IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 19, 2014 Session

MICHAEL DAVID OLSON v. JENNIFER CARLIN BECK

Appeal from the Circuit Court for Davidson County
No. 11D3549 Philip E. Smith, Judge

No. M2013-02560-COA-R3-CV - Filed February 27, 2015

In this divorce appeal, Husband argues that the trial court erred in not allowing him to repudiate the parties' marital dissolution agreement. Husband also asserts that the trial court erred in its determination regarding the parenting plan, in failing to consider split parenting time, and in awarding Wife her attorney fees. We find no merit in Husband's arguments and affirm the trial court's decision.

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

ANDY D. BENNETT, J., delivered the opinion of the court, in which FRANK G. CLEMENT, P.J., M.S., and W. NEAL MCBRAYER, J., joined.

J. Todd Faulkner, Nashville, Tennessee, for the appellant, Michael David Olson.

Lawrence J. Kamm, Nashville, Tennessee, for the appellee, Jennifer Carlin Beck.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

Michael David Olson ("Husband") and Jennifer Carlin Beck ("Wife") married in June 2011. They have one child, a boy, born in September 2009. Husband filed a complaint for divorce in December 2011, but never had the complaint served upon Wife. On April 24, 2012, Wife obtained an ex parte order of protection against Husband. Shortly thereafter, on May 7, 2012, Husband filed and served upon Wife a first amended complaint for divorce asserting grounds of irreconcilable differences and inappropriate marital conduct. Wife answered and counterclaimed for divorce on the grounds of irreconcilable differences and

inappropriate marital conduct.

The hearing on Wife's petition for an order of protection was continued until June 4, 2012. At that time, the petition for an order of protection was dismissed at Wife's request. On June 15, 2012, the parties filed a marital dissolution agreement ("MDA") and permanent parenting plan ("PPP") executed by both parties. On August 22, 2012, Wife filed a motion to set the case for final hearing.

On August 30, 2012, Husband, through new counsel, filed a motion to set aside the MDA on the grounds that, under the MDA, Husband was entitled to receive possession of the residence on August 23, 2012, in "good repair," but when he took possession he had to make a number of repairs to the residence. According to Husband, Wife breached the contract, and he did not receive the benefit of the bargain. Wife opposed Husband's motion and filed a petition to enforce the MDA. These matters were heard on January 9, 2013. In its order, entered on January 22, 2013, the trial court determined that, if there was any damage to the residence, Husband had recourse in a suit for damages for breach. The trial court found that there was no clear and convincing evidence of a mutual mistake. Husband's motion was denied. The trial court found the MDA to be an enforceable contract.

The final hearing took place on May 22, 2013. Husband stated that, within four months of the parties' marriage, he had proof of Wife's infidelity. Tensions were high. Husband briefly described an incident that occurred when he was giving Wife a ride to work at Vanderbilt and they were arguing and poking at each other. Wife reported him for domestic violence and included their two-year-old son on the petition for an order of protection even though the child had no involvement in the incident. As a result, Husband went 52 days without seeing his son.

At the trial, Husband testified that he was repudiating the MDA. The marital residence was supposed to be returned to him in "broom-clean" condition, but Husband testified that there were problems with the house when he took possession. Wife's counsel objected because he argued that these matters had been resolved at the earlier hearing. Husband's counsel made an offer of proof concerning all of the repairs that Husband had to make to the house due to damage caused by Wife.

The trial court stated:

> I will state for the record that this was tried. We tried this a half a day, looking at the contractual defenses that were available to Mr. Olson, which I found were none. I think the only real defense that was asserted was—actually two. I think there was a lack of meeting of the minds for the benefit of the parties. While Mr. Olson may have an action of breach, he does not have an action

> under enforcement of these contracts as far as I'm concerned. Looking at the *Barnes*[1] case, which was decided by the Court of Appeals, I decided this very issue, and I decided it that day. I do consider this a backdoor attempt to get back to that issue. With that said, a refusal of an offer of proof I think is reversible error, in and of itself.

The court then accepted rebuttal witnesses on the offer of proof. John Milillo, a friend of both parties who had done repairs on the home, testified about the condition of the marital home and repairs he made there. Corey Beck, Wife's brother, was called as another rebuttal witness on the same issues. Mr. Beck lived with Wife when she moved out of the marital home. The offer of proof was then completed.

Husband returned to the stand as a witness to testify about the PPP. He stated that he repudiated the PPP because he did not believe it was in the best interest of the child. In Husband's view, it did not allow him sufficient time with the child. According to Husband, he and Wife had a verbal agreement to share parenting time equally, and that was what he wanted the trial court to order.

On cross-examination, Husband admitted that he had other income ($300 per month) that he had not disclosed as part of the child support calculation. He asserted that he could provide documentation of his child support payments that were due twice per month.

Wife's first witness was Cheryl Bradley, a Vanderbilt police officer, who testified about the events of April 24, 2012, the date of the domestic disturbance that resulted in the order of protection against Husband. Officer Bradley talked to Wife on the scene and then went to Husband's place of work and interviewed him.

Wife testified next. She stated that the child was born in September 2009 and the parties did not marry until June 2011. Wife averred that she was the child's primary caregiver and that Husband was involved in his care. Wife believed that the PPP was in the child's best interest and stated that she had never prevented Husband from seeing the child during his scheduled parenting time. Wife presented a chart showing the dates when Husband owed child support payments and when he had paid. According to this chart, Husband had only made seven payments, or $3,720.50, out of a total of $10,329.20 owed.[2]

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[1] *Barnes v. Barnes*, 193 S.W.3d 495 (Tenn. 2006).

[2] At this point, Husband's counsel interjected that he had money orders with dates on them. The court asked if Wife's signatures were on them, and Husband's counsel responded in the negative. The court observed that this was the problem with getting credit for money orders.

Wife gave her version of the events leading up to the petition for an order of protection. She further admitted to a short extramarital affair. Wife also testified about her dancing career. She stated that there were only three shows that year, and all of them fell on weekends when she did not have the child. Previously, if a show or a rehearsal fell on a weekend when she had him, she just would not go.

Wife testified that Husband damaged the marital residence: "He busted the glass in the basement door. He punched walls. He tore the railing down outside on the deck." She stated that this damage occurred in November 2011, a night when the police were called.

On cross-examination, Wife denied that they had agreed to a 50/50 shared parenting arrangement.

Mr. Beck testified as a character witness for mother, as did Mr. Milillo.

In its final decree, entered on August 30, 2013, the court awarded Husband a divorce on the ground of inappropriate marital conduct. The court determined that it was in the child's best interest for Mother to be the primary residential parent. Many of the provisions of the PPP originally agreed to by the parties were adopted by the court, but the court also made some changes, including changes in the amount of child support to reflect Husband's true income. The court awarded Wife $3,500.00 for attorney fees, and gave Husband 45 days to show proof of payment of pendente lite child support.

Wife and Husband both filed motions to alter or amend on September 17, 2013. Husband's motion was denied on October 31, 2013. On October 18, 2013, the court heard Wife's motion to alter or amend as well as a motion to strike husband's notice of filing of money orders purporting to show child support payments. The court granted Wife's motion to alter or amend to the extent that she be awarded a judgment for unpaid child support for $5,423.29; and the court granted Wife's motion to strike to the extent that "the altered money order shall be . . . no proof of a child support payment"; and Husband "shall have no credibility as a witness in this matter."

ISSUES ON APPEAL

On appeal, Husband argues that the trial court erred in (1) enforcing the MDA, (2) failing to making sufficient findings of fact and conclusions of law in regard to parenting time and in merely following portions of the parenting plan agreed to by the parties, (3) failing to consider split parenting (or equal parenting) time simply because the matter was contested, and (4) awarding attorney fees to Wife. Wife asserts that she should be awarded her attorney fees for her defense of this appeal.

ANALYSIS

Marital dissolution agreement

Husband's first argument is that the trial court erred in failing to allow him to repudiate the MDA based upon his "contention that the Wife had damaged the interior of the marital residence to the extent that the Husband had to pay to have repairs done, and that if the Husband had known of the damage to the marital residence, he would never have agreed to the terms of the Marital Dissolution Agreement." Husband asserts that he was unable to enter the home to inspect it due to an order of protection.

Our Supreme Court has held that, "A marital dissolution agreement is a contract and thus is generally subject to the rules governing construction of contracts." *Barnes v. Barnes*, 193 S.W.3d 495, 498 (Tenn. 2006). Because construction of a contract is a matter of law, our review of such issues is de novo with no presumption of correctness. *Id.*

The record does not include a transcript of the hearing on Husband's motion to set aside the MDA. From the trial court's order, it appears that Husband argued below that there was no meeting of the minds and that the condition of the marital residence was a condition precedent to entry into the contract. The trial court found no merit in these arguments and concluded that Husband's remedy for any damage to the residence was a suit for damages in breach.

On appeal, Husband cites two cases, *Nahon v. Nahon,* No. W2004-02023-COA-R3-CV, 2005 WL 3416415, at *5 (Tenn. Ct. App. Dec. 14, 2005), and *Barnes v. Barnes*, No. W2004-01426-COA-R3-CV, 2005 WL 517536, at *4 (Tenn. Ct. App. Mar. 4, 2005), to support the proposition that the MDA is a consent judgment, and a party may be permitted to withdraw consent from the MDA before it has been approved by the court, as long as one party has not detrimentally relied on the agreement. These cases have been superseded by our Supreme Court's decision in *Barnes v. Barnes*, 193 S.W.3d at 495.

In *Barnes*, as here, the husband repudiated the terms of the MDA prior to its approval by the trial court. *Id.* at 497. The court stated: "A marital dissolution agreement may be enforceable as a contract even if one of the parties withdraws consent prior to the entry of judgment by the trial court, so long as the agreement is otherwise a validly enforceable contract." *Id.* at 499 (footnote omitted). The agreement was reduced to writing, signed by both parties, and notarized. *Id.* The court held that the MDA was a contract, the enforceability of which was governed by contract law. *Id.*

The same principles govern in this case. The MDA between Husband and Wife is in

writing, signed by both parties, and notarized; it is a contract, and its enforceability is governed by contract law. Husband cannot repudiate the contract simply by withdrawing his consent prior to the court's approval.

As to defenses to the MDA under contract law, Husband argues that he would not have entered into the contract if he had known about the condition of the marital home. We interpret this argument to be that the satisfactory condition of the marital home was a condition precedent to Husband's agreement to the MDA. A condition precedent is "an act of a party that must be performed or a certain event that must happen before a contractual right accrues or contractual duty arises." *McGhee v. Shelby Cnty. Gov't*, No. W2012-00185-COA-R3-CV, 2012 WL 2087188, at *8 (Tenn. Ct. App. June 11, 2012) (quoting 13 Samuel Williston, TREATISE ON THE LAW OF CONTRACTS § 38:7 (Richard A. Lord ed., 4th ed. 2011)).

When interpreting a contract, "our task is to ascertain the intention of the parties based upon the usual, natural, and ordinary meaning of the contractual language." *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 95 (Tenn. 1999). The relevant portion of the MDA, found in paragraph four, states:

> The parties further warrant, acknowledge, and agree that Wife has exclusive possession of the former marital residence at the time of execution of this Marital Dissolution Agreement, and that such exclusive possession shall continue without interruption and/or interference from the Husband until 5:00 pm CDT on August 23, 2012, at which time Wife shall surrender said real property to Husband in broom-clean condition and good repair—reasonable wear and tear, prior existing sheetrock damage, and the broken glass in the basement door excepted. The parties further warrant, acknowledge, and agree that in the event Wife vacates said real property before August 23, 2012, Wife shall immediately notify Husband via email that [she] is no longer in residence, at which time Husband may take exclusive possession.

Wife signed the MDA on June 7, 2012; Husband signed on June 12, 2012. Under this language and the circumstances of the parties' signing, the satisfactory condition of the marital home could not be a condition precedent to Husband's agreement to the MDA. The MDA was signed in June 2012, and the MDA contemplated that Husband would take possession of the marital home in August 2012. Moreover, nothing in the language of the MDA makes the Husband's entry into the contract conditional upon the satisfactory condition of the marital home. The trial court correctly held that "there is no provision making the condition of the marital residence at the time Mr. Olson took possession a condition precedent to entry into that contract." Rather, as the trial court stated, "[i]f there was damage to the marital residence, or any sort of breach of Paragraph 4 of the parties' Marital

Dissolution Agreement, Mr. Olson has recourse in a suit for damages in breach."

Husband's final argument with respect to the MDA is that it required that the divorce be granted on the ground of irreconcilable differences. The trial court heard proof of Wife's infidelity, and Wife admitted that she had an extramarital affair. Tennessee Code Annotated section 36-4-129(b) allows the court, upon "proof of any ground of divorce pursuant to § 36-4-101, [to] grant a divorce to the party who was less at fault . . . ." In light of Wife's admission, the trial court granted Husband a divorce on the ground of inappropriate marital conduct. Husband now asserts that, in doing so, the court violated the MDA and made it necessary to conduct a trial. In other words, Husband seems to be arguing that the granting of a divorce on the basis of irreconcilable differences was a condition precedent to the MDA.

Husband did not, however, raise this defense at trial; and an issue "not raised in the trial court cannot be raised for the first time on appeal." *Barnes*, 193 S.W.3d at 501; *see* TENN. CT. APP. R. 6(a). Moreover, Husband's argument on appeal consists of three sentences. Husband makes the statement that the MDA "required that he is given the divorce upon the ground of irreconcilable differences," but provides no argument, citation of authority, or citation of language from the MDA to support this conclusion. This court has addressed a party's duty to construct an argument and waiver by failing to do so:

> A skeletal argument that is really nothing more than an assertion will not properly preserve a claim, especially when the brief presents a multitude of other arguments. *United States v. Dunkel,* 927 F.2d 955, 956 (7th Cir. 1991) (per curiam). It is not the function of the appellate court to research and construct the parties' arguments. *United States v. Berkowitz*, 927 F.2d 1376, 1384 (7th Cir. 1991). The Appellant's Brief "should contain an argument setting forth the contentions of the appellant with respect to the issues presented with citations to the authorities and appropriate references to the record." *Rhea County v. Town of Graysville*, No. E2001-02313-COA-R3-CV, 2002 Tenn. App. LEXIS 539, at *20, 2002 WL 1723681, at *7 (Tenn. Ct. App. July 25, 2002); *see also Berkowitz,* 927 F.2d at 1384. The failure of a party to cite to any authority or to construct an argument regarding his position on appeal constitutes waiver of that issue. *See Rector v. Halliburton*, No. M1999-02802-COA-R3-CV, 2003 Tenn. App. LEXIS 149, at *25, 2003 WL 535924, at *9 (Tenn. Ct. App. Feb. 26, 2003) (per curiam); *Rhea County*, 2002 Tenn. App. LEXIS 539, at *19-20, 2002 WL 1723681, at *7.

Newcomb v. Kohler Co., 222 S.W.3d 368, 400-01 (Tenn. Ct. App. 2006). Husband's argument fails to comply with the requirements of TENN. R. APP. P. 27(a)(7), including reasons for his contentions, citations to authorities, and appropriate references to the record.

Thus, even if Husband had not waived this issue at the trial level, he has waived it for review. *See Bean v. Bean*, 40 S.W.3d 52, 55 (Tenn. Ct. App. 2000).

Permanent parenting plan

Husband asserts that the trial court erred in failing to make findings of fact and conclusions of law regarding "parenting time" and in "merely following the parenting plan that was repudiated by the appellant." Although Husband references "parenting time," his argument appears to focus on the trial court's analysis of the primary residential parent. He asserts that the trial court failed to make findings of fact regarding the factors for determining custody set forth in Tenn. Code Ann. § 36-6-106(a).

As Husband points out, TENN. R. CIV. P. 52.01 now requires, in all bench trials, that the court "find the facts specially and . . . state separately its conclusions of law . . . ." This requirement serves the purpose of facilitating appellate review by making clear the basis for the trial court's decision. *Clark v. Clark*, No. M2013-02632-COA-R3-CV, 2014 WL 7465651, at *3 (Tenn. Ct. App. Dec. 30, 2014); *Williams v. Singler*, No. W2012-01253-COA-R3-JV, 2013 WL 3927934, at *9 (Tenn. Ct. App. July 31, 2013). Husband acknowledges that the trial court went through all of the statutory factors of Tenn. Code Ann. § 36-6-106(a), but asserts that there are no supporting findings of fact.

We agree with Husband that the trial court failed to make supporting findings of fact with respect to each of the statutory factors. When a trial court fails to satisfy the requirements of Tenn. R. Civ. P. 52.01, appellate courts typically remand to the trial court with instructions to make the requisite findings of fact and conclusions of law. *Lovlace v. Copley*, 418 S.W.3d 1, 36 (Tenn. 2013). An appellate court also has the option, however, "to remedy the trial court's deficient factual findings by conducting a de novo review of the record to determine where the preponderance of the evidence lies." *Id.* In this case, we choose the latter remedy. The trial court's findings of fact include the following pertinent statements:

> The Court does find that while the Court does not think or believe that Mr. Olson has committed perjury the Court does have some issues with his credibility. Mr. Olson, by his own admission, testified that he has more income than what he listed in the child support calculation worksheet. Ms. Beck, on the other hand, appeared to be very truthful in her testimony, and the Court finds specifically where the testimony of Mr. Olson conflicts with Ms. Beck the Court will give greater weight to the testimony of Ms. Beck.

With the trial court's credibility determination, this court is equipped to determine where the

preponderance of the evidence lies with respect to the statutory factors on whether Husband or Wife should be the primary residential parent.

Factor one under Tenn. Code Ann. § 36-6-106(a) is the "love, affection, and emotional ties" existing between the parents and the child. Tenn. Code Ann. § 36-6-106(a)(1) (2013).[3] Both parents testified of their love and close relationship with the child and agreed that the other parent loved the child and was a good parent. The evidence does not preponderate against the trial court's finding that this factor favors both parties equally.

Factor two is the disposition of the parents to provide the child with necessities such as food, clothing, and medical care, and the degree to which a parent has been the primary caregiver. Tenn. Code Ann. § 36-6-106(a)(2). The parties' child was born in September 2009, and the parties married in June 2011. While both parties acknowledged that Husband helped with the child when he was a baby, the evidence showed that Wife was the child's primary caregiver. After the parties separated in December 2011, the child lived with Wife until the parties signed the agreed PPP in June 2012. Even prior to the final hearing, the parties followed this plan, under which Wife was the primary residential parent, and Husband had parenting time every other Thursday until the following Monday and every other Tuesday night. Thus, the evidence does not preponderate against the trial court's finding that factor two favors Wife.

Factor three is "the importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment." Tenn. Code Ann. § 36-6-106(a)(3). The facts detailed above support the trial court's determination that this factor "slightly favors" Wife.

Factor four, the stability of the parents' family units, was found by the trial court to weigh equally in favor of both parties. Tenn. Code Ann. § 36-6-106(a)(4). There was no testimony to indicate that either party's family unit was problematic.

Factor five is the mental and physical health of the parents. Tenn. Code Ann. § 36-6-106(a)(5). The evidence supports the trial court's finding that there was not sufficient proof to make a determination on this factor. The court made a similar determination with respect to factor six, the home, school, and community record of the child. Tenn. Code Ann. § 36-6-106(a)(6). The evidence does not preponderate against the trial court's determination that factor six was not applicable in this case. Similarly, factor seven, the preference of the child, was not applicable; the child was only three at the time of trial and did not testify. Tenn.

[3]This statute was amended, with an effective date of July 1, 2014. Thus, the earlier version of the statute is applicable in this case.

Code Ann. § 36-6-106(a)(7).

Factor eight concerns evidence of physical or emotional abuse to the child, to the other parent, or to other persons. Tenn. Code Ann. § 36-6-106(a)(8). The court found this factor to favor Wife, and the evidence does not preponderate against this finding. The record contains testimony by a police officer who talked to Wife immediately after an incident when Husband allegedly hit her. Wife's left cheek was red and swollen; a picture of her injuries was introduced into evidence. Husband was arrested as a result of this incident, and an order of protection was issued against him. Wife's brother, who lived with the parties for a period of time, testified that he had witnessed some of Husband's violent behavior, including punching holes in the wall. Wife testified that there were two occasions when the police were called. Once, Husband was outside in his underwear yelling, hitting things, and shaking trees; he fell off of their deck. Another time, he broke through a locked bathroom door while Wife was in that room, closed the door, and yelled at her. Her brother called 911 because he was afraid for her.

Factor nine relates to the character of other persons who reside in or frequent the home of either parent. Tenn. Code Ann. § 36-6-106(a)(9). The court did not hear testimony on this subject, so it found this provision not applicable. The evidence does not preponderate against this finding.

Factor ten, Tenn. Code Ann. § 36-6-106(a)(10), is each parent's past and potential for future performance of parenting responsibilities, "including the willingness and ability of each of the parents . . . to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents . . . ." The court found that this factor favors both parties equally. Although Husband and Wife did not get along with each other, each considered the other a good parent, and there is nothing in the record to indicate that they did not wish to encourage the child's relationship with the other parent. Therefore, the evidence does not preponderate against the trial court's finding here.

Having examined the evidence with respect to all of the statutory factors, we conclude that the evidence does not preponderate against the trial court's determination that it was in the child's best interest for Wife to be the primary residential parent.

With respect to parenting time, the parties agreed to the schedule reflected in the sworn PPP, and they had been following this schedule since their agreement, even after Husband's attempted repudiation. The following standard of review is applicable with respect to parenting plans:

Trial courts have broad discretion to fashion parenting plans that best serve the

> interests of the children. Tenn. Code Ann. § 3-6-101(a)(2)(A) (Supp. 2004). They must, however, base their decisions on the evidence presented to them and upon the proper application of the relevant principles of law. *D v. K*, 917 S.W.2d 682, 685 (Tenn. Ct. App. 1995). While we are reluctant to second-guess a trial court's decisions regarding a parenting plan, *see Adelsperger v. Adelsperger*, 970 S.W.2d 482, 485 (Tenn. Ct. App. 1997), we will not hesitate to do so if we conclude that the trial court's decision is not supported by the evidence, that the trial court's decision rests on an error of law, or that the child's interests will be best served by another parenting arrangement. *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001); *Steen v. Steen*, 61 S.W.3d at 328; *Placencia v. Placencia*, 3 S.W.3d 497, 499 (Tenn. Ct. App. 1999).

Shofner v. Shofner, 181 S.W.3d 703, 716 (Tenn. Ct. App. 2004). Husband has not established that the trial court abused its discretion in adopting large portions of the proposed PPP originally agreed to by the parties.

Split parenting time

At the hearing, Husband argued that the trial court should order a 50/50 parenting arrangement where the parties would have parenting time on alternating weeks. On appeal, Husband asserts that the trial court failed to consider split parenting time "simply because the matter was contested." We must respectfully disagree.

In making this argument, Husband relies upon the following statement made by the trial court during the course of the hearing:

> Now, Mr. Faulkner [Counsel for Husband], let me ask you, what makes you think 50/50 is going to work? We're here in a contested trial. And a 50/50 may have worked if they could have resolved their differences between themselves, but we're in a contested trial. I usually find that when people get to this point, it's very difficult to engage in shared parenting.

There followed an extended exchange between the court and Husband concerning the relationship between Husband and Wife and how they exchanged the child. Later in the hearing, the court expressed concern about the mutual restraining order that had been in effect between the parties, stating, "doesn't that mitigate against a shared parenting arrangement and joint decision-making authority?" In both instances, the court was raising its concerns and giving Husband and his counsel a chance to respond.

The trial court's overall concern was that parents who could not get along with each other would not be successful with a shared parenting arrangement. In its ruling, the court stated:

> The Court is also very mindful of the directive from the Tennessee General Assembly—which is contained in TCA 36-6-106(a)—which states—and I will quote—that the Court shall order a custody arrangement that permits both parents to enjoy the maximum participation possible in the life of the child consistent with—end of quote—other factors in the section.
> . . .
> In regard to decision-making authority the Court finds that all categories of decision-making shall be vested solely in Ms. Beck. The Court does not feel that these parties will be able to engage in joint decision-making. The Court further questions whether Mr. Olson will work in a good faith effort to resolve a disputed issue should one arise.

Thus, the court expressed the same concern regarding joint decision making—the parties' inability to work together and get along. The court's lack of confidence in the parties' ability to work together, and in Husband's good faith in particular, justifies the court's decision not to award a shared parenting arrangement. Therefore, we find no abuse of discretion in the court's decision not to award 50/50 parenting.

Attorney fees

Husband's argument with respect to attorney fees, to which he devotes but a single paragraph with no supporting authority, is that the trial court erred in awarding attorney fees to Wife after adopting the MDA.

In Tennessee, courts follow the American Rule, which provides that litigants must pay their own attorney fees unless there is a statute or contractual provision providing otherwise. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 194 (Tenn. 2000). In this case, the MDA, a contract, governs the award of attorney fees.[4]

We review a trial court's decision to award attorney fees under an abuse of discretion standard. *In re Estate of Greenamyre*, 219 S.W.3d 877, 885 (Tenn. Ct. App. 2005). A trial court abuses its discretion only when it applies an incorrect legal standard or when it reaches a decision against logic or reasoning that causes an injustice to the complaining party.

[4]Tennessee Code Annotated section 36-5-103(c) authorizes a spouse to whom custody is awarded to recover reasonable attorney fees incurred in any action concerning the adjudication or change of custody.

Eldridge v. Eldridge, 42 S.W.3d 82, 85 (Tenn. 2001). Under this standard, we are required to uphold the ruling "as long as reasonable minds could disagree about its correctness." *Caldwell v. Hill*, 250 S.W.3d 865, 869 (Tenn. Ct. App. 2007). Furthermore, "we are not permitted to substitute our judgment for that of the trial court." *Id.* Thus, under the abuse of discretion standard, we give "great deference" to the trial court's decision. *Henry v. Goins*, 104 S.W.3d 475, 479 (Tenn. 2003).

Husband relies upon paragraph 14 of the MDA, which states: "Wife shall be solely responsible for paying, and shall pay, all of her attorney fees to her attorneys," and then lists the names of the attorneys who represented her in the divorce. Paragraph 21 of the MDA states: "In the event that it becomes reasonably necessary for either party to institute legal proceedings to procure the enforcement of any provision of this agreement, he or she shall be entitled to a judgment for reasonable expenses, including attorney's fees, incurred in prosecuting the action." Counsel for Wife submitted an affidavit and monthly billing statement for attorney fees and costs incurred after the parties entered into the MDA and PPP (in a total amount of $6,148.05). The trial court awarded Wife attorney fees in the amount of $3,500. Although the MDA contemplated that the parties pay their own attorney fees in the original divorce, it authorized an award of attorney fees for an action to enforce the MDA. The trial court did not abuse its discretion in awarding Wife her attorney fees.

Attorney fees on appeal

Wife asserts that she should be awarded her attorney fees for this appeal on the ground that Husband's appeal is frivolous. Although we have found no merit in Husband's arguments, we decline to find his appeal frivolous.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court in all respects. Costs of appeal are assessed against the appellant, and execution may issue if necessary.

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ANDY D. BENNETT, JUDGE