

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs April 11, 2014

**Summer Ann-Michelle Miller v. Richard Anthony McFarland**

**Appeal from the Circuit Court for Robertson County**  
**No. 74CC32011CV205     John H. Gasaway, III, Judge**

---

**No. M2013-00381-COA-R3-CV - Filed May 23, 2014**

---

In this post-divorce modification of alimony case, Husband contends that the trial court erred in concluding that his alimony obligation was not subject to modification. We reverse the trial court's judgment and conclude that Husband's alimony obligation constitutes transitional alimony that is subject to modification pursuant to Tennessee Code Annotated Section 36-5-121(g)(2). Reversed and remanded.

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

J. STEVEN STAFFORD, J., delivered the opinion of the Court, in which ALAN E. HIGHERS, P.J., W.S., and DAVID R. FARMER, J., joined.

Richard A. Demonbreun, Nashville, Tennessee, for the appellant, Richard Anthony McFarland.

No appearance by the appellee, Summer Ann-Michelle Miller

**OPINION**

**Background**

This is a post-divorce case concerning the modification of an agreed alimony obligation. The parties, Plaintiff/Appellee Summer Ann-Michelle Miller ("Wife") and Defendant/Appellant Richard Anthony McFarland ("Husband"), were married in 1997 and

have three minor children, one of whom has special needs. The parties were divorced on October 28, 2011 by final decree of divorce, which incorporated the parties' agreed marital dissolution agreement ("MDA") and parenting plan.<sup>1</sup> Husband's child support obligation was based on an income of \$4,500.00 per month. With regard to alimony, the MDA states:

. . . Wife is economically disadvantaged as compared to Husband. Husband shall pay Wife alimony at the rate of \$929.00 per month, beginning August 15, 2011. Said alimony shall continue for a period of eight years.

The MDA further provided that Husband would pay Wife \$1,200.00 for her attorney's fees and contained a separate section outlining the division of the parties' marital property. Husband filed a Motion to Alter or Amend the trial court's judgment on November 23, 2011, arguing that Husband's child support obligation was incorrect because the court failed to take into account any of Wife's presumptive income, and that both his child support and alimony obligations should be modified because his employment had changed, causing his income to decrease. Wife filed a response, arguing that Husband's current obligations were correct and reasonable and that Husband's decision to take a lower paying job was the result of voluntary underemployment. The trial court denied Husband's Motion to Alter or Amend on January 17, 2012.

The parties's relationship continued to deteriorate after the divorce. Wife filed a contempt petition against Husband, alleging that Husband had failed to comply with the parties' MDA. Husband also filed a petition to modify his child support obligation to take into account his decreased earnings. The trial court eventually sustained Wife's allegations, sentenced Husband to thirty days in jail, and granted Wife a judgment against Husband of \$39,161.11.<sup>2</sup>

On November 29, 2012, Husband filed a petition to terminate his alimony obligation. In his petition, Husband contended that the alimony agreed to in the MDA constituted transitional alimony, which may be modified based upon evidence that the obligor spouse resides with a third person and no longer needs the support. Husband asserted that Wife had

---

<sup>1</sup> Prior to the entry of the final decree of divorce, Husband filed a motion to set aside the MDA and agreed parenting plan, arguing that he had entered into the agreements under duress. The trial court denied Husband's request.

<sup>2</sup> In this order, the trial court held that Husband's decision to take lower paying employment was voluntary and that as a result, he was underemployed. As we perceive it then, the trial court impliedly denied Husband's request to modify his child support obligation. Regardless, Husband does not raise the trial court's failure to modify his child support obligation as an issue in this appeal.

remarried and that because of her new husband's income, she no longer required alimony. Wife filed a response wherein she did not deny that she had remarried, but argued that Husband's obligation constituted alimony *in solido*, which was non-modifiable by the court. The trial court held a hearing on Husband's petition to terminate his alimony obligation on December 6, 2012. At the hearing, Wife testified that she had remarried and that she and her husband's combined monthly income totaled between \$5,000.00 and \$8,000.00.<sup>3</sup> Regardless, the trial court denied Husband's petition to terminate alimony, concluding that the alimony paid by Husband was not transitional alimony subject to modification. In its written order, entered on January 7, 2013, the trial court stated:

- 1) The alimony provision of the "Marital Dissolution Agreement" executed by the parties does not specify whether the payments are to be considered alimony *in futuro*<sup>4</sup> or alimony *in solido* despite the payments being limited in time;
- 2) The inclusion of the term "economically disadvantaged" in the alimony provision of the "Marital Dissolution Agreement" cannot be considered by the Court as controlling to render such payments subject to modification or termination as transitional alimony under T.C.A. § 36-5-121(g)(1);
- 3) The parties could have included specific exceptions or conditions in the alimony provision of the "Marital Dissolution Agreement" but chose not to do so; hence, the Court will enforce the agreement as a written contract and not consider [Wife's] remarriage as creating a "rebuttable presumption" which could justify suspension of "all or part of the alimony obligation of the former spouse" pursuant to T.C.A. § 36-5-121(g)(2)(C)(i).

Husband filed a timely notice of appeal of this order.

### **Issues Presented**

Husband raises one issue on appeal, which is taken, and slightly modified, from his

---

<sup>3</sup> The record on appeal does not contain a transcript of this hearing. However, the trial court's order in this case makes a factual finding that Wife testified as to her remarriage. This finding is not disputed on appeal.

<sup>4</sup> Despite the trial court's order, it appears that there is no dispute on appeal that the alimony at issue does not constitute alimony *in futuro*. Instead, the issue in this case is whether the alimony at issue constitutes alimony *in solido* or transitional alimony.

brief:

Whether the trial court erred in failing to grant Husband's motion to modify or terminate his obligation to pay alimony as required by the MDA.

### Analysis

Because Husband is the party seeking to terminate his alimony obligation, he bears the burden of proving that his alimony obligation should be terminated. *Norvell v. Norvell*, 805 S.W.2d 772, 774 (Tenn. Ct. App. 1990) (citing *Azbill v. Azbill*, 661 S.W.2d 682 (Tenn. Ct. App. 1983)). Each case is fact-driven and the trial court must balance a number of factors when deciding in its sound discretion whether modification is appropriate. *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. Ct. App. 2001) (citing *Watters v. Watters*, 22 S.W.3d 817, 821 (Tenn. Ct. App. 1999)). We review findings of fact made by the trial court *de novo* upon the record accompanied by a presumption of the correctness of the findings, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d).

The parties disagree as to what type of alimony was awarded in their agreed MDA. "Whether an alimony award is subject to modification depends upon the type of alimony involved, as determined from the language of the order or agreement establishing the award." *Finn v. Bundy*, No. 96D-216, 2005 WL 418793, at \*4 (Tenn. Ct. App. Feb. 22, 2005). Marital dissolution agreements are treated as contracts for purposes of interpretation. See *Barnes v. Barnes*, 193 S.W.3d 495, 498 (Tenn. 2006). As such, we review the trial court's interpretation of the MDA as a question of law, upon which no presumption of correctness attaches. See *Honeycutt v. Honeycutt*, 152 S.W.3d 556, 562 (Tenn. Ct. App. 2003).

Tennessee recognizes four distinct types of spousal support: (1) alimony *in futuro*, (2) alimony *in solido*, (3) rehabilitative alimony, and (4) transitional alimony. Tenn. Code Ann. § 36-5-121(d)(1). Alimony *in futuro* is a form of long-term support. An award of alimony *in futuro* is appropriate when the economically disadvantaged spouse cannot achieve self-sufficiency and economic rehabilitation is not feasible. *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 107 (Tenn. 2011). Alimony *in solido*, another form of long-term support, is typically awarded to adjust the distribution of the marital estate and, as such, is generally not modifiable and does not terminate upon death or remarriage. *Id.* at 108. By contrast, rehabilitative alimony is short-term support that enables a disadvantaged spouse to obtain education or training necessary to become self-reliant following a divorce. *Id.* Where economic rehabilitation is unnecessary, transitional alimony may be awarded. Transitional alimony assists the disadvantaged spouse with the "transition to the status of a single person." *Id.* at 109 (internal quotation marks omitted).

As found by the trial court, the parties' agreed MDA fails to state what type of alimony the parties contemplated when agreeing to the award. As such, the parties disagree as to whether the alimony at issue constitutes alimony *in solido*, which is not subject to modification, or transitional alimony, which is subject to modification. We begin with Wife's contention in the trial court<sup>5</sup> that the alimony at issue is alimony *in solido*. Alimony *in solido* is an award of a definite sum of money, and the total amount to be paid is ascertainable at the time of the award. *Burlew v. Burlew*, 40 S.W.3d 465, 471 (Tenn. 2001); *Waddey v. Waddey*, 6 S.W.3d 230, 232 (Tenn.1999). It retains its character as alimony *in solido* even if paid in installments, provided the payments are ordered over a definite period of time and the total amount to be paid is definite and ascertainable. *Burlew*, 40 S.W.3d at 471; *Waddey*, 6 S.W.3d at 232. Alimony *in solido* is often used to adjust the distribution of the parties' marital property. *Burlew*, 40 S.W.3d at 471. It promotes the twin goals of certainty and finality through the award of a fixed amount without conditions. *Bryan v. Leach*, 85 S.W.3d 136, 145 (Tenn. Ct. App. 2001). The determinative factor in deciding whether an award of alimony is *in solido* is the intent of the parties (in an MDA) or the court (in a final order). *Bryan*, 85 S.W.3d at 146 (citing *Self v. Self*, 861 S.W.2d 360, 363 (Tenn.1993)). A final award of alimony *in solido* is not subject to future modification. *Burlew*, 40 S.W.3d at 471; *Day v. Day*, 931 S.W.2d 936, 939 (Tenn. Ct. App. 1996).

Husband contends, however, that the alimony at issue is transitional alimony, which is subject to termination in certain limited circumstances. "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 107. Consequently, "transitional alimony has been described as a form of short-term 'bridge-the-gap' support designed to 'smooth the transition of a spouse from married to single life.'" *Mayfield v. Mayfield*, 395 S.W.3d 108 (Tenn. 2012) (citing *Engesser v. Engesser*, 42 So.3d 249, 251 (Fla. Dist. Ct. App. 2010)). Transitional alimony is payable for a definite period of time and may be modified only if: (1) the parties agree that it may be modified; (2) the court provides for modification in the divorce decree, decree of legal separation, or order of protection; or (3) the recipient spouse resides with a third person following the divorce. Tenn. Code Ann. § 36-5-121(g)(2). Tennessee statutes concerning spousal support reflect a legislative preference favoring rehabilitative or transitional alimony rather than alimony *in futuro* or *in solido*. See Tenn. Code Ann. § 36-5-121(d)(2)–(3); *Gonsewski*, 350 S.W.3d at 109.

It is undisputed in this case that Wife has remarried and now resides with her new husband. Thus, a condition precedent to modification of transitional alimony has occurred.

---

<sup>5</sup> Wife declined to file a brief with regard to Husband's appeal.

*See* Tenn. Code Ann. § 36-5-121(g)(2)(C) (creating a rebuttable presumption that an obligee spouse no longer requires all or a portion of the transitional alimony originally awarded when “[t]he alimony recipient lives with a third person”). Accordingly, if the alimony at issue in this case is properly termed transitional alimony, then the trial court erred in failing to consider Husband’s request to terminate his alimony obligation. However, if the alimony at issue is properly termed alimony *in solido*, then the trial court did not err in refusing to consider Husband’s modification request, irrespective of Wife’s remarriage. *See* Tenn. Code Ann. § 36-5-121(h)(2) (“A final award of alimony *in solido* is not modifiable, except by agreement of the parties only.”).

The trial court determined that the alimony at issue was non-modifiable, based upon two factors. First, the trial court considered the fact that the parties’ MDA contained no language regarding possible modification. According to the trial court, this deficiency is conclusive as to whether the alimony at issue is modifiable. Husband points out in his brief, however, that regardless of whether modification terms have been included in an alimony award, this Court has held that alimony may, nevertheless, be modifiable pursuant to Tennessee Code Annotated Section 36-5-121, citing *Finchum v. Finchum*, No. M2012-00975-COA-R3-CV, 2013 WL 593275 (Tenn. Ct. App. Feb. 13, 2013). In *Finchum*, the parties entered into an MDA in which husband agreed to pay wife alimony for three years. The MDA included a provision that the alimony would terminate upon wife’s death. Husband subsequently filed a petition to terminate his alimony obligation based upon wife’s remarriage. *Id.* at \*1. The trial court ruled that the alimony at issue was contractual in nature, that the contract contained no modification terms regarding remarriage, and that the alimony, therefore, constituted alimony *in solido*. *Id.* at \*2–3. Accordingly, the trial court ruled that the alimony was not subject to modification by the Court. *Id.* at \*3. The Court of Appeals reversed, holding that the alimony at issue was rehabilitative alimony that was subject to modification pursuant to Tennessee Code Annotated Section 36-5-121(e)(2) based upon a substantial and material change in circumstances, irrespective of the parties’ failure to include modification terms in their agreed MDA. *Id.* at \*4. The Court explained that the trial court retains jurisdiction to modify an alimony award pursuant to the statutory guidelines “because the trial court adopted the [] MDA as part of its Order and maintains control over the alimony as provided in the statute.” *Id.* at \*3.

The topic of an agreed MDA becoming part of an order of the court is discussed in more detail in *Osborne v. Osborne*, 197 S.W.2d 234 (Tenn. Ct. App. 1946):

A case is here presented where childless parties to a marriage have entered into a valid agreement, after proper representation by able counsel and without any element of fraud or duress, which is incorporated into a decree awarding the

plaintiff an absolute divorce. Is such an agreement a binding contract wherein the court in a divorce action is bound to adhere to?

The general rule is that such agreements are merely evidential in value and may be followed by the court in its award of alimony—they should be given great consideration but are subject to close scrutiny by the court. When such agreements or their terms are adopted in the decree fixing alimony they are not absolute and binding when the court retains jurisdiction for their modification or the statute law of the state provides that such decrees remain open and subject to modification. 27 C.J.S., Divorce, § 234, p. 961. *See* notes in 58 A.L.R. 639, and 109 A.L.R. 1068, where numerous cases are collected. The author states that the above rule is supported by the weight of authority.

‘Other contracts may be modified, restricted, or enlarged, or entirely released upon the consent of the parties. Not so with marriage. The relation once formed, the law steps in and holds the parties to various obligations and liabilities. It is an institution, in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of society, without which there would be neither civilization nor progress.’ *Maynard v. Hill*, 125 U.S. 190, 8 S.Ct. 723, 729, 31 L.Ed. 654.

A divorce action is really a triangular proceeding where in addition to the parties the State through the court is a quasi party. It is for this basic reason that the courts afford the fullest possible hearing in the matter and at all times must guard against collusion, fraud and any unfair practice or undue advantage that one party might take of the other. Adhering to these principles the courts do not take the agreements of the parties as conclusive but merely use them as a basis on which an alimony decree is fixed. When the circumstances of the parties change the court’s decree may be changed. Code, section 8446, provides among other things that, ‘the order or decree to remain in the court’s control; and, on application of either party, the court may decree an increase or decrease of such allowance on cause being shown.’ In *Davenport v. Davenport*, 178 Tenn. 517, 160 S.W.2d 406, the court held that the above Code section and section 8454 is incorporated in every divorce decree. The decree in the instant

case retains the matter on the docket and open for modification.

*Id.* at 236. Relying upon the *Osborne* holding, in *Penland v. Penland*, 521 S.W.2d 222 (Tenn. Ct. App. 1975), this Court explained:

[F]rom a careful reading of *Osborne v. Osborne*. . . it is clear that the reason for stripping the agreement of the parties of its contractual nature is the continuing statutory power of the Court to modify its terms when changed circumstances justify. It follows, and we so hold, that only that portion of a property settlement agreement between husband and wife dealing with the legal duty of child support, or alimony over which the court has continuing statutory power to modify, loses its contractual nature when merged into a decree for divorce.

*Id.* at 224. Thus, while the parties' failure to include modification terms in their agreed MDA may be evidence of their intent that the alimony at issue constitutes alimony *in solido*, because the MDA is incorporated into the court's order, that failure does not prevent this Court from concluding that the alimony at issue is subject to modification pursuant to the terms of the alimony statute.

This rule, of course, only applies to those types of periodic alimony that are subject to modification pursuant to Tennessee Code Annotated Section 36-5-121: alimony *in futuro*, rehabilitative alimony, and transitional alimony. See *Beck v. Beck*, No. W2011-01806-COA-R3-CV, 2012 WL 1656228, at \*5 n.3 (Tenn. Ct. App. May 11, 2012) (“The foregoing analysis [regarding merger of an MDA into the court's order] does not apply to awards of alimony *in solido*, but only to awards (such as the one in the instant case) of [periodic alimony].”) (citing *Dennis v. Dennis*, No. CA-45, 1986 WL 7608, at \*2 (Tenn. Ct. App. July 9, 1986)). Transitional alimony is expressly modifiable in three circumstances, as discussed above: (1) if the parties agree to subsequent modification in their initial divorce decree; (2) if the court orders that the award will be subject to modification in the initial divorce decree; or (3) if the alimony recipient resides with a third party, in which case a rebuttable presumption favoring modification is created. Tenn. Code Ann. § 36-5-121(g)(2)(A–C). Thus, when the obligor spouse is seeking a modification of transitional alimony based upon the alimony recipient's cohabitation with a third party, as is the case in this appeal, there is no statutory requirement that either the parties or the court agree to this type of modification in the initial divorce decree or MDA. Instead, the obligor spouse's right to seek modification based on the alimony recipient's cohabitation with a third party is guaranteed by statute. Consequently, if the alimony at issue is properly termed transitional alimony, it is subject to modification pursuant to Tennessee Code Annotated Section 36-5-121(g)(2)(C) regardless



of whether the agreed MDA contains express modification terms. Therefore, the trial court incorrectly concluded that the parties' failure to include modification terms in their agreed MDA was fatal to Husband's request to modify or terminate his alimony obligation.

Next, the trial court noted that the alimony provision in the parties' MDA specifically provided that the alimony was based upon the fact that Wife is economically disadvantaged. The Tennessee Supreme Court has previously noted that a finding that the obligee spouse is economically disadvantaged is a hallmark of transitional alimony.<sup>6</sup> See *Gonsewski*, 350

---

<sup>6</sup> We note that economic disadvantage may also be a hallmark of both rehabilitative alimony or alimony *in futuro*. See Tenn. Code Ann. § 36-5-121(d)(2) (noting that it is the preference of the General Assembly that “a spouse, who is economically disadvantaged relative to the other spouse, be rehabilitated, whenever possible, by the granting of an order for payment of rehabilitative alimony”); Tenn. Code Ann. § 36-5-121(d)(3) (noting that “[w]here there is relative economic disadvantage and rehabilitation is not feasible,” the court may order alimony *in futuro*). However, neither of the parties appear to have asserted that the alimony at issue constituted rehabilitative alimony or alimony *in futuro*. From our review of the MDA, we agree with the parties that this alimony is neither rehabilitative alimony nor alimony *in futuro*. First, nothing in the record or in the parties' agreed MDA indicates that the alimony award was intended to rehabilitate Wife, or that Wife was capable of rehabilitation. See Tenn. Code Ann. § 36-5-121(e)(1) (noting that rehabilitative alimony is intended to assist the economically disadvantaged spouse with increasing his or her earning capacity 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”). Our courts, however, have consistently held that such findings are required to support an award of rehabilitative alimony. See *Gillespie v. Gillespie*, No. E2006-00734-R3-CV, 2006 WL 3732195, at \*3 (Tenn. Ct. App. Dec. 19, 2006) (“Our courts interpreting this statute have consistently required a factual finding by the trial court that a spouse is ‘economically disadvantaged relative to the other spouse,’ and that rehabilitation of the economically disadvantaged spouse is feasible, in order to properly classify an award of alimony as ‘rehabilitative.’”) (citing *Self*, 861 S.W.2d at 361). Here, there is a notation that Wife is economically disadvantaged, but no notation that Wife is capable of rehabilitation. *C.f.* *Gillespie*, 2006 WL 3732195, at \*3-\*4 (noting that the parties did not argue that an alimony award constituted transitional alimony, but declining to find that an award was either transitional or rehabilitative alimony when the court made no findings as to either economic disadvantage or capability of rehabilitation). In light of the parties' failure to assert that the alimony at issue was rehabilitative and in the absence of any evidence suggesting that this award was intended to provide rehabilitation to Wife, we decline to conclude that the alimony was rehabilitative alimony. Next, the alimony agreed to by the parties is for a definite duration. Consequently, it does not constitute alimony *in futuro*. See *Isbell v. Isbell*, 816 S.W.2d 735, 739 (Tenn. 1991) (holding that alimony *in futuro* is “an indefinite amount over an indefinite period of time”). Further, both rehabilitative alimony and alimony *in futuro* remain within the court's control and are modifiable upon a showing of a “substantial and material change in circumstances.” See Tenn. Code Ann. § 36-5-121(e)(2) (“An award of rehabilitative alimony shall remain in the court's control for the duration of such award, and may be increased, decreased, terminated, extended, or otherwise modified, upon a showing of a substantial and material change in circumstances.”); Tenn. Code Ann. § 36-5-121(f)(2)(a) (“An award of alimony *in futuro* shall remain in the court's control for the duration of such award, and may be increased, decreased, terminated, extended, or otherwise modified, upon a showing of substantial and material change in

(continued.....)

S.W.3d at 109 (holding that 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”). In contrast, economic disadvantage is not a condition precedent to an award of alimony *in solido*. However, the trial court declined to consider the plain language of the MDA, stating that this language “cannot be considered by the Court as controlling to render such payments subject to modification or termination as transitional alimony.” While the inclusion of this language may not be dispositive of whether this alimony constitutes transitional alimony, the language of the MDA is clear evidence of the parties’ intent in this case. As explained by this Court, in construing an MDA:

The cardinal rule in the construction of contracts is to ascertain the intent of the parties. *Bradson Mercantile, Inc. v. Crabtree*, 1 S.W.3d 648, 652 (Tenn. Ct. App. 1999) (citing *West v. Laminite Plastics Mfg. Co.*, 674 S.W.2d 310 (Tenn. Ct. App. 1984)). If the contract is plain and unambiguous, the meaning thereof is a question of law, and it is the Court’s function to interpret the contract as written according to its plain terms. [*Bradson Mercantile*, 1 S.W.3d at 652] (citing *Petty v. Sloan*, 197 Tenn. 630, 277 S.W.2d 355 (1955)). The language used in a contract must be taken and understood in its plain, ordinary, and popular sense. [*Bradson Mercantile*, 1 S.W.3d at 652] (citing *Bob Pearsall Motors, Inc. v. Regal Chrysler-Plymouth, Inc.*, 521 S.W.2d 578 (Tenn. 1975)). In construing contracts, the words expressing the parties’ intentions should be given the usual, natural, and ordinary meaning. [*Bradson Mercantile*, 1 S.W.3d at 652] (citing *Ballard v. North American Life & Cas. Co.*, 667 S.W.2d 79 (Tenn. Ct. App. 1983)). If the language of a written instrument is unambiguous, the Court must interpret it as written rather than according to the unexpressed intention of one of the parties. [*Bradson Mercantile*, 1 S.W.3d at 652] (citing *Sutton v. First Nat. Bank of Crossville*, 620 S.W.2d 526

---

(.....continued)

circumstances.”). While remarriage alone may not constitute a “substantial and material change in circumstances,” this Court has held that remarriage, “coupled with other changes” may be sufficient to constitute a material change in circumstances. *Fulbright v. Fulbright*, 64 S.W.3d 359, 368–69 (Tenn. Ct. App. 2001). Accordingly, even if we were to conclude that this alimony constituted either rehabilitative alimony or alimony *in futuro*, the trial court’s conclusion that the alimony was non-modifiable regardless of the circumstances was erroneous.

(Tenn. Ct. App. 1981)).

*Honeycutt*, 152 S.W.3d at 561–62 (citing *Pitt v. Tyree Organization Ltd.*, 90 S.W.3d 244, 252 (Tenn. Ct. App. 2002)). Thus, the plain language of the parties’ MDA, which includes a notation that the alimony is awarded because Wife is “economically disadvantaged” is clear evidence of the parties’ intention that the alimony at issue is properly considered transitional alimony, rather than alimony *in solido*.

From the totality of the circumstances, we conclude that the alimony at issue in this case is transitional alimony subject to modification pursuant to Tennessee Code Annotated Section 36-5-121(g)(2). The alimony at issue provides that Wife shall receive \$929.00 per month for eight years, an award that is certain in both amount and duration. As previously discussed, both alimony *in solido* and transitional alimony are payable for a definite period of time, in an amount that is easily ascertainable. *See generally* Tenn. Code Ann. § 36-5-121. However, the MDA specifically states that the purpose of the alimony is to provide for Wife, who is economically disadvantaged. This is the stated purpose of transitional alimony in the alimony statute. *See* Tenn. Code Ann. § 36-5-121(g)(1). In contrast, the typical purpose of an award of alimony *in solido* is “to adjust the distribution of the parties’ marital property,” *Burlew*, 40 S.W.3d at 471, or to provide for attorney’s fees. *See Gonszewski*, 350 S.W.3d at 108. In this case, Wife was awarded a portion of her attorney’s fees in a separate provision of the MDA and nothing in the MDA suggests that the alimony award was intended to adjust the distribution of the parties’ marital property. Accordingly, the only purpose evident from the plain language of the MDA is to assist Wife, who is economically disadvantaged. This language, thus, weighs in favor of a conclusion that the alimony at issue is transitional in nature.

Further, while the award of alimony is for a considerable period of time, we note that this Court has previously countenanced awards of transitional alimony of similar durations. *See Hatfield v. Hatfield*, No. M2012-00358-COA-R3-CV, 2013 WL 493305, at \*6 (Tenn. Ct. App. Feb. 7, 2013) (affirming award of alimony of \$1,200.00 per month for five years, but modifying the designation of such alimony from alimony *in futuro* to transitional alimony); *Ghorashi-Bajestani v. Bajestani*, No. E2009-01585-COA-R3-CV, 2010 WL 3323743, at \*15 (Tenn. Ct. App. Aug. 24, 2010) (modifying nine year transitional alimony award to last only six years, given that the parties were married only eight years); *Pearson v. Pearson*, No. E2007-02154-COA-R3-CV, 2008 WL 4735305, at \*13 (Tenn. Ct. App. Oct. 27, 2008) (affirming award of alimony of \$1,500.00 per month for six years, but modifying the designation of such alimony from rehabilitative alimony to transitional alimony); *see also Erdly v. Erdly*, No. 01A01-9706-CH-00269, 1998 WL 70639, at \*3 (Tenn. Ct. App. Feb. 20, 1998) (allowing an award of rehabilitative alimony for ten years). In this case, the parties agreed to alimony of eight years based on their fourteen year marriage. Based on the

foregoing authorities, this is not an unreasonable duration for an award of transitional alimony.

Finally, we note that, as previously discussed, the General Assembly has expressed a preference for transitional alimony over alimony *in solido*. See **Mayfield**, 395 S.W.3d at 115 (“Tennessee statutes concerning spousal support reflect a legislative preference favoring rehabilitative or transitional alimony rather than alimony *in futuro* or *in solido*.”). Given this preference and in light of the foregoing analysis, we must conclude that the alimony at issue constitutes transitional alimony that is subject to modification pursuant to Tennessee Code Annotated Section 36-5-121(g)(2). Accordingly, we reverse the judgment of the trial court denying Husband’s request to terminate his alimony obligation. Based on its erroneous conclusion that the alimony at issue was non-modifiable, the trial court did not consider whether Husband was entitled to a modification based upon Wife’s remarriage and cohabitation. Accordingly, we remand to the trial court to consider whether Husband is entitled to a modification or termination of his alimony obligation based upon Wife’s remarriage and cohabitation in accordance with Tennessee Code Annotated Section 36-5-121(g)(2).

### **Conclusion**

The judgment of the Robertson County Circuit Court is reversed and this cause is remanded to the trial court for further proceedings consistent with this Opinion. Costs of this appeal are taxed to Appellee Summer Ann-Michelle Miller, for which execution may issue if necessary.

---

J. STEVEN STAFFORD, JUDGE