IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
July 21, 2015 Session

HOLLY THERESA SELF v. JASON WAYNE SELF

Appeal from the Chancery Court for Lincoln County
No. 12963 J.B. Cox, Chancellor

No. M2014-02295-COA-R3-CV – Filed September 23, 2015

The paramount issue in this parental relocation action arises from a contractual provision in the parenting plan that reads: "If either party should relocate from Lincoln County, Tennessee, the children shall reside primarily with the party remaining so as to keep the children in the Lincoln County School System." The parties were divorced in 2009 at which time Mother was designated the primary residential parent. In 2014, Mother notified Father that she intended to relocate to Brentwood, Tennessee, because her husband accepted a job there. Father filed a petition opposing relocation relying, in part, on a contractual provision in the parenting plan. Because the parents were exercising substantially equal parenting time, the relocation issue was to be decided pursuant to Tenn. Code Ann. § 36-6-108(c), which states that no presumption in favor of or against relocation with the child shall arise and that "the court shall determine whether or not to permit relocation of the child based upon the best interests of the child." Tenn. Code Ann. § 36-6-108(c). Following a full evidentiary hearing, the trial court denied Mother's request to relocate. The sole basis for the ruling was that Mother was estopped to relocate with the children based on the parenting plan. Having decided the case based on estoppel, the court stated it was not necessary to conduct a best interest analysis. Mother filed a Motion to Alter or Amend insisting the trial court was required to conduct a best interest analysis pursuant to Tenn. Code Ann. § 36-6-108(c). The court then conducted the required analysis and additionally found that relocation was not in the children's best interests. The court modified its order stating that it was denying relocation on the basis of estoppel and its best interest findings. We have determined that the trial court erred in finding Mother was estopped to relocate based upon the parenting plan because the parties contractual agreement merged into the final decree, and the trial court retained jurisdiction on issues concerning the care, custody, and control of the minor children. Nevertheless, we affirm the decision to deny relocation based upon the trial court's finding that relocation was not in the children's best interests. Mother also filed a petition to hold Father in civil contempt for failing to pay a debt for which they were jointly liable. The court ruled that Father was not in civil contempt because he had cured his contemptuous conduct and we find no error with the contempt ruling.

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

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the Court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Dana C. McLendon, III, Franklin, Tennessee, for the appellant, Holly Theresa Self.

Jason C. Davis and Louisa Jackson Davis, Lewisburg, Tennessee, for the appellee, Jason Wayne Self.

OPINION

Holly Self ("Mother") and Jason Self ("Father") lived in Lincoln County, Tennessee, during their marriage. They have three sons: Steven, born in 2001; Sean, born in 2004; and Trent, born in 2005.

Mother and Father divorced in 2009, and the Permanent Parenting Plan adopted in the divorce decree designated Mother the primary residential parent and awarded the parents substantially equal parenting time. Father was awarded 182 days and Mother 183 days based on an alternating week-to-week schedule.

Following the divorce, both parents continued to live in Lincoln County and adhered to the original parenting plan. Each parent soon remarried. Father gained a minor stepchild when he remarried and Mother had three additional children with her new husband over the next four years.[1] During this time, Mother became a stay-at-home mom. Father continued to work full-time as an operator for the Lincoln County Board of Public Utilities until he took a new job working for Frito Lay in Fayetteville, the county seat of Lincoln County.

In February 2014, Father received an email from Mother stating that she and the children would be moving to Brentwood, Tennessee. The parties' three children were 12, 10, and 8 years old at the time. On March 21, 2014, Father filed a Petition in Opposition to Relocation and/or for Change of Custody requesting that he be named the primary residential parent based, in part, upon paragraph J of the parenting plan, which reads:

[1] Mother's additional children were born in 2009, 2012, and 2013.

> If either party should relocate from Lincoln County, Tennessee, the children shall reside primarily with the party remaining so as to keep the children in the Lincoln County School System.[2]

Mother filed a response and counter-petition for relocation and modification of the permanent parenting plan. She requested to relocate to Williamson County due to her husband's new employment and to keep all six of her children together.

Following an evidentiary hearing, the trial court denied Mother's relocation, finding that Mother was estopped from invoking Tennessee's parental relocation statute, codified at Tenn. Code Ann. § 36-6-108, because of the agreed upon restraint against relocation in the parenting plan. Based on the estoppel ruling, the court announced that it was not necessary to conduct a best interest analysis as prescribed by the relocation statute. The court then designated Father the primary residential parent and awarded Mother three weekends of parenting time per month, the first and last weeks of summer vacation, and every other week during summer vacation.

Mother challenged the trial court's ruling by filing a Motion to Alter or Amend. She contended that the court erred in denying her permission to relocate with the children due, in part, to the fact the court failed to conduct a best interest analysis pursuant to Tenn. Code Ann. § 36-6-108(c). Following a hearing on the motion, the court agreed to conduct a best interest analysis. After making specific findings regarding the relevant factors under Tenn. Code Ann. § 36-6-108(c), the court found that relocation was not in the children's best interests. The court also stated that "[t]he prior order of the Court is modified to include this analysis as an alternative basis to the Court's use of estoppel."

In the interim, and while that relocation petition was pending, Mother filed a Petition for Contempt alleging that Father had filed bankruptcy and willfully failed to pay a debt on a vehicle assigned to him in the Marital Dissolution Agreement ("MDA").[3] As a result, the vehicle had been repossessed and a judgment entered against Mother for the repayment of the debt. The trial court found that the parties agreed to temporarily and equally divide a $50 monthly payment on the indebtedness until the matter is settled by the parties or heard by the court and further found that Father was not in willful contempt because he cured his contemptuous conduct by making his monthly payments in accordance with the Agreed Order. Further, the court found that Father now had the ability to pay the indebtedness, and ordered Father to begin paying $200 per month to the court to pay down the judgment assessed against Mother.

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[2] It is undisputed that Mother insisted upon this provision to restrict Father from moving with the children should he join the military.

[3] The Marital Dissolution Agreement, which was also incorporated into the final decree, assigned Husband a 2007 Ford F-150 and the $16,000 loan associated with the vehicle.

ANALYSIS

Mother contends that the trial court applied an incorrect legal standard by enforcing the relocation provision in the parenting plan. She further argues that the evidence preponderates against the trial court's findings of fact upon which it concluded that relocation was not in the children's best interests. Mother also contends that the trial court erred by failing to hold Father in contempt.

I. THE PARENTAL RELOCATION STATUTE

In 1998, the General Assembly enacted Tenn. Code Ann. § 36-6-108 to provide consistency in parental relocation proceedings and a framework for parents and courts to determine whether the move should be permitted. *Collins v. Coode*, No. M2002-02557-COA-R3-CV, 2004 WL 904097, at *2 (Tenn. Ct. App. Apr. 27, 2004). The statute creates a presumption in favor of the relocating custodial parent who spends substantially more time with the child than the non-custodial parent. *Id*. (citing *Elder v. Elder*, No. M1998-00935-COA-R3-CV, 2001 WL 1077961, at *5 (Tenn. Ct. App. Sept. 14, 2001); *Caudill v. Foley*, 21 S.W.3d 203, 211 (Tenn. Ct. App. 1999)). However, "[*i*]*f the parents are actually spending substantially equal intervals of time with the child*, . . . [*n*]*o presumption in favor of or against the request to relocate with the child shall arise*." Tenn. Code Ann. § 36-6-108(c) (emphasis added). In such circumstance, the statute mandates: "The court shall determine whether or not to permit relocation of the child based upon the best interests of the child." Tenn. Code Ann. § 36-6-108(c).

II. MUTUAL AGREEMENT PROHIBITING PARENTAL RELOCATION

Upon learning of Mother's proposed relocation, Father filed a Petition in Opposition to Relocation and/or for Change of Custody based upon the provision in the parenting plan that prohibited relocation with the children. Paragraph J of the parenting plan states: "If either party should relocate from Lincoln County, Tennessee, the children shall reside primarily with the party remaining so as to keep the children in the Lincoln County School System."

Following an evidentiary hearing, and without conducting a best interest analysis, the trial court ruled that Mother was estopped to relocate with the children based upon paragraph J in the parenting plan and designated Father as the primary residential parent. The trial court explained its initial ruling as follows:

> [G]iven that the parties agreed to the restriction in the Permanent Parenting Plan . . . limiting relocation of the children from Lincoln County, Tennessee, [Mother] is estopped from invoking the Parental Relocation Statute and seeking to relocate the children from Lincoln County,

> Tennessee. Given this estoppel, the Court affirmatively finds that it is not necessary to conduct a best interest analysis prescribed by the Parental Relocation Statute in regard to the proposed relocation.

Mother contends the trial court erred by applying the doctrine of estoppel based on an unenforceable agreement in the parenting plan.

Provisions in a divorce decree that pertain to the care, custody, and control of minor children "shall remain within the control of the court and be subject to such changes or modifications as the exigencies of the case may require."[4] Tenn. Code Ann. § 36-6-101(a). When parents "contract upon issues considered part of a legal duty or that remain within the jurisdiction of the court, the agreement of the parties becomes merged into the decree and loses its contractual nature." *Helton v. Helton*, No. M2002-02792-COA-R3-CV, 2004 WL 63478, at *5 (Tenn. Ct. App. Jan. 13, 2004) (citing *Penland v. Penland*, 521 S.W.2d 222, 224 (Tenn. 1975)). "[T]he reason for stripping the agreement of the parties of its contractual nature is the continuing statutory power of the Court to modify its terms when changed circumstances justify." *Helton*, 2004 WL 63478, at *5. (quoting *Penland*, 521 S.W.2d at 224). As we discussed in detail in *Helton*:

> Our courts have accordingly held that when a marital dissolution agreement with regard to custody is incorporated into a final decree, it is considered to have merged into that decree. *Vaccarella v. Vaccarella*, 49 S.W.3d 307, 314 (Tenn. Ct. App. 2001). Such agreements thereby lose their contractual nature and remain subject to the court's continuing jurisdiction, so that they may be modified as circumstances change. *Hill v. Robbins*, 859 S.W.2d 355, 358 (Tenn. Ct. App. 1993). The parties cannot bargain away the court's continuing jurisdiction over the care of the child and cannot irrevocably agree to the best interests of the child without regard to future developments or changes of circumstances.
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> *Included in agreements on the care, custody and control of children are those that attempt to restrict the custodial parent's ability to relocate with the children. Hill*, 859 S.W.2d at 358; *Smith v. Kelley*, No. 01A01-9711-

[4] Tenn. Code Ann. § 36-6-101(a)(1) states in pertinent part:

> In a suit for annulment, divorce or separate maintenance, where the custody of a minor child or minor children is a question, the court may, notwithstanding a decree for annulment, divorce or separate maintenance is denied, award the care, custody and control of such child or children to either of the parties to the suit or to both parties in the instance of joint custody or shared parenting, . . . as the welfare and interest of the child or children may demand, . . . Such decree shall remain within the control of the court and be subject to such changes or modification as the exigencies of the case may require.

> CH-00657, 1998 WL 743731, at *6 (Tenn. Ct. App. Oct. 27, 1998) (no Tenn. R. App. P. 11 application filed) ("Provisions which restrict where the child shall reside are provisions which concern the care, custody and control of the child.") In both *Hill* and *Smith*, the parties had entered into MDA provisions that prohibited the custodial parent from relocating with the child. The relocation proceedings in both cases predated the enactment of Tenn. Code Ann. § 36-6-108, so the application of the statute was not at issue. In both cases, this court determined that, regardless of the MDA provision, a proposed relocation was subject to the court's continuing jurisdiction over custody matters and would be determined by the court using applicable legal principles. *Hill*, 859 S.W.2d at 356; *Smith*, 1998 WL 743731, at *7.

Helton, 2004 WL 63478, at *5 (emphasis added). Based on this reasoning, the *Helton* court concluded that a relocation provision in the parents' MDA "was not effective so as to deprive the court of its jurisdiction to allow relocation by the mother." *Id*. at *6. The *Helton* court went on to hold that the trial court erred when it "measured the relocation issue against the parties' agreement, not the statutory standards." *Id*.

Based upon the foregoing authorities, the relocation provision in the parenting plan which mandated that "the children shall reside primarily with the party remaining so as to keep the children in the Lincoln County School System" lost its contractual nature when it merged into the final decree of divorce. Moreover, issues concerning the care, custody, and control of the minor children remain "subject to the court's continuing jurisdiction, so that they may be modified as circumstances change." *Helton*, 2004 WL 63478, at *6 (citing *Hill*, 859 S.W.2d at 358). Accordingly, Mother was not estopped to relocate. As Tenn. Code Ann. § 36-6-108(c) mandates, whether Mother should be permitted to relocate must be based on the applicable best interest factors, not an unenforceable agreed upon restraint on relocation. *Helton*, 2004 WL 63478, at *5. Therefore, we reverse the trial court's ruling that Mother was estopped to relocate based on the relocation provision in the parenting plan.

We shall now address Mother's contention that the trial court erred in finding that relocating with the children to Brentwood was not in the children's best interests.

III. THE TRIAL COURT'S BEST INTEREST ANALYSIS

For the reasons explained above, the trial court retained the authority to grant or deny Mother's request to relocate depending on whether relocation was or was not in the children's best interests. Moreover, because the parents spent substantially equal amounts of time with the children, the applicable standard was that set forth in Tenn. Code Ann. § 36-6-108(c), which expressly states that "[*n*]*o presumption in favor of or against the*

request to relocate with the child shall arise." Tenn. Code Ann. § 36-6-108(c) (emphasis added).

In response to Mother's Motion to Alter or Amend the trial court's initial ruling that was based solely on the doctrine of estoppel, the court conducted a best interest analysis based upon the eleven factors set forth in Tenn. Code Ann. § 36-6-108(c) prior to the 2014 amendment.[5] They read as follows:

> (1) The extent to which visitation rights have been allowed and exercised;
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> (2) Whether the primary residential parent, once out of the jurisdiction, is likely to comply with any new visitation arrangement;
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> (3) The love, affection and emotional ties existing between the parents and child;
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> (4) The disposition of the parents to provide the child with food, clothing, medical care, education and other necessary care and the degree to which a parent has been the primary caregiver;
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> (5) 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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> (6) The stability of the family unit of the parents;
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> (7) The mental and physical health of the parents;
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> (8) The home, school and community record of the child;
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> (9)(A) The reasonable preference of the child if twelve (12) years of age or older;
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> (B) The court may hear the preference of a younger child upon request. The preferences of older children should normally be given greater weight than those of younger children;

[5] Tenn. Code Ann. § 36-6-108(c) was amended effective July 1, 2014. *See* 2014 Pub. Acts, c. 617, § 4. Prior to the 2014 amendment, Tenn. Code Ann. § 36-6-108(c) specified eleven best interest factors the court was to consider. Tenn. Code Ann. § 36-6-108(c) (2014) now reads: "The court shall consider all relevant factors including those factors found in § 36-6-106(a)(1)-(15)." In this case, the trial court considered the eleven best interest factors identified in Tenn. Code Ann. § 36-6-108(c) (2013), not the fifteen best interest factors identified in Tenn. Code Ann. § 36-6-106(a)(1)-(15) (2014), and neither party takes issue with that.

(10) Evidence of physical or emotional abuse to the child, to the other parent or to any other person; and

(11) 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.

Tenn. Code Ann. § 36-6-108(c) (2013) (amended July 1, 2014). The trial court's findings of fact are set forth in its Memorandum on Petitioner's Motion to Alter or Amend or for a New Trial. The court's application of the statutory factors is as follows:

As to T.C.A. § 36-6-108(c) factor one (1) the parties have been spending equal time with the children. The move will result in a plan that will reduce the opportunity for a week on week off schedule. This factor is also analyzed in light of the parties' prior agreement that if one of them moved the other parent would become the primary residential parent. This factor weighs against relocation and favors the Father.

As to factor two (2), the Court is not certain that Mother would comply with the Court's orders since she moved without Court permission to do so and has been bringing the children back and forth from [Brentwood] on a week on week off basis. This factor must also be analyzed in light of paragraph J of the parties' Permanent Parenting Plan. This provision clearly contemplates a move such as this one and such move was clearly foreseeable especially in light of Mother's testimony concerning why she had the provision put in the final divorce decree. Given the parties prior contemplation in their Permanent Parenting Plan and given the fact that the real reason for the move is for the convenience of Mother's present husband and his job, this factor favors the Father and does not favor allowing relocation.

As to factor three (3), the children are bonded to both parents and this factor favors neither parent. Looking at factor four (4), Mother is totally dependent on her present husband for her ability to provide the children with food, clothing etc. She has been able to stay at home and be the primary caregiver. She has provided the children a good home in Lincoln County. They chose to move to [Brentwood] before the Court ruled on the petition and did not consider the ramifications of paragraph J of the permanent parenting plan in making that decision. Frankly they did not consider the ramifications of the move on all their children. Father has the ability to provide the children with the necessities and the time to spend with them. In light of all the facts this factor weighs against relocation.

> As to factor five (5), the children have had great continuity in their lives and they have lived in a stable home environment in Lincoln County where they have been surrounded not only by their parents but also by an extended family that loves and cares for them. The children enjoy extra-curricular activities that they would not be able to transition to. The Court places great weight on this factor. This factor favors the Father and weighs against relocation. Upsetting this balance for the sake of the new job enjoyed by Mother's present husband is not persuasive to the Court.
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> Both family units are stable and factor six (6) does not favor either parent. Pursuant to factor seven (7) both parties appear to be mentally and physically healthy.
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> . . .
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> Factor eight (8), the home, school and community record of the children also weighs heavily against relocation. It is in the children's best interests to remain in the community where they have lived their whole lives where they have been surrounded by their parents and by an extended family that cares deeply for them and is invested in their success. This is especially true in light of paragraph J of the Permanent Parenting Plan where the parties clearly contemplated the children remaining in the Lincoln County School system. This factor weighs heavily against relocation.
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> Preferences and abuse are not an issue in this case and are not a part of the court's consideration. See factors nine (9) and ten (10) . . . . Lastly, as to factor eleven (11), the Court is also not concerned with the character and behavior of the other people residing in and frequenting the homes of the Mother or Father. In fact, the character and behavior of the parties' present spouses is not at issue.

Mother challenges the court's findings on two general grounds. One, she contends the court's findings were unduly influenced by the parties' prior agreement that if one of them moved from Lincoln County, the parent who remained would become the primary residential parent. Two, she contends the evidence in the record preponderates against the trial court's findings.

IV. DE NOVO REVIEW OF THE TRIAL COURT'S FINDINGS

In this case, we have the benefit of detailed findings of fact by the trial court, which comply with the mandate in Tenn. R. Civ. P. 52.01. We review a trial court's factual findings de novo, accompanied by a presumption of the correctness of the finding of fact, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d);

see Boarman v. Jaynes, 109 S.W.3d 286, 289-90 (Tenn. 2003). For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect. *Walker v. Sidney Gilreath & Assocs.*, 40 S.W.3d 66, 71 (Tenn. Ct. App. 2000); *Realty Shop, Inc. v. R.R. Westminster Holding, Inc.*, 7 S.W.3d 581, 596 (Tenn. Ct. App. 1999). We will also give great weight to a trial court's factual findings that rest on determinations of credibility and weight of oral testimony. *Estate of Walton v. Young*, 950 S.W.2d 956, 959 (Tenn. 1997); *Woodward v. Woodward*, 240 S.W.3d 825, 828 (Tenn. Ct. App. 2007); *B & G Constr., Inc. v. Polk*, 37 S.W.3d 462, 465 (Tenn. Ct. App. 2000).

The presumption of correctness in Tenn. R. App. P. 13(d) applies only to findings of fact, not to conclusions of law. *Blair v. Brownson*, 197 S.W.3d 681, 683-84 (Tenn. 2006). Accordingly, no presumption of correctness attaches to the trial court's conclusions of law and our review is de novo. *Id.*

It is readily apparent that some of the trial court's findings were influenced to varying degrees by paragraph J of the parenting plan, wherein the parties agreed in 2009 that if one of them moved away, the parent who remained in Lincoln County would be the primary residential parent. Having already concluded that the relocation provision is unenforceable, it would be error for the trial court to implicitly enforce paragraph J. Nevertheless, it is undisputed that the parents were in agreement in 2009 that it was in the children's best interests to reside primarily with the parent remaining in Lincoln County. Thus, we find no error with the trial court including this undisputed fact within its findings of fact. Further, we find no error with the trial court's statement: "While it is clear to the Court that it retains the jurisdiction over the best interest of minor children, what is less clear is why the Court should just ignore the considered judgment of parents who agreed that education in the Lincoln County School System was of a paramount concern of theirs." Contrary to Mother's contention, the trial court was not required to ignore the considered judgment of the parents in 2009 when they agreed to paragraph J. Thus, we have concluded that the trial court acted appropriately by considering that fact along with the parents' respective explanations of why paragraph J was or was not in the children's best interests at the time of trial, along with all other relevant factors, to determine what was in the children's best interests when the case was tried in 2014.

As for the trial court's findings concerning the eleven factors identified in Tenn. Code Ann. § 36-6-108(c) in effect at the time,[6] the court found that factors 3, 6, 7, 9, 10, and 11 inconsequential. Therefore, we will review the remaining factors, 1, 2, 4, 5 and 8,

[6] As noted earlier, Tenn. Code Ann. § 36-6-108 no longer contains a list of factors to be considered; instead, the last sentence of Tenn. Code Ann. § 36-6-108(c)(2014) now reads: "The court shall consider all relevant factors including those factors found in § 36-6-106(a)(1)-(15)."

all of which the court found to weigh against relocation, to determine whether the evidence preponderates against the trial court's findings.

In its analysis of factor (1), concerning the extent to which visitation rights have been allowed and exercised, the trial court found that the parties have been spending equal time with the children and the evidence in the record fully supports this finding. The court then correctly noted that to relocate, if permitted, "will result in a plan that will reduce the opportunity for a week on week off schedule," which is also supported by the record. The court then stated that it analyzed this factor "in light of the parties' prior agreement that if one of them moved the other parent would become the primary residential parent." Based on these findings, the court concluded that factor (1) weighed against relocation and, thus, favors Father. The undisputed fact is that the parents were spending substantially equal time with the children under the existing parenting plan and a relocation would by necessity require a significant reduction in the parenting time of one of the parents. The record reveals that the children have thrived under the plan that afforded equal parenting time, thus, even without considering paragraph J, we have determined that the evidence does not preponderate against the court's finding that factor (1) weighs against relocation.

Factor (2) pertains to whether the primary residential parent, once out of the jurisdiction, is likely to comply with any new visitation arrangements. In its analysis of factor (2) the court stated that it was "not certain that Mother would comply with the Court's orders since she moved without Court permission to do so and has been bringing the children back and forth from [Brentwood] on a week on week off basis." The evidence in the record does not preponderate against this finding for Mother did indeed move the children to Brentwood without court approval; however, to be fair, she did bring them back every other week to facilitate Father's parenting time. Nevertheless, she was not authorized to move the children without court approval. The evidence does not preponderate against the trial court's finding that Mother may not comply with any new visitation arrangement; therefore, this factor does not favor relocation.

Factor (4) concerns the disposition of the parents to provide the children with food, clothing, medical care, education, and the degree to which each parent has been the primary caregiver. In its analysis of this factor the court noted that "Mother is totally dependent on her present husband for her ability to provide the children with food, clothing," that she "provided the children a good home in Lincoln County," and that she and her husband "chose to move to [Brentwood] before the Court ruled on the petition and did not consider the ramifications of paragraph J of the permanent parenting plan in making that decision. Frankly they did not consider the ramifications of the move on all their children." The court then noted that "Father has the ability to provide the children with the necessities and the time to spend with them. In light of all the facts this factor weighs against relocation."

We respectfully disagree with the trial court's finding that factor (4) weighs against relocation. While the evidence supports the trial court's finding that neither parent was "the primary caregiver," for they shared this responsibility, and each parent had a similar disposition to provide the children with food, clothing, and medical care, the evidence preponderates in favor of a finding that Mother had been more involved in the children's education. Nevertheless, the totality of the evidence concerning factor (4) does not weigh in favor of or against relocation.

Factor (5) focuses on the importance of continuity in the children's lives and the length of time they have lived in stable, satisfactory environments. In its analysis of this factor, the court found that "the children have had great continuity in their lives and they have lived in a stable home environment in Lincoln County where they have been surrounded not only by their parents but also by an extended family that loves and cares for them." The court then stated that it placed "great weight on this factor" and found that factor (5) weighed against relocation. Having reviewed the record, we conclude that the evidence does not preponderate against these findings; in fact, it fully supports the finding that the children have resided in Lincoln County their entire lives and that each parent provided a stable and satisfactory environment for the children in Lincoln County since the divorce.

As for factor (8), the court found that "the home, school and community record of the children also weighs heavily against relocation. It is in the children's best interests to remain in the community where they have lived their whole lives where they have been surrounded by their parents and by an extended family that cares deeply for them and is invested in their success." The court also found that "[t]his factor weighs heavily against relocation." Considering our ruling regarding the effect of paragraph J on relocation, we are mindful that the trial court stated that this finding against relocation was "especially true in light of paragraph J of the Permanent Parenting Plan where the parties clearly contemplated the children remaining in the Lincoln County School system."

As for the home, school, and community record of the children, the record reveals that Mother was primarily involved in assisting the children with school and both parents testified that Mother attended the majority of parent/teacher conferences and that Mother had picked the children up during Father's visitation in order to help them with their homework. Father testified that the children have an extended family near his home, including their grandparents, cousins, aunts and uncles, and that it is very important that the children live near their friends and family. Father also testified that the children have a close relationship with their paternal grandparents and that the children attend church with them every other Sunday during his visitation. Having considered the foregoing, we have concluded that the evidence preponderates against the finding that factor (8) weighs against relocation. Instead, the evidence neither favors nor disfavors relocation.

Based upon our review of where the preponderance of evidence lies, we have concluded that three of the factors are against relocation, no factors favor relocation, and the remaining factors neither favor nor disfavor relocation. Furthermore, we find no error with the trial court placing an emphasis on factor (5) in determining that relocation is not in the children's best interests.

As discussed at the beginning of our analysis, Tenn. Code Ann. § 36-6-108 provides a framework to determine whether parental relocation with the parties children should be permitted. *See Collins*, 2004 WL 904097, at *2. The statute directs that if the parents spend substantially equal amounts of time with the child, which is the case here, "[*n*]*o presumption in favor of or against the request to relocate with the child shall arise*." Tenn. Code Ann. § 36-6-108(c) (emphasis added). Further, as the statute directs, whether relocation shall or shall not be permitted will be determined on the best interests of the children. *Id*.

In this case, there is no statutory presumption for or against relocation and the best interest factors weigh against relocation. Therefore, having reviewed the record and each of the trial court's findings, we affirm the trial court's decision to deny Mother's request to relocate with the children.

V. CONTEMPT

Mother also filed a petition to hold Father in contempt for failing to pay an indebtedness owed on a vehicle awarded to him in the divorce for which they were jointly liable. At the time of the divorce, the vehicle awarded to Father was encumbered, and both parties were jointly liable on the obligation. The encumbered vehicle, a 2007 Ford F-150, was awarded to Father in the MDA, and Father was ordered to pay the $16,000 debt associated with the vehicle. In lieu of making payments on the vehicle, Father filed for Chapter 7 bankruptcy. As a result, the vehicle was repossessed by the lien holder, and Mother was sued for the outstanding debt, which totaled $9,780.56.

The parties entered an Agreed Order in which they agreed to temporarily and equally divide the $50 monthly payment on the indebtedness associated with the vehicle "until this matter is settled by the parties or heard by the court." The issue of contempt was held in abeyance. Father abided by the Agreed Order and timely made his $25 payments to Mother each month. Following a hearing on July 22, 2014, the trial court found that Father was not in willful violation of the order when he failed to make the payments that led to the adverse judgment against Mother. Mother contends this was error.

We review a trial court's finding of contempt under the abuse of discretion standard. *State ex rel. Flowers v. Tennessee Trucking Ass'n Self Ins. Grp. Trust*, 209

S.W.3d 602, 610 (Tenn. Ct. App. 2006) (citing *Hawk v. Hawk*, 855 S.W.2d 573, 583 (Tenn. 1993)).

> Pursuant to this standard of review, we will set aside a discretionary decision only when the trial court has misconstrued or misapplied the controlling legal principles or has acted inconsistently with the substantial weight of the evidence. *Overstreet v. Shoney's, Inc*., 4 S.W.3d 694, 695 (Tenn. Ct. App. 1999); *White v. Vanderbilt Univ*., 21 S.W.3d 215, 222 (Tenn. Ct. App. 1999). The trial court's discretionary decision will be reviewed to determine: (1) whether the factual basis for the decision is supported by the evidence, (2) whether the trial court identified and applied the applicable legal principles, and (3) whether the trial court's decision is within the range of acceptable alternatives. *BIF, Inc. v. Service Constr. Co., Inc*., 1988 WL 72409, at *3 (Tenn. Ct. App. July 13, 1988)). The abuse of discretion standard does not permit us to substitute our judgment for that of the trial court. *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn.2001) (citing *Myint v. Allstate Ins. Co*., 970 S.W.2d 920, 927 (Tenn.1998)). Under the abuse of discretion standard, a trial court's ruling "will be upheld so long as reasonable minds can disagree as to the propriety of the decision made." A trial court abuses its discretion only when it "applies an incorrect legal standard, or reaches a decision which is against logic or reasoning or that causes an injustice to the party complaining." *Eldridge v. Eldridge*, 42 S.W.3d at 85 (citations omitted). An abuse of discretion is found when the trial court's ruling falls outside the spectrum of rulings that might reasonably result from an application of the correct legal standards to the evidence found in the record. *See, e.g., State ex. rel Vaughn v. Kaatrude*, 21 S.W.3d 244, 248 (Tenn. Ct. App. 2000).

State ex rel. Flowers, 209 S.W.3d at 610.

Civil contempt occurs when a person refuses or fails to comply with a court order and a contempt action is brought to enforce private rights. *Id*. at 613. Civil contempt sanctions are remedial and coercive in character, designed to compel a party to comply with the court's order. *Id*. "Unlike criminal contempt, *a civil contemnor can purge the contempt by complying with the court's order*." *Id*. (emphasis added) (citing *Ahern v. Ahern*, 15 S.W.3d 73, 79 (Tenn. 2000); *see also Doe v. Board of Prof'l Responsibility*, 104 S.W.3d 465, 473 (Tenn. 2003) (holding civil contempt, unlike criminal contempt, is designed to coerce an individual to comply with a court's order).

In this case, the trial court did not hold Father in civil contempt because of Father's compliance with the Agreed Order pursuant to which he was to make $25 payments to Mother each month and be solely responsible for the remainder of the debt. It is therefore apparent that the trial court concluded that Father purged his contempt by

complying with the Agreed Order. Accordingly, the record reflects that the trial court applied the controlling legal principles, and its decision is supported by the evidence. Therefore, we affirm.

IN CONCLUSION

The judgment of the trial court is affirmed and this matter is remanded with costs of appeal assessed against Mother.

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FRANK G. CLEMENT, JR., JUDGE