

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
May 17, 2023 Session

<b>FILED</b> 10/12/2023 Clerk of the Appellate Courts
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**VIRGIE LEE PARKER v. PAUL J. PARKER**

**Appeal from the Circuit Court for Bradley County**  
**No. V-20-287          Michael E. Jenne, Judge**

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**No. E2022-00720-COA-R3-CV**

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In this post-divorce action, the trial court denied the husband’s petition for contempt upon finding that the wife had satisfied a provision of the parties’ marital dissolution agreement allowing for the husband to retrieve items of personal property from a home awarded to the wife. The court initially awarded attorney’s fees to the wife, pursuant to Tennessee Code Annotated § 36-5-103(c), for her successful defense against the petition. Upon the husband’s motion to alter or amend and following a hearing and supplemental briefing, the trial court concluded that the statute did not provide for attorney’s fees in an action involving enforcement of the distribution of property in a divorce. The trial court granted the husband’s motion to alter or amend, denying the wife’s request for attorney’s fees. The wife has appealed. Upon consideration, we hold that Tennessee Code Annotated § 36-5-103(c) provides for attorney’s fees solely in matters involving alimony, child support, permanent parenting plan provisions, and custody of children. We therefore affirm the trial court’s judgment.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court**  
**Affirmed; Case Remanded**

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which JOHN W. MCCLARTY and KRISTI M. DAVIS, JJ., joined.

Philip M. Jacobs, Cleveland, Tennessee, for the appellant, Virgie Lee Parker.

William J. Brown, Cleveland, Tennessee, for the appellee, Paul J. Parker.

**OPINION**

I. Factual and Procedural History

The petitioner, Paul J. Parker (“Husband”), and the respondent, Virgie Lee Parker (“Wife”), were divorced by decree of the Bradley County Circuit Court (“trial court”) entered on June 21, 2021, upon the statutory ground of irreconcilable differences. The trial court incorporated the parties’ marital dissolution agreement (“MDA”) into the divorce decree, providing for an equitable distribution of the parties’ assets and debts. At the time of the divorce, the parties had no minor children, and the MDA contained a statement that neither party was seeking alimony.

Husband initiated the instant action by filing a “Petition for Order to Enforce and for Civil Contempt” on December 17, 2021, alleging that Wife was in violation of an MDA provision regarding his separate personal property. Husband sought “a finding of Civil Contempt to the extent necessary to have [Wife] permit [Husband] to recover his personal property that is located at [Wife’s] home,” as well as attorney’s fees and court costs. Husband accused Wife of violating an MDA section providing that the parties’ attorneys would “work together to arrange a time for Husband to retain the personal property” and that he would have ninety days to do so. Concerning attorney’s fees, the MDA includes the following provision:

Attorney’s Fees and Costs. Each party shall be solely responsible for the payment of their attorney fees and all court costs and litigation tax associated with this matter shall be split 50/50 between the parties.

The MDA contains no other mention of attorney’s fees, and it is undisputed that the MDA does not contractually provide for an award of attorney’s fees.

Wife filed an answer to the petition on February 8, 2022, stating that Husband had retrieved his personal property and asserting that Husband had filed the contempt petition “as a retaliating measure” in return for Wife’s insistence that he execute a quitclaim deed required by the MDA. Wife requested attorney’s fees pursuant to Tennessee Code Annotated § 36-5-103(c), which provides:

A prevailing party may recover reasonable attorney’s fees, which may be fixed and allowed in the court’s discretion, from the nonprevailing party in any criminal or civil contempt action or other proceeding to enforce, alter, change, or modify any decree of alimony, child support, or provision of a permanent parenting plan order, or in any suit or action concerning the adjudication of the custody or change of custody of any children, both upon the original divorce hearing and at any subsequent hearing.

Following a hearing conducted on March 3, 2022, the trial court entered an order on March 18, 2022, granting a Tennessee Rule of Civil Procedure 50.01 motion for

directed verdict raised by Wife at the close of Husband's proof. The court found that Husband had "retrieve[d] the personal property specified in the petition" and that Wife had "satisfied the terms of the Petition." The court also found that Wife was entitled to an award of attorney's fees "for the successful defense of a Petition for Contempt" pursuant to Tennessee Code Annotated § 36-5-103(c). The court directed Wife to submit an affidavit of reasonable attorney's fees.

Husband immediately filed a Tennessee Rule of Civil Procedure 59.04 motion to alter or amend the judgment "to the extent that it awards attorney fees to [Wife]." Husband argued that Tennessee Code Annotated § 36-5-103(c) does not apply to enforcement of a marital dissolution agreement provision concerning property. He also noted that the MDA contained no provision for attorney's fees to be awarded in an action to enforce it.

Following a hearing on the motion to alter or amend conducted on April 19, 2022, the trial court sent a letter to counsel for both parties. The court stated that after counsel were unable to provide Tennessee case law on point, the court had reviewed the statute further and concluded that it was "somewhat ambiguous in its application." The court stated that it had then "conducted research as related to the legislative history of this statute" and had determined that the statute did "not apply to Husband's Petition for Civil Contempt solely related to property matters." The court allowed the parties ten days to submit additional authority before it made a final decision as to whether to grant the motion to alter or amend. Wife subsequently filed a memorandum in support of maintaining her award of attorney's fees, and Husband filed a response in letter format.

On May 12, 2022, the trial court entered an order granting Husband's motion to alter or amend the judgment, maintaining the dismissal of Husband's contempt petition but amending its prior order to "reflect that [Wife] shall be responsible for her own attorney fees." The court certified the order as final pursuant to Tennessee Rule of Civil Procedure 54.02.

Wife timely appealed the trial court's order granting Husband's motion to alter or amend. On appeal, the parties submitted a "Joint Statement of Evidence" pursuant to Tennessee Rule of Appellate Procedure 24(c). In their joint statement, the parties noted that during the March 3, 2022 hearing, Husband "acknowledged retrieving all the items of personal property listed in Paragraph 5.5 of the [MDA]" and "testified that he wanted additional items that he acknowledged were not listed in the [MDA]." Accordingly, no substantive issue remains as to the contempt petition, and solely the award of attorney's fees is at issue on appeal.

During the pendency of this appeal, Husband's counsel filed a suggestion of death, indicating that Husband had passed away on November 24, 2022. Wife subsequently filed a motion to substitute a party in place of Husband but did not specify the party to be substituted. This Court entered an order on March 6, 2023, directing counsel for each party to brief the issue of whether this cause of action survived Husband's death and, if so, who would be the proper party to substitute. Following the parties' subsequent filings, this Court entered an order on April 11, 2023, substituting Paul J. Parker, Jr., and Donna Kay Hendrix, as personal representatives of the Estate of Paul J. Parker, in place of Husband pursuant to Tennessee Rule of Appellate Procedure 19 and Tennessee Rule of Civil Procedure 25. This appeal then proceeded.

## II. Issue Presented

Wife presents one issue on appeal, which we have restated as follows:

Whether the trial court abused its discretion by ruling that Tennessee Code Annotated § 36-5-103(c) does not support an award of attorney's fees to a prevailing party in a contempt proceeding that does not involve alimony, child support, or a permanent parenting plan.

At the conclusion of her appellate brief, Wife has also requested attorney's fees on appeal pursuant to § 36-5-103(c). However, Wife has not presented an issue in her statement of the issues regarding attorney's fees on appeal. As our Supreme Court has explained:

Appellate review is generally limited to the issues that have been presented for review. Tenn. R. App. P. 13(b); *State v. Bledsoe*, 226 S.W.3d 349, 353 (Tenn. 2007). Accordingly, the Advisory Commission on the Rules of Practice and Procedure has emphasized that briefs should "be oriented toward a statement of the issues presented in a case and the arguments in support thereof." Tenn. R. App. P. 27, advisory comm'n cmt.

*Hodge v. Craig*, 382 S.W.3d 325, 334 (Tenn. 2012); *see also Forbess v. Forbess*, 370 S.W.3d 347, 356 (Tenn. Ct. App. 2011) ("We may consider an issue waived where it is argued in the brief but not designated as an issue."). Therefore, we deem Wife's request for attorney's fees on appeal to be waived.

## III. Standard of Review

As this Court has explained concerning review of a Tennessee Rule of Civil Procedure 59.04 motion to alter or amend a judgment:

The purpose of a motion to alter or amend a judgment “is to provide the trial court with an opportunity to correct errors before the judgment becomes final.” *In re M.L.D.*, 182 S.W.3d 890, 895 (Tenn. Ct. App. 2005) (citation omitted). “The motion should be granted when the controlling law changes before the judgment becomes final; when previously unavailable evidence becomes available; or to correct a clear error of law or to prevent injustice.” *Id.* (citation omitted). On appeal, we review a trial court’s decision regarding a motion to alter or amend a judgment under an abuse of discretion standard. *Id.* (citation omitted).

*Stricklin v. Stricklin*, 490 S.W.3d 8, 11 (Tenn. Ct. App. 2015).

This Court reviews a trial court’s award of attorney’s fees according to an abuse of discretion standard. *See Wright ex rel. Wright v. Wright*, 337 S.W.3d 166, 176 (Tenn. 2011). Likewise, “Tennessee courts long have recognized that the decision to grant attorney’s fees under [Tennessee Code Annotated] section 36-5-103(c) is largely within the discretion of the trial court and that, absent an abuse of discretion, appellate courts will not interfere with the trial court’s finding.” *Eberbach v. Eberbach*, 535 S.W.3d 467, 475 (Tenn. 2017). “[A] trial court will be found to have ‘abused its discretion’ only when it applies an incorrect legal standard, reaches a decision that is illogical, bases its decision on a clearly erroneous assessment of the evidence, or employs reasoning that causes an injustice to the complaining party.” *In re Estate of Greenamyre*, 219 S.W.3d 877, 886 (Tenn. Ct. App. 2005) (internal citations omitted).

However, in arguing that the trial court misinterpreted Tennessee Code Annotated § 36-5-103(c) and thus applied an incorrect legal standard, Wife has presented an issue requiring statutory interpretation, which we review *de novo* as a question of law. *See Duke v. Duke*, 563 S.W.3d 885, 894 (Tenn. Ct. App. 2018). As our Supreme Court has explained:

When dealing with statutory interpretation, well-defined precepts apply. Our primary objective is to carry out legislative intent without broadening or restricting the statute beyond its intended scope. *Houghton v. Aramark Educ. Res., Inc.*, 90 S.W.3d 676, 678 (Tenn. 2002). In construing legislative enactments, we presume that every word in a statute has meaning and purpose and should be given full effect if the obvious intention of the General Assembly is not violated by so doing. *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005). When a statute is clear, we apply the plain meaning without complicating the task. *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004). Our obligation is

simply to enforce the written language. *Abels ex rel. Hunt v. Genie Indus., Inc.*, 202 S.W.3d 99, 102 (Tenn. 2006). It is only when a statute is ambiguous that we may reference the broader statutory scheme, the history of the legislation, or other sources. *Parks v. Tenn. Mun. League Risk Mgmt. Pool*, 974 S.W.2d 677, 679 (Tenn. 1998). Further, the language of a statute cannot be considered in a vacuum, but “should be construed, if practicable, so that its component parts are consistent and reasonable.” *Marsh v. Henderson*, 221 Tenn. 42, 424 S.W.2d 193, 196 (1968). Any interpretation of the statute that “would render one section of the act repugnant to another” should be avoided. *Tenn. Elec. Power Co. v. City of Chattanooga*, 172 Tenn. 505, 114 S.W.2d 441, 444 (1937). We also must presume that the General Assembly was aware of any prior enactments at the time the legislation passed. *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995).

*In re Estate of Tanner*, 295 S.W.3d 610, 613-14 (Tenn. 2009).

#### IV. Attorney’s Fees under Tennessee Code Annotated § 36-5-103(c)

The trial court found that Tennessee Code Annotated § 36-5-103(c) (2021) did “not apply to Husband’s Petition for Civil Contempt solely related to property matters in this case” and therefore did not entitle Wife to recover attorney’s fees under the statute in her successful defense against Husband’s contempt petition. Specifically finding that the language of § 36-5-103(c) “may be considered somewhat ambiguous in its application,” the court reviewed legislative history in reaching its decision and also noted the title of § 36-5-103, “Enforcement of orders or decrees; administrative orders of income assignment,” within Chapter 5, “Alimony and Child Support,” of Title 36. The court concluded that “[t]o hold that this statute applies to anything other than alimony, child support and parenting plans would in effect be holding that the statute would apply to any type of contempt action which is not the legislative intent of the statute.”

On appeal, each party respectively maintains that § 36-5-103(c) is not ambiguous. Wife contends that the trial court erred in its interpretation and conclusion because a “plain reading” of § 36-5-103(c) “permits attorney’s fees to be awarded to a prevailing party in a contempt proceeding,” and, Wife argues, this includes any contempt proceeding. Husband responds that under the plain meaning of the statute, the trial court was ultimately correct in its determination. Upon a *de novo* review of this question of law, we agree with the parties that the language of § 36-5-103(c) is not ambiguous. *See In re Estate of Tanner*, 295 S.W.3d at 614 (“When a statute is clear, we apply the plain meaning without complicating the task.”). We conclude that the plain language of Tennessee Code Annotated § 36-5-103(c) provides for attorney’s fees solely in matters

involving alimony, child support, permanent parenting plan provisions, and custody of children.

At the outset, we note that Wife's claim to attorney's fees is based entirely on her interpretation of § 36-5-103(c). Tennessee generally adheres to the "American Rule" for recovery of attorney's fees, under which "attorneys' fees are not recoverable in the absence of a statute or contract *specifically* providing for such recovery . . . ." *Cracker Barrel Old Country Store, Inc. v. Epperson*, 284 S.W.3d 303, 309 (Tenn. 2009) (quoting *Pullman Standard, Inc. v. Abex Corp.*, 693 S.W.2d 336, 338 (Tenn. 1985) (emphasis added in *Cracker Barrel*)). Our Supreme Court has held that a provision in a marital dissolution agreement providing for an award of reasonable attorney's fees to a prevailing party is a contractual provision and must be enforced by both trial and appellate courts. *Eberbach*, 535 S.W.3d at 478. However, in the instant action, the MDA undisputedly does not provide for an award of attorney's fees, and Wife has relied solely on § 36-5-103(c) as the statutory basis for the relief she seeks.

Tennessee Code Annotated § 36-5-103(c) provides:

A prevailing party may recover reasonable attorney's fees, which may be fixed and allowed in the court's discretion, from the nonprevailing party in any criminal or civil contempt action or other proceeding to enforce, alter, change, or modify any decree of alimony, child support, or provision of a permanent parenting plan order, or in any suit or action concerning the adjudication of the custody or change of custody of any children, both upon the original divorce hearing and at any subsequent hearing.

Wife posits that § 36-5-103(c) consists of two "clauses" with the first ending on the phrase, "any criminal or civil contempt action." Referring then to the subsequent language as "the second sentence," Wife states that this "sentence references the application of the statute to 'any decree of alimony, child support, or provision of a permanent parenting plan order, or in any suit or action concerning the adjudication of the custody or change of custody of any children.'" Of course, the entire text of § 36-5-103(c) is punctuated as one sentence. We find it helpful in analyzing the plain meaning of this statutory language to examine the "natural construction" of the sentence at issue. *See Bearing Distributors, Inc. v. Gerregano*, No. M2020-01075-COA-R3-CV, 2022 WL 40008, at \*8 (Tenn. Ct. App. Jan. 5, 2022) (quoting *Paroline v. United States*, 572 U.S. 434, 447 (2014)).

The immediately noticeable flaw in Wife's postulate is that what she refers to as the "second sentence," or the second of two "clauses," does not stand alone as a clause or as a sentence. A clause must contain its own subject and predicate. *See* CHERYL GLENN

& LORETTA GRAY, HODGES' HARBRACE HANDBOOK 718 (16th ed. 2007) ("A clause has both a subject and a predicate."). Section 36-5-103(c) does contain two clauses, but not the ones that Wife would have us view as a reason to divide the provision at the "or" that appears between "action" and "other proceeding." One of the clauses in § 36-5-103(c) is a nonrestrictive relative clause, signaled by the use of the relative pronoun, "which," as the subject (relating back to "reasonable attorney's fees") and presenting the information that such fees "may be fixed and allowed in the court's discretion." *See id.* at 728. This information is presented outside the main sentence structure, which itself, while lengthy, consists of only one other clause:

A prevailing party may recover reasonable attorney's fees . . . from the nonprevailing party in any criminal or civil contempt action or other proceeding to enforce, alter, change, or modify any decree of alimony, child support, or provision of a permanent parenting plan order, or in any suit or action concerning the adjudication of the custody or change of custody of any children, both upon the original divorce hearing and at any subsequent hearing.

The subject of this clause is "[a] prevailing party," and the main verb phrase is "may recover," which is followed by the direct object, "reasonable attorney's fees." *See* GLENN & GRAY, at 725 ("A direct object names the person or thing that receives the action of the verb[.]"). Next appears the prepositional phrase, "from the nonprevailing party," explaining from whom the fees may be recovered. *See id.* at 34 ("A prepositional phrase consists of a preposition (a word such as *around*, *at*, or *near* [*from* and *in* are among those prepositions also subsequently listed]) and a noun, phrase, or pronoun (object of the preposition).").

Finally, we have two somewhat complicated phrases, each beginning with the preposition, "in," and explaining the types of actions or proceedings to which this subsection is applicable:

in any criminal or civil contempt action or other proceeding to enforce, alter, change, or modify any decree of alimony, child support, or provision of a permanent parenting plan order,

or

in any suit or action concerning the adjudication of the custody or change of custody of any children, both upon the original divorce hearing and at any subsequent hearing.



Wife focuses on the first of these “in” phrases, arguing that the “or” before “other proceeding” is disjunctive and means essentially that a period may be placed after “criminal or civil contempt action.” See *Pryor Oldsmobile/GMC Co. v. Tenn. Motor Vehicle Comm’n*, 803 S.W.2d 227, 230 (Tenn. Ct. App. 1990) (“The disjunctive ‘or’ usually, but not always, separates words or phrases in an alternate relationship, indicating that either of the separated words or phrases may be employed without the other.”). Wife maintains that “[t]his construction allows the recovery of attorney’s fees in matters of criminal or civil contempt or in proceedings involving child custody, child support, or alimony.” We disagree with Wife’s interpretation.

Each of the four uses of “or” in the first “in” phrase does function to separate a word or phrase in an alternate relationship and indicate that each of the separated words or phrases could be employed without the other. See *Pryor Oldsmobile/GMC Co.*, 803 S.W.2d at 230. Thus, for example, a contempt action may be either criminal or civil, and the action in question may be either a contempt action or other proceeding. However, all three of these options—criminal contempt action, civil contempt action, or other proceeding—are qualified by the infinitive verb phrase, “to enforce, alter, change, or modify any decree of alimony, child support, or provision of a permanent parenting plan order.”<sup>1</sup> The disjunctive “or” is then employed similarly to provide alternatives for the types of actions—enforce, alter, change, or modify—and types of court orders those actions may affect—decree of alimony, child support, or provision of a permanent parenting plan order. Although Wife does not address the “or” that separates the two long “in” phrases, that “or” is also employed to set forth an alternate type of “suit or action,” this time concerning custody of children. Wife has essentially cherry-picked one of many examples of a disjunctive “or” appearing in § 36-5-103(c) as representing a division in the statutory provision that supports her claim for attorney’s fees under the statute.

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<sup>1</sup> In support of his position that, as we have determined, the entire phrase, “criminal or civil contempt action or other proceeding” is qualified by the infinitive verb phrase, “to enforce, alter, change, or modify any decree of alimony, child support, or provision of a permanent parenting plan order,” Husband focuses on the absence of a comma before “other proceeding.” See *State ex rel. McQueen v. Metro. Nashville Bd. of Pub. Educ.*, 587 S.W.3d 397, 405 (Tenn. Ct. App. 2019) (“[A] qualifying phrase separated from antecedents by a comma is evidence that the qualifier is supposed to apply to all the antecedents instead of only to the immediately preceding one.” (quoting 2A NORMAN J. SINGER & SHAMBIE SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 47.33 (7th ed. 2018 update))). We note, however, that in this instance, the plain meaning of the provision would not have been affected if instead of “criminal or civil contempt action or other proceeding,” the drafters had written out “criminal contempt action, civil contempt action, or other proceeding” with a serial comma before the last item in the series. The infinitive verb phrase would still have applied to all three. See *Paroline*, 572 U.S. at 447 (“When several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all.” (quoting *Porto Rico Ry., Light & Power Co. v. Mor*, 253 U.S. 345, 348 (1920))); see also *Bearing Distributors*, 2022 WL 40008, at \*7.

In support of her position, Wife also relies on this Court’s decision in *Strickland v. Strickland*, 644 S.W.3d 620 (Tenn. Ct. App. 2021), particularly the following statement: “Tennessee Code Annotated § 36-5-103(c) expressly states that ‘[a] prevailing party may recover reasonable attorney’s fees’ in an action for civil contempt.” *Id.* at 635. We find the statement to have been taken out of context and determine *Strickland* to be factually distinguishable from the instant action. In *Strickland*, also a post-divorce action, the wife appealed the trial court’s suspension of the husband’s alimony obligation; the trial court’s dismissal of the wife’s contempt charge against the husband “for his failure to pay her the value of her interest in the CDs as provided in the MDA”; and the trial court’s denial of Wife’s request for attorney’s fees, made pursuant to § 36-5-103(c), related to alimony and her contempt petition. *Id.* at 626-27.<sup>2</sup> This Court ultimately reversed the trial court’s suspension of the husband’s alimony obligation but affirmed the dismissal of the contempt charge against the husband. *Id.* at 625.

In addressing attorney’s fees under § 36-5-103(c), the *Strickland* Court focused on whether the wife had been a prevailing party, which had been the basis of the trial court’s denial of the requested fees, stating in pertinent part:

[T]he trial court refused to award Wife her reasonable attorney fees incurred to prosecute the civil contempt claim pertaining to Husband’s failure to timely pay her the value of her interest in the CDs because she did not prevail on that claim. Tennessee Code Annotated section 36-5-103(c) expressly states that “[a] prevailing party may recover reasonable attorney’s fees” in an action for civil contempt. We have affirmed the trial court’s ‘dismissal of the contempt claim due to Wife’s failure to prove she had been damaged beyond that for which Husband had already compensated her. Thus, she was not the prevailing party on that claim, and we conclude that the trial court did not abuse its discretion in declining to award her the attorney fees she incurred relating to that claim pursuant to Tenn. Code Ann. § 36-5-103(c).

*Id.* at 635. Having reversed the trial court’s suspension of alimony, this Court awarded reasonable attorney’s fees to the wife incurred in her defense against the husband’s petition to suspend alimony. *Id.* Accordingly, the *Strickland* Court did not address the question at issue here of whether attorney’s fees may be awarded under § 36-5-103(c) for defense of a contempt petition involving the distribution of property in a divorce, and we find Wife’s reliance on *Strickland* to be unavailing.

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<sup>2</sup> The *Strickland* trial court had also awarded attorney’s fees to the wife for two civil contempt claims, not at issue on appeal, upon which she had prevailed. *Strickland*, 644 S.W.3d at 626.

Wife also relies in part on a decision that this Court rendered under a prior version of § 36-5-103(c), *Allison v. Hagan*, 211 S.W.3d 255 (Tenn. Ct. App. 2006). Wife cites *Allison* as an example “in which the prevailing party who raised the enforcement of a marital dissolution agreement [has] been permitted to recover attorney’s fees pursuant to [§ 36-5-103(c)] . . . .” However, in *Allison*, the trial court had awarded attorney’s fees to the wife “pursuant to Tenn. Code Ann. § 36-5-103(c) and the pertinent language of the MDA.” *Allison*, 211 S.W.3d at 259 (emphasis added). The wife had prevailed on her petition for contempt wherein she alleged that the husband had unilaterally reduced his child support payment and failed to execute a deed of trust or pay to the wife her share of a property settlement. *Id.* at 258. The parties’ marital dissolution agreement included a section providing for an award of reasonable attorney’s fees to a party instituting legal proceedings to enforce the agreement. *Id.*; see *Eberbach*, 535 S.W.3d at 478.

In affirming the trial court’s award of attorney’s fees to the wife, the *Allison* Court explained:

Specifically, Husband claims that because Wife should have lost on the previous issues, she should no longer be declared the prevailing party for purposes of awarding attorney fees under Tenn. Code Ann. § 36-5-103(c) or the relevant language in the MDA. Because we have affirmed the Trial Court on the previous issues, Husband’s argument challenging the award of attorney fees to Wife must necessarily fail.

*Allison*, 211 S.W.3d at 263 (footnote omitted). *Allison* contains no indication that the attorney’s fees awarded to the wife for prevailing in her bid to enforce the property provisions of the marital dissolution agreement were awarded pursuant to anything other than the relevant contractual provision of the agreement. Wife’s reliance on *Allison* is also unavailing.

Upon thorough review of the plain language of the statute, we hold that Tennessee Code Annotated § 36-5-103(c) provides for attorney’s fees solely in matters involving alimony, child support, permanent parenting plan provisions, and custody of children. To the extent that others may entertain Wife’s interpretation of the statute, we note that this holding is, on its face, a matter of first impression. However, the statutory provision has been previously applied in accordance with this holding in numerous decisions. See, e.g., *Waddell v. Waddell*, No. W2020-00220-COA-R3-CV, 2023 WL 2485667, at \*53 (Tenn. Ct. App. Mar. 14, 2023) (“[W]e note that Tennessee Code Annotated section 36-5-103(c) allows this Court, in its discretion, to award attorney’s fees ‘in regard to any suit or action concerning the adjudication of the custody . . . of any child[.]’” (quoting Tenn. Code Ann. § 36-5-103(c))); *Emch v. Emch*, No. M2021-00139-COA-R3-CV, 2022 WL 3972749, at \*10 (Tenn. Ct. App. May 3, 2022) (“Section § 36-5-103(c) allows for the

award of attorney’s fees to the prevailing party in proceedings to modify a permanent parenting plan[.]”); *Owens v. Owens*, No. E2020-01470-COA-R3-CV, 2021 WL 5504210, at \*19 (Tenn. Ct. App. Nov. 24, 2021) (“As to the visitation issue, the granting of attorney’s fees is authorized by Tennessee Code Annotated section 36-5-103[.]”); *Stark v. Burks*, No. W2018-01283-COA-R3-JV, 2019 WL 4132444, at \*12 (Tenn. Ct. App. Aug. 30, 2019) (“Father’s motions for appointment of a guardian *ad litem* and participation in counseling fit within the purview of Tennessee Code Annotated § 36-5-103(c) inasmuch as Mother prevailed in enforcing the trial court’s prior adjudication of issues concerning the parties’ PPP [permanent parenting plan].”).

Having determined that there is no ambiguity in the plain language of the statute and in contrast to the trial court’s analysis, we do not find it necessary to consult the legislative history surrounding the 2018 enactment of the current version of § 36-5-103(c). See 2018 Tenn. Pub. Acts, Ch. 905, § 1 (H.B. 2526); see also *State ex rel. McQueen*, 587 S.W.3d at 404 (“[W]e determine that there is no ambiguity in [the statute at issue] and, therefore, we need not consult the legislative history.”). The trial court ultimately concluded that “[t]o hold that this statute applies to anything other than alimony, child support and parenting plans would in effect be holding that the statute would apply to any type of contempt action . . . .” In this statement, the trial court omitted the last portion of § 36-5-103(c) providing for actions involving adjudication or modification of child custody. Nonetheless, the trial court based its decision to grant Husband’s motion to alter or amend on a valid interpretation of § 36-5-103(c), namely that the statute does not provide for attorney’s fees to be awarded concerning enforcement of property issues in a divorce. We therefore determine that the trial court did not abuse its discretion by granting Husband’s motion to alter or amend the judgment and vacating its prior award of attorney’s fees to Wife.

## V. Conclusion

For the foregoing reasons, we affirm the judgment of the trial court granting Husband’s motion to alter or amend and vacating its prior award of attorney’s fees to Wife. We remand this case to the trial court for enforcement of the judgment and collection of costs below. Costs on appeal are taxed to the appellant, Virgie Lee Parker.

s/ Thomas R. Frierson, II  
THOMAS R. FRIERSON, II, JUDGE