IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
November 8, 2022 Session

IN RE MCKAYLA H.

Appeal from the Juvenile Court for Shelby County
No. DD4932, DD7100 Dan H. Michael, Judge

No. W2020-01528-COA-R3-JV

In this custody case, Father appeals the trial court's order allowing Mother to relocate, from Tennessee to Virginia, with the parties' daughter. Father also appeals the trial court's order charging him with costs of the child's airline travel expenses and the guardian ad litem's attorney's fees. Discerning no reversible error, we affirm. Mother and the guardian ad litem's respective requests for appellate attorneys' fees are granted.

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

KENNY ARMSTRONG, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and ARNOLD B. GOLDIN, J., joined.

Sarah M. Turner, Cordova, Tennessee, and Lori R. Holyfield, Munford, Tennessee, for the appellant, Daniel W.[1]

Paola Palazzolo-West, Memphis, Tennessee, for the appellee, Cora H.

Matthew R. Macaw, Memphis, Tennessee, guardian ad litem.[2]

[1] In cases involving a minor child, it is the policy of this Court to redact the names of certain individuals in order to protect the child's privacy.

[2] The guardian ad litem submitted a brief adopting Father's brief and agreeing with Father's argument that relocation to Virginia was not in the child's best interest.

OPINION

I. Background

In August 2008, McKayla H. (the "Child") was born to Appellee Cora H. ("Mother") and Appellant Daniel W. ("Father"). The parties were never married, and their relationship ended before McKayla's birth. At the time of the Child's birth, Mother had graduated from college and lived in Virginia, and Father attended the University of Tennessee ("UT") in Knoxville, Tennessee where he played football. After McKayla was born, Father drove to Virginia to visit with her, and Mother brought her to Knoxville to visit with Father. When Father graduated from UT, he signed with a sports agent and was drafted by the Arizona Cardinals in the first round of the National Football League ("NFL").

Early in McKayla's life, Mother moved back to Knoxville. On May 31, 2011, the Juvenile Court of Knox County entered the Agreed Order of Parentage and Agreed Order to Set Support, ordering Father to pay $2,100 per month in support. At this time, there was no order concerning Father's visitation with McKayla. In 2012, Father filed a petition to establish parenting time. On July 9, 2012, the parties entered into an Agreed Permanent Parenting Plan (the "2012 Parenting Plan"). The 2012 Parenting Plan named Mother as the primary residential parent and awarded the parties joint decision-making over all major decisions. Father's parenting time was structured around his professional football schedule. Also, in July 2012, Mother married Jeremy D. ("Stepfather"), who had been present in McKayla's life since she was approximately 16-months old. Together, Mother and Stepfather have three other children, McKayla's only siblings.

In April 2013, Mother moved from Knoxville to the Memphis area. In July 2014, Father hired an attorney and sought to transfer the case from Knox County to Shelby County. The matter was not successfully filed with the Shelby County Juvenile Court (the "trial court") until 2018.

In April 2015, Father purchased a home in Fayette County. Although Father played his final NFL game in January 2017, he remained employed by the Oakland Raiders until April 2017. As late as August or September 2017, Father was training with the New York Giants and was contemplating signing a contract to play for that team. In April 2018, Father bought a second home in the Memphis area, and, in June 2018, Father married Tia W. ("Stepmother").

On September 13, 2018, Father filed a petition seeking equal parenting time with McKayla. At the time, McKayla was 10 years old. By October 2018, Mother was actively seeking employment opportunities in another state with the intention of relocating. At the end of October 2018, the parties entered into a temporary agreement that provided Father with more visitation. The trial court did not enter this agreement, but the parties operated

under it until May 30, 2019, when they entered into another agreement. Under the May 30, 2019 agreement, Father received approximately 165 days of parenting time per year. The parties agreed to alternate school breaks and federal holidays with the Child, with Father receiving the majority of summer break. The parties also agreed to continue with joint decision-making. The agreement also provided that McKayla's last name would be changed from Mother's last name to a hyphenation of Mother's and Father's last names. Although the trial court never entered this agreement, the parties and their attorneys signed it, and the parties operated under it.

In July 2019, Mother was offered a job in Virginia. On July 22, 2019, Mother and Stepfather met with Father and Stepmother to discuss Mother's possible relocation to Virginia. On July 23, 2019, the day after meeting with Mother, Father texted Mother to express that he did not believe it was in McKayla's best interest to move; Mother responded, in part, "I do intend on accepting the job."

On July 24, 2019, Mother sent Father a notice of relocation. On August 6, 2019, Mother filed a petition to modify the permanent parenting plan and to approve parental relocation. On August 12, 2019, Mother filed an emergency motion for interim relocation, asking the trial court to allow McKayla to temporarily relocate to Virginia to begin school on September 3, 2019, and to allow her to remain there until the trial court entered a final order.

On August 15, 2019, Father filed a response to Mother's petition and a counter-petition in opposition to relocation of minor child and request for injunctive relief and emergency restraining order. Father asked the trial court to: (1) allow him to enroll McKayla in her previous school; (2) deny Mother's request for McKayla's relocation; and (3) designate Father as the Child's primary residential parent. On December 3, 2019, Mother filed a response to Father's counter-petition and request for injunctive relief and emergency restraining order.

Also, on August 15, 2019, the parties appeared before the trial court on Mother's emergency motion. Although Mother's attorney originally argued that the emergency was due to Mother wanting McKayla to begin school in Virginia because "[M]other is going to relocate anyway with her husband and her [other] children," it was later determined that Mother could work remotely from Memphis during the relocation trial. Accordingly, Mother agreed to "leave things split until we have a . . . full hearing with proof[.]" Mother's attorney represented that Mother was "going to stay in Memphis with [McKayla], with her [other] kids, with her husband. She got that permission. The job is still there." On August 19, 2019, the trial court denied Mother's emergency motion and granted Father's request for injunctive relief, ordering that Father immediately enroll McKayla in her previous school, First Assembly Christian School ("FACS"). The order also provided: "If Mother relocates from Shelby County, Tennessee pending resolution of this matter, the Primary Residential Parent shall be Father, with whom the minor child shall reside during the school

year."

By order of September 4, 2019, the trial court appointed Matthew R. Macaw to serve as McKayla's guardian ad litem ("GAL"). On September 9, 2019, McKayla, then 11 years old and in the 5th grade, testified outside the presence of Mother and Father, but with the GAL and the parties' attorneys present.

In the fall of 2019, Mother traveled frequently to and from Virginia and other locations for her new job. Although Mother sometimes traveled during the weeks McKayla resided with her, Mother tried to arrange her schedule to travel on weeks that the Child was with Father. On December 15, 2019, Mother, Stepfather, and McKayla's siblings moved to Virginia. In January 2020, McKayla began seeing Dr. Christine Malone, a licensed psychologist.[3] In early 2020, the trial court held that McKayla would reside with Father in Shelby County pending the resolution of the litigation and established a visitation schedule with Mother.

The trial began on February 20 and 27, 2020. The third day of trial was continued due to the Covid-19 pandemic. When it became apparent that the final trial would not conclude before McKayla was to return to school (after the summer of 2020), the parties approached the trial court for intervention. At the conclusion of the August 5, 2020 telephone conference,[4] the trial court declined to choose McKayla's school. The trial court ordered that Mother had final authority to choose McKayla's school, effectively allowing for McKayla's temporary relocation to Virginia.

On August 11, 2020, Father filed an application for extraordinary appeal and an emergency motion for stay, asking this Court to vacate the trial court's oral ruling from August 5, 2020.[5] By orders of August 13, 2020 and September 1, 2020, this Court stayed the trial court's decision pending the outcome of Father's application for extraordinary appeal.

The trial court continued with the final hearing in this matter on September 10, 14, 17, 21, 2020, and on October 1, 2, and 22, 2020. The following witnesses testified: (1) McKayla; (2) Father; (3) Mother; (4) Stepfather; (5) Stepmother; (6) Dr. Malone; (7) Sonya Wright, an advisor for Shelby County Schools and the mother of one of McKayla's friends; (8) Karen W., the paternal grandmother; (9) Malcolm Rawls, Father's former roommate and McKayla's godfather; (10) Thomas Hall, a private investigator Father hired; (11) Rana Saadat, a second private investigator Father hired; (12) Brandi Cox, family friend of

[3] McKayla had previously seen Dr. Tracey Agostin from 2013 until 2019. In 2019, McKayla expressed to the GAL that she no longer wanted to see Dr. Agostin, and he recommended that she see Dr. Malone instead.

[4] It does not appear that a hearing took place.

[5] The trial court's August 5, 2020 oral ruling was memorialized in an order the trial court signed on August 25, 2020.

Mother and Stepfather; (13) Lori Poley, family friend of Mother and Stepfather; (14) William D., the Child's step-grandfather; and (15) Jordan D., the Child's step uncle. 75 exhibits were entered into evidence. Although McKayla first testified in September 2019, she testified a second time on October 22, 2020.

By order of November 9, 2020, the trial court granted Mother's petition for relocation. In a lengthy final order, the trial court considered the factors in both Tennessee Code Annotated section 36-6-108(c)(2) and Tennessee Code Annotated section 36-6-106(a), discussed further *infra*, before concluding that relocation was in McKayla's best interest. The trial court created a new parenting plan and designated Mother the primary residential parent. The new parenting plan awarded Father most holidays and school breaks (including summer), with the parties alternating Thanksgiving and Christmas. Relevant to this appeal, the parenting plan also required Father to bear the entire cost of the Child's airline transportation from Virginia to Memphis and also required Father to pay the entire amount of the GAL's attorney's fees from trial.

On November 10, 2020, Father filed a notice of appeal and an emergency motion for stay. That same day, this Court entered an order staying McKayla's relocation pending further order of the Court. On November 20, 2020, Mother filed a request to dissolve the stay, which this Court denied on November 25, 2020. On December 8, 2020, Mother filed a Rule 7(a) motion in the Tennessee Supreme Court, asking for a review of this Court's November 25, 2020 order. By order of December 18, 2020, the Supreme Court vacated this Court's order on its conclusion that: (1) Father failed to state a sufficient reason under Rule 7(a) as to why he did not seek a stay in the trial court; and (2) based on the filings, there was no substantive basis for the stay. This order also provided that "the trial court's relocation order shall take effect expeditiously." On December 22, 2020, Father filed a petition to rehear in the Supreme Court. On December 23, 2020, Father filed another emergency motion for stay in this Court. On December 30, 2020, the Supreme Court denied Father's petition to rehear. By order of December 30, 2020, this Court denied Father's second emergency motion to stay as premature. On January 25, 2021, Father filed a third emergency motion for stay in this Court, which was denied on February 3, 2021. McKayla has been living with Mother in Virginia since the beginning of 2021. Father appeals.

II. Issues

Father raises three issues for review, as stated in his brief:

1. The trial court made errors of law and fact when it granted Mother's petition to relocate with the minor child.

2. The trial court erred in assessing all transportation costs against Father.

3. The trial court erred in assessing all guardian ad litem fees against Father.

The GAL joins in Father's first two issues but takes "no position concerning whether the trial court erred in assessing all of [the GAL's] fees against Father." The GAL presents the following additional issue for review:

1. The Guardian ad Litem is entitled to an award of reasonable attorney fees and suit expenses on appeal.

Mother also asks for an award of her appellate attorney's fees and expenses.

III. Standard of Review

We review a non-jury case "*de novo* upon the record with a presumption of correctness as to the findings of fact, unless the preponderance of the evidence is otherwise." ***Bowden v. Ward***, 27 S.W.3d 913, 916 (Tenn. 2000) (citing Tenn. R. App. P. 13(d)). The trial court's conclusions of law are reviewed *de novo* and "are accorded no presumption of correctness." ***Brunswick Acceptance Co., LLC v. MEJ, LLC***, 292 S.W.3d 638, 642 (Tenn. 2008).

Furthermore, we are "'mindful that trial courts are vested with wide discretion in matters of child custody.'" ***Schaeffer v. Patterson***, No. W2018-02097-COA-R3-JV, 2019 WL 6824903, at *4 (Tenn. Ct. App. Dec. 13, 2019) (quoting ***Johnson v. Johnson***, 165 S.W.3d 640, 645 (Tenn. Ct. App. 2004)). Appellate courts will not interfere with a trial court's custody determination absent an abuse of discretion. ***Dungey v. Dungey***, No. M2020-00277-COA-R3-CV, 2020 WL 5666906, at *2 (Tenn. Ct. App. Sept. 23, 2020) (quoting ***C.W.H. v. L.A.S.***, 538 S.W.3d 488, 495 (Tenn. 2017)). Indeed, this Court may reverse a custody decision "only 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." ***Dungey***, 2020 WL 5666906, at *2 (quoting ***C.W.H.***, 538 S.W.3d at 495). "This Court's 'paramount concern' is the well-being and best interests of the child . . . ." ***Schaeffer***, 2019 WL 6824903, at *4 (citing ***Johnson***, 165 S.W.3d at 645). Whether relocation is in a child's best interest often hinges on the particular facts of each case. ***Schaeffer***, 2019 WL 6824903, at *4 (citing ***Johnson***, 165 S.W.3d at 645). Because "custody and visitation determinations often [turn] on subtle factors, including the parents' demeanor and credibility . . . appellate courts are reluctant to second-guess a trial court's decisions." ***Johnson***, 165 S.W.3d at 645; *see also* ***Schaeffer***, 2019 WL 6824903, at *4. Indeed, as "trial courts are able to observe witnesses as they testify and to assess their demeanor, . . . trial judges [are best suited] to evaluate witness credibility." ***Wells v. Tennessee Bd. of Regents***, 9 S.W.3d 779, 783 (Tenn. 1999) (citing ***State v. Pruett***, 788 S.W.2d 559, 561 (Tenn. 1990); ***Bowman v. Bowman***, 836 S.W.2d 563, 566 (Tenn. Ct. App. 1991)); *see also* ***Richards v. Liberty Mut. Ins. Co.***, 70 S.W.3d 729, 733 (Tenn. 2002) ("As this Court has repeatedly emphasized, a reviewing court must give 'considerable

deference' to the trial judge with regard to oral, in-court testimony as it is the trial judge who has viewed the witnesses and heard the testimony."). To this end, "appellate courts will not re-evaluate a trial judge's assessment of witness credibility absent clear and convincing evidence to the contrary." ***Wells***, 9 S.W.3d at 783 (internal citations omitted). With the foregoing in mind, we turn to the substantive issues.

IV. Analysis

A. Relocation

As this Court explained in ***Franklin v. Franklin***, No. W2020-00285-COA-R3-CV, 2021 WL 5500722, at *2 (Tenn. Ct. App. Nov. 24, 2021), in July 2018, the Tennessee General Assembly amended Tennessee's relocation statute, Tennessee Code Annotated section 36-6-108. When ***Franklin*** was decided, this Court had applied the amended statute in only two other cases, ***Dungey***, 2020 WL 5666906, and ***Schaeffer***, 2019 WL 6824903. In these cases, we explained that the previous relocation statute "often required courts to conduct an analysis of whether the parents were spending 'substantially equal intervals of time' with the child and whether the parent seeking relocation demonstrated a 'reasonable purpose' for the proposed move." ***Dungey***, 2020 WL 5666906, at *2; *see also* ***Schaeffer***, 2019 WL 6824903, at *4-5. The amendment removed the "substantially equal intervals of time" and "reasonable purpose" criteria from the trial court's analysis. ***Dungey***, 2020 WL 5666906, at *2. As noted in ***Dungey***, the current version of the statute "restore[s] a significant amount of discretion to trial courts and does not contain a presumption either for or against relocation." ***Dungey***, 2020 WL 5666906, at *2 n.1.[6]

Under the amended statute, "if a parent who is spending intervals of time with a child desires to relocate outside the state or more than fifty (50) miles from the other parent within the state," the relocating parent shall send notice to the other parent, and such notice shall include:

> (1) Statement of intent to move;
>
> (2) Location of proposed new residence;
>
> (3) Reasons for proposed relocation; and
>
> (4) Statement that absent agreement between the parents or an objection by the non-relocating parent within thirty (30) days of the date notice is sent by

[6] On this Court's review, since deciding ***Franklin***, only two other cases have applied the amended relocation statute, ***Hall v. Hall***, No. M2021-00757-COA-R3-CV, 2022 WL 1642700 (Tenn. Ct. App. May 24, 2022) and ***Nance v. Franklin***, No. M2021-00161-COA-R3-JV, 2022 WL 4241374 (Tenn. Ct. App. Sept. 15, 2022).

registered or certified mail in accordance with subsection (a), the relocating parent will be permitted to do so by law.

Tenn. Code Ann. § 36-6-108(a). If the non-relocating parent timely objects to the relocation, "the relocating parent shall file a petition seeking approval [from the court] of the relocation." Tenn. Code Ann. § 36-6-108(b). "The non-relocating parent [then] has thirty (30) days to file a response in opposition to the petition." Tenn. Code Ann. § 36-6-108(b). Upon review of such petition, a trial court must determine whether relocation is in the child's best interest. Tenn. Code Ann. § 36-6-108(c)(1). There are several factors for courts to consider when making this best interest determination. *See* Tenn. Code Ann. § 36-6-108(c)(2). We turn to review these factors against the evidence and the trial court's findings of facts.

The nature, quality, extent of involvement, and duration of the child's relationship with the parent proposing to relocate and with the non-relocating parent, siblings, and other significant persons in the child's life.
Tenn. Code Ann. § 36-6-108(c)(2)(A)

Concerning the first factor, the trial court found that Mother was responsible for McKayla's day-to-day needs and performed them as a single parent from the Child's birth (2008) through 2012. The trial court found that Mother and Stepfather bore the primary day-to-day responsibilities of raising the Child from 2012 to 2019. The trial court also found that Father "became more physically present on a day[-]to[-]day basis, and more directly involved in the daily aspects of McKayla's life only after he was terminated from the NFL." The evidence supports the foregoing findings. According to the record, for most of McKayla's life, Father and McKayla lived in different cities, and Father traveled often for his career. Although he visited McKayla, the nature and extent of Father's involvement in the Child's life was very different from the nature and extent of Mother's involvement in the Child's life. Indeed, Father did not share in the day-to-day responsibilities, and he was able to be the "fun dad" when he visited with the Child.

The evidence supports the trial court's finding that Mother raised McKayla as a single parent until 2012 when Mother and Stepfather began raising the Child together. The record shows that Father's move to Memphis became permanent in mid-2018; thereafter, Father petitioned the trial court for more parenting time. In 2019, Mother agreed to give Father considerably more time with the Child, but the record shows that Mother and, to an extent, Stepfather remained McKayla's primary caretakers until Mother's relocation to Virginia in December 2019. This fact is supported by both Father's and the Child's testimony. During his testimony on February 20, 2020, when asked "So . . . since her birth until now, who do you believe . . . took care of [McKayla's] daily needs," Father responded, "it [is] probabl[y] between [Stepfather] and [Mother]." During her September 2019 testimony, the trial court asked McKayla: "[I]f you were sick and had to go to the doctor, dentist, who is the person who is probably going to be the one to do it?" McKayla's

responded: "My mom. My mom."

Regarding her relationship with Father, the trial court found that McKayla, "loves, worships, adores, idolizes, and, arguably at this point in her life, prefers her father to her mother." The trial court described Father's and McKayla's relationship as "vibrant and full of love." However, the trial court found that part of the reason Father and McKayla enjoyed this close relationship was due to Mother's "constant support and encouragement," and, from 2012 forward, the additional support and encouragement of Stepfather. The trial court found that Mother and Stepfather "created an environment where McKayla was free to love and adore her father despite his physical absence from her day[-]to[-]day life." These findings are also supported by the record. We agree that, without Mother and Stepfather's support,[7] it is unlikely that Father and McKayla would have such a close relationship. The record shows that, while Father was living in a different city, Mother was in constant communication with him concerning the details of McKayla's life. Mother frequently sent Father pictures of McKayla and kept him informed of her academics and extracurricular activities. The record also shows that McKayla had various mementos of Father (memorabilia from his NFL teams, stuffed animals from Father, and pictures of him) in her room at Mother's house. The proof established that Stepfather also supported McKayla's relationship with Father. According to the record, Stepfather and McKayla would watch Father's football games together. In addition, the record shows that Mother encouraged Father to spend time with the Child beyond his designated parenting time.

Aside from the Child's relationships with her parents, the trial court found that the Child's relationship with Stepfather has been "extremely significant" in the Child's "day[-]to[-]day life, in her rearing, and in her education and formation[.]" The trial court found that Stepfather and McKayla have a "deep love" for each other, and that Stepfather showed his devotion to McKayla through his testimony wherein he focused on "who McKayla is as a human being, and how he has been a daily witness to her growth since she was sixteen (16) months old." The trial court found that McKayla also enjoys being a big sister to her three younger siblings and is closely bonded with them. The evidence supports these findings. Indeed, all parties, including Father and Stepmother, testified to McKayla's close bond with Stepfather and her siblings.

Regarding McKayla's relationship with Father's family, the trial court found that, although it is apparent that Stepmother and Father's extended family love McKayla, they "have not been the daily witnesses to the minutia of McKayla's life, to the quotidian details of the fabric of this [C]hild's being that her [M]other and [Stepfather] have[.]" The trial court did not minimize Father or his family's involvement in McKayla's life, but found that "the great weight of the evidence shows that their involvement at this current level is more recent." The record supports these findings. Although Father visited with the Child

[7] The record shows that Mother also encouraged McKayla's relationship with Father's family when Father did not reside in the Memphis area.

during the off-season from football, he was not involved in the "day-to-day" life of the Child until 2019, when he and Mother agreed on a new parenting schedule that allowed him more time with the Child. Likewise, while it is clear that McKayla and Stepmother have a special bond, Stepmother has only been in McKayla's life for a few years. For the foregoing reasons, we agree with the trial court that the first factor favors allowing Mother to relocate with McKayla to Virginia.

The age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child.
Tenn. Code Ann. § 36-6-108(c)(2)(B)

The trial court made extensive findings on the second statutory factor. As an initial matter, the trial court noted that McKayla was 11 years old when the litigation began and 12 years old at the time of the final trial. Concerning the Child's educational needs, the trial court found that McKayla "struggled" in kindergarten, but she became more focused and began to flourish academically when the parties moved her to a school with smaller class sizes and individualized attention from teachers. Although McKayla has historically made mostly As in her classes, she has received some lower grades in the recent past, discussed *infra*. The trial court found that both Mother and Stepfather as well as Father have helped McKayla with her homework and school projects. The record supports these findings. The record shows that McKayla initially struggled in kindergarten. Mother testified that, once the Child was enrolled in schools with smaller class sizes, the Child was able to thrive. However, the record also shows that part of McKayla's academic success is attributable to Mother's focus on the Child's education. It is clear that academics are very important to Mother and Stepfather, as evidenced by Mother's testimony that she created a family calendar for McKayla's assignments so that Mother and Stepfather could "stay on top of" McKayla's academics. Although Father and Stepmother testified that they also help McKayla with her homework, the record shows that this involvement has been very recent.

Turning to the recent past, the trial court found that, during the 2020-2021 school year, while McKayla lived with Father, she made honor roll the first quarter. However, the trial court found that, since the end of the first quarter, McKayla's grades suffered, and the Child expressed a need for a tutor in one subject. The record shows that the Child made As and Bs the first quarter, but received an F on a math quiz in the second quarter. McKayla also expressed that she desires a tutor in English. The trial court found that Mother was alarmed by the slip in the Child's grades, while Father and Stepmother minimized the significance of it. The trial court found that Father and Stepmother testified that they met with the school to address McKayla's grades. Mother testified that she was concerned that Father and Stepmother are less vigilant in ensuring that McKayla stays on top of her school assignments than she was when McKayla lived with her. The trial court expressed concern that "McKayla has slipped academically despite the presence of [three] adults in her home

and in her life."[8] Despite her grades suffering, the trial court found that Father allowed McKayla to join the basketball team, over Mother's objection that the extra-curricular activity was inappropriate in light of McKayla's grades. The record supports these findings. Concerning McKayla's future schooling in Memphis, the trial court found that McKayla desires to attend Houston Middle School ("Houston Middle"), a quality public school, but one that is larger and less focused on the individualized needs of students. Mother testified that she worries that McKayla will be lost and will struggle due to the size of the school. Mother testified that she is also concerned that McKayla's interest in Houston Middle is due to a "crush" she had developed on a boy in Memphis, and Mother also expressed concern that McKayla had been allowed to be unsupervised with the boy. The record supports these findings. The record also shows that McKayla wants to attend Houston Middle because, according to her testimony, the children who have attended it have been successful in securing sports scholarships in college, and she is interested in playing lacrosse, shot put, volleyball, and basketball there. Concerning the Child's physical development, the trial court found, and the record supports, that McKayla has always been very physically active and enjoys a variety of sports. Indeed, the record shows that McKayla is a very active child and that both parents support her extracurricular activities. Recently, she has taken an interest in basketball, volleyball, lacrosse, and shot put. Given that Father did not live in the same city as the Child for the majority of her life, Mother has historically enrolled the Child in extracurricular activities and has attended more of them. When he moved to the Memphis area, Father began attending more of McKayla's activities and took an interest in enrolling her in these activities.

In this portion of its order, the trial court discussed Father and Stepmother's addressing McKayla's recent questions and curiosity about human sexuality without including Mother and Stepfather in the conversation. The record shows that McKayla approached Stepmother concerning this topic, and Stepmother told McKayla to discuss these issues with Mother. When McKayla expressed that Mother would not discuss such issues with her, Stepmother engaged McKayla in this conversation.[9] We agree with the trial court that "[t]his was an unacceptable exclusion of [M]other and [S]tepfather from a critical stage in [McKayla's] life," and that Father and Stepmother should have communicated with Mother before engaging with the Child in this conversation.

Regarding the Child's emotional development, the trial court found that Stepmother, Father, and McKayla have been attending the paternal grandmother's church since 2018. The trial court also found that Mother taught Sunday School at their church. Furthermore, the trial court found that Mother organized playdates and sleepovers for the Child. The trial court also found that extensive travel had never been detrimental to McKayla and that she had always traveled to other cities to be with Father.

[8] The paternal grandmother lives with Father and Stepmother.

[9] There is evidence in the record that the Child lied and/or was not completely truthful with the parties. It is unclear from the record whether Mother refused to discuss these issues with McKayla.

We now turn to the Child's emotional and developmental stage and needs during the latter part of the litigation. We draw this distinction because it is clear that the Child's behavior changed during this time and that she was struggling to cope with the relocation. We recall that the Child began living with Father and Stepmother in December 2019, when Mother and Stepfather relocated to Virginia. In January 2020, McKayla began seeing Dr. Malone who diagnosed the Child for the first time with adjustment disorder and depression. Dr. Malone first visited with the Child on January 13, 2020, January 22, 2020, and February 18, 2020. Dr. Malone testified that, during these initial sessions, McKayla was very sad and missed Mother, Stepfather, and her siblings. Dr. Malone testified that McKayla expressed the desire to have all of her family in one city, and she did not want to choose between her parents because she did not want to hurt either of them. Dr. Malone testified that the Child did not discuss the details of the litigation at this time.

The record shows that the Child resided with Mother in Virginia from March through May 2020, at the start of the Covid-19 pandemic. Mother testified that the family had a great visit with McKayla while she was in Virginia, and McKayla did not want to return to Memphis after residing in Virginia. Nevertheless, the Child returned to Memphis to live with Father while the litigation was pending. Mother testified that McKayla attended their family vacation in June and that, on the Child's return to Memphis, Mother's communication with her became very difficult. Mother testified that she felt like Father was not encouraging McKayla's relationship with her while the Child resided with him. On June 17, 2020, Mother emailed Dr. Malone to express that she was very concerned with McKayla's emotional and mental health due to the conversations, or lack thereof, that Mother had been having with the Child. Dr. Malone met with McKayla on July 6, 2020, to discuss Mother's concerns. McKayla told Dr. Malone that she was upset with Mother because Mother was asking McKayla what she had discussed with the GAL. At this session, McKayla told Dr. Malone she did not have a preference as to which parent she lived with, but she desired to stay in Memphis and attend Houston Middle.

On August 5, 2020, the trial court ordered that Mother had final authority to choose McKayla's school for the 2020-2021 school year, effectively allowing for McKayla's temporary relocation to Virginia. Dr. Malone testified that she met with McKayla on August 6, 2020, the day after the Child learned she would be attending virtual school in Virginia. Dr. Malone testified that McKayla was very upset with Mother, and that she wanted to attend in-person school at FACS or Houston Middle. Dr. Malone again visited with McKayla on August 13, 2020. During that session, McKayla explained that Mother found a private school in Virginia that had in-person school, but McKayla remained upset that she would be moving and attending school in Virginia. Dr. Malone testified that, at this point, the Child exhibited increased irritability and depression. As discussed above, after the trial court's August 5 decision, Father filed an application for extraordinary appeal and an emergency stay, and the Child remained in Memphis during this time. The parties litigated the foregoing simultaneously while the final trial was pending. Mother testified

that, when the trial court ruled that the Child would begin school in Virginia, her relationship with McKayla "took a stark, stark turn for the worst." The record shows that, during this time, the Child was very angry with Mother and unable to communicate her feelings with Mother concerning the situation.

In September 2020, Mother recorded her telephone calls with McKayla, and three of these calls were admitted into evidence at trial. We address these recordings because Father and the GAL argue that these recordings demonstrate that Mother "emotionally abused" the Child. The recordings show that both Mother and McKayla were stressed and upset with their current situation and demonstrate the very fractured relationship between them. The two frequently interrupt each other, McKayla appears distracted, and it is clear that Mother and McKayla were not communicating effectively. As the trial court found, the telephone calls were "concerning" in that Mother threatened to withhold contact with McKayla's siblings due to McKayla's behavior, something the trial court found "particularly unconscionable." We agree that Mother failed to exhibit good judgment during the calls, and that the threat to withhold McKayla's siblings from her was unacceptable. However, we also agree with the trial court that these telephone calls must be viewed in the entire context of the situation and litigation. Mother testified that she spoke to McKayla out of anger, and she acknowledged that her threats were wrong. She further testified that, when she visited with the Child in October 2020, she apologized to McKayla for her behavior and told McKayla that she (Mother) was in the wrong. The record also shows that Mother contacted both Dr. Malone and another family therapist in Virginia for help concerning how to speak with McKayla during such a difficult time. Dr. Malone corroborated Mother's testimony that she reached out for help in communicating with McKayla. Mother testified that she was advised to keep conversations "light" with McKayla and to "give her some space," which Mother did as evidenced by both her testimony and McKayla's testimony. In short, while the telephone calls are concerning to this Court, it is clear that Mother regretted her actions and took steps to rectify them and to restore effective and loving communication with the Child. Furthermore, as the trial court found, these recordings "represent little more than one hour of the 12-year life of this [C]hild," where it is otherwise clear that Mother has been a very loving and supportive parent. Despite the foregoing difficulties, one month after the telephone calls, McKayla testified that she has a good relationship with her siblings and that she feels like she can "speak with [Mother] about anything going on in [her] life." Thus, despite some difficulties, the record shows that McKayla still views her Mother as a source of love and support.

On this Court's review, the record shows that McKayla has suffered during the litigation because the stability she once had with Mother has not been present while she has been living with Father, and she has been unable to communicate her feelings on this subject. Indeed, the record shows that Mother has always been the parent to provide McKayla with the structure and discipline that has allowed her to become the successful adolescent that she is. We agree with the trial court's finding that Father and Stepmother

"may be more in tune with McKayla's 'wants,' but that [Mother] and Stepfather are more in tune with her 'needs.'" On its review, the trial court concluded that it was "of the firm opinion that relocating to Virginia with her [Mother], [S]tepfather, and siblings will have a positive impact on McKayla's life and that it will restore the structure and stability that allowed her to flourish and succeed academically, emotionally, and in a developmentally appropriate way." We agree.

The feasibility of preserving the relationship between the non-relocating parent and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties.
Tenn. Code Ann. § 36-6-108(c)(2)(C)

The trial court found that the third factor weighed in favor of McKayla relocating to Virginia. Specifically, the trial court found that the Child was previously able to maintain a strong relationship with Father while he played football in the NFL. However, the trial court found that the Child has been unable to maintain a strong relationship with Mother, Stepfather, and her siblings while McKayla has resided with Father during the litigation. Specifically, the trial court found that the Child's relationship with Mother and her family has suffered insofar as Father and Stepmother do not cultivate strong communication between McKayla and Mother.

The trial court also considered the parties' schedules and ability to travel to see the Child. Regarding Father and Stepmother, the trial court found that neither of them worked outside the home, but they were able to maintain a high standard of living. The trial court found that Father retired from the NFL three years before trial and was able to live off his NFL earnings. Conversely, the trial court found that, although Mother was employed as a vice president of a leading non-profit organization and enjoyed an excellent salary, she had three other children to consider and support, and she had neither the freedom nor the wealth Father enjoyed. Accordingly, the trial court found that, based on the parties' circumstances, Father and Stepmother were better able to travel to visit with McKayla. The evidence supports the trial court's findings and conclusion. Indeed, McKayla and Father consistently traveled to see each other until 2018 when Father established a permanent residence in the Memphis area. The record shows that travel has never been difficult with McKayla and that Father and Stepmother have the financial means and the flexibility to visit McKayla in Virginia. The same cannot be said for Mother and Stepfather. Mother testified that McKayla's relationship with Stepfather and her siblings would suffer because it would be difficult for the entire family to consistently travel from Virginia to Memphis to visit McKayla. Furthermore, as evidenced by McKayla's close relationship with Father, Mother has historically encouraged McKayla's relationship with him; Mother testified that she would continue to foster that relationship should McKayla relocate to Virginia. Accordingly, we agree with the trial court that this factor favors McKayla's relocation.

The child's preference, if the child is twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preference of older children should normally be given greater weight than those of younger children.
Tenn. Code Ann. § 36-6-108(c)(2)(D)

As discussed above, McKayla testified twice during the litigation. In September 2019, when McKayla was 11 years old and both parents resided in Memphis, the trial court found that McKayla "had no preference and did not want to choose between her parents." McKayla's testimony supports the trial court's findings. Although McKayla testified that she wanted to spend more time with Father, she testified that she "would like to spend time with both [parents]." When the trial court asked, "So I guess for you it would be better if they stayed in the same city?" McKayla responded, "Yes." When the trial court engaged McKayla concerning a potential move, the following conversation transpired:

> Trial Court: So have you told your mom how you feel, or do you want to go see the place?
>
> McKayla: I do want to see it, but then, but then I want to stay with my dad more. I said, I said, but then I want to see my dad more.
>
> Trial Court: So is it your -- does it worry you that if you move to D. C. with your mom that you would not see him as much --
>
> McKayla: Yes.
>
> Trial Court: -- as you do now, and what you would really like is to actually see him a lot more?
>
> McKayla: Yes.
>
> Trial Court: So how do you -- so if you if we did that, and you lived with your dad, do you not think you would miss your mom?
>
> McKayla: I would be. I said I would miss her.
>
> Trial Court: You think you would or would not?
>
> McKayla: I would.

Although McKayla did not explicitly express that she had no preference, it is clear from her testimony that the Child was conflicted with Mother's move, and ultimately desired for her parents to remain in the same city so she could spend more time with each of them.

McKayla testified a second time in October 2020, when she was 12 years old and after Mother had relocated to Virginia. At that time, as the trial court found, the Child expressed a preference to live with Father in Memphis. The trial court found that McKayla's preference was due to her friends remaining in Memphis and her desire to attend Houston Middle. McKayla's testimony supports the trial court's findings. Specifically, McKayla testified that she wanted to remain in Memphis "[b]ecause [her] friends are [in Memphis] and because [she] grew up [in Memphis]." McKayla also confirmed that she wanted to remain in Memphis because she had family there, including her cousins, grandmothers, an aunt, an uncle, and Stepfather's family. McKayla also testified that she wanted to attend Houston Middle. At that time, McKayla testified that she and Mother argued "eight out of ten times" they communicated, and, as discussed *supra*, she often did not communicate with Mother due to the arguments. Despite the foregoing, McKayla also testified that she felt safe with Mother and that she felt that she could speak with Mother concerning anything in her life. McKayla testified that she felt the same about Father and Stepmother.

Concerning McKayla's stated preference, the trial court opined:

> Distilled to its essence, the primary issue in this case is that, for a period of about a year before the 2019 relocation litigation began, McKayla had both of her parents in the same county in the same state for the very first time in her life - and she loved it, and she does not want to accept that it has come to an end. McKayla does not want to move. She does not want her parents to live in separate cities again - period. In her first statement to the court, she stated that she wanted to spend as much time as possible with both parents. McKayla is angry that her ideal world of having both parents in one city at one time has come to a halt, and she has focused her anger like a laser beam on her mother. McKayla was never angry at her father for pursuing his dream career as it took him to cities and states that were away from her - her [M]other and [Stepfather] would not tolerate or permit this. Her [F]ather maintained a steady presence in her life despite his career pursuits, which was encouraged and supported by [M]other and [Stepfather] and [F]ather's family members, and her relationship with him blossomed and flourished and remained strong. The first time McKayla talked to the [trial] court, when asked, she described the people in her life who were responsible for her day to day care in this order: her [M]other, her [S]tep-father, then her [S]tep-mother and [F]ather. In her second statement to the [trial] court, after having 10-12 sessions with a new therapist and seeing her [M]other only a handful of times during the entire year of 2020, quite predictably, McKayla now states that she has a preference to live with her [F]ather. Father and [Stepmother], [F]ather's mother, [Mr. Rawls], and Dr. Malone have not only permitted McKayla to be angry and remain angry at her [M]other for pursuing her dream career - a career trajectory that is nothing short of

> identical to [F]ather's when he was working for the NFL - they have fomented her resentment and anger toward her mother.[10]

Because McKayla expressed different preferences at different times throughout the litigation, the trial court did not weigh this fourth factor for or against relocation. Rather, it noted "that this an illuminating example of why younger children's preferences should not be given an enormous amount of weight in making such important decisions in their lives." Given McKayla's age, her opinions have been inconsistent throughout the litigation. The Child cannot be faulted for lacking a complete understanding of the intricacies that affect her well-being. So, while courts should *consider* an older child's preference when deciding whether relocation is in that child's best interest, because children may not always understand what is in their own best interest, as is the situation here, we agree with the trial court that this factor does not weigh for or against relocation.

Whether there is an established pattern of conduct of the relocating parent, either to promote or thwart the relationship of the child and the non-relocating parent.
Tenn. Code Ann. § 36-6-108(c)(2)(E)

Although the trial court made extensive findings concerning this factor, we summarize the findings as follows. In short, the trial court found that Mother and Stepfather "very intentionally created a safe space for McKayla to love her father and his side of the family and to spend time with them." The trial court found that the parties' only court approved parenting plan exemplified this wherein "the entire schedule [was] built around [Father]'s [NFL] career." The trial court also found that, when McKayla resided with Mother, Mother extensively communicated with Father concerning the Child. Conversely, the trial court found that "[t]he level of communication between the parents about McKayla's day[-]to[-]day life has diminished" since she has been in Father's care. As an example of the foregoing, the trial court noted how, during the trial, Father announced that McKayla was on a plane to Virginia to visit Mother, but he had not informed Mother of this travel arrangement prior to the hearing.[11] Furthermore, the trial court found that, since McKayla has been living with Father, Father and Stepmother have excluded Mother and Stepfather and Stepfather's relatives from participating in activities with McKayla. In short, the trial court found that McKayla's relationship with Mother suffers when she is in Father's care, but Father's relationship with McKayla flourishes

[10] In its order, the trial court noted an "unofficial 'third time McKayla expressed a preference to the [trial] court'"—in March 2020, when the Covid-19 pandemic began. The trial court found that McKayla was visiting with her Mother, Stepfather, and siblings in Virginia when the pandemic began, and the parties and the GAL asked the trial court to decide where McKayla would live as the pandemic unfolded. According to the trial court's order, all three attorneys for the parties and the Child advised that McKayla desired to remain in Virginia during that time. There is no evidence in the record concerning a hearing on this matter nor is there any order on it. Accordingly, we place little weight on this finding.

[11] The trial court recessed the hearing to allow for Mother to make arrangements to pick up the Child from the airport.

when the Child lives with Mother. Accordingly, the trial court found that this factor favored relocation.

The record supports the trial court's findings. The record shows that when McKayla was very young, Mother allowed Father to visit with the Child at her parents' home in Virginia—this without any court ordered visitation. Although Father and Mr. Rawls alleged that Mother required Father to have "supervised visitation" with the Child, Mother testified that she would leave Father alone with the Child in a room in her parents' house, but that she needed to remain close to the Child because McKayla was breastfeeding. When McKayla was no longer breastfeeding, Mother allowed Father to take the Child for visitation outside of the house without her. The record also shows that the only parenting plan entered by a court was completely structured around Father's professional football schedule. Indeed, Mother and the paternal grandmother testified that Mother would deliver McKayla to her paternal grandparents who would then fly the Child to visit Father wherever he resided at the time. The record also shows that, when the Child's schedule allowed, Mother encouraged Father to spend additional time with McKayla beyond his regular parenting time. Although Father and his family testified that Mother often denied Father's request for parenting time, the record shows that Mother consistently promoted McKayla's relationship with Father while also keeping the Child on a schedule that allowed her to succeed academically and otherwise. This fact is also supported by Mother's agreement to two informal parenting plans that provided Father with more visitation after he moved to the Memphis area. In short, the record shows that, when the Child was with Mother, Mother successfully balanced McKayla's relationship with Mother, Stepfather, and her siblings, McKayla's relationship with Father and his family, and McKayla's schedule. However, as discussed above, McKayla's relationship with Mother has suffered since she has been in Father's care.

We note that Father and the GAL argue that the fact that Mother sought employment outside the Memphis area, after Father requested more visitation with the Child, is proof of her attempt to thwart Father's relationship with the Child. However, Mother testified that she and Stepfather: (1) always wanted to live in a big city; (2) intended to reside in Memphis for only four years; and (3) wanted to move before their younger children began school. Mother testified that she never promised Father that she would stay in Memphis and, in fact, conveyed to Father that Memphis was "not a permanent stop for [them]." From our review, there is no evidence to show that Mother exhibited a pattern of behavior in which she thwarted McKayla's relationship with Father. Rather, the record shows the opposite. Accordingly, we agree with the trial court that this factor favors relocation.

Whether the relocation of the child will enhance the general quality of life for both the relocating parent and the child, including, but not limited to, financial or emotional benefit or educational opportunity.
Tenn. Code Ann. § 36-6-108(c)(2)(F)

The trial court found that relocation would enhance McKayla's, Mother's, Stepfather's, and her siblings' quality of life. Mother and Stepfather testified that McKayla would benefit from the racial and cultural diversity offered by Fairfax County, Virginia and Washington, D.C. as well as the civic, cultural, and political discourse present in the area. They further testified that McKayla's siblings were excelling at their school in Virginia at a greater level than what they experienced in Shelby County, and Mother testified that, based on her research, the Fairfax County public schools are among the top in the nation. Mother and Stepfather testified concerning their desire for McKayla to enjoy the same experience as her siblings.

It is clear that the relocation would also enhance Mother's quality of life as the job she relocated for provides her with new career opportunities. *See* ***Franklin***, 2021 WL 5500722, at *8 (discussing the "emotional benefits" relocation would provide for the relocating parent). When asked why she applied for the position in Washington, D.C., Mother testified:

> So[,] it's the – it's the lead position, lead fundraiser for a nationally-recognized operation organization. This organization feeds into the world monument fund, which is an international conservation organization, across the globe. Works very closely, so it's – it's a very prestigious organization. It's the top in the field for this country. And I knew it was going to expose me to some things that I would never have gotten in Memphis.

We also note Mother's testimony that McKayla will benefit from witnessing Mother's work ethic and her career progression. Indeed, Mother testified that she wants McKayla to see her as the example of a "young, successful African American working mother in a position of power in a national organization." Beyond the personal growth that Mother could attain through her new position, Mother testified that her new salary is almost double the salary she earned in Memphis. She further testified that she has already been promoted within the organization and that the promotion should come with another pay increase. Given the foregoing, the trial court found that this factor favored relocation, and we agree.

The reasons of each parent for seeking or opposing the relocation.
Tenn. Code Ann. § 36-6-108(c)(2)(G)

The trial court found that this factor weighs neither in favor, nor against relocation. We agree. Specifically, the trial court found that both parents have very compelling reasons for their respective positions regarding relocation but noted that "[t]he timing is at cross purposes and . . . is unfortunate." The trial court also found that neither party is vindictive, spiteful, or driven by any untoward purpose and that both parents and their spouses are credible. Indeed, the record shows that the parties are simply at different periods in their lives; Mother's career is progressing while Father's career has ended. From Mother's perspective, the move provides her opportunity for personal and professional

growth, which she believes will benefit not only herself, but also her husband and children. From Father's perspective, he has finally established a residence near McKayla and sees this as an opportunity to make up for lost time with the Child. Both Mother's and Father's motives are worthy, and it is clear that both parties simply want to spend as much time as possible with McKayla. As such, we agree with the trial court's assessment that this factor does not weigh in favor of either party.

Any other factor affecting the best interest of the child, including those enumerated in § 36-6-106(a).
Tenn. Code Ann. § 36-6-108(c)(2)(H)[12]

In its final order, the trial court noted Father's and the GAL's request for the trial court to consider Tennessee Code Annotated section 36-6-106(a) in deciding whether relocation was in McKayla's best interest. Despite this request, Father and the GAL barely address this factor on appeal. For the sake of completeness, we briefly review these factors against the trial court's findings.

Factors Favoring Mother

The trial court found that Tennessee Code Annotated section 36-6-106(a)(1), (2), (5), (7), (9), (10), (12), and (14) favored Mother "for all of the reasons discussed at length . . . in the factors of the relocation statute." The section 36-6-106(a) factors that the trial court found favored Mother are:

> (1) 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;

[12] The trial court addressed its concerns with Dr. Malone's testimony in this portion of its order. The trial court found that Dr. Malone had a skewed understanding of McKayla's and the parties' histories. Specifically, the trial court found, and the record supports, that Dr. Malone's perception of the parties' histories was based solely on what McKayla, Father, and Stepmother communicated to Dr. Malone. The record shows that Dr. Malone never contacted Mother or Stepfather to speak with them concerning the Child, the parents, or their history. As a result, Dr. Malone testified that she believed Mother married Stepfather when McKayla was "around age 8," and that Father married Stepmother when McKayla was "around 9 or 10." This is factually inaccurate as the record shows that Mother married Stepfather in 2012, one month before McKayla's fourth birthday, and Father married Stepmother in June 2018, two months before McKayla's tenth birthday. Similarly, Dr. Malone testified that she was under the impression that Mother was McKayla's primary residential parent "up until [Father] moved [to Memphis]," and that Dr. Malone believed Father moved to Memphis in the "beginning of 2019." The record shows that Father's move to Memphis became permanent around 2018 but that Mother remained the Child's primary parent until Mother moved to Virginia in December 2019. Indeed, it appears from Dr. Malone's testimony that she was not only operating under a misconception of McKayla's history, but that her perception was based on partisan information. Accordingly, Dr. Malone was unable to acquire complete insight into McKayla's history and/or what was needed to help the Child with the transition during Mother's relocation.

(2) Each 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;

***

(5) 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;

***

(7) The emotional needs and developmental level of the child;

***

(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;

(10) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

***

(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;

***

(14) Each parent's employment schedule, and the court may make accommodations consistent with those schedules.

Tenn. Code Ann. § 36-6-106(a)(1), (2), (5), (7), (9), (10), (12), (14).

For the reasons discussed at length, *supra*, we agree with the trial court's conclusion that factors (1), (2), (5), (7), (9), and (10) favor Mother. We disagree that factor (12) solely favors Mother and that factor (14) favors Mother. Concerning factor (12), the record shows that McKayla has a good relationship with both Stepmother and her paternal grandmother, who also reside in Father's house. As such, this factor should weigh evenly as to both parents. Regarding factor (14), because Father is unemployed, he has more flexibility to care for the Child. Thus, factor (14) weighs in favor of Father. However, for the many reasons discussed above, these conclusions have little bearing on the ultimate outcome of the case.

Factors Weighing Evenly as to Both Parents

The trial court found that Tennessee Code Annotated section 36-6-106(a)(4), (6), and (8) favored the parties equally. These factors are:

> (4) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;
>
> ***
>
> (6) The love, affection, and emotional ties existing between each parent and the child;
>
> ***
>
> (8) The moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the child. The court may order an examination of a party under Rule 35 of the Tennessee Rules of Civil Procedure and, if necessary for the conduct of the proceedings, order the disclosure of confidential mental health information of a party under § 33-3-105(3). The court order required by § 33-3-105(3) must contain a qualified protective order that limits the dissemination of confidential protected mental health information to the purpose of the litigation pending before the court and provides for the return or destruction of the confidential protected mental health information at the conclusion of the proceedings.

Tenn. Code Ann. § 36-6-106(a)(4), (6), (8). For the reasons discussed above, we agree that the foregoing factors favor the parties equally.

Remaining Factors

The trial court found that Tennessee Code Annotated section 36-6-106(a)(3) was

inapplicable, and we agree.[13] The remaining factors are:

> (11) Evidence of physical or emotional abuse to the child, to the other parent or to any other person. The court shall, where appropriate, refer any issues of abuse to juvenile court for further proceedings;
>
> ***
>
> (13) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preference of older children should normally be given greater weight than those of younger children;

Tenn. Code Ann. § 36-6-106(a)(11), (13).

As discussed above, Father and the GAL argue that Mother emotionally abused McKayla as evidenced by the September 2020 recorded telephone calls. From our review, and for the reasons discussed *supra*, we agree with the trial court that, although concerning, the recorded conversations between McKayla and Mother should be viewed in the context of all extenuating circumstances. In this light, the telephone conversations simply do not constitute emotional abuse of the Child.

Regarding McKayla's preference, the trial court found that factor (13) favored Father but did not assign it significant weight for the reasons discussed *supra*. We agree.

In determining what is in a child's best interest,

> [t]rial courts are not simply to perform a rote examination of each factor and tally up those in favor of each party. ***Beaty v. Beaty***, No. M2020-00476-COA-R3-CV, 2021 WL 2850585, at *3 (Tenn. Ct. App. July 8, 2021) (quoting ***Steakin v. Steakin***, No. M2017-00115-COA-R3-CV, 2018 WL 334445 at *5 (Tenn. Ct. App. Jan. 9, 2018)). Instead, the relevancy and weight of the factors depend o[n] the specific circumstances of the case. ***Id.*** Indeed, any one factor may prove determinative in the trial court's analysis of an appropriate parenting plan. ***Grissom v. Grissom,*** 586 S.W.3d 387, 393 (Tenn. Ct. App. 2019) (quoting ***Solima v. Solima,*** No. M2014-01452-COA-R3-CV, 2015 WL 459134, at *4 (Tenn. Ct. App. July 30, 2015)). This context-specific analysis means that there can be no bright-line test for us to use in assessing whether the trial court provided sufficient factual findings to

[13] Factor three requires courts to consider a party's "[r]efusal to attend a court ordered parent education seminar[.]" Tenn. Code Ann. § 36-6-106(a)(3). It does not appear that the parties were required to attend such seminar, and this factor is inapplicable.

> underpin its decision. *See* ***Lovlace v. Copley,*** 418 S.W.3d 1, 35 (Tenn. 2013). However, the trial court must include in its findings "as much of the subsidiary facts as is necessary to disclose to the reviewing court the steps by which the trial court reached its ultimate conclusion on each factual issue." ***Id.*** (citation omitted).

Bean v. Bean, No. M2022-00394-COA-R3-CV, 2022 WL 17830533, at *6 (Tenn. Ct. App. Dec. 21, 2022).

Here, the trial court made ample factual findings and thoroughly explained the reasons underlying its decision that relocation is in McKayla's best interest. On appeal, we are prevented from second-guessing the trial court's decision to allow relocation unless we conclude that the trial court abused its discretion. *See* ***Dungey***, 2020 WL 5666906, at *2; ***Schaeffer***, 2019 WL 6824903, at *4. In its final order, the trial court methodically analyzed each relocation factor against the evidence. The trial court found, and the evidence supports, that the Child has consistently relied on Mother for stability and direction in her life, and that the Child's educational and emotional development suffered in the months she was away from Mother during the relocation litigation. Furthermore, because McKayla is accustomed to traveling to visit Father and is accustomed to communicating with Father remotely, she will be able to maintain a close relationship with Father, despite the distance. Thus, based on the trial court's order and the entire record, we cannot conclude that the trial court abused its discretion when it found that relocation was in the Child's best interest.

B. The Child's Transportation Costs

Tennessee Code Annotated section 36-6-108(d) provides, in part, that in parental relocation cases a court shall "assess the costs of transporting the child for visitation[.]" Tenn. Code Ann. § 36-6-108(d). "'As with all matters concerning custody and visitation, trial courts are vested with broad discretion in making determinations regarding transportation.'" ***Keown v. Keown***, No. M2014-00915-COA-R3-CV, 2015 WL 3455383, at *3 (Tenn. Ct. App. May 29, 2015) (quoting ***Ohme v. Ohme***, No. E2004-00211-COA-R3-CV, 2005 WL 195082, at *5 (Tenn. Ct. App. Jan. 28, 2005)).

Concerning McKayla's transportation costs to and from Memphis, the trial court found:[14]

[14] The trial court also ordered that the parties could meet in Knoxville, upon a written mutual agreement, for any exchange where Father would receive 5 days or more of parenting time. We presume the trial court anticipated the parties driving for this transportation and note that it did not award costs incurred to drive the Child to and from Knoxville. In the absence of a mutual agreement, the Child would fly for Father's visits.

> The Father shall bear the responsibility for the scheduling and cost of the child's airfare and unaccompanied minor fee for his parenting time. The parties shall confirm all travel arrangements in advance and in writing with each other in enough time for the child to be prepared to travel and for the parents to make appropriate arrangements for pick up/drop off.

On appeal, Father argues that the trial court erred in assessing McKayla's transportation costs against him.[15] As the parties acknowledge in their briefs, the trial court failed to make the appropriate findings of fact to support its assessment of the Child's total airline transportation costs to Father. Nevertheless, Father asks this Court to "soldier on" in its analysis of the issue, and Mother argues that this Court can "find insight from the [t]rial [c]ourt's previous findings [to support its conclusion that Father should pay the transportation costs][—]namely, the wealth and means of Father compared to the income of Mother." To provide finality to the parties and because the parties have asked this Court to take such action, we will "soldier on" and independently review the record to determine whether the trial court erred when it assessed McKayla's travel costs against Father. *See* ***Hanson v. J.C. Hobbs Co.***, No. W2011-02523-COA-R3-CV, 2012 WL 5873582, at *10 (Tenn. Ct. App. Nov. 21, 2012) (internal citation omitted) ("On occasion . . . 'when faced with a trial court's failure to make specific findings, the appellate courts may 'soldier on' when . . . the court's decision is 'readily ascertainable.'").

This Court has explained that the relative financial resources of the parties may be considered when assigning travel expenses for visitation. ***Bowers v. Bowers***, 956 S.W.2d 496, 499-500 (Tenn. Ct. App. 1997); *see also* ***Reznicek v. Reznicek***, 1991 WL 156407, at *5 (Tenn. Ct. App. Aug. 19, 1991). Where there is a "great disparity" between the financial resources of the parties, we have concluded that it was proper for the party with more financial resources to bear the cost of transportation, even when the transportation costs were the result of the other party's relocation. *See* ***Dodd v. Dodd***, 737 S.W.2d 286, 292 (Tenn. Ct. App. 1987).

Turning to the record, Father testified that he earned a combined gross income of $15,000,000.00 in the last two years of his NFL career. The record shows that Father invested his NFL earnings into investment accounts and business ventures. Although there was no proof concerning whether and/or how much Father has profited from these investments, Father testified that he receives approximately $100,000.00 in income every year. Father also testified that, in 2018, he paid cash for his home in Germantown; Father stated that his house was worth approximately $1,300,000.00. The record shows that

[15] We note that the GAL joined in Father's argument concerning this issue and incorporated Father's entire argument by reference in the GAL's brief. The GAL's joinder with Father regarding this issue is inappropriate given the issue and the GAL's role in this litigation. In its order appointing a guardian ad litem, the trial court held that the GAL was appointed "to legally represent the interest of the minor child in this cause[.]" We fail to see how the trial court's order assessing McKayla's transportation costs to Father affects the Child's interests.

Father owns another house in the Memphis area and that he has a rent-paying tenant residing there; the rental income covers the expenses of this additional house. The record also shows that McKayla is Father's only child; neither Father nor Stepmother work; they are not seeking employment, and they travel frequently. Indeed, Father testified that he will not have to work for the remainder of his life, and he will be able to maintain his current standard of living. Concerning Mother's financial resources, the record shows that the job for which Mother relocated offered her a gross yearly salary of $175,000.00. Mother testified that, although the cost of living in Dunn Loring, Virginia is higher than it is in Memphis, her salary makes up for the adjustment. The record further demonstrates that Stepfather does not work, and is a stay-at-home parent. From the evidence concerning the parties' relative financial situations, we cannot conclude that the trial court abused its discretion in allocating McKayla's airline travel expenses to Father.

C. GAL's Attorney's Fees at Trial

On appeal, neither party argues that the GAL's attorney's fees at trial were unreasonable. Rather, Father appeals the trial court's order requiring him to pay all of the GAL's fees and asks this Court to divide the fees equally between Mother and Father. Specifically, Father argues that the trial court's order fails to make "findings that would have justified reallocation of 100% of the [GAL's] fees."

Tennessee Rule of the Supreme Court Rule 40A, section 11 provides that a court may

> reallocate the fees and expenses [of a guardian ad litem] at the conclusion of the custody proceeding, in the court's discretion, if the initial allocation of guardian ad litem fees and/or expenses among the parties has become inequitable as a result of the income and financial resources available to the parties, the conduct of the parties during the custody proceeding, or any other similar reason. Any reallocation shall be included in the court's final order in the custody proceeding and shall be supported by findings of fact.

Tenn. R. S. Ct. Rule 40A, § 11(b)(4).[16] "'In awarding guardian ad litem fees in a custody case, the trial court is given wide discretion, and this [C]ourt will not interfere in the exercise of that discretion absent a clear showing of abuse.'" ***Morgan v. Morgan***, No. E2020-00618-COA-R3-CV, 2021 WL 5792393, at *9 (Tenn. Ct. App. Dec. 7, 2021) (quoting ***Keisling v. Keisling***, 196 S.W.3d 703, 726 (Tenn. Ct. App. 2005)).

In its final order, the trial court found, in part,

> that much of [F]ather's proof focused on issues that occurred prior to the entry of the parties' 2012 Knox County Parenting Plan, and that were not

[16] The trial court referenced this section of Rule 40A in its order appointing the GAL.

> particularly relevant to the court's consideration of the best interest factors in the relocation statute. The court further finds that a significant segment of [F]ather's proof (two private investigator witnesses and their reports, which were almost 100 pages in length) contributed little to the court's inquiry into the best interest factors and did not cause the court to question the credibility of [M]other's testimony.

There is proof in the record to support these findings. Although both parties presented evidence concerning issues that occurred before entry of the 2012 Parenting Plan, the record also shows that Father hired two private investigators, one in Memphis and one in Virginia, to follow Mother in the fall of 2019, after Mother began her new position in Virginia. We agree that this proof "contributed little to the court's inquiry into the best interest factors and did not cause the court to question" Mother's credibility. However, the trial court's assessment of the GAL's fees against Father was not limited to this reasoning. As the trial court found in its order, "Tennessee's relocation statute gives the court the discretion to award attorney fees and suit expenses . . . in the discretion of the court. T.C.A. 36-6-108(f)." Indeed, Tennessee Code Annotated section 36-6-108(f) provides that "[e]ither parent in a parental relocation matter may recover reasonable attorney fees and other litigation expenses from the other parent in the discretion of the court." Tenn. Code Ann. § 36-6-108(f). Here, the trial court found that "[t]he attorney['s] fees and suit expenses for this lengthy trial are extensive," and that "[M]other's share of the GAL fees would be roughly equivalent of the amount of the attorney fees that the court would have found [M]other to be entitled to under T.C.A. 36-6-108(f)." Although, the trial court noted that it would "normally order the parties to share in the fees of the [GAL], . . . considering all of the equities in this case, and the respective financial circumstances of both parents (with [F]ather's financial ability and assets far exceeding [M]other's)," the trial court ordered Father to pay the entire amount of the GAL's attorney's fees. It did not award Mother attorney's fees, despite her pleading for them in her petition. Thus, we deduce from the trial court's order that it would have awarded Mother her attorney's fees, but, in its discretion, declined to do so and instead ordered Father to pay the GAL's attorney's fees. As discussed above, the record shows that Father's ability to pay the GAL's fees is greater than Mother's ability to do so. Accordingly, we conclude that the trial court did not abuse its discretion when it ordered Father to pay the GAL's attorney's fees from trial.

D. Attorney's Fees on Appeal

1. GAL's Appellate Attorney's Fees

Next, we turn to the GAL's request for appellate attorney's fees, which Father does not dispute but asks this Court to divide equally between Mother and Father.[17] Turning to

[17] Mother filed her appellate brief two days before the GAL filed his brief, and Mother did not file a reply brief. Accordingly, Mother made no argument concerning the GAL's appellate attorney's fees.

the order appointing the GAL, the trial court ordered that the GAL should "be compensated for fees and expenses in an amount the [c]ourt determine[d] [was] reasonable," and that the GAL could "participate in the appeal as any other party, including but not limited to, filing briefs, motions, and making oral arguments." Accordingly, the GAL is entitled to reasonable attorney's fees incurred in this appeal. Given that Mother has prevailed on the petition to modify permanent parenting plan and to approve parental relocation, and for the other financial reasons discussed, *supra*, we order Father to pay the GAL's appellate attorney's fees.

2. Mother's Appellate Attorney's Fees

Finally, Mother requests attorney's fees incurred in this appeal. In Tennessee, "litigants are responsible for their own attorney's fees absent a statute or agreement between the parties providing otherwise." ***Darvarmanesh v. Gharacholou***, No. M2004-00262-COA-R3-CV, 2005 WL 1684050, at *16 (Tenn. Ct. App. July 19, 2005) (citing ***State v. Brown & Williamson Tobacco Corp.***, 18 S.W.3d 186, 194 (Tenn. 2000)). As discussed above, Tennessee Code Annotated section 36-6-108(f) gives courts discretion to award reasonable attorney's fees and other litigation expenses to either parent in a parental relocation matter. Tenn. Code Ann. § 36-6-108(f). Accordingly, it is within this Court's discretion to award Mother her appellate attorney's fees. "When considering a request for attorney's fees on appeal, we . . . consider the requesting party's ability to pay such fees, the requesting party's success on appeal, whether the requesting party sought the appeal in good faith, and any other equitable factors relevant in a given case." ***Darvarmanesh***, 2005 WL 1684050, at *16. Given Mother's success in this appeal, we grant her request for attorney's fees and costs incurred in defense of this appeal.

V. Conclusion

For the foregoing reasons, we affirm the trial court's final order. Mother's and the GAL's request for appellate attorneys' fees is granted, and we remand the case for determination of the GAL and Mother's reasonable appellate attorney's fees and costs, for entry of judgment on same, and for such further proceedings as are necessary and consistent with this opinion. Costs of the appeal are assessed to the Appellant, Daniel W., for all of which execution may issue if necessary.

s/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE