

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
March 24, 2026 Session

**DEVON N. BAGWELL v. NOEL R. BAGWELL, III**

**Appeal from the Chancery Court for Montgomery County**  
**No. DI 21-569      Ben Dean, Chancellor**

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**No. M2025-00716-COA-R3-CV**

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This appeal arises from post-divorce proceedings. The trial court modified the parties' permanent parenting plan for their minor child upon determining that a material change in circumstance had occurred and modification was in the child's best interest. Father appeals. Discerning no error, we affirm the judgment of the trial court.

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

VALERIE L. SMITH, J., delivered the opinion of the court, in which CARMA DENNIS MCGEE and KRISTI M. DAVIS, JJ., joined.

Daniel P. Bryant, Clarksville, Tennessee, for the appellant, Noel Reese Bagwell, III.

Stacy A. Turner, Clarksville, Tennessee, for the appellee, Devon N. Bagwell.

**OPINION**

**I. BACKGROUND FACTS AND PROCEDURAL HISTORY**

Devon B. ("Mother") and Noel B. ("Father"; together, "Parents") were married in 2006 and have one minor child ("the child"), born in November 2018. In August 2021, Mother filed a complaint for divorce in the Chancery Court for Montgomery County ("the trial court") and alleged the grounds of irreconcilable differences and inappropriate marital conduct. On July 19, 2022, the trial court entered a decree of divorce on the grounds of irreconcilable differences, a marital dissolution agreement ("MDA"), and an agreed permanent parenting plan. Parents' MDA included a "permanent injunction" provision

stating: “It is agreed by and between the parties that both parties should be permanently restrained and enjoined from coming about the other for the purpose of harming, harassing, threatening, or intimidating the other.”

The agreed parenting plan designated Parents as joint residential parents with equal parenting time. The plan provided that Mother would be primary residential parent from Monday morning at 8:30 through Wednesday morning at 8:30 or when the child resumed school, and Father would be primary residential parent from Wednesday morning at 8:30 through Friday morning at 8:30 or when the child resumed school. It also provided for alternate weekend and holiday parenting time and shared decision-making authority. Based on Parents’ nearly equal gross income, neither parent incurred a child support obligation.<sup>1</sup> The permanent parenting plan provided that each parent would have ten days of vacation time with the child and required two weeks of advance notice.

On March 19, 2024, Mother filed a petition for contempt and modification of the permanent parenting plan. In her petition, Mother asserted that Parents had lived in different school zones since the divorce, the child was now school age and preparing to enter kindergarten, and Father had “unilaterally enrolled” the child in Oakland Elementary School in Montgomery County without her consent in violation of the parenting plan. She asserted that because the child was starting school, he would benefit from an alternate-week parenting schedule rather than the split-week schedule set forth in the parenting plan. Mother also asserted that Father “continue[d] to exhibit controlling and harassing behaviors and is insisting that the Mother have daily contact with the Father, still wearing his wedding ring and telling the child that the parties are still married.” Mother asserted that a material change of circumstance had therefore occurred such that modification of the parenting plan was in the child’s best interests. Mother sought modification of the parenting plan to provide for an alternate-week parenting schedule, designation of Mother as primary residential parent, and enrollment of the child in Pleasant View Elementary School in her school zone. Mother further stated:

. . . the parties reviewed their respective elementary schools in their school zone, which are the Mother's school zone, Pleasant View Elementary in Cheatham County and the Father’s school zone, Oakland Elementary in Montgomery County. The schools ranked differently in different areas and for different school years, but essentially were very closely aligned in their ratings.

Mother also prayed for an order finding Father in contempt and requiring him to unenroll the child from the Montgomery County School System. She also requested attorney’s fees and costs.

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<sup>1</sup> The trial court approved an agreed \$39.00 per month downward deviation based on Parents’ incomes.

On April 19, Father answered Mother’s petition, generally denying her allegations and asserting:

15. Specifically regarding the choice of which school the minor child will attend, the Parenting Plan provides: “If the parties live in different school zones, they will together mutually decide, **based on the comparable academic rankings of the available schools, which school the child will attend, based on the academic rankings of the schools, giving priority to the highest-ranking school.**” (emphasis added by Father)

16. Respondent would draw this Honorable Court’s attention to the fact that the Parenting Plan does not require that one school be better than another by any particular margin, and, therefore, whether a school is 4% better or 40% better, the higher-ranking (or, synonymously, “higher-rated”) school is the school the minor child must attend, because *better is better*—even if only by a slim margin.

17. Pursuant to conversations with Petitioner, on the 6th day of March, 2024, Respondent contacted Grace Shelton, Assistant Commissioner of Program and Financial Performance and Evaluation in the Office of the Commissioner of the Tennessee Department of Education to inquire about the relative academic performance of Oakland Elementary School and Pleasant View Elementary School.

Father asserted that in her return e-mail, Ms. Shelton stated that a comparison of the Achievement Test scores indicated that Oakland Elementary “had a slightly higher (~4%) overall percentage of students scoring proficient on their TCAP assessments.” Father additionally asserted that Ms. Shelton stated that the school scored differently in different areas and stated: “which [Father] would concede is an outcome on which the two schools are ‘essentially very closely aligned,’ but which [Father] notes does not mean ‘the overall rankings of the schools are equal.’” Father alleged that Mother had made “material misrepresentations of fact” to the court by stating that the “overall rankings of the schools are equal” and that she had acted in bad faith by “refus[ing] to accept the clear and dispositive evidence from the Tennessee Department of Education, indicating that Oakland Elementary School (in Montgomery County) is an academically higher-ranked (or, synonymously, “higher-rated”) school than Pleasant View Elementary School (in Cheatham County).” Father also stated that he had not enrolled the child in “any school for the 2023-24 school year” but had “only completed the pre-enrollment paperwork” to “facilitate[] the enrollment process by electronically completing some preliminary paperwork.”<sup>2</sup> He contended that Mother made a “materially false statement” by

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<sup>2</sup> We assume Father was referring to the 2024-25 school year.

representing to the court that Father had “enrolled” the child in Oakland Elementary.

Father also asserted that the parenting plan permitted him to have FaceTime calls with the child and that “[t]his is the ‘daily contact’” to which Mother referred. He contended:

[Mother’s] false statement to the effect that [Father] “is insisting that [Mother] have daily contact with [Father]” is a material misrepresentation of fact to this Honorable Court, as it neglects to distinguish between “daily contact” that serves no legitimate purpose and the daily contact mandated by the Parenting Plan or other contact in furtherance of legitimate purposes, such as improving their co-parenting relationship, improving their communication, and generally improving their relationship out of regard for the best interests of the minor child.

Father characterized Mother’s statement regarding his “controlling and harassing behaviors” as “paranoid delusions” and asserted that Mother’s statements “[were] riddled with lies and hearsay.”

Father also argued that Mother “fail[ed] to even make a pro forma effort to show how the circumstances [had] changed at all[.]” He asserted that the child was only two years older than he was when the parenting plan was entered and that he was already attending preschool in Montgomery County. Father asserted that preschool and elementary school began at approximately the same time in the morning; the schools were located near each other; and Parents were already transporting the child. He asserted that Mother had “essentially perjured herself by making oath that she has read the Petition and, knowing the contents thereof, that the statements made therein are true and correct, etc.” Father asked the court to deny Mother’s petition and to declare that some of Mother’s statements constituted perjury. He also asked the court to “deny [Mother’s] request that the parties be ordered to attend mediation” and prayed for sanctions and attorney’s fees.

On July 11, 2024, Father filed a motion to dismiss Mother’s petition for failure to state a claim. He asserted that Mother had failed to abide by the processes mandated by the parenting plan and that her allegations of harassment were frivolous. Father further asserted that, under the criteria for selecting the child’s school provided by the parenting plan, Oakland Elementary was the favored school. He prayed for an order requiring the child to attend Oakland Elementary and for sanctions against Mother. Father asked the court to “declare that any future modifications to the Parenting Plan or resolution of disputes between the parties must strictly adhere to the mediation process outlined in Section V of the Parenting Plan[.]” Father also requested an award of attorney’s fees and costs.

Mother filed her response to Father’s motion on July 23, 2024. She admitted that

the parenting plan provided for mediation and asserted that Parents “[had] taken extreme polarized positions that will not be resolved in mediation.” She stated that counsel for the parties had appeared before the court on June 28 to set the matter for a hearing and agreed that “neither party was budging in their position and the issue needed to be heard and resolved before the child started kindergarten on August 7, 2024.” She denied the remainder of Father’s petition.

Following a hearing on August 6, the trial court entered judgment in the matter on December 17, 2024. The court found that a material change of circumstances had occurred since entry of the 2022 parenting plan and that a new plan was needed because the child had reached school age and Mother had relocated to Pleasant View for employment. After making findings regarding the best interest factors set forth in Tennessee Code Annotated section 36-6-106(a), the court determined that it was in the child’s best interest for Parents to have equal parenting time and decision-making authority, and that it was in the child’s best interest to designate Mother primary residential parent. The trial court modified that parenting plan to an alternating week residential schedule and provided “[t]he noncustodial parent shall have a mid-week overnight with the minor child on the other parent’s week.” The court ordered that the noncustodial midweek visitation would cease when the child begins second grade. The court ordered that the child would attend Pleasant View Elementary and stated:

The Mother is admonished that she is not to move out of the school zone at which she currently resides as this was the basis for the Court’s determination today. If the Mother moves from this school zone and further away from the Father, this plan will be modified.

The trial court adopted the remainder of the 2022 parenting plan and dismissed Mother’s petition for contempt. However, the court issued a permanent injunction requiring Father “to cease communications that are making unwanted advances to the Mother which do not have anything to do with the minor child and are affecting the co-parent relationship.” The court found that there was “no other alternative than an injunction to curb/stop [Father’s] behavior.” The court stated that it would impose up to ten days in jail and a fine up to \$50.00 if Father violated the injunction. It further ordered that only one FaceTime call “for a reasonable duration” would be permitted with the child per day. The trial court ordered Parents to pay their own attorney’s fees.

On January 16, 2025, Father filed a motion styled “consolidated motion to alter or amend judgment, for a new trial, for relief from judgment and to vacate unconstitutional injunction; and for sanctions.” In his motion, Father sought attorney’s fees in addition to sanctions. On April 15, Mother filed a response denying Father’s assertions. On April 23, 2025, Father filed a motion to strike Mother’s response. Father argued that he had filed a 19-page consolidated motion asserting 32 “numbered paragraphs and sub-paragraphs containing [Father’s] detailed arguments and factual assertions” and that Mother’s one-

word response “denied” to each of the paragraphs was inadequate under Tennessee Rules of Civil Procedure 7.02 and 12.06 and Local Rules 8.06 and 8.04.

Following a hearing on April 24, the trial court entered final judgment on May 6, 2025. The court incorporated its oral ruling following the evidentiary hearing of August 6, 2024 – which included the court’s analysis of the statutory factors relevant to its December 2024 judgment – into its May 6 order. In its May 2025 order, the trial court amended the December 2024 order, and it lifted the injunction against Father effective April 24, 2025. In so doing, the trial court stated:

The Court expressed concern regarding Respondent/Father’s past communications, characterizing them as inappropriate and potentially harassing, and warned Respondent/Father that if such conduct continues, Petitioner/Mother could apply directly to this Court for an Order of Protection. The Court noted that lifting the injunction prospectively does not preclude Petitioner/Mother from seeking contempt for any alleged violations occurring prior to April 24, 2025.

The trial court denied the remainder of Father’s consolidated motion and his post-judgment discovery requests. The court took its prior decision not to award attorney’s fees under advisement “specifically to consider whether fees should be awarded against Respondent/Father pursuant to applicable law[.]” and instructed Parents’ counsel to submit affidavits “detailing their fees and time expended[.]”

On May 6, the trial court also entered a supplemental final order and order on attorney’s fees. The court incorporated its oral ruling on Father’s motion to alter or amend into its written order and stated that the order “submitted by the parties fails to fully capture the Court’s ruling, sentiment and findings.” After making findings as required by Rule 1.5 of the Rules of Professional Conduct, the trial court awarded Mother attorney’s fees in the amount of \$8,000.00. The court ordered Father to make payments toward the fees of \$222.22 per month for 36 months and ordered that post-judgment interest would accrue in the event that Father failed to make the payments as ordered. Father filed a timely notice of appeal.

## **II. ISSUES PRESENTED**

Father presents ten issues for our review, as we re-order and concisely re-word them:

I. Whether the trial court erred in admitting evidence submitted by Mother in a late-filed document disclosure on August 2, 2024.

II. Whether the trial court erred in imposing an injunction on August 6, 2024.

- III. Whether the trial court erred by conducting the trial prior to dispute resolution.
- IV. Whether the trial court erred in finding a material change in circumstance.
- V. Whether the trial court erred in its analysis of the best-interest factors set forth in Tennessee Code Annotated section 36-6-106 and in modifying the parenting plan.
- VI. Whether the trial court erred by reconsidering its initial decision and ordering Father to pay Mother's attorney's fees.
- VII. Whether the trial court erred by entering Mother's proposed final order, as modified by the trial court, as its final order.
- VIII. Whether the trial court erred in denying Father's post-judgment requests for discovery made in conjunction with Father's Tennessee Rules of Civil Procedure 59 and 60 motions.
- IX. Whether the trial court erred in its final judgment and post-judgment orders based on the court's prejudice against Father.
- X. Whether Father should be awarded attorney's fees on appeal.

Mother raises no additional issues but requests attorney's fees on appeal.

### **III. STANDARD OF REVIEW**

This is a non-jury case. Accordingly, we review the trial court's findings of fact *de novo* upon the record with a presumption of correctness unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); *Allstate Ins. Co. v. Tarrant*, 363 S.W.3d 508, 512 (Tenn. 2012). The evidence preponderates against the trial court's findings of fact when it supports another finding "with greater convincing effect." *Hardeman Cnty. v. McIntyre*, 420 S.W.3d 742, 749 (Tenn. Ct. App. 2013) (citation omitted). Therefore, the trial court's factual findings must contain sufficient underlying facts that clearly disclose the basis of the court's determinations. *Lovelace v. Coley*, 418 S.W.3d 1, 34 (Tenn. 2013) (citations omitted). Additionally, the appellate courts recognize that trial courts are in the best position to assess witness credibility. *Brown v. Brown*, 571 S.W.3d 711, 720 (Tenn. Ct. App. 2018) (citation omitted). Therefore, when the trial court has seen and heard witnesses, we afford great deference to findings based on the court's credibility determinations. *In re M.L.P.*, 228 S.W.3d 139, 143 (Tenn. Ct. App. 2007). Findings based on witness credibility will not be reversed unless the record contains clear and convincing evidence to contradict them. *Id.* Appellate review of a trial court's conclusions of law is *de novo* with no presumption of correctness. *Rogers v. Louisville Land Co.*, 367 S.W.3d 196, 204 (Tenn. 2012).

“In assessing a petition to modify a permanent parenting plan, the court must first determine if a material change in circumstances has occurred and then apply the ‘best interest’ factors of section 36-6-106(a).” *C.W.H. v. L.A.S.*, 538 S.W.3d 488, 496 (Tenn. 2017) (quoting *Armbrister*, 414 S.W.3d at 697).; (citing *see* Tenn. Code Ann. § 36-6-101(a)(2)(B)-(C)). Our scope of review is limited when reviewing a trial court’s decision to modify a parenting plan. *Id.* at 495 (citation omitted). The *C.W.H.* court reiterated:

[a] trial court’s determinations of whether a material change in circumstances has occurred and whether modification of a parenting plan serves a child’s best interests are factual questions. Thus, appellate courts must presume that a trial court’s factual findings on these matters are correct and not overturn them, unless the evidence preponderates against the trial court’s findings.

*Id.* (quoting *Armbrister*, 414 S.W.3d 685 at 692 ). Additionally, trial courts enjoy broad discretion when determining the details of a parenting plan. *Id.* (citation omitted). Therefore, we review a trial court’s determinations regarding parenting schedules under the deferential abuse of discretion standard. *Id.* (citation omitted). “An abuse of discretion occurs when the trial court . . . appl[ies] an incorrect legal standard, reaches an illogical result, resolves the case on a clearly erroneous assessment of the evidence, or relies on reasoning that causes an injustice.” *Id.* (quoting *Armbister*, 414 S.W.3d at 693 (quoting *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 105 (Tenn. 2011))) (additional citation omitted). Therefore, we will not reverse a trial court’s parenting plan decisions if they are within “the spectrum of rulings that might reasonably result from an application of the correct legal standards to the evidence.” *Id.* (quoting *Kelly v. Kelly*, 445 S.W.3d 685, 696 (Tenn. 2014) (quoting *Armbrister*, 414 S.W.3d at 693)) (additional citation omitted).

## **IV. DISCUSSION**

### **A. Admission of Evidence**

We turn first to Father’s argument that the trial court abused its discretion by admitting evidence introduced by Mother in a document disclosure purportedly filed on August 2, 2024. Father argues that admission of evidence introduced on August 2 deprived him of a reasonable opportunity to review and respond before the August 6 hearing. In her brief, Mother argues that the parties agreed to exchange responses and requests for documents on August 2. She asserts: “There were no motions to compel discovery filed prior to trial and Mother received all of Father’s documents and proposed exhibits on the same day as father received Mother’s.” Mother further argues that the documents Father complains of are his own communications to Mother and “were no surprise to him.” Father did not file a reply brief refuting Mother’s assertions.<sup>3</sup>

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<sup>3</sup> On February 25, 2026, Father filed an unopposed motion in this Court for an extension of time in

The appellate courts review a trial court's evidentiary decisions under the deferential abuse of discretion standard. *Biscan v. Brown*, 160 S.W.3d 462, 468 (Tenn. 2005) (citation omitted). "A trial court abuses its discretion 'only when it applies an incorrect legal standard, or reaches a decision which is against logic or reasoning that causes an injustice to the party complaining.'" *Id.* (quoting *Mercer v. Vanderbilt Univ., Inc.*, 134 S.W.3d 121, 131 (Tenn. 2004) (quoting *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001))).

From our review of the record, we note that it does not contain the parties' discovery requests or any agreement regarding discovery. The transcript of the August 6 hearing demonstrates that Father's counsel objected to the entry of exhibits consisting of Father's communications to Mother, but it otherwise sheds no light on when Father's discovery requests were filed or whether Mother failed to abide by any discovery deadlines. Additionally, the trial court overruled Father's objection on the basis that the evidence caused no surprise to Father, who was aware of his own statements. We find no abuse of discretion by the trial court.

### **B. The Injunction**

We turn next to Father's argument that the trial court erred by imposing an injunction against Father requiring him "to cease communications that are making unwanted advances to the Mother which do not have anything to do with the minor child and are affecting the co-parent relationship." We observe that the trial court imposed its injunction orally at the August 2024 hearing; reiterated the injunction in its December 2024 order; and lifted the injunction in its May 2025 order. Mother argues that the trial court's May 2025 order renders this issue moot. We agree.

"Tennessee courts follow self-imposed rules of judicial restraint so that they stay within their province 'to decide, not advise, and to settle rights, not to give abstract opinions.'" *Hooker v. Haslam*, 437 S.W.3d 409, 417 (Tenn. 2014) (quoting *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Co.*, 301 S.W.3d 196, 203 (Tenn. 2009) (internal quotation marks omitted)). Further, "[a] case, or an issue in a case, becomes moot when the parties no longer have a continuing, real, live, and substantial interest in the outcome." *Hooker*, 437 S.W.3d 409 at 417 (citation omitted). Because the trial court lifted the injunction imposed on Father, the question is moot and we decline to address it further.

### **C. Mediation**

We turn next to Father's argument that the trial court erred by conducting the trial prior to dispute resolution as required by the 2022 parenting plan. Mother asserts that, in

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which to file a reply brief. By order entered February 27, we granted Father's motion and extended the time to file through March 6, 2026. Nevertheless, Father did not file a reply brief in this Court.

a scheduling hearing on June 28, 2024, counsel for the parties informed the trial court that neither would relent on the positions regarding the choice of school and that mediation would be fruitless. Although the record does not include a transcript of the June hearing, at the August 2024 hearing the trial court stated that it had “waived mediation.”

In her four-page March 2024 petition to modify the parenting plan, Mother asked the court to order Father to unenroll the child from the Montgomery County School System pending “mediation or further order from [the court].” In his detailed, 14-page answer, Father asked the court to deny “[Mother’s] request that the parties be ordered to attend mediation.” In his subsequent July 2024 motion to dismiss, Father argued that Mother did not make a good faith effort to resolve the question through mediation prior to filing her petition. He asked the court deny Mother’s petition “in its entirety” and to:

Declare that any *future* modifications to the Parenting Plan or resolution of disputes between the parties must strictly adhere to the mediation process outlined in Section V of the Parenting Plan, and that neither party may unilaterally bypass this mandatory step by directly petitioning the Court, absent exigent circumstances that pose an immediate threat to the child's safety or well-being[.] (emