FILED
09/28/2023
Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs September 1, 2023

STATE OF TENNESSEE EX REL. ANDREA GUTIERREZ v. LANE BAGGETT

Appeal from the Circuit Court for Montgomery County
No. 63CC1-2016-CV-1119 Adrienne Gilliam Fry, Judge

No. M2022-01658-COA-R3-CV

In this post-divorce case, Father appeals the trial court's grant of sole decision-making authority over the Children's non-emergency health care and religious decisions to Mother. Mother requests attorney's fees incurred on appeal. Because there is no evidence to support an award of sole decision-making authority over religious decisions, we reverse the trial court's order awarding Mother same. The trial court's order is otherwise affirmed, and Mother's request for appellate attorney's fees is denied.

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

KENNY ARMSTRONG, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., joined. THOMAS R. FRIERSON, II, J., not participating.

Gregory D. Smith, Clarksville, Tennessee, for the appellant, Lane Baggett.

Katie B. Klinghard, Clarksville, Tennessee, for the appellee, Andrea Gutierrez.[1]

OPINION

I. Background

Appellant Lane Baggett ("Father") and Appellee Andrea Gutierrez ("Mother") were divorced on October 23, 2015 and share two children, Ezra (D/O/B March 2013) and Angel

[1] Although the State of Tennessee was a party to the case in the trial court proceedings, the State filed a notice of intent not to file a brief with this Court, explaining that it takes no position on the sole issue presented for our review.

(D/O/B October 2014) (together, the "Children"). The parties have been involved in extensive litigation since the divorce. Relevant here, on September 24, 2019, the Circuit Court for Montgomery County (the "trial court") entered an agreed parenting plan (the "Parenting Plan") that: (1) named Mother the primary residential parent; (2) awarded Mother 280 days and Father 85 days with the Children; and (3) awarded joint decision-making authority to the parties over major decisions concerning the Children, *i.e.*, education, non-emergency health care, religion, and extracurricular activities.

On July 9, 2020, Mother filed a petition for modification of the Parenting Plan asking the trial court to allow her to obtain passports for the Children without Father's permission because Father refused to consent to same. By order of September 29, 2020, the trial court granted Mother's request to obtain passports for the Children. On October 7, 2020, Mother filed a motion asking the trial court to allow her to have the Children baptized in the Church of Jesus Christ of Latter-Day Saints (the "LDS Church") because Father refused to consent to same. On November 16, 2020, the trial court granted Mother's request to have the Children baptized.

On February 23, 2021, Father filed a petition to modify the Parenting Plan. Therein, Father alleged a material change in circumstances that warranted modification. Specifically, Father alleged that: (1) Mother refused to communicate with Father concerning major decisions on behalf of the Children; (2) Mother could not provide the Children with a stable living environment; (3) Mother refused to communicate with Father concerning major events and issues in the Children's lives; (4) Ezra was presenting with increasingly higher levels of anxiety; (5) Mother failed to make the Children's mental health a priority; and (6) the Children would suffer "irretrievable emotional harm" should Mother remain their primary residential parent. Despite alleging the foregoing, Father's proposed parenting plan kept Mother as the Children's primary residential parent and kept joint decision-making for major decisions. Father's only request was to increase his parenting time with the Children from 85 days to 140 days. On April 29, 2021, Mother filed an answer to Father's petition. By order of September 8, 2021, the trial court appointed Mr. John Parker to serve as the Children's Guardian Ad Litem ("GAL").

On May 18, 2022, Mother filed a petition to modify the Parenting Plan to change decision making. Mother alleged a material change in circumstances that warranted modification. Specifically, Mother alleged that: (1) she received transfer orders from the United States Army and would be relocating six hours away from Father's current residence: (2) Father had interfered in several doctors' appointments for the Children, against their best interest; (3) the parties were unable to make any joint medical decisions for the Children; (4) Father refused to allow Ezra to attend his winter show performances at school; (5) Father interfered with the Children's enrollment at their private school; and (6) Father would not allow Mother to have Ezra baptized, resulting in Mother having to file the motion to allow baptism. Mother alleged that it was in the Children's best interest for her to have sole decision-making authority over all educational, medical,

extracurricular, and religious decisions. On May 27, 2022, Father filed an answer to Mother's petition.

