IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 16, 2008 Session

BILLY JOHN INZER, SR. v. GAIL MARIE INZER

Appeal from the Circuit Court for Coffee County
No. 3073D L. Craig Johnson, Judge

No. M2008-00222-COA-R3-CV - Filed July 28, 2009

This is a divorce action concerning the termination of an eighteen-year marriage. Husband appeals the trial court's valuation of the couple's ownership interest in a limited liability company and Sonic Drive-In, the award of both rehabilitative alimony and alimony in futuro to Wife, and the distribution of Husband's cash withdrawal from a joint savings account after the couple's separation. Wife appeals the denial of attorney fees. At trial, both parties offered expert testimony regarding the value of the Sonic with Husband's expert valuing the interest at $33,201 and Wife's expert valuing the interest at $509,263. We find the Sonic operating agreement signed by Husband and Wife is dispositive on the valuation issue and binding on Wife. The case is remanded for determination of the value in accordance with the agreement. We also modify the judgment entered against Husband to account for child support payments made after the parties' child reached the age of majority. The judgment of the trial court is affirmed in all other respects.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed in Part, Modified in Part, Remanded

ANDY D. BENNETT, J., delivered the opinion of the court, in which RICHARD H. DINKINS, J., and WALTER KURTZ, SP. J., joined.

David W. Garrett, Nashville, Tennessee, for the appellant, Billy John Inzer, Sr.

Eric J. Burch, Manchester, Tennessee, for the appellee, Gail Marie Inzer.

OPINION

FACTUAL BACKGROUND

Billy John Inzer ("Husband") and Gail Marie Inzer ("Wife") were married in 1988. This was the second marriage for both. In 2005, Husband filed for divorce citing irreconcilable differences and inappropriate marital conduct as grounds for divorce. The Inzers had children from their previous marriages and together had one son, who reached the age of majority before the divorce decree was entered.

During their marriage the Inzers lived modestly, and both Husband and Wife worked outside the home earning hourly wages. Wife stayed home for two years after the birth of the son but returned to work outside the home in 1992. The Inzers were diligent in contributing to their savings and tax savings accounts and in tithing to the church. When Husband began working for the Sonic Drive-In in McMinnville, Tennessee in 1998, the Inzers' financial condition began to improve. The Inzers invested $18,500 in the Sonic franchise, which represented a 24% ownership interest in the company.[1] Husband was named the Working Manager-Member. As the working manager-member, Husband is responsible for running the day-to-day operations at Sonic and overseeing its employees. At the time the Inzers made the investment, Husband signed an Operating Agreement outlining the terms and conditions of his employment as a manager-member. Wife also signed an acknowledgment agreeing to the terms of the Operating Agreement, which specifically referenced buyout provisions governing the L.L.C.'s right to purchase Husband's interest.

In 2000, the Inzers decided Wife no longer needed to work outside the home. In the years that followed, Husband earned well over $100,000 in gross annual income but the Inzers retained their frugal lifestyle. A portion of this amount was rental income received from the Inzers' investment and 10% ownership interest in another Sonic property in McDonough, Georgia. Despite the added financial security and higher standard of living, there was tension in the marriage and the parties separated in 2005. After the separation, Husband withdrew a total of $49,000 in cash from two joint checking accounts, continued to pay the marital expenses, and moved into a rental house situated on approximately 60 acres of property that was owned by his boss, Johnny Young. Husband filed for divorce on July 29, 2005, and on November 21, 2005, was ordered to pay temporary child support of $1,236 per month and alimony pendente lite of $2,000 per month.

A divorce hearing did not take place until June 28, 2007. Husband testified that his monthly expenses totaled $6,866.33 plus $1,281.97 in marital expenses he continued to pay. The proof showed that Husband earned a B.S. degree in business and that Wife had a high school diploma. Husband had been diagnosed with bipolar mood disorder before the marriage, and despite a few struggles necessitating hospitalization, managed his condition with medication; both were generally in good health. Wife testified that she was enrolled full-time at Tennessee Technological Center to bring her office management skills up to date. Wife intended to become an administrative assistant earning approximately $10 to $12 per hour. Wife claimed monthly expenses of $3,963.60 which included her tuition and fees.

Johnny Young, Chief Manager-Member for the McMinnville Sonic, testified about the franchise Operating Agreement and Husband's managerial role. Mr. Young is a franchisee and owner of several Sonics throughout the southeast region. According to Mr. Young, Sonic requires its managers to have an ownership interest in the franchise they manage because it encourages them to "do a much better job." Mr. Young stated that because its working manager-member is required

---

[1] Husband was one of six members and/or managers of Sonic Drive-In, McMinnville, TN, L.L.C. Husband initially purchased a 25% interest which was later reduced by 1% as a result of a previously settled lawsuit; the interests of other Sonic Drive-In, McMinnville, TN, L.L.C. members were also reduced.

to run the restaurant, he cannot sell his interest without the approval of the remaining members. Mr. Young testified that Husband was a good worker and was good with the employees. He also explained that the Operating Agreement provided the L.L.C. members with the option to buy out or terminate Husband for any or no reason simply upon notice and a 51% vote of the remaining members. The trial court found Mr. Young's testimony particularly instructive when valuing the business interest.

The testimonial evidence further showed that Sonic requires its franchisees to retrofit the locations every seven years, meaning update and replace signage, at a cost of approximately $200,000 and that the McMinnville Sonic was required to retrofit its store within the next few years.

The hearing was continued until July 6, 2007, at which time the parties' experts testified regarding the valuation of the Inzers' interest in the McMinnville Sonic. Husband's expert, Clyde W. Bright, calculated the fair market value of the 24% equity interest in Sonic to be between $16,158 and $134,880 as of December 31, 2006. Mr. Bright computed the values on a minority, non-marketable interest basis since the Inzers' share of the franchise is not saleable on the open market. Wife's expert, Cameron L. Ray, valued the Inzers' minority business interest in the McMinnville Sonic at $509,263. Mr. Ray used the present value of future cash flows method, or discounted future benefits method, which considers an average of the Inzers' past income and projects future earnings to calculate the value.

The parties were declared divorced by order dated September 4, 2007. On October 15, 2007, the trial court entered its opinion summarizing its findings of fact and conclusions of law and its preliminary distribution of marital assets with the final order of divorce being entered on November 20, 2007. The trial court awarded Husband the interest in the McDonough, Georgia, Sonic, the 1998 Kawasaki 400 ATV, the 2007 Dodge pick-up truck, the Javelin boat, and the tax savings account at People's Bank and Trust. Husband was responsible for the American Express credit card debt and his debt owed to Johnny Young. Wife was awarded the marital residence, the 1998 Jeep Cherokee, the 1989 Honda Accord, the People's Bank and Trust checking and savings accounts, her individual accounts at AEDC Federal Credit Union, and the Roth IRAs in her name. The Inzers were to divide the Roth IRA and traditional IRA accounts equally. The parties do not challenge these divisions.

As for the largest marital asset, the trial court valued the Inzers' 24% interest in the McMinnville Sonic at $207,456 and awarded Wife half its value. The trial court ordered that Husband's $49,000 cash withdrawal made at the onset of the divorce be divided equally. The court found that $8,500 of the withdrawal was used to pay Wife's attorney fees and $1,250 was used to pay some of Wife's expenses. Wife's share was therefore reduced to $14,750 "to effect an equal division of these monies." Combining this division plus the Sonic interest, judgment was entered against Husband for $118,500.[2] Additionally, Husband was ordered to pay rehabilitative alimony of $3,000 per month for 24 months beginning November 1, 2007. Thereafter, Husband was ordered

[2] The total amount owed Wife for her share of the Sonic franchise ($103,728) plus her portion of the cash withdrawn from the Inzers' joint savings accounts ($14,750) actually equaled $118,478.

to pay $2,000 per month for alimony in futuro. Each party was responsible for his or her attorney fees and costs. Husband appeals the division of the Sonic interest and the cash withdrawal; Wife appeals the issue of attorney fees.

