IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 18, 2015 Session

JAMES MASON YATES v. SALLY JO SEITZ YATES

Appeal from the Circuit Court for Rutherford County
No. 67606 Royce Taylor, Judge

No. M2015-00667-COA-R3-CV – Filed February 24, 2016

Husband and Wife were married for a little over three years and had one child together when Husband filed a complaint for divorce. Wife wanted a prenuptial agreement, and Husband prepared and signed an agreement that he presented to Wife before the parties were married. Wife testified she signed the document Husband presented to her before the parties' marriage ceremony. Following a pretrial hearing, the trial court determined the prenuptial agreement was not valid. The trial court reversed its ruling after a full trial, however, finding that Wife would not have married Husband without a prenuptial agreement. Based on the provisions of the prenuptial agreement, the trial court determined which property was separate, which property was marital, and then distributed the marital property. The parties agreed to split their parenting time equally. The trial court calculated the parties' incomes and determined that based on each party's ability to earn approximately $16,000 per month and the parties' equal parenting time, no child support order was necessary. Husband appealed from the trial court's final order. We affirm the trial court's judgment in all respects but one. We reverse the trial court's decision to deduct six percent from the value of the marital home to account for closing costs because there was no evidence that the parties planned to sell the house as part of the divorce.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed in Part and Reversed in Part

ANDY D. BENNETT, J., delivered the opinion of the court, in which RICHARD H. DINKINS and W. NEAL MCBRAYER, JJ., joined.

James Barger, Murfreesboro, Tennessee, for the appellant, James Yates.

Gregory D. Smith and Brenton H. Lankford, Nashville, Tennessee, for the appellee, Sally Jo Seitz Yates.

OPINION

I. INTRODUCTION

James Mason Yates ("Husband") and Sally Jo Seitz Yates ("Wife") were married on October 14, 2010. The parties had one child together who was born on March 26, 2008.[1] Before they were married, Wife told Husband she wanted a prenuptial agreement. The parties discussed the terms of such an agreement, but the parties disagree about whether or not an agreement became effective before they were married.

Husband filed a complaint for divorce on January 23, 2014, just a little over three years after the parties were married. The trial court held a pretrial hearing on July 2, 2014, to determine whether the parties had an enforceable prenuptial agreement. At the end of the hearing, the court determined that they did not. Additional evidence was introduced during the divorce trial regarding the prenuptial agreement, and the court ultimately decided that Wife would not have married Husband in the absence of such an agreement. Thus, the court reversed its earlier ruling that there was no enforceable prenuptial agreement and ruled as part of its final order that the parties were bound by the terms of the agreement Wife introduced into evidence. Based on the terms of the prenuptial agreement, the court determined which of the parties' properties constituted marital property and which constituted separate property, divided the marital property between the parties, and entered a permanent parenting plan.

Husband appeals the trial court's ruling, arguing that the trial court erred (1) by ruling that the parties entered into a valid prenuptial agreement; (2) in dividing the marital residence; and (3) in calculating the parties' incomes for purposes of determining whether child support should be awarded. Wife requests an award of her attorneys' fees and expenses incurred in responding to Husband's appeal.

II. FACTUAL AND PROCEDURAL BACKGROUND

The evidence introduced at the hearing on July 2, 2014, showed that Wife was employed by Apple Inc. and was able to work out of her home. She was living in Franklin and Husband was living in Smyrna when they had a child in 2008. Wife decided to move closer to Husband and purchased a house in Murfreesboro in or about June 2009. Husband was a realtor and 20% owner of the real estate company Red Realty.

[1] In addition to this child, each party has another child from a prior relationship.

Husband acted as Wife's agent when she purchased the house in Murfreesboro, but he did not pay any portion of the purchase price.

After the parties became engaged, but before they were married, each party discussed a prenuptial agreement with their individual attorneys. Wife testified that she agreed to add Husband's name to the deed of her house before the parties were married but that she was concerned she could lose part of her house if she and Husband ended up not getting married. Wife also testified that Husband was in litigation with his former wife, and she wanted to protect her assets and prevent them "from becoming part of that appeal process." To alleviate this concern, Husband sent Wife an e-mail on September 9, 2010, in which he wrote:

> Sally Seitz and I plan to be married on Oct 14, 2010. We mutually agreed to sign a Prenuptial Agreement to protect money/investments we currently have. We are scheduled to close on a refi of Sally's house at 4324 Pretoria Run in Murfreesboro tomorrow at 4. Since the prenup has not been finished, we felt it would be prudent to document our agreement related to this property. Sally purchased this prior to our wedding and we agree that the amount of down payment money Sally paid at closing is a premarital asset and should be returned to her in the event our marriage fails. We both agree that neither party will receive Alimony payments from the other in the event of divorce, regardless of what the current or expected incomes are of either party at the time of divorce.

Wife explained why she wanted a prenuptial agreement:

> I wanted my retirement account protected 100 percent and we negotiated and we agreed on 25 percent of the other's retirement account, but that was something - - a negotiation that he and I had reached.
>
> . . . .
>
> [T]he Apple stock I wanted protected completely. I have a son, and I negotiated most of that stock on my – as my signing bonus to Apple to get – they wanted me to come work for them, and at that time I worked hard to negotiate because of my child, who his father [sic] was not involved and I was a single mother and going to raise this child and some day send him to college, and so that stock, in my mind, really was for him. And I was completely open about that with James as to why I was protecting it.

On October 7, 2010, Husband sent Wife a document titled "Antenuptial

Agreement" that contained the following pertinent provisions:

> This Antenuptial Agreement, made and entered into this 7th day of October, 2010, between James Yates, of County Rutherford, State of Tennessee, referred to as "Prospective Husband", and Sally Seitz, of the County of Rutherford, State of Tennessee, referred to as "Prospective Wife".
>
> **RECITALS:**
> It is the intent of the parties named above to become married.
> Each of the parties has certain separate property acquired prior to marriage and both parties desire to retain their separate property without the same being affected by the marriage or converted to community property.
>
> It is the intent of the parties for the purpose of this agreement that each waive any community property rights the other may have to the earnings, rents, issues, profits, and other accruals as a result of community labor or efforts.
>
> Therefore, in consideration of the mutual terms, conditions, and covenants set forth below, the parties agree as follows:
>
> 1. The Prospective Husband and Prospective Wife agree with each other that none of their respective property rights shall in any way become affected or changed in any way by reason of their marriage.
>
> 2. That Prospective Husband waives, releases, forgoes, and disclaims all his rights in any and all retirement accounts, Apple stock, and stock options of which the Prospective Wife is or may become seized or possessed except twenty five percent (25%) of any increase over value as of September 22, 2010 of Fidelity/Apple 401k account or future retirement accounts.
>
> 3. That Prospective Wife waives, releases, forgoes, and disclaims all her rights in any and all retirement accounts, benefits, MidSouth Bank stock, and stock options of which the Prospective Husband is or may become seized or possessed except twenty five percent (25%) of any increase over value as of September 22, 2010 of Northwestern Mutual Roth IRA and SEPP accounts or future retirement accounts.
>
> 4. The provisions of this agreement shall not prohibit either Prospective Husband or Prospective Wife from making any gift, in any amount, to his or her respective spouse, and that gift shall become the separate property of

the donee spouse.

5. Except as otherwise provided in this Agreement, each of the parties waives and relinquishes any claims for services rendered, work performed and labor expended by either of the parties during any period prior to the marriage and during the entire length of the marriage.

6. Prospective Husband and Prospective Wife shall execute and deliver any other instruments or documents necessary or convenient, to give effect to the provisions of this agreement.

7. This agreement may be modified, amended or rescinded at any time after the solemnization of the marriage, by subsequent written agreement between Prospective Husband and Prospective Wife.

8. The provisions contained in this agreement represent the entire understanding between Prospective Husband and Prospective Wife pertaining to the respective property and marital property rights.

9. Each of the parties acknowledges that the other has made full disclosure to the other of all property owned or otherwise held by each respective party as shown on Exhibit A and B.

10. The parties acknowledge that they, and each of them, have been either represented by counsel of their choice in the preparation of this agreement, or have had full opportunity to consult with an attorney of their selection pertaining to the terms and conditions of this particular agreement and to advise them as to the legal effect of this agreement so that they would understand the terms, provisions and other aspects that may effect [sic] their marital property rights. In the event that either party has not consulted an attorney pertaining to the terms and conditions of this agreement, that party acknowledges full understanding of the terms and conditions and that party expressly waives any objection at a later time based upon the fact of not being advised by an attorney of that party's own selection of the legal effect of this agreement.

Husband testified that he signed this document and then sent it to Wife via e-mail on October 7, 2010. In his e-mail to Wife dated October 7, to which he attached a signed version of the agreement, Husband wrote, *inter alia*:

I have signed it. As long as you don't see anything wrong, please sign it

> and return a copy to me for my files. If you see an error, you can tell me what it is and I will correct it and send it back to you for your signature.

Wife was traveling on October 7 and sent a reply e-mail to Husband explaining that she could not print out or scan the document that day. At the hearing on July 2, 2014, Wife testified that she accepted the October 7 version of the prenuptial agreement via her reply e-mail that same day. Wife's e-mail to Husband included the following:

> Hey – I have no way of printing or scanning this. it will have to wait until I get home.
>
> The payoff of Pretoria was what I owed on the house before the refinance. I don't want to quibble over it so if you think my debt should reflect post refinance then so be it.

Wife testified that her words "so be it" reflected her acceptance of the agreement that Husband signed and e-mailed to her on October 7.

Husband testified at the July 2 hearing that he prepared a different version of the prenuptial agreement on October 8 and that the parties never signed the revised document.[2] Husband was asked whether he provided the document dated October 8 to Wife to sign, and he answered:

> Well, I actually brought this home as a hard copy for us to sign . . . . [B]ut we were on October 11th, I think, at that time and we were getting married on the 14th, and we just started paying attention towards other details. . . . [W]hen we got back a few days later [after the wedding], sort of after the smoke had settled I asked her about it again, and she said: You know, it's just been so frustrating I've just decided that it wasn't worth worrying about. And of course that made me happy because I didn't want the prenuptial to begin with. So it just fell to the wayside, and there - - there was never a signed copy.

Wife testified that she accepted and signed the agreement Husband sent her on October 7, 2010. She testified further that neither she nor Husband ever rescinded that version of the prenuptial agreement. This is the document Wife introduced into evidence at the hearing on July 2 and that she contends is the operative prenuptial agreement.

[2]The version dated October 8 is virtually identical to the earlier version. The changes include different valuation dates of the parties' stock and retirement accounts as well as changes in the parties' net worth.

II. TRIAL COURT'S RULINGS

Following the hearing on July 2, the trial court issued an order dated July 14, 2014. The court wrote:

> [T]he Court finds the Antenuptial was signed by [Husband] and sent to [Wife] on October 7, 2010. The Court further finds there was no evidence when [Wife] signed the document. The Court further finds that the signatures were not notarized, nor were they dated by a notary. The Court further found that based upon the circumstances, it can not determine if [Wife] signed this prior to the marriage or after the marriage. Based upon the above findings, the Antenuptial Agreement signed on October 7, 2010 is not valid.

The parties' divorce case was tried on September 4 and 10, 2014. The court issued a Final Decree of Divorce on December 23, 2014. The court ordered that Wife would be named the primary residential parent and that each parent would spend an equal amount of time with their daughter, as the parties proposed. Then, turning to the prenuptial agreement, the trial court set aside its earlier order dated July 14, 2014, and found the prenuptial agreement "is a valid and binding agreement." The court wrote:

> [I]n looking back at the parties' prenuptial agreement, having listened to the testimony of the parties over two additional days in July, the Court found the prenuptial agreement was not notarized — the Court believed that the Husband signed a copy and faxed it to Wife on October 7, 2010 with a note to sign it. At the time of hearing the testimony for the Motion to Determine Validity of Antenuptial Agreement, the Court could not determine whether it had been signed or not because there was not sufficient information such as a notary or any corroboration as to when the Wife signed it. The Court states that after hearing an additional two days of testimony, it is clear to the Court that the Wife did not intend to marry unless she had a signed prenuptial agreement, the Wife made it very clear. She did not respond to the one that was sent to her, she made no changes. The Court believes that the Husband knew that the Wife would not sign the prenuptial agreement and he knew she did not respond with changes before the wedding.[[3]] Based upon the Wife's testimony, the Court finds that the Wife was very credible and that she signed the faxed copy before the wedding.

[3]The trial court entered an order on March 17, 2015, amending its earlier ruling to read "I think [Husband] knew that she would not marry if he did not sign the prenuptial agreement."

The court continued:

> There appears to be no original paperwork as the Husband signed a copy and faxed it to [Wife] and she signed the faxed copy and kept it and made a copy that was sent to the court. There are only copied signatures, but that creates a valid document. They are both copied signatures.
>
> The Court further finds in support of its finding, both parties operated during the marriage as if the prenuptial was valid. Both parties kept their property separate except for two pieces of real estate and a joint checking account. Husband sold real estate and put some of the money in the joint account, then withdrew it, therefore, the Court finds said monies should be considered his separate property and equitably the Husband should receive it.

As part of its final decree, the trial court determined which property of the parties constituted marital property and which constituted separate property and devised a method for splitting up the marital property. The court also made findings regarding the parties' income levels for purposes of determining whether to enter an order for child support. The court found that both parties are "high-income earners and each has the ability to earn approximately $16,000.00 per month." The court found the circumstances did not warrant an order of child support because the child was spending equal time with both parents.

III. ANALYSIS

A. Prenuptial Agreement

On appeal we conduct a de novo review of the trial court's findings of fact, accompanied by a presumption of correctness of the trial court's findings of fact unless the evidence preponderates otherwise. TENN. R. APP. P. 13(d); *In re Adoption of A.M.H.*, 215 S.W.3d 793, 809 (Tenn. 2007); *Smith v. Tenn. Farmers Life Reassurance Co.*, 210 S.W.3d 584, 589 (Tenn. Ct. App. 2006). Evidence preponderates against a trial court's finding of fact if it supports a different finding of fact in a more convincing manner. *Sattler v. Sattler*, No. M2007-02319-COA-R3-CV, 2008 WL 4613589, at *3 (Tenn. Ct. App. Oct. 13, 2008). Questions of law enjoy no presumption of correctness. *In re Adoption of A.M.H.*, 215 S.W.3d at 809.

A prenuptial agreement is a type of contract that is expressly recognized by the General Assembly. *Soloman v. Murrey*, 103 S.W.3d 431, 434 (Tenn. Ct. App. 2002).

Tennessee Code Annotated section 36-3-501 provides:

> Notwithstanding any other law to the contrary, . . . any antenuptial or prenuptial agreement entered into by spouses concerning property owned by either spouse before the marriage that is the subject of such agreement shall be binding upon any court having jurisdiction over such spouses and/or such agreement if such agreement is determined, in the discretion of such court, to have been entered into by such spouses freely, knowledgeably and in good faith and without exertion of duress or undue influence upon either spouse. The terms of such agreement shall be enforceable by all remedies available for enforcement of contract terms.

Prenuptial agreements "are favored by public policy in Tennessee," and they will be enforced so long as the parties entered them "voluntarily and knowledgeably." *Reece v. Elliott*, 208 S.W.3d 419, 421 (Tenn. Ct. App. 2006); *see also O'Daniel v. O'Daniel*, 419 S.W.3d 280, 284 (Tenn. Ct. App. 2013) (finding prenuptial agreements are favored in Tennessee). The proponent of a prenuptial agreement carries the burden of establishing that the agreement "was entered into freely, knowledgeably, and in good faith and without the exertion of duress or undue influence." *O'Daniel*, 419 S.W.3d at 284 (citing Tenn. Code Ann. § 36-3-501). The term "knowledgeably" has been interpreted to require that the proponent of the agreement prove that a "full and fair disclosure of the nature, extent and value of the party's holdings was provided, or that such disclosure was unnecessary because the spouse had independent knowledge of the same." *Reece*, 208 S.W.3d at 422. Our Supreme Court has explained that "disclosure need not reveal precisely every asset owned by an individual spouse." *Randolph v. Randolph*, 937 S.W.2d 815, 821 (Tenn. 1996). It is enough that each contracting spouse has an idea of the nature, extent, and value of the other party's assets. *Id.*

Husband does not contend he signed the prenuptial agreement under duress or undue influence, and he acknowledges that he freely signed the agreement dated October 7 before sending it over to Wife. His primary argument is that the trial court should not have reversed its earlier ruling that the prenuptial agreement was not valid without providing notice of this to the parties until after the close of evidence. We disagree. This Court has explained that "an order that adjudicates an issue preliminarily is a temporary, interim or 'interlocutory order.'" *State ex rel. Dillard v. Blanks*, No. M2010-00901-COA-R3-JV, 2011 WL 4378016, at *2 (Tenn. Ct. App. Sept. 20, 2011) (citing *Hoalcraft v. Smithson*, 19 S.W.3d 822, 827 (Tenn. Ct. App. 1999)).

> To constitute a final order, the order must fully and completely define the parties' rights with regard to all of the issues, leaving nothing else for the trial court to decide. *Id.* (citing *State ex rel. McAllister v. Goode*, 968

> S.W.2d 834 (Tenn. Ct. App. 1997); *Vineyard v. Vineyard*, 170 S.W.2d 917, 920 (Tenn. Ct. App. 1942); Restatement (Second) of Judgments § 41, cmt. a (1942)).
>
> Accordingly, unless and until an order becomes final, "it remains within the [trial] court's control and may be modified any time prior to the entry of a final judgment." *Hoalcraft*, 19 S.W.3d at 827 (citing *Stidham v. Fickle Heirs*, 643 S.W.2d 324, 328 (Tenn. 1982)); *see also Fox v. Fox*, 657 S.W.2d 747, 749 (Tenn. 1983) (noting that an interlocutory order "can be revised at any time before the entry of judgment adjudicating all the claims and rights and liabilities of all parties"); *Winter v. Smith*, 914 S.W.2d 527, 535 (Tenn. Ct. App. 1995) (stating that an interlocutory order is "subject to revision by the trial court any time prior to the entry of a final judgment adjudicating all the claims raised").

Blanks, 2011 WL 4378016, at *2. Moreover, Tennessee Rule of Civil Procedure 54.02 provides, in pertinent part, that:

> [A]ny order or other form of decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of the judgment adjudicating all the claims and the rights and liabilities of all the parties.

When the trial court entered its earlier order in July 2014 finding that the parties' prenuptial agreement was not valid, the court had not heard all of the parties' evidence. During the trial in September, two months later, the court noted that Wife's intent in wanting a prenuptial agreement was not covered at the earlier hearing. We will review the evidence that was introduced at trial to determine whether the evidence preponderates against the trial court's final ruling that the parties had a valid and enforceable prenuptial agreement.

Wife's attorney questioned Husband on the first day of trial about the prenuptial agreement. Husband responded that "[t]he prenup has already been found to be invalid." Husband resisted answering questions about the parties' discussions insofar as they related to the prenuptial agreement until the court instructed Husband, "She can still ask you about your discussions even though the prenup is not at issue today." Husband responded to questions by Wife's attorney as follows:

> Q: And both of you worked back and forth diligently with trying to

come up with a prenuptial agreement; did you not?

A: We did.

Q: And you had negotiations back and forth; did you not?

A: We did.

Q: You even - - I think you've already made it an exhibit, but you even set down what you believed the value of your assets at that time to be prior to the marriage, correct?

A: That's correct.

Q: So for all intents and purposes you wanted that property to remain separate, didn't you?

A: Correct.

Q: So you wanted your Red Realty to remain separate, didn't you?

A: Yes.

Q: You wanted any increase in value in Red Realty to remain separate.

A: Yes.

Q: You didn't want her to – you got 20 percent and you didn't want her from this marriage to obtain 10 percent of Red Realty, did you?

A: No.

Q: What about your rental properties, the increase in value of your rental properties? Did you intend for her to have one-half interest in those?

A: No.

Q: Glenties, remember that rental property?

A: It was my personal residence.[4]

Q: Well, you put her name on it during the marriage, didn't you?

A: Yes.

Q: And you sold it during the marriage, didn't you?

A: Yes.

Q: And you put $30,000 of that in the joint account during the marriage, didn't you?

A: Yes.

Q: And then right before this divorce ensued you pulled $25,000 out, didn't you?

A: Yes.

Q: Okay. So even though you put her name on it – right - -

A: Yes.

Q: - - you put the money in the joint account, correct - -

A: Yes.

Q: - - and then you pulled the money back out right before you filed for divorce, you want that to be separate property.

A: Yes. . . . [W]hen I realized that the . . . marriage still wasn't going to be salvageable, I took that money out as a precautionary measure.

This testimony by Husband contributed to the trial court's ultimate conclusion that Husband operated during the marriage as if the prenuptial agreement was in force.

When Wife took the stand during the trial, Husband's attorney raised another

[4]Husband listed the property located on Glenties Drive as his separate property on the exhibit he attached to the prenuptial agreement dated October 7, 2010.

objection when Wife's attorney began to question Wife about how she intended her premarital assets to be affected by the marriage. According to Husband's attorney, the court had already ruled the parties did not have a valid prenuptial agreement and they were just wasting time. The court overruled the objection, stating: "I think we can still cover this. We've covered part of it in the prior hearing, but I'm not sure [Wife's intent] was discussed." When the court made this statement, Husband should have been put on notice that the validity of the prenuptial agreement was still an open issue in the case.

Wife testified at trial that she would not have married Husband without a prenuptial agreement:

> Q: Did you go back and forth . . . about what you intended to do with your premarital interest in that house?
>
> A: Yes, and he agreed all along that the money that I had invested in this house would remain my money.
>
> . . . .
>
> Q: So as far as that, your intent of this separate funds that you've placed into the marital residence, did you – through your writings and these e-mails did you make it known to [Husband] that you never intended for him to get any interest in your separate funds?
>
> A: Right, I was very clear about that. And, you know, had I known that that was his intention, I would never have married him.
>
> Q: Okay.
>
> A: You know, we had several conversations about our finances and premarital assets, and I would have never married him without a prenup.

Husband contends he did not "knowledgeably" agree to the prenuptial agreement because Wife failed to disclose all of her assets. The accounts Husband claims Wife failed to disclose include accounts Wife set up for her older son, an account Wife set up for the parties' daughter, and another checking and savings account that had approximately $9,500 in it when the parties were married. The evidence shows that the accounts set up for the children were college accounts and may not constitute marital property even in the absence of the prenuptial agreement and that the account worth $9,500 was not meant to be covered by the prenuptial agreement. Wife intended that money to be used by the parties during the marriage.

When determining whether one spouse's disclosure of her assets is adequate to enable the other spouse to make a knowledgeable decision about entering a prenuptial agreement, the courts "generally require that the disclosure be essentially fair under all of the circumstances." *Erickson v. Erickson-Mitchell*, No. M2006-00895-COA-R3-CV, 2007 WL 1555824, at *3 (Tenn. Ct. App. May 29, 2007) (citing *Wilson v. Moore*, 929 S.W.2d 367, 371 (Tenn. Ct. App. 1996)).

> The inadvertent failure to disclose an asset or the unintentional undervaluation of an asset will not invalidate a prenuptial agreement as long as "the disclosure that was made provides an essentially accurate understanding of the party's financial holdings." *Wilson*, 929 S.W.2d at 371. "The disclosure will be deemed adequate if it imparts an accurate understanding of the nature and extent of a person's property interests." *Wilson*, 929 S.W.2d at 371 (citing *Nanini v. Nanini*, 166 Ariz. 287, 802 P.2d 438, 441 (1990)).

Erickson, 2007 WL 1555824 at *3. Husband is a sophisticated businessman who drafted the prenuptial agreement at issue. He has not established that Wife intentionally withheld information regarding any of her assets from Husband in an effort to dupe him into agreeing to a prenuptial agreement. *Cf. Randolph*, 937 S.W.2d at 821 (holding husband failed to establish valid prenuptial agreement where wife had only general idea of husband's assets but no idea of extent of his net worth); *Ellis v. Ellis*, No. E2013-02408-COA-R9-CV, 2014 WL 6662466, at *8 (Tenn. Ct. App. Nov. 25, 2014) (holding prenuptial agreement was invalid where husband failed to disclose to wife that his assets were worth $4,750,000 and wife did not know, or have reason to know, value of his assets); *Sattler*, 2008 WL 4613589, at *4-5 (holding prenuptial agreement invalid where wife failed to disclose extent of her assets to husband, husband had inadequate opportunity to learn of wife's assets prior to signing document, and document was very one-sided). We find Wife's disclosure of her assets provided Husband with an essentially accurate understanding of her financial holdings and that Husband knowledgeably entered into the prenuptial agreement.

Husband relies on e-mails between the parties dated October 11, 2010, in an effort to show the parties were contemplating changes to the prenuptial agreement after October 7. The e-mails Husband relies on, however, simply include different values of Wife's assets that are covered by the prenuptial agreement; nothing in the e-mails negates the document dated October 7.[5] After reviewing the evidence introduced at trial, we

[5] Wife testified that the value of her stock and other publicly traded assets is always changing depending on the day.

conclude that it does not preponderate against the trial court's findings regarding the prenuptial agreement. Accordingly, we affirm the trial court's judgment that the prenuptial agreement is valid and enforceable.

B. Division of Marital Residence

Husband's next argument concerns the trial court's valuation of the marital residence and the division of its equity between the parties. Husband and Wife each introduced an expert appraiser to testify about the current value of the marital residence. Husband's expert testified the house was worth $535,000. Wife's expert testified the house was worth $505,000. The trial court averaged the two appraisals to reach a value of $517,500. The court then deducted six percent of its value to cover a broker's commission and closing costs that the parties would have to pay if it were sold. The court found the marital home had a mortgage balance of $301,300, which the parties do not dispute. After deducting the six percent and the mortgage balance, the court determined the equity in the house was $185,150.

Trial courts have broad discretion in equitably dividing marital property, and appellate courts "must accord great weight" to the trial court's decision in this regard. *Owens v. Owens*, 241 S.W.3d 478, 490 (Tenn. Ct. App. 2007) (citing *Jolly v. Jolly*, 130 S.W.3d 783, 785 (Tenn. 2004), *Fisher v. Fisher*, 648 S.W.2d 244, 246 (Tenn. 1983), *Wilson v. Moore*, 929 S.W.2d 367, 372 (Tenn. Ct. App. 1996), and *Batson v. Batson*, 769 S.W.2d 849, 859 (Tenn. Ct. App. 1988)). The trial court is charged with placing a "reasonable value" on marital property when dividing the marital assets in a divorce case. *Vachon v. Vachon*, No. M2013-00952-COA-R3-CV, 2014 WL 819448, at *2 (Tenn. Ct. App. Feb. 27, 2014). "When the parties present conflicting evidence of valuation, the court has discretion to value the property at issue from the range of values presented by the parties and their witnesses." *Dilley v. Dilley*, No. M2009-02585-COA-R3-CV, 2011 WL 2015395, at *11 (Tenn. Ct. App. May 23, 2011) (citing *Owens*, 241 S.W.3d at 486, and *Koch v. Koch*, 874 S.W.2d 571, 577 (Tenn. Ct. App. 1993)).

The parties submitted no evidence that they were planning to sell the marital home. Therefore, Husband argues, the trial court erred by deducting six percent of its value to cover closing/transaction costs before determining the value of each party's interest in the residence. Wife agrees. Because both parties agree that the trial court should not have reduced the value of the house by six percent, and because we are aware of no factual or legal basis for this reduction, we reverse this aspect of the court's ruling and revise the value of the parties' equity in the house from $185,150 to $216,200 ($517,500 - $301,300 = $216,200).

Wife purchased the marital residence before the parties were married, and

Husband does not dispute the court's decision to award Wife her premarital interest in the house in the amount of $116,500. Deducting Wife's premarital interest and the amount of the mortgage balance from the value of $517,500 reduces the parties' equity in the house to $99,700 ($517,500 - $116,500 - $301,300 = $99,700).

The trial court awarded Husband fifty percent of the equity in the house. Husband contends he should be awarded more than fifty percent, however, because he made improvements to the property while the parties were living there. The court noted, and Husband does not dispute, that Wife paid the household bills and payments during the marriage, and she paid for a hotel during the parties' separation. Husband fails to show that the trial court abused its discretion in equitably dividing this asset by awarding him fifty percent of the equity, and not more. Accordingly, we conclude that the value of Husband's interest in the house is $49,850 ($99,700 ÷ 2 = $49,850).

C. Child Support Determination

The final issue Husband raises on appeal concerns the trial court's determination of Husband's income for purposes of determining that Wife is not required to pay him any amount of child support. Awards of child support are governed by the child support guidelines promulgated by the Tennessee Department of Human Services Child Support Service Division. *See generally* TENN. COMP. R. & REGS. 1240-2-4; Tenn. Code Ann. § 36-5-101(e)(2). These guidelines provide that "gross income" includes "all income from any source . . . whether earned or unearned." TENN. COMP. R. & REGS. 1240-2-4-.04(3)(a)(1). "[O]rdinary and reasonable expenses necessary to produce such income" may be deducted from the calculation of a parent's self-employment income. TENN. COMP. R. & REGS. 1240-2-4-.04(3)(a)(3)(i). The child support guidelines specify, however, that "[e]xcessive promotional, excessive travel, excessive car expenses or excessive personal expenses, or depreciation on equipment, the cost of operation of home offices, etc., shall not be considered reasonable expenses." TENN. COMP. R. & REGS. 1240-2-4-.04(3)(a)(3)(ii)(I).

The trial court made the following findings as part of its Final Decree of Divorce:

> The Court finds that the Mother had significant income in 2012 that was a result of her cashing out quite a bit of stock, which was used for the marital residence and other extravagancies that the parties indulged in during the year. Therefore, the Mother's income for 2013 seems to be appropriate to use and the Court finds the Mother earned approximately $15,753.50 per month.
>
> The Court finds the income for the father has increased and using the

> checks he received from Red Realty, the sponsorship checks he received, and the profit he received, even though it is not taxable, it is attributable to this ownership of Red Realty and it is being used to pay an indebtedness. After backing out depreciation and other matters under the guidelines from his rental property, the Court finds the Father's monthly income is $16,764.00.
>
> In figuring out the Father's income, the Court found that the Father received checks from Red Realty from January 1, 2014 through July 30, 2014 to be $73,620.49. He received from sponsorship checks from January 1, 2014 through June 30, 2014 to be $3,924.67. The Court found his profit from the profit and loss statement, the Father's 20% interest from January 1, 2014 through July 30, 2014 was $31,066.38 for a total of $4,438.00 per month. For the rental income, the Court in looking at the 2013 tax return, backed out the depreciation and some other items under the guidelines and then figured the income received was $13,863.00 per year or $1,155.25 per month.
>
> The Court further finds that both parties are high-income earners and each has the ability to earn approximately $16,000 per month and under these circumstances neither party will pay the other child support since they are equally sharing time with the child.

The trial court clarified its calculation of Husband's income in responding to the parties' motions to alter or amend:

> The Court states that [Husband's] tax return is not an accurate reflection of self-employment earnings, particularly where he had deferred income and also had payments being made on his behalf with before tax earnings, which the Court believed should be reflected as earnings. The Court . . . did not use an average. The Court found through the testimony that the real estate market was improving and Mr. Yates indicated that it was improving and the current earnings seemed to reflect the improving trend and there is no need to average back earnings while the real estate market was down. The Court further finds its calculation of Mr. Yates' earnings was an accurate reflection of his ability to earn. The Court further states that of course the child support can be reviewed if the real estate market declines.

Child support decisions "retain an element of discretion." *Richardson v. Spanos*, 189 S.W.3d 720, 725 (Tenn. Ct. App. 2005). Appellate courts review the trial court's child support decisions using the deferential abuse of discretion standard and will refrain

from substituting their discretion for that of the trial court. *Id.*; *Kopp v. Kopp*, No. M2008-01146-COA-R3-CV, 2009 WL 2951172, at *2 (Tenn. Ct. App. Sept. 14, 2009). We will not reverse the trial court's decision unless we determine it is clearly unreasonable based on the facts of the case and the applicable law. *Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010); *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001); *Richardson*, 189 S.W.3d at 725.

Husband is a licensed real estate broker and has a twenty percent ownership interest in the real estate company Red Realty. He argues that in calculating his income for child support purposes, the court should have considered his income from earlier years, going back to 2010, when the market was down and he was not earning as much as in 2013 and 2014. However, Husband testified that 2010 "was the worst year that we've had in real estate." He explained:

> 2010 when we got married was quite possibly the — well, I knew it was; it was the worst real estate market I'd seen in 23 years — or 22 years at that point — or 21 years at that point, excuse me. And the income that I made that year was nominal in comparison to what I would normally do.

The evidence introduced at trial showed, and Husband does not dispute, that the real estate market has been improving since 2010.

Husband also contends the court erred in treating his portion of the company's profits as his income because his portion of the profits was not going to him; it was being used to repay one of his partners for a loan the partner made for the benefit of the company. However, Husband was liable for the repayment of this loan because he is an owner of the business, so we believe it was appropriate for the court to consider Husband's interest in the profits as a portion of Husband's income. Regardless of whether Husband paid his partner from another account or with his portion of the company's profits, Husband's portion of the company's profits constitutes income to Husband. Husband's reliance on *Mitts v. Mitts*, 39 S.W.3d 142 (Tenn. Ct. App. 2001), is misplaced. Unlike here, the appellant in *Mitts* was unable to use any portion of the company's retained earnings, for repayment of a loan or for any other purpose, unless the majority owner decided to distribute the earnings. *Mitts*, 39 S.W.3d at 148; *see also Thomas v. Thomas*, No. W1999-00284-COA-R3-CV, 2000 WL 33191358, at *9 (Tenn. Ct. App. Nov. 13, 2000) (holding trial court did not err in ruling husband's interest in partnership was not income where husband's receipt of profits depended on general manager's decision to distribute profits and where court ruled husband was required to contribute percentage of any distributed profits towards child support).

Husband further asserts the trial court erred by failing to deduct his ordinary and

reasonable expenses as a self-employed individual from the total amount of his income. Father claims he has "consistently realized $15,000 in reasonable business expenses necessary to derive his income." During trial, however, Husband conceded that for the year 2012, his tax return showed "a vehicle depreciation of $8,000, some insurance, legal and professional fees." The child support guidelines state that "excessive car expenses or excessive personal expenses, or depreciation on equipment, the cost of operation of home offices, etc., shall not be considered reasonable expenses." TENN. COMP. R. & REGS. 1240-2-4-.04(3)(a)(3)(ii)(I). Moreover, the trial court found that Husband's tax return "is not an accurate reflection of self-employment earnings, particularly where he had deferred income and also had payments being made on his behalf with before tax earnings, which the Court believed should be reflected as earnings." We do not believe the evidence in the record preponderates against this finding.

Based on the deferential review we are required to apply to the trial court's decisions regarding child support coupled with the evidence in the record, we are unable to conclude that the trial court abused its discretion in determining that no child support is warranted in this case. Husband can apply for a modification of the trial court's order if circumstances warrant such a modification in the future. *See* Tenn. Code Ann. § 36-5-101(g).

D. Wife's Attorneys' Fees

Wife seeks an award of the attorneys' fees and expenses she incurred on appeal. Tennessee Code Annotated section 36-5-103(c) gives the courts discretion to award attorneys' fees in certain circumstances. We hereby exercise our discretion to rule that Wife is not entitled to an award of her fees and expenses in this case.

IV. CONCLUSION

We reverse the trial court's decision to deduct six percent from the value of the marital residence to account for closing costs. We affirm the trial court's judgment in all other respects. Costs of this appeal shall be taxed to the appellant, James Mason Yates, for which execution shall issue if necessary.

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ANDY D. BENNETT, JUDGE