IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
April 20, 2023 Session Heard at McKenzie[1]

STUART RICHARD JAMES, III v. STEPHANIE LYNNE JAMES

Appeal from the Chancery Court of Shelby County
No. CH-18-0658 Gadson W. Perry, Chancellor

No. W2022-00739-COA-R3-CV

This is a post-divorce dispute. Two primary issues are presented, whether the trial court erred by (1) holding the mother in civil contempt for violating the Permanent Parenting Plan and the Parental Rights Statute and (2) reversing the Shelby County Divorce Referee's ruling regarding the father's child support obligations. For the reasons set forth below, we reverse the findings of contempt as well as the ruling setting aside the Divorce Referee's ruling and remand with instructions to reinstate the Order Confirming the Divorce Referee's Ruling.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court of Shelby County Reversed in Part and Vacated in Part

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and CARMA DENNIS MCGEE, J., joined.

Laurie Winstead Hall and Donielle M. Beaty, Memphis, Tennessee, for the appellant, Stephanie Lynne James.

Sarah Johnson Carter, Memphis, Tennessee, for the appellee, Stuart Richard James, III.

MEMORANDUM OPINION[2]

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[1] Oral argument was heard on the campus of Bethel University in McKenzie, Tennessee.

[2] Tenn. Ct. App. R. 10 states:

> This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

FACTS AND PROCEDURAL BACKGROUND

Stuart Richard James, III ("Father"), and Stephanie Lynne James ("Mother") were divorced by Final Decree of Divorce entered on March 29, 2019, which incorporates a Marital Dissolution Agreement ("MDA") and a Permanent Parenting Plan ("Parenting Plan"). They have two minor children, Stuart Richard James, IV, born February 2017, and Elliana Grace James, born December 2018 ("the Children").

This appeal concerns two different aspects of the parties' obligations. We will first discuss the contempt issues concerning Mother's unilateral decision to enroll the Children in Collierville Christian Academy in Collierville, Tennessee, (hereinafter referred to as "Collierville Christian") and her failure to provide Father's contact information to Collierville Christian.

Section II. B. of the Parenting Plan provides that all major decisions, including educational decisions, will be made jointly by the parties.[3] The Parenting Plan also incorporates the Parental Bill of Rights under Tennessee Code Annotated § 36-1-101, which provides that a parent has the right to "receive directly from the child's school any educational records customarily made available to parents."

In early 2020, Mother worked full time as a nurse from 8:00 a.m. to 4:30 p.m., while the Children attended Germantown Baptist school. However, due to the Covid-19 pandemic, Germantown Baptist closed its doors in March and did not reopen until May 2020. Upon reopening, Germantown Baptist modified its hours and began closing at 4:30 p.m., which was around the same time that Mother's work ended. Thus, Mother decided to put the Children on a waiting list for a different daycare that would comport with her work schedule, and she selected Collierville Christian. Mother advised Father that she had placed the Children on a waiting list for Collierville Christian. When spots opened up, Mother enrolled the Children without obtaining Father's consent. Moreover, Mother did not initially provide Collierville Christian with Father's information.[4] Mother testified that she submitted Father's contact information to Collierville Christian months later.[5]

[3] The provision also applies to non-emergency healthcare, religious upbringing, and extracurricular activities.

[4] Mother testified that she did not provide Father's information at that time because Father's visitation was supervised.

[5] Mother testified that she submitted Father's contact information on March 11, 2021; however, Terie Lynch, Account Manager of Collierville Christian, now known as Bright Ideas, provided an affidavit which stated that the relevant forms were not amended by Mother until September 16, 2021.

In March 2021, Father filed a Petition for Civil Contempt of the Parenting Plan and the Parental Bill of Rights. With regard to the Parenting Plan, Father alleged that Mother violated the joint decision-making provision of the Parenting Plan when she failed to include him in the decision before enrolling the Children at Collierville Christian. Father maintained that Mother was obligated to include him in the decision regardless of the fact that the expense in the worksheet is identified as "childcare," because Collierville Christian is an educational program and not a daycare. Father argued that Mother failed to involve him with the change to Collierville Christian for the sole purpose of avoiding a decrease in her support amount, which Father claimed had decreased significantly since the Children stopped attending Germantown Baptist and began attending Collierville Christian.

Father also alleged that Mother was in contempt for violating his right to receive educational records customarily made available to parents under Tennessee Code Annotated § 36-1-101, the Parental Rights Statute, by failing to include his contact information on the Children's information packet at Collierville Christian.

In October 2021, following an evidentiary hearing, the trial court entered an order on Father's petition for civil contempt. The court held Mother in civil contempt for failing to notify Father that she had enrolled the Children in Collierville Christian, reasoning that the "Educational Decisions" subsection of the Major Decisions portion of the Permanent Parenting Plan necessitated a joint decision between the parties regarding this change. The court assessed a $50.00 fine per child for Mother's failure to consult Father regarding the change from Germantown Baptist to Collierville Christian, resulting in a total fine of $100.00. In addition, the court found Mother in civil contempt for violating the Parental Rights Statute by failing to list Father's information on the forms for Collierville Christian for each child. The court assessed a $50.00 fine per day for each child, resulting in a fine over $13,000.00.[6] However, the court suspended $10,000 of the fine and ordered Mother to pay the remaining $3,000 within ninety days. The trial court denied Father's request for attorney's fees.[7]

In the interim, each party filed a motion or petition to set child support due to the fact the issue had been reserved pursuant to the MDA and the Parenting Plan. The facts and procedural history relevant to this issue are as follows.

[6] The calculation was based upon Mother's testimony that she provided Collierville Christian with Father's information on March 11, 2021.

[7] Mother timely filed a motion to alter or amend, which the trial court denied.

The MDA contains an interim support provision that was to be in lieu of child support pending the sale of the marital residence. The interim support provision, as stated in the MDA, reads:

> 6. SUPPORT PENDING SALE OF THE MARITAL RESIDENCE. The parties agree that pending the sale of the residence, Husband shall be responsible for payment of the following: mortgage (including principal, interest, taxes, and insurance), the HOA fees, cable television and internet, utilities, security system, and pest control. Husband shall immediately pay the past due mortgage payment for the month of November 2018. Husband shall be current on the mortgage by January 10, 2019. Pending the sale of the residence, Husband shall also continue to pay Wife's monthly automobile insurance premiums. The parties acknowledge that Husband's payment of the foregoing expenses is such that Wife agrees that Husband's monthly child support obligation shall not begin until the month immediately following the sale of said residence.

The Parenting Plan also contained a "child support" provision, which reads:

> III. FINANCIAL SUPPORT
>
> A. CHILD SUPPORT
>
> Child support payments shall begin the month succeeding the sale of the marital residence, as set forth in paragraph five (5) of the parties' Marital Dissolution Agreement. Counsel for the parties will attempt to agree upon an appropriate child support worksheet. In the event counsel for the parties are unable to reach an agreement, this matter shall be referred to the Shelby County Divorce Referee, and child support shall be retroactive to the month succeeding the closing on the sale of the residence.

The MDA specified the type and amount of support Father was to provide "pending" the sale of the marital residence, after which child support payments were to ensue. However, the parties were unable to agree upon a child support worksheet. Thus, the child support issue was referred to the Shelby County Divorce Referee.

In the ruling filed on July 11, 2019,[8] the Divorce Referee ordered Father to pay Mother $3,075.00 a month in child support and arrearages of $15,579.00 to be paid at $500.00 per month to reflect the period of January 1, 2019 through July 31, 2019. On August 2, 2019, the trial court entered an order confirming the Referee's ruling and

[8] After hearing arguments from counsel concerning the issues presented, the Divorce Referee announced the ruling from the bench on July 10, 1019, and the verbatim transcript of that ruling was filed with the court on July 11, 2019.

awarded Mother attorney's fees in the amount of $1,098.25 and litigation expenses in the amount of $120.00.

On August 9, 2019, Father filed a motion to appeal the Divorce Referee's ruling regarding child support. Father alleged that the Divorce Referee disregarded the language of the Parenting Plan by awarding Mother retroactive child support from January through July of 2019. Specifically, Father stated that the parties sold the marital residence on May 2, 2019; thus, by way of the parties' Parenting Plan, Father's child support obligation should have begun in June of 2019, not January 1, 2019. Additionally, Father alleged that retroactive child support was incorrectly calculated using child support worksheets that included "work related childcare" for many months that Mother was on maternity leave after the parties' second child was born. Father argued that Mother should have only been awarded retroactive child support in the amount of $6,150.00 for June and July 2019, less credit for Father's payments in June and July in the amount of $4,000.00, for a total retroactive child support in the amount of $2,150.00. Mother filed a motion to dismiss Father's appeal of the Divorce Referee's ruling contending it was not timely based on Chancery Court Local Rule 12(d).

In an order entered on May of 2022, the trial court denied Mother's motion to dismiss because Father's motion was filed within ten days of the Order Confirming Divorce Referee's Ruling. Further, the trial court held that the Divorce Referee's ruling disregarded the express language of the Parenting Plan because the Referee awarded child support retroactive to the date of the divorce, not the month following the sale of the marital residence as specified by the Parenting Plan. The court also remanded the issue to the Divorce Referee to recalculate retroactive child support beginning the month following the sale of the marital residence, noting that the residence was sold in May of 2019, therefore child support calculations only should have been calculated as of June, 2019.The trial court also denied both parties' requests for attorney's fees.

This appeal followed.

ISSUES

Mother has set forth six issues for our consideration, stated as follows:

I. Whether the trial court erred in finding Mother in civil contempt of the parties' Permanent Parenting Plan for changing the children's daycare without prior consultation with Father;
II. Whether the Trial Court erred in finding Mother in Civil contempt for not adding Father's name to the information packet at the daycare;
III. Whether the Trial Court erred in assessing a fine of $50.00 per count of civil contempt against Mother: a total of $100.00 for changing the daycare ($50.00 per child) and a total of over $13,000.00 for each day that Father's name was not added

to the information at the daycare, which was reduced to $3,000.00 to be paid within ninety days;

IV. Whether the Trial Court erred in reversing the ruling of the Shelby County Divorce Referee due to the fact that the Motion Appealing the Divorce Referee Ruling was filed outside of the specified time period as provided in the Shelby County Chancery Court Rules for the Thirtieth Judicial District;

V. Whether the Trial Court erred in reversing the ruling of the Shelby County Divorce Referee by finding that the date for commencement of child support should be a later date than that found by the Shelby County Divorce Referee;

VI. Whether Appellant should be awarded attorney fees and litigation expenses for this appeal.

STANDARD OF REVIEW

This case was heard by way of bench trial. The Tennessee Rules of Civil Procedure maintain that "In all actions tried upon the facts without a jury, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment." Tenn. R. Civ. P. 52.01. If the trial court makes the required findings of fact, "appellate courts review the trial court's factual findings de novo upon the record, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise." *Kelly v. Kelly*, 445 S.W.3d 685, 692 (Tenn. 2014) (quoting *Armbrister v. Armbrister*, 414 S.W.3d 685, 692 (Tenn. 2013) (citing Tenn. R. App. P. 13(d)). "For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect." *State ex rel. Flowers v. Tennessee Trucking Ass'n Self Ins. Grp. Tr.*, 209 S.W.3d 595, 599 (Tenn. Ct. App. 2006).

While there is no bright-line test by which to assess the sufficiency of the trial court's factual findings, the general rule is that "the findings of fact must include as much of the subsidiary facts as is necessary to disclose to the reviewing court the steps by which the trial court reached its ultimate conclusion on each factual issue." *Lovlace v. Copley*, 418 S.W.3d 1, 35 (Tenn. 2013). "Simply stating the trial court's decision, without more, does not fulfill [the Rule 52.01] mandate." *Gooding v. Gooding*, 477 S.W.3d 774, 782 (Tenn. Ct. App. 2015) (quoting *Barnes v. Barnes*, No. M2011-01824-COA-R3-CV, 2012 WL 5266382, at *8 (Tenn. Ct. App. Oct. 24, 2012)).

If the trial court fails to explain the factual basis for its decisions, the appellate court "may conduct a de novo review of the record to determine where the preponderance of the evidence lies or remand the case with instructions to make the requisite findings of fact and conclusions of law and enter judgment accordingly." *Id.* at 783 (citing *Lovlace*, 418 S.W.3d at 36; *Ganzevoort v. Russell*, 949 S.W.2d 293, 296 (Tenn. 1997); *Nashville Ford Tractor, Inc. v. Great Am. Ins. Co.*, 194 S.W.3d 415, 424 (Tenn. Ct. App. 2005)).

Our review of a trial court's determinations on issues of law is de novo, without any presumption of correctness. *Lind v. Beaman Dodge, Inc*., 356 S.W.3d 889, 895 (Tenn. 2011).

ANALYSIS

I. CIVIL CONTEMPT

Civil contempt claims based upon alleged willful disobedience of a court order have four essential elements:

> (1) the order alleged to have been violated must be "lawful"; (2) the order alleged to have been violated must be clear, specific, and unambiguous; (3) the person alleged to have violated the order must have actually disobeyed or otherwise resisted the order; and (4) the violation of the order must have been "willful."

Lovlace v. Copley, 418 S.W.3d 1, 34 (Tenn. 2013) (citing *Konvalinka v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, 249 S.W.3d 346, 354 (Tenn. 2008)). Whether a party violated an order and whether a violation was willful are factual issues, which appellate courts review de novo, with a presumption of correctness afforded the trial court's findings. *Id.* (citing *Konvalinka* at 356–57).

A. The Parenting Plan

Mother contends the trial court erred by finding her in civil contempt for violating the Parenting Plan by enrolling the Children at Collierville Christian without obtaining Father's consent.

Under Section II. A. of the Parenting Plan, "Each parent shall make decisions regarding the day-to-day care of the children while the children are residing with that parent, including any emergency decisions affecting the health or safety of the children." By contrast, under Section II. B. of the Parenting Plan, "major decisions" regarding education, non-emergency healthcare, religious upbringing, and extracurricular activities shall be made jointly by the parties.

Mother submits that her decision to transfer the Children to Collierville Christian in 2020 was neither a major decision nor an educational decision; instead, it was driven by her day-to-day need for childcare for the Children while she worked. Father counters that this was a major educational decision because both Germantown Baptist and Collierville Christian are educational environments that advertise themselves as schools, and because Father was obligated to pay tuition through monthly child support payments.

Father's argument on this specific issue, as set forth in his appellate brief, reads:

> Appellant (hereinafter referred to as "Mother") absolutely had an obligation to reach a joint decision regarding the children's school, which Mother attempts to create a distinction by claiming it was nothing more than "work-related childcare which would be the same as a babysitter. Mother argues the trial court's ruling finding she had an obligation to reach a joint decision, would equate to Mother being in contempt if she changed babysitters without a joint decision. (App. Brief p.17). The flaw in Mother's argument is that the children were not in the care of a babysitter; the children were enrolled in an educational environment advertised as a school in which Appellee (hereinafter referred to as "Father") was obligated to pay the tuition through his monthly child support. Germantown Baptist describes their program as "quality education grounded in God's word, and describes their hours of operation as "school hours". Collierville Christian Academy provides a curriculum including math and science and the school forms filled out by Mother are titled "Preschool/Pre-K" enrollment. (R. V. 5, p. 39-43). The trial court correctly ruled that the Permanent Parenting Plan necessitated a joint decision to change the daycare. (R. V. 5 p. 67).

There is little doubt that a facility like Collierville Christian Academy can provide both childcare services as well as educational services. The fallacy with Father's argument on appeal, however, is that neither of the Children were of school age at the time at issue.

Under Article XI, § 12 of the Tennessee Constitution, "all children of ***school age*** in the state" are guaranteed "the opportunity to obtain an education." *Tenn. Small Sch. Sys. v. McWherter,* 851 S.W.2d 139, 140 (Tenn. 1993) (emphasis added). To implement this constitutional imperative, the General Assembly has created a statutory right to a public education that benefits all school-age children in Tennessee. *Heyne v. Metro. Nashville Bd. of Pub. Educ.*, 380 S.W.3d 715, 732 (Tenn. 2012). Under Tennessee Code Annotated § 49-6-3001(c)(1), "every parent, guardian or other legal custodian residing within this state having control or charge of any child or children between ***six*** years of age and ***seventeen*** years of age, both inclusive, shall cause the child or children to attend public or nonpublic school."

At the time that Mother enrolled the Children in Collierville Christian, the oldest was only four years old. Thus, when Mother took the action at issue, neither child was "of school age" under Tennessee Code Annotated § 49-6-3001(c)(1). Also significant is that

the Parenting Plan did not require or contemplate enrolling the Children in any public or nonpublic school prior to attaining the statutory school age.

The evidence in this record preponderates in favor of the finding that the program the Children were enrolled in at Collierville Christian fits squarely within the definition of child care under Chapter 0520-12-01-.02(9) of the Rules of the State Board of Education Office of the Commissioner.[9] The fact that Father was obligated to pay "tuition" does not negate the fact that these are childcare services. Accordingly, the evidence preponderates against the trial court's finding that enrolling the Children at Collierville Christian constituted a major educational decision.

For the foregoing reasons, we reverse the trial court's ruling that Mother was in contempt for violating the Parenting Plan by enrolling the Children in Collierville Christian without Father's consent.

B. The Parental Rights Statute

Mother contends the trial court erred in finding her in civil contempt for violating the Parental Rights Statute by failing to provide Father's contact information to Collierville Christian.

Father's contention that the trial court correctly found Mother in contempt for refusing to add Father's information is based solely on Tennessee Code Annotated § 36-6-101(a)(3)(ix), which reads:

> The right to access and participation in the child's education on the same basis that are provided to all parents including the right of access to the child during lunch and other school activities; provided, that the participation or access is legal and

[9] Chapter 0520-12-01 of the Rules of the State Board of Education Office of the Commissioner defines the standards for school administered childcare programs. Specifically, Chapter 0520-12-01-.02(9) defines a child care program as:

> Any public school administered early childhood education programs; programs operated by private schools as defined by § 49-6-3001(c)(3); *child care provided by church affiliated schools as defined by § 49-50-801*; state approved Montessori school programs; before or after school child care programs operated pursuant to §§ 49-2-203(b)(11) and 49-6-707; programs providing center-based early intervention services through Tennessee Early Intervention Services; child care provided in federally regulated programs including Title I preschools, 21st Century Community Learning Centers and all school administered head start and even start programs.

Tenn. Comp. R. & Regs. 0520-12-01-.02(9) (2021) (emphasis added).

> reasonable; however, access must not interfere with the school's day- to-day operations or with the child's educational schedule.

We find two problems with Father's argument. One, there is nothing in this statute that places an affirmative duty on Mother to provide Father's contact information to the administrators of the child care program at Collierville Christian. Also significant is that the Parental Rights Statute pertains to parents who have children in school, and we have already held that the Children are in daycare, not in school.

Under Tennessee Code Annotated § 36-6-101 (A)(B)(iv), "A parent has the right to receive directly from the child's *school* any educational records customarily made available to parents. Upon request from one (1) parent, the parent enrolling the child in school shall provide to the other parent as soon as available each academic year the name, address, telephone number and other contact information for the school.…" (emphasis added). However, as we have already determined, Mother enrolled the Children in Collierville Christian's childcare program, not a school.

For these reasons, we hold that Mother did not have an affirmative duty to provide Father's contact information to Collierville Christian. Accordingly, we reverse the trial court's ruling that Mother was in contempt for violating the Parental Rights Statute.

C. The Imposition of Fines for Contemptuous Conduct

Mother argues that the trial court erroneously assessed civil contempt fines against her that were punitive in nature.

Because we have reversed both findings of contempt, there is no basis upon which to impose any sanctions. Accordingly, we vacate the assessment of fines and penalties against Mother.

II. Father's Appeal of the Divorce Referee's Ruling

We next address whether Father filed his appeal of the Divorce Referee's ruling on child support outside of the ten-day time period specified by the Shelby County Chancery Court Rules for the Thirteenth Judicial District.

The Tennessee Rules of Civil Procedure govern practice and procedure in all state trial courts. *See* Tenn. R. Civ. P. 1. Trial courts may, however, adopt local practice rules as long as the rules do not conflict with other applicable statutes or rules promulgated by the Tennessee Supreme Court. *See* Tenn. S. Ct. R. 18; *see also Hessmer v. Hessmer*, 138 S.W.3d 901, 905 (Tenn. Ct. App. 2003); *Pettus v. Hurst*, 882 S.W.2d 783, 786 (Tenn. Ct.

App. 1993); *Hackman v. Harris,* 475 S.W.2d 175, 177 (Tenn. 1972); Tenn. Code Ann. § 16–2–511.

Because the parties were unable to agree upon all issues concerning Father's child support obligations, the issue was referred by order of the chancery court to a Divorce Referee to set child support and an arrearage judgment if past due support was owed. The Divorce Referee's ruling was entered on July 11, 2019. The Order Confirming the Divorce Referee Ruling was entered August 2, 2019. Father filed his Motion Appealing the Divorce Referee Ruling on August 9, 2019. The Chancellor ruled that Father's objection was timely and reversed, in part, the ruling of the Divorce Referee. Mother contends this was error, arguing that the Divorce Referee's ruling became final before Father filed his objection.

Specifically, Mother argues that Father filed his appeal outside of the ten-day limit prescribed by Local Rule 12(d). By contrast, Father argues that his appeal was timely based on the language of Local Rule 12(c).

The Thirtieth Judicial District has adopted and published Local Rules of Practice in the Chancery Court of Shelby County, which do not conflict with other applicable Tennessee rules or statutes. Local Rule 12(d) states as follows:

> (d) Appeals from a ***Divorce Referee's*** ruling shall be made written motion within ***ten (10) days of the referee's oral or written ruling*** and shall be placed on the Motion Docket of the Court to which the case is assigned or specially set by fiat. The motion shall specifically set forth what the movant seeks and where the Divorce Referee was in error. The referee's oral or written ruling on the pendente lite award shall be in effect and enforceable pending the appeal. Appeals shall be heard based on the record of the proceedings before the Divorce Referee. There will be no additional proof introduced unless directed by the Court.

(Emphasis added).

Local Rule 12(c) states, "Reports of the master, except reports of sale, shall be made in conformity with TCRP 53.04, ***which rule shall also be applicable to reports of the Divorce Referee***. (Emphasis added). TRCP Rule 53.04(2) states, in pertinent part: "In an action to be tried without a jury the court shall act upon the report of the master. Within ten (10) days after being served with ***notice of the filing of the report***, any party may serve written objections thereto upon the other parties." (Emphasis added). Thus, Father insists

that the ten-day appeals period began to run as of the date of the Order Confirming the Divorce Referee Ruling.[10]

The transcript of the Divorce Referee's Ruling (report) was filed with the court on July 11, 2019. Thus, the ten-day window to object started, at the latest, on July 11, 2019. Father did not file his Motion Appealing the Divorce Referee Ruling until August 9, 2019, which was more than ten days after the entry of the Divorce Referee's Ruling. Moreover, the Order Confirming the Divorce Referee Ruling was entered before Father filed his Motion to Object to the Divorce Referee's Ruling. Thus, Father's motion was untimely.

For these reasons, we reverse the Chancellor's ruling on this issue and remand with instructions to reinstate the Order Confirming the Divorce Referee Ruling.

III. ATTORNEY'S FEES

Both parties seek to recover their respective attorney's fees and expenses incurred on appeal.[11]

The relevant statute provides:

> (c) A prevailing party may recover reasonable attorney's fees, which may be fixed and allowed in the court's discretion, from the non-prevailing 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.

Tenn. Code Ann. § 36-5-103(c).

"Whether to award attorney's fees on appeal is a matter within the sole discretion of this Court." *Ellis v. Ellis*, 621 S.W.3d 700, 709 (Tenn. Ct. App. 2019) (quoting *Luplow v. Luplow*, 450 S.W.3d 105, 119 (Tenn. Ct. App. 2014)). "In determining whether an award for attorney's fees is warranted, we should consider, among other factors, the ability of the requesting party to pay his or her own attorney's fees, the requesting party's success on appeal, and whether the requesting party has been acting in good faith." *Shofner v. Shofner*,

[10] Father does not contend that he did not receive timely notice of the filing of the Divorce Referee's ruling.

[11] The trial court did not award attorney's fees to either party, and neither party appeals that decision.

181 S.W.3d 703, 719 (Tenn. Ct. App. 2004). Exercising our discretion, we decline to award either party attorney's fees on appeal.

IN CONCLUSION

The judgment of the trial court is reversed, in part, and vacated, in part, and this matter is remanded to the trial court for the entry of judgment consistent with this opinion. Costs of appeal are assessed as follows: one-half of the costs are assessed against Mother, and one-half of the costs are assessed against Father.

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FRANK G. CLEMENT JR., P.J., M.S.