STANDARD OF REVIEW

We review the trial court's findings of fact de novo with a presumption of correctness unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Keyt v. Keyt*, 244 S.W.3d 321, 327 (Tenn. 2007). Questions of law are reviewed de novo with no presumption of correctness. *Langschmidt v. Langschmidt*, 81 S.W.3d 741, 745 (Tenn. 2002).

ANALYSIS

Value of the Sonic Franchise

I. Expert Testimony

We first address Husband's argument that the trial court erred in admitting Wife's expert testimony. Husband challenges the expert's qualifications, limited experience, and alleged errors in his report. We find this argument to be without merit. Trial courts have broad discretion on decisions regarding the admissibility or competency of expert testimony. *State v. Scott*, 275 S.W.3d 395, 404 (Tenn. 2009). A trial court abuses its discretion if it applies an incorrect legal standard or reaches a decision that is against logic or causes an injustice to the complaining party. *Freeman v. Blue Ridge Paper Prods., Inc.*, 229 S.W.3d 694, 708 (Tenn. Ct. App. 2007). As to the admissibility of expert testimony, "[a]n expert witness may testify if his or her 'scientific, technical, or other specialized knowledge will substantially assist the trier of fact to understand the evidence or to determine a fact in issue.'" *Scott*, 275 S.W.3d at 404 (quoting Tenn. R. Evid. 702).

Cameron Ray, Wife's expert, is a certified public accountant with twelve years' experience conducting valuations for restaurants, mostly fast-food chains, for purposes of estate tax returns. Admittedly, Mr. Ray was not certified in valuations, had not received specialized training in this field, and had not previously testified in a divorce action. He was nevertheless familiar with and employed accepted methods for valuing businesses and had testified as an expert witness in other cases. Mr. Ray valued the Inzer's interest at $509,263 but the trial court assigned it a significantly lesser value of $207,456.[3] Aside from accepting the value as a possible maximum to the range of values, there is nothing in the record to indicate what, if any, weight the trial court gave Mr. Ray's valuation. In fact, the trial court stated it relied on Mr. Young's testimony as "helpful and corroborative" in reaching its value. We find no abuse of discretion in admitting Mr. Ray's testimony.

---

[3] We note that Mr. Ray based his valuation on a $25,000 investment and 25% interest whereas the Inzers only invested $18,500 and held a 24% interest at the time of the divorce.

II. Valuation

Next, we address Husband's challenge to the trial court's valuation of the Sonic franchise. The value of marital property is a question of fact. *Owens v. Owens*, 241 S.W.3d 478, 486 (Tenn. Ct. App. 2007). As fact finder, the trial court is free to place a value on a marital asset that is within the range of the evidence presented. *Wallace v. Wallace*, 733 S.W.2d 102, 107 (Tenn. Ct. App. 1987). A trial court's valuation and distribution of a marital asset will therefore be given great weight on appeal and will not be overturned unless the evidence preponderates against those findings or they are inconsistent with the factors outlined in Tenn. Code Ann. § 36-4-121(c). *Owens*, 241 S.W.3d at 486; *Kinard v. Kinard*, 986 S.W.2d 220, 231 (Tenn. Ct. App. 1998).

The subject business is a limited liability corporation, a type of entity that is akin to a closely held corporation for purposes of valuing it as a marital asset. *Powell v. Powell*, 124 S.W.3d 100, 104 (Tenn. Ct. App. 2003). While there are several acceptable methods used to calculate the value of a corporation, it is particularly important in this case to note that "determining the value of a closely held corporation is not an exact science. . . ." *Wright v. Quillen*, 909 S.W.2d 804, 809 (Tenn. Ct. App. 1995) (citing *Wallace*, 733 S.W.2d at 107). Our Supreme Court recognized three of these methodologies: (1) the market value method, (2) the asset value method, and (3) the earnings value or capitalization of earnings method. *Blasingame v. Am. Materials, Inc.*, 654 S.W.2d 659, 666 (Tenn. 1983), *superceded on other grounds by* Tenn. Code Ann. § 47-8-102 (1992 Repl. & Supp. 1998). The *Blasingame* court explained the methods as follows:

