IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
July 18, 2014 Session

ELIZABETH EBERBACH v. CHRISTOPHER EBERBACH

Appeal from the Chancery Court for Williamson County
No. 37317 Timothy L. Easter, Chancellor

No. M2013-02852-COA-R3-CV - Filed December 23, 2014

This case involves post-divorce litigation over child support and residential parenting time. In connection with a petition for a decrease in child support, the parties found themselves in a discovery dispute, which resulted in the trial court awarding Mother $10,000 in attorney's fees. Later, as a result of his move out of state, Father filed a motion to modify the parties' permanent parenting plan. When Father decided not to pursue his motion to modify, Mother filed an emergency motion for relief to set holiday parenting time. The court ordered that the parenting plan remain in effect for the holiday period and required Father to personally pick up and return the children for visitation. Father appeals the award of attorney's fees to Mother stemming from the discovery dispute and the order requiring him to personally pick up and return his children when exercising holiday parenting time. We affirm the trial court's order awarding attorney's fees to Mother. Because we find the issue to be moot, we dismiss Father's appeal regarding holiday parenting time.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

W. NEAL MCBRAYER, J., delivered the opinion of the Court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Duncan C. Cave, Nashville, Tennessee, for the appellant, Christopher Eberbach.

Rose Palermo, Nashville, Tennessee, for the appellee, Elizabeth Eberbach.

OPINION

I. Background

Elizabeth Eberbach ("Mother") and Christopher Eberbach ("Father") were divorced in May 2011. They are the parents of three children. The parties agreed to a Permanent Parenting Plan ("parenting plan"), which was incorporated into their final divorce decree. Over a year later, the parties found themselves litigating child support and residential parenting time issues. This appeal arises out of two filings: Father's petition for a decrease in child support and Mother's emergency motion for relief to set holiday parenting time.

A. Discovery Dispute and Award of Attorney's Fees

On September 19, 2012, Father filed a petition for a decrease in child support. In connection with this petition, Father requested certain financial documents from Mother, including her federal income tax returns. On December 27, 2012, Father filed a motion to compel production of the documents, and Mother filed a response requesting a protective order and an award of attorney's fees for responding to the motion. However, the motion to compel was never heard, apparently because it failed to comply with local rules.

On April 10, 2013, Father filed a petition to hold Mother in civil contempt for failure to provide her 2011 federal income tax return and supporting documentation. Father filed a second motion to compel one month later, alleging that Mother still had not produced the requested documents.

The trial court held a hearing on Father's second motion to compel on May 21, 2013. At the hearing, Mother gave Father a copy of her 2010 and 2011 federal income tax returns with attachments. On July 8, 2013, the court issued an order requiring Mother to produce the remaining documents from Father's discovery request. The order also required Father to produce his personal and business federal income tax returns for 2010 and 2011, including supporting documentation.

Father subsequently filed a motion for contempt and damages on July 17, 2013, asking the trial court to hold Mother and her attorney in "willful contempt" of court for failure to comply with the court's order to produce tax information. Father claimed that the tax returns Mother produced on May 21, 2013, were inaccurate because they were not signed and pages were missing from the supporting documentation. Father also requested $18,307.50 in fees and expenses he incurred while seeking to obtain Mother's tax information.

On July 24, 2013, Mother filed her own motion to compel relating to a request for

production she had served on Father on June 4, 2013. On August 1, 2013, Father filed a "Response Motion to Strike; Motion to Stay Discovery; and for Further Relief." Father also subpoenaed Mother and her attorney to appear as witnesses regarding his motion for contempt and damages. Mother filed a motion to quash the subpoenas.

On September 10, 2013, the trial court held a hearing on the various discovery motions related to Father's petition to decrease child support. Father called Mother as his only witness. Mother's attorney cross-examined Mother and requested attorney's fees for responding to Father's motion for contempt and damages and Father's "Notice of a Hearing on Motion for Child Support Arrearage Overpayment."

On September 26, 2013, the trial court entered two orders relating to the September 10, 2013 hearing. In the first order, the court found that Mother had substantially complied with all discovery requests from Father, and Father had failed to comply with the court's order to produce his tax information to Mother. The court ordered Father to produce his federal income tax returns and supporting documentation for 2011 and 2012. In the second order, the court denied Father's motion for contempt and damages against Mother and her attorney, and awarded Mother her attorney's fees for responding to two of Father's discovery motions. Specifically, paragraph 3 of the order stated, "[t]hat Mother shall be awarded her reasonable attorney's fees upon submission of an affidavit as it relates to responding to Father's Motion For Contempt and Damages and Notice of Hearing on Motion for Child Support Arrearage Overpayment."

Mother's attorney filed an affidavit of attorney's fees, which showed total fees of $13,900. The affidavit included: a statement of the hourly rates for each lawyer or staff member that worked on Mother's case and a statement of the number of hours expended on Mother's case by each lawyer or staff member. An invoice detailing the date, description, time expended, and hourly rate for each task completed for Mother was attached to the affidavit, covering entries from July 29, 2013, to September 10, 2013. On September 30, 2013, the trial judge awarded Mother $10,000 in attorney's fees and ordered Father to pay them directly to Mother's attorney.

Father filed two Rule 52.02 motions to amend findings of fact and conclusions of law on September 30, 2013, and October 9, 2013. The court held a hearing on these motions on November 5, 2013. Father did not introduce any testimony or evidence at the hearing. Father's attorney stated that the award of attorney's fees was unreasonable and claimed that some of the requested fees were unrelated to the discovery dispute. However, Father's attorney did not identify any particular entry in the affidavit of Mother's attorney that was objectionable.

> The Court: "Can you point to anything in that affidavit that you object to?"
>
> Father's Attorney: "Well, anything related other than beyond the motion."
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> . . . .
>
> The Court: "You don't have one to show me, here's where she's entered something that's not part of the discovery fuss?"
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> Father's Attorney: "I don't have that in front of me, Your Honor."
>
> . . . .
>
> Father's Attorney: "But regardless, I don't think that that would be reasonable in terms of relating to a motion to compel discovery and having a hearing, 13,000-plus dollars."

At the conclusion of the hearing, the court stated:

> You do also talk about the Court's finding that [Mother's attorney] is entitled to her attorney's fees for this [ ] discovery dispute. And absent your showing to me specific entries on her affidavit that you claim did not relate to the discovery process, . . . the Court's unable to make a finding on that.

In an order issued on November 22, 2013, the court denied both of Father's Rule 52.02 motions. In the same order, the court also denied Father's request to reduce the attorney's fees awarded to Mother. Then, on December 2, 2013, Father filed a notice of dismissal for his motion to modify child support. The trial court entered an order dismissing the motion without prejudice on December 4, 2013.

On December 23, 2013, Father appealed the trial court's orders of: (1) September 26, 2013, regarding the parties' compliance with their obligations to produce tax information; (2) September 26, 2013, regarding Father's motion for contempt and damages and Mother's request for attorney's fees; (3) September 30, 2013, awarding Mother $10,000 in attorney's fees; and (4) November 22, 2013, denying Father's Rule 52.02 motions.

B. Order to Set Holiday Parenting Time

When the parenting plan was executed, both parties resided in Williamson County, Tennessee. In 2013, Father relocated to Orlando, Florida. The parenting plan includes a

specific provision, Section (E), regarding parenting time during "Winter (Christmas) Vacation." Section (E) states:

> The mother shall have the children for the first period from the day and time school is dismissed until December 25 at 2:00 p.m. in the even-numbered years. The other parent will have the child or children for the second period from the day and time indicated above until 2:00 pm on January 1st. Any remaining days will be split equally between the parties. The parties shall alternate the first and second periods each year.

Section (H) of the parenting plan addresses transportation arrangements for the children and states the following:

> The Father shall be responsible for picking up the children from school or Mother's residence at the beginning of his parenting time and returning them to Mother's residence or school at the end of his parenting time.
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> The pickup and delivery of the children shall be timely and in accordance with the terms of this Parenting Plan. If a parent does not possess a valid driver's license, he or she must make reasonable transportation arrangements to protect the child or children while in the care of that parent.

Father filed an amended motion to modify the parenting plan on November 22, 2013, but then dismissed the motion on December 2, 2013. From December 6 to December 15, 2013, Mother and Father negotiated a plan for parenting time during the holiday vacation. Under Section (E), the parenting plan would have required Father and/or the children to make two out-of-state trips during the vacation period because the parents evenly shared the days remaining after January 1 that the children were out of school. Although the parties reached an agreement to address the issue, Father refused to enter an agreed order modifying the parenting plan.

Mother filed an emergency motion for relief to set holiday parenting time on December 17, 2013. Mother requested that the court issue an order either: (a) modifying the parenting plan so that Father would exercise his parenting time from December 19, 2013, when the children were dismissed from school, until December 28, 2013, at 2:00 p.m.; or (b) stating that the current parenting plan remained in effect, and for Father to personally pick up and return the children. In her motion, Mother requested a teleconference at the court's earliest convenience.

The trial court issued an ex parte, handwritten order on December 17, 2013,

essentially adopting option (b), stating: "The Court Orders as highlighted above. Current Parent Plan shall be enforced for Holiday (Christmas) Schedule. Father only to pick-up and return Children." The highlighted portion of the motion read: "to enter an order that the current Permanent Parenting Plan remains in effect, and for Father to pick up and return the children, as provided in the Permanent Parenting Plan, not a third party . . . ."

On December 18, 2013, Father filed a motion to dismiss Mother's emergency motion and a motion to vacate the December 17, 2013 judgment. Father also filed a Rule 52.02 motion to amend findings of facts and conclusions of law on December 19, 2013. Father argued that the trial court had permanently modified the parenting plan ex parte by ordering Father to be the only person to pick up and return the children, which he claimed was not a requirement under the parenting plan. The trial court denied Father's motion to amend findings of facts and conclusions of law on December 20, 2013. On December 23, 2013, Father withdrew his motion to dismiss and motion to vacate the December 17, 2013 judgment. On the same day, he also appealed the trial court's December 20, 2013 order denying Father's motion to amend findings of facts and conclusions of law.

The court issued a typewritten order in response to Mother's motion on January 3, 2014, stating:

> 1. The current Permanent Parenting Plan entered on May 13, 2011, signed by the parties and incorporated into the Court's Final Decree of Divorce shall be enforced for the WINTER (CHRISTMAS) VACATION schedule stated as follows:
>
> > The mother shall have the children for the first period from the day and time school is dismissed until December 25 at 2:00 p.m. in the even-numbered years. The other parent will have the child or children from the second period from the day and time indicated above until 2:00 p.m. on January 1st. Any remaining days will be split equally between the parties. The parties shall alternate the first and second periods each year.
>
> Therefore, Father's parenting time for 2013 shall be from the time and day school is dismissed until 2:00 p.m. on Christmas Day, December 25, 2013 at 2:00 p.m. The children will be dismissed from school on Thursday, December 19, at 9:00 a.m. The Mother's parenting time shall be from December 25, 2013 at 2:00 p.m. until January 1, 2014 at 2:00 p.m. The parties shall equally divide any remaining days.

2. The Father shall be the only person to pick up and return the children, no third parties shall be allowed.

(emphasis in original).

On January 15, 2014, Father timely appealed the trial court's January 3, 2014 order. We consolidated Father's appeal of the orders relating to the award of attorneys' fees with his appeal of the order relating to holiday parenting time. Father's issues on appeal are: (1) whether the trial court erred in awarding Mother her attorney's fees relating to the parties' discovery dispute; and (2) whether the trial court inappropriately modified the parenting plan through its January 3, 2014 order to set holiday parenting time.

II. ANALYSIS

A. Standard of Review

We review the trial court's findings of fact de novo on the record, with a presumption of correctness, unless the evidence preponderates otherwise. *See, e.g.*, *Armbrister v. Armbrister*, 414 S.W.3d 685, 692 (Tenn. 2013). In weighing the preponderance of the evidence, determinations of witness credibility are given great weight, and they will not be overturned without clear and convincing evidence to the contrary. *In re Adoption of A.M.H.*, 215 S.W.3d 793, 809 (Tenn. 2007). We review the trial court's conclusions of law de novo, with no presumption of correctness. *Armbrister*, 414 S.W.3d at 692.

Trial courts have discretion to award attorney's fees, *McFarland v. Bass*, No. M2013-00768-COA-R3-CV, 2014 WL 3002004, at *5 (Tenn. Ct. App. June 30, 2014), and issue visitation orders, *Suttles v. Suttles*, 748 S.W.2d 427, 429 (Tenn. 1988). The appellate court will not interfere with these decisions except upon a showing of an abuse of that discretion. *See, e.g.*, *Taylor v. Fezell*, 158 S.W.3d 3752, 359 (Tenn. 2005) (quoting *Aaron v. Aaron*, 909 S.W.2d 408, 411 (Tenn. 1995)). A trial court abuses its discretion only if it: (1) applies incorrect legal standards; (2) reaches an illogical conclusion; (3) bases its decision on a clearly erroneous assessment of the evidence; or (4) employs reasoning that causes an injustice to the complaining party. *Konvalinka v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, 249 S.W.3d 346, 358 (Tenn. 2008); *see also Kline v. Eyrich*, 69 S.W.3d 197, 203-04 (Tenn. 2002); *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001). In other words, if "reasonable minds can disagree as to [the] propriety of the decision made," the trial court's ruling will be upheld. *Eldridge*, 42 S.W.3d at 85.

B. Award of Attorney's Fees

Tennessee courts follow the American Rule, which provides that litigants are responsible for paying their own attorney's fees unless there is a statutory or contractual provision stating otherwise. *Taylor v. Fezell*, 158 S.W.3d 352, 359 (Tenn. 2005) (citing *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 194 (Tenn. 2000)). Mother claims attorney's fees under the parties' Martial Dissolution Agreement ("MDA")[1] and Tennessee Code Annotated section 36-5-103(c) (2010). Tennessee Code Annotated section 36-5-103(c) provides:

> The plaintiff spouse may recover from defendant spouse, and the spouse or other person to whom custody of the child, or children, is awarded may recover from the other spouse reasonable attorney fees incurred in enforcing any decree for alimony and/or child support, in regard to any suit or action concerning the adjudication of the custody or the change of custody of any child, or children, of the parties, both upon the original divorce hearing and at any subsequent hearing, which fees may be fixed and allowed by the court, before whom such action or proceeding is pending, in the discretion of such court.

Under this statute, the Tennessee Supreme Court has noted that awards of attorney's fees are now "familiar and almost commonplace." *Deas v. Deas*, 774 S.W.2d 167, 170 (Tenn. 1989). Courts grant attorney's fees awards in child custody or support proceedings to "facilitate a child's access to the courts." *Sherrod v. Wix*, 849 S.W.2d 780, 784 (Tenn. Ct. App. 1992) (citing *Graham v. Graham*, 204 S.W. 987, 989 (Tenn. 1918)). "[R]equiring parents who precipitate custody or support proceedings to underwrite the costs if their claims are ultimately found to be unwarranted is appropriate as a matter of policy." *Id.* at 785. The amount of attorney's fees awarded under section 103 must be reasonable, and the fees must relate to custody or support issues, and not simply to the dissolution of the marriage. *Miller v. Miller*, 336 S.W.3d 578, 586 (Tenn. Ct. App. 2010); *see* Tenn. Code Ann. § 36-5-103(c).

The party requesting attorney's fees has the burden to establish a prima facie claim for reasonable attorney's fees. *Wilson Mgmt. Co. v. Star Distribs. Co.*, 745 S.W.2d 870, 873

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[1] Paragraph 18 of the MDA states:

> In the event it becomes reasonably necessary for either party to institute legal proceedings to procure the enforcement of any provision of this Agreement, the prevailing party shall also be entitled to a judgment for reasonable expenses, including attorney's fees, incurred in prosecuting the action.

(Tenn. 1988). The requesting party ordinarily carries this burden by offering an affidavit by the lawyer who performed the work. *Hennessee v. Wood Grp. Enters., Inc.*, 816 S.W.2d 35, 37 (Tenn. Ct. App. 1991). A party opposed to the fees request is entitled to a "fair opportunity to cross-examine the requesting [party's] witnesses and to present proof of its own." *Sherrod*, 849 S.W.2d at 785. However, the trial court need not have a "fully developed record of the nature of the services rendered" in order to award attorney's fees in a divorce case. *Kahn v. Kahn*, 756 S.W.2d 685, 696 (Tenn. 1988). A trial judge may fix the award of attorney's fees "with or without expert testimony of lawyers and with or without a prima facie showing by plaintiffs of what a reasonable fee would be." *Wilson Mgmt.*, 745 S.W.2d at 873.

If a trial judge awards attorney's fees without first hearing the moving party's proof on reasonableness, "it is *incumbent* upon the party challenging the fee [to request a] hearing" on the reasonableness of the fees awarded. *Kline*, 69 S.W.3d at 210 (emphasis in original); *see also Kahn*, 756 S.W.2d at 697. Alternatively, the party challenging the fees could convince the appellate court that he was denied the opportunity to have a hearing on the reasonableness of the fees through no fault of his own. *Kahn*, 756 S.W.3d at 697. This court will not reverse a trial court's award of attorney's fees merely because the record does not contain proof establishing the reasonableness of the fees. *Kline*, 69 S.W.3d at 210. The record must contain some evidence showing that an award of attorney's fees is unreasonable before a reversal of the fees is justified. *Id.* at 210. Additionally, the record should contain at least an affidavit of the lawyer's hourly rate and time spent on the case. *See Miller*, 336 S.W.3d at 587.

At trial, Father did not rebut Mother's prima facie case for attorney's fees. Father had the opportunity to cross-examine Mother's attorney at the November 5, 2013 hearing, but he did not do so. Father did not question Mother's attorney about any of the entries in the affidavit that he alleged were unrelated to the discovery dispute. Father also did not present any evidence of his own that the fees were unreasonable. Instead, Father's attorney simply made the following statements at the hearing: (1) "She's trying to get attorney's fees going all the way back to the beginning of the case, and we don't think that that's reasonable."; (2) "[B]ut it certainly doesn't relate to awarding all the fees in the case, whatever you've done. We think that's pretty unreasonable."; (3) "[T]here appears to be a lot of people involved and a lot of assistance or whatever. But I don't think it relates – that's an optional thing."; and (4) "I don't think that that would be reasonable in terms of relating to a motion to compel discovery and having a hearing, 13,000-plus dollars." These conclusory statements do not satisfy Father's burden to contest the reasonableness of the fees. *See Kline*, 69 S.W.3d at 210.

On appeal, Father now complains that the affidavit used to support Mother's award of attorney's fees was made without personal knowledge.[2] However, this issue has been waived. *Dick Broad. Co. v. Oak Ridge FM, Inc.*, 395 S.W.3d 653, 670 (Tenn. 2013) ("Issues raised for the first time on appeal are waived.") Father did not raise this issue in the trial court and presents it for the first time on appeal. "It has long been the general rule that questions not raised in the trial court will not be entertained on appeal." *Lawrence v. Stafford*, 655 S.W.2d 927, 929 (Tenn. 1983). We, therefore, decline to address this issue.

C. Order to Set Holiday Parenting Time

Father argues that the trial court inappropriately modified the parenting plan in its January 3, 2014 order by requiring him to personally pick up and return the children for visitation. Mother argues that this issue is moot because the order was temporally limited to the children's 2013 winter vacation.

Generally, when there are two possible interpretations of an order or judgment, "that one will be adopted which is in harmony with the entire record, and is such as ought to have been rendered and is such as is within the jurisdictional power of the court." *Lamar Adver. Co. v. By-Pass Partners*, 313 S.W.3d 779, 786 (Tenn. Ct. App. 2009) (quoting *John Barb, Inc. v. Underwriters at Lloyds of London*, 653 S.W.2d 422, 423 (Tenn. Ct. App. 1983)). We read an order or judgment "in light of the pleadings and other parts of the record." *Id.* Here, there are two possible interpretations of the trial court's January 3, 2014 order. One is that the court interpreted Section (H) of the parenting plan to require Father to personally pick up and return the children for visitation. The order could also be interpreted as a temporary measure to address the parties' visitation rights for the holiday period only. In light of Mother's December 17, 2013 emergency motion and the entire record, we have determined that the latter interpretation is correct.

The doctrine of justiciability prevents courts from adjudicating cases that do not involve a "genuine and existing controversy." *McIntyre v. Traughber*, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994). "Our courts will not render advisory opinions or decide abstract legal

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[2] Although Father appeals the trial court's September 26, 2013 orders, the only reference to the orders in Father's brief is a single citation to one page of the order regarding Mother's request for attorney's fees in a very brief argument section. The cited page of the order states: "3. That Mother shall be awarded her reasonable attorney's fees upon submission of an affidavit as it relates to responding to Father's Motion For Contempt and Damages and Notice of Hearing on Motion for Child Support Arrearage Overpayment." Father presents no argument regarding the September 26, 2013 orders other than his claim that the award was based on an insufficient affidavit. Father also appeals the trial court's November 22, 2013 order denying his Rule 52.02 motions, but Father has waived his claim as to that order because he failed to present any argument on the issue in his brief. *Forbess v. Forbess*, 370 S.W.3d 347, 355 (Tenn. Ct. App. 2011).

questions." *Id.* (internal citations omitted). A case must be justiciable when it is filed and throughout the course of litigation, including during the appeal. *Id.* Our courts will decline to hear a case if it does not "involve a genuine, continuing controversy requiring the adjudication of presently existing rights." *Alliance for Native Am. Indian Rights in Tenn., Inc. v. Nicely*, 182 S.W.3d 333, 338 (Tenn. Ct. App. 2005).

A moot case is no longer justiciable because it "has lost its character as a present, live controversy." *McIntyre*, 884 S.W.2d at 137. Generally, a case is moot when it "no longer serves as a means to provide relief to the prevailing party." *Id.* There are only a few recognized exceptions to the mootness rule: (1) the issue is of great public importance or affects the administration of justice; (2) the challenged conduct is capable of repetition and will likely evade judicial review; (3) the primary subject of the dispute has become moot, but collateral consequences to one of the parties remain; and (4) the defendant voluntarily stops engaging in the challenged conduct. *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Cnty.*, 301 S.W.3d 196, 204 (Tenn. 2009)). Only if the issue falls within a recognized exception do we have the discretion to reach the merits of the appeal. *Alliance for Indian Rights*, 182 S.W.3d at 339. Father does not allege that the order falls within any of the four exceptions to the mootness doctrine.

Here, Father's challenge to the trial court's January 3, 2014 order is moot because it no longer presents a live controversy. The order was temporally limited to the 2013 winter vacation period. The text of the court's order provides a parenting schedule dating from 9:00 a.m. on December 19, 2013, until the children returned to school in January 2014. After this period elapsed, the order no longer affected the parties' rights to visitation. The court's order did not extend to the parenting plan or to future visitation periods.[3] There is no longer a live controversy regarding the order – the 2013 winter vacation period has passed and the order is no longer in effect. Therefore, there is no relief this Court can provide to Father. Accordingly, we dismiss the portion of Father's appeal related to the January 3, 2014 order as moot.

D. Award of Appellate Attorney's Fees

Mother also asserts Father's appeal was frivolous, and she seeks an award of her attorney's fees as damages pursuant to Tennessee Code Annotated section 27-1-122 (2010).[4]

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[3] We do not read Section (H) of the parties' parenting plan to require either parent to personally pickup or return the children for visitation.

[4] Tenn. Code Ann. § 27-1-122 provides:

The statute authorizing an award of damages for frivolous appeal "must be interpreted and applied strictly so as not to discourage legitimate appeals." *See Davis v. Gulf Ins. Grp.*, 546 S.W.2d 583, 586 (Tenn. 1977) (citing the predecessor to Tennessee Code Annotated section 27-1-122). A frivolous appeal is one "utterly devoid of merit." *Combustion Eng'g, Inc. v. Kennedy*, 562 S.W.2d 202, 205 (Tenn. 1978). We do not find this appeal devoid of merit or any indication that it was undertaken for delay. Therefore, we decline to award Mother her appellate fees on this basis.

III. CONCLUSION

The portion of Father's appeal regarding the January 3, 2014 order is dismissed as moot. We affirm the trial court's judgments in all other respects. Costs of this appeal shall be taxed to the appellant, Christopher Eberbach, for which execution may issue, if necessary.

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W. NEAL McBRAYER, JUDGE

When it appears to any reviewing court that the appeal from any court of record was frivolous or taken solely for delay, the court may, either upon motion of a party or of its own motion, award just damages against the appellant, which may include but need not be limited to, costs, interest on the judgment, and expenses incurred by the appellee as a result of the appeal.