

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
April 14, 2009 Session

DONALD R. BIRD v. PAMELA STUCKY BIRD

**Appeal from the Circuit Court for Bradley County
No. V-04-1054 John B. Hagler, Judge**

No. E2008-00269-COA-R3-CV - FILED AUGUST 27, 2009

In this divorce case, the trial court dissolved the brief marriage of Donald R. Bird (“Husband”) and Pamela Stucky Bird (“Wife”) on stipulated grounds. Following a bench trial, the court awarded Wife a judgment against Husband for alimony in solido, representing the value of certain liquidated assets she brought to the marriage and the balance of loans she made to Husband. In addition, Wife was awarded transitional alimony, a vehicle, and her attorney fees. Husband appeals each of these determinations. We affirm the judgment.

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

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and JOHN W. MCCLARTY, J., joined.

Eric S. Armstrong, Cleveland, Tennessee, for the appellant, Donald R. Bird.

Barrett T. Painter, Cleveland, Tennessee, for the appellee, Pamela Stucky Bird.

OPINION

I.

The parties were married on April 27, 2002. It was Husband’s fourth marriage and Wife’s third. Before marrying Husband, Wife had been a widow and single mother for the past 12 years after her former husband was killed by a drunk driver when their son, Philip, was six weeks old.

Husband filed for divorce on December 21, 2004. A bench trial was held in September 2005. At that time, Husband was 61, Wife was 47, and Philip was 15.

When the parties married, Wife owned a home in Orlando, Florida, where she and Philip lived. After the parties decided to marry, Wife put her home up for sale and, a few months after the wedding, she and Philip moved to Tennessee to join Husband in his home in Cleveland, Tennessee. Husband had owned his home on Edgewood Circle for six years, having received it in a previous marital dissolution agreement. Its tax appraised value was \$200,000 at the time of the marriage and Husband estimated having \$27,000 equity in it at the time of the divorce. His monthly house payment was \$1,334. Wife made no claim to any interest in the home. In addition, Husband owned property on Waterlevel Highway where his business was located and his business equipment. Wife brought with her all of the furnishings and personal belongings she and her son owned and used them to furnish Husband's home. As a result of Husband's most recent divorce in November 2001, Husband had sparse furnishings in the home before Wife arrived.

Husband has a master's degree and was the self-employed owner of a fence company during the marriage. He earned \$80,400 in 2001 and \$66,700 in 2004. Husband estimated his net worth was \$85,000 at the beginning of the marriage and \$25,000 at the end. He agreed, however, that when the marriage ended, he held the assets that he started with, including his home, his business, and his motor home, plus some acquired during the marriage – a 2004 Suburban and a boat.

Wife was not working outside the home when the parties were married, but continued to home-school Philip in 2002 and 2003; he entered public school for the first time in 2004. In the years before the marriage, Wife and Philip each received social security survivor benefits of \$956 a month. Wife supplemented their benefits by working, at different times, as a caterer and for several home-based businesses including "Pampered Chef," where she sold kitchen products, and "Creative Memories," a company that offered scrapbooking supplies and services. She estimated she earned about \$1,500 a month from these ventures until 2001. That year, Wife was involved in an automobile accident and sustained an injury to her hand that required hand surgery. She is still receiving rehabilitation treatments. She said that, with the limited ability to use her left arm, she was unable to work leading up to the marriage in 2002. In addition, Wife had been receiving about \$6,000 a year for speaking engagements on behalf of Mothers Against Drunk Drivers.

As a result of the marriage, Wife's social security benefit ceased. According to Wife, she was approached during the marriage about working in a catering business, but Husband strenuously objected to her taking a job, saying "absolutely not," that it would not be fair to him. Husband testified to the contrary. He claimed that he encouraged her to look into teaching or work for his business, but that she "wouldn't go to work." During the marriage, Wife's only income was from her son's continued social security survivor benefit and a weekly \$300 allowance she received from Husband for groceries and incidentals. Husband also provided Wife with gas credit cards to fuel her vehicle.

Wife had a "very bad" hysterectomy in the Fall of 2002. In January 2004, she underwent a follow-up surgery for the "severe problems" that resulted from the earlier surgery and experienced a difficult recovery. Husband did not testify to any health issues of his own.

Husband had reviewed the explanation of benefits statements and calculated that he had paid \$8,000 for Wife and \$723 for Philip in medical bills not covered by their health insurance. In addition, he paid increased premiums for family coverage.

From her personal injury settlement, Wife itemized several large payments she had made including repayment of a pre-marital loan to her mother (\$3,200); purchase of a personal computer (\$2,500); repayment of social security benefits she was no longer entitled to receive as a result of the marriage (\$4,600); and the first loan to Husband (\$8,000). In addition, Wife spent a total of \$7,000 on gifts and entertaining Husband's family during Christmas of 2002 and 2003. Husband said that he had advised Wife throughout the marriage to save her son's social security checks, the proceeds from the sale of her house, and her settlement monies "for a rainy day" because he was willing to pay all their expenses. In addition to insurance and basic household expenses, Husband provided things for Philip including music lessons, a computer, boxing classes, and a riding mower. Accounting for the money he had spent, Husband did not believe he owed Wife anything. Instead, he believed that Wife owed him what "it cost [him] to keep her up . . ." during the marriage. Wife said she told Husband in early December 2004 that her money was gone and he filed for divorce on December 21.

In October 2002, Wife loaned Husband \$8,000 as an infusion of capital for his business; at the time of the hearing he had repaid \$6,000 of this amount. In November 2002, Wife wrote Husband another check for \$7,700. Although the payment is undisputed, its purpose was hotly contested. The proof showed that Husband owed \$14,000 in back taxes to the IRS when the parties married, on which he made a partial payment of \$3,600 in June 2002. According to Wife, she made the \$7,700 loan to Husband because concern over his tax debt and penalties "consumed" him. Wife explained that she wrote the check to pay off Husband's IRS debt, but considered that \$4,000 was to repay Husband for the cost of the wedding she had wanted, thus leaving a \$3,700 loan balance. Wife thus explained that she loaned Husband a total of \$15,700, for his business and his tax debt, and, after deducting \$4,000 for the wedding costs, and the \$6,000 Husband had already repaid, Husband owed a balance of \$5,700. Husband disputed Wife's testimony, saying that her wedding ring "wasn't exactly a gift." Husband said that Wife had agreed to repay him for the wedding as well as her wedding ring and the \$7,700 check covered both these costs. Wife disputed that she agreed to repay Husband for her ring. Husband introduced a credit card statement which reflected that the ring was purchased on a credit card on April 9, 2002, for \$3,420.62.

Five days after the marriage, Wife's checking account had a balance of \$1,681. In July 2002, she deposited the net proceeds from the sale of her Florida home (\$32,025.70); in November 2002, she deposited one of two checks from her personal injury settlement (32,934.66); followed by the second check received in May 2003 (\$6,240.70). As can be seen, Wife deposited about \$71,000 to her account during the marriage. By August 21, 2003, her remaining balance was \$5,857. Husband attributed the dissipation of Wife's money to what he considered as needless and extravagant spending sprees and trips to Florida and other locations to visit her family. In addition, Husband said that Wife "ate out a lot." Wife agreed that the money was spent rather quickly, but said it mainly went for food, clothing and other items for the family and purchases for their home as she worked at "building a home . . . [and] a life with [her] husband."

The parties' "master asset list" reflected no marital property and only 2 disputed assets that existed at the time of the trial – a 2004 Suburban vehicle and a 1992 Bayliner boat. Wife brought to the marriage a 2001 Grand Marquis and was paying the lien of \$513 a month. Husband drove a 2001 Suburban he leased just before the marriage. Husband also owned a motor home. At some point, Wife's car was traded to Husband's brother in exchange for a bigger motor home the brother owned. Wife said on February 14, 2004, she was recovering from surgery when Husband came home and said, "Get out of bed. I want to show you your Valentine's Day present." Wife and son testified that Husband took them outside and showed them her present, a 2004 Suburban. Wife said she drove the vehicle from then until the marriage ended. Husband denied that the Suburban was "an official gift," but said he gave it to her "just to use" and never registered it in her name. After purchasing the vehicle, Husband increased Wife's weekly allowance to \$500 to cover the \$761 monthly payment that was automatically drafted from her checking account. When Husband filed for divorce, Wife awoke one day to find that Husband had retrieved the Suburban and his brother came and returned the Marquis to her. Husband had been driving the Suburban since February 2005. Its agreed value was \$29,000, and the lien was \$38,000 at the time of the trial.

The second disputed marital asset was a boat. The agreed value at the trial was \$1,200. In his proposed resolution filed shortly after the trial, Husband asserted that the parties had settled the dispute over the boat whereby Husband purchased Wife's half-interest in the boat for \$600.00.

At the time of the trial, Wife was unable to meet her monthly expenses. Wife said she had applied to be a substitute teacher and had started another home-based sales business, but expected, based on her past experience, that it would take several months for her to begin generating an income. She estimated that she and Philip would each receive \$984.00 per month when her survivor benefits resumed after the divorce.

As relevant to this appeal, the trial court specifically ordered the division of the marital estate as follows:

[Wife] has a judgment against [Husband] in the amount of \$48,379.35 for the equity in her Florida home and the balance on the loan owed by [Husband] to [Wife] in the amount of \$5,700.00 as alimony in solido.

[Husband] has 30 days from entry of this Order upon which to pay the judgment amount for the equity in the Florida home and the balance on the loan. If [Husband] cannot pay the judgment of \$54,527.51 within 30 days . . . the judgment amount shall be reduced to periodic alimony at 10% over a four (4) year period, enforceable as support, in the amount of \$1,382.96 per month beginning the 31st day after entry of this Order and due the same day of each month thereafter for forty eight (48) months total.

[Wife] is awarded transitional alimony . . . of \$500.00 per month for a period of one (1) year, beginning November 22, 2006.

[Wife] is awarded her attorney's fees. . . .

[Wife] may have her choice of the 2004 Chevrolet Suburban (white Suburban) upon which she shall assume all indebtedness on the Suburban and hold [Husband] harmless from payment of the same, or she may choose the Mercury. If [Wife] takes the Mercury, [Husband] shall be awarded the Suburban and shall assume the debt, with [Husband] holding [Wife] harmless from payment of the same.

In addition, Husband was awarded all right, title, and interest in the marital home, together with the outstanding indebtedness, and Wife was divested of any interest therein. Lastly, the trial court awarded each party the remaining property in the party's possession and taxed costs to Husband.

II.

As set forth in his brief, Husband's appeal presents questions that we address in the following order:

1. Whether the trial court erred in awarding the Suburban vehicle to [Wife].
2. Whether the trial court erred in ordering [Husband] to pay to [Wife] . . . the claimed equity in her home plus \$5,700.00 as alimony in solido.
3. Whether the trial court should have awarded [Wife] rehabilitative alimony.
4. Whether the trial court erred in awarding [Wife] attorney fees.¹

III.

Our review of the trial court's findings of fact is *de novo* upon the record of the proceedings below, accompanied by a presumption of correctness, a presumption we must honor unless the preponderance of the evidence is against those findings. Tenn. R. App. P. 13(d); *Wright v. City of Knoxville*, 898 S.W.2d 177, 181 (Tenn. 1995); *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993). There is no presumption of correctness as to the trial court's conclusions of law. *Kendrick v. Shoemaker*, 90 S.W.3d 566, 569 (Tenn. 2002); *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996). On discretionary matters, the

¹ In responding to this issue, Wife requests that the case be remanded to the trial court for an award of her attorney fees in prosecuting this appeal. Because Wife did not raise this request in a section of the brief stating her issues on appeal, *see* Tenn. R. App. P. 27(b), we decline to address it.

trial court can only be found to have abused its discretion when it “applies an incorrect legal standard, or reaches a decision which is against logic or reasoning that causes an injustice to the party complaining.” *State v. Shirley*, 6 S.W.3d 243, 247 (Tenn. 1999) (quoting *State v. Shuck*, 953 S.W.2d 662, 669 (Tenn. 1997)).

IV.

Husband contends the trial court erred in “awarding the Suburban vehicle to [Wife].” Both parties agree that it is not clear whether the trial court found that the vehicle was a gift to Wife. As Husband sees it, the Suburban was either his separate property or marital property that should have been awarded to him because he was responsible for the lien on the vehicle and it had a negative net worth at the time of the divorce.

As noted, the trial court permitted Wife to choose either the Suburban, together with its lien, or the Mercury. The undisputed testimony at trial was that the vehicle was bought during the marriage and given to Wife to drive. Whether the vehicle was an outright “gift” was disputed. Implicit in the trial court’s decision that Wife could have the Suburban only if she assumed responsibility for the payments is a finding that the vehicle was not a gift to Wife, but marital property subject to equitable division. The evidence does not preponderate against this finding. “Generally speaking, property that is acquired during the marriage by either or both spouses and still owned at the time of the divorce is classified as marital property subject to equitable division.” *Oakes v. Oakes*, 235 S.W.3d 152, 158 (Tenn. Ct. App. 2007)(citing Tenn. Code Ann. § 36-4-121(b)(1)(2005)).

The question becomes whether the trial court abused its discretion in awarding the vehicle, as marital property, to Wife. The proof showed that Wife drove the vehicle from the time it was purchased until Husband retrieved it from her after he initiated the divorce proceedings. At the same time, the Mercury, Wife’s separate property, was traded to Husband’s brother and driven by him during the marriage before being returned to her. In dividing marital property, courts are required to allocate interests in a manner consistent with the relevant statutory factors set forth in Tenn. Code Ann. § 36-4-121(c).² In the present case, the Suburban

² Tenn. Code Ann. § 36-4-121(c) provides as follows:

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;

was the only marital asset for the court to distribute. In its ruling, the trial court noted that Wife was severely economically disadvantaged in the divorce and in fact had no remaining capital assets and a negative net worth at the time of the trial. The trial court has broad discretion in dividing marital property, and, accordingly, its judgment should be given great weight on appeal and presumed proper unless the evidence preponderates otherwise. *Batson v. Batson*, 769 S.W.2d 849, 859 (Tenn. Ct. App. 1988). The decision is not a mechanical one and is not rendered inequitable because it is not precisely equal, *Batson*, 769 S.W.2d at 859, or because both parties did not receive a share of each piece of property, *Thompson v. Thompson*, 797 S.W.2d 599, 604 (Tenn. Ct. App. 1990). The trial court did not abuse its discretion in awarding Wife the only marital asset, the Suburban, together with its related debt.

V.

Husband asserts that Wife was not entitled to spousal support of any kind. Husband contends that the trial court's ruling was based on erroneous findings regarding some facts and overlooking other pertinent facts altogether. Wife responds that the trial court properly restored her to her premarital financial condition and that Husband's claim of factual errors and omissions is without merit. We agree with Wife.

As a part of her proposed property distribution, Wife sought an award of the equity that existed in her Florida home at the time of the marriage (\$48,379.35) and the balance of the loans she had advanced to Husband (\$5,700). Wife also sought transitional alimony of \$500 a month for 1 year to give her "time to transition back to [being] a single mother."

Husband proposed that Wife "should receive nothing from [Husband] and the parties go their way." He contended that he spent over \$89,000 for the benefit of Wife and her son during the marriage. Husband contended that but for the marriage, Wife and her son would not have

(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.

received the benefits of these monies, in addition to having a rent-free place to live, complete with utilities, cable, phone service, and other allowances that Husband provided.

The trial court has broad discretion in fashioning an award of spousal support. *Aaron v. Aaron*, 909 S.W.2d at 410; *Anderton v. Anderton*, 988 S.W.2d 675, 682 (Tenn. Ct. App. 1998). Decisions regarding the propriety, nature, and amount of spousal support hinge upon the unique facts of each case and require a careful balancing of the relevant factors found at Tenn. Code Ann. § 36-5-121(i)(1)-(12).³ *Anderton*, 988 S.W.2d at 683 (citing the predecessor to § 36-5-121(i)).

In its memorandum opinion, the trial court elaborated on its ruling as follows:

³ Tenn. Code Ann. § 36-5-121(i) sets forth the following factors to be considered:

- (1) The relative earning capacity, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and all other sources;
- (2) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earnings capacity to a reasonable level;
- (3) The duration of the marriage;
- (4) The age and mental condition of each party;
- (5) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;
- (6) The extent to which it would be undesirable for a party to seek employment outside the home, because such party will be custodian of a minor child of the marriage;
- (7) The separate assets of each party, both real and personal, tangible and intangible;
- (8) The provisions made with regard to the marital property, as defined in § 36-4-121;
- (9) The standard of living of the parties established during the marriage;
- (10) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;
- (11) The relative fault of the parties, in cases where the court, in its discretion, deems it appropriate to do so; and
- (12) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

This divorce involves a short-term marriage . . . in which wife brought all her property and liquidated assets to Tennessee from Florida. The marriage had an ugly end with devastating economic and emotional impact for the wife and her son.

When [Wife] married [Husband] . . . , she had been a fourteen year widow . . . raising her son in Florida. She and her son received social security survivor benefits of approximately \$956.00 each [per month] and approximately \$1500.00 [per month] in her earned income. She had a furnished home with \$48,379.35 equity. She had a serious automobile accident prior to the marriage and, early in the marriage, brought in a net cash settlement of \$39,000. She sold her home in Florida and brought all her furnishings and \$32,000.00 net equity, after closing costs, to [Husband's] residence in Tennessee, which she says was deficient in furnishings because of his previous divorces. Apparently she brought no debt into the marriage except \$3,400 owed to her mother. By August 2003, her home equity was gone and by time of the divorce trial she had a negative net worth.

It is difficult to fully account for the complete diminution of the . . . \$71,000 which she brought into the marriage. However, some expenditures are eye-catching: She lent him \$11,700.00 during the first year of the marriage and also re-paid him for the wedding and ring costs. Of the loan, he has re-paid her \$6,000.00. She also had to re-pay social security \$4,600.00 for over-payments caused by her marital status. She also re-paid her mother \$3,400.00 and spent \$2,500.00 for a computer for her teen-age son. Most of the rest seems to have been spent on holidays (\$7,000.00 for two Christmases), trips to Florida and household expenses for which [Husband] also gave her \$300.00 per week.

* * *

[Wife], who is forty-nine with a 13th grade education, asks for the return of the full equity in her Florida home of \$48,379.35, the loan balance of \$5,700.00, her attorney fees, and \$500.00 per month for one year as transitional alimony. She also asks the court to declare a vehicle (the white Suburban) to be a marital gift and therefore her separate property. She makes no claim for her settlement proceeds or for any increase in the value of the marital home.

[Husband], a former Chief Deputy Sheriff and State Legislator, who owns a fence business and has a master's degree, sets forth . . .

. what he says [Wife] has cost him (\$89,327.00 not including household expenses) during the marriage.

[Husband] says she owes him \$89,327.00 to put him in the position he was in before the marriage; however, since this is not possible “she should receive nothing. . . .” He denies the Suburban was a gift. An examination of [Husband’s itemized list of payments he contended he made to Wife or for her benefit during the marriage] does not support [Husband’s] conclusion. First, he did not prove he paid for either the wedding or the honeymoon; if he did she re-paid him. Second, the ring was a gift before the marriage and he did not prove he paid for it. Third, he can’t claim the \$6,000.00 he re-paid her for a loan. Fourth, he can’t claim temporary alimony ordered by the Court and moving expenses which would have been ordered had he not agreed to pay them. The other expenses of gasoline, medicine, and household, are all ordinary expenses of marriage. It is noted that her insurance was cancelled way before the parties were divorced. More importantly, [Husband] was spending money from income while [Wife] was spending her capital assets.

Applying the statutory factors as interpreted by Batson v. Batson, 726 S.W.2d 849 (Tenn. App., 1988) in short-term marriage, it is surely clear that [Wife] is much more disadvantaged by the marriage, will have a harder time recovering, and presents an equitable proposal as contrasted to [Husband’s] “give her nothing” approach.

Therefore, [Wife’s] proposal is adopted. . . .

(Underlining in original.)

The evidence does not preponderate against the trial court’s decision to award Wife as alimony in solido \$54,527.51, the lump-sum amount representing the equity in the home she sold as a result of the marriage and the monies she advanced to Husband during the short-lived marriage. Most significantly, we reject Husband’s position that the trial court erroneously awarded Wife the equity in her home before it was sold rather than the amount she realized after paying closing costs and other fees at the time of the sale. Husband’s position misses the well-taken point Wife makes, and the trial court accepted, that Wife would still have her home in Florida had she not sold it after the marriage to live in Tennessee with Husband. When considering an award of spousal support, the “real need of the [disadvantaged] spouse seeking the support is the single most important factor. . . . [and next] the courts most often consider the ability of the obligor spouse to provide support.” *Aaron*, 909 S.W.2d at 410 (citation omitted). Moreover, “[i]f one spouse is economically disadvantaged compared to the other, the courts are generally inclined to provide some type of support.” *Batson*, 769 S.W.2d at 861.

In the present case, the trial court correctly found that Wife's financial position had seriously declined following the divorce. She was supporting herself and her son on social security benefits plus the temporary support Husband provided, but was actively seeking additional income sources. There was no showing, however, that even if Wife secured additional income, that she would be able to regain the equity in the home she sold when she entered into the marriage. Husband, on the other hand, was in possession of all the separate assets he owned at the time of the marriage plus a boat he acquired during the marriage, and he continued to earn a good income from his business. In short, there being no marital property to distribute save for one vehicle, the trial court fashioned a reasonable lump-sum alimony award in an effort to provide Wife some long-term support and return her, as far as possible, to her pre-marital financial condition. We observe that if Husband exercised the option to pay the award in monthly installments over 4 years, the monthly payments would be only slightly more than the grocery allowance he had provided Wife during the marriage. Considering the overall equities between the parties, we cannot conclude that there was an abuse of discretion in the trial court's decision to award Wife alimony in solido.

VI.

Next, Husband seeks credit for the \$6,000 in transitional alimony that he asserts he has paid to Wife as ordered. Husband essentially submits that Wife should not have been awarded such alimony because, he concludes, she never made any showing that she is unable to work and had "more than enough time" after the divorce proceedings to find employment and "transition to single life."

"Transitional alimony" is statutorily defined as "a sum of money payable by one (1) party to, or on behalf of, the other party for a determinate period of time." Tenn. Code Ann. § 36-5-121(g)(1). The statute provides that transitional alimony is to be awarded when the court finds that "rehabilitation is not necessary, but the economically disadvantaged spouse needs assistance to adjust to the economic consequences of a divorce. . . ." *See id.* In the present case, Wife is not in need of rehabilitation. She has experience with home-based businesses that in the past enabled her to supplement her social security benefits in an amount that allowed her to support herself and her son in a self-described "simple" life with a comfortable standard of living. Wife estimated that beginning from scratch, it would take her 6-8 months to begin seeing a profit from her new business. At the same time, she was awaiting a background check in reference to her application to become a substitute teacher. Given some time and limited support, Wife should be able to support herself and her son again and build a new home following the divorce. Again considering Wife's need and Husband's ability to pay, we conclude that the evidence does not preponderate against the trial court's finding that Wife should receive transitional alimony. The trial court did not err in ordering Husband to pay transitional alimony to Wife of \$500 per month for one year.

VII.

In a divorce case, an award of attorney's fees is treated as an award of alimony in solido. *Kinard v. Kinard*, 986 S.W.2d 220, 235 (Tenn. Ct. App. 1998); *Herrera v. Herrera*, 944 S.W.2d

379, 390 (Tenn. Ct. App. 1996). Husband reiterates his position that any award of alimony to Wife, including for her attorney fees, is inappropriate in the present case.

Trial courts have discretion to make awards to help a spouse defray his or her legal expenses in a divorce case. *Fox v. Fox*, 657 S.W.2d 747, 749 (Tenn. 1983); *Loyd v. Loyd*, 860 S.W.2d at 413. As with alimony, need is the critical factor to be considered by the court when deciding whether to award attorney's fees. *Herrera*, 944 S.W.2d at 390. Accordingly, these awards are appropriate, however, only when the spouse seeking them lacks sufficient funds to pay his or her own legal expenses, *Houghland v. Houghland*, 844 S.W.2d 619, 623 (Tenn. Ct. App. 1992), or would be required to deplete his or her resources in order to pay these expenses. *Harwell v. Harwell*, 612 S.W.2d 182, 185 (Tenn. Ct. App. 1980).

In the present case, Wife by the time of the trial had no income except for social security benefits, no remaining liquidated assets, and received no monetary award of marital property with which to pay her attorney fees. The trial court did not abuse its discretion in granting Wife's request for her reasonable attorney fees incurred in the divorce case. We note in passing that the court refused Wife's request for fees incurred by her in the defense of an assault charge brought by her adult stepdaughter arising out of an incident that occurred during the pendency of this divorce action; we agree with the court's decision to deny that part of Wife's claim for attorney's fees.

VIII.

The judgment of the trial court is affirmed. This case is remanded to the trial court, pursuant to applicable law, for enforcement of its judgment and for collection of costs assessed below. Costs on appeal are taxed against the appellant, Donald R. Bird.

CHARLES D. SUSANO, JR., JUDGE