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

STEPHANIE J. SOLIMA v. DAVID J. SOLIMA

Appeal from the Circuit Court for Williamson County
No. 04229 Timothy L. Easter, Judge

No. M2013-01074-COA-R3-CV – Filed March 11, 2015

This appeal arises out of Mother's and Father's opposing motions to modify a parenting plan. Both of the parties and the court agreed that there had been a material change in circumstance warranting a modification of the plan. After a hearing, the court largely adopted Mother's proposed parenting plan and reduced Father's residential parenting time. The court also denied Mother's request for attorneys' fees. Shortly after the new parenting plan was entered, Mother filed a motion for a one-time modification of the plan to allow the child to attend a school trip that coincided with both parties' parenting time. After a hearing, the court granted Mother's motion. Father appealed the new parenting plan and the one-time modification. We find the modification issue moot and, therefore, dismiss that portion of Father's appeal. We affirm the trial court's judgment in all other respects.

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

W. NEAL MCBRAYER, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S., and RICHARD H. DINKINS, J., joined.

Connie Reguli and Julia Shaver, Brentwood, Tennessee, for the appellant, David J. Solima.

Lawrence J. Kamm, Nashville, Tennessee (at oral argument), John J. Hollins, Jr. and Sarah Richter Perky, Nashville, Tennessee (on brief), for the appellee, Stephanie J. Solima.

OPINION

I. FACTUAL AND PROCEDURAL BACKGROUND

Stephanie Solima ("Mother") and David Solima ("Father") were divorced in 2006. They have one son. The parties' post-divorce proceedings regarding child support and the terms of their parenting plan have been particularly contentious. After several unsuccessful iterations, the parties agreed to a detailed parenting plan in 2009.

Under that plan, Mother was the primary residential parent and had all major decision-making authority. Mother had 255 days a year of parenting time, and Father had the remaining 110 days. Father exercised his parenting time every other week from Thursday evening to Sunday evening. If a holiday or other "school-free day" fell on a Monday or Friday, the holiday or school-free day was awarded to the parent who had the child for that particular weekend. Mother had parenting time with the child every fall break, and the parties alternated spring break visitation. Mother and Father evenly shared winter vacation each year. The parties also shared summer vacation, alternating two-week periods of parenting time until school began. Despite the plan's detail, the parties continued to have serious disagreements regarding visitation.

On August 2, 2011, Mother filed an emergency petition to return the child to her custody, to modify the parenting plan, and for criminal contempt. Between September and October 2011, Father filed five pleadings requesting a modification of the parenting plan as well as two petitions for criminal contempt against Mother. On October 31, 2011, the trial court denied or dismissed all of Father's pleadings. Then, on February 15, 2012, Father filed an amended answer to Mother's August 2, 2011 petition and a counter-petition for modification of the parenting plan and criminal contempt. Throughout 2012 and early 2013, the parties continued to engage in visitation and discovery disputes.

On March 26, 2013, Mother filed an amended petition to modify the parenting plan and criminal contempt. Mother also filed a proposed parenting plan. The proposed plan had several similarities to the 2009 plan. The residential parenting schedule and day-to-day schedule remained the same, and Mother retained all major decision-making authority. The proposed changes would: (1) rather than alternating two week periods of parenting time throughout summer vacation, alternate two-week periods of visitation from June 1 to July 30; (2) remove references to "school-free days"; (3) change the holiday schedule so that the parent who had residential time the preceding weekend would have the child on the holiday; (4) change return times from 2:00 p.m. to 5:00 p.m.; (5) add Father's Day visitation for Father; (6) allow the parents to communicate by methods other than e-mail in case of an emergency; and (7) add a statement reserving Mother's right to make a claim against Father's estate for any unpaid child support obligations or medical expenses.

The trial court conducted a hearing on Mother's petition and Father's counter-petition to modify the parenting plan on March 26 and 27, 2013. Only Mother and Father testified at the hearing. Father did not file a proposed parenting plan.[1] Instead, he outlined requested changes at the hearing, asking the court to: (1) increase Father's parenting time to 129 days; (2) change the parties' meeting location to the Brentwood Library; (3) change Mother's Day and Father's Day visitation to Saturday at 5:00 p.m. through Sunday at 5:00 p.m.; (4) change Thanksgiving visitation to end at 5:00 p.m. the day before school resumes; (5) extend Father's visitation on the child's birthday to 7:30 p.m.; (6) grant Father fall break in odd years; (7) grant Father additional visitation with the child one school night a week; (8) grant Father major decision-making authority for education and extracurricular activities; (9) have Child Support Services manage child support payments; (10) apportion health and dental expenses by income; (11) reduce life insurance requirements to $50,000 per parent; and (12) have mediation costs assessed by the mediator.

At the conclusion of the hearing, Mother requested an award of her attorneys' fees incurred in responding to Father's requests to modify the parenting plan. In response, the court stated from the bench:

> I deny the request today based on my previous rulings but I will remember this, should I ever be faced with the two of you again in another hearing, and the difficulty that I'm having in denying the request for attorney's fees to [Mother].

In an order entered April 8, 2013, the court denied both petitions for criminal contempt. The order also adopted a new parenting plan, but contained very few findings of fact. The order states, in relevant part:

> 3. The parties and the Court agree that modification of the June 22, 2009 Permanent Parenting Plan is warranted pursuant to Tenn. Code Ann. § 36-6-101(2)(B). The Court further finds that the modification of the June 22, 2009 Permanent Parenting Plan is in the best interests of the minor child.
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> 4. That the Permanent Parenting Plan attached hereto as Exhibit A shall become the Order of this Court and the child support shall be established as set forth herein. The Court further finds that pursuant to Tenn. Code Ann. § 36-6-404 the attached Permanent Parenting Plan is in the best interest of the minor child.

[1] Tennessee Code Annotated § 36-6-405(a) (2014) requires parents to file and serve a proposed parenting plan in a proceeding for the modification of a permanent parenting plan. A proposed parenting plan is not required if the modification pertains only to child support, but Father requested several other types of modifications. Although Father did not file and serve a proposed parenting plan in accordance with this section, neither the trial court nor the parties addressed this issue.

5. [Mother's] Petition to Modify the June 22, 2009 Permanent Parenting Plan shall be dismissed.

6. [Father's] Petition to Modify the June 22, 2009 Permanent Parenting Plan and his Petition to Modify Child Support shall both be dismissed.

7. Both parents shall complete the online www.uptoparenting.org class within sixty (60) days of the date of entry of this order.

8. [Mother's] request for attorney's fees is denied at this time.

The new parenting plan made the following changes to the 2009 plan: (1) Mother was granted 266 days and Father was granted 99 days; (2) references to "school-free days" were deleted from the plan; (3) the parties alternated fall break; (4) the parties alternated summer visitation every two weeks from June 1 to July 30; and (5) Father was ordered to pay Mother $312.00 in monthly child support.

On May 10, 2013, Mother filed a motion to alter or amend and reopen proof, requesting that the court remove Father's parenting time on all Monday holidays, shorten Father's weekend parenting time, and reduce Father's summer parenting time. Mother alleged that Father had refused to allow the child to attend a school trip during his parenting time, so she requested that the court consider Father's lack of cooperation. The court denied Mother's motion in an order entered May 13, 2013.

Two days later, Mother filed a motion for a one-time modification of summer parenting time. Mother's motion explained that the child was scheduled to attend a four-day school trip that coincided with both parties' parenting time. Father would not agree to allow the child to attend the trip. Mother asked that the court modify the parenting plan and allow the child to participate in the school trip.

The court conducted a hearing on May 21, 2013,[2] and granted Mother's motion in a May 22, 2013 order. The order set transportation and parenting time for the days surrounding the child's trip, and made a one-time modification of Father's parenting time in May 2013 to compensate for the time he would miss during the child's trip.

Father timely appealed the trial court's April 8, 2013 and May 22, 2013 orders. Father's issues on appeal are whether: (1) the trial court failed to maximize his participation with the child in the new parenting plan; (2) the court's comment regarding the award of attorney's fees violates his constitutional right of access to the courts; and (3) the trial court erred in modifying the parenting plan on May 22, 2013, without finding a material change in circumstance. Mother presents two additional issues for review:

[2] A transcript of this hearing was not included in the appellate record.

(1) whether the trial court erred in denying her request for attorneys' fees; and (2) whether she is entitled to attorneys' fees on appeal.

II. ANALYSIS

A. Standard of Review

A trial court's determinations of whether a material change in circumstance has occurred and whether modification of the parenting plan is in the child's best interest are factual questions. *Armbrister v. Armbrister*, 414 S.W.3d 685, 692 (Tenn. 2013). We review the trial court's factual findings de novo upon the record, with a presumption of correctness, unless the evidence preponderates otherwise. *See, e.g., id.*; Tenn. R. App. P. 13(d). We review the trial court's conclusions of law de novo, with no presumption of correctness. *Armbrister*, 414 S.W.3d at 692.

Custody determinations and parenting responsibility decisions are within the broad discretion of the trial court. *Id.* at 693. We will not interfere with these decisions except upon a showing of abuse of that discretion. *See, e.g., Suttles v. Suttles*, 748 S.W.2d 427, 429 (Tenn. 1988). A trial court abuses its discretion only if it: (1) applies an incorrect legal standard; (2) reaches an illogical conclusion; (3) bases its decision on a clearly erroneous assessment of the evidence; or (4) employs reasoning that causes an injustice to the complaining party. *Konvalinka v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, 249 S.W.3d 346, 358 (Tenn. 2008); *see also Kline v. Eyrich*, 69 S.W.3d 197, 203-04 (Tenn. 2002); *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001). In other words, if "reasonable minds can disagree as to [the] propriety of the decision made," the trial court's ruling will be upheld. *Eldridge*, 42 S.W.3d at 85.

B. Failure to Maximize Participation

Both Mother and Father requested a modification of the residential parenting schedule in the 2009 parenting plan. Consideration of a petition to modify residential parenting time is a two-step process in Tennessee. *See* Tenn. Code Ann. § 36-6-101(a)(2)(C) (2014); *Armbrister*, 414 S.W.3d at 697-98. First, the court must determine if there has been a material change in circumstance affecting the child's best interest. Tenn. Code Ann. § 36-6-101(a)(2)(C). If there has been a material change in circumstance, then the court considers whether the modification is in the child's best interest under Tennessee Code Annotated § 36-6-404 or § 36-6-106(a) (2014). *See, e.g., Armbrister*, 414 S.W.3d at 698.

In this case, the trial court and the parties agreed that there had been a material change in circumstance. The trial court found that the new parenting plan was in the child's best interest under Tennessee Code Annotated § 36-6-404. Father argues that the trial court failed to order a parenting arrangement that allows him to enjoy the "maximum

participation possible" in his child's life, consistent with the child's best interest, as required by Tennessee Code Annotated § 36-6-106(a).

The trial court's order did not include any specific findings of fact regarding the fifteen best interest factors in Tennessee Code Annotated § 36-6-404. Although the court need not list every applicable statutory factor and an accompanying conclusion, the trial court is required to "consider all the applicable factors."[3] *See Pandey v. Shrivastava*, No. W2012-00059-COA-R3-CV, 2013 WL 657799, at *4 (Tenn. Ct. App. Feb. 22, 2013). Moreover, Tennessee Rule of Civil Procedure 52.01 requires trial courts to make specific findings of fact and conclusions of law, even if neither party requests them. Tenn. R. Civ. P. 52.01; *see, e.g.*, *Ward v. Ward*, No. M2012-01184-COA-R3-CV, 2013 WL 3198157, at *14 (Tenn. Ct. App. June 20, 2013). "[F]indings of fact are particularly important in cases involving the custody and parenting schedule of children . . . ." *In re Connor S.L.*, No. W2012-00587-COA-R3-JV, 2012 WL 5462839, at *4 (Tenn. Ct. App. Nov. 8, 2012).

Where findings of fact are insufficient, the appellate court may remand to the trial court or "conduct its own independent review of the record to determine where the preponderance of the evidence lies, without presuming the trial court's decision to be correct" *Williams v. Singler*, No. W2012-01253-COA-R3-JV, 2013 WL 3927934, at *10 (Tenn. Ct. App. July 31, 2013); *see also Lovlace v. Copley*, 418 S.W.3d 1, 36 (Tenn. 2013); *Brooks v. Brooks*, 992 S.W.2d 403, 404-05 (Tenn. 1999); *Coley v. Coley*, No. M2007-00655-COA-R3-CV, 2008 WL 5206297, at *6 (Tenn. Ct. App. Dec. 12, 2008). In determining whether to perform a de novo review, we consider the adequacy of the record, the fact-intensive nature of the case, and whether witness credibility determinations must be made. *See Lovlace*, 418 S.W.3d at 36 (declining to conduct a de novo review because credibility determinations were necessary to resolve factual disputes); *Town of Middleton v. City of Bolivar*, No. W2011-01592-COA-R3-CV, 2012 WL 2865960, *26 (Tenn. Ct. App. July 13, 2012) (stating that independent review is appropriate when the case involves a legal issue or the court's decision is "readily ascertainable"); *see also State v. King*, 432 S.W.3d 316, 328 (Tenn. 2014) (considering the adequacy of the record, the fact-intensive nature of the case, and the ability to request supplementation of the record in determining whether to conduct a de novo review in the context of a criminal case).

In this case, witness credibility is not an issue, and the record is sufficient to conduct an independent review. We begin our review by considering the best interest

[3] We have previously noted our concern that the case law holding that a trial court is not required to articulate the statutory factors it considered is seemingly inconsistent with Tennessee Rule of Civil Procedure 52.01. *See Pandey v. Shrivastava*, No. W2012-00059-COA-R3-CV, 2013 WL 657799, at *4 n.8 (Tenn. Ct. App. Feb. 22, 2013); *In re Connor S.L.*, No. W2012-00587-COA-R3-JV, 2012 WL 5462839, at *7 n.6 (Tenn. Ct. App. Nov. 8, 2012) (citing *In re Elaina M.*, No. M2010-01880-COA-R3-JV, 2011 WL 5071901, at *8 n.13 (Tenn. Ct. App. Oct. 25, 2011)).

factors in Tennessee Code Annotated § 36-6-404 (2010) that were in effect at the time of the hearing.[4] Under that section, the court must first determine if either parent has engaged in any conduct described in Tennessee Code Annotated § 36-6-406, which would require a limitation on the parent's residential time. *Armbrister*, 414 S.W.3d at 706. If Tennessee Code Annotated § 36-6-406 does not apply, then the court must consider fifteen specific factors in Tennessee Code Annotated § 36-6-404(b). *Id.*

Tennessee Code Annotated § 36-6-406 does not apply in this case, so we move directly to a consideration of the child's best interest. The statutory factors relevant to determining the best interest of the child in this case are:

> (2) The relative strength, nature, and stability of the child's relationship with each parent, including whether a parent has taken greater responsibility for performing parenting responsibilities relating to the daily needs of the child;
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> (3) The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, consistent with the best interests of the child;
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> . . . .
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> (5) The disposition of each parent to provide the child with food, clothing, medical care, education, and other necessary care;
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> (6) The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities;
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> (7) The love, affection, and emotional ties existing between each parent and the child;
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> (8) The emotional needs and emotional ties existing between each parent and the child;
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> (9) The character and physical and emotional fitness of each parent as it relates to each parent's ability to parent or the welfare of the child;
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> . . . .

[4] Since the hearing in this matter occurred, the State legislature amended Tennessee Code Annotated § 36-6-404. *See* 2014 Pub. Acts ___ (ch. 617, § 7). Effective July 1, 2014, Section 404 directs courts to consider the best interest factors listed in Tennessee Code Annotated § 36-6-106(a) (2014). Even if we were to apply the new best interest factors listed in § 106(a), the result in this case would not change.

> (11) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;
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> . . . .
>
> (15) Each parent's employment schedule, and the court may make accommodations consistent with those schedules; [ ]
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> . . . .

Tenn. Code Ann. § 36-6-404(b).

Upon consideration of these factors and the record, we conclude that factors (2), (3), (6), (8) and (11) weigh in favor of Mother. Factors (5), (7), and (9) weigh equally in favor of Mother and Father. Only factor (15) weighs exclusively in favor of Father.

Although the child seems to have a relatively stable relationship with both parents, Mother has performed the majority of parenting responsibilities relating to the child's daily needs since the parties' divorce, so factors (2) and (6) weigh in her favor. Perhaps most importantly, the record demonstrates that Mother is willing to facilitate "a close and continuing parent-child relationship" between the child and Father. Mother testified that Father had displayed aggressive and threatening behavior towards her in the past and that she had received an order of protection against Father. Father's litigiousness and hostile attitude towards Mother does not promote a healthy, continuous relationship between child and Mother. Therefore, factor (3) weighs in Mother's favor.

Finally, the child has lived the majority of his life with Mother, who has been the child's primary residential parent. This arrangement has proven to provide a stable, healthy environment for the child. He is succeeding academically, emotionally, and socially. It is important that the child have continuity and remain in a stable environment, so factors (8) and (11) also weigh in Mother's favor.

The record demonstrates that factor (5) weighs equally in favor of Mother and Father. Both parents are able to provide the child with necessities, including food, clothing, medical care, education, and other requirements. Similarly, both parents have equally expressed their love and affection for the child, so factor (7) does not favor either party. Both Father and Mother are also fit to parent their child, so factor (9) also weighs equally for both parents.

Finally, factor (15), the parents' employment schedules, weighs in Father's favor because his schedule aligns with the child's school calendar. Father is an elementary school employee, so his free time and the child's free time largely coincide. But even considering Father's employment schedule and the factors that weighed in favor of both

parents, the evidence preponderates in favor of the trial court's finding that the April 8, 2013 parenting plan is in the best interest of the child.

Trial courts have discretion to determine a parenting schedule that maximizes parents' participation in their child's life, given the best interest analysis under Tennessee Code Annotated §§ 36-6-404 and -106. Although the April 8, 2013 parenting plan removed eleven days from Father's parenting time, it does not amount to an abuse of discretion. The record does not reflect that the trial court applied an incorrect legal standard, reached an illogical conclusion, based its decision on a clearly erroneous assessment of the evidence, or employed reasoning that caused an injustice to Father. *See, e.g., Konvalinka*, 249 S.W.3d at 358. We are hesitant to second-guess the trial court's decision on child custody and visitation issues. *See, e.g., Nelson v. Nelson*, 66 S.W.3d 896, 901 (Tenn. Ct. App. 2001). It is not our role to "tweak a visitation order." *Eldridge*, 42 S.W.3d at 88. Therefore, we uphold the April 8, 2013 parenting plan ordered by the trial court.

C. Comment Regarding Attorneys' Fees

Father alleges that the trial judge's comment regarding the award of attorney's fees unconstitutionally restricts his right of access to the courts under Article I, Section 17 of the Tennessee Constitution. At the conclusion of the March 27, 2013 hearing, the trial judge stated that he would remember "the difficulty [he had] in denying the request for attorney's fees to Ms. Solima" if the parties returned to court to litigate another custody dispute.

Father does not cite to any case law indicating that such a statement may impede a litigant's right of access to the courts. Initially, we note that a trial court may consider a party's litigious nature in determining an award of attorney's fees. *Gilliam v. Gilliam*, 776 S.W.2d 81, 86 (Tenn. Ct. App. 1988). The trial court's comment could be interpreted as merely a reminder to Father on the potential consequences of litigiousness.

Particularly when viewed in context of the court's concluding remarks, the comment is not sufficient to impede Father's right of access to the courts. *See generally* William C. Koch, Jr., *Reopening Tennessee's Open Courts Clause: A Historical Reconsideration*, 27 U. Mem. L. Rev. 333, 426-31 (1997) (describing litigants' constitutional rights to institute civil actions, seek judicial remedies, and proceed before an impartial judge). To the extent Father believed the comment indicated the judge's prejudice or bias, Father could have moved to recuse the trial judge under Tennessee Supreme Court Rule 10B.

D. Modification of April 8, 2013 Order

Father argues that the trial court inappropriately modified the parties' parenting plan without first ordering mediation and finding a material change of circumstance.

Mother argues Father has waived any claims regarding the one-time modification because he failed to include a transcript of the May 21, 2013 hearing with the appellate record or, alternatively, that the issue is moot. In response to Mother's mootness argument, Father claims that a modification for the child's school trip is capable of repetition and will likely evade judicial review. Because both parties briefed the issue and we find the transcript unnecessary to our review, we conclude the issue is not waived. Therefore, we address whether the issue is moot.

The doctrine of justiciability prevents courts from adjudicating cases that do not involve a "genuine and existing controversy." *McIntyre v. Traughber*, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994). "Our courts will not render advisory opinions or decide abstract legal questions." *Id.* (internal citations omitted). A case must be justiciable when it is filed and throughout the course of litigation, including during the appeal. *Id.* Our courts will decline to hear a case if it does not "involve a genuine, continuing controversy requiring the adjudication of presently existing rights." *Alliance for Native Am. Indian Rights in Tenn., Inc. v. Nicely*, 182 S.W.3d 333, 338 (Tenn. Ct. App. 2005).

A moot case is no longer justiciable because it "has lost its character as a present, live controversy." *McIntyre*, 884 S.W.2d at 137. Generally, a case is moot when it "no longer serves as a means to provide relief to the prevailing party." *Id.* There are only a few recognized exceptions to the mootness rule: (1) the issue is of great public importance or affects the administration of justice; (2) the challenged conduct is capable of repetition and will likely evade judicial review; (3) the primary subject of the dispute has become moot, but collateral consequences to one of the parties remain; and (4) the defendant voluntarily stops engaging in the challenged conduct. *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Cnty.*, 301 S.W.3d 196, 204 (Tenn. 2009)). Only if the issue falls within a recognized exception do we have discretion to reach the merits of the appeal. *Alliance for Indian Rights*, 182 S.W.3d at 339.

Father argues that the one-time modification of the parenting plan is capable of repetition and will likely evade judicial review. To qualify for this exception, a party must demonstrate: (1) a "reasonable expectation" or "demonstrated probability" that the acts that instigated litigation will reoccur; (2) "a risk that effective judicial remedies cannot be provided in the event [the acts] reoccur"; and (3) "that the same complaining party will be prejudiced by the [ ] act when it reoccurs." *Id.* at 339-40. A "theoretical possibility that an act might reoccur" is not sufficient to invoke this exception. *Id.* at 340. Father has not established a reasonable expectation or demonstrable probability that the circumstances leading to the one-time modification will reoccur. Therefore, we conclude that this exception to the mootness doctrine does not apply.

Father's challenge to the trial court's May 22, 2013 order is moot because it no longer presents a live controversy. The order was temporally limited to May and June 2013. The text of the court's order provides a parenting schedule dating from 5:00 p.m. on May 23, 2013, to 5:00 p.m. on June 1, 2013. After this period elapsed, the order no

longer affected the parties' rights to visitation. The court's order did not extend to the parenting plan or to future visitation periods.[5] There is no longer a live controversy regarding the order—the school trip has passed and the order is no longer in effect. Therefore, there is no relief this Court can provide to Father.

D. Attorneys' Fees

Mother claims she is entitled to attorneys' fees incurred at trial and on appeal under Tennessee Code Annotated § 36-5-103(c) (2014). She first argues that the trial court erred in denying her attorneys' fees below. The award of attorneys' fees is within the trial court's sole discretion, and we will not interfere with the trial court's decision absent a clear showing of an abuse of that discretion. *See, e.g.*, *Taylor v. Fezell*, 158 S.W.3d 352, 359 (Tenn. 2005). The record does not indicate that the trial court abused its discretion. *See, e.g.*, *Konvalinka*, 249 S.W.3d at 358. Therefore, we affirm the trial court's decision not to award attorneys' fees to Mother.

Pursuant to Tennessee Code Annotated § 36-5-103(c), appellate courts have discretion to award a prevailing party fees incurred on appeal. *Pippin v. Pippin*, 277 S.W.3d 398, 407 (Tenn. Ct. App. 2008); *Shofner v. Shofner*, 181 S.W.3d 703, 719 (Tenn. Ct. App. 2004). We consider the following factors in our decision to award fees: (1) the requesting party's ability to pay the accrued fees; (2) the requesting party's success in the appeal; (3) whether the requesting party sought the appeal in good faith; and (4) any other relevant equitable factors. *Hill v. Hill*, No. M2006-02753-COA-R3-CV, 2007 WL 4404097, at *6 (Tenn. Ct. App. Dec. 17, 2007). In light of these factors, we award Mother her attorneys' fees incurred on appeal. Accordingly, we remand this case to the trial court for a determination of the appropriate amount of attorneys' fees and expenses to which Mother is entitled.

III. CONCLUSION

The portion of Father's appeal regarding the May 22, 2013 one-time modification is dismissed as moot. We affirm the trial court's judgment in all other respects. We also award Mother reasonable attorneys' fees and expenses incurred on appeal and remand to the trial court for further proceedings consistent with this opinion.

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W. NEAL McBRAYER, JUDGE

[5] The May 22, 2013 order states, "The remaining summer parenting schedule as set forth in the April 8, 2013 Permanent Parenting Plan shall apply for the remainder of the summer."