

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

DESSIE X v. IDRIS X

**Appeal from the Circuit Court for Shelby County
No. CT-001926-16 James F. Russell, Judge**

No. W2021-01155-COA-R3-CV

Husband appeals the trial court’s classification, valuation, and division of real property in this divorce action. Discerning no error, we affirm.

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

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

Lara E. Butler and Elizabeth Walker Fyke, Memphis, Tennessee, for the appellant, Idris X.

Princess Monique Woodard, Memphis, Tennessee, for the appellee, Dessie X.

MEMORANDUM OPINION¹

I. FACTS AND PROCEDURAL HISTORY

This is a divorce case. Appellant Idris X (“Husband”) and Appellee Dessie X (“Wife”) married in March 2010. Wife was approximately 52 years old at the time of the

¹ Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION”, shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

marriage; Husband was 53. It was Wife's fifth marriage and Husband's second.² The parties have a minor child who was born in 2012. During the course of the marriage, Wife owned and operated Education is Key Daycare, a daycare located at 975 Thomas Street in Memphis ("the Thomas Street property"). Education is the Key, LLC and Education is the Key Properties, LLC are associated with the daycare, and the parties stipulated that the Thomas Street property is marital property. Husband owned and operated a property management company known as Independent Properties Management.

In May 2016, Wife filed a complaint for divorce alleging that, although they continued to reside in the same residence, the parties separated on November 1, 2015. In her complaint, Wife asserted irreconcilable differences and inappropriate marital conduct as grounds for divorce and alleged that Husband "ha[d] threaten[ed] to kill [Wife] within the past week" and that she feared for her life and the life of the parties' child. She prayed for a divorce, custody of the parties' child, an equitable division of marital property, and attorney's fees. She also prayed for "exclusive use" of the parties' marital property in Millington, Tennessee, and for a temporary restraining order enjoining Husband from removing the parties' child from Shelby County and from "coming about her residence, place of employment, and her person."

In his July 2016 answer, Husband denied Wife's allegations of inappropriate marital conduct; he also denied that he had threatened Wife's life. Husband admitted that irreconcilable differences existed between the parties but asserted that the parties did not separate until May 2016. Husband counter-claimed for divorce on the grounds of irreconcilable differences and inappropriate marital conduct. He prayed for equal parenting time with the parties' child, an equitable division of the parties' property, and attorney's fees.

In December 2018, while the matter was pending in the trial court, a friend/employee of Wife quitclaimed 30 parcels of improved real property in Memphis to Education is the Key, LLC. The properties were collectively valued at \$550,000-\$600,000, and the quitclaim deeds recited consideration of \$1.00 per property.

After acrimonious proceedings pertaining largely to parenting issues, the trial court heard the matter over five days in August 2019. The trial court entered a parenting plan and decree of divorce in February 2020. It incorporated its oral rulings from the August 2019 hearing into the final decree. The trial court found that the parties separated in November 2015 and that the marriage was "a marriage of relatively short duration." It also found that the parties had no "jointly held debts" or bank accounts and that they agreed to be "individually responsible" for debt held in their respective names. The court awarded each party the bank accounts held in his or her name. The trial court also determined that

² In her complaint for divorce, Wife stated that the marriage was her fifth. In his answer and counter-complaint, Husband asserted that it was Wife's sixth marriage.

the parties stipulated to an equitable division of personal property and to the classification and distribution of several parcels of real property.

The trial court classified the 30 parcels of real property that had been quitclaimed to Education is the Key as Wife's separate property. It found that the parties had not offered proof regarding the value of either Husband's or Wife's business and that the parties stipulated that the businesses had no value. The trial court awarded each party his or her respective business interests and awarded Wife the Thomas Street property.

The trial court also found that the parties stipulated that their marital residence in Millington was valued at \$300,000. The court found that: 1) the land on which the parties built the marital residence was purchased by Wife with her separate funds in 2013; and 2) Husband "contributed nothing." The court noted that the parties resided in the residence for two years prior to their separation and that Wife and the parties' child continued to live in the residence after the separation. The court also noted Wife's testimony that the property needed significant repair. The trial court awarded the marital residence to Wife.

The trial court denied Husband's request for \$200,000 to be paid as alimony *in solido* to "balance" the equities between the parties. It also denied the parties' requests for attorney's fees.

In March 2020, Husband filed a Tennessee Rules of Civil Procedure Rule 60.02 motion for relief from the judgment. In his motion, Husband argued that the trial court erred in its identification and valuation of certain parcels of real property in Memphis. In September 2021, the trial court entered an agreed order amending the 2020 decree with respect to those parcels. Husband filed a timely notice of appeal to this Court.

II. ISSUES

Husband raises the following issue for review, as stated in his brief:

Whether the Circuit Court of Shelby County, Tennessee committed reversible error in its classification, valuation and division of assets and debts of the parties?

a. Whether the Circuit Court of Shelby County, Tennessee committed reversible error in classifying 30 pieces of real property Wife acquired during the litigation as Wife's separate property?

b. Whether the Circuit Court of Shelby County Tennessee committed reversible error in failing to place a value on the property located at 975 Thomas Street, Memphis, Tennessee?

c. Whether the Circuit Court of Shelby County Tennessee committed reversible error in division of the marital estate, including the marital residence?

Additionally, both Husband and Wife request an award of attorney's fees on appeal.

III. STANDARD OF REVIEW

This case was tried without a jury. Accordingly, under Rule 13(d) of the Tennessee Rules of Appellate Procedure, our review of the trial court's findings of fact is *de novo* upon the record with a presumption of correctness unless the evidence preponderates otherwise. *Allstate Ins. Co. v. Tarrant*, 363 S.W.3d 508, 512 (Tenn. 2012). The evidence preponderates against the trial court's factual findings when it supports another finding "with greater convincing effect." *Hardeman Cnty. v. McIntyre*, 420 S.W.3d 742, 749 (Tenn. Ct. App. 2013) (citation omitted). Therefore, the trial court's findings of fact must contain sufficient underlying facts to clearly disclose the basis for the trial court's determinations. *Lovelace v. Coley*, 418 S.W.3d 1, 34 (Tenn. 2013).

"[T]rial courts are able to observe witnesses as they testify and to assess their demeanor, which best situates trial judges to evaluate witness credibility." *Geller v. Henry Cnty. Bd. Of Educ.*, 602 S.W.3d 876, 889 (Tenn. 2020) (quoting *Wells v. Tenn. Bd. of Regents*, 9 S.W.3d 779, 783 (Tenn. 1999)). Accordingly, when the trial court's findings are based on witness credibility, we will not disturb the court's findings without clear and convincing evidence to the contrary. *Dog House Invs., LLC v. Teal Props., Inc.*, 448 S.W.3d 905, 912 (Tenn. Ct. App. 2014) (citation omitted). However, we review the trial court's conclusions of law *de novo* with no presumption of correctness. *Rogers v. Louisville Land Co.*, 367 S.W.3d 196, 204 (Tenn. 2012). With these standards of review in mind, we turn to the issues.

IV. ANALYSIS

In Tennessee, the division of property in a divorce action "begins with the systematic identification of all of the parties' property interests." *Owens v. Owens*, 241 S.W.3d 478, 485 (Tenn. Ct. App. 2007) (citations omitted). Because Tennessee is a dual property state, the trial court must classify each property interest as either marital or separate. *Larsen-Ball v. Ball*, 301 S.W.3d 228, 231 (Tenn. 2010). After classifying the parties' property, the trial court must assign a reasonable value to all property subject to division, *Owens*, 241 S.W.3d at 485, and divide it in an equitable manner without regard to fault and in light of the factors set out in Tennessee Code Annotated section 36-4-121(c). *Larsen-Ball*, 301 S.W.3d at 231. An equitable division of marital property does not require a division that is precisely equal, but one that is fair. *Melvin v. Melvin*, 415 S.W.3d 847, 852 (Tenn. Ct. App. 2011). "Trial courts are vested with a great deal of discretion when classifying and dividing the marital estate, and their decisions are afforded great weight on

appeal.” *Id.* Therefore, we will not disturb the trial court’s decision unless it is contrary to the preponderance of the evidence or results from an error of law. *Id.*

In his brief, Husband asserts that the trial court erred with respect to three “real estate issues.” Specifically, he argues that the trial erred by: 1) classifying 30 parcels of real property quitclaimed to Education is the Key during the course of litigation as Wife’s separate property; 2) failing to assign a value to the Thomas Street property; and 3) awarding Wife the parties’ marital residence. We will address each of Husband’s arguments in turn.

A. Classification of Real Property

Marital property includes all assets “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, except in the case of fraudulent conveyance in anticipation of filing[.]” Tenn. Code Ann. § 36-4-121(b)(2)(A). Marital property includes “any property to which a right was acquired up to the date of the final divorce hearing[.]” *Id.* Marital property also “includes income from, and any increase in the value during the marriage of, property determined to be separate property . . . if each party substantially contributed to its preservation and appreciation[.]” Tenn. Code Ann. § 36-4-121(b)(2)(B)(i).

Separate property includes:

(A) All real and personal property owned by a spouse before marriage, including, but not limited to, assets held in individual retirement accounts (IRAs) as that term is defined in the Internal Revenue Code of 1986 (26 U.S.C.), as amended;

(B) Property acquired in exchange for property acquired before the marriage;

(C) Income from and appreciation of property owned by a spouse before marriage except when characterized as marital property under subdivision (b)(1);

(D) Property acquired by a spouse at any time by gift, bequest, devise or descent;

(E) Pain and suffering awards, victim of crime compensation awards, future medical expenses, and future lost wages; and

(F) Property acquired by a spouse after an order of legal separation where the court has made a final disposition of property.

Tenn. Code Ann. § 36-4-121(b)(4) (footnote omitted).

“As a general rule, assets acquired by either spouse during the marriage are presumed to be marital property.” *Owens*, 241 S.W.3d at 485. The burden of proof to demonstrate that property acquired during the course of the marriage is separate property is on the party so asserting. *Gaither v. Gaither*, No. E2013-02681-COA-R3CV, 2014 WL 5112797, at *4 (Tenn. Ct. App. Oct. 13, 2014) (citing *see Owens v. Owens*, 241 S.W.3d 478, 486 (Tenn. Ct. App. 2007)). The presumption that property is marital may be rebutted “by evidence of circumstances or communications clearly indicating an intent that the property remain separate[]” and evidence demonstrating that the property falls within one of the categories contained in section 36-4-121(b)(4)(B)-(F). *Id.* (citing *See Batson v. Batson*, 769 S.W.2d 849, 858 (Tenn. Ct. App. 1989)). The classification of property as either separate or marital involves “inherently factual[]” determinations. *Owens*, 241 S.W.3d at 485. Accordingly, we will not set aside the trial court’s determinations regarding the classification of property unless the evidence preponderates against them. *Id.*

Turing to the record, it is undisputed that, on December 20, 2018, while the divorce was pending, James Earl Love, III quitclaimed 30 parcels of improved real property to Wife’s daycare business, Education is the Key, LLC. In his brief, Husband asserts that Wife failed to carry her burden of proof to rebut the presumption that the 30 parcels were marital property. He maintains that Wife’s assertion that the properties were quitclaimed without consideration was not sufficient to demonstrate that the properties were a gift. Husband submits that “[Wife] took the properties to protect [Mr. Love] from his tenant, and she received rental income for those properties.” Husband also asserts that, because he did not have the burden of proof on this issue, the trial court erred in finding that he had failed to offer evidence that the properties were marital property

Wife counters that Mr. Love “hastily transferred thirty (30) pieces of real property to [Wife] via her business, Education is Key,” because Mr. Love temporarily relocated from Memphis after being “pressur[ed] . . . not to cooperate with the police” by a tenant who was involved in a criminal incident. Wife maintains that Mr. Love’s father, James Earl Love [“JEL”]: 1) was an owner of the Education is Key Properties’ bank account; 2) deposited rental income from the real properties into the account; and 3) “had no intent in vesting any rights to [Wife] when the properties were transferred to [Wife] and it was the intent and understanding of Mr. Love and [Wife] that the properties would ultimately be returned to Mr. Love.” Wife further claims that she neither accessed nor used the funds, and, by the time this case was heard in August 2019, Mr. Love had returned to Memphis and resumed collecting the rental proceeds. She asserts that the properties have a collective value of \$577,000.00, that the deeds recite consideration of \$1.00 per property, and that “\$1.00 per property and the reasoning for Mr. Love transferring the properties do not amount to consideration which would be necessary to establish [Wife] purchased the

properties[.]”

At the August 2019 hearing, Mr. Love testified that he transferred the properties following a “situation with one of [the] properties,” involving “some illegal activity going on where a person got murdered, and it was --- and the police and stuff got involved. And it was kind of pressuring me not to cooperate.” He stated that he “had to leave town[.]” and “wanted to put [the] properties in somebody’s name [he] trusted, because [he] didn’t know how long [he] was going to be gone.” He testified that he transferred the properties to Wife and to his father and that he “wanted them back” when he was “situated[.]” Mr. Love testified that Wife did not pay for the properties, collected no rent, performed no maintenance, and paid no expenses associated with the properties. Mr. Love further testified that his father collected the rent during the four months that Mr. Love was away from Memphis. Mr. Love stated that he had been a bus driver for the daycare for four-to-five years and that he trusted [Wife]. He testified that he transferred the properties to Wife because none of his associates knew her or knew that he was associated with her. When asked whether he would “describe [the] transfer of the properties as a gift[,] Mr. Love replied: “Yes.” Mr. Love testified that he had not asked Wife to deed the properties back to him because he had been “busy working” and “just hadn’t had time to do it yet.” He acknowledged receiving a check from Education is Key in April 2019 as compensation for his work as a bus driver and stated that he “was really kind of back and forth” during the four-to-five-month period. He stated that he returned to Memphis “once or twice a month” for approximately a week at a time.

Mr. Love’s father testified that he had known Wife for 16 or 17 years and had deposited funds into the Education is the Key Properties account to maintain the properties. He testified that: 1) the Education is Key Properties account was opened specifically for these properties; 2) Wife did not receive any funds from the properties; and 3) the account was closed at the time of trial. He also testified that Wife borrowed approximately \$140,000 from him to pay toward the repurchase of the Thomas Street property.

In the final decree of divorce, the trial court stated:

Wife is awarded all rights, ownership, interest, and equity in Education is the Key Daycare, Education is the Key, LLC, and Education is the Key Properties, LLC including the businesses’ financial accounts, bank accounts, real property, inventory, equipment, contracts, and debts; Husband is divested of any rights, title, interest, and equity he may have acquired in said properties.

While it is in dispute if James Love, III owned the following properties and had the authority to transfer ownership of the properties, for the purposes of this divorce, any rights, title, or interest held by Education is the Key, LLC or Education is the Key Properties, shall be treated as the separate property

of Wife and Wife is vested in all rights, title, interest, and equity in the real properties, Husband is divested of any rights, title, interest, and equity in said real properties.

The trial court found that Wife met her burden of proof to show that the disputed properties were not marital property. The trial court specifically held that Husband failed to rebut Wife's contention that her "arrangement [with Mr. Love] was designed as an accommodation to help her friend in a time of need." From our review of the record, we conclude that the evidence does not preponderate against the trial court's determination that Wife carried her burden of proof on this issue.

