IN THE UTAH COURT OF APPEALS

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| Chad E. Bennion,<br><br>Petitioner and Appellant,<br><br>v.<br><br>Christine M. Bennion nka Christine M. Hess,<br><br>Respondent and Appellee. | ) | MEMORANDUM DECISION<br>(Not For Official Publication)<br><br>Case No. 20070191-CA<br><br>F I L E D<br>(September 11, 2008)<br><br>2008 UT App 330 |

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Third District, Salt Lake Department, 964903735
The Honorable Glenn K. Iwasaki

Attorneys: Michael J. Thompson, Orem, for Appellant
David R. Ward, Salt Lake City, for Appellee

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Before Judges Greenwood, Bench, and Billings.

GREENWOOD, Presiding Judge:

Chad E. Bennion appeals the trial court's order awarding Christine M. Hess an increase in child support, childcare expenses, and one-half of accrued health insurance premium payments in arrears, and rejecting Bennion's claim that the child support statute and its corresponding guidelines are unconstitutional. We affirm.

"Due to the equitable nature of child support proceedings, we accord substantial deference to the trial court's findings and give it considerable latitude in fashioning support orders. Accordingly, we will not disturb its actions unless there has been an abuse of discretion." Hill v. Hill, 841 P.2d 722, 724 (Utah Ct. App. 1992) (citation omitted). "The challenge to the constitutionality of a statute presents a question of law, which we review for correctness." State v. Weisberg, 2002 UT App 434, ¶ 14, 62 P.3d 457 (internal quotation marks omitted).

Bennion first asserts that there was insufficient evidence to substantiate Hess's claim for childcare expenses. Specifically, Bennion argues that the trial court should not have awarded Hess one-half of childcare expenses because some of the receipts she presented to the trial court were illegible, there

were no years on them, and Hess was required to provide written documentation that the children were in childcare only when Hess was at school or at work. In order to successfully challenge the trial court's ruling on this issue, Bennion is required to marshal the evidence in support of the court's ruling. See Martinez v. Media-Paymaster, 2007 UT 42, ¶ 17, 164 P.3d 384. In other words, he must present all of the evidence the trial court relied on and then demonstrate how the court's conclusion is against the weight of that evidence. See id. When an appellant fails to marshal the evidence, we will generally presume "that the record supports the findings of the trial court." Moon v. Moon, 1999 UT App 12, ¶ 24, 973 P.2d 431 (internal quotation marks omitted).

Although Bennion argues that Hess's receipts were illegible or for services other than childcare, he does not marshal all of the evidence the trial court relied on in ruling on this issue. Except for citing to Hess's testimony, Bennion does not refer specifically to the disputed receipts or to how the trial court erred in concluding that those receipts were for appropriate childcare services. As dictated by the Utah Rules of Civil Procedure, we give "due regard . . . to the [trial court's] opportunity . . . to judge the credibility of the witnesses." Utah R. Civ. P. 52(a). The trial court fastidiously reviewed the evidence on this issue and ultimately found Hess's testimony credible and the receipts adequate. Absent any evidence to the contrary, we conclude that the trial court did not abuse its discretion in ordering partial reimbursement for Hess's childcare expenses.

Bennion also argues that Hess was required, yet failed, to provide written verification that all childcare expenses were incurred while Hess was either at work or at school. In support of his argument, Bennion relies on paragraph 6 of the former couple's divorce decree, as well as Utah Code section 78-45-7.16(2)(a). See Utah Code Ann. § 78-45-7.16(2)(a) (2002). However, neither of these sources state that the parent requesting a share of childcare expenses must provide evidence in writing that the parent was in school or at work when the expenses were accrued. In fact, the only language Bennion points to states that the childcare expenses must be reasonable and that the parent requesting payment shall present evidence in writing of the childcare expenses upon the initial engagement of the provider and thereafter on the request of the other parent. Because we conclude that Hess did all that she was required to by law, we will not reverse the trial court on this issue.[1]

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[1]Furthermore, Bennion presented no evidence indicating Hess was not in school or at work when the childcare expenses were incurred.

Bennion also argues that he should be given a credit for health insurance premiums he paid for the children during 2002 and 2003. During the hearing on this matter, Bennion testified that he provided insurance for the children beginning January 1, 2004, and continuing until the time of trial. Based on this testimony, the trial court awarded Bennion exactly what he requested--an offset for premiums paid from 2004 until the time the trial court issued its order. Bennion provided no evidence at trial or on appeal indicating that he paid insurance premiums for the children prior to 2004. Thus, we reject Bennion's argument that he was entitled to a greater offset.

Bennion further argues that the trial court abused its discretion by refusing to consider his support obligations for his three additional children when fashioning the current support award.[2] He does not contend that the increased child support obligation was otherwise improper. We conclude, however, that this issue is not properly before us because Bennion points to no evidence indicating that he had such an obligation, and he fails to provide any record cites indicating that he brought this matter to the trial court's attention. See generally Utah R. App. P. 24(a)(5)(A); State v. Richins, 2004 UT App 36, ¶ 8, 86 P.3d 759 ("In order to preserve an issue for appeal, it must be raised in a timely fashion, must be specifically raised such that the issue is sufficiently raised to a level of consciousness before the trial court, and must be supported by evidence or relevant legal authority." (internal quotation marks omitted)). Moreover, in his reply brief, Bennion acknowledges that he failed to present any evidence regarding additional support obligations to the trial court, stating that he "could not provide to the trial court specific evidence as to the exact amount of support of his other three (3) children because [his] temporary orders regarding their support were pending." We therefore conclude that this issue was not preserved and decline to address it further.

Bennion also argues that the Uniform Child Support Guidelines are unconstitutional under the Fourth and Fourteenth Amendments to the United States Constitution both on their face and as applied to him. More specifically, Bennion asserts that the trial court's failure to consider his additional support obligations "violates not only his equal protection rights, but the rights of his other three (3) children to have support." Thus, Bennion argues that Utah Code section 78-45-7.7 and the

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[2]Utah Code section 78-45-7 states that when fashioning a support order, the trial court may deviate from the statutory guidelines "after considering all relevant factors, including . . . the responsibilities of the obligor and the obligee for the support of others." Utah Code Ann. § 78-45-7(h) (2002).

corresponding child support guidelines are unconstitutional. See Utah Code Ann. §§ 78-45-7.7, 78-45-7.14 (2002).

Hess first responds that Bennion is not entitled to raise an as applied challenge because he only raised a facial challenge with the trial court. Next, Hess asserts that both claims fail because Bennion has not fully briefed his constitutional arguments. We agree with both arguments. First, none of Bennion's constitutional arguments were preserved. In his appellate brief, Bennion points to one record cite documenting that he presented these constitutional arguments to the trial court. However, that record cite reveals that the only constitutional arguments advanced to the trial court were based on the state constitution, not the federal constitution. In fact, the only record evidence referencing the federal constitution appears in Bennion's proposed findings of fact and conclusions of law to the trial court, which the trial court did not adopt.

Furthermore, even if Bennion's federal constitutional arguments were preserved, we conclude that they are inadequately briefed. "An adequately briefed argument must provide meaningful legal analysis. A brief must go beyond providing conclusory statements and fully identify, analyze, and cite its legal arguments. This analysis requires not just bald citation to authority but development of that authority and reasoned analysis based on that authority." West Jordan City v. Goodman, 2006 UT 27, ¶ 29, 135 P.3d 874 (footnotes and internal quotation marks omitted). Bennion advances general allegations that the statute and support guidelines are unconstitutional, but he fails to provide any legal analysis supporting his assertions. Moreover, his arguments are based entirely on his additional support obligations, which he failed to document with testimony or record evidence at trial. Based on these deficiencies, we conclude that Bennion's constitutional claims do not merit our review.

Finally, Hess argues that this court should award her costs and attorney fees on the grounds that Bennion's appeal is frivolous. Rule 33(a) of the Utah Rules of Appellate Procedure provides that "if th[is] court determines that a motion made or appeal taken under these rules is either frivolous or for delay, it shall award just damages, which may include . . . reasonable attorney fees." Utah R. App. P. 33(a). Rule 33 states that an appeal is frivolous if it "is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law." Id. R. 33(b). We have, on occasion, imposed attorney fees as a sanction after concluding that the appeal at issue was entirely frivolous, see, e.g., Porco v. Porco, 752 P.2d 365, 368-69 (Utah Ct. App. 1988), and we reach the same conclusion in this case. As presented to the trial court, this case involved fairly routine issues extensively

governed by statutory and case law. Under that law, the trial court had considerable discretion to resolve the issues presented. After the trial court entered its rulings, Bennion opted to bring this appeal, thus incurring additional expenses for both parties. All of the arguments Bennion advances on appeal are either unpreserved because Bennion did not raise them before the trial court, inadequately briefed, or based entirely on facts not in evidence. Further, Bennion failed to properly marshal the evidence in support of his claims on appeal. Due to the extensiveness of these deficiencies, we conclude that this appeal is frivolous and, therefore, award Hess attorney fees in accordance with rule 33. Consequently, we affirm and remand to the trial court for a determination of reasonable attorney fees Hess incurred on appeal.

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Pamela T. Greenwood,
Presiding Judge

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WE CONCUR:

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Russell W. Bench, Judge

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Judith M. Billings, Judge