

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON  
February 8, 2023 Session

**FILED**  
03/31/2023  
Clerk of the  
Appellate Courts

**JOE RILEY PRICHARD v. RHONDA KAY PRICHARD**

**Appeal from the Chancery Court for Dyer County**  
**No. 20-CV-394      Tony Childress, Chancellor**

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**No. W2022-00728-COA-R3-CV**

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This appeal arises from a divorce case. The husband filed a petition for divorce, and the wife filed a counter-petition. The trial court entered a final decree of divorce dividing the marital estate and granting the divorce in the wife’s favor on the grounds of adultery and inappropriate marital conduct. The husband appeals. We affirm as modified.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed  
as Modified**

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which ARNOLD B. GOLDIN and KENNY W. ARMSTRONG, JJ., joined.

Jason R. Creasy, Dyersburg, Tennessee, for the appellant, Joe Riley Prichard.

Thomas E. Weakley, Dyersburg, Tennessee, for the appellee, Rhonda Kay Prichard.

**OPINION**

**I.      FACTS & PROCEDURAL HISTORY**

Joe Riley Prichard (“Husband”) and Rhonda Kay Prichard (“Wife”) married in August 2006. They had one child during the marriage. Husband began working for Caterpillar at a young age, was employed there during most of the marriage, and had worked his way up to the position of supervisor. However, after the plant at Caterpillar shut down in 2019, he began working as an insurance salesman. He also acquired investment properties during the parties’ marriage. Wife had a bachelor’s degree in medical technology and worked in medical laboratories during most of the marriage. However, she was laid off from her job, and she transitioned into the education field

working as a teacher's assistant.

In September 2020, Husband filed a petition for divorce alleging the grounds of inappropriate marital conduct and, in the alternative, irreconcilable differences. Wife filed a response and a counter-petition for divorce, in which she also alleged the grounds of inappropriate marital conduct and, in the alternative, irreconcilable differences. She subsequently filed a motion to amend her counter-petition in order to include the additional ground of adultery, which the trial court granted.

The trial court ultimately held a trial in February 2022. At the beginning of trial, the parties agreed to the values of certain marital assets and how that marital property should be divided.<sup>1</sup> As for Wife, the parties agreed that she would get the 2012 Cadillac SRX valued at \$13,000. As for Husband, the parties agreed that he would get the 2011 Ford F150 valued at \$11,000, the 1979 Chevrolet truck valued at \$1,500, the 2015 KTM 450 dirt bike valued at \$2,000, and the 2007 E-Z-Go golf cart valued at \$1,000. They agreed that the stove and the refrigerator valued at \$750 would go to whomever was awarded the marital residence. Additionally, they agreed that Husband would get the Jayco camper, but they did not agree as to its value. After trial, the trial court announced its findings of fact on limited issues and entered an order incorporating its oral ruling. Among other things, the court made findings regarding the classification and values of Husband's IRA, Wife's retirement account, and Wife's pension. The court valued each of these assets; however, it classified only certain percentages of the values as marital property because each of these assets was established for a period of time prior to the parties' marriage. The court also made findings regarding the marital residence and the values of the zero-turn lawn mower, the utility task vehicle, and the Jayco camper.<sup>2</sup>

The trial court then announced its findings of fact and conclusions of law on the issues in dispute and entered an order incorporating its oral ruling. Among other things, the court found that Husband's testimony regarding his income and expenses was not credible. Additionally, the court found that Husband committed adultery and engaged in inappropriate marital conduct, and therefore it awarded Wife the divorce based on those grounds. The court also explained that there was a rebuttable presumption as to the marital

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<sup>1</sup> The parties also agreed to the classification of certain property as separate property and the values of those properties. They agreed that Husband would receive as his separate property the master bedroom suite valued at \$500, the antique rolltop desk valued at \$250, the Townecraft cookware valued at \$400, the washer and dryer valued at \$200, and the furniture at his apartment valued at \$2,000. They agreed that Wife would receive as her separate property the dining room table valued at \$75, a certificate of deposit valued at \$3,800, and the remaining household furniture valued at \$2,000.

<sup>2</sup> The trial court found that the zero-turn lawn mower was jointly owned by Husband and Husband's father, but it determined that the value of the marital portion was \$1,500. Likewise, the court found that the utility task vehicle was jointly owned by Husband and Husband's friend and that the value was \$5,000, but it determined that the value of the marital portion was \$2,500. The utility task vehicle that we refer to here is what the parties and the trial court referred to as the "side by side."

residence being marital property because it was purchased during the marriage. The court concluded that Husband failed to rebut the presumption so the marital residence was classified as marital property. The court then announced its valuations of the marital property, how the marital property would be divided, and how the marital debt would be allocated. After considering the statutory factors relevant to alimony, the court concluded that Wife was in need of alimony and that Husband had the ability to pay alimony. As a final matter, the court denied Wife's request to require Husband to pay her attorney's fees.

In May 2022, the trial court entered a final decree of divorce incorporating both of its prior orders that contained its findings of fact and conclusions of law. The court granted Wife an absolute divorce on the grounds of adultery and inappropriate marital conduct and named Wife as the primary residential parent of the parties' child. As for the division of marital property, the court's rulings are summarized as follows:

1. The court awarded Wife the marital residence along with the lot the marital residence was situated on;
2. The court awarded Husband two rental properties, the Washington Street property and Frankie Drive property, along with the debts on each of those properties;
3. The court awarded Wife 60% of the marital portion of Husband's IRA and awarded Husband 40% of the marital portion of Husband's IRA;
4. The court awarded Wife the money market account based upon the value set forth in its findings;
5. The court awarded Husband the Greystone storage units, along with the debt against them;
6. The court awarded Husband his personal checking account and awarded Wife her personal checking account and her pension; and
7. The court awarded Husband the Jayco camper, the zero-turn lawn mower, and the utility task vehicle.<sup>3</sup>

In addition to these rulings, the court ordered Husband to pay transitional alimony, denied Wife's request for attorney's fees, and taxed the court costs equally to Husband and Wife. The court also entered a permanent parenting plan order. Thereafter, Husband timely filed an appeal.

Meanwhile, Husband filed a motion to alter or amend the final decree of divorce. In his motion, he argued that the marital residence should have been awarded to him. Furthermore, he noted that there was an error in the value of Husband's IRA because the trial court had stated the value of the IRA was \$189,261 when the actual value was \$389,261. Wife also filed a motion to amend the trial court's findings to address certain

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<sup>3</sup> The trial court failed to mention the award of Wife's retirement account in its final decree; however, it was clear that Wife was awarded her retirement account given that the court incorporated both of its prior orders containing its findings of fact and conclusions of law.

issues. In July 2022, the trial court entered an order amending its findings and conclusions. The court granted Husband's request to amend its findings regarding the value of the IRA but denied his other requests. The court also denied Wife's requests to amend its findings regarding the issues she raised in her motion. However, the court noted that it was amending its findings and conclusions in an effort to put some of the issues in the best posture possible for an appellate review. Therefore, the court made additional findings regarding the shop building on the property of Husband's father, the 2020 tax return, the child's savings account, the value of the Greystone storage units, and the value of the marital residence.<sup>4</sup>

## II. ISSUES PRESENTED

Husband presents the following issues for review on appeal, which we have slightly restated:

1. Whether the trial court erred in its division of marital property; and
2. Whether the trial court erred in not giving Husband credit for his use of separate funds to purchase the marital residence that was titled in his individual name.

For the following reasons, we affirm the decision of the trial court as modified.

## III. STANDARD OF REVIEW

We review the trial court's findings of fact de novo with a presumption of correctness and will honor those findings unless the preponderance of the evidence is otherwise. *Snodgrass v. Snodgrass*, 295 S.W.3d 240, 245 (Tenn. 2009) (citing *Keyt v. Keyt*, 244 S.W.3d 321, 327 (Tenn. 2007)); see Tenn. R. App. P. 13(d) ("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."). However, we review the trial court's conclusions of law with no presumption of correctness. *Id.* at 245-46 (citing *Keyt*, 244 S.W.3d at 327).

The division of the marital estate in divorce cases "necessarily begins with the classification of the parties' property as either marital or separate property."<sup>5</sup> *Green v. Green*, No. W2019-01416-COA-R3-CV, 2021 WL 1343569, at \*4 (Tenn. Ct. App. Apr. 12, 2021) (quoting *Brown v. Brown*, 913 S.W.2d 163, 166 (Tenn. Ct. App. 1994); see Tenn.

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<sup>4</sup> The trial court also noted that the parties had agreed to a few changes to the parenting plan and that those changes would be included in the permanent parenting plan. A permanent parenting plan order was then entered reflecting those changes.

<sup>5</sup> In this Opinion, we apply the version of the relevant statute, Tennessee Code Annotated section 36-4-121, in effect at the time Husband filed the petition for divorce in September 2020. See *Webb v. Webb*, No. W2021-01227-COA-R3-CV, 2023 WL 568331, at \*2 n.2 (Tenn. Ct. App. Jan. 27, 2023).

Code Ann. § 36-4-121(b) (defining “separate property” and “marital property”). “The classification of particular property as either separate or marital is a question of fact to be determined in light of all relevant circumstances.” *Id.* (quoting *Snodgrass*, 295 S.W.3d at 245). The court’s decision regarding classification is subject to its “sound discretion and will be given great weight on appeal.” *Trezevant v. Trezevant*, 568 S.W.3d 595, 607 (Tenn. Ct. App. 2018) (citing *Dunlap v. Dunlap*, 996 S.W.2d 803, 814, (Tenn. Ct. App. 1998)).

