IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 18, 2014 Session

ALISON FEIN (YOUNG) DAHL v. SHAWN PATRICK YOUNG

Appeal from the Chancery Court for Williamson County
No. 35642 Robbie T. Beal, Judge

No. M2013-02854-COA-R3-CV - Filed February 24, 2015

Mother and Father were divorced when their child was not quite two years old. Mother was named the primary residential parent. She remarried when the child was three years old and sought to relocate to Virginia when her husband was required to move there for his job. Father objected and sought to be named the primary residential parent. The evidence was undisputed that Mother's stepson (the child's stepbrother) committed an act of sexual abuse on the child when he was four and the stepson was ten. Counselors were retained to work with each child. Both counselors testified the situation was under control and Mother was taking proper precautions to protect the child. The trial court permitted Mother to relocate with the child, but it limited the number of days the stepbrother could spend with the child in Virginia. Mother appealed, claiming the trial court's ruling was arbitrary. She also appealed the trial court's ruling requiring her to pay the transportation costs of the child's flights to Tennessee to visit Father, its credit to Father for childcare expenses on the child support worksheet, and its denial of her request for attorney's fees. We vacate the court's $250 childcare credit to Father because no evidence of this expense was offered at trial. We affirm the trial court's judgment in all other respects.

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

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

Robert E. Lee Davies and William P. Holloway, Franklin, Tennessee, for the appellant, Alison Fein (Young) Dahl.

Donald Capparella and Elizabeth Sitgreaves, Nashville, Tennessee, for the appellee, Shawn Patrick Young.

OPINION

I. BACKGROUND

Alison Fein (Young) Dahl ("Mother") and Shawn Patrick Young ("Father") are the biological parents of the child at issue in this case ("LY" or "the Child"). Mother and Father were divorced in 2010, when the Child was about 20 months old. According to the permanent parenting plan entered at the time of divorce, Mother was named the primary residential parent and was awarded 223 days per year with the Child. Father was awarded 142 days.

Mother remarried in 2012. Her husband is a lieutenant commander in the United States Navy, and he received orders to report to Norfolk in the fall of 2013 to work as a pediatric neurologist in a naval hospital. Mother notified Father in January 2013 of her desire to relocate with the Child to Virginia in the fall of that year. Father opposed Mother's relocation and filed a petition in opposition on January 30. In his opposition, Father asserted, *inter alia*, that the relocation would pose a threat of specific and serious harm to the Child which outweighed the threat of harm to the Child by a change of custody. Father asked the court to deny Mother's request to relocate with the Child and to designate him as the primary residential parent.

The main reason Father opposed Mother's relocation was because of an incident of sexual abuse by the Child's step-brother, ZD, when the Child was four and ZD was ten. The incident occurred in July 2012, on a Saturday night in Mother's home, when Mother and her husband were in another room. The Child did not disclose the abuse to Mother until she was putting him to bed that night. Mother and her husband returned ZD to his mother's house the following day. On Monday, they contacted a therapist to begin counseling the Child about the abuse that had been perpetrated on him by his stepbrother.[1] They also contacted the Department of Children's Services ("DCS") and agreed to a permanency plan designed to ensure the Child's safety.

Both LY's therapist and ZD's therapist recognized that reunification of the stepbrothers was a desirable outcome due to the permanency of the relationship between Mother and ZD's father. Father objected to any contact between the Child and ZD because he was fearful of further abuse. LY's therapist testified (by deposition) that reunification was

[1]ZD also began seeing a therapist to address the abuse he had perpetrated on his stepbrother.

appropriate so long as there was adequate supervision of the two boys when they were together and a safety plan was followed. LY's therapist explained that the safety plan should include:

> making sure there are alarms, making sure there's a video monitor, making sure there's adult supervision the entire time, things related to when and how kids go to the bathroom, use the restrooms, change their clothes, all of those body safety kinds of recommendations.

Mother testified that she and her husband have fully implemented the safety plan LY's therapist recommended and that there have been no further incidents of abuse. Father complains, however, that Mother did not follow all of the recommendations LY's therapist made regarding the supervision of LY and ZD at Mother and her husband's wedding celebration a few months later.[2]

LY's therapist testified, however, that Mother is a good, caring parent and that she took appropriate steps to protect LY once she learned of the abuse:

> I will say, I want to be clear, because I see so many of these cases, that there are situations in which a parent is non-protective at the point of disclosure, and this is not a case like that. This is a case where mom immediately listened to the child, immediately took the proper steps to separate the children, until there was feedback from therapists, and so forth. So [she was] way ahead of the game, not to be painted as a non-protective parent. . . . I just want that on the record because - - because so many things were done right, especially in the beginning.

ZD's mother is ZD's primary residential parent. Prior to Mother's husband's relocation to Virginia, ZD and the Child spent supervised time together at Mother's house in accordance with the safety plan LY's therapist recommended. No evidence was introduced suggesting that ZD has engaged in any conduct towards LY that would be a cause for concern since the initial (and only) incident in July 2012.

Mother testified at trial that if she were permitted to move to Virginia with LY, LY would spend less time with ZD than he does while living in Tennessee. Mother explained:

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[2]LY's therapist recommended that family members supervise LY and ZD during the celebration. Mother decided, however, to have two of LY's teachers supervise the two boys instead. No problems between ZD and LY occurred at the wedding celebration.

> [I]f the Court were to adopt my plan, based on LY's school schedule in Norfolk, and ZD's school schedule here in Williamson County, there's very little overlap during the year, probably two or three days during the actual school year, and in the summer months, they would also be swapping. So, essentially, they would have opposite schedules. They would see each other less than would if LY were here and . . . LY was going to school here in Williamson County. So, I would say less than 14 days out of the entire calendar year that ZD and LY would actually be together in Norfolk.

II. TRIAL COURT'S RULING

The trial court announced its ruling from the bench following the trial, before it issued a written order. The court addressed several issues in its oral ruling. First, the court approved Mother's request to relocate with the Child. The court explained:

> [T]he mother, who is the primary residential parent [who] spends the majority amount of time with the child, has a legitimate purpose . . . in at least wanting to move. She wants to get on with her life. . . . [S]he has the right to expect that if circumstances exist that cause him to have to move that she should be able to move with her new husband. That's a very legitimate interest and that interest is recognized by the statutes of the state.

The trial court then addressed Father's contention that the relocation would pose a threat of specific and serious harm to the Child that outweighs the threat of harm from a change of custody. Opining that the sexual abuse ZD perpetrated on LY met the definition of "specific threat of harm," the court stated:

> The question then is that harm enough that would cause this Court to believe that the move should not take place. Is it the Court's only option basically to prevent the move, possibly change custody if the mother still wants to move, possibly change custody to protect [LY]. We have some very credible testimony from Dr. Kenner in this case who stated that there's a threat that [ZD] -- high threat that [ZD] would reoffend. He asked the Court to do a psychosexual [test], that this psychosexual would be a great help to the Court to determine if [ZD] is someone that would reoffend and poses this type of threat.
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> Dr. Kenner has testified in this Court before. I give Dr. Kenner a lot of weight in his statements, a lot of weight. . . . But because [ZD] spends so little time or will spend so little time around [LY], that threat of reoffending is

lessened significantly.

> The other thing is, I mean, the mother comes in here with credibility. There is no reason for me to believe that the mother is not capable and ready to protect her child [LY]. There were some statements made that she perhaps made wrong decisions with regard to the amount of contact she wanted [LY] and [ZD] to have, especially initially . . . .
>
> Again, those are questions as to her judgment and they are appropriate questions for the father to ask. The father has every right to ask those questions, but do I truly believe that the mother has exercised such poor judgment that it signifies to this Court that she's not ready and able to protect [LY], no. She pursued this matter, she didn't try to cover it up, she pursued this matter, she took steps including counseling. They've outfitted the home in an effort to keep the children apart. The fact is, is that the mother has gone to - - has gone to significant steps to protect her own child.

The trial court ultimately concluded that Father had failed to prove that relocating to Virginia with LY would pose a specific threat to LY that outweighed the threat of harm from a change in custody.

The trial court next turned to the issue of visitation. Under the revised parenting plan, the trial court awarded Mother a total of 253 days with the Child and awarded Father a total of 112 days. The court split the time the parties would have with LY during the holidays, and the court awarded Father one weekend per month in Virginia during the school year. The Child was then to spend a majority of his summer with Father in Tennessee, with Mother to have one week at the beginning and end of the summer. Then, during the Child's summer vacation with Father, Mother was awarded two four-day periods with the Child in Tennessee.

In the section of the parenting plan marked "J. Other," the trial court added language limiting the time LY and ZD could both be in Mother's house together in Virginia. The court wrote: "[LY]'s oldest step-brother will not spend more than twenty-one days in Mother's household in Virginia with [LY] during any calendar year."

The trial court then addressed the issue of transportation costs. The court made Mother responsible for the transportation costs incurred when the Child flies to Tennessee to visit Father. The court directed Father to schedule the flights and purchase the plane tickets for LY at least 30 days in advance. Mother was then directed to reimburse Father for the full cost of the flight. The court wrote, "The mother will be completely responsible for the transportation of this child to and from, except for those months during the school year

that the father wishes to come up and spend that weekend with the child . . . ." The court explained its rationale as follows:

> [Mother]'s the one wanting to move, the Father shouldn't be punished for the fact that she wants to move, financially punished, and the Court does not believe that this is a situation that by reduction of that child support, an expenditure of that child support for transportation cost is not going to be detrimental to the child. Obviously the mother and her husband the Commander make a good living, have the ability to make good livings, and the absence of that cost incurred of moving will not threaten the best interest of the child.

The trial court next turned to Mother's request for an award of her attorney's fees. After recognizing that the statute provides for Mother to recover her fees, the court exercised its discretion to deny Mother's request for an award of her fees.

Following the close of evidence, Father's attorney submitted a proposed order to the trial court that included a monthly childcare expense of $250. Father's counsel sent a letter to the trial court judge stating:

> I added $250.00 per month for father's childcare expense. He will have to pay $1,000.00 per month in the summer for three months; this calculates to be $250.00 per month.

Mother's counsel objected to this expense on the basis that Father introduced no evidence at the trial whatsoever regarding any childcare expenses. The trial court did not convene a further hearing to address this issue, but it included Father's proposed $250 monthly childcare expense in the child support worksheet portion of the parenting plan attached to the judgment. Thus, the court gave Father credit for a monthly childcare expense of $250 when calculating his child care obligation.

Mother appeals from the trial court's judgment, arguing the trial court erred in the following ways: (1) limiting the number of days ZD and LY could spend together in Mother's home in Virginia; (2) requiring Mother to be responsible for the cost of transporting LY between Virginia and Tennessee to visit Father; (3) giving Father credit for childcare expenses when no evidence was offered in support thereof; and (4) refusing Mother's request for an award of attorney's fees. Mother also seeks an award of the fees she has incurred on appeal.

Father raises an issue on appeal as well: whether the trial court erred by finding

Mother's relocation did not pose a threat of specific and serious harm to LY that outweighed the threat of harm from a change in the primary residential parent. He also seeks an award of his attorney's fees on appeal.

III. ANALYSIS

A. Mother's Relocation

We will first address Father's contention that the trial court erred when it allowed Mother to relocate with the Child to Virginia. The question whether a divorced parent is permitted to relocate with a child outside Tennessee is governed by Tenn. Code Ann. § 36-6-108. This statute provides, *inter alia*, that:

> The parent spending the greater amount of time with the child shall be permitted to relocate with the child unless the court finds:
>
> (A) The relocation does not have a reasonable purpose;
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> (B) The relocation would pose a threat of specific and serious harm to the child that outweighs the threat of harm to the child of a change of custody; or
>
> (C) The parent's motive for relocating with the child is vindictive in that it is intended to defeat or deter visitation rights of the non-custodial parent or the parent spending less time with the child.

Tenn. Code Ann. § 36-6-108(d)(1).

The parties agree that Mother spends more time with LY than Father. Thus, there is a presumption in favor of Mother's desire to relocate unless Father can establish one of the three factors set out above. Father does not appeal the trial court's conclusions that Mother's relocation had a reasonable purpose or that her motive for relocating was not vindictive. Father takes issue only with the trial court's conclusion that the relocation did not pose a threat of specific and serious harm to LY that outweighed the threat of harm by a change in the primary residential parent.

We review the trial court's findings of fact de novo, presuming them to be correct unless the evidence preponderates otherwise. TENN. R. APP. P. 13(d); *Mann v. Mann*, 299 S.W.3d 69, 71 (Tenn. Ct. App. 2009); *Smith v. Tenn. Farmers Life Reassurance Co.*, 210 S.W.3d 584, 588 (Tenn. Ct. App. 2006). "[F]or the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect."

Nashville Ford Tractor, Inc. v. Great Am. Ins. Co., 194 S.W.3d 415, 425 (Tenn. Ct. App. 2005). Appellate courts give "great weight" to a trial court's findings of fact that are based on a witness's credibility. *Mann*, 299 S.W.3d at 71; *Smith*, 210 S.W.3d at 588.

When one parent alleges a threat of serious and specific harm as a result of the other parent's relocation, the court "should look for 'proof of such a threat.'" *Mann*, 299 S.W.3d at 75 (quoting *Dunkin v. Dunkin*, No. M2002-01899-COA-R3-CV, 2003 WL 22238950, at *5 (Tenn. Ct. App. Sept. 30, 2003)). Tennessee Code Annotated section 36-6-108(d)(2)(A)-(F) includes a nonexclusive list of what may constitute specific and serious harm to justify denying a parent's request to relocate with a child.[3] Father does not suggest that any situation identified on the list applies to LY.

Father seems to focus on Mother's actions and decisions shortly after the incident of sexual abuse to demonstrate a threat of specific, serious harm to LY. Specifically, Father relies on Mother's attempt to reunite LY and ZD more quickly following the incident than Father thought was appropriate. The evidence was undisputed, however, that when Father

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[3]The statute provides that "[s]pecific and serious harm to the child includes, but is not limited to, the following:"

> (A) If a parent wishes to take a child with a serious medical problem to an area where no adequate treatment is readily available;
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> (B) If a parent wishes to take a child with specific educational requirements to an area with no acceptable education facilities;
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> (C) If a parent wishes to relocate and take up residence with a person with a history of child or domestic abuse or who is currently abusing alcohol or other drugs;
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> (D) If the child relies on the parent not relocating who provides emotional support, nurturing and development such that removal would result in severe emotional detriment to the child;
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> (E) If the custodial parent is emotionally disturbed or dependent such that the custodial parent is not capable of adequately parenting the child in the absence of support systems currently in place in this state, and such support system is not available at the proposed relocation site; or
>
> (F) If the proposed relocation is to a foreign country whose public policy does not normally enforce the visitation rights of non-custodial parents, that does not have an adequately functioning legal system or that otherwise presents a substantial risk of specific and serious harm to the child.

Tenn. Code Ann. § 36-6-108(d)(2).

alerted LY's therapist to his fear that Mother was moving too quickly and that LY needed more time away from ZD, Mother agreed to let more time pass before reuniting the two boys. Once the safety plan LY's therapist recommended was put into place, LY and ZD resumed concurrent overnight stays at Mother's house. Mother testified that Father was made aware of these overnights and that he did not raise any objections until he learned of Mother's desire to move to Virginia.

Father also argues that ZD may commit a further act of sexual abuse and that this risk poses a threat of specific and serious harm to LY. Mother testified, however, that if she and LY relocated to Virginia, LY and ZD would see each other far less than they do in Tennessee. In light of Mother's undisputed testimony, we believe the threat to LY's safety is lessened if he is living in Virginia.

We conclude that the evidence does not preponderate against the trial court's finding that Father has failed to prove that Mother's relocation to Virginia with LY poses a threat of specific and serious harm to LY. We affirm the trial court's judgment granting Mother permission to relocate with the Child.

B. Limitation of LY's and ZD's Time Together in Virginia

We next turn to Mother's first assignment of error. Mother contends the trial court's judgment was arbitrary and capricious to the extent that it limited the number of days ZD could spend with LY at Mother's house in Virginia. Despite the fact that neither party asked the trial court to impose a particular limitation on their time together, the trial court, *sua sponte*, inserted a provision in the revised permanent parenting plan that limited the number of days ZD and LY could be together at Mother's house to twenty-one days. The court did not explain how it arrived at this limitation.

We review the trial court's findings of fact de novo upon the record, granting them a presumption of correctness, unless the evidence preponderates otherwise. *Armbrister v. Armbrister*, 414 S.W.3d 685, 692 (Tenn. 2013); TENN. R. APP. P. 13(d). In the context of parenting plans, "[t]rial courts have broad discretion to fashion parenting plans that best serve the interests of the children." *Massey-Holt v. Holt*, 255 S.W.3d 603, 611 (Tenn. Ct. App. 2007) (quoting *Shofner v. Shofner*, 181 S.W.3d 703, 716 (Tenn. Ct. App. 2004)). Each family involves unique circumstances, and "[t]he trial court's decision regarding parenting plans will be set aside only when it 'falls outside the spectrum of rulings that might reasonably result from an application of the correct legal standards to the evidence found in the record.'" *Bryant*, 2008 WL 4254364, at *7 (quoting *Eldridge v. Eldridge*, 42 S.W.3d 82, 88 (Tenn. 2001)).

When fashioning a permanent parenting plan, a trial court is statutorily required to make residential provisions that are consistent with the child's developmental level and that take into account "[t]he character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child." Tenn. Code Ann. § 36-6-404(b)(13) (2013).[4] Appellate courts are reluctant to second-guess a trial court's decision regarding parenting time and will refrain from disturbing a parenting plan "unless th[e] decision is based on a material error of law or the evidence preponderates against it." *In re T.C.D.*, 261 S.W.3d 734, 742 (Tenn. Ct. App. 2007) (citing *Adelsperger v. Adelsperger*, 970 S.W.2d 482, 485 (Tenn. Ct. App. 1997)).

According to Mother, the evidence presented at trial provided no basis to support the court's twenty-one day restriction. Mother did testify, however, that if the court granted her request to relocate with LY, ZD and LY would be together at Mother's house in Virginia for less than fourteen days in a calendar year. Father wanted LY to have no contact at all with ZD to decrease to zero the opportunity for ZD to perpetrate further abuse on LY.

Dr. William D. Kenner testified on behalf of Father as an expert on child sexual abuse. According to Dr. Kenner, there was a risk ZD would reoffend based on ZD's age when he committed the sexual abuse on LY. ZD's therapist testified there was a low risk that ZD would reoffend, and LY's therapist testified during her deposition that the boys should be able to spend time together so long as appropriate safeguards were in place.

Considering the range of testimony offered at trial, we believe the trial court did its best to balance Mother's interest that she and LY be permitted to relocate with Father's concerns about future abuse. The trial court found both Mother and Dr. Kenner to be credible witnesses. We do not believe the trial court's restriction on the time LY and ZD may be in Mother's Virginia home falls outside the spectrum of rulings that might reasonably result from an application of the correct legal standards to the evidence found in the record. Therefore, we reject Mother's argument that the trial court's limitation was arbitrary or that the court abused its discretion and affirm the trial court's judgment in this regard.

C. Transportation Costs

Mother's next assignment of error concerns the trial court's decision to charge her with the cost of transporting LY back and forth to Tennessee to visit Father during the year. Pursuant to the parenting plan, Mother is "responsible for the transportation [of LY] for Father's visitation except the nine weekends [during] which Father may visit the child in

[4]The statute has been modified since this case was heard, but this is the language applicable to this case.

Virginia from September through May." The parenting plan provides for LY to travel down to Tennessee seven to nine times per year to visit Father. Mother estimated this cost to be $5,775 when LY goes to visit Father seven times a year and $7,425 when LY goes to visit Father nine times a year. Mother contends the trial court essentially imposed a downward deviation on Father's child support obligation by saddling her with LY's transportation costs.

The parent relocation statute addresses transportation costs and provides:

> The court shall assess the costs of transporting the child for visitation, and determine whether a deviation from the child support guidelines should be considered in light of all factors including, but not limited to, additional costs incurred for transporting the child for visitation.

Tenn. Code Ann. § 36-6-108(f).

The regulations addressing deviations from the child support guidelines specifically address parenting time-related travel expenses:

> If parenting time-related travel expenses are substantial due to the distance between the parents, the tribunal may order the allocation of such costs by deviation from the PCSO,[5] taking into consideration the circumstances of the respective parties as well as which parent moved and the reason that the move was made.

TENN. COMP. R. & REGS. 1240-2-4-.07(2)(c). Deviation from the child support guidelines "is within the discretion of the tribunal," TENN. COMP. R. & REGS. 1240-2-4-.07(1)(b), and must serve the best interest of the child at issue. TENN. COMP. R. & REGS. 1240-2-4-.07(1)(c)(3)(ii). Before deviating from the presumptive child support amount, trial courts are directed to consider "all available income of the parents" and are required to find "that an amount of child support other than the amount calculated under the Guidelines is reasonably necessary to provide for the needs of the minor child . . . immediately under consideration." TENN. COMP. R. & REGS. 1240-2-4-.07(2)(a)(1).

Mother contends the trial court improperly deviated downward from the presumptive child support amount Father should have been ordered to pay under the guidelines by requiring her to use a large portion of Father's child support payments to pay for Father's visitation. Trial courts have discretion in deciding whether or not to deviate from the

[5]PCSO is defined as the "presumptive child support order." TENN. COMP. R. & REGS. 1240-2-4-.02(20)(a).

guidelines. To prevail on her argument, Mother must convince us that the trial court did in fact deviate from the guidelines and that it abused its discretion in doing so.

When reviewing a trial court's decision for abuse of discretion, an appellate court is not permitted to substitute its judgment for that of the trial court just because the appellate court may have decided the case differently. *Eldridge*, 42 S.W.3d at 85. "A trial court abuses its discretion only when it 'applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining.'" *Id*. (quoting *State v. Shirley*, 6 S.W.3d 243, 247 (Tenn. 1999)). The trial court's decision will be upheld as long as reasonable minds can disagree about its correctness. *Id*.

The trial court explained its reasons for imposing LY's transportation costs to Tennessee on Mother: Mother is the one who wanted to move; Mother can afford to pay these costs; and LY will not suffer any detriment as a result. Similar reasoning was used by the trial court in the case *Long v. Long*, M2006-02526-COA-R3-CV, 2008 WL 2649645 (Tenn. Ct. App. July 3, 2008). In that case, the father moved to Maryland to be closer to his girlfriend, and the trial court ordered him to pay the entire cost of his children's transportation from Tennessee to visit him in Maryland. *Id*. at *7. On appeal, the father argued that the mother should be required to pay half of the costs, or, in the alternative, that the trial court should have deviated downward from his presumptive child support obligation to take into account the transportation costs. *Id*. at *12. The Court of Appeals disagreed and upheld the trial court's decision on this issue, in part, because it was the father's decision to move to Maryland to be closer to his girlfriend. *Id*.

Mother, here, contends she is required to pay all the transportation costs for Father's visitation. She ignores the fact that Father was awarded nine additional weekends with LY in Virginia, and that Father is required to pay these transportation costs. Thus, the parties will essentially be splitting the transportation costs of Father's visitation with LY between them. *See Clark v. Clark*, M2002-03071-COA-R3-CV, 2003 WL 23094000, at *4 (Tenn. Ct. App. Dec. 30, 2003) (trial court split transportation costs between the parties). This case does not involve the situation like that in *Bowers v. Bowers*, 956 S.W.2d 496, 500 (Tenn. Ct. App. 1997), where the husband was required to reimburse the mother in full for her costs in traveling to Oklahoma to exercise her visitation. In that case, the mother would have had to spend half of her income to travel and visit her child, and the evidence showed the father earned about six times as much as the mother. *Bowers*, 956 S.W.2d at 499-500.

We disagree with Mother that the trial court deviated downward to lower her child support order when it made her responsible for LY's travel expenses to Tennessee. Instead, we believe the court simply followed the statute's direction to "assess the costs of

transporting the child for visitation" and chose not to deviate from the guidelines after considering the relevant factors in this case. Tenn. Code Ann. § 36-6-108(f). Mother was permitted to relocate with LY to Virginia, as she requested, and the trial court did not abuse its discretion by requiring her to share Father's cost of exercising his visitation with LY once he was there.[6] *See Leach v. Leach*, No. W2000-00935-COA-R3-CV, 2001 WL 720635, at *6 (Tenn. Ct. App. June 25, 2001) (appellate court not only affirmed trial court's order requiring parties to split cost of children's travel expenses to visit father in Tennessee, but also modified order to require mother to pay half of father's travel expenses to visit children in South Carolina).

D. Childcare Credit Awarded to Father

Mother next argues the trial court erred in giving Father a monthly credit of $250 for childcare expenses on the child support worksheet adopted by the court. Father admits that he did not present evidence of these expenses during the trial. Without evidence, the trial court had no basis on which to include childcare expenses on the child support worksheet.

We review the trial court's decision de novo on the record, with a presumption of correctness unless the evidence preponderates otherwise. TENN. R. APP. R. 13(d). Without evidence to support the trial court's decision, the evidence preponderates otherwise. Thus, we agree with Mother that the trial court erred when it gave Father a $250 credit on the child support worksheet. *See Amos v. Amos*, No. 01-A-019504-CH-00156, 1992 WL 247644, at *4 (Tenn. Ct. App. Oct. 2, 1992) (court denied father credit for insurance in absence of evidence of its value). The trial court is directed to correct this error on remand and determine Father's child support obligation without this credit for childcare expenses.

E. Attorney's Fees

Mother's final argument on appeal is that the trial court erred in denying her request for an award of attorney's fees. Tennessee Code Annotated section 36-6-108(i) gives the trial court discretion to award attorney's fees and other litigation expenses to either parent in a relocation matter. In this case, the trial court exercised its discretion not to award Mother her fees. We review the trial court's decision on this matter under the abuse of discretion standard. *Lima v. Lima*, No. W2010-02027-COA-R3-CV, 2011 WL 3445961, at *9 (Tenn. Ct. App. Aug. 9, 2011). Applying this standard of review, we must affirm the trial court's decision if reasonable minds could disagree about its correctness. *Caldwell v. Hill*, 250 S.W.3d 865, 869 (Tenn. Ct. App. 2007).

[6]No evidence was introduced to suggest Mother cannot afford to pay the cost of LY's tickets to Tennessee, as was the case in *Bowers*.

In denying Mother's request for her fees, the court stated the following:

> [T]his was not a case where the Court can say that the father . . . was opposing the move merely to draw it out or [be] vindictive or to be spiteful, acrimonious or otherwise, he had an incredibly legitimate concern, a concern that gave this Court a significant pause. He had every right to question this move and he exercised that right. The mother had every right to request the move. She exercised that right. But let's make no mistake, the reason we're here . . . is because the mother married a gentleman and at that time she knew full well . . . that she was going to take the child away from the natural father. Just by virtue of the fact of marrying the man, she knew that was a consequence, so then to come back into Court and request attorney's fees is absurd. It is her fault that we're here and we need to clearly understand that.

We disagree with the trial court's reasoning that Mother was "absurd" to request her attorney's fees under the facts of this case. Mother had every right to marry whomever she chose and to follow her husband to a different state when his work required him to relocate. We disagree with the trial court's use of the word "fault" in its judgment. However, the statute does not grant Mother the right, as the prevailing party, to recover her fees, either. The trial court found Father had legitimate concerns regarding Mother's relocation and LY's continued safety.

The statute does not provide parameters directing trial courts to consider particular factors in deciding whether to award attorney's fees to one party or another in a relocation case. Mother provided no evidence that she was unable to pay her fees. Based on the wide discretion the trial court is given to decide whether to award fees, we cannot say under the facts of this case that the court abused its discretion in denying Mother's request for her fees. Therefore, we affirm the trial court's judgment denying Mother an award of her attorney's fees.

F. Attorney's Fees Incurred on Appeal

Both Mother and Father have requested an award of the attorney's fees that have been incurred on appeal. Both Mother and Father raised issues on appeal, and each party prevailed, at least in part, on appeal. We exercise our discretion and respectfully decline to grant either Mother or Father an award of the attorneys' fees incurred on appeal.

IV. CONCLUSION

For the reasons stated above, we affirm the trial court's decision in every respect with

the exception of the $250 childcare credit the court gave Father in the child support worksheet. We vacate the court's decision to award Father this childcare credit and remand the case for a calculation of Father's child support obligation without this $250 credit. The costs of this appeal shall be taxed to both parties equally.

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ANDY D. BENNETT, JUDGE