

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
February 7, 2023 Session

<b>FILED</b> 10/17/2023 Clerk of the Appellate Courts
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**RAYMOND D. BARNES, JR. v. MARION L. BARNES**

**Appeal from the Circuit Court for Davidson County  
No. 19D-97 Philip E. Smith, Judge**

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**No. M2022-00328-COA-R3-CV**

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After a long-term marriage, the parties divorced. The trial court, which found the husband’s testimony not to be credible, set the value of the marital property, divided the marital property, and awarded alimony *in futuro* to the wife. The husband appeals, challenging the credibility finding, the trial court’s valuation of the marital property, the division of property, and the alimony award. We affirm the trial court’s valuation and distribution of the marital property, but we vacate the trial court’s alimony award, remanding for further proceedings consistent with this opinion.

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

JEFFREY USMAN, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and ANDY D. BENNET, J., joined.

Gregory D. Smith, Rebecca McKelvey Castañeda, Brenton H. Lankford, and Ann Ralls Brown, Nashville, Tennessee, for the appellant, Raymond D. Barnes.

Larry Hayes, Jr., and Rachel M. Thomas, Nashville, Tennessee, for the appellee, Marion L. Barnes.

**OPINION**

I.

When Raymond D. Barnes and Marion L. Barnes married in 1991 neither party had significant wealth, but by the time of their divorce, the parties’ estate was valued at \$12,871,615. During the course of their marriage, the parties had two children, both of whom are now adults. Early in their marriage, Ms. Barnes, who had obtained an

undergraduate degree from Vanderbilt University, worked as a paralegal. Mr. Barnes, who had received his undergraduate and law degrees from the University of Tennessee, worked as an attorney. In 2001, Mr. Barnes left his law practice and founded Delk Industries, Inc. (Delk), an importing and wholesaling company. The company became a successful business. Ms. Barnes also worked for Delk in a limited capacity from 2004 to 2017 but her primary focus was on caring for the couple's children and the household. The parties purchased several pieces of real property during the marriage. They purchased two homes and the parcel on which Delk was located, known as the Cockrill Bend property.

In 2019, Mr. Barnes filed a complaint for divorce, and Ms. Barnes filed a counter-complaint for divorce. After the filing of various answers and amended complaints, Mr. Barnes later stipulated that Ms. Barnes was entitled to a divorce on the grounds of adultery and inappropriate marital conduct, as he had engaged in multiple extramarital relationships during the marriage. Mr. Barnes also stipulated to a dissipation award of \$185,000 related to the affairs.

Accordingly, the primary issues at trial were the division of marital property and alimony. A five-day trial was held beginning in October 2020 and concluding in June 2021. The parties each submitted a proposed division of property. Both parties' proposals included the Cockrill Bend property being awarded to Mr. Barnes, along with full ownership of Delk. At trial, the court heard testimony from the parties, their financial experts, and a woman with whom Mr. Barnes had an affair.

Regarding the operation of the business, Mr. Barnes testified that Delk's primary sales occur in the fall and winter months. During the summer, Delk utilizes a line of credit from Pinnacle Bank to supplement the lower cash flow. As to the amount of the loan, Mr. Barnes testified that the borrowing calculation is based on a formula involving "order commitments, issued purchase orders, and then accounts receivable." In 2020, Delk maintained a \$6 million line of credit. The loan is supported by Delk's assets and Mr. Barnes's personal guarantee. In testifying regarding his personal guarantee, Mr. Barnes made no statement specifically addressing any importance of the Cockrill Bend property or his ownership interest in it, failing to distinguish it from any other real property or other asset. Mr. Barnes did testify that a personal guarantee was typical in this kind of loan in order to allow the bank to reach his assets and real estate.

Regarding the line of credit, Mr. Barnes explained that Delk begins to draw on its credit by the end of March and uses it to fund inventory and payroll into the fall when business picks up again. Delk typically pays off the line of credit by February, and then the cycle repeats. Mr. Barnes believes that Delk could not survive without the line of credit due to the seasonal nature of the business.

To determine Delk's value in the divorce proceedings, Mr. Barnes, as the sole owner

of Delk, prepared projections for the 2019 and 2020 years. He provided these projections to Mr. Tom Price, his own financial expert, and to Mr. Vic Alexander, Ms. Barnes's financial expert, to use in their valuations of Delk. The projection for 2019 did not include any historical analysis and did not mention that Delk ended up making approximately \$1 million more than projected. Mr. Barnes, in his testimony, acknowledged the inaccuracy of the projection.

Mr. Price, Mr. Barnes's expert, calculated the value of Delk at \$2.7 million. He based his valuation primarily on Mr. Barnes's projections. Although Mr. Barnes's 2019 projection was off by \$1 million, Mr. Price used the 2020 projection and turned it into a four-year outlook in his calculation. He used no historical data in his valuation.

Mr. Alexander, Ms. Barnes's expert, used a different methodological approach to arrive at an estimated value for Delk of \$3.8 million, as he was wary of basing his valuation purely on Mr. Barnes's projections. This methodology involved normalizing Mr. Barnes's income over several years to a reasonable compensation level for a CEO of a company of similar type and size, based on market research. Further, while Mr. Price based his valuation primarily on the one-year projection, Mr. Alexander based it on the one-year projection and two years of historical data.

Mr. Barnes in his testimony addressed in some detail two extramarital relationships. As to his affair with Ms. K.C., a former Delk employee, Mr. Barnes testified the affair occurred in 2014 and lasted six months. This description of the length of the affair was stated in deposition testimony, in discovery responses, and in Mr. Barnes's pre-trial brief, and then reaffirmed by Mr. Barnes at trial. As for an affair with a current Delk employee, Mr. Barnes testified that it began in 2017 and was ongoing at the time of trial. Mr. Barnes also testified about an incident in early 2018 where a passenger seated behind Mr. Barnes on an airplane oversaw his text messages to his paramour. After exiting the plane, the passenger told Mr. Barnes's daughter what he saw. Mr. Barnes's actions caused family drama. Mr. Barnes initially downplayed the text messages and did not admit the full extent of the affair. A few months after this incident, Mr. Barnes took his paramour on a beach vacation, while telling Ms. Barnes that he was going to the Indianapolis 500 with a friend. To aid in his deception, he sent text messages to Ms. Barnes purportedly from the race, including a photo of the track.

Ms. K.C. also testified at trial. The trial court found that she began her testimony evasively, leading the trial court to classify her as a hostile witness. After the trial court admonished her for her evasiveness, Ms. K.C. became more forthcoming, providing details about her affair with Mr. Barnes. While Mr. Barnes had repeatedly indicated that the affair only lasted for six months in 2014, Ms. K.C. testified that the affair actually had begun around 2006 and that it continued for multiple years.

Ms. Barnes testified as to, among other things, her financial need going forward. She explained that the parties enjoyed a high standard of living during the marriage and that, outside of a brief period in 2008, the parties never had to worry about money. Their lifestyle included driving new cars, vacationing on yachts, and extensive traveling. She testified that she would like to continue traveling. She also testified as to future expenses, taxes, and retirement contributions. Based on her income and expense statement, she testified that she would require monthly spousal support of \$17,500.

The court also heard testimony from Kellie McDowell, a financial expert specializing in divorces. She testified as to Ms. Barnes's future financial needs. Ms. McDowell testified that she based her estimate of Ms. Barnes's financial need, \$17,500, on monthly expenses, spending summaries, and the parties' standard of living during the marriage. She also testified about Ms. Barnes's potential to invest her portion of the divided estate and the returns she could expect from such investments.

In November 2021, the trial court entered a memorandum and final decree. Mr. Barnes filed a motion to alter or amend to address several mathematical errors in the property division chart. The most significant mathematical error alleged was related to the Cockrill Bend property. The trial court had ordered that the parties would both continue to own Cockrill Bend as tenants in common so that Mr. Barnes could continue to operate Delk on it without excess debt. Further, Ms. Barnes would be entitled to half of the \$15,000 rent that Delk pays each month, helping to relieve her need for support from Mr. Barnes. With the Cockrill Bend property valued at \$3,563,000, the court gave each party a half interest as tenants in common. It assigned \$1,657,005, half of the total value, to Mr. Barnes's column in the property division chart, but it failed to also add that value to Ms. Barnes's column. In Mr. Barnes's motion to alter or amend, he requested that the trial court add the same value to Ms. Barnes's column to accurately divide the estate. Mr. Barnes did not therein request that the Cockrill Bend property be awarded solely to him or raise any issue related to the effect of the trial court's determination as to ownership on Delk's ability to secure its line of credit in his motion. He also noted that the trial court's order had placed the stipulated \$185,000 dissipation payment on Ms. Barnes's column instead of Mr. Barnes's, although he would be the one paying it. Furthermore, he asserted the trial court had errantly included an adjustment payment from Mr. Barnes to Ms. Barnes for \$384,246, which would have been unnecessary if the Cockrill Bend split had been accurately stated. As a result of these errors, he argued that the sum total amount awarded to each was incorrect.

The trial court entered an amended memorandum and final decree to correct and address mathematical errors on March 3, 2022. The trial court's order included detailed findings of fact and conclusions of law. Therein, the trial court made a negative finding as to Mr. Barnes's credibility. The trial court noted the significant variance between his testimony and that of Ms. K.C. regarding their affair. The trial court also questioned Mr.

Barnes's credibility in connection with the financial projections he provided for Delk, one of which was off by approximately \$1 million. The trial court found that Mr. Barnes was attempting to manipulate figures for his benefit by downplaying the value of the company. Combined, these issues led to the trial court finding him not to be credible and giving "zero weight to his testimony." On the other hand, the court found Ms. Barnes to be truthful, giving much greater weight to her testimony. Regarding Ms. K.C., the trial court found that, while she was evasive at first that after the court admonished her for her evasiveness, she offered credible testimony.

Addressing the financial experts, the trial court found Ms. McDowell's testimony to be truthful and straightforward. The court also found Mr. Price to be truthful, but had concerns as to his use of the projections in creating the valuation, particularly since those were created by Mr. Barnes, whom the court had already found was not credible and whose projection was off by a million dollars. The court found Mr. Alexander's testimony and methodology to be more persuasive. Therefore, the trial court gave greater weight to Mr. Alexander's testimony than that of Mr. Price in determining the value of Delk.

In discussing the division of property, the trial court analyzed the statutory factors of Tennessee Code Annotated section 36-4-121(c).<sup>1</sup> For factor one, it found the 29-year

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<sup>1</sup> Tennessee Code Annotated section 36-4-121(c) provides:

In making equitable division of marital property, the court shall consider all relevant factors including:

- (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;  
(B) For purposes of this subdivision (c)(5), dissipation of assets means wasteful expenditures which reduce the marital property available for equitable distributions and which are made for a purpose contrary to the marriage either before or after a complaint for divorce or legal separation has been filed;
- (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;
- (9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;

marriage to be long-term. For factor two, it found that, while both parties had higher education, Mr. Barnes had an exponentially greater earning capacity, given his successful ownership of Delk. Ms. Barnes alternatively had worked part-time while caring for the parties' children. For factor three, the court found that Ms. Barnes had managed the home and provided the primary care for the children, allowing Mr. Barnes to focus on running Delk, aiding in its success. For factor four, it found that Mr. Barnes would continue to have the ability to generate a very high income, allowing him the superior ability to make future acquisitions of capital assets and income. The trial court found Ms. Barnes to have comparatively little ability to do the same without the assets received from the divorce. For factor five, the trial court found that each party contributed to the acquisition and appreciation of the marital estate. It also found, based on the parties' stipulation, that Mr. Barnes dissipated \$185,000 in marital funds related to his affairs. For factor six, the court found that there was little proof about separate property, as the majority of the parties' property was marital. For factor seven, the parties submitted no proof as to the value of their estates at the time of the marriage. For factor eight, the court found that, given the value of the estate and Mr. Barnes's income, each party will receive a portion of the estate that will allow them to begin their post-divorce lives with little financial concern. For factor nine, the court found that the marital home's mortgage was too high and the marital home would cost too much to maintain, so the trial court ordered that the home be sold. For factor ten, the court found Mr. Alexander's valuation of Delk to be more persuasive, so it adopted his findings and valued Delk at \$3,882,000. For factor eleven, the court found that the parties' potential social security benefits did not have a significant influence on the division of the parties' assets. The court did not consider any "other factors" under factor twelve.

In dividing the marital property, valued in total at \$12,871,615, the court awarded \$5,950,182 (46.2%) of assets to Mr. Barnes and \$6,921,433 (53.8%) to Ms. Barnes. Mr. Barnes's share consisted primarily of the parties' second home, sole ownership of Delk, half ownership of Cockrill Bend, and extremely little in liquid assets. Ms. Barnes's share included the marital home, a majority of the parties' liquid financial accounts, and half ownership of Cockrill Bend. As to Cockrill Bend, the court explained that it was awarding

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(10) In determining the value of an interest in a closely held business or similar asset, all relevant evidence, including valuation methods typically used with regard to such assets without regard to whether the sale of the asset is reasonably foreseeable. Depending on the characteristics of the asset, such considerations could include, but would not be limited to, a lack of marketability discount, a discount for lack of control, and a control premium, if any should be relevant and supported by the evidence;

(11) The amount of social security benefits available to each spouse; and

(12) Such other factors as are necessary to consider the equities between the parties.

Tenn. Code Ann. § 36-4-121(c) (effective July 1, 2017, to March 30, 2022).

this property to the parties as tenants in common for several reasons. First, it would allow Mr. Barnes to continue to operate Delk “without saddling him with overwhelming debt.” Delk also paid \$15,000 per month in rent, so this structure would provide each of them with \$7,500 per month in rental income, reducing Ms. Barnes’s need for support. The court acknowledged that it is always reluctant to leave parties in a divorce financially tied to property after the divorce, but the court was attempting “to avoid the sale of assets to fairly and equitably divide the marital estate.” It added that if the parties are unable to work together in ownership of Cockrill Bend, either party can petition the court to sell the property after three years. Overall, the court found the division to be a fair and equitable division of marital property.

The trial court also awarded alimony to Ms. Barnes. In doing so, the trial court analyzed the Tennessee Code Annotated section 36-5-121 factors in detail. It found that Mr. Barnes brought in an average income of \$1,373,988 per year between 2015 and 2020, but found that income would likely be approximately \$861,000 per year going forward. It noted Ms. Barnes’s income she would make from marital assets assigned to her in the divorce. It set her need at \$16,138 but subtracted the amount of the \$3,107 mortgage payment for the marital home, as it would be sold after the divorce. Therefore, her need was reduced to \$12,027.25. Based on the property division, the court found that Ms. Barnes would be receiving \$10,000 in investment income and \$7,500 per month from the Cockrill Bend rent. This income would exceed her need by \$5,472.75. Beyond this, because Mr. Barnes would always be able to bring in significantly more income, it found Ms. Barnes to be the economically disadvantaged spouse. Under Tennessee Code Annotated section 36-5-121, the court sought to permit her, as the economically disadvantaged spouse, to continue to have a standard of living comparable to that during the marriage. Therefore, based on this and Mr. Barnes’s high ability to pay, it awarded an additional \$6,000 per month in alimony *in futuro*.

Mr. Barnes appealed, raising multiple issues:

1. Whether the trial court erred in making specific credibility findings against Husband;
2. Whether the trial court erred in its application of the falsus in uno, falsus in omnibus legal maxim;
3. Whether the trial court erred in its valuation of the marital estate, including its valuation of Delk, its refusal to update the values of the estate despite timely requests by Husband to do so, and in not crediting certain debts to Husband in its division of the marital estate;
4. Whether the trial court erred in its overall division of the marital estate,

including its failure to appropriately explain the factual basis for its division of the marital estate, its failure to equally divide the marital estate, and its failure to award Husband an equitable share of the parties' liquid assets;

5. Whether the trial court erred by jointly titling Cockrill Bend property and failing to provide Husband adequate due process in doing so; and

6. Whether the trial court erred in awarding alimony to Wife by awarding her alimony in excess of her need, by wrongly calculating Husband's income, and by not assessing Wife with an earned income.

## II.

With regard to the foundational issue of credibility, Mr. Barnes argues the trial court erred in finding him not to be credible. Tennessee appellate courts "afford trial courts considerable deference when reviewing issues that hinge on the witnesses' credibility because trial courts are 'uniquely positioned to observe the demeanor and conduct of witnesses.'" *Kelly v. Kelly*, 445 S.W.3d 685, 692 (Tenn. 2014) (quoting *State v. Binette*, 33 S.W.3d 215, 217 (Tenn. 2000)). Appellate courts will not re-evaluate a trial judge's credibility determination absent clear and convincing evidence to the contrary. *Kelly*, 445 S.W.3d at 692 (quoting *Wells v. Tennessee Bd. of Regents*, 9 S.W.3d 779, 783 (Tenn. 1999)); *Kincade v. Kincade*, No. M2017-00797-COA-R3-CV, 2018 WL 1631415, at \*5 (Tenn. Ct. App. Apr. 4, 2018). For evidence to be clear and convincing, it must eliminate any "serious or substantial doubt about the correctness of the conclusions drawn from the evidence." *State v. Sexton*, 368 S.W.3d 371, 404 (Tenn. 2012) (quoting *Grindstaff v. State*, 297 S.W.3d 208, 221 (Tenn. 2009)).

The trial court noted significant variance between Mr. Barnes's testimony regarding the affair with Ms. K.C. and her testimony. The court also noted Mr. Barnes created a yearly projection that was to be used in the valuation of Delk that was low by approximately \$1 million. In reflecting upon Mr. Barnes's projection, the trial court concluded that Mr. Barnes was attempting to manipulate figures "to benefit him in establishing a lower value for Delk."

Mr. Barnes argues that the evidence weighs against the trial court's adverse credibility finding for two primary reasons. First, he argues that Ms. K.C.'s testimony was inconsistent, wavering, and confusing, while his testimony that the affair only lasted six months was consistent throughout. Ms. K.C. was called to testify about the timeline of her affair with Mr. Barnes. At first, she was evasive and hesitant to answer questions about the affair. After the trial court admonished her for evasiveness, she provided what the trial court considered to be straightforward testimony. She stated that the affair started near in time to the parties' 15th anniversary, which would have been sometime in 2005 or 2006.



She indicated that the affair continued even while she was pregnant with her child, who was eleven at the time of trial. According to her, the affair ended in 2014 when she left Delk. This directly contradicts Mr. Barnes's testimony that the affair only lasted for six months in 2014. Mr. Barnes had previously asserted the relationship lasted only for six months in multiple discovery responses and pleadings. Mr. Barnes argues that the trial court erred in finding Ms. K.C. to be credible given her "evasive" responses. Having observed the witnesses, the trial court indicated that her testimony "appeared to be truthful." This is precisely the type of determination that falls in the province of a trial court evaluating credibility. *See Kelly*, 445 S.W.3d at 692 (explaining that trial courts are "uniquely positioned to observe the demeanor and conduct of witnesses" (quoting *Binette*, 33 S.W.3d at 217)).

Second, Mr. Barnes argues that the trial court's conclusion about his untruthfulness in making the Delk projection contradicted the trial court's earlier statement regarding his truthfulness. The trial court had previously stated, "I don't think he was doing anything willfully . . . . Mr. Alexander has just made the point that is very important to me, is that projections can change." Further, Mr. Barnes argues that the trial court adopted Mr. Alexander's valuation of Delk and that Mr. Alexander's report concluded that the info provided by Mr. Barnes was "reliable and accurate."

On June 2, 2021, the trial court did orally note that it did not regard Mr. Barnes's representations as to projections for Delk to be willfully misleading. By March 3, 2022, having dug through the entirety of the evidence and prepared its final written order, the trial court evidently had a change of mind on this matter, stating that "[t]he Court believes that Mr. Barnes has attempted to manipulate figures to benefit him in establishing a lower value for Delk." In relying upon Mr. Alexander's expert opinion rather than Mr. Price's expert opinion, the court also indicated that it did so, in part, because Mr. Alexander's method was less dependent upon Mr. Barnes's projections, of which the court had become skeptical. Despite the trial court's earlier sense that Mr. Barnes had simply made a mistake, by the time of its written order, the trial court had come to believe that Mr. Barnes was deliberately manipulating financial figures to try to mislead as to the value of Delk. As noted by the Tennessee Supreme Court, "[i]t is well-settled that a trial court speaks through its written orders—not through oral statements contained in the transcripts . . . ." *Williams v. City of Burns*, 465 S.W.3d 96, 119 (Tenn. 2015) (quoted reference omitted).

One of the most time-honored principles of appellate review is that trial courts are best situated to determine the credibility of the witnesses and to resolve factual disputes hinging on credibility determinations. *Mitchell v. Archibald*, 971 S.W.2d 25, 29 (Tenn. Ct. App. 1998). Simply stated, it is not our place to second-guess the trial court's credibility findings when it bases those findings on live, in-person testimony unless the record contains clear and convincing evidence that directly contradicts those findings. *Kelly*, 445 S.W.3d at 692. Having reviewed the trial court's order and the record, we cannot conclude

that the evidence in the record clearly and convincingly contradicts the trial court's determination. While Mr. Barnes points to some evidence that weighs in the other direction, that evidence certainly does not rise to the level of raising "serious or substantial doubt about the correctness of the conclusions drawn from the evidence." *Sexton*, 368 S.W.3d at 404 (quoting *Grindstaff*, 297 S.W.3d at 221). The trial judge was able to observe the witnesses in person and concluded that Mr. Barnes was not credible, and we see no clear and convincing basis to reverse that finding.

### III.

Further objecting to the trial court's assessment of his testimony, Mr. Barnes also argues that even if the trial court's credibility findings were valid, the trial court, nevertheless, erred in its purported use of the *falsus in uno, falsus in omnibus* legal maxim. This Latin maxim means "false in one, false in all." *Wix v. Wix*, No. M2000-00230-COA-R3-CV, 2001 WL 219700, at \*4 (Tenn. Ct. App. Mar. 7, 2001). In other words, it means that when a "witness is found to have testified falsely as to one fact, the court is justified in disregarding other testimony of that witness as untrue, even though the other testimony is uncontradicted." *Hensley v. Britt*, No. 01A01-9607-CH-00296, 1996 WL 709375, at \*4 (Tenn. Ct. App. Dec. 11, 1996). The Tennessee Supreme Court limited the application of this maxim in *McKinnon v. Michaud*, observing that a "false statement of a material fact does not authorize a jury to disregard the rest of his testimony where the falsehood is due to mistake and not to willfulness." 260 S.W.2d 721, 726 (Tenn. 1953). Accordingly, the maxim "becomes applicable only when the witness has deliberately and willfully given false testimony." *Wix*, 2001 WL 219700 at \*4

In discussing Mr. Barnes's credibility, the trial court stated:

Mr. Barnes's testimony relating to the affair with [Ms. K.C.] differs remarkably from the testimony of Ms. [K.C.]. Mr. Barnes described his relationship with Ms. [K.C.] as something of a short-term relationship. However, the testimony of Ms. [K.C.] reflected the relationship with Mr. Barnes continued for an extended period.

...

The Court also questions Mr. Barnes's credibility regarding his projections he originally submitted. The proof has established that the projections submitted by Mr. Barnes for the year 2020 were off by approximately a million dollars. The Court believes that Mr. Barnes has attempted to manipulate figures to benefit him in establishing a lower value for Delk.

This belief, based on the testimony of Mr. Barnes and the testimony of Ms.

[K.C.], causes the Court to have very serious doubts about Mr. Barnes's credibility.

This Court, because of its concerns about Mr. Barnes's credibility, will give zero weight to his testimony, including much of the unsupported testimony about the value of Delk.

Reflecting on the trial court's approach to Mr. Barnes's credibility, Ms. Barnes argues that the trial court did not employ the maxim *falsus in uno, falsus in omnibus* either in name or in practice. She observes that the trial court did not discount Mr. Barnes's testimony based upon a single false statement. Furthermore, Ms. Barnes contends that Mr. Barnes's testimony was contradicted and included multiple and repeated misrepresentations. Thus, Ms. Barnes asserts that Mr. Barnes's argument is without merit.

Ms. Barnes is correct that the trial court did not specifically mention the *falsus in uno, falsus in omnibus* maxim nor did the trial court discount Mr. Barnes's testimony based on a single mistaken statement. Rather, the trial court outlined two separate areas of testimony that led to a negative assessment of Mr. Barnes's credibility. With regard to one of these areas, the projections related to the valuation of Delk, the trial court expressly found Mr. Barnes to have engaged in acts of deliberate misrepresentation. As to Mr. Barnes's representation to the court that his affair with Ms. K.C. had been of six months' duration, the trial court found that the affair actually lasted considerably longer. Mr. Barnes did not mistakenly state the affair was limited to six months once but instead repeatedly represented that the affair had been limited to six months. The trial court concluded Mr. Barnes's testimony and representations on this point were simply untrue. Furthermore, the trial court concluded that Mr. Barnes engaged in deliberate misrepresentations, trying to mislead by manipulating data in order to artificially lower the valuation of Delk, the couple's single most valuable asset. In other words, Mr. Barnes's testimony was not *falsus in uno*, false in one, but instead reflected more than one falsehood. Having concluded that Mr. Barnes made multiple misrepresentations and deliberately misrepresented financial information in connection with a matter as important as the valuation of Delk, we find no error in the trial court's broader skepticism of Mr. Barnes's testimony. Despite Mr. Barnes's argument to the contrary, *McKinnon's* limitation on the legal maxim *falsus in uno, falsus in omnibus* does not point toward any error by the trial court with regard to its consideration of his testimony. *See* 260 S.W.2d at 726.

#### IV.

Addressing the trial court's valuation of the marital estate, Mr. Barnes argues that the trial court erred in three different respects. One, Mr. Barnes contends that the trial court's valuation is inaccurate because, by splitting ownership of Cockrill Bend, the court's division of property affected Delk's ability to operate under its line of credit. Two, Mr.

Barnes asserts that the trial court erred in not updating the value of the marital estate in response to his requests. Three, he argues that the trial court erred in not assessing a debt to Mr. Barnes for his obligation to pay Ms. Barnes on promissory notes.

Decisions regarding the value of marital property present questions of fact. *Chase v. Chase*, 670 S.W.3d 280, 302 (Tenn. Ct. App. 2022); *Owens v. Owens*, 241 S.W.3d 478, 486 (Tenn. Ct. App. 2007). The parties bear the burden of presenting competent evidence of value with the court determining value based upon relevant evidence. *Sykes v. Sykes*, 647 S.W.3d 596, 609 (Tenn. Ct. App. 2021); *Powell v. Powell*, 124 S.W.3d 100, 104 (Tenn. Ct. App. 2003). When the evidence of value is conflicting, “the trial judge may assign a value that is within the range of values supported by the evidence.” *Chase*, 670 S.W.3d at 287 (quoting *Kinard v. Kinard*, 986 S.W.2d 220, 231 (Tenn. Ct. App. 1998)). “[A] trial court’s decision with regard to the value of a marital asset should be given great weight on appeal. A trial court’s decision with respect to the valuation of a marital asset will be presumed to be correct unless the evidence preponderates otherwise.” *Chase*, 670 S.W.3d at 302 (citation omitted).

A.

Mr. Barnes argues that the court erred in valuing Delk at \$3,883,000. After reading the reports by each party’s financial expert and hearing their testimony, the court adopted Ms. Barnes’s expert Mr. Alexander’s valuation. Mr. Barnes argues that Mr. Alexander’s report contained certain limitations that ran contrary to the trial court’s own findings, thus undercutting Mr. Alexander’s valuation for Delk. One of the built-in limitations in the report states that,

[a] material change in critical information relied upon in this Report would be cause for a reassessment to determine the effect, if any, upon our conclusions.

Another limitation states,

[t]he estimate(s) of value included in this Report assumes that the Company will maintain the character and integrity through any sale, reorganization or reduction of any owner’s/manager’s participation in the existing activities of the business enterprise.

The crux of Mr. Barnes’s argument is that, by splitting ownership of the Cockrill Bend property, the trial court has dramatically devalued Delk and that the trial court’s division of property does not account for this devaluation. Mr. Barnes contends that remand is necessary to allow for a revaluation of Delk. Explaining his contention, Mr. Barnes argues that his exclusive ownership of Cockrill Bend is essential to Delk’s ability

to maintain the line of credit that it draws on during the summer months. If he no longer exclusively and fully owns the Cockrill Bend property, Mr. Barnes asserts that Delk “can no longer access its line of credit.” Mr. Barnes presents an intriguing argument in which the trial court’s division of property itself undermines its valuation of Delk and thereby renders inequitable the division of the marital estate as a consequence of the manner of division imposed under the trial court’s order.

Problematically, however, the testimony before the trial court did not clarify the importance of the Cockrill Bend property, and the argument that Mr. Barnes now advances on appeal was not presented to the trial court. In his briefing on appeal, Mr. Barnes characterizes his testimony as follows: “Husband also described the personal guaranty he provided to his lenders and the importance of the Cockrill Bend property to that personal guarantee.” On appeal, he characterizes his exclusive ownership of the Cockrill Bend property as the lynchpin of his credit arrangement for Delk. The record does support that Mr. Barnes made clear in his testimony that the line of credit was based on Delk’s performance and his own personal guarantee. We have reviewed closely the portions of the record cited by Mr. Barnes as purportedly reflecting his testimony conveying the particular importance of the Cockrill Bend property, and his contention that he testified as to the particular importance of the Cockrill Bend property to the credit arrangement is simply not supported by the record. We do not doubt that Mr. Barnes may have meant to convey this to the court, but the testimony does not support his characterization that he actually stated it. He did not testify before the trial court that the exclusive ownership of the Cockrill Bend property in particular was essential to his credit arrangement. From the testimony presented, the trial court would not have appreciated that splitting the Cockrill Bend property would significantly interfere with Delk’s credit arrangement. In terms of testimony and argument presented to the trial court, Mr. Barnes failed to communicate to the trial court the importance of his exclusive ownership of the property.

Additionally, in the wake of the trial court’s ruling as to the property division, while raising in a motion to alter or amend aspects of the accounting for the valuation of the Cockrill Bend property, Mr. Barnes did not raise the argument that he is now presenting on appeal. To the contrary, Mr. Barnes is raising this issue for the first time on appeal based on facts that are not contained in the record. *See In re Aliyah C.*, 604 S.W.3d 417, 419 (Tenn. Ct. App. 2019) (issues not raised at trial are generally considered waived on appeal) (citing *Lawrence v. Stanford*, 655 S.W. 2d 927, 929 (Tenn. 1983)); *see also* Tenn. R. App. P. 36(a) (appellate courts are not required to grant relief to a party “who failed to take whatever action was reasonable available to prevent or nullify” the alleged error). Therefore, we find that this issue is waived.

## B.

Mr. Barnes also argues that the trial court erred when it declined to update the

valuation of the marital estate in response to his requests. The trial was split between three days in October 2020 and two days in June 2021. Mr. Barnes first introduced his asset and liability statement on October 14, 2020, the first day of trial. This included the values of real property, business interests, cash accounts, notes receivable, and other similar information. On June 1, 2021, the fourth day of trial, he requested to update the marital property values, because it had been nearly eight months since the values were introduced. Mr. Barnes had initially inquired about updating the values on October 28, 2020, in anticipation of the next trial date being in June. The trial court refused but entered the new asset and liability statement for identification purposes as an exhibit to the record. When the court entered its original final decree on November 23, 2021, the values were just over a year old. In his December 2021 motion to alter or amend, Mr. Barnes again requested that the court update the values. Ms. Barnes opposed updating the values. The court again refused to update the values, stating that updating would require reopening the proof, which it found inappropriate.

Mr. Barnes contends that the trial court's refusal violated Tennessee Code Annotated section 36-4-121(b)(2)(A), which states that marital property is to be "valued as of a date as near as reasonably possible to the final divorce hearing date." This court has interpreted the term "final divorce hearing date" to be the date on which a decree is entered declaring the parties divorced. *Bunch v. Bunch*, 281 S.W.3d 406, 412 (Tenn. Ct. App. 2008) (citing *Dunlap v. Dunlap*, 996 S.W.2d 803, 817 (Tenn. Ct. App. 1998)). In *Dunlap v. Dunlap*, the trial court entered the decree of divorce in 1989 but did not enter an order dividing the marital property until 1997. 996 S.W.2d at 805-07. This court held that the trial court was correct to use the value of the property as of 1989, as that is the relevant date under Tennessee law. *Id.* at 817 (citing *Wright v. Quillen*, 909 S.W.2d 804, 809 (Tenn. Ct. App. 1995)).

In support of the trial court's decision to not permit testimony updating the valuation of the marital property in June 2021 or December 2021, Ms. Barnes references this court's decision in *Wallace v. Wallace*, 733 S.W.2d 102 (Tenn. Ct. App. 1987) and the expansive deference afforded therein. An embrace of the wide-ranging discretion afforded by this court in *Wallace*, however, would be misplaced. Considering the then-existent version of the relevant Tennessee Code provision with regard to the valuation of marital property, we observed that it "provides no direction concerning when the value of marital property should be determined" and that trial courts, in general, possess wide discretion in dividing marital property. *Id.* at 106. Accordingly, the *Wallace* Court indicated that we "cannot perceive of any reason why this discretion should not extend to setting the date upon which the value of the marital property will be determined as long as the date chosen bears some relationship to the divorce proceeding and nature of the property itself." *Id.* The relevant Tennessee Code provision, however, was subsequently amended and the General Assembly has directed Tennessee courts to value marital property "as of a date as near as reasonably possible to the final divorce hearing date." Tenn. Code Ann. § 36-4-

121(b)(2)(A). In other words, after the decision in *Wallace*, the discretion of trial courts with regard to the timing of valuation has been cabined by a subsequently enacted statutory requirement. See *Small v. Small*, No. M2009-00248-COA-R3-CV, 2010 WL 334637, at \*12 (Tenn. Ct. App. Jan. 28, 2010) (acknowledging the trial court's discretion with regard to valuation but noting that timing for valuation needs to be in accordance with the statutory requirement).

As noted above, the trial court declined Mr. Barnes's request to update his proof on valuation during the trial and after the close of proof in response to his motion to alter or amend. In declining to permit further testimony upon ground already traversed by the parties, the trial court noted that the parties had indicated in their certificate of readiness for trial that the proceedings would take three days. The trial court had calendared the case in accordance with the parties' certificate for readiness. The court indicated that it was the parties, not the court, that were at fault for the delay that arose in completing the trial, which instead took five days. The court reflected upon the challenges of scheduling and conducting trials, particularly in connection with complications of scheduling arising in connection with Covid-19, which created an enormous backlog. Furthermore, the trial court observed the impossibility of and confusion caused by continually updating valuation during the course of trial proceedings. The trial court also viewed allowing further proof as creating unnecessary complexities. The trial court further observed that allowing updating would not be as simple as permitting Mr. Barnes to present evidence of changed valuation but would instead necessitate an opportunity for Ms. Barnes to be able to cross-examine and also to be able to call witnesses.

Asserting that the trial court's rationale provides an improper basis to deny permission to update valuation, Mr. Barnes notes on appeal that he was merely endeavoring to update the valuation of "the assets that had a readily ascertainable value, e.g., checking accounts, notes receivable, retirement, and the like." He expressly disclaims any attempt to update the value of the real property or of Delk. Accordingly, he asserts that the trial court's concern about the time that would be necessary to update the values was misplaced. This framing of the request to update using what he characterizes as readily ascertainable updated valuations seems modest in scope and less time-consuming in nature than a broad-based updating of the numerous complex assets of this substantial marital estate. The limited scope of Mr. Barnes's proposed valuation updates was not, however, clearly communicated to the trial court. In a colloquy with the trial court, Mr. Barnes inquired "are we going to be allowed to update balances and things." In pressing the point further, Mr. Barnes noted valuation updating as to "balances and accounts and things" and specifically noted equity in the home as an example. In a subsequent colloquy with the court, Mr. Barnes characterized the updating of valuation in terms of "the asset and liability statement" and a need to update "our assets." An exhibit reflecting Mr. Barnes's updated valuation, which was admitted by the trial court for identification purposes under the heading "HUSBAND'S PROPOSED DIVISION OF ASSETS AND LIABILITIES

(UPDATED 5/28/21)” lists dozens of non-business and business assets including real and personal property valuations and business valuations. There is no clear delineation on the exhibit itself indicating which items he sought to update and which are not being updated. This lack of delineation exists on a document that lists dozens of marital assets including real property, debts, and business assets including, notably, Delk. Similarly, in his motion to alter or amend, in seeking to update values, Mr. Barnes expressly argued “the Court should update all values,” noting that “Husband through counsel requested many times during trial to update all values of assets . . . .” Thus, while Mr. Barnes may have been seeking a modest, less time-consuming, less complex, and less challenging update of marital estate asset valuation, he did not clearly communicate this to the trial court, at least in the materials that he has cited to this court on appeal.

Mr. Barnes, nevertheless, raises a valid concern, contending there are limits on how far a trial court’s control of its docket can go in limiting the ability of a party to present evidence related to valuation of marital property. Given the directive of Tennessee Code Annotated section 36-4-121(b)(2)(A) that marital property is to be “valued as of a date as near as reasonably possible to the final divorce hearing date,” we agree that there are limits on a trial court’s ability to use docket control to justify limitations on valuation testimony in accordance with the demands of the statute. The docket management concerns of the trial court are not, however, inapplicable in considering what is “reasonably possible” under the statute. Reflecting on the present case, this is not a case in which the trial court failed to afford the parties the time they believed necessary to try their case and significant delay resulted. To the contrary, the trial court honored the parties’ three-day trial projection in their certificate of readiness for trial, and the delay between valuation evidence being presented and the final divorce hearing was the parties’, not the court’s, fault. *See Byrd v. Byrd*, No. W2021-00926-COA-R3-CV, 2022 WL 16548578, at \*21 (Tenn. Ct. App. Oct. 31, 2022) (upholding the trial court’s decision to use what the husband asserted were outdated valuations of marital property where the husband was not cooperative in producing updated information). The delay in finalizing the matter and separating the valuation testimony from the final divorce hearing also arose in the midst of extreme scheduling challenges for the trial court and a backlog, which the trial court noted resulted from Covid’s impact on the operation of courts. Additionally, this case involved a significant number of assets, some quite complex in connection with their valuation, and the attempt to update was not as limited in scope as Mr. Barnes now suggests on appeal, or at least Mr. Barnes did not clearly communicate the purportedly narrow scope to the trial court. In a case with dozens of assets, this helps to explain the trial court’s concern that updating would create confusion and why allowing updating of valuation testimony could impinge further and unreasonably upon the trial court’s docket. Accordingly, given the confluence of these circumstances, we cannot say that the trial court’s ruling in declining to allow testimony updating valuation was not in accordance with what was “reasonably possible” in light of the circumstances of the present case.



C.

Mr. Barnes next argues that the trial court erred in not assessing a debt to Mr. Barnes for his obligation to pay Ms. Barnes on promissory notes owned by Delk. In Ms. Barnes's response, she argues that Mr. Barnes is wrong on the merits of this issue and that Mr. Barnes has waived consideration of this issue. Ms. Barnes contends that the evidence at trial showed that the promissory notes were already paid, so Mr. Barnes would never be obliged to make any payments on them. According to Ms. Barnes, if Mr. Barnes was assigned the debts on already-paid notes, it would be a windfall to him as he did not have to actually pay them. Second, she argues that Mr. Barnes has waived this issue on appeal by failing to cite to the record or to relevant legal authorities. In his reply brief, Mr. Barnes addresses aspects of the merits analysis but does not engage with Ms. Barnes's contention that his argument is waived for failing to adhere to Tennessee Rule of Appellate Procedure 27 by not providing supporting legal authority.

We agree with Ms. Barnes that this issue is waived. Mr. Barnes did not provide any citations to legal authorities supporting his contention that the trial court erred and, accordingly, has failed to comply with Tennessee Rule of Appellate Procedure 27(a). As such the issue is waived. *See Sneed v. Bd. of Prof'l Responsibility*, 301 S.W.3d 603, 615 (Tenn. 2010); *Morrison v. Allen*, 338 S.W.3d 417, 441 n.15 (Tenn. 2011).

V.

In addition to asserting that the trial court erred as to valuation, Mr. Barnes also argues that the trial court erred as to multiple decisions made in distributing the marital property. Mr. Barnes contends that both the overall distribution of the marital property and the distribution of liquid assets, in particular, are not equitable. Additionally, he asserts that the trial court erred in assigning joint ownership of the Cockrill Bend property to Ms. Barnes and that this error violated due process.

As noted above, in a divorce action, the trial court shall "[e]quitably divide, distribute, or assign the marital property between the parties without regard to marital fault in proportions as the court deems just based on the factors set forth in subsection (c)." Tenn. Code Ann. § 36-4-121(a)(1)(A). Subsection (c) of Tennessee Code Annotated section 36-4-121 provides that

In making equitable division of marital property, the court shall consider all relevant factors including:

- (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;
  - (B) For purposes of this subdivision (c)(5), dissipation of assets means wasteful expenditures which reduce the marital property available for equitable distributions and which are made for a purpose contrary to the marriage either before or after a complaint for divorce or legal separation has been filed;
  - (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;
  - (9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;
  - (10) In determining the value of an interest in a closely held business or similar asset, all relevant evidence, including valuation methods typically used with regard to such assets without regard to whether the sale of the asset is reasonably foreseeable. Depending on the characteristics of the asset, such considerations could include, but would not be limited to, a lack of marketability discount, a discount for lack of control, and a control premium, if any should be relevant and supported by the evidence;
  - (11) The amount of social security benefits available to each spouse;
  - (12) Such other factors as are necessary to consider the equities between the parties.

Tenn. Code Ann. § 36-4-121(c).

In undertaking this charge, “[t]rial courts have wide latitude in fashioning an equitable division of marital property.” *Luplow v. Luplow*, 450 S.W.3d 105, 110 (Tenn.

Ct. App. 2014) (citing *Fisher v. Fisher*, 648 S.W.2d 244, 246 (Tenn. 1983)). “[A]ppellate courts must accord great weight to a trial court’s division of marital property. Accordingly, it is not our role to tweak the manner in which a trial court has divided the marital property.” *Long v. Long*, 642 S.W.3d 803, 828 (Tenn. Ct. App. 2021) (citation omitted) (quoting *Owens v. Owens*, 241 S.W.3d 478, 490 (Tenn. Ct. App. 2007)). “Appellate courts generally defer to the trial court’s decision unless it is inconsistent with the factors in Tennessee Code Annotated section 36-4-121(c) or the evidence preponderates against the trial court’s ruling.” *Jolly v. Jolly*, 130 S.W.3d 783, 785-86 (Tenn. 2004)

A.

Turning to Mr. Barnes’s first objection to the trial court’s distribution of the marital estate, Mr. Barnes asserts the court erred by not dividing the marital estate equally. According to him, the trial court awarded Ms. Barnes \$1.7 million more in marital assets when it should have made the division equal. However, in looking at the division of marital property, the difference does not add up to \$1.7 million. Of the \$12,871,615 estate, the trial court awarded \$5,950,182 (46.23%) to Mr. Barnes and \$6,921,433 (53.77%) to Ms. Barnes. That is a difference of \$971,251, or 7.54% of the total value, not \$1.7 million.

Mr. Barnes argues that a long-term marriage supports a division of the marital property that is essentially equal. “An equitable division of marital property[, however,] is not necessarily an equal division, and § 36-4-121(a)(1) only requires an *equitable* division.” *Long*, 642 S.W.3d at 818 (quoting *McHugh v. McHugh*, No. E2009-01391-COA-R3-CV, 2010 WL 1526140, at \*3 (Tenn. Ct. App. Apr. 16, 2010) (internal citations omitted)); *see also, e.g., Brown v. Brown*, 577 S.W.3d 206, 212 (Tenn. Ct. App. 2018). “The division of the estate is not rendered inequitable simply because it is not mathematically equal. . . .” *Telfer v. Telfer*, 558 S.W.3d 643, 654 (Tenn. Ct. App. 2018) (quoting *King v. King*, 986 S.W.2d 216, 219 (Tenn. Ct. App. 1998)); *see also Luplow*, 450 S.W.3d at 109-10 (“A division of marital property in an equitable manner does not require that the property be divided equally.”). This court has repeatedly upheld non-equal, but equitable, distributions of marital property. *See, e.g., Grant v. Grant*, No. M2014-01835-COA-R3-CV, 2016 WL 2898434, at \*8 (Tenn. Ct. App. May 12, 2016) (upholding and naming “essentially equal” a division of property of large estate that was 48.17% to wife and 51.83% to husband); *Perkins v. Perkins*, No. W2021-01246-COA-R3-CV, 2023 WL 2446807 at \*4 (Tenn. Ct. App. Mar. 10, 2023) (48% to wife and 52% to husband); *Prichard v. Prichard*, No. W2022-00728-COA-R3-CV, 2023 WL 2726776, at \*8-12 (Tenn. Ct. App. Mar. 31, 2023) (upholding a modified award of 40.2% to husband and 59.8% to wife).

Here, the trial court made extensive findings of fact in its final order in connection with the Tennessee Code Annotated section 36-4-121(c) factors in order to determine an equitable distribution. While the division was not equal, affording the trial court deference, we cannot say that the trial court’s distribution of the marital property is inequitable. In

awarding more of the marital property to Ms. Barnes, the trial court noted, in analyzing pursuant to Tennessee Code Annotated section 36-4-121(c)(4), the dramatically different relative ability of Mr. Barnes and Ms. Barnes to acquire future capital assets and income. The trial court found the following:

There is no dispute that Mr. Barnes is a very high-income earner. Ms. Barnes . . . has generated little income since the birth of the twins. Mr. Barnes will continue to have the ability to generate an extraordinarily high income for several more years. This will allow him a superior ability for future acquisitions of capital assets and income. Ms. Barnes, on the other hand, will have little ability for future acquisitions of capital assets and income without the assistance of Mr. Barnes and investment income from the assets she receives from the division of the marital estate.

Mr. Barnes, though being awarded less in terms of the value of the marital estate, was awarded the greatest income-generating marital asset. We cannot conclude that an allocation of the marital estate assigning 7.54% more to Ms. Barnes than Mr. Barnes constitutes an inequitable distribution where he was awarded the asset that is anticipated to generate the most income going forward.

#### B.

Relatedly, Mr. Barnes argues that the trial court erred by awarding almost all of the parties' liquid assets to Ms. Barnes. In support of his contention, Mr. Barnes argues that "[t]he trial court's decision on this matter is specious on its face and does not require much analysis." Ms. Barnes argues that the trial court did not err. She cites *Owens v. Owens* for the premise that the division of property is not rendered inequitable just because each party is not given a share of every piece of marital property. 241 S.W.3d at 490. She further cites *Brock v. Brock* to support her argument that trial courts are not required to provide liquidity to either or both of the parties. 941 S.W.2d 896, 903 (Tenn. Ct. App. 1996). Ms. Barnes also notes that Mr. Barnes has claimed a monthly income of \$43,848.57 going forward. Additionally, she observed that a better estimate, and one the trial court viewed as more accurate, would be that Mr. Barnes would have \$850,000 per year, or \$70,833.33 per month available. Under either understanding, Mr. Barnes would, according to Ms. Barnes, be well-positioned, having been awarded Delk, to quickly acquire significant liquid assets.

In a similar case, *Grant v. Grant*, the husband appealed, asserting that the division of marital property was inequitable because the wife was awarded the majority of the liquid assets. No. M2014-01835-COA-R3-CV, 2016 WL 2898434, at \*9 (Tenn. Ct. App. May 12, 2016). The trial court had awarded the couple's business interests to the husband, so it necessarily had to award more of the other assets to the wife. *Id.* The *Grant* court cited

*Brock* and repeated that there was no requirement to provide liquid assets to both parties. *Id.* Therefore, the *Grant* court affirmed the division. *Id.*

Here, we agree with Ms. Barnes that under the circumstances of this case, the division was equitable. There is no requirement that each party receive the same amount of liquid assets and the trial court's division was not rendered inequitable because it awarded the liquid assets to Ms. Barnes. Rather, as stated above, the trial court must divide the estate equitably, considering the Tennessee Code Annotated section 36-4-121(c) factors. Awarding Mr. Barnes full ownership of Delk, the equity in his residence, and half interest in the Cockrill Bend property accounts for 44.2% of the marital property. To provide an equitable distribution to Ms. Barnes, the property to be allocated to Ms. Barnes had to be drawn from somewhere in the parties' marital property. This resulted in the trial court awarding almost all of the liquid assets of the marital property to Ms. Barnes. In leaving Mr. Barnes with little of the parties' liquid assets, the trial court also observed that Mr. Barnes has a very high monthly income and Ms. Barnes does not. With having been awarded Delk, the trial court viewed him as well-situated to earn significant income.

### C.

Mr. Barnes's final argument against the trial court's division of marital property is related to the Cockrill Bend property. He argues that the trial court erred in dividing the Cockrill Bend property between the parties because doing so violates his due process rights and results in an unworkable distribution.

Turning to his first contention, Mr. Barnes argues that his due process rights were violated because the Cockrill Bend property being allocated to anyone other than him was not a matter presented to the trial court nor a prospect as to which he was provided notice. Mr. Barnes's argument is unavailing. In the present case, both parties offered dueling proposals for the distribution of the marital property with both proposals assigning the Cockrill Bend property to Mr. Barnes. The parties, however, did not reach a stipulation or agreement that provided for allocation of the Cockrill Bend property to Mr. Barnes. This is significant because the General Assembly has charged Tennessee trial courts with the responsibility to "equitably divide, distribute, or assign the marital property between the parties without regard to marital fault in proportions as the court deems just based on the factors set forth in subsection (c)." Tenn. Code. Ann. § 36-4-121(a)(1). Ms. Barnes's counter-complaint for divorce asked the trial court to "make an equitable division of the marital property between the parties as provided in T.C.A. § 36-4-121." There is no dispute that the Cockrill Bend property is marital property; both parties correctly identified it as such. Simply stated, "marital property is subject to the trial court's powers of equitable distribution." *Dunlap v. Dunlap*, 996 S.W.2d 803, 814 (Tenn. Ct. App. 1998); *see also Trimble v. Trimble*, No. 74,074, 1996 WL 35069946, at \*2 (Kan. Ct. App. May 31, 1996) (stating that "[t]he parties were unable to agree as to a just and equitable division of the

marital estate and submitted the issue to the district court for determination. The district court is not bound by the joint proposals of the parties; its duty is to make a just and reasonable division of the marital estate . . . .”); *Stratman v. Stratman*, 948 S.W.2d 230, 237 (Mo. Ct. App. 1997) (“In the exercise of its discretion, the trial court is not bound to accept either party’s proposal for the division of [marital] property.”). While Mr. Barnes may have assumed that the trial court would award him the Cockrill Bend property, this property, nevertheless, is part of the marital property that was subject to equitable division. As such, we cannot agree that Mr. Barnes did not have notice that ownership of this property was at issue. Where the parties have neither stipulated nor agreed to an allocation of the property, if there is information regarding the distribution of the marital property, it is the responsibility of the parties to present it to the trial court to inform its distribution thereof.

Mr. Barnes also argues that the joint ownership of the Cockrill Bend property is unworkable and inadvisable for a variety of reasons. Insofar as his argument relates to the purported significance of his sole ownership of the Cockrill Bend property to Delk’s line of credit, as discussed above, evidence to support that contention was not advanced before the trial court and is not properly before this court. Independently of the credit issue, Mr. Barnes also argues the trial court erred by leaving him and Ms. Barnes intertwined in connection with the property upon which Delk operates. In addition to imposing limitations on the parties’ unilateral ability to act in connection with their respective ownership interest in this property, the trial court in its order acknowledged and expressly addressed this concern:

The Court finds the parties shall continue to own the 6115 Cockrill Bend property as tenants in common. Neither party shall encumber the property without the express written consent of the other party. The goal of the Court in awarding the Cockrill Bend property to the parties as tenants in common is to allow Mr. Barnes to continue to operate Delk, Inc. without saddling him with overwhelming debt. Additionally, Ms. Barnes will receive \$7,500.00 per month which is one-half the \$15,000.00 Mr. Barnes testified he receives as monthly rent from Delk. Ms. Barnes will be entitled to one-half the rent when said rent increases. Mr. Barnes shall maintain the rent he and Ms. Barnes receive at a commercially reasonable amount. The Court believes this rent amount will help to defray some of Ms. Barnes’s need for support. . . . Delk will continue to be responsible for the obligations toward the property it has traditionally been responsible for.

This Court is always reluctant to leave parties to a contested divorce tied financially to property or a business after the divorce. In this case, however, the Court has attempted to avoid the sale of assets in order to fairly and equitably divide the marital estate. In the event that the parties are unable to

work together in the ownership of the Cockrill Bend property, after three (3) years from entry of this Amended Memorandum and Final Decree either party can petition the Court to sell the property.

Additionally, we note that allocating both Delk and the Cockrill Bend property to Mr. Barnes would, without any further allocations to Mr. Barnes, constitute an award of \$7,196,010 of the marital property. Adopting this approach would result in nearly 56% of the marital property being awarded to Mr. Barnes, which exceeds the 53.8% ultimately awarded to Ms. Barnes, which itself is a level Mr. Barnes has argued on appeal was inequitable. The trial court also expressed concern that in receiving Delk, Mr. Barnes was receiving the most significant income-producing asset of the marital property and that he was, accordingly, well-positioned to earn significant additional income while Ms. Barnes was not. Ultimately, the trial court considered the relevant statutory factors, made extensive reasoned findings, and determined that this was the proper equitable distribution of the marital property. Considered in accordance with the proper deference being afforded to the trial court, we cannot conclude in light of the evidence presented that the trial court erred in its application of the statutory factors or that the evidence preponderates against the trial court's conclusion. *See Jolly*, 130 S.W.3d at 785-86.

## VI.

Finally, Mr. Barnes argues that the trial court erred in awarding alimony to Ms. Barnes for three reasons. First, he argues that the court erred in calculating Mr. Barnes's income. Second, he argues that the court erred in not assessing an earned income to Ms. Barnes. Third, he argues that the court erred in awarding alimony that exceeded Ms. Barnes's need.

In reviewing rulings as to alimony, it is well established that a trial court's decision regarding spousal support is factually driven, so we are "disinclined to second-guess a trial judge's spousal decision" absent an abuse of discretion. *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 105 (Tenn. 2011) (citing *Kinard v. Kinard*, 986 S.W.2d 220, 234 (Tenn. Ct. App. 1998)). As the Tennessee Supreme Court has explained,

An abuse of discretion occurs when the trial court causes an injustice by applying an incorrect legal standard, reaches an illogical result, resolves the case on a clearly erroneous assessment of the evidence, or relies on reasoning that causes an injustice. *Wright ex rel. Wright v. Wright*, 337 S.W.3d 166, 176 (Tenn. 2011); *Henderson v. SAIA, Inc.*, 318 S.W.3d 328, 335 (Tenn. 2010). This standard does not permit an appellate court to substitute its judgment for that of the trial court, but "reflects an awareness that the decision being reviewed involved a choice among several acceptable alternatives,' and thus 'envisions a less rigorous review of the lower court's

decision and a decreased likelihood that the decision will be reversed on appeal.” *Henderson*, 318 S.W.3d at 335 (quoting *Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010)). Consequently, when reviewing a discretionary decision by the trial court, such as an alimony determination, the appellate court should presume that the decision is correct and should review the evidence in the light most favorable to the decision. *Wright*, 337 S.W.3d at 176; *Henderson*, 318 S.W.3d at 335.

*Gonsewski*, 350 S.W.3d at 105-06.

A.

First, we address Mr. Barnes’s argument that the trial court abused its discretion in calculating his income for purposes of determining alimony. The court, in analyzing the alimony factors in Tennessee Code Annotated section 36-5-121(i) (effective April 25, 2011, to March 30, 2022), made detailed findings. In addressing factor (i)(1),<sup>2</sup> the relative earning capacity of each party, the trial court found that, based on the evidence presented, Mr. Barnes would likely make an amount similar to what he made in 2019, or \$861,400. Mr. Barnes argues that this was error because he will no longer own all of the income-producing assets he did in the past and because the trial court cannot consider assets distributed as marital property as income for alimony purposes. As the Tennessee Supreme Court has instructed, we will presume the trial court is correct and review the evidence in the light most favorable to the decision.

Mr. Barnes argues that his income from Delk in 2019 was \$536,187, so the trial court was incorrect in finding that he would make approximately his full 2019 income going forward. However, the trial court properly based its decision on the evidence before it. The parties presented evidence of their past income and potential for future income. The trial court noted that Ms. Barnes’s income had been approximately \$30,000 per year while Mr. Barnes’s income had averaged around \$1,373,988 over the past six years. Mr. Alexander testified that Mr. Barnes would have access to approximately \$850,000 in income solely from Delk going forward.

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<sup>2</sup> (i) In determining whether the granting of an order for payment of support and maintenance to a party is appropriate, and in determining the nature, amount, length of term, and manner of payment, the court shall consider all relevant factors, including:

(1) The relative earning capacity, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and all other sources;



Mr. Barnes also argues that, because the court adopted Mr. Alexander's valuation of Delk, which normalized income for his position at \$357,808, this prevented the trial court from attributing to him an income above that amount. He cites Tennessee law that prevents a trial court from considering marital property itself as income for alimony purposes,<sup>3</sup> but this argument is misplaced. Under Tennessee law, the trial court may consider a marital asset in determining alimony "to the extent the asset will create additional income after the division . . . ." Tenn. Code Ann. § 36-4-121(b)(1)(E). It is the income that will be produced by Delk that the trial court considered. Mr. Barnes argues, nevertheless, that attributing the income level determined by the trial court would encroach upon the value of Delk itself. Mr. Alexander, Ms. Barnes's expert witness, testified Mr. Barnes would have that level of income available as part of his assessment of Delk, the income produced thereby, and its value. Mr. Alexander expressly addressed the question of whether taking a higher income than he used in the valuation would undermine the value of Delk in his testimony. He rejected that proposition, indicating that the two matters were distinct, and he observed that Mr. Barnes had regularly taken a higher compensation than what modeling would suggest was reasonable. From our review of the record, it appears the trial court's finding as to Mr. Barnes's income was within the range of "acceptable alternatives," given the facts presented to it. *See Henderson*, 318 S.W.3d at 335 (quoting *Lee Medical, Inc.*, 312 S.W.3d at 524). Accordingly, we affirm the trial court's findings as to Mr. Barnes's income.

## B.

Second, Mr. Barnes argues that the trial court erred in not imputing any earned income to Ms. Barnes in connection with work. Mr. Barnes noted that Ms. Barnes has a college degree, is in good health, and is capable of working and even expressed some interest in returning to work; accordingly, he contends that she must be imputed or assigned some income in connection with her work capacity. Ms. Barnes responds by noting that the trial court did address income that she would receive in connection with marital property that she was being awarded. She adds that she is only qualified for entry-level work, making approximately minimum wage.

Under Tennessee Rule of Civil Procedure 52.01, "[i]n all actions tried upon the facts without a jury, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment." The trial court in this case made detailed findings of fact and conclusions of law, but in doing so, failed to expressly state that it was not attributing any income to Ms. Barnes in connection with her earning capacity or explain its reasoning for doing so. In reviewing the trial court's order,

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<sup>3</sup> *See* Tenn. Code Ann. § 36-4-121(b)(1)(E).

it is difficult to discern whether the trial court made a conscious decision to not attribute any income to the wife in connection with her earning capacity or if this was simply an omission. In rendering its findings of fact and conclusions of law, the trial court “has a duty to ensure that its rulings are adequately explained,” *Vaughn v. DMC-Memphis, LLC*, No. W2019-00886-COA-R3-CV, 2021 WL 274761, at \*11 (Tenn. Ct. App. Jan. 27, 2021), so as to avoid creating a circumstance in which an appellate court is “left to guess as to why the trial court reached its conclusion,” *Calzada v. State Volunteer Mut. Ins. Co.*, No. M2020-01697-COA-R3-CV, 2021 WL 5368020, at \*8 (Tenn. Ct. App. Nov. 18, 2021); *see also Etheredge v. Est. of Etheredge*, No. M2022-00451-COA-R3-CV, 2023 WL 5367681, at \*6 (Tenn. Ct. App. Aug. 22, 2023). While the trial court ruling was extremely detailed in most respects, we do not have an adequate basis from its ruling to assess the trial court’s order in connection with the failure to attribute any income to Ms. Barnes in connection with her earning capacity in a job.

### C.

Mr. Barnes also argues that the trial court erred in awarding Ms. Barnes an amount of alimony that exceeded her claimed need.<sup>4</sup> In its final memorandum and decree, the trial court made findings related to all of the Tennessee Code Annotated section 36-5-121(i) factors and concluded that alimony *in futuro* was appropriate. The trial court set her need at \$16,138 but subtracted the amount of the \$3,107 mortgage payment and various other payments related to the marital home, as it would be sold after the divorce. Therefore, her need was reduced to \$12,027.25. Based on the properties the court awarded to Ms. Barnes, it found she would be receiving \$10,000 in investment income and \$7,500 per month as one-half of the Cockrill Bend rent. This combined income would exceed her need by \$5,472.75. As high as these amounts may be, the trial court also found Mr. Barnes to have an income of \$861,400 per year, or more than \$71,000 per month.

Because Mr. Barnes is positioned to bring in significantly more income, the court found Ms. Barnes to be the economically disadvantaged spouse. Under Tennessee Code Annotated section 36-5-121(c)(2), the court chose to add additional alimony *in futuro* to “permit the economically disadvantaged spouse’s standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage.” The court had heard testimony about a high standard of living that included driving new cars, vacationing on yachts, and extensive traveling. Therefore, based on this evidence and Mr. Barnes’s high ability to pay, the trial court awarded an additional \$6,000 per month in alimony *in futuro*. In doing so, the trial court ordered an ongoing alimony amount that greatly exceeded what the trial court characterized as Ms. Barnes’s need.

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<sup>4</sup> Mr. Barnes also plainly states that this award was punitive, but provides no explanation as to why. Therefore, we find this issue is waived. *See Sneed*, 301 S.W.3d at 615.

Mr. Barnes argues against this alimony award, attacking it at two levels. His foundational argument is an assertion that the testimony of Ms. Barnes and her expert Ms. McDowell regarding Ms. Barnes's need was addressed to the amount necessary to maintain Ms. Barnes's standard of living. Furthermore, the trial court expressly found their testimony to be credible and straight-forward, creating a potential discordancy regarding standard of living and need in light of Mr. Barnes's assertion. Mr. Barnes also contends that standard of living is generally part of the assessment of need; accordingly, the trial court erred by awarding alimony that exceeded Ms. Barnes's need as it already incorporated standard of living.

A trial court may award *alimony in futuro*

when the court finds that there is relative economic disadvantage and that rehabilitation is not feasible, meaning that the disadvantaged spouse is unable to achieve, with reasonable effort, an earning capacity that will permit the spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.

Tenn. Code Ann. § 36-5-121(f)(1). Despite the trial court's detailed findings of fact and conclusions of law, we are left with uncertainty as to how the trial court judge was using the terms need and standard of living in its order. We are also unclear as to the trial court's understanding of the testimony of Ms. Barnes and Ms. McDowell in terms of need and standard of living. This uncertainty presents significant challenges in considering Mr. Barnes's arguments on appeal regarding the trial court's alimony award.

As noted above, under Tennessee Rule of Civil Procedure 52.01, "[i]n all actions tried upon the facts without a jury, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment." In rendering its findings of fact and conclusions of law, the trial court "has a duty to ensure that its rulings are adequately explained," *Vaughn*, 2021 WL 274761, at \*11, so as to avoid creating a circumstance in which an appellate court is "left to guess as to why the trial court reached its conclusion," *Calzada*, 2021 WL 5368020, at \*8; *see also Etheredge*, 2023 WL 5367681, at \*6. While the trial court ruling was extremely detailed in most respects, we do not have an adequate basis to consider Mr. Barnes's argument with regard to need and standard of living as applied in the trial court's order and in accordance with the facts of the present case.

VII.

For the reasons set forth above, we affirm the judgment of Circuit Court for Davidson County as to the valuation and distribution of the marital property, but we vacate and remand for further proceedings consistent with this opinion as to alimony. Costs of the appeal are taxed equally to the appellant, Raymond D. Barnes, and the appellee, Marion L. Barnes, for which execution may issue if necessary.

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JEFFREY USMAN, JUDGE