After classification of the parties’ property, the trial court “should place a reasonable value on each piece of property subject to division.” *Green*, 2021 WL 1343569, at \*4 (quoting *Owens v. Owens*, 241 S.W.3d 478, 486 (Tenn. Ct. App. 2007)). On the subject of valuation of the parties’ property, we have explained as follows:

The parties themselves must come forward with competent valuation evidence. When valuation evidence is conflicting, the court may place a value on the property that is within the range of the values represented by all the relevant valuation evidence. Decisions regarding the value of marital property are questions of fact. Accordingly, they are entitled to great weight on appeal and will not be second-guessed unless they are not supported by a preponderance of the evidence.

*Id.* (quoting *Owens*, 241 S.W.3d at 486). We have further explained that “[t]he value placed on marital property should, as near as possible, reflect the value of the property on the date that it is divided.” *Id.* (quoting *Owens*, 241 S.W.3d at 487).

Once the parties’ property is classified and valued, “the marital property must then be divided equitably between the divorcing spouses, without regard to the fault of either party.” *Id.* at \*5 (citing *Snodgrass*, 295 S.W.3d at 246); *see* Tenn. Code Ann. § 36-4-121(a)(1) (“In all actions for divorce . . . , the court having jurisdiction thereof may, upon request of either party, . . . equitably divide, distribute or assign the marital property between the parties without regard to marital fault in proportions as the court deems just.”). “A trial court’s decision regarding equitable division of marital property ‘is not a mechanical one and is not rendered inequitable because it is not precisely equal or because both parties did not receive a share of each piece of property.’” *Id.* (quoting *Brown*, 913 S.W.2d at 168). “The trial court is empowered to do what is reasonable under the circumstances and has broad discretion in the equitable division of the marital estate.” *Keyt*, 244 S.W.3d at 328. 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*, 295 S.W.3d at 245 (citing *Keyt*, 244 S.W.3d at 327).

#### IV. DISCUSSION

### *A. Classification*

We begin with Husband's issue concerning the marital residence. He maintains that he used separate property that he owned prior to the marriage, i.e., funds from his personal checking account, to purchase the marital residence shortly after the parties' marriage. Therefore, he argues that the marital residence should be awarded to him as separate property, subject to any substantial contribution made by Wife to the extent that it improved the value of the marital residence.

At trial, Husband's father explained that he inherited what is now the marital residence from his mother and already had it surveyed to transfer to Husband before the parties' marriage in August 2006. He said that the plan was for Husband to buy the marital residence before the parties' marriage, but Husband purchased it in December 2006 due to some delay. He testified that Husband was working at the time and was making good money. Therefore, he explained that Husband had the ability to purchase the marital residence and that Husband paid \$45,000 for it by writing a check out of his personal checking account.<sup>6</sup> Husband testified that he agreed to purchase the marital residence from his father while it was still in probate, which occurred before the parties' marriage. Although probate concluded in May 2006, he explained that he was delayed because the marital residence had to be resurveyed. He stated that he ultimately purchased the marital residence in December 2006 for \$45,000 using funds from his personal checking account. He testified that these were funds he earned prior to the parties' marriage. He had attempted to obtain his banking records to demonstrate how much money he had in his account prior to the parties' marriage, but he stated that his bank did not keep records that far back.

Wife confirmed that Husband wrote the \$45,000 check to purchase the marital residence from his father and that the marital residence was purchased in Husband's name. She stated that she had no idea where the \$45,000 Husband used to pay for the marital residence came from because he kept her "in the dark" when it came to their finances. However, she testified the purpose behind purchasing the marital residence was for it to be their family home. She also testified that they remodeled the inside of the marital residence after moving into it and that she was mainly responsible with keeping it clean during their marriage. Both parties testified that they lived together for a time before their marriage and split expenses during that time.

The trial court explained that the marital residence was purchased during the parties' marriage, so the marital residence came with a rebuttable presumption that it was marital property. After weighing all the evidence and credibility of the witnesses, the trial court concluded that Husband failed to rebut the presumption that the marital residence was

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<sup>6</sup> Husband's father testified that the purchase price of \$45,000 was what he thought the marital residence was worth at the time.

marital property. The court explained as follows:

[Husband] is the party asserting this house or at least a portion of the house is separate property and he has the burden of rebutting the presumption this property is marital. The evidence most likely to rebut that presumption is that the house was purchased with a check drawn on [Husband's] personal account. [Husband] was working for a considerable period of time prior to the parties being wed. [Husband] purchased the home from his father who had inherited the home from his family. The home was deeded only in [Husband's] name and it was unlikely that [Husband] earned \$45,000, which was the purchase price of the home, at his employment for the period of time after the parties wed until the home was purchased. On the flipside, [Husband] was working for the same employer from the time the parties wed in August until the house was purchased in December. His pay from that employment was going somewhere. [Husband] failed to establish that the pay from this employment after marriage but prior to the purchase of the home was not going into an account from which the check used to purchase the house was drawn upon and the home was intended to be and was treated as marital property.

As such, the court concluded that the marital residence and all value in it was marital property.

The trial court properly concluded that there was a rebuttable presumption as to the marital residence being marital property because it was purchased during the parties' marriage. *See Davis v. Goodwin*, No. W2010-01340-COA-R3-CV, 2010 WL 5449844, at \*5 (Tenn. Ct. App. Dec. 23, 2010) (noting that the wife purchased the property two years into the marriage, "thus raising the presumption that it is marital property"). "It is well settled that assets acquired during a marriage are presumed to be marital property and that a party desirous of disputing this classification has the burden of proving by a preponderance of the evidence that the asset is separate property." *Long v. Long*, 642 S.W.3d 803, 819 (Tenn. Ct. App. 2021); *see* Tenn. Code Ann. § 36-4-121(b)(1)(A) (defining "marital property" as "all real and personal property, both tangible and intangible, acquired by either or both spouses during the course of the marriage up to the date of the final divorce hearing and owned by either or both spouses as of the date of filing of a complaint for divorce"). "This presumption can be rebutted, however, by evidence of circumstances or communications clearly indicating an intent that the property remain separate." *Id.*

Therefore, the question is whether Husband rebutted this presumption. The trial court noted that the parties intended for the marital residence to be marital property and treated it as such. Indeed, the purpose of the purchase of the marital residence was for it to be the parties' family home. The parties remodeled it together and shared in the costs

of the improvements. Wife took care of cleaning the home and paid the utility and internet bills at times using funds from her own separate account. Additionally, the parties lived in it together, along with their child, for nearly their entire marriage. As such, “[t]he proof established that the parties used the home as a marital residence, and both parties managed and maintained it.” *Potter v. Potter*, No. E2012-02390-COA-R3-CV, 2013 WL 4458839, at \*5 (Tenn. Ct. App. Aug. 19, 2013).

Husband testified that he purchased the marital residence using funds made prior to the parties’ marriage from his personal checking account. As such, he argues that the marital residence was separate property because it was “[p]roperty acquired in exchange for property acquired before the marriage[.]” Tenn. Code Ann. § 36-4-121(b)(2)(B). However, he was unable to produce the necessary banking records to demonstrate this. *See Davis*, 2010 WL 5449844, at \*5 (“Wife’s banking records indicate that she . . . withdrew approximately \$41,000 from her savings account to fund the down payment and closing costs associated with the purchase of the . . . property.”). We reiterate that the trial court concluded that Husband did not rebut this presumption, explaining that he “failed to establish that the pay from his employment after marriage but prior to the purchase of the home was not going into an account from which the check used to purchase the house was drawn upon . . . .” Moreover, the trial court made a credibility finding against Husband regarding his income and expenses. The evidence concerning the funds used to purchase the marital residence was mainly limited to Husband’s testimony, which made credibility a key issue. *See John-Parker v. Parker*, No. E2014-01338-COA-R3-CV, 2016 WL 2936834, at \*7 (Tenn. Ct. App. May 17, 2016) (noting that credibility was a key issue where the only available evidence concerning an issue of classification of debentures as marital or separate property was the husband’s testimony). We have explained that “where issues of credibility and weight of testimony are involved, this Court will accord considerable deference to the trial court’s factual findings.” *Keyt*, 244 S.W.3d at 327 (citing *In re M.L.P.*, 228 S.W.3d 139, 143 (Tenn. Ct. App. 2007)).

In light of the relevant circumstances concerning the marital residence, we find that the evidence preponderates in favor of the trial court’s decision. As such, we conclude that the trial court did not err in classifying the parties’ marital residence as marital property. Husband failed to rebut the presumption that the marital residence was marital property because he did not produce sufficient evidence demonstrating an intent for the property to remain separate or that he used separate funds. It follows then that the court also did not err in not giving Husband credit for his use of “separate funds” to purchase the marital residence because Husband failed to establish that he did so.

### ***B. Valuation & Division***

Husband also presents an issue of whether the trial court erred in its division of



marital property.<sup>7</sup> For this issue, he makes two specific arguments. First, he argues that the court's valuation of Wife's checking account was inconsistent with her own testimony. Second, he argues that the court's division was not equitable. We will address these arguments separately. Before doing so, however, we set forth the trial court's valuations of the marital property, which were as follows:

1. The marital residence was valued at \$100,000;
2. The Washington Street property was valued at \$20,000 with a debt of \$3,187;
3. The Frankie Drive property was valued at \$550,000 with a debt of \$542,000;
4. The Jayco camper was valued at \$9,000;
5. The zero-turn lawn mower was valued at \$1,500;
6. The utility task vehicle was valued at \$2,500;
7. The money market account was valued at \$43,523;
8. Husband's IRA was valued at \$189,261 with 60% of that amount being marital property;
9. Wife's retirement account was valued at \$47,900 with 67% of that amount being marital property;
10. Wife's pension was valued at \$11,448 with 88% of that amount being marital property;
11. Wife's checking account was valued at \$2,000;
12. Husband's checking account was valued at \$900; and
13. The Greystone storage units were valued at \$250,000 with a debt of \$165,000.

