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IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 6, 2025 Session

JOHN ALBERT VEITH IV v. ANDREA DEVICTOR VEITH

Appeal from the Circuit Court for Davidson County
No. 19D-73 Stanley Kweller, Judge[1]

No. M2024-00493-COA-R3-CV

After a divorce, a mother sought to enforce a marital dissolution agreement and modify an existing permanent parenting plan. The trial court held the father in civil contempt for willful failure to pay his former spouse her agreed share of his work bonus as specified in the marital dissolution agreement. It awarded the mother attorney's fees related to this issue as compensatory damages. But it denied her request for prejudgment interest. The court dismissed the mother's remaining enforcement claims and denied the modification request. Upon review, we vacate the award of attorney's fees and the denial of prejudgment interest and remand for reconsideration of those issues. Otherwise, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed in Part, Vacated in Part, and Remanded

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and JEFFREY USMAN, J., joined.

Sarah Richter Perky, Franklin, Tennessee, for the appellant, Andrea DeVictor Veith.

Elizabeth Garrett, Brenton H. Lankford, and Gregory D. Smith, Nashville, Tennessee, for the appellee, John Albert Veith IV.

OPINION

I.

A.

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[1] The Honorable Judge Kweller passed away during the pendency of this appeal.

John Albert Veith IV ("Father") and Andrea DeVictor Veith ("Mother") divorced in 2020. As part of the final divorce decree, the trial court adopted and incorporated the parties' marital dissolution agreement ("MDA") and agreed permanent parenting plan for their minor children.

About a year later, Mother filed a civil contempt petition asserting multiple violations of the MDA. According to the petition, Father failed to make timely alimony and child support payments; he failed to pay Mother her share of his 2020 bonus or provide the required documentation; and he violated an MDA provision governing the children's educational savings accounts. Among other things, she sought a judgment for the amounts she was owed under the MDA plus interest and attorney's fees.

In an amended petition, Mother added another enforcement claim. She alleged that Father violated the disclosure provision in the MDA. Specifically, he never disclosed during the divorce that 15% of his bonus was deferred and paid ratably over a three-year period. Mother asserted that she was entitled to an equitable share of the deferred compensation pursuant to the MDA.

Mother's amended petition also included a request to modify the joint decision-making provision in the permanent parenting plan. Mother alleged that, since the divorce, the parties had not been able to make timely mutual decisions affecting the children. She asked for sole decision-making authority in all areas.

In response, Father filed a counter-petition for civil contempt. He alleged that Mother violated the MDA by withdrawing more than half of his 2019 bonus from the parties' joint checking account. He asked for a judgment against Mother for the overpayment.

B.

The court bifurcated the proof at trial. First, it heard the parties' evidence on the financial dispute.

Much of the proof concerned Father's bonus from his employer, Raymond James. Father's supervisor, Scott Garfinkle, explained that as an employee in good standing, Father was eligible for an annual performance bonus. The dollar amount of the bonus varied. Raymond James set an amount based on a subjective evaluation of each eligible employee's performance during the fiscal year. Mr. Garfinkle verified that Father typically learned the amount of his bonus by mid-November and received payment in December.

Mr. Garfinkle stressed that, while the bonus amount was variable, the payment structure was not. Throughout his tenure with Raymond James, Father received eightyfive percent of his annual bonus in December. The remaining fifteen percent was deferred and paid ratably over the next three years as a retention incentive.

The proof showed that the parties executed an MDA on November 26, 2019. In paragraph 16, they agreed to divide Father's 2019 and 2020 work bonuses as follows,

> On or before December 15, 2019, [Father] shall pay [Mother] one-half of his Raymond James bonus for the September 2018-September 2019 fiscal year, net of taxes applying [Father]'s effective tax rate. . . .
>
> On or before December 15, 2020, [Father] shall pay [Mother] one-half of the marital portion of his Raymond James bonus for the September 2019-September 2020 fiscal year using the coverture fraction 1/4 (which the parties hereby acknowledge and agree is 1/8 of the total Raymond James bonus for the purposes of clarity), net of taxes applying [Father]'s effective tax rate. [Father] shall provide [Mother] with documentary proof of his gross bonus and the applicable taxes upon receipt but no later than December 15, 2020.

Mother explained that Raymond James deposited the 2019 bonus into the parties' joint checking account before the divorce was final. She withdrew half of the deposited funds as her share of Father's 2019 bonus. According to Mother, Father did not object to her withdrawal until a year later.

Mr. Garfinkle confirmed that Father was awarded a $450,000 bonus for the September 2019-2020 fiscal year. Of that total, $412,250 was paid in December 2020. This amount represented 85% of the 2020 bonus plus deferred compensation from previous bonuses. As usual, 15% of the total award, or $67,500, was deferred. This included $47,500 in deferred cash, which would vest ratably over the next three years, and $20,000 in stock, which would vest in 2023. According to Mr. Garfinkle, when an employee's bonus reached a certain dollar level, part of the bonus was paid in stock.

Mother complained that Father failed to pay her agreed share of his 2020 bonus. In her view, he also failed to provide objective "documentary proof of his gross bonus and the applicable taxes" as required. Instead, on December 15, 2020, he sent her a copy of a redacted pay stub and his subjective calculation of the amount owed. She demanded unredacted documentation so she could verify his calculations. But he ignored her demands.

Father defended his compliance efforts. He believed the redacted pay stub plus his calculations should have been enough. He noted that the effective tax rate could not be determined in mid-December. As he explained, he tried to pay Mother her share of the bonus, but she refused to accept payment. He conceded that his calculations of Mother's share did not include his deferred compensation. In his view, "Raymond James bonus," as used in paragraph 16, referred to the bonus amount payable during the fiscal year minus any deferred compensation from prior or future years. So Mother had already received more than half of his 2019 bonus. And she was demanding an outsized portion of his 2020 bonus.

The MDA did not expressly address deferred compensation or unvested stock. Even so, Mother argued at trial that paragraph 16 included the deferred portion of Father's bonus. But, if not, she claimed that she was entitled to an equitable share of the deferred portion because Father never disclosed his bonus structure during the divorce proceedings. She relied on paragraph 24 of the MDA, which provided,

> The parties acknowledge that there are no assets owned by them, either jointly or individually, and that they have no interest in any assets, which are not reflected by the terms of this agreement. The parties warrant and represent that they have made full disclosure to each other of all assets in which they have an interest. Should it develop that there were undisclosed assets, the party to whom the assets were not disclosed shall have a right to an equitable share of same. This claim is specifically reserved to each party and is not discharged by the remaining terms of this agreement.

Mother maintained that she was unaware of Father's deferred compensation during the divorce. She pointed out that Father received a "total bonus payable statement" every year clearly showing the structure of his bonus, including the deferred compensation and the three-year vesting schedule. Yet he did not produce these statements during the divorce, despite her comprehensive discovery requests.

On cross-examination, Mother was forced to admit that Father's discovery responses during the divorce included information on the bonus structure. He produced a chart documenting his payment history and an unredacted 2018 paystub, both of which referenced his deferred compensation. In a footnote to his payment history, Father noted that 15% of his annual performance bonus "is deferred and vests ratably over the next three years." And his paystub classified part of his bonus as "CFD Deferred Comp Pool." Mother claimed that these oblique references were insufficient. Yet she conceded that she could have requested clarification, but she did not.

On Father's motion, the court involuntarily dismissed Mother's claim for an equitable share of the deferred portions of the two bonuses. *See* TENN. R. CIV. P. 41.02(2). The court reasoned that any deferred compensation Father received after the final divorce decree, with the exception of any amount included in paragraph 16, was not marital property subject to distribution as part of the marital estate. And he had no obligation to disclose non-marital assets under paragraph 24. Even so, the court found, as a factual matter, that Father disclosed his deferred compensation during discovery in the divorce action. While Father could have provided more precise information, the court found

Mother "was aware of [Father]'s deferred compensation during the divorce proceedings or should have been aware of it based on the information provided." Thus, Mother failed to establish that she was entitled to any relief under paragraph 24 of the MDA.[2]

The court determined that Father provided Mother with sufficient documentation of the gross amount of the 2020 bonus. But his willful failure to pay Mother her share of the 2020 bonus constituted civil contempt. According to the court, Father's attempted payment was not in good faith because he knowingly calculated Mother's share using an inapplicable tax rate.

As for the parties' dispute over the meaning of paragraph 16, the court determined that the parties intended for Mother to receive a share of the "total Raymond James bonus" for 2019 and 2020. Based on testimony at trial, the court interpreted "total bonus" to mean "both the fiscal year bonus and the deferred compensation paid in that year." But it did not include any unearned and unvested compensation or stock Father received after 2020. After calculating Mother's share, the court ordered Father to pay Mother the remaining amounts owed for 2019 and 2020 within 10 days or report to jail. It denied Mother's request for prejudgment interest but awarded her $5,000 in attorney's fees as compensatory damages for civil contempt.

C.

The second half of the trial centered on Mother's modification request. The existing plan named Mother the primary residential parent and gave her roughly twice as much parenting time as Father. Despite this disparity, the plan required the parents to make all major decisions jointly.

Mother claimed that the parties were unable to make timely mutual parenting decisions, especially about the children's counseling and extracurricular activities. She also worried that Father planned to disrupt the children's education.

According to Mother, the most glaring example of parental conflict involved the children's need for counseling. During the divorce, school officials recommended counseling for their oldest child, J.A., to help him adjust to the divorce. The parents agreed, and J.A. saw a therapist for about a year and a half. But after the provider relocated, Father would not agree to more therapy. Mother believed that J.A. still needed therapy as evidenced by the former therapist's recommendation letter. Father felt the former therapist's recommendation "lacked substance." In his view, J.A. no longer needed additional support. Mother argued that a subsequent incident at school demonstrated that

[2] The court also dismissed Mother's civil contempt claims based on alleged violations of the MDA provisions regarding payment of his monthly support obligations and the children's educational savings accounts. Mother does not contest the dismissal of these claims on appeal.

Father's assessment was wrong. Father countered that one bad day did not establish that J.A. needed to resume counseling.

Witnesses from the children's school confirmed that J.A., a sensitive child, had needed counseling to adjust to the divorce. From the school's point of view, J.A.'s previous therapy was successful. Except for one isolated incident, J.A. appeared to be doing well.

The parents enrolled their other child, K.M., in pre-kindergarten when he was four. It was a difficult adjustment. School witnesses explained that K.M. had "big emotions" and problems with impulse control. Due to his disruptive behavior, the school first suggested shorter days and then recommended counseling. Father was reluctant. Mother believed that Father's hesitation unnecessarily delayed necessary counseling for K.M. Still, Father agreed to counseling a couple of months later after the school made the recommendation mandatory.

K.M. began counseling with Tricia Thornton in November 2021. During the next school year, K.M. showed signs of improvement, but school officials believed he still "needed more support." So the school added a requirement for weekly family therapy. Ms. Thornton also conducted the family therapy sessions. According to Mother, Father only participated in family therapy for a short period. Father insisted that family therapy was ineffective. Ms. Thornton confirmed that the family therapy sessions had not been helpful.

At some point, Ms. Thornton recommended screening K.M. for attention deficit hyperactivity disorder. Mother complained that Father delayed the screening process. Ms. Thornton acknowledged that Father initially raised valid concerns. And while the process was somewhat delayed, she did not blame Father. Ms. Thornton diagnosed K.M. with a combined type of ADHD, meaning he had both impulse control and inattention issues. She recommended that the parents share her findings with the child's school and his pediatrician. The proof showed that the parents followed her recommendation and, with Father's consent, K.M. began the recommended treatment for ADHD.

From the school's perspective, K.M.'s behavior had greatly improved by the time of trial. At that point, the child had been in counseling for about two years. He still had emotional outbursts, but the frequency had greatly diminished.

Father explained that he was not opposed to counseling if needed. But he believed that therapy should be used as a tool for addressing specific problems. Unlike Mother, he was uncomfortable with undefined therapy for an indefinite duration.

Mother also offered proof related to the children's education and extracurricular activities. Before the divorce, the parents had agreed to send the children to private school. But Mother feared that Father intended to withdraw his consent because he had recently purchased tuition insurance. Father testified that he had no such plans. As for extracurriculars, it was undisputed the children participated in a wide variety of activities. Mother complained that Father was inordinately slow to respond when she asked for his input on these decisions. Yet she conceded that he rarely objected to her choices.

The court allowed Ms. Thornton to testify as a child and family therapy expert. She opined that the parents did not communicate with each other very well. Mother tended to interrupt, which Father found frustrating. She witnessed multiple disagreements over logistics in general and the timing and frequency of counseling in particular. She believed that family therapy with a "more neutral" therapist would be beneficial for the parties.

Father's expert, Dr. Jay Woodman, readily acknowledged that the parents had different co-parenting styles, which contributed to their poor communication. He explained that Mother was decisive and wanted to act quickly while Father preferred a slower, more deliberate approach. Neither style was unreasonable. But when Mother pushed Father too hard for a decision, he tended to withdraw and become unresponsive. Still, so far, in Dr. Woodman's view, they seemed able to make mutual decisions about important matters affecting their children.

Dr. Woodman noted that the parents' differing views on counseling as a treatment option contributed to their current disagreement over counseling for J.A. Father believed there was a downside to indefinite counseling. So he was reluctant to agree to counseling without a defined objective. Mother had no such misgivings. She accepted the former therapist's general recommendation without question. While this impasse would be problematic if the child needed therapy, Dr. Woodman heard no testimony at trial indicating that J.A. had an unmet need.

The court denied Mother's modification request. Having considered all the evidence, it determined that Mother failed to establish a material change in circumstances had occurred since the entry of the current plan warranting modification of decision-making authority. Except for J.A.'s counseling, the parents had been able to make "a vast number" of mutual decisions for the children. As for Mother's complaints about timeliness, the court attributed the delay to the difference in decision-making styles. But, in the court's view, these differences were "not fatal to the parties' ability to engage in joint decision-making for their children." To the contrary, the two styles actually "complement[ed] one another." And there was no proof that these delays harmed the children. Lacking proof of a material change, the court did not address the children's best interests.

II.

As we understand it, Mother seeks appellate relief on several grounds. On the financial front, she challenges the court's dismissal of her claim for an equitable share of

Father's deferred compensation, the denial of prejudgment interest, and the reasonableness of the award of attorney's fees. She also insists that the evidence preponderates against the court's finding of no material change. For his part, Father contends that the court erred in failing to award him attorney's fees at trial.

Because this was a bench trial, 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). Evidence preponderates against a finding of fact when it "support[s] another finding of fact with greater convincing effect." *Phillips v. Hatfield*, 624 S.W.3d 464, 474 (Tenn. 2021). In reviewing the court's findings, 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 questions of law de novo, with no presumption of correctness. *Armbrister v. Armbrister*, 414 S.W.3d 685, 692 (Tenn. 2013).

A. Financial Issues

1. Full Disclosure of Assets

Mother claims that the court erred in calculating the amount she was owed for her share of the 2019 and 2020 bonuses. She argues that she is entitled to an equitable share of the deferred portions of these bonuses under paragraph 24 of the MDA. The court granted Father's motion for involuntary dismissal of this claim. *See* TENN. R. CIV. P. 41.02(2). Rule 41.02(2) motions "challenge the sufficiency of the plaintiff's proof." *Burton v. Warren Farmers Coop.*, 129 S.W.3d 513, 520 (Tenn. Ct. App. 2002). The court must "impartially weigh and evaluate the plaintiff's evidence" just as it would at the end of a trial. *Id.* The case should be dismissed if the plaintiff "has failed to demonstrate [a] right to relief by a preponderance of the evidence." *Via v. Oehlert*, 347 S.W.3d 224, 228 (Tenn. Ct. App. 2010). We will affirm a trial court's decision on a Rule 41.02(2) motion "unless the evidence preponderates against the trial court's factual determinations or the trial court's decision is based on an error of law that affects the outcome of the case." *Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405, 414 (Tenn. 2013).

The trial court concluded that the MDA did not require Father to disclose his deferred compensation because it was not marital property. *See* Tenn. Code Ann. § 36-4-121(b)(2)(A) (Supp. 2025) (defining marital property); *Murdock v. Murdock*, No. W2019-00979-COA-R3-CV, 2022 WL 611024, at *12-13 (Tenn. Ct. App. Mar. 2, 2022) (concluding that any bonuses and stock options a spouse received after the final divorce hearing were not part of the marital estate and, thus, not subject to equitable division). Respectfully, classification was not the issue here. A marital dissolution agreement is a contract, subject to the normal rules of contract construction. *Eberbach v. Eberbach*, 535 S.W.3d 467, 478 (Tenn. 2017). We interpret contracts as written, giving the parties' words a natural and ordinary meaning. *Id.* If the language used is clear and unambiguous, we need go no further. *Id.* Paragraph 24 required the parties to make "full disclosure to each other of all assets in which they ha[d] an interest," not just the marital assets. So whether Father's deferred compensation was marital property or not, under the plain terms of the MDA, he was required to disclose it.

Even so, paragraph 24 only gave Mother a right to an equitable share of "undisclosed assets." Based on Mother's evidence, the court found that she knew or should have known about his deferred compensation based on the information he disclosed during the divorce action. The evidence does not preponderate against this finding. In response to Mother's requests for information about his compensation during the divorce proceeding, Father stated that fifteen percent of his annual performance bonus was "deferred and vest[ed] ratably over the next three years." Mother insists that Father could have been provided better information. Still, the information he did disclose was "certainly enough to put [Mother] on notice that she needed to seek additional information if she was not satisfied."

We affirm the dismissal of Mother's claim for an equitable share of undisclosed assets. Because Mother knew or should have known about the deferred portion of Father's bonuses, she did not show that she was entitled to her requested relief. *Via*, 347 S.W.3d at 228.

2. Prejudgment Interest

Mother contends that the court erred in denying her request for prejudgment interest. The award of prejudgment interest is a discretionary decision. *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 927 (Tenn. 1998). The court denied the request because Mother failed to offer proof that she sustained any actual damages from her inability to invest the unpaid funds. Simply put, Mother was not required to offer such proof. *See Post v. Post*, No. M2008-01488-COA-R3-CV, 2009 WL 1850880, at *8 (Tenn. Ct. App. June 26, 2009) (recognizing that "there is no requirement that a party seeking prejudgment interest show harm from being deprived of the disputed money"). Loss of use of unpaid funds is the natural consequence of a "failure to pay an obligation according to its terms." *Mitchell v. Mitchell*, 876 S.W.2d 830, 832 (Tenn. 1994). Prejudgment interest is the usual means of compensation for this loss. *Id.*; *Alexander v. Inman*, 974 S.W.2d 689, 698 (Tenn. 1998); *Scholz v. S.B. Int'l, Inc.*, 40 S.W.3d 78, 82 (Tenn. Ct. App. 2000). Whether an award of prejudgment interest is appropriate in a particular case depends on equitable principles, not proof of actual damages. *See Alexander*, 974 S.W.2d at 697; *Myint*, 970 S.W.2d at 927.

Despite this error, Father insists that we should affirm the denial because the amount owed was reasonably disputed. *See Alexander*, 974 S.W.2d at 698 (affirming the denial of prejudgment interest when "both the right to recover . . . and the amount of [recovery] were quite reasonably disputed"). Reasonable or not, this fact alone "does not *mandate* a denial of prejudgment interest." *Myint*, 970 S.W.2d at 928. Besides, the court made its decision without considering any of the equitable factors that customarily guide this decision. *See id.* at 927-29 (discussing the equitable considerations that should inform a court's decision on prejudgment interest). Because the court failed to consider equitable principles, we vacate the denial of prejudgment interest and remand for reconsideration. *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010). On remand, the court should decide "whether the award of prejudgment interest is fair, given the particular circumstances of the case." *Myint*, 970 S.W.2d at 927.

3. Attorney's Fee Award

Mother contests the amount of attorney's fees she was awarded as compensatory damages for civil contempt. We will not disturb a trial court's subjective determination of a reasonable amount of attorney's fees absent an abuse of discretion. *Wright ex rel. Wright v. Wright*, 337 S.W.3d 166, 176 (Tenn. 2011). The court is not required to follow any "fixed mathematical rule[s]." *Killingsworth v. Ted Russell Ford, Inc.*, 104 S.W.3d 530, 534 (Tenn. Ct. App. 2002). It may choose to proceed without expert testimony or even a prima facie showing of reasonableness. *Wilson Mgmt. Co. v. Star Distribs. Co.*, 745 S.W.2d 870, 873 (Tenn. 1988). "[U]ltimately the reasonableness of the fee must depend upon the particular circumstances of the individual case." *White v. McBride*, 937 S.W.2d 796, 800 (Tenn. 1996). Thus, in most cases, a trial court's determination of a reasonable amount is not subject to reversal absent some proof in the record that the award "is unreasonable under the circumstances." *Kline v. Eyrich*, 69 S.W.3d 197, 210 (Tenn. 2002).

But here we cannot discern whether the court actually engaged in a reasonableness analysis. It did not reference the appropriate factors or make a reasonableness finding. Without any findings or explanation, we are left to wonder how the court arrived at this figure. Nothing in the record sheds any additional light on the matter. Under these circumstances, the correct approach is to vacate the award and remand for a new determination of a reasonable fee related to the bonus issue. *See Thomas v. Smith*, 682 S.W.3d 213, 232-33 (Tenn. Ct. App. 2023) (vacating award of fees when the court failed to address the reasonableness of the amount awarded); *Ellis v. Ellis*, 621 S.W.3d 700, 709 (Tenn. Ct. App. 2019) (vacating award of attorney's fees based on the court's failure to make a reasonableness finding or reference the appropriate factors); *First Peoples Bank of Tenn. v. Hill*, 340 S.W.3d 398, 410 (Tenn. Ct. App. 2010) (vacating fee award and remanding for a new determination when there was "nothing in the record to indicate that the trial court actually evaluated the amount of the fee to see if it [wa]s reasonable"). On remand, the court should consider the circumstances involved in light of the appropriate factors and fix a reasonable amount of attorney's fees for Mother. *See Wright ex rel. Wright*, 337 S.W.3d at 176-77 (identifying the factors in TENN. SUP. CT. R. 8, RPC 1.5 as guidelines to consider when determining a reasonable fee).

B. Modification of the Permanent Parenting Plan

Tennessee courts apply the two-step analysis in Tennessee Code Annotated § 36-6-101(a) to requests to modify a permanent parenting plan. *Armbrister*, 414 S.W.3d at 697-98; *Brunetz v. Brunetz*, 573 S.W.3d 173, 183-84 (Tenn. Ct. App. 2018). The threshold issue is whether a material change of circumstance has occurred since the court's prior custody order. *See* Tenn. Code Ann. § 36-6-101(a)(2)(C) (Supp. 2025); *Armbrister*, 414 S.W.3d at 697-98. This is a question of fact. *Armbrister*, 414 S.W.3d at 692; *In re T.C.D.*, 261 S.W.3d 734, 742 (Tenn. Ct. App. 2007). If a material change of circumstance is found, the court must decide whether modification is in the child's best interest. *Armbrister*, 414 S.W.3d at 705.

The parent requesting a modification must prove the existence of a material change by a preponderance of the evidence. Tenn. Code Ann. § 36-6-101(a)(2) (B), (C). But the threshold for establishing a material change depends on the type of modification sought. *See id.*; *Armbrister*, 414 S.W.3d at 702-03. The parent seeking to change the primary residential parent must meet a higher standard. Tenn. Code Ann. § 36-6-101(a)(2)(B)(i). Key factors include whether the change occurred after entry of the previous plan; whether the change was known or reasonably anticipated when the order was entered; and whether the change affected the child's well-being in a meaningful way. *Kendrick v. Shoemake*, 90 S.W.3d 566, 570 (Tenn. 2002). If, on the other hand, the parent seeks to modify the residential parenting schedule, the threshold is much lower. *Armbrister*, 414 S.W.3d at 703; Tenn. Code Ann. § 36-6-101(a)(2)(C). "[M]erely showing that the existing arrangement [is] unworkable for the parties" may be enough. *Rose v. Lashlee*, No. M2005-00361-COA-R3-CV, 2006 WL 2390980, at *2 n.3 (Tenn. Ct. App. Aug. 18, 2006). Still, under either standard, the change must be significant and affect the child's best interest. Tenn. Code Ann. § 36-6-101(a)(2)(C); *Armbrister*, 414 S.W.3d at 704.

Mother insists that she met the lower threshold for establishing a material change. We have previously applied the lower standard to requests to modify decision making authority. *See Smallman v. Smallman*, 689 S.W.3d 845, 863 (Tenn. Ct. App. 2023); *Colley v. Colley*, No. M2014-02495-COA-R3-CV, 2016 WL 3633376, at *11-12 (Tenn. Ct. App. June 28, 2016); *Hansen v. Hansen*, No. M2008-02378-COA-R3-CV, 2009 WL 3230984, at *2 (Tenn. Ct. App. Oct. 7, 2009). Father argues that the higher threshold should apply because modification of decision-making authority is a more substantive change than altering the residential schedule. *See Massey-Holt v. Holt*, 255 S.W.3d 603, 608 (Tenn. Ct. App. 2007) (noting that the higher standard applied to requests to modify custody and "matters more substantive than a change of schedule" (quoting *Scofield v. Scofield*, No. M2006-00350-COA-R3-CV, 2007 WL 624351, at *3 (Tenn. Ct. App. Feb. 28, 2007))). But we need not resolve this dispute because we conclude that Mother failed to clear the lower bar.

Mother maintains that this record contains ample proof that the joint decision-making provision no longer worked. She points to the conflicts and delays over counseling, Father's premature termination of family therapy, Father's delay in responding to her messages about extracurricular activities, and the parties' general hostility toward one another. Granted, the situation is not ideal. But "[a]crimony and hostility between the parties does not, in and of itself, amount to a material change in circumstances." *Lovlace v. Copley*, 418 S.W.3d 1, 32 (Tenn. 2013). And, unlike in previous cases, we see no evidence of a significant communication breakdown between these parties. *Cf. Colley*, 2016 WL 3633376, at *12 (affirming finding of material change sufficient to modify joint decision making for educational decisions when proof showed that parents no longer spoke to one another and their inability to make a joint decision about the child's education caused her to attend three different schools during the first two weeks of the school year); *Pankratz v. Pankratz*, No. M2017-00098-COA-R3-CV, 2017 WL 4842400, at *5 (Tenn. Ct. App. Oct. 25, 2017) (affirming finding of material change based on proof of "intense level of ongoing conflict between the parties"). Instead, the proof showed that Father and Mother had largely been successful in making mutual decisions. Despite Mother's misgivings, the parents had no real disagreements about the children's education, religious upbringing, or extracurricular activities. Despite Father's slow response time, the children enjoyed a wide variety of summer camps and other activities. The few missed opportunities were relatively insignificant.

Nor has the conflict over counseling had an adverse effect on the children. *Cf. Smallman*, 689 S.W.3d at 862-63 (affirming implicit finding of material change sufficient to alter joint decision-making authority when frequent disagreements over child's medical treatment resulted in delays and gaps in treatment); *Hansen*, 2009 WL 3230984, at *2 (affirming finding of material change when parental discord adversely impacted the child's medical treatment). School officials reported no recent concerns about either child. Nor does the school seem concerned about the lack of family therapy. At the time of trial, J.A. had no ongoing emotional or behavioral issues. And Father never withdrew his consent for K.M.'s counseling. By all accounts, K.M.'s behavior improved with consistent counseling and the parents agreed on the appropriate treatment for his ADHD diagnosis.

Because the evidence does not preponderate against the finding of no material change in circumstance, we do not reach Mother's argument that modification of the joint decision-making provision was in the children's best interests. *Armbrister*, 414 S.W.3d at 705.

C. Attorney's Fees at Trial

Father asserts that the trial court erred in failing to award him attorney's fees for successfully defending against Mother's enforcement and modification claims. He relies on the MDA and Tennessee Code Annotated § 36-5-103(c).

1. Contractual Right to Attorney's Fees

Our courts have no "discretion to deny an award of fees mandated by a valid and enforceable" MDA. *Eberbach*, 535 S.W.3d at 479. Whether the MDA mandated an award of attorney's fees is a question of law, subject to de novo review. *Id.* at 473. The language used in the MDA dictates the answer. *Id.* at 479 (directing courts to "look to the actual text" to determine whether an attorney's fee provision "is mandatory and applicable"). Paragraph 20 of the agreement reads,

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

Based on this language, we conclude that the MDA mandates an award of reasonable attorney's fees to the party, whether plaintiff or defendant, who prevails in a legal proceeding to procure enforcement of any provision of the MDA. Otherwise, the reference to the party forced to "defend" would be superfluous. Because the MDA expressly incorporated the provisions of the permanent parenting plan, the fee provision would also apply to the prevailing party in a proceeding to enforce the parenting plan. *See Staubach Retail Servs.-Se., LLC v. H.G. Hill Realty Co.*, 160 S.W.3d 521, 525 (Tenn. 2005) (recognizing that the terms of an expressly incorporated agreement become part of the agreement as a whole).

Although Father's fee request falls within the scope of the MDA, the fee provision only mandates a fee award to the prevailing party. We must enforce the parties' agreement as written. *Eberbach*, 535 S.W.3d at 478 (stating that courts "must enforce the parties' terms to the extent the agreement demands"). Here, both parties were somewhat successful. Mother achieved her primary objective. She obtained a substantial monetary judgment in her favor on the bonus issue. *See Fannon v. City of LaFollette*, 329 S.W.3d 418, 432 (Tenn. 2010). Although she was not wholly successful in convincing the court to adopt her view of the bonus provision, neither was Father. The court also rejected Father's effort to claw back part of the 2019 bonus. Still, Father fended off Mother's other enforcement claims as well as her attempt to modify the parenting plan. *See Colley v. Colley*, 715 S.W.3d 293, 304-05 (Tenn. 2025) (concluding that the defendant prevailed in the trial court within the meaning of the MDA because she achieved her goal of preserving the status quo). But there was no "clear winner." *See Richardson v. Spanos*, 189 S.W.3d 720, 729 (Tenn. Ct. App. 2005). Because neither party prevailed, neither party was entitled to recover attorney fees at trial pursuant to the MDA.

2. Statutory Claim

We must also review Father's request for fees for under Tennessee Code Annotated § 36-5-103(c). *Eberbach*, 535 S.W.3d at 479. Father asserts that he is entitled to an award of fees for defending the decision-making provision of parenting plan. This statute authorizes a court to award reasonable attorney's fees to the "prevailing party" in a modification proceeding. Tenn. Code Ann. § 36-5-103(c) (Supp. 2025). Because Father was the prevailing party on the modification issue, he has a statutory right to an award of attorney's fees. *Colley*, 715 S.W.3d at 314. But this right is not absolute. *Deas v. Deas*, 774 S.W.2d 167, 170 (Tenn. 1989). Whether to award fees under this statute remains discretionary. *See Colley*, 715 S.W.3d at 313 (recognizing that "[t]rial courts have full discretion under section 36-5-103(c) to consider the equities between the parties in deciding whether to award reasonable attorney fees"); *Deas*, 774 S.W.2d at 170 (reasoning that "if the trial judge deems that fees are inappropriate or that the awarding of them would be inequitable or unnecessary, the court may decree accordingly").

Based on the equities here, the trial court declined to award Father any fees under the statute. The court found that Mother brought her modification petition in good faith. In the court's view, her petition was unproven, not unwarranted. Given Mother's apparent good faith and the financial circumstances of the parties, we cannot fault the court's decision. *See Lee Med., Inc.*, 312 S.W.3d at 524.

D. Attorney's Fees on Appeal

Both parties seek an award of attorney's fees on appeal based on the fee provision in the MDA and Tennessee Code Annotated § 36-5-103(c).

We have already determined that the fee provision in the MDA is mandatory and applicable to this litigation. Thus, appellate attorney's fees must be awarded to the party who prevailed on appeal. *Eberbach*, 535 S.W.3d at 479. In this appeal, we affirmed the dismissal of the full disclosure claim and the denial of the modification petition. Father prevailed on these issues. Mother did not. So Father is entitled to an award of reasonable attorney's fees. *Colley*, 715 S.W.3d at 315. On remand, the trial court should determine a reasonable amount of attorney's fees incurred on appeal.

Like the trial court, we also have the discretion to award fees on appeal under Tennessee Code Annotated § 36-5-103(c). *Id.* In exercising our discretion, we consider the purposes behind the statute and the circumstances of the appeal. *Id.* at 316. Because Mother did not prevail on appeal on a substantive issue, she is not entitled to an award of attorney's fees. Although Father was successful on appeal, when we consider all the relevant factors in this case, we respectfully decline to grant his request for an award of attorney's fees under the statute.

III.

We vacate the denial of prejudgment interest and the award of attorney's fees to Mother as compensatory damages. Otherwise, we affirm the trial court's decision. Father is awarded attorney's fees incurred on appeal. This case is remanded to the trial court for reconsideration of the two vacated rulings and a determination of Father's reasonable attorney's fees incurred on appeal.

s/ W. Neal McBrayer

W. NEAL MCBRAYER, JUDGE