IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 9, 2018 Session

IN RE BRITTON H-S.

Appeal from the Juvenile Court for Montgomery County
No. 14-JV-1383 Vicki S. Snyder, Judge

No. M2016-01576-COA-R3-JV

The juvenile court established a permanent parenting plan for the minor child of unwed parents and ordered the father to pay child support. The father argues that the juvenile court erred both in fashioning the parenting plan and in calculating his child support obligation. Because the court's order lacks sufficient findings of fact and conclusions of law to explain its calculation of the father's gross income for child support purposes, we vacate the court's child support order and remand for entry of an order in compliance with Rule 52.01 of the Tennessee Rules of Civil Procedure. In all other respects, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed in Part and Vacated in Part

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J., and RICHARD H. DINKINS, J., joined.

Mark R. Olson and Taylor R. Dahl, Clarksville, Tennessee, for the appellant, Richard S.

Sharon T. Massey, Clarksville, Tennessee, for the appellee, Taylor H.

OPINION

I.

A.

Britton H-S. was born to unwed parents, Richard S. ("Father") and Taylor H. ("Mother"). On November 10, 2014, Father petitioned the Juvenile Court for

Montgomery County, Tennessee, to establish a permanent parenting plan. Claiming that he was unaware of Britton's whereabouts, Father also asked the court to issue either a restraining order preventing Mother from relocating with Britton outside of Tennessee or a mandatory injunction requiring Mother to return Britton to Tennessee.

Mother answered and filed a counter-petition for shared parenting. She denied that she had removed the child from Tennessee and asked the court to order supervised visitation based on Father's alleged "harassing, threatening, and intimidating" behavior.

Initially, the court named Mother primary residential parent, granted her request for supervised visitation, and ordered both parents to submit to drug testing. Subsequently, the court removed the supervision requirement but denied Father's request for additional parenting time.

B.

The court held an evidentiary hearing on June 17, 2016. At the time of the hearing, Britton was almost two years old. Mother had relocated with Britton to Nashville, Tennessee. Father lived in Clarksville, Tennessee, although he also maintained an apartment in Nashville.

The couple met when Mother answered a help-wanted advertisement for Father's car dealership in Clarksville. After a few months, they began dating, and in November 2013, Mother discovered she was pregnant. She moved into Father's home, and Britton was born the following July.

After Britton's birth, his parents' relationship soured. Father claimed that the couple merely had personal issues; Mother maintained that the problems arose after she discovered Father's marijuana in the basement.[1] Whatever the reasons, by October 2014, the couple agreed to separate. According to Father, they intended to discuss a co-parenting arrangement after he returned from a previously scheduled business trip to Florida.

[1] Mother testified that, while she was pregnant, she discovered what she characterized as "a bunch of marijuana" in the basement of Father's home. She convinced Father to remove the marijuana and participate in counseling to address any drug issues. Later, after Britton's birth, she thought she detected the presence of marijuana in the home again, but Father denied it. Still, Mother continued to worry about Father's possible involvement with drugs.

While Father admitted to smoking marijuana before Britton's birth, he denied that he currently sold or used drugs, and his drug screen was negative. He also denied that the drugs Mother found were his and accused various members of Mother's family of planting drugs in his home. But Mother's stepfather testified that Father admitted he was involved in transporting drugs.

Mother explained that she had plans to take Britton to visit her extended family in Texas while Father was gone, but when she mentioned the plan to Father, he became angry and threatening. Because she was afraid of what he might do, she cancelled her trip and stopped answering his calls and text messages. She also decided to move out. Father claimed that, when he returned from Florida, he was totally surprised to find Mother and Britton gone.

Father swore that Mother kept Britton from him for 42 days. But he admitted that a few days after his return, Mother told him that Britton was in Clarksville. She offered to let him visit Britton at her mother's home, but he declined. According to Mother, at most, Father went 12 days without seeing his son.

Despite his claims that Mother kept Britton from him, Father agreed that he exercised all of his court-ordered parenting time. And Mother maintained that she offered him additional time, which he refused.

Mother testified that, after she moved out, Father was always following her. Father placed a GPS tracker on her car, claiming that he was worried that she would disappear with Britton. Eventually, Mother discovered the tracker, and on June 10, 2015, she obtained an order of protection based on evidence that Father had been stalking her.

According to Mother, she moved to Nashville in order to be closer to work. Her Clarksville employer offered her a position supervising the opening of a new portrait studio location in Franklin, Tennessee. With the move, her employer's expectation was that Mother would become an area manager for the company. She explained that the management position would afford her more time with Britton.

Because she could not take Britton to work, Mother initially paid a friend to care for Britton during work hours. But approximately six weeks before the hearing, she enrolled Britton in daycare two days per week in Franklin. Mother chose the daycare facility because it was on her way to work and was one of the few places that had space available. The daycare's programming, including the enrichment activities, pleased Mother. So she enrolled Britton full-time starting the week of the hearing. Father complained that Mother enrolled Britton in daycare without consulting him.

Father, on the other hand, claimed that he was Britton's sole caregiver during his parenting time. He described the extensive collection of toys he purchased for Britton, including a ball pit and a theater room. He also equipped his office at the dealership like a playroom so that he could take Britton to work with him. But he acknowledged that occasionally his employees watched Britton when he was on the sales floor. And two of his employees agreed that they took care of Britton at the dealership. Father's mother

testified that she babysat Britton at Father's home on Saturdays so that Father could go to work.

Father asked the court to award equal parenting time. In Mother's view, equal parenting time was not in Britton's best interest. While acknowledging that Britton loves his father, Mother expressed concerns about Father's parenting abilities. And based on Britton's behavior when he returned from visits with Father and the pictures Father posted of Britton on social media, she had concerns about Father's ability to provide a stable environment.

Father testified that, when the couple was together, he paid all their expenses. But since leaving, Mother has provided for all of Britton's needs. Father made only two child support payments, totaling $4,500.

Although Father owns two successful car dealerships, his most recent tax return showed a $117,000 loss. Father maintained that he could only withdraw approximately $3,500 from the business each month. Mother, however, produced a pay stub showing Father's gross income for a two-week period was over $6,000. She explained that Father had submitted the pay stub at a previous court hearing. Father denied receiving any salary from the dealership. He claimed that he had created the pay stub for his personal use when he was considering the tax implications of taking a salary.

C.

On July 11, 2016, the juvenile court entered a written ruling. After considering the statutory factors in Tennessee Code Annotated § 36-6-106, the court named Mother primary residential parent and awarded Father 150 days of residential parenting time. The court also ordered Father to pay unpaid medical expenses and retroactive child support. The court referred the calculation of the amount of child support to the Child Support Magistrate.

Father filed a premature notice of appeal, and on July 29, 2016, he filed a Rule 60 motion to alter or amend the court's order. Shortly thereafter, he filed a series of additional motions, including: (1) a petition for civil and criminal contempt; (2) a motion for a new trial and recusal; (3) two motions for findings of fact; and (4) a motion for the appointment of a special master to calculate child support. On December 1, 2016, the juvenile court denied Father's post-trial motions and set child support at $1,251 per month based on previously-submitted evidence. In the December order, the court expressly found Father's testimony at trial was not credible.

II.

A. THE COURT'S WRITTEN ORDER

Initially, Father complains that the court's written order is inconsistent with the decision the court announced from the bench at the end of the hearing. "It is well-settled that a trial court speaks through its written orders." *Williams v. City of Burns*, 465 S.W.3d 96, 119 (Tenn. 2015) (quoting *Anil Constr. Inc. v. McCollum*, No. W2013-01447-COA-R3-CV, 2014 WL 3928726, at *8 (Tenn. Ct. App. Aug. 7, 2014)). As we have previously noted, the entry of a written order is essential for it to be binding.

> A judgment must be reduced to writing in order to be valid. It is inchoate, and has no force whatever, until it has been reduced to writing and entered on the minutes of the court, and is completely within the power of the judge or Chancellor. A judge may modify, reverse, or make any other change in his judgment that he may deem proper, until it is entered on the minutes, and he may then change, modify, vacate or amend it during that term, unless the term continues longer than thirty days after the entry of the judgment, and then until the end of the thirty days.

Cunningham v. Cunningham, No. W2006-02685-COA-R3-CV, 2008 WL 2521425, at *5 (Tenn. Ct. App. June 25, 2008) (quoting *Broadway Motor Co. v. Fire Ins. Co.*, 12 Tenn. App. 278, 280 (1930)).

Generally, we do not review a court's oral statements unless the oral ruling was incorporated into the written decree. *Id.* The exception would be when the oral ruling indicates that the written decree does not represent the court's "own deliberations and decision." *Smith v. UHS of Lakeside, Inc.*, 439 S.W.3d 303, 316 (Tenn. 2014). The principle that a court speaks only through written orders "presupposes the performance of the judicial act reflected in the order." *Id*. at 317. Here, the court's written order did not incorporate its oral ruling. And Father only asserts that the trial court erred in deviating from it oral ruling, not that it failed to exercise its independent judgment. So any inconsistencies between the trial court's oral ruling and its written order are irrelevant.

B. PERMANENT PARENTING PLAN

Courts use the same standards applicable to divorce cases when establishing custody and visitation for the child of unmarried parents. *See* Tenn. Code Ann. § 36-2-311(a)(9), (10) (2017). Custody decisions are based on the best interest of the child, which is determined through consideration of a non-exclusive list of statutory factors.[2]

[2] We find Father's argument that the court erred in failing to apply the standards in the parental relocation statute unavailing. *See* Tenn. Code Ann. § 36-6-108 (2017). This Court has repeatedly held

Id. § 36-6-106(a) (2017). The court's goal is to fashion a custody arrangement that permits "both parents to enjoy the maximum participation possible in the life of the child consistent with the [statutory best interest] factors . . . , the location of the residences of the parents, the child's need for stability and all other relevant factors." *Id.* The visitation schedule should be designed to allow the noncustodial parent to maintain a parent-child relationship unless the court finds that visitation would endanger the child. *Id.* § 36-6-301 (2017).

As we have often noted, "[c]ustody and visitation determinations often hinge on subtle factors." *Gaskill v. Gaskill*, 936 S.W.2d 626, 631 (Tenn. Ct. App. 1996). Consequently, we "are reluctant to second-guess a trial court's decisions" on such matters. *Id.* We ordinarily leave the details of a parenting plan to the trial court's discretion. *Armbrister v. Armbrister*, 414 S.W.3d 685, 693 (Tenn. 2013).

A trial court abuses its discretion only if it applies an incorrect legal standard; reaches an illogical conclusion; bases its decision on a clearly erroneous assessment of the evidence; or employs reasoning that causes an injustice to the complaining party. *Konvalinka v. Chattanooga-Hamilton Cty. 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). When reviewing a lower court's discretionary decision, we must determine: "(1) whether the factual basis for the decision is properly supported by evidence in the record, (2) whether the lower court properly identified and applied the most appropriate legal principles applicable to the decision, and (3) whether the lower court's decision was within the range of acceptable alternative dispositions." *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010).

A trial court's determination of a child's best interest is a question of fact. *Armbrister*, 414 S.W.3d at 692-93; *In re T.C.D.*, 261 S.W.3d 734, 742 (Tenn. Ct. App. 2007). Therefore, appellate courts must "presume that a trial court's factual findings on . . . [best interest] are correct and not overturn them, unless the evidence preponderates against the trial court's findings." *Armbrister*, 414 S.W.3d at 693. "For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect." *Watson v. Watson*, 196 S.W.3d 695, 701 (Tenn. Ct. App. 2005). In weighing the preponderance of the evidence, the trial court's findings of fact that are based on witness credibility are given great weight, and they will not be overturned absent clear and convincing evidence to the contrary. *In re Adoption of A.M.H.*, 215 S.W.3d 793, 809 (Tenn. 2007).

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that the parental relocation statute does not apply to initial custody determinations. *See, e.g.*, *Sikora ex rel. Mook v. Mook*, 397 S.W.3d 137, 149 (Tenn. Ct. App. 2012); *Dayhoff v. Cathey*, No. W2016-00377-COA-R3-JV, 2016 WL 4487813, at *5 (Tenn. Ct. App. Aug. 25, 2016); *Nasgovitz v. Nasgovitz*, No. M2010-02606-COA-R3-CV, 2012 WL 2445076, at *5-7 (Tenn. Ct. App. June 27, 2012).

1. Best Interest Factors

The juvenile court considered the statutory best interest factors and determined that the majority of the relevant factors favored Mother. *See* Tenn. Code Ann. § 36-6-106(a). Father takes issue with the court's evaluation of nine of the fifteen factors and asserts that a proper analysis would have awarded him more parenting time.

The first factor focuses on the "strength, nature, and stability of the child's relationship with each parent, including whether one (1) parent has performed the majority of parenting responsibilities relating to the daily needs of the child." *Id.* § 36-6-106(a)(1). The court found this factor slightly favored Mother because Britton has spent most of his time with Mother due to Father's limited visitation and the order of protection. Father contends that the circumstances that led to the protective order should not be used against him. But Father's actions limited his ability to perform his parenting responsibilities. The court did not err in its determination that this factor favored Mother.

The court also determined that the second factor, which concerns each parent's willingness to foster the child's relationship with the other parent, favored Mother. *See id.* § 36-6-106(a)(2).[3] Father continues to argue that Mother kept Britton hidden from him for 42 days in spite of his admission at trial that he refused her offer to allow him visitation during this period. And he denies that Mother offered him additional parenting time. The trial court credited Mother's testimony on this issue, and we find no basis in this record to overturn the court's credibility finding. *See Richards v. Liberty Mut. Ins. Co.*, 70 S.W.3d 729, 733-34 (Tenn. 2002) ("[F]indings with respect to credibility and the weight of the evidence . . . may be inferred from the manner in which the trial court resolves conflicts in the testimony and decides the case.").

Much like the first factor, the court found that the fifth factor favored Mother because Mother had been the primary caregiver. *See* Tenn. Code Ann. § 36-6-106(a)(5)

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[3] Specifically, under factor (2) the court must consider:

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

Tenn. Code Ann. § 36-6-106(a)(2).

("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."). For the same reasons discussed previously, the evidence does not preponderate against the court's finding.

The seventh factor focuses on "[t]he emotional needs and developmental level of the child." *Id.* § 36-6-106(a)(7). Father contends that the court placed undue emphasis on socialization. We disagree. The court relied on both the greater amount of socialization Britton experienced while in Mother's care and Britton's changes in behavior after visiting Father in determining that this factor favored Mother. The evidence does not preponderate against the court's determination.

Under the eighth factor, the court evaluates the "moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the child." *Id.* § 36-6-106(a)(8). Father disputes the court's finding that the eighth factor weighed heavily against him because of the presence of drugs in his home and his behavior towards Mother. Again, the court credited the testimony of Mother's witnesses on this issue, and this record lacks sufficient evidence to overturn the court's finding. *See In re Adoption of A.M.H.*, 215 S.W.3d at 809.

Although the court did not specifically find that factor nine favored either parent, Father complains about the court's expressed concern that Father did not sufficiently encourage Britton's relationship with his paternal grandparents. *See* Tenn. Code Ann. § 36-6-106(a)(9) ("The child's interaction and interrelationships with siblings, other relatives and step-relatives, and mentors, as well as the child's involvement with the child's physical surroundings, school, or other significant activities."). The evidence in the record reflects that Britton has extended family members in close proximity to both parents' residences and interacts regularly with his maternal and paternal grandmothers. We conclude that this factor favors both parents equally.

Father asserts that the tenth factor, which looks at "the importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment," favors him because of Mother's multiple moves. *See id.* § 36-6-106(a)(10). But the court found Mother's decision to move reasonable in light of Father's behavior. And the evidence does not preponderate against the court's finding that even with her multiple moves, Mother has provided a more stable environment for Britton.

The court found that factor eleven also favored Mother based on Father's emotional abuse. *See id.* § 36-6-106(a)(11) ("Evidence of physical or emotional abuse to the child, to the other parent or to any other person."). Multiple witnesses described Father's behavior toward Mother and her family. The evidence does not preponderate against the court's finding.

Finally, Father contends that factor twelve did not favor Mother because Mother's roommate admitted to smoking marijuana before Britton was born. *See id.* § 36-6-106(a)(12) ("The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child."). The court accepted the roommate's testimony that her drug use was in the past, and Father presented no evidence to the contrary. The evidence does not preponderate against the court's finding.

After considering the foregoing factors, the court named Mother primary residential parent and awarded Father 150 days of residential parenting time.[4] Based on our review of the evidence, we cannot say that the trial court abused its discretion in fashioning this residential schedule. Our role is not to "tweak a visitation order in the hopes of achieving a more reasonable result than the trial court." *Eldridge*, 42 S.W.3d at 88. Further, the best interest analysis is a "particularly fact-intensive process." *McEvoy v. Brewer*, No. M2001-02054-COA-R3-CV, 2003 WL 22794521, at *5 (Tenn. Ct. App. Nov. 25, 2003). Eight factors favored Mother while only one favored Father. Contrary to Father's claim that the court's residential schedule was designed to limit his parenting time, the court adopted a parenting plan that increased Father's parenting time. The trial court applied the correct law, the evidence does not preponderate against its factual findings, and its decision is within the range of acceptable alternative dispositions. *See Lee Med.*, 312 S.W.3d at 524.

2. Transportation Costs

Father also complains that the court's parenting plan forces him to bear an inordinate amount of the transportation costs. The plan requires Father to transport Britton to and from daycare in Franklin for his Wednesday nights and weekend visitations. For all other exchanges, the parties meet at a halfway point designated in the plan. Father testified that his work schedule was flexible and, in addition to his Clarksville residence, he maintained an apartment in Nashville that he visited frequently. Under these circumstances, the trial court did not abuse its discretion. *See Carroll v. Corcoran*, No. M2012-01101-COA-R3CV, 2013 WL 2382292, at *4 (Tenn. Ct. App. May 29, 2013) (finding no abuse of discretion when plan required father to bear most of transportation costs because of his flexible work schedule).

[4] Father contends that the court's calculation of his parenting days is in error. We disagree. Under the parenting plan, Father has four days every other weekend, one overnight on alternating Wednesdays, five days over the winter holidays, three nonconsecutive weeks in the summer, his birthday and Father's Day, and seven additional holidays during even years. Although the parenting plan allows Father to choose when to exercise his summer parenting time, the plan specifies that the alternating weekend schedule continues during the summer months. Based on the residential schedule outlined in the parenting plan, we calculate that Father has 149-152 days of parenting time, depending on the alternating holiday schedule.

C. CHILD SUPPORT ORDER

1. Evidentiary Hearing

First, we address Father's argument that the juvenile court erred in failing to conduct a second evidentiary hearing on child support after the Child Support Magistrate did not accept the referral. Both parents submitted income evidence at the June 2016 hearing. And when the juvenile court announced its intention to set child support based on the previously submitted evidence, Father did not object or seek to submit additional evidence:

> THE COURT: Right. I'm setting child support today.
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> MS. MASSEY: Yes.
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> MR. OLSON [Father's attorney]: My client is not here, because when --
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> THE COURT: Well, I'm not hearing any proof. I've heard all the proof when I was here earlier. I heard the testimony, Mr. Olson.
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> MR. OLSON: Okay. Well, then set child support. I --
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> . . . .
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> MR. OLSON: . . . Your Honor said you have enough evidence to set child support?
>
> THE COURT: I do.
>
> MS. MASSEY: We're fine with you just – I'm fine if you just, with what you've heard.
>
> MR. OLSON: If you feel like you've heard enough evidence to --
>
> THE COURT: Based on the testimony I heard on June the 19th, I mean, it's going to be a nunc pro tunc obviously back to then. That's going to be the testimony and evidence I heard at that time to set child support.

Under these circumstances, Father cannot complain on appeal that the court refused to hear his evidence. *See* Tenn. R. App. P. 36(a) ("Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of

an error."); *Grandstaff v. Hawks*, 36 S.W.3d 482, 488 (Tenn. Ct. App. 2000) (holding that failure to object to the admission of evidence precludes raising the evidentiary issue on appeal).

2. Child Support Guidelines

But Father also contends that the court did not follow the Tennessee Child Support Guidelines in determining the amount of child support awarded. *See* Tenn. Code Ann. § 36-5-101(e)(1)(A) (2017). Although child support decisions are discretionary, these decisions "must be made within the strictures of the Child Support Guidelines." *Richardson v. Spanos*, 189 S.W.3d 720, 725 (Tenn. Ct. App. 2005).[5]

The first step in setting child support is accurately determining the parties' gross incomes. Tenn. Comp. R. & Regs. 1240-2-4-.04(3) (2008); *see also Massey v. Casals*, 315 S.W.3d 788, 795 (Tenn. Ct. App. 2009) ("The fairness of a child support award depends on an accurate determination of both parents' gross income or ability to support."). The court found that Father was self-employed. "We have long recognized the difficulty of establishing the income of a self-employed business owner and the potential for manipulation of income in that situation." *Owings v. Owings*, No. W2005-01233-COA-R3-CV, 2006 WL 3410702, at *8 (Tenn. Ct. App. Nov. 27, 2006) (citing *Koch v. Koch*, 874 S.W.2d 571, 578 (Tenn. Ct. App. 1993)).

Here, Father owns two successful car dealerships in the Clarksville area and has sufficient income to support a lavish lifestyle. But according to Father's most recent federal income tax return, he reported negative taxable income. Even though his dealerships generated over a million dollars in gross receipts for 2014, he reported a $117,000 loss for the year. His reported gross income of $217,850 from car sales was eclipsed by $335,000 in claimed business expenses, including $14,000 in depreciation.

Mother produced a pay stub purporting to show Father's gross income for a two week period in July 2014. Although Father denied that the pay stub was authentic, Mother testified that Father produced the pay stub at an earlier hearing.

For a self-employed parent, gross income is determined by adding the total income from business operations and then subtracting the ordinary and reasonable expenses necessary to produce that income. Tenn. Comp. R. & Regs. 1240-2-4-.04(3)(a)(3)(i). Recognizing the potential for a self-employed parent to manipulate reported income by inflating expenses, the Guidelines prohibit deductions for excessive promotional, travel, car, or personal expenses. *Id.* 1240-2-4-.04(3)(a)(3)(ii)(I). And deductions for equipment depreciation, accelerated depreciation, investment tax credits, and the cost of home

[5] Support for the child of unmarried parents is established using the same standards applicable to divorce cases. Tenn. Code Ann. § 36-2-311(a)(11).

offices are specifically disallowed for child support purposes. *Id.* 1240-2-4-.04(3)(a)(3)(ii)(II); *see Taylor v. Fezell*, 158 S.W.3d 352, 358 (Tenn. 2005) ("These self-employment guidelines are fashioned in such a way as to authorize the trial court to address the potential of a self-employed obligor to manipulate income for the purpose of avoiding payment of child support."). Once reasonable expenses have been subtracted, a further adjustment must be made for items such as self-employment tax, FICA, and social security tax. Tenn. Comp. R. & Regs. 1240-2-4-.04(4).

"The goals of the Guidelines are best met when current and accurate information of a parent's income is used." *Radebaugh v. Radebaugh*, No. M2005-02727-COA-R3-CV, 2006 WL 3044155, at *10 (Tenn. Ct. App. Oct. 26, 2006). We have previously recognized that "[w]hile a federal income tax return is a valuable source of data when calculating an obligor's child support obligation under the Guidelines, . . . the object of a tax return is very different from that of the Guidelines." *Abercrombie v. Abercrombie*, No. E2003-01226-COA-R3-CV, 2004 WL 626713, at *7 (Tenn. Ct. App. Mar. 29, 2004). The definition of gross income and the type of allowable deductions in the Guidelines are not the same as those in the federal tax code. *Id.* Thus, our courts scrutinize a self-employed parent's reported business expenses to ensure that they are reasonable and necessary. *See Howard v. Howard*, No. 03A01-9811-CV-00374, 1999 WL 427596, at *2 (Tenn. Ct. App. June 25, 1999). And courts must disallow any deductions that are not permitted by the Guidelines. *See Norton v. Norton*, No. W1999-02176-COA-R3-CV, 2000 WL 52819, at *7 (Tenn. Ct. App. Jan. 10, 2000).

When it is apparent that a self-employed parent's actual income exceeds reported income, a court may base its gross income determination on other evidence of income. *See Mays v. Mays*, No. M2010-02479-COA-R3-CV, 2012 WL 1424970, at *2-3 (Tenn. Ct. App. Apr. 23, 2012) (concluding court did not err in disregarding income information in self-employed parent's tax return and setting gross income based on other evidence of income, including bank deposits, bank forms, and business invoices); *Eatherly v. Eatherly*, No. M2000-00886-COA-R3-CV, 2001 WL 468665, at *5 (Tenn. Ct. App. May 4, 2001) ("Where issues are raised about actual income from self-employment, information beyond pay stubs or individual tax returns may be needed."). For example, a court may determine gross income by analyzing the self-employed parent's bank deposits. *See Sellers v. Walker*, No. E2014-00717-COA-R3-CV, 2015 WL 1934489, at *4 (Tenn. Ct. App. Apr. 29, 2015) (concluding "that the trial court did not err by considering and accepting the amount of Father's deposits to his personal bank account as the best evidence of his actual income"); *Parris v. Parris*, No. M2006-02068-COA-R3-CV, 2007 WL 2713723, at *11-12 (Tenn. Ct. App. Sept. 18, 2007) (affirming trial court's method of determining self-employed parent's gross income when the court set gross income based on parent's bank deposits and business expenses after determining that his income information in his tax returns was unreliable).

Still, a court must base its gross income determination on some reliable evidence in the record. *See Radebaugh*, 2006 WL 3044155, at *11 (vacating court's child support award when court disregarded self-employed parent's evidence of income and set gross income without sufficient reliable evidence). Or, in the absence of reliable evidence, a court may impute income as provided in the Guidelines. *See* Tenn. Comp. R. & Regs. 1240-2-4.04(3)(a)(2)(i)(II), (3)(a)(2)(iv); *see also Eatherly*, 2001 WL 468665, at *5 (holding that when a self-employed parent's reported income is low, it may be appropriate to impute income).

Regrettably, in this case our review is hampered by the juvenile court's failure to make specific findings of fact that would explain its method for calculating Father's gross income as $6000. We cannot discern whether the court found Father's claimed business expenses unreasonable or disallowed his depreciation deduction or if the court's income figure is based on the evidence of Father's lifestyle, the pay stub, or some other evidence.

Tennessee Rule of Civil Procedure 52.01 requires trial courts to make findings of fact and conclusions of law, even if neither party requests them. *See, e.g.*, *Ward v. Ward*, No. M2012-01184-COA-R3-CV, 2013 WL 3198157, at *14 (Tenn. Ct. App. June 20, 2013). Rule 52.01 provides, in relevant part, "In all actions tried upon the facts without a jury, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment." Tenn. R. Civ. P. 52.01. "Simply stating the trial court's decision, without more, does not fulfill this mandate." *Barnes v. Barnes*, No. M2011-01824-COA-R3-CV, 2012 WL 5266382, at *8 (Tenn. Ct. App. Oct. 24, 2012).

If we cannot determine from the trial court's written order what legal standard it applied or what reasoning it employed, then the trial court has not complied with Rule 52.01. *See Ray v. Ray*, No. M2013-01828-COA-R3-CV, 2014 WL 5481122, at *16 (Tenn. Ct. App. Oct. 28, 2014). The reviewing court must be able to ascertain "the steps by which the trial court reached its ultimate conclusion on each factual issue." *Lovlace v. Copley*, 418 S.W.3d 1, 35 (Tenn. 2013) (quoting 9C CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 2579, at 328 (3d ed. 2005)). "Without such findings and conclusions, this court is left to wonder on what basis the [trial] court reached its ultimate decision." *Hardin v. Hardin*, W2012-00273-COA-R3-CV, 2012 WL 6727533, at *3 (Tenn. Ct. App. Dec. 27, 2102) (quoting *In re K.H.*, No. W2008-01144-COA-R3-PT, 2009 WL 1362314, at 88 (Tenn. Ct. App. May 15, 2009)). We face precisely that scenario in this case.

Although "the appellate court may choose to conduct its own independent review of the record" in the absence of sufficient findings of fact, it is not prudent to do so in this case. *Williams v. Singler*, No. W2012-01253-COA-R3-JV, 2013 WL 3927934, at *10 (Tenn. Ct. App. July 31, 2013); *see also Lovlace*, 418 S.W.3d at 36; *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). Ascertaining Father's actual income is not a clear legal issue and the basis of the court's calculation is not readily ascertainable from this record. *See Rogin v. Rogin*, No. W2012-01983-COA-R3-CV, 2013 WL 3486955, at *7-8 (Tenn. Ct. App. July 10, 2013) (refusing to conduct an independent review in the absence of adequate findings of fact concerning the calculation of mother's income for child support purposes).

Thus, we vacate the juvenile court's child support order and remand for entry of an order in compliance with Rule 52.01. *See id.* Pending entry of the trial court's order on remand, the provisions of the temporary child support order entered on July 11, 2016, will remain in effect.

3. Work-Related Childcare Costs

Finally, Father argues that the court erred in including Mother's claimed work-related childcare costs on the child support worksheet. Mother testified at trial that she had enrolled Britton in daycare while she worked. According to the fee schedule Mother submitted, Mother was paying $156 per week for part-time enrollment. But she testified that at the time of the hearing, she had changed to full-time enrollment, which increased the cost to $310 per week.[6]

Under the Guidelines, the cost of work-related childcare "shall be divided between the parents pro rata" based on the income of each parent. Tenn. Comp. R. & Regs. 1240-2-4-.04(8)(a)(1), (3). The Guidelines define "work-related childcare costs" as those expenses for the care of the child "which are due to employment of either parent or non-parent caretaker." *Id.* 1240-2-4-.02(29). And these childcare expenses must be "appropriate to the parents' financial abilities and to the lifestyle of the child if the parents and child were living together." *Id.* 1240-2-4-.04(8)(c)(1).

At trial, Father voiced no objection to the daycare cost. And he has failed to identify any evidence in this record that Mother's childcare expenses are disproportionate to the parents' earnings. *Cf. In re Grace N.*, No. M2014-00803-COA-R3-JV, 2015 WL 2358630, at *7 (Tenn. Ct. App. May 14, 2015) (concluding that trial court abused its discretion in allowing mother's work-related childcare expenses when father identified evidence in record showing the expenses were disproportionate).

We also find Father's contention that the court should have treated the cost of Britton's daycare as an extraordinary educational expense unpersuasive. Extraordinary educational expenses include, but are not limited to, "tuition, room and board, fees,

[6] Enrollment costs are based on the age of the child. After Britton's second birthday in July 2016, his daycare cost decreased to $300 per month. The court used this lower amount to calculate Mother's work-related childcare costs. *See* Tenn. Comp. R. & Regs. 1240-2-4-.02(29)(c).

books, and other reasonable and necessary expenses associated with special needs education or private elementary and secondary schooling." Tenn. Comp. R. & Regs. 1240-2-4-.03(6)(b)(5)(i). These expenses may be added to the presumptive child support order as a deviation. *Id.* 1240-2-4-.07(2)(d)(1)(i).

The trial court did not abuse its discretion in treating the daycare costs as work-related childcare expenses. Britton is only two years old, and he does not have special needs. While Mother described the enrichment classes offered at the daycare in glowing terms, she enrolled Britton in daycare because he needed to be cared for while she was at work. *Cf. Henegar v. Henegar*, No. M2015-01780-COA-R3-CV, 2016 WL 3675145, at *16 (Tenn. Ct. App. June 29, 2016) (differentiating between tuition costs at private preschool which provided specialized care for child's developmental needs and the costs of extended care necessary because of parents' employment); *Lubell v. Lubell*, No. E2014-01269-COA-R3-CV, 2015 WL 7068559, at *21 (Tenn. Ct. App. Nov. 12, 2015) (holding that private school tuition for fourteen-year-old with autism more appropriately treated as extraordinary educational expense rather than work-related childcare).

D. FRIVOLOUS APPEAL

Mother seeks an award of attorney's fees as damages for a frivolous appeal. *See* Tenn. Code Ann. § 27-1-122 (2017). The statute authorizing an award of damages for a frivolous appeal "must be interpreted and applied strictly so as not to discourage legitimate appeals." *See Davis v. Gulf Ins. Grp.*, 546 S.W.2d 583, 586 (Tenn. 1977) (citing the predecessor to Tennessee Code Annotated § 27-1-122). A frivolous appeal is one "utterly devoid of merit." *Combustion Eng'g, Inc. v. Kennedy*, 562 S.W.2d 202, 205 (Tenn. 1978). We do not find this appeal devoid of merit or perceive that it was taken solely for delay. Thus, we decline to award Mother her attorney's fees on this basis.

III.

For the foregoing reasons, we vacate the juvenile court's child support order and remand this case for entry of an order in compliance with Tennessee Rule of Civil Procedure 52.01. In all other respects, we affirm.

W. NEAL MCBRAYER, JUDGE