B. Valuation of Property

We turn next to whether the trial court erred by not assigning a value to the Thomas Street property. Marital property must be valued as of a date that is as close as possible to the date the order dividing the property is entered. Tenn. Code Ann. § 36-4-121(b)(2)(A). The burden is on the parties to provide competent evidence of value, and when the evidence is conflicting the court may assign a value "that is within the range of the values represented by all the relevant valuation evidence." *Owens*, 241 S.W.3d at 486. The valuation of a material asset is a question of fact. *Id.* Therefore, the trial court's valuations "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.*

In his brief, Husband acknowledges a mortgage on the Thomas Street property in the amount of \$143,528 and asserts that the marital equity in the property is \$146,471.81. He asserts that Wife's testimony that she owes an additional \$140,000 to JEL under a promissory note is not credible. He maintains:

Wife did not disclose this "promissory note" until trial. In addition, Wife's inability to recall which account the funds were deposited in, combined with the inconsistent testimony of James Earl Love that he actually gave Wife \$140,000 in cash, is indicative that Wife had fabricated the "promissory note" and additional indebtedness, presumably to decrease the equity in that property.

However, Husband presented no proof to establish that the State did not require Wife to pay \$290,000 to repurchase the Thomas Street property, which the State seized because of the transfer of that property to Husband's for-profit business. The parties stipulated that the Thomas Street property was marital property and that it should be awarded to Wife. In his property division worksheet, Husband assigned a value of \$257,500 to the Thomas Street property. Wife testified to a value of \$202,500 and assigned a negative equity of \$60,000 in the Thomas Street property. Wife's valuation is supported by the tax appraisal. With no explanation, Husband proposed that the award of the property to Wife would result in a

distribution of equity in the amount of \$17,500. At trial, Husband provided no other evidence concerning the value of the Thomas Street property and appears to have relied solely on the value set out in his property division worksheet. In his brief, Husband submits:

Wife testified she purchased 975 Thomas for \$290,000 on December 4, 2018 (nine (9) months before the divorce trial began). This purchase was close enough to the trial date that the purchase price would be an appropriate value. Wife did introduce competent proof that she has mortgage in the amount of \$143,528.19. Wife's testimony that she has an additional debt of \$140,000 to James Earl Love is not credible.

Although the trial court did not explicitly assign a value to the property, we conclude that the trial court implicitly found Wife's testimony regarding the value of and the indebtedness on the property to be credible.³ Where issues of credibility and weight of testimony are involved, this Court will accord considerable deference to the trial court's factual findings. *In re M.L.P.*, 228 S.W.3d 139, 143 (Tenn. Ct. App. 2007) (citing *Seals v. England/Corsair Upholstery Mfg. Co., Inc.*, 984 S.W.2d 912, 915 (Tenn. 1999)). Additionally, as the trial court observed, Husband provided no countervailing evidence.

³In her brief to this Court, Wife maintains:

At the date of marriage, Ms. X's daycare operated under the name of House of Knowledge, LLC, a 501(C)(3) non-profit organization. The House of Knowledge daycare was located at 975 Thomas Street, Memphis, Tennessee from 2010 to 2017 and was owned by the House of Knowledge non-profit. While Ms. X had operated her daycare business for fourteen (14) years before, during the parties' relationship Mr. X gifted Ms. X \$120,000.00 to \$125,000.00 towards her daycare business to show her "he was all in with the daycare." Due to a criminal past, Mr. X worked for himself throughout the marriage in his business, Independent Properties Management, LLC. A few years into the marriage, the parties elected to transfer the daycare, 975 Thomas Street, and several other pieces of real property owned by the House of Knowledge non-profit to Mr. X's for-profit business, Independent Properties Management, LLC. These transfers were not in compliance with the laws and requirements regarding conveyances of properties and assets owned by non-profits to for-profit entities. Shortly after the commencement of the divorce proceedings, the State seized all of the properties that had been conveyed from the non-profit to Independent Properties Management, LLC and shut down operations of Ms. X's daycare, the strip mall at 613 Chelsea, and other properties under the name of House of Knowledge, LLC. Approximately eight (8) months before the divorce trial, Ms. X brokered an agreement with the State to repurchase 975 Thomas Street to continue her daycare operations. Due to the State requiring Ms. X to discontinue using the name House of Knowledge for her daycare business, and, in 2018, she changed the name to Education is Key and established Education is Key, LLC. In addition to establishing Education is Key, LLC, Ms. X established Education is Key Properties, LLC in 2018. Ms. X repurchased 975 Thomas Street for \$290,000.00; she financed the purchase with a mortgage from First Alliance Bank and a \$140,000.00 loan from James Earl Love. Mr. X made no claims that he contributed in any way towards the repurchasing of 975 Thomas Street.

