

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 5, 2026 Session

FILED

07/31/2026

Clerk of the
Appellate Courts

IN RE CONSERVATORSHIP OF COLUMBUS LEWIS, JR.

**Appeal from the Circuit Court for Davidson County
No. 13P576 Andra J. Hedrick, Judge**

No. M2024-01924-COA-R3-CV

Paula Lewis, the former conservator for Columbus Lewis, Jr., appeals the finding by the probate court that she breached her fiduciary duty as conservator by making expenditures and other financial transactions without prior court approval and the assessment of a judgment against her in the amount of \$23,800. We affirm.

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

FRANK G. CLEMENT JR., C.J., delivered the opinion of the Court, in which W. NEAL MCBRAYER, and CARMA DENNIS MCGEE, JJ., joined.

Kathy A. Leslie, Nashville, Tennessee, for the appellant, Paula Lewis.

Mike J. Urquhart, Nashville, Tennessee, for the appellee, Mike J. Urquhart in his capacity as the Conservator of Columbus Lewis, Jr.

OPINION

FACTS AND PROCEDURAL HISTORY

A conservatorship was created for Columbus Lewis Jr. in November of 2017, at which time Kim Hale was appointed to serve as the Conservator. On May 6, 2021, a cousin of Mr. Lewis, Paula Lewis, petitioned the court to seek appointment as the Successor Conservator for Mr. Lewis. At the time of the petition, Mr. Lewis was residing at Middle Tennessee Mental Health Institute (“MTMHI”).

In June of 2021, Ms. Lewis’s petition was granted, and she was appointed as Mr. Lewis’s successor conservator subject to posting a bond of \$250,000. After the requisite bond was posted by Merchants Bonding Company, Letters of Conservatorship were issued to Ms. Lewis. In the oath Ms. Lewis signed and filed on June 3, 2021, Ms. Lewis promised “to timely file each required Inventory and Accounting, unless waived by this Court, and

to spend the assets of the minor or person with a disability only as approved by the Court.” Ms. Lewis filed her initial inventory in September 2021, which listed the value of Mr. Lewis’s estate at \$247,845.69.

Ms. Lewis was initially represented by attorney Charles Duke. After Mr. Duke withdrew from the case in July of 2022, Ms. Lewis hired attorney Kathy A. Leslie to represent her concerning her conservatorship duties. In August of 2022, and without court approval, Ms. Lewis paid Ms. Leslie \$7,000 to draft a special needs trust for Mr. Lewis. Three months later, on November 29, 2022, Ms. Leslie filed a notice of appearance as counsel for Ms. Lewis.

In the interim, in September 2022, after MTMHI determined that Mr. Lewis had reached maximum medical improvement, he was released from MTMHI and moved into Belinda’s Group Home. Shortly thereafter, and without court approval, Ms. Lewis executed a one-year lease to rent a home for her to reside with and provide full-time care for Mr. Lewis.¹ The lease agreement required Ms. Lewis to pay one year of rent in advance, totaling \$28,800, which she paid from conservatorship funds without prior court approval. Thereafter, Ms. Lewis paid all utilities and other household expenses from conservatorship funds.

On January 12, 2023, a report was filed by the Office of Conservatorship Management following a review of Ms. Lewis’s annual accounting. The report revealed that Ms. Lewis used conservatorship funds to pay attorney fees, tax preparation fees, and Belinda’s Group Home without prior court approval. It also revealed that she entered into a residential lease without prior court approval and paid the security deposit, a full year of rent in advance, and utility bills using conservatorship funds. The report noted that motions for approval of attorney and conservator fees had been filed but had yet to be heard by the court.

Then, in April 2023, the Probate Master conducted a review hearing in which Ms. Lewis and Ms. Leslie participated, for the purpose of addressing the accounting issues and the actions of Ms. Lewis. Although the Probate Master recalls instructing Ms. Leslie to prepare an order reciting the substance of the hearing and the Master’s rulings, no order was provided or entered.² Thus, the record is silent as to what action was taken as a result of the April 2023 review hearing.

¹ Ms. Lewis, who had been working full-time, chose to leave her job to care for Mr. Lewis and subsequently filed a motion to be compensated for providing full-time care for Mr. Lewis. In April 2023, the Probate Court entered an order granting Ms. Lewis back pay for her services from October 2022 through March 2023, for a total of \$37,500.00. Ongoing, Ms. Lewis was to be paid \$4,500.00 a month from conservatorship funds to provide care to Mr. Lewis. There are no allegations in the record that Ms. Lewis did not provide adequate care.

² Ms. Leslie insists that she was not instructed to prepare and present a proposed order.

In March 2024, Ms. Lewis filed a motion seeking to be removed as conservator based on conflicts with Mr. Lewis. On April 11, 2024, the Probate Judge conducted a hearing and granted Ms. Lewis's motion to be removed as conservator while admonishing Ms. Lewis, noting that she needed to file her final accounting and that she would not be relieved of her bond until all accountings were approved. The judge appointed attorney Mike Urquhart as the successor conservator.

In April 2024, the Probate Master entered an order setting another review hearing to address three accountings, the January 2023 accounting, an accounting filed on March 25, 2023, and the most recent accounting filed in March 2024.³ This review hearing, held on June 26, 2024, and attended by Ms. Lewis and Ms. Leslie, revealed that there was still no court approved property management plans authorizing, *inter alia*, the lease agreement, Ms. Lewis's rent payments, household expenses, or self-reimbursements. After hearing sworn testimony from Ms. Lewis and reviewing the accountings and other records submitted to the court, the Probate Master found that certain expenditures were not in Mr. Lewis's best interest, in part because Ms. Lewis benefited from free rent, utilities, and household expenses. Resultingly, the Probate Master recommended, as stated in the order, that Ms. Lewis be found in breach of her fiduciary duty, that a judgment be entered against her in the sum of \$35,010.70,⁴ and that the bond for Ms. Lewis be called to reimburse the conservatorship estate.

Ms. Lewis timely filed a motion for a *de novo* evidentiary appeal of the Probate Master's order. The *de novo* hearing Ms. Lewis requested was held before the Probate Judge on September 24, 2024, during which the court reviewed the accountings that Ms. Lewis filed in January 2023 and March 2024.⁵ Ms. Lewis testified at length and provided receipts for her expenditures. In the order that followed, the Probate Judge found that "only \$59,658.53 in assets were left in the conservatorship estate when Ms. Lewis turned the position over to Mr. Urquhart," and that "the accountings filed by Ms. Lewis revealed numerous transactions that had not been approved by the Court by way of an order or approved property management plan, and/or for which there was not adequate supporting receipts or other documentation." The order summarized the unapproved expenditures,

³ Tennessee Code Annotated § 34-1-111 places the responsibility on the conservator to file annual accountings that itemize the expenditures made using conservatorship funds.

⁴ The judgment covered the full year of advance rent, the security deposit in the amount of \$2,400.00, and \$4,610.70 of other, unexplained expenses for a total of \$35,010.70.

⁵ The order filed from that hearing also states: "Ms. Lewis also filed a final accounting on 6/28/24. No exceptions to the accounting have been filed. Therefore, the Court has reviewed the final accounting and noted only that it includes additional attorney fees and expenses paid to Ms. Leslie beyond the total amount approved by the Court."

stating that Ms. Lewis:

- a) Entered into a lease to rent a home in which she would live with Mr. Lewis;
- b) Pre-paid a security deposit for the rental home;
- c) Pre-paid a year's worth of rent for the rental home;
- d) Purchased a washer and dryer;
- e) Made cash withdrawals from the conservatorship account;
- f) Used cash to pay for food, clothing and incidentals for Mr. Lewis;
- g) Reimbursed herself for out of pocket expenses incurred for Mr. Lewis;
- h) Paid attorney fees and expenses; and
- i) Paid accountant fees and expenses.

Following an assessment of Ms. Lewis's testimony and her expenditures, which was set forth in the final order, the Probate Judge states that "[a] judgment is entered against Ms. Lewis and in favor of the conservatorship in the total amount of \$23,800.00." Of this sum, \$16,800 represented one-half of the rental home payments where Ms. Lewis resided at no cost with Mr. Lewis, plus \$7,000 in attorney's fees and expenses paid to Ms. Leslie without court approval.⁶

The final order, entered on November 14, 2024, allowed Ms. Lewis sixty days to pay the judgment in full or arrange repayment acceptable to Mr. Urquhart. The order further stated, "If Ms. Lewis has not paid the judgment in full or entered into a repayment plan acceptable to Mr. Urquhart within sixty (60) days of the entry of this Order, Mr. Urquhart shall submit to the Court a proposed order to call the fiduciary bond, without the need to file a motion for same." Ms. Lewis failed to pay the judgment and failed to agree to a repayment plan within the time allowed; thus, the bond was called. Shortly thereafter, Merchants Bonding Company satisfied the judgment.

In the interim, Mr. Urquhart filed a motion pursuant to Rule 54.04 of the Tennessee Rules of Civil Procedure seeking to assess discretionary costs against Ms. Leslie. The court denied the motion.

This appeal followed.

After filing her notice of appeal, Ms. Lewis filed a motion asking the trial court to supplement the record with proof, *inter alia*, that the trial court called her bond *sua sponte* in May 2025 after she failed to pay the judgment against her. Her motion to supplement was denied.

⁶ The court had previously approved attorney fees and expenses to be paid to Ms. Leslie in the amount of \$5,950.00; however, Ms. Lewis paid \$12,950.00 to Ms. Leslie, \$7,000.00 of which was not approved.

ISSUES

Ms. Lewis, the former conservator, raises two issues on appeal.

1. Whether Ms. Lewis's right to Due Process was violated when the court ordered, without a petition or hearing, that she breached her fiduciary duty to the conservatee and the court and by doing so entering a judgment and calling her bond *sua sponte*, without providing her with prior notice or an opportunity to be heard.
2. Whether the trial court erred by not allowing Ms. Lewis to supplement the record on appeal.

Mr. Urquhart, the successor conservator, presents three additional issues for consideration.

1. Whether the appeal is moot because the judgment was satisfied when the trial court called the bond.
2. Whether the court erred by not awarding discretionary costs.
3. Whether Mr. Lewis should be awarded attorney's fees because this appeal is frivolous and because Ms. Lewis breached her fiduciary duty.

STANDARD OF REVIEW

This Court's review of factual findings is "de novo upon the record with a presumption of correctness as to the findings of fact, unless the preponderance of the evidence is otherwise." *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000). *See also* Tenn. R. App. P. 13(d). We review questions of law de novo with no presumption of correctness. *See In re Conservatorship of Hudson*, 578 S.W.3d 896, 905-06 (Tenn. 2018).

Discretionary decisions made by the trial court are reviewed under the abuse of discretion standard, and as the Supreme Court explained, "[d]iscretionary decisions must take the applicable law and the relevant facts into account." *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010). "An abuse of discretion occurs when a court strays beyond the applicable legal standards or when it fails to properly consider the factors customarily used to guide the particular discretionary decision." *Id.* Although the abuse of discretion standard of review envisions a less rigorous review of the trial court's discretionary decisions, the standard does not immunize a trial court's decision from any meaningful appellate scrutiny. *Id.*

ANALYSIS

I. MOOTNESS

We begin with Mr. Urquhart's contention that the appeal by Ms. Lewis is moot because the surety company satisfied the judgment.

The determination of mootness is a question of law. *All. for Native Am. Indian Rts. in Tennessee, Inc. v. Nicely*, 182 S.W.3d 333, 338–339 (Tenn. Ct. App. 2005). A moot case is one that has lost its justiciability because it no longer involves a present, ongoing controversy. *Id.* A case is considered moot if it no longer serves as a means to provide some sort of judicial relief to the prevailing party. *Ford Consumer Fin. Co. v. Clay*, 984 S.W.2d 615, 616 (Tenn.Ct.App.1998).

Although Merchants Bonding Company, the surety, satisfied the judgment,⁷ this appeal presents a present, ongoing controversy in deciding whether Ms. Lewis breached her fiduciary duty and whether the judgment against her should be set aside. Therefore, the appeal is not moot.

II. DUE PROCESS

Ms. Lewis argues that her right to due process was violated because, she alleges, the Probate Judge “ordered, without a petition or hearing, that she breached her fiduciary duty to the conservatee and the court and by doing so entering a judgment and calling her bond *sua sponte*, without providing her with prior notice or an opportunity to be heard.”

While Ms. Lewis is correct that no petition was filed, the record fails to support the contention that Ms. Lewis was denied “prior notice or an opportunity to be heard” concerning the Probate Judge’s decision to assess a monetary judgment against her for breach of her fiduciary duty.

In the order entered on July 19, 2024, following the accounting review hearing, the Probate Master recommended that a monetary judgment be assessed against Ms. Lewis for breach of her fiduciary duties in managing Mr. Lewis’s finances and that the surety bond be called. Ms. Lewis filed a timely notice of appeal seeking a *de novo* hearing to decide the issues. As requested, Ms. Lewis was provided a full evidentiary hearing, a *de novo* hearing, which was set by proper notice entered on August 13, 2024, to be heard on September 24, 2024. Further, Ms. Lewis was represented by legal counsel, Mr. Leslie, during the evidentiary hearing before the Probate Judge concerning the accountings Ms. Lewis filed in January 2023 and March 2024. Additionally, Ms. Lewis testified at length

⁷ As noted earlier, all parties acknowledge this fact.

concerning her accountings and actions as conservator.⁸ Thus, we find no merit to the contention that Ms. Lewis was deprived of proper prior notice of the hearing before the Probate Judge or of an opportunity to be heard during that hearing.

Ms. Lewis also contends she was denied due process because no one filed “a petition” to challenge her fiduciary decisions or expenditures. As a consequence, she states, whether she was in breach of her fiduciary duties was not at issue. In making this argument, she relies on Tennessee Code Annotated § 34-3-108(a) and (c). We find her reliance on the statute misplaced for several reasons.

Tennessee Code Annotated § 34-3-108(a) and (c) read:

(a) A conservator appointed under this chapter may be discharged or have its duties modified if the court determines that the respondent is no longer a person with a disability, or that it is in the best interests of the person with a disability that the conservatorship be terminated, or that the conservator has failed to perform its duties and obligations in accordance with the law, or that the conservator has failed to act in the best interest of the person with a disability so as to warrant modification or termination. The person with a disability or any interested person on the behalf of the person with a disability may petition the court at any time for a termination or modification order under this section.

(c) The court, upon receipt of the petition filed under this section, shall conduct a hearing. At the hearing, the person with a disability has all the rights set out in § 34-3-106. Prior to the holding of the hearing, the court may require that the person with a disability submit to an examination as required by § 34-3-105 to support the person with a disability’s contention that a conservator is no longer needed.

Id.

As subsection (a) makes clear, the person with a disability or any interested person on the behalf of the person with a disability may petition the court at any time for a termination or modification order under this section. *See id.* However, the procedure set forth in subsection (a) does not preclude the Probate Judge from initiating an inquiry *sua*

⁸ The order from that hearing states: “On 9/24/24, this Court conducted a lengthy *de novo* evidentiary hearing for review of accountings filed on 1/12/23 and 3/25/24 by the former conservator, Paula Lewis (“Ms. Lewis”). Ms. Lewis was present, along with her attorney Kathy Leslie (“Ms. Leslie”). Karl Warden (“Mr. Warden”), the guardian ad litem, was also present as was Mike Urquhart (“Mr. Urquhart”), the successor conservator.” Further, a footnote in that order states, “the hearing lasted approximately 3.5 hours.”

sponte. See *AmSouth Bank v. Cunningham*, 253 S.W.3d 636, 643 (Tenn. Ct. App. 2006); see also Tenn. Code Ann. § 34-1-123.

Contrary to Mr. Lewis’s contentions, Tennessee Code Annotated § 34-1-123 authorizes the trial court to summon a fiduciary before the court over concerns of “any abuse, mismanagement, neglect or failure to perform the duties of fiduciary....”⁹ As we explained in *AmSouth Bank v. Cunningham*:

Further, Tenn. Code Ann. § 34–1–123 expressly authorizes the court “in its discretion” to summon a fiduciary before the court and, if cause be shown, remove the conservator for any abuse, mismanagement, neglect or failure to perform her duties. The statute does not, however, prescribe a formal procedure for “summoning” the conservator, and does not mandate an evidentiary hearing. The probate court has, and indeed must have, the inherent authority to act *sua sponte* or upon an *ex parte* application prior to holding an evidentiary hearing when in the court’s discretion it deems it in the best interest of the ward for whom it is ultimately responsible. See *Nutting v. Alsup*, 60 Tenn. App. 467, 448 S.W.2d 77, 80 (1969) (reasoning that to hold otherwise would emasculate the inherent power of the probate courts to preserve and conserve the estates of incompetents and deceased persons by making temporary emergency appointments where necessary).

253 S.W.3d at 643 (citation omitted). Thus, the Probate Court had the inherent authority to act *sua sponte* without a petition being filed.

⁹ The purpose of a conservatorship is to protect the person and property of the disabled person. *In re Conservatorship of Clayton*, 914 S.W.2d 84, 90 (Tenn. Ct. App. 1995) (citations omitted). Thus, it is important to consider the relationship between a conservator and the court:

“[T]he court itself is ultimately responsible for the disabled persons who come under its care and protection.” *In re Conservatorship of Clayton*, 914 S.W.2d 84, 90 (Tenn. Ct. App. 1995) (citing *Hinds v. Buck*, 177 Tenn. 444, 150 S.W.2d 1071, 1072 (1941); *In re Ellis*, 822 S.W.2d 602, 607 (Tenn. Ct. App. 1991)).

The authority, rights and responsibilities of a conservator are not independent of the court. “Conservators act as the court’s agent and are under the court’s supervision.” *Clayton*, 914 S.W.2d at 90. The courts appointing conservators “retain continuing control over guardians and conservators because the persons who accept these appointments become ‘quasi-officials’ of the court appointing them.” *Clayton*, 914 S.W.2d at 92 (citing *Logan v. Graper*, 155 Tenn. 565, 4 S.W.2d 955, 956 (1927)).

AmSouth Bank v. Cunningham, 253 S.W.3d 636, 642–43 (Tenn. Ct. App. 2006) (footnote omitted). This control is imperative because the court remains responsible for determining the best interests of the conservatee. *Id.* at 643.

For the reasons stated above, Ms. Lewis was not deprived of due process. Furthermore, we find no error with the Probate Judge *sua sponte* taking the action it deemed necessary to protect Mr. Lewis's estate by finding that Ms. Lewis breached her fiduciary duties to him, awarding a monetary judgment against Ms. Lewis and calling on the surety company to reimburse the estate for the consequences of her breach.

III. SUPPLEMENTING THE RECORD

Ms. Lewis claims that providing proof that her bond was called *sua sponte* by the trial court is "necessary to convey a fair, accurate, and complete account of what transpired in the trial court with respect to those issues that are the bases of the appeal."¹⁰

"We review the trial court's decision to deny the introduction of new evidence to supplement the record under an abuse of discretion standard." *Lamar Tennessee, LLC v. Murfreesboro Bd. of Zoning Appeals*, 336 S.W.3d 226, 232 (Tenn. Ct. App. 2010) (citations omitted). "The abuse of discretion standard does not permit the appellate court to substitute its judgment for that of the trial court." *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn 2002) (citation omitted).

Rule 24 of The Tennessee Rules of Appellate Procedure governs supplementation of the appellate record. The pertinent part of Rule 24(e) states, "Absent extraordinary circumstances, the determination of the trial court is conclusive. If necessary, the appellate or trial court may direct that a supplemental record be certified and transmitted." Rule 24(g) clarifies, "Nothing in this rule shall be construed as empowering the parties or any court to add to or subtract from the record except insofar as may be necessary to convey a fair, accurate and complete account of what transpired in the trial court with respect to those issues that are the bases of appeal." The trial judge is in the best position to determine which matters meet this standard. *Bradshaw v. Daniel*, 854 S.W.2d 865, 869 (Tenn. 1993).

Ms. Lewis argues that the trial court erred by not allowing her to supplement the record on appeal with "the post-appeal appearance docket." She contends that these filings are needed to "convey an accurate and complete account of what has transpired in the trial court with respect to those issues that are the bases of the appeal." We disagree because Ms. Lewis's notice of appeal, filed on December 13, 2024, challenges the trial court's order dated November 14, 2024. The filings Ms. Lewis seeks to add to the record are all post-judgment filings dated April 25, 2025, and later, which pertain to the decision to call the surety bond after Ms. Lewis failed to satisfy the judgment against her. We fail to see how the calling of the surety bond relates to the trial court's determination that Ms. Lewis breached her fiduciary duty for which a monetary judgment was assessed against her.

¹⁰ As the parties acknowledge in the briefs and during oral argument, the Probate Judge called her bond *sua sponte* and ordered Merchants Bonding Company to satisfy the full judgment, which it did.

Therefore, we find no error in the trial court's denial of her motion to supplement the record.

IV. DISCRETIONARY COSTS

Mr. Urquhart filed a Tennessee Rule of Civil Procedure 54.04 motion seeking to be awarded discretionary costs for the court reporter's services rendered at the final hearing in the amount of \$1,134.29 and for the guardian ad litem fees for services rendered from July 17, 2023 to July 1, 2024 in the amount of \$4,680.27. The court denied the motion, and Mr. Urquhart contends this was error.

In pertinent part, Tennessee Rule of Civil Procedure 54.04 states:

- (1) Costs included in the bill of costs prepared by the clerk shall be allowed to the prevailing party unless the court otherwise directs
- (2) Costs not included in the bill of costs prepared by the clerk are allowable only in the court's discretion. Discretionary costs allowable are: reasonable and necessary court reporter expenses for depositions or trials, reasonable and necessary expert witness fees for depositions (or stipulated reports) and for trials, reasonable and necessary interpreter fees not paid pursuant to Tennessee Supreme Court Rule 42, and guardian ad litem fees

Tenn. R. Civ. P. 54.04.

When deciding whether to award or deny costs under Rule 54.04(2):

[T]he courts should (1) determine whether the party requesting the award is the "prevailing party," (2) limit awards to the costs specifically identified in the rule, (3) determine whether the requested costs are necessary and reasonable, and (4) determine whether the prevailing party has engaged in conduct during the litigation that warrants depriving it of the discretionary costs to which it might otherwise be entitled.

Barnett v. Tennessee Orthopaedic All., 391 S.W.3d 74, 83 (Tenn. Ct. App. 2012).

"[W]e employ a deferential standard when reviewing decisions either to award or to deny discretionary costs." *Id.* at 84. "Generally, trial courts award such costs to whichever party ultimately prevails in the lawsuit, provided the prevailing party has filed a timely, properly supported motion." *Sanders v. Gray*, 989 S.W.2d 343, 345 (Tenn. Ct. App. 1998) (citations omitted).

Although Mr. Urquhart makes a well-reasoned argument about why the conservatorship estate should be awarded its discretionary costs, we defer to the trial

court's discretionary decision. Thus, we affirm the trial court's decision to deny the 54.04 motion.

V. ATTORNEY'S FEES

Mr. Urquhart requested attorney's fees on appeal, based on the trial court's finding that the appellant had breached her fiduciary duties. Alternatively, Mr. Urquhart argues that even if attorney's fees are not awarded based on a finding of breach, they should be awarded because the appeal was frivolous.

Generally, Tennessee courts adhere to the American Rule, which provides that a party to a civil action may not recover its attorney's fees in the absence of a statute, contractual provision, or other recognized ground allowing for recovery. *See Cracker Barrel Old Country Store, Inc. v. Epperson*, 284 S.W.3d 303, 308-309 (Tenn. 2009). However, there are exceptions to this rule.

As Mr. Urquhart correctly notes, some decisions of this Court support the proposition that attorney fees may be awarded against a fiduciary who breaches her fiduciary duty. *See Martin v. Moore*, 109 S.W.3d 305, 313 (Tenn. Ct. App. 2003) (citing *Brandt v. Bib Enterprises*, 986 S.W.2d 586 (Tenn. Ct. App. 1998); *Marshall v. First National Bank of Lewisburg*, 622 S.W.2d 558 (Tenn. Ct. App. 1981)). Generally, however, the imposition of such fees on fiduciaries is limited to those who deliberately use their position of trust to enrich themselves. *See id.* Here, the Probate Judge made the express finding that Ms. Lewis's "wrong turns" as conservator do not appear to have been intentional, even though she failed to fulfill her responsibilities. Thus, we decline to award attorney's fees on this basis.

Alternatively, Tennessee Code Annotated § 27-1-122 authorizes appellate courts to award damages against an appellant when the appeal "was frivolous or taken solely for delay." A frivolous appeal is one that is devoid of merit or has no reasonable chance of success. *Wakefield v. Longmire*, 54 S.W.3d 300, 304 (Tenn. Ct. App. 2001). "Any such award rests in the appellate court's sound discretion." *Eberbach v. Eberbach*, 535 S.W.3d 467, 475 (Tenn. 2017). But "[t]his discretion is exercised 'sparingly so as not to discourage legitimate appeals.'" *Id.* (quoting *Whalum v. Marshall*, 224 S.W.3d 169, 181 (Tenn. Ct. App. 2006)). Exercising our discretion, we decline to award damages based on a frivolous appeal.

CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded for further proceedings consistent with this opinion. Costs of appeal are assessed against the appellant, Paula Lewis, for which execution may issue if necessary.

FRANK G. CLEMENT JR., C.J.