

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 5, 2023 Session

FILED
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Clerk of the
Appellate Courts

YAKIMA MARKS GREEN v. DERRICK LAMAR GREEN

**Appeal from the Circuit Court for Davidson County
No. 17D-847 Phillip R. Robinson, Judge**

No. M2021-00955-COA-R3-CV

A father petitioned to change the primary residential parent and for immediate physical custody of his child based on the mother’s allegedly inappropriate behavior. The court granted Father an ex parte order of immediate physical custody. At the show cause hearing, the court determined that the mother had engaged in a pattern of emotional abuse of the father and the child such that her parenting time should be limited. After a final hearing on the father’s petition, the court found a material change of circumstances had occurred and that it was in the child’s best interest to modify the permanent parenting plan. The court then adopted a modified parenting plan that named the father the primary residential parent and limited the mother’s parenting time. Discerning no abuse of discretion, we affirm.

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

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and JEFFREY USMAN, J., joined.

Yakima Marks Green, Nashville, Tennessee, pro se appellant.

Marcus Shute, Jr., Nashville, Tennessee, for the appellee, Derrick Lamar Green.

OPINION

I.

A.

Yakima Marks Green (“Mother”) and Derrick Lamar Green (“Father”) divorced in 2017. In the final divorce decree, the Circuit Court for Davidson County, Tennessee

approved and incorporated the parties' marital dissolution agreement and agreed permanent parenting plan, which governed custody and visitation for their only child, Caleb.

During the divorce proceedings, Mother and Caleb moved to Birmingham, Alabama. Father remained in Tennessee. The parenting plan named Mother primary residential parent and awarded her 280 days of parenting time. Father received 85 days, which he was required to exercise in Alabama.

In December 2018, about a year after the divorce, Mother and Father had a disagreement during an outing with Caleb and other family members. Both parents accused the other of acting inappropriately. The next day, Mother obtained an ex parte temporary order of protection against Father. The order prohibited Father from having any contact with Mother or Caleb pending a hearing. So Father was unable to exercise his upcoming parenting time.

The court ultimately dismissed Mother's petition for failure to prosecute. But while the ex parte order was in effect, Mother twice brought seven-year-old Caleb to Father's home. The first time, Father found Caleb alone on his doorstep. Father brought his son inside. But, on the advice of counsel, he also called law enforcement. When the officers arrived, they informed Father that he could not be in the child's presence. And they arranged for Mother to remove Caleb from Father's home. A couple of weeks later, Caleb appeared at Father's door again. This time, Mother was with him. She demanded entry so Caleb could use the facilities. Father agreed. While she was inside, Mother discovered a picture of Father and his new girlfriend with Caleb. Mother threatened Caleb with repercussions. But Father reassured him that he had done nothing wrong. Caleb was upset and confused by these events.

Apparently still angry, Mother created a scene outside Father's home a few days later. Among other things, Mother intentionally rammed her vehicle into Father's truck. Father called law enforcement, but did not press charges. The next day, Mother turned her attention to Father's girlfriend. During the girlfriend's morning commute, Mother cut in front of her vehicle and repeatedly slammed on her brakes, nearly causing an accident. Police officers issued Mother a citation. The girlfriend later obtained a one-year order of protection against Mother and swore out a criminal warrant for stalking. Mother later pleaded guilty to the stalking charge.

On February 4, 2019, Father petitioned to modify the permanent parenting plan and child support. And he asked for a temporary restraining order requiring Mother to immediately surrender physical custody of Caleb to Father. The court issued the ex parte restraining order the next day.

The following weekend, Father traveled to Alabama to exercise his allotted parenting time.¹ Because of a conflict at work, he was only able to stay for part of the three-day weekend. Previously, Mother had allowed Caleb to spend time with Father's family when Father was unavailable during his parenting time. So Father left Caleb with the paternal grandmother and returned home.

Mother retrieved Caleb from the grandmother's home and drove to a rest area outside of Birmingham. Mother then sent a stream of text messages to Father demanding that he pick up Caleb. When he failed to respond, Mother sent a disturbing video to the paternal grandmother shortly before 3:00 a.m. The video showed Mother leaving the child alone at the rest stop to wait for Father. The paternal grandmother contacted Father, who immediately began the one-and-a-half-hour drive to the rest stop. He also called law enforcement, asking them to keep his son safe until he arrived. Unbeknownst to Caleb or Father, Mother had remained in the area. When Father arrived, she tried to keep him from taking physical custody of Caleb. But law enforcement allowed Father to leave with Caleb based on the ex parte order. Mother followed them onto the interstate and then tried to force Father's vehicle off the road. Father avoided her maneuvers and arrived home safely with his son.

At the show cause hearing, the court found that Mother had been emotionally abusive to both Father and Caleb such that her contact with the child should be limited. Based on that finding, the court left the temporary restraining order in place, suspended the parental bill of rights, and restricted Mother's parenting time to scheduled phone calls. A couple of months later, the court granted Mother three hours of parenting time each week under the maternal grandfather's supervision. By agreed order, the amount of Mother's supervised parenting time increased substantially in later months. But the court denied Mother's repeated requests for unsupervised parenting time.²

For various reasons, two years elapsed before the court held a final hearing on Father's modification petition. During that time, Mother continued to harass Father and his new wife. Mother emailed Father's employer, accusing him of unprofessional conduct, such as embezzlement and drug trafficking. She also informed law enforcement that Father was a known drug dealer. She made similar unfounded accusations to Father's mother. She posted disparaging comments about Father's wife on social media. Mother swore out a petition for an order of protection against Father's wife, which was dismissed after an evidentiary hearing. And she repeatedly asked law enforcement to make unnecessary welfare checks on Caleb. In light of Mother's behavior, the court issued another restraining

¹ It is unclear from the record when Mother learned of the court's ex parte restraining order.

² At Mother's request, the court removed the maternal grandfather as supervisor a few months before trial, leaving Mother without an approved supervisor.

order prohibiting Mother from contacting Father’s employer, co-workers, or supervisors and from harassing, threatening, or intimidating Father and his family.

B.

The proof at trial focused primarily on Mother’s inappropriate behavior and its effect on Caleb. Multiple witnesses testified, including Mother, Father, Father’s wife, the maternal grandfather, a police officer, and a psychologist. Mother disputed Father’s version of events. But the court did not find her to be a credible witness.

In a final order, the trial court found that Mother’s harassing behavior was a substantial and material change of circumstances that negatively affected the minor child. Her conduct toward Father and his wife was “one of the most egregious examples of inappropriate behavior by a parent” that the court had ever seen. Although Mother clearly loved Caleb and had the capacity to be a good parent, “her overwhelming jealousy of the Father and his new relationship ha[d] a toxic impact on the child and the Father and [wa]s detrimental to them both.”

The court reaffirmed its previous ruling that Mother had been emotionally abusive. According to the court, Mother’s inappropriate behavior had intensified throughout the litigation. She had engaged in a pattern of emotional abuse of Father, his wife, and Caleb. And her “abusive use of conflict” endangered Caleb’s psychological development. The court found that “Mother’s harassing behavior undermine[d] the stability of the Father’s home” to Caleb’s detriment. And it was in Caleb’s best interest to limit his contact with Mother until she demonstrated to the court that she had ceased her inappropriate behavior.

After considering the relevant statutory factors, the court also determined that it was in Caleb’s best interest to change the primary residential parent to Father. The court awarded Father 280 days of parenting time. It limited Mother to 80 days, but did not require further supervision. The court also reinstated the parental bill of rights to the extent it did not otherwise conflict with the amended parenting plan.

II.

As an initial matter, Father complains that Mother’s brief does not comply with our appellate rules. *See* TENN. R. APP. P. 27(a); TENN. CT. APP. R. 6. Specifically, he contends that she failed to provide appropriate citations to the record for her factual assertions. TENN. R. APP. P. 27(a)(6), (7)(A); TENN. CT. APP. R. 6(a)(4), 6(b). In his view, her issues on appeal should be deemed waived, and this appeal should be dismissed.

We are mindful that Mother is not a lawyer and may have little legal training or familiarity with the judicial system. She deserves fair treatment by our courts; but “[p]ro se litigants are not . . . entitled to shift the burden of litigating their case to the courts.”

Whitaker v. Whirlpool Corp., 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000). We cannot entirely excuse pro se litigants from complying with the same substantive and procedural rules imposed on represented parties. *Young v. Barrow*, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003).

Mother's brief does not meet all the requirements of our rules. Yet, in appropriate circumstances, we give pro se appellants a certain degree of leeway in their briefing. *See, e.g., Whitaker*, 32 S.W.3d at 227 (excusing the "fail[ure] to comply with the rules concerning correct citations to the record"). Here, we can grasp the basics of her arguments. And Father was able to brief the merits of this appeal. While "we have no duty to exhaustively search this record to verify unsupported allegations," the record is not extensive. *Id.* Much of the technical record is irrelevant to the issues on appeal. And the statement of the evidence is only 13 pages. Nor are we faced with a mountain of exhibits. So we exercise our discretion to consider the merits of Mother's appeal despite the deficiencies in her appellate brief. *See* TENN. R. APP. P. 2 (allowing this Court to suspend the requirements of the Tennessee Rules of Appellate Procedure "[f]or good cause").

III.

Mother lists eight issues in her statement of issues on appeal. Based on her written and oral arguments, we can narrow that list to these three asserted errors by the trial court: (1) the change of primary residential parent to Father, (2) the failure to maximize Mother's parenting time, and (3) the allocation of major decision-making authority to Father.

We apply the deferential abuse-of-discretion standard of review to parenting plan decisions. *Armbrister v. Armbrister*, 414 S.W.3d 685, 693 (Tenn. 2013). A court abuses its discretion when it applies the wrong legal standard, reaches "an illogical or unreasonable decision," or bases its decision "on a clearly erroneous assessment of the evidence." *Lee Med., Inc., v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010).

We review the trial court's factual findings de novo on the record with a presumption of correctness, unless the evidence preponderates otherwise. TENN. R. APP. P. 13(d); *Armbrister*, 414 S.W.3d at 692 (Tenn. 2013). We give great deference to findings based on witness credibility, and we will not overturn such findings absent clear and convincing evidence to the contrary. *In re Adoption of A.M.H.*, 215 S.W.3d 793, 809 (Tenn. 2007). "[T]rial judges, who have the opportunity to observe the witnesses and make credibility determinations, are better positioned to evaluate the facts than appellate judges." *Kelly v. Kelly*, 445 S.W.3d 685, 692 (Tenn. 2014) (citing *Armbrister*, 414 S.W.3d at 693). We review the trial court's conclusions of law de novo with no presumption of correctness. TENN. R. APP. P. 13(d); *Armbrister*, 414 S.W.3d at 692.

A.

Tennessee courts apply a two-step analysis for requests to modify a permanent parenting plan. *C.W.H. v. L.A.S.*, 538 S.W.3d 488, 496 (Tenn. 2017); *Brunetz v. Brunetz*, 573 S.W.3d 173, 179 (Tenn. Ct. App. 2018). The threshold issue is whether a material change in circumstances has occurred since the court adopted the current parenting plan. Tenn. Code Ann. § 36-6-101(a)(2)(B)(i), (C) (2021). If a material change has occurred, the court must then determine whether modifying the parenting plan is in the child’s best interest by examining the statutory best interest factors. *Brunetz*, 573 S.W.3d at 179; Tenn. Code Ann. § 36-6-106(a) (Supp. 2022).

The court found that Mother’s harassing behavior toward Father and his wife and its negative impact on Caleb was a material change of circumstances. As we perceive it, Mother does not dispute this finding. Rather, she questions the court’s determination of Caleb’s best interest.

In determining Caleb’s best interest, the court considered the proof of any statutory limiting factors as well as the relevant statutory best interest factors. *See* Tenn. Code Ann. §§ 36-6-106(a), -406 (2017). When Father filed his petition, Tennessee Code Annotated § 36-6-406 required the court to limit a parent’s residential time if it determined, “based upon a prior order or other reliable evidence,” that the “parent has engaged in . . . a pattern of emotional abuse of the [other] parent [or the] child or . . . another person living with that child.” Tenn. Code Ann. § 36-6-406(a)(2). The same statute allowed the court to limit any provision in a parenting plan if it found that the parent had engaged in an “abusive use of conflict . . . that create[d] the danger of damage to the child’s psychological development.” *Id.* § 36-6-406(d)(5).

Here, the court found that Mother’s conduct toward Father, his wife, and Caleb constituted a pattern of emotional abuse. And she repeatedly exposed Caleb to unnecessary conflict, which had a negative effect on him. She swore out unfounded petitions for orders of protection against both Father and his wife in an effort to interfere with their access to Caleb. Twice she brought Caleb to Father’s home, knowing that her actions placed Father at risk of violating the court’s protective order. Caleb was visibly upset at being forced to leave. When she discovered Father had a new girlfriend, she included her son in the scope of her anger. Father had to reassure Caleb that he was not in trouble. A month later, she took Caleb to a rest stop in the middle of the night and told him to get out of the car and wait alone for Father. According to Father, Caleb was traumatized by Mother’s actions that night. She also stalked and harassed Father’s wife. And she tried to disrupt Father’s household after the court awarded temporary physical custody of Caleb to Father. While Mother testified otherwise, the court did not credit that testimony. We discern no basis in this record to overturn that finding. *See In re Adoption of A.M.H.*, 215 S.W.3d at 809. Despite Mother’s protests on appeal, the court’s limitation on her residential parenting time was consistent with the statutory directive.

B.

Turning to the best interest factors, the court recognized that both parents loved Caleb and had a good relationship with him. Tenn. Code Ann. § 36-6-106(a)(1), (6). Since the divorce, each parent had been Caleb's primary caregiver, Mother for 14 months and Father for 29. *Id.* § 36-6-106(a)(5). But Mother's inappropriate conduct exposed Caleb to unnecessary conflict and constituted emotional abuse. *Id.* § 36-6-106(a)(7), (11). The court credited the psychologist's testimony that Mother's anger issues caused her to make decisions that were not in Caleb's best interest. So the court found that she was not emotionally fit to be the primary caregiver at this time. *Id.* § 36-6-106(a)(8). Given her ongoing harassment of Father and his wife, it appeared unlikely that she would encourage a close continuing relationship between Father and son. *Id.* § 36-6-106(a)(2). Nor did it appear that joint parenting was a workable option. *Id.* After 29 months as Caleb's primary caregiver, Father had the stronger parental bond. Father had provided the more stable and tranquil environment. And Caleb was thriving. *Id.* § 36-6-106(a)(10). So the court determined that it was in Caleb's best interest to award custody to Father and to limit Mother to 80 days of residential parenting time.

We discern no abuse of discretion in awarding custody to Father and limiting Mother's parenting time. While Mother contends that the court discounted her emotional bond with Caleb and her role as his primary caregiver, the court expressly recognized Mother's love for her son and her active involvement in his life. But she also "made him a party to her inappropriate behavior and jealousy." And she did not appear to recognize the impact of her behavior on her son. The best interest analysis is particularly "fact-intensive." *Grissom v. Grissom*, 586 S.W.3d 387, 394 (Tenn. Ct. App. 2019). These decisions "often hinge on subtle factors, including the parents' demeanor and credibility during the . . . proceedings." *Gaskill v. Gaskill*, 936 S.W.2d 626, 631 (Tenn. Ct. App. 1996). The court applied the correct law, the evidence does not preponderate against its factual findings, and its decision is within the range of acceptable alternative dispositions. *See Lee Med., Inc.*, 312 S.W.3d at 524.

C.

Mother also complains that the court awarded major decision-making authority to Father. But we also discern no abuse of discretion in that award. Our courts consider several factors when allocating decision-making authority between parents, including "[t]he existence of a limitation under § 36-6-406;" each parent's history of participation in decision-making for the child; "[w]hether the parents have demonstrated the ability and desire to cooperate with one another in decision making regarding the child;" and the parents' geographic proximity to one another. Tenn. Code Ann. § 36-6-407(c) (2017). Here, the court found that Mother engaged in a pattern of emotional abuse toward Father, his wife, and Caleb. *See id.* § 36-6-406(a)(2). It also determined that "Mother's campaign

of harassment” of Father and his wife “ma[de] it clear that these parties cannot co-parent their child.” Both considerations militate against joint decision-making. And the evidence does not preponderate against these findings.

IV.

The court did not abuse its discretion in adopting a modified parenting plan that awarded custody to Father and limited Mother’s residential parenting time based on the pattern of emotional abuse and the harmful effects of Mother’s abusive use of conflict. So we affirm.

s/ W. Neal McBrayer
W. NEAL McBRAYER, JUDGE