Rel: February 25, 2022

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

2200269

Melissa Marler

v.

Julie L. Lambrianakos

Appeal from Madison Circuit Court
(DR-17-504.01)

On Application for Rehearing

THOMPSON, Presiding Judge.

This court's opinion of October 8, 2021, is withdrawn, and the following is substituted therefor.

These parties have been before this court on two previous occasions. In Marler v. Lambrianakos, 281 So. 3d 415 (Ala. Civ. App. 2018) ("Marler I"), Julie L. Lambrianakos ("the paternal grandmother"), in August 2017, filed an action in the Madison Circuit Court ("the trial court") against Melissa Marler ("the mother") in which she registered in the trial court a July 31, 2017, judgment of the Family Court of Kings County, New York ("the New York judgment"). The New York judgment awarded the paternal grandmother visitation with her granddaughter ("the child"), who was born of the mother's marriage to John Michael Lambros, the paternal grandmother's late son.

In her 2017 action, the paternal grandmother also sought to enforce the visitation provisions of the New York judgment. The trial court entered an order on February 18, 2018, confirming the August 2017 registration of the New York judgment in that court; it later certified that order as final pursuant to Rule 54(b), Ala. R. Civ. P. Marler I , supra. The mother appealed the February 18, 2018, order to this court, which affirmed the order. Marler I, supra. In our opinion, this court noted, among other things, that the mother is an attorney licensed to practice in

Alabama, that she had unsuccessfully attempted to avoid service in New York of the paternal grandmother's grandparent-visitation action before leaving New York to relocate to Alabama, that she had failed or refused to participate in much of the New York litigation, and that she had either ignored or failed to comply with court orders in the New York litigation. This court stated, among other things, that "[i]t is clear that the mother has resisted visitation between the paternal grandmother and the child at least since the filing of the grandparent-visitation action." Marler I, 281 So. 3d at 430.

In late March 2018, while the appeal in Marler I, supra, was still pending before this court, the mother filed an "emergency" petition in the trial court seeking to modify the New York judgment. The paternal grandmother filed a counterclaim seeking to have the mother held in contempt for refusing to allow, or for interfering with, her court-ordered visitation with the child, and she sought to dismiss the mother's modification claim; she also later amended her pleadings. The trial court entered an order on May 14, 2019, in which it granted the paternal grandmother's motion to dismiss the mother's modification claim. The

trial court immediately, on May 15, 2019, entered an order scheduling a hearing on the paternal grandmother's pending contempt claims, and it later entered an order requiring the mother to appear to show why she should not be held in contempt. In spite of the orders scheduling the paternal grandmother's counterclaims for a hearing, on July 25, 2019, the mother filed a notice of appeal to this court from the trial court's May 14, 2019, order dismissing her modification claim. That appeal was assigned appeal number 2180881. We note that, in appeal number 2180881, the paternal grandmother argued, among other things, that the mother had filed that appeal from the nonfinal May 14, 2019, order as a delay tactic. On December 13, 2019, this court issued an order dismissing appeal number 2180811 on the basis that it had been taken from a nonfinal order because of the pendency of the paternal grandmother's contempt counterclaims. Marler v. Lambrianakos (No. 2180881, Dec. 13, 2019), 312 So. 3d 804 (Ala. Civ. App. 2019)(table)("Marler II").

After this court's dismissal of the appeal in Marler II, the action proceeded in the trial court. The parties engaged in numerous discovery disputes, and the contempt hearing was rescheduled several times.

The trial court conducted an ore tenus hearing over the course of three days -- September 15, 2020, through September 17, 2020. At the close of the contempt hearing on September 17, 2020, the trial court orally found the mother in criminal contempt for preventing or interfering with the paternal grandmother's visitation on 155 separate occasions. The trial court sentenced the mother to 5 days of incarceration for each of the 155 occasions, for a total sentence of 775 days, and it ordered the mother to be immediately incarcerated. The next day, September 18, 2020, the order committing the mother to incarceration was formally entered in the record.

On September 22, 2020, the trial court entered a judgment finding the mother in contempt, enforcing the paternal grandmother's right of visitation as set forth in the New York judgment, and ordering that the paternal grandmother be allowed additional days of visitation during certain periods, including during the summer of 2021, to "make up" for the visitation the mother had denied the paternal grandmother. Also on September 22, 2020, the trial court entered a separate order suspending

410 days of the mother's total sentence for criminal contempt and ordering her to serve 365 days of that sentence.

On September 25, 2020, the trial court entered an order releasing the mother from incarceration and suspending the rest of the remaining sentence for criminal contempt. In that order, the trial court based its ruling on an "agreement of zero tolerance." In an October 1, 2020, order entered after a status conference, the trial court explained that the parties had reached an agreement, apparently concerning the mother's incarceration. The trial court stated:

> "The remaining days of the [mother's] incarceration (747 days) are suspended following her release upon strict compliance with the Orders of this Court and those issued in New York. This Court is adopting a zero-tolerance policy with respect to compliance, and even if the parties agree to a suspension of days to serve for any future violations, the parties are specifically advised that this Court is inclined to not suspend any further days if there are any future violations of Court orders."

In its October 1, 2020, order, the trial court directed that the child be treated by a specific counselor and provided that both the mother and the paternal grandmother could present a "position statement" to that counselor detailing their respective concerns for and about the child.

The mother filed a postjudgment motion with respect to the September 22, 2020, judgment, and she later filed an amendment to that postjudgment motion. The trial court entered a December 2, 2020, postjudgment order in which it modified certain provisions of the September 22, 2020, judgment pertaining to its findings of criminal contempt but denied the remainder of the mother's postjudgment motion. The mother timely appealed to this court, and this appeal was assigned appeal number 2200269.

On May 6, 2021, before briefing had been completed in this appeal, the mother filed a motion to stay enforcement of portions of the September 22, 2020, judgment that awarded the paternal grandmother summer visitation with the child. This court issued an order on May 13, 2021, granting the motion for a stay pending further orders of the court and calling for a response to that motion. The paternal grandmother filed an opposition to the mother's motion. On May 19, 2021, this court issued an order denying the mother's motion to stay the summer visitation awarded to the paternal grandmother. We take judicial notice of the records in Marler I, supra, and in Marler II, supra, as well as the documents and

evidence filed in support of and in opposition to the mother's motion for a stay while this appeal was on submission. See Ex parte Smalls, 244 So. 3d 102, 103 n. 4 (Ala. Civ. App. 2017) (quoting City of Mobile v. Mathews, 220 So. 3d 1061, 1063 (Ala. Civ. App. 2016)) (" '[A] court may take judicial notice of its own records.' ").

Jurisdiction to Modify the New York Judgment

The mother argues on appeal that the trial court erred in entering its May 14, 2019, order dismissing her claim seeking to modify the New York judgment awarding the paternal grandmother visitation. The mother contends that the trial court had jurisdiction under Alabama's version of the Uniform Child Custody Jurisdiction and Enforcement Act ("the UCCJEA"), § 30-3B-101 et seq., Ala. Code 1975, to modify the New York judgment.

Initially, we note that the registration of the New York judgment in Alabama did not confer upon the trial court jurisdiction to modify that judgment. § 30-3B-306(b), Ala. Code 1975 ("A court of this state shall recognize and enforce, but may not modify, except in accordance with Article 2 [of Alabama's version of the UCCJEA], a registered child custody

determination of a court of another state."). The UCCJEA and the Parental Kidnaping Prevention Act ("the PKPA"), 28 U.S.C. § 1738A, govern disputes regarding child custody and visitation. When there is a conflict between the PKPA and the UCCJEA, the PKPA governs because it is a federal statute. Stanley v. State Dep't of Hum. Res., 567 So. 2d 310, 311 (Ala. Civ. App. 1990). The PKPA provides:

> "(h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination."

28 U.S.C. § 1738A(h) (emphasis added). Thus, under the facts of this case, the trial court could not exercise jurisdiction to modify the New York judgment unless the New York court no longer had jurisdiction to modify its judgment or had declined to exercise that jurisdiction.

Under § 1738A(d) of the PKPA, a state that has a made a child-custody determination in compliance with that statute retains continuing jurisdiction if that state's law provides for continuing jurisdiction and either the child or a contestant remains living in that state. Patrick v. Williams, 952 So. 2d 1131, 1138 (Ala. Civ. App. 2006) (citing M.J.P. v.

K.H., 923 So. 2d 1114, 1116 (Ala. Civ. App. 2005)). In this case, the New York court properly exercised jurisdiction to enter its July 31, 2017, judgment that was later properly registered in the trial court. Marler I, supra; see also Davis v. Blackstock, 159 So. 3d 708, 717 (Ala. Civ. App. 2013) (explaining that issues previously decided between the same parties are law of the case).

Also, a "contestant" for the purposes of the PKPA is "a person, including a parent or grandparent, who claims a right to custody or visitation of a child." 28 U.S.C. § 1738A(b)(2). Although the child no longer resides in New York, the paternal grandmother, who is a contestant under the PKPA, see § 1738A(b)(2), does continue to reside in New York. Thus, under § 1738A(d), New York has continuing jurisdiction over the parties if its laws provide for such continuing jurisdiction. To determine whether New York laws provide for the New York court's retention of continuing jurisdiction, we must look to that state's version of the UCCJEA.

New York's version of the UCCJEA is codified at N.Y. Dom. Rel. Law §§ 75 to 78. Section 76-a of New York's version of the UCCJEA provides:

> "1. Except as otherwise provided in section seventy-six-c of this title, a court of this state which has made a child custody determination consistent with section seventy-six or seventy-six-b of this title has exclusive, continuing jurisdiction over the determination until:
>
> > "(a) a court of this state determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or
> >
> > "(b) a court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.
>
> "2. A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section seventy-six of this title."

(Emphasis added.)

There is nothing in the record to indicate, and the parties do not allege, that the New York court made any determination pursuant to § 76-a.1(a), i.e., determined that "neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection

with [New York] and that substantial evidence is no longer available in [New York] concerning the child's care, protection, training, and personal relationships." Therefore, we must consider whether the New York court or the trial court, i.e., a "court of another state," made or could make a determination that the child, the mother, and "any person acting as a parent" no longer reside in New York. See § 76-a.1(b).

The child and the mother live in Alabama, and only the paternal grandmother remains living in New York. The mother contends that the paternal grandmother is not a "person acting as a parent" and, therefore, that the trial court had jurisdiction to make a determination under § 76-a.1(b) that the New York court no longer had continuing jurisdiction. New York law supports the mother's position that the paternal grandmother is not a "person acting as a parent." See N.Y. Dom. Rel. Law § 75-a.13 (defining a "person acting as a parent" as anyone other than a parent who has physical custody of the child, or has had physical custody of the child for six consecutive months before the action was filed, and who has been awarded, or claims a right to, legal custody of the child); and Z.G. v. E.S., 69 Misc. 3d 946, 948, 133 N.Y.S.3d 768, 770 (N.Y. Fam. Ct. 2020) (holding

that a grandmother who had been awarded visitation with a child was not a "person acting as a parent" so as to confer continuing jurisdiction in New York under its version of the UCCJEA). Moreover, the Comment of the National Conference of Commissioners on Uniform State Laws to § 202 of the UCCJEA, upon which § 76-a is based, explains that the UCCJEA is intended to have a more narrow interpretation than the PKPA regarding which parties are necessary to reside in a state in order for that state to retain continuing jurisdiction:

> "The continuing jurisdiction provisions of this section are narrower than the comparable provisions of the PKPA. That statute authorizes continuing jurisdiction so long as any 'contestant' remains in the original decree State and that State continues to have jurisdiction under its own law. This Act eliminates the contestant classification. The Conference decided that a remaining grandparent or other third party who claims a right to visitation, should not suffice to confer exclusive, continuing jurisdiction on the State that made the original custody determination after the departure of the child, the parents and any person acting as a parent. The significant connection to the original decree State must relate to the child, the child and a parent, or the child and a person acting as a parent. This revision does not present a conflict with the PKPA. The PKPA's reference in § 1738(d) to § 1738(c)(1) recognizes that States may narrow the class of cases that would be subject to exclusive, continuing jurisdiction."

Uniform Child Custody Jurisdiction & Enforcement Act § 202, Comment, 9 U.L.A. 512 (2019) (emphasis added).

Given the facts of this case and applicable New York law on the issue of jurisdiction under New York's version of the UCCJEA, the trial court, as a "court of another state" under § 76-a.1(b), could make a determination pursuant to that subsection regarding whether New York maintained continuing jurisdiction. In this case, it is clear that New York did not maintain exclusive, continuing jurisdiction over the grandparent-visitation matter. See § 76-a.1; Z.G. v. E.S., supra. Under § 76-a.2, in the absence of exclusive, continuing jurisdiction, the New York court would not have jurisdiction over the mother's modification action unless that court could make an initial child-custody determination under New York's version of the UCCJEA; it is undisputed that New York would not have jurisdiction to do so.

Under the PKPA, the Alabama trial court could modify the visitation provisions of the New York judgment only if the New York court declined to exercise jurisdiction or no longer had jurisdiction to modify that judgment. 28 U.S.C. § 1738A(h). In this case, the record establishes that

the New York court no longer has jurisdiction under New York's version of the UCCJEA to modify the New York judgment.

As noted earlier in this opinion, under Alabama's version of the UCCJEA, the trial court could enforce the New York judgment, see § 30-38-306(b), but it had jurisdiction to modify that judgment only if it had jurisdiction to make an initial child-custody determination. § 30-3B-203, Ala. Code 1975. The trial court had jurisdiction to make an initial child-custody determination if, among other things, Alabama is the child's home state. § 30-3B-201(a)(1), Ala. Code 1975. Under Alabama's version of the UCCJEA, a "home state" is defined as "[t]he state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. ..." § 30-3B-102(7), Ala. Code 1975. It is undisputed that the child has lived with the mother in Alabama for a number of years. Accordingly, Alabama is the child's home state, and the trial court had jurisdiction to consider the mother's modification claim. We therefore reverse the trial court's dismissal of the mother's modification claim, and we remand the action for further proceedings, if necessary, on that claim.

Facts

The remainder of the mother's arguments on appeal pertain to the trial court's September 22, 2020, judgment entered on the paternal grandmother's contempt claims and awarding the paternal grandmother makeup visitation with the child. Accordingly, we set forth the facts pertaining to those issues.

We note that "'[v]isitation rights are a part of custody determinations.... Both visitation and custody determinations are subject to the same standards of review.'" S.D.B. v. B.R.B., 295 So. 3d 104, 112 (Ala. Civ. App. 2019) (quoting Denney v. Forbus, 656 So. 2d 1205, 1206 (Ala. Civ. App. 1995)). This court's review of a judgment based on ore tenus evidence is limited, and such a judgment will not be reversed absent a showing that it is so unsupported by the evidence as to be plainly and palpably wrong. L.L.M. v. S.F., 919 So. 2d 307, 311 (Ala. Civ. App. 2005). Moreover,

> "'"[i]n ore tenus proceedings the trial court is the sole judge of the facts and of the credibility of witnesses," and "we are required to review the evidence in a light most favorable to the prevailing part[y]," that is, the [paternal grandmother]. Driver v. Hice, 618 So. 2d 129, 131 (Ala. Civ. App. 1993); see also

> First Health, Inc. v. Blanton, 585 So. 2d 1331, 1332 (Ala. 1991) (reviewing evidence in the light most favorable to the prevailing party where the trial court's judgment was entered after an ore tenus proceeding).' "

Casey v. Casey, 283 So. 3d 319, 328 (Ala. Civ. App. 2019) (quoting Architectura, Inc. v. Miller, 769 So. 2d 330, 332 (Ala. Civ. App. 2000)). Accordingly, in setting forth the facts of this case, we set forth those facts that support the trial court's findings in its judgment, which we quote later in this opinion, and we summarize the evidence presented in favor of the paternal grandmother. Ex parte Snider, 929 So. 2d 447, 451 (Ala. 2005).

After the entry of the New York judgment, the paternal grandmother immediately sought to enforce the visitation provisions of that judgment by registering it in Alabama and filing the 2017 action seeking to enforce visitation. The paternal grandmother immediately traveled to Alabama, with her daughter, Marie Lambrianakos ("the aunt"), and the aunt's husband ("the uncle"), for Labor Day weekend visitation, as provided for in the New York judgment. The aunt testified that the mother filed an emergency motion in the trial court seeking to

stop that Labor Day 2017 visitation and arguing, among other things, that the paternal grandmother was a danger to the child.[1] In response to that emergency motion, a previous trial-court judge ordered that the mother, the paternal grandmother, and the child spend two hours together on Friday night of that weekend, that they spend six hours together on Saturday, and that the paternal grandmother and the child visit together, without the mother, on Sunday. The aunt testified that the mother refused to leave the visitation on Sunday as was ordered by the trial court and that she later insisted that the child had to leave the visitation early because the child needed to attend a softball practice. The aunt testified that she, the uncle, and the paternal grandmother followed the mother, the mother's boyfriend, and the child to the ball field, where, she said, only a few children had gathered. The aunt stated that the "practice"

[1]The aunt explained in her testimony that, because of the paternal grandmother's advanced age, she assisted the paternal grandmother with all aspects of the legal process, including typing letters or e-mail messages that the paternal grandmother dictated, that she traveled to Alabama for all visitations to assist the paternal grandmother, and that she facilitated the paternal grandmother's telephone or videoconferencing with the mother and/or the child because the paternal grandmother was unable to use that technology on her own.

primarily consisted of the mother's boyfriend pitching balls for the child to bat.

In her testimony, the mother stated that she had not felt comfortable leaving the child with the paternal grandmother during that scheduled visitation and that, before the visitation, the child had asked to attend the softball practice. The mother admitted that she had to interrupt the visit and remind the child about the practice. The mother also stated that the practice had been poorly attended because it was scheduled on a holiday weekend.

The paternal grandmother also attempted to exercise a 2017 fall-break visitation she had been awarded, but the mother informed the then trial-court judge that she was taking the child on a previously scheduled trip to the Dollywood Amusement Park in Tennessee. That previous trial-court judge stayed that 2017 fall-break visitation after the paternal grandmother had traveled to Alabama. The mother refused to allow the paternal grandmother and her family to visit the child for even one night of that scheduled visitation. The aunt testified that she and the uncle went out one night while they were in Alabama and saw the mother at a

bar, which meant that the mother and the child had not left for the scheduled trip to Dollywood. The mother testified that she and the child left for Dollywood the day after she was at that bar and that the child had been staying with her maternal grandmother while the mother was at the bar. The aunt pointed out that the mother could have allowed the paternal grandmother to see the child that night.

The aunt testified that, because of the mother's position opposing visitation, the paternal grandmother did not attempt to exercise visitation over Thanksgiving 2017. However, the aunt testified that a previous trial-court judge had allowed the paternal grandmother to visit the child for a few hours after a December 4, 2017, court date and that the child and the paternal grandmother had had "a great time."

The parties presented a great deal of evidence regarding the paternal grandmother's next attempted visitation, which occurred over a weekend in late February 2018. The mother took the child to the hotel at which the paternal grandmother, the aunt, and the uncle (referred to collectively as "the paternal family") were staying. Once inside the hotel lobby, the child, who was then 10 years old, threw a tantrum by screaming

and rolling on the hotel floor. The aunt and the paternal grandmother each testified that, during her tantrum, the child would periodically look at the mother for cues and that, in their opinion, the mother was encouraging the child's behavior.

The mother denied that she encouraged the child in any manner during the time the child threw the tantrum in the hotel. The mother stated that the child was generally well-behaved. However, the mother testified that she had not prepared the child for the possibility of the visit,[2] and, she said, the child had been unwilling to visit the paternal grandmother. The mother left the hotel with the child that night because, she said, she did not feel comfortable leaving the child with the paternal grandmother when the child was so upset.

The next day, the mother informed the paternal family that the child had swim practice and needed to sign up for softball; the paternal family

[2]The February 2018 visit occurred shortly after the trial court entered an order overruling the mother's objection to the paternal grandmother's registration of the New York judgment and confirming that New York judgment. The mother had taken the position that the paternal grandmother could not visit the child until a confirmation order was entered.

attended the swim practice and then followed the mother and the child to the softball field. Only thereafter did the mother allow the child to go with the paternal grandmother. The aunt stated that, when the child finally came to their vehicle, the child requested to go to a specific restaurant and that, moments after the paternal family and the child arrived at that restaurant, the mother also appeared at that same restaurant. The paternal family eventually were able to leave and go to another establishment with the child for lunch. Documents admitted into evidence during the contempt hearing indicate that the attorney for the mother and the attorney for the paternal grandmother believed that the mother had instructed the child not to put down her telephone during the visitation. The aunt testified that the lunch visit went well but that nobody heard the child's telephone ring when the mother called the child during lunch. According to the aunt, the child returned the mother's telephone call as they were leaving after lunch, and, the aunt stated, the child immediately began crying and insisting that she had to go home.

The paternal grandmother's next scheduled visitation was April 6, 2018, through April 8, 2018. The aunt testified that the mother would not

agree to allow the child to be picked up anywhere except the court-ordered location, which was the child's school. The mother testified that, because the paternal grandmother and the aunt had blamed the child's behavior during the February 2018 visit on her, she had refused to be present when they picked up the child in April 2018.

The aunt testified that when school personnel went to bring the child to the paternal grandmother, the child went into the office of assistant principal Leslie Zurowski. When the aunt and the paternal grandmother also entered that office, the child was texting on her telephone. The aunt testified that the paternal family and Zurowski spoke with the child to address her concerns, which included that the paternal grandmother would kidnap her. The child also claimed that the paternal grandmother and the aunt were "liars" because, she said, they had told her she could attend a party during their February 2018 visitation but she had been late for that party.

The mother testified that the child was texting her during that discussion and that the child asked the mother to pick her up from school but that she told the child that she could not do so. An exhibit submitted

into evidence concerning those texts does not support the mother's characterization of them. The 13-minute text exchange between the child and the mother during the paternal grandmother's attempt to exercise the April 2018 weekend visitation reads as follows:

> "CHILD: Can you pick me up right now at school?
>
> "MOTHER: You need to tell ms. zurowski what you want.
>
> "CHILD: I already did.
>
> "MOTHER: Tell them what you want over and over again what you want.
>
> "CHILD: Okay
>
> "CHILD: Pick me up now.
>
> "MOTHER: Ask ms. zurowski to call me again.
>
> "CHILD: She is already out of the room so I cannot.
>
> "MOTHER: Go find her.
>
> "CHILD: Ok
>
> "MOTHER: Talk to any teacher you can find.
>
> "CHILD: I found her but she won't disobey court orders.
>
> "CHILD: Or parent orders.

"MOTHER: Tell her to call me. I'm your parent.

"CHILD: Ok."

The aunt stated that the discussion between the paternal family, the school officials, and the child was ending and that the child appeared ready to leave the school when Andi Ware, the child's former second-grade teacher and a friend of the mother's, took the child away to Ware's classroom. The mother admitted that she had contacted Ware to ask her to check that the child "was safe"; according to the mother, in addition to being the child's former teacher, Ware and the child had spent time together outside of class. The aunt testified that, when the child returned from Ware's classroom 10 minutes later, the child was upset and refused to go with the paternal grandmother.

The child eventually left the school with the paternal family. In her testimony, the child stated that the aunt and the paternal grandmother dragged her out of the school and down the sidewalk and forced her into their vehicle. The aunt and the paternal grandmother disputed that they had dragged the child to the car. The aunt stated that the child had walked out of the school between the aunt and the paternal grandmother

but that, when the child stated "you don't understand, I can't go," the paternal grandmother had grabbed the child's wrist to guide her to the vehicle. The child stated that, when the paternal grandmother did so, it hurt her wrist; the mother later characterized that contact as "disciplining" the child. We note that it is undisputed that, during these events that occurred outside the school, it was raining heavily.

The aunt testified that, while the group was outside the school, she was relieved to see Patrick Hill, the child's guardian ad litem, arrive; she explained that she felt that Hill would help to stop the drama and "the directives coming in to [the child]." The group returned to the school on the guardian ad litem's recommendation to allow the child to calm down. The mother arrived and ultimately left with the child.

The child did not visit with the paternal grandmother at any point over the course of that weekend in April 2018. Rather, the mother filed a motion for an emergency hearing and a motion to stay enforcement of the paternal grandmother's visitation rights. Another previous trial-court judge granted that stay by entering a June 28, 2018, order stating that the "enforcement of the New York order in the .00 action and all proceedings

in the .01 action [(the contempt action)] are stayed, pending decision of Alabama Court of Civil Appeals" of the appeal in Marler I, supra, which was before this court at that time. The paternal grandmother was unable to exercise the remainder of her visitation for 2018. The mother also blocked the paternal grandmother's telephone number so that the paternal grandmother was unable to speak with the child during the weekly telephone visits awarded in the New York judgment.[3]

The record indicates that, throughout most of 2018 and 2019, the paternal grandmother attempted to communicate with the mother by e-mail but that the mother did not respond to those e-mail messages. The paternal grandmother testified that she had not attempted to travel to Alabama for a scheduled February 2019 weekend visitation because the mother was still unresponsive, despite this court's September 28, 2018,

[3]We note that the trial court stated during the hearing on the merits in this matter that the June 28, 2018, stay order was ineffective because, it concluded, § 30-3B-314, Ala. Code 1975, provides that, "[u]nless the court enters a temporary emergency order under Section 30-3B-204, [Ala. Code 1975,] the enforcing court may not stay an order enforcing a child custody determination pending appeal." The paternal grandmother, however, did not seek reconsideration or review of the June 28, 2018, order on that basis.

release of the decision in Marler I, supra, and continued to deny her visitation. At the contempt hearing, the mother argued that the June 2018 stay had remained in place until she had exhausted all appellate review. This court had denied the mother's application for rehearing in Marler I, supra, on January 4, 2019. On March 15, 2019, our supreme court denied the mother's petition for a writ of certiorari, and this court entered its certificate of judgment in the case. We note that, during the contempt hearing, the trial court stated that it interpreted the June 28, 2018, stay order as valid only through the release of this court's September 28, 2018, opinion in Marler I, supra, and that, thereafter, any denial to the paternal grandmother of visitation by the mother was a willful disobedience of the New York judgment; the mother did not object to that determination.

After the entry of the March 15, 2019, certificate of judgment in Marler I, supra, the paternal grandmother attempted to exercise her weekend visitation for April 26-28, 2019, but, according to the aunt, the mother did not respond to paternal grandmother's attempts to contact the mother, and the mother denied the paternal grandmother visitation that weekend. On June 11, 2019, the paternal grandmother filed a motion for

a status conference and sought to enforce the scheduled summer visitation for 2019. After that hearing, the trial court entered an order enforcing the summer-visitation provision and ordering, among other things, that Hill accompany the child on the flight to the paternal grandmother's home in New York. Hill testified that, because the child had threatened that she might run away if she were taken to New York, he paid for his wife to accompany him on the trip to assist him in watching the child and ensuring her safety in public bathrooms.

Hill testified that the mother brought the child to the airport and that the two cried as they parted. Hill stated, however, that the mother was crying significantly and that, as she did so, the child became more upset. According to Hill, the mother stood on the other side of a glass partition as he, his wife, and the child went through airport security, that the mother continued to cry, and that, when the child went the partition to say a last goodbye, the child had tears in her eyes. The mother testified that she and the child had never spent more than a night apart and that the mother had been extremely upset at the prospect of their spending two weeks apart.

On cross-examination, Hill stated that he did not "find it unusual that the mother was upset. What I found unusual was the mother was unable to control her emotions to the effect that she was upsetting the child." On questioning from the trial court, Hill elaborated that he had witnessed the mother making the situation more difficult for the child and that he had witnessed the then 10-year-old child being placed in a position to comfort the mother.

However, according to Hill, as soon as they left the mother, the child's demeanor changed; she was cheerful and speaking excitedly about the things she looked forward to doing in New York. Hill testified that the paternal grandmother and a number of extended family members, including the child's cousins who are close in age to the child, met Hill, his wife, and the child at the airport. Hill stated that the child was initially a little "standoffish" but that, within 30 minutes, she was fine and seemed happy. Hill went with the child to the aunt's home, where the child stayed during that visit,[4] and, he said, on the ride, the child sat beside and talked

[4]The aunt explained that the child stayed in her home, rather than in the home of the paternal grandmother, during that visit because a sick

with the paternal grandmother. Hill said that, before he left the child with the paternal family, the child asked the paternal grandmother to help her unpack and that the child held the paternal grandmother's hand as they left the room. Hill also stated that he told the child that nobody would be mad at her for having a good time and that, from what he observed, the child showed affection for the paternal side of her family.

The aunt stated that, after the child arrived, she saw a text exchange between the child and the mother and that she took a photograph of the child's phone with the exchange showing on the screen. That text exchange read:

> "CHILD: I'm on plane. As we were boarding I forgot where we were going and got on. I regret that. I shouldn't have forgotten. Now there's no turning back. I'm so stupid. I'm okay though.
>
> "MOTHER: You are ok. You will be fine. I love you sweet girl."

---

family member resided with the paternal grandmother and they did not want to risk the child's being exposed to stress if that family member had a health-related incident.

The aunt and the paternal grandmother testified that the visit went well overall. However, during that visit, the paternal grandmother sent an e-mail message to Hill complaining that the mother had instructed the child to text her each time she moved from one location to another and that that was interfering with the child's enjoyment of the visitation. The mother also sent a tracking device with the child. The mother stated that she wanted to know where the child was at all times but that the child often left the tracker at the home of either the aunt or the paternal grandmother.

During that summer 2019 visitation, the child contacted the mother by telephone when she became distressed about a glitch with the paternal family's tickets to a baseball game. A recording of one of several telephone calls depicts the child in distress, saying that she missed the mother and wanted the mother to come to New York; the mother reassured the child, telling her that, although the mother could not come to New York, the child would have a good time at the baseball game. The aunt alleged that, in a different telephone call, she heard the mother tell the child that the paternal grandmother and the aunt would not allow her to visit the child

in New York. The mother denied making that statement, and there is no recording of such a statement.

We note that the aunt and the paternal grandmother alleged that the mother made a number of statements to the child during various visitations that were designed to upset the child or reflect negatively on the paternal grandmother. For example, they allege that the mother told the child that visiting with the paternal grandmother had made the child miss "the best part" of a sleep over that the child was going to attend, albeit late, during one weekend visit and that, during the summer 2019 visit, the mother told the child that her swim teammates did not want her to swim in a competition because she had missed practices. In addition, they allege that, during a conversation they overhead between the mother and the child after the child reported enjoying spending time with the paternal grandmother, the mother told the child a parable about a scorpion that lied to a frog and then stated that the child should "trust her own memories."

In her testimony at the contempt hearing, the mother denied making any of those statements. The mother also insisted that, although she had

had concerns that the paternal grandmother might kidnap the child, she had never communicated those concerns to the child. The mother stated that she did not know where the child had gotten the idea that she might be kidnapped by the paternal grandmother; the mother speculated that the idea of being kidnapped might have arisen from the child's love of Nancy Drew books, at least one of which, she said, mentioned kidnapping.

The paternal grandmother's November 2019 visitation with the child was interrupted by several activities scheduled for the child. The mother admitted that, very early in the original litigation, Hill had told her that it was inappropriate for her to schedule activities for the child during the paternal grandmother's visitation periods. During the hearing on the merits, the trial court reiterated that principle several times, stating that social events and sports practices should generally not interrupt the paternal grandmother's visitation. We note, however, that the paternal grandmother has been willing to work around the child's extracurricular-activities schedule to some extent. For example, the paternal grandmother had immediately rescheduled return flights for the summer 2019 visitation when she was informed of an important swim meet in which the

child wanted to compete. The paternal grandmother cut short the two weeks she was to have with the child in New York and returned the child to Alabama four days early. The child was to stay with the paternal grandmother in Alabama during those days, but difficulties such as those detailed above resulted in the paternal grandmother's seeing the child only briefly during those four days of her summer 2019 scheduled visitation.

The COVID-19 pandemic prevented the paternal grandmother from exercising her visitation rights during much of 2020. The paternal grandmother sought to be awarded makeup visitation with the child for all of the missed visitation, not just with regard to those periods for which the mother might be held in contempt. Also, the paternal grandmother was not seeking to have the mother held in contempt for visitations missed because of the COVID-19 pandemic.

The paternal grandmother presented evidence indicating that the mother had denied or interfered with her court-awarded weekly telephone visits with the child. The aunt and the paternal grandmother testified that the paternal grandmother's telephone calls were often not answered

or that the mother had "blocked" the paternal grandmother's telephone number. Later, they said, the child answered the telephone, spoke only briefly, was often disrespectful, and then hung up. They submitted audio recordings of some of those telephone contacts.

The mother testified that she had taken no action to interfere with or obstruct the child's relationship with the paternal grandmother and that she wants the child to have a loving relationship with the paternal grandmother. The mother admitted that she has disciplined the child on the infrequent occasions when the child misbehaves but that she has imposed no consequences on the child for being disrespectful to the paternal grandmother during the telephone calls. The mother stated that she is present for each telephone call between the child and the paternal grandmother but that she has not disciplined the child for telling the paternal grandmother that she is a witch, a bitch, and that she hates her; the mother stated that she had instructed the child not to use the word "bitch" in any future telephone contacts. The mother stated that "I'm in a difficult position here being -- having been asked by the Court not to speak to my daughter about the case; having to make sure that she

comply -- that I comply with the order and that she makes the phone calls." The mother elaborated that "[m]y policy with my daughter is to tell her you have to make the phone call, and you have to speak, and you have to say goodbye before you hang up."

The mother also admitted that she has told the child frequently that the mother will be in trouble if the child does not visit the paternal grandmother. The mother denied telling the child that the mother would go to jail, and she also stated that she doubted that the child's maternal grandmother had informed the child of that possibility. Regardless, it is clear that the child knew of the possibility of the mother's incarceration as a result of a contempt finding.

At the time of the contempt hearing, the child was 12 years old and in the sixth grade. The child testified that she did not want to spend time with the paternal grandmother, and she accused her paternal family of being "liars" for telling her she could go to a party during their visitation but making her late for that party. She also accused the paternal grandmother or the aunt of sending texts to her mother on her telephone that she did not recall sending, including that she was reading a certain

book, but not responding to a text from the mother stating that the mother loved her. The child testified regarding the "meltdown" she had at the baseball game during the summer 2019 visitation, stating that she had been distraught because the paternal grandmother would not allow the mother to come to New York because it was "illegal."

The child admitted that she is curious about her father and her father's side of the family and that she enjoys visiting her extended family in New York, particularly her cousins. However, she insisted that she did not want to see the paternal grandmother or the aunt. The child claimed that the paternal grandmother did not spend a lot of time with her when she was in New York, and she stated that she did not remember riding in the van from the airport to the aunt's home in New York or speaking with the paternal grandmother during that ride. The child explained that the numerous photographs the paternal grandmother submitted into evidence of the child's appearing to enjoy her visit with the paternal family and the extended family were misleading because, she said, she was forced to look as if she were having a good time.

The child testified that the mother told her that it was the child's choice whether to visit and what to say to the paternal grandmother during their weekly scheduled telephone calls and that the mother had not disciplined the child or spoken to her for telling the paternal grandmother that she hated her. The child also stated that she did not believe that the paternal grandmother loves her.

In its September 22, 2020, judgment, the trial court made a number of factual determinations and legal conclusions based on the evidence presented to it. That judgment provides:

> "This matter is before the Court for hearing on the issue of contempt and all matters related thereto. The parties announced ready for trial. After careful consideration of the testimony and evidence received ore tenus, the Court finds as follows:
>
> > "1. This matter is before the Court as a result of the registration of a foreign judgment from the State of New York, County of Kings, styled Julie Lambrianakos v. Melissa Marler, Docket No.: V-31370-13, File Number 213351, dated July 31, 2017.
> >
> > "2. Said [New York judgment] was registered in Madison County, Alabama, on August 18, 2017.

"3. Pursuant to said [New York judgment], [the paternal grandmother] was granted certain rights of visitation with the minor child ... in that case. Said visitation, in summary, allowed [the paternal grandmother] visitation with the minor child on certain dates and times beginning in 2017 as follows:

> "a. September 1, 2017 at 6:00 p.m. through September 4, 2017 at 6:00 p.m.;
>
> "b. Fall Recess from September 29, 2017, through October 7, 2017;
>
> "c. The first two weeks in July every year, beginning in the summer of 2018;
>
> "d. The third weekend in November every year, beginning November 2017;
>
> "e. The third weekend in February every year, beginning February 2018;
>
> "f. Greek Orthodox Easter holidays, the relevant dates for this matter being April 6-8, 2018; April 26-28, 2019; and April 17-19, 2020.

"4. Pick-ups for the visits were to be conducted at the minor child's school, or any other location agreed upon by the parties, and the minor child was to be returned to her home.

"5. Additionally, pursuant to the [New York judgment], the [paternal grandmother] was granted telephone and/or Skype [videoconferencing] visits with the minor child each Sunday at 7:30 p.m.

"6. The New York judgment noted that the matter that resulted in the [judgment] was filed in November 2013. Additionally, the [New York judgment] noted that the [mother] attempted to circumvent the jurisdiction of the New York Courts by initiating actions in the State of Alabama, noting that said actions were ultimately dismissed. Furthermore, two different New York judges heard the matter and noted that the [mother] is a licensed attorney in both Alabama and New York and was afforded the opportunity to appear. Nonetheless, the [mother], who practiced law in New York for several years, refused to appear. The [New York judgment] noted that the [mother] called the New York Courts to ascertain what happened during the hearings, although she advised the Court that she was unaware that her presence was needed at the hearing.

"7. This Court finds that after the registration of the New York [judgment] in Alabama, the matter has been fully litigated in 47-D R-2017-000504.[1] Thereafter, contempt motions were filed, and a Request for Modification was filed, denied, and appealed in the .01 case.

"8. This Court finds that the registration was confirmed by the Alabama Court of Civil Appeals on September 28, 2018. Language in the Appeals

Court's Denial of the Application for Rehearing notes a concern for delay, for which said Court did sanction one of the [mother's former] attorneys.

"9. The Court finds that there has been willful disobedience and resistance to the New York Court's [judgment] by the [mother]. [The mother's] resistance and disobedience is so extensive that it indicates an attempt to interrupt, disturb, and hinder the administration of justice and the execution of lawful orders in the Courts of New York and Alabama.

"10. This Court finds that [the mother's] disobedient conduct in this action has been willful and malicious and demonstrates a total disregard for the New York Court's [judgment].

"11. This Court finds that [the mother's] attempts to circumvent the lawful New York [judgment] have been constant and continuous, and were in fact done to circumvent said [New York judgment].

"12. This Court finds that [the mother], as a licensed, practicing attorney and an officer of the Court, has shown a callous disregard for the New York Court's [judgment]. This Court expects all who come before the Court and who are under Court orders to follow said orders, especially those individuals who are admitted to practice before the Court, who should hold the responsibility for following court orders in the highest regard.

"13. This Court finds that even when matters had been appealed, [the mother], who is an appellate attorney, ignored affirmance and continued to defy Court orders. From this matter's inception, [the mother] has made conscious decisions to disobey court orders and unilaterally prevent enforcement of the New York [judgment]. [The mother] has, on numerous occasions which shall be noted herein, interfered with visitations, or simply not allowed visitations to occur.

"14. [The mother's] actions throughout this matter have put her child in a precarious position, leaving the minor child without a parent, and with no one to see after her interest.

"15 . The Court finds that the [mother] has committed contempt on each of the following days:

> "a. See Exhibit 1, which lists the dates in each month in which visitation did not occur or was interfered with, attached hereto and incorporated herein by reference as if fully set out in verbatim.
>
> "b. See Exhibit 2, which lists the number of times each month when a Sunday call did not take place or was interfered with, attached hereto and incorporated herein by reference as if fully set out in verbatim.

"16. The Court finds that, because of the [mother's] willful efforts to circumvent court

> orders, each day, and each call missed or interfered with, represents a separate act of contempt.
>
> "17. Therefore, the Court finds that the [mother] shall be found in CRIMINAL CONTEMPT on 155 separate occasions. [The mother] is sentenced to five (5) days on each occasion, for a total of 775 days, to be served in the Madison County Jail.
>
> "18. The Court further finds that the [mother's] systematic and continued efforts to circumvent court orders are so egregious, that the Court finds [the mother] in CIVIL CONTEMPT on each occasion to discourage future noncompliance.

"Therefore, the following is ORDERED, ADJUDGED, AND DECREED:

> "1. That the [mother] is held in CRIMINAL CONTEMPT for her past willful disregard of lawful court orders on 155 separate occasions and is sentenced to five (5) days in jail for each separate occasion, to be served in the Madison County Jail. That is a total of 775 days. That the [mother] is to serve 365 days of that sentence, and the remaining 410 days are suspended so long as the [mother] does not further violate the Court orders. If she does so, the remaining 410 days shall be served in addition to whatever sentence she receives for future violations.
>
> "2. That the [mother] is held in CIVIL CONTEMPT for her actions and is fined the cost of

[the paternal grandmother's] attorney fees in the amount of $87,894.31.

"3. That the cost of [the paternal grandmother's] travel and lodging is taxed to [the mother] and a Judgment is rendered in [the paternal grandmother's] favor for $8,839.31, plus interest, for which execution may issue.

"4. That the Fee of the Guardian ad Litem is taxed to [the mother] in the amount of $16,550. A Judgment is rendered for said amount, plus interest, for which execution may issue.

"5. That there have been twenty-six (26) days missed for contempt, fourteen (14) days missed due to the stay of the New York [judgment],[2] and seventeen (17) days missed due to COVID-19, for a total of fifty-seven (57) days. The missed days shall be made up in the following manner:

> "a. The [paternal grandmother] shall have the minor child for thirty (30) days commencing in June 2021, unless the COVID-19 pandemic makes such an arrangement impracticable, in which case the visit shall take place in the next June when it can resume.
>
> "b. The [paternal grandmother] shall have the minor child for eight (8) days during Christmas 2021, beginning on December 26, 2021 at 6:00 p.m.

> "c. The [paternal grandmother] shall have the minor child for nineteen (19) days commencing on June 11, 2022, after the COVID-19 pandemic ends.
>
> "d. The [mother] shall pay travel costs for make-up visits.

"6. For future communications, the Court orders as follows:

> "a. That to assist in communication between the parties, both parties shall enroll in and pay for their own enrollment in Our Family Wizard, which shall be the primary means of communication. ...
>
> "....
>
> "d. The Court takes the position that all postings and communications occurring through the program are admissible as evidence in any future proceeding involving these parties. Additionally, the absence of records will also be considered evidence of a party's failure to abide by the Court's Final [judgment].

"7. Costs are taxed to the [mother], and a judgment is entered for same for which execution may issue.

"_____

> "[1]An appeal of the [trial court's judgment] registering the New York [judgment] was taken to the Alabama Court of Civil Appeals. The registration of the New York [judgment] was affirmed on September 28, 2018.
>
> "[2]The matter was stayed by order of the Court dated June 28, 2018, which said order was void or voidable by statute. § 30-3B-314, Ala. Code 1975. However, no party objected to the void or voidable order, so this court finds that the missed visits do not meet the willfulness standard for contempt."

(Capitalization in original.)

The trial court modified that September 22, 2020, judgment in its December 2, 2020, postjudgment order as follows:

> "1. Page 3, paragraph 1 is amended to state:
>
> > "That the [mother] is held in CRIMINAL CONTEMPT for her past willful disregard of lawful court orders on 22 separate occasions and is sentenced to five (5) days in jail for each separate occasion, to be served in the Madison County Jail. That is a total of 110 days. The [mother] is to serve fifty (50) days of that sentence, and the remaining sixty (60) days are suspended so long as the [mother] does not further violate the Court Order. If she does so, the remaining (60) days shall be served in addition to whatever sentence she receives for future violations."

(Capitalization in original.) In that postjudgment order, the trial court amended Exhibit 1 and Exhibit 2 to the September 22, 2020, judgment in a manner consistent with its finding set forth above, and it denied all other relief requested in the mother's postjudgment order.

Contempt

We first discuss the law pertaining to criminal contempt and civil contempt. A party who fails to comply with a trial court's orders may be held in both civil contempt and criminal contempt. S.T.W. v. T.N., 141 So. 3d 1083, 1088 (Ala. Civ. App. 2013). Rule 70A, Ala. R. Civ. P., discusses the differences between civil contempt and criminal contempt. Criminal contempt is either:

> "(i) Misconduct of any person that obstructs the administration of justice and that is committed either in the court's presence or so near thereto as to interrupt, disturb, or hinder its proceedings, or
>
> "(ii) Willful disobedience or resistance of any person to a court's lawful writ, subpoena, process, order, rule, or command, where the dominant purpose of the finding of contempt is to punish the contemnor."

Rule 70A(a)(2)(C). Civil contempt is defined as a person's willful failure to comply with "a court's lawful writ, subpoena, process, order, rule, or

command that by its nature is still capable of being complied with." Rule 70A(a)(2)(D).

> "Our supreme court discussed civil and criminal contempt in [State v. Thomas], 550 So. 2d 1067, 1072 (Ala. 1989), and stated:
>
> > " 'Contempts are characterized as either civil or criminal. Civil contempt seeks to compel or coerce compliance with orders of the court, while a criminal contempt is one in which the purpose of the proceeding is to impose punishment for disobedience of orders of the court.
> >
> > " 'The sanction for civil contempt continues indefinitely until the contemnor performs as ordered. A critical distinction is that the sanction for criminal contempt is limited in Alabama district and circuit courts to a maximum fine of $100 and imprisonment not to exceed five days.'
>
> "(Citations omitted.)
>
> "Our supreme court also stated in [State v. Thomas], 550 So. 2d 1067, 1073:
>
> > " 'The line between civil and criminal contempt can sometimes become blurred....
> >
> > " 'Confusion arises in attempts to classify civil and criminal contempts, because the elements often overlap. In appropriate circumstances, however, a party's actions can support a finding of both civil and criminal contempt.'

"(Citations omitted.)

"....

"The question of whether this is civil contempt or criminal contempt becomes important in this case because a contemnor must be in a position to purge himself from the contempt. Mims v. Mims, 472 So. 2d 1063 (Ala. Civ. App. 1985). In order to purge himself in a criminal contempt case, the contemnor must pay the fine imposed, serve the authorized time, or do both. Kalupa v. Kalupa, 527 So. 2d 1313 (Ala. Civ. App. 1988). In order to purge himself in a civil contempt case, the contemnor must comply with the court's order. Rule 33.4(b), A[la]. R. Crim. P."

Hill v. Hill, 637 So. 2d 1368, 1370 (Ala. Civ. App. 1994).

Criminal Contempt

We first address the mother's argument that the evidence does not support the trial court's criminal-contempt determination. In reviewing a finding of criminal contempt, this court must determine whether the evidence supports a determination that the contempt was proven beyond a reasonable doubt. Ex parte Ferguson, 819 So. 2d 626, 629 (Ala. 2001). Our supreme court explained in that case:

" 'The essential elements of the criminal contempt for which punishment has been imposed on [the defendant] are that the court entered a lawful order of reasonable specificity, [the

> defendant] violated it, and the violation was wilful. Guilt may be determined and punishment imposed only if each of these elements has been proved beyond a reasonable doubt.'
>
> "[United States v.] Turner, 812 F.2d [1552,] 1563 [(11th Cir. 1987)]. The Turner court also stated, quoting Gordon v. United States, 438 F.2d 858, 868 n.30 (5th Cir. 1971):
>
> > " ' "The test is whether the evidence is sufficient to justify the trial judge, as trier of the facts, in concluding beyond a reasonable doubt that the defendant was guilty, and that such evidence is inconsistent with any reasonable hypothesis of his innocence. Such is the substantial evidence test." '
>
> "Turner, 812 F.2d at 1563."

Ex parte Ferguson, 819 So. 2d at 629.

In its judgment, as amended, the trial court found the mother in contempt with regard to 22 separate incidents. Two of those contempt findings related to the mother's alleged denial of the paternal grandmother's scheduled weekend visitations -- February 16-18, 2018, and April 26-28, 2019. The trial court also found the mother in contempt for denying the paternal grandmother the awarded weekly telephone conversations with the child on 20 separate occasions. Those contempt

findings related to scheduled telephone visits in February and March 2018 and from March 2019 through September 2019.[5]

With regard to the findings of contempt regarding the missed visitations, the mother first argues that the evidence was not sufficient to demonstrate that she was in criminal contempt with regard to the February 16-18, 2018, weekend visitation. The mother did not raise this argument before the trial court. A trial court may not be held in error for an issue not raised before it; this court's review is limited to issues and arguments asserted before the trial court. Marler I, 281 So. 3d at 418 (citing Beavers v. County of Walker, 645 So. 2d 1365, 1372 (Ala. 1994); Andrews v. Merritt Oil Co., 612 So. 2d 409 (Ala. 1992); Crest Constr. Corp. v. Shelby Cnty. Bd. of Educ., 612 So. 2d 425 (Ala. 1992); and Shiver v. Butler Cnty. Bd. of Educ., 797 So. 2d 1086, 1088 (Ala. Civ. App. 2000)). Accordingly, we do not reach that argument.

[5]It appears that, in reducing the amount of criminal-contempt findings from the original, September 22, 2020, judgment, the trial court determined that visitations missed as a result of the June 2018 stay order and during the COVID-19 pandemic did not constitute criminal contempt.

The mother also argues that the trial court erred in finding her in criminal contempt with regard to her refusal to allow the paternal grandmother visitation over the weekend of April 26-28, 2019. The mother argues that she believed that the stay ordered pursuant to the June 28, 2018, order remained in effect at that time. The June 28, 2018, order stated that it was effective "pending decision of Alabama Court of Civil Appeals." The mother argued at the contempt hearing that she believed that that stay had been effective until she had exhausted all appellate review. Even assuming that the stay remained in effect until the mother had exhausted all appellate review, that appellate review ended, at the latest, on March 15, 2019, when our supreme court denied the mother's petition for certiorari review and this court issued its certificate of judgment.

However, the mother contends that the June 28, 2018, stay was not lifted by an order of the trial court before that visitation and that, for that reason, she cannot be held in criminal contempt. The June 28, 2018, stay order stated that it remained in effect until this court's decision in Marler I, supra. Moreover, the mother has cited no caselaw requiring the entry

of a separate trial-court order to end the stay imposed by the June 28, 2018, order. Thus, the mother has failed to properly support her argument and has failed to demonstrate error with regard to that contention. Prattville Mem'l Chapel v. Parker, 10 So. 3d 546, 560 (Ala. 2008) (observing that it is not the function of an appellate court to perform an appellant's research or to address arguments not properly supported by citations to supporting authority). The mother also contends that she relied on the advice of counsel with regard to refusing that visit because, she says, she believed that the stay had remained in effect. The trial court, noting that the mother is also an attorney with appellate experience, rejected that argument. The mother has not provided this court citation to any authority supporting the proposition that one with knowledge of the terms of an order may disregard that order based on purported advice from his or her attorney.[6]

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[6]On application for rehearing, the mother has, for the first time, cited to authority concerning the "advice of counsel" defense. This court may not consider an argument properly supported only for the first time in a brief on application for rehearing. Riscorp, Inc. v. Norman, 915 So. 2d 1142, 1155 (Ala. 2005); Alabama Dep't of Env't Mgmt. v. Wynlake Dev., LLC, [Ms. 2190999, Aug. 13, 2021] __ So. 3d __, __ (Ala. Civ. App. 2021).

The mother also contends that, because the last time the child had attempted to visit the paternal grandmother in April 2018 the visit had not gone well, "it was reasonable for the mother to believe that visitation remained against [the child's] interests." In making that argument, the mother appears to conclude that she, as opposed to the trial court, has the authority to determine whether she will follow the New York judgment and/or orders of the trial court. Moreover, the mother has demonstrated, through filings below, that she is capable of seeking to stay visitation or modify the terms of visitation when she feels it is appropriate. The mother did not file in the trial court any motion alleging that she believed that the April 26-28, 2019, visit was not in the best interests of the child or requesting any relief on that basis. Given the evidence in the record on appeal, and the trial court's emphasis on the mother's ongoing pattern of interference with and attempts to obstruct the paternal grandmother's visitation, we cannot say that the evidence does not support the trial

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Moreover, a determination whether the mother relied on the advice of counsel, or whether any such reliance was reasonable, is a matter within the discretion of the trial court. Rhodes v. Rhodes, 317 So. 3d 37, 43 (Ala. Civ. App. 2020).

court's criminal- contempt finding with regard to the April 2019 weekend visitation the mother refused to allow the paternal grandmother to exercise.

The mother next challenges the trial court's finding that she was in criminal contempt for refusing the paternal grandmother her ordered weekly telephone contact with the child on 20 separate occasions. The mother argues on appeal that the trial court's contempt findings with regard to the missed telephone visits were not sufficiently specific -- an argument she did not make before the trial court. Accordingly, the mother is raising that argument for the first time on appeal, and we do not address it. Marler I, 281 So. 3d at 418.

With regard to the telephone calls, the mother also argues that the trial court erred in holding her in contempt with regard to 14 of those 20 calls because, she contends, it is undisputed that those telephone calls "occurred." The mother's argument with regard to those calls, however, is disingenuous. The mother admits that, in her presence, the child answered the telephone and almost immediately disconnected the call; in her postjudgment motion, the mother dismisses the paternal

grandmother's contempt claim with regard to those calls as "dissatisfaction" with the length and content of those telephone calls. As the mother points out in her appellate brief, the child, in her testimony, stated that the mother had never told her what to say or to hang up on the paternal grandmother, and there is no evidence indicating that the mother did so. However, the child testified that the mother had told her that she only had to answer the telephone and say goodbye before disconnecting the call. The child and the mother both stated that the child was never disciplined for or discouraged from being rude or disrespectful to the paternal grandmother.

Instead, the mother blames the child for her behavior in those telephone calls, arguing to this court that she cannot be held in contempt because the New York judgment does not specify the length or content of the telephone calls and that "it was improper to hold the mother in contempt for [the child's] behavior." The mother cites Shellhouse v. Bentley, 690 So. 2d 401, 402 (Ala. Civ. App. 1997), in which this court reversed a judgment finding a father in contempt when his 15-year-old daughter refused to visit with her mother. In that case, however, "[t]here

was no evidence to indicate that the father ha[d] willfully or intentionally interfered with the visitation schedule." Shellhouse v. Bentley, 690 So. 2d at 403.

In this case, however, the parties agree that the child is generally a well-behaved, cheerful, and obedient child. The trial court determined that the mother has extensively and intentionally interfered with the visitation rights granted to the paternal grandmother by the New York judgment. The evidence supports a determination that the mother's attitude and conduct toward the paternal grandmother is clear to the child and that the mother influenced and encouraged the child's behavior during the attempts at telephone contact by the paternal grandmother. The evidence supports a conclusion that the mother taught, or at the least tacitly encouraged, the child to make only enough effort at communication sufficient for the mother to assert this hyper-technical argument that telephone calls comprising only of a few seconds' disrespectful conversation and an immediate disconnection were sufficient to comply with that part of the New York judgment awarding the paternal grandmother weekly telephone contact with the child. Accordingly, we

cannot say that the mother has demonstrated error on the part of the trial court with regard to this argument.

The mother also maintains that the other 6 of the 20 missed telephone calls occurred between March and April 2019, when, she says, she could have reasonably assumed that the June 28, 2018, stay order was still in effect. We have discussed a similar argument made by the mother with regard to the missed weekend visitation in April 2019 and have rejected that argument. Similarly, we affirm the trial court's judgment as to this issue on the same basis.

The mother next posits, in a 3-sentence argument, that the 110-day sentence the trial court imposed for the criminal-contempt findings was disproportionate and unreasonable. Initially, we note that the trial court has the authority to impose a sentence of up to five days' incarceration for each incident of criminal contempt. Rule 70A(e)(1), Ala. R. Civ. P.; § 12-11-30, Ala. Code 1975; Hill v. Hill, supra. The mother points out that, in other cases, a trial court has imposed sentences for criminal contempt that are "less harsh." She cites Pate v. Guy, 934 So. 2d 1070, 1071 (Ala. Civ. App. 2005), in which this court affirmed a contempt judgment ordering a

mother who had repeatedly denied visitation to serve 24 hours in jail, and L.A. v. R.H., 929 So. 2d 1018, 119-20 (Ala. Civ. App. 2005), in which this court affirmed that part of a judgment finding a mother in contempt for a denial of visitation and fining her $100. The mother's only attempt to apply the holdings of those cases to the facts of this case are statements that much of the visitation "substantially occurred," i.e., that the paternal grandmother received some visitation during which the mother scheduled other events for the child or required the child to keep her telephone with her to answer the mother's attempts to contact the child during the visitation. The mother also points out that a previous trial-court judge, in the June 28, 2018, stay order, had made a finding that both parties were at fault with regard to the April 2018 attempt at visitation.

In asserting her argument on this issue, the mother does not address the trial court's specific findings that her conduct amounted to a willful, malicious disobedience of court orders that was continuous and designed to circumvent court orders. Those findings are supported by the evidence in the record. Further, Rule 70A allows the imposition of a sentence of up to five days' incarceration for each contempt finding. Given the nature of

the numerous findings in the trial court's September 22, 2020, judgment, as amended, the evidence that tends to support those findings, and the paucity of the mother's argument as to this issue, we cannot say that the mother has demonstrated that, given the circumstances of this case, the trial court exceeded its discretion in its contempt sentence, i.e., she has failed to demonstrate that that sentence is too harsh under the facts. See Preston v. Saab, 43 So. 3d 595, 601-02 (Ala. Civ. App. 2010) ("[T]he trial court's imposition of a five-day sentence for each finding of criminal contempt ... was proper.").

Civil Contempt

The mother also challenges the trial court's determination that she was in civil contempt and that part of the September 22, 2020, judgment requiring her to pay the paternal grandmother's attorney fee of $87,894.13. The mother insists that that attorney-fee award was made pursuant to a finding of criminal contempt and, therefore, that it was improper. The mother cites § 12-11-30(5), Ala. Code 1975, which limits fines levied pursuant to a finding of criminal contempt to $100 per incident. See also Rule 70A(e)(1), Ala. R. Civ. P. ("The court may not

punish a person for criminal contempt under the provisions of this rule by imprisonment or a fine exceeding the maximum term of imprisonment or maximum amount of fine provided by law."). Section 12-11-30(5) also provides, however, that "[t]he power of the [trial] court to enforce its orders and judgments by determinations of civil contempt shall be unaffected by this section."

The contempt provisions of the September 22, 2020, judgment, set forth above, clearly state that the mother was found in criminal contempt for her willful refusal to comply with court orders, and, based on the criminal-contempt findings, the trial court ordered the mother to be incarcerated; as is also noted above, that sentence has been suspended. In a separate, specific finding, the trial court ordered that the mother pay, among other things, the paternal grandmother's attorney fee pursuant to a finding of civil contempt. The trial court specifically stated that the mother's "systematic and continued efforts to circumvent court orders are so egregious that the Court finds [the mother] in CIVIL CONTEMPT on each occasion to discourage future noncompliance." (Capitalization in original; emphasis added.) As explained above, " '[c]ivil contempt seeks to

compel or coerce compliance with orders of the court.' " Hill v. Hill, 637 So. 2d at 1370 (quoting State v. Thomas, 550 So. 2d 1067, 1072 (Ala. 1989)).

The mother argues that the trial court has mischaracterized the nature of the contempt finding upon which the attorney-fee award fine is based. The mother also maintains that the contempt finding is actually one for criminal contempt because, she says, there is no method by which she could purge herself of that contempt. The mother cites a portion of International Union, Mine Workers of America v. Bagwell, 512 U.S. 821 (1994), concerning the difference between incarceration based on a finding of criminal contempt and incarceration based on a finding of civil contempt. The other cases upon which the mother also relies concern a finding of contempt in which the contemnor was sentenced to time in jail. See Kent v. Herchenhan, 215 So. 3d 1079 (Ala. Civ. App. 2016); and S.T.W. v. T.N., 141 So. 3d 1083, 1086 (Ala. Civ. App. 2013). When a party is ordered incarcerated pursuant to a finding of civil contempt, that party must comply with the court's order to purge himself or herself from the civil contempt that resulted in the incarceration. Rule 33.4(b), Ala. R. Crim. P. ("Commitment in Cases of Civil Contempt. The court may order

that a person who has been found to be in civil contempt be committed to the custody of the sheriff until such person purges himself or herself of the contempt by complying with the court's order, decree, or command."); Kent v. Herchenhan, supra; S.T.W. v. T.N., supra.

In Wilson v. Freeman, 402 So. 2d 1004 (Ala. Civ. App. 1981), a trial court held a father in criminal contempt for removing the parties' child from the mother's custody, held the father in civil contempt for his failure to pay child support, and awarded the mother an attorney fee. The trial court further ordered the father to be incarcerated for five days based on the finding of criminal contempt and "'until such time as he purges himself' for civil contempt." 402 So. 2d at 1005. On appeal, the father argued that the trial court had erred in including the attorney fee as a part of the amount he needed to pay to purge himself of civil contempt. This court disagreed that the trial court had done so, explaining that "[t]he order neither found [the father] in contempt for failure to pay attorney's fees nor made the payment of such fees a purgative condition." Wilson v. Freeman, 402 So. 2d at 1006.

Similarly, in this case, the mother was not ordered to be incarcerated as a result of the finding of civil contempt. Thus, there was no need, under the facts of this case, for a "purgative condition" to the civil-contempt finding. Wilson v. Freeman, supra; Wilson v. York, 445 So. 2d 907, 909 (Ala. Civ. App. 1983).

Further, with regard to fines imposed as a result of a finding of civil contempt, the United States Supreme Court explained in Bagwell:

> "This dichotomy between coercive and punitive imprisonment has been extended to the fine context. A contempt fine accordingly is considered civil and remedial if it either 'coerce[s] the defendant into compliance with the court's order, [or] ... compensate[s] the complainant for losses sustained.' United States v. Mine Workers, 330 U.S. 258, 303-304 (1947). Where a fine is not compensatory, it is civil only if the contemnor is afforded an opportunity to purge. See Penfield Co. of Cal. v. SEC, 330 U.S. 585, 590 (1947). Thus, a 'flat, unconditional fine' totaling even as little as $50 announced after a finding of contempt is criminal if the contemnor has no subsequent opportunity to reduce or avoid the fine through compliance. Id., at 588."

512 U.S. at 829 (emphasis added). In this case, the trial court's judgment specifically orders the mother to pay, as a civil-contempt fine, amounts to compensate the paternal grandmother for her attorney fees. See Bagwell,

supra. Accordingly, the mother has not demonstrated that the award of a damages pursuant to the civil-contempt finding was erroneous.

In her next argument, the mother does not assert that her past actions did not support a finding that she was in civil contempt. Rather, she contends that the "last action" for which she was found in contempt occurred more than a year before the September 2020 contempt hearing. She contends that, because civil contempt "means willful, continuing failure or refusal of any person to comply with a court's ... order, rule, or command that by its nature is still capable of being complied with," see Rule 70A(a)(2)(D), Ala. R. Civ. P., she was not in civil contempt because the contempt has not continued, i.e., because she was last in contempt for the denial of telephone communication in September 2019.[7]

The mother points out that civil contempt is designed to coerce or compel compliance with court orders. Hill v. Hill, 637 So. 2d at 1370. The

[7]We note that the paternal grandmother alleged that the failure to allow contact with the child continued after September 2019 but that the trial court refused to consider evidence as to that period because the paternal grandmother had not amended her contempt petition to place the mother on notice of such claim.

mother argues that her conduct that might serve as the basis for a civil-contempt finding occurred in the past and that there is no evidence indicating that her contemptuous conduct is ongoing in the present such that she should be held in civil contempt so as to compel her to comply with court orders. However, the paternal grandmother presented a great deal of evidence indicating that the mother has engaged in a continuous pattern of preventing or obstructing the visitation and telephone communication awarded to the paternal grandmother under the New York judgment.

The trial court's findings in its September 22, 2020, judgment demonstrate that it found that the mother's conduct had been willful, malicious, and designed to attempt to thwart court orders. Shortly after the last date on which the trial court found the mother in contempt, i.e., late September 2019, the COVID-19 pandemic began. The history of this action demonstrates that when visitation was imposed, or resumed after a stay, the mother continued to attempt to prevent or obstruct the introduction or reintroduction of visitation between the child and the paternal grandmother. The only evidence indicating that the mother's

conduct would not continue in the future, i.e., when visitation could resume after the COVID-19 restrictions were lifted or adjusted, is the mother's own testimony that she has never intentionally interfered with the paternal grandmother's visitation and that she wanted the paternal grandmother and the child to have a loving relationship.

However, the trial court was in the best position to evaluate the mother's credibility as she testified. See Ex parte Fann, 810 So. 2d 631, 633 (Ala. 2001) (holding that the presumption of correctness afforded a trial court's judgment is based upon its superior position to evaluate the credibility of the witnesses as they testify); Espinoza v. Rudolph, 46 So. 3d 403, 412 (Ala. 2010); and Marler I , 281 So. 3d at 431. The trial court could well have determined that the mother's actions since 2017 belie that testimony and that, given the history of this action, a finding of civil contempt was necessary to ensure the mother's future compliance with the New York judgment and its orders and judgments enforcing that judgment. The evidence in the record on appeal supports such a determination.

The mother next contends that the trial court's award to the paternal grandmother of an amount to compensate her for her attorney fee is not an authorized remedy for a finding of civil contempt. However, our supreme court has held that the prevailing party in an action alleging civil contempt may recover an award of an attorney fee. Moody v. State ex rel. Payne, 355 So. 2d 1116, 1119 (Ala. 1978); Baker v. Heatherwood Homeowners Ass'n, 587 So. 2d 938, 944 (Ala. 1991). "Such an award, by its very nature, must be predicated on past action that has caused injury to the party moving for a finding of contempt of court." Chestang v. Chestang, 769 So. 2d 294, 298 (Ala. 2000). The trial court found the mother in civil contempt, and this court has affirmed that determination; accordingly, the award of an attorney fee is an authorized remedy or award in this case. J.S. v. L.M., 251 So. 3d 61, 67 (Ala. Civ. App. 2017).

In spite of the foregoing, the mother maintains that because the trial court stated that the mother was "fined" the amount of the paternal grandmother's attorney fee as a result of its finding of civil contempt, the award must be reversed because, she says, a "fine" is not appropriate as a method of recovery for civil contempt. However, in addition to the

principles set forth above, we note that our supreme court has recognized that Alabama law allows compensatory "fines" in favor of the adverse party in a contempt action. Chestang v. Chestang, 769 So. 2d at 298 (citing Lightsey v. Kensington Mortg. & Fin. Corp., 294 Ala. 281, 287, 315 So. 2d 431, 436 (1975); see also J.S. v. L.M., 251 So. 3d 61, 67 (Ala. Civ. App. 2007) ("[M]any civil contempt proceedings have resulted not only in the imposition of a fine, payable to the complainant, but also in committing the defendant to prison."); and International Union, Mine Workers of America v. Bagwell, supra. "Such an award, by its very nature, must be predicated on past action that has caused injury to the party moving for a finding of contempt of court." Chestang v. Chestang, 769 So. 2d at 298.

Further, the trial court had already imposed punitive measures on the mother, i.e., the suspended sentence of incarceration, with regard to its finding of criminal contempt. It is clear from the trial court's judgment that it was aware of the purpose of civil contempt, i.e., to ensure future compliance with its orders. "[A] trial court may award damages on a claim alleging civil contempt in order to compensate the injured party and/or to

encourage the contemnor's future compliance with court orders." J.K.L.B. Farms, LLC v. Phillips, 975 So. 2d 1001, 1012 (Ala. Civ. App. 2007). The language of the September 22, 2020, judgment pertaining to the award of the attorney fee pursuant to a finding of civil contempt "was in the nature of compensatory damages rather than in the nature of a punitive fine." Chestang v. Chestang, 769 So. 2d at 298. We reject the mother's argument that the attorney-fee award was an improper punitive fine.

The mother also challenges the evidentiary support for the amount of the award of the attorney fee. She contends that the exhibit submitted into evidence in support of the paternal grandmother's claim seeking an award of an attorney fee contained numerous charges that were related to the mother's petition to modify rather than to the contempt claims. She also argues that the award of an attorney fee includes amounts for the representation of the paternal grandmother in a previous appeal for which this court had already awarded the paternal grandmother a portion of those fees. The mother failed to assert either of those arguments before the trial court. An issue must be raised in the trial court in order for it to be preserved for appellate review. Allsopp v. Bolding, 86 So. 3d 952, 962

(Ala. 2011). " 'This rule is premised on the doctrine that the trial court should first have the opportunity to rule on all points.' " P.J. Lumber Co., v. City of Prichard, 249 So. 3d 1135, 1137 (Ala. Civ. App. 2017) (quoting Head v. Triangle Constr. Co., 274 Ala. 519, 522, 150 So. 2d 389, 392 (1963)). " ' "[T]here is something unseemly about telling a lower court it was wrong when it never was presented with the opportunity to be right." ' " Birmingham Hockey Club, Inc. v. National Council on Compensation Ins., Inc., 827 So. 2d 73, 80 (Ala. 2002) (quoting Ex parte Elba Gen. Hosp., 828 So. 2d 308, 314 (Ala. 2001), quoting in turn other sources) (emphasis omitted).

In this case, the mother filed a lengthy postjudgment motion in the trial court, and, approximately one month later, she filed an amendment to that postjudgment motion. It is clear from the amendments made to the original judgment in the December 2, 2020, postjudgment order that the trial court carefully considered and agreed with many of the arguments the mother asserted in her postjudgment motion and in the amendment to that motion. However, the mother did not raise the issues she is currently asserting on appeal before the trial court during the ore tenus

hearing, in the postjudgment motion, or in the amended postjudgment motion. Accordingly, the mother has failed to preserve these arguments for appellate review. Allsopp v. Bolding, supra; Marler I, 281 So. 3d at 418.[8]

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[8]On application for rehearing, the mother has argued that she did make the argument concerning the amount of the attorney fee below. In her lengthy postjudgment motion, the mother asserted briefly that the evidence was insufficient "to support the extreme financial penalties imposed in the form of attorney fees and costs totaling over $100,000." Later in that postjudgment motion, the mother asserted generally that "[t]he sentence and fines imposed are excessive, unreasonable, not authorized by law, cruel and unusual, and an abuse of discretion" and stated in another argument that "the civil contempt fines were clearly imposed as penalties." On application for rehearing, the mother contends that those assertions, spread out throughout her postjudgment motion, were sufficient to preserve her arguments on appeal concerning the amount of the attorney fee awarded to the paternal grandmother. The mother cites to no authority in support of that contention, and, as is explained in this court's analysis, supra, a specific argument was required. See also Docen v. Docen, 294 So. 3d 767, 773 (Ala. Civ. App. 2019); Aramini v. Aramini, 220 So. 3d 322, 331 (Ala. Civ. App. 2016).

We further note that the mother has raised similar arguments on application for rehearing with regard to other issues that, on original submission, this court determined had not been properly raised in the trial court. We reject those arguments for reasons similar to those discussed above.

The mother also asserts for the first time in her brief on application for rehearing that "[t]he transcript and exhibits were unavailable, so she

Similarly, the mother raises a number of specific arguments concerning the amount of costs the trial court ordered the mother to pay and whether all of those costs were related to the contempt findings. The mother did not assert any of those arguments concerning costs before the trial court so that it might have had the opportunity to correct those purported mistakes. Accordingly, we may not reach these arguments. Allsopp v. Bolding, supra; P.J. Lumber Co. v. City of Prichard, supra; Marler I, supra.

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could not make specific challenges to the evidentiary basis" for the amount of the attorney fee awarded to the paternal grandmother at the time she drafted her postjudgment motion. The mother's arguments on original submission concerning the amount of the attorney fee were based solely on an exhibit admitted into evidence that set forth the calculation of the fee claimed by the paternal grandmother. The mother has made no argument and has submitted no evidence, either to the trial court or to this court, indicating that the exhibit upon which this argument was based was not available through the clerk of the trial court or court reporter when she drafted her postjudgment motion. Similarly, the mother has made no allegation that she had not received a copy of that exhibit from opposing counsel. Therefore, the mother has provided no other argument and no evidence to the trial court or to this court that the exhibit upon which she relied in making her argument concerning the amount of the attorney-fee award was unavailable to her at the time she filed her postjudgment motion.

The mother also contends that the imposition of the paternal grandmother's attorney fee and costs on her impinges on her constitutional rights and her ability to properly parent and support the child. As is the case with previous arguments asserted by the mother, this issue is impermissibly raised for the first time on appeal, and we do not address it.

Makeup Visitation

The mother next maintains that the trial court erred in awarding additional days of visitation ("makeup visitation") to the paternal grandmother. The makeup visitation was awarded to allow the paternal grandmother to recover the time awarded to her under the New York judgment but which she was denied the ability to exercise, whether because of the mother's interference, the 2018 stay order, or the restrictions imposed by the COVID-19 pandemic.

The mother argues that, in awarding the paternal grandmother makeup visitation, the trial court modified the New York judgment. The mother did not argue before the trial court that its award of makeup visitation constituted a modification of the New York judgment. An issue

not raised before the trial court may not be raised for the first time on appeal. Marler I, 281 So. 3d at 418 (citing Andrews v. Merritt Oil Co., supra, Crest Constr. Corp. v. Shelby Cnty. Bd. of Educ., supra, and Owens v. National Bank of Commerce, supra).

However, as part of her argument in her appellate brief on this issue, the mother maintains that the authority to modify a foreign judgment is a jurisdictional issue. This court may address on appeal an issue raised for the first time on appeal that pertains to subject-matter jurisdiction. Health Care Auth. for Baptist Health v. Davis, 158 So. 3d 397, 402 (Ala. 2013); Heaven's Gate Ministries Int'l, Inc. v. Burnett, 295 So. 3d 72, 77 n. 2 (Ala. Civ. App. 2019). Accordingly, we briefly address the mother's argument that the trial court purportedly modified the New York judgment by awarding the paternal grandmother makeup visitation with the child.

In a footnote to a one-sentence assertion in her brief that the trial court modified the New York judgment, the mother cites to § 30-3B-304(a), Ala. Code 1975, a part of Alabama's version of the UCCJEA. Section 30-3B-304 pertains to a temporary order enforcing a visitation provision of

a foreign judgment, and it does allow for makeup or substitute visitation under certain circumstances.[9] Regardless, the September 22, 2020, judgment at issue is not a temporary order. The mother has failed to

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[9]That statute provides:

> "(a) A court of this state which does not have jurisdiction to modify a child custody determination, may issue a temporary order enforcing:
>
> > "(1) A visitation schedule made by a court of another state;
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> > "(2) The visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule; or
> >
> > "(3) The visitation provision of a child custody determination of another state by implementing makeup or substitute visitation.
>
> "(b) If a court of this state makes an order under subsection (a)(2) or subsection (a)(3), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Article 2 [of Alabama's version of the UCCJEA, §§ 30-3B-201 through -210]. The order remains in effect until an order is obtained from the other court or the period expires."

§ 30-3B-304, Ala. Code 1975.

demonstrate that that section has any application to the final judgment at issue in this appeal.

The mother does not discuss in her appellate brief § 30-3B-306, Ala. Code 1975, which governs the enforcement of a registered foreign judgment and provides, among other things, that "[a] court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state." § 30-3B-306(a). This court has considered similar orders awarding makeup visitation as orders implicating the issue of the enforcement of a judgment awarding visitation. See Marshall v. Marshall, [Ms. 2200187, July 30, 2021] ___ So. 3d ___, ___ (Ala. Civ. App. 2021) (concluding that a trial court had determined that a mother had not violated the terms of a divorce judgment that had awarded a father visitation when the trial court denied the father's request for makeup visitation for visitation days allegedly improperly denied to him); and Hadley v. Hadley, 202 So. 3d 699, 702 (Ala. Civ. App. 2016) (mentioning that a trial court had found a father in contempt and had ordered him to allow a mother an additional five days of makeup visitation for visitation

that she had not received as ordered). Thus, the trial court had the authority to award makeup visitation for the periods of visitation awarded to the paternal grandmother but which she was unable to exercise. Accordingly, the trial court, in enforcing the New York judgment, has granted the paternal grandmother "relief normally available under the law of this state." § 30-3B-306(a). The mother has not directed this court to any supporting caselaw indicating that an award of makeup visitation constitutes a modification of a judgment. Thus, the mother has failed to demonstrate on appeal that the trial court "modified" the New York judgment in entering that part of its September 22, 2020, judgment that awarded the paternal grandmother makeup visitation with the child.[10]

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[10]The mother also argues in her appellate brief that the purported modification of the New York judgment contradicts the trial court's decision in its May 14, 2019, order that it could not modify the New York judgment. As we have held, in ordering makeup visitation, the trial court did not modify the New York judgment.

We also note that the mother contends that the trial court "indicated at a pretrial conference that the only issue for the hearing was contempt, and the court would 'shut down' attempts to raise other issues," "including any award of 'make-up' visitation." The only document in the record tending to support that contention is a copy, which is heavily redacted, of a March 16, 2020, e-mail message from the mother's attorney to the

Because we hold that the award of makeup visitation did not constitute a modification of the New York judgment, we do not reach the mother's argument that the trial court failed to properly apply Alabama caselaw and modification standards in reaching its judgment.

The mother next argues that the trial court incorrectly determined the number of days of makeup visitation that were awarded to the paternal grandmother. The mother first contends that the trial court erred in awarding the paternal grandmother three days of makeup visitation for a missed weekend. Those visitations were scheduled from Friday evening

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mother that was submitted in support of the mother's postjudgment motion. In that e-mail message, the mother's attorney represented to the mother that, during a status conference on March 13, 2020, the trial-court judge purportedly made statements limiting the scope of the contempt hearing to the issue of the mother's contempt and that the trial-court judge "made it equally clear that he cannot modify any of the NY order -- to include the award of any 'make-up' visitation or to determine where visitation is to be held." It is not clear whether the trial court considered that e-mail message between the mother's attorney and the mother when ruling on her postjudgment motion. See J.S.M. v. P.J., 902 So. 2d 89, 91 n.2 (Ala. Civ. App. 2004) (noting that this court had not considered evidence submitted in support of a postjudgment motion when the record did not indicate whether the trial court had considered that evidence). Moreover, the record does not demonstrate whether the trial court agreed with the characterization set forth in the e-mail message, as redacted.

through Sunday evening, which, the mother contends, is a period of 48 hours, or 2 days. The mother did not raise this issue before the trial court to afford that court the opportunity to consider it and, perhaps, adjust its judgment. Accordingly, we do not reach that issue. Marler I, 281 So. 3d at 418.

The mother also argues that, although in its amended judgment the trial court reduced its finding that the mother was in criminal contempt to 5 days rather than the 26 days for which it had held her in contempt in the original September 22, 2020, judgment, the trial court did not reduce the number of days of visitation to be made up. That argument, however, assumes that the trial court could not enforce the New York judgment by awarding makeup days to the paternal grandmother in the absence of a finding of criminal contempt. The mother has cited no authority that possibly could support such an argument. Although the trial court determined that only five days of missed visitation were due to criminally contumacious conduct on the part of the mother, it is undisputed that the paternal grandmother was prevented from exercising her visitation for other reasons as well. We disagree with the mother that the trial court,

in enforcing the visitation provisions of the New York judgment, was limited to allowing makeup visitation for only those periods of time when it found the mother to be in criminal contempt for the denial of visitation. The mother does not dispute that, regardless of whether the mother was found to be in contempt with regard to the days of missed visitation, the paternal grandmother did not receive that visitation. We reject the mother's arguments that the number of days of makeup visitation should be reduced to reflect only days on which the mother was found in contempt for the denial of visitation.

The mother also contends that the award of makeup visitation was improper with regard to the days of missed visitation due to the imposition of the 2018 stay and because of the restrictions imposed by the COVID-19 pandemic. The mother claims that she was not afforded notice that the trial court would award makeup visitation for those periods. However, throughout the three-day contempt hearing, the trial court indicated that it would award makeup visitation to the paternal grandmother for the times when she had a right to visitation but visitation did not occur. The mother made no objection. In addition, the

trial court did not agree with the mother's position regarding the length of the stay imposed by the June 2018 order; it concluded that that stay ended upon the release of this court's opinion in Marler I, supra. We do not address the issue of the length of that stay because the mother does not do so in her appellate brief.

Moreover, without citing any supporting authority, in contradiction of the requirements of Rule 28(a)(10), Ala. R. App. P., the mother equates the visitation denied to the paternal grandmother under the 2018 stay order as canceled. However, a stay order merely suspends or postpones, in full or in part, a proceeding or an order. See Black's Law Dictionary 1709 (11th ed. 2019) (defining "stay"). The trial court clearly determined that the stay order did not cancel the paternal grandmother's right to visitation with the child afforded to her by the New York judgment. Similarly, the visitations missed because of the COVID-19 pandemic were not canceled, and the right to visitation awarded to the paternal grandmother did not cease, merely because the paternal grandmother was not able to safely exercise that visitation.

In all matters of visitation, a trial court has broad discretion. Smith v. Smith, 887 So. 2d 257, 264 (Ala. Civ. App. 2003). The New York judgment afforded the paternal grandmother visitation with the child beginning in 2017. The paternal grandmother has been able to exercise only minimal visitation with the child since that award. The trial court's enforcement of the New York judgment through its award of makeup visitation allows the paternal grandmother to exercise the visitation rights she received through the New York judgment.

With regard to the issue of makeup visitation, the mother last argues that the scope of the award of makeup visitation to the paternal grandmother violates her constitutional right to the care, custody, and control of the child; she cites only generally to Troxel v. Granville, 530 U.S. 57 (2000).[11] That case governs the determination regarding an initial award of grandparent visitation. To the extent that the mother is citing

[11]As is explained later in this opinion, the issue of the amount of summer visitation and certain holiday visitation awarded to the paternal grandmother is now moot. See Funderburk v. Russell Cnty. Dep't of Hum. Res., [Ms. 2190981, June 18, 2021] __ So. 3d __, __ (Ala. Civ. App. 2021); City of Mobile v. Matthews, 220 So. 3d 1061, 1064 (Ala. Civ. App. 2016).

that case for the proposition that parental rights are fundamental, and that a parent has a due-process right to make decisions concerning the custody and control of his or her child, we agree. See Troxel v. Granville, 530 U.S. at 65-66.

The mother continues her argument by maintaining that, based on the foregoing, the trial court had no authority to award makeup visitation if she, as the child's parent, did not authorize such makeup visitation. In support of that argument, the mother also relies upon R.S.C. v. J.B.C., 812 So. 2d 361 (Ala. Civ. App. 2001) (plurality opinion), for the proposition that a parent's fundamental rights are implicated by any award of visitation. The plurality opinion in that case states: "[O]vernight and other unsupervised 'visitation' removes children from the presence and control of their parents and gives complete control and authority over the child for a period of time to another adult, essentially effecting a temporary or 'partial custody.' " R.S.C. v. J.B.C., 812 So. 2d at 369. However, the award of visitation at issue was a part of the New York judgment. The trial court's September 22, 2020, judgment enforced the New York judgment and did not award the paternal grandmother any additional visitation.

Therefore, we reject the mother's argument that the trial court lacked authority to award makeup visitation.

The mother also relies on Dodd v. Burleson, 932 So. 2d 912, 922 (Ala. Civ. App. 2005) (per Pittman, J., with one judge concurring and three judges concurring in the result), in which the court affirmed that part of a judgment awarding grandparent visitation but reversed the extent of the visitation. Specifically, this court held that alternating weekly grandparent visitation was untenable, given the 600-mile distance between the grandparents' home and that of the father and the children. 932 So. 2d at 921. This court also reversed the award to the grandparents in that case of "extensive" holiday visitation, which included six weeks of summer visitation each year, as erroneous because "the ... minor children are at risk of being prevented from forming and maintaining any substantial social and familial bonds in their new home community." Dodd v. Burleson, 932 So. 2d at 922.

Unlike Dodd v. Burleson, supra, this case does not involve an initial award of grandparent visitation. The mother's rights with regard to that issue were decided in the New York judgment. In Dodd, supra, this court

held that the annual visitation awards, including six weeks of visitation in the summer, were excessive. In this case, however, the paternal grandmother was granted a total of approximately six weeks of visitation with the child as a method of attempting to allow her to recoup some of the time that she has lost with the child over the years, often because of the mother's conduct.

The mother argues, in essence, that allowing the paternal grandmother to make up visitation to which the paternal grandmother was entitled under the New York judgment is a violation of the mother's right to the care, custody, and control of the child. We agree that the mother has that fundamental right, but, unlike the mother, we acknowledge that that fundamental right was somewhat curtailed by the award of grandparent visitation to the paternal grandmother in the New York judgment. Under the terms of the New York judgment, the mother is not entitled to have custody of the child on the days of visitation that were designated as awarded to the paternal grandmother. Thus, the mother did not have a constitutionally protected right to the sole care, custody, and control of the child on days designated under the New York

judgment as grandparent-visitation days awarded to the paternal grandmother. Under the facts of this case, we cannot agree with the mother that the trial court's enforcement of the visitation provisions of the New York judgment by allowing the paternal grandmother days of visitation to make up for those denied to her constitutes any infraction of the mother's constitutional rights.

The mother argues that the inclusion of the makeup visitation, which awarded the paternal grandmother almost six weeks of uninterrupted visitation with the child during the summer of 2021, was erroneous and not in the child's best interests because of the length of time the child would be separated from the mother. This court denied the mother's motion to stay that visitation, and it is now presumed that the summer 2021 visitation has already occurred. Accordingly, this issue is now moot as to that period of visitation. "In other words, a ruling in this appeal would not impact the rights of the parties." Funderburk v. Russell Cnty. Dep't of Hum. Res., [Ms. 2190981, June 18, 2021] __ So. 3d __, ___ (Ala. Civ. App. 2021). See also City of Mobile v. Matthews, 220 So. 3d 1061, 1064 (Ala. Civ. App. 2016) (quoting Underwood v. Alabama State

Bd. of Educ., 39 So. 3d 120, 127 (Ala. 2009), quoting in turn other cases) (" ' " 'The test for mootness is commonly stated as whether the court's action on the merits would affect the rights of the parties.' " ' " (emphasis omitted)).

Similarly, because the release date of this opinion on rehearing will occur after the eight days of makeup visitation occurring over the December 2021 through January 2022 holidays, the mother's arguments as to that visitation is also moot. On application for rehearing, the mother contends that this court omitted a discussion of the 19 days of makeup visitation awarded to the paternal grandmother in the summer of 2022 that is to run concurrently with the 14-day period of summer visitation in June that the paternal grandmother was awarded under the New York judgment. Out of an abundance of caution, we interpret the arguments asserted by the mother as to this issue on original submission as including the additional visitation award for the summer of 2022, and we address that argument.

The mother contends that the additional 19 days of visitation will prevent the child from participating in extracurricular activities in

Alabama, that it will interfere with her orthodontic care, and that it will compromise the child's need to spend time with the mother and the child's friends in Alabama. For those reasons, the mother contends that the additional period of makeup visitation is unreasonable.

> "[T]he issue of child visitation is within the sound discretion of the trial court. Wyatt v. Wyatt, 549 So. 2d 1351 (Ala. Civ. App. 1989); Andrews v. Andrews, 520 So. 2d 512 (Ala. Civ. App. 1987). Further, when the issue of visitation is decided after an ore tenus proceeding, the trial court's resolution of this issue will not be disturbed absent an abuse of discretion or a showing that it is plainly in error. Hutchinson v. Davis, 435 So. 2d 1303 (Ala. Civ. App. 1983). The trial court's discretion in determining visitation privileges is guided by what will protect and enhance the best interests and welfare of the child. See Jackson v. Jackson, 520 So. 2d 530 (Ala. Civ. App. 1988)."

E.W. v. Montgomery Cnty. Dep't of Hum. Res., 602 So. 2d 428, 429 (Ala. Civ. App. 1992); Smith v. Smith, supra.

The mother disputes that makeup visitation is in the child's best interests. However, the trial court received evidence indicating that the child wanted to know her extended family. Also, the record supports a finding that more extended visitation without interference from the mother would allow the child to relax and enjoy visitation with the paternal grandmother and her other extended family members. In matters

when the facts and positions of the parties are in such sharp dispute, this court must afford deference to the trial court's determination that such visitation would best serve the child's best interests. Accordingly, we decline to reverse the trial court's judgment as to this issue.

Request for Reassignment to Another Judge on Remand

In her final argument asserted before this court, the mother contends that this court should order that a new trial-court judge serve on remand. We note that the current trial-court judge is at least the third trial-court judge to preside over the parties' dispute. The mother did not file a motion seeking the recusal of the current trial-court judge. Instead, she asks this court to reassign the case on remand to another trial-court judge because, "under [Art. VI,] § 141(c), [Ala. Const. 1901 (Off. Recomp.)], this court may issue an order reassigning a case to a different trial judge when such an order is in aid of our appellate jurisdiction to enforce compliance with this court's previous opinions or orders." C.D.S. v. K.S.S., 978 So. 2d 782, 789 (Ala. Civ. App. 2007). This court has explained:

> "Typically, the appellate courts in this state have not ordered the reassignment of a case as much as they have ordered trial judges to recuse themselves from cases when

necessary. One scholar has described the difference between recusal and reassignment in the context of federal actions as follows:

> " 'The reassignment procedure is distinct from the recusal procedures. Recusal arises either from a litigant's petition, under Section 144 of 28 U.S.C., or by the district judge, under Section 455 of 28 U.S.C. The recusal statutes direct the judge to recuse herself when there is a conflict of interest, when there is "an opinion that derives from an extrajudicial source," or when there is "a high degree of favoritism or antagonism as to make fair judgment impossible." Reassignment arises when an appellate panel determines that it would further justice for a different district judge to proceed on remand.'

"James A. Worth, Destigmatizing the Reassignment Power, 17 Geo. J. Legal Ethics 565, 565 (2004) (footnotes omitted). In United States v. White, 846 F.2d 678 (11th Cir.1988), the United States Court of Appeals for the Eleventh Circuit explained:

> " 'In cases where there is no proof of personal bias, the Second Circuit has persuasively enumerated factors which should be considered by an appellate court in deciding whether to exercise its supervisory authority to reassign a case. These criteria include:
>
> > " ' "(1) whether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind

> previously-expressed views or findings determined to be erroneous or based on evidence that must be rejected, (2) whether reassignment is advisable to preserve the appearance of justice, and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness."

> " 'United States v. Robin, 553 F.2d 8, 10 (2d Cir. 1977) (en banc). ...'

"... We adopt and apply the factors set out in United States v. Robin, 553 F.2d 8 (2d Cir. 1977), to this matter. In doing so, we are mindful of the statement the United States Court of Appeals for the Second Circuit made in Robin, i.e., that reassignment on remand 'does not imply any personal criticism of the trial or sentencing judge.' 553 F.2d at 10. That being noted,

> " '[i]n the rare case where a judge has repeatedly adhered to an erroneous view after the error is called to his attention, see, e.g., United States v. Brown, 470 F.2d 285, 288 (2d Cir. 1972) (court twice used improper sentencing procedure), reassignment to another judge may be advisable in order to avoid "an exercise in futility in which the Court is merely marching up the hill only to march right down again." United States v. Tucker, 404 U.S. 443, 452, 92 S. Ct. 589, 594, 30 L. Ed. 2d 592 (1972) (Blackmun, J., dissenting).'

"Robin, 553 F.2d at 11."

C.D.S. v. K.S.S., 978 So. 2d at 789-90.

The mother cites the factors discussed in C.D.S. v. K.S.S., supra, as set forth in United States v. Robin, 553 F.2d 8, 10 (2d Cir. 1977), in support of her argument. The mother argues that the trial court imposed harsh sanctions on her and that its stated "zero-tolerance policy" with regard to any future interference with the paternal grandmother's visitation by the mother places the mother at risk of incarceration. The mother also claims that the zero-tolerance policy damages her relationship with the child.[12] The mother also contends that the trial court allowed the aunt to attack her character and parenting decisions in the aunt's testimony at the contempt hearing but that the trial court did not allow the mother to rebut that evidence. The mother fails to direct this court to any portion of the record in which she attempted to introduce evidence or testimony and the trial court refused to allow her to do so.[13] Regardless,

[12]The mother does not explain how the "zero-tolerance policy" impacts her relationship with the child.

[13]On application for rehearing, the mother again argues that the trial court erred in purportedly preventing her from offering the testimony of witnesses regarding her good character in the community. In her original brief, however, the mother mentioned that she had followed the

the mother contends that the reassignment of the case on remand is necessary to preserve the appearance of justice. See C.D.S. v. K.S.S., 978 So. 2d at 790.

In this case, the mother has failed to demonstrate error with regard to that part of the September 22, 2020, judgment finding her in contempt and imposing sanctions on her and ordering her to pay certain fees and costs. Thus, because we are not reversing the contempt judgment, it cannot be said that the trial-court judge, on remand, would have "'"substantial difficulty in putting out of his or her mind previously-expressed views or findings determined to be erroneous or based on evidence that must be rejected."'" C.D.S. v. K.S.S., 978 So. 2d

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trial court's "direction" that she would have to continue her presentation of the evidence without a break because of the length of time that the hearing had already taken. In reasserting this argument on application for rehearing in support of a part of her argument addressing criminal-contempt issues, the mother again fails to cite to a part of the record on appeal indicating that she offered to present evidence and was prevented from doing so. The mother did not argue on original submission, and she fails to argue on application for rehearing, that an offer of proof concerning the testimony of the witnesses she says she would have had testify on her behalf would have been futile. See Perry v. Brakefield, 534 So. 2d 602, 606-07 (Ala. 1988).

at 790 (quoting United States v. Robin, 553 F.2d at 10). See also Mahoney v. Loma Alta Prop. Owners Ass'n, 84 So. 3d 907, 918 (Ala. Civ. App. 2011) (ordering a reassignment of the case on remand from the fourth appeal in the matter because "[t]he judgment that was before us in [the third appeal] and the judgment that is before us now indicate that the original trial judge is having difficulty putting aside his original view of the ALAA claim, which we held was erroneous in [the second appeal]"); C.D.S. v. K.S.S., 978 So. 2d at 791 (ordering a reassignment to another trial judge on remand after a second appeal in the same action "because of the circuit court judge's difficulty in putting out of his mind his previously expressed views as to custody that we have determined are based, at least in part, on evidence received by the juvenile court in proceedings it did not have jurisdiction to conduct and because the circuit court has not held a full evidentiary hearing"). Although the mother argues that the sanctions and payments required by the September 22, 2020, judgment are harsh, she fails to acknowledge that those sanctions and payments are reflective of an extended, three-year dispute between the mother and the paternal grandmother with regard to the enforcement of the rights afforded to the

paternal grandmother by the New York judgment. This matter has been pending for a lengthy period before multiple trial-court judges. The trial court conducted a three-day ore tenus hearing, and it made findings of fact and legal conclusions based on the evidence presented. The mother's disagreement with the September 22, 2020, judgment and the sanctions imposed by that judgment, as amended, does not mean that the trial court erred or that its sanctions were so harsh as to warrant a reassignment. Given the evidence in the record and the trial court's specific findings pertaining to the mother's conduct, we cannot say that reassignment to another trial-court judge is needed to "'preserve the appearance of justice.'" Id. (quoting United States v. Robin, 553 F.2d at 10). In addition, we conclude that, at this point in the litigation, any reassignment to yet another trial judge "'"would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness."'" Id. at 790 (quoting United States v. White, 846 F.2d 678, 696 (11 Cir. 1988), quoting in turn United Stated v. Robin, 553 F.2d at 10). Accordingly, we reject the mother's argument concerning the need for a reassignment of this action to another trial-court judge on remand.

The paternal grandmother also requests an award of an attorney fee on appeal. We grant that request in the amount of $15,000.

APPLICATION OVERRULED; OPINION OF OCTOBER 8, 2021, WITHDRAWN; OPINION SUBSTITUTED; AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Moore, Edwards, and Hanson, JJ., concur.

Fridy, J., recuses himself.