

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 17, 2026 Session

KIMBERLY J. SMITH v. GREGORY A. SMITH

Appeal from the Circuit Court for Bradley County
No. V-09-931 Jerri Bryant, Chancellor¹

No. E2024-01274-COA-R3-CV

This appeal concerns post-divorce proceedings. For many years, wife has sought to enforce husband's alimony obligation, pursuing civil and criminal contempt based on allegations of nonpayment and nondisclosure of assets. The trial court entered a series of orders denying most of wife's requested relief, concluding among other things that it could not make husband get and keep a job and that wife had not proven fraud sufficient to reopen the parties' marital dissolution agreement. Wife appeals. We affirm.

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

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which JOHN W. MCCLARTY, P.J., E.S., and WILLIAM E. PHILLIPS II, J., joined.

Kimberly J. Smith, Nashville, Tennessee, pro se appellant.

Gregory A. Smith, Chattanooga, Tennessee, pro se appellee.²

OPINION

BACKGROUND

On June 2, 2010, the trial court entered its final decree of divorce as to Kimberly J. Smith ("Wife") and Gregory A. Smith ("Husband"). The final decree incorporated the parties' Marital Dissolution Agreement ("MDA"), which the parties executed on

¹ Chancellor Bryant formerly presided in this matter. On December 8, 2023, this matter was assigned to Chancellor Pamela A. Fleenor by interchange following Chancellor Bryant's recusal.

² Husband filed no brief on appeal.

December 5, 2009. Under the MDA, Husband agreed to pay Wife alimony in solido in the amount of \$40,000 at the rate of \$833.33 per month for four years. The MDA included a waiver of any interest in the other party's retirement funds or pensions. Additionally, it provided that the parties made no representations to induce the agreement other than those contained in the MDA and waived all claims to the other's existing assets.

Over the course of time, Wife encountered difficulties in collecting what she was owed under the final decree. To obtain the payments she was due, Wife pursued contempt proceedings against Husband and garnished his wages. Although Husband was credited with paying Wife \$41,833.29 in interest, he still owed principal on the original alimony obligation. Under a January 11, 2016 order, Husband was required to notify Wife of any changes in his employment status within seventy-two hours. Wife has maintained that Husband frequently changed jobs to avoid garnishment and failed to disclose employment changes when they occurred.

On July 24, 2019, Wife filed her Fifth Petition for Civil and Criminal Contempt, alleging that Husband failed to pay alimony. On September 25, 2019, Husband filed a very short, signed answer in which he "categorically" denied Wife's allegations. On January 25, 2022, the trial court conducted a hearing only on Wife's *criminal* contempt claims against Husband. On March 18, 2022, the trial court entered its order finding Husband guilty of fifteen counts of criminal contempt and imposing a \$750 fine and 120 hours of jail time. On January 17, 2023, Wife filed an amended Fifth Petition. Wife alleged among other things that Husband reduced his work hours to avoid garnishment. In addition, she asserted—relying on discovery responses produced by Husband in January 2022—that he had fraudulently concealed a pension from his employment at Charleston Hosiery. Wife asserted that she was entitled to seventy-five percent of Husband's pension, notwithstanding the waiver provisions in the MDA.

On April 13, 2023, Wife filed a motion for default judgment, citing Husband's failure to answer her amended petition. On July 25, 2023, the trial court conducted a hearing on Wife's *civil* contempt claims set forth in the Fifth Petition against Husband. The trial court declined to grant default judgment on the Fifth Petition because Husband had filed an answer in opposition. Instead, on July 26, 2023, the trial court entered an order granting default judgment only as to the allegations contained in Wife's January 17, 2023 amended petition.

On September 21, 2023, the trial court entered an order addressing certain outstanding issues in the case. The trial court declined to impose additional civil contempt sanctions against Husband, noting that he had already been found in criminal contempt on the same grounds. The trial court also declined to jail Husband until he paid in full, explaining that "[t]his [c]ourt cannot require [Husband] to work or go to job training."³ In

³ We observe that Husband was 63 years old at the time this order was entered.

addition, the trial court denied Wife's request to impute Husband's income for purposes of alimony collection. The trial court said that Wife had shown no legal authority for such an imputation. On the issue of post-judgment interest, the trial court ruled that Wife's interest calculations were incorrect and instructed her to recalculate the interest she was due using the statutory rates.

As to Wife's fraud claim, the trial court found no clear and convincing evidence that Husband intentionally concealed his pension. Husband testified that he left the employment associated with the plan more than twenty years before the divorce and had forgotten about it, and the trial court credited that explanation. Citing *Grande v. Grande*, No. E2022-00981-COA-R3-CV, 2023 WL 5311997 (Tenn. Ct. App. Aug. 18, 2023), the trial court ruled further that the MDA barred Wife's pension claim under the doctrine of res judicata and that the MDA's waivers precluded such a claim.

On October 11, 2023, Wife filed a motion under Tennessee Rule of Civil Procedure 59 arguing that default judgment should have been entered on her fraud claim. On May 6, 2024, the trial court heard Wife's Rule 59 motion, now with Chancellor Fleenor sitting by interchange following Chancellor Bryant's recusal. On July 25, 2024, the trial court entered an order denying Wife's Rule 59 motion except as to that part concerning post-judgment interest. The trial court gave Wife another opportunity to provide the information needed to calculate post-judgment interest. It also found that Chancellor Bryant had acted within her discretion in declining to impose additional civil contempt sanctions against Husband. With respect to the pension issue, the trial court held that reopening the MDA was barred both by res judicata and by the terms of the MDA. As to Wife's request for default judgment on her fraud claim, the trial court determined that her fraud allegations were conclusory and therefore not admitted in default, and it further noted that those fraud claims had already been adjudicated and failed for insufficient evidence.

At this juncture, all that remained outstanding in the case was the issue of post-judgment interest. On June 16, 2025, the trial court heard Wife's motion on this issue. On June 25, 2025, the trial court entered an order stating that Wife had still not recalculated interest using judgment-specific dates, statutory rates, and credits as required by Tennessee Code Annotated section 47-14-121. Although Wife submitted new appendices, the trial court found that they merely repeated her previously rejected calculations and continued to include items such as costs and service fees. The trial court stated that its role was not to construct Wife's case for her and that she had failed after multiple chances to supply the necessary information for her request for post-judgment interest to be granted. The trial court then certified its judgment as final under Tennessee Rule of Civil Procedure 54.02. Wife timely appealed to this Court.

ISSUES

Wife raises seven issues on appeal, which are consolidated and restated slightly as follows:

1. Whether the trial court erred in dismissing Wife's pension claim on grounds she failed to prove fraud and in declining to assign a value to Husband's Charleston Hosiery pension.
2. Whether the trial court erred in declining to grant default judgment on Wife's fraud claim and in treating Husband's answer as sufficient.
3. Whether the trial court erred by declining to award Wife statutory post-judgment interest.
4. Whether the trial court erred in declining to impose additional civil contempt sanctions or other enforcement measures against Husband.
5. Whether the trial court's conduct created an appearance of partiality toward Husband.

STANDARD OF REVIEW

As stated by our Supreme Court,

In a non-jury case such as this one, appellate courts review the trial court's factual findings de novo upon the record, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. *See* Tenn. R. App. P. 13(d); *Armbrister v. Armbrister*, 414 S.W.3d 685, 692 (Tenn. 2013). We review the trial court's resolution of questions of law de novo, with no presumption of correctness. *Armbrister v. Armbrister*, 414 S.W.3d at 692.

Kelly v. Kelly, 445 S.W.3d 685, 691–92 (Tenn. 2014). Some issues in this appeal implicate the abuse of discretion standard of review, as well. A trial court abuses its discretion when it “applies an incorrect legal standard, reaches a decision that is illogical, bases its decision on a clearly erroneous assessment of the evidence, or employs reasoning that causes an injustice to the complaining party.” *In re Estate of Greenamyre*, 219 S.W.3d 877, 886 (Tenn. Ct. App. 2005).

DISCUSSION

I. Pension-Related Matters

Wife asserts that the trial court erred in dismissing her pension claim and in declining to determine the value of the Charleston Hosiery plan. According to Wife, Husband fraudulently concealed his pension from her to prevent her from receiving her alleged rightful share of it in the divorce. Wife cites *Black v. Black*, 166 S.W.3d 699, 704 (Tenn. 2005), for the proposition that a showing of extrinsic fraud may lead to the reopening of a marital dissolution agreement notwithstanding any waivers of assets. The burden of proof for a spouse alleging fraud in the execution of a marital dissolution agreement is clear and convincing evidence.⁴ See *Higdon v. Higdon*, No. M2019-02281-COA-R3-CV, 2020 WL 6336151, at *7–8 (Tenn. Ct. App. Oct. 29, 2020).

Wife’s fraud theory faces a threshold problem. As this Court explained in *Gentry v. Larkin*, 389 S.W.3d 329, 334–35 (Tenn. Ct. App. 2012), Tennessee distinguishes between extrinsic fraud, which prevents a fair hearing, and intrinsic fraud, which concerns matters such as nondisclosure or concealment of marital assets. “[A] motion to set aside a judgment for fraud under section 2 of Rule 60.02 may be based on intrinsic or extrinsic fraud[.]” *Id.* at 334 (quoting *Black*, 166 S.W.3d at 703). However, “claims under Rule 60.02 for intrinsic fraud must be brought within a year from the judgment in question.” *Id.* at 335. Although Rule 60.02 “contains a ‘savings’ provision, which clarifies that the rule ‘does not limit the power of a court to entertain *an independent action* to relieve a party from a judgment, order or proceeding, or to set aside a judgment for fraud upon the court,’” such action requires extrinsic fraud. *Id.* at 334 (quoting *Black*, 166 S.W.3d at 703). Wife appears to recognize that intrinsic fraud cannot reopen the MDA years after the fact. She therefore proceeds as though Husband’s nondisclosure amounted to extrinsic fraud. Even so, the conduct she identifies is Husband’s alleged concealment of a marital asset, and Tennessee law squarely classifies that type of nondisclosure as intrinsic fraud. See *Black*, 166 S.W.3d at 703–04. Because Wife’s allegations amount to intrinsic fraud and she did not file a timely motion for Rule 60.02 relief, the MDA’s express waivers and its finality provisions control.

Beyond Wife’s failure to allege any form of extrinsic fraud, the MDA itself forecloses her claim. The MDA contains clear waivers in which both parties expressly relinquished any interest in the other’s retirement benefits. Wife does not explain how Husband’s nondisclosure of the pension rendered her execution of the MDA unfair when she knowingly agreed to waive any such claim. Wife voluntarily waived any interest in Husband’s retirement plans or pensions, and it does not follow that her agreement becomes

⁴ Clear and convincing evidence eliminates any “serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” *Kelly*, 445 S.W.3d at 692–93 (quoting *State v. Sexton*, 368 S.W.3d 371, 404 (Tenn. 2012)).

invalid simply because a pension she did not know about later came to light. The record shows she entered into the MDA freely, and her present dissatisfaction with its terms does not provide a basis for reopening it. In *Grande v. Grande*, this Court explained that the doctrine of res judicata bars later claims to marital assets disposed of through a marital dissolution agreement. 2023 WL 5311997, at *4.

As for the trial court's decision not to value Husband's pension, the record reflects that the trial court found no competent evidence supporting any valuation. Wife contends that the trial court should have adopted her pension valuation as the only competent evidence. Wife's proposed valuation was based on her own projections using historical S&P 500 returns. Citing *Kabiri v. Kabiri*, No. E2014-01980-COA-R3-CV, 2015 WL 6083195, at *6 (Tenn. Ct. App. Oct. 16, 2015), Wife posits that courts may use the best available evidence to place a value on a marital asset. *Kabiri* also recognizes that valuation decisions are left to the trial court's discretion. *Id.* at *4. However, the passage of time also impeded the trial court's ability to value the pension, as Husband left the job associated with the plan decades before the divorce, and no reliable records were produced. In any event, the MDA's express waivers foreclose any claim to Husband's retirement benefits, so there was no basis for valuing the pension even if adequate evidence existed. Given the limited information and the controlling effect of the MDA, the trial court acted within its discretion in declining to assign a value.

Finally, the trial court found no clear and convincing evidence of any fraudulent conduct by Husband related to the pension. Husband explained that he left the job associated with the plan many years before the divorce and had forgotten about it. The trial court clearly credited Husband's explanation, as was its prerogative. Insofar as the trial court's finding hinged on its implicit determination of Husband's credibility, that credibility determination is subject to deference, absent clear and convincing evidence to the contrary. See *Kautz v. Berberich*, No. E2019-00796-COA-R3-CV, 2021 WL 1034987, at *7 (Tenn. Ct. App. Mar. 18, 2021). In sum, Wife did not prove fraud by the requisite clear and convincing evidence, and she failed to allege any form of extrinsic fraud that could support reopening the MDA. The evidence does not preponderate against the trial court's findings. In addition, the trial court did not abuse its discretion in declining to assign a value to Husband's pension. We affirm the trial court's dismissal of Wife's pension-related claims.

II. Default Judgment

Wife argues next that the trial court erred by limiting the effect of the default judgment entered on her amended Fifth Petition filed January 17, 2023. In the Rule 59 order, the trial court concluded that Wife's fraud allegations were not well-pleaded and were too conclusory to support relief even in default. Wife contends that the trial court should have deemed her fraud allegations as admitted under Tennessee Rule of Civil Procedure 55 and granted relief accordingly. She contends further that the trial court

imposed heightened evidentiary requirements for the first time in its written order, thereby, in her view, nullifying the default. Whether to enter default judgment is within the trial court's discretion. *Patterson v. SunTrust Bank*, 328 S.W.3d 505, 509 (Tenn. Ct. App. 2010). Wife advances an additional argument focused on Husband's answer, contending that it was untimely, unsigned, and contained false statements, and that the trial court should have stricken it under Tennessee Rule of Civil Procedure 11. *See Old Hickory Eng'g & Mach. Co. v. Henry*, 937 S.W.2d 782, 786 (Tenn. 1996) (stating that an unsigned pleading can violate Rule 11 and is subject to being stricken). Finally, Wife asks this Court, on this and other issues, to "render."⁵

Having reviewed Wife's allegations of fraud against Husband, we conclude that she did not allege anything specific for which relief could be granted under default judgment. "The elements of a claim for fraud include: (1) an intentional misrepresentation of an existing material fact, (2) knowledge of the representation's falsity, and (3) injury caused by reasonable reliance on the misrepresentation." *Lopez v. Taylor*, 195 S.W.3d 627, 634 (Tenn. Ct. App. 2005) (citing *Concrete Spaces, Inc. v. Sender*, 2 S.W.3d 901, 904 (Tenn. 1999); *First Nat'l Bank v. Brooks Farms*, 821 S.W.2d 925, 927 (Tenn. 1991); *Metro. Gov't v. McKinney*, 852 S.W.2d 233, 237 (Tenn. Ct. App. 1992)). Wife's fraud allegations were imprecise, consisting of broad assertions of long-term concealment without factual detail. Default judgment grants relief only as to well-pleaded allegations, not legal conclusions. *H.G. Hill Realty Co. v. Re/Max Carriage House, Inc.*, 428 S.W.3d 23, 30–31 (Tenn. Ct. App. 2013) (stating that default operates as an admission of well-pleaded material factual allegations). Wife identified no specific act or omission by Husband that she falsely relied on, only his general failure to disclose the pension. Because Wife's fraud allegations were generic, they were not well-pleaded facts. We also find no merit in Wife's assertion that the trial court imposed an unfair evidentiary burden on her. The evidentiary burden the trial court applied was simply the one required under Tennessee law.

As for Wife's argument concerning Husband's answer, she asserts that the trial court should have stricken it as late, unsigned, and containing false statements. The record, however, shows that the answer filed on September 25, 2019 was signed by Husband. We do not know what unsigned answer Wife is referring to. Even so, although Husband's answer was brief and not especially substantive, it was nonetheless a response. Wife identifies no specific falsehood in Husband's answer and offers no explanation for how its timing or content materially affected the case. Wife does not show how striking the answer would have changed the trial court's handling of default, particularly given that her fraud allegations in the amended petition were too conclusory to be admitted even in default. Tennessee courts do not favor dismissals or default judgments. *Henry v. Goins*, 104 S.W.3d 475, 481 (Tenn. 2003). In declining either to strike Husband's answer or to

⁵ It is unclear precisely what Wife means by "render," apart from simply asking us to grant the relief she asks for.

broaden the default judgment to include Wife's conclusory fraud claim, the trial court did not apply an incorrect legal standard; reach an illogical conclusion; base its decision on a clearly erroneous assessment of the evidence; or employ reasoning that caused an injustice. We conclude that the trial court acted within its discretion in declining to grant the additional relief Wife sought. Finally, we respectfully decline Wife's request to "render" on this or any other issue.

III. Post-Judgment Interest

We next address Wife's claim that the trial court should have awarded her post-judgment interest. Wife asserts that Tennessee Code Annotated section 47-14-121 makes such interest mandatory and that the trial court lacked discretion to deny it. She argues further that the trial court incorrectly found she applied a uniform ten-percent rate.

Wife is correct that post-judgment interest is mandatory. *See Tallent v. Cates*, 45 S.W.3d 556, 563 (Tenn. Ct. App. 2000); Tenn. Code Ann. § 47-14-121. However, even mandatory interest must be tied to specific judgments and calculated from the proper dates at the proper statutory rates. This case spans many years and includes numerous orders. The trial court found that Wife's figures left out necessary details, leaving the trial court unable to determine which judgments were at issue or how interest should run. On multiple occasions, the trial court instructed Wife to supply judgment-specific information so that interest could be calculated. Wife never did. Without identifying the particular judgments and supplying the corresponding calculations, the trial court could not award post-judgment interest. As Wife did not furnish the information required to calculate interest, the trial court properly declined to conjecture as to an amount. To be clear, although post-judgment interest is mandatory, it cannot be awarded from a jumble of numbers; it must be tied to identifiable judgments. We discern no reversible error on this issue.

IV. Contempt and Enforcement

We next address Wife's contempt and enforcement arguments. Wife asserts that the trial court wrongly concluded that it could not punish Husband further for his contemptuous acts because he had already been found in criminal contempt. Wife states that the record reflects continued noncompliance and that the trial court should have taken additional coercive measures against Husband. Civil contempt requires a clear and lawful order, an actual violation, and a willful failure to comply. *Konvalinka v. Chattanooga-Hamilton County Hosp. Auth.*, 249 S.W.3d 346, 354–55 (Tenn. 2008). A willful violation includes proof that the contemnor had the ability to comply. *Id.* at 357–58.

Although Wife argues as though the trial court believed it had no remaining tools to bring Husband into compliance, the record shows otherwise. The trial court never stated

that it was powerless to address Husband's conduct. Rather, the trial court concluded that, in the exercise of its discretion and under the circumstances presented, the additional coercive measures Wife sought were not appropriate. The trial court reasoned that imposing such sanctions could be counter-productive to the goal of obtaining payment, as incarceration is generally an impediment to earning income. Wife's frustration with Husband's continued failure to pay what he owes is entirely understandable. Even so, we see nothing unreasonable in the trial court's decision. Judicial remedies are not all-powerful, and neither the trial court nor this Court can compel Husband to get and keep a job. This in no sense means that Husband is absolved of his obligations; it simply means that, contrary to Wife's insistence, the trial court was not required to impose the harshest available contempt sanction regardless of the factual context.

Trial courts have broad discretion in determining whether to impose civil contempt sanctions, and such rulings are reviewed for abuse of discretion. *Konvalinka*, 249 S.W.3d at 358. Here, the trial court applied the correct legal standards and assessed the likely effectiveness of the coercive sanctions Wife sought, concluding that additional measures would not be productive considering Husband's circumstances. That is the essence of a discretionary decision. The trial court did not apply an incorrect legal standard; reach an illogical conclusion; base its decision on a clearly erroneous assessment of the evidence; or employ reasoning that caused an injustice. The trial court therefore did not abuse its discretion in declining to impose additional contempt sanctions against Husband.

V. Impartiality

As a final matter, Wife argues that the trial court's conduct created an appearance of partiality toward Husband. She points to what she describes as the trial court raising objections on Husband's behalf, limiting parts of her proof, and relying on what she contends was Husband's flawed answer. She acknowledges that there was no single remark showing the trial court's partiality, but rather there was a "cumulative effect." Notably, one specific example she cites is that the trial court "disrupted" her presentation by initially rejecting her attempt to submit transcripts of prior proceedings into evidence as hearsay. In her brief, Wife states: "The [trial] court's initial exclusion, argument on admissibility, and subsequent midstream reversal interfered with the orderly presentation of testimony and deprived [Wife of] the ability to rely on the evidence in real time as part of her case-in-chief."

A claim of judicial bias requires evidence that would cause a reasonable, disinterested observer to question the judge's impartiality. *Neamtu v. Neamtu*, No. M2019-00409-COA-T10B-CV, 2019 WL 2849432, at *3 (Tenn. Ct. App. July 2, 2019). Here, the trial court sometimes disagreed with Wife and sometimes issued rulings against her. However, adverse rulings, and even erroneous rulings, generally do not establish bias. *State v. Cannon*, 254 S.W.3d 287, 308 (Tenn. 2008); *Alley v. State*, 882 S.W.2d 810, 821 (Tenn. Crim. App. 1994). Wife's assertion that the trial court "disrupted" her presentation

by making an evidentiary ruling is not evidence of partiality. While judges strive to give reasonable voice to parties and counsel, they do not have to sit there silently.

Wife also contends that the trial court acted as an advocate for Husband. The record does not support that characterization. Over the course of this long case, the trial court has jailed Husband, fined him, and ruled against him on several issues. Nothing in that history suggests undue favor, and nothing in the trial court's conduct would lead a reasonable, disinterested observer to question its neutrality. We therefore find no merit in Wife's claim of judicial partiality and affirm the judgment of the trial court in its entirety.

CONCLUSION

The judgment of the Circuit Court for Bradley County is hereby affirmed, and this case is remanded for further proceedings consistent with this opinion. Costs on appeal are assessed to the appellant, Kimberly J. Smith, for which execution may issue if necessary.

KRISTI M. DAVIS, JUDGE