trade or business or for investment purposes, and

> (B) A motor vehicle or vehicles not used primarily in a trade or business.

Tenn. Code Ann. § 30-2-101(a)(1). If the property has been sold, "the court shall order the money to be paid to the surviving spouse or unmarried minor children." *Id.* § 101(c).

Thus, to support her claim for personal property under § 30-2-101, Plaintiff had the burden of proving that said property fell within the ambit of § 101(a)(1)(A) or (B). However, after quoting the statute in her brief, the entirety of Plaintiff's argument on this issue reads:

> Elizabeth Carol Quinn is entitled to personal property with a value of $50,000.00. The Master awarded her a truck and a stock trailer, worth $2,000.00. This finding clearly is erroneous and is not supported by the statute. To comply with the statute, Elizabeth Carol Quinn should be awarded an additional $48,000.00, as value of personal property. The parties stipulated that the value of the personal property and vehicles was $73,525.00.

(Citation omitted).

We find this argument so inadequate that it fails to comply with the Tennessee Rule of Appellate Procedure as well as the Rules of this Court. As we have previously noted, we are "under no duty to blindly search the record to find . . . evidence," nor can Plaintiff shift this burden to us. *See Pearman v. Pearman*, 781 S.W.2d 585, 588 (Tenn. Ct. App. 1989). Failure to comply with the Rules of Appellate Procedure and the Rules of the Tennessee Court of Appeals constitutes a waiver of the issues raised by Plaintiff. *See Breeden v. Garland*, No. E2020-00629-COA-R3-CV, 2020 WL 6285300, at *3 (Tenn. Ct. App. Oct. 27, 2020); *see also Bean v. Bean*, 40 S.W.3d 52, 54–55 (Tenn. Ct. App. 2000). Furthermore,

> the Supreme Court has held that it will not find this Court in error for not considering a case on its merits where the [appellant] did not comply with the rules of this Court." "[A]ppellate courts may properly decline to consider issues that have not been raised and briefed in accordance with the applicable rules." "We have previously held that a litigant's appeal should be dismissed where his brief does not comply with the applicable rules, or where there is a complete failure to cite to the record."

Breedon, 2020 WL 6285300, at *3 (citations omitted) (quoting *Clayton v. Herron*, No. M2014-01497-COA-R3-CV, 2015 WL 757240, at *2–3 (Tenn. Ct. App. Feb. 20, 2015)).

We cannot overlook the serious deficiencies in Plaintiff's argument on this issue. For these reasons, we find and hold that Plaintiff has waived this issue. Accordingly, we

find no reversible error in the award of exempt property under Tennessee Code Annotated § 30-2-101.

III. ELECTIVE SHARE

Plaintiff's final issue is that the award of her elective share is grossly deficient. Because we have ruled that the Bledsoe Road Property is to be included in the calculation of Decedent's net estate, we also reverse the award of Plaintiff's elective share and remand this issue for a determination of Decedent's net estate and a calculation of the amount of Plaintiff's elective with the entry of judgment in favor of Plaintiff in that amount. Further, and as provided in Tennessee Code Annotated § 31-1-105, the conveyances are voidable to the extent the other assets in Decedent's net estate are insufficient to fund and pay the elective share amount payable to the surviving spouse under § 31-4-101(c).

IN CONCLUSION

The judgment of the trial court is affirmed in part and reversed in part, and this matter is remanded for further proceedings consistent with this opinion. Costs of appeal are assessed against the appellees, Beverly Quinn, Wanda Jean Cooke, Dale Ervin Quinn, Shane Henry Quinn, David Nelson Quinn, and Wendell Quinn.

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FRANK G. CLEMENT JR., P.J., M.S.