



**In the Missouri Court of Appeals
Eastern District**

DIVISION THREE

KIMBERLY L. BALL,) No. ED109532
)
 Appellant,) Appeal from the Circuit Court of
) St. Charles County
vs.)
) Honorable John P. Banas
MICHAEL R. BALL,)
)
 Respondent.) Filed: November 23, 2021

Introduction

Kimberly Guinn (“Mother”) appeals the trial court’s judgment modifying an Illinois court’s child custody judgment and giving Michael Ball (“Father”) sole physical custody of their daughter, MB. Mother raises eight Points on appeal. In Point I, Mother challenges the trial court’s “jurisdiction” to modify an Illinois court’s dissolution judgment. In Point II, Mother argues the trial court improperly entered a temporary custody order without a hearing and delegated its judicial authority to enter a custody order to a guardian ad litem (“GAL”). In Points III-IV, Mother argues the trial court erred by awarding the parties joint legal custody, giving Father final decision-making authority, and awarding Father sole physical custody of MB. In Point V, Mother argues the trial court uncritically “rubber stamped” Father’s proposed findings of fact and conclusions of law. In Point VI, Mother argues the trial court lacked jurisdiction to amend the Illinois judgment’s award of a tax credit to her. In Point VII, Mother argues the trial

court erred by dismissing her motion for new trial as untimely. In Point VIII, Mother argues the trial court lacked jurisdiction to amend the child support order because it was not registered for modification.

We affirm.

Factual and Procedural Background

The parties' relationship began in 2008. They had one child together in March of 2010, MB. The parties married in July of 2010 and divorced in Illinois on June 28, 2017. They lived in both Missouri and Illinois at different points during the marriage and were twice separated pending divorce in 2012-2013 and 2015-2017.

The 2017 Illinois dissolution judgment provided Mother would receive sole physical and legal custody of MB and Father would receive visitation on the Illinois equivalent of a *Siegenthaler* schedule.¹ In July 2019, Father attempted to register the dissolution judgment in Missouri and sought to modify it under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), RSMo § 452.810.1² and Missouri Supreme Court Rule 74.14.³

Section 452.810.1 permits registration of another state's child custody determination in Missouri courts. The registration may include a simultaneous request for enforcement. As relevant here, to register a foreign judgment, section 452.810.1(2) provides the registering party must send (1) two copies, including one certified copy, of the determination sought to be registered and (2) a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified.

¹ *Siegenthaler* visitation schedules generally provide the non-custodial parent with visitation on designated weekends, weekdays, holidays, and longer periods during the summer. See *White v. White*, 616 S.W.3d 373, 384 (Mo. App. E.D. 2020).

² All statutory citations are to RSMo (2019), unless otherwise indicated.

³ All Rule citations are to the Missouri Supreme Court Rules (2019), unless otherwise indicated.

Rule 74.14 controls registration of foreign judgments in Missouri courts generally and contains filing rules pertaining to properly authenticating the foreign judgment seeking registration. Rule 74.14(b) provides:

A copy of any foreign judgment authenticated in accordance with the act of Congress or the statutes of this state may be filed in the office of the clerk of any circuit court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the circuit court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a circuit court of this state and may be enforced or satisfied in like manner.

The trial court conducted a hearing on the motion to modify on October 15-16, 2020. Whether Father properly registered the judgment in Missouri was not an issue raised. On December 16, 2020, the trial court raised the issue of its jurisdiction over the Illinois judgment *sua sponte*. The trial court's jurisdiction concerns did not include the authentication of the Illinois judgment; they were limited to the court's ability to modify a foreign judgment without first consulting the issuing state's court.⁴ On January 7, 2021, the trial court held a jurisdictional conference with the Illinois court under Mo. Rev. Stat. 452.730.⁵ Both parties participated in the conference and submitted written arguments to the Illinois court about which court should have jurisdiction over the modification motion.

⁴ The trial court determined it was required to conduct a "jurisdictional hearing" with the Illinois court under section 452.750 before modifying the parties' Illinois judgment.

⁵ Section 452.730 provides Missouri courts may communicate with courts of other states regarding jurisdictional issues in cases involving dissolution of marriage, custody, and support under sections 452.700-452.930.

On January 29, 2021, the Illinois court entered a written judgment finding it had no continuing interest in retaining jurisdiction over the parties. Specifically, the Illinois court found:

Based on the evidence, neither the child, the child’s parents, nor any person acting as a parent have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child’s care, protection, training, and personal relationships. The Court, therefore, no longer has exclusive, continuing jurisdiction over the issue of child custody [. . .]

Based upon the evidence, even if the Court were to find that it has exclusive, continuing jurisdiction, Illinois is an inconvenient forum for the parties to litigate the issue of modification of this Court’s judgment and the Court would decline to exercise jurisdiction.

The Illinois court further emphasized Illinois was an inappropriate forum because (1) MB lived in Missouri “the majority of the time since entry of the Illinois judgment;” (2) the distance between the parties did not create an undue burden; (3) the parties “essentially agreed to the jurisdiction of the Missouri court by litigating the entire case [in Missouri];” and (4) the Missouri court was in a better position to decide the case and consider witness credibility because the Missouri court heard the evidence and the Illinois court did not.

The Missouri court accepted the Illinois court’s findings and retained jurisdiction. On February 8, 2021, the Missouri court entered its findings of fact and conclusions of law, modifying the Illinois judgment (1) granting joint legal custody to both parents; (2) granting sole physical custody to Father; (3) eliminating Father’s child support obligations; and (4) purportedly transferring child tax benefits to Father.

The Illinois and Missouri trial courts are to be commended for their efforts to address their continuing jurisdiction over this factually complicated matter.

This appeal follows. Additional factual and procedural history will be provided as necessary to address Mother's claims.

Standard of Review

A. Jurisdiction

“Whether to register a foreign judgment and the propriety of the foreign judgment are legal conclusions that we review *de novo*.” *Ramalingam v. Kumaresan*, 603 S.W.3d 323, 325 (Mo. App. E.D. 2020). Whether Missouri has jurisdiction to determine custody is also a legal question this Court reviews *de novo*. *Blanchette v. Blanchette*, 476 S.W.3d 273, 277 (Mo. banc 2015).

B. Dissolution and Child Custody

We will affirm the judgment unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law. *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). We will not review the trial court's decisions regarding the weight of the evidence, resolving conflicting evidence, and witness credibility. *Sulkin v. Sulkin*, 619 S.W.3d 155, 159 (Mo. App. E.D. 2021). If the trial court has made no specific findings on a factual issue, such findings are interpreted as having been found in accordance with the judgment. *Id.*

The trial court's custody determinations are afforded greater deference than other decisions. *Thorp v. Thorp*, 390 S.W.3d 871, 877 (Mo. App. E.D. 2013). We presume the trial court reviewed all the evidence and based its decision on the child's best interests. *Id.* We view the evidence and any reasonable inferences in the light most favorable to the judgment and will

not reweigh the evidence. *Id.* The trial court had a superior opportunity to observe the sincerity and character of the witnesses; thus, we defer to the court’s credibility determinations. *Mehler v. Martin*, 440 S.W.3d 529, 534 (Mo. App. E.D. 2014).

Discussion

Point I: “Jurisdiction” and Authority

Mother claims the trial court had no jurisdiction to modify the Illinois judgment under the UCCJEA because Father did not include an authenticated, certified copy of the entire judgment in his petition to register the judgment. She points out Father only filed non-authenticated, non-certified copies of the four-page Illinois dissolution judgment and twelve-page parenting plan, omitting the parties’ marital settlement agreement and support order. Mother argues Father’s attempt to register the judgment violated Missouri’s general foreign judgment registration statute, section 511.760(3);⁶ section 452.810.1(2) of the UCCJEA; and Rule 74.14. Mother reasons Father had to file an authenticated, certified copy of the Illinois judgment with the trial court and his failure to do so was fatal to the trial court’s subject matter jurisdiction.

Father “disputes” Mother’s claim he failed to properly register the judgment in Missouri but cites no authority supporting his position. Instead, Father notes Mother correctly registered the entire judgment in Missouri in a separate action and argues Mother’s registration cured any jurisdictional defect.⁷

⁶ Section 511.760(3) provides in relevant part: A verified petition for registration shall set forth a copy of the judgment to be registered, the date of its entry and the record of any subsequent entries affecting it, all authenticated in the manner authorized by the laws of the United States or of this state, and a prayer that the judgment be registered. Mother cites no authority supporting her claim Father had to register the Illinois judgment under both section 511.760(3) and section 452.810.1(2). Because this issue is unimportant to our discussion and holding we do not address it further.

⁷ Mother registered the Illinois judgment in a separate action in Missouri on March 15, 2021, more than one month after the trial court entered its modification judgment. We fail to see how Mother’s separate registration is relevant to this appeal.

Both parties' positions are incorrect. Authentication of a foreign state's judgment does not impact a court's jurisdiction; authentication involves the court's authority to act under the statute.

A. Subject Matter Jurisdiction

To have jurisdiction over a case, a court must have personal jurisdiction over the parties and subject matter jurisdiction over the issues to be litigated. *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 251 (Mo. banc 2009) (citing *In re marriage of Hendrix*, 183 S.W.3d 582 (Mo. banc 2006)). Subject matter jurisdiction of Missouri courts is governed by Article V, section 14 of the Missouri Constitution, which provides: "the circuit courts shall have original jurisdiction over all cases and matters, civil and criminal." This is a civil case. The UCCJEA as codified in section 452 can give a Missouri court jurisdiction over foreign states' child custody judgments in certain circumstances.

In *Wyciskalla*, the Missouri Supreme Court examined the breadth of trial courts' constitutional subject matter jurisdiction. 275 S.W.3d 249, 252-54 (Mo. banc 2009). The Court observed trial courts sometimes conflated subject matter jurisdiction with their authority to act in a particular case. *Id.* The source of the confusion was the concept of "jurisdictional competence," a quasi-jurisdictional justification for barring litigants from relief in "situations in which there is no question as to the court's authority to decide the general issue before it, but there is a question whether the issue or parties affected by the court's judgment are properly before it for resolution at that time." *Id.*

Wyciskalla changed how we analyze trial courts' jurisdiction over cases with threshold filing defects. Before *Wyciskalla*, statutory filing rules were considered jurisdictional; that is, a litigant's failure to follow statutory prerequisites deprived trial courts of subject matter

jurisdiction. *See, e.g., McMinn v. McMinn*, 884 S.W.2d 277, 279-80 (Mo. App. W.D. 1994) (holding the trial court was deprived of subject matter jurisdiction over a foreign judgment because the filing party failed to file an authenticated copy of the judgment with the court).

After *Wyciskalla*, statutory prerequisites became a question of the trial court's authority to enter judgment, not subject matter jurisdiction. *Gray v. Missouri Dep't of Corr.*, 577 S.W.3d 866, 868 (Mo. App. W.D. 2019). In *Gray*, the Court of Appeals for the Western District acknowledged statutory prerequisites were traditionally considered a jurisdictional matter, but noted *Wyciskalla* clarified they are properly analyzed as a question of the trial court's authority to enter judgment. *Id.* at 868-67. The trial court therefore had subject matter jurisdiction to address the Illinois judgment. *Gray*, 567 S.W.3d at 868-69; Mo. Const. art. V, § 14. Mother's position is based on a statutory filing defect, which raises the court's authority to act, not subject matter jurisdiction.

B. Challenges to the Trial Court's Authority to Act are Unpreserved

Mother never challenged the trial court's *authority* to enter judgment. She first raised the court's subject matter jurisdiction – an issue that cannot be waived and may be raised at any time – in her untimely motion for new trial. *See* Point VII, *infra*. Challenges to the trial court's statutory authority over a child custody matters are waived if not timely and properly asserted. *Schaeffer v. Schaeffer*, 471 S.W.3d 367, 371-72 (Mo. App S.D. 2015). Unpreserved authority arguments framed as jurisdictional arguments are waived. *Hightower v. Myers*, 304 S.W.3d 727, 733 (Mo. banc 2010). Failure to raise the court's authority in the initial proceeding or subsequent modification proceedings leave the issue unpreserved for review. *Id.*

In *Hightower*, the Missouri Supreme Court explained non-waivable jurisdictional arguments are distinct from waivable statutory authority arguments under its then-recent holding in *Wyciskalla*. *Id.* The Court noted:

It was crucial that Mother successfully frame her claim for relief in terms of subject matter jurisdiction because subject matter jurisdiction may not be waived, may not be conferred by consent, and can be raised at any time by any party or court, even in a collateral or subsequent proceeding. Mother did not raise a challenge properly to the authority of the trial court in the initial paternity proceeding or the modification proceeding, so her claims of error . . . are unpreserved. Because the trial court had subject matter jurisdiction and any unpreserved claims are waived, she is not entitled to relief.

Id. (internal citations omitted). Like in *Hightower*, Mother cannot bootstrap unpreserved non-jurisdictional claims to a jurisdictional argument. We will not convict a trial court of error for an issue not presented for its determination. *Fouts v. Regency N. Acquisition, LLC*, 569 S.W.3d 463, 466 (Mo. App. W.D. 2018). The trial court’s authority over the judgment was not challenged; we decline to act as an advocate for the parties and consider the issue for the first time on appeal.

Point I is denied.

Point II: The Temporary Custody Order

On August 30, 2019, the trial court appointed a GAL to represent MB’s interests. The court entered a temporary custody order, which stated: “The Court orders that [MB] shall continue to attend school from Father’s residence. The Court appoints Joshua Knight as GAL. The GAL shall implement a visitation schedule for [Mother].”

Mother asserts in conclusory fashion the trial court's order exceeded its subject matter jurisdiction and was an abuse of discretion.⁸ As explained in Point I, *supra*, the trial court had subject matter jurisdiction over this matter. Mother claims she objected to the temporary custody order and was therefore entitled to a hearing under section 452.380(1) before the order could be entered. Further, Mother claims the trial court's instruction, "[t]he GAL shall implement a visitation schedule" violated Missouri Supreme Court Rule 2-2.2(A), but offers no citations to authority nor analysis of her claim.⁹ Mother also contends the GAL's investigation into MB's preferences and best interests was not thorough enough, but cites no authority establishing the GAL's investigation was insufficient.

Father argues the August 30, 2019 temporary custody order was a consent order and no hearing was required. Father argues Mother's claimed objection to the order is "completely fabricated," is unpreserved because it was not raised at the trial court, and is moot.

We agree with Father: Mother's argument is unpreserved. Section 452.380(1) provides: "A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit. The court may award temporary custody after a hearing or, if there is no objection, solely on the basis of the affidavits." Nothing in the record supports Mother's claim she objected to the temporary custody order. We are therefore not "firmly convinced that the judgment is wrong." *Meseberg v. Meseberg*, 580 S.W.3d 59, 65 (Mo. App. W.D. 2019).

Point II is denied.

⁸ Mother's argument is multifarious and violates Rule 84.04(d). Distinct claims of error must be asserted in separate Points. Rule 84.04(d); *Librach v. Librach*, 575 S.W.3d 300, 307 (Mo. App. E.D. 2019). We nevertheless exercise our discretion to review Mother's claims *ex gratia* to the extent we understand them. We exercise this discretion with caution, because each time we review a noncompliant brief *ex gratia*, we imply substandard briefing is acceptable. It is not. See *Scott v. King*, 510 S.W.3d 887, 893 (Mo. App. E.D. 2017).

⁹ Rule 2-2.2(A) provides: "A judge shall uphold and apply the law, and shall perform all duties of judicial office promptly, efficiently, fairly and impartially."

Point III-IV: Physical and Legal Custody of MB

In Points III-IV, Mother asserts the trial court erred by awarding the parties joint legal custody and awarding Father sole physical custody of MB. Mother claims the judgment contradicted the “credible testimony of the witnesses” and argues the trial court erred by finding MB’s best interest would be served by awarding Father sole physical custody. Specifically, Mother disputes the trial court’s finding “Mother has not made a significant effort to maintain her relationship with [MB] since her move. In addition to failing to maintain phone contact or attend any activities, she has taken no initiative to learn where [MB] was attending school; has made little to no contact with the school.”

Regarding joint legal custody, Mother contests the trial court’s order: “If a disagreement arises as to a decision on a legal issue above, and the parties are unable to reach an agreement within forty-eight hours, Father shall have final decision-making authority.” In Point IV, Mother argues such an arrangement violates the State’s public policy interest in encouraging parents to share decisions affecting their children’s health, education, and welfare and diminishes her role as MB’s parent.

Father argues the trial court did not err and its findings regarding Mother’s lack of participation in MB’s life were supported by the evidence. Father notes the evidence established Mother demonstrated little interest in communicating with or visiting MB while she was in Father’s custody and was unwilling to communicate directly with Father, instead using Father’s parents as an intermediary.

Regarding the trial court’s award of final decision-making authority to Father on disputed legal custody issues, Father argues such arrangements are permitted when the parties demonstrate an inability to agree. Father relies on this Court’s decision in *Rallo v. Rallo* to argue

final authority should rest with one parent when the other parent failed to timely respond to custody issues and communicated through an intermediary such as the child's grandparents. 477 S.W.3d 29, 34 (Mo. App. E.D. 2015).

We agree with Father. A trial court's custody determination is afforded greater deference than other decisions and we will not reweigh the evidence or credibility of the witnesses. *Thorp*, 390 S.W.3d at 877. Mother's claims ignore our standard of review and are replete with speculation about facts outside the record. We are therefore not "firmly convinced" the trial court's judgment was wrong. *Murphy*, 536 S.W.2d at 32; *Meseberg*, 580 S.W.3d at 65.

Points III and IV are denied.

Point V: Adoption of Father's Proposed Judgment

The trial court ordered the parties to submit proposed findings of fact and conclusions of law. In finding for Father, large portions of the trial court's judgment adopted Father's proposed findings verbatim. Mother notes such a practice by trial courts is disfavored and, though not *per se* reversible error, "it is unwise in a contested case and this Court and the Supreme Court of Missouri have repeatedly warned against it." *Tribus, LLC v. Greater Metro, Inc.*, 589 S.W.3d 679, 699 (Mo. App. E.D. 2019). Mother claims the judgment is internally inconsistent, confusing, prejudicial, and unsupported by substantial evidence, indicating the trial court did not carefully consider the issues.

Father argues the portions of the judgment adopted verbatim from his proposed findings of fact and conclusions of law were not prejudicial, noting the judgment materially differs from his proposed judgment. Specifically, Father notes the trial court did not adopt his proposed custody and visitation schedules, attorney fee requests, and financial support proposals.

This Court “does not condone [verbatim adoption of proposed findings] by a trial court, and strongly encourage[s] all trial courts to avoid such a practice.” *Arcese v. Daniel Schmitt & Co.*, 504 S.W.3d 772, 778 n.7 (Mo. App. E.D. 2016) (citing *State v. Griffin*, 848 S.W.2d 464 (Mo. banc 1993)). We agree with Father the judgment is not a “rubber stamp” of his proposed findings of fact and conclusions of law. Here, the trial court’s partial adoption of Father’s proposed findings did not indicate a lack of careful consideration because the court modified the proposed findings to reflect its view of the evidence. *Tribus, LLC*, 589 S.W.3d at 699.

Point V is denied.

Point VI: Tax Benefits

In the parties’ underlying dissolution judgment and settlement agreement, they agreed to claim MB on their taxes in alternating years. The Illinois settlement agreement further provided Father would waive his right to claim MB on his taxes for four years as consideration for settling the distribution of the parties’ other assets. In its modification judgment, the Missouri trial court stated, “Father shall be entitled to the tax exemption for the child as set forth in the previous judgment” and “In all other respect[s] not specifically modified herein, the provisions of the [Illinois Judgment] . . . shall remain in full force and effect.”

Mother asserts the modification judgment violated principles of *res judicata* by permitting Father to relitigate the Illinois trial court’s judgment of the parties’ division of tax benefits. Specifically, Mother contends she is entitled to a 2021 tax benefit for MB under the Illinois judgment, but the modification judgment improperly transferred the benefit to Father. She claims the modification judgment ignored the settlement agreement by effectively returning the right to claim MB to Father.

Father argues Mother's claim is moot because the trial court's order did not return the tax exemption to him; it simply reaffirmed the parties' arrangement in the underlying judgment. We agree. The underlying judgment and settlement had two parts: (1) the parties' right to claim the tax benefit alternates every year and (2) Father agreed to waive his right to the benefit for four years. Nothing in the Missouri modification judgment contradicted the agreement the parties reached in their Illinois settlement. Mother concedes her claim about the trial court's alleged modification of the tax benefit is speculation. We disagree with her characterization of the modification judgment: it specifies the Illinois judgment still controls the parties' tax exemption.

Point VI is denied.

Point VII: Mother's Motion for New Trial

The trial court entered its judgment on February 8, 2021. On February 25, 2021, Father moved to amend the judgment. On March 13, 2021, Mother moved for a new trial. The trial court dismissed Mother's motion for new trial as untimely under Rule 78.04, which provides: "Any motion for new trial and any motion to amend the judgment or opinion shall be filed not later than thirty days after the entry of the Judgment."

Mother moved for a new trial over thirty days after the judgment was entered. She appears to argue she can extend her deadline to file a post-trial motion by bootstrapping it to Father's timely post-trial motion. Mother cites no authority supporting her position. Her post-trial motion was untimely and the trial court did not err by dismissing it.

Point VII is denied.

Point VIII: Child Support

Before the modification judgment, Father paid \$312 per month in child support. In its modification judgment, the trial court found Father earns \$10,093 per month and Mother earns

\$2,100 per month. The court also found Father pays \$410 per month for MB's health insurance. Using a Form 14, the trial court found Mother's presumed monthly child support obligation was \$86, but did not order her to pay support because of the parties' disparate incomes.

Mother claims the trial court erred by modifying the child support judgment under the Uniform Interstate Family Support Act ("UIFSA"), section 454.1500. Mother claims in conclusory fashion (1) personal jurisdiction was not established over her or (2) even if personal jurisdiction was established, the trial court lacked authority to modify the support order. Mother's claims are unpreserved.¹⁰ Unlike subject matter jurisdiction, personal jurisdiction objections can be waived if not timely and properly raised. *Interest of A.R.B.*, 586 S.W.3d 846, 859 (Mo. App. W.D. 2019). Similarly, as explained in Point I, failure to timely challenge the trial court's statutory authority also waives the issue. *Hightower*, 304 S.W.3d at 733.

Mother appears to argue the trial court abused its discretion by no longer requiring Father pay child support to Mother, despite physical custody transferring to Father. Mother cites no authority supporting this position. Mother also claims the court overestimated her monthly income and overestimated the cost of MB's health insurance, concluding the court's calculations were against the weight of the evidence. Finally, Mother cites section 452.377.11(2) to argue the trial court had to specify which party should pay for transporting MB between their residences.

Mother's arguments essentially ask this Court to reweigh the evidence and conclude the trial court abused its discretion by ending Father's child support obligation. We find no abuse of discretion and will not reweigh the evidence on appeal. *Sulkin*, 619 S.W.3d at 159. The judgment favors Mother: she was presumed to owe child support to Father, but the court eliminated her obligation to contribute. Regarding Mother's transportation cost argument,


¹⁰ We note Point VIII violates Rule 84.04(e), which requires appellants to "include a concise statement describing whether the error was preserved for appellate review; if so, how it was preserved; and the applicable standard of review." Mother included no preservation statement.

section 452.377.11 applies *after* the court approves the custodial parent’s relocation.¹¹ Nothing in the record indicates Father has relocated from his residence in St. Charles, Missouri, and Mother cites no authority expanding the applicability of section 452.377.

Point VIII is denied.

Conclusion

For the reasons stated above, we affirm.



Philip M. Hess, Presiding Judge

Angela T. Quigless, Judge and
Colleen Dolan, Judge concur.

¹¹ Section 452.377.11 provides in relevant part: “*If relocation is permitted: . . . (2) The court shall specify how the transportation costs will be allocated between the parties and adjust the child support, as appropriate, considering the costs of transportation.*” (emphasis added).