STATE OF MICHIGAN

COURT OF APPEALS

MEGHAN MARIE KUEBLER, also known as MEGHAN MARIE O'NEIL,

Plaintiff-Appellant,

v

PAUL ANDREW KUEBLER,

Defendant-Appellee.

UNPUBLISHED
November 18, 2021

Nos. 354327; 355934; 356641; 356709
Washtenaw Circuit Court
LC No. 15-002753-DM

Before: RICK, P.J., and O'BRIEN and CAMERON, JJ.

PER CURIAM.

The present divorce case involves postjudgment disputes concerning parenting time, child support, and attorney fees. There are currently four appeals before this Court, all of them brought by plaintiff, Meghan Kuebler (also known as Meghan O'Neil). First, in Docket No. 356641, plaintiff appeals by delayed leave granted[1] an order denying plaintiff's motion to modify parenting time. Second, in Docket No. 356709, plaintiff appeals by delayed leave granted[2] an order that increased plaintiff's child support obligation payable to defendant, Paul Kuebler. Third, in Docket No. 354327, plaintiff appeals as of right the order denying plaintiff's motion for sanctions and attorney fees. Finally, in Docket No. 355934, plaintiff appeals as of right an order which granted defendant's request for attorney fees in the amount of $37,830. The four appeals were consolidated by this Court.[3] For the reasons explained in this opinion, we affirm the trial court's orders denying

[1] *Kuebler v Kuebler*, unpublished order of the Court of Appeals, entered June 9, 2021 (Docket No. 356641).

[2] *Kuebler v Kuebler*, unpublished order of the Court of Appeals, entered June 9, 2021 (Docket No. 356709).

[3] *Kuebler v Kuebler*, unpublished order of the Court of Appeals, entered June 9, 2021 (Docket Nos. 354327; 355934; 356641; 356709).

plaintiff's motion to modify parenting time and denying plaintiff's motions for sanctions and attorney fees. However, we vacate the award of sanctions and attorney fees to defendant. Finally, with regard to child support, we vacate the order retroactively modifying plaintiff's child support obligation to the extent that the award was made retroactive to January 2018 when, instead, it should be retroactive only to January 2020.

I. BACKGROUND

The present case involves a highly contentious, postjudgment divorce dispute with a voluminous record and a long procedural history, both in the trial court and in this Court.[4]

Plaintiff and defendant married in 2010. Early in their marriage, the parties lived in Connecticut, and they both worked on Wall Street in New York City. Defendant was an investment banker, and plaintiff worked as a statistician. At some point, defendant, who had both a law degree and an MBA, lost his investment job, and he changed careers, switching to law. Plaintiff also changed careers, deciding to pursue a doctorate degree in sociology. The parties moved to Michigan—despite plaintiff's reluctance—in 2014 when defendant accepted a position in the federal prosecutor's office. Defendant currently works as an assistant United States attorney. Following the parties' divorce, plaintiff finished her doctorate degree at the State University of New York Albany, and she now works at the University of Michigan as a research investigator and research scholar.

The parties have two children together: BK and SK. Plaintiff filed for divorce in November 2015. Eventually, pursuant to a consent judgment of divorce entered on April 21, 2017, defendant received sole physical and legal custody of the children, and plaintiff received supervised parenting time at Catholic Social Services. The reasons for the supervised parenting time were plaintiff's mental-health problems involving manipulation and alienating behavior, such as fabricated ideas of child abuse. The divorce judgment provides that plaintiff "has a serious personality disorder, and serious problems with manipulation that will require much psychotherapeutic effort." The treatment directives in the divorce judgment specified that the long-term goal was for plaintiff to "be able to present believable evidence that her mental health is being properly treated and that she is not endangering the children by the kind of alienating behavior that Defendant reasonably fears. Fabricated ideas of child abuse are dangerous not only to Defendant, but to the minor children's burgeoning self-concept."

The divorce judgment was agreed to after both parties were evaluated by Dr. Pamela Ludolph, Ph.D., a court-appointed psychologist, and Dr. Elissa P. Benedek, M.D., a psychiatrist. Notable to plaintiff's arguments on appeal, Dr. Ludolph diagnosed plaintiff with borderline personality disorder. Dr. Benedek, though not definitively diagnosing borderline personality disorder, also concluded that plaintiff exhibited borderline personality "traits." Undisputedly, plaintiff has a long history of mental-health problems, and she has also been diagnosed with major depressive disorder related to events in late 2014 and early 2015. By the time of the parties' divorce, plaintiff's depression was in remission, but, according to Dr. Ludolph and Dr. Benedek, likely to reoccur. Dr. Ludolph recommended treatment for plaintiff. The divorce judgment

[4] Aside from the four current appeals, the parties have filed eight other appeals with this Court.

expressly incorporated Dr. Ludolph's mental-health determinations and treatment recommendations, including requirements that plaintiff treat with a psychologist, a psychiatrist, and take any medication as prescribed.

With regard to defendant, when evaluating the parties, Dr. Ludolph noted that defendant had problems with anger, and under the divorce judgment, defendant was also ordered to seek mental-health treatment. When evaluating the parties, Dr. Ludolph also considered the parties' respective parenting skills and their relationship with each other, and she opined that, given the acrimonious relationship between the parties, coparenting would be "impossible." In view of the parties' respective strengths and weaknesses, and their inability to coparent, Dr. Ludolph recommended that defendant receive sole physical and legal custody.

As noted, the divorce judgment mentions plaintiff's "alienating behavior" and "fabricated ideas" of child abuse, which everyone agreed can be harmful to children. In this regard, over the last several years both before and after entry of the divorce judgment, plaintiff has made various complaints about defendant, including allegations of child abuse, all of which defendant denies and none of which have been substantiated. Plaintiff first accused defendant of physically and sexually abusing BK in 2017 during the divorce proceedings. Plaintiff's claims were investigated by police; BK was forensically interviewed; and the claims were not substantiated. Despite her allegations of child abuse, plaintiff, at other times, admitted that the children were "safe" with defendant, including during her testimony at a recent evidentiary hearing.

Plaintiff has also, at various times, accused defendant of domestic violence against her. Since the divorce, plaintiff has more recently filed for, and then withdrawn, requests for personal protection orders (PPOs), she has accused defendant of breaking into her home to steal her passport (which she later found in her house), she has written to the State Bar Commissioner, she has posted about defendant on Facebook, and during a parenting-time visit, she attempted to photograph SK's genital area in an effort to establish that SK had sexually transmitted genital warts when, in actuality, SK had a common childhood condition called "molluscum contagiosum," which is more commonly referred to as "water warts."

In December 2017, several months after the divorce judgment entered, plaintiff moved to modify parenting time—to include unsupervised parenting time, more parenting time, and overnight visits—on the basis that her court-appointed therapist, Brenda Scotton, a licensed social worker, had concluded that plaintiff did not have borderline personality disorder. Since Scotton provided her opinions, a subsequent evaluation by Dr. Philip Saragoza, a psychiatrist hired by plaintiff to evaluate her, likewise indicated that plaintiff did not have borderline personality disorder. Nevertheless, Dr. Saragoza recognized that there were examples of plaintiff "engaging in deceit/manipulation," and he noted "that she seems to harbor considerable anger towards her ex-husband and lacks empathy for him amidst their years-long highly contentious dispute."

Plaintiff's motion to modify parenting time was initially denied by the trial court without an evidentiary hearing. In connection with her motion, plaintiff twice appealed to this Court, and

each time this Court peremptorily reversed or vacated the decision of the trial court and remanded for further proceedings regarding plaintiff's motion to modify parenting time.[5]

After the second remand from this Court, the trial court held a four-day evidentiary hearing on the threshold question whether plaintiff had established a proper cause or change in circumstances. The trial court treated plaintiff's request as seeking a change in custody, and accordingly applied *Vodvarka*.[6] Following the hearing, the trial court concluded that plaintiff failed to make a threshold showing and accordingly denied plaintiff's motion. In so doing, the trial court issued a lengthy opinion and order, which, briefly summarized, concluded that plaintiff's conduct had not shown any improvement since the divorce judgment, but instead had actually gotten worse. The trial court's denial of plaintiff's parenting-time motion is at issue in Docket No. 356641.

Aside from the parenting-time issues, these consolidated appeals involve questions of child support and attorney fees. Regarding child support, the trial court granted defendant's request to increase plaintiff's child support obligation as a result of her increased salary after she obtained employment at the University of Michigan. Relevant to plaintiff's appeal, the trial court made this increase retroactive to when plaintiff began her new position in January 2018. The child support award is at issue in Docket No. 356709.

Finally, regarding attorney fees, both parties have made repeated requests for attorney fees, sanctions, or both. Plaintiff's requests were denied, and defendant's requests were ultimately granted with regard to the costs for "preparing for and conducting" the evidentiary hearing on remand from this Court. The trial court awarded defendant a total of $37,830. Questions regarding sanctions and attorney fees are at issue in Docket Nos. 354327, 356641, and 355934.

II. DOCKET NO. 356641—PLAINTIFF'S MOTION TO "MOVE" PARENTING TIME

In Docket No. 356641, plaintiff asserts that the trial court erred by applying *Vodvarka* to her motion to move parenting time. According to plaintiff, her motion only sought to change the conditions on parenting time or, at most, to modify parenting time. Additionally, plaintiff argues that even under *Vodvarka*, the trial court erred by denying her motion to modify parenting time because she established a proper cause or change in circumstances. We disagree.

A. STANDARDS OF REVIEW

As explained by this Court in *Shade v Wright*, 291 Mich App 17, 20-21; 805 NW2d 1 (2010):

> Orders concerning parenting time must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court

[5] See *Kuebler v Kuebler*, unpublished order of the Court of Appeals, entered June 26, 2019 (Docket No. 347617); *Kuebler v Kuebler*, unpublished per curiam opinion of the Court of Appeals, issued December 30, 2019 (Docket No. 351805).

[6] *Vodvarka v Grasmeyer*, 259 Mich App 499; 675 NW2d 847 (2003).

committed a palpable abuse of discretion, or the court made a clear legal error on a major issue. Under the great weight of the evidence standard, this Court should not substitute its judgment on questions of fact unless the facts clearly preponderate in the opposite direction. In child custody cases, [a]n abuse of discretion exists when the trial court's decision is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. Clear legal error occurs when the trial court errs in its choice, interpretation, or application of the existing law. [Quotation marks and citations omitted.]

B. LEGAL FRAMEWORK

"As set forth in MCL 722.27(1)(c), when seeking to modify a custody or a parenting-time order, the moving party must first establish proper cause or a change of circumstances before the court may proceed to an analysis of whether the requested modification is in the child's best interests." *Lieberman v Orr*, 319 Mich App 68, 81; 900 NW2d 130 (2017). If the movant fails to make a threshold showing of proper cause or change in circumstances, the trial court is precluded from holding a best-interest hearing. *Vodvarka v Grasmeyer*, 259 Mich App 499, 508; 675 NW2d 847 (2003). The standard applicable to this threshold showing depends on whether the moving party seeks to (1) modify custody, (2) modify parenting time, or (3) impose, revoke, or modify a condition of parenting time. See *Kaeb v Kaeb*, 309 Mich App 556, 570; 873 NW2d 319 (2015).

The most demanding standard, set forth in *Vodvarka*, 259 Mich App at 509-514, applies to requests to modify child custody. As explained by this Court:

> [T]o establish "proper cause" necessary to revisit a custody order, a movant must prove by a preponderance of the evidence the existence of an appropriate ground for legal action to be taken by the trial court. The appropriate ground(s) should be relevant to at least one of the twelve statutory best interest factors, and must be of such magnitude to have a significant effect on the child's well-being. When a movant has demonstrated such proper cause, the trial court can then engage in a reevaluation of the statutory best interest factors. [*Id*. at 512.]
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> [I]n order to establish a "change of circumstances," a movant must prove that, since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have a significant effect on the child's well-being, have materially changed. Again, not just any change will suffice, for over time there will always be some changes in a child's environment, behavior, and well-being. Instead, the evidence must demonstrate something more than the normal life changes (both good and bad) that occur during the life of a child, and there must be at least some evidence that the material changes have had or will almost certainly have an effect on the child. This too will be a determination made on the basis of the facts of each case, with the relevance of the facts presented being gauged by the statutory best interest factors. [*Id*. at 513–514.]

In comparison to *Vodvarka*, the less stringent standards for showing proper cause or a change in circumstances relative to requests to modify parenting time were detailed by this Court in *Shade*, 291 Mich App at 28-30. "Whereas the primary concern in child custody determinations is the stability of the child's environment and avoidance of unwarranted and disruptive custody changes, the focus of parenting time is to foster a strong relationship between the child and the child's parents." *Id*. at 29. For this reason, "normal life changes" that would not justify modifying a custodial environment may constitute proper cause or change of circumstances sufficient to modify parenting time. *Id*. at 29-30.

And, lastly, *Kaeb*, 309 Mich App at 570-572, provides the standards to modify conditions on parenting time. *Kaeb* involves "a lesser, more flexible, understanding" of proper cause or change in circumstances that allows for modification for "ordinary changes in the parties' behavior, status, or living conditions." *Id*. at 570-571. "[A] party requesting a change to an existing condition on the exercise of parenting time must demonstrate proper cause or a change in circumstances that would justify a trial court's determination that the condition in its current form no longer serves the child's best interests." *Id*. at 571.

The preliminary question in this case is which standard should apply to plaintiff's motion, which plaintiff labeled as a motion to "move parenting time." Regardless of how a party labels its motion, a determination of the applicable threshold standard requires consideration of the gravamen of the motion and a reading of the document as a whole. *Lieberman* 319 Mich App at 77 n 4, 86 n 9. That is, a motion labeled as one to modify parenting time will still be reviewed under *Vodvarka* rather than *Shade* "if a change in parenting time results in a change in the established custodial environment." *Shade*, 291 Mich App at 27. See also *Lieberman*, 319 Mich App at 86 n 9. A "*substantial* modification of parenting time" will alter the established custodial environment, whereas "*minor* modifications" to scheduling "that leave a party's parenting time essentially intact do not change a child's established custodial environment." *Lieberman*, 319 Mich App at 89-90 (emphasis added). In comparison to those motions reviewable under *Vodvarka* or *Shade*, a motion that seeks *only* to change a condition of parenting time does not involve "either a change in custody or a change in the duration or frequency of parenting time." *Kaeb*, 309 Mich App at 570.

For example, in *Kaeb*, the father merely sought to eliminate requirements that he attend AA meetings and counseling based on his assertions that these conditions of parenting time were no longer necessary; he did *not* seek to alter custody or the frequency or duration of parenting time. See *id*. at 570-572. In comparison, *Shade* involved a motion to modify parenting time, which did not rise to the level of altering custody. The parties in *Shade* received "*very close* to the same number of parenting time days under the judgment of divorce and under the modified parenting time order. Thus, the modified parenting time did not affect the established custodial environment." *Shade*, 291 Mich App at 27 n 3 (emphasis added). In contrast, in *Lieberman*, this Court determined that *Vodvarka* applied to a motion to significantly modify parenting time, explaining:

> The parties' judgment of divorce awarded legal custody to both parents, but physical custody of the children to defendant; the judgment did not award the parties joint physical custody. As noted, an award of physical custody primarily or solely to one party typically entails a situation in which the children receive

> physical care and supervision primarily from the parent awarded that status. That is the case here. In accordance with the parties' agreement that defendant would be the children's primary physical custodian, the children in the case at bar have resided with and been cared for and supervised primarily by defendant since entry of the judgment of divorce. Thus, it defies the plain meaning of the word "primary," as well as rudimentary mathematics, to say that reducing the primary custodian's overnights with the children from 225, or nearly 62% of the calendar year, to 140, or approximately 38% of the calendar year, does not change primary physical custody. By proposing a reduction in the number of overnights the children spend with defendant to a distinct minority of the year, plaintiff was proposing a change in custody, regardless of the label he gave his motion. [*Lieberman*, 319 Mich App at 85-86.]

C. ANALYSIS

With these principles in mind, we turn to plaintiff's motion in the current case. Under the divorce judgment, defendant received sole physical and legal custody. Plaintiff received supervised parenting time at Catholic Social Services that consisted of two, one-hour visits each week. In seeking to alter these arrangements, plaintiff labeled her motion as a request to "move parenting time" away from Catholic Social Services, and on appeal, she attempts to characterize her motion simply as a request for unsupervised parenting time at her home. She maintains that supervision and the location of parenting time are merely conditions on parenting time, and that modification of these conditions should be scrutinized under *Kaeb*. Alternatively, plaintiff asserts that her motion is, at most, one to modify parenting time, which should be reviewed under *Shade*.

Notwithstanding the label on plaintiff's motion, a reading of the document as a whole shows that she clearly sought—at a minimum—to change parenting time, not merely conditions on parenting time. That is, plaintiff did *not* simply ask for unsupervised parenting time at her home for two hours a week. Instead, plaintiff expressly sought "overnight, unsupervised parenting time," and her prayer for relief asked for "unsupervised parenting time every other weekend and every Monday and Wednesday from 8:00 am to 8:00 pm." She also sought the adoption of a holiday parenting-time schedule to afford her additional time over the holidays. Contrary to her representations on appeal, plaintiff plainly sought an increase in parenting time, both in frequency and duration. Considering the gravamen of plaintiff's motion and the expansive increase in parenting time that she requested, her suggestion that she only sought to change a *condition* of parenting time lacks merit, and *Kaeb* clearly does not apply.

The trial court determined that plaintiff's sought-after changes were so substantial that they would affect the established custodial environment, and therefore *Vodvarka* applied. There is support for this determination considering plaintiff's very restricted parenting time under the current arrangement and defendant's *sole* physical custody under the existing custody order. Under the current custody arrangement, plaintiff has zero overnight visits and defendant has 365 overnights. Plaintiff receives two hours of parenting time a week, for a total of 104 *hours* a year: the equivalent of only 4.33 days a year. In moving to modify parenting time, plaintiff sought overnight visits every other weekend, amounting to 52 overnight visits a year, plus additional time during the holidays. And she sought two, 12-hour weekday visits, amounting to an additional 1,248 hours—or another 52 days—each year. Comparing plaintiff's extremely restricted time

under the current arrangement and defendant's sole, 365-overnights-a-year, physical custody of the children, plaintiff's request would significantly increase both the duration and frequency of her parenting time. Far from leaving defendant's sole custody "essentially intact," this change would significantly reduce defendant's number of overnights with the children each year; it would cut his weekend time with the children in half; and it would significantly reduce his time with the children during the work week and the year as a whole. See *Lieberman*, 319 Mich App at 89-90. On these facts, when plaintiff sought a substantial change to the *sole* physical custody that currently exists, we can see why the trial court reviewed plaintiff's motion under *Vodvarka*. Cf. *id*. at 87 n 9 ("In no world can a change from 225 overnights to 140 overnights be considered simply a change of parenting time and not a change in physical custody when the parties do not share joint physical custody."); *id*. (noting a change of 52 or 85 overnights would likely affect the established custodial environment even when the parties already share joint physical custody).

We need not decide, however, whether the trial court correctly determined that *Vodvarka* applies because we conclude that, regardless of whether the trial court should have applied *Shade* instead of *Vodvarka*,[7] the error would not warrant relief on appeal. See MCR 2.613(A). When denying plaintiff's motion—following a four-day evidentiary hearing—the trial court reached the factual conclusion that plaintiff's "behavior has actually *worsened* over time." As detailed later, this factual determination was not against the great weight of the evidence. In light of this factual finding, it is clear that, regardless of the applicable standard, plaintiff failed to make a showing of proper cause or change in circumstances. In other words, this is not a case in which there was some change favorable to plaintiff's position and a question whether plaintiff might satisfy *Shade* even if she could not satisfy *Vodvarka*. Instead, the trial court concluded that plaintiff's conduct *worsened*, making it inconceivable that plaintiff could show proper cause or a change in circumstances warranting an increase in her parenting time under *Shade* or any other standard. Accordingly, any error in the trial court's choice of the *Vodvarka* standard rather than *Shade* does not warrant relief on appeal. See *State Mut Ins Co v Russell*, 185 Mich App 521, 528; 462 NW2d 785 (1990) (concluding that use of incorrect standard does not require reversal when "the right result is reached, but for the wrong reason"). See also *Newcomer v Fisher*, 346 Mich 396, 398; 78 NW2d 144 (1956) (recognizing that reversal is not warranted for a "trial court's erroneous statements of law unnecessary to decision").

Under the divorce judgment, plaintiff received supervised parenting time in light of her mental-health problems. This stipulation was not simply because she had mental-health diagnoses, but because her *conduct* included manipulation and alienating behavior. Plaintiff freely acknowledged the existence of these mental-health problems and behaviors when entering into the consent judgment of divorce, which provided that plaintiff "has a serious personality disorder, and serious problems with manipulation that will require much psychotherapeutic effort." With regard to the personality disorder in question, Dr. Ludolph diagnosed plaintiff with borderline personality disorder; and, although not diagnosing a disorder, Dr. Benedek identified borderline personality traits in plaintiff. Under the divorce judgment, plaintiff also agreed to a treatment plan. The treatment directives in the divorce judgment specified that the long-term goal was for plaintiff to

[7] Only *Vodvarka* or *Shade* could have applied in light of our earlier determination that *Kaeb* was clearly inapplicable.

"be able to present believable evidence that her mental health is being properly treated and that *she is not endangering the children by the kind of alienating behavior* that Defendant reasonably fears. *Fabricated ideas of child abuse* are dangerous not only to Defendant, but to the minor children's burgeoning self-concept." (Emphasis added.) The fabricated ideas of child abuse relate to the incident in 2017 during the divorce proceedings when plaintiff accused defendant of physically and sexually abusing BK, a claim that was unsubstantiated, despite a police investigation and a forensic interview of BK. Indeed, in contrast to her contentions of child abuse, plaintiff later admitted that the children were in fact "safe" with defendant. It was against this backdrop of plaintiff's manipulation and alienating behavior that the divorce judgment provided plaintiff with limited, supervised parenting time and imposed treatment obligations with the goal that plaintiff would stop "endangering the children" with "alienating behavior."

Generally, this Court has recognized that "there is no reasonable dispute that high-conflict custody disputes frequently involve acts by one parent designed to obstruct or sabotage the opposing parent's relationship with the child." *Martin v Martin*, 331 Mich App 224, 238; 952 NW2d 530 (2020). And, in this case in particular, all the experts—including plaintiff's expert, Dr. Saragoza—agreed that false allegations of abuse were harmful to children. Moreover, this kind of alienating behavior toward another parent can provide sound reason for limiting a parent to supervised parenting time. See, e.g., *id*. at 537-541.

In moving to modify the supervised parenting-time arrangement in place to protect against alienating behavior, plaintiff maintained that she should be granted more extensive, unsupervised and overnight parenting time because she did not have borderline personality disorder, either because Dr. Ludolph misdiagnosed her or because plaintiff had since recovered. In support, plaintiff relied on the opinion of Scotton, who opined that borderline personality disorder was not a correct diagnosis initially or that plaintiff was in remission. Plaintiff also presented testimony from her therapist, Dr. Melody Vaitkus, and an expert whom plaintiff hired to evaluate her, Dr. Saragoza, both of whom agreed that plaintiff did not have borderline personality disorder.

Although there were opinions that plaintiff's mental-health diagnosis at the time of the divorce was no longer valid (or had never been correct), the trial court concluded that plaintiff had not shown proper cause or a change in circumstances because, regardless of the diagnosis, her concerning behavior had worsened. The trial court looked at plaintiff's "actual observed conduct" and found that plaintiff's "behavior has actually worsened over time." The court concluded that "the concerns in the Benedek/Ludolph reports regarding Plaintiff's deceitful/manipulative/alienating behavior and her externalizing blame has not changed and is not only consistent with pre-[judgment of divorce] behavior, but it is now being directed at the children." In support of this conclusion, the trial court detailed over the course of 23 pages plaintiff's ongoing pattern of making unsubstantiated allegations against defendant, a pattern that continued after the entry of the divorce judgment and despite plaintiff's claims that the risks of manipulative and alienating behavior, identified in the divorce judgment, no longer existed.

For example, as detailed by the trial court, in 2019, plaintiff sought a PPO against defendant, asserting that she had recordings of him making abusive phone calls. When he denied the occurrence of any phone calls and asked for an offer of proof, i.e., the recordings, plaintiff instead dismissed the PPO request. The trial court viewed plaintiff's dismissal of the PPO request and her failure, in the PPO proceedings or in the current proceedings, to produce these "recordings"

as evidence that plaintiff's allegations lacked merit. On appeal, plaintiff contends that she offered other reasons for dismissing the PPO request, such as financial concerns, and that the trial court should have accepted these explanations. However, the trial court's analysis thoroughly and thoughtfully supported its findings regarding the PPO and the significance of plaintiff's abandonment of her request, particularly in light of defendant's request for an offer of proof. And, to the extent the court's findings were based on its assessment of the parties' credibility, this Court defers to the trial court's determinations in that regard given the lower court's "superior position" to make such judgments. *Martin*, 331 Mich App at 239.

In addition to the fabricated PPO request, the trial court noted that plaintiff has continued to vilify defendant in various forums, including Facebook postings, a letter to the State Bar Commissioner, and a complaint to defendant's employer. Plaintiff contended in the trial court that she was not responsible for the complaint to defendant's employer, but the trial court did not credit her denials given that the letter contained private information that must have come from plaintiff. Again, plaintiff's credibility was a question for the trial court. See *id*. Plaintiff more generally faults the trial court for viewing plaintiff's ongoing reports and complaints against defendant as an attempt to vilify him when, according to plaintiff's version of events, she is a victim of domestic violence and should not be criticized for vilifying her abuser. Again, plaintiff's credibility was a question for the trial court. See *id*. And there were sound reasons for questioning plaintiff's credibility, including her false allegations of child abuse in 2017, her practice of making complaints against defendant only to withdraw those complaints when pressed for evidence (e.g., her recent failure to substantiate her PPO allegations), the unreasoned nature of some of her allegations such as her assertion that defendant broke into her house to steal her passport (which she later found in her house), and her nonsensical allegations against persons other than defendant (such as her accusations that Catholic Services had somehow violated her rights by supervising her parenting-time visits pursuant to a court order). Contrary to plaintiff's arguments, the trial court was not required to simply accept plaintiff's version of events, and the trial court's conclusion that plaintiff was vilifying defendant was not against the great weight of the evidence.

Plaintiff also argues on appeal that her campaign to vilify defendant does not affect her ability to parent and should have no bearing on her parenting time. However, plaintiff's argument ignores the significance of the pattern of plaintiff's behavior, which, much like her behavior at the time of the divorce, shows an ongoing effort to publicly malign defendant. To suggest that such attacks on defendant will not impact the children or their relationship with defendant, particularly as they continue to age, is simply disingenuous.

Moreover, plaintiff's assertions that her conduct is limited to attacks on defendant that will not directly affect the children ignores the trial court's factual findings and the record in this case, which show that plaintiff's ongoing pattern of allegations toward defendant does in fact involve the children. Most notably, during her supervised parenting time after the entry of the divorce judgment, plaintiff attempted to photograph SK's genital area to support assertions that the child had sexually transmitted genital warts,[8] which prompted another child-abuse complaint against

[8] We again note that, in actuality, SK had a common childhood condition called "molluscum contagiosum."

defendant. Plaintiff maintains that it was Catholic Services and not plaintiff who made the report. But her argument ignores the testimony from Paige Neal, an employee with Catholic Social Services who testified at the evidentiary hearing that she made the report after plaintiff "brought concerns up to" Neal. And even more notably, it was plaintiff—not anyone at Catholic Services—who attempted to photograph the child's genitals. In fact, Catholic Services intervened to prevent this inappropriate conduct by plaintiff. The photography incident—which occurred while plaintiff was being supervised—is a strong indication that plaintiff's alienating behavior had not ceased.

Aside from the photography incident, the trial court noted other concerning incidents during plaintiff's parenting time. For example, the court noted that plaintiff confused the children by telling them that SK's birth name was actually "Shirley," which was plaintiff's mother's name and what plaintiff wanted to name the child. The choice of SK's name was in fact a matter of dispute between the parties which they litigated during their divorce. There is no sound reason for presenting the children with confusing information arising from the parties' contentious litigation.

Additionally, with regard to parenting time, the trial court also emphasized plaintiff's ongoing failure to help the children transition at the end of the visits. According to Neal, it was because of plaintiff's behavior—and comments from plaintiff about how plaintiff was being made to "leave now"—that transitions were so difficult, particularly for BK. Plaintiff's *ongoing* unwillingness to ease the children's transition further illustrated her uncooperative and alienating behaviors.

On one occasion, plaintiff also gave the children Christmas gifts but then refused to allow the children to take the gifts home with them, which upset the children and prompted Catholic Services to develop a new policy related to gift-gifting to prevent this type of occurrence. Plaintiff explained her behavior by stating that she wanted to make sure the children played with the gifts more than once and that she wanted the gifts to be available for a possible video conference with her family. The decision to give small children gifts and then take them back seems rather imprudent or, to use the trial court's words, "nonsensical." But more troublingly, as noted by the trial court, plaintiff's explanation for the incident was "all about" plaintiff. Her conduct suggests that she was perfectly willing to upset the children to get her own way.

Also contrary to plaintiff's assertions that all has been well with her parenting time, plaintiff has engaged in combative and threatening behavior toward workers at Catholic Services, as detailed by the trial court. The trial court summarized plaintiff's conduct as follows:

> Plaintiff's outburst reads as being accusatory, combative, personal, and threatening; Plaintiff goes well beyond 'venting.' Plaintiff refers to "a scumbag on the agency's board", argues that she is under "surveillance" and goads [Catholic Services] into calling the police. Plaintiff's final solution for the "scumbag who is using DOJ dollars to keep them under surveillance" is to have the minor children removed by the police "kicking and screaming", so it can be put on the front page of the Detroit Free Press.

As with her attacks on defendant, plaintiff contends that her various clashes with employees at Catholic Services, which were not in the children's presence, do not affect the children. However, in actuality, her threats toward personnel at Catholic Services—and her stated willingness to have

the children removed by police "kicking and screaming," and put on the front page of a newspaper, simply to make a point about what she perceives as the unfairness of her parenting-time arrangement—further exemplify her manipulative behavior, including a willingness to involve the children in that manipulation. Overall, the trial court's determination that plaintiff's conduct continued to demonstrate manipulative behavior—and that this behavior involved the children—was not against the great weight of the evidence.

Rather than focus on her actual conduct, plaintiff focuses the majority of her argument on the experts and the opinions from Scotton, Dr. Saragoza, and Dr. Vaitkus to the effect that plaintiff never had—or has fully recovered from—borderline personality disorder. Again, questions of credibility were for the trial court. The trial court noted that these experts—presented by plaintiff to support her position—were unaware of much of her conduct, and for this reason, the trial court found their opinions to be of little help. Moreover, the trial court also emphasized that Dr. Saragoza in fact concurred in the observation of plaintiff's manipulative and deceitful behavior.[9] As detailed by the trial court, Dr. Saragoza's opinions of plaintiff's manipulative and deceitful behavior coincided with the concerning traits identified by Dr. Benedek and in the divorce judgment, and in fact supported the trial court's view of plaintiff's conduct. Indeed, regardless of plaintiff's diagnosis, plaintiff's *objective conduct*, as detailed by the trial court, showed an ongoing pattern of alienating behavior that the supervised parenting-time arrangement sought to protect against.

Plaintiff also attacks Dr. Ludolph's credibility on appeal with assertions that the Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing (LARA) investigated Dr. Ludolph and filed an administrative complaint related to her unprofessional conduct. However, any findings by LARA were not part of the record in the trial court, and they are not part of the record on appeal. See MCR 7.210(A) ("Appeals to the Court of Appeals are heard on the original record."). Whatever findings LARA made with regard to Dr. Ludolph's conduct, if any, were reached after the conclusion of the proceedings in the trial court.[10] Collateral LARA proceedings, particularly those concluding after the trial court reached its decision in this case, do not demonstrate that the trial court's findings were against the great weight of the evidence. Moreover, plaintiff's attacks on Dr. Ludolph do not account for the fact that Dr. Benedek (and to a lesser extent Dr. Saragoza) agreed with many of Dr. Ludolph's findings or the fact that, in signing the consent judgment, plaintiff herself acknowledged the existence of her mental-health problems at the time the divorce judgment entered.[11] Further, and perhaps most

[9] As an example, Dr. Saragoza noted an instance when plaintiff sent a letter to defendant's therapist and signed her attorney's name.

[10] Indeed, on the basis of the subsequent LARA proceedings plaintiff has since filed a new motion to modify custody and parenting time in the trial court.

[11] A consent judgment does not necessarily bind parties to facts that were originally at issue when the action was settled. *American Mut Liability Ins Co v Mich Mut Liability Co*, 64 Mich App 315, 327; 235 NW2d 769 (1975). However, "[i]t goes without saying that if the parties intend that the settlement is to bind them on certain issues of fact," those intentions as to the facts, as reflected in the consent judgment, will be binding. *Id*. at 327 n 13. The consent judgment in this case is not

importantly, the trial court's findings ultimately focused on plaintiff's observable *conduct*, not simply her diagnosis. A particular diagnosis, or lack thereof, does not necessarily make a parent inherently fit or unfit to see his or her children. In this case it was—and remains—plaintiff's manipulative and alienating behavior, including her fabricated allegations of child abuse against defendant, that warranted the supervised parenting-time arrangement provided in the judgment of divorce. See *Martin*, 331 Mich App at 537-541.

In sum, the facts found by the trial court show an ongoing pattern by plaintiff, before and after the entry of the divorce judgment, of manipulative and alienating behavior that was designed to harm defendant and his relationship with the children. Regardless of plaintiff's assertions about her diagnosis, this pattern has not changed, and the trial court's conclusion that plaintiff's conduct had "worsened" since entry of the divorce judgment was not against the great weight of the evidence. Given plaintiff's worsening behavior, the trial court did not err by concluding that she had not shown proper cause or a change in circumstances, and the trial court did not err by denying her motion to modify parenting time.

III. DOCKET NO. 356709—CHILD SUPPORT

In Docket No. 356709, plaintiff argues that the trial court erred by retroactively modifying child support. Plaintiff also maintains that the trial court erred, and showed a willingness to "bend the law," by concluding that student-loan repayment assistance that defendant receives from his employer did not constitute a "perk" of employment and income for purposes of calculating child support. Although we agree that the trial court erred by retroactively modifying child support to January 2018, we decline to address plaintiff's "perk" argument.

A. STANDARD OF REVIEW

The decision whether to apply a modification to a child support order retroactively is reviewed for an abuse of discretion. *Clarke v Clarke*, 297 Mich App 172, 187; 823 NW2d 318 (2012). However, whether the trial court properly operated within the appropriate statutory framework when making a child support determination presents a question of law that this Court reviews de novo. *Peterson*, 272 Mich App at 516. Any factual findings related to the trial court's child support decisions are reviewed for clear error. *Borowsky v Borowsky*, 273 Mich App 666, 672; 733 NW2d 71 (2007).

B. RETROACTIVE MODIFICATION

"It is well settled that children have the right to receive financial support from their parents and that trial courts may enforce that right by ordering parents to pay child support." *Id*. at 672-673. Trial courts are presumptively required to calculate child support following the Michigan Child Support Formula (MCSF).[12] *Ewald v Ewald*, 292 Mich App 706, 715; 810 NW2d 396

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simply a settlement without a resolution of facts. The parties plainly agreed to the facts as they existed at the time of the divorce judgment.

[12] A new version of the MCSF became effective January 1, 2021. In this case, we cite to the 2017 MCSF, which was in effect at the time of the trial court's decision.

(2011). Under MCL 552.603(2), once entered, a support order may not be modified retroactively except in specific circumstances:

> Except as otherwise provided in this section, a support order that is part of a judgment or is an order in a domestic relations matter is a judgment on and after the date the support amount is due as prescribed in [MCL 552.605c], with the full force, effect, and attributes of a judgment of this state, and is not, on and after the date it is due, subject to retroactive modification. No additional action is necessary to reduce support to a final judgment. Retroactive modification of a support payment due under a support order is permissible with respect to a period during which there is pending a petition for modification, but only from the date that notice of the petition was given to the payer or recipient of support. [MCL 552.603(2).]

MCL 552.603(2) permits retroactive modification to the "date that notice" of a petition to modify was provided. With court approval, parties may also agree to retroactively modify a support order. See MCL 552.603(5). Most significant to this case, an additional exception to the general prohibition on retroactive modification is set forth in MCL 552.603b, which states:

> If an individual who is required by the court to report his or her income to the court or the office of the friend of the court knowingly and intentionally fails to report, refuses to report, or knowingly misrepresents that income, after notice and an opportunity for a hearing, the court may retroactively correct the amount of support.

In this case, under the original child support order, plaintiff paid $109 a month in child support while she was unemployed and working on her education. In calculating plaintiff's child support obligation, the Friend of the Court (FOC) imputed income to plaintiff in the amount of $8.90 an hour for 30 hours of work a week, i.e., $13,350 a year. In January 2018, plaintiff obtained full-time employment, earning a salary of $43,195, which was in addition to plaintiff's other sources of income, such as rental income. In the same month, plaintiff informed the FOC of her new employer, but not her new income. On the form plaintiff gave to the FOC, plaintiff handwrote a message wrongly informing the FOC that there was a no-contact order in place between her and defendant, and asking the FOC not to inform defendant or his attorney of her new employment. In January 2020, defendant sought a retroactive modification of child support to the time of plaintiff's employment in January 2018, asserting that retroactive modification was warranted given plaintiff's failure to disclose her change in income to the FOC and her express attempt to prevent defendant and his attorney from learning of her change in employment status.

The trial court granted defendant's request for retroactive modification, but its findings do not support a retroactive modification of child support under the statutory framework. In relevant part, the trial court's order states:

> 1. No changes of circumstance occurred prior to 2018 requiring a modification of child support. Plaintiff providing proof of employment should have triggered an automatic review of child support by the FOC.

> 2. There is not an order in place that would require FOC to not disclose to either party information provided by the other. The parties are incapable of effectively communicating with each other and are required to communicate via OurFamilyWizard regarding the children.
>
> 3. Plaintiff's cost of living versus income seem questionable; however, there was no specific evidence shown for this Court to impute income to Plaintiff, or that Plaintiff has committed a fraud on the Court.

With regard to the applicability of MCL 552.603b and plaintiff's failure to report income, the trial court's only germane finding appears to be the court's conclusion that plaintiff had *not* "committed a fraud on the Court." In this regard, plaintiff testified at the hearing that she was unaware of an obligation to disclose her updated income information, and her credibility on this point was a question for the trial court. See *Martin*, 331 Mich App at 239. The trial court's findings are rather cursory, and the trial court could have done a better job addressing the specific statutory language and detailing its findings related to plaintiff's failure to disclose her income. Nevertheless, it appears the trial court was aware of the issues in the case, and the trial court's shorthand conclusion that plaintiff's conduct did not rise to the level of "fraud" would seem to encompass the conclusion that plaintiff did not knowingly and intentionally fail to report income, refuse to report income, or knowingly misrepresent her income. See generally MCR 2.517(A)(2) ("Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without over elaboration of detail or particularization of facts."); *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995) (concluding that fact findings were sufficient when "it appears that the trial court was aware of the issues in the case and correctly applied the law, and where appellate review would not be facilitated by requiring further explanation"). Accordingly, given the trial court's factual findings, MCL 552.603b does not apply, and the retroactive modification of child support could not be justified on this basis.

Rather than justify retroactive modification under MCL 552.603b, the trial court appeared to rely primarily on two considerations when retroactively modifying support: (1) plaintiff's providing misleading information to the FOC with regard to the existence of a no-contact order and (2) the FOC's failure to conduct a review of child support when informed of plaintiff's new employment. As to the first consideration, the trial court did not err by concluding that there was not a no-contact order in place. Contrary to plaintiff's representations to the FOC (and others, such as the State Bar Commissioner), this is not a domestic violence case involving a "no-contact" order. As detailed by the trial court, the only order regarding communication does not prohibit communication; it merely requires the parties to communicate using OurFamilyWizard. The order does not prohibit defendant from contacting plaintiff, and it certainly does not provide plaintiff with grounds for concealing her employment information relevant to a child support determination. Moreover, plaintiff's attempt to prevent defendant and his attorney from learning of her employment is certainly troubling as it would hinder defendant's ability to petition the court to modify child support or to seek the FOC's review of child support as he was entitled to do under MCL 552.517(1)(b).

With that said, plaintiff's misrepresentations regarding the existence of a no-contact order do not provide grounds for retroactively modifying child support. Again, MCL 552.603b provides the grounds for retroactive modification, and it says nothing that would necessarily apply to a party

misrepresenting a no-contact order to the FOC. It is the wording of the statute—not consideration of other equitable considerations—that determines whether child support may be modified retroactively. See *Waple v Waple*, 179 Mich App 673, 677; 446 NW2d 536 (1989). See also *Clarke*, 297 Mich App at 187 (concluding that consideration of "equitable circumstances" and "flexible interpretation" of statute were not permissible when considering whether a statute authorized retroactive modification of child support). Accordingly, the misinformation that plaintiff provided the FOC regarding a no-contact order does not justify retroactive modification of child support.

As for the trial court's consideration that the FOC failed to conduct a review of child support that should have been triggered when plaintiff reported her new employment, even if the consideration was legally correct, it would still not warrant the retroactive modification of child support. There is nothing in the statutory scheme that allows for retroactive modification of child support on the basis of an error by the FOC. Again, MCL 552.603b only applies if plaintiff intentionally or knowingly fails to report, refuses to report, or knowingly misrepresents income.

Overall, the trial court seemingly rejected the proposition that plaintiff intentionally or knowingly failed to report, refused to report, or knowingly misrepresented her income when it concluded that plaintiff had not engaged in fraud. Thus, under the trial court's findings, there is no basis for retroactive modification under MCL 552.603b. Instead, under MCL 552.603(2), the modification of child support should be effective as of the date that plaintiff received notice of defendant's petition to modify support in January 2020. Accordingly, we vacate the modification retroactive to January 2018 and we order that the modification be imposed retroactive only to January 2020.

C. STUDENT-LOAN REPAYMENT ASSISTANCE

Plaintiff's argument regarding student-loan assistance is outside the scope of her appeal in Docket No. 356709. In granting plaintiff's application for leave to appeal, we unequivocally limited her appeal "to the issues raised in the application and supporting brief." See *Kuebler v Kuebler*, unpublished order of the Court of Appeals, entered June 9, 2021 (Docket No. 356709), citing MCR 7.205(E)(5). Plaintiff admits in her filings on appeal that the issue was not raised in her application, but in her reply to defendant's answer to plaintiff's application. Plainly, plaintiff's reply to defendant's answer was not her "application and supporting brief." Moreover, a reply brief is limited to rebuttal; it is not appropriate to use a reply brief to raise new issues. See MCR 7.205(D); MCR 7.212(G); *Blazer Foods, Inc v Rest Props, Inc*, 259 Mich App 241, 252; 673 NW2d 805 (2003). Accordingly, we decline to review this issue.

IV. DOCKET NOS. 354327, 356641, AND 355934—SANCTIONS AND ATTORNEY FEES

Finally, in Docket Nos. 354327 and 356641, plaintiff argues that the trial court erred by denying her request for attorney fees under MCR 3.206(D) and by denying her request for

sanctions under MCR 1.109(E).[13] Additionally, in Docket No. 355934, plaintiff contends that the trial court erred by awarding attorney fees and sanctions to defendant, and plaintiff challenges particular expenses awarded to defendant as being "excessive." Although we find no error in the trial court's denial of plaintiff's requests for sanctions and attorney fees, we vacate the trial court's award to defendant.

A. STANDARD OF REVIEW

A trial court's decision to grant or deny attorney fees is reviewed for an abuse of discretion. *Richards v Richards*, 310 Mich App 683, 699; 874 NW2d 704 (2015). "An abuse of discretion occurs when the result falls outside the range of principled outcomes." *Id*. Any underlying findings of fact are reviewed for clear error. *Id*. at 700. Likewise, a trial court's decision whether to impose sanctions is reviewed for clear error. See *Kelsey v Lint*, 322 Mich App 364, 379; 912 NW2d 862 (2017). "A decision is clearly erroneous when, although there may be evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *Id*. (quotation marks and citation omitted).

B. PLAINTIFF'S REQUEST FOR ATTORNEY FEES UNDER MCR 3.206(D)

In Docket Nos. 354327 and 356641, plaintiff maintains that she is entitled to attorney fees under MCR 3.206 because she is unable to pay and defendant is able to pay. This argument lacks merit. In domestic-relations cases, attorney fees are not recoverable as of right, but they may be awarded when a party needs financial assistance to prosecute or defend the suit. *Reed*, 265 Mich App at 164. See also MCL 552.13. Relevant to plaintiff's argument, MCR 3.206(D), states:

> (1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding.
>
> (2) A party who requests attorney fees and expenses must allege facts sufficient to show that:
>
> (a) the party is unable to bear the expense of the action, including the expense of engaging in discovery appropriate for the matter, and that the other party is able to pay . . . .

[13] On appeal, defendant argues that, to the extent plaintiff appeals the trial court's July 9, 2020 order related to attorney fees and sanctions, she lacks an appeal of right under MCR 7.203(A) because she was not aggrieved by the trial court's denial of her motions without prejudice. Defendant previously moved for dismissal on this basis, and we denied his motion. See *Kuebler v Kuebler*, unpublished order of the Court of Appeals, entered May 3, 2021 (Docket No. 354327). Our denial of defendant's motion to dismiss constitutes the law of the case for purposes of this jurisdictional issue. See *Bennett v Detroit Police Chief*, 274 Mich App 307, 311 n 1; 732 NW2d 164 (2007). And in any event, plaintiff was aggrieved within the meaning of MCR 7.203(A).

Under this rule, "[t]he party requesting the attorney fees has the burden of showing facts sufficient to justify the award." *Woodington v Shokoohi*, 288 Mich App 352, 370; 792 NW2d 76 (2010). Whether attorney fees are warranted depends on "the specific financial situations of the parties and the equities involved." *Loutts v Loutts*, 309 Mich App 203, 218; 871 NW2d 298 (2015) (quotation marks and citations omitted).

In this case, plaintiff has fallen far short of showing facts sufficient to justify an award of attorney fees under MCR 3.206(D), and the trial court did not abuse its discretion by denying plaintiff's motion. First, plaintiff failed to submit documentation regarding her attorney fees or to even outline the details of her attorney fees, including an hourly rate, number of hours worked, and the experience level of her attorney. See *Skaates v Kayser*, 333 Mich App 61, 85; 959 NW2d 33 (2020). Without sufficient details of the attorney fees in question, plaintiff has failed to submit sufficient facts to justify an award of attorney fees under MCR 3.206(D). See *Skaates*, 333 Mich App at 85.

Second, plaintiff has not shown that she lacks the ability to pay and that defendant has the ability to pay her attorney fees. To support her claim for attorney fees under MCR 3.206(D), plaintiff relies exclusively on "wages" the parties received in 2019, asserting that, in 2019, plaintiff reported wages of $48,907, and defendant reported wages of $163,097. Plaintiff maintains that she owes more in attorney fees than she receives in annual "wages," and she seems to suggest that this fact alone demonstrates that she cannot pay her attorney fees. However, there is no bright-line rule that "when a party's attorney fees exceed that party's yearly income, it is dispositive of the party's ability to pay in all cases." *Loutts*, 309 Mich App at 216-218. Instead, in each case, the propriety of fees under MCR 3.206(D) depends on "the specific financial situations of the parties and the equities involved." *Id*. at 218 (quotation marks and citations omitted).

In this case, in focusing on "wages" for 2019, plaintiff largely ignores the parties' other significant financial circumstances and the equities involved. For example, plaintiff provides no account of her assets or other income, despite the fact that it is clear from the record that she owns rental property and receives rental income. Indeed, the trial court calculated plaintiff's income for 2019 at $53,532, plainly demonstrating that plaintiff's "wages" are not her sole means of support. Absent (1) an explanation of her assets and other income, and (2) evidence that payment of her attorney fees will involve invading assets on which plaintiff relies for support, there is no basis to conclude that plaintiff lacks the ability to pay her attorney fees. See *Woodington*, 288 Mich App at 370 ("It is well settled that a party should not be required to invade assets to satisfy attorney fees *when the party is relying on the same assets for support*.") (emphasis added); see also *Nalevayko v Nalevayko*, 198 Mich App 163, 165; 497 NW2d 533 (1993) (denying a wife's request for attorney fees when, although the wife did not "enjoy the earning power of the husband," she had gainful employment and real estate from which her attorney fees could be paid).

Further, in focusing solely on the parties' reported "wages," plaintiff has similarly failed to establish that defendant has the ability to pay her attorney fees. The "wages" cited by plaintiff are apparently gross earnings, which do not account for the taxes or other deductions from defendant's income. Indeed, the trial court calculated defendant's 2019 income at $94,771.75 as compared to plaintiff's income of $53,532 in 2019, meaning that the income disparity is not nearly so great as plaintiff suggests. Moreover, although plaintiff insists that defendant's greater "wages" show that he has the ability pay her attorney fees, she ignores the demands on his income, including

most notably the fact that he has provided nearly the sole means for the children's support. Accord *Heike v Heike*, 198 Mich App 289, 294; 497 NW2d 220 (1993) (concluding that attorney fees were not appropriate when, although the husband earned nearly twice what the wife earned, the husband had assumed responsibility for considerably more of the marital debt). Plaintiff has historically paid defendant only $109 a month in child support, and between January 2018 and January 2020, while the current litigation for which she now seeks attorney fees was ongoing, she continued to make this low contribution, even after she obtained full-time employment that should have increased her monthly obligation to closer to $1,000 a month.[14] Defendant in contrast has had nearly sole responsibility for the children's financial support, including childcare expenses, medical expenses, housing, food, clothing, etc. See *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993) (noting, in context of the attorney-fees discussion, a party's need to use assets for her support *and* the support of her children). Nothing in the equities of the parties' financial circumstances supports plaintiff's claim for attorney fees under MCR 3.206(D). See *Loutts*, 309 Mich App at 218.

Overall, plaintiff's motion for attorney fees under MCR 3.206(D) failed to meaningfully address the parties' financial circumstances or the other equities involved. She also failed to adequately outline her attorney fees as necessary to justify an attorney-fees award. See *Skaates*, 333 Mich App at 85. And she ultimately failed to meet her burden of sufficiently alleging facts to show that she lacked the ability to pay and that defendant had the ability to pay. Accordingly, the trial court did not abuse its discretion by denying plaintiff's motion for attorney fees under MCR 3.206(D).

C. PLAINTIFF'S REQUEST FOR SANCTIONS UNDER MCR 1.109(E)

Also in Docket No. 354327, plaintiff contends that the trial court erred by denying her requests for sanctions under MCR 1.109(E) because defendant filed documents that were not well-grounded in fact and law and because the documents were filed for an improper purpose, such as to harass or delay. This argument lacks merit.

Sanctions are warranted under MCR 1.109(E) when a party "asserts claims without any reasonable basis in law or fact for those claims" or when "the claims are asserted for an improper purpose." *Robert A Hansen Family Trust v FGH Indus, LLC*, 279 Mich App 468, 486; 760 NW2d 526 (2008). MCR 1.109(E)(5) states:

> The signature of a person filing a document, whether or not represented by an attorney, constitutes a certification by the signer that:
>
> (a) he or she has read the document;

[14] After denying plaintiff's motion for attorney fees, the trial court later retroactively modified plaintiff's child support obligation. However, as we have already explained, the trial court erred by retroactively modifying plaintiff's child support obligation to January 2018, meaning that the fact remains that between January 2018 and January 2020, plaintiff paid minimal child support while defendant otherwise bore the costs of the children's support.

> (b) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
>
> (c) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Signing a document in violation of this rule gives rise to sanctions under MCR 1.109(E)(6), which states:

> If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

This current case has a lengthy and contentious history, and as in many cases, the parties' views and arguments are diametrically opposed. Moreover, the voluminous lower court record is replete with numerous filings by both parties. Contrary to plaintiff's arguments, nothing in this lengthy record evinces any indication that defendant filed documents not well-founded in facts or law or that he filed any documents for an improper purpose. See MCR 1.109(E)(5).

From the voluminous record, plaintiff makes little effort on appeal to pinpoint any sanctionable conduct by defendant. She begins her argument on appeal with a broad assertion that defendant has a "habit" of "inaccurately citing cases" that do not support his positions. Yet she does not brief the details of defendant's "habit," and instead refers this Court to her motion in the trial court for more details. This attempt to incorporate arguments from other documents by reference is not an appropriate way to brief an issue on appeal. See *Ile v Foremost Ins Co*, 293 Mich App 309, 328; 809 NW2d 617 (2011) (recognizing that the appellant's "lazy and sloppy effort" to incorporate other arguments by reference was an "unacceptable" method of briefing an issue), rev'd in part on other grounds 493 Mich 915 (2012). And this insufficient briefing falls far short of demonstrating clear error in the trial court's denial of plaintiff's request for sanctions under MCR 1.109(E).

Aside from her general and undeveloped claims of improper use of citations by defendant, plaintiff identifies only two filings that she asserts warrant sanctions under MCR 1.109(E). First, plaintiff complains about defendant's answer to plaintiff's emergency motion for parenting time in March 2020, which was necessitated by the onset of the COVID-19 pandemic. Plaintiff does not dispute the substantive content of defendant's answer, but instead complains that the answer was untimely because defendant filed it four days after the trial court ruled on plaintiff's motion. Even assuming the document was untimely, MCR 1.109(E) does not provide a basis for imposing monetary sanctions merely because a litigant filed an untimely document. Plaintiff suggests that the only purpose of filing the document must have been to harass plaintiff because the trial court had already ruled on the motion, but the trial court seemingly determined that this was not true, and we see no basis on which to conclude that this determination was clearly erroneous.

Second, plaintiff faults defendant for filing an emergency motion for a protective order after plaintiff wrote the State Bar Commissioner to the effect that defendant was a "batterer" in violation of a no-contact order. Plaintiff's submission to the State Bar Commissioner also included pictures of the children from a Zoom visit. In response to this communication, defendant's motion sought to prevent plaintiff from making additional defamatory statements against him, from engaging in conduct that impairs his employment or professional reputation, and from publishing pictures of the children. In view of plaintiff's conduct, defendant also asked the trial court to reconsider the Zoom order relating to parenting time and, more specifically, to reduce the number of visits.

On appeal, plaintiff contends that defendant's motion was frivolous. However, in her discussion of this motion, she fails to cite any law or to explain why defendant had no legal basis for filing his motion. Instead, plaintiff's argument is entirely fact based. She again reiterates her version of events in which she is a victim of domestic violence, and she maintains that defendant's assertions to the contrary are incorrect. Obviously, plaintiff disagrees with defendant's version of events, but it does not follow that defendant's position was not well-grounded in the facts or the law. See *Bancorp Group, Inc v Mich Conference of Teamsters Welfare Fund*, 231 Mich App 163, 170; 585 NW2d 777 (1998) (concluding sanctions were properly denied when there was a legitimate dispute between the parties). Indeed, the trial court ultimately agreed with many of defendant's assertions, including his contention that there was not a no-contact order in this case. In short, plaintiff disagrees with defendant's version of events, but she has identified nothing in defendant's motion that would warrant sanctions under MCR 1.109(E)(6). The trial court did not clearly err by denying plaintiff's request for sanctions.

D. DEFENDANT'S REQUEST FOR SANCTIONS AND ATTORNEY FEES

Lastly, in Docket No. 355934, we conclude that the trial court erred by sanctioning plaintiff and awarding defendant attorney fees under MCR 3.206(D).

In an order dated December 10, 2020, the trial court awarded defendant attorney fees related to "preparing for and conducting the COA remanded evidentiary hearing," which concerned proper cause and change in circumstances. In a December 16, 2020 order, the trial court explained the reasons for the award as follows:

> The Court has reviewed the attorney's submissions regarding attorney fees and costs; the Court can render its opinion based upon the record developed by the pleadings and argument by counsel. Per MCL 600.2591, the Court finds that Plaintiff's legal position was devoid of arguable legal merit. As stated in the November 10, 2020 opinion of this Court, Plaintiff failed to meet her burden of proof of showing proper cause/change of circumstance. Furthermore, the testimony of Plaintiff's expert, Dr. Saragoza, was profoundly similar to Dr. Benedek's original opinion.
>
> Furthermore, per MCR 3.206(D)(2)(b), Defendant has alleged sufficient facts to show that "the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply, or engaged in discovery practices in violation of these rules."

As to the trial court's first reason, whether a claim is frivolous depends on the facts of the case. *Kitchen v Kitchen*, 465 Mich 654, 662; 641 NW2d 245 (2002). The fact that a party's position is rejected or that the party does not ultimately prevail does not render a position frivolous. *Id*. at 662-663.

In this case, plaintiff sought to modify parenting time on the basis that the circumstances warranting limited supervised parenting time—namely, her mental-health problems and related manipulative and alienating behavior—no longer existed. She supported her position with expert opinions from Scotton, Dr. Saragoza, and Dr. Vaitkus to the effect that she had been misdiagnosed with (or had recovered from) borderline personality disorder. She also offered testimony from Neal, which although not an entirely glowing report of plaintiff's parenting-time visits at Catholic Services, did include some information favorable to plaintiff. While the trial court was free to reject plaintiff's evidence and arguments, and to conclude as a factual matter that plaintiff's behavior had in fact worsened, it does not follow that her motion was frivolous or not well grounded in the facts and law. Cf. *Kaeb*, 309 Mich App at 573 ("Although the trial court was free to reject the opinions and conclude that it was in the children's best interests to continue to impose those conditions, that alone did not warrant finding that the motion was frivolous."). Indeed, the four days of testimony, numerous exhibits, and the trial court's detailed opinion on plaintiff's motion demonstrate that there were legitimate factual questions regarding plaintiff's conduct and mental health, the resolution of which involved weighing conflicting evidence and assessing witnesses' credibility. That plaintiff did not prevail does not render her position frivolous or demonstrate that her position was not well founded in fact or law. See *id*.; see also *Kitchen*, 465 Mich at 662. On the record in this case, the trial court clearly erred by concluding that plaintiff's position was devoid of merit as to warrant sanctions.

The trial court's second rationale—that defendant incurred attorney fees because plaintiff violated a court order or engaged in improper discovery practices—is also clearly erroneous. Relevant to this basis for attorney fees, MCR 3.206(D) states:

> (1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding.
>
> (2) A party who requests attorney fees and expenses must allege facts sufficient to show that:
>
> * * *
>
> (b) the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply, or engaged in discovery practices in violation of these rules.

To award fees under this provision, a trial court must make a factual determination that a party violated a court order, despite having the ability to comply, or violated a discovery rule and that this misconduct caused the other party to incur fees. See *Reed*, 265 Mich App at 165. "The party requesting attorney fees bears the burden of proving they were incurred." *Id*. at 165-166.

In this case, the trial court quoted the language from MCR 3.206(D)(2)(b) but failed to identify with specificity what order plaintiff violated or what discovery practice plaintiff engaged in that violated the court rules. The lack of specificity in the trial court's decision prevents this Court's meaningful review. See *Reed*, 265 Mich App at 165. We note, however, that the trial court had previously remarked on several occasions that plaintiff was in violation of her obligation to obtain treatment required by the divorce judgment.[15] Nevertheless, even assuming that this was the violation the trial court had in mind, the only fees that could be awarded for such a violation were those that defendant incurred as a result of this violation. See *id*. at 165-166. Yet, in this case, the trial court expressly awarded attorney fees related to "preparing for and conducting the COA remanded evidentiary hearing." The evidentiary hearing was necessitated by plaintiff's motion to modify parenting time, not a violation of an order. On this record, defendant failed to meet his burden of proving—and the trial court's findings do not support—that defendant incurred the attorney fees in question as a result of plaintiff's violation of an order. The trial court clearly erred by awarding defendant attorney fees under MCR 3.206(D)(2)(b). Defendant's attorney-fees award is vacated in its entirety.[16]

Affirmed in part and vacated in part. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Michelle M. Rick
/s/ Colleen A. O'Brien
/s/ Thomas C. Cameron

[15] The trial court's lack of specificity in its findings is troubling because there were multiple orders in place regarding treatment (including the more general directives in the divorce judgment and a subsequent order specifically mandating that plaintiff treat with Scotton). To the extent that plaintiff stopped treating with Scotton, there is a question whether it was possible for plaintiff to comply with an order to treat with Scotton when Scotton later indicated her unwillingness to treat plaintiff and Scotton was then discharged from her duties by the trial court. See MCR 3.206(D)(2)(b); see also *Kirby v Mich High Sch Athletic Ass'n*, 459 Mich 23, 40; 585 NW2d 290 (1998) (considering whether it was possible for party to comply with court order).

[16] Given our decision that the trial court erred by awarding sanctions and attorney fees to defendant, we need not address plaintiff's additional, more specific challenges to the amount awarded. We also note that plaintiff argues on appeal for reassignment to a new trial judge. We previously struck that issue from plaintiff's brief as moot because the case has since been reassigned to a new trial judge. *Kuebler v Kuebler*, unpublished order of the Court of Appeals, entered May 3, 2021 (Docket No. 354327). We need not address this issue further.