IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Parentage and Support of T.H.B., Child, CLYDE REED, Petitioner and Cross-Respondent, and CATHERINA BROWN, Respondent and Cross-Appellant.	No. 40119-3-II UNPUBLISHED OPINION
CATHERINA YVETTE BROWN, Respondent, v. CLYDE HARRISON REED JR., Appellant.	(Consolidated with No. 40122-3-II)

Quinn-Brintnall, J. — This case involves a consolidated appeal and cross appeal of a parenting plan and child support order (No. 40119-3-II), and a domestic violence protection order

(No. 40122-3-II). Clyde Reed[1] challenges the entry of a protection order, the primary residential parent designation in a final parenting plan, an evidentiary ruling, and several findings of fact and conclusions of law. Although some of Reed's challenges lack merit, we find that the trial court erred in treating the primary residential parent designation made in a temporary parenting plan as a final designation. Accordingly, we remand this case to the trial court with direction that the court should use its own discretion and judgment in designating the primary residential parent in the final parenting plan as required by RCW 26.09.187(3)(a).

Catherina Brown's cross appeal challenges the trial court's decisions denying modification of a child support order and her attorney fees request. Because the trial court did not enter a final child support order, we cannot review Brown's alleged error. We remand for entry of a final child support order. In addition, we hold that the trial court did not err in denying Brown's request for attorney fees below and we deny her attorney fees request related to her cross appeal.

FACTS

Reed and Brown began dating in February 2005. Around July 2006, the couple conceived a child. Reed obtained health insurance coverage for Brown and provided her with significant financial support during her pregnancy. On February 14, 2007, Brown gave birth to a girl, T.H.B.[2]

After T.H.B.'s premature birth, Reed and Brown's relationship effectively ended. Reed continued to provide Brown with financial support, such as paying her mortgage and noncourt-ordered child support. Brown agreed that Reed could see T.H.B. several times a week. In early

[1] Reed also goes by the name "Mike Reed." 3 Clerk's Papers (CP) at 424.

[2] T.H.B.'s birth certificate listed her last name as "Brown" and did not identify her father.

August 2007, Brown told Reed that she intended to move to Chicago and relocate T.H.B. because of a job offer.

On August 10, 2007, in King County Superior Court, Reed objected to Brown's relocation of T.H.B. Eventually, the parties agreed to transfer Reed's case to Pierce County, where Brown and T.H.B. lived. Before transferring the case, King County Superior Court entered a temporary order identifying Brown's home as T.H.B.'s primary residence and establishing a visitation schedule for Reed. This order was to remain in effect until proceedings occurred in Pierce County. On October 10, the King County Superior Court completed the transfer of Reed's case to Pierce County.

Meanwhile, on August 14, in Pierce County Superior Court, Brown obtained a temporary domestic violence protection order (TPO) preventing Reed from having contact with her and T.H.B. Brown cited recent in-person and telephone interactions as grounds for the TPO, alleged past instances of physical abuse against her, and raised safety concerns for T.H.B. related to Reed's parenting decisions, such as allegedly taking a five-month-old child canoeing without a life jacket. On September 26, Pierce County Commissioner Marshall granted a one-year TPO, but provided that Reed could visit with T.H.B. in accord with the visitation schedule entered by King County Superior Court until a Pierce County family court ruled in Reed's case.

In family court, on November 1, Pierce County Commissioner Foley entered a temporary order that included (1) mutual restraining orders, (2) a temporary child support order that Reed

pay Brown $730 a month, (3) a temporary residential schedule/parenting plan,[3] (4) a prohibition on T.H.B. being removed from the State by either parent, and (5) a requirement that Brown file a paternity affidavit within seven days. On December 4, the family court appointed Kelly LeBlanc as T.H.B.'s guardian ad litem (GAL).

On May 21, 2008, Reed asked the family court for modifications to his visitation schedule. He also asked the family court to hold Brown in contempt for not complying with the November 1, 2007 temporary parenting plan terms, not filing the paternity affidavit, and not submitting to an evaluation with the GAL. The family court modified the temporary residential schedule giving Reed more visitation time, but reserved judgment on Reed's contempt motion. Brown responded to Reed's contempt allegations with her own allegations of Reed's lack of cooperation with the temporary parenting plan and paternity affidavit process.

On July 29, the family court made minor revisions to Reed's visitation schedule. This order also included additional instructions on the filing of a paternity affidavit. The family court also amended the November 1, 2007 restraining orders to allow Brown and Reed to have contact at settlement conference proceedings. A three-day settlement conference in September 2008 did not succeed in settling the matter.

On September 25, 2008, Brown requested a renewal of the TPO in her domestic violence case. The superior court extended Brown's TPO through October 10, 2009.

On October 10, October 15, and November 5, 2008, Reed again proposed modifications to the visitation schedule and asked the family court to hold Brown in contempt for violating

[3] Commissioner Foley's temporary order incorporates by reference a temporary residential schedule/parenting plan that is not in our record.

court orders and failing to comply with discovery requests. Reed sought overnight time with T.H.B. every weekend. He provided the family court with a home study report and a parenting program certificate of completion.

On November 19, the family court again made minor revisions to Reed's visitation schedule and ordered the GAL to provide more information about possible overnight residential time for T.H.B. with Reed. The family court reserved judgment on Reed's requests for discovery sanctions.

On December 2, 2008, the family law case proceeded to trial in Pierce County Superior Court before Judge Armijo. Reed testified about his relationship with T.H.B. and providing her care. Reed also testified that the GAL inspected his home for safety concerns and the only change she encouraged was the addition of a fence between his house and a lake. Reed stated that he planned to install a fence when the weather got better.

Reed described his relationship with Brown as a typical one with disagreements over things like laundry, errand running, and arriving to social events late. Reed called family and a prior girlfriend as character witnesses. These witnesses testified about Reed's excellent parenting skills and his tendency to react to anger by becoming "withdrawn [and] just kind of get[ting] quiet." Report of Proceedings (RP) (Dec. 2, 2008) at 55.

Judge Armijo examined Reed as part of the proceeding. At one point, he asked Reed, "What is it you want? I need to find out, what is it you want?" RP (Dec. 4, 2008) at 53. Reed responded,

> I would like to be a father to my daughter. That means I want a lot of time with her. I want to be in a position to guide her, to support her, to have fun with her. If I can get that in a legally noncustodial environment and I can get assurance that she's not going anywhere, that would be okay. But what I would really like is the

> ability to guide and influence my daughter throughout her young life. I would like custody. I would like custody.

RP (Dec. 4, 2008) at 53-54. Reed repeated his wish to be T.H.B.'s custodial parent multiple times throughout the proceedings.

Brown testified and alleged a pattern of Reed's domestic abuse and violence. Brown blamed Reed's relocation petition for her lost employment opportunity when she could not move. Brown testified that her main concern for T.H.B. was overnight visitations with Reed because of safety concerns.

On December 8, 2008, Judge Armijo ruled from the bench. Before a lunch recess, Judge Armijo stated that T.H.B. should have substantial overnight residential time with both of her parents. But after reconvening, Brown argued that an occupational therapist and the GAL expressed a need for stability in T.H.B.'s schedule and that any changes should be gradual. Judge Armijo then decided to gradually increase Reed's visitation time and work towards residential overnights. Judge Armijo entered several written orders that same day. First, Judge Armijo entered a new temporary parenting plan. This temporary parenting plan designated Brown as T.H.B.'s custodial parent and granted Reed visitation time two evenings a week, every other Saturday, and every Sunday. Judge Armijo expressly provided for a review of the parenting plan on April 17, 2009.

Judge Armijo also entered a "Judgment and Order Determining Parentage and Granting Additional Relief." 2 Clerk's Papers (CP) at 378. This judgment declared that Reed is T.H.B.'s father, provided that T.H.B.'s last name would be "Brown-Reed," and assigned Brown as

T.H.B.'s primary residential parent.[4] 2 CP at 379-80. This order did not include any restraining orders, but it expressly directed that the TPO in Brown's domestic violence case be "modified in conformity with the temporary parenting plan."[5] 2 CP at 383. Finally, this order stated that Reed would be required to pay child support in accord with a separately-filed child support order.[6]

Over the next several weeks, the parties filed multiple motions in the family law case. Brown filed a reconsideration motion; Reed filed a motion to hold Brown in contempt and proposed revisions to the temporary parenting plan, again seeking residential overnight time with T.H.B.

On January 16, 2009, the family law case was reassigned to Judge Hickman.[7] On March 6, the trial court considered Reed's proposed parenting plan revisions. Ultimately, the trial court revised the parenting plan and granted Reed overnight residential time one night a week. The trial court decided that there was no evidence that T.H.B.'s health or safety was jeopardized while she was with Reed and that T.H.B.'s best interests were served by limited overnight visitations with her father.

In July 2009, Brown requested a temporary order requiring Reed to pay for daycare

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[4] Reed alleged that when Brown signed the trial court's order, she also fraudulently changed the designation of T.H.B.'s last name. The order contains strikethroughs of "Reed" both times T.H.B.'s last name is written in the order. Only the initials "CB" appear next to the redactions. Brown denied altering the order.

[5] Brown filed a motion to modify the TPO in her domestic violence case per Judge Armijo's order, but a week later she withdrew the motion.

[6] A child support order signed by Judge Armijo is not in the record on review.

[7] All subsequent references to the "trial court" in these facts refer to actions taken by Judge Hickman unless noted otherwise.

expenses, pay her attorney fees, and change the visitation exchange location. Also, in her domestic violence case, Brown received an extension of her TPO, making it valid through March 23, 2010.

On September 14, 2009, the trial court began a second trial on the parenting plan and child support issues. Although the parties asserted that Commissioner Foley's November 1, 2007 child support order was a final order, Reed had complied with it, and no party had challenged it, Judge Hickman refused to treat a document titled "Order of Child Support (ORS) Temporary" as a final order in the absence of any evidence of Judge Armijo's intent to adopt it as a final order.

In addition, the trial court considered several motions in limine. Relevant to this appeal, Brown moved to confine the evidence to events that occurred since the December 2008 trial. She argued that Judge Armijo's primary residential and custodial parent designations were final determinations and that res judicata barred review of any nonvisitation issues in the parenting plan. Reed agreed to Brown's limiting motion, noting that his "only exception would be if something was opened up that required that we needed to go back in time." 3 RP at 53. The trial court granted the motion, stating that it had an extensive record of events up through the December 2008 trial for its review and that it desired to hear information about events since that trial.

At this second trial, Reed presented multiple witnesses and testified himself. In general, Reed presented evidence about his relationship with T.H.B., their routine when she visits, and his financial and home circumstances. He also introduced evidence about baby-proofing his home.

Brown presented multiple witnesses and testified herself. In general, Brown presented evidence about her relationship with T.H.B., her mother's help in caring for T.H.B., and

precautionary safety measures in her home. Brown testified about the financial strain, including filing for bankruptcy that she experienced related to this litigation and her inability to accept employment offers because she cannot relocate T.H.B. She described between $10,000 to $19,000 in debt for attorney fees and a $2,192.98 lien on her home associated with these costs.

Finally, Brown testified that she agreed that T.H.B.'s best interests were served by having some residential time with Reed. She stated that ideally Reed would have T.H.B. every other weekend and a midweek visit. Brown expressly testified that she did not have "any problems with [Reed's] parenting." 5 RP at 371.

Last, the trial court heard testimony about T.H.B.'s alleged sensory deficit problems. Reed testified that an occupational therapist described, but did not diagnose, T.H.B. as having problems coordinating information obtained from her senses. An occupational therapist testified about T.H.B.'s recent therapy experiences and the impact of sensory development problems. T.H.B.'s pediatrician provided expert testimony about T.H.B.'s good health and sensory development problems that make it hard for T.H.B. to interact correctly with her environment.

On October 2, Reed moved for the trial court overseeing Brown's domestic violence case to terminate the TPO based on his good behavior during the September family law case proceedings. The resolution of Reed's motion in the domestic violence matter is not in our record.

On October 9, the trial court issued rulings from the bench. Then, on November 19, the trial court reduced its decisions to writing in multiple orders. The trial court ordered Brown to change T.H.B.'s last name to Brown-Reed and to have the TPO in her domestic violence case modified to conform to the findings of fact and conclusions of law entered in the family law case.

The trial court also ordered Reed to pay child support, but a final child support order is not in the record on review.

The trial court also entered a final permanent parenting plan designating Brown as the custodial and primary residential parent but granting Reed substantial residential visitation rights. The parties were required to pursue mediation before returning to the trial court if any disputes over the parenting plan occurred.

The trial court also entered "Supplemental Findings of Fact and Conclusions of Law." 4 CP at 618. The trial court found that T.H.B. did not have a childhood disability and that Brown had used the alleged sensory deficit disability "as a means to prevent [Reed] from having standard visitation with [T.H.B.]." 4 CP at 619. The trial court also found that Reed had not intentionally violated or acted in bad faith on any of the trial court's orders since December 2008. Moreover, based on its observations at trial, the trial court found that Reed's actions were "not manipulative, controlling, or an extension of any pattern of domestic violence." 4 CP at 619. The trial court also found that no evidence, including Judge Armijo's decisions and the record before him, supported restrictions on Reed's visitation rights; in fact, "[t]he opposite is true." 4 CP at 619. The trial court ordered the parties to pay their own attorney fees.

On November 24, Reed asked the trial court to reconsider certain parts of the final parenting plan. Specifically, Reed asked for some changes to the start and end times in the residential schedule, residential time every other year on T.H.B.'s birthday, and that the parties are not required to attempt mediation to resolve disputes. Brown objected and requested attorney fees. The trial court denied Reed's motion and Brown's requested attorney fees.

On December 4, Brown moved to modify the TPO in her domestic violence case in light

of Reed's visitation rights under the permanent parenting plan. The trial court overseeing the domestic violence case approved these changes on December 17.

On December 18, Reed filed two separate notices of appeal. One notice of appeal concerned Brown's TPO case. Reed attached to this notice of appeal Brown's September 9, 2009 motion to renew the TPO and the December 17, 2009 order making changes to the TPO. Reed's second notice of appeal concerned the November 19, 2009 orders entered in the family law proceedings. We consolidated Reed's appeals. On December 31, 2009, Brown filed a cross appeal in the family law case.

ANALYSIS

Reed's Appeals

A. Domestic Violence Protection Order

Reed assigns error to the TPO limiting his contact with Brown. He argues that res judicata and the "priority of action rule"[8] precluded the creation and extension of a TPO. Brown responds that Reed's challenge to the TPO relies on evidence outside the record on review.[9] We agree with Brown that Reed failed to perfect the record for our review and cites to evidence which we cannot consider.

The party seeking review has the burden to perfect the record so that, as the reviewing

[8] The "priority of action rule" provides that the first forum to obtain jurisdiction over a case retains exclusive authority over the case to the exclusion of other coordinate courts. *Am. Mobile Homes of Wash., Inc. v. Seattle-First Nat'l Bank*, 115 Wn.2d 307, 316-17, 796 P.2d 1276 (1990).

[9] Brown also argues that Reed failed to include in his notice of appeal any orders from her domestic violence case. Reed filed two different notices of appeal on December 18, 2009, including one challenging decisions in Brown's domestic violence case, Pierce County Cause No. 07-2-02403-0.

court, we have all relevant evidence before us. *Bulzomi v. Dep't of Labor & Ind.*, 72 Wn. App. 522, 525, 864 P.2d 996 (1994). An insufficient appellate record precludes review of the alleged errors. *Bulzomi*, 72 Wn. App. at 525. Pro se litigants are held to the same standard as attorneys and must comply with all procedural rules on appeal. *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993).

The record does not clearly indicate that Brown presently has a TPO against Reed. Reed's notice of appeal included a September 23, 2009 extension of a TPO through March 23, 2010, and a December 17, 2009 order modifying the terms of the TPO but not changing its expiration date. And although Reed moved to terminate the TPO in October 2, 2009, the record does not include any information about the resolution of this motion.

Reed has not established the existence of a current TPO for which we can grant his requested relief. By not perfecting the record to show that a present legal issue exists for which we can provide a remedy, Reed's appeal of the TPO fails. *See Bulzomi*, 72 Wn. App. at 525.

Moreover, Reed's arguments rely on a December 18, 2008 transcript from a Tacoma Municipal Court proceeding that was not included in Reed's statement of arrangements and is not a part of the record on appeal. In addition, Reed cites to clerk's papers that are not in the record.[10] We cannot review legal issues that rely on evidence outside the record on appeal. *In re Marriage of Wintermute*, 70 Wn. App. 741, 744 n.3, 855 P.2d 1186 (1993), *review denied*, 123 Wn.2d 1009 (1994).

[10] The clerk's papers in the record include pages 1 through 744 and 921 through 944. Reed requested clerk's papers 745 through 920 but did not pay Pierce County for them, despite several invoices. Thus, the county did not send clerk's papers 745 through 920 and, consequently, Reed's citations to the missing clerk's papers are to evidence outside the record on review.

B. Parenting Plan Appeal[11]

Reed assigns numerous errors to the trial court's final parenting plan and findings. First, Reed argues that the trial court erred by treating Judge Armijo's December 2008 decision designating Brown as the primary residential parent as a final determination on this issue. Next, he contends that the trial court erred by excluding evidence of events that occurred before the December 2008 trial. Then, Reed argues that the trial court should have entered certain findings of fact against Brown's position and in favor of his position. Last, he challenges the trial court's conclusions of law, alleging that the findings of fact do not support them. Because the trial court erred by treating Judge Armijo's designation of Brown as the primary residential parent for purposes of the *temporary* parenting plan as a *final* determination on this issue, we reverse the designation and remand to the trial court to make its own independent determination on this issue.

As an initial matter, Brown argues that Reed did not include in his notice of appeal, or assign error to, the December 8, 2008 judgment and order determining parentage and granting additional relief or the final parenting plan. Although Reed did not include the December 8, 2008 temporary judgment and orders in his notice of appeal, when the trial court entered its final order in October 2009, it relied on the December 2008 orders as having resolved certain parenting plan issues, namely primary residential parenting and custodial parenting status. Accordingly, any errors in the December 2008 order prejudicially impact the final parenting plan and those alleged errors are before us for review. RAP 2.4(b).

Also, although Reed failed to perfect his challenge to the final parenting plan by failing to

[11] Unless otherwise noted, all references to the "trial court" in this part of our analysis refer to rulings by Judge Hickman when he presided over family law proceedings.

attach it to his notice of appeal, as required by RAP 10.4(c), technical violations of the Rules of Appellate Procedure do not per se bar our review. RAP 1.2(a). And to the extent that Reed failed to specifically assign error to the December 2008 orders and the final parenting plan as required by RAP 10.3(g), we may exercise discretion and review the merits of an issue when the nature of that challenge is clear in the appellant's brief. *Green River Cmty. Coll., Dist. No. 10 v. Higher Educ. Pers. Bd.*, 107 Wn.2d 427, 431, 730 P.2d 653 (1986); *Goehle v. Fred Hutchinson Cancer Research Ctr.*, 100 Wn. App. 609, 614, 1 P.3d 579, *review denied*, 142 Wn.2d 1010 (2000).

1. Primary Residential Parent Designation

Reed argues that the trial court erred by treating Judge Armijo's December 2008 designation of Brown as the primary residential parent as a final decision. Because the record does not indicate that Judge Armijo considered the enumerated factors in RCW 26.09.187 as required by law when formulating a final—as opposed to temporary—parenting plan, we agree.

We review a trial court's ruling on placement of children for an abuse of discretion. *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. *Kovacs*, 121 Wn.2d at 801. Because of the trial court's "unique opportunity to personally observe the parties," we will only disturb a custody designation when both the written findings of fact and the trial court's oral opinions express a failure to consider the statutory factors of ch. 26.09 RCW in determining primary residential parentage. *Murray v. Murray*, 28 Wn. App. 187, 189, 622 P.2d 1288 (1981).

Temporary parent plans are designed to maintain the status quo and "[d]rawing any

presumption" of parental fitness "from the temporary plan is inappropriate." *Kovacs*, 121 Wn.2d at 809. But in making determinations for purposes of the final parenting plan, the trial court should consider the seven enumerated factors listed in RCW 26.09.187(3)(a):

> (i) The relative strength, nature, and stability of the child's relationship with each parent;
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> (ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;
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> (iii) Each parent's past and potential for future performance of parenting functions . . ., including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;
>
> (iv) The emotional needs and developmental level of the child;
>
> (v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;
>
> (vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and
>
> (vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

Judge Armijo did not err in failing to consider these seven factors in determining the temporary residential parenting plan as consideration of these factors is not required in formulating a temporary plan. However, the trial court did err in treating Judge Armijo's designation of Brown as the primary residential parent (in the temporary plan) for purposes of the *final* parenting plan as, in doing so, the trial court failed to consider the RCW 26.09.187(3)(a) factors as required by law. Accordingly, remand is required for the trial court to consider these factors in deciding primary residential parent status.

Moreover, although we are aware that, under the current terms of the parenting plan, both parties have nearly equal residential time with T.H.B., designation of custody pursuant to RCW 26.09.285 does create certain legal implications. In our recent decision in *In re Marriage of*

Fahey, 164 Wn. App. 42, 54-59, 262 P.3d 128 (2011), *review denied*, 173 Wn.2d 1019 (2012), for instance, we held that a trial court did not err in employing a rebuttable presumption favoring the primary residential parent's relocation decisions where the nonprimary residential parent actually exercised custody more than half of the time. Thus, although RCW 26.09.285 envisions that the designation of a primary parent "shall not affect either parent's rights and responsibilities under the parenting plan," there are situations "for the purposes of all other state and federal statutes which require a designation or determination of custody" where the designation carries weight. Accordingly, in light of Brown's asserted desire to move her and T.H.B. to Chicago, it is especially important that the trial court carefully consider all the enumerated factors in RCW 26.09.187(3)(a) in determining T.H.B.'s primary residential parent.

2. Evidentiary Ruling

Next, Reed contends that the trial court erred by excluding evidence of any events between the parties that occurred before the first family law trial in December 2008. We hold that Reed both waived and failed to preserve any error for review.

In his reply brief, Reed concedes that he agreed to a pretrial motion to limit evidence at the September 2009 family law trial to events that occurred after the December 2008 trial. Accordingly, Reed waived any challenge to the trial court's evidentiary ruling that he now attempts to challenge on appeal.

Reed argues that, even if he agreed to refrain from *presenting* cumulative evidence at the second trial, he did not agree that the trial court did not have to *review and consider* the pre-December 2008 evidence. Reed cites a trial court colloquy asserting that it proves the trial court did not review and consider all the evidence admitted at the December 2008 trial. But, in context,

the trial court stated that it reviewed only Judge Armijo's orders to determine which issues had or had not been preserved for the second trial. *See* 6 RP at 516 (stating, "I think I just want to read [the ruling] one more time *to make sure I cover the issues that [Judge Armijo] didn't cover*. But to go back and read the transcript, no way.") (emphasis added).

Moreover, the trial court's final written order on the limiting motion states that "[t]he court having heard argument on [Brown's] Motion in Limine; It is hereby ordered, [a]djudged, and decreed that the Motion in Limine is granted and the issues, evidence, and testimony shall be after the date of the prior trial of December 8, 2008."[12] 3 CP at 594. The trial court's written ruling on its face limits consideration of the evidence at the second trial to post-December 8, 2008 circumstances and events. Reed did not object to the trial court's written order and, thus, he has failed to preserve any error in the evidentiary ruling for us to review. RAP 2.5(a).

3. Entering Additional Findings of Fact

Reed asserts that the trial court erred by failing to enter certain findings of fact. He argues that substantial evidence supports findings that Brown's lifestyle does not provide a stable environment for raising T.H.B., that Brown failed to adequately provide for T.H.B.'s care constituting neglect and nonperformance of parenting functions, and that Reed's bond with T.H.B. is stronger than Brown's. Reed requests that we either enter appropriate findings of fact or remand to the trial court for entry of these specific findings.

Appellate courts are "not a fact-finding branch of the judicial system of this state." *Berger*

[12] To the extent that the trial court's oral decision conflicts with its written decision, the written decision controls. *Ferree v. Doric Co.*, 62 Wn.2d 561, 567, 383 P.2d 900 (1963). An oral decision "is necessarily subject to further study and consideration, and may be altered, modified, or completely abandoned. It has no final or binding effect, unless formally incorporated into the findings, conclusions, and judgment." *Ferree*, 62 Wn.2d at 567.

Eng'g Co. v. Hopkins, 54 Wn.2d 300, 308, 340 P.2d 777 (1959). The function of ultimate fact finding is exclusively vested in the trial court. *Edwards v. Morrison-Knudsen Co.*, 61 Wn.2d 593, 598, 379 P.2d 735 (1963). We do not weigh evidence or substitute our judgment for that of the trial court. *In re Marriage of Greene*, 97 Wn. App. 708, 714, 986 P.2d 144 (1999).

We cannot enter Reed's requested factual findings, which are based on disputed evidence admitted at trial. In addition, remanding to the trial court to enter specific findings of fact would usurp the trial court's exclusive role of evaluating the persuasiveness of evidence and the credibility of witnesses. *Morse v. Antonellis*, 149 Wn.2d 572, 574, 70 P.3d 125 (2003); *Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 108, 864 P.2d 937 (1994). We will not do this.

Brown's Cross Appeal

A. Child Support Order

Brown challenges the trial court's refusal to modify Reed's child support obligation. We cannot evaluate Brown's claim because no final child support order has been entered in this case. We remand for the entry of a final child support order.

Brown's notice of appeal and briefing discuss Commissioner Foley's temporary child support order entered on November 1, 2007. This temporary order was presumably superseded by a final order entered by either Judge Armijo or Judge Hickman. After the December 2008 trial, Judge Armijo entered final written orders, including a "Judgment and Order Determining Parentage and Granting Additional Relief" that stated Reed would pay child support "as set forth in the Order of Child Support . . . which is filed separately." 2 CP at 380. But the record on review does not include a separate child support order entered and signed by Judge Armijo. A review of Pierce County's publically accessible Legal Information Network Exchange (LINX)

case-tracking system suggests that Judge Armijo did not enter the referenced child support order.

During the second trial, before Judge Hickman, Brown moved to modify Reed's child support obligation, citing Commissioner Foley's November 1, 2007 order as if it were Judge Armijo's final child support order. On appeal, Reed also refers to the November 1, 2007 temporary child support order as a final order entered by Judge Armijo. But Judge Hickman ruled that the November 1, 2007 order was a temporary order and that nothing in the record suggested that Judge Armijo intended to treat the temporary order of child support as the final child support order. Moreover, Judge Hickman expressly stated that he considered a final child support order to be "in play" at the second family court trial. 3 RP at 61.

But according to our review, when Judge Hickman entered final orders on November 19, 2009, he also did not enter a final child support order. The final "Judgment and Order Establishing Residential Schedule/Parenting Plan [and] Child Support" states that "Clyde H. Reed shall pay child support as set forth in the order of child(ren) support which was *signed by the court on this date*." 4 CP at 622-23 (emphasis added). Our review of Pierce County's LINX system suggests that Judge Hickman did not enter the referenced final child support order.

To the extent Brown argues that we can treat Commissioner Foley's November 1, 2007 temporary child support order as a final order based on Judge Hickman's oral rulings that he didn't "see any reason to change the existing child-support order," we disagree. 6 RP at 546. An oral decision "is necessarily subject to further study and consideration, and may be altered, modified, or completely abandoned. It has no final or binding effect, unless formally incorporated into the findings, conclusions, and judgment." *Ferree v. Doric Co.*, 62 Wn.2d 561, 567, 383 P.2d 900 (1963). Because Judge Hickman's November 19, 2009 judgment and order specifically

references a child support order *entered on that same day*, we cannot presume that Judge Hickman adopted the temporary decision as his final order. Remand to Judge Hickman for entry of a final child support order is, thus, appropriate.

B. Denial of Trial Court[13] Attorney Fees

Brown also challenges the trial court's denial of her request for attorney fees. She argues that the trial court abused its discretion by not considering her dire financial situation and litigation costs from when she had representation. We discern no error.

We review a denial of attorney fees for an abuse of discretion. *In re Marriage of Freeman*, 169 Wn.2d 664, 676, 239 P.3d 557 (2010). The party challenging the award must show that the trial court's decision is untenable or manifestly unreasonable. *In re Marriage of Knight*, 75 Wn. App. 721, 729, 880 P.2d 71 (1994), *review denied*, 126 Wn.2d 1011 (1995).

As an initial matter, on appeal, Brown cites RCW 26.26.625[14] as the grounds for her trial attorney fees. This statute concerns attorney fees in adjudicating parentage under the Uniform Parentage Act of 2002, ch. 26.26 RCW. Although, the litigation below tangentially related to a parentage determination because a paternity affidavit had not been filed, the parties never actually disputed Reed's status as T.H.B.'s father. The primary dispute in this litigation concerned the final parenting plan and, thus, RCW 26.26.625 cannot support an attorney fees award in this case.

Moreover, regardless of the party's financial circumstances, the trial court's unchallenged

[13] References to the "trial court" in this section of the analysis refer to rulings by Judge Hickman at the end of the family law proceedings.

[14] Brown actually cites RCW "26.25.625(3)" in her brief. Br. of Cross-Appellant at 9. Ch. 26.25 RCW concerns cooperative agreements between the state and Indian tribes for child support services and does not contain a section 625. Given the context, Brown likely meant to cite RCW 26.26.625(3).

findings of fact support its denial of attorney fees in this case. Unchallenged findings of fact are verities on appeal. *In re Marriage of Brewer*, 137 Wn.2d 756, 766, 976 P.2d 102 (1999). The primary reason for Reed's litigation concerned his visitations rights: the trial court's findings imply that Brown's actions contributed to the length and cost of this litigation. Moreover, based on our review of the record, Brown often refused to comply with trial court orders about changing T.H.B.'s legal last name to "Brown-Reed" and modifying the domestic violence TPO, which contributed to the length of the litigation. Accordingly, the trial court did not abuse its discretion when denying Brown attorney fees.

Appellate Attorney Fees

A request for appellate attorney fees requires a party to include a separate section in his or her brief devoted to the request. RAP 18.1(b). This requirement is mandatory. *Phillips Bldg. Co. v. An*, 81 Wn. App. 696, 705, 915 P.2d 1146 (1996). The rule requires more than a bald request for attorney fees on appeal. *Thweatt v. Hommel*, 67 Wn. App. 135, 148, 834 P.2d 1058, *review denied*, 120 Wn.2d 1016 (1992). Argument and citation to authority are required under the rule to advise this court of the appropriate grounds for an award of attorney fees as costs. *Austin v. U.S. Bank of Wash.*, 73 Wn. App. 293, 313, 869 P.2d 404, *review denied*, 124 Wn.2d 1015 (1994). Pro se litigants are held to the same standard as attorneys and must comply with all procedural rules on appeal. *Olson*, 69 Wn. App. at 626.

Under RAP 18.9(a), we can award attorney fees for the filing of frivolous appeals. An appeal is frivolous when the appeal presents no debatable issues on which reasonable minds could differ and is so lacking in merit that there is no possibility of reversal. *Mahoney v. Shinpoch*, 107 Wn.2d 679, 691, 732 P.2d 510 (1987).

A. Reed's Appeals

Reed and Brown both requested attorney fees in Reed's appeals. Reed included a single sentence requesting attorney fees without citation to authority and, thus, did not comply with the mandatory requirements of RAP 18.1(b). Accordingly, we deny Reed's request for attorney fees.

Brown complied with the requirements of RAP 18.1(b) and requests fees arguing Reed's appeal is frivolous.[15] Although some of Reed's arguments are devoid of merit, Reed successfully argues that Judge Hickman erred in failing to make an independent determination of Reed's fitness to be the primary residential parent independent of Judge Armijo's earlier ruling in the temporary order. Accordingly, we deny Brown's request for attorney fees.

B. Brown's Cross Appeal

Reed did not request attorney fees related to Brown's cross appeal. Brown requested appellate attorney fees and complied with RAP 18.1(b), but failed to cite a proper statutory authority for this court to award fees. Brown cites only the Uniform Parentage Act attorney fees provision, RCW 26.26.625(3), as grounds for an award. As previously discussed, this statute cannot support attorney fees in Brown's cross appeal. We deny Brown's appellate attorney fees request in her cross appeal.

[15] Brown also cites the Uniform Parentage Act attorney fees statute, RCW 26.26.625(3), as grounds for fees on appeal. As already explained, this statute does not apply under the facts of this case and cannot support any attorney fee awards.

In accordance with this opinion, we remand to Judge Hickman for entry of a final child support order and an independent determination of T.H.B.'s primary residential parent and affirm in all other respects.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

HUNT, J.

PENOYAR, C.J.