We have noted:

“The parties, not the court, are responsible for proposing values to marital property.” *Blevins v. Blevins*, No. M2002-02583-COA-R3-CV, 2003 WL 23094162, at *3 (Tenn. Ct. App. Dec.30, 2003) (citing *Wallace v. Wallace*, 733 S.W.2d 102, 107 (Tenn. Ct. App. 1987)). “The burden is on the parties to produce competent evidence of value, and the parties are bound by the evidence they present.” *Koch v. Koch*, 874 S.W.2d 571, 577 (Tenn. Ct. App. 1993). Although the trial court should place a value on marital assets, its failure to do so does not necessarily constitute reversible error. *See, e.g., Cox v. Cox*, No. M2003-01622-COA-R3-CV, 2004 WL 1562516, at *6 (Tenn. Ct. App. May 5, 2004) (“While the trial court should value marital assets ... we find this a proper circumstance for the application of the maxim *de minimis non curat lex* (the law does not concern itself with trifles).”); *Adams v. Adams*, No. 02A01-9310-CH-00219, 1996 WL 111150, at *2 (Tenn. Ct. App. Mar.12, 1996).

Clayton v. Clayton, No. W200701079COAR3CV, 2008 WL 2122332, at *9 (Tenn. Ct. App. May 21, 2008). Although the trial court did not assign a specific value to the Thomas Street property, as discussed above, the parties assigned a value between \$257,500 (Husband’s worksheet) and \$202,500 (Wife’s testimony). Even if we apply Husband’s valuation of \$257,500, we must defer to the trial court’s credibility finding concerning Wife’s testimony as to the debt on the property. As such, this still results in a negative equity value on the Thomas Street property. Accordingly, the trial court’s failure to place a value on property does not constitute reversible error.

C. Division of Marital Property

The trial court is required to consider all relevant factors when making an equitable division of marital property. Tenn. Code Ann. § 36-4-121(c). These factors include:

- (1) The duration of the marriage;
- (2) The age, physical and mental health, vocational skills, employability, earning capacity,⁴ estate, financial liabilities and financial needs of each of the parties;

⁴ We note that the amount of Husband’s income is not clear from the record. Wife testified that he receives rental income in excess of \$12,000 per month, and it appears he placed funds received from the sale of separate property into the Education is Key bank accounts and later withdrew it. In its October 2019 oral ruling, which was incorporated into the final decree of divorce, the trial court found that Wife’s total income from her daycare business and rental income was \$5,416.67 per month; Husband received rental income of approximately \$2,250 per month at the time of trial.

(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;⁵

(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;

⁵ We observe that, although Husband did not request an award of alimony in his counter-complaint for divorce, he requested a property division “balancing payment” in the amount of \$200,000 to be paid in \$2,000 increments over 100 months. The trial court and the parties treated this as a request for alimony *in solido*, which the trial court denied. Husband has not appealed this ruling.

(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; and

(13) The total amount of attorney fees and expenses paid by each party in connection with the proceedings; whether the attorney fees and expenses were paid from marital property, separate property, or funds borrowed by a party; and the reasonableness, under the factors set forth in Rule 1.5 of the Tennessee Rules of Professional Conduct, and necessity of the attorney fees and expenses paid by each party[.]

Id.

The division of marital property must be equitable in light of all the relevant factors, but the division is not inequitable merely because it is not equal. *Owens*, 241 S.W.3d at 490. Further, it is not necessary that each spouse receive a share of each item of marital property. *Id.* Rather, the trial court should weigh the statutory factors and consider the relevant circumstances to reach an equitable determination. *Id.* The fairness of the trial court's division of property is "inevitably reflected in its results." *Id.* Furthermore, trial courts have broad discretion when determining an equitable division of marital property. *Id.* Therefore, we give great weight to the trial court's determination. *Id.* "[O]ur 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. § 36-4-121(c) is consistent with logic and reason, and whether the trial court's division of the marital property is equitable. *Id.*

In his brief, Husband asserts that the trial court's division of marital property is not equitable because it results in Wife receiving 74 percent of the marital estate, while he receives only 26 percent. Husband contends that the trial court's findings with respect to the marital residence are not supported by the proof and that the trial court erroneously relied on *Cronin-Wright v. Wright*, 121 S.W.3d 673 (Tenn. Ct. App. 2003) when dividing the parties' property. He asserts that he deposited funds into Wife's former daycare business, and they used those funds to pay for the construction of the marital residence. Wife disputes this assertion. She testified that she used her pre-marital savings to purchase the lot and to construct the home. Wife further testified that the funds Husband placed in the daycare account were removed by him and were not used for construction of the marital residence or for the benefit of the daycare business. According to Wife's testimony, which the trial court apparently found credible, Husband placed those funds into the daycare account to somehow avoid paying taxes. We observe that Husband does not dispute the award of stipulated separate property in the amount of \$87,600 to Wife and \$72,700 to Husband. In the division of property tables included in his brief as required by Rule 7 the

Rules of the Court of Appeals, Husband indicates that the trial court's division of marital property resulted in an award of \$135,866 to Husband and \$384,946 to Wife (exclusive of the Thomas Street property). Wife maintains that the trial court awarded marital property in the amount of \$378,946 to her and \$130,866 to Husband. Additionally, the parties stipulated that the parties' businesses had no value and that the marital residence was marital property.

In its final decree, the trial court referenced *Cronin-Wright v. Wright*, 121 S.W. 3d 673 (Tenn. Ct. App. 2003), as the case relied on by Wife in support of the proposition that this was a marriage of short duration such that Wife should be returned to her pre-marital position. Husband asserts that *Wright* is distinguishable because he and Wife "comingled their business interests, real property and other financial affairs which caused certain complexities in this case."

We agree with Husband that the facts of *Wright* are distinguishable from the facts of this case. The parties in *Wright* were married in Florida in July 2000, and the wife sold her Florida residence to relocate to Tennessee. *Wright*, 121 S.W.3d at 674. The husband in *Wright* did not contribute to wife's moving expenses. *Id.* In September 2000, the parties purchased a marital residence in Tennessee, and wife paid the down payment on the residence with proceeds from the sale of her Florida property. *Id.* Although the residence was titled jointly, husband made no contribution to the down payment and paid only one mortgage payment and one utility bill. *Id.* The husband spent only 31 nights in the marital home, and the wife filed for divorce on December 1, 2000. *Id.* The parties in *Wright* reached a settlement as to all issues except the equitable distribution of the marital residence. *Id.* The wife in *Wright* conceded that transmutation occurred with respect to the marital home. *Id.* Thus, the issue in *Wright* was "not one of classification but rather one of equitable distribution[]" in light of all the circumstances. *Id.* at 675. As the *Wright* Court noted the *Wright* marriage was "an unusually short marriage by anyone's standard," and "[t]he only real claim that Husband ha[d] to a share of this marital asset [was] that Wife allowed his name to be placed on the warranty deed along with her own." *Id.* This Court concluded that "[r]easonable minds could not differ as to whether Husband [was] entitled to a share of the equity in the marital residence." *Id.* Rather, "[i]t [was] clear, beyond any doubt, that equity require[d] that Wife be vested with the full ownership of the marital residence." *Id.* at 675-76. However, notwithstanding the factual differences between *Wright* and the current case, the trial court's reliance on *Wright* does not constitute reversible error.

Here, Wife filed for divorce after six years of marriage, and the parties were married for ten years when the trial court entered the final decree. There is no dispute that the parties comingled some of their assets. Indeed, it was the transfer of Wife's not-for-profit Thomas Street property into Husband's for-profit business that resulted in the State seizing Wife's business that she had operated for several years before this marriage.

Wife testified that she sought an award of the marital residence and proposed that Husband should receive half the equity in the property. We note the following testimony by Wife:

Q. And we agree the value is three hundred thousand, and that it was acquired during the marriage.

A. Yes.

Q. Okay. What is your proposed distribution of this property?

A. Basically have it.

Q. Half? Or have it? What was your answer?

A. I was to have it. Yes.

Q. H-A-V-E?

A. Yes, ma'am.

Q. So you would like to be awarded that property.

A. Yes.

Q. Okay. And are you proposing that Mr. X receive any share of equity from that property?

A. Yes.

Q. Okay. What is your proposal for Mr. X's share of equity?

A. I guess I could say half.

Q. Okay. So you're proposing that he will receive a hundred and fifty thousand dollars from Ryan Hill?

A. Yes, ma'am.

Q. Do you have a proposal as to how that money would be paid to him?

A. Kind of sort of.

Q. Okay. Is it to sell the property? Is it to pay him out over installments?

A. To pay him out over installments.

However, Wife also testified that she “[felt] like it was [her] money that bought it[.]” and that there was no debt on the property. She further testified that Husband made no contribution to the purchase of the marital residence and that he knew she intended to build it before the parties were married. Wife testified that she paid the utilities and taxes on the marital residence and that there was an outstanding tax balance of approximately \$8,000.

Husband testified that he helped to construct the marital residence. He testified that he poured the concrete, installed the roof, and generally helped with the physical construction. Husband testified that he had not paid any expenses on the marital home since 2016.

The trial court found that Wife's separate funds were used to purchase the land on which the marital residence was constructed, and Husband made no financial contribution. Although the court noted Husband's testimony that he assisted with the construction of the home, and further acknowledged Husband's testimony “that he helped financially by

paying the light bill [] from time to time[.]” The trial court ultimately found that Husband offered no other proof to support his contention that he was entitled to any equity in the marital home. In awarding the marital residence to Wife, the trial court sought to place the parties in the position they would have been in had the marriage never occurred. Wife testified that she saved the funds and planned to construct a home in Millington prior to the marriage. In the trial court’s view, Husband’s contributions to the construction and maintenance of the marital residence was *de minimis*. We do not disagree with this finding regarding the martial home.

Turning to the Thomas Street property, the parties stipulated that the property should be awarded to Wife. The only issue was valuation and whether any equity in the property should be awarded to Husband. As discussed, *supra*, Wife testified that the property had a value of \$202,500 and that the indebtedness on the property exceeded its value. The trial court credited Wife’s testimony and implicitly found that there was no equity in the property to divide. While the trial court’s division of the marital estate, particularly the award of the marital residence to Wife, resulted in a larger award to Wife, from the record, we conclude that the trial court’s distribution of the marital estate is not inequitable.

V. CONCLUSION

The trial court’s order is affirmed. The parties’ requests for attorney’s fees on appeal are denied, and the matter is remanded to the trial court for such further proceedings as may be necessary and are consistent with this opinion. Costs of the appeal are assessed to the Appellant, Idris X, for which execution may issue if necessary.

s/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE