OKLAHOMA CITY UNIVERSITY LAW REVIEW

VOLUME 47 Spring 2023 NUMBER 2

Comment

*Bills v. Bills*: Promoting Equitability in Oklahoma’s Divorce Jurisprudence

Magdalena L. Willis[[1]](#footnote-1)\*

I. INTRODUCTION

Since the 1970s, divorces have been on the rise in the United States.[[2]](#footnote-2) During divorce proceedings, a couple seeking a divorce will bring an action before a court where the judge will issue a decree terminating the marital relationship and changing the legal status of the previously married parties.[[3]](#footnote-3) In a divorce, the trial court judge must decide how to distribute marital assets.[[4]](#footnote-4) In many states across the country, including Oklahoma, judges practice the equitable distribution of marital assets where marital funds are distributed amongst the couple based on fairness versus equality.[[5]](#footnote-5) Judges may weigh various factors, such as marital misconduct and spousal income to determine an equitable division.[[6]](#footnote-6)

In *Bills v. Bills*,[[7]](#footnote-7) the Oklahoma Court of Civil Appeals found that the trial court did not abuse its discretion on any counts; therefore, the appellate court affirmed the trial court’s decision and did not award the husband with any additional marital assets or attorney fees. The court also denied the wife’s challenge to the trial court’s decision to not award her attorney fees.[[8]](#footnote-8)

This Comment begins, in Part II, with a description of the historical developments of related divorce case law in Oklahoma’s courts. Next, Part III lays out the facts, procedural history, and other details from the opinion. Finally, Part IV analyzes *Bills* and discusses how the court correctly denied Mr. Bills’s challenge, but incorrectly denied Mrs. Bills’s attorney fees for both the trial court and appeals proceedings.

II. HISTORICAL DEVELOPMENT OF THE RELEVANT LAW

*A. Equitable Distribution of Marital Assets*

Oklahoma has long practiced the equitable distribution of marital assets. Section 121 of Title 43 of the Oklahoma Statutes requires that trial courts distribute marital assets fairly and justly.[[9]](#footnote-9) The division of marital assets does not need to be equal for it to be considered fair and just.[[10]](#footnote-10) The term “marital assets” has been defined as wealth that has been jointly acquired by the spouses during the marriage.[[11]](#footnote-11) Any spouse that owned property before the marriage and brought it with them to the marriage has the right to retain it if a divorce occurs.[[12]](#footnote-12) Increases in marital assets that are the result of inflation, changing economic conditions, or circumstances beyond either spouses’ control must not be included in the trial court’s final determination of divisible assets.[[13]](#footnote-13) The only way a non-owning spouse can claim assets in an account that previously belonged to the other spouse is if they can prove that they took concerted actions to invest additional money into the account for its financial growth.[[14]](#footnote-14) Oklahoma appellate courts presume that the trial court reached a fair and equitable result unless the challenging party can show that the trial court abused its discretion or ruled in a way blatantly contrary to the admitted evidence.[[15]](#footnote-15)

*B. Marital Misconduct*

Marital misconduct can contribute to the demise of a marriage and significantly affect marital assets. However, when a party is aware of their spouse’s marital misconduct and implicitly condones the actions for an extended period, they cannot use the misconduct as a reason to get a higher pay-out from the divorce.[[16]](#footnote-16) Examples of marital misconduct, such as concealed dissipation, are only material insofar as they relate to the creation of the marital estate.[[17]](#footnote-17) Evidence of marital misconduct will only weigh in favor of the non-offending spouse if there is an indication of secreting or wasting assets.[[18]](#footnote-18) The Oklahoma Supreme Court has held that instances of marital misconduct shall only be weighed in evidence if they have aggravated the condition of the marital assets.[[19]](#footnote-19)

*C. Determining Income*

The Oklahoman court system has traditionally followed a set of statutory guidelines to compute child support payment, determine a parent’s income, and to determine a just and equitable distribution of marital assets.[[20]](#footnote-20) Appellate courts presume that the trial court’s determination of incomes was fair.[[21]](#footnote-21) When computing gross income of parents, courts may consider both earned and passive income to come to the most equitable determination. When considering imputed income, the court may consider a parent’s willful unemployment—and can add value to the spouse’s gross income.[[22]](#footnote-22) Oklahoma courts have sometimes chosen to impute income when the evidence shows that the parent appears to be presenting a significantly reduced salary to escape paying child support.[[23]](#footnote-23) The Oklahoma Court of Civil Appeals has said that trial courts are in the best position to determine when imputing income is appropriate in divorce cases.[[24]](#footnote-24)

*D. Attorney Fees*

In American jurisprudence, it is common for one party to pay attorney fees for the other party. In a dissolution of marriage proceeding, a spouse may be required to pay the other’s reasonable expenses.[[25]](#footnote-25) No outside parties, other than the parties to the former marriage, can challenge attorney fee claims.[[26]](#footnote-26) The trial judge will determine whether such payment should occur by conducting a judicial balancing of equities amongst the parties.[[27]](#footnote-27) Factors to be considered are the income and property of the parties, whether the appeal is frivolous, or if the appeal lacks merit.[[28]](#footnote-28) Attorney fees can also be awarded under statutory authority.[[29]](#footnote-29) The misconception that the main provider for the family is inherently responsible for the other spouse’s attorney fees has been held to be a legal myth.[[30]](#footnote-30)

Traditionally, if each party received almost equal amounts of the marital assets they would not be ordered to pay the other’s attorney fees.[[31]](#footnote-31) When parties in a divorce case expend money and time to efficiently prepare their cases, each party should be required to pay for their own attorney fees and expenses of litigation.[[32]](#footnote-32) It is believed that parties who are responsible for paying their own attorney fees will be encouraged to carry out litigation and to use the court’s resources efficiently and swiftly.[[33]](#footnote-33) Parties who unnecessarily expend the court’s resources through their litigation will mitigate their chances of retrieving attorney fees.[[34]](#footnote-34) An appellate court will not disturb the trial court’s decision unless there was abuse of discretion.[[35]](#footnote-35)

III. *BILLS v. BILLS*

*A*. *Facts*

Unfortunately, like many other divorce cases, *Bills* deals with deceit, untruthfulness, and pain in a marriage.[[36]](#footnote-36) The husband’s deceitful actions against his wife compelled the Oklahoma Court of Civil Appeals to consider what was the fairest distribution of assets amongst the former couple.[[37]](#footnote-37) Accordingly, the court considered how the severity of the husband’s actions should affect the distribution of marital assets.[[38]](#footnote-38)

1. The Marriage

Mr. and Mrs. Bills married in 2000.[[39]](#footnote-39) During their marriage, they had four children and lived in Tulsa County.[[40]](#footnote-40) The husband worked as an attorney, making over $100,000 per year, and the wife was also employed.[[41]](#footnote-41) However, in the final years of their marriage, the husband had lost his attorney job, began working at a small car repair shop making $20 per hour, and concealed it all from his wife by faking work invoices and pretending to go into the office.[[42]](#footnote-42) Additionally, unbeknownst to his wife, Mr. Bills attempted to cover-up his loss of income by taking out a line of credit on their family home, borrowing money against his wife’s vehicle, and taking a personal loan from his wife’s uncle.[[43]](#footnote-43) The husband was in charge of all family finances and deposited all of the borrowed money in the couple’s joint account.[[44]](#footnote-44) The only account that Mrs. Bills had any control over was an E-Trade account that she held prior to their marriage.[[45]](#footnote-45) At the start of their marriage, the account held $71,320 and the couple both added to it.[[46]](#footnote-46) It was not until the wife spoke to their financial advisor that she discovered that her husband had been deceitful.[[47]](#footnote-47)

2. The Divorce

Mr. Bills’s deceit led to his wife filing a petition for dissolution of marriage in 2018, and the decree was entered and filed in 2020.[[48]](#footnote-48) Custody of their four children was settled at the trial court proceeding, but the couple continued to have disputes related to the distribution of their marital assets.[[49]](#footnote-49)

*B. Procedural History*

The Tulsa County District Court was tasked with deciding how to divide the couple’s marital assets and made several determinations. First, the trial court determined that Mr. Bills was “willfully underemployed” and calculated both his income and his wife’s income to be $6,400 per month.[[50]](#footnote-50) Second, the trial court decided to award the wife the amount that was in her E-Trade account before the marriage, then divide the remaining assets in the account in half.[[51]](#footnote-51) Third, the trial court found that the amount the husband “covertly” withdrew was intended to support the family so it should not be included as marital funds.[[52]](#footnote-52) On the other hand, the lines of credit on the home and the wife’s car, and several loans from Mrs. Bills’s family—all without the wife’s knowledge—would be included in depleted marital funds.[[53]](#footnote-53) Fourth, the trial court ruled that the wife would be responsible for some of the loans payable to her family which would be offset by her share of the marital estate.[[54]](#footnote-54) Fifth, the remaining martial assets were awarded to the husband as a portion of the estate already received.[[55]](#footnote-55) Finally, the trial court denied both requests to have the opposing party pay attorney fees.[[56]](#footnote-56) The trial court pointed out that, once all the assets were calculated, Mrs. Bills had been awarded a higher amount.[[57]](#footnote-57) However, the court still decided that the division of the assets was “just and equitable” given the deceitful actions of her husband.[[58]](#footnote-58) Mr. Bills’s actions discouraged the trial court from giving him an equal share.[[59]](#footnote-59)

*C. Opinion*

Unsatisfied with the trial court’s decision, Mr. Bills filed an appeal.[[60]](#footnote-60) Mrs. Bills also appealed the payment of her attorney fees.[[61]](#footnote-61) Judge Robert P. Bell wrote the opinion for the Oklahoma Court of Civil Appeals.[[62]](#footnote-62) In Oklahoma divorce cases, the court of appeals will not interfere with the trial court’s decision related to property division unless the appealing party can show that the trial court has abused its discretion or entered a decision that “is clearly contrary to the weight of the evidence.”[[63]](#footnote-63) This also applies to determining payment of attorney fees.[[64]](#footnote-64)

1. Marital Assets

The first issue raised by Mr. Bills’s appeal related to the division of marital assets. Mr. Bills argued that the trial court failed to show specific evidence that he dissipated marital assets. Therefore, he argued that it ruled incorrectly in offsetting the nonexistent debts because he had already repaid them three years prior to filing the appeal.[[65]](#footnote-65) The wife challenged her ex-husband’s assertion, stating that the trial court did properly find that the dissipated marital assets were a part of the marital estate because of his efforts to conceal the funds from her.[[66]](#footnote-66) The court held in favor of Mrs. Bills, noting that the husband’s exclusive control over marital assets and concealment of the flow of funds was a relevant factor in valuing and dividing the estate.[[67]](#footnote-67) The court is required to come up with an equitable distribution of the assets, and burdening the wife with any marital estate losses because of the husband’s deceitful actions would be unjust.[[68]](#footnote-68)