On August 3, 2022, the trial court heard the parties' competing petitions to modify the Parenting Plan. Mother, Father, and Amanda Medley, Ezra's psychiatric nurse practitioner, testified, and fifteen exhibits were entered into evidence. By order of September 29, 2022, the trial court: (1) found that there had been a material change in circumstances; (2) reviewed the best interest factors, discussed further below; (3) reviewed Tennessee Code Annotated Section 36-6-407 concerning sole decision-making; and (4) concluded that Mother should be awarded sole decision-making authority over religious and non-emergency health care decisions for the Children. The trial court concluded that the parties would continue to make decisions jointly concerning the Children's education and extracurricular activities. Father filed a timely appeal.[2]

II. Issue

Father's sole issue on appeal is whether the trial court erred when it awarded Mother sole decision-making authority over non-emergency health care and religious decisions for the Children.

III. Standard of Review

We review a non-jury case "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) (citing Tenn. R. App. P. 13(d)). The trial court's conclusions of law are reviewed de novo and "are accorded no presumption of correctness." ***Brunswick Acceptance Co., LLC v. MEJ, LLC***, 292 S.W.3d 638, 642 (Tenn. 2008).

As discussed below, the trial court made certain credibility findings. We note that, because "trial courts are able to observe witnesses as they testify and to assess their demeanor, . . . trial judges [are best suited] to evaluate witness credibility." ***Wells v. Tennessee Bd. of Regents***, 9 S.W.3d 779, 783 (Tenn. 1999) (citing ***State v. Pruett***, 788 S.W.2d 559, 561 (Tenn. 1990); ***Bowman v. Bowman***, 836 S.W.2d 563, 566 (Tenn. Ct. App. 1991)); *see also* ***Richards v. Liberty Mut. Ins. Co.***, 70 S.W.3d 729, 733 (Tenn. 2002) ("As this Court has repeatedly emphasized, a reviewing court must give 'considerable deference' to the trial judge with regard to oral, in-court testimony as it is the trial judge who has viewed the witnesses and heard the testimony."). To this end, "appellate courts will not re-evaluate a trial judge's assessment of witness credibility absent clear and

[2] For completeness, we note that Father filed a Tennessee Rule of Civil Procedure Rule 59.04 motion to alter or amend the trial court's order on an issue unrelated to the current appeal. The trial court entered an amended order on November 10, 2022.

convincing evidence to the contrary." ***Wells***, 9 S.W.3d at 783 (internal citations omitted). With the foregoing law in mind, we turn to our analysis.

IV. Analysis

A. Modification of 2019 Parenting Plan

Once a permanent parenting plan has been established, "the parties are required to comply with it unless and until it is modified as permitted by law." ***Armbrister v. Armbrister***, 414 S.W.3d 685, 697 (Tenn. 2013) (citing Tenn. Code Ann. § 36-6-405). "A modification in decision-making authority is analyzed utilizing the same standards governing any modification of the parenting plan." ***Brunetz v. Brunetz***, 573 S.W.3d 173, 183-84 (Tenn. Ct. App. 2018) (citing ***Gider v. Hubbell***, No. M2016-00032-COA-R3-JV, 2017 WL 1178260, at *5 (Tenn. Ct. App. Mar. 29, 2017)). It is well-settled that courts must apply a two-step analysis in addressing requests for modification. ***Gentile v. Gentile***, No. M2014-01356-COA-R3-CV, 2015 WL 8482047, at *4 (Tenn. Ct. App. Dec. 9, 2015). The threshold question is whether a material change in circumstances has occurred since entry of the trial court's previous order. Tenn. Code Ann. § 36-6-101(a)(2)(B), (C). If a court finds that there has been a material change in circumstances, then it must decide whether modification of the parenting plan is in the child's best interest. ***Armbrister***, 414 S.W.3d at 698. Here, our review of the first step of the inquiry is unnecessary because, as discussed above, both parties pled that there had been a material change in circumstances. *See* ***Carmen v. Murray***, No. M2018-00146-COA-R3-CV, 2019 WL 4702622, at *2 (Tenn. Ct. App. Sept. 25, 2019) (citing ***Stricklin v. Stricklin***, 490 S.W.3d 8, 15 (Tenn. Ct. App. 2015); ***In re Makinna B.***, No. M2018-00979-COA-R3-JV, 2019 WL 2375434, at *3 (Tenn. Ct. App. June 5, 2019)). We also note that, in his appellate brief, Father did not argue that the trial court erred in finding a material change in circumstances. Accordingly, we will proceed to a review of the trial court's best interest analysis. We will also address Tennessee Code Annotated Section 36-6-407, which provides courts with further direction when addressing the issue of sole decision-making authority.

Before turning to our analysis, we first consider the scope of our review. As the Tennessee Supreme Court has explained, appellate courts have a *limited* scope of review of "a trial court's factual determinations in matters involving child custody and parenting plan developments." ***C.W.H. v. L.A.S.***, 538 S.W.3d 488, 495 (Tenn. 2017). Because "[a] trial court's determinations of whether a material change in circumstances has occurred and whether modification of a parenting plan serves a child's best interests are factual questions," this Court "must presume that a trial court's factual findings on these matters are correct and not overturn them, unless the evidence preponderates against the trial court's findings." ***Id.*** (quoting ***Armbrister***, 414 S.W.3d at 692). Similarly, appellate courts will not interfere with a trial court's custody determination or decision concerning a parenting schedule absent an abuse of discretion. *See* ***C.W.H.***, 538 S.W.3d at 495; ***Armbrister***, 414 S.W.3d at 693; ***Eldridge v. Eldridge***, 42 S.W.3d 82, 88 (Tenn. 2001);

Dungey v. Dungey, No. M2020-00277-COA-R3-CV, 2020 WL 5666906, at *2 (Tenn. Ct. App. Sept. 23, 2020). This Court has explained that a parent's request to be the sole decision maker for a child "falls under the umbrella of custody modification." ***Gider***, 2017 WL 1178260, at *5. Accordingly, we will only interfere with a trial court's conclusion that one parent should be awarded sole decision-making authority when we conclude that the trial court abused its discretion. "'An abuse of discretion occurs when the trial court . . . appl[ies] an incorrect legal standard, reaches an illogical result, resolves the case on a clearly erroneous assessment of the evidence, or relies on reasoning that causes an injustice.'" ***C.W.H.***, 538 S.W.3d at 495 (quoting ***Armbrister***, 414 S.W.3d at 693). In short, this Court may reverse a trial court's decision concerning custody, a parenting plan, or sole decision-making authority "only when the trial court's ruling falls outside the spectrum of rulings that might reasonably result from an application of the correct legal standards to the evidence." ***Dungey***, 2020 WL 5666906, at *2 (quoting ***C.W.H.***, 538 S.W.3d at 495).

T.C.A. § 36-6-106(a)—Best Interest

"Whether modification of a parenting plan serves a child's best interests [is a] factual question[]." ***Armbrister***, 414 S.W.3d at 692. "The pertinent factors to be considered in the best interest analysis are set forth in Tennessee Code Annotated section 36-6-106." ***C.W.H.***, 538 S.W.3d at 497. As this Court has explained, "[a]scertaining a child's best interests does not call for a rote examination" of each of the factors "and then a determination of whether the sum of the factors tips in favor or against [one] parent." ***In re Marr***, 194 S.W.3d 490, 499 (Tenn. Ct. App. 2005). Furthermore, "[t]he relevancy and weight to be given each factor depends on the unique facts of each case." ***Id.*** In its final order, the trial court addressed the relevant best interest factors, which we review below.

Factors Equal for Both Parents (4, 6, 7, and 8)[3]

The trial court concluded that the following factors applied equally for both parents:

> (4) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;
>
> ***
>
> (6) The love, affection, and emotional ties existing between each parent and the child;
>
> (7) The emotional needs and developmental level of the child;

[3] The trial court concluded that factors 3, 11, 12, 13, and 14 were inapplicable.

(8) The moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the child. . . .;

Tenn. Code Ann. § 36-6-106(a)(4), (6), (7), (8). Concerning the fourth factor, the trial court found:

> The [c]ourt will make separate findings in regard to the medical decision-making but both parents are able to provide the minor children with food, clothing, medical care, education and other necessary care.

Concerning the sixth, seventh, and eighth factors, the trial court simply stated that the factors weighed equally between the parties.

Factors that Favor Mother (1, 2, 5, 9, and 10)

The trial court concluded that the following factors favored Mother:

(1) The strength, nature, and stability of the child's relationship with each parent, including whether one (1) parent has performed the majority of parenting responsibilities relating to the daily needs of the child;

(2) Each parent's or caregiver's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, consistent with the best interest of the child. In determining the willingness of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, the court shall consider the likelihood of each parent and caregiver to honor and facilitate court ordered parenting arrangements and rights, and the court shall further consider any history of either parent or any caregiver denying parenting time to either parent in violation of a court order;

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(5) The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities;

***

(9) The child's interaction and interrelationships with siblings, other relatives and step-relatives, and mentors, as well as the child's involvement with the child's physical surroundings, school, or other significant activities;

> (10) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

Tenn. Code Ann. § 36-6-106(a)(1), (2), (5), (9), (10). Concerning the first factor, the trial court found:

> Mother has been the Primary Residential Parent for a majority of the parties' minor Children's lives. However, the [c]ourt is impressed with Father's ability to overcome substantial alcohol abuse issues that were reflected in the past Parenting Plans and Orders. The [c]ourt does encourage Father to continue his sobriety for the benefit of himself and the minor children. The children love both parents very much.

Concerning the second factor, the trial court found:

> This factor is difficult because the testimony presented relates to the parents' inability to co-parent. Mother testified that she has provided Father with medical information. In reviewing the text messages between the parties and hearing the testimony, the parents have an overall block when dealing with each other. This is also evidence [sic] heard by Judge Hicks regarding the [Children's] baptism[s] and passports, which the parents should have been able to agree upon without [c]ourt intervention. Mother has tried to facilitate a relationship between Father and minor children.

Regarding the fifth and tenth factor, the trial court concluded that, because Mother has provided stability as the Children's primary parent since their births, both of these factors weighed in her favor. As to the ninth factor, the trial court found that the Children have a half-sibling at Mother's residence and that Mother is very involved in the Children's extracurricular activities. Thus, the trial court concluded that the ninth factor also favored Mother.

On this Court's review, the record supports most of the trial court's findings. While the record shows that both parties love the Children and are able to care for them, it is clear that Mother is, and has been, their primary caregiver. Specifically, the record shows that Mother is the parent who has enrolled the Children in school and extracurricular activities. As discussed further below, Mother has also borne the primary responsibility for scheduling doctor's appointments for Ezra.[4] The record also supports the trial court's finding that "the parents have an overall block when dealing with each other[,]" discussed further, *infra*. Despite this "block," Mother's testimony and the text messages introduced

[4] There was no evidence presented concerning doctor's appointments for Angel.

into evidence support the trial court's finding that "Mother has tried to facilitate a relationship between Father and [the Children]."

T.C.A. § 36-6-407(b)—Sole Decision-Making Authority

While courts are required to conduct the above best interest analysis before modifying a permanent parenting plan, as this Court has explained, "Tennessee Code Annotated section 36-6-407 gives further direction to courts in dealing with the issue of decision-making." ***Cantey v. Cantey***, No. W2018-01331-COA-R3-CV, 2019 WL 2932676, at *3 (Tenn. Ct. App. July 9, 2019). Relevant here, a court *shall* order sole decision-making authority to one parent when it finds that:[5]

> (1) A limitation on the other parent's decision-making authority is mandated by § 36-6-406;[6]
>
> (2) Both parents are opposed to mutual decision making; or
>
> (3) One (1) parent is opposed to mutual decision making, and such opposition is reasonable in light of the parties' inability to satisfy the criteria for mutual decision-making authority.

Tenn. Code Ann. § 36-6-407(b).

Concerning section 36-6-407(b), the trial court found that: (1) the court file was "replete with the inability of the parents to co-parent"; (2) Mother was opposed to joint

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[5] Tennessee Code Annotated Section 36-6-407(b) begins by stating that:

> The court may consider a parent's refusal, without just cause, to attend a court-ordered parental educational seminar in making an award of sole decision-making authority to the other parent. The court shall order sole decision making to one (1) parent when it finds that . . . .

Tenn. Code Ann. § 36-6-407(b). In his brief, Father appears to argue that the trial court abused its discretion when it "leap-frogged, overlooked, or ignored the first sentence," *i.e.*, the sentence concerning a parent's refusal to attend a court-ordered parental educational seminar. Father misunderstands the statute. With the use of the word "may," the Tennessee Legislature crafted the first sentence to be permissive, *i.e.*, a court *may* consider a parent's refusal to attend a parental educational seminar when making an award of sole decision-making authority. Contrary to the first sentence, the second sentence, which contains the word "shall," creates a mandatory obligation on a court, *i.e.*, a court is *required* to award sole decision-making authority to one party when one of the elements that follow, discussed *supra*, is met. It appears from the record that a party's failure to attend a court-ordered, parental educational seminar was not an issue before the trial court. Accordingly, the trial court was correct to "leap frog" over the first sentence and address the mandatory elements of Tennessee Code Annotated Section 36-6-407(b).

[6] The limitations set out in section 36-6-406 are inapplicable here. *See* Tenn. Code Ann. § 36-6-406.

decision-making; and (3) "mutual decision-making has been detrimental to [Ezra] as it relates to medical care." Regarding Ezra's medical care, the trial court found:

> The [c]ourt was startled by the testimony . . . regarding medication for the bladder spasms for the minor child, Ezra. The [c]ourt is aware of the Father's concern as to chemical dependency and is compassionate to his position, however, this is a child that had a medical condition that needed the expertise of doctors and that is a concern for the [c]ourt and a concern for Ms. Medley, the [C]hild's medical professional. The [c]ourt found that Mother was a very credible witness in regard to the children's medical treatment, and she was trying to get appropriate care for Ezra for the bladder spasms as well as ADHD.

Turning to the record, the trial court heard testimony from the parties concerning Ezra's enuresis diagnosis, *i.e.*, bladder spasms and bedwetting (after being toilet trained), and the treatment for these issues. The trial court also heard testimony from the parties and Ms. Medley concerning Ezra's ADHD diagnosis and treatment. As an initial matter, we note that the trial court found Mother's testimony concerning Ezra's medical conditions "very credible," and we conclude that there is nothing in the record that would cause us to disturb such finding. *See* ***Wells***, 9 S.W.3d at 783. Concerning Father's involvement with Ezra's medical issues, Mother testified that Father was

> trying to come back and change Ezra's recommended treatment plan. That's the harm. And I mean, that's kind of what he's been trying to do the whole time. That's why this is a problem. It's working for my son, and I'm advocating for my son.

Due to Father's actions, Mother testified that she does not want Father making decisions anymore because he has "ma[de] them [for] himself" rather than for Ezra. Accordingly, the trial court's finding that Mother is opposed to mutual decision-making is supported by the evidence. *See* Tenn. Code Ann. § 36-6-407(b)(3).

The record also supports the trial court's finding that "mutual decision-making has been detrimental to [Ezra] as it relates to medical care." The evidence shows that Mother diligently pursued the opinions of medical experts to help with both Ezra's enuresis and his lack of focus in school. Concerning the enuresis, Mother initially contacted Ezra's pediatrician. After an evaluation, the pediatrician referred the family to a urologist, who prescribed medication for the bedwetting. Despite a doctor recommending this course of treatment, Father objected to it and attempted to have Ezra see a psychologist, insisting that Ezra's issues were mental rather than physical. After a steady regimen of medication, Ezra's symptoms improved, and he no longer suffers from enuresis. Concerning Ezra's ADHD diagnosis, the record shows that Ezra's teacher informed Mother that Ezra was displaying some behavioral issues. Mother testified:

> So Ezra had started to lose points for things like putting his name on his paper, turning his assignments in late, forgetting to turn them in, like he would do it, and then she would find it under the desk, things like that. And in fourth grade, that's where they actually start to actually do a gifted and talented program. If Ezra didn't have those—those behaviors under control, then he's not going to be able to participate in any of that. So I said, Well, let's get it under control now and take care of it, so he can continue to excel because he's doing great.

According to her testimony, Mother sought treatment for Ezra at the Ireland Army Behavioral Health Clinic where he saw a behavioral therapist, Ms. Cheyenne Brent. Ms. Brent informed Mother that she did not believe Ezra had any behavioral issues; rather, she thought it was very likely that Ezra had ADHD, and she referred the family to Ms. Medley for an evaluation. Following her evaluation, Ms. Medley diagnosed Ezra with ADHD and explained that, in her opinion, he would benefit from medication. Ms. Medley testified that Ezra was not placed on medication immediately because Father opposed it. When questioned about Father's behavior towards Ms. Medley during Ezra's evaluation, Ms. Medley testified that, at times, Father was argumentative and "made it very clear that he was not in agreeance with the ADHD diagnosis or the medications[.]" In Ms. Medley's opinion, Father "seemed like he wasn't trying to hear that [diagnosis], and he just wanted a different explanation for what was going on." As a result of Father's disagreement, Ezra was not placed on the medication immediately, and his treatment was delayed. When asked whether she believed that the joint-decision making process slowed treatment for Ezra, Ms. Medley testified: "I believe it did. It took several months for him to be able to start treatment." The record shows that, once Ezra was placed on the medication, Father reduced the dosage by half. Although Father consulted Ms. Medley before halving Ezra's dosage, the record shows that he made this decision unilaterally and without consulting Mother.

The foregoing shows that despite Mother's attempts to seek prompt care for Ezra, Father's disagreements and unilateral actions caused unnecessary delay in Ezra's care. Father disregarded the advice of competent medical professionals and made decisions on Ezra's behalf concerning medication without consulting Mother. The fact that the treatments prescribed ultimately improved Ezra's issues indicates that Father's recalcitrance worked against the Child's best interest. In sum, the evidence clearly shows that the parties are unable to make joint, non-emergency, health care decisions for the Children and that the joint decision-making requirement has been detrimental to Ezra. Based on the foregoing discussion, we conclude that the trial court did not err when it determined that Mother's opposition to mutual decision-making was reasonable in light of the parties' inability to make non-emergency, health care decisions jointly. *See* Tenn. Code Ann. § 36-6-407(b)(3).[7]

[7] Although the decisions made concerned only Ezra, there is nothing in the record to suggest that

When a court determines that sole decision-making authority should be awarded to one parent, it must then decide which parent should make the decision. In doing so, a court must consider the following criteria:

> (1) The existence of a limitation under § 36-6-406;[8]
>
> (2) The history of participation of each parent in decision making in each of the following areas: physical care, emotional stability, intellectual and moral development, health, education, extracurricular activities, and religion; and whether each parent attended a court ordered parent education seminar;
>
> (3) Whether the parents have demonstrated the ability and desire to cooperate with one another in decision making regarding the child in each of the following areas: physical care, emotional stability, intellectual and moral development, health, education extracurricular activities, and religion; and
>
> (4) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

Tenn. Code Ann. § 36-6-407(c)(1)-(4). As discussed above, the trial court found that Mother has been the Children's primary parent from their births, and she has a history of obtaining appropriate care for Ezra's health issues. Despite Father's delaying Ezra's treatments, Mother attempted to co-parent with him and continually provided him with information concerning doctors and scheduled appointments, a fact that Father admitted in his testimony. Furthermore, the Children spend the majority of their time with Mother, and Father lives several hours away. In light of the foregoing, we conclude that it was in the Children's best interests for Mother to be awarded sole decision-making authority over their non-emergency health care decisions, and we affirm the trial court's award of the same.

Concerning the trial court's determination that Mother should have sole decision-making authority over the Children's religious upbringing, we note that the trial court failed to make any substantive findings concerning the parties' ability to make joint religious decisions for the Children. Apart from the trial court's finding that there had been "evidence heard" by a prior judge concerning Ezra's baptism (and the Children's passports), the trial court made no independent findings concerning the parties' inability to make mutual decisions regarding the Children's religious upbringing. As this Court has explained:

Father would have been more cooperative had the decisions concerned only Angel. Accordingly, we conclude that the trial court was correct when it determined that one parent should make non-emergency health care decisions for both Children.

[8] As noted in footnote 6, *supra*, the limitations of section 36-6-406 are inapplicable here. *See* Tenn. Code Ann. § 36-6-406.

> Our role on appeal is to review the specific findings of the trial court against the evidence in the record. ***Kathryne B.F. v. Michael B.***, No. W2013-01757-COA-R3-CV, 2014 WL 992110, at *7 (Tenn. Ct. App. Mar. 13, 2014). This court has held that "[f]indings of fact are particularly important in cases that involve the custody and parenting schedule of children." ***In re Connor S.L.***, No. W2012-00587-COA-R3-JV, 2012 WL 5462839, at *4 (Tenn. Ct. App. Nov. 8, 2012) (quoting ***Hyde v. Bradley***, No. M2009-02117-COA-R3-JV, 2010 WL 4024905, at *3 (Tenn. Ct. App. Oct. 12, 2010)).
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> Findings of fact are also required by the Tennessee Rules of Civil Procedure. Rule 52.01 requires that a trial court make appropriate findings of fact and separate conclusions of law following a bench trial. This Court has previously explained the importance of this Rule to the appellate process:
>
> > [T]he requirement to make findings of fact and conclusions of law is "not a mere technicality." ***In re K.H.***, No. W2008-01144-COA-R3-PT, 2009 WL 1362314, at *8 (Tenn. Ct. App. May 15, 2009). Instead, the requirement serves the important purpose of "facilitat[ing] appellate review and promot[ing] the just and speedy resolution of appeals." ***Id.***; ***White v. Moody***, 171 S.W.3d 187, 191 (Tenn. Ct. App. 2004); ***Bruce v. Bruce***, 801 S.W.2d 102, 104 (Tenn. Ct. App. 1990). "Without such findings and conclusions, this court is left to wonder on what basis the court reached its ultimate decision." ***In re K.H***., 2009 WL 1362314, at *8 (quoting ***In re M.E.W.***, No. M2003-01739-COA-R3-PT, 2004 WL 865840, at *19 (Tenn. Ct. App. Apr. 21, 2004)).
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> ***Westfall v. Westfall***, No. E2017-01819-COA-R3-CV, 2018 WL 2058198, at *3 (Tenn. Ct. App. May 2, 2018) (quoting ***Babcock v. Babcock***, No. E2014-01670-COA-R3-CV, 2015 WL 1059003, at *6 (Tenn. Ct. App. Mar. 9, 2015)).

Cantey, 2019 WL 2932676, at *3-4.

When a trial court's factual findings fail to comply with Rule 52.01, appellate courts are left with two options: (1) "soldier on" and conduct an independent analysis of the record; or (2) vacate the trial court's decision and remand the case to the trial court with instructions to issue sufficient findings of fact and conclusions of law. ***Id.*** at *5; *see also* ***Trezevant v. Trezevant***, 568 S.W. 3d 595, 623 (Tenn. Ct. App. 2018); ***Pandey v. Shrivastava***, No. W2012-00059-COA-R3-CV, 2013 WL 657799, at *5 (Tenn. Ct. App. Feb. 22, 2013); ***In re Caleb F.***, M2016-01584-COA-R3-JV, 2017 WL 5712992, at *6-7 (Tenn. Ct. App. Nov. 28, 2017); ***Hardin v. Hardin***, No. W2012-00273-COA-R3-CV, 2012

WL 6727533, at *5-6 (Tenn. Ct. App. Dec. 27, 2012); ***In re Connor S.L.***, 2012 WL 5462839, at *7. Having reviewed the record to determine whether the trial court erred in determining that Mother should have sole decision-making authority over non-emergency, health care decisions, we are familiar with the facts adduced in the trial court. Furthermore, the litigation between the parties has been protracted, and it is certainly in the Children's best interests to have the question of decision-making settled at the earliest possible date. As such, we will exercise our discretion to "soldier on" and conduct an independent analysis of whether the record supports Mother being awarded sole decision-making authority over religious decisions. Tenn. R. App. P. 2 ("For good cause, including the interest of expediting decision upon any matter the . . . Court of Appeals. . . may suspend the requirements or provisions of any of these [appellate] rules in a particular case . . . in accordance with its discretion.").

On this Court's review, any evidence concerning the parties' inability to make joint religious decisions was presented through Mother's testimony; Father did not testify as to the Children's religious upbringing. Mother testified that she requested sole decision-making authority over religious decisions because she wanted the Children "to have the ability to choose for themselves what religion, if any, they want to join." Mother stated that Ezra expressed a desire to be baptized in the LDS Church, but Father opposed baptism in any religion until the Children reached majority. Mother testified that Father threatened Mother with contempt if Ezra was baptized without Father's consent. Such threat lead Mother to file the motion for baptism on October 7, 2020, discussed *supra*. In this motion, Mother asked permission to have the Children baptized in the LDS Church, if they so desired. By order of November 16, 2020, the trial court granted Mother's motion and held that the Children could be baptized in the LDS Church if they expressed such desire.[9] Accordingly, the only issue presented to the trial court concerning religious decisions on the Children's behalf, *i.e.*, whether they would be baptized in the LDS Church, was resolved before either party filed a petition to modify the Parenting Plan. Thus, there was no evidence presented concerning the parties' current or ongoing inability to make religious decisions for the Children. In the absence of any evidence of an ongoing issue with religious decision-making, we conclude that the trial court exceeded its discretion in concluding that the parties were unable to make joint religious decisions for the Children. *See* ***C.W.H.***, 538 S.W.3d at 495; ***Dungey***, 2020 WL 5666906, at *2. While the trial court alluded to evidence heard by a different judge concerning Ezra's baptism, that evidence was not presented to the trial court during its hearing on the parties' competing petitions to modify the Parenting Plan. Accordingly, we reverse the trial court's award of sole decision-making authority over religious decisions to Mother.

B. Mother's Request for Appellate Attorney's Fees

In the conclusion of her appellate brief, Mother requests an award of appellate

[9] It is unclear from the record whether Ezra has been baptized.

attorney's fees associated with this appeal. This Court has explained that where an appellee fails to raise a request for appellate attorney's fees as a specific issue for review, that issue is waived:

> Tennessee Rule of Appellate Procedure 27(b) provides that if an appellee requests relief from this Court, "the brief of the appellee *shall* contain the issues and arguments involved in his request for relief . . . ." Tenn. R. App. P. 27(b). Because "[a]n award of attorney's fees generated in pursuing [an] appeal is a form of relief," our rules require that such a request be stated as an issue on appeal. ***Killingsworth v. Ted Russell Ford, Inc.***, 205 S.W.3d 406, 411 (Tenn. 2006). Any issue not included in the statement of issues presented for review as required by Tennessee Rule of Appellate Procedure 27(b), is not properly before the Court of Appeals. ***Hawkins v. Hart***, 86 S.W.3d 522, 531 (Tenn. Ct. App. 2001).

In re Est. of Stokes, No. W2021-00249-COA-R3-CV, 2022 WL 484565, at *6 (Tenn. Ct. App. Feb. 17, 2022). Because Mother failed to designate her request for appellate attorney's fees as an issue on appeal, she has waived it.

V. Conclusion

For the foregoing reasons, we reverse the trial court's modification awarding Mother sole decision-making authority over religious decisions for the Children. The trial court's order is otherwise affirmed. Mother's motion for appellate attorney's fees is denied, and the case is remanded for such further proceedings as are necessary and consistent with this Opinion. Costs of the appeal are assessed one-half to the Appellant, Lane Baggett, and one-half to the Appellee, Andrea Gutierrez, for all of which execution may issue if necessary.

s/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE