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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 4, 2020 Session

CHRISTOPHER ADAMS v. TIFFANY ADAMS

Appeal from the Chancery Court for Rutherford County
No. 16CV-885 Barry R. Tidwell, Chancellor

No. M2019-00309-COA-R3-CV

In this divorce action, the husband has appealed, raising issues concerning the trial court's award to the wife of \$300.00 in monthly rehabilitative alimony for four years, distribution of the parties' marital debts, and allocation of co-parenting time with the parties' child. The husband subsequently conceded during oral argument that the issue of co-parenting time is moot due to the child's having reached the age of majority. Additionally, we determine that the husband has waived the issue of debt distribution through his failure to comply with Tennessee Court of Appeals Rule 7. Having further determined that the trial court did not abuse its discretion in its award of rehabilitative alimony to the wife, we affirm the trial court's judgment in all respects.

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

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Daniel Lyn Graves, II, Murfreesboro, Tennessee, for the appellant, Christopher Adams.

Christina Hammond Zettersten, Brentwood, Tennessee, for the appellee, Tiffany Adams.

OPINION

I. Factual and Procedural History

Christopher Adams ("Husband") and Tiffany Adams ("Wife") were married in May 2000 and had one daughter ("the Child") born of the marriage. Following an incident that occurred in May 2016, the parties separated, and Husband filed a petition for an order of protection, resulting in the trial court's entry of an *ex parte* order of protection against Wife on June 3, 2016. Husband then initiated this action by filing a complaint for

divorce in the trial court on June 13, 2016, alleging alternate grounds of irreconcilable differences or inappropriate marital conduct. The trial court subsequently entered an order consolidating the order of protection and divorce actions. Wife filed an answer on June 30, 2016, admitting that irreconcilable differences had developed but denying Husband's allegation of inappropriate marital conduct.

In July 2016, the parties entered into an agreed order of reconciliation by which the trial court dismissed the *ex parte* order of protection and suspended the divorce. However, the parties' attempt to reconcile failed, and Wife filed a motion for *pendente lite* support on November 21, 2016, requesting a hearing to determine the primary residence for the Child, temporary residential co-parenting time, temporary child support, and temporary spousal support. The parties each respectively submitted a proposed temporary parenting plan, and the special master submitted a report after conducting a hearing. The trial court adopted the special master's findings by order entered February 17, 2017, temporarily designating Wife as the primary residential parent and directing Husband to pay \$174.00 per week in temporary child support, \$47.00 per month in temporary spousal support, and certain monthly bills for Wife.

Upon Wife's subsequent motion for *pendente lite* relief, the special master conducted a second hearing, finding, *inter alia*, that because of Wife's financial issues related to a vehicle accident, Husband should pay the insurance payments related to Wife's vehicle and Wife should be allowed to keep her federal income tax return refund. However, the special master declined to modify the previously ordered temporary co-parenting time or child support. The trial court adopted the special master's findings in an order entered on April 3, 2017.

On November 17, 2017, Wife filed a motion for civil contempt, alleging that Husband had failed to pay a total of \$5,920.00 in combined temporary child and spousal support and had failed to make her vehicle insurance payments. Upon the parties' subsequent agreement, the trial court struck the motion for civil contempt and held the contempt issues in abeyance until the final divorce hearing. The parties participated in mediation but failed to come to an agreement. Wife then filed a counter-complaint for divorce on January 31, 2018, alleging inappropriate marital conduct on the part of Husband as an alternative to the ground of irreconcilable differences. Husband filed an answer to the counter-complaint, denying any inappropriate marital conduct.

The trial date was rescheduled multiple times, but the matter was eventually set to be heard on November 13, 2018. On the day of trial, the parties presented a "Joint Stipulation of Counsel," setting forth items of specific personal property that they had agreed were "Separate Property," as well as certain marital assets and debts accompanied by the parties' sometimes differing valuations.

Following the bench trial, the trial court initially entered an order on December 12, 2018, finding Husband in willful civil contempt for failure to pay temporary child and spousal support and granting to Wife a judgment in the amount of \$15,691.00. The court also awarded to Wife \$1,300.00 in reasonable attorney's fees related to the motion for civil contempt.

On January 18, 2019, the trial court entered a final decree, granting the parties a divorce on the grounds of inappropriate marital conduct as to both parties. The court concomitantly entered a permanent parenting plan order, designating Wife as the primary residential parent and directing Husband to pay \$593.00 in monthly child support until the Child reached the age of eighteen years or graduated from high school, whichever occurred later. Concerning the residential co-parenting schedule, the trial court granted 285 days of annual co-parenting time to Wife and 80 days of annual co-parenting time to Husband. The trial court also directed that the Child could have additional residential co-parenting time with Husband as the Child desired "so long as it [did] not interfere with [Wife's] holiday and vacation visitation." In making these findings, the trial court expressly considered the testimony of the parties and the Child, as well as the statutory best interest factors regarding an award of initial custody as provided in Tennessee Code Annotated § 36-6-106(a) (2017). We note that the Child had reached age eighteen in the interim between the trial and the entry of the final decree.

In determining what it considered to be an equitable distribution of the marital estate, pursuant to Tennessee Code Annotated § 36-4-121 (2017), the trial court found that each party should share equally in marital assets and liabilities. Concerning specific disputed assets, the trial court awarded to Husband a 1997 Chevy pick-up truck with associated debt, a 2005 Chevy Avalanche automobile with associated debt, a Bunn coffee maker, a wine rack, an iPhone 7 Plus cellular telephone, an iMac computer, and a television. The trial court awarded to Wife a 2015 Nissan Altima automobile with associated debt, a washing machine and dryer, an iPhone 6s cellular telephone, and a larger television. The trial court also awarded to Wife half of the funds that Husband had received from liquidating his 401(k) account, valued at a net total of \$1,801.00 after taxes were deducted, and awarded to Husband the entirety of his military disability benefits in the amount of \$133.00 monthly.

In accordance with what the trial court understood to be the parties' stipulations as to debt, the trial court allocated to Wife \$1,000.00 in medical bills and \$300.00 owed to Comcast while allocating to Husband the debt from a Chapter 13 bankruptcy action that

he had filed independently in 2015.¹ Finding that the only debt in dispute at trial was an \$800.00 Sprint bill, the trial court directed that the parties would split that debt equally.

Determining that Wife had a need for alimony and that Husband had the ability to pay, the trial court awarded to Wife rehabilitative alimony in the amount of \$300.00 monthly for a period of four years.² The trial court specifically found that the parties had been involved in a long-term marriage of more than eighteen years. As to Husband, the trial court found that he earned a stipulated gross income of \$4,115.58 per month and that at the time of trial, he was employed approximately fifty-two hours per week at Alley-Cassety Brick and Block making \$17.11 per hour. The court also found that although Husband's income had recently decreased due to his failure to renew an endorsement on his commercial driver's license, Husband had the prospect of earning additional income in the future.

As to Wife, the trial court found that although she had been a homemaker for most of the marriage, she had been employed during the pendency of the divorce and was currently working full time at Goodwill Industries earning \$14.00 per hour. The trial court noted that Wife had recently been promoted to the role of an assistant manager and that she also had the prospect of making additional income in the future. At the close of trial, the court stated in its oral ruling that the award of rehabilitative alimony would be "so that [Wife] can get some sort of schooling and/or training to where she can rise even above an assistant manager." Husband timely appealed.

¹ As this Court has recently noted:

In 2010, the United States Supreme Court distinguished Chapter 13 from the more commonly filed Chapter 7:

Chapter 13 of the Bankruptcy Code provides bankruptcy protection to "individual[s] with regular income" whose debts fall within statutory limits. 11 U.S.C. §§ 101(30), 109(e). Unlike debtors who file under Chapter 7 and must liquidate their nonexempt assets in order to pay creditors, *see* §§ 704(a)(1), 726, Chapter 13 debtors are permitted to keep their property, but they must agree to a court-approved plan under which they pay creditors out of their future income, *see* §§ 1306(b), 1321, 1322(a)(1), 1328(a). A bankruptcy trustee oversees the filing and execution of a Chapter 13 debtor's plan. § 1322(a)(1); *see also* 28 U.S.C. § 586(a)(3).