2. Husband’s Income

The second issue that Mr. Bills brought on appeal was the calculation of his income at $6,400.[[69]](#footnote-69) The trial court calculated his income at that amount because of his willful and bad faith underemployment.[[70]](#footnote-70) Additionally, the court ruled that the spouses had the same income.[[71]](#footnote-71) The Oklahoma Court of Civil Appeals held that if Mr. Bills’s income had not been computed to be the same as his wife’s income, she would be forced to pay him child support, which would have been unjust given Mr. Bills’s marital misconduct.[[72]](#footnote-72) While there was no malicious intent on the husband’s behalf, there was circumstantial evidence that deceit was a factor in the husband’s underemployment.[[73]](#footnote-73) Therefore, the court found no abuse of discretion.[[74]](#footnote-74)

3. The E-Trade Account

When the parties got married, Mrs. Bills owned an E-Trade account that totaled $71,320.00.[[75]](#footnote-75) Neither party disputed that throughout their marriage both parties invested funds to ensure the financial growth of the account.[[76]](#footnote-76) At trial, Mr. Bills testified that, based on his recollection, the amount in the account at the start of the marriage could not have exceeded $25,000.[[77]](#footnote-77) His wife testified that, based on conversations with the account’s financial management company, the amount brought into the marriage was around $72,000.[[78]](#footnote-78) While neither party could produce documentation to prove their claims, the court sided with the wife because she was the most credible party given the husband’s history of lying.[[79]](#footnote-79)

The Court of Civil Appeals chose to designate the remaining amount in the E-Trade account as marital funds because the increased amount in the account during the marriage was not a result of “appreciation . . . [or] changing economic conditions.”[[80]](#footnote-80) It was then divided in half since neither party disputed that they both invested money throughout the marriage.[[81]](#footnote-81) The court did highlight that, had the wife cited *Thielenhaus v. Thielenhaus*—which held that inflation contributed to the increase in fund assets—she could have walked away with a higher amount than her husband. However, this was not the case, and the court could not award it to her.[[82]](#footnote-82) In sum, the Court of Civil Appeals believed Mrs. Bills’s testimony over Mr. Bills’s.[[83]](#footnote-83) The court noted that Mr. Bills’s marital deceit was a factor in balancing the two testimonies.[[84]](#footnote-84)

4. Equitable versus Equal Division of Marital Assets

Mr. Bills appealed the trial court’s decision to award his ex-wife a higher amount of the marital assets.[[85]](#footnote-85) The appellate court held that Mr. Bills’s assertion that the division had to be equal was misinformed.[[86]](#footnote-86) Rather, the case law requires the court to execute an equitable, just, and reasonable distribution—not one based on equality.[[87]](#footnote-87) Accordingly, the court decided to exercise the equitable distribution of marital funds by giving the wife more than half of the marital assets to counterbalance the harm of the husband’s misconduct.[[88]](#footnote-88) The court held that there was no abuse of discretion.[[89]](#footnote-89)

5. Attorney Fees

The final issue taken up on this appeal by the Oklahoma Court of Civil Appeals was whether the trial court abused its discretion when it denied either party the right to recover attorney fees.[[90]](#footnote-90) The court of appeals highlighted that a court must analyze what is just and equitable considering each party’s separate financial means.[[91]](#footnote-91) A party may be required to pay attorney fees if the court deems it to be a fair balancing of the equities.[[92]](#footnote-92) Both parties argued that they were entitled to have their attorney fees paid because of the other party’s excessive use of the justice system.[[93]](#footnote-93) Here, the appellate court found the trial court had not abused its discretion when it denied both parties’ requests for payment of attorney fees because both sides had equally contributed to the escalation and expenses related to their case.[[94]](#footnote-94) In conclusion, the Oklahoma Court of Civil Appeals affirmed the trial court’s decisions and both appeals were unsuccessful.[[95]](#footnote-95)

IV. ANALYSIS

The Oklahoma Court of Civil Appeals correctly sided with the Tulsa trial court on all issues except for the challenge brought by Mrs. Bills regarding attorney fees.[[96]](#footnote-96) The court correctly determined Mr. Bills’s income should be calculated to include his imputed income to bring forth an equitable conclusion.[[97]](#footnote-97) Additionally, the marital assets were properly distributed to reflect an equitable distribution of justice amongst the couple, and the court properly considered the husband’s misconduct as a factor.[[98]](#footnote-98) While the court did correctly reject Mr. Bills’s challenge to collect attorney fees, it did not follow relevant case law to determine whether attorney fees should be paid to Mrs. Bills.[[99]](#footnote-99)

*A. Determining Income*

In divorce proceedings, calculating the parties’ incomes sets the foundation for all other related decisions. In *Bills*, the court of appeals correctly decided to affirm the trial court’s decision to impute his income because, if it had not, Mrs. Bills would have to pay child support to Mr. Bills.[[100]](#footnote-100) Mr. Bills’s marital misconduct led the court to decide that it would be inequitable to order his wife to pay him after he lied to her and concealed his willful underemployment.[[101]](#footnote-101) Similarly, in *Parnell v. Parnell*, the Oklahoma Court of Civil Appeals held that evidence supported imputing the husband’s income but found that the amount reached by the trial court was unfair. The court held in *Parnell* that evidence of a parent’s willful or voluntarily underemployment or unemployment, when considered in light of the jobs which the parent is qualified for, can be used as a factor to impute that parent’s income.[[102]](#footnote-102) Additionally, in *Parnell*, the court found that the husband would not be able to pay the imputed income amount because his earning potential could not reach the trial court’s determination.[[103]](#footnote-103) The court in *Parnell* consequently held that the spouse’s imputed income can only survive an appeal if it is shown that the party is capable of earning more than they are currently earning.[[104]](#footnote-104) Here, in accordance with *Parnell*, the court of appeals correctly considered Mr. Bills’s willful underemployment as a factor when it imputed his income.[[105]](#footnote-105) Additionally, as an attorney, Mr. Bills had the potential to earn far more than he was currently making as a car repair shop employee.[[106]](#footnote-106)

The calculation of a spouse’s income can depend on their marital behavior. In *Metcalf v. Metcalf*, the Oklahoma Supreme Court agreed with the lower courts and denied the wife the ability to recover spousal alimony because of her conduct—given that she traveled excessively with her new boyfriend—and her willful unemployment.[[107]](#footnote-107) *Metcalf* is comparable to *Bills* because Mr. Bills was also willfully underemployed and acted inappropriately by deceiving his wife throughout their marriage.[[108]](#footnote-108) Mr. Bills’s marital behavior led to his divorce and it would have been inappropriate and unjust to force Mrs. Bills to support him without considering how his deceitful actions ought to be weighed.[[109]](#footnote-109) Here, the court’s decision was the only way to administer an equitable distribution of justice. Therefore, the Oklahoma Court of Civil Appeals properly agreed with the trial court when it denied his imputed income challenge.[[110]](#footnote-110)

*B. Equitable Division of Marital Assets*

The Oklahoma Court of Civil Appeals correctly administered an equitable distribution of justice when it determined that Mrs. Bills was entitled to receive a larger portion of the marital estate and denied her husband’s challenge to reconsider its distribution.[[111]](#footnote-111) The court followed Oklahoma case law that instructs courts to divide marital estates equitably instead of equally.[[112]](#footnote-112) The court chose to affirm the trial court’s decision to give Mrs. Bills a larger portion of the marital estate to counteract the effect of the husband’s actions.[[113]](#footnote-113)

Mr. Bills’s deceitful actions and total control of family finances led the couple to be in debt to creditors and family members.[[114]](#footnote-114) The court awarded Mrs. Bills a larger portion of the estate and ordered that repayment of marital debts would be taken out of the marital estate.[[115]](#footnote-115) In *Mocnik v. Mocnik*,a party’s good will was determined to be a factor in dividing a martial estate*.*[[116]](#footnote-116)In *Bills*, the court interpreted *Mocnik* to stand for the notion that evidence of a party’s willful depletion of marital assets is a relevant factor in determining estate division.[[117]](#footnote-117) Additionally, Title 43 O.S. § 121 emphasizes that property division should be just and reasonable.[[118]](#footnote-118) When considering *Mocnik* and the Oklahoma statute together, it was correct for the appellate court to affirm the trial court’s consideration of deceitful behavior when dividing marital assets. Accordingly, the Oklahoma Court of Civil Appeals was correct when it denied the husband’s challenge and affirmed the trial court’s decision to award the wife a larger portion of the estate as a just and equitable outcome.[[119]](#footnote-119)

The Oklahoma Court of Civil Appeals did not let Mr. Bills walk away from the marriage empty-handed, notwithstanding his wrongdoings. It still awarded Mr. Bills a fair portion of the couple’s marital assets.[[120]](#footnote-120) Mr. Bills was awarded funds that he contributed to the marriage, which included half of the investments into the E-Trade account that his wife previously owned once her portion was deducted.[[121]](#footnote-121) In *Thielenhaus*, the Oklahoma Supreme Court held that the non-owning spouse’s interest in an account will be calculated and awarded once any inflation, and natural economic conditions, are deducted from the growth of the account.[[122]](#footnote-122) In *Moyers v. Moyers*, the Court also held that the enhancement in the value of an account not made by normal appreciation, but by the joint efforts and financial skill of both parties, should be considered divisible marital assets.[[123]](#footnote-123) While the court could have used this framework to increase the wife’s portion, Mrs. Bills did not present evidence of any inflation-related growth to the account, so the court divided the account in half.[[124]](#footnote-124)This decision was fair in the eyes of the law because Mr. Bills was awarded what the court could determine was his portion.[[125]](#footnote-125) Therefore, the Court of Civil Appeals correctly decided this issue when it affirmed the trial court’s decision.[[126]](#footnote-126)

1. Role of Marital Misconduct

Mr. Bills challenged the trial court’s decision, arguing that it incorrectly believed his wife’s testimony over his recollection concerning the amount that was in his wife’s E-Trade account when their marriage started.[[127]](#footnote-127) The trial court chose to award Mrs. Bills the amount she claimed was in the account before the marriage instead of believing Mr. Bills’s recollected amount.[[128]](#footnote-128) The court denied this challenge and said that the trial court correctly weighed his admitted lies against his credibility and—instead—believed his wife’s testimony as the truth.[[129]](#footnote-129) In *Childers v. Childers*, the Oklahoma Supreme Court ruled that the trial court is the proper forum to determine the credibility of witnesses when it believed one proffered witness with twenty years of experience over another with less experience.[[130]](#footnote-130) *Childers* also held that higher courts will not question the trial court’s determination of witness credibility unless there is a clear abuse of discretion shown.[[131]](#footnote-131) Here, just like in *Childers*, the trial court weighed the credibility of one witness over the other.[[132]](#footnote-132) Additionally, the court of appeals did not find that the trial court abused its discretion.[[133]](#footnote-133) Therefore, the Court of Civil Appeals correctly affirmed the trial court’s decision to believe the wife’s testimony related to the value of the E-Trade account.[[134]](#footnote-134)

*C. Attorney Fees*

While the Oklahoma Court of Civil Appeals correctly decided to affirm the trial court’s decision to not grant Mr. Bills’s attorney fees, it incorrectly decided to not grant Mrs. Bills’s attorney fees. In *Thielenhaus*, the Oklahoma Supreme Court held that attorney fees can be awarded by conducting a judicial balancing of the equities if doing so would be “just and equitable” considering the financial means of the parties.[[135]](#footnote-135) In *Childers*,the Court stated that a decision regarding the payment of attorney fees will not be overturned unless there is proof that the trial court abused its discretion.[[136]](#footnote-136) In *Bills*, the appeals court held that the trial court correctly decided that no attorney fees should be awarded to either party because each side contributed to the lengthiness and excessiveness of litigation.[[137]](#footnote-137)

The decision to not award Mr. Bills any attorney fees was correct. As previously stated in *Thielenhaus*, when awarding attorney fees, the court must analyze whether justice requires such action.[[138]](#footnote-138) In *Metcalf*, the court ruled that a spouse who brings a divorce related appeal, and doesn’t win his appeal, is not entitled to attorney fees.[[139]](#footnote-139) In *Casey v. Casey*,[[140]](#footnote-140) the court held that attorney fees are payable when the other party has acted “arbitrarily and capriciously” during litigation. Here, Mr. Bills did not win any challenges on appeal and should not recoup attorney fees for a frivolous suit.[[141]](#footnote-141) Additionally, his own misconduct led to the couple’s marital issues which culminated in the divorce proceeding.[[142]](#footnote-142) The court of appeals mentioned that it was compensating Mrs. Bills for the hardships caused by her husband.[[143]](#footnote-143) Therefore, it would not be fair to then also reward Mr. Bills for dragging this case out into an appeal where he did not present any reasonable argument that the trial court abused its discretion.

However, the Oklahoma Court of Civil Appeals should have reversed the trial court’s decision to not grant attorney fees to Mrs. Bills. The *Thielenhaus* Court held that attorney fees are to be awarded in divorce proceedings when a judicial balancing of the equities indicates that payment is fair.[[144]](#footnote-144) Here, the trial court already decided that Mrs. Bills was entitled to a higher portion of the marital estate and considered Mr. Bills’s marital misconduct as a factor in that decision.[[145]](#footnote-145) If it is fair for Mrs. Bills to be awarded a higher portion of the marital estate because of her husband’s deceitful marital misconduct, it should also be fair for her to receive attorney fees.

Furthermore, the Oklahoma Court of Civil Appeals should have awarded Mrs. Bills attorney fees related to the appeal. 20 O.S. Supp. § 15.1 states that a party to an appeal can recover attorney fees for appeal-related services if the suit is found to be frivolous.[[146]](#footnote-146) In *Woods v. Woods*,the wife was awarded attorney fees for appeals-related services because her husband prolonged the suit and caused her to expend funds on an unnecessary appeal.[[147]](#footnote-147)The same can be said for this suit. At the trial court level, Mr. Bills was already awarded a fair portion of the marital estate despite him single-handedly dissipating the couple’s funds and taking out several loans without his wife’s knowledge.[[148]](#footnote-148) Mr. Bills brought an appeal to try to get more money out of his divorce, despite his allotment being fair. Yet the Oklahoma Court of Civil Appeals held that Mrs. Bills was not awarded attorney fees because she contributed to a lengthy divorce litigation.[[149]](#footnote-149)

However, there was no indication of such behavior in the facts of this case. Mrs. Bills was forced to respond to Mr. Bills’s appeal despite the fact that Mr. Bills had recovered a fair portion of the estate.[[150]](#footnote-150) If the Oklahoma courts are concerned with delivering an equitable and fair judgment, it is dangerous for the court to presume that Mrs. Bills contributed to a lengthy litigation process with no evidence of that behavior. Therefore, considering the totality of the circumstances, the amount already awarded, Mr. Bills’s deceitful behavior during their marriage, and all the pain experienced, Mrs. Bills should have been granted payment of all attorney fees.

It can be argued that requiring payment of attorney fees from both parties can encourage litigation to be carried out expeditiously.[[151]](#footnote-151) However, when one party has decided to weaponize their ability to expend resources and keep arguing issues in court, expeditious litigation is a forgone conclusion. Here, Mr. Bills was trying to get more money out of his divorce settlement by bringing this claim. He had already been awarded money at the trial court level.[[152]](#footnote-152) Mrs. Bills didn’t bring any appeals other than trying to recover attorney fees.[[153]](#footnote-153) The court should have affirmed her challenge because her husband was continuing to cause hardships.

On the other hand, Mr. Bills could have argued that it would be unfair to force him to pay attorney fees because of his low income.[[154]](#footnote-154) In *Metcalf*, the court held that a party’s income is a factor in determining whether it is fair for a party to be awarded attorney fees.[[155]](#footnote-155) However, Mr. Bills’s income was imputed to be the same as his wife’s because he was underemployed and had the education to work as a practicing attorney, but did not.[[156]](#footnote-156) Therefore, since both of their incomes were calculated to be the same, this should not have hindered Mrs. Bills’s ability to recover attorney fees.

V. CONCLUSION

In Oklahoma’s divorce cases, the courts strive to administer an equitable administration of justice when distributing marital assets.[[157]](#footnote-157) In *Bills*, the Oklahoma Court of Civil Appeals correctly decided to deny Mr. Bills’s challenges to the trial court’s decisions.[[158]](#footnote-158) The court correctly decided that the trial court did not abuse its discretion regarding the calculation and imputation of his income.[[159]](#footnote-159) Next, the court correctly decided that the trial court did not abuse its discretion when it divided the marital estate equitably and awarded Mrs. Bills a larger portion.[[160]](#footnote-160) Additionally, the court correctly decided to affirm the trial court’s decision to believe Mrs. Bills’ credible testimony over the husband’s recollection. Finally, it correctly decided to deny the husband the ability to recover any attorney fees.

However, the court incorrectly decided to affirm the trial court’s decision to not award Mrs. Bills any attorney fees.[[161]](#footnote-161) It did not put forward any evidence that she negatively contributed to the continuation of litigation.[[162]](#footnote-162) Without evidence of such behavior, Mrs. Bills should have been able to recover attorney fees because Mr. Bills was engaging in a frivolous suit. Ultimately, it is important for the Oklahoma court system to continue to administer fair and equitable distribution of marital assets, and the court missed an opportunity to do so in this case.

1. \* Juris Doctor Candidate, Oklahoma City University School of Law, May 2024. I would like to dedicate this comment to my late father, John H. Dunmar. Thank you for always believing in my dreams. I would also like to thank my husband, Micky Willis, my family, and my friends for their love and support throughout this process. Lastly, thank you to the Oklahoma City University Law Review team for making this publication possible [↑](#footnote-ref-1)
2. . Stephane Mechoulan, *Divorce Laws and the Structure of the American Family*, 35 J. Legal Stud. 143, 144 (2006). [↑](#footnote-ref-2)
3. . 24 Am. Jur. 2d Divorce and Separation § 1 (2022). [↑](#footnote-ref-3)
4. . Lee R. Russ, Annotation, *Divorce: Equitable Distribution Doctrine*, 41 A.L.R. 4th 481 § 1(a) (1985). [↑](#footnote-ref-4)
5. . *Id*. [↑](#footnote-ref-5)
6. . *Id*. § 2(a). [↑](#footnote-ref-6)
7. . Bills v. Bills, 2022 OK CIV APP 27, ¶ 1, 514 P.3d 485, 487. [↑](#footnote-ref-7)
8. . *Id*. [↑](#footnote-ref-8)
9. . Okla. Stat. Ann. tit. 43, § 121(B) (No.2) (2022). [↑](#footnote-ref-9)
10. . *Id*. [↑](#footnote-ref-10)
11. . *Id*. [↑](#footnote-ref-11)
12. . Thielenhaus v. Thielenhaus, 1995 OK 5, ¶ 9, 890 P.2d 925, 930. [↑](#footnote-ref-12)
13. . *Id*. [↑](#footnote-ref-13)
14. . *Id*. [↑](#footnote-ref-14)
15. . Johnson v. Johnson, 2016 OK CIV APP 74, ¶ 6, 386 P.3d 1049, 1052 (discussing Okla. Stat. Ann. tit. 43, § 121 (2022)). [↑](#footnote-ref-15)
16. . Dancer v. Dancer, 2022 OK CIV APP 25, ¶ 30, 513 P.3d 569, 577. [↑](#footnote-ref-16)
17. . *Id*. [↑](#footnote-ref-17)
18. . Smith v. Smith, 1993 OK CIV APP 17, ¶ 6, 847 P.2d 827, 829. [↑](#footnote-ref-18)
19. . *Id*. ¶ 7, 847 P.2d at 830. [↑](#footnote-ref-19)
20. . Okla. Stat. Ann. tit. 43, § 118(B) (2021). [↑](#footnote-ref-20)
21. . *Id*. [↑](#footnote-ref-21)
22. . *In re* Children of Knight v. Lincoln, 2014 OK CIV APP 2, ¶ 6, 317 P.3d 210, 213. [↑](#footnote-ref-22)
23. . Parnell v. Parnell, 2010 OK CIV APP 74, ¶¶ 9-10, 239 P.3d 216, 219. [↑](#footnote-ref-23)
24. . Minnich v. Minnich, 1995 OK CIV APP 60, ¶ 7,898 P.2d 747, 750. [↑](#footnote-ref-24)
25. . Okla. Stat. Ann. tit. 43, § 110(C) (2002). [↑](#footnote-ref-25)
26. . Fulsom v. Fulsom, 2003 OK 96, ¶ 11, 81 P.3d 652, 657. [↑](#footnote-ref-26)
27. . *Thielenhaus*, ¶ 19, 890 P.2d at 935. [↑](#footnote-ref-27)
28. . Metcalf v. Metcalf, 2020 OK 20, ¶ 28, 465 P.3d 1187, 1195, *as corrected* (Apr. 27, 2020). [↑](#footnote-ref-28)
29. . *Id*. ¶ 27, 465 P.3d at 1195. [↑](#footnote-ref-29)
30. . *Thielenhaus*, ¶ 19, 890 P.2d at 934. [↑](#footnote-ref-30)
31. . Hickman v. Hickman, 1997 OK 49, ¶ 15, 937 P.2d 85, 88. [↑](#footnote-ref-31)
32. . Gardner v. Gardner, 1981 OK CIV APP 9, ¶ 24, 629 P.2d 1283, 1287. [↑](#footnote-ref-32)
33. . *Id*. [↑](#footnote-ref-33)
34. . Okla. Stat. Ann. tit. 43, § 110(D) (2022). [↑](#footnote-ref-34)
35. . Childers v. Childers,2016 OK 95, ¶ 28, 382 P.3d 1020, 1026-27. [↑](#footnote-ref-35)
36. . *Bills*, ¶ 9, 514 P.3d at 488. [↑](#footnote-ref-36)
37. . *Id*. [↑](#footnote-ref-37)
38. . *Id*. [↑](#footnote-ref-38)
39. . *Id*. ¶ 2, 514 P.3d at 487. [↑](#footnote-ref-39)
40. . *Id*. [↑](#footnote-ref-40)
41. . *Id.* [↑](#footnote-ref-41)
42. . *Id*. [↑](#footnote-ref-42)
43. . *Id*. [↑](#footnote-ref-43)
44. *. Id.* [↑](#footnote-ref-44)
45. *. Id*. ¶ 11, 514 P.3d at 489. [↑](#footnote-ref-45)
46. *. Id*. [↑](#footnote-ref-46)
47. *. Id*. ¶ 2, 514 P.3d at 487. [↑](#footnote-ref-47)
48. *. Id*. [↑](#footnote-ref-48)
49. *. Id*. [↑](#footnote-ref-49)
50. *. Id*. [↑](#footnote-ref-50)
51. *. Id*. ¶ 3, 514 P.3d at 487. [↑](#footnote-ref-51)
52. *. Id*. [↑](#footnote-ref-52)
53. . *Id*. [↑](#footnote-ref-53)
54. . *Id*. ¶ 3, 514 P.3d at 487-88. [↑](#footnote-ref-54)
55. . *Id*. ¶ 3, 514 P.3d at 488. [↑](#footnote-ref-55)
56. . *Id*. ¶ 5, 514 P.3d at 488. [↑](#footnote-ref-56)
57. . *Id*. ¶ 4, 514 P.3d at 488. [↑](#footnote-ref-57)
58. . *Id*. ¶ 5, 514 P.3d at 488. [↑](#footnote-ref-58)
59. . *Id*. [↑](#footnote-ref-59)
60. . *Id.* [↑](#footnote-ref-60)
61. . *Id*. [↑](#footnote-ref-61)
62. . *Id*. ¶ 1, 514 P.3d at 487. [↑](#footnote-ref-62)
63. . *See* McLaughlin v. McLaughlin, 1999 OK 34, ¶ 12, 979 P.2d 257, 260. [↑](#footnote-ref-63)
64. . *See* Merritt v. Merritt, 2003 OK 68, ¶ 20,73 P.3d 878, 884. [↑](#footnote-ref-64)
65. . *Bills*, ¶ 8, 514 P.3d at 488. [↑](#footnote-ref-65)
66. . *Id*. [↑](#footnote-ref-66)
67. . *Id*. ¶ 9, 514 P.3d at 488. [↑](#footnote-ref-67)
68. . *Id*. [↑](#footnote-ref-68)
69. . *Id*. ¶ 10, 514 P.3d at 488. [↑](#footnote-ref-69)
70. . *Id*. [↑](#footnote-ref-70)
71. . *Id*. [↑](#footnote-ref-71)
72. . *Id*. ¶ 10, 514 P.3d at 488-89. [↑](#footnote-ref-72)
73. . *Id*. ¶ 10, 514 P.3d at 489. [↑](#footnote-ref-73)
74. . *Id*. [↑](#footnote-ref-74)
75. . *Id*. ¶ 3, 514 P.3d at 487. [↑](#footnote-ref-75)
76. . *Id*. ¶ 11, 514 P.3d at 489. [↑](#footnote-ref-76)
77. . *Id*. [↑](#footnote-ref-77)
78. . *Id*. [↑](#footnote-ref-78)
79. . *Id*. [↑](#footnote-ref-79)
80. . *Id*. (citing *Thielenhaus*, ¶ 9, 890 P.2d at 930). [↑](#footnote-ref-80)
81. . *Id*. ¶ 13, 514 P.3d at 489. [↑](#footnote-ref-81)
82. . *Id*. [↑](#footnote-ref-82)
83. . *Id*. ¶ 14, 514 P.3d at 489. [↑](#footnote-ref-83)
84. . *Id*. [↑](#footnote-ref-84)
85. . *Id*. ¶ 15, 514 P.3d at 489. [↑](#footnote-ref-85)
86. . *Id*. [↑](#footnote-ref-86)
87. . *See* *Childers*, ¶ 22, 382 P.3d at 1025. [↑](#footnote-ref-87)
88. . *Bills*, ¶ 15, 514 P.3d at 489-90. [↑](#footnote-ref-88)
89. . *Id*. ¶ 15, 514 P.3d at 490. [↑](#footnote-ref-89)
90. . *Id*. ¶ 16, 514 P.3d at 490. [↑](#footnote-ref-90)
91. . *See Thielenhaus*, ¶ 19,890 P.2d at 935. [↑](#footnote-ref-91)
92. . *Id*. [↑](#footnote-ref-92)
93. . *Bills*, ¶ 17, 514 P.3d at 490. [↑](#footnote-ref-93)
94. *. Id*. [↑](#footnote-ref-94)
95. . *Id*. ¶ 18, 514 P.3d at 490. [↑](#footnote-ref-95)
96. . *Id*. ¶¶ 17-18, 514 P.3d at 490. [↑](#footnote-ref-96)
97. . *Id*. ¶ 3, 514 P.3d at 487. [↑](#footnote-ref-97)
98. . *Id*. ¶ 4, 514 P.3d at 488. [↑](#footnote-ref-98)
99. . *See* *Metcalf*, ¶ 28, 465 P.3d at 1195. [↑](#footnote-ref-99)
100. . *Bills*, ¶ 10, 514 P.3d at 488. [↑](#footnote-ref-100)
101. . *Id*. [↑](#footnote-ref-101)
102. . *Parnell*, ¶ 8, 239 P.3d at 219. [↑](#footnote-ref-102)
103. . *Id*. ¶¶ 18-20, 239 P.3d at 220-21. [↑](#footnote-ref-103)
104. . *Id*. ¶ 18, 239 P.3d at 220. [↑](#footnote-ref-104)
105. . *Bills*, ¶ 3, 515 P.3d at 487 [↑](#footnote-ref-105)
106. . *Id*. ¶ 2, 515 P.3d at 487. [↑](#footnote-ref-106)
107. . *Metcalf*, ¶¶ 21-22, 465 P.3d at 1193. [↑](#footnote-ref-107)
108. *. Bills*, ¶ 3, 514 P.3d at 487. [↑](#footnote-ref-108)
109. . *Id*. ¶ 10, 514 P.3d at 488-89. [↑](#footnote-ref-109)
110. . *Id*. [↑](#footnote-ref-110)
111. . *Id*. ¶ 15, 514 P.3d at 489-90. [↑](#footnote-ref-111)
112. . *See Childers*, ¶ 22, 382 P.3d at 1025. [↑](#footnote-ref-112)
113. . *Bills*, ¶ 15, 514 P.3d at 489-90. [↑](#footnote-ref-113)
114. . *Id*. ¶ 3, 514 P.3d at 487-88. [↑](#footnote-ref-114)
115. . *Id*. [↑](#footnote-ref-115)
116. . *Mocnik v. Mocnik*, 1992 OK 99, ¶ 23, 838 P.2d 500, 505. [↑](#footnote-ref-116)
117. . *Bills*,¶ 9, 514 P.3d at 488. [↑](#footnote-ref-117)
118. . Okla. Stat. Ann. tit. 43, § 121(B) (2022). [↑](#footnote-ref-118)
119. . *Bills*, ¶ 9, 514 P.3d at 488. [↑](#footnote-ref-119)
120. . *Id*. ¶ 4, 514 P.3d at 488. [↑](#footnote-ref-120)
121. . *Id*. ¶ 13, 514 P.3d at 489. [↑](#footnote-ref-121)
122. . *Id*. ¶ 12, 514 P.3d at 489 (citing *Thielenhaus*, ¶ 9,890 P.2d at 930-31). [↑](#footnote-ref-122)
123. . *Moyers v. Moyers*, 1962 OK 146, ¶ 8, 372 P.2d 844, 846. [↑](#footnote-ref-123)
124. . *Bills*, ¶ 14, 514 P.3d at 489. [↑](#footnote-ref-124)
125. . *Id*. ¶ 13, 514 P.3d at 489. [↑](#footnote-ref-125)
126. . *Id*. [↑](#footnote-ref-126)
127. . *Id*. ¶ 14, 514 P.3d at 489. [↑](#footnote-ref-127)
128. . *Id*. [↑](#footnote-ref-128)
129. . *Id*. [↑](#footnote-ref-129)
130. . *Childers*, ¶ 18, 382 P.3d at 1024. [↑](#footnote-ref-130)
131. . *Id*. [↑](#footnote-ref-131)
132. . *Bills*, ¶ 14, 514 P.3d at 489. [↑](#footnote-ref-132)
133. . *Id*. [↑](#footnote-ref-133)
134. . *Id*. [↑](#footnote-ref-134)
135. . *Thielenhaus*, ¶ 19, 890 P.2d at 934-35. [↑](#footnote-ref-135)
136. . *Childers*, ¶ 28, 382 P.3d at 1026-27. [↑](#footnote-ref-136)
137. . *Bills*, ¶ 17, 514 P.3d at 490. [↑](#footnote-ref-137)
138. . *Thielenhaus*, ¶ 19, 890 P.2d at 934-35. [↑](#footnote-ref-138)
139. . *Metcalf*, ¶ 27, 465 P.3d at 1195. [↑](#footnote-ref-139)
140. . *Casey v. Casey*, 1993 OK CIV APP 129, ¶ 6, 860 P.2d 807, 810. [↑](#footnote-ref-140)
141. . *Bills*, ¶ 1, 514 P.3d at 487. [↑](#footnote-ref-141)
142. . *Id.* ¶ 9, 514 P.3d at 488. [↑](#footnote-ref-142)
143. . *Id*. ¶ 4, 514 P.3d at 488. [↑](#footnote-ref-143)
144. . *Thielenhaus*, ¶ 19, 890 P.2d at 934-35. [↑](#footnote-ref-144)
145. . *Bills*,¶ 4, 514 P.3d at 488. [↑](#footnote-ref-145)
146. . Okla. Stat. Ann. tit. 20, § 15.1 (1982). [↑](#footnote-ref-146)
147. . *Woods v. Woods*, 1990 OK CIV APP 49, ¶ 17, 793 P.2d 1372, 1377. [↑](#footnote-ref-147)
148. . *Bills*, ¶¶ 2-4, 514 P.3d at 487-88. [↑](#footnote-ref-148)
149. . *Id*. ¶ 17, 514 P.3d at 490. [↑](#footnote-ref-149)
150. . *Id*. ¶ 4, 514 P.3d at 488. [↑](#footnote-ref-150)
151. . *Gardner*, ¶ 24, 629 P.2d at 1287. [↑](#footnote-ref-151)
152. . *Bills*,¶ 13, 514 P.3d at 489. [↑](#footnote-ref-152)
153. . *Id*. ¶ 1, 514 P.3d at 487. [↑](#footnote-ref-153)
154. . *Id*. ¶ 2, 514 P.3d at 487. [↑](#footnote-ref-154)
155. . *Metcalf*, ¶ 28, 465 P.3d at 1195. [↑](#footnote-ref-155)
156. . *Bills*,¶ 10, 514 P.3d at 488. [↑](#footnote-ref-156)
157. . Okla. Stat. Ann. tit. 43, § 121(2) (2022). [↑](#footnote-ref-157)
158. . *Bills*, ¶ 1, 514 P.3d at 487. [↑](#footnote-ref-158)
159. . *Id*. ¶ 3, 514 P.3d at 487. [↑](#footnote-ref-159)
160. . *Id*. ¶ 4, 514 P.3d at 488. [↑](#footnote-ref-160)
161. . *Id*. ¶ 17, 514 P.3d at 490. [↑](#footnote-ref-161)
162. . *Id*. [↑](#footnote-ref-162)