IN THE COURT OF APPEALS OF TENNESSEE

DAVIS A. REED,	)	C/A NO. 03A01-9707-DR-00266
	)	
Petitioner-Appellee,	)	
	)	
	)	
	)	
v.	)	APPEAL AS OF RIGHT FROM THE
	)	ROANE COUNTY GENERAL SESSIONS COURT
	)	
	)	
	)	
	)	
KATHY L. REED,	)	
	)	HONORABLE THOMAS A. AUSTIN,
Respondent-Appellant.	)	JUDGE

For Appellant

DAVID A. LUFKIN
Lufkin, Henley & Conner
Knoxville, Tennessee

For Appellee

ROBERT W. WILKINSON
Oak Ridge, Tennessee

O P I N I O N

AFFIRMED AND REMANDED

Susano, J.

Kathy L. Mabry, the former wife of the respondent, Davis A. Reed, filed a petition against her ex-husband seeking additional child support. Without stating its reasons for doing so, the trial court entered an order dismissing the petition. Ms. Mabry appealed. She argues two points: first, that the trial court erred in basing its refusal to award additional child support on the fact that Ms. Mabry bankrupted an obligation upon which she and her former husband were jointly obligated, thus necessitating the latter's payment of the debt; and second, that the trial court erred in refusing to increase Mr. Reed's child support obligation in light of an increase in his income and his failure to exercise visitation.

Ms. Mabry's petition was before the trial court on June 12, 1997. The record before us includes a 22-page transcript of that hearing. That transcript contains the statements and argument of counsel for the parties regarding their respective positions. It also contains comments of the trial court. What it does not contain is the testimony of any witnesses or a stipulation of facts. Furthermore, like the order of dismissal, the transcript does not contain any oral comments by the trial judge as to his reasons for dismissing the petition. In fact, the transcript fails to reflect that the hearing was *ever* completed. The last 13 lines of the transcript are as follows:

> THE COURT: Why don't you take a minute and show him what you've got. And then after you all look at it, bring them in here, and let me see them. I'm going to consider that. I mean if he paid $4,000 to sell the house, and then she bankrupted it on him, I think that's something the Court needs to consider.

> We'll be in recess for a few minutes. You let me know, and bring it back and let me look at it.
>
> (Brief recess)
>
> (Recess taken and proceedings thereupon ended).

There is nothing in the record to indicate whether there was any further discussion among counsel and the court, or evidence introduced, before the court reached its decision. While the last comments of the trial judge quoted above would lead one to believe that further proceedings were contemplated by the trial court, it is not clear whether there was a further hearing, informal or otherwise. The court's order dismissing the petition states that the matter was considered "upon...the testimony of witnesses..."; however, counsel agreed at oral argument that no witnesses testified in this case.

Since this is a non-jury case, our review is *de novo* upon the record with a presumption of correctness as to the trial court's judgment, unless the preponderance of the evidence is otherwise. Rule 13(d), T.R.A.P.; ***Hackett v. Smith County***, 807 S.W.2d 695, 699 (Tenn.App. 1990).

A party who raises issues on appeal must furnish an appellate court with a record that will enable the court to reach those issues. ***In re Indemnity Ins. Co. of North America***, 594 S.W.2d 705, 707 (Tenn. 1980); ***Word v. Word***, 937 S.W.2d 931, 933 (Tenn.App. 1996). If those issues are factually-driven, we must be in a position to review the pertinent facts. ***Id***.; ***Sherrod v. Wix***, 849 S.W.2d 780, 783 (Tenn.App. 1992). In this case, the

appellant had the burden of showing us that the evidence preponderates against the trial court's judgment. Rule 13(d), T.R.A.P.; ***Galbreath v. Harris***, 811 S.W.2d 88, 91 (Tenn.App. 1990). This she has failed to do. The trial court appears to have decided this case based solely on the comments of counsel. The attorneys "talked" about the case and apparently acquiesced in the trial court deciding the issues before it based upon that discussion. As far as the record before us reveals, the appellant did not call any witnesses, did not extract a stipulation of facts from the appellee,[1] did not otherwise offer any proof, and, significantly, did not contest the procedure utilized by the trial court to resolve this matter. Thus, the appellant cannot claim that she was deprived of a plenary hearing below. Assuming that the procedure utilized by the trial court was irregular in nature, the appellant's failure to object to the trial court's informal procedure constitutes a waiver of that error as far as this appeal is concerned. Rule 36(a), T.R.A.P. ("Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error.")

In ruling as we do, we do not, in any way, mean to indicate that we approve of the procedure apparently utilized by the trial court. If material facts are in dispute, there should be a plenary trial.

[1]It is clear from the discussion of counsel that they did not agree on all of the facts.

The appellant has not presented a record on this appeal to show us that "the preponderance of the *evidence* is otherwise." *See* Rule 13(d), T.R.A.P. (emphasis added). Therefore, we must honor the Rule 13(d) presumption that the trial court's judgment is correct.

The judgment of the trial court is affirmed. Costs on appeal are assessed against the appellant and her surety. This case is remanded to the trial court for collection of costs assessed below, pursuant to applicable law.

_____
Charles D. Susano, Jr., J.

CONCUR:

_____
Houston M. Goddard, P.J.

_____
William H. Inman, Sr.J.