IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
April 15, 2025 Session

ROAR NORMANN RONNING v. LESLEY ANNE RONNING

Appeal from the Circuit Court for Claiborne County
No. 20-CV-2126 John D. McAfee, Judge

No. E2024-00437-COA-R3-CV

This appeal concerns divorce related issues including property division, alimony, and child custody. Roar Normann Ronning ("Father") sued Lesley Anne Ronning ("Mother") for divorce in the Circuit Court for Claiborne County ("the Trial Court"). The parties have a minor daughter, Freya ("the Child"). Over the course of multiple hearings, the Trial Court granted the parties a divorce and ultimately approved a parenting plan whereby Mother was named primary residential parent and received more parenting time with the Child than Father. One of the relevant factors in the child custody determination was Father's career as a commercial airline pilot, which means he has a varied schedule. Father appeals, arguing among other things that the Trial Court erred in designating Mother primary residential parent, granting Mother more time with the Child than Father, and granting Mother major decision-making authority. Mother raises separate issues, including whether this appeal is frivolous. We find, *inter alia*, that the Trial Court did not abuse its discretion in making its custody determination. We find no reversible error in the Trial Court's judgment. Mother's separate issues are without merit. We affirm.

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

D. MICHAEL SWINEY, C.J., delivered the opinion of the court, in which JOHN W. MCCLARTY and KRISTI M. DAVIS, JJ., joined.

Laura S. Hash, Knoxville, Tennessee, for the appellant, Roar Normann Ronning.

Aaron J. Chapman, Morristown, Tennessee, for the appellee, Lesley Anne Ronning.

OPINION

Background

Mother and Father married in 2010. They have one child together, Freya, born in January 2017. Mother is an engineering technician who earns around $60,000 per year. Father is a commercial airline pilot from Norway. At the time of the divorce, Father earned over $300,000 per year. In 2017, Mother and Father moved to Morristown, Tennessee. In 2019, the parties bought land in Claiborne County. Mother and Father separated not long after, and Mother returned to Morristown. Mother worked in Morristown and her parents lived there. On June 11, 2020, Father sued Mother for divorce in the Trial Court. One of Father's main contentions in this case is that his homestead in Claiborne County has special significance for the Child and that he should receive more parenting time and decision-making authority. Father also asserts that Mother has acted unilaterally, such as by enrolling the Child in private school without his agreement. In addition, Father faults Mother for having moved to Morristown and creating a need for extended travel. Mother, in turn, argues that the non-cooperation has come from Father. Mother points out that the parties had previously lived in Morristown, and that is where her job and parents are located. An early temporary parenting plan saw the parties exercise relatively equal parenting time.

Multiple hearings took place over the course of the case. At a December 2022 hearing, Father testified to what would happen with the Child during his parenting time while he was away for his work. As relevant to the issues on appeal, the Trial Court questioned Father as follows:

> *HON. JUDGE JOHN McAFEE:* I've been there. But at the end of the day, your solution is for [Mother] to move to Claiborne County?
>
> A: Yeah. And I. . .
>
> *HON. JUDGE JOHN McAFEE:* Let's just say. . .let's say she says, "I'm not", what am I going to do then?
>
> A: Well I think you've got to look at which parent has been the most flexible. . .
>
> *HON. JUDGE JOHN McAFEE:* Well I can't make her move.
>
> A: No, but you've got to look at whose been the parent who has been known to be flexible.

HON. JUDGE JOHN McAFEE: I got it. What [do] I do with the hundred and forty (140) days [Father is away flying]?

A: I don't. . .

HON. JUDGE JOHN McAFEE: What do I do with hundred and forty (140) days?

A: If I'm getting full custody and. . .I'll take care of it. I'll get a. . .

HON. JUDGE JOHN McAFEE: Well you need to tell me. . .

A: . . .Au Pair or nanny or whatever I need for those days.

HON. JUDGE JOHN McAFEE: So what's she. . .she would. . .you have to hire somebody to keep her while you were gone?

A: Yes. I would prefer not to do because I think she needs both parents in her life.

HON. JUDGE JOHN McAFEE: Well I agree with that. We'll all agree with that.

A: Yeah.

HON. JUDGE JOHN McAFEE: But I can't make her move to Morris. . .to Claiborne County. I can't make you move to Morristown. I could suggest. . .

A: But the one hundred and forty (140) days. . .if. . .if that. . .if I'm awarded full custody, I will make sure that Fraya's taken care of. And I. . .I would do that.

HON. JUDGE JOHN McAFEE: You. . .you would hire someone to keep her?

A: To. . .to. . .to watch. . .watch her while I'm at work, yes sir.

HON. JUDGE JOHN McAFEE: Now the Mother's going to say, "I'm in Morristown three hundred and sixty-five (365) days a year. I don't leave." Is that right? I don't think you leave do you?

Mrs. Ronning: No Your Honor.

HON. JUDGE JOHN McAFEE: I mean, that's what she's going to say and at the end of the day. . .

A: And Fraya's got to lose a parent and my. . .my. . .me and my. . .my whole side of my family by. . .

HON. JUDGE JOHN McAFEE: I'm with you. I know. But at the end of the day I've got to figure out the hundred and forty (140). Your solution is to. . .she moves here. I can't make her move here. I can suggest or whatever and. . .

A: Yeah.

HON. JUDGE JOHN MCAFEE: . . . then she says no.

A: Uh-huh. (An affirmative response)

HON. JUDGE JOHN McAFEE: And so you say, "Well I'll hire somebody to keep her." So your solution is if she doesn't move here, I'll hire somebody to keep my daughter for that hundred and forty (140) days?

A: Yes sir.

HON. JUDGE JOHN McAFEE: That's it? That's your solution?

A: Uh-huh. (An affirmative response)

HON. JUDGE JOHN McAFEE: Okay. Go ahead.

Later, at a January 2023 hearing, Father testified to what he would like to include in a custody plan:

Q: So with being home as many days of the year as you are what would you like to see the Court do as far as a custody plan goes?

A: Like I started to say and you see from my schedules that I'm pretty much a stay-at-home dad for two hundred and thirty (230) days a year and that's how it's been since Fraya was born. I took care of her for the first couple of months while Mrs. Ronning was bedridden with a C-Section. Mrs. Ronning worked from. . .from home all day and when I was home I took care of Fraya. In the morning I got her out of bed, fed her breakfast, lunch and dinner. We spent all day together when I was home and when I was at work we had babysitters or something initially called Parent's Day Out in Morristown where she went one (1) day out of the week and then her parents moved up here and took care of her. So I'm the one since she was born that has been her primary parent taking care of her and my schedule. . .(witness paused). . .and the way she spends the majority of her time with me when I'm home that's her normal. That's what she's used to. It's not like somebody that goes to work 9:00 to 5:00. I'm home all day. And when I'm home. . .(witness paused). . .so what I'd like to see is. . . I want. . .what I think is the best for Fraya is that she has the least possible disruption to her life. I'd like her to stay in the marital home where she grew up. I want her to continue to spend the majority of time with me. But at the same time I also, and like I've said before, she needs both parents equally in her life. And that is possible with what I proposed that she stays with her mom when I work. That would be the least disruption to her life. That's what she's used to. And she. . .

HON. JUDGE JOHN McAFEE: She's stay with her mom in Morristown hasn't she?

A: (Witness paused) Well Your Honor I. . .I believe it's. . .(witness paused). . .if she. . .(witness paused). . .I'm the primary parent and Mrs. Ronning in currently in a rental as she has stated several times before that she is intending to move out of. So I don't even know where Fraya is going to end up in the next couple of months.

Q: So what would be your plan as far as school?

A: I've looked at two (2) options. . . .

HON. JUDGE JOHN McAFEE: So he's saying she should move back to Claiborne County from Morristown and take care of the child while he's flying.

A: That would be the best option for Fraya, for my daughter. That would be. . .

Q: And what would. . .

A: . . .would be best for her.

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HON. JUDGE JOHN McAFEE: No. I'm just curious, why can't you move to Morristown?

A. Well at. . .first of all that. . .(witness paused). . .the property and both me and Fraya loves that place. . .

At a March 2023 hearing, Father asked the Trial Court to re-open the proof on the parenting plan. The Trial Court declined. The following exchange occurred:

HON. JUDGE JOHN McAFEE: Do what? What's the other issue you was asking me to reconsider?

Mr. White [Father's trial counsel]: We were asking you to reconsider the fact that Mr. Ronning was actually home a hundred and ninety-five (195) days last year.

HON. JUDGE JOHN McAFEE: I'm not going to re-try the issue. If he wants to move and we suggested two (2) years ago, he owns a piece of paper down there that ain't worth what it's worth and now we've talked about it and he's talked about, "oh, I love my chickens and whatever he's got down there" and whatever. It's a hillside. It's a hillside that was logged years ago. It has no valuable timber on it whatsoever. You all know that I'm familiar with that property because it sits just behind my mother-in-law and I told you all that. And he's kept insisting that he wanted to keep it and keep it. Well that's fine with me. I don't give a hoot. If he wants to take his money and throw it over the bridge down there at the 33 bridge I don't care. I really don't care. But she's going to get her money one way or the other. And we keep saying, "Oh, we're going to the bank. We're going to the bank." Interest rates are going up every day. They keep going up. I don't know what this is going to cost to refinance when they refinance. This is something that. . .you know, I talked out loud about this two (2) years ago. To me, I'm not the smartest. . .I've never claimed to be the smartest person. I always tell everyone, I'm just a little above average on these things. But I can. . .someone who is a commercial airline pilot and who is familiar with a number of things well my

> thought was, well he surely can figure out this is a money pit. This whole deal about this property down there is a money pit. But kept insisting on it. And I've resolved the issue about the arrangement with the children. Now if he wants to move to Morristown, that's fine. If he wants to sell that property and move to Morristown, we talked about that. I said, "If he did that. . ." because he's close to his daughter. And I said, "we could probably do week-to-week over there." But, no, he kept insisting that he wanted to. . .and we went through a. . .I don't know how long we were here the last time we were here, a half a day or something going through this. It's almost. . .it's unrealistic, it's just. . .it dumbfounded me to set here and listen to that when he gets on an airplane and leaves for two (2) weeks out of the month and he's arguing over a day or two. It just didn't make any sense to me. If he's in Morristown and he's living down the road from where. . .he has no ties here. His family's not from here. He doesn't have anybody in Claiborne County and it made no sense to me and so if he wanted to go to. . .if he wants to move to Morristown he can always file a Petition with the Court and ask to have the Plan modified. That's what he needs to do.
>
> Mr. White: And Your Honor, I would ask that when. . .that if and when he does so could that be in the Order as a material change?
>
> *HON. JUDGE JOHN McAFEE:* No. No I'm not going to do that. I mean, that's a. . .Lord I'm not going to do that.

In April 2023, the Trial Court entered an order granting the parties a divorce, designating Mother primary residential parent, and reserving child support and alimony issues.

In May 2023, the Trial Court entered its "Final Judgment of Divorce (Amended)," which stated, in part:

> 1. Divorce. The parties are declared divorced upon stipulated grounds pursuant to Tenn. Code Ann. § 36-4-129(b), such that the bonds of matrimony uniting the parties are hereby fully and perpetually dissolved, and both parties are restored to all rights and privileges of unmarried persons. The Court finds pursuant to Tenn. R. Civ. P. 54.02 that there is no just reason for delay in declaring the parties divorced by entry of this Judgment.
> 2. Property and liabilities. Husband is awarded the Claiborne County realty on Lone Mountain Road and Wife is divested of any interests therein. She shall execute a Quit Claim Deed for recordation. The parties' real property shall be refinanced to remove Wife's liability therefrom and Wife shall be provided with 50% of the equity in existence at the time of refinancing. The

Court has received a personal property exhibit and firearms exhibit governing the division of those items between the parties which shall be incorporated herein by reference. Wife shall otherwise receive her IRA, accounts in her name, her Toyota Camry, the Subaru Outback, and Husband shall pay wife $7,500 for her interests in the farm equipment and $600 for her interest in the livestock located at the marital realty. Wife shall receive 50% of Husband's accumulated balance in his Atlas 401(k) retirement account, and a QDRO shall be prepared to this effect. Husband shall receive the remaining items located at the parties' marital residence. Husband shall receive the GMC Sierra Denali. Husband shall receive the 2001 Honda Motorcycle and his full interests in that shall be an offset any claim he would have to any marital portion of Wife's retirement account. Likewise, Wife's full interests in the Subaru shall be an offset to that respective portion of any retroactive/backdue child support to be determined by the Court.

3. Parenting Plan. The Court names Wife Primary Residential Parent of the parties' minor child Freya, with primary decision-making authority for educational, extra-curricular, and non-emergency healthcare decisions, and the Court awards Husband visitation during the school year every other weekend and excess parenting time during the school breaks and a majority of summer break (so long as adequate intervening parenting time is afforded to Wife). Husband's summer time shall include up to 21 days for him to have the child for an extended trip to visit family overseas, if requested. A Parenting Plan will be prepared and entered which shall become the Order of the Court with respect to all matters of custody, visitation, and support.

4. Child Support. Beginning March 24, 2023 child support will tentatively be $1,750 per month (an increase from $384 previously ordered *pendente lite*). Husband shall pay to Wife an additional $1,350 in March 2023 to catch up for that month, and then, beginning April 2023, Husband shall pay $1,750 per month in monthly child support, which is entered without a presumption of correctness due to the pendency of a Permanent Parenting Plan Order.

On June 21, 2023, the Trial Court entered its "Supplemental Judgment," stating in part as follows:

1. Prior Judgment Unaffected. The provisions of the Court's Final Judgment of Divorce (Amended) remain in effect unless expressly addressed herein.

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3. Alimony. After considering the statutory requirements of Tenn. Code Ann. § 36-5-121(i), the Court finds that the main factors supporting an award

> of support center on the Court's decision to order Wife to be responsible for the parties' child's private school tuition of approximately $800 per month. As such, the Court ORDERS, as Alimony *in Solido*, an award of $28,800 to be paid by Husband to Wife in monthly installments of $800 for 36 months, beginning June 1, 2023. Otherwise, no support is owed by or to either party.
> 4. Child Support. Child support issues regarding calculation of any retroactive/backdue amounts due, correctness of monthly child support obligation, and enforcement are referred to Child Support Enforcement/Child Support Magistrate for finalization.
> 5. Legal Expenses. Each party shall be entirely responsible for their own attorneys' fees and costs.
> 6. Finality. Aside from any child support issues being referred to Child Support Enforcement/Child Support Magistrate, this is a final judgment. The case is closed and counsels are relieved from further services regarding the divorce and parenting plan matter. Unpaid court costs are taxed equally.

On July 11, 2023, Father filed a motion to alter or amend, raising issues with the parenting plan. Finally, in March 2024, the Trial Court entered an order addressing outstanding motions, stating:

> 1. Plaintiff's and Defendant's post-trial motions are withdrawn.
> 2. The parties presented an Amended Permanent Parenting Plan to conform with prior rulings and to otherwise include agreed amendments.
> 3. Plaintiff shall pay $16,100 directly to the Mother on March 8, 2024 resolving all claims of unpaid support and marital equity in personal property.
> **IT THEREFORE ORDERED, ADJUDGED AND DECREED:** That
> A. The Permanent Parenting Plan and corresponding child support worksheet is fully incorporated herein as if repeated verbatim and made an Order of this Court.
> B. Plaintiff shall pay $16,100 directly to the Mother on March 8, 2024.
> C. The post-trial Motions are otherwise withdrawn and resolved.

Under the permanent parenting plan, a box was checked signifying that the plan "Modifies and Amends to Conform to the Court's Ruling on an existing Parenting Plan dated 6/13/23." Mother was named primary residential parent and awarded 220 days with the Child to Father's 145. Mother was granted the right to make major decisions regarding the Child. Father timely appealed to this Court.

Discussion

Although not stated exactly as such, Father raises the following issues on appeal: 1) whether the Trial Court erred by denying Father a fair and impartial trial; 2) whether the Trial Court abused its discretion in ordering the parenting plan, including naming Mother primary residential parent and granting her major decision-making authority; 3) whether the Trial Court abused its discretion by failing to equitably divide closing costs associated with the refinancing loan and Father's 401k loan; 4) whether the Trial Court abused its discretion in ordering Father to pay Mother alimony *in solido*; and 5) whether the Trial Court erred in denying Father's request to re-open the proof as to the parenting plan. Mother raises separate issues, which we restate slightly as follows: 1) whether this appeal is untimely with respect to every issue not referenced in Father's July 11, 2023 motion to alter or amend; 2) whether Father's appeal is justiciable because the March 2024 order allegedly was a consent order; and 3) whether Father's appeal is frivolous.

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 respect to credibility determinations, the Tennessee Supreme Court has instructed:

> When it comes to live, in-court witnesses, appellate courts should afford trial courts considerable deference when reviewing issues that hinge on the witnesses' credibility because trial courts are "uniquely positioned to observe the demeanor and conduct of witnesses." *State v. Binette*, 33 S.W.3d 215, 217 (Tenn. 2000). "[A]ppellate courts will not re-evaluate a trial judge's assessment of witness credibility absent clear and convincing evidence to the contrary." *Wells v. Tennessee Bd. of Regents*, 9 S.W.3d 779, 783 (Tenn. 1999); *see also Hughes v. Metro. Gov't of Nashville & Davidson Cnty.*, 340 S.W.3d 352, 360 (Tenn. 2011). In order for evidence to be clear and convincing, it must eliminate any "serious or substantial doubt about the correctness of the conclusions drawn from the evidence." *State v. Sexton*, 368 S.W.3d 371, 404 (Tenn. 2012) (quoting *Grindstaff v. State*, 297 S.W.3d 208, 221 (Tenn. 2009)). Whether the evidence is clear and convincing is a question of law that appellate courts review de novo without a presumption of correctness. *Reid ex rel. Martiniano v. State*, 396 S.W.3d 478, 515 (Tenn. 2013), (citing *In re Bernard T.*, 319 S.W.3d 586, 596-97 (Tenn. 2010)), *cert. denied*, ––– U.S. ––––, 134 S.Ct. 224, 187 L.Ed.2d 167 (2013).

Kelly v. Kelly, 445 S.W.3d 685, 692-93 (Tenn. 2014). Insofar as the issues on appeal implicate the abuse of discretion standard, "[a]n abuse of discretion occurs when the trial court causes an injustice by applying an incorrect legal standard, reaches an illogical result, resolves the case on a clearly erroneous assessment of the evidence, or relies on reasoning that causes an injustice." *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 105 (Tenn. 2011).

We first address Mother's issue of whether this appeal is untimely with respect to every issue not referenced in Father's July 11, 2023 motion to alter or amend. Mother argues that Father "waived further appellate review of issues not addressed in his July 11, 2023 Motion (which, again, were limited to objections to certain Parenting Plan provisions)." She argues further that "the record and the circumstances indicate a multilateral understanding between the parties and the Trial Court that issues of property and liabilities were resolved and that other matters would be seen as separate claims for purposes of Tenn. R. Civ. P. 54.02, which was ultimately confirmed by Final Judgment of May 22, 2023." A final judgment "resolves all of the parties' claims and leaves the court with nothing to adjudicate." *Ball v. McDowell*, 288 S.W.3d 833, 836-37 (Tenn. 2009). The Trial Court entered multiple orders over the span of this case. However, until the Trial Court entered its March 8, 2024 order incorporating a permanent parenting plan with child support findings, the Trial Court still had claims to adjudicate. The Trial Court's March 8, 2024 order constituted a final judgment because, unlike the previous orders, it did not leave any claims unresolved. Father timely appealed the final judgment. Therefore, Mother's issue lacks merit.

We next address Mother's issue of whether Father's appeal is justiciable because the March 2024 order allegedly was a consent order. In contending that the March 2024 order was a consent order, Mother points out that the permanent parenting plan was signed by both parties. However, this is unremarkable. It is abundantly obvious that, by signing the plan, Father merely agreed that it accurately reflected how the Trial Court ruled. This is a common practice. Father's mere acknowledgment that the Trial Court ruled as it did was not tantamount to a consent order. This issue also is without merit.

Turning to Father's issues, we address whether the Trial Court erred by denying Father a fair and impartial trial. Father states that the Trial Court made certain remarks over the course of the proceedings revealing frustration with Father. Father also notes that the Trial Court stated that it was familiar with the marital home at issue because it was adjacent to the Trial Court's family's property. Without question, "[t]he right to a fair trial before an impartial tribunal is a fundamental constitutional right." *Bean v. Bailey*, 280 S.W.3d 798, 803 (Tenn. 2009) (quoting *State v. Austin*, 87 S.W.3d 447, 470 (Tenn. 2002)); *see also* Tenn. Const. Art. VI, § 11. However, while litigants are entitled to an impartial tribunal, they are not entitled to the tribunal's agreement with their positions or positive assessment of their credibility. A court may form judgments about a litigant based upon

what the tribunal sees and hears over the course of the judicial proceedings. "Forming an opinion of litigants and issues based on what is learned in the course of judicial proceedings is necessary to a judge's role in the judicial system." *Groves v. Ernst-W. Corp.*, No. M2016-01529-COA-T10B-CV, 2016 WL 5181687, at *5 (Tenn. Ct. App. Sept. 16, 2016), *no appl. perm. appeal filed* (footnote omitted). "[A]n opinion formed on the basis of what a judge properly learns during judicial proceedings, and comments that reveal that opinion, are not disqualifying unless they are so extreme that they reflect an utter incapacity to be fair." *Id.*

Here, there is no hint that the Trial Court was predisposed against Father. It appears that the Trial Court grew somewhat frustrated with Father over the course of the judicial proceedings, especially concerning Father's persistent emphasis on his farm property. Even still, the Trial Court did not say anything extreme regarding Father. On the contrary, the Trial Court was civil and respectful toward Father. The Trial Court's mild expressions of frustration with Father, which arose out of the judicial proceedings themselves, did not deprive Father of a fair and impartial tribunal. Regarding the Trial Court's personal knowledge about the property at issue, Father did not object when the Trial Court made its personal knowledge known to both sides. A litigant may not sit on an objection and then spring it later to gain a tactical advantage. That is not a basis for appellate relief. Father was not denied a fair and impartial tribunal.

We next address whether the Trial Court abused its discretion in ordering the parenting plan, including naming Mother primary residential parent and granting her major decision-making authority. Our Supreme Court has explained that trial courts have considerable discretion in deciding the details of parenting arrangements, stating:

> Because decisions regarding parenting arrangements are factually driven and require careful consideration of numerous factors, *Holloway v. Bradley*, 190 Tenn. 565, 230 S.W.2d 1003, 1006 (1950); *Brumit v. Brumit*, 948 S.W.2d 739, 740 (Tenn. Ct. App. 1997), trial judges, who have the opportunity to observe the witnesses and make credibility determinations, are better positioned to evaluate the facts than appellate judges. *Massey–Holt v. Holt*, 255 S.W.3d 603, 607 (Tenn. Ct. App. 2007). Thus, determining the details of parenting plans is "peculiarly within the broad discretion of the trial judge.' " *Suttles v. Suttles*, 748 S.W.2d 427, 429 (Tenn. 1988) (quoting *Edwards v. Edwards*, 501 S.W.2d 283, 291 (Tenn. Ct. App. 1973)). "It is not the function of appellate courts to tweak a [residential parenting schedule] in the hopes of achieving a more reasonable result than the trial court." *Eldridge v. Eldridge*, 42 S.W.3d 82, 88 (Tenn. 2001).

Armbrister v. Armbrister, 414 S.W.3d 685, 693 (Tenn. 2013). The following statutory factors applied to the Trial Court's decision herein on custody:

> (a) In a suit for annulment, divorce, separate maintenance, or in any other proceeding requiring the court to make a custody determination regarding a minor child, the determination shall be made on the basis of the best interest of the child. In taking into account the child's best interest, the court shall order a custody arrangement that permits both parents to enjoy the maximum participation possible in the life of the child consistent with the factors set out in this subsection (a), the location of the residences of the parents, the child's need for stability and all other relevant factors. The court shall consider all relevant factors, including the following, where applicable:
> (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;
> (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;
> (3) Refusal to attend a court ordered parent education seminar may be considered by the court as a lack of good faith effort in these proceedings;
> (4) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;
> (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;
> (6) The love, affection, and emotional ties existing between each parent and the child;
> (7) The emotional needs and developmental level of 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;
(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;
(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;
(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;
(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;
(14) Each parent's employment schedule, and the court may make accommodations consistent with those schedules; and
(15) Any other factors deemed relevant by the court.

Tenn. Code Ann. § 36-6-106(a) (West July 1, 2016 to June 30, 2021).[1]

Regarding decisions about parental decision-making authority, Tenn. Code Ann. § 36-6-407(c) provides these factors for consideration:

(1) The existence of a limitation under § 36-6-406;
(2) The history of participation of each parent in decision making in each of the following areas: physical care, emotional stability, intellectual and moral development, health, education, extracurricular activities, and religion; and whether each parent attended a court-ordered parent education seminar;
(3) Whether the parents have demonstrated the ability and desire to cooperate with one another in decision making regarding the child in each of the following areas: physical care, emotional stability, intellectual and moral development, health, education, extracurricular activities, and religion; and

[1] This lawsuit was filed June 11, 2020. The statute has since been amended, but the amendment does not affect this appeal.

(4) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

Tenn. Code Ann. § 36-6-407(c).

Father argues that the Trial Court erred in its custody determination. In support of his argument, Father asserts that, contrary to statute, the Trial Court failed to maximize his parenting time with the Child; that Father had previously been the Child's primary caregiver for 225 days per year when he was off work; that Mother has not cooperated fully with Father on issues concerning the Child; that Mother unilaterally signed the Child up for preschool, Kindergarten, mental health treatment, and extracurricular activities which interfered with Father's time; that Mother has had mental health and alcohol issues in the past; and that Father has maintained the family home and keeps a "fun hobby environment" that Father and the Child deeply love. Father asserts that he should be the Child's primary residential parent. With respect to decision-making authority, Father argues that this should be jointly held with Mother. Father contends that if he and Mother cannot agree on a decision, he should have the final say. Father again points to Mother's alleged failure to consult him about the Child.

While Father is correct that Tenn. Code Ann. § 36-6-106 provides for maximizing both parents' involvement in their child's life, that is subject to the child's best interest. A major consideration in this case is Father's variable work schedule as a commercial airline pilot. Father is away flying for a significant part of the year. That Father is gainfully employed in a high-earning job is a good thing for the Child. All the same, the nature of Father's schedule is such that it creates an issue of what to do with the Child while Father is away flying. Father testified to possibly hiring a nanny. Clearly, the Trial Court was unsatisfied with Father's answer. By contrast, Mother works a more conventional schedule. That does not make Mother's job any better than Father's. It was, however, a relevant consideration for the Trial Court in its custody determination. It is evident that the Trial Court tried to devise a workable parenting schedule in light of Father's variable schedule.

Closely connected to the issue of Father's work schedule was that of the geographic distance between the parties. Father repeatedly states that Mother made things more difficult by moving back to Morristown. However, as the Trial Court said at the hearings below, it could no more order Mother to move than it could order Father to move. The Trial Court had to make its custody decision based on the existing situation before it. Regarding Mother's past mental health and alcohol issues, which Father invokes in his brief, Father also acknowledges that "these issues appear to be resolved. . . ." Therefore, we do not see how the Trial Court erred in declining to make Mother's past troubles a decisive factor in its ruling.

The record shows that both Mother and Father are fit parents who love the Child. The most pressing issue is which parent is better able to be on the scene with the Child in her day-to-day life. Principally owing to career and geography, the Trial Court determined Mother was more suited for that role. That again does not reflect any unfitness on Father's part. It was merely a recognition of the realities of the case. The Trial Court's custody decision was a discretionary one. It is not to be tweaked or changed because an alternate plan might also have worked. It is sufficient that the Trial Court's plan was one such reasonable alternative among other possible outcomes. We find no reversible error in the Trial Court's designation of Mother as primary residential parent.

With respect to major decision-making authority, Father again cites Mother's alleged failure to consult him about the Child. That is unpersuasive. In this domestic litigation, both sides could and have asserted the other's non-cooperation. That does not rise to a showing that the Trial Court abused its discretion in granting Mother major decision-making authority. The same factors guiding the Trial Court's selection of primary residential parent bear on the issue of major decision-making authority: time and availability favor Mother. In reaching its child custody determination, the Trial Court neither applied an incorrect legal standard; reached an illogical result; resolved the case on a clearly erroneous assessment of the evidence; nor relied on reasoning that caused an injustice. The Trial Court did not abuse its discretion in ordering the parenting plan, including naming Mother primary residential parent and granting her major decision-making authority.

We next address whether the Trial Court abused its discretion by failing to equitably divide closing costs associated with the refinancing loan and Father's 401k loan. "A trial court has wide discretion in dividing the interest of the parties in marital property." *Morton v. Morton*, 182 S.W.3d 821, 833 (Tenn. Ct. App. 2005). "It is not the role of this Court to tweak a trial court's distribution of property. Rather, we must look to determine if the overall property distribution is equitable." *Id*. at 834. On this issue, Father's brief is deficient. We have stated: "Rule 7 of the Rules of the Court of Appeals of Tennessee requires that, in all cases where a party takes issue with the classification and division of marital property, the party must include in its brief a chart displaying the property values proposed by both parties, the value assigned by the trial court, and the party to whom the trial court awarded the property." *Akard v. Akard*, No. E2013-00818-COA-R3-CV, 2014 WL 6640294, at *4 (Tenn. Ct. App. Nov. 25, 2014), *no appl. perm. appeal filed*. "[W]here an appellant fails to comply with [Rule 7], that appellant waives all such issues relating to the rule's requirements." *Forbess v. Forbess*, 370 S.W.3d 347, 354 (Tenn. Ct. App. 2011) (quoting *Harden v. Harden*, No. M2009-01302-COA-R3-CV, 2010 WL 2612688, at *8 (Tenn. Ct. App. June 30, 2010), *no appl. perm. appeal filed*).

Father did not include a Rule 7 table in his principal appellate brief. In her responsive brief, Mother argued that Father waived his issue concerning the marital estate for failure to include a Rule 7 table. Thereafter, Father included a Rule 7 table in his reply brief. However, that does not rectify the original omission. As we observed in a previous case, "Husband did attach a table in compliance with Rule 7 in his reply brief. Reply briefs, however, are not vehicles to correct deficiencies in initial briefs." *Ingram v. Ingram*, No. W2017-00640-COA-R3-CV, 2018 WL 2749633, at *11 n.4 (Tenn. Ct. App. June 7, 2018), *no appl. perm. appeal filed*. On issues concerning a marital estate, we are interested in whether the overall division is equitable, not on isolated awards here and there. That is the significance of a Rule 7 table, as well as an opposing party's ability to respond to it. Consequently, Father has waived his issue concerning the marital estate.

We next address whether the Trial Court abused its discretion in ordering Father to pay Mother alimony *in solido*. Alimony decisions fall within a trial court's discretion. *Gonsewski,* 350 S.W.3d at 105-06. Regarding alimony *in solido* specifically, our High Court has explained:

> Current Tennessee law recognizes several distinct types of spousal support, including (1) alimony in futuro, (2) alimony in solido, (3) rehabilitative alimony, and (4) transitional alimony.
>
> ***
>
> The second type of support, alimony in solido, is also a form of long-term support. The total amount of alimony in solido is set on the date of the divorce decree and is either paid in a lump sum payment of cash or property, or paid in installments for a definite term. Tenn. Code Ann. § 36-5-121(h)(1); *Broadbent*[*v. Broadbent*], 211 S.W.3d [216,] 222 [(Tenn. 2006)]. ("Alimony *in solido* consists of a definite sum of money that is paid in a lump sum or in installments over a definite period of time."). "A typical purpose of such an award would be to adjust the distribution of the parties' marital property." *Burlew*[*v. Burlew*], 40 S.W.3d [465,] 471 [(Tenn. 2001)]. Alimony in solido "may be awarded in lieu of or in addition to any other alimony award, in order to provide support, including attorney fees, where appropriate." Tenn. Code Ann. § 36-5-121(d)(5). Unlike alimony in futuro, the other form of long-term support, alimony in solido is considered a final judgment, "not modifiable, except by agreement of the parties," and does not terminate upon the death or remarriage of the recipient or payor spouse. Tenn. Code Ann. § 36-5-121(h)(2)-(3); *see Riggs* [*v. Riggs*], 250 S.W.3d [453,] 456 n. 3 [(Tenn. Ct. App. 2007)].

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Finally, in determining whether to award spousal support and, if so, determining the nature, amount, length, and manner of payment, courts consider several factors:

> (1) The relative earning capacity, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and all other sources;
>
> (2) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earnings capacity to a reasonable level;
>
> (3) The duration of the marriage;
>
> (4) The age and mental condition of each party;
>
> (5) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;
>
> (6) The extent to which it would be undesirable for a party to seek employment outside the home, because such party will be custodian of a minor child of the marriage;
>
> (7) The separate assets of each party, both real and personal, tangible and intangible;
>
> (8) The provisions made with regard to the marital property, as defined in § 36-4-121;
>
> (9) The standard of living of the parties established during the marriage;
>
> (10) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible

> contributions by a party to the education, training or increased earning power of the other party;
>
> (11) The relative fault of the parties, in cases where the court, in its discretion, deems it appropriate to do so; and
>
> (12) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.
>
> Tenn. Code Ann. § 36-5-121(i). Although each of these factors must be considered when relevant to the parties' circumstances, "the two that are considered the most important are the disadvantaged spouse's need and the obligor spouse's ability to pay." *Riggs*, 250 S.W.3d at 457. *See also Bratton*, 136 S.W.3d at 605; *Robertson*[*v. Robertson*], 76 S.W.3d [337,] 342 [(Tenn. 2002)]; *Burlew*, 40 S.W.3d at 470. Carefully adhering to the statutory framework for awarding spousal support, both in terms of awarding the correct type of support and for an appropriate amount and time, fulfills not only the statutory directives but also alimony's fundamental purpose of eliminating spousal dependency where possible.

Gonsewski, 350 S.W.3d at 107-10 (footnote omitted).

As relevant, the Trial Court found that "the main factors supporting an award of support center on the Court's decision to order Wife to be responsible for the parties' child's private school tuition of approximately $800 per month. As such, the Court ORDERS, as Alimony *in Solido*, an award of $28,800 to be paid by Husband to Wife in monthly installments of $800 for 36 months, beginning June 1, 2023."

Father argues that the Trial Court erred in awarding Mother alimony *in solido* when it did not find Mother economically disadvantaged. Father acknowledges that he earns more than Mother but states that he has much higher bills because of the debt he absorbed from the divorce. Father notes Mother's good health, age, education, and cash payout from the marital estate as reasons she should not have been awarded alimony. Father asserts further that Mother is not economically disadvantaged because "her bills were $3,800 and her income was $5,500." Regarding the Child's private education, Father says that he should not be required to pay a discretionary expense that he was never consulted on in the first place. Father says that he "should not be financially responsible for [Mother's] discretionary expenses, unless he agrees in advance to split the costs for the benefit of the child."

The Trial Court ordered an award of alimony *in solido* to Mother as it ended Father's prior obligation to pay 68% of the Child's tuition. The record reflects that Father earns significantly more than Mother—as much as five times more. Clearly, Mother is economically disadvantaged relative to Father. It is evident that the Trial Court sought to mitigate the financial impact on Mother from her expenditure on the Child's private education. While Father contends that he was not consulted on enrolling the Child in private school, the fact remains that the Child was enrolled in private school, and Mother's expenditure in keeping the Child in her current school was a reasonable consideration by the Trial Court. In view of the income discrepancy between the parties, and Mother's expenditure on the Child's private education, the Trial Court's award to Mother of $28,800 in non-modifiable alimony *in solido* was well within the range of reasonable outcomes. The Trial Court clearly considered the parties' respective needs and abilities to pay, the chief considerations for alimony. In awarding Mother alimony *in solido*, the Trial Court neither applied an incorrect legal standard; reached an illogical result; resolved the case on a clearly erroneous assessment of the evidence; nor relied on reasoning that caused an injustice. The Trial Court did not abuse its discretion in granting Mother an award of alimony *in solido*.

We next address whether the Trial Court erred in denying Father's request to re-open the proof as to the parenting plan. "Whether to re-open the proof to permit additional evidence after the proof has closed is within the discretion of the trial court." *Iloube v. Cain*, 397 S.W.3d 597, 604 (Tenn. Ct. App. 2012). Following the January 2023 hearing, Father moved to re-open the proof concerning whether he could receive joint custody of the Child if he moved to Morristown. The Trial Court declined to re-open the proof. It is notable that Father did not assert that he had actually moved to Morristown, only that he was willing to do so in order to receive joint custody of the Child. In the interests of achieving a final result for the Child's custody, and not dragging the issue out indefinitely, it was understandable that the Trial Court declined to re-open proof based on Father's mere potential plans for relocation. Meanwhile, nothing prevents Father from filing a petition to modify going forward. We find that in declining to re-open the proof, the Trial Court neither applied an incorrect legal standard; reached an illogical result; resolved the case on a clearly erroneous assessment of the evidence; nor relied on reasoning that caused an injustice. The Trial Court did not abuse its discretion in declining Father's request to re-open the proof.

The final issue we address is Mother's issue of whether Father's appeal is frivolous. Mother asks for damages for a frivolous appeal pursuant to Tenn. Code Ann. § 27-1-122. We decline. Father's appeal is unsuccessful, but not so utterly devoid of merit to be frivolous.

Conclusion

The judgment of the Trial Court is affirmed, and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed against the Appellant, Roar Normann Ronning, and his surety, if any.

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D. MICHAEL SWINEY, CHIEF JUDGE