The court misspoke when it valued Husband's IRA at \$189,261 with 60% of that amount being marital property, so it later entered an order amending its findings and conclusions stating that the correct value of Husband's IRA was \$389,261. Therefore, the amount of marital property from Husband's IRA to be divided was 60% of \$389,261, which was \$233,556.60. The court determined 60% of that amount would be awarded to Wife and 40% of that amount would be awarded to Husband.

The trial court then divided the marital property and allocated the marital debt, which is summarized in the tables below.

### **Marital Property**

<b>Property</b>	<b>Wife</b>	<b>Husband</b>
Equity in Marital Residence	\$100,000.00	\$0.00
Equity in Washington Street Property	\$0.00	\$16,813.00
Equity in Frankie Drive Property	\$0.00	\$8,000.00

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<sup>7</sup> In accordance with Tennessee Court of Appeals Rule 7, Husband's brief includes tables of the trial court's division of the marital property, his proposed division of the marital property, and the trial court's allocation of the debt of the marital property. Wife's appellate brief did not contain any such tables.

Jayco Camper	\$0.00	\$9,000.00
Lawn Mower	\$0.00	\$1,500.00
Utility Task Vehicle	\$0.00	\$2,500.00
Husband's IRA	\$140,133.96	\$93,422.64
Money Market Account	\$43,523.00	\$0.00
Wife's Retirement Account	\$32,093.00	\$0.00
Wife's Pension	\$10,074.24	\$0.00
Wife's Checking Account	\$2,000.00	\$0.00
Husband's Checking Account	\$0.00	\$900.00
Greystone Storage Units	\$0.00	\$85,000.00
<b>Total</b>	<b>\$327,824.20</b>	<b>\$217,135.64</b>

### Debt

Debt	Wife	Husband
Debt on Washington Street Property	\$0.00	\$3,187.00
Debt on Frankie Drive Property	\$0.00	\$542,000.00
Debt on Greystone Storage Units	\$0.00	\$165,000.00
<b>Total</b>	<b>\$0.00</b>	<b>\$710,187.00</b>

As such, Wife received approximately 60.2% of the marital property, Husband received approximately 39.8% of the marital property. Additionally, Wife received 0% of the marital debt, and Husband received 100% of the marital debt. This comports with the calculation made by Husband in his appellate brief regarding the percentages of the division of the marital property.

As previously discussed, however, the parties agreed to the values and division of other marital property at the beginning of trial, which was not accounted for in the trial court's orders or in Husband's calculation in his appellate brief. We itemize that marital property in the table below.

### Other Marital Property

Property	Wife	Husband
2012 Cadillac SRX	\$13,000.00	\$0.00
2011 Ford F150 Truck	\$0.00	\$11,000.00
1979 Chevrolet Truck	\$0.00	\$1,500.00
2015 KTM 450 Dirt Bike	\$0.00	\$2,000.00
2007 E-Z-Go Golf Cart	\$0.00	\$1,000.00
Stove and Refrigerator <sup>8</sup>	\$750.00	\$0.00

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<sup>8</sup> Wife ultimately received the stove and refrigerator because the parties agreed that the stove and

<b>Total</b>	<b>\$13,750.00</b>	<b>\$15,500.00</b>
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With these adjustments, Wife received \$341,574.20 or approximately 59.5% of the marital property, and Husband received \$232,635.64 or approximately 40.5% of the marital property. We now address the specific issues Husband raises as to the valuation and division of the parties' marital property.

*i. Valuation of Wife's Checking Account*

Husband first argues that the trial court's valuation regarding Wife's checking account was inconsistent with her own testimony. The trial court concluded that the value of Wife's checking account was \$2,000. Prior to trial, both parties submitted assessments of their assets and liabilities, in which both of them listed \$2,000 as the balance in Wife's checking account. Contrary to her own assessment, however, Wife testified that the balance in her checking account at the time of trial was \$6,800. She explained that it had been as low as \$400 during the pendency of this matter because Husband was not helping her, but the balance was higher than usual because she had recently received stimulus checks in the amount of \$2,800, a child tax credit in the amount of \$1,500, and a tax return in the amount of \$2,900. Regardless of this explanation, "[t]he value placed on marital property should, as near as possible, reflect the value of the property on the date that it is divided." *Green*, 2021 WL 1343569, at \*4 (quoting *Owens*, 241 S.W.3d at 487). The evidence preponderates against the trial court's valuation of \$2,000, and the court should have valued Wife's checking account as \$6,800 based on her own testimony regarding its value at the time of trial.

Accordingly, we modify the valuation of Wife's checking account to \$6,800. With this adjustment, Wife would have received \$346,374.20 or approximately 59.8% of the marital property, and Husband would have received \$232,635.64 or approximately 40.2% of the marital property. Considering this adjustment to the overall distribution of the marital assets, we conclude that this error was harmless. *See Watters v. Watters*, 959 S.W.3d 585, 589 (Tenn. Ct. App. 1997) (finding that the trial court should have included certain property within the marital estate but "such error was harmless considering the overall distribution of assets").

*ii. Equitable Division*

Husband also argues that the division of the marital property was not equitable given the long duration of the marriage, the fact that Wife had a higher education than Husband, and Wife was given all assets and no indebtedness. On appeal, "it is not our role to tweak the manner in which a trial court has divided the marital property. *Owens*, 241 S.W.2d at 490 (citing *Morton v. Morton*, 182 S.W.3d 821, 834 (Tenn. Ct. App. 2005)). Instead, "our

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refrigerator would go to whomever was awarded the marital residence.

role is to determine whether the trial court applied the correct legal standards, whether the manner in which the trial court weighed the factors in Tenn. Code Ann. § 36-5-121(c) is consistent with logic and reason, and whether the trial court’s division of the marital property is equitable.” *Id.* (citations omitted).

When dividing the marital estate, the trial court must weigh “the relevant factors enumerated in Tennessee Code annotated section 36-4-121(c).” *Larsen-Ball v. Ball*, 301 S.W.3d 228, 234 (Tenn. 2010). Those factors include in pertinent part:

- (1) The duration of the marriage;
- (2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;
- (3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;
- (4) The relative ability of each party for future acquisitions of capital assets and income;
- (5)(A) The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;
- ...
- (6) The value of the separate property of each party;
- (7) The estate of each party at the time of the marriage;
- (8) The economic circumstances of each party at the time the division of property is to become effective; [and]
- ...
- (12) Such other factors as are necessary to consider the equities between the parties.

Tenn. Code Ann. § 36-4-121(c).<sup>9</sup> Prior to the division of the parties' marital property, the trial court considered the relevant factors found in section 36-4-121(c). It appears that the court did not consider factors nine, ten, or eleven because those factors were not relevant.

Factor one concerns "[t]he duration of the marriage." *Id.* § 36-4-121(c)(1). The parties were married for approximately 16 years. The trial court noted the duration of the parties' marriage; however, it did not elaborate on the duration's significance to the equitable division of the marital property. Husband argues that the division of marital property was inequitable in light of the "long duration of the marriage." Although we have countenanced "[a]n essentially equal division" when there is a long marriage, *Grant v. Grant*, No. M2014-01835-COA-R3-CV, 2016 WL 2898434, at \*8 (Tenn. Ct. App. May 12, 2016), we require an equitable division of marital property and not "mathematical equality," *Perkins v. Perkins*, No. W2021-01246-COA-R3-CV, 2023 WL 2446807, at \*4 (Tenn. Ct. App. Mar 10, 2023). Therefore, while the result of an equitable division may be an essentially equal one, we simply require that the division be equitable. Furthermore, "[t]he duration of the marriage is merely one factor that the courts must consider . . ." in reaching an equitable division of the marital estate. *Goddard v. Goddard*, No. 02A01-9208-CH-00230, 1993 WL 512551, at \*3 (Tenn. Ct. App. Dec. 10, 1993).

Factor two concerns "the age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties[.]" Tenn. Code Ann. § 36-4-121(c)(2). The trial court found that the parties were both in their forties, their medical conditions were normal, and neither of them was disabled. However, the court noted that Husband had been diagnosed with chronic lymphocytic leukemia and that Wife had been diagnosed with rheumatoid arthritis and had undergone a hip replacement. While Husband only had a high school education, the court stated that he had exhibited a capacity to earn more income than Wife. He was working as an insurance salesman at the time and had received training in that field which would increase his earning capacity. The court stated that Wife had a college degree and was capable of earning a yearly income more than what she was currently earning despite her rheumatoid arthritis. She was working as a teacher's assistant at the time, but the court found that she was capable of receiving more education in order to advance in that field.

Husband argues that the division of marital property was inequitable in light of the fact that Wife had a higher education than Husband. Although Wife had a higher education than Husband, the testimony demonstrates that Husband had the capacity to earn more income than Wife despite her higher education. Husband began working at Caterpillar in 1996, which was approximately ten years before the parties married. He started in the factory but worked his way up into material management. Around the time the parties married in 2006, Husband was making good money working for Caterpillar. He continued

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<sup>9</sup> Again, we are applying the version of the statute in effect at the time Husband filed the petition for divorce in September 2020.

working there for 13 more years until he lost his job after the plant closed in 2019. He testified that his base salary at that time was approximately \$80,000, but his total compensation was in the range of \$90,000 to \$112,000. He received \$51,000 in severance pay after the plant closed. Afterward, he started a job as an insurance salesman. He testified that he made approximately \$24,000 to \$25,000 as an insurance salesman in 2021. He anticipated that he would make approximately \$36,000 at that job in 2022. Wife had a bachelor's degree in medical technology and had made approximately \$44,000 to \$45,000 per year working in medical laboratories during the parties' marriage. However, she was laid off and transitioned to the education field where she began working as a substitute teacher. At the time of trial, she was working as a teacher's assistant. She testified that she could get a degree to become a teacher but felt that she would be physically unable to do the job due to her rheumatoid arthritis worsening. Therefore, she did not anticipate that she would be able to work a different job in the future where she would make more money.

For factor three, the trial court found that neither party contributed to the other's education, training, or increased earning power of the other party. Husband had a high school education and went to work for Caterpillar prior to the parties' marriage. Wife had a bachelor's degree in medical technology and started working in medical laboratories prior to the parties' marriage. She had student loans from obtaining her degree, but she could not remember whether she paid them off before or after the parties' marriage. During the parties' marriage, she participated in a Teach Tennessee program in order to transition to teaching.

In regard to factor four, the trial court found that Husband generated income from his investment properties, namely the Frankie Drive property and the Greystone storage units. The court found that both parties had the ability to acquire capital assets and more income in the future but Husband's ability to do so was greater than Wife's. Wife's only source of income was her job as a teacher's assistant, but there was a potential opportunity for her to advance in the field of education and earn more income. She testified that she did not have the ability to acquire properties like Husband. As for Husband, not only did he have a source of income as an insurance salesman, but he also had income-producing properties. There were several instances where Husband was able to borrow money to purchase these income-producing properties. Thus, he had a greater ability to acquire capital assets and income in the future. *Id.* § 36-4-121(c)(4).

As for factor five, the trial court found that Husband contributed to the acquisition, preservation, and appreciation of the marital property, which was mainly that of income earner and investor. Even after the parties separated, Husband paid certain bills such as utilities, internet, cell phones, and trash pickup. As for Wife, the court found that she also worked and earned income and contributed to the parties' assets as a homemaker during the marriage. Wife cleaned, cooked, did laundry, and performed duties related to their child. She had also paid the utility and internet bills at times using funds from her own separate account. The record demonstrates that the parties' fulfilled their respective roles

during the marriage.

Factor six concerns “[t]he value of the separate property of each party[.]” *Id.* § 36-4-121(c)(6). The trial court stated the parties’ separate property consisted of portions their retirement and pension accounts, which was valued at the time at approximately \$155,000 for Husband and \$17,000 for Wife. However, the parties agreed to the classification of certain other property as separate property and the values of those properties at the beginning of trial. The trial court failed to consider this in its ultimate calculation of the total value of the parties’ separate property. We set forth the appropriate value of the parties’ separate property awarded to each of them in the table below.

**Separate Property**

<b>Property</b>	<b>Wife</b>	<b>Husband</b>
Husband’s IRA	\$0.00	\$155,704.40
Wife’s Retirement Account	\$15,807.00	\$0.00
Wife’s Pension	\$1,373.76	\$0.00
Master Bedroom Suite	\$0.00	\$500.00
Antique Rolltop Desk	\$0.00	\$250.00
Townecraft Cookeware	\$0.00	\$400.00
Washer and Dryer	\$0.00	\$200.00
Apartment Furniture	\$0.00	\$2,000.00
Dining Room Table	\$75.00	\$0.00
Wife’s Certificate of Deposit	\$3,800.00	\$0.00
Remaining Household Furniture	\$2,000.00	\$0.00
<b>Total</b>	<b>\$23,055.76</b>	<b>\$159,054.40</b>

Therefore, the parties’ separate property should have been valued at approximately \$159,000 for Husband and \$23,000 for Wife. Again, as previously explained, considering this adjustment to the value of the parties’ separate property and overall distribution of the marital assets, we conclude that this error was harmless.

For factor seven, however, the court stated that it did not know the value of the parties’ pension and retirement accounts at the time the parties married. The court also did not know how much money Husband had in his personal checking account at the time the parties married. Thus, the value of the estate of each party at the time they married was unknown. *Id.* § 36-4-121(c)(7). Factor eight concerns “[t]he economic circumstances of each party at the time the division of property is to become effective[.]” *Id.* § 36-4-121(c)(8). The trial court stated that the parties were both employed but could be employed in positions earning more income than they were earning at the time. Therefore, the court found that their economic circumstances were not that bad and were not as dire as they made it out to be.

Factor twelve provides that the trial court may consider “[s]uch other factors as are necessary to consider the equities between the parties.” *Id.* § 36-4-121(c)(12). After dividing the marital estate, the trial court recognized that Wife was being awarded a sizeable portion of the parties’ marital property which was mostly debt-free whereas Husband was being awarded a smaller portion of the marital property which came with considerable debt. However, the court noted that a significant portion of the marital property being awarded to Husband was income-producing property. For instance, the Washington Street property awarded to Husband was a rental house with a monthly rent of \$400. The Frankie Drive property awarded to Husband consisted of 10 duplexes where the apartments were rented at an average of \$450 to \$500 per month. Additionally, Husband testified that he hoped to make more of a profit in the future from the Greystone storage units, which were also awarded to him.

We also note that Husband was permitted to use funds from the money market account, which was classified as marital property, to pay temporary support and temporary child support during the pendency of this matter. The balance of the money market account was approximately \$90,000 at one point, but the balance at the time of trial had dropped to approximately \$43,523 due to Husband’s use of the funds. The trial court allowed Husband to use the funds from this account because it believed that Husband’s income was extremely low at the time. However, the court subsequently found that Husband’s testimony was not credible regarding income and expenses because he had been receiving other income from his investment properties. The court explained that the Greystone storage units were generating thousands in income and that the debt on the Greystone storage units was being paid. Over \$160,000 was deposited into the business account for the Greystone storage units during an 18-month period.

Additionally, Husband’s checking account showed that he had withdrawn approximately \$60,000 via teller checks from January 2018 to November 2020. Wife testified that these withdrawals were largely unexplained by Husband and that she did not know what he spent the money on. She stated that she was unaware if the money was used to help the family or used for some business purpose. However, after Husband’s deposition, she was made aware that \$16,000 went to the business account for the Greystone storage units, \$13,000 was used to pay back Husband’s mother, and some of the money may have been used to buy the 2015 KTM 450 dirt bike. On this issue, the trial court stated as follows:

Husband removed a considerable amount of money from [his] accounts via counter checks. Some of these transactions had believable explanations as to what the money was spent on while others do not have any explanations and . . . Husband really did not give believable answers as to what became of these monies. The Court simply did not buy that all of these monies were spent on normal, every day living expenses. The Court is not certain if this



was a dissipation of marital assets or not and it is not making such a finding. However, these counter checks are certainly a fact that in light of the veracity of [Husband's] evidence and testimony regarding his income and expenses has not strayed from the Court's mind.

Wife also testified that she and Husband filed joint tax returns from 2015 to 2019 and that they argued over the refunds. She stated that she received portions of the refunds but Husband received a bulk of the \$42,519 in refunds they received for those years.

Husband argues that the division of the marital property was inequitable because Wife was given all assets and no indebtedness. On this issue, this Court has explained that “[t]he division of the marital estate includes both the division of the marital property and the allocation of the marital debt[.]” *Perkins*, 2023 WL 2446807, at \*3 (quoting *Owens*, 241 S.W.3d at 490). “[W]hen allocating marital debts, the following factors are to be taken into account: ‘(1) the debt’s purpose; (2) which party incurred the debt; (3) which party benefitted from incurring the debt; and (4) which party is best able to repay the debt.’” *Id.* (quoting *Alford v. Alford*, 120 S.W.3d 810, 814 (Tenn. 2003)). The Tennessee Supreme Court has observed that “[a] careful application of these factors will insure the fairest possible allocation of debt” and “will also protect the spouse who did not incur the debt from bearing responsibility for debts that are the result of personal excesses of the other spouse.” *Alford*, 120 S.W.3d at 814.

The marital debt allocated to Husband consisted of debts related to the Washington Street property, the Frankie Street property, and the Greystone storage units. These properties were awarded to Husband. As for the Frankie Drive property, Husband borrowed money from a bank, from his father, and from a friend in order to purchase the property for \$550,000. The Frankie Drive property was not purchased until 2021, which was before the final divorce hearing but after the parties’ separation. Wife testified that Husband kept her “in the dark” regarding the Frankie Drive property and that she was unaware he had borrowed money to purchase it. As for the Greystone storage units, Husband and his friend borrowed money in order to purchase the property. The debt on this property increased after they added a \$79,000 building and refinanced their loan in 2021, which again was before the final divorce hearing but after the parties’ separation. Husband benefited from incurring these debts because he was able to purchase the Washington Street property, the Frankie Street property, and the Greystone storage units, all of which were income-producing properties. Husband was best able to repay the debts on these properties given that these properties were income-producing, he had a capacity to earn more income than Wife, and he had a greater ability to acquire future assets and income. *See Barrentine v. Barrentine*, No. W2005-02082-COA-R3-CV, 2006 WL 2613535, at \*3 (Tenn. Ct. App. Sept. 13, 2006) (concluding that the trial court did not abuse its discretion in allocating 100% of the marital debt to the husband because he was best able to repay the debt based on the parties’ relative economic positions and future earning potential).

In light of our consideration of the relevant factors, we cannot conclude that the evidence preponderates against the trial court's findings. We reiterate that the trial court has "broad discretion" in dividing the marital estate. *Perkins*, 2023 WL 2446807, at \*3 (quoting *Flannary v. Flannary*, 121 S.W.3d 647, 650 (Tenn. 2003)). We therefore give great weight on appeal to the trial court's division and "will ordinarily defer to the trial court's division . . . 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." *Id.* (citing *Altman v. Altman*, 181 S.W.3d 676, 683 (Tenn. Ct. App. 2005)). As for the court's ultimate division of the marital property and allocation of the marital debt, we conclude that the court did not abuse its broad discretion. Thus, we defer to its division of the parties' marital estate and affirm.

## V. CONCLUSION

For the aforementioned reasons, we affirm the decision of the trial court as modified. Costs of this appeal are taxed to the appellant, Joe Riley Prichard, for which execution may issue if necessary.

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CARMA DENNIS MCGEE, JUDGE