Bell v. Gardner, No. M2017-01520-COA-R3-CV, 2018 WL 4692736, at *1 n.1 (Tenn. Ct. App. Sept. 28, 2018) (quoting *Hamilton v. Lanning*, 560 U.S. 505, 508 (2010)).

² As a correction to an apparent typographical error, the trial court in the final decree struck through "five (5)" and replaced it with "four (4)" to indicate the number of years of rehabilitative alimony awarded to Wife. We note that four years' duration is consistent with the trial court's oral ruling at the close of trial.

II. Issues Presented

Husband presents three issues on appeal, which we have restated and reordered as follows:

1. Whether the trial court erred by awarding 285 days of annual residential co-parenting time with the Child to Wife while awarding 80 days of annual residential co-parenting time to Husband.
2. Whether the trial court erred in allocating marital debt to Husband.
3. Whether the trial court erred by awarding rehabilitative alimony to Wife.

III. Standard of Review

In a case involving the proper classification and distribution of debts incident to a divorce, our Supreme Court has elucidated the applicable standard of review as follows:

Defining marital debt and determining what factors should guide the allocation of marital debt are questions of law. We review questions of law *de novo* with no presumption of correctness. *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993). Our review of findings of fact is *de novo* upon the record, with a presumption of correctness, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); *Hass v. Knighton*, 676 S.W.2d 554, 555 (Tenn. 1984).

Alford v. Alford, 120 S.W.3d 810, 812 (Tenn. 2003). “[W]here issues of credibility and weight of testimony are involved, this Court will accord considerable deference to the trial court’s factual findings.” *Keyt v. Keyt*, 244 S.W.3d 321, 327 (Tenn. 2007).

Furthermore, our Supreme Court has defined marital debt, “consistent with the [statutory] definition of ‘marital property,’” as “all debts incurred by either or both spouses during the course of the marriage up to the date of the final divorce hearing.” *Alford*, 120 S.W.3d at 813 (citing Tenn. Code Ann. § 36-4-121(b)(1)(A)). Tennessee courts should utilize four factors when equitably distributing marital debt: “(1) the debt’s purpose; (2) which party incurred the debt; (3) which party benefitted from incurring the debt; and (4) which party is best able to repay the debt.” *Alford*, 120 S.W.3d at 814 (citing *Mondelli v. Howard*, 780 S.W.2d 769, 773 (Tenn. Ct. App. 1989)).

Regarding alimony, our Supreme Court has “repeatedly . . . observ[ed] that trial courts have broad discretion to determine whether spousal support is needed and, if so, the nature, amount, and duration of the award.” *See Gonsewski v. Gonsewski*, 350 S.W.3d 99, 105 (Tenn. 2011). The High Court has further explained:

[A] trial court’s decision regarding spousal support is factually driven and involves the careful balancing of many factors. *Kinard v. Kinard*, 986 S.W.2d 220, 235 (Tenn. Ct. App. 1998). As a result, “[a]ppellate courts are generally disinclined to second-guess a trial judge’s spousal support decision.” *Kinard*, 986 S.W.2d at 234. Rather, “[t]he role of an appellate court in reviewing an award of spousal support is to determine whether the trial court applied the correct legal standard and reached a decision that is not clearly unreasonable.” *Broadbent v. Broadbent*, 211 S.W.3d 216, 220 (Tenn. 2006). Appellate courts decline to second-guess a trial court’s decision absent an abuse of discretion. 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. 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 [v. SAIA, Inc.]*, 318 S.W.3d [328,] 335 [(Tenn. 2010)] (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.

Id. at 105-06 (footnote and additional internal citations omitted).

IV. Residential Co-Parenting Schedule

Wife contends that Husband’s issue regarding the residential co-parenting schedule is moot because the Child turned eighteen years of age in December 2018, prior to entry of the final judgment, and subsequently graduated from high school in May or June of 2019. During oral argument before this Court, Husband’s counsel so conceded. Therefore, upon the parties’ respective acknowledgments and our own review of the record, we determine that the issue of residential co-parenting time, and any attendant effect on child support, is pretermitted as moot.

V. Allocation of Marital Debt

Husband contends that the trial court erred in assigning the Chapter 13 bankruptcy debt to him because marital debt was included in his bankruptcy filing to Wife's benefit. Wife contends that the trial court correctly found that Husband had stipulated to his responsibility for the bankruptcy debt at trial and that the allocation of the debt to Husband was equitable. Upon careful review, we determine that Husband has waived this issue by failing to comply with Tennessee Court of Appeals Rule 7, which provides in pertinent part:

- (a) In any domestic relations appeal in which either party takes issue with the classification of property or debt or with the manner in which the trial court divided or allocated the marital property or debt, the brief of the party raising the issue shall contain, in the statement of facts or in an appendix, a table in a form substantially similar to the form attached hereto. This table shall list all property and debts considered by the trial court, including: (1) all separate property, (2) all marital property, and (3) all separate and marital debts.
- (b) Each entry in the table must include a citation to the record where each party's evidence regarding the classification or valuation of the property or debt can be found and a citation to the record where the trial court's decision regarding the classification, valuation, division, or allocation of the property or debt can be found.
- (c) If counsel disagrees with any entry in the opposing counsel's table, counsel must include in his or her brief, or in a reply brief if the issue was raised by opposing counsel after counsel filed his or her initial brief, a similar table containing counsel's version of the facts.

On appeal, Husband has not included in his brief a table pursuant to Tennessee Court of Appeals Rule 7. As this Court recently explained:

[I]t is essential that the parties comply with Rule 7 in order to aid this Court in reviewing the trial court's decision. The table required by Rule 7, allows this Court to easily and correctly determine the valuation and distribution of the marital estate as ordered by the trial court. Further, the Rule 7 table, allows this Court to ascertain the contentions of each party as to the correct valuations and proper distribution, as well as the evidence in the record

which the party believes supports its contention. Consequently, a table, in full compliance with Rule 7, is vital as this Court must consider the *entire* distribution of property in order to determine whether the trial court erred. Moreover, this Court is under no duty to minutely search the record for evidence that the trial court's valuations may be incorrect or that the distribution may be improper.

Kanski v. Kanski, No. M2017-01913-COA-R3-CV, 2018 WL 5435402, at *6 (Tenn. Ct. App. Oct. 29, 2018) (quoting *Harden v. Harden*, No. M2009-01302-COA-R3-CV, 2010 WL 2612688, at *8 (Tenn. Ct. App. June 30, 2010)) (internal citations in *Harden* omitted in *Kanski*).

Wife has not responded to Husband's omission or included a Rule 7 table in her responsive brief. Although "this Court may 'suspend the requirements of Rule 7 for 'good cause,'" *Kanski*, 2018 WL 5435402, at *6 (quoting *Hopwood v. Hopwood*, No. M2015-01010-COA-R3-CV, 2016 WL 3537467, at *7 (Tenn. Ct. App. June 23, 2016)) (in turn quoting Tenn. R. Ct. App. 1(b)), we discern no good cause for such a suspension in this case. *See, e.g., Kanski*, 2018 WL 5435402 at *6 (finding "no such cause under the facts of this case" to suspend the requirements of Rule 7). We therefore deem Husband's issue concerning marital debt to be waived.

VI. Rehabilitative Alimony

Husband contends that the trial court abused its discretion by awarding to Wife rehabilitative alimony in the amount of \$300.00 per month for a period of four years. Husband does not dispute that Wife is entitled to spousal support. Instead, he argues that a shorter duration of transitional alimony would be more appropriate because Wife allegedly made no attempt to "better herself" during the two-year pendency of this litigation and because the parties' economic situations were not widely disparate. Wife asserts that the trial court properly awarded her rehabilitative alimony because this was a long-term marriage, she was a homemaker during the bulk of the marriage, and she was in need of alimony following the divorce "until she [could become] self-sufficient." Upon thorough review of the record and applicable authorities, we determine that the trial court did not abuse its discretion in awarding rehabilitative alimony to Wife.

