

Murray, J.

This appeal results from the trial court's judgment modifying the provisions of a marital dissolution agreement entered into by these parties at the time of their divorce and incorporated into the final judgment. Mr. Michael petitioned the trial court for a modification because of a substantial decrease in his salary. The trial court granted him relief. Ms. Michael sought relief in this court. See Michael v. Michael, No. 03A01-9402-CH-00044, (opinion of this court filed May 23, 1994).

At that time this court remanded the action to the trial court for the purpose of hearing further evidence regarding the health care premiums for Ms. Michael. On remand, the trial court modified the alimony award, forgave the arrearage in alimony, ordered Mr. Michael to pay for Ms. Michael's TennCare coverage, modified the life insurance provision of their original agreement and awarded attorney fees. Ms. Michael has appealed claiming the trial court erred in its modification. We affirm the trial court.

These parties were divorced in January, 1985. At that time Mr. McMichael was ordered to pay Mrs. McMichael \$1,000.00 per month in alimony, to pay her health insurance premiums, and to maintain a life insurance policy on his life in the amount of \$30,000.00 with Mrs. McMichael being the beneficiary.

In January, 1993, Mr. McMichael petitioned the court seeking a reduction in the alimony and relief from the high premiums he was paying to maintain health insurance for Mrs. McMichael. As grounds for relief, he asserted that, essentially, he had been constructively discharged from the place where he was employed at the time of the divorce. The evidence indicates that Mr. McMichael was working, at that time, as a senior engineer making over \$70,000.00 annually. His employer informed him that he was to be demoted to a junior position with an income of \$25,000.00 annually. Mr. McMichael left this employment and sought a higher paying position more commensurate with his abilities and experience. However, when he left his original position, he lost the benefit of a life insurance policy on his life on which Mrs. McMichael was the beneficiary.

The trial court ordered Mr. Michael to continue paying for Ms. Michael's health insurance, reduced the life insurance requirements to \$20,000.00, reduced his monthly alimony obligation from \$1,000.00 per month to \$500.00 per month, forgave all arrearage, and awarded Ms. Michael \$500.00 in attorney fees.

In Ms. Michael's original appeal, she challenged the judgment of the trial court modifying the original agreement of the parties which was incorporated in the final decree of the court. She further sought to bring to this court's attention, in the form of a post judgment fact, that her health care insurance was now through TennCare and the premiums were much lower than Mr. Michael was paying at the time of the first hearing. This court remanded the cause for the taking of further evidence on the issue of the amount of the premium for the health care coverage and its impact on the amount of alimony.

Upon remand, the trial court in addition to considering the impact of the reduced insurance premium, also considered the financial circumstances and other conditions of both parties at that time. At the conclusion of the hearing, the trial court ordered Mr. Michael to pay alimony in the amount of \$750.00 per

month; to pay directly to Ms. Michael the sum \$123.31 each month for TennCare premiums, her deductible and out-of-pocket expense; awarded Ms. Michael an attorney fee of \$500.00 for the hearing on remand; ordered Mr. Michael to maintain a life insurance policy in the amount of \$20,000.00 payable to Ms. Michael; forgave all arrearage; and awarded an additional \$500.00 in attorney fees to Ms. Michael.

Ms. Michael has appealed raising the following issues for our review:

1. The trial court erred in reducing Mr. Michael's alimony obligation to Ms. Michael.
2. The trial court erred in forgiving all of Mr. Michael's alimony arrearage and failing to hold him in contempt for his wilful failure to pay his alimony obligation accrued prior to trial.
3. The trial court erred in modifying that part of the property settlement agreement of the parties which required Mr. Michael to maintain a \$30,000 life insurance policy for the benefit of Ms. Michael.
4. The trial court erred in arbitrarily awarding Ms. Michael's attorney a \$500.00 attorney fee at both the October 1993 hearing and the March 1995 hearing without any further consideration of time spent in this cause.

On application of either party for spousal support the court may decree an increase or decrease of such allowance only upon a showing of a substantial and material change of circumstances. T. C. A. § 36-5-101(a)(1). The party seeking relief on the grounds of changed circumstances has the burden of proving the changed circumstances, which must be shown to have occurred after the entry of the divorce decree, and must not have been foreseeable when the decree was entered into or in the contemplation of the parties when they entered into the support and alimony agreement. See Elliot v. Elliot, 825 S. W 2d 87 (Tenn. App. 1991), and McCarty v McCarty, 863 S. W 2d 716 (Tenn. App. 1992).

Our review is de novo, however, and the record developed below comes to us accompanied by a presumption of correctness which we must honor unless we find that the evidence preponderates against the trial court's findings of fact. T.R.A.P. 13(d); Union Carbide Corp. v. Huddleston, 854 S. W 2d 87, 91 (Tenn. 1993). We are also mindful that a trial court has wide discretion in the matters under review, i.e., division of marital property and alimony. Mirmino v. Mirmino, 34 Tenn. App. 352, 238 S. W 2d 105, 107 (Tenn. App. 1950); Harrington v. Harrington, 798 S. W 2d 244, 245 (Tenn. App. 1990). We give a trial court's decision on these matters great weight and

will only interfere with such a decision when we find an abuse of discretion. Kelly v. Kelly, 679 S.W.2d 458, 460 (Tenn. App. 1984).

We shall address the first three issues together. As the basis for his petition to modify his support obligation to Ms. Michael, Mr. Michael alleged that his employment was about to be terminated and upon termination he would lose the life insurance policy payable to Ms. Michael and the health insurance that he carried for her. The trial judge implicitly found that these changes were substantial enough to warrant a modification in Mr. Michael's support obligation to Ms. Michael. The trial court then examined the circumstances of the parties. The trial court, in his opinion, announced from the bench, transcribed and incorporated into the final judgment by reference, found that the original agreement was based upon Mr. Michael's salary of \$70,000.00. He further found that his salary was now reduced to \$53,000.00. We agree with the trial court that this change in circumstances is substantial and sufficient to warrant a modification of the original decree.

With regard to the reduction in life insurance benefits, the appellant argues that the \$30,000.00 policy was a part of the

division of the marital estate and is not subject to modification. In support of her position, she relies on Jones v. Jones, 784 S.W2d 349 (Tenn. App. 1989). Jones is clearly distinguishable from the case at hand. In Jones, the court found that the trial court in a prior decree found that "the life insurance benefits awarded to [the wife] in the final decree was a division of marital property and not subject to modification." No appeal was taken from this decree. This court held that because there was no appeal, the decree had become final and the findings of the trial court became the "law of the case" as distinguished from the general law. In this case, we view the required insurance, not as a division of property, but as a part of alimony in futuro which is subject to modification.

In conclusion, we note that there are other reasons appearing in the record which would allow the trial court to modify the award of alimony payable to the appellant. The appellant had a male live-in friend who admittedly shares the expenses incurred for rent, utilities, automobile expenses, food and other costs. T.C.A. § 36-5-101(a)(3) provides as follows:

(3) In all cases where a person is receiving alimony in futuro and the alimony recipient lives with a third person, a rebuttable presumption is thereby raised that:

(A) The third person is contributing to the support of the alimony recipient and the alimony recipient therefore does not need the amount of support previously awarded and the court therefore should suspend all or part of the alimony obligation of the former spouse; or

(B) The third person is receiving support from the alimony recipient and the alimony recipient does not need the amount of alimony previously awarded and the court therefore should suspend all or part of the alimony obligation of the former spouse.

* * * *

In this case it is admitted that the third person living with Ms. Michael is contributing to her support. Further, it has been demonstrated that from the time of the divorce in 1985 until the hearing in this case, the appellant has been somewhat of a spendthrift while the appellee has preserved the assets which he received as a part of the marital property division and has managed to accumulate additional assets since the divorce. The appellee should not be penalized for the spending habits of his former spouse nor his frugality.

With regard to the forgiveness of the alimony arrearage, Ms. McMichael testified that Mr. McMichael paid the required alimony payments faithfully every month from 1985 until his employment problems. He further paid all other sums required of him during that time. We also conclude that, under the circumstances, forgiveness of the arrearage was reasonable.

We find no abuse of discretion by the trial court in making the modifications to the decree complained of in the first three issues presented by the appellant.

Lastly, Ms. McMichael argues that the trial court erred in its award of attorney fees. Ms. McMichael complains that the award, at both hearings, was arbitrary and not based upon any consideration of time expended on her behalf by her attorney. We must be mindful that attorney fee awards are treated as alimony. Gilliam v. Gilliam 776 S.W2d 81, 86 (Tenn. App. 1988). These awards are within the sound discretion of the trial court, and unless the evidence preponderates against that award, it will not be disturbed on appeal. Storey v. Storey, 835 S.W2d 593, 599 (Tenn. App. 1992). In determining the amount of attorney fees as they relate to alimony, the court may but is not required to look

to the time expended by a party's attorney in the preparation and trial of a case. As with any alimony award, in deciding whether to award attorney's fees as alimony, the trial court should consider the relevant factors enumerated in T.C.A. § 36-5-101(d). Story, supra.

In our consideration of the award of attorney fees, we point out that the award is not made to the attorney nor does it have any bearing on the contractual relationship between the attorney and client. The court is not bound to award attorney fees in accordance with the contract between the attorney and client. The court may make an award solely for the purpose of helping to defray the expenses of hiring an attorney. "Trial courts are permitted to make additional awards to defray the legal expenses resulting from a divorce proceeding. Palmer v. Palmer, 562 S.W2d 833 (Tenn. App. 1977). These decisions, like those involving support and maintenance, are within the trial court's discretion. Fox v. Fox, 657 S.W2d 747 (Tenn. 1983); Hardin v. Hardin, 689 S.W2d 152, 154 (Tenn. App. 1983). This Court is not inclined to second-guess the trial court unless the evidence preponderates against its decision." Batson v. Batson, 769 S.W2d 849 (Tenn. App. 1988).

Counsel for the appellant filed an affidavit with the trial court itemizing expenses incurred and fees charged for representation from March 26, 1993, through March 29, 1995. We are not at liberty to presume as urged by appellant that the court arbitrarily awarded attorney fees without consideration of time spent on the case. A public official, in the absence of proof to the contrary, is presumed to do his duty. See State ex rel. Biggs v. Barclay, 216 S.W2d 711 (Tenn. 1948). Therefore, in the absence of evidence showing otherwise, we must presume that the trial judge correctly and adequately considered all evidence on all issues properly presented.

We find no abuse of discretion on the part of the trial court. Further, we find that the evidence does not preponderate against the judgment of the trial court.

The appellant has asked this court to remand the case to the trial court for the purpose of awarding attorney fees for the prosecution of this appeal. We do not feel that this is an appropriate case for an award of attorney fees.

The trial court is affirmed in all respects. Costs of this appeal are taxed to the appellant and this cause is remanded to the trial court for the collection thereof.

Don T. Murray, J.

CONCUR:

Herschel P. Franks, J.

Clifford E. Sanders, Senior Judge

IN THE COURT OF APPEALS

PATSY M M CHAEL,)	CLAI BORNE CHANCERY
)	C. A. NO. 03A01-9509-CH-00319
)	
Plaintiff - Appellant)	
)	
)	
)	
)	
vs.)	HON. BILLY J. WHITE
)	CHANCELLOR
)	
)	
)	
)	
JOHN M M CHAEL,)	AFFIRMED AND REMANDED
)	
Defendant - Appellee)	

ORDER

This appeal came on to be heard upon the record from the Chancery Court of Claiborne County, briefs and argument of counsel. Upon consideration thereof, this Court is of opinion that there was no reversible error in the trial court.

The trial court is affirmed in all respects. Costs of this appeal are taxed to the appellant and this cause is remanded to the trial court for the collection thereof.

PER CURIAM