

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs November 2, 2020

<b>FILED</b> 01/28/2021 Clerk of the Appellate Courts
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**RANIA ANWAR AL QAISI v. DIAB MAHMOUD ALIA**

**Appeal from the Circuit Court for Davidson County**  
**No. 18-D-1097      Phillip R. Robinson, Judge**

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**No. M2020-00390-COA-R3-CV**

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This appeal arises from a divorce proceeding after a short-term marriage. The husband challenges the trial court’s decisions regarding his parenting time, the calculation of his income, and its award of alimony to the wife. We affirm.

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

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and KRISTI M. DAVIS, J., joined.

Jennifer Lynn Thompson, Nashville, Tennessee, for the appellant, Diab Mahmoud Alia.

John F. Floyd, Jr., Nashville, Tennessee, for the appellee, Rania Anwar Al Qaisi.

**OPINION**

**I.      FACTS & PROCEDURAL HISTORY**

Diab Mahmoud Alia (“Husband”) was born and raised in Kuwait. He obtained a college degree in mechanical engineering from a university in Jordan. Husband came to the United States at around age twenty-one. He has been a United States citizen for “a long time.” Husband never worked as an engineer in the United States but had “a passion for cars” and attended a trade school in Texas to become a certified mechanic. He was married and divorced twice before, but had no children.

In 2014, at the age of forty-one, Husband married Rania Anwar Al Qaisi (“Wife”) in Jordan. Wife was twenty-seven. She had a college degree in interior art and had worked

as an interior designer in Jordan. Upon arriving in the United States with Husband, however, Wife did not work. She gave birth to a daughter in 2015. The parties resided in Houston, Texas, for a period of two and one-half years.

During the marriage, Husband had a business that bought and sold cars, which was financed by investments from his sister. However, he “gave up” on the business around 2016 because it was unprofitable. For a time, Husband worked various jobs for other car dealers. Then, he was offered a job in North Carolina managing cellular phone company stores. The parties and their daughter moved to North Carolina for one year, where they lived in an apartment. However, their relationship was deteriorating. The parties often argued, and the police were called to their home on two occasions. In early 2018, Husband’s employer transferred him to Nashville to manage a store there. Wife and the parties’ daughter remained in North Carolina for a couple of months, but they joined Husband in Nashville in May after he “got everything settled” in an apartment. On or about June 5, 2018, the parties had another domestic dispute, and this time, Wife went to the police and sought an order of protection. Husband was arrested and charged with domestic assault and offensive contact.

On June 22, 2018, Wife filed a complaint for divorce. The parties had been married for approximately three and one-half years. Their daughter was two years old. Wife alleged that Husband had abused her in the presence of their daughter and that his parenting time was already limited by an order of protection. She also alleged that she had been unemployed for years at Husband’s request and that she was in need of support. She sought an award of rehabilitative alimony, transitional alimony, and/or alimony in solido. Wife also filed a motion for temporary support with an affidavit and statement of her income and expenses.

Husband filed an answer and counter-complaint. An agreed order was entered regarding temporary support which provided that Husband would continue to pay the rent and utilities on the parties’ apartment, where Wife continued to reside with the child, in addition to Wife’s automobile insurance. Another agreed order was entered allowing Husband to exercise parenting time during certain hours on Saturdays and Sundays. Later, he was allowed overnight visitation on Saturdays. However, his motion to dissolve the order of protection was denied. The parties were to exchange the child at the police station, and Husband was required to stay in his vehicle.

An Arabic interpreter was appointed, as Wife has a limited ability to understand and/or communicate in English. Wife filed a petition for contempt, alleging that Husband had transferred \$262,000 from his business checking account to an international account one week after he was served with the complaint for divorce. Husband filed a response admitting that the transfer was made but claiming that his sister had terminated their business partnership and that he was simply returning her investment. After a hearing on the contempt petition, the trial court entered an order finding Husband in civil contempt

because he transferred the sum in direct violation of the automatic statutory injunctions that went into effect upon the filing of the divorce complaint. Ultimately, however, the trial court did not punish Husband for the contempt because his sister refused to return the funds and he did not have the ability to purge the contempt.

On March 5, 2019, Husband filed a motion for relief from the temporary support order requiring him to pay rent, utilities, and insurance, claiming that he had lost his job with the cellular company and was unemployed as of February 28, 2019. After a hearing, the trial court denied Husband's motion for relief from the order.

The divorce trial was held over the course of two days, in November 2019 and January 2020, with an interpreter. We do not have a transcript of the proceedings, but Husband submitted a statement of the evidence. By the time of trial, the parties had been married for five years, and their child was four years old. Wife submitted a proposed parenting plan in which she would be designated primary residential parent and have 285 days of parenting time, while Husband would have 80 days. Wife also submitted another income and expense statement. Based on her calculation of her need, she requested an award of alimony for four years in the sum of \$1,987 per month, in addition to her attorney's fees. Husband sought a joint custody arrangement. His attorney also announced that the criminal case against Husband in connection with his arrest for domestic assault had recently been dismissed and expunged after he completed a year of probation.

Wife testified that she was 32 years old and that she had been a stay-at-home mother throughout the marriage. Although she had a bachelor's degree in interior art from a university in Jordan, she had not worked as an interior designer since she moved to the United States with Husband. She testified that in order for her to become an interior designer in the U.S., she "would have to redo everything" because she had been out of work for five years. Wife testified that she would have to take some courses and that she did not feel confident enough in her English to take those courses. Wife explained that her English was "very weak" but that she planned to find a college after the divorce proceeding and try to move on with her life. She was in good health aside from some dental issues that she could not afford to address.

Wife described several incidents in which Husband had physically abused her during the marriage in the presence of their daughter. She finally sought an order of protection after the parties moved to Nashville. Although Husband was responsible for paying her rent, utilities, and automobile insurance after she filed for divorce, Wife testified that he stopped paying these expenses in March when he lost his job. As a result, Wife and the child were evicted from their apartment. They stayed in her vehicle for three days. She had difficulty renting another apartment because no one would rent to her without established credit. Although Wife was able to move some things out of the apartment where she was evicted, the apartment complex eventually removed some of her belongings.

Wife testified that she tried to look for work, but she had no qualifications, no one understood her language, and she was not in possession of her social security card or green card. She began working long hours for applications like Uber and Uber Eats, transporting customers and making deliveries. Wife testified that she worked for a short time “at a restaurant with some Arabs,” who provided her with financial assistance, but that she would have to repay them.

At the time of trial, Wife was paying all expenses for herself and the child, including her rent, utilities, automobile insurance, food, and child care expenses. She testified that Husband was paying nothing. Wife was employed by Uber, Lyft, and similar applications, making a combined sum of around \$300 to \$400 per week from all sources. She occasionally worked at the restaurant covering shifts five to six times per month as needed or helping with catering and deliveries. Over time, she had borrowed a total of \$15,000 from a relative of the restaurant owner. She had received some minimal financial assistance from her family overseas.

Wife proposed that Husband have parenting time with the child every other weekend and for two weeks in the summer, for a total of 80 days. However, she requested an extension of the order of protection. Wife testified that Husband continued to interrogate her and cuss at her when they met to exchange the child for visitation, and she believed that she had seen him following her in a car and near her house.

Husband testified as well. He was 46 years old. Husband acknowledged that he had a college degree in mechanical engineering but said that he had never worked as a professional engineer in the U.S. and that he was not licensed here. He had also attended a trade school in Texas and was certified as a mechanic. Surprisingly, the record does not reflect anything about Husband’s employment during the twenty years that he lived in the U.S. before he married Wife. However, on July 30, 2014, he incorporated a car-buying business in Texas (before marrying Wife in November). Husband initially testified that he was “100% owner” of the business and that his sister supplied the money for the business in order for him to buy and sell vehicles for profit. His bank statements from that time period showed deposits of \$86,000, \$199,963, and \$99,000. According to Husband, he was unsuccessful in the business so he “gave up on his business” in early 2016. However, he did not return his sister’s investment at that time. During the years that Husband worked at the cellular company, his sister’s investment remained in his business bank account. He did not return the money to his sister until Wife filed for divorce in June 2018. During discovery, Husband had initially stated that he had no partnership agreements or documents showing ownership of the business. However, he later produced a written partnership agreement, translated from Arabic, and dated September 2014. This agreement stated that it was for a four-year term ending in September 2018. Husband took the position that this agreement showed his sister was “part owner” of the business. The business’s tax returns showed little to no income. However, Husband had no accounting records, ledgers of inventory, purchase and sale agreements, or insurance documents; “[t]here was nothing.”

Husband admitted that the parties had arguments during the marriage and that he “probably raised his voice” at Wife, stating that he “talks loud regularly.” However, he claimed that he “never touched” Wife and that they only argued. He said some of their arguments arose when the child was accidentally injured while in Wife’s care. Husband testified that he was cleared of the charges relating to the domestic incident in Nashville in June 2018 and that his record had been expunged.

Husband testified that he could no longer afford to pay his temporary support obligation once he lost his job at the cellular company in March 2019. When he testified at trial, in January 2020, Husband was working part-time at a “restaurant grocery store” making ten dollars an hour. Husband said he sometimes worked six-hour shifts but that he was not working forty hours per week. He claimed that it had been difficult for him to find a job before his criminal record was expunged. He also testified that he could no longer do mechanic work because he had a back problem. However, upon cross-examination, Husband acknowledged his discovery responses stating that he had no health problems. Husband said he had started a second job “on the side” the week before trial but that he would still be making ten dollars per hour and working part-time. Husband said he hoped his employment situation was going to improve because of the recent expungement and that he intended to apply for more jobs. Currently, he was making around \$300 per week. A single paystub from 2018 indicated that his net pay on that check was \$2,463, but the length of the pay period is not mentioned in the record. Husband claimed that he owned no assets at the time of trial and that he was driving a vehicle that belonged to his boss.

The trial court entered its final decree of divorce on February 6, 2020.<sup>1</sup> Initially, the trial court noted that its temporary support order had required Husband to pay Wife’s rent, utilities, and automobile insurance, and the court found that Husband failed to make any of the support payments after February 2019. As a result, the court found, Wife and the child were evicted from their apartment and forced to sleep in a vehicle for several nights. In addition, the court found that Wife’s vehicle was damaged in an accident and unable to be repaired due to the lack of insurance.

The order states that the trial judge weighed the parties’ credibility and found that Husband was “prone to extreme exaggerations.” The court specifically referenced Husband’s trial testimony about injuries suffered by the child. It also pointed out his trial testimony about having “a bad back” and his late-produced partnership agreement with his sister, though neither had been mentioned in his discovery responses. Based on these instances, the trial court concluded that Husband “is not a credible witness.” The court further found that Husband’s testimony alleging inappropriate marital conduct by Wife was “not believable,” while her testimony about grounds for divorce was “credible and

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<sup>1</sup> Another witness testified briefly as to an allegation of abuse against Husband that was deemed unsubstantiated.

compelling.” The trial court found that Husband had physically abused Wife, in the presence of the child, on more than one occasion. It further found that Husband attempted to control Wife by physical violence, threats of harm, and the termination of financial support.

The trial court addressed each of the statutory factors with respect to parenting time. The trial court found that Wife had been the primary caregiver for the four-year-old child since her birth and that they had “a strong and stable relationship.” The court noted Wife’s “extraordinary efforts” to provide care and support for the child when Husband stopped paying any support to assist her. It found that she earned money driving for Uber and Lyft, delivering packages for Amazon, and working as a server and employee at a restaurant. The court “was impressed with the Wife’s determination and perseverance, under very difficult circumstances, in her efforts to support herself and her child with little help from the Husband.” The trial court found that Wife was well-educated but nevertheless “a stranger in a strange land attempting to support herself and her child and build a life for both of them with limited English and few job skills.” On the other hand, the trial court was “disappointed with the efforts of the Husband to support his family.” It found that he failed to pay his court-ordered obligations after February 2019, leading to Wife’s utilities being cut off and her eviction from the apartment. The trial court found that Husband had a four-year degree in mechanical engineering, a fourteen-month course in automotive repair and maintenance, certification as a mechanic, and “fluency in English,” yet he was working “at a friend’s restaurant for \$300 per week, barely above minimum wage,” while claiming he was unable to find other employment. The trial court noted Husband’s profession of love for his daughter but was troubled by his failure to provide any support for her since March 2019. The court also noted that Husband had physically abused Wife in the presence of the child, although it emphasized that there was no competent evidence that he represented a threat of harm to the child or had abused her. Still, the court had concerns over the animosity between the parties and noted Husband’s “controlling nature.” It found that Wife had a greater ability and willingness to facilitate the child’s relationship with the other parent. The court concluded that Wife was more “morally fit” to parent the child and explained that Husband’s controlling nature caused the court to question his emotional fitness. As such, the court designated Wife as the primary residential parent. However, the court formulated its own parenting schedule by which Wife would have 246 days of parenting time and Husband would have 119 days. Generally, Husband would have parenting time every other Thursday until the following Monday. It entered a separate order continuing the order of protection.

The trial court found that Wife was earning approximately \$2,150 per month from her part-time employment at the restaurant, driving for Uber and similar employers, and delivering packages for Amazon on an as-needed basis. The court found her to be “hard-working and industrious” and observed that she “appears to be doing everything she can to provide for herself and her child.” It noted her degree in interior art but recognized that her knowledge of fashions and styles “may not translate well in the Western world” and

might be out-of-date. The court found that in order for Wife to use her education, she would have to take refresher classes in interior design that would be more suitable to an American clientele.

As for Husband, the trial court found that he claimed to earn \$300 per week working for a friend who operated a restaurant and that he was often paid in cash. The trial court found that Husband “has not presented any reliable evidence of his income or his efforts to secure more reasonable employment.” Again, the trial court noted Husband’s education and training and his claimed inability to find employment. It noted Husband’s claim of a “bad back” when he had previously claimed no health problems. The trial court found that Husband “is not a credible witness regarding this issue.” It also concluded that he was voluntarily underemployed. The trial court explained that it would adopt an annual gross income for Husband of \$37,589 pursuant to Chapter 1240-2-4-.04(3)(a)(2) of the Tennessee Child Support Guidelines. The trial court calculated Husband’s monthly child support obligation at \$488 per month. It also calculated a retroactive child support obligation owed by Husband. The court attached to its order a permanent parenting plan and child support worksheet reflecting these findings.

The trial court also divided the parties’ marital estate. The court noted Wife’s claim to a share of the \$262,000 that Husband transferred out of the country shortly after the complaint for divorce was filed. The court found that Husband “willfully and intentionally transferred assets under his control outside the country and beyond the reach of the Wife and the Court” in violation of the automatic statutory injunction. The trial court noted that “it was in the purview of the Court, not the Husband, to determine whether the money in the Husband’s possession was his sister’s investment money or a marital asset.” The court noted “with interest” that the agreement produced by Husband “coincidentally was to last four (4) years, ending on September 1, 2018, just shortly after the Wife filed for divorce.” Still, from the evidence presented, the court found no basis for any claim by Wife against the funds. Aside from this disputed sum, the court found “little other evidence of the parties’ assets.” Wife was driving a 2014 Nissan Altima that had been damaged in an accident. The court found no evidence regarding the repair cost or the status of the title of the vehicle, but to the extent that it represented a marital asset, the court awarded it (and any indebtedness) to Wife to help care for the minor child. The trial court also noted that Wife managed to save some of the furnishings when she was evicted from the apartment, and those items were awarded to Wife. Husband was awarded the furnishings in his possession.

The trial court also addressed the factors relevant to a determination of spousal support. It found that Husband has a greater earning capacity based on his education and work experience and that Wife has a greater financial need. It noted that both parties have a college education but that Husband had an opportunity to enhance his education after moving to this country, while Wife did not. Instead, Wife had acted as a housewife and caregiver for the parties’ daughter. The court found that Husband had little need for further

education but that Wife would benefit from additional training or refresher classes that may enable her to use her education and generate a greater income. The court also noted that Wife would serve as the primary residential parent for the parties' child but that the child would be starting kindergarten in the next year or so.

Additionally, the court noted that the parties' marriage lasted five years, and at the time of trial, Wife was 32 years old and Husband was 46. It found that both parties were in good physical condition, despite Husband's trial testimony about his back. The trial court again noted that Husband was not a credible witness and that he was voluntarily underemployed. It found that the parties had very few assets of any kind, with the marital property consisting primarily of a small amount of furniture and furnishings. The court found that the parties enjoyed a "modest, though comfortable, standard of living" during the marriage.

Finally, the trial court deemed it appropriate to consider "the relative fault" of the parties in this case. The court explained:

The Husband married the Wife in Jordan and then brought her to this country where she has little, if any, support system. He behaved in a controlling and abusive manner which compelled the Wife to seek a divorce for her own personal safety and the well-being of the parties' minor daughter. The Wife has limited English, and her current set of job skills has limited her to various low-paying, part-time jobs. The Husband bears responsibility for the Wife's current economic plight.

Considering all of these factors, the trial court concluded that Husband has the earning capacity to pay spousal support, and Wife has the need for it. The trial court reviewed Wife's income and expense statement in detail and found some expenses reasonable while reducing others. After these reductions, and offsetting Wife's income and her child support award, the court found that Wife had a need of approximately \$1,070 per month. Consequently, the trial court awarded Wife the sum of \$1,070 per month "as transitional alimony for a period of 36 months."<sup>2</sup> The trial court also awarded Wife \$9,500 for a portion of her attorney's fees as alimony in solido, as she had incurred over \$15,000 in attorney's fees. Husband timely filed a notice of appeal.

## **II. ISSUES PRESENTED**

Husband presents the following issues for review on appeal:

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<sup>2</sup> Transitional alimony is awarded when the court finds that "the economically disadvantaged spouse needs assistance to adjust to the economic consequences of a divorce." Tenn. Code Ann. § 36-5-121(g)(1).



1. Whether the trial court erred in imputing Father's income at \$3,132 per month;
2. Whether the trial court erred in awarding Wife alimony; and
3. Whether the trial court erred by restricting Father's parenting time rather than awarding equal parenting time.

For the following reasons, we affirm the decision of the circuit court.

### III. DISCUSSION<sup>3</sup>

#### A. Husband's Income

First, we address Husband's contention that the trial court erred in imputing income to him pursuant to the Tennessee Child Support Guidelines. "Determinations regarding child support are reviewed under an abuse of discretion standard." *State ex rel. Williams v. Woods*, 530 S.W.3d 129, 136 (Tenn. Ct. App. 2017). However, "decisions regarding child support must be made within the strictures of the Child Support Guidelines." *Id.* (quoting *Richardson v. Spanos*, 189 S.W.3d 720, 725 (Tenn. Ct. App. 2005)). A trial court's child support decision retains an element of discretion, but "a trial court will be found to have abused its discretion when it applies an incorrect legal standard, reaches a decision that is illogical, bases its decision on a clearly erroneous assessment of the evidence, or employs reasoning that causes an injustice to the complaining party." *Id.* (quoting *Richardson*, 189 S.W.3d at 725).

In certain situations, the Tennessee Child Support Guidelines allow a court to "impute" income to a parent, meaning, the court may "assign or attribute an income level to the parent that may not reflect the parent's actual gross income." *Massey v. Casals*, 315 S.W.3d 788, 795 (Tenn. Ct. App. 2009). At the time of the proceedings below, the Guidelines provided:

Imputing additional gross income to a parent is appropriate in the following situations:

- (I) If a parent has been determined by a tribunal to be willfully and/or voluntarily underemployed or unemployed; or
- (II) When there is no reliable evidence of income; or
- (III) When the parent owns substantial non-income producing assets, the court may impute income based upon a reasonable rate of return upon the assets.

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<sup>3</sup> We note that Husband's brief on appeal does not contain any citations to the appellate record in his statement of the facts. He includes a few cites to the record in the argument section of his brief, so we have considered the merits of his appeal. However, we wish to remind counsel that a brief must contain "[a] statement of facts, setting forth the facts relevant to the issues presented for review *with appropriate references to the record.*" Tenn. R. App. P. 27(a)(6) (emphasis added).

Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(i) (2008).<sup>4</sup> Here, the trial court found that “Husband claims to earn \$300 per week working for a friend who operates a restaurant. He is often paid in cash, and the Court finds that he has not presented any reliable evidence of his income or his efforts to secure more reasonable employment.” The trial court noted Husband’s claimed inability to find employment and his testimony about a “bad back.” It concluded by stating that “Husband is not a credible witness regarding this issue.” The trial court found Husband “voluntarily underemployed.” It ultimately imputed an annual gross income to Husband of \$37,589, or \$3,132 per month, citing section 1240-02-04-.03(a)(2).

The trial court’s findings implicate two of the possible avenues, quoted above, for imputing income to a parent. The trial court found that Husband had not presented “any reliable evidence of his income,” under subsection (II), and it found that Husband was “voluntarily underemployed,” under subsection (I). However, the Guidelines provided separate instructions for each situation.

In the absence of “reliable evidence” of a parent’s income, the Guidelines provided:

(iv) Imputing Income When There is No Reliable Evidence of Income.

(I) When Establishing an Initial Order.

I. If a parent fails to produce reliable evidence of income (such as tax returns for prior years, check stubs, or other information for determining current ability to support or ability to support in prior years for calculating retroactive support); and

II. The tribunal has no reliable evidence of the parent’s income or income potential;

III. Then, in such cases, gross income for the current and prior years shall be determined by imputing annual gross income of thirty-seven thousand five hundred eight-nine dollars (\$37,589) for male parents and twenty-nine thousand three hundred dollars (\$29,300) for female parents. These figures represent the full time, year round workers’ median gross income, for the Tennessee population only, from the American Community Survey of 2006 from the U.S. Census Bureau.

Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(iv).<sup>5</sup> Thus, the Guidelines recognize the importance of having “reliable information regarding a parent’s current ability to support when establishing a support order.” *In re Samuel P.*, No. W2016-01665-COA-R3-JV, 2018 WL 1046784, at \*13 (Tenn. Ct. App. Feb. 23, 2018) (citing *Eatherly v. Eatherly*, No.

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<sup>4</sup> This section of the Guidelines was amended effective May 10, 2020, while this case was pending on appeal. See 2020 TN REG TEXT 526643. For purposes of this appeal, we apply the version in effect at the time of the proceedings below.

<sup>5</sup> Again, we note that this section has been amended such that it now includes different figures based on the 2016 census.

M2000-00886-COA-R3-CV, 2001 WL 468665, at \*4 (Tenn. Ct. App. May 4, 2001)). When the evidence of a parent’s income is incomplete, the courts and the parties “find themselves in a serious quandary.” *Id.* at \*14 (quoting *Kirchner v. Pritchett*, No. 01A01-9503-JV-00092, 1995 WL 714279, at \*2 (Tenn. Ct. App. Dec. 6, 1995)). However, the Child Support Guidelines “are not intended to permit [] parents to avoid their obligation to support their children simply by keeping inadequate records of their income and expenses or by resisting appropriate discovery requests for this information.” *Id.* (quoting *Kirchner*, 1995 WL 714279, at \*3).

“[I]f a parent fails to produce reliable evidence of income *and the trial court does not otherwise have reliable evidence of income or income potential*, then the trial court may impute income to the parent’ as set forth in this section.” *Id.* at \*13 (quoting *In re Andrea R.*, No. M2014-01895-COA-R3-JV, 2015 WL 7749116, at \*11 (Tenn. Ct. App. Nov. 30, 2015)). In the absence of any reliable evidence, the Guidelines “set a precise dollar amount that should be imputed.” *Id.* (citing *Smith v. Smith*, No. M2015-01038-COA-R3-CV, 2016 WL 3095067, at \*4 (Tenn. Ct. App. May 24, 2016)). However, “the median income amount is only available in the event reliable evidence of a parent’s income or income potential is not presented.” *Id.* (citing *Garrett v. Elmore*, No. M2013-01564-COA-R3-JV, 2014 WL 3763806, at \*11 (Tenn. Ct. App. July 29, 2014)). Simply put, “the median income amount is to be used as a fall back only when the court has no other reliable evidence of the [parent’s] income or income potential.” *Id.* (quoting *In re Brittany M.A.*, No. M2010-02173-COA-R3-JV, 2011 WL 4600435, at \*4 (Tenn. Ct. App. Oct. 5, 2011)).<sup>6</sup>

A separate subsection of the Guidelines governs the situation in which a parent is deemed voluntarily underemployed. The Guidelines provide that when a parent has been found to be willfully or voluntarily underemployed, “additional income can be allocated to that parent to increase the parent’s gross income *to an amount which reflects the parent’s income potential or earning capacity*, and *the increased amount* shall be used for child support calculation purposes.” Tenn. Comp. R. & Regs. 1240-02-04-.04 (3)(a)(2)(ii)(II) (emphasis added).

In sum, in the absence of reliable evidence, the Guidelines “set a precise dollar amount that should be imputed,” while in the case of voluntary underemployment, the trial court considers various factors in order to determine the amount of income to impute to a

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<sup>6</sup> According to the Guidelines, “reliable evidence” can take the form of “tax returns for prior years, check stubs, or other information” for determining the parent’s ability to support. Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(iv)(I)(I). Notably, however, the court is not limited to the types of documentary evidence listed as examples, and it may also consider testimony on the issue. *In re Samuel P.*, 2018 WL 1046784, at \*14. At the same time, “the court may choose to disbelieve a parent’s proof relative to his or her finances and deem it unreliable, even if it is the type of evidence listed in the guideline.” *Id.*; *see, e.g., Campbell v. Campbell*, No. 02A01-9711-CH-00286, 1998 WL 765715, at \*1-2 (Tenn. Ct. App. Nov. 4, 1998) (“Obviously, . . . the trial court found that Husband’s proffered tax returns were not reliable, and we conclude that the evidence does not preponderate against this finding.”).

party. *Smith*, 2016 WL 3095067, at \*4. In the case of voluntary underemployment, the parent’s earning capacity is used to calculate child support. *Garrett*, 2014 WL 3763806, at \*8. Ultimately, in this case, the trial court used the median income amount based on the absence of any reliable evidence. We discern no error in this decision.

The record supports the trial court’s conclusion that Father failed to produce “reliable evidence” of his income or income potential. The trial court clearly discredited Husband’s testimony that he was earning only \$300 per week at a friend’s restaurant and was often paid in cash. Husband does not point to any documentation in the record to support his testimony about these earnings. In fact, on appeal, Husband does not argue that the trial court should have utilized his current employment income figures, provided during his trial testimony. We note that the record contains some unsigned tax returns for Husband’s now defunct car-buying business, and testimony about a single paystub from 2018, but Husband does not argue that we should use those figures either. Instead, Husband points to an exhibit contained in the record on appeal that contains his discovery responses. He claims that the trial court should have utilized two figures he listed in his responses to interrogatories from 2018, wherein he was asked to describe his employment history and income and provided the following information:

a. DMDA Investments Inc. . . .

Buy and sale cars and earn a commission on each car sold

January 2015 until March 2017

commission based

Business was losing and my sister wanted the cars sold and her money back.

b. All Cellular NC. . . .

Employed as a sales person

April 2017 to April 2018

\$12.00 per hour – 40 hours a week

Company moved to Tennessee

c. Uber

Driver

October 2017 to March 2018

Commission based – part time work

My full-time job moved me to Tennessee

d. Lyft

Driver

November 2017 to March 2018

Commission based – part time work

My full-time job moved me to Tennessee

e. Alternative Mobile Management, Inc. . . .  
July 2018 to the present  
Runner  
\$3000.00 gross monthly  
Currently working here.

Based on these discovery responses contained within the trial exhibits, Husband argues that the trial court should have multiplied his hourly income from All Cellular to calculate a total of \$2,080 per month, and additionally considered his income of \$3,000 per month from Alternative Mobile, then averaged the two in order to reach “a much more accurate imputed income number” of \$2,540 per month. We are not persuaded by this late-raised argument.

Essentially, Husband contends that his discovery responses constitute “reliable” evidence of his income. We disagree. These vague and incomplete income figures were only listed in Husband’s discovery responses from 2018, Husband was no longer working at any of these employers at the time of trial, and most importantly, the trial court found that Husband was not a credible source of information regarding this issue. “A parent’s reported income may not truly reflect his or her ability to provide support.” *In re Samuel P.*, 2018 WL 1046784, at \*14. As previously noted, “the court may choose to disbelieve a parent’s proof relative to his or her finances and deem it unreliable, even if it is the type of evidence listed in the guideline.” *Id.* “[I]f the court finds the evidence presented of the obligor’s income is not credible, it may impute income and determine the amount of child support accordingly.” *Gulvartian v. Gulvartian*, No. E2002-03117-COA-R3-CV, 2004 WL 343599, at \*3 (Tenn. Ct. App. Feb. 24, 2004); *see, e.g., In re Andrea R.*, 2015 WL 7749116, at \*11 (concluding that the evidence did not preponderate against a trial court’s finding that there was no reliable evidence of income where it implicitly found that the mother and her employer were not reliable sources and discredited their testimony); *Garrett*, 2014 WL 3763806, at \*11 (finding that the evidence did not preponderate against the trial court’s conclusion that the father’s evidence of his income was “less than reliable”); *In re Faith A.F.*, No. M2011-02563-COA-R3-JV, 2013 WL 3941085, at \*10-11 (Tenn. Ct. App. July 26, 2013) (explaining that the trial court was permitted to impute income to the father because it did not believe his testimony regarding his finances and deemed it unreliable); *Leopold v. Leopold*, No. M1999-00602-COA-R3-CV, 2003 WL 21004630, at \*5 (Tenn. Ct. App. May 6, 2003) (concluding that a trial court was left with “no alternative” than to use the median income amount where the husband failed to produce reliable evidence of his income such as income tax returns, his testimony was unhelpful, and he did not file an income and expense statement).

At trial, Husband never mentioned the numbers in his discovery responses that he now claims the trial court should have utilized. Although it is difficult to tell from the statement of the evidence, it appears that Husband’s discovery responses were only discussed at trial with respect to Husband’s failure to disclose any health issues and his

failure to produce the partnership agreement.<sup>7</sup> Additionally, we note that Husband's proposed parenting plan left his income blank in the section for the calculation of child support, and he failed to submit an income and expense statement listing his monthly income.

Given the trial court's express credibility finding, we reject Husband's argument on appeal that the trial court should have used the income figures in his discovery responses rather than the median income amount. Because the trial court properly concluded that there was no reliable evidence of Husband's income and imputed the standard median income, we do not reach the alternative issue of voluntary underemployment. *See In re Andrea R.*, 2015 WL 7749116, at \*11 (“[T]he trial court's finding that Mother did not provide reliable evidence of income justifies the imputation of income to Mother, and we need not discuss Mother's argument regarding voluntary underemployment.”).

### ***B. Alimony***

Next, we address Husband's argument that the trial court erred “in setting such high amounts” for the alimony awards. Husband claims that it was necessary to calculate his monthly living expenses and that the trial court failed to do so. The problem with this argument is that Husband failed to submit evidence of his monthly expenses at trial. He did not testify as to his monthly expenses and did not submit an income and expense statement either.

In his brief on appeal, Husband has constructed a “chart” of his purported monthly expenses. However, Husband did not testify to any of these expenses at trial. As his source of information, Husband resorts to the same exhibit containing his discovery responses mentioned above. Therein, Wife's interrogatories asked Husband to itemize his monthly living expenses by category, such as mortgages, car notes, electricity, water, telephone, food, clothing, laundry, gasoline, recreation, medical care, insurance, bank notes, etc., and to state the amount Husband spent monthly for each category. The only amounts listed in Husband's answer were “Room and board \$400.00 temp until I can get an apartment,” \$150 for utilities, \$250 for food, and \$75 for other supplies. Thus, Husband only listed \$875 in monthly expenses. Husband's chart includes these figures even though they were never mentioned at trial or proved to be current expenses. Next, Husband's chart includes amounts listed on *Wife's* income and expense statement for additional categories of expenses. Husband claims that because the trial court deemed these categories to be reasonable allowances for Wife, they should be allowable for him too, even though he presented no evidence of such expenses at trial. He simply states that Wife's figures “remain reasonable estimates for [him] as well.” Finally, Husband has “spread . . . out”

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<sup>7</sup> A transcript or statement of the evidence is supposed to “clearly indicate and identify any exhibits offered in evidence and whether received or rejected.” Tenn. R. App. P. 24(a). The statement of the evidence in this case does not mention this exhibit, who introduced it, or for what purpose.

the trial court's judgment for attorney's fees and a marital debt to be paid over twenty-four months, "to be practical," even though such terms of payment were not specified in the order, and his chart includes monthly expenses for these sums as well. Utilizing all these figures, Husband claims a monthly deficit of \$322.93. He claims that the deficit is much higher if one substitutes his present income of \$300 per week instead of using the imputed income figure discussed in the previous section.

Once again, we reject Husband's belated attempt to piece together evidence that he should have proven at trial. "Parties are limited to the evidence presented during the course of a trial." *Jacks v. E. Tennessee Mech. Contractors, Inc.*, No. E2008-02501-WC-R3-WC, 2009 WL 2589093, at \*5 (Tenn. Workers Comp. Panel Aug. 24, 2009). This Court cannot speculate as to Husband's expenses with respect to his ability to pay. *See, e.g., Hayes v. Hayes*, No. M2014-00237-COA-R3-CV, 2015 WL 1450998, at \*8 (Tenn. Ct. App. Mar. 26, 2015) (explaining that we could not speculate as to monthly expenses for everyday items, such as food, clothing, and utilities, when they were not included on the husband's income and expense statement). Furthermore, we cannot extrapolate expenses from Wife's income and expense statement and find that they were incurred by Husband when he failed to present any evidence to that effect. The simple fact is that Husband failed to testify as to *any* monthly expenses or submit an income and expense statement detailing any expenses. Although he was asked about his answers to some interrogatories on other subjects, he never stated that the expenses he listed then were current expenses. We cannot fault the trial judge for failing to quantify Husband's monthly expenses when Husband did not mention any. This Court is not required to grant relief "to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error." Tenn. R. App. P. 36; *see also Hayes*, 2015 WL 1450998, at \*8 (declining to consider the husband's argument that he had an inability to pay a certain sum of alimony when this Court could not discern his monthly living expenses because he failed to include an income and expense statement in the record on appeal and the record contained only "fleeting testimony . . . as to some of his expenses").

Even if we consider the figure of \$875 in monthly expenses listed in Husband's 2018 discovery responses, we cannot say that the trial court erred in concluding that Husband has the earning capacity to pay \$1,070 in transitional alimony to Wife for 36 months, in addition to a portion of her attorney's fees, and Wife certainly has the need for it. "For well over a century, Tennessee law has recognized that trial courts should be accorded wide discretion in determining matters of spousal support." *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 105 (Tenn. 2011). "[T]rial courts have broad discretion to determine whether spousal support is needed and, if so, the nature, amount, and duration of the award." *Id.* Such a decision "is factually driven and involves the careful balancing of many factors." *Id.* (citing *Kinard v. Kinard*, 986 S.W.2d 220, 235 (Tenn. Ct. App. 1998)). Our role on appeal "is to determine whether the trial court applied the correct legal standard and reached a decision that is not clearly unreasonable." *Id.* (quoting *Broadbent v. Broadbent*, 211 S.W.3d 216, 220 (Tenn. 2006)). We must presume that the

spousal support decision “is correct and should review the evidence in the light most favorable to the decision.” *Id.* at 105-06.

Although there are many statutory factors to consider in the analysis, the need of the disadvantaged spouse “must necessarily be the most important factor to consider, because alimony is primarily intended to provide some minimal level of financial support for a needy spouse.” *Bogan v. Bogan*, 60 S.W.3d 721, 730 (Tenn. 2001). Here, the trial court carefully addressed all of the statutory factors and provided a well-reasoned five-page explanation for its decision as to spousal support, which, ultimately, was within the range of acceptable alternatives. Husband has not demonstrated that the trial court abused its discretion.

Finally, we note that Husband argues on appeal that the trial court’s alimony ruling violates the “Self Support Reserve” section of the Child Support Guidelines, which became effective in May 2020, while this appeal was pending. Husband admits that the Guidelines only apply to child support but suggests that “its underlying reasoning also applies to alimony awards” and “must be applied to alimony.” We find no support for this assertion.

### *C. Parenting Time*

The final issue raised by Husband is whether the trial court erred by failing to grant him “half of all parenting time.” Instead, the trial court designated 246 days to Wife and 119 days to Husband. This provided more days to Husband than Wife had proposed but less than he requested.

The Tennessee Supreme Court has emphasized “the *limited* scope of review to be employed by an appellate court in reviewing a trial court’s factual determinations in matters involving child custody and parenting plan developments.” *C.W.H. v. L.A.S.*, 538 S.W.3d 488, 495 (Tenn. 2017) (citing *Armbrister v. Armbrister*, 414 S.W.3d 685, 692-93 (Tenn. 2013)). “[T]rial courts are in a better position to observe the witnesses and assess their credibility; therefore, trial courts enjoy broad discretion in formulating parenting plans.” *Id.* (quoting *Armbrister*, 414 S.W.3d at 693). Appellate courts “review a trial court’s decision regarding parenting schedules for an abuse of discretion.” *Id.*

Husband argues that the trial court abused its discretion by concluding that Wife is more morally fit to parent the child. Husband suggests that the trial court was angered by his lack of credibility as a witness and that his credibility does not affect his ability to parent his child. He also argues that the trial court abused its discretion by questioning his emotional fitness because of his “controlling nature” because there was no evidence that he was “controlling towards the child.”

Having carefully reviewed the record, we cannot say that the trial court abused its discretion in this case. Again, the trial court carefully analyzed all of the statutory factors



for consideration. It considered the fact that Wife had been the primary caregiver for the child since birth and that she has a “strong and stable relationship” with the child. It also noted Wife’s “extraordinary efforts” to provide support for the child while Husband provided no support for her, even after Wife and the child were evicted from their apartment and forced to sleep in a vehicle. The trial court’s concerns about Husband’s “controlling nature” are warranted based on the evidence in the record. The trial court specifically found that Husband had physically abused Wife in the presence of the child on more than one occasion. It continued the order of protection and provided that there would be no verbal communication between the parties at exchanges of the child, and Husband was ordered to stay in his car throughout the exchange. All communication was limited to text message or electronic mail only, except in the event of an emergency. Clearly, this was a sensitive situation, and the trial court attempted to formulate a parenting plan that was in the best interest of the child but also provided her with stability and limited the amount of contact between Husband and Wife. Husband was to pick up the child from daycare or school every other Thursday afternoon and return her to school on Monday morning. We discern no abuse of discretion.

#### IV. CONCLUSION

For the aforementioned reasons, the decision of the circuit court is affirmed and remanded. Costs of this appeal are taxed to the appellant, Diab Mahmoud Alia, for which execution may issue if necessary.

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CARMA DENNIS MCGEE, JUDGE