Tennessee law recognizes four types of spousal support: (1) alimony *in futuro*, also known as periodic alimony; (2) alimony *in solido*, also known as lump-sum alimony; (3) rehabilitative alimony; and (4) transitional alimony. Tenn. Code Ann. § 36-5-121(d) (2017); *Mayfield v. Mayfield*, 395 S.W.3d 108, 115 (Tenn. 2012). Our statutory scheme indicates a legislative preference favoring short-term spousal support, rehabilitative and transitional alimony, over the long-term types of support, alimony *in futuro* and alimony

in solido. See Tenn. Code Ann. § 36-5-121(d)(2)-(3); *Mayfield*, 395 S.W.3d at 115; *Riggs v. Riggs*, 250 S.W.3d 453, 456 (Tenn. Ct. App. 2007). Rehabilitative alimony, awarded by the trial court in the case at bar, “is designed to increase an economically disadvantaged spouse’s *capacity* for self-sufficiency.” See *Mayfield*, 395 S.W.3d at 115 (quoting *Gonsewski*, 350 S.W.3d at 109). In contrast, transitional alimony, which Husband urges the trial court should have awarded, “is appropriate when a court finds that rehabilitation is not required but that the economically disadvantaged spouse needs financial assistance in adjusting to the economic consequences of the divorce.” See *Gonsewski*, 350 S.W.3d at 109 (citing Tenn. Code Ann. § 36-5-121(d)(4), (g)(1); *Riggs*, 250 S.W.3d at 456 n.5).

It is well settled that “trial courts in Tennessee have broad discretion to determine whether spousal support is needed and, if so, to determine the nature, amount, and duration of the award.” *Mayfield*, 395 S.W.3d at 114; see also *Fickle v. Fickle*, 287 S.W.3d 723, 736 (Tenn. Ct. App. 2008). When determining whether spousal support is needed and the appropriate nature of the support, Tennessee law instructs trial courts to look first to whether a spouse is economically disadvantaged relative to the other spouse, then to whether rehabilitation is feasible. See Tenn. Code Ann. § 36-5-121(d)(2)-(3). Tennessee Code Annotated § 36-5-121(i) (2017) provides the following relevant statutory factors for a trial court to consider:

- (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;
- (2) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party’s earnings capacity to a reasonable level;
- (3) The duration of the marriage;
- (4) The age and mental condition of each party;
- (5) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;
- (6) The extent to which it would be undesirable for a party to seek employment outside the home, because such party will be custodian of a minor child of the marriage;

- (7) The separate assets of each party, both real and personal, tangible and intangible;
- (8) The provisions made with regard to the marital property, as defined in § 36-4-121;
- (9) The standard of living of the parties established during the marriage;
- (10) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;
- (11) The relative fault of the parties, in cases where the court, in its discretion, deems it appropriate to do so; and
- (12) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

“Although each of these factors must be considered when relevant to the parties’ circumstances, ‘the two that are considered the most important are the disadvantaged spouse’s need and the obligor spouse’s ability to pay.’” *Gonsewski*, 350 S.W.3d at 110 (quoting *Riggs*, 250 S.W.3d at 457).

In its final decree, the trial court noted that “[i]n considering the setting of alimony [and] child support in this case,” it had “taken into consideration the provisions of T.C.A. § 36-5-101 *et seq.*” Although the trial court did not make specific findings regarding each factor set forth in Tennessee Code Annotated § 36-5-121(i), we determine that the court did make findings throughout the final decree that are relevant to each applicable statutory factor.

Regarding the first factor, the trial court found that Husband possessed a high school degree and made \$17.11 per hour working approximately fifty-two hours a week. However, the court also found that Husband’s income had recently decreased due to his failure to renew an endorsement on his commercial driver’s license and that he had the prospect of earning a higher income in the future. The trial court stated in its final decree that in calculating the need for alimony, it had taken “into consideration that some of the monthly expenses identified by [Husband] [were] short term.” Testimony from Husband revealed that before he had failed to renew his endorsement, his income was significantly greater than at the time of trial. In addition, the trial court found that Husband was entitled to keep his military disability benefits in the amount of \$133.00 per month.

As to Wife, the trial court found that through her employment at Goodwill Industries, she earned \$14.00 per hour working forty hours a week at the time of trial. The court also found that Wife had demonstrated her potential to earn additional income in the future by having recently been promoted to an assistant manager.

As to the second and third factors, the trial court found that the parties had been married for over eighteen years. Relevant testimony included that Wife desired to pursue a degree in the future and “better herself.” Wife also testified that she had made an effort during the pendency of the divorce to improve her situation by obtaining employment and achieving a promotion.

Regarding the fourth and fifth factors, the trial court found that Husband was forty-six years of age at the time of trial and that no evidence had been presented to indicate that either party was in poor physical health or condition. We note that the record indicates that Wife was of a comparable age. Concerning the sixth factor, although Wife was named primary residential parent of the Child, no evidence indicated that this responsibility would prevent Wife from continuing with employment outside the home. Factor seven is essentially inapplicable in this case because neither party possessed significant separate assets.

With regard to the eighth factor, the trial court divided the marital assets in what the court found to be an equitable fashion. In addition, the court awarded to Wife half the value of Husband’s 401(k) as marital property, which had been valued at a total of \$1,801.00 after taxes. Regarding the ninth factor, the trial court did not make a specific finding concerning the standard of living of the parties. Regarding the tenth factor, the trial court found that Wife had contributed through her role as homemaker and primary caretaker of the Child during the majority of the marriage. Wife testified that during the marriage, Husband had been the primary wage earner and that his previous employment history had been stable. As to factor eleven, the trial court awarded a divorce to the parties on the grounds of inappropriate marital conduct on the part of both parties and did not consider the relative fault of the parties in awarding alimony.

Ultimately, the trial court concluded that Wife had the need for spousal support and that Husband had the ability to pay, determining that \$300.00 in monthly rehabilitative alimony for a period of four years was most appropriate. In calculating the amount of the award, the trial court found the difference in the parties’ current respective wages to be approximately \$3.00 per hour and determined that this amount should be divided to provide Wife with an additional \$1.50 per hour for fifty hours per week. Concerning the duration of the award, the trial court did not offer a specific explanation in its final decree for the time period of four years; however, in its oral ruling at the close

of trial, the court explained that this time period would allow Wife to obtain “some sort of schooling and/or training” to achieve higher earning potential in the future.

Husband asserts that rehabilitative alimony is not appropriate because Wife has shown the potential to be only partially rehabilitated in that she did not seek education or training during the pendency of the divorce. He thereby argues that a shorter duration of transitional alimony would be more appropriate because Wife allegedly needs financial assistance solely to adjust to the immediate consequences of divorce. We disagree.

In support of his argument that rehabilitative alimony is not appropriate when only “partial rehabilitation” is possible, Husband relies on this Court’s decision in *Diffie v. Diffie*, No. M2018-00267-COA-R3-CV, 2019 WL 1785683 (Tenn. Ct. App. Apr. 23, 2019). We find *Diffie* to be highly factually distinguishable from the instant action. In *Diffie*, the trial court had awarded four types of alimony to the wife: *in solido*, *in futuro*, rehabilitative, and transitional. *Id.* at *1. On appeal, this Court affirmed the award of alimony *in solido*. *Id.* In analyzing the trial court’s award of both rehabilitative and transitional alimony, this Court determined that the trial court had erred in awarding the two types simultaneously and, concluding that “the discretionary decision to award rehabilitative alimony lack[ed] an evidentiary foundation,” vacated the award of rehabilitative alimony. *Id.* at *10-12. The *Diffie* Court affirmed the trial court’s findings that awards of transitional alimony and alimony *in futuro* were appropriate but reversed the amounts awarded, remanding to the trial court for additional findings of fact and conclusions of law in this regard. *Id.* at *1.

Husband in the instant action relies on the following explanation in *Diffie*:

[The appellee] relies on Tenn. Code Ann. § 36-5-121(d)(1) which states, “The court may award rehabilitative alimony, alimony *in futuro*, also known as periodic alimony, transitional alimony, or alimony *in solido*, also known as lump sum alimony **or a combination of these**, as provided in this subsection (d).” (Emphasis added). However, as the statute expressly provides, the discretion to award “a combination of these” is subject to “subsection (d)” which states that “[t]ransitional alimony is awarded when the court finds that **rehabilitation is not necessary**, but the economically disadvantaged spouse needs assistance to adjust to the economic consequences of a divorce, legal separation or other proceeding where spousal support may be awarded, such as a petition for an order of protection.” Tenn. Code Ann. § 36-5-121(d)(4) (Emphasis added).

The differing roles of these two distinct categories of support [have] been discussed in detail by our Supreme Court as follows:

The fourth category of support, transitional alimony, is appropriate when a court finds that rehabilitation is not required but that the economically disadvantaged spouse needs financial assistance in adjusting to the economic consequences of the divorce. Simply put, this type of alimony “aid[s] the person in the transition to the status of a single person.” In contrast to rehabilitative alimony, which is designed to increase an economically disadvantaged spouse’s capacity for self-sufficiency, transitional alimony is designed to aid a spouse who already possesses the capacity for self-sufficiency but needs financial assistance in adjusting to the economic consequences of establishing and maintaining a household without the benefit of the other spouse’s income.

Gonsewski, 350 S.W.3d at 109 (internal citations omitted) (emphasis added).

Furthermore, in the case of *Lunn v. Lunn* where the wife’s ability to achieve partial rehabilitation was not disputed, this court opined:

[T]he award of rehabilitative alimony is proper. We conclude, however, that it is appropriate to modify the transitional alimony award to an award of alimony *in futuro*. **As previously explained, transitional alimony should be awarded where rehabilitation is not necessary.** Tenn. Code Ann. § 36-5-121(d)(4). If, as here, the disadvantaged spouse can be only partially rehabilitated, an award of alimony *in futuro* may be granted in addition to rehabilitative alimony. Tenn. Code Ann. § 36-5-121(d)(4). Having determined that the trial court correctly found that Wife would experience an ongoing need for alimony beyond the period of rehabilitation, we conclude alimony *in futuro* would be the more appropriate form of this award. We therefore modify the trial courts judgment accordingly.

Lunn, 2015 WL 4187344, at *11 (footnote omitted) (emphasis added).

Diffie, 2019 WL 1785683, at *10.

Husband's reliance on this rationale in *Diffie* is unavailing. The *Diffie* Court determined that the trial court was authorized to award alimony *in futuro* in addition to an award of rehabilitative alimony based on the trial court's finding that the wife would need additional funds because she could only be partially rehabilitated. *Id.* Here, the evidence does not preponderate against the trial court's finding that the award of rehabilitative alimony will assist Wife in becoming more self-sufficient following the divorce because she will be able to acquire additional education and/or training. We do not find the duration of four years to be beyond the trial court's discretion as a reasonable amount of time for such rehabilitation to occur. Husband's argument that Wife must have somehow already begun an educational program during the pending litigation is unavailing because rehabilitative alimony is for the purpose of Wife's rehabilitation following the divorce. *See Mayfield*, 395 S.W.3d at 115 ("Rehabilitative alimony 'is designed to increase an economically disadvantaged spouse's *capacity* for self-sufficiency.'") (quoting *Gonsewski*, 350 S.W.3d at 109). Although the difference in the parties' income was not widely disparate, we determine that the trial court did not abuse its discretion in calculating an amount of rehabilitative alimony that was reasonable based on the discrepancy in the parties' respective wages. The trial court's award of rehabilitative alimony is affirmed.

VII. Attorney's Fees on Appeal

In the concluding sentence of her responsive brief, Wife requests that this Court "award attorney's fees" to her. However, Wife has not raised an issue concerning attorney's fees on appeal in her statement of the issues. As our Supreme Court has explained:

Appellate review is generally limited to the issues that have been presented for review. Tenn. R. App. P. 13(b); *State v. Bledsoe*, 226 S.W.3d 349, 353 (Tenn. 2007). Accordingly, the Advisory Commission on the Rules of Practice and Procedure has emphasized that briefs should "be oriented toward a statement of the issues presented in a case and the arguments in support thereof." Tenn. R. App. P. 27, advisory comm'n cmt.

Hodge v. Craig, 382 S.W.3d 325, 334 (Tenn. 2012); *see also Forbes v. Forbes*, 370 S.W.3d 347, 356 (Tenn. Ct. App. 2011) ("We may consider an issue waived where it is argued in the brief but not designated as an issue."). Therefore, we deem Wife's request for attorney's fees on appeal to be waived.

VIII. Conclusion

For the foregoing reasons, we affirm the judgment of the trial court in its entirety. We remand this case for enforcement of the judgment and collection of costs below. Costs on appeal are taxed to the appellant, Christopher Adams.

THOMAS R. FRIERSON, II, JUDGE