REL: July 24, 2020

Notice: This opinion is subject to formal revision before publication in the advance sheets of **Southern Reporter**. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in **Southern Reporter**.

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2020

2190220

Aimee Blythe Davis

v.

Scott Anthony Davis

Appeal from Baldwin Circuit Court
(DR-19-900080)

EDWARDS, Judge.

In November 2018, Scott Anthony Davis ("the father") filed a complaint seeking a divorce from Aimee Blythe Davis ("the mother") in the General Sessions Court for Wilson County, Tennessee ("the Tennessee court"). The mother filed

an answer and moved for pendente lite support and temporary custody of the parties' children in the Tennessee court. The Tennessee court entered a pendente lite order establishing visitation between the father and the parties' children on January 27, 2019.

Meanwhile, on January 22, 2019, the mother filed in the Baldwin Circuit Court ("the trial court") a complaint seeking a divorce from the father. In February and March 2019, the mother filed in the trial court motions seeking an award of temporary custody of the parties' children, an award of child support, and an award of spousal support.[1] On April 18, 2019, the father, acting pro se, filed in the trial court a motion to dismiss the mother's action for lack of jurisdiction based on his argument that the Tennessee court had jurisdiction over the divorce and all associated issues.

[1]The mother also sought to have the father held in contempt of a status quo order that does not appear in the record on appeal. However, in light of the trial court's determination that it lacked jurisdiction over all aspects of the mother's divorce action except for the issue of child custody, which will be discussed infra, it necessarily determined that it lacked jurisdiction to enforce the status quo order, rendering the mother's request for enforcement of that order moot.

After being notified of the existence of the divorce action in the Tennessee court, the Alabama court, in compliance with Ala. Code 1975, § 30-3B-110 and § 30-3B-206(b), communicated via telephone conference with the Tennessee court on two occasions to resolve the dispute regarding jurisdiction over the divorce, child custody, and support obligations. Both conferences with the Tennessee court were transcribed and are a part of the record on appeal. After the conferences with the Tennessee court, the trial court, on June 4, 2019, denied the father's motion to dismiss, in part, and set the matter for a trial. On August 27, 2019, the trial court entered an order explaining that it had jurisdiction over the child-custody issue.

The trial court held a trial on August 27, 2019. Both the mother and the father appeared pro se at trial. After brief questioning, the trial court stated on the record that the mother would receive "principal physical custody" and that the parents would share joint legal custody.

In its judgment, the trial court awarded the parties joint legal custody and awarded the mother sole physical custody of the parties' children, subject to the father's

visitation. The visitation provisions of the final custody judgment awarded the father visitation during alternating school breaks after the conclusion of the school week before the break until 6:00 p.m. on the Sunday before school is scheduled to resume on Monday. Similarly, the custody judgment awarded the father certain alternating holiday weekends like Easter weekend, Memorial Day weekend, and Labor Day weekend, from the day the children's school recesses until 6:00 p.m. on the Sunday or Monday before school resumes on Monday or Tuesday, depending on the holiday. The custody judgment makes the party "receiving" the children responsible for the transportation of the children to and from visitation; that is, the father is responsible for the cost of transporting the children to Tennessee for visitation and the mother is responsible for the cost of transporting the children back to Alabama. Finally, the custody judgment contains a "morality clause," which prohibits either party from having unrelated guests of the opposite sex present overnight or after midnight in their respective homes or any place that they might be staying during the time the children are present.

The mother filed two timely postjudgment motions directed to the custody judgment. She also filed a request to be awarded an attorney fee. In her first postjudgment motion, which was verified, she challenged the trial court's conclusion that it lacked jurisdiction over the child-support issue; the mother attached to her first postjudgment motion documents that, she said, could establish that the trial court had personal jurisdiction over the father to establish child support pursuant to Alabama's version of the Uniform Interstate Family Support Act ("the UIFSA"), codified at Ala. Code 1975, § 30-3D-101 et seq. In her second postjudgment motion, which was not verified, the mother complained that the trial court should amend the judgment to make the father responsible for the cost of transporting the children both to and from visitations, that it should amend its judgment to make the time for the conclusion of the father's visitation at an earlier hour than 6:00 p.m. so as to prevent the children from traveling late at night and arriving at their Spanish Fort home well after midnight on Monday or Tuesday mornings when they would have to attend school; and that it should delete the morality clause. After a brief hearing, at which

the trial court explained that it would not hear new evidence from the mother, the trial court denied the mother's postjudgment motions and her request for an attorney fee on October 29, 2019, and the mother then timely filed a notice of appeal to this court.

As noted above, the mother and the father appeared pro se at the August 27, 2019, trial. The trial court asked questions of the parties, who were not, as far as the record indicates, sworn.[2] Neither party presented documentary or testimonial evidence regarding the parenting of the children, and neither party conducted an examination of the other party. When questioned by the trial court, the father stated that he did not desire to have custody and that he desired to be awarded visitation. When asked if there might be a reason that the trial court should not award the father visitation as set out in its "out-of-town parenting schedule," the mother commented that the father had left the children, who at the

[2]The failure to require the parties to swear the oath or affirmation is deemed waived if not objected to in the trial court. See Green v. State, 586 So. 2d 54, 55 (Ala. Crim. App. 1991) ("By failing to object, the appellant waived the issue of any alleged failure to place the witnesses under oath. Merton v. State, 500 So. 2d [1301,] 1306 [(Ala. Crim. App. 1986)].").

time of trial were ages 13 and 17, unattended and that the father had upset the children by engaging in a "road rage" incident involving the father's "chasing down a vehicle" and by causing a scene at a restaurant by having "altercations with managers." The further details of those incidents do not appear in the record. The mother also complained that the older child would have to work 20 hours a week as part of a co-op program at her high school and that visitation with the father would interfere with her employment. The father indicated that the children did not return his telephone calls but that he would be willing to work with the older child regarding her work schedule.

On appeal, the mother makes several arguments. She first complains that the trial court erred in concluding that the temporary or pendente lite order entered by the Tennessee court was "appropriate." She also contends that the trial court erred in concluding that it lacked jurisdiction under the UIFSA to award child support. The mother also specifically challenges the trial court's failure to amend the judgment as she requested in her second postjudgment motion to require the father to be responsible for the transportation

costs related to visitation, to adjust the father's visitation so that the children could be returned home earlier, and to remove the morality clause. Finally, the mother complains that the trial court erred when it denied her request to be awarded an attorney fee.

The mother's first argument pertains to the trial court's decision to delay ruling on the jurisdictional issue until after the mother completed a contempt sentence imposed by the Tennessee court for her failure to abide by the pendente lite order entered by the Tennessee court. The mother argues that the Tennessee court lacked jurisdiction under Alabama's version of the Uniform Child Custody Jurisdiction and Enforcement Act ("the UCCJEA"),[3] codified at Ala. Code 1975, § 30-3B-101 et seq., to enter the pendente lite order and therefore that the trial court erred by recognizing the Tennessee court's order as valid and by requiring her to serve the sentence of contempt imposed by the Tennessee court before deciding the jurisdictional issue presented to the trial court. The mother candidly admits that "there is no specific

[3]Tennessee has also adopted the Uniform Child Custody Jurisdiction and Enforcement Act. See Tenn. Code Ann. § 36-6-201 et seq.

relief that can correct the err[or] of law or undo the injury that the [mother] suffered as a result of serving 10 days in jail [pursuant to the contempt judgment of the Tennessee court]," which suggests that the issue presented by the mother is moot.

"It is a well-settled principle of appellate review that this Court will not decide questions that are moot or that have become purely academic. It is not the province of [an appellate court] to resolve an issue unless a proper resolution would afford a party some relief." Kirby v. City of Anniston, 720 So. 2d 887, 889 (Ala. 1998). The mother has served her sentence of contempt in Tennessee, and we are unable to provide her any form of relief from the Tennessee court's contempt order. This particular issue is moot, and we will not entertain it further.

The mother next challenges the trial court's conclusion that it lacked personal jurisdiction over the father to adjudicate the issue of child support. As our supreme court has stated:

> "This Court set forth the standard of review applicable to such a claim in Elliott v. Van Kleef, 830 So. 2d 726, 729 (Ala. 2002): 'An appellate court considers de novo a trial court's judgment on a

> party's motion to dismiss for lack of personal jurisdiction.' Moreover, this Court has also stated that the plaintiff carries the burden of proving the trial court's personal jurisdiction over the defendant. Ex parte Covington Pike Dodge, Inc., 904 So. 2d 226, 229 (Ala. 2004)."

Vista Land & Equip., L.L.C. v. Computer Programs & Sys., Inc., 953 So. 2d 1170, 1174 (Ala. 2006).

The mother argues first that the trial court had personal jurisdiction over the father based on the fact that he was personally served by a process server in Tennessee and, she says, based on the fact that he has had the appropriate minimum contacts with Alabama to establish personal jurisdiction over him. The mother also contends that the father submitted himself to the jurisdiction of the trial court when he filed his April 2019 motion to dismiss and made what the mother refers to as a general appearance before the trial court on, she represents, April 23, 2019. Finally, the mother argues that the trial court has personal jurisdiction over the father under Ala. Code 1975, § 30-3D-201(a)(5), a part of the UIFSA, because, she contends, the children live in Alabama "as a result of the acts or directives of" the father.

As we have previously explained, "Alabama has adopted the UIFSA. One section of the UIFSA establishes the basis for

personal jurisdiction over a nonresident in an action pertaining to orders of support." Beale v. Haire, 812 So. 2d 356, 358 (Ala. Civ. App. 2001). The section of the UIFSA addressing personal jurisdiction is currently codified at Ala. Code 1975, § 30-3D-201,[4] which provides, in part:

> "(a) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:
>
> "(1) the individual is personally served with summons within this state;
>
> "(2) the individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
>
> "(3) the individual resided with the child in this state;

[4]The mother has cited the former version of the UIFSA in her brief to this court, but, because the text of the provisions of the former version of the UIFSA that the mother relies upon are nearly identical to their counterparts in the current version of the UIFSA, we cite and apply the current version of the UIFSA. The former version of the UIFSA was codified at Ala. Code 1975, former §§ 30-3A-101 through -906; it was repealed, effective June 2, 2015, when the current version of the UIFSA took effect.

> "(4) the individual resided in this state and provided prenatal expenses or support for the child;
>
> "(5) the child resides in this state as a result of the acts or directives of the individual;
>
> "(6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
>
> "(7) the individual asserted parentage of a child in the putative father registry maintained in this state by the Department of Human Resources; or
>
> "(8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction."

The mother first argues that the father has minimum contacts with Alabama such that Alabama may exercise personal jurisdiction over him. See, e.g., Nelson v. Nelson, 891 So. 2d 317, 322 (Ala. Civ. App. 2004) (discussing the requirement of minimum contacts in the context of a child-support action); Coleman v. Coleman, 864 So. 2d 371, 374 (Ala. Civ. App. 2003) (discussing minimum contacts in the context of a child-custody action). She contends in her brief that she and the father jointly purchased real property in Alabama in 2017 and that he has "used and resided overnight in this property during his

frequent overnight visits to Alabama." Thus, she reasons, the father has had sufficient contacts with Alabama as set out in former Rule 4.2(a)(2)(F), Ala. R. Civ. P., which provided that "[a] person has sufficient contacts with the state when that person, acting directly or by agent, is or may be legally responsible as a consequence of that person's ... having an interest in, using, or possessing real property in this state." Rule 4.2 was amended in 2004, and it no longer contains a specific list of what constitutes sufficient contacts; however, as explained in the Committee Comments to Amendment to Rule 4.2 Effective August 1, 2004, "[b]ecause the 'catchall' clause has consistently been interpreted to go to the full extent of federal due process, see, for example, Martin v. Robbins, 628 So. 2d 614, 617 (Ala. 1993), it is no longer necessary to retain the 'laundry list' [of sufficient contacts] in the text of the Rule."

We need not decide whether the father's owning property in Alabama and his allegedly frequent overnight visits to that property could have formed a basis for the trial court's exercising personal jurisdiction over him, however, because the record as it existed at the time the trial court made its

jurisdictional determination contains no evidence indicating that the father owned property in Alabama. The mother's complaint alleges that the father is a resident of Tennessee. She makes no allegations regarding the father's contacts with Alabama in her complaint.

The father's motion to dismiss likewise contains statements indicating that he is a resident of Tennessee. Because the mother's complaint did not contain jurisdictional averments, the father was not required to refute the allegations in the complaint with an affidavit when he challenged personal jurisdiction in his motion to dismiss. See Ex parte W.C.R., 98 So. 3d 1144, 1148 (Ala. Civ. App. 2012) (quoting Ex parte McNeese Title, LLC, 82 So. 3d 670, 674 (Ala. 2011), quoting in turn Ex parte Excelsior Fin., Inc., 42 So. 3d 96, 104 (Ala. 2010)) (explaining that, "'when the complaint fails to allege any jurisdictional basis, "there is nothing in the complaint ... that the court must consider as true and that therefore places [any] burden on [the defendant] to controvert by affidavit"'"); see also Ex parte J.B., 223 So. 3d 251, 259 (Ala. Civ. App. 2016) (discussing and applying the rationale of W.C.R.). We therefore conclude that this

case is like W.C.R., in which we explained that "the record is devoid of evidence of any contacts that [W.C.R.] may have with Alabama to suggest that he had sufficient 'minimum contacts' with Alabama or 'should reasonably anticipate being haled into court' in Alabama." Ex parte W.C.R., 98 So. 3d at 1148 (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291, 297 (1980)). Thus, despite the fact that the record contains some evidence indicating that the father does indeed own property in Alabama, the mother's argument on this point does not require a reversal of the trial court's judgment.

A deed conveying property in Alabama to both the mother and the father, as grantees, was first presented to the trial court as an attachment to the mother's first postjudgment motion. The mother's tardy presentation of evidence on the issue in her postjudgment motion does not change our decision because the belated presentation of evidence that the mother could have produced at the jurisdictional conferences or at trial did not entitle the mother to a reopening of the evidence or a new trial. See Rel v. Rel, 280 So. 3d 442, 447 (Ala. Civ. App. 2019). As we explained in Rel,

> "[t]he failure to discover evidence that could have been discovered before the trial by the exercise of

> reasonable diligence is not a cognizable ground for reopening the evidence or for granting a new trial. See, e.g., Adams v. State, 428 So. 2d 117, 119 (Ala. Civ. App. 1983) ('Our case law requires, among other criteria, that in order to grant a new trial on the basis of newly discovered evidence it must be established the evidence could not have been discovered before the trial by the exercise of due diligence.')."

280 So. 3d at 447. The mother did not allege in her first postjudgment motion that she had failed to discover evidence of the father's ownership of property in Alabama before the jurisdictional conferences or the trial, and such an allegation would be highly doubtful in light of the fact that the deed she produced is the deed to the property in which the mother resides in Alabama. Even if the mother had made such an allegation, the trial court could have determined that the mother could have discovered that evidence before the trial. In either event, the trial court was not required to reopen the evidence after the entry of the judgment, and we find no error in its not having done so.

We next address the mother's contention that the trial court had jurisdiction over the child-support issue under the UIFSA because, she says, the father "submit[ted] to the jurisdiction of this state by consent in a record, by entering

a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction." § 30-3D-201(a)(2). She argues that the father's April 18, 2019, motion to dismiss was not, in fact, a motion to dismiss, because, she says, it "argued the merits of the case, thereby waiving any contest to personal jurisdiction." She further contends that the father "submitted to the jurisdiction of the trial court" by appearing before it on April 23, 2019.

The record contains no indication that a hearing was held on April 23, 2019, or that the father appeared at such a hearing. However, the trial court did state on the record at a May 14, 2019, hearing that the father had "appeared when he thought he might have had to be here the last time we had a telephone conference." Even so, the mother does not cite any authority indicating that the father's motion to dismiss, which described the course of the proceedings in the Tennessee court and which argued that he was a resident of Tennessee and had never resided in Alabama, was somehow not a motion to dismiss because he included certain general facts in his recitation of the proceedings in the Tennessee court or that

his appearance at a scheduled telephone conference waived his previously asserted personal-jurisdiction defense.

In fact, controlling authority is to the contrary. Even assuming that the father had made arguments concerning the merits or had raised other defenses in his motion to dismiss, his objection to jurisdiction remained valid. See Rule 12(b), Ala. R. Civ. P. ("No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion."), and Committee Comments on 1973 Adoption of Rule 12 ("Neither the filing of a general appearance, nor the taking of a position looking to the merits, prevents a party from attacking the jurisdiction of the court ...."); see also Investors Guar. Fund, Ltd. v. Compass Bank, 779 So. 2d 185, 191 (Ala. 2000) (explaining that multiple defenses or arguments regarding the merits of an action may be raised in conjunction with an argument relating to personal jurisdiction without causing waiver of the personal-jurisdiction argument). The father's appearance before the trial court for a telephone conference also failed to waive his previously asserted contest to personal jurisdiction. See Hubbard v. State ex rel. Hubbard, 625 So.

2d 815, 816 (Ala. Civ. App. 1993) (explaining that a husband's participation in litigation after raising the issue of personal jurisdiction did not waive the defense).[5]

We turn now to the mother's argument that the trial court had jurisdiction over the child-support issue because the children were in Alabama based on the "acts or directives" of the father. In her brief, the mother relies on information she first provided to the trial court in her first postjudgment motion, which was verified, indicating that the father had participated in the decision to relocate the mother and the children to Alabama and had "jointly purchased" the "second marital residence" in Alabama. As noted previously, the trial court questioned the parties at the trial, but neither party presented testimonial evidence relating to the reason the mother and the children were located in Alabama. Furthermore, as encouraged by § 30-3B-110(b), the trial court allowed the parties and their respective counsel to be present for, and to participate in, its conferences with the Tennessee

[5]We further note that the telephone conferences with the Tennessee court dealt specifically with jurisdiction under the UCCJEA and the UIFSA, likely making any appearance at such a conference a special appearance relating to the issue of jurisdiction.

court. The mother did not present any legal or factual argument concerning the father's alleged "acts or directives" during either telephone conference or at trial. At the hearing on the mother's postjudgment motions, the trial court stated unequivocally that it would not hear factual evidence that had not previously been presented to it when it was considering the jurisdictional issue. The mother has not presented authority requiring the trial court to consider evidence that she failed to present either at the telephone conferences relating to the jurisdictional decision or at trial, and, as we have previously explained, the mother's tardy presentation of evidence that she had access to before trial did not entitle her to the reopening of the evidence before the trial court or to a new trial. See Rel, 280 So. 3d at 447.

The mother further contends that Ala. Code 1975, § 30-3D-204(a)(3), provides a basis for the exercise of jurisdiction by the trial court, namely, the fact that Alabama is the home state of the children. Indeed, § 30-3D-204(a)(3) does instruct the trial court to consider whether Alabama is the home state of the children; however, the mother misunderstands

the whole of § 30-3D-204(a), of which subsection (3) is but one of three requirements for the exercise of jurisdiction under the UIFSA in cases involving simultaneous proceedings in different states. Section 30-3D-204(a) reads, in its entirety:

> "(a) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a pleading is filed in another state or a foreign country only if:
>
> > "(1) the petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country;
> >
> > "(2) the contesting party timely challenges the exercise of jurisdiction in the other state or the foreign country; and
> >
> > "(3) if relevant, this state is the home state of the child."

(Emphasis added.)

The mother does not contend in her brief on appeal that she fully met the other two requirements for the exercise of the trial court's jurisdiction set out in § 30-3D-204(a), and it does not appear that she could meet those requirements. She contends only that she filed a complaint for a divorce in

Alabama after the father commenced his divorce action in the Tennessee court and that Alabama is the home state of the children. Although those facts are undisputed, those facts alone are not sufficient to compel a conclusion that the trial court was required to exercise jurisdiction over the child-support issue under § 30-3D-204(a).[6]

---

[6]As a companion argument to her argument under § 30-3D-204(a), the mother contends that Tennessee's version of the Uniform Interstate Family Support Act, Tenn. Code Ann § 36-5-2201 et seq., prohibits the Tennessee court from exercising jurisdiction over the child-support issue. Like Alabama's version, see § 30-3D-204(b), Tennessee's version contains the following prohibition on the exercise of jurisdiction in situations involving simultaneous proceedings:

> "(b) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or a foreign country if:
>
> > "(1) The petition or comparable pleading in the other state or foreign country is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;
> >
> > "(2) The contesting party timely challenges the exercise of jurisdiction in this state; and
> >
> > "(3) If relevant, the other state or foreign country is the home state of the child."

Having addressed the mother's several arguments regarding the trial court's personal jurisdiction over the father and jurisdiction under the UIFSA, we turn now to the mother's challenges to the content of the trial court's custody judgment. The mother complains that the trial court erred in denying her second postjudgment motion insofar as she sought an amendment to the judgment to make the father responsible for the cost related to the transportation of the children to and from Tennessee for visitation, to alter the time for the conclusion of the father's visits on an evening before a school day, and to remove the morality clause prohibiting either party from having an unrelated person of the opposite

---

Tenn. Code Ann. § 36-5-2204. The mother contends that the Tennessee court lacks jurisdiction to establish child support because, she says, she commenced an action in Alabama, she contested the Tennessee court's jurisdiction, and Alabama is the home state of the children. The mother's jurisdictional challenge in her answer filed in the Tennessee proceedings challenged that court's jurisdiction under Tenn. Code Ann. § 36-4-104, which concerns whether the events on which the divorce was requested occurred when she was a resident of Tennessee. The mother did not contest the jurisdiction of the Tennessee court over the child-custody or child-support issues; instead, she filed a counterclaim for a divorce requesting that the Tennessee court address those issues and award her custody and child support. Thus, we cannot conclude that the Tennessee court lacked jurisdiction over the issue of child support under Tennessee law.

sex stay overnight or after midnight in a house where the children are present. Our review of the custody judgment and the visitation provisions contained therein is limited because the determination of visitation of children with a divorced parent is a matter within the judicial discretion of the trial court. Evans v. Evans, 668 So. 2d 789, 789 (Ala. Civ. App. 1995). When "'exercising its discretion in awarding visitation rights, the trial court's primary consideration must be the best interests and welfare of the children, and each case must be decided on its own facts.'" Carr v. Howard, 777 So. 2d 738, 742 (Ala. Civ. App. 2000) (quoting Mann v. Mann, 725 So. 2d 989, 992 (Ala. Civ. App. 1998)).

The mother complains that the trial court should have amended the judgment to make the father solely responsible for the costs of transportation. At the trial, the mother expressed concern about her ability to pay for the transportation of the children, stating that she had not been awarded either spousal or child support because both issues were to be addressed by the Tennessee court. In her second postjudgment motion, which was not verified, the mother stated that her income is approximately $2,930 per month and that the

father's monthly income is over $20,000. However, neither party testified about their respective incomes or the expected cost of travel for visitation at trial; as noted previously, the trial court stated that it would not reopen the evidence at the hearing on the mother's postjudgment motions. The mother's statements in her second postjudgment motion are not verified and therefore are not evidence. See, e.g., Metcalf v. Pentagon Fed. Credit Union, 155 So. 3d 256, 262 (Ala. Civ. App. 2014) (explaining that factual averments in an unverified answer did not constitute evidence of those facts). Even if they were, we have already explained that the tardy presentation of evidence in a postjudgment motion when the party could have presented that evidence earlier is not a sufficient basis for reopening the evidence or for granting a new trial. Rel, 280 So. 3d at 447. Thus, the record contains no evidence from which we could determine that the trial court erred by requiring each party to bear his or her cost of transporting the children to and from visitations or from which we could determine the parties' respective incomes. Accordingly, we must affirm the judgment insofar as it

requires the mother to assume the cost of return transportation from visitations.

The mother next contests the trial court's failure to amend the judgment to alter the time for the conclusion of the father's visits when the children will have to attend school the following day. The mother contends that the travel time between the father's residence in Mt. Juliet, Tennessee, and her home in Spanish Fort is approximately eight hours, which, she says, could result in the children's arriving home as late as 2:00 a.m. if they are not permitted to conclude their visit at their father's home until 6:00 p.m.; she also stated those facts in her argument at the postjudgment hearing.[7] The mother complains that the children's best interests are not served by being required to travel in the late evening hours

[7]A court may judicially notice the distance between two cities, and the distance between Mt. Juliet, Tennessee, and Spanish Fort is approximately 455 miles. See American Auto. Ins. Co. v. Carson, 212 Ala. 293, 293, 102 So. 219, 220 (1924) ("Courts take judicial knowledge of the locations of [two cities] and the approximate distance between the two points."); Mann v. Mann, 725 So. 2d 989, 993 (Ala. Civ. App. 1998) (judicially noticing the travel time between cities and citing Carson).

and into the early morning hours, especially when they must attend school later that same morning. She requests that the judgment be modified to provide that the children be required to return to Spanish Fort by 8:00 p.m.

The trial court imposed its standard "out-of-town" visitation schedule based on the parties' being located in different states. However, the visitation schedule does not take into account the distance between the residences of the parties or the length of time it takes to travel between their residences. We have said before that "[t]he frequency and length of the travel required, in our opinion, must be a factor in the consideration of what serves the children's best interests." Carr, 777 So. 2d at 742. Although we do not necessarily find fault with a trial court's having a standard order like that imposed by the trial court in the present case, we note that the mother raised valid concerns in her second postjudgment motion and at the postjudgment hearing regarding the nearly eight-hour travel time and the fact that the children would not arrive home until well after midnight on certain Mondays or Tuesdays and would have to attend school later those same mornings. The postjudgment proceedings were

the first time the mother could have raised this argument because she was not aware of the specific contours of the visitation award before the entry of the custody judgment.

The mother is correct that a visitation order must be in the best interest of the children. See Mann v. Mann, 725 So. 2d at 992 ("In exercising its discretion in awarding visitation rights, the trial court's primary consideration must be the best interests and welfare of the children ...."). We have previously concluded that requiring young children to travel by car for eight hours per visitation weekend when their parents' residences were only two hours apart was not in their best interest. See id. The children in this case are far older than the preschool-aged children involved in Mann, and the parents in this case live nearly eight hours apart. Thus, based on those factual differences, we can hardly agree that Mann requires reversal of the judgment in the present case.

However, the decision in Mann is instructive, as is our decision in Carr, in which we reversed a visitation order requiring the parties' children to fly from Alabama to Chicago every other weekend for visitation. Carr, 777 So. 2d at 742.

The trial court and this court must consider whether the arrangements for visitation properly ensure that the children have meaningful involvement with the noncustodial parent, see Speakman v. Speakman, 627 So. 2d 963, 965 (Ala. Civ. App. 1993) (stating that a parent "should be given an opportunity to maintain a meaningful relationship with his [or her] child"), and also do not pose a risk of harm to the well-being of the children. See Ex parte Thompson, 51 So. 3d 265, 272 (Ala. 2010) ("A trial court in establishing visitation privileges for a noncustodial parent must consider the best interests and welfare of the minor child and, where appropriate, as in this case, set conditions on visitation that protect the child."). Requiring children to arrive home from visitation after midnight when they must attend school that same morning is not in their best interest. See id. (observing that requiring children to fly back and forth between Alabama and Chicago every other weekend was not in the children's best interest). Accordingly, we reverse that portion of the custody judgment authorizing the children to remain in Tennessee until 6:00 p.m. on those evenings that visitation concludes on the evening before a school day, and

we instruct the trial court to make adjustments in the visitation order to provide that the children arrive home at a more reasonable hour.

The mother next objects to the trial court's denial of her postjudgment request to remove from the custody judgment the morality clause, which prohibits each parent from having unrelated persons of the opposite sex in their respective homes or any place they might be staying after midnight or overnight when the children are present. Within her argument, the mother challenges the morality clause on the bases that it infringes upon her constitutional and fundamental right to make child-rearing decisions, see Troxel v. Granville, 530 U.S. 57 (2000), and that it discriminates against nonmarried heterosexual couples, albeit without citing authority relating to her perceived equal-protection challenge. The mother did not raise either constitutional issue before the trial court, however, and we are therefore precluded from considering either argument. Cooley v. Knapp, 607 So. 2d 146, 148 (Ala. 1992) ("The rule is well settled that a constitutional issue must be raised at the trial level and that the trial court must be given an opportunity to rule on the issue, or some

objection must be made to the failure of the court to issue a ruling, in order to properly preserve that issue for appellate review.").

Typically, this court has considered morality clauses in appeals involving a challenge to the imposition of restrictions on a noncustodial parent's visitation. In appeals involving restrictions upon the visitation rights of noncustodial parents, we have explained that

> "'[t]he trial court has broad discretion in determining the visitation rights of a noncustodial parent, and its decision in this regard will not be reversed absent an abuse of discretion.' Carr v. Broyles, 652 So. 2d 299, 303 (Ala. Civ. App. 1994). In exercising its discretion over visitation matters, '"[t]he trial court is entrusted to balance the rights of the parents with the child's best interests to fashion a visitation award that is tailored to the specific facts and circumstances of the individual case."' Ratliff v. Ratliff, 5 So. 3d 570, 586 (Ala. Civ. App. 2008) (quoting Nauditt v. Haddock, 882 So. 2d 364, 367 (Ala. Civ. App. 2003) (plurality opinion)). A noncustodial parent generally enjoys 'reasonable rights of visitation' with his or her children. Naylor v. Oden, 415 So. 2d 1118, 1120 (Ala. Civ. App. 1982). However, those rights may be restricted in order to protect children from conduct, conditions, or circumstances surrounding their noncustodial parent that endanger the children's health, safety, or well-being. See Ex parte Thompson, 51 So. 3d 265, 272 (Ala. 2010) ('A trial court in establishing visitation privileges for a noncustodial parent must consider the best interests and welfare of the minor child and, where appropriate, as in this case, set conditions on

> visitation that protect the child.'). In fashioning the appropriate restrictions, out of respect for the public policy encouraging interaction between noncustodial parents and their children, see Ala. Code 1975, § 30-3-150 (addressing joint custody), and § 30-3-160 (addressing Alabama Parent-Child Relationship Protection Act), the trial court may not use an overbroad restriction that does more than necessary to protect the children. See Smith v. Smith, 887 So. 2d 257 (Ala. Civ. App. 2003), and Smith v. Smith, 599 So. 2d 1182, 1187 (Ala. Civ. App. 1991)."

Pratt v. Pratt, 56 So. 3d 638, 641 (Ala. Civ. App. 2010). Certainly, the character of the parents and other moral considerations are relevant to decisions regarding custody and the welfare of the children at issue. See, e.g., Ex parte Devine, 398 So. 2d 686, 696-97 (Ala. 1981); Sain v. Sain, 426 So. 2d 853, 855 (Ala. Civ. App. 1983); and Hodges v. Nelson, 370 So. 2d 1020, 1021 (Ala. Civ. App. 1979). However, restrictions on visitation should be tailored to protect the well-being of the specific children involved. Ex parte Thompson, 51 So. 3d at 272. We therefore see no reason not to use the same principles when considering a morality clause being challenged by a custodial parent.

To support her argument that morality clauses should not be imposed without evidence indicating that the best interest of the children involved require such prohibitions be

enforced, the mother relies on authority from other jurisdictions, some of which is unreported,[8] and on Smith v. Smith, 599 So. 2d 1182, 1187 (Ala. Civ. App. 1992), in which this court determined that a restriction prohibiting unrelated male guests from being in or staying in the mother's residence during her periods of overnight visitation was overly restrictive because it would prevent the mother from having male visitors of any kind, even, for example, a male pastor or

[8]The mother cites the following cases from our sister states: Moix v. Moix, 430 S.W.3d 680 (Ark. 2013) (concluding that a noncohabitation provision should be imposed only when it is found to be in the best interest of the child); Arkansas Dep't of Human Servs. v. Cole, 380 S.W.3d 429 (2011) (declaring unconstitutional an Arkansas statute that prohibited persons cohabiting with a sexual partner outside of marriage from being foster parents or adoptive parents); Bargmann v. Bargmann, (No. M2010-00096-COA-R3-CV, March 22, 2011) (Tenn. Ct. App. 2011) (not reported in S.W.3d) (concluding that the trial court had abused its discretion in imposing a "paramour provision" precluding the mother in that case from having overnight guests with whom she was romantically involved because it found no "evidentiary justification for the limitation on Mother's parenting time"); and Barker v. Chandler (No. W2010-01151-COA-R3-CV, June 29, 2010) (Tenn. Ct. App. 2010) (not reported in S.W.3d) (concluding that the "record [was] devoid of any evidence to support a finding that the paramour provision is in the best interest of the children"). We are not bound by opinions of our sister states. Fox v. Hunt, 619 So. 2d 1364, 1367 (Ala. 1993) ("The opinions of our sister states are merely persuasive authority, and this Court is not bound by the doctrine of stare decisis to follow such decisions.").

the husband of a friend, in her home at any time during her visitation periods. She contends that the record lacks any evidence indicating that the restriction is necessary to protect the welfare of the children.[9] We agree.

Like the restriction in this case, the restriction imposed by the trial court in Smith v. Smith, 887 So. 2d 257 (Ala. Civ. App. 2003), prohibited both parents from having certain overnight guests. However, the restriction imposed by the trial court in Smith, 877 So. 2d at 265, prohibited overnight guests of any gender who were not either married to the parent or related to him or her by blood. Because of the living arrangements of both parents, who each lived in a home with their respective parents and their respective sisters (and, in the case of the father, also lived in the same home

[9]We recognize that the mother has contended in her brief to this court that the children have a good relationship with the biological father of their half sibling and that he poses no risk to them. However, as we have previously explained, the record contains no evidence relating to the children at all, much less regarding their relationship with the half sibling's biological father, and we cannot consider the mother's arguments as evidence. See Cameron v. Cameron, 259 So. 3d 662, 669 (Ala. Civ. App. 2016) ("Statements made in briefs are not evidence"); and Geer Bros. v. Walker, 416 So. 2d 1045, 1049 (Ala. Civ. App. 1982) ("[A]n appellate court cannot consider statements in brief that are not supported by the record.").

with his sister's spouse), we concluded in Smith, 877 So. 2d at 265, that the restriction was overbroad and served to make the right of each parent to his or her custodial period difficult, if not impossible, to exercise. Thus, in Smith, 877 So. 2d at 265, we reversed the trial court's judgment and ordered that it modify the restriction on remand so that it served to protect the best interest of the children but permitted their exposure to those, like the father's brother-in-law, who posed no danger to them.

Although the restriction at issue in this case is not nearly as restrictive as the one in Smith, 599 So. 2d 1187, or as situationally problematic as the one in Smith, 877 So. 2d at 265, we agree with the mother that the principles underlying the outcomes in both decisions compel a reversal of the restriction contained in the custody judgment at issue. We have explained that "in visitation cases [involving alleged indiscreet conduct of a parent] there should still be evidence presented to show that the misconduct complained of is detrimental to the child." Jones v. Haraway, 537 So. 2d 946, 947 (Ala. Civ. App. 1988). The record in the present appeal

contains no evidence indicating that the mother's conduct was indiscreet or detrimental to the children.

At the hearing on the postjudgment motions, the trial court stated that, in its opinion, a morality clause is "always in the best interest of the child[ren]." However, restrictions on a parent's conduct must be tailored to the specific facts of each individual case. The record contains insufficient evidence to demonstrate that the mother's conduct was indiscreet and had a detrimental effect on the children and that the restriction imposed was necessary to protect the children from further harm to their well-being. Ex parte Thompson, 51 So. 3d at 272; Pratt, 56 So. 3d at 641. Accordingly, we reverse the custody judgment insofar as it imposed a morality clause; on remand, the trial court is instructed to delete that clause from the custody judgment.

Finally, the mother complains that the trial court erred by failing to award her an attorney fee. She requested an attorney fee in her complaint and reiterated her request for an attorney fee of an unspecified amount in a motion filed after the entry of the custody judgment. At the time she filed her postjudgment motion requesting an attorney fee, the

mother was proceeding pro se, and the trial court indicated that it was denying her request for an attorney fee because she was not represented by an attorney. In her brief on appeal, the mother, in contravention of Rule 28, Ala. R. App. P., does not cite to any authority relating to the award of an attorney fee in a custody matter. "[B]ecause we are not required to perform a party's legal research, the failure to present authority for an argument often results in a determination that the argument was waived and that the judgment should be affirmed on that issue." B.C. v. A.A., 143 So. 3d 198, 206 (Ala. Civ. App. 2013) (citing White Sands Grp., L.L.C. v. PRS II, LLC, 998 So. 2d 1043, 1058 (Ala. 2008)). Based on the failings in the mother's brief, we affirm the trial court's decision denying the mother's request for an attorney fee.

In conclusion, we reject the mother's jurisdictional arguments. We reverse the custody judgment insofar as it contains the provision requiring the children to remain in Tennessee until 6:00 p.m. on a night before the children are to attend school and the provision containing the morality clause. We affirm the judgment in all other respects. The

cause is remanded to the trial court to alter the visitation provisions to direct that the children will arrive home from Tennessee at a reasonable hour and to delete the morality clause from the custody judgment.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH INSTRUCTIONS.

Thompson, P.J., and Moore, Donaldson, and Hanson, JJ., concur.