

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
July 24, 2008 Session

ALAN C. ODOM v. JANIS B. ODOM

**Appeal from the Circuit Court for Hamilton County
No. 05D1369 Jacqueline S. Bolton, Judge**

No. E2007-02250-COA-R3-CV - FILED SEPTEMBER 30, 2008

In 2005, Alan C. Odom (“Husband”) filed suit for divorce from Janis B. Odom (“Wife”). The parties married in 1970 and have two adult sons. Husband is a successful orthopedic surgeon in Chattanooga, Tennessee. With the assistance of the parties’ sons, the parties were able to resolve several issues before trial, including how to distribute some but not all of the marital assets. Following a trial, the Trial Court distributed the remaining marital property in a manner which resulted in each party being awarded exactly one-half of the total marital assets. The amount awarded to each party totaled almost three million dollars. Each party raises several issues on appeal surrounding the property distribution and payment of various expenses. We modify the judgment of the Trial Court and affirm that judgment as so modified.

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

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., and SHARON G. LEE, JJ., joined.

Lauren G. Strange-Boston, Knoxville, Tennessee, for the Appellant, Alan C. Odom.

John P. Konvalinka and Jillyn M. Pullara, Chattanooga, Tennessee, for the Appellee, Janis B. Odom.

OPINION

Background

The parties were married in 1970 and have two adult sons. Wife completed two years of college during the marriage. Husband completed medical school and is a practicing orthopedic surgeon in Chattanooga. This lawsuit began when Husband filed a complaint for divorce in July of 2005. As the litigation progressed, there was much disagreement and discontent between the parties. As one might expect, there were significant marital assets to be distributed because Husband was a successful orthopedic surgeon. Fortunately, prior to trial and with substantial assistance from the parties' two sons, the parties were able to resolve several of the issues including how to divide some, but not all, of the marital property. The parties' agreement, which was adopted and ratified by the Trial Court, provides as follows:

1. The parties have agreed to be divorced pursuant to [Tenn. Code Ann. §] 36-4-129(b)¹ with full reservation of [Wife's] rights and without prejudice relative to [her] request for alimony.
2. The parties have divided their personal property as reflected in Exhibit 50, which includes all vehicles with the exception of the jetskis and the jetski trailer which the parties agreed [Wife] should have.
3. The parties' residence located at 318 South Crest Road shall be listed with Jay Robinson, with the contingency that the buyer shall not take possession until August, 2007. [Husband] will continue to maintain the home as he has been doing, and shall perform such maintenance to the house as may be necessary to sell the home. Depending upon what reimbursement, if any, [Husband] is to receive for the maintenance of the home on or after the date of the hearing, the proceeds from the sale of the home shall first be applied to any indebtedness, then to any reimbursement determined to be due [Husband], and the remaining funds are to be divided equally.
4. [Husband] shall be awarded the 6040 East Brainerd home at a value of \$138,000, with a debt of \$46,640.
5. [Husband] shall be awarded the 5714 Maple Lane home at a value of \$400,000.

¹ Tenn. Code Ann. § 36-4-129(b) (2005) provides that "[t]he court may, upon stipulation to or proof of any ground for divorce pursuant to § 36-4-101, grant a divorce to the party who was less at fault or, if either or both parties are entitled to a divorce, declare the parties to be divorced, rather than awarding a divorce to either party alone."

6. [Husband] shall be awarded the 5418 Oakdale Drive home at a value of \$75,000.
7. [Husband] shall be awarded the Wyoming home excluding Lot 111 at a value of \$614,000, with a debt in the amount of \$75,984.
8. The parties shall sell the Time Share in Gatlinburg and split the proceeds equally between them.
9. [Husband's] interest in RGA Properties shall be split equally between the parties, by such documentation as may be necessary for [Husband] to execute, conveying one-half of [Husband's] ownership interest to [Wife].
10. [Husband's] interest in Intellysis shall be split equally between the parties, by such documentation as may be necessary for [Husband] to execute, conveying one-half of [Husband's] ownership interest to [Wife].
11. The 200 shares of Community Trust and Banking stock shall be split equally between the parties. Each party shall receive 100 shares, together with any ownership benefits....
12. The parties shall assign the parties' two sons ... their respective insurance policies. (footnote added)

The parties' agreement also detailed the parties' separate property which each party was to retain. The value of Wife's separate property was \$302,084, and the value of Husband's separate property was \$247,350.

A trial on the remaining issues was held in April and May of 2007. Following the trial, the Trial Court entered an order stating, in relevant part, as follows:

The parties were married in 1970, when the Wife was 20 and the Husband was approximately 21 years of age. The parties have agreed and stipulated that grounds for divorce exist pursuant to T.C.A. § 36-4-129.... The parties were able to resolve by agreement certain property issues, which the Court hereby adopts.... Husband shall receive no reimbursement for the maintenance of the home before or after its sale because, in part, of his dissipation of marital assets.... The parties have further resolved the issue of their separate property....

The Husband is 58 years old and the Wife is 57 years old and they have been married for over 37 years. Wife has a high school

education with two years of college and Husband is a practicing physician. Wife has not been employed outside the home since 1975 except for a business venture ... which has never earned a profit. The Husband has substantial assets through his medical practice including an interest in the Chattanooga Orthopedic Group, PC, (COG) [and] the Center for Sports Medicine, LLC, (CSM), which entities have ten partners each.

Husband's earnings from his medical practice includes \$634,692.00 in adjusted gross earnings in 2005, and \$450,000.00 plus for 2006, for an average income over the last two years of approximately \$500,000.00.

Husband does not express an opinion as to the value of COG but has told his Wife that his shareholder interest in COG is \$450,000.00 which was prior to the purchase of an MRI machine for \$1,000,000.00. Each COG shareholder equally realizes income from the machine. Neither of the parties has an opinion as to the value of CSM.

Husband is romantically involved with his first nurse, Gloria Brown, since sometime in 2005. Husband has been dilatory in producing documents and records concerning his assets and liabilities and has been guilty of dissipation of assets in the support of his friend, Gloria Brown, and her son.

The unrefuted testimony of Wife acknowledges that the Husband has violated the mandatory injunction required in all divorce actions by dissipating assets. Husband has closed various accounts without permission of the Court, including credit cards, and has ignored the ordinary meaning of the mandatory injunction, all to the detriment of the Wife.

The Court specifically finds the following dissipation of assets by the Husband: \$20,000.00 from the parties' joint First Tennessee account, ending numbers 554; Husband closed SunTrust account, ending numbers 835, with a balance of \$27,304.87; closed parties' joint SunTrust account, ending numbers 607, with a balance of \$2,305.06; closed joint SunTrust account, ending numbers 54650, balance \$678.34; cancelled Wife's First Marriott credit card and American Express credit card; has changed Wife's health insurance deductible from [a] \$250.00 deductible to a \$5,000.00; terminated Wife's cell phone coverage; received income from Community Trust & Bank in the amount of \$65,755.00 without disclosure to Wife; Husband has hired his girlfriend for a yearly salary of \$55,000.00

plus benefits; opened a new AmSouth account, ending numbers 117; has bought personal items for Gloria Brown and her son; provided living expenses for himself and his girlfriend; failed to disclose an AmSouth account, ending number 095 and failed to produce documentation regarding same; Husband received various dividend checks without disclosing same and cashing of same.

It is further found by the Court that the Husband is in willful contempt of this Court's orders regarding the above documented incidents for which punishment shall be withheld upon faithful compliance with future orders of this Court.

The Court further finds that the Wife is entitled to periodic alimony based upon the following factors ... in T.C.A. § 36-5-101:

- 1) The relative earning capacity, needs, obligations and financial resources of each party ...;
- 2) The relative education and training of each party ...;
- 3) The duration of the marriage ...;
- 4) Standard of living of the parties established during the marriage; and such other factors including tax consequences to each party.

As to the medical practice of the Husband, the Court concludes that Husband's unrefuted testimony to [Wife] that his COG interest is \$450,000 plus an additional \$50,000.00 in increased funds generated by the MRI machine. Given the above stated Findings of Fact and based upon all the proof at trial the Court makes the following conclusions of law....

Wife is entitled to periodic alimony in the amount of \$10,000 per month based upon Findings of Fact. The Court expressly accepts and adopts the written agreement entered into between the parties resulting in the disposition of substantial property issues.

The Trial Court then proceeded to distribute the remaining items of marital property which the parties had been unable to agree on how to distribute. The end result, when considering all of the marital property, including the property that the parties agreed on how to distribute, was an overall award to each party in the amount of \$2,953,657. The award to Wife included lot 111 in Wyoming. The Trial Court also ordered each party to pay his or her own attorney fees, but awarded Wife discretionary costs in the amount of \$3,769.34.

Husband appeals claiming: (1) the Trial Court erred when it distributed the funds in his 401k account because the amount ordered to be distributed from that account exceeds the funds actually in that account; (2) the Trial Court erred by overvaluing Husband's interest in Chattanooga Orthopedic Group, P.C.; and (3) the Trial Court erred when it awarded Wife lot 111 in Wyoming.

Wife urges this Court to affirm the Trial Court's determination with respect to the three issue raised by Husband.

Wife raises three additional issues. First, Wife claims the Trial Court erred by not awarding her a credit in the amount of the assets dissipated by Husband. Second, Wife claims the Trial Court should have ordered Husband to reimburse Wife for funds she spent on "household, automobile, medical and travel expenses." Finally, Wife claims that the Trial Court erred when it failed to award her attorney fees, and she further requests an award of attorney fees incurred on appeal.

Discussion

The factual findings of the Trial Court are accorded a presumption of correctness, and we will not overturn those factual findings unless the evidence preponderates against them. *See* Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). With respect to legal issues, our review is conducted "under a pure de novo standard of review, according no deference to the conclusions of law made by the lower courts." *Southern Constructors, Inc. v. Loudon County Bd. Of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

Many of the issues on appeal surround the Trial Court's distribution of marital property. Our Supreme Court recently discussed the standard of review to be used when dealing with issues regarding the distribution of marital property as follows:

This Court gives great weight to the decisions of the trial court in dividing marital assets and "we are disinclined to disturb the trial court's decision unless the distribution lacks proper evidentiary support or results in some error of law or misapplication of statutory requirements and procedures." *Herrera v. Herrera*, 944 S.W.2d 379, 389 (Tenn. Ct. App. 1996). As such, when dealing with the trial court's findings of fact, we review the record de novo with a presumption of correctness, and we must honor those findings unless there is evidence which preponderates to the contrary. Tenn. R. App. P. 13(d); *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993). Because trial courts are in a far better position than this Court to observe the demeanor of the witnesses, the weight, faith, and credit to be given witnesses' testimony lies in the first instance with the trial court. *Roberts v. Roberts*, 827 S.W.2d 788, 795 (Tenn. Ct. App. 1991). Consequently, where issues of credibility and weight of testimony are involved, this Court will accord considerable deference to the trial court's factual findings. *In re M.L.P.*, 228 S.W.3d 139, 143 (Tenn. Ct. App. 2007) (citing *Seals v. England/Corsair Upholstery Mfg. Co.*, 984 S.W.2d 912, 915 (Tenn. 1999)). The trial court's conclusions of law, however, are accorded no presumption of correctness. *Langschmidt v. Langschmidt*, 81 S.W.3d 741, 744-45 (Tenn. 2002).

Keyt v. Keyt, 244 S.W.3d 321, 327 (Tenn. 2007).

Courts must look to Tenn. Code Ann. § 36-4-121(c) (2005) when determining how to distribute property in a divorce. According to the statute:

(c) In making equitable division of marital property, the court shall consider all relevant factors including:

(1) The duration of the marriage;

(2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;

(3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;

(4) The relative ability of each party for future acquisitions of capital assets and income;

(5) The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;

(6) The value of the separate property of each party;

(7) The estate of each party at the time of the marriage;

(8) The economic circumstances of each party at the time the division of property is to become effective;

(9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;

(10) The amount of social security benefits available to each spouse; and

(11) Such other factors as are necessary to consider the equities between the parties....

Tenn. Code Ann. § 36-4-121(c) (2005).

A trial court has wide discretion in dividing the interest of the parties in marital property. See *Barnhill v. Barnhill*, 826 S.W.2d 443, 449 (Tenn. Ct. App. 1991). As noted by this Court in *King v. King*, when dividing marital property:

The trial court's goal in every divorce case is to divide the parties' marital estate in a just and equitable manner. The division of the estate is not rendered inequitable simply because it is not mathematically equal, *Cohen v. Cohen*, 937 S.W.2d 823, 832 (Tenn. 1996); *Ellis v. Ellis*, 748 S.W.2d 424, 427 (Tenn. 1988), or because each party did not receive a share of every item of marital property. *Brown v. Brown*, 913 S.W.2d [163] at 168.... In the final analysis, the justness of a particular division of the marital property and allocation of marital debt depends on its final results. See *Thompson v. Thompson*, 797 S.W.2d 599, 604 (Tenn. App. 1990).

King v. King, 986 S.W.2d 216, 219 (Tenn. Ct. App. 1998) (quoting *Roseberry v. Roseberry*, No. 03A01-9706-CH-00237, 1998 WL 47944, at *4-5 (Tenn. Ct. App. Feb. 9, 1998), *no appl. perm. appeal filed*).

The first issue we address is Husband's claim that the amount in his 401k that was distributed by the Trial Court actually exceeded what was contained in that account. When the property distribution was complete, Husband was awarded the majority of the parties' real property. The disproportionate real property distribution then was offset by Wife receiving a substantially greater interest in Husband's 401k account. By awarding Wife such a significant interest in Husband's 401k, the Trial Court was able to achieve an overall property distribution that was mathematically equal. As noted above, a trial court must distribute property in a manner that is equitable, which may or may not result in a property division that is mathematically equal. In the present case, after considering the pertinent factors set forth in Tenn. Code Ann. § 36-4-121(c), the Trial Court determined that an equal division of marital property was equitable under the circumstances of this case. The facts do not preponderate against this determination.

At trial, Husband submitted documentation showing that the balance in his 401k account was \$2,966,739.35. This amount is not in dispute given that the parties stipulated at trial that the value of Husband's 401k account was \$2,966,739.35. The Trial Court in dividing Husband's retirement account awarded \$1,225,899 to Husband and \$2,467,282 to Wife, which totals \$3,693,181. Thus, Husband correctly argues that the Trial Court's distribution of the 401k exceeded the funds contained in that account by \$726,441.65.

Wife does not argue on appeal that the Trial Court's award did not exceed the funds contained in the 401k account. Rather, Wife argues that Husband did not comply with the Trial Court's local rules and timely object to entry of a qualified domestic relations order. The record establishes that Husband filed a timely post-trial motion to alter or amend the final judgment and, when that motion was denied, timely filed a notice of appeal. We conclude that Husband's challenge to the Trial Court's award with respect to the 401k is timely.

Because the Trial Court divided Husband's 401k incorrectly by inadvertently distributing \$726,441.65 more from that account than was in the account, we must modify the Trial Court's judgment. In order to be consistent with the Trial Court's overall determination, which we have affirmed, that an equal distribution of marital assets is equitable under the facts of this case, we must reduce the amount each party was awarded from the 401k by an equal amount, i.e., \$363,220.82. Accordingly, the Trial Court's judgment is modified so that Husband is hereby awarded a total interest in his 401k of \$862,678.17, and Wife is awarded a total interest in Husband's 401k of \$2,104,061.18. These two amounts equal the stipulated value of Husband's 401k account of \$2,966,739.35 when the case was tried. On remand, the Trial Court is instructed to enter a new Qualified Domestic Relations Order consistent with the foregoing and to take other action as necessary, if any, to accomplish this change.

The next issue is Husband's claim that the Trial Court erred by overvaluing the amount of his interest in Chattanooga Orthopedic Group ("COG"). There was little evidence presented at trial regarding the value of Husband's interest in COG. Husband testified at trial that, in his opinion, the value of his interest in COG and his interest in the Center for Sports Medicine had a combined value of \$78,000. Husband was unable to assign a value to his interest in COG standing alone. Husband based the \$78,000 value on the amount he would be entitled to receive pursuant to his employment agreement with COG should Husband leave that practice. Wife testified at trial that Husband had told her that his interest in COG was worth \$450,000 before COG purchased a MRI machine, and that the purchase of the MRI machine increased the value of his interest further.

We do not know why the Trial Court referred to Wife's testimony as to the value of COG as "unrefuted" because Husband's testimony contradicts that of Wife on this issue. Having said that, we are confident that the Trial Court did indeed consider Husband's testimony. During the trial when counsel for the parties were arguing over the value of COG, the Trial Court stated "I've heard the proof. I'll deal with it at the end of trial."

In *Owens v. Owens*, 241 S.W.3d 478 (Tenn. Ct. App. 2007), this Court discussed values placed on marital property by a trial court as follows:

After a trial court has classified the parties' property as either marital or separate, it should place a reasonable value on each piece of property subject to division. *Davidson v. Davidson*, No. M2003-01839-COA-R3-CV, 2005 WL 2860270, at * 2 (Tenn. Ct. App. Oct. 31, 2005) (No Tenn. R. App. P. 11 application filed). *Edmisten v. Edmisten*, No. M2001-00081-COA-R3-CV, 2003 WL 21077990, at *11 (Tenn. Ct. App. May 13, 2003) (No Tenn. R. App. P. 11 application filed). The parties themselves must come forward with competent valuation evidence. *Kinard v. Kinard*, 986 S.W.2d 220, 231 (Tenn. Ct. App. 1998); *Wallace v. Wallace*, 733 S.W.2d 102, 107 (Tenn. Ct. App. 1987). When valuation evidence is conflicting, the court may place a value on the property that is within the range of the values represented by all the relevant valuation evidence. *Watters v. Watters*, 959 S.W.2d 585, 589 (Tenn. Ct. App. 1997); *Brock v. Brock*,

941 S.W.2d 896, 902 (Tenn. Ct. App. 1996). Decisions regarding the value of marital property are questions of fact. *Kinard v. Kinard*, 986 S.W.2d at 231. Accordingly, they are entitled to great weight on appeal and will not be second-guessed unless they are not supported by a preponderance of the evidence. *Smith v. Smith*, 93 S.W.3d at 875; *Ray v. Ray*, 916 S.W.2d 469, 470 (Tenn. Ct. App. 1995).

Owens, 241 S.W.3d at 486.

Regardless of whether the Trial Court incorrectly characterized Wife's testimony as being unrefuted, there certainly was evidence presented at trial supporting the value found by the Trial Court as to Husband's interest in COG. The value placed on COG by the Trial Court was "within the range of the values represented by all the relevant valuation evidence." *Owens*, 241 S.W.3d at 486. The value Husband assigned at trial to his interest in COG was based on what he would receive should he leave COG and the Center for Sports Medicine and practice medicine elsewhere. While this testimony is certainly some evidence of the value of Husband's interest in COG, it is by no means conclusive. For example, if Husband's employment agreement provided that he would receive nothing if he left COG and practiced elsewhere, it would not be credible to argue that the current value of his interest in COG was zero. Contradicting Husband's trial valuation of his interest in COG, was Wife's testimony as to what Husband earlier had told her his interest in COG was worth. Based on the foregoing, we are unable to conclude that the facts presented at trial preponderate against the Trial Court's finding with respect to the value of Husband's interest in COG.

Husband's final issue is his claim that the Trial Court erred when it awarded Wife lot 111 in Wyoming, which the Trial Court valued at \$11,000. As stated previously, prior to trial, the parties were able to agree on how to distribute much of the marital property. This agreement was negotiated late into the night with considerable assistance from the parties' two sons. In any event, the parties agreed for Husband to be awarded the house on Soda Springs Road in Dubois, Wyoming. Husband claims it was his understanding that this agreement included lot 111, which is across the street from the house on Soda Springs Road. Wife claims that the agreement did not encompass the empty lot 111. The parties' agreement as adopted by the Trial Court clearly excludes Lot 111.

Although the Trial Court eventually awarded Wife lot 111, the Trial Court understandably was concerned about awarding Wife this property located across the street from a vacation home the parties agreed should be awarded to Husband. Although we share this concern, we are unable to conclude either that the facts preponderate against the Trial Court's conclusion that the parties pre-trial agreement did not encompass Lot 111, or that the Trial Court committed reversible error when it awarded Lot 111 to Wife. Therefore, we reluctantly affirm the judgment of the Trial Court on this issue.

As mentioned previously, Wife also raises several issues on appeal. Her first issue is a claim that the Trial Court erred by not giving her a credit for the amount of assets dissipated by Husband. Initially, we note that Wife argues that she is entitled to credit for the full amount of the dissipated assets, which essentially ignores the fact that Husband also had an interest in these assets.

At least one of the larger dissipated assets was considered by the Trial Court in its final judgment. Specifically, the Trial Court awarded Husband an account with Community Trust and valued that account at \$38,353, even though only \$11,000 remained in that account at the time of trial.² In addition, the parties had agreed that Husband would be reimbursed from the proceeds of the sale of the marital residence in an amount equal to what he spent maintaining the marital residence and getting the residence ready for sale. Due to Husband's dissipation of marital assets, the Trial Court determined that he was not entitled to reimbursement for these expenses. Wife cites us to nothing in the record showing how much Husband would have been reimbursed had it not been for his dissipation of marital assets. For all this Court knows, it could have been an amount sufficient to significantly close or even eliminate any gap on Wife's claim for a credit on dissipated assets. What we do know from the record is that the Trial Court did consider Husband's dissipation of marital assets in arriving at its decision not to give Husband any reimbursement for the maintenance of the home.

One of the factors for a trial court to consider when distributing marital property is the "contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property." Tenn. Code Ann. 36-4-121(c)(5). The evidence fully supports a conclusion that the Trial Court adequately and fairly considered Husband's dissipation of marital assets when rendering its final judgment. The judgment of the Trial Court on this issue is, therefore, affirmed.

Wife's next issue is her claim that the Trial Court should have required Husband to pay for certain household, automobile and similar expenses she incurred while the divorce was pending. Early on in the proceedings, the Trial Court ordered Husband to continue paying "any and all household expenses which he had temporarily been paying." Husband also was ordered to pay Wife an additional \$2,500 per month. Wife admitted at trial that she withdrew \$10,000 from a marital bank account which she used for living expenses.³ There is no dispute that Husband did in fact pay many of Wife's temporary expenses as ordered by the Trial Court. Wife has failed to explain why what Husband did pay, coupled with the \$2,500 per month and the \$10,000 she withdrew from the bank was insufficient to meet her needs as ordered by the Trial Court. The judgment of the Trial Court with respect to this issue is, therefore, affirmed.

The final issue is Wife's claim that the Trial Court erred when it denied her request for attorney fees. It is well settled that a trial court's decision to award attorney fees in divorce cases is considered an award of alimony. This Court will not interfere with the trial court's ruling on attorney fees unless it is shown that "manifest injustice would be done if the award is allowed to

² With regard to this asset, Husband was deemed to have received \$27,353 more than the \$11,000 actually in the account. Because the marital property was divided equally, Wife, therefore, received an equal amount of \$27,353 in marital assets. Assuming Husband was nevertheless entitled to 50% of the assets that he dissipated, the Trial Court's ruling had the effect of compensating Wife for one-half of \$54,706 in total dissipated assets.

³ Although Wife claims Husband's withdrawal of money was dissipation of assets, she fails to explain why her withdrawal of \$10,000 also should not be considered dissipation of assets. We also note that Wife acknowledged at trial that both she and Husband withdrew money to pay living expenses.

stand.” *Freeman v. Freeman*, 147 S.W.3d 234, 244 (Tenn. Ct. App. 2003)(quoting *Long v. Long*, 957 S.W.2d 825, 829 (Tenn. Ct. App. 1997)). As this Court further explained in *Koja v. Koja*:

“[Awards of attorneys’ fees as alimony in solido] are appropriate, however, only when the spouse seeking them lacks sufficient funds to pay his or her own legal expenses,” *Brown v. Brown*, 913 S.W.2d 163, 170 (Tenn. Ct. App. 1994) (citing *Houghland v. Houghland*, 844 S.W.2d 619, 623 (Tenn. Ct. App. 1992), and *Ingram v. Ingram*, 721 S.W.2d 262, 264 (Tenn. Ct. App. 1986)), or would be required to “deplete his or her resources in order to pay these expenses.” *Id.* (citing *Harwell v. Harwell*, 612 S.W.2d 182, 185 (Tenn. Ct. App. 1980)). Where one party has been awarded additional funds for maintenance and support and such funds are intended to provide the party with a source of future income, the party need not be required to pay legal expenses by using assets that will provide for future income. *Batson v. Batson*, 769 S.W.2d 849, 862 (Tenn. Ct. App. 1988).

Koja v. Koja, 42 S.W.3d 94, 98 (Tenn. Ct. App. 2000).

Both parties were awarded substantial assets, including substantial cash assets. Accordingly, we cannot conclude that the Trial Court abused its discretion when it ordered each party to pay his or her own attorney fees. It is for this reason that we also decline Wife’s request for an award of attorney fees incurred on appeal.⁴

Conclusion

The judgment of the Trial Court is affirmed as modified. This cause is remanded to the Trial Court for further proceedings consistent with this Opinion and for collection of the costs below. Costs on appeal are taxed one-half to the Appellant, Alan C. Odom and his surety, and one-half to the Appellee Janis B. Odom.

D. MICHAEL SWINEY, JUDGE

⁴ While this appeal was pending, Wife filed a motion requesting this Court consider certain post-judgment facts. That motion is denied.