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Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
April 11, 2023 Session

**MICHAEL GRANDE v. KIMBERLY GRANDE**

**Appeal from the Circuit Court for Knox County  
No. 147325 Gregory S. McMillan, Judge**

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**No. E2022-00981-COA-R3-CV**

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This appeal concerns divorce-related issues. In October 2019, Michael Grande (“Husband”) filed for divorce against Dr. Kimberly Grande (“Wife”) in the Circuit Court for Knox County (“the Trial Court”). In March 2021, the Trial Court entered its Final Judgment for Divorce, which incorporated the parties’ Marital Dissolution Agreement (“the MDA”). In September 2021, Husband filed a petition for civil contempt against Wife. In its June 2022 final order, the Trial Court found among other things that Wife was in civil contempt of court. Wife appeals. Husband raises his own issues as well. We find, *inter alia*, that Wife is not in civil contempt for pre-MDA conduct when the MDA purported to resolve the very issues subject to the contempt petition and Husband has not asserted a claim of fraud. We reverse the Trial Court’s findings of civil contempt against Wife, as well as the judgments against Wife in the amounts of \$27,000 and \$11,171.80, respectively. We also reverse the Trial Court’s award of attorney’s fees to Husband, and decline to award either party attorney’s fees and expenses incurred on appeal. Otherwise, we affirm the judgment of the Trial Court. We thus affirm, in part, and reverse, in part.

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

D. MICHAEL SWINEY, C.J., delivered the opinion of the court, in which THOMAS R. FRIERSON, II, and KENNY W. ARMSTRONG, JJ., joined.

Allison Easterday Alexander and Haleigh E. Chastain, Knoxville, Tennessee, for the appellant, Dr. Kimberly Grande.

Sarah Y. Sheppard and Ariane S. Hookman, Knoxville, Tennessee, for the appellee, Michael Grande.

## OPINION

### Background

In October 2019, Husband filed for divorce against Wife in the Trial Court. Wife filed an answer and counterclaim to Husband's complaint. In April 2020, the parties entered into an agreed order to resolve certain pending motions and to pay marital bills. In June 2020, Wife filed a motion alleging that Husband was dissipating the marital estate. Wife also filed a motion for civil contempt against Husband for his alleged violation of the April 2020 agreed order. Husband, in turn, filed a petition for civil contempt against Wife in which he alleged that she violated the April 2020 agreed order by failing to pay bills. Husband later filed an amended petition for civil contempt. In October 2020, an agreed order was entered, providing in part: that the parties' Sherwood home was to be put on the market and sold; that the Kiawah property mortgage was to be re-financed; and that Husband would receive \$20,000 from the Penn Mutual Life Insurance policy.

In February 2021, the Trial Court entered an order addressing several outstanding motions. In March 2021, the Trial Court entered its Final Judgment for Divorce, which incorporated the MDA. The MDA contained a Waiver of Discovery, which stated that "[t]he parties both certify, by their signatures hereon, that they do not wish to pursue further discovery and that they are satisfied with the assets and liabilities set forth herein are true and accurate."

In September 2021, Husband filed a petition for civil contempt against Wife. In his September 2021 petition for civil contempt, Husband alleged, in relevant part:

1. The parties signed a Marital Dissolution Agreement (hereinafter "MDA") on March 24, 2021 that was incorporated into the Final Judgment for Divorce entered in this cause on March 25, 2021. Said Final Judgment and MDA are incorporated herein by specific reference. Wife has failed or refused to comply with many of the items required of her pursuant to said Final Judgment and MDA.

- a. Pursuant to Paragraph 5 of the MDA, Husband is to receive the Treasury/Savings Bonds estimated at \$6,500, that were stored in the Knoxville home and to which Wife had exclusive access since the parties' separation on or about August 2019. Wife has failed to provide them to Husband.

- b. Pursuant to Paragraph 7 of the MDA, Wife is to designate Husband as the beneficiary of an amount of life insurance sufficient to secure her alimony obligation. Despite multiple requests by Husband's counsel, Wife

has failed to provide proof of said life insurance coverage, and Husband has no reason to believe that Wife is in compliance with this requirement.

c. Also pursuant to Paragraph 7 of the MDA, Husband was to receive the cash value in Wife's Penn Mutual Life insurance policy previously valued at \$471,101.52, as shown on the Penn Mutual statement attached hereto as Exhibit A. However, the actual amount Husband received was only \$382,954.65.

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g. Pursuant to Paragraph 14 of the MDA, Wife is to make alimony payments to Husband on each biweekly pay period. Wife has not made sufficient arrangements to ensure such payments are made in a timely manner. On multiple occasions the payment has been late. Husband relies on receiving consistent payments so that he may pay his bills.

2. An Agreed Order was entered and approved by the Court on April 17, 2020 in response to a hearing held on March 6, 2020 before the Honorable Gregory S. McMillan on various motions filed by both parties. The Agreed Order required Wife to pay all household bills listed on Exhibit A to the Order. Despite being under court order to pay such bills, Wife refused to pay or fully pay many of the bills, including the first mortgage on the parties' Knoxville home. Immediately following entry of the Agreed Order, from May 2020 through September 2020, Wife did not pay the mortgage. Husband subsequently discovered that Wife had entered into some sort of payment deferral agreement with the lender that he did not agree to nor did he sign. As a result, Wife failed to make mortgage payments she was required to make on the residence. When the house was sold on July 23, 2021, the payoff was substantially higher than expected, resulting in less equity being available to the parties at closing. Wife's refusal to follow this Court's Order was done willfully and not out of an inability to pay, as Wife made in excess of \$1,600,000 in 2020.

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4. Wife's conduct as set forth herein is willful, wanton, intentional, and done with full knowledge and disregard for the Final Judgment and incorporated Marital Dissolution Agreement, which was clear, specific, and unambiguous.

5. Wife's actions set forth herein constitute civil contempt and the Court should punish her as it deems appropriate and award Husband the relief requested as set forth herein, including, but not limited to, that Wife be

required to pay to him the funds he has been short-changed due to her misconduct and that she be responsible for his attorney fees, and such other sanctions as the Court deems appropriate until Wife shows a propensity to comply with the orders of the Court.

In February 2022, Wife filed a motion for contempt against Husband containing four counts of civil contempt and one count of criminal contempt. In May 2022, a hearing was conducted.

In June 2022, the Trial Court entered its final order. As pertinent, the Trial Court found: (1) that by taking \$27,000 from a life insurance policy to pay taxes on the marital residence, Wife was in civil contempt of the April 2020 agreed order, and Husband was awarded a judgment of \$27,000 against Wife; (2) that Wife did not effectively enter into a deferment agreement with SunTrust Bank and her failure to pay the mortgage resulted in a higher pay-off at closing; (3) that Wife was in civil contempt for failure to pay the mortgage and Husband was awarded a judgment of \$11,171.80; (4) that Wife was in civil contempt for withholding federal income tax when cashing out the life insurance policy in violation of the MDA; (5) that the taxes due from the life insurance policy cash-out were to be divided equally between the parties; (6) that Wife must make her alimony payments by 4:45 p.m. on the date due; (7) that Husband prevailed on almost all of his claims, with Wife prevailing on one issue; (8) that Wife could not recover attorney's fees for prevailing on an issue of criminal contempt or for defending Husband's motion and petition; and (9) that "[p]ursuant to the parties' MDA and the statutes governing civil contempt," Husband was awarded attorney's fees of \$12,898.85. Wife timely appealed to this Court.

### **Discussion**

We restate and consolidate Wife's issues on appeal as follows: 1) whether the Trial Court erred in finding Wife in civil contempt for conduct that occurred prior to the entry of the Final Judgment for Divorce; 2) whether the Trial Court erred in ordering Wife to make her alimony payment by 4:45 p.m. on the date due; 3) whether the Trial Court erred in finding Wife in civil contempt for executing the life insurance cash value transfer form that required the withholding of taxes, due to the gain, when the payment of taxes was unanticipated by the parties; 4) whether the Trial Court erred in ordering Wife responsible for one-half of the unanticipated taxes associated with the life insurance cash value awarded to Husband; 5) whether the Trial Court erred in awarding Husband attorney's fees in the amount of \$12,898.85 and in declining to award Wife her attorney's fees; and 6) whether Wife is entitled to an award of attorney's fees and expenses incurred on appeal. Although not stated exactly as such, Husband raises the following separate issues: 1) whether the Trial Court erred in declining to require Wife to be responsible for all taxes associated with the life insurance cash value awarded to Husband; 2) whether the Trial

Court erred in failing to require Wife to maintain health insurance coverage at a level commensurate with the coverage in effect at the time of the divorce; and 3) whether Husband is entitled to an award of attorney's fees and expenses incurred on appeal.

Our review is *de novo* upon the record, accompanied by a presumption of correctness of the findings of fact of the trial court, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). A trial court's conclusions of law are subject to a *de novo* review with no presumption of correctness. *S. Constructors, Inc. v. Loudon Cnty. Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001). With regard to civil contempt, our Supreme Court has instructed:

Civil contempt claims based upon an alleged disobedience of a court order have four essential elements. First, the order alleged to have been violated must be "lawful." Second, the order alleged to have been violated must be clear, specific, and unambiguous. Third, the person alleged to have violated the order must have actually disobeyed or otherwise resisted the order. Fourth, the person's violation of the order must be "willful."

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After determining that a person has willfully violated a lawful and sufficiently clear and precise order, the court may, in its discretion, decide to hold the person in civil contempt. *See Robinson v. Air Draulics Eng'g Co.*, 214 Tenn. 30, 37, 377 S.W.2d 908, 912 (1964). The court's decision is entitled to great weight. *Hooks v. Hooks*, 8 Tenn. Civ. App. (Higgins) 507, 508 (1918). Accordingly, decisions to hold a person in civil contempt are reviewed using the abuse of discretion standard of review. *Hawk v. Hawk*, 855 S.W.2d 573, 583 (Tenn. 1993); *Moody v. Hutchison*, 159 S.W.3d 15, 25-26 (Tenn. Ct. App. 2004). This review-constraining standard does not permit reviewing courts to substitute their own judgment for that of the court whose decision is being reviewed. *Williams v. Baptist Mem'l Hosp.*, 193 S.W.3d 545, 551 (Tenn. 2006); *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001).

*Konvalinka v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, 249 S.W.3d 346, 354-55, 358 (Tenn. 2008) (footnotes omitted). In *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515 (Tenn. 2010), the Tennessee Supreme Court discussed the abuse of discretion standard at length, stating:

The abuse of discretion standard of review envisions a less rigorous review of the lower court's decision and a decreased likelihood that the decision will be reversed on appeal. *Beard v. Bd. of Prof'l Responsibility*,

288 S.W.3d 838, 860 (Tenn. 2009); *State ex rel. Jones v. Looper*, 86 S.W.3d 189, 193 (Tenn. Ct. App. 2000). It reflects an awareness that the decision being reviewed involved a choice among several acceptable alternatives. *Overstreet v. Shoney's, Inc.*, 4 S.W.3d 694, 708 (Tenn. Ct. App. 1999). Thus, it does not permit reviewing courts to second-guess the court below, *White v. Vanderbilt Univ.*, 21 S.W.3d 215, 223 (Tenn. Ct. App. 1999), or to substitute their discretion for the lower court's, *Henry v. Goins*, 104 S.W.3d 475, 479 (Tenn. 2003); *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 927 (Tenn. 1998). The abuse of discretion standard of review does not, however, immunize a lower court's decision from any meaningful appellate scrutiny. *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 211 (Tenn. Ct. App. 2002).

Discretionary decisions must take the applicable law and the relevant facts into account. *Konvalinka v. Chattanooga-Hamilton County Hosp. Auth.*, 249 S.W.3d 346, 358 (Tenn. 2008); *Ballard v. Herzke*, 924 S.W.2d 652, 661 (Tenn. 1996). An abuse of discretion occurs when a court strays beyond the applicable legal standards or when it fails to properly consider the factors customarily used to guide the particular discretionary decision. *State v. Lewis*, 235 S.W.3d 136, 141 (Tenn. 2007). A court abuses its discretion when it causes an injustice to the party challenging the decision by (1) applying an incorrect legal standard, (2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence. *State v. Ostein*, 293 S.W.3d 519, 526 (Tenn. 2009); *Konvalinka v. Chattanooga-Hamilton County Hosp. Auth.*, 249 S.W.3d at 358; *Doe I ex rel. Doe I v. Roman Catholic Diocese of Nashville*, 154 S.W.3d [22,] 42 [(Tenn. 2005)].

To avoid result-oriented decisions or seemingly irreconcilable precedents, reviewing courts should review a lower court's discretionary decision to 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. *Flautt & Mann v. Council of Memphis*, 285 S.W.3d 856, 872-73 (Tenn. Ct. App. 2008) (quoting *BIF, a Div. of Gen. Signal Controls, Inc. v. Service Constr. Co.*, No. 87-136-II, 1988 WL 72409, at \*3 (Tenn. Ct. App. July 13, 1988) (No Tenn. R. App. P. 11 application filed)). When called upon to review a lower court's discretionary decision, the reviewing court should review the underlying factual findings using the preponderance of the evidence standard contained in Tenn. R. App. P. 13(d) and should review the lower court's legal

determinations de novo without any presumption of correctness. *Johnson v. Nissan N. Am., Inc.*, 146 S.W.3d 600, 604 (Tenn. Ct. App. 2004); *Boyd v. Comdata Network, Inc.*, 88 S.W.3d at 212.

*Beecher*, 312 S.W.3d at 524-25.

We first address whether the Trial Court erred in finding Wife in civil contempt for conduct that occurred prior to the entry of the Final Judgment for Divorce. Wife argues that “[a]ll of the alleged violations were known or should have been known by Husband at the time he voluntarily signed and entered into the MDA on March 24, 2021.” Wife states further that “in the case at hand, the FJD and MDA undoubtably merged and invalidated all of the temporary pre-divorce orders in this cause.” Wife challenges the Trial Court’s decision to award judgments to Husband in the amounts of \$27,000 and \$11,171.80, respectively. Wife invokes the doctrine of res judicata, the elements of which are as follows:

The party asserting a defense predicated on res judicata or claim preclusion must demonstrate (1) that the underlying judgment was rendered by a court of competent jurisdiction, (2) that the same parties or their privies were involved in both suits, (3) that the same claim or cause of action was asserted in both suits, and (4) that the underlying judgment was final and on the merits.

*Jackson v. Smith*, 387 S.W.3d 486, 491 (Tenn. 2012) (citations omitted). “A marital settlement agreement incorporated into a divorce decree can serve as a basis to assert the defense of *res judicata* where the issue was or could have been addressed in the agreement.” *Brownyard v. Brownyard*, No. 02A01-9803-CH-00063, 1999 WL 418352, at \*13 (Tenn. Ct. App. June 22, 1999), *perm. app. denied Nov. 29, 1999* (citation omitted).

In response, Husband argues that Wife may not successfully invoke res judicata on the basis of her fraud. He characterizes Wife’s argument as effectively being that “because her misrepresentations were not uncovered prior to the entry of the Final Judgment and execution of the MDA, the doctrine has bought her an immunity for her fraud.” However, Husband did not assert a claim of fraud against Wife. Except for some limited exceptions not applicable here, we will not consider issues, let alone claims, raised for the first time on appeal. *See City of Cookeville ex rel. Cookeville Reg’l Med. Ctr. v. Humphrey*, 126 S.W.3d 897, 905-06 (Tenn. 2004) (noting the general rule that “questions not raised in the trial court will not be entertained on appeal.” (quoting *Lawrence v. Stanford*, 655 S.W.2d 927, 929 (Tenn. 1983))). Husband did not assert a claim for fraud below, and he may not introduce one for the first time on appeal. As this Court said in *Brownyard*, a marital dissolution agreement may serve as the basis for res judicata. The MDA was an agreement

purporting to resolve the disputed subject matter subject to Husband's contempt petition through the point of its execution. Here, there was a court of competent jurisdiction, the same parties, the same cause of action, and the underlying judgment was final on the merits. The elements of res judicata are met. To adopt Husband's position would mean that a party later dissatisfied with a marital dissolution agreement—one freely entered into—could revisit settled matters after the fact without asserting a claim of fraud or otherwise filing a motion pursuant to Tenn. R. Civ. P. 60. Tennessee law does not provide for that. Husband's claims are barred by the doctrine of res judicata.

When Husband freely entered into the MDA, and it was incorporated into the Final Judgment for Divorce, the parties purported to resolve certain matters. The parties could be held to their adherence to the MDA going forward, but as to matters settled in the MDA, a chapter was closed. By finding Wife in contempt for her alleged disobedience of temporary orders entered prior to entry of the Final Judgment for Divorce and the MDA incorporated thereto, the Trial Court failed to identify and apply the most appropriate legal principles applicable to the decision at hand. Thus, the Trial Court's decision was not within the range of acceptable alternative dispositions. Finally, these findings of civil contempt were unjust toward Wife, who had reason to believe that the very issues raised in Husband's petition for civil contempt had been settled per the MDA. We find that the Trial Court abused its discretion on this issue. We reverse the Trial Court's findings of civil contempt against Wife stemming from her alleged contemptuous conduct engaged in before entry of the Final Judgment for Divorce. We further reverse the judgments awarded to Husband in the amounts of \$27,000 and \$11,171.80.

We next address whether the Trial Court erred in ordering Wife to make her alimony payment by 4:45 p.m. on the date due. Wife argues that by specifying this time for payment, the Trial Court inappropriately expanded or modified the terms of the MDA. The record reflects that Husband has had difficulty receiving alimony payments in a timely way because Wife waits until late in the day to initiate the process. The MDA states as relevant that "Wife shall direct deposit all payments to an agreed upon regional bank, BB&T . . . ." In our judgment, the Trial Court did not expand or modify terms of the MDA. Rather, the Trial Court tried to ensure the effective implementation of the alimony provision of the MDA. The Trial Court's effort to ensure that Wife makes her alimony payments to Husband in a timely way is consistent with the plain terms of the MDA. We find no reversible error in the Trial Court's selection of a reasonable time by which Wife must make her alimony payments.

We next address whether the Trial Court erred in finding Wife in civil contempt for executing the life insurance cash value transfer form that required the withholding of taxes, due to the gain, when the payment of taxes was unanticipated by the parties. The Trial Court found that Wife was in civil contempt for "withholding funds to which she is not



entitled.” Wife argues that she “simply checked the box she was instructed to check in light of the policy having a gain associated with it.” For his part, Husband asks: “[W]hy, if [Wife] was unaware of any tax consequence as she maintains, she would elect to have money withheld from funds that were to be paid to Husband. This appears to be yet another step taken by her to unilaterally diminish what was properly to be awarded to Husband.” We note that Husband and Wife stipulated that they were unaware of any tax consequences of the policy. In view of that, there is no evidence that Wife intentionally sought to diminish what was to be awarded to Husband. While a trial court’s finding of civil contempt is entitled to deference, the essential elements of civil contempt must be established. Neither the second, third, or fourth essential elements of civil contempt were established here—that is, there is no specific provision in the Trial Court’s order that Wife violated; there is no evidence that Wife actually disobeyed or resisted the Trial Court; and there is no evidence that Wife willfully disobeyed the Trial Court. The factual basis for the Trial Court’s decision was not properly supported by evidence in the record; the Trial Court failed to properly identify and apply the most appropriate legal principles applicable to the decision; and the Trial Court’s decision was not within the range of acceptable alternative dispositions. We find that the Trial Court abused its discretion on this issue. We reverse the Trial Court’s finding of civil contempt against Wife in relation to her executing the life insurance cash value transfer form.

We next address whether the Trial Court erred in ordering Wife responsible for one-half of the unanticipated taxes associated with the life insurance cash value awarded to Husband. Wife cites to an opinion in which this Court stated that “if a particular marital asset was not addressed in the final judgment of divorce, it is permissible for a court to make a division of that asset at a later date.” *Demonbreun v. Demonbreun*, No. M2004-02105-COA-R3-CV, 2005 WL 3555545, at \*8 (Tenn. Ct. App. Dec. 28, 2005), *perm. app. denied June 26, 2006*. She says that “[f]or the Trial Court to now hold Wife responsible for half of the unanticipated taxes, for an asset awarded to Husband, is simply unjust and an error of law by the Trial Court.” In response, Husband argues that “[Wife] did not represent that there was a tax obligation...Such tax obligations were unknown to Husband, and as between the two parties, Wife is in a much better position to know of and to pay her tax obligation.”

We note that, in the course of her arguments, Wife has pointed to the parties’ stipulated unawareness about future tax consequences. However, unawareness of future tax consequences cannot be both sword and shield for Wife. The parties’ mutual unawareness means just that—neither party knew about the tax consequences, so neither party should be wholly burdened with them. Wife cites *Macy v. Macy*, No. M2012-02370-COA-R3-CV, 2014 WL 575905 (Tenn. Ct. App. Feb. 11, 2014), *perm. app. denied June 20, 2014*, an appeal challenging the effectiveness of a qualified domestic relations order requiring the wife to pay taxes on a \$115,000.00 divorce settlement. *Id.* at \*1. The trial

court held that the amount should not be reduced, but we reversed. *Id.* Wife cites *Macy* for the proposition that “the MDA does not state Husband is responsible for the taxes, but does not say that Husband is NOT responsible for the taxes.” However, we find *Macy* inapposite. Moreover, we find the proposition unpersuasive that Husband should be assigned all of the tax burden when neither side expected it. In the case at bar, it is reasonable that Husband and Wife share in the unanticipated tax consequences. As to this issue, the Trial Court did not apply an incorrect legal standard, reach an illogical or unreasonable decision, or base its decision on a clearly erroneous assessment of the evidence. The Trial Court’s decision was within the acceptable dispositions. We find no abuse of discretion or other reversible error in the Trial Court’s decision that the parties equally share in the tax consequences associated with the life insurance cash value awarded to Husband.

We next address whether the Trial Court erred in awarding Husband attorney’s fees in the amount of \$12,898.85 and in declining to award Wife her attorney’s fees. Tennessee law provides:

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

Tenn. Code Ann. § 36-5-103(c) (West eff. July 1, 2021). However, “our courts do not have discretion to deny an award of fees mandated by a valid and enforceable agreement between the parties. . . .” *Eberbach v. Eberbach*, 535 S.W.3d 467, 479 (Tenn. 2017). Here, paragraph 21 of the MDA provides for an award of attorney’s fees and costs in an action for enforcement. It states:

21. **Enforcement** - In the event it becomes reasonably necessary for either party to seek the enforcement of any provision of this Judgment or to defend unsubstantiated claims under it, in addition to any other relief to which the enforcing or defending party may be adjudged entitled, he or she shall also be entitled to a judgment for his or her reasonable expenses, including attorney’s fees and litigation expenses incurred in seeking enforcement or defending unsubstantiated claims.

The Trial Court cited as the bases for its award of attorney’s fees to Husband “the parties’ MDA and the statutes governing civil contempt. . . .” The Trial Court concluded

that Husband prevailed on almost all of his claims. However, we have reversed the Trial Court's findings of civil contempt against Wife and resulting judgments, which comprised the bulk of Husband's success. Consequently, there is no clear winner in this case. While we are not at liberty to deny an award of fees mandated by a valid and enforceable agreement, both parties have achieved partial success. Under these circumstances, we conclude that there is no prevailing party, and neither party is entitled to an award of attorney's fees and expenses. We therefore reverse the Trial Court's award to Husband of \$12,898.85 in attorney's fees.

Wife's last issue is whether she is entitled to an award of attorney's fees and expenses incurred on appeal. "In determining whether an award for attorney's fees is warranted, we should consider, among other factors, the ability of the requesting party to pay his or her own attorney's fees, the requesting party's success on appeal, and whether the requesting party has been acting in good faith." *Shofner v. Shofner*, 181 S.W.3d 703, 719 (Tenn. Ct. App. 2004) (citation omitted). However, "where both parties are partially successful on appeal, this Court has held that no attorney fees should be awarded in respect to the appeal." *Young v. Young*, 971 S.W.2d 386, 393 (Tenn. Ct. App. 1997) (citations omitted). Wife and Husband are both partially successful on appeal. For the same reasons resulting in our decision to reverse the Trial Court's award of attorney's fees to Husband, we decline to award Wife her attorney's fees and expenses incurred on appeal.

Turning to Husband's separate issues, we address whether the Trial Court erred in declining to require Wife to be responsible for all taxes associated with the life insurance cash value awarded to Husband. While Husband identifies this as an issue in his statement of the issues, he does not actually argue it in the body of his brief. He merely states in his conclusion section that "[Wife] should be responsible for all taxes owed related to Husband receiving the cash value of the Penn Mutual life insurance policy. . . ." Wife argues that the would-be issue is waived. We agree. Husband has waived consideration of this issue for failure to argue it. Nevertheless and as already discussed, even considering this issue of Husband's, we find no reversible error in the Trial Court's allocation of responsibility for taxes in light of the fact that neither party contemplated the tax consequences at issue.

We next address Husband's issue of whether the Trial Court erred in failing to require Wife to maintain health insurance coverage at a level commensurate with the coverage in effect at the time of the divorce. Husband argues that "[n]owhere is it indicated that the parties agreed that Wife could unilaterally change the coverage to be a high deductible policy, with substantially inferior coverage." The MDA states, in part, that "Husband shall be entitled to the maximum COBRA coverage (36 months) available on Wife's health insurance plan. . . ." As relevant to this issue, the Trial Court found:

Dr. Grande testified that approximately every two years, her practice administrator reviews and “shops” the practice[’]s health insurance. In late 2021, it was determined that for 2022, the practice would have a health insurance plan that has a lower cost to the practice but a higher out-of-pocket cost to those insured under it. The Court finds that the COBRA benefits referred to in the MDA relate solely to the maximum time for which benefits must be provided and not to the level of benefits. The MDA does not require equivalent benefits coverage. Mr. Grande will have the same health insurance benefits as the members and employees of the practice for the remaining portion of the original 36 months for which coverage is to be provided. Dr. Grande is not in contempt and has not breached the terms of the MDA.

The evidence does not preponderate against the Trial Court’s findings relative to this issue. Husband is not entitled to a specific health insurance plan other than it is to be “Wife’s health insurance plan. . . .” As Wife points out, the proof at trial shows that Husband has the same policy that Wife and the parties’ children have. The MDA does not require more than that. We find no reversible error in the Trial Court’s declining to require Wife to maintain health insurance coverage at a level commensurate with the coverage in effect at the time of the divorce.

The final issue we address is whether Husband is entitled to an award of attorney’s fees and expenses incurred on appeal. We decline Husband’s request for the same reason we decline Wife’s request. Both parties are partially successful on appeal. We decline to award either party attorney’s fees and expenses incurred on appeal.

### **Conclusion**

We reverse the Trial Court’s findings of civil contempt against Wife, as well as the judgments against Wife in the amounts of \$27,000 and \$11,171.80, respectively. We also reverse the Trial Court’s award of attorney’s fees to Husband. Otherwise, we affirm the judgment of the Trial Court, and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed 50% to the Appellant, Kimberly Grande, and her surety, if any, and 50% to the Appellee, Michael Grande.

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D. MICHAEL SWINEY, CHIEF JUDGE