> The market value method establishes the value of the share on the basis of the price for which a share is selling or could be sold to a willing buyer. This method is most reliable where there is an established market for the stock. The asset value method looks to the net assets of the corporation valued as a 'going concern,' each share having a pro rata value of the net assets. The net assets value depends on the real worth of the assets as determined by physical appraisals, accurate inventories, and realistic allowances for depreciation and obsolescence. The investment value method relates to the earning capacity of the corporation and involves an attempt to predict its future income based primarily on its previous earnings record. Dividends paid by the corporation are considered in its investment value. Generally, all the elements involved in these methods are considered in determining the value of the dissenter's stock.

Id. (quoting *Brown v. Hedahl's-Q B & R, Inc.*, 185 N.W.2d 249, 254 (N.D. 1971)).

The method or combination of methods used depends upon the unique circumstances of each corporation, for reasons discussed in *Wallace*:

> A public corporation's value is most reliably determined using the market value method. This method presumes that there is an established market for the corporation's stock which will enable the court to arrive at the price a willing buyer

> would pay for the stock. The stock in closely held corporations is rarely traded. Thus, it is improper to attempt to place a value of a closely held corporation using the method generally used to place a value on a public corporation.

Wallace, 733 S.W.2d at 107 (citations omitted). In determining a value for the Inzers' interest in the McMinnville Sonic, the trial court acknowledged that the market value method was not the proper way to value this business interest since it is akin to a closely held corporation and not a public corporation. Thus, it considered (1) the nature of the business; (2) the value and the earnings of this particular Sonic; and (3) the bonuses paid to its members. The trial court concluded that the restrictive covenant in the Operating Agreement did not affect the value of the Inzers' interest and that its lack of marketability should not be considered since this type of membership interest is not sold on the open market.

The Operating Agreement's buyout provision and restrictive covenant are found in Paragraph 24, entitled "Remaining Members Option to Purchase Billy John Inzer's Interest." It provides the remaining members of the LLC with a continuing option to purchase Husband's interest upon a 51% majority vote and notice to Husband. Subsection (c) provides for the calculation of the purchase price or redemption price should the remaining members exercise their option to purchase Husband's interest:

> (c) For the purposes of this Paragraph 24, the purchase price or redemption price of **Billy John Inzer's** value shall be determined by the regularly employed certified public accountant of the Company, such determination to be binding and conclusive upon the parties hereto. Such computation shall be made in accordance with the standards established by the American Institute of Certified Public Accountants; provided, however, said book value shall be subject to the following adjustments:
>
> > (1) No allowance of any kind shall be made for goodwill or similar intangible asset of the Company.
> >
> > (2) All accounts payable shall be taken at the face amount, less discounts deductible therefrom, and all accounts receivable shall be taken at the face amount, less discounts and a reasonable reserve for bad debts.
> >
> > (3) All machinery, fixtures, and equipment shall be computed at the depreciated value appearing on the books of the Company.
> >
> > (4) All inventory of merchandise and supplies shall be computed at cost or market value, whichever is lower.
> >
> > (5) All unpaid and accrued federal, state, city and municipal taxes, including but not limited to sales tax, payroll tax, unemployment insurance, excise tax, franchise tax, and income tax, shall be deducted as liabilities.

Mr. Bright and Mr. Ray were the only valuation experts to testify; no valuation testimony from a certified public accountant employed by Sonic was offered but the trial court stated it also relied on Mr. Young's testimony as a representative of Sonic.

Mr. Young testified that Husband's ability to sell his interest in the McMinnville Sonic was restricted in the sense that any potential buyer would have to assume Husband's same managerial role, undergo required Sonic training, and would have to be approved by Mr. Young and his partners. Paragraph 16 restricts the assignability of company interests and grants the members a first right of refusal to any other member's interest which, according to Mr. Bright, makes it harder to sell. The provision specifically limits the price of the working manager-member's interest if he sells it to "the lower of the sales price in his offer or the book value of his capital account determined in accordance with . . . Paragraph 24[.]"

Although not bound by it, Tennessee courts suggest Revenue Ruling 59-60 provides standard guidelines to value such a business. *See, e.g., Anderson v. Anderson*, No. E2005-02110-COA-R3-CV, 2006 WL 2535393, *3 (Tenn. Ct. App. Sept. 5, 2006); *Wallace*, 733 S.W.2d at 107. Revenue Ruling 59-60 expounds a number of tenets to consider: (1) the nature of the business, including its history since incorporation; (2) the economic status of the industry and the nation at the time of the valuation; (3) the book value of the business; (4) the business's earnings; (5) the business's dividends and paying capacity; (6) any goodwill or other intangible value; (7) the size of the stock and prior stock sales; and (8) the selling price of comparable securities relative to earnings, asset values, and dividends. Rev. Rul. 59-60 (1959). Any life insurance proceeds covering the sole or controlling shareholder may also be considered. *Wallace*, 733 S.W.2d at 107-08.

Mr. Bright used four calculation methods and then applied a minority interest discount of 24.9% followed by a 35% discount to account for the lack of marketability. According to Mr. Bright, the lack of marketability was a substantial factor because there is no ready market for selling Husband's interest. The first method, the Adjusted Book Value – Going Concern, valued the Sonic franchise at $137,925 which was reduced to $67,328 after discounts leaving a value of $16,158 for the Inzers' 24% share. The second method, Market Value – Price to Revenue, generated a total value of $1,008,900. After applying the discounts, the business was valued at $492,500 with $118,200 representing a 24% interest. The third method was the Market Value – Rule of Thumb method used mostly as a gauge or check to ensure the other methods were property calculated. Using the Rule of Thumb method, Mr. Ray calculated the total value at $1,071,013, the post-discount value at $522,815, and the 24% share at $125,476. The final method was the Capitalized Cash Flow Method which valued the entire franchise at $1,151,000 discounted to $562,000 and 24% at $134,880. Despite these valuations, Mr. Bright concluded that the restrictive covenant in the Operating Agreement ruled and that the value should be based on the net book value without any consideration of goodwill or discounts. Accordingly, Mr. Bright's report stated that "the value of the Company in the hands of the 24% interest owner would be $33,102."

Wife's expert, Mr. Ray, used the Discount Cash Flow Method to figure the value of the Sonic. He considered what the Inzers' investment yielded between 2001 and 2006 by averaging the

income as reported on tax returns[4] then deducting $20,500, representing the salary of a non-owner manager, to determine the net cash flow resulting from the Inzers' ownership. Mr. Ray then projected future income for five years based on the net cash flow average of $109,803 applying a 3% inflation rate per year.[5] After applying a 4.67% discount representing a risk-free rate of return, Mr. Ray valued the Inzers' interest in Sonic at $509,263. Mr. Ray did not review revenue or earnings statements of the McMinnville Sonic, only the Inzers' tax returns. He also did not factor a discount in his valuation for the lack of marketability, account for Husband's minority interest, or consider the agreement signed by Wife.

The trial court found Mr. Bright's value of $33,102 "defies even common sense" and proceeded to value the 24% interest at $207,456 with no explanation of how it determined this value aside from finding Mr. Young's testimony corroborative. While it is difficult to reconcile how Husband's earnings at $150,000 per year so greatly exceed the value of his interest in the entity that created those earnings, we find the fact that Wife signed the Operating Agreement to be dispositive of the issue.

In a similar case where the valuation of the husband's ownership interest in a limited partnership was the main issue, this court held that the wife was not bound by the buy-sell agreement in the partnership's bylaws because she did not sign the agreement. *Harmon v. Harmon*, No. W1998-00841-COA-R3-CV, 2000 WL 286718, *10 (Tenn. Ct. App. Mar. 2, 2000). After reviewing case law from other jurisdictions, this Court adopted the majority view that a buy-sell agreement signed by the shareholder spouse "may be considered along with any other relevant evidence on valuation, but [is] not controlling." *Id*. at *10. The court summarized the view held by a majority of jurisdictions as one where "the value established in the buy-sell agreement of a closely-held corporation, *not signed by the non-shareholder spouse*, is not binding on the nonshareholder spouse but is considered, along with other factors, in valuing the interest of the shareholder spouse." *Id*. at *8 (emphasis added). In a Virginia case relied on in *Harmon*, the court stated that "the price set by a buy-out provision does not control the determination of value *when the other spouse did not consent or was not otherwise bound by its terms*." *Id*. at *9 (quoting *Bosserman v. Bosserman*, 384 S.E.2d 104, 108 (Va. Ct. App. 1989)). Accordingly, we find application of the majority rule depends on whether or not the nonshareholder spouse consented to the terms of a buy-sell agreement.

In this case, Wife signed a separate agreement acknowledging her consent to the terms of the Operating Agreement, "including but not limited to, the provisions of Sections 24 and 26 relating to the right of purchase of [Husband's] interest in the Company." Buy-sell agreements, like other contracts, entered into with mutual assent of the parties are enforceable against the parties. *See Calabro v. Calabro*, 15 S.W.3d 873, 879 (Tenn. Ct. App. 1999); *Drake v. Drake*, 809 S.W.2d 710, 713 (Ky. Ct. App. 1991). Wife is therefore bound by the value set by the terms of this agreement.

---

[4] Mr. Ray did not have Husband's 2006 tax return at the time he conducted his valuation so he estimated the income at $154,225.

[5] In projecting the future earnings of the Sonic, Mr. Ray did not consider the $200,000 expense the L.L.C. was going to have to spend to retrofit the franchise.

However, we do not believe the trial court was presented with competent evidence of this value. Mr. Bright gave little explanation of how he arrived at the $33,102 value or that it comported with the standards established by the American Institute of Certified Public Accountants as required by the Operating Agreement. The parties have the burden to provide competent valuation evidence. *Kinard v. Kinard*, 986 S.W.2d 220, 231 (Tenn. Ct. App. 1998). Although the trial court valued the business interest within the range of values presented at trial, we must vacate that judgment and remand for a hearing to determine the value set in accordance with the terms of the Operating Agreement and Paragraph 24 in particular.

<u>Cash Withdrawal from Joint Accounts</u>

Husband claims the trial court erred in its division of the $49,000 cash withdrawal. Specifically, Husband contends that half of the money was used to pay the couple's joint tax obligation for 2005 and should be excluded from the division. According to Husband, Wife's equitable share should be half of $24,500, less the $8,500 paid for Wife's attorney fees and the $1,250 paid for Wife's expenses, for a total of $2,500, not the $14,750 awarded by the trial court. Conversely, Wife contends the court erred when it reduced her share of the $49,000 to $14,750 by crediting Husband for expenses she believes should be paid by him. Wife's main argument is that the money represented their life savings and that Husband had the ability to pay.

Husband admitted a spreadsheet he created accounting for the $49,000 withdrawn following the Inzers' separation. A review of the document shows a number of line items designated as Wife's expenses, attorney fees for both Husband and Wife, and a $7,380 payment to the United States Treasury. The accounting however totals $74,452.31 and includes deposits for Husband's regularly earned income that are not shown on the document. Because the trial court has discretion in its division of marital assets, *Lancaster v. Lancaster*, 671 S.W.2d 501, 502 (Tenn. Ct. App. 1984), and credited Husband for amounts paid on behalf of Wife and reflected on the accounting sheet, we find no reason to disturb the trial court's division on appeal.

<u>Alimony</u>

Husband appeals two issues with respect to the award of alimony: 1) the amount and duration of the alimony awarded Wife and 2) the failure to give Husband full credit for certain pendente lite alimony and child support payments.

I. Amount and Duration

Trial courts have broad discretion to determine whether spousal support is needed and, if so, the appropriate type, amount, and duration of alimony. *Bratton v. Bratton*, 136 S.W.3d 595, 605 (Tenn. 2004). Because of this broad discretion, an award of spousal support will not be disturbed on appeal absent an abuse of the trial court's discretion. *Broadbent v. Broadbent*, 211 S.W.3d 216, 220 (Tenn. 2006). Therefore, this Court is "generally disinclined to second-guess a trial judge's spousal support decision unless it is not supported by the evidence or is contrary to the public

policies reflected in the applicable statutes." *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001) (quoting *Kinard v. Kinard*, 986 S.W.2d 220, 234 (Tenn. Ct. App. 1998)).

The single most important consideration for the court in awarding alimony is the need of the disadvantaged spouse seeking support followed next by the ability of the economically advantaged spouse to pay support. *Oakes v. Oakes*, 235 S.W.3d 152, 160 (Tenn. Ct. App. 2007). In awarding spousal support, the trial court must consider the statutory factors enumerated in Tenn. Code Ann. § 36-5-121(i). Tennessee courts may award the following classes of spousal support: rehabilitative alimony; alimony in futuro, also known as periodic alimony; transitional alimony; or alimony in solido, also known as lump sum alimony; or a combination of these. Tenn. Code Ann. § 36-5-121(d)(1). Alimony is intended "to aid the disadvantaged spouse to become and remain self-sufficient and, when economic rehabilitation is not feasible, to mitigate the harsh economic realities of divorce." *Owens*, 241 S.W.3d at 493-94 (citing *Earls v. Earls*, 42 S.W.3d 877, 888 (Tenn. Ct. App. 2000)).

In particular, rehabilitative alimony is intended to assist the economically disadvantaged spouse "to achieve, with reasonable effort, an earning capacity that will permit [her] standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse. . . ." Tenn. Code Ann. § 36-5-121(e)(1). The statute expresses a preference for awarding rehabilitative alimony over long-term alimony in futuro. Tenn. Code Ann. § 36-5-121(d)(2). The purpose of alimony in futuro is to provide support to a disadvantaged spouse who cannot be rehabilitated. *Bowie v. Bowie*, 101 S.W.3d 420, 424 (Tenn. Ct. App. 2002). While our Supreme Court had previously held that concurrent awards of alimony in futuro and rehabilitative alimony were not appropriate, *see Crabtree v. Crabtree*, 16 S.W.3d 356, 360 (Tenn. 2000), the Tennessee General Assembly amended Tenn. Code Ann. § 36-5-121(d)(4) in 2005 to expressly authorize alimony in futuro awards in addition to rehabilitative alimony awards where a spouse may only be partially rehabilitated. *Owens*, 241 S.W.3d at 499 n.1.

In this instance, the trial court awarded Wife both rehabilitative alimony and alimony in futuro after addressing the factors enumerated in Tenn. Code Ann. § 36-5-121(i)(1)-(12). The trial court considered the parties' contributions to and quality of life during the marriage, education, earning capacity, and health and determined that Husband should pay Wife $3,000 per month in rehabilitative alimony for two years followed by $2,000 per month in alimony in futuro.

The proof showed that Husband earned $133,747 in 2004, $129,595 in 2005, and $153,031 in 2006 as reported on his income tax returns. While Husband argued that his employment at Sonic could be terminated at any time by a majority vote of the LLC members, there was no indication that he was in danger of losing his job or considering quitting his job and this fact is of little consequence since Tennessee recognizes the doctrine of at-will employment. *See Forrester v. Stockstill*, 869 S.W.2d 328, 330 (Tenn. 1994). He earned a bachelor of science degree in business while Wife had a high school diploma. Although Wife was only out of the workforce for about seven years, she was enrolled at Tennessee Technological Center in hopes of bettering her earning potential. Before she

left the workforce, Wife was earning around $9 per hour. Even with the additional education, Wife expected to earn between $10 and $12 per hour.

By awarding Wife rehabilitative alimony and alimony in futuro, the trial court necessarily found she could be only partially rehabilitated to reach the standard of living she enjoyed during the last several years of marriage. We find the record supports this conclusion and affirm the award of rehabilitative alimony in the amount of $3,000 per month for 24 months and the amount of alimony in futuro at $2,000 per month until either her remarriage or death.

II. Credit for Alimony Pendente Lite and Child Support Payments

We review a trial court's decision on a motion to alter or amend a final judgment under an abuse of discretion standard. *Stovall v. Clarke*, 113 S.W.3d 715, 721 (Tenn. 2003). Husband's motion to alter or amend the judgment sought a credit for monies Husband paid pursuant to the November 21, 2005 order until the final divorce decree was entered on October 25, 2007. Husband was ordered to pay temporary child support in the amount of $1,236 per month in November 2005. The parties' son reached the age of majority and graduated high school by May 2007. Husband nevertheless continued to pay child support for six months after his son was no longer a minor entitled to child support. The trial court granted Husband's motion in part by giving him a partial credit of $236 per month for the overpayments without any justification for the partial credit.

Husband also sought a credit for the $12,000 in alimony pendente lite paid during the six months before the final judgment was entered in accordance with the November order. Husband cites no authority justifying his request for a credit against the final alimony award and we find no basis for granting his request. However, we believe Husband is entitled to a full credit for the overpaid child support obligation totaling $7,416. A parent is statutorily required to support his or her child until the child reaches the age of majority or graduates from high school. Tenn. Code Ann. 34-1-102(a), (b). Once a child reaches the age of majority, there is a complete emancipation of the minor and a parent's legal duty of support ends. *Garey v. Garey*, 482 S.W.2d 133, 135 (Tenn. 1972). A reduction in child support resulting from the emancipation of a child is not a modification of the support award but "is simply the application of a rule of law derived from the legal principle that parents generally owe no duty of support to their adult children." *Brooks v. Brooks*, No. M2007-00351-COA-R3-CV, 2009 WL 928283, *5 (Tenn. Ct. App. Apr. 6, 2009), no Tenn. R. App. P. 11 application filed. We therefore instruct the trial court to modify the judgment as determined on remand by applying the full amount of the overpayment to reduce Husband's obligation to Wife.

Attorney Fees

Wife claims the trial court erred by not requiring Husband to pay her attorney fees and costs considering she is the economically disadvantaged spouse and Husband has the ability to pay. Wife also seeks her attorney fees on appeal. An award of attorney fees in a divorce action is considered an award of alimony in solido and is within the discretion of the trial court. *Keyt*, 244 S.W.3d at 334; *Owens*, 241 S.W.3d at 495. Trial courts customarily award of attorney fees in this manner so the

economically disadvantaged spouse will not have to deplete assets in order to pay attorney fees. *Keyt*, 244 S.W.3d at 334.

The trial court determined that the parties should be responsible for their own attorney fees after making its award of spousal support to Wife. Wife's rehabilitative alimony of $3,000 per month for 24 months remains intact and she will continue to receive $2,000 per month. She has no dependents, few expenses, and, once she completes her schooling, stands to earn a comfortable living. At the time of the decree, Husband already paid a substantial amount of Wife's attorney fees on his own volition. We find no abuse of discretion in the trial court's decision with respect to attorney fees.

CONCLUSION

After careful review of the record, we vacate the trial court's valuation of the Inzers' 24% interest in the McMinnville Sonic and remand for determination of its value in accordance with the terms of the Operating Agreement and competent evidence submitted to that end. We affirm the trial court's award of rehabilitative alimony and alimony in futuro and the distribution of Husband's cash withdrawal following the parties' separation and modify the total judgment awarded Wife to credit Husband for overpayments made on his child support obligation. Judgment of the trial court is affirmed in all other respects. The case is remanded to the trial court for proceedings consistent with this opinion. Costs of appeal are assessed against the appellant, Billy John Inzer, Sr., for which execution may issue if necessary.

ANDY D. BENNETT, JUDGE