IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
November 15, 2022 Session[1]

MADELINE LUCKETT NOLAN v. GREGORY STEWART NOLAN

Appeal from the Circuit Court for Shelby County
No. CT-002564-18 Rhynette N. Hurd, Judge

No. W2021-01018-COA-R3-CV

The circuit court, finding that Father committed twenty-one counts of criminal contempt, imposed a jail sentence and awarded Mother attorney's fees. Father appeals, arguing that the court's holding violates the prohibition against double jeopardy, that the evidence is insufficient to support thirteen of the counts, and that the court erred in awarding attorney's fees. We conclude that double jeopardy is not implicated in the findings of contempt and that Father has not presented an argument entitling him to relief regarding the attorney's fees award. However, because the evidence is insufficient to support the finding of contempt on Counts 9, 16, 36, and 40, we reverse the circuit court's finding of contempt on these counts. In addition, we conclude that Count 12 must be vacated because the factual predicate of the trial court's findings appears to potentially rest upon an unsupported basis. The remaining 16 counts are affirmed and the case is remanded for further proceedings.

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

JEFFREY USMAN, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and CARMA DENNIS MCGEE, J., joined.

Stuart Breakstone and Adrian Vivar-Alcalde, Memphis, Tennessee, for the appellant, Gregory Stewart Nolan.

Kay Farese Turner and Leslie M. Gattas, Memphis, Tennessee, for the appellee, Madeline L. Nolan.

OPINION

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[1] Oral argument for this case was heard at the University of Tennessee at Martin.

I.

Madeline Nolan and Gregory Nolan, both of whom are law school graduates, divorced when their minor son was two years old. They negotiated and agreed upon a Permanent Parenting Plan and Marital Dissolution Agreement, which became part of their final divorce decree in November 2017.

Among its other provisions, the Parenting Plan provided that "[n]either parent shall denigrate or disparage the other parent or his/her family members to or in the presence of the minor child or allow others to speak negatively or disparagingly of the other parent or his or her family members to or in the presence of the minor child." The plan also placed restrictions on introducing the child to a romantic partner: "Neither parent shall expose the minor child to his/her romantic partner unless he/she has been in a committed, ongoing relationship for 12 continuous months or longer. The time period for this provision shall start running on the date of entry of the Final Decree of Absolute Divorce." The plan forbid either party from having unrelated overnight guests of the opposite sex when the child was present.

A little over a year after the divorce was finalized, on November 18, 2018, Ms. Nolan filed a petition seeking to hold Mr. Nolan in civil and criminal contempt, to enforce the Parenting Plan, and for an injunction and restraining order. The petition alleged 23 counts of criminal contempt for violating the terms of the Parenting Plan set out above,[2] and it further alleged acts of civil contempt.[3]

On December 18, 2018, the circuit court entered a Consent Order on the petition for contempt.[4] Pursuant to the Consent Order, Ms. Nolan would dismiss her petition "without prejudice." The order provided:

Father consents and agrees that he shall not criticize, demean, denigrate,

[2] Some of the counts, which are not at issue on appeal, alleged violations of other provisions in the Parenting Plan, including a requirement for Mr. Nolan to keep clothing and shoes for the child at his home and the place to exchange the child.

[3] These were related to Mr. Nolan's alleged failure to pay certain school and medical expenses and failure to remove Ms. Nolan from Mr. Nolan's bar study loan.

[4] At oral argument before this court, counsel for Ms. Nolan was asked if Mr. Nolan was represented by counsel at the time the Consent Order was entered, and she responded that neither party was represented at the time. As the court noted at oral argument, counsel's name appears as "Attorney for Mother" on the Parenting Plan, which was signed June 5, 2017, and entered November 1, 2017, and on the Consent Order entered December 18, 2018. In addition, counsel's fee affidavit stated that "Mother's counsel has consistently represented Mother from June 17, 2017 to the present date." Counsel's response to this question, accordingly, appears to be inaccurate.

> curse, use foul language toward, or in any way disparage Mother, Mother's family, Mother's home, the minor child's friends, the minor child's school or teachers, the minor child's clothing, or the minor child's activities either to or in the presence of the minor child. Both parties agree that it is in the best interest of the minor child to love and respect the other parent and the other parent's family members. Father acknowledges that if he continues to engage in the conduct set forth in Paragraphs 5(a)-5(s) of Mother's Petition, that the minor child will be irreparably harmed.

Mr. Nolan also agreed that he would not discuss any "issues or complaints" regarding the Parenting Plan in the child's presence, that he would not seek to elicit opinions from the child regarding parenting time, that the parties would agree to send the child to counseling, and that the parties would "agree to cooperate and follow the recommendations" of the counselor, Dr. Lou Martin. Mr. Nolan also agreed to attend anger management. The Consent Order confirmed Mr. Nolan's willingness to comply with the terms of the Parenting Plan, including the transportation arrangements, refraining from the use of alcohol during his parenting time, and keeping clothes for the child. The Consent Order modified the schedule of parenting time, and it also modified the section regarding romantic partners, reducing the time required for a committed relationship prior to introducing the child to the romantic partner from twelve to four months. The Consent Order provided that the Parenting Plan was modified to include the additional agreements contained in the Consent Order.

On September 15, 2020, Ms. Nolan filed a second petition for criminal and civil contempt. Ms. Nolan incorporated into the second petition all 23 counts of criminal contempt that she had alleged in the first petition. Ms. Nolan also alleged that subsequent conduct on Mr. Nolan's part constituted criminal contempt. In total, Ms. Nolan advanced 44 counts of criminal contempt in this petition. A number of these counts were related to Mr. Nolan's alleged violation of the terms of the Consent Order. On October 29, 2020, Ms. Nolan filed an Amended Second Petition alleging various acts of civil and criminal contempt, asserting a total of 53 counts of criminal contempt. In her petitions, Ms. Nolan asked for attorney's fees pursuant to the terms of the Marital Dissolution Agreement.[5]

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[5] The Marital Dissolution Agreement provided:

> 14. Non-Compliance: Should either party incur any expense or legal fees as a result of the breach or noncompliance or Petition for specific enforcement or litigation to collect from a party, estate or third party any sums or property to be transferred or received herein consistent with of any portion of this Agreement, whether contractual or otherwise, by the other party, the Court shall award all reasonable attorney's fees and suit expenses to the non-defaulting party. No breach, waiver, or default of any of the terms of this Agreement shall constitute a waiver of any subsequent breach or default of any of the terms of this agreement.

The trial court did not address attorney's fees pursuant to this contract but awarded them pursuant to a

The trial court bifurcated the civil and criminal contempt hearings. The evidence regarding the counts of criminal contempt was heard on five separate days over the course of as many months.[6] Prior to trial, Mr. Nolan filed an objection to anticipated hearsay testimony, and he asserted that double jeopardy prohibited trial on the acts of contempt that had also been alleged in the first petition. Mr. Nolan also moved to dismiss numerous counts, asserting they did not violate court orders. The trial court ruled that it would handle hearsay objections as the evidence was introduced at trial. The court deferred ruling on the double jeopardy issue, stating that it had not had an opportunity to review the matter, with the motion having been filed the day of the hearing. In deferring, the court did orally note regarding the Consent Order that "I guess it would be like a guilty plea on certain counts. . . ."

Ms. Nolan testified regarding the various alleged acts of contempt. She also testified regarding whether Mr. Nolan's conduct was willful, stating that Mr. Nolan had "made it very clear" that he did not believe himself bound by the Parenting Plan and told her "specifically that he would not follow certain provisions."

Ms. Nolan introduced an audio recording made shortly prior to the entry of the divorce decree. In the recording, the two-year-old-child can be heard talking to himself, and Mr. Nolan can be heard in the background cursing at and berating Ms. Nolan. Mr. Nolan can be heard addressing inappropriate comments to the child. Specifically, he said, "I hope you like getting f***ed in the a**, [Child], cause that's what's going to happen to you. You're going to grow up to be a little f*ggot." Mr. Nolan shouted, "You f***ing b*tch!" at Ms. Nolan, told her that she was a terrible person and that he hoped she died, and he also objected to what he saw as an unfair distribution of parenting time under the Parenting Plan. Mr. Nolan proceeded to tell the child, "Have fun with your mother, son; I'll never see you again. She's the worst person in the whole world."

In complaining about the Parenting Plan, Mr. Nolan can be heard expressing an intention to violate the plan: "I'm not going to abide by some stupid-a** agreement. Hold me in contempt. What are they going to do? Put me in jail for a day? Woooo, I'm f***ing scared. Tell me to stop doing it? OK, fine. Some f***ing elected judge. Great. I'm really f***ing scared." Mr. Nolan then continued to berate Ms. Nolan. He referred to the trial court as a "kangaroo court" and as "some ni**er woman who's been elected by a bunch of

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statute. *See* Tenn. Code Ann. § 36-5-103(c) (2018).

[6] Mr. Nolan engaged counsel on November 14, 2020, and counsel obtained a continuance of the trial date from December 1, 2020, to December 17, 2020. At a hearing on the motion for continuance, the court stated Mr. Nolan would have to pay attorney's fees for Ms. Nolan's counsel's appearance at the hearings, attributing the continuance to his delay in hiring counsel. It does not appear that any written order was ever entered related to this ruling.

other idiots."[7] Mr. Nolan, during his testimony, acknowledged his behavior was inappropriate, stating he was in a "bad place" at the time and "lashed out." He testified that he no longer engaged in such behavior.

Ms. Nolan testified that Mr. Nolan violated the prohibition in the Parenting Plan against disparaging the other parent in front of the child on numerous occasions, as alleged in the petition. She testified that Mr. Nolan discussed complaints about the Parenting Plan with the child and would cry in front of the child while telling the child that Ms. Nolan was restricting his parenting time.

Specifically, as alleged in Count 1, Ms. Nolan testified that on November 7, 2017, she heard Mr. Nolan tell the child that Ms. Nolan was a bad person. During his testimony, Mr. Nolan did not specifically recall making this statement but acknowledged he "must have said something like that."

Regarding Count 2, Ms. Nolan testified that on November 15, 2017, Mr. Nolan called her "the C word" and "a dumbass" in front of the child and stated that she should keep the child with her all the time and that he never wanted to see her or the child again. Ms. Nolan introduced an audio recording of this interaction, and Mr. Nolan acknowledged making the statements.

Regarding the allegations in Count 3, Ms. Nolan testified that on Christmas Eve, she had dressed the child to go to the Peabody Hotel after church, and they FaceTimed Mr. Nolan. Ms. Nolan testified that Mr. Nolan, in the presence of the child, told her she dressed the child "like an idiot" and that he "looked like a clown." She introduced a series of text messages sent after this conversation, in which she asked Mr. Nolan not to speak about the child's clothing "like that" and admonished him that, even if he disapproved of the holiday outfit, it was "not necessary" to say something when the child could hear it because it would make him "self-conscious." Mr. Nolan denied that he made the statements in front of the child on direct examination, but agreed on cross-examination, "I said that to Ms. Nolan in [the child's] presence."

Ms. Nolan testified that the next day, as alleged in Count 4, Mr. Nolan came to pick up the child for parenting time and that Mr. Nolan told Ms. Nolan that her haircut "looked like sh*t," that he "never loved" her, and that Ms. Nolan's neighborhood was "not safe." Ms. Nolan testified she lived in a safe neighborhood. Mr. Nolan told the child to say to Ms. Nolan that she "was f***ing terrible." When Ms. Nolan FaceTimed the child that day and called him "Bear," Mr. Nolan said that was a terrible nickname and that she was "babying" the child. Mr. Nolan acknowledged telling the child his mother was "F-ing

[7] No recusal motion was filed. Noting the language, the trial court judge indicated that it is not the first time she has heard such terms used regarding herself. The trial court judge stated that she had taken an oath to remain impartial and would make her decisions based on the law and facts.

terrible."

Regarding Count 5, Ms. Nolan testified that on January 17, 2018, she witnessed a FaceTime call between Mr. Nolan and the child, during which Mr. Nolan told the child he would no longer pick him up, that the child should have fun "only living with Mommy," and yelled "F you" to her. Mr. Nolan asserted that she was not controlling the child during the call. Ms. Nolan stated that Mr. Nolan had never apologized or shown remorse for his statements. Mr. Nolan acknowledged having made these statements.

According to Ms. Nolan, on January 21, 2018, Mr. Nolan likewise began to curse at her during a FaceTime call with the child, as alleged in Count 6. Ms. Nolan texted Mr. Nolan, telling him not to curse at her while FaceTiming, and he asserted she was violating the order because, during his FaceTime opportunities, the child would run around and refuse to participate. Mr. Nolan did not deny that this occurred.

On February 17, 2018, Ms. Nolan offered to pick the child up at Mr. Nolan's house and arrived ten minutes early. When she asked if the child's bag was packed, Mr. Nolan called her a "b*tch" in front of the child and said there was "a crazy person" slamming the door downstairs, then asked her to leave the home, although he had invited her in previously. She introduced an audio recording of the interaction, which was the basis of Count 7. Mr. Nolan testified that he did not deny that he called Ms. Nolan a "b*tch" in the child's presence.

As alleged in Count 8, on February 22, 2018, Ms. Nolan was FaceTiming with the child while the child was at Mr. Nolan's house. She testified that Mr. Nolan told the child that Ms. Nolan had rats in her house. Ms. Nolan introduced text messages in which she asked Mr. Nolan not to talk about "that kind of stuff" in front of the child and told Mr. Nolan she did not have rats. He responded, "You told me you did." She denied having told him she had rats and stated that a mouse had eaten a hole in the dog food bag on the day she moved in but she had seen no rodents since. She asked Mr. Nolan to stop saying "those things," and Mr. Nolan responded, "You need to stop telling me what to do." He followed up with "Your house is a sh*thole." Mr. Nolan acknowledged referencing rats in Ms. Nolan's home, recalling he said, "I hear you have some rats in your house; those aren't scaring you, are they[?]" He explained that he was joking with the child.

Ms. Nolan asserted that Mr. Nolan, during a FaceTime call between Mr. Nolan and the child on June 29, 2018, told the child that FaceTime was all he got with the child "because of Mommy," as alleged in Count 9. Mr. Nolan acknowledged making the statement regarding FaceTime but denied saying, "because of Mommy."

As alleged in Count 11, on September 16, 2018, Mr. Nolan told the child that the child "didn't have much room to play" at Ms. Nolan's house and that he "needed to be safe" at Ms. Nolan's house. Mr. Nolan explained that he was "just commenting to him

about, I guess, the lack of room for him to play." He testified that the comment about being safe was not intended to denigrate Ms. Nolan's home and that he had previously told the child to be safe at his own house.

Regarding the allegations of Count 12, in October 2018, the child received, as a gift from a third party, a "Skeleton in the Closet," which is a "Halloween version of Elf on the Shelf."[8] Ms. Nolan told the child she would show him where the skeleton had moved on FaceTime while he was at Mr. Nolan's home for parenting time. Ms. Nolan testified that on October 5, 2018, Mr. Nolan said in front of the child that the toy was "dumb." When she objected, Mr. Nolan said she "love[d] to argue" and that she would only allow the child to stay "two sleeps" with Mr. Nolan. On direct examination, Mr. Nolan testified he did not recall saying the toy was dumb and did not know why he would say that in the child's presence. However, on cross-examination, he agreed that he told the child the toy was "dumb." He testified that, at the time, there was no court order forbidding him from complaining about the Parenting Plan in front of the child.

On October 21, 2018, Mr. Nolan refused to bring the child to Ms. Nolan's house as provided in the Parenting Plan, and instead asked her to meet him at a bank. While returning the child, he stated in front of the child that the child spent all his time with Ms. Nolan, he tried to renegotiate the Parenting Plan in front of the child, and he said to Ms. Nolan, "You can sue me if you want to." Ms. Nolan asked him not to discuss parenting time, and he told her "not to f'ing tell him what to do." The child started saying, "Daddy, just leave this place." Mr. Nolan parted by saying, "Maybe one day, I'll win the lottery, and we can sue your mommy." Ms. Nolan introduced an audio recording confirming the interaction, which was the basis of the finding of contempt in Count 14. Mr. Nolan denied that he harassed Ms. Nolan about the plan or that the child was within earshot. He acknowledged that when she refused to discuss the Parenting Plan his response was "along th[e] lines" of telling her "to not F---ing tell [him] what to do." He did not recall the statement about suing Ms. Nolan with lottery winnings and stated he probably said it to Ms. Nolan, if he said it. On cross-examination, he testified that the child was out of earshot for the bulk of the interaction but that Ms. Nolan's driver's side door was open when he made the comment about the lottery.

Similarly, as alleged in Count 16, Mr. Nolan discussed the Parenting Plan with Ms. Nolan during drop-off on October 29, 2018. According to Ms. Nolan, Mr. Nolan did not

[8] Elf on a Shelf originated with a family tradition introduced by Carol Aeborsold with her three children in the 1970s, involving an elf that would observe their behavior near Christmas and report back to Santa Claus. Barbara Bellesi Zito, *What's the Elf on the Shelf story? Here's how the beloved Christmas tradition originated*, TODAY.COM, (Dec. 13, 2022, 11:50 A.M.), https://www.today.com/life/holidays/elf-on-the-shelf-story-rcna44019. In the 2000s, an illustrated book and plush toy elf brought this family tradition to a national and then international market, *id*., though there are objections to the elf on the shelf. Kelsey McKinney, *The Elf on the Shelf is the greatest fraud ever pulled on children*, VOX.COM, (Dec. 15, 2016 9:10 A.M.), https://www.vox.com/2014/12/10/7361911/elf-on-the-shelf.

permit the child to get out of the car and stood next to the child's seat while discussing the Parenting Plan. The child knocked on the window to get out and then told Mr. Nolan he was being "mean to mommy."[9] An audio recording showed that Mr. Nolan repeatedly asked Ms. Nolan to change the Parenting Plan. There were no raised voices, only a disagreement about changing the plan. Mr. Nolan testified he did not recall this interaction on direct examination. On cross-examination, he acknowledged having listened to the audio and testified that he did not deny that he "said those things."

Regarding Count 19, on November 4, 2018, Mr. Nolan refused to return the child to Ms. Nolan's home after his parenting time, and Ms. Nolan drove to Mr. Nolan's house. According to Ms. Nolan, Mr. Nolan initially told her the child did not want to leave. When the child came out of the house, Mr. Nolan pushed Ms. Nolan out of the way, began to cry, and called her a "despicable person." Ms. Nolan noted the child was three and could not be expected to have an opinion on the Parenting Plan. She introduced a recording in which the parties argued about whether Mr. Nolan pushed Ms. Nolan and in which Mr. Nolan repeatedly asked the child if he wanted to stay with Mr. Nolan during Ms. Nolan's parenting time. Ms. Nolan asked Mr. Nolan not to solicit the child's opinion on the Parenting Plan. She testified that, because she was "intimidated" by Mr. Nolan, who had a military background and builds sniper rifles and guns, she did not file the petition until this incident took place. She noted he had told her he wanted her dead and that the world would be a better place without her. Mr. Nolan testified that the day of this incident was his birthday, that the next day was his scheduled parenting day, and that he wanted to keep the child overnight although the plan called for the child to be with Ms. Nolan at 5:00 p.m. He denied pushing Ms. Nolan, testifying that he was holding the child and that Ms. Nolan tried to "snatch" the child from his arms. He acknowledged calling Ms. Nolan a despicable person in front of the child and stated this was prior to his anger management counseling.

The remaining counts charge conduct occurring after the parties entered into the Consent Order. Regarding Count 34, on June 14, 2019, Ms. Nolan had professional photographs taken of the child, and Mr. Nolan FaceTimed the child while he was in the outfit he wore for the pictures. Ms. Nolan testified that Mr. Nolan asked the child "in a demeaning tone. . . what he was wearing." She elaborated that Mr. Nolan appeared angry and that when the child said he had just had photographs taken, Mr. Nolan said, "[W]hat are you wearing and how do you even get that kind of shirt on?" Ms. Nolan introduced text messages in which Mr. Nolan called the clothing "embarrassing" and "effeminate." Mr. Nolan acknowledged asking the child what he was wearing and that the child got defensive. He denied that it was a demeaning tone and denied saying the shirt was "awful" as alleged in the written petition.

Ms. Nolan testified that on December 14, 2019, she FaceTimed the child and he was crying under the table. The child, who was four at the time, was upset because Mr. Nolan

[9] The trial court excluded this statement as hearsay, but the audio recording was admitted.

took away his security blanket "because men don't have blankets." Mr. Nolan returned the blanket during the call. These events were the basis of Count 36. Similarly, on March 31, 2020, Mr. Nolan told the child that "he didn't need that stinky blanket," as alleged in Count 40. Mr. Nolan acknowledged that he "probably" said that "men don't have blankets" to the child, but he stated he meant to parent and not belittle the child in order to wean him from the blanket. He did not believe the comment demeaned the child or that any court order prevented him from commenting on the blanket. He acknowledged calling the blanket "stinky" but explained he was encouraging the child to leave it for the duration of dinner.

As alleged in Count 37, on December 26, 2019, Mr. Nolan FaceTimed the child, who was wearing llama pajamas. Ms. Nolan testified that the child had picked out the pajamas and that the pajamas were "Christmas pajamas that have like a llama hood and little ears." She testified that Mr. Nolan said, "What are you wearing? Aren't you a little old for having bunnies on your pajamas?" Ms. Nolan stated that Mr. Nolan repeatedly commented on the pajamas if he saw the child wearing them. Mr. Nolan stated the pajamas did not seem age-appropriate and admitted he told the child he was too old for bunny pajamas.

Ms. Nolan testified that Mr. Nolan complained about the Parenting Plan in front of the child on Halloween 2019, as alleged in Count 42. Specifically, Mr. Nolan FaceTimed the child and said he was sorry he could not be there. When the child asked why, Mr. Nolan instructed the child to "ask his mother why." Ms. Nolan introduced text messages the parties exchanged, in which Mr. Nolan asked if Ms. Nolan intended to "exclude" him, asked to take the child separately earlier in the evening, and asked, "And what will you tell [the child] when he asks where I am?" Ms. Nolan responded she was following the Parenting Plan. After the FaceTime, Ms. Nolan texted that she felt Mr. Nolan was complaining about parenting time to the child and stated that the child had not asked about Mr. Nolan's presence prior to Mr. Nolan saying he was sorry not to be there. Mr. Nolan acknowledged the conversation and stated he was attempting to avoid violating the court order by not mentioning the Parenting Plan.

Regarding the allegations of Count 44, on June 6, 2020, Ms. Nolan allowed the child to have two friends over for an outdoor movie one weekend to celebrate his birthday. Ms. Nolan testified that she had told Mr. Nolan about the planned celebration and that Mr. Nolan told the child that he had heard the child was having "a big party" and that Mr. Nolan was not invited. He told the child to ask Ms. Nolan why he was not invited. Under the Parenting Plan, Mr. Nolan received parenting time with the child on the child's actual birthday. Mr. Nolan testified that the child asked him why he could not be there and that he was attempting to avoid discussing the Parenting Plan with the child by directing him to ask his mother. He agreed he told the child he was not invited and that the child should ask his mother why she did not invite him, but he stated the child had previously spoken to him about the event.

Ms. Nolan also testified that Mr. Nolan exposed the child to his romantic partner in violation of the consent agreement, as alleged in Count 47. In particular, she testified that Mr. Nolan allowed his girlfriend, A.R.,[10] to spend the night in October 2020. According to Ms. Nolan, Mr. Nolan and A.R. had been romantically involved at some point, but Ms. Nolan believed they had broken up in March 2020, and she stated A.R. had been on vacation with another man in June and again in July of 2020. Ms. Nolan testified that Mr. Nolan told her he had no girlfriend on August 25, 2020, but that in October, he allowed A.R. and her children to spend the night while the parties' minor child was present. Mr. Nolan testified that he and A.R. began dating in the fall of 2019 and that they broke up for June and July 2020. He married A.R. on October 26, 2020.[11] He testified that he felt as if he had no input into the Parenting Plan and did not interpret it to mean that he had to be married before introducing the child to his partner. He testified that in October 2020, the child had asked if A.R.'s children could spend the night, that he had agreed, and that he and A.R. slept on the couch.

Mr. Nolan testified generally that he felt he had no input into the Parenting Plan and that he was "sort of forced to sign it based on sort of an inequitable distribution of lawyer power" because he was not represented by counsel at the time. He stated that when he voiced dissatisfaction with the plan, Ms. Nolan told him that "she would bury [him] in attorney fees" if he challenged it. After being served with the first contempt petition, he recognized that some of his behavior was inappropriate. He attended anger management counseling and continued to see a therapist. He apologized for the statements he made about Ms. Nolan and the trial court, and he stated that he regretted the things he had said in front of his son. He testified that he entered Alcoholics Anonymous in the spring of 2019 and that he apologized to Ms. Nolan as part of the program. He agreed that the behavior noted in the first petition was "unjustifiable" but stated he had made progress in therapy. He had served seven years in the military. Mr. Nolan acknowledged that he had training in deceiving the enemy and that he had had limited counter-interrogation training.

Ms. Nolan testified on rebuttal that Mr. Nolan presently remained hostile toward her. Although he no longer shouted expletives, he would glare at her, roll his eyes, or completely disregard her presence if she tried to speak to him when the child was present. She testified that, the previous week, he would not accept a pair of soccer cleats from her and that she ended up having to "hand them past him to his new wife." She testified that a large portion of the Parenting Plan originated with Mr. Nolan and that the schedule revolved around his Thursday-through-Saturday work weekends at the time. She denied

[10] Mr. Nolan and A.R. subsequently married, and we glean from the record that A.R. took Mr. Nolan's surname. Because the conduct alleged took place prior to their marriage, we refer to her as "A.R" rather than "A.N." The court intends no disrespect in doing so.

[11] This was immediately prior to a scheduled hearing on some of the contempt charges, and Ms. Nolan first learned of the marriage at this hearing.

saying she would cause him financial harm if he fought the Parenting Plan. Ms. Nolan acknowledged that she received a letter from a counselor indicating that Mr. Nolan had attended six sessions of therapy. She also testified that, when they were in law school together, Mr. Nolan announced to the class that he had been trained in how to defeat a polygraph machine and that he told her he had received training in how to deceive others.

Dr. Lou Martin, a licensed professional counselor who began treating the child in January 2020, testified that the parties' inability to communicate appropriately created an uncomfortable and hostile environment. Dr. Martin indicated that the child would hide when both parents were present together at therapy. She testified that Mr. Nolan would stare Ms. Nolan down and roll his eyes. On one occasion, the child wished to speak to Mr. Nolan with Dr. Martin present, and Mr. Nolan refused, instead urging the child to talk about the issue in the waiting room, causing the child to feel disappointed and embarrassed. Mr. Nolan also argued about appointment times in the presence of the child. Dr. Martin said that the child expressed confusion about sharing a bed with A.R.'s children and being told to play alone while Mr. Nolan and A.R. took a nap. Dr. Martin stated that the child shared with her that his father criticized his shoes, his clothes, and his haircuts. Dr. Martin made efforts to have Mr. Nolan fill out an intake form and participate in counseling, but Mr. Nolan first submitted the form and participated the week prior to the January 2021 hearing.[12]

Mr. Nolan moved for dismissal of all the criminal contempt counts that had been first alleged in the November 2018 petition, asserting that a finding of contempt on these counts would violate the prohibition against double jeopardy. The trial court, which had previously deferred ruling on the double jeopardy motion, orally denied the motion.

At the close of Ms. Nolan's proof, Mr. Nolan also moved for judgment of acquittal[13] on numerous counts, based on purported insufficiency of the evidence. The trial court granted the motion on several counts. The court dismissed some counts because the evidence supporting them was inadmissible hearsay consisting of Ms. Nolan's testimony of what the child said, and it dismissed other counts based on a failure of proof, particularly as to several counts alleging that Mr. Nolan exposed the child to A.R. and her children,

[12] Mr. Nolan's participation in and payment for the therapy sessions were subjects of the counts of civil contempt.

[13] Mr. Nolan described this motion as one for directed verdict. The trial court made it clear that the court was looking to see if the evidence could support a finding of guilt beyond a reasonable doubt. This motion was decided prior to Mr. Nolan's presentation of proof. *See State v. Little*, 402 S.W.3d 202, 211 (Tenn. 2013) ("The standard by which the trial court determines a motion for a judgment of acquittal is, in essence, the same standard that applies on appeal in determining the sufficiency of the evidence after a conviction."); *State v. James*, 315 S.W.3d 440, 455 (Tenn. 2010) (noting that Tennessee Rule of Criminal Procedure 29(b) "empowers the trial judge to direct a judgment of acquittal when the evidence is insufficient to warrant a conviction either at the time the state rests or at the conclusion of all the evidence"); *Cottingham v. Cottingham*, 193 S.W.3d 531, 538 (Tenn. 2006) (motion for judgment of acquittal for criminal contempt).

finding that the duration of Mr. Nolan and A.R.'s relationship was not proven beyond a reasonable doubt. The trial court found that there was insufficient evidence of a violation of the Parenting Plan in the counts alleging that Mr. Nolan called the skeleton in the closet "dumb" on a particular occasion; this was one of two occasions where the comment was allegedly made.[14] (Count 13). The court also found that certain allegations were only supported by inadmissible hearsay, including allegations that Mr. Nolan told the child that Ms. Nolan was "angry all the time" (Count 15); that Mr. Nolan criticized Ms. Nolan's nephew (Count 17); that Mr. Nolan exposed the child to one of his girlfriends (Count 22); or that Mr. Nolan told the child babysitters were bad (Count 38). The court found that the counts alleging that Mr. Nolan exposed the child to A.R. and her children were either based on hearsay or unsupported by evidence that the relationship was shorter than four months at the time the child was exposed (Counts 24-32); that saying the child did not look as though he had a haircut was not a violation of an order (Count 41); and that there was no admissible evidence that Mr. Nolan told the child that Ms. Nolan had denied him extra parenting time (Count 43). The court likewise found insufficient evidence regarding the length of the relationship with A.R. to sustain a violation (Counts 48, 49, 50). Mr. Nolan had also moved to dismiss counts 1, 3, 8, 9, 10, 11, 16, 20, 23, 33, 36, 37, 40, 42, 44, 45, 46, 47, 52, but the trial court denied the motion as to these counts.

The trial court convicted Mr. Nolan of twenty-one counts of criminal contempt and found he was not in contempt on the remaining fourteen counts. In its order, the trial court noted that the purpose of the Parenting Plan and Consent Order was to "promote the child's emotional and psychological well-being," and it stated that it considered the introductory provisions in evaluating the element of intent. The court stated that sentences imposed for the violations were intended to be "proportional to the degree to which [the] infraction adversely affect[ed] the child." The circuit court noted Mr. Nolan's own words that he did not intend to comply with the orders of the court, and it found that Mr. Nolan's arguments that he did not "understand the provisions and their intent is not credible." The circuit court fined Mr. Nolan $1,050, and sentenced him to 83 days in confinement. The court suspended 53 days of the sentence and ordered Mr. Nolan to serve the remaining 30 days on specified weekends to accommodate his work schedule.

The trial court conducted a separate hearing on the counts of civil contempt, finding Mr. Nolan in civil contempt for failure to pay certain required expenses for the child. The trial court ordered Mr. Nolan to pay by a specified date or to face jail time.

The trial court also held a hearing on the issue of attorney's fees. Ms. Nolan's counsel had filed several documents seeking attorney's fees. Counsel's Sixth Amended Affidavit of Attorney Fees and Expenses Incurred filed in August 2021 requested $57,727.50 in fees and $6,601.52 in expenses. The affidavit stated that the fees were

[14] This was a separate violation from count 12, which involved calling the skeleton "dumb" on a separate occasion, as well as other allegations.

reasonable and necessary, were charged pursuant to a written contract, and were in line with local rates.

Ms. Nolan testified regarding her experience practicing family law, both as an associate with her counsel and elsewhere. She stated that the attorney's fees at issue related to both the civil and criminal contempt were reasonable and necessary. She had a written contract employing trial counsel and had been billed for the fees but had not paid them. Ms. Nolan testified that, unless the court ordered Mr. Nolan to pay the fees, she would be responsible for them.

Mr. Nolan, in May 2021, filed a written objection to some of the charges included in Ms. Nolan's counsel's fee affidavit, asserting that these items were not related to the contempt proceedings, or that they were not reasonable and necessary expenses. He objected to an email regarding an act for which there was no contempt charge, an unfiled injunction, and a letter regarding the sale of his home. Mr. Nolan also took issue with a bill for a telephone call researching the validity of his marriage license, with charges for Ms. Nolan's paralegal's participation in calls and hearings where Ms. Nolan's counsel was already present, a fee related to asking Mr. Nolan's attorney about any disability payments he was receiving, and a letter sent to A.R. asking her not to text Ms. Nolan regarding money. At the hearing on fees, the circuit court relied on the Sixth Amended Affidavit of Attorney Fees and Expenses Incurred and the attachments.[15] Mr. Nolan argued that certain fees claimed over the summer were unrelated to the contempt proceedings and that having multiple attorneys at the hearings was not reasonable or necessary.

The trial court found that, based on the skill level and hours of preparation expended by Ms. Nolan's counsel, Ms. Nolan was entitled to reasonable and necessary attorney's fees. The court awarded $6,601.52 in expenses but discounted the requested attorney's fees from $57,727.50 to $40,000. Mr. Nolan appeals the finding of contempt on all counts, and he appeals the award of attorney's fees.

II.

Mr. Nolan asserts that imposition of sanctions for the fourteen criminal contempt counts of the second amended petition that were also contained in the first contempt petition[16] violates the prohibition against double jeopardy. He argues that this result follows because he admitted his guilt and received punishment for those acts as a result of the first petition through the Consent Order.

[15] The attachments are not in the record on appeal, although the record contains the itemized fees underlying the Third Amended Affidavit of Attorney Fees and Expenses Incurred.

[16] Mr. Nolan was found in contempt for acts alleged in the first petition in Counts 1-9, 11-12, 14, 16, and 19.

Both the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution and article I, section 10 of the Tennessee Constitution prohibit putting the accused "in jeopardy of life or limb" twice "for the same offence." *See State v. Watkins*, 362 S.W.3d 530, 548 (Tenn. 2012) (noting the two provisions are co-extensive). In general, the double jeopardy constitutional safeguard protects against multiple punishments for the same offense in a single prosecution or reprosecution after an acquittal or conviction. *Id.* In this case, Mr. Nolan's argument is essentially that he has been previously found in contempt for these same counts of criminal contempt and cannot be held in contempt again. Whether retrial in this case is prohibited because of the constitutional prohibition of double jeopardy presents a question of law that is reviewed *de novo*. *See State v. Houston*, 328 S.W.3d 867, 875 (Tenn. Crim. App. 2010).

Contempt may be classified as civil or criminal. *Baker v. State*, 417 S.W.3d 428, 436 (Tenn. 2013). Civil contempt sanctions are remedial and coercive; that is, the sanctions for civil contempt are designed to encourage a party to comply with the court's orders. *State ex rel. Flowers v. Tennessee Trucking Ass'n Self Ins. Grp. Trust*, 209 S.W.3d 602, 613 (Tenn. Ct. App. 2006). Accordingly, in civil contempt, a party holds the "keys to his prison in his own pocket" and can secure release from confinement by complying with the court's order. *Baker*, 417 S.W.3d at 436 (quoting *State ex rel. Anderson v. Daugherty*, 191 S.W. 974, 974 (1917)). Sanctions for criminal contempt, on the other hand, "are generally both punitive and unconditional in nature." *Id.* A criminal contemnor cannot purge the contempt, because the sanctions imposed are to punish for past misbehavior, not to secure future compliance. *Id.*

"Criminal contempt is often regarded as a 'crime' . . . ." *Id.* The Tennessee Supreme Court has observed, however, that criminal contempt is not wholly criminal in nature. *Id*. at 435. It partakes of some characteristics of civil proceedings and not all of the same constitutional protections afforded to a criminal defendant in a criminal proceeding apply to a criminal contempt proceeding. *Id*. at 435-36; *see also Marlow v. Marlow*, 563 S.W.3d 876, 882 (Tenn. Ct. App. 2018).

Given its punitive nature, criminal contempt is, however, subject to many constitutional safeguards connected with criminal matters, including a presumption of innocence, a right to be found guilty only on proof beyond a reasonable doubt, a right to refuse to testify against oneself, and a right to an attorney. *Baker*, 417 S.W. 3d at 436. Another constitutional safeguard that applies to criminal contempt proceedings is the prohibition against double jeopardy. *See Overnite Transp. Co. v. Teamsters Local Union No. 480*, 172 S.W.3d 507, 510 (Tenn. 2005) (noting that "[c]riminal contempt cases are subject to the double jeopardy provisions in the federal and state constitutions"); *Ahern v. Ahern*, 15 S.W.3d 73, 80 (Tenn. 2000); *see also* 22A C.J.S. Criminal Procedure and Rights of Accused § 615 (stating that "[c]riminal contempt cases are subject to the double jeopardy provisions of the federal and state constitutions").

As noted above, Mr. Nolan's argument that the trial court has violated his double jeopardy rights is built upon his contention that the Consent Order functioned as a guilty plea and imposition of sentence. Thus, according to Mr. Nolan, he is now being retried for something for which he was previously convicted of and sentenced for as a result of his prior guilty plea. For double jeopardy protections to apply, the person asserting the constitutional safeguard must have previously been in jeopardy for the same offense; thus, jeopardy necessarily must have previously attached. *See State v. Pennington*, 952 S.W.2d 420, 422 (Tenn. 1997). As stated by the Tennessee Supreme Court, the well-established formulation for when jeopardy attaches is as follows: "In jury proceedings, jeopardy attaches when the jury is sworn. In non-jury proceedings, jeopardy attaches when the first witness testifies." *Ahern*, 15 S.W.3d at 80 (citations omitted).

This well-established formulation does not, however, address guilty pleas. For "those cases in which a guilty plea ends the case without trial, there is some disagreement about when jeopardy attaches." Wayne R. LaFave et al., 6 Crim. Proc. § 25.1(d) (4th ed. 2022).[17] The United States Supreme Court has "assume[d] that jeopardy attached at least when respondent was sentenced . . . on his plea of guilty." *Ricketts v. Adamson*, 483 U.S. 1, 8 (1987). The Tennessee Supreme Court has indicated that "jeopardy does not attach at a hearing on a guilty plea until the plea is unconditionally accepted." *State v. Todd*, 654 S.W.2d 379, 383 (Tenn. 1983); *see also Waters v. Farr*, 291 S.W.3d 873, 892 (Tenn. 2009) (stating that "[j]eopardy attaches when a guilty plea is unconditionally accepted by a trial court."). Applying this standard, the Tennessee Court of Criminal Appeals concluded that jeopardy did not attach where a trial judge deferred "the sentencing decision until after considering the presentence report" and subsequently concluded that "it could not accept the agreement." *State v. Akins*, 867 S.W.2d 350, 353 (Tenn. Crim. App. 1993).

As noted above, Mr. Nolan argues that jeopardy attached through the Consent Order because it constituted a guilty plea and an imposition of a sentence. In making his argument that the Consent Order constituted a guilty plea, Mr. Nolan focuses on language in the Consent Order stating that "Father acknowledges that if he continues to engage in the conduct set forth in Paragraphs 5(a)-5(s) of Mother's Petition,[18] that the minor child will be irreparably harmed." He asserts the admission that he engaged in certain conduct is the equivalent of a guilty plea. He further points to the circuit court's oral statement reflecting on the Consent Order in its initial consideration of his double jeopardy argument that "I guess it would be like a guilty plea on certain counts. . . ." He contends that, other than this statement, "the trial court made no reference of Father's double jeopardy contention" in its order. However, the court did state in its order that the counts were not resolved by the Consent Order but were "revived" in the subsequent petition. Furthermore, subsequent

[17] *See also* Anna R. Light, Note, *Criminal Law: The Tension Between Finality and Accuracy: Double Jeopardy in Guilty Pleas-State v. Jeffries*, 39 Wm. Mitchell L. Rev. 306, 310 (2012) (stating that "courts across the country take various positions as to when jeopardy attaches in cases of guilty pleas").

[18] These paragraphs contained the allegations supporting Counts 1-19 of the first petition.

to the above statement, the court orally denied Mr. Nolan's motion to dismiss based on double jeopardy.

In support of his contention that he pled guilty, Mr. Nolan cites to *Marlow v. Marlow*, in which this court determined that jeopardy had not attached to a guilty plea contained in an agreed order. 563 S.W.3d at 879. In *Marlow*, the parties "presented an agreed order to the trial court pursuant to which Father would plead guilty to 10 unspecified counts . . . and the remaining counts would be dismissed." *Id.* at 879. The agreement provided for a sentence of one hundred days, for the manner of service, and for a modification to a prior contempt sentence. *Id.* at 879-80. The court approved the order "which included Father's guilty plea," but it failed to conduct a plea colloquy under Tennessee Rule of Criminal Procedure 11(b). *Id.* at 880. The father moved to set the pleas aside on the basis that the court had not conducted the required colloquy, and the court granted the motion. *Id.* at 880-81. This court determined that there was no double jeopardy prohibition against retrial on those counts because the guilty pleas were set aside on procedural grounds. *Id.* at 884. The court also noted that because of the failure of the order to specify the particular counts to which the father was pleading guilty, jeopardy had not attached to any of the counts. *Id.* Mr. Nolan distinguishes *Marlow* by asserting that he admitted guilt of specific counts of the petition through the language acknowledging harm to the child "if he continue[d] to engage" in the acts set out in certain paragraphs of the Parenting Plan. He also asserts he suffered punishment pursuant to the Consent Order.

Mr. Nolan's argument is unavailing. The Consent Order in this case does not contain an adjudication of guilt for criminal contempt, nor does it provide for any sanction authorized for criminal contempt. The order does not contain the word "guilt" or "guilty"; it does not contain a statement that Mr. Nolan pleads guilty; it does not contain the court's acceptance of any guilty plea or any holding that Mr. Nolan is found in contempt; it does not contain an adjudication of guilt; and it does not contain a sentence or manner of service for criminal contempt. *Compare Marlow*, 563 S.W.3d at 879-80; *see Todd*, 654 S.W.2d at 382 ("By a plea agreement a defendant admits commission of the specified offense and consents to entry of a conviction and receipt of the agreed upon punishment without a trial."). Additionally, the Tennessee Court of Criminal Appeals has reasoned that "[w]hen there is no witness sworn and no fact trial in a contempt proceeding, jeopardy cannot attach until the contempt is declared." *State v. Bryan*, No. W1999-00620-CCA-R3CD, 2000 WL 33288749, at *4 (Tenn. Crim. App. June 27, 2000). No contempt was declared in the present case in the Consent Order or with regard to the first petition.

At most, the Consent Order contains an acknowledgement of acts that could carry liability for criminal contempt. However, an acknowledgement of engaging in prohibited conduct is not the "functional equivalent" of a guilty plea. *See Florida v. Nixon*, 543 U.S. 175, 188-89 (2004) (concluding that counsel's concession of guilt was not the functional equivalent of a guilty plea because the State continued to bear the burden of proving the offenses beyond a reasonable doubt and the defense was able to cross-examine witnesses

and attempt to exclude prejudicial evidence). "[A] plea of guilty is more than an admission of conduct; it is a conviction."[19] *State v. Newsome*, 778 S.W.2d 34, 35-36 (Tenn. 1989) (noting that "[s]everal federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial"); *see Boykin v. Alabama*, 395 U.S. 238, 242 n.4 (1969) ("A plea of guilty is more than a voluntary confession made in open court. It also serves as a stipulation that no proof by the prosecution need be advanced. . . . It supplies both evidence and verdict, ending controversy." (quoting *Woodard v. State*, 171 So. 2d 462, 469 (Ala. Ct. App. 1965)); *State ex rel. Rivera v. Henderson*, 410 S.W.2d 726, 728 (Tenn. 1967) ("A plea of guilty differs in purpose and effect from a mere admission or an extrajudicial confession; it is itself a conviction.").

Furthermore, for guilty pleas, this court has concluded that

> in criminal contempt proceedings, the trial judge *shall* comply with [Tennessee] Rule [of Criminal Procedure] 11(b) by addressing the defendant *in person*, *in open court*, engaging the defendant in the requisite dialogue and then making the individualized determinations the rule requires *before* accepting any guilty plea, including without limitation, making the determination that the proposed sentence is appropriate under the circumstances.

Baker v. Baker, No. M2010-01806-COA-R3-CV, 2012 WL 764918, at *10 (Tenn. Ct. App. Mar. 9, 2012) (Tenn. R. Crim. P. 11(b)). It is undisputed that this did not occur in the present case. There was no Rule 11(b) plea colloquy that occurred. Mr. Nolan never entered a plea formally pursuant to such procedure or informally in some other form. Additionally, as noted above, there is nothing in the Consent Order to indicate that Mr. Nolan was in fact found in criminal contempt or that any judgment holding him in contempt was entered by the trial court.

In addition to arguing that he entered a guilty plea, Mr. Nolan also argues that he was subjected to "punishment in the form of financial obligations, reduced parenting time, and restrictions on . . . speech." In particular, he notes that the Consent Order restricted his communications in the child's presence, reduced his parenting time, held him financially responsible for the child's counseling and for other expenses,[20] and required him to attend

[19] We note that, although certain criminal procedural safeguards such as double jeopardy apply to criminal contempt proceedings, the Tennessee Supreme Court has clarified that contempt is not a criminal offense, that a contempt finding is not a conviction, and that post-conviction procedures do not apply to criminal contempt. *Baker*, 417 S.W.3d at 438 ("Courts properly 'find' or 'hold' persons in contempt and impose 'sanctions' or 'punishment' for contempt but do not 'convict' persons of contempt.").

[20] Pursuant to the Consent Order, Mr. Nolan was required to reimburse Ms. Nolan for the filing fee for the petition and for "all additional court costs, if any, incurred by Mother in filing her Petition." It appears from the third fee affidavit, the only one in the record, that $27.95 was included in the claim for expenses for the filing fees for the first petition for contempt. Mr. Nolan does not specifically challenge this amount

anger management. He asserts that these were sanctions that constituted prior punishment for criminal contempt and that any subsequent finding of contempt based on the same counts would violate the prohibition against double jeopardy. However, "the United States Supreme Court has 'long recognized that the Double Jeopardy Clause does not prohibit the imposition of all additional sanctions that could, 'in common parlance,' be described as punishment.'" *Waters*, 291 S.W.3d at 892 (quoting *Hudson v. United States*, 522 U.S. 93, 98-99 (1997)). "Instead, '[t]he Clause protects only against the imposition of multiple *criminal* punishments for the same offense, and then only when such occurs in successive proceedings.'" *Id.* (quoting *Hudson*, 522 U.S. at 99); *see Ward v. State*, 315 S.W.3d 461, 472-74 (Tenn. 2010) (concluding, in assessing whether the plea was knowing and voluntary, that the requirement of registration as a sex offender was not punitive but that community supervision for life was punitive).

Mr. Nolan does not cite to any law that empowers a trial court to punish criminal contempt through restricting a party's denigration of another party, reducing parenting time, imposing financial obligations with regard to shared child expenses, or requiring therapy. Indeed, Tennessee by statute curtails the punishments that may be imposed for contempt: "[t]he punishment for contempt may be by fine or by imprisonment, or both." Tenn. Code Ann. § 29-9-103(a); *see also* Tenn. Code Ann. § 29-9-103(b) (providing that the punishment is limited to a fifty-dollar fine and ten days' imprisonment). This statute, delineating the punishment for contempt, was passed "to curb the contempt power of state judges," which at common law, "was vast and undefined." *Baker*, 417 S.W.3d at 435. Accordingly, the circuit court's authority was limited to "the authority to punish . . . contempt with either a fine, a period of confinement, or both." *Id.* The Consent Order contains no such punishment. The consequences listed in the Consent Order simply do not amount to any sort of authorized punishment for criminal contempt imposed by the court.

The Consent Order was not an adjudication of guilt on the counts of criminal contempt; rather, it was a contract, reduced to a court order, in which Mr. Nolan agreed to undertake certain obligations in exchange for Ms. Nolan's agreeing to dismiss the petition for contempt, "without prejudice." There was no guilty plea. These were no criminal sanctions for contempt; instead, they were contractual provisions which Mr. Nolan accepted both to perhaps avoid prosecution, though subject only to a "without prejudice" dismissal, and as stated explicitly in the Consent Order, to further the child's best interests. Analogizing to conventional criminal proceedings, the closest corollary in the present case is pretrial diversion, a deferred prosecution agreement, with Mr. Nolan having failed to adhere to the terms of the deferred prosecution, resulting in reinstatement thereof. *See* Tenn. Code Ann. § 40-15-105. While Mr. Nolan asserts that via the Consent Order he both pled guilty and had a criminal contempt sanction imposed upon him, we conclude that he neither pled guilty nor had a criminal contempt sanction imposed upon him. Accordingly,

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in the challenge to attorney's fees, and it is unclear if he paid the court costs as provided in the Consent Order.

the prohibition against double jeopardy does not prohibit a subsequent proceeding to determine whether Mr. Nolan was in criminal contempt for the acts alleged in the initial petition. Therefore, imposition of sanction for counts appearing in the first petition does not violate the constitutional safeguard prohibiting double jeopardy.

III.

On appeal, Mr. Nolan challenges on the merits thirteen of the twenty-one counts of contempt found by the trial court. In arguing that the trial court erred, Mr. Nolan contends that the trial court committed two principal errors.[21] One, he argues the trial court's findings of contempt were based upon insufficient evidence. Two, he argues the trial court engaged in an overly broad reading of the restrictions imposed under its prior orders in concluding that his conduct violated those prohibitions.

The recognition of an inherent power of courts to impose punishment for contempt, which can be traced in common law back to the twelfth century, "has long been regarded as essential to the protection and existence of the courts." *Baker v. State*, 417 S.W.3d at 434–35. This inherent power has been codified and limited in Tennessee. *State v. Beeler*, 387 S.W.3d 511, 519 (Tenn. 2012). Under Tennessee Code Annotated section 29-9-102:

The power of the several courts to issue attachments, and inflict punishments

[21] In addition to the two principle arguments, Mr. Nolan also advances two other contentions in opposition to the trial court's finding of contempt. One, he argues that the trial court should not have considered the purpose of the orders that were purportedly violated in evaluating whether Mr. Nolan acted willfully. The court stated that it considered the "introductory provisions and related language in the Parenting Plan and Consent Order in determining whether . . . the violation should result in a finding that Father knew or should have known his actions or inactions reasonably were in contravention of the goal of protecting child." We conclude that the trial court was merely reading the sections of the orders prohibiting certain behavior in the context of the order as a whole, following the directive of the Tennessee Supreme Court to take "into account both the language of the order and the circumstances surrounding the issuance." *Konvalinka v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, 249 S.W.3d 346, 356(Tenn. 2008). The trial court, therefore, properly considered the context of the prohibitions in evaluating whether Mr. Nolan violated the orders willfully.

As for the second contention, Mr. Nolan also asserts that the trial court erred in not considering the "drastic change and improvement" in Mr. Nolan's behavior. The evidence at trial was mixed regarding Mr. Nolan's more recent behavior, with Mr. Nolan testifying that he no longer engaged in inappropriate behavior and Ms. Nolan and Dr. Martin testifying that Mr. Nolan either glared at or completely ignored Ms. Nolan when they were together. Dr. Martin noted that the relationship between Mr. Nolan and Ms. Nolan was harmful to the child. The trial court did not make a particular finding in this regard, but there is no indication that it disregarded any evidence on this front. More importantly, criminal contempt is in general punitive for past conduct. *Baker*, 417 S.W.3d at 436. Accordingly, the court determined that Mr. Nolan had willfully violated court orders, and it imposed punishment in proportion to its perception of the harm caused to the child by such violations. Any improvement in Mr. Nolan's subsequent behavior would not purge a prior contempt, because unlike in civil contempt, the contemnor does not hold the keys to the jail in criminal contempt; instead, criminal contempt is a punishment for past behavior. *Id*.

> for contempts of court, shall not be construed to extend to any except the following cases:
>
> . . .
>
> (3) The willful disobedience or resistance of any officer of the such courts, party, juror, witness, or any other person, to any lawful writ, process, order, rule, decree, or command of such courts. . . .

Tenn. Code Ann. § 29-9-102. The punishment for contempt is a fine up to $50, imprisonment up to 10 days, or both. Tenn. Code Ann. § 29-9-103.

Criminal contempt may further be subdivided into direct or indirect; contempt is direct when it occurs in the court's presence and indirect when it does not. *Beeler*, 387 S.W.3d at 520. While a court may take summary action for direct contempt, indirect contempt requires additional procedural safeguards. *Id.* "For example, indirect criminal contempt may only be punished after the accused contemnor has been given notice and an opportunity to respond to the allegations at a hearing." *Baker*, 417 S.W.3d at 436. "While criminal contempts may arise in the course of private civil litigation, such proceedings, 'in a very true sense raise an issue between the public and the accused.'" *Black v. Blount*, 938 S.W.2d 394, 398 (Tenn. 1996) (quoting *State v. Daugherty*, 137 Tenn. 125, 191 S.W. 974, 974 (1917)).

Once an adjudication of guilt has been entered on a count alleging criminal contempt, "the contemnor loses the presumption of innocence and bears the burden of overcoming the presumption of guilt on appeal." *Beeler*, 387 S.W.3d at 519. The reviewing court gives the prevailing party the strongest legitimate view of the evidence and all reasonable and legitimate inferences to be drawn from the evidence. *Furlong v. Furlong*, 370 S.W.3d 329, 338 (Tenn. Ct. App. 2011). On appeal, this court determines whether, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Beeler*, 387 S.W.3d at 519; *Cottingham v. Cottingham*, 193 S.W.3d 531, 538 (Tenn. 2006); *Black*, 938 S.W.2d at 399.[22]

[22] While Ms. Nolan states, in the section of her brief addressing standard of review, that the standard of review for findings of contempt is abuse of discretion, in developing her argument in her appellate brief she instead addresses her argument to the above-delineated standard articulated in *Black*. We note that this case involves the imposition of sanctions for indirect contempt after notice and multiple hearings. The cases relied on in the standard of review section of Ms. Nolan's brief involve direct contempt. *Compare In re Brown*, 470 S.W.3d 433, 445 (Tenn. Ct. App. 2015) (reviewing summary imposition of sanctions for direct contempt for abuse of discretion); *Daniels v. Grimac*, 342 S.W.3d 511, 518 (Tenn. Ct. App. 2010) (reciting abuse of discretion standard when the trial court purported to be issuing summary punishment for direct contempt); *with Beeler*, 387 S.W.3d at 519; *Cottingham*, 193 S.W.3d at 538; *Black*, 938 S.W.2d at 399; *Burris v. Burris*, 512 S.W.3d 239, 247 (Tenn. Ct. App. 2016); *Pruitt v. Pruitt*, 293 S.W.3d 537, 545 (Tenn. Ct. App. 2008). Here, we review the court's findings of contempt under the standard articulated by the Tennessee Supreme Court in *Beeler*, *Cottingham*, and *Black*. *Beeler*, 387 S.W.3d at 519; *Cottingham*,

Criminal contempt requires proof of the following elements:

> First, the order alleged to have been violated must be "lawful." Second, the order alleged to have been violated must be clear, specific, and unambiguous. Third, the person alleged to have violated the order must have actually disobeyed or otherwise resisted the order. Fourth, the person's violation of the order must be "willful."

Furlong, 370 S.W.3d at 336-37 (quoting *Konvalinka v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, 249 S.W.3d 346, 354 (Tenn. 2008) and applying its standards in the context of criminal contempt).

Mr. Nolan does not challenge the lawfulness of the trial court's orders prohibiting the child's parents from engaging in certain conduct. Mr. Nolan asserts on appeal that "[g]ermaine to this appeal are the second and fo[u]rth elements of contempt—the clarity of the orders and the willfulness of Father's conduct." Before a party can be held in contempt for violation of a court order, the order must "be clear, specific, and unambiguous." *Konvalinka*, 249 S.W.3d at 355; *see Long v. McAllister-Long*, 221 S.W.3d 1, 14 (Tenn. Ct. App. 2006) (requiring a clear and unambiguous order in a case involving criminal contempt).

> Vague or ambiguous orders that are susceptible to more than one reasonable interpretation cannot support a finding of civil[23] contempt. Orders need not be "full of superfluous terms and specifications adequate to counter any flight of fancy a contemner may imagine in order to declare it vague." They must, however, leave no reasonable basis for doubt regarding their meaning.
>
> Orders alleged to have been violated should be construed using an objective standard that takes into account both the language of the order and the circumstances surrounding the issuance of the order, including the audience to whom the order is addressed. Ambiguities in an order alleged to have been violated should be interpreted in favor of the person facing the contempt charge. Determining whether an order is sufficiently free from ambiguity to be enforced in a contempt proceeding is a legal inquiry that is subject to de novo review.

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193 S.W.3d at 538; *Black*, 938 S.W.2d at 399.

[23] While *Furlong* leaves the reference to civil contempt from *Konvalinka* in place, *Furlong* itself was applying these standards to criminal contempt. *Furlong*, 370 S.W.3d at 336 ("*Konvalinka* is a case involving civil contempt, but, with the noted exception of the standard for reviewing the sufficiency of the evidence, it is clear to us that the following analysis set out in *Konvalinka* applies to all contempt proceedings.").

Furlong, 370 S.W.3d at 337 (quoting *Konvalinka*, 249 S.W.3d at 356 (citations omitted)).

Much of Mr. Nolan's argumentation in his appellate brief is directed at the purported insufficiency of the evidence to support the counts of contempt that he is challenging on appeal. The specific nature of the asserted evidentiary deficiencies varies with the different counts that Mr. Nolan is arguing are inadequately supported. He also makes another argument on appeal, which is legal rather than factual in nature, against at least some of the counts. Analogized to more conventional criminal law matter, this latter argument is more akin to a rule of lenity rather than a void for vagueness contention.[24] In this argument mirroring the rule of lenity, the language of the court's prior orders parallels the statutory language in a more conventional rule of lenity analysis. Mr. Nolan contends the trial court read some of the restrictions in its prior orders in an overly broad manner, resolving ambiguity against, rather than in favor of, the person facing the contempt charge. In doing so, Mr. Nolan contends the trial court departed from the manner in which criminal contempt is supposed to be assessed. Such an argument is entirely appropriate in challenging a criminal contempt finding because the threat of punishment in a criminal contempt proceeding "triggers the same concerns that motivate the rule of lenity."[25] This type of argument is also entirely consistent with the Tennessee Supreme Court directive that "[a]mbiguities in an order alleged to have been violated should be interpreted in favor of the person facing the contempt charge." *Konvalinka*, 249 S.W.3d at 356. Accordingly, we consider both Mr. Nolan's sufficiency of the evidence arguments and his rule-of-lenity-mirroring arguments, considering the respective counts that he challenges on appeal and his arguments as to each below.

A. Counts 8, 9, 11, 12, and 16

The Permanent Parenting Plan, which was approved by the trial court on November 1, 2017 provided, in part, as follows: "Neither parent shall denigrate or disparage the other parent or his/her family members to or in the presence of the minor child or allow others to speak negatively or disparagingly of the other parent or his or her family members to or in the presence of the minor child." Contempt counts 8, 9, 11, 12, and 16 are all predicated

[24] The rule of lenity has been described as "as a sort of 'junior version of the vagueness doctrine.'" *United States v. Lanier*, 520 U.S. 259, 266 (1997). This characterization stems in part from the vagueness doctrine being a constitutional doctrine that results in striking down a law as unconstitutional while the rule of lenity is a rule of statutory construction that results in a stricter construction of a statute. *See* Carissa Byrne Hessick & Joseph E. Kennedy, *Criminal Clear Statement Rules*, 97 Wash. U. L. Rev. 351, 368–69 (2019). The void-for-vagueness doctrine "guarantees that ordinary people have 'fair notice' of the conduct a statute proscribes." *Sessions v. Dimaya*, 138 S. Ct. 1204, 1212 (2018). "Run-of-the-mill ambiguity regarding particular applications of a criminal statute . . . does not warrant application of the void-for-vagueness doctrine"; instead, that is addressed via the rule of lenity. *See Martin v. State*, 259 So.3d 733, 741 (Fla. 2018).

[25] F. Andrew Hessick & Michael T. Morley, *Interpreting Injunctions*, 107 Va. L. Rev. 1059, 1086 (2021).

upon the trial court's conclusions that Mr. Nolan's actions violated the aforementioned provision. Mr. Nolan argues his conduct did not constitute denigration or disparagement of Ms. Nolan. He also raises other contentions as to the sufficiency of the evidence to support the trial court's conclusions on each of these counts.

In considering counts 8, 9, 11, 12, and 16, we note that to disparage means: "1. To speak slightingly of; to criticize (someone or something) in a way showing that one considers the subject of discussion neither good nor important. 2. To degrade in estimation by disrespectful or sneering treatment," *Black's Law Dictionary* (11th ed. 2019); or "to lower in rank or reputation: DEGRADE . . . to depreciate by indirect means (as invidious comparison): speak slightingly about." *Merriam-Webster Collegiate Dictionary* 360 (11th ed. 2011); *see also The Concise Oxford Dictionary* 389 (9th ed. 1995) (defining disparage as to "speak slightingly of; depreciate"). To denigrate means "to attack the reputation of: DEFAME" or "to deny the importance or validity of: BELITTLE," *Merriam-Webster Collegiate Dictionary* 333 (11th ed. 2011), or to "defame or disparage the reputation of (a person); blacken," *The Concise Oxford Dictionary* 360 (9th ed. 1995). We note that Ms. Nolan correctly observes that Tennessee by statute provides that parents, in orders pertaining to custody arising from an action for absolute divorce, have "[t]he right to be free of unwarranted derogatory remarks made about such parent or such parent's family by the other parent to or in the presence of the child," and the Permanent Parenting Plan referenced this provision. Tenn. Code Ann. § 36-6-101(a)(3)(B)(vi); *see*, *e.g.*, *Richardson v. Richardson*, No. M2020-00179-COA-R3-CV, 2021 WL 4240831, at *14 (Tenn. Ct. App. Sept. 17, 2021) (affirming finding of contempt when mother made "unwarranted derogatory remarks" about father in contravention of the parenting plan); *Boren v. Rousos*, No. M2014-02504-COA-R3-CV, 2015 WL 7182141, at *5 (Tenn. Ct. App. Nov. 13, 2015) (upholding criminal contempt for violating a provision prohibiting father from making "derogatory remarks" about mother). Accordingly, the order itself "is sufficiently free from ambiguity to be enforced in a contempt proceeding." *Furlong*, 370 S.W.3d at 337.

1. Count 8

Mr. Nolan challenges the trial court's conclusion that his statement to the child that Ms. Nolan had rats in her house constituted denigration or disparagement of Ms. Nolan. Mr. Nolan acknowledges having said to the minor child that Ms. Nolan had rats in her home, but he asserts that this was not disparaging of Ms. Nolan personally but only of her home and that his statement was not willfully denigrating because he intended it as a joke.

The evidence showed that Ms. Nolan did not have rats in her home. She testified that on the day she moved into her new home, she noticed that a mouse had nibbled a hole in a bag of dog food but that she had not encountered any other rodents. She indicated that she informed Mr. Nolan of this.

Mr. Nolan testified that he did not intend to denigrate Ms. Nolan, and he argues that

this testimony establishes his lack of intent to denigrate Ms. Nolan, defeating willfulness. Ms. Nolan's allegations, however, regarding intent were supported by a chain of text messages in which she asked Mr. Nolan not to say she had rats in her house in front of the child. Mr. Nolan initially responded that she had told him she did, and when she denied it, he stated, "Your house is a sh*thole." While this particular statement was not a violation of the order because it was not said in front of the child, it is relevant to assessing Mr. Nolan's intent in making the comment about rats in Ms. Nolan's home. It is likewise relevant to interpreting the statement about the rats. Although Mr. Nolan's statement is ostensibly about the home and not about Ms. Nolan, a rational inference to be drawn from the statement is that Ms. Nolan maintains her home in an unsanitary manner. We find no error in the trial court's conclusion that the Count 8 statement by Mr. Nolan fell within the prohibition upon derogatory/denigrating comments about the other parent.

2. Count 9

The court held Mr. Nolan in contempt for violating the provision prohibiting him from disparaging or denigrating Ms. Nolan in front of the child for his statement to the child during a FaceTime conversation that "because of mommy, FaceTime is all daddy gets so you need to talk to me." Father denied having blamed Ms. Nolan; Ms. Nolan insists that the statement was made.

The statement taxes Ms. Nolan with responsibility for the apportionment of parenting time and involves the child in a dispute about court-ordered custody arrangements. Mr. Nolan's statement, accordingly, would appear to violate the provision of the Consent Order forbidding him from airing complaints regarding the Parenting Plan in front of the child, but this provision was not in place at the time he made the statement. We have little difficulty in seeing how such a comment could potentially constitute a derogatory or denigrating statement, but additional testimony was not offered to contextualize the statement in a manner to support such a conclusion. Accordingly, without such contextualizing evidence, we cannot say that the statement clearly violates the prohibition upon disparaging or denigrating of Ms. Nolan. Therefore, we reverse the court's finding of contempt on Count 9.

3. Count 11

The circuit court likewise found Mr. Nolan in contempt for saying to the child, "You don't have much room to play in your tiny house" and exhorting him to "be safe at mommy's house." Ms. Nolan testified that Mr. Nolan had on a previous occasion warned the child that Ms. Nolan's neighborhood was unsafe, a contention that Ms. Nolan disagreed with strongly. Mr. Nolan admitted saying the house was small and telling the child to be safe but argues that these statements are about Ms. Nolan's house and not about Ms. Nolan. Accordingly, he contends that this cannot constitute a derogatory or denigrating statement about Ms. Nolan. Again, as in addressing count 8 above in relation to Mr. Nolan's

comment about rats, a reasonable inference from this statement is that this statement belittles Ms. Nolan, suggesting that she has provided an unsuitable living environment for the child. We find no error in the trial court's conclusion that the Count 11 statement fell within the prohibition upon derogatory/denigrating comments about the other parent.

4. Count 12

Mr. Nolan also contests the finding of contempt regarding his statements made surrounding the "Skeleton in the Closet." As noted above, this toy is a Halloween version of the Christmas "Elf on the Shelf." Ms. Nolan testified that Mr. Nolan stated in front of the child that the toy was "dumb." When she objected to his statement, he allegedly said she loved to argue and told the child that she would only allow the child to stay "two sleeps" with Mr. Nolan. Mr. Nolan's testimony, however, was contradictory, as he testified on direct examination that he did not recall having called the toy "dumb" in front of the child and did not know why he would have said that. On cross-examination, he acknowledged having said the toy was "dumb" in front of the child. Mr. Nolan did not acknowledge saying that Ms. Nolan loved to argue,[26] and he stated that he did not believe that the comment about two sleeps violated the Parenting Plan.

The trial court summarized the allegations and found Mr. Nolan in contempt:

> Number 12 that Father said the skeleton in the closet was dumb and Father asserted that he could say anything he wanted to say when Mother asked Father not to say that it was dumb. Father then told the child, Mother loves to argue.
>
> Father also told the child two days was all that Mother would allow him to have. That was October 5, 2018. Father admitted that on cross-examination and the Court finds that Mother has proven that beyond a reasonable doubt.

Mr. Nolan correctly points out that he only acknowledged having said the skeleton was "dumb" in front of the child but that he did not admit the other allegations related to

[26] Immediately after Mr. Nolan denied saying the skeleton was "dumb" to the child, the transcript contains the following exchange:

> Q. Okay. Did you say Father -- did you tell [the child] that Mother might starve you?
>
> A. No.

The next question was regarding "two sleeps." We note the absence of allegations regarding starvation and the phonetic similarity between "likes to argue" and "might starve you." Regardless of whether this is a transcription error, which neither party contends, Mr. Nolan did not admit having said Ms. Nolan liked to argue.

this count. The Consent Order was not in place at the time these statements were made, and the allegation in the petition was that the statements disparaged and denigrated Ms. Nolan. The statement that the "Skeleton in the Closet," which the child received as a gift from a third party (not Ms. Nolan), was "dumb" cannot reasonably be read to denigrate or disparage Ms. Nolan. In line with our analysis in Count 9 above, Mr. Nolan's statement that Ms. Nolan limited his parenting time, without additional contextual support, was also not disparaging or derogatory of Ms. Nolan.

Ms. Nolan testified that Mr. Nolan told the child she loved to argue. Mr. Nolan notes that the only proof regarding the allegations, aside from his admission he called the skeleton "dumb," was Ms. Nolan's "self-serving testimony alone." However, the testimony of a single witness alone, in general, can serve to support a finding of guilt. *See*, *e.g.*, *State v. Wyrick*, 62 S.W.3d 751, 767 (Tenn. Crim. App. 2001) ("Generally, a defendant may be convicted upon the uncorroborated testimony of one witness."). Here, it is unclear, however, from the record which of the three[27] statements alleged in the petition served as the basis for the circuit court's ruling that Mr. Nolan was in contempt in count 12. It is unclear if the trial court erroneously relied on a determination that Mr. Nolan admitted to having made each of three statements, which he did not, or on statements that do not qualify as denigrating or derogatory of Ms. Nolan. Accordingly, this count is vacated and remanded for further proceedings. *See Neely v. Neely*, No. E2017-01807-COA-R3-CV, 2019 WL 2929074, at *2 (Tenn. Ct. App. July 8, 2019) (vacating finding of contempt when the trial court did not make a determination regarding willfulness).

5. Count 16

The trial court found that on October 29, 2018, Mr. Nolan denigrated and harassed Ms. Nolan when he complained about the Parenting Plan in front of the child. Ms. Nolan's testimony as to this incident at trial was limited, stating only that Mr. Nolan was standing immediately outside of the child's car window talking about the Parenting Plan and that the child became upset. Ms. Nolan introduced an audio recording of this exchange, during which Mr. Nolan pressured her to change the Parenting Plan but did not make any negative comments to or regarding her and did not raise his voice. On direct examination, Mr. Nolan testified he did not recall this particular date or recall his child saying he was being "mean to Mommy." On cross-examination, Mr. Nolan stated simply that he did not deny he said the things in the audio recording.

Mr. Nolan argues on appeal that he was speaking outside the child's hearing.

[27] The circuit court granted Mr. Nolan's motion to dismiss Count 13, which alleged that, on the following day, Mr. Nolan called the skeleton "dumb" and that he told Ms. Nolan not to call the child a "sweet guy," concluding that this was not a violation of the Parenting Plan. Even if we were to infer from the dismissal of Count 13 that the court did not rely on the statement about the skeleton, it is still unclear which of the other two statements the court used as the basis of the finding of contempt.

Although the trial testimony shows Mr. Nolan did not in fact deny that the child was present for the interaction, the recording also demonstrated that there was nothing said to either denigrate or disparage Ms. Nolan during this interaction. This interaction took place prior to the Consent Order which prohibited Mr. Nolan from complaining about the Parenting Plan in front of the child. We conclude that Mr. Nolan's actions did not violate the Parenting Plan, and we reverse the trial court's finding of contempt as to this count.

B. Counts 14, 37, and 47

Mr. Nolan's challenge on appeal as to counts 14, 37, and 47 is primarily focused on the sufficiency of the evidence with regard to a lack of willfulness of any violation. With regard to willfulness, "[i]n the context of criminal contempt, willfulness has two elements: (1) intentional conduct and (2) a culpable state of mind." *Neely*, 2019 WL 2929074, at *2. Willful misconduct for criminal contempt "entails an intentional violation of a known duty." *Beeler*, 387 S.W.3d at 523. Accordingly, "[i]n the criminal context, a willful act is one undertaken for a bad purpose." *Furlong*, 370 S.W.3d at 340 (quoting *Konvalinka*, 249 S.W.3d at 357), or more specifically, with the specific intent to do some forbidden act, *Konvalinka*, 249 S.W.3d at 357; *see Beeler*, 387 S.W.3d at 523-24 (finding an attorney's act willful when it was "his conscious objective or desire to engage in the conduct"). The trial court, in evaluating willfulness, considered Mr. Nolan's statements "that he was not going to and did not have to comply with the Court's order."

1. Count 14

Like the above discussed counts, Count 14 is also predicated upon violation of the prohibition upon derogatory and denigrating comments about the other parent. As noted above, the Permanent Parenting Plan, which went into effect on November 1, 2017, by court order, prohibited derogatory and denigrating statements from being made regarding the other parent "in the presence of the minor child." Ms. Nolan testified that Mr. Nolan argued with her about the Parenting Plan while she was standing immediately next to the child's car window and that he told her "not to f'ing tell him what to do" when she asked him not to say those things. An audio recording was introduced in which Mr. Nolan said, "You can sue me if you want to." He then told the child, "Maybe one day, I'll win the lottery, and we can sue your mommy." Mr. Nolan acknowledged saying something "along th[e] lines" of "to not F---ing tell [him] what to do" but he testified that he was trying to speak outside the child's hearing.

Mr. Nolan argues on appeal that insufficient evidence supports Count 14. As to the purported evidentiary deficiency, he contends he was attempting "to speak to Mother outside of the minor child's hearing range," which he asserts "is dispositive to the issue of willfulness." On the contrary, the trial court made an explicit credibility finding against Mr. Nolan on this issue, noting his testimony that he tried to speak outside the child's hearing but finding that "the evidence does support that, in fact, there's no way the child

could not have heard that." The court continued, "The testimony of Father just simply isn't believable. . . ." Both the audio recording, in which the child can be heard in the background of the discussion, and Mr. Nolan statement outside the child's window referencing suing "your mommy" support the trial court's conclusion that Mr. Nolan did not make the comments outside the child's presence. The trial court is entitled to deference as to credibility determinations, *Cottingham*, 193 S.W.3d at 538, and the evidence is sufficient to support the finding of contempt on this count.

2. Count 37

Under the Consent Order, Mr. Nolan was forbidden to:

> criticize, demean, denigrate, curse, use foul language toward, or in any way disparage Mother, Mother's family, Mother's home, the minor child's friends, the minor child's school or teachers, *the minor child's clothing*, or the minor child's activities either to or in the presence of the minor child.

(Emphasis added).

On December 26, 2019, Mr. Nolan FaceTimed the child, who was wearing llama pajamas. Mr. Nolan said, "What are you wearing? Aren't you a little old for having bunnies on your pajamas?" Mr. Nolan testified the pajamas did not seem age-appropriate and admitted he told the child he was a "little old for bunny pajamas." He did not believe he was violating an order when he said it, and his purpose was to "parent" the child and to "encourage him to leave the little kid stuff, the baby stuff behind and continue on his maturation process." The circuit court concluded this was a criticism of the child's clothing and held Mr. Nolan in contempt for violating the order forbidding him to "criticize, demean, denigrate, . . . or in any way disparage . . . the minor child's clothing." Mr. Nolan argues on appeal that he was merely attempting to "parent" the child and did not believe that his comment was violation of the order; therefore, because of this belief, he contends there was no willful violation of the court's order.

A contemnor's testimony that he or she did not believe the action was a violation of an order is not, however, an automatic get-out-of-jail-free card. Instead, willfulness in criminal contempt is the specific intent to do some forbidden act. *Konvalinka*, 249 S.W.3d at 357. Here, Mr. Nolan testified that he suggested the child's clothing was childish for the purpose of encouraging the child not to wear the clothing. Mr. Nolan, however, expressly agreed to a limitation on his ability to criticize his child's clothing under the Consent Order. The question before us is not whether such a limitation, which was agreed to and not challenged, should exist. The question before this court is whether Mr. Nolan had the specific intent to criticize the child's clothing to the child. We conclude that, even if Mr. Nolan's underlying motives may have been laudatory, a rational trier of fact could conclude that he had the specific intent to criticize the child's clothing in order to make the

child reluctant to wear the clothing. *See Thigpen v. Thigpen*, 874 S.W.2d 51, 53-54 (Tenn. Ct. App. 1993) (concluding that a mother's decision to engage in a scuffle with the father at the child's school, when the child wanted her to take him to an appointment but the father physically grabbed the child, may have been done pursuant to "her maternal desire to help her son avoid a disturbing situation" or "provoked" and "well-intentioned" but was nevertheless willful and in conflict with the court's order). Accordingly, the evidence is sufficient to uphold a contempt finding on this count.

3. Count 47

Regarding Count 47, Mr. Nolan was found in contempt for allowing A.R. to spend the night at his home while the child was there on October 3, 2020, in violation of the court order. Mr. Nolan does not dispute that he allowed A.R. to spend the night, but asserts that his act was not willful because "they had already been engaged for several months and were officially married October 25, 2020." He points to his testimony that he was attempting to ease the child's transition to having A.R. as his stepmother.

However, Mr. Nolan was aware that he was forbidden by court order from having A.R. stay overnight. "No matter how . . . well-intentioned, [the] conduct was willful and was inconsistent with the . . . order." *Thigpen*, 874 S.W.2d at 54. The court order forbade him from having A.R. stay overnight, but he nevertheless permitted her to stay, despite his awareness that he would be violating the order. The evidence also showed that the child was distressed and spoke to his therapist and his mother about the circumstance. A rational trier of fact could have found that Mr. Nolan's behavior was willful.

C. Counts 34, 42, and 44

Mr. Nolan's challenges the trial court's finding of contempt as to counts 34, 42, and 44. His challenges to each of these counts are all predicated upon his assertion that the evidence is insufficient to support a finding of criminal contempt.

1. Count 34

Mr. Nolan challenges the trial court's finding him in contempt for commenting on the child's outfit worn to a photo shoot on June 14, 2019, based upon the sufficiency of the evidence. As noted above, under the Consent Order, Mr. Nolan was forbidden to:

> criticize, demean, denigrate, curse, use foul language toward, or in any way disparage Mother, Mother's family, Mother's home, the minor child's friends, the minor child's school or teachers, *the minor child's clothing*, or the minor child's activities cither to or in the presence of the minor child.

(Emphasis added).

The petition alleged that Mr. Nolan asked the child in a demeaning tone, "[W]hat are you wearing" and said, "[W]hat is that awful shirt?" At trial, Ms. Nolan testified that Mr. Nolan asked the child "in a demeaning tone . . . what he was wearing." She stated that Mr. Nolan appeared angry and that when the child told him about the photographs, Mr. Nolan said, "[W]hat are you wearing and how do you even get that kind of shirt on?" She introduced subsequent text messages in which Father called the clothing "embarrassing" and "effeminate." Mr. Nolan acknowledged asking the child what he was wearing and that the child got defensive. He denied that it was a demeaning tone and denied saying the shirt was "awful" as alleged in the petition.

Mr. Nolan, focusing on the fact that he only admitted asking the child what he was wearing, asserts that the evidence is insufficient to support this count because the criticism of the clothing was contained in the text messages and his statement to the child was only an inquiry. The circuit court found that Mr. Nolan's statement to the child was denigrating the child's clothing because, "while he denied saying the shirt was 'awful,' it was obvious he was disapproving of the child's clothing, which I think is the specific concern as the parties entered both the Parenting Plan and the Consent Order." We conclude that Ms. Nolan's testimony that the statement was in a demeaning tone, coupled with the text messages, supports the reasonable inference that Mr. Nolan was criticizing, demeaning, or denigrating the minor child's clothing to the child, in contravention of the Consent Order. We conclude the evidence is sufficient to support Count 34.

J. Counts 42 and 44

In Counts 42 and 44, Mr. Nolan was found guilty of contempt for telling the child to ask his mother why Mr. Nolan was not exercising parenting time. As alleged in Count 42, Mr. Nolan FaceTimed the child on Halloween, said he was sorry he could not be there, and when the child asked why, instructed the child to "ask his mother why." Text messages were introduced, in which Mr. Nolan, prior to the FaceTime, anticipated Ms. Nolan's explaining his absence to the child. Mr. Nolan acknowledged the conversation and stated he was attempting to avoid violating the Consent Order because he was not permitted to reference the Parenting Plan.

With regard to Count 44, Ms. Nolan testified that, prior to the child's viewing of an outdoor movie on his birthday, Mr. Nolan told the child he was not invited and told the child "that he would have to ask his mother why [Mr. Nolan] wasn't invited to the party." Mr. Nolan testified that he was attempting to avoid violating the Parenting Plan by not discussing the Parenting Plan with the child and instead directing him to ask his mother. The chart attached to the trial court's order described count 44 as "6/6/20, Father told child he wasn't invited to child's birthday party and said child would have to ask Mother why she didn't invite him." The order then reflects, "Admitted." On appeal, Mr. Nolan takes issue with this, noting that he only admitted telling the child, "well, you have to ask her"

and not to saying Ms. Nolan did not invite him. However, the transcript shows that Mr. Nolan did acknowledge saying Ms. Nolan did not invite him:

> Q. And the child said: Are you coming? And you responded: I wasn't invited and that he would have to ask his mother why she didn't invite you. Did you say those words?
>
> A. Yes. To provide context [the child] and I had had a conversation about this before in which I said, we'll see, hoping to sort of kick the can down the road. He asked again, and again, like I just explained, . . . I felt like I had no other option.

The trial court found that the Consent Order, by its terms, did not prohibit Mr. Nolan from mentioning the prearranged parenting schedule. The Consent Order prohibited Mr. Nolan from discussing with the child "any issues or complaints that Father may have with the Permanent Parenting Plan . . . including but not limited to issues with the current parenting schedule, the amount of parenting time each of the parties has, holiday parenting time, or any other issues involving the Permanent Parenting Plan." It also provided that he would not "question, interrogate, discuss with, and/or pressure the minor child about his opinions and/or desires regarding parenting time."

The trial court found as to Count 42 that the intent behind the statement was "to place in the child's mind that the father didn't agree with the Parenting Plan." With regard to Count 44, the trial court found that it was "just not convinced" and that it was not "credible" that Mr. Nolan was attempting to avoid mentioning the Parenting Plan, and that it would apply the same rationale as to Count 42.

The trial court, which is able to observe the demeanor of the parties, is in the best position to make credibility determinations. *Cottingham*, 193 S.W.3d at 538; *Moody v. Hutchison*, 159 S.W.3d 15, 26 (Tenn. Ct. App. 2004). The court found that the statement was not merely a referral to the mother's knowledge or made to avoid a violation but instead a statement that Ms. Nolan was responsible for the parenting schedule and that Mr. Nolan disagreed with it. We conclude a rational trier of fact could have found that the statements, in context, amounted to raising issues or complaints Mr. Nolan had about the Parenting Plan with the child.

D. Counts 36 and 40

Mr. Nolan challenges the finding of contempt on Counts 36 and 40, in which the circuit court found he violated the Consent Order by criticizing the child's blanket. The Consent Order prohibited Mr. Nolan from "criticiz[ing], demean[ing], denigrat[ing], curs[ing], . . . or in any way disparag[ing] . . . the minor child's activities either to or in the presence of the minor child." Ms. Nolan testified that Mr. Nolan took the child's blanket and told him that "men don't have blankets" and that he called the blanket "stinky." Mr. Nolan acknowledged he called the blanket "stinky" and "probably" said that men do not

have blankets, but he testified he was not trying to belittle the child but to wean him from the blanket.

The court found the statements were violations of the order, noting regarding Count 36, "That was, I think, in the category of activities of the child and things that the child does," and regarding Count 40, "It was a denigration of an activity of the child."

Mr. Nolan asserts that this is an overly broad reading of the word "activities" in the order. The interpretation of a trial court's order is a question of law. *Byrnes v. Byrnes*, 390 S.W.3d 269, 277 (Tenn. Ct. App. 2012); *see also State ex rel. Pope v. U.S. Fire Ins. Co.*, 145 S.W.3d 529, 533 (Tenn. 2004) (interpretation of a contract is a question of law). Accordingly, we review de novo whether or not the blanket qualifies as an "activity." We conclude it does not.

"Activity" has many definitions, but we have located none which could encompass possessing a security blanket. *See American Heritage Dictionary* (5th ed. 2022), https://www.ahdictionary.com (last visited July 3, 2023) ("3.a. A specified pursuit in which a person partakes. b. An educational process or procedure intended to stimulate learning through actual experience."); *Merriam-Webster Collegiate Dictionary* 13 (11th ed. 2011) ("5.a: a pursuit in which a person is active. b: a form of organized, supervised, often extracurricular recreation"); *Black's Law Dictionary* (11th ed. 2019) ("The collective acts of one person or of two or more people engaged in a common enterprise."); *The Compact Edition of the Oxford English Dictionary* 95 (1971) ("3. Physical exercise, gymnastics, athletics."); *The Concise Oxford Dictionary* 14 (9th ed. 1995) ("2 (often in *pl.)* a particular occupation or pursuit").

In construing an order, we use "an objective standard that takes into account both the language of the order and the circumstances surrounding the issuance of the order." *Furlong*, 370 S.W.3d at 337 (quoting *Konvalinka*, 249 S.W.3d at 356). Furthermore, "[a]mbiguities in an order alleged to have been violated should be interpreted in favor of the person facing the contempt charge." *Id.* (quoting *Konvalinka*, 249 S.W.3d at 356). The terms violated must "leave no reasonable basis for doubt regarding their meaning." *Id.* (quoting *Konvalinka*, 249 S.W.3d at 356). We conclude that, in this case, the plain meaning of the term "activity" does not encompass possession of a blanket.

Accordingly, the evidence did not satisfy the third element, that "the person alleged to have violated the order must have actually disobeyed or otherwise resisted the order." *Id.* at 336 (quoting *Konvalinka*, 249 S.W.3d at 356). We conclude that, even if Mr. Nolan's statements were denigrating of blanket possession, possessing a blanket is not an activity within the meaning of the Consent Order. Because we conclude that the blanket is not an activity, we conclude no rational trier of fact could have found beyond a reasonable doubt that he violated the order, and we reverse Mr. Nolan's convictions for Counts 36 and 40.

IV.

The parties also dispute the trial court's award of attorney's fees to Ms. Nolan. Mr. Nolan argues the trial court erred by ordering him to pay $46,601.52 out of the $64,329.02 requested, noting that many of the counts alleged were dismissed or found not to be supported by evidence beyond a reasonable doubt. Mr. Nolan contends this was an abuse of discretion and that the trial court erred in not considering which fees were expended in the trial of the dismissed counts. Mr. Nolan does not dispute the general reasonableness of the attorney's fees in this case and does not offer any objections on appeal to specific billing entries.[28] Ms. Nolan asserts that the fees were properly granted. We conclude that Mr. Nolan has not demonstrated that the trial court abused its discretion in awarding attorney's fees, and we affirm the fee award.

The trial court awarded attorney's fees based on Tennessee Code Annotated section 36-5-103, which states that:

> (c) A prevailing party may recover reasonable attorney's fees, which may be fixed and allowed in the court's discretion, from the nonprevailing party in any criminal or civil contempt action or other proceeding to enforce, alter, change, or modify any decree of alimony, child support, or provision of a permanent parenting plan order, or in any suit or action concerning the adjudication of the custody or change of custody of any children, both upon the original divorce hearing and at any subsequent hearing.

Tenn. Code Ann. § 36-5-103(c) (2018). The prior version of the statute only permitted recovery of "attorney fees incurred in enforcing any decree for alimony and/or child support, or in regard to any suit or action concerning the adjudication of the custody or the change of custody of any child, or children, of the parties, both upon the original divorce hearing and at any subsequent hearing." Tenn. Code Ann. § 36-5-103(c) (eff. July 10, 2017, to June 30, 2018). Before the 2018 amendment, this court had specifically held that Tennessee Code Annotated section 36-5-103(c) "does not authorize a court to award attorney's fees related to criminal contempt." *Watts v. Watts*, 519 S.W.3d 572, 585 (Tenn. Ct. App. 2016) (noting that the Legislature might wish to consider amending the statute).

The Act amending the statute provides, "This act shall take effect July 1, 2018, the public welfare requiring it, and shall apply to actions commenced on or after that date." *See* 2018 Tenn. Pub. Acts, Ch. 905 § 2 (H.B. 2526). Ms. Nolan's first petition was filed on November 18, 2018. However, a number of the acts alleged as bases for criminal contempt took place prior to the effective date of the law providing that parties were newly permitted to recover attorney's fees at the court's discretion.

[28] As noted above, the underlying billing entries are not in the record on appeal.

After hearing oral arguments in this case, this court ordered supplemental briefing on the effect of a change in the statute authorizing attorney's fees in this case, and the parties submitted supplemental briefing. Ms. Nolan argued that the amendment by its terms applied to her action, which was commenced after the effective date, and that accordingly, the trial court had authority to impose the fees.

Mr. Nolan did "not dispute" that the trial court had the authority to award attorney's fees under the amended statute; instead, he asked this court to "consider," in reviewing the trial court's discretionary award, that some of the acts of contempt, as well as some fee claims, occurred prior to the amendment to the statute. Mr. Nolan did not challenge the award as a retrospective law running afoul article I, section 20 of the Tennessee Constitution.[29] This court has many times observed that "[i]t is not the role of the courts, trial or appellate, to research or construct a litigant's case or arguments for him or her." *Sneed v. Bd. of Prof'l Responsibility of Sup. Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010). Accordingly, this appeal is governed by Mr. Nolan's concession that the amended statute applies.

A trial court's award of attorney's fees under Tennessee Code Annotated section 36-5-103 lies within its discretionary authority, and "absent an abuse of discretion, appellate courts will not interfere with the trial court's finding." *Eberbach v. Eberbach*, 535 S.W.3d 467, 475 (Tenn. 2017). We review for abuse of discretion both the decision to award attorney's fees under the statute and the amount of attorney's fees. *Id.* at 479 n.7. Appellate courts will set aside a discretionary decision by a trial court "only when the court that made the decision applied incorrect legal standards, reached an illogical conclusion, based its decision on a clearly erroneous assessment of the evidence, or employs reasoning that causes an injustice to the complaining party." *Konvalinka*, 249 S.W.3d at 358. "If a discretionary decision is within a range of acceptable alternatives," a Tennessee appellate court "will not substitute our judgment for that of the trial court simply because we may have chosen a different alternative." *Royal Properties, Inc. v. City of Knoxville*, 490 S.W.3d 1, 7 (Tenn. Ct. App. 2015); *Riad v. Erie Ins. Exch.*, 436 S.W.3d 256, 266 (Tenn. Ct. App. 2013).

[29] *See* Tenn. Const. art. I, § 20 (providing that "no retrospective law, or law impairing the obligations of contracts, shall be made"); *see Shell v. State*, 893 S.W.2d 416, 419 (Tenn. 1995) ("[A] basic rule of statutory construction provides that statutes are to be applied prospectively, unless the legislature clearly indicates to the contrary."); *Anderson v. Memphis Hous. Auth.*, 534 S.W.2d 125, 128 (Tenn. Ct. App. 1975) (noting that, when the act of inverse condemnation occurred prior to the statutory amendment, the new statute could not be retrospectively applied because it "clearly allows the owner in an inverse condemnation matter recovery for greater and a new and different measure of damages than was previously allowed, viz., attorney fees etc."); *see also Emerson v. Oak Ridge Research, Inc.*, 187 S.W.3d 364, 375-76 (Tenn. Ct. App. 2005) (concluding that "a provision allowing attorney's fees which did not exist before . . . created a new measure of damages for such claims" and that the trial court erred in retrospective application), *overruled on other grounds by Haynes v. Formac Stables, Inc.*, 463 S.W.3d 34 (Tenn. 2015).

Tennessee Code Annotated section 36-5-103(c) permits fees to be awarded to the "prevailing party." The Tennessee Supreme Court has noted that "[t]he touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties." *Fannon v. City of LaFollette*, 329 S.W.3d 418, 430 (Tenn. 2010) (quoting *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792–93, 109 S.Ct. 1486, 103 L.Ed.2d 866 (1989)). The prevailing party is one who has obtained some sort of judicially sanctioned relief from the court. *Id.* at 431. A prevailing party "need not attain complete success on the merits of a lawsuit in order to prevail"; it is enough to succeed on any significant issue which achieves some of the benefit sought in bringing the suit. *Id.*

We conclude that Ms. Nolan is a prevailing party under *Fannon*. She brought an action charging Mr. Nolan with 53 counts of criminal contempt for his violation of court orders, as well as civil contempt. Mr. Nolan was held in contempt on 21 counts and also found in civil contempt. The attorney's fee award appears to be addressed to both.[30] Mr. Nolan does not challenge the civil contempt findings on appeal. We have affirmed sixteen of the counts of criminal contempt on appeal. While Ms. Nolan did not "attain complete success," she has attained relief sought from the court by seeking a criminal contempt finding against Mr. Nolan. *See Fannon*, 329 S.W.3d at 431.

Mr. Nolan's argument on appeal boils down to the assertion that, because the trial court chose to acquit him of 32 counts, it erred in awarding Ms. Nolan the bulk of the fees she requested for the counts of which he was held in contempt. He asks for an unspecified "further reduction" of the fees. However, "[t]he trial court's determination of a reasonable attorney's fee is 'a subjective judgment based on evidence and the experience of the trier of facts,' and Tennessee has 'no fixed mathematical rule' for determining what a reasonable fee is." *Schwager v. Messer*, No. W2018-01820-COA-R3-CV, 2019 WL 4733475, at *18 (Tenn. Ct. App. Sept. 27, 2019) (quoting *Wright ex rel. Wright v. Wright*, 337 S.W.3d 166, 176 (Tenn. 2011)). The circuit court explicitly noted that Ms. Nolan did not prevail on each count when it awarded fees, but concluded that, considering the work required and the skill level of the attorneys, $40,000, which it characterized as a "conservative discount" of the $57,727.50 requested, was reasonable. We conclude that Mr. Nolan has not demonstrated that the fee award was an abuse of the trial court's discretion.

Ms. Nolan also requests attorney's fees for this appeal. When a fee request is made pursuant to statutory authority, the statute governs the award. *Eberbach*, 535 S.W.3d at 477. In such cases, the appellate court analyzes the request for fees to determine if awarding fees to the prevailing party is appropriate. *Id.* Given our disposition of the case

[30] The only fee affidavit in the record contains work related to the criminal and civil contempt hearings. In awarding attorney's fees, the trial court noted that Ms. Nolan prevailed on her allegations of both civil and criminal contempt. The trial court's fee award was contained only in its order on criminal contempt, but the order finding Mr. Nolan in criminal contempt is incorporated into the civil contempt order.

and considering the timing of some of the acts of criminal contempt, we decline to award attorney's fees related to this appeal to Ms. Nolan. *See Strickland v. Strickland*, 644 S.W.3d 620, 635-36 (Tenn. Ct. App. 2021) (appellate award of attorney's fees is discretionary).

V.

Based on the foregoing, we affirm the trial court's finding that Mr. Nolan was in criminal contempt in Counts 1, 2, 3, 4, 5, 6, 7, 8, 11, 14, 19, 34, 37, 42, 44, and 47. We reverse the finding of contempt in Counts 9, 16, 36, and 40, and we vacate the finding in Count 12.

Mr. Nolan did not challenge the individual sentences imposed for the counts of contempt. We note that the circuit court orally imposed sentences for each count of criminal contempt, imposing a total of 83 days, to be served consecutively. The court's written order likewise reflects that the total sentence is 83 days with 53 days suspended and 30 to be served in confinement on certain weekends. The court's order incorporates a chart which includes the penalty associated with each finding of contempt. However, the sentences in the chart do not match the sentences imposed orally, and the total sentence according to the chart incorporated into the order is 122 days. On remand, the circuit court should correct the errors in the chart, which was incorporated into the judgment.

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JEFFREY USMAN, JUDGE

Counts of Contempt on Appeal

Count	Disposition	Penalty[31]	Factual Predicate	Date	Appellate Disposition
1	*Held in Contempt*	2 days and $50 fine	Mr. Nolan said Ms. Nolan was a bad person to the child	11/7/17	Affirmed
2	*Held in Contempt*	2 days and $50 fine	In the child's presence, Mr. Nolan called Ms. Nolan a "dumbass" and said he never wanted to see her or the child	11/15/17	Affirmed
3	*Held in Contempt*	10 days and $50 fine	In the child's presence, Mr. Nolan told Ms. Nolan that she dressed him "like an idiot" or "clown"	12/24/17	Affirmed
4	*Held in Contempt*	10 days and $50 fine	Mr. Nolan instructed the child to tell Ms. Nolan that she was "fucking terrible"	12/25/17	Affirmed
5	*Held in Contempt*	5 days and $50 fine	Mr. Nolan told the child he should have fun "only living with Mommy," and yelled "F you" to Ms. Nolan in the child's presence	1/17/18	Affirmed
6	*Held in Contempt*	2 days and $50 fine	Mr. Nolan cursed at Ms. Nolan during a FaceTime call with the child.	1/21/18	Affirmed
7	*Held in Contempt*	2 days and $50 fine	In the child's presence, Mr. Nolan called Ms. Nolan a "bitch" and "crazy person"	2/17/18	Affirmed
8	*Held in Contempt*	1 day and $50 fine	Mr. Nolan told the child Ms. Nolan had rats in her home.	2/22/18	Affirmed
9	*Held in Contempt*	2 days and $50	Mr. Nolan told the child that he was only permitted FaceTime	6/29/18	**Reversed**

[31] The trial court included a helpful and meticulous chart of its findings of contempt in its order, but the penalties reflected in the chart do not correspond to those imposed orally and would add up to more than 83 days. The chart attached here includes the penalties orally imposed by the court, totaling 83 days.

		fine	with the child because of Ms. Nolan		
10	Acquitted				
11	*Held in Contempt*	2 days and $50 fine	Mr. Nolan told the child he did not "have much room to play in your tiny house" and exhorted him to "be safe at mommy's house."	9/16/18	Affirmed
12	*Held in Contempt*	5 days and $50 fine	In the presence of the child, Mr. Nolan called the skeleton toy "dumb" and told the child Ms. Nolan loved to argue	10/15/18	**Vacated and Remanded**
13	Motion for Judgment of Acquittal Granted				
14	*Held in Contempt*	2 days and $50 fine	In the child's presence, Mr. Nolan told Ms. Nolan "not to f'ing tell him what to do" and said to the child, "Maybe one day, I'll win the lottery, and we can sue your mommy."	10/21/18	Affirmed
15	Motion for Judgment of Acquittal Granted				
16	*Held in Contempt*	2 days and $50 fine	Mr. Nolan pressured Ms. Nolan to change the Parenting Plan while standing near the child, and the child said Mr. Nolan was "being mean."	10/29/18	**Reversed**
17	Motion for Judgment of Acquittal Granted				
18	Acquitted				
19	*Held in Contempt*	5 days and $50 fine	In the presence of the child, Mr. Nolan called Ms. Nolan a "despicable person."	11/4/18	Affirmed
20	Acquitted				
21	Acquitted				

22	Motion for Judgment of Acquittal Granted				
23	Acquitted				
24	Motion for Judgment of Acquittal Granted				
25	Motion for Judgment of Acquittal Granted				
26	Motion for Judgment of Acquittal Granted				
27	Motion for Judgment of Acquittal Granted				
28	Motion for Judgment of Acquittal Granted				
29	Motion for Judgment of Acquittal Granted				
30	Motion for Judgment of Acquittal Granted				
31	Motion for Judgment of Acquittal Granted				
32	Motion for Judgment of Acquittal Granted				
33	Acquitted				
34	*Held in Contempt*	10 days and $50 fine	Mr. Nolan asked the child, in a demeaning tone, what he was wearing	6/14/19	Affirmed
35	Acquitted				

36	*Held in Contempt*	1 day and $50 fine	Mr. Nolan told the child that "men don't have blankets"	12/14/19	**Reversed**
37	*Held in Contempt*	5 days and $50 fine	Mr. Nolan criticized the llama pajamas	12/26/19	Affirmed
38	Motion for Judgment of Acquittal Granted				
39	Acquitted				
40	*Held in Contempt*	2 days and $50 fine	Mr. Nolan told the child he did not need the "stinky" blanket		**Reversed**
41	Motion for Judgment of Acquittal Granted				
42	*Held in Contempt*	2 days and $50 fine	Mr. Nolan instructed the child to ask Ms. Nolan why he could not be there for Halloween	10/31/19	Affirmed
43	Motion for Judgment of Acquittal Granted				
44	*Held in Contempt*	1 day and $50 fine	Mr. Nolan told the child to ask Ms. Nolan why he could not come to the birthday movie	6/6/20	Affirmed
45	Acquitted				
46	Acquitted				
47	*Held in Contempt*	10 days and $50 fine	A.R. stayed overnight	10/3/20	Affirmed
48	Motion for Judgment of Acquittal Granted				
49	Motion for Judgment of Acquittal Granted				

50	Motion for Judgment of Acquittal Granted				
51	Acquitted				
52	Acquitted				
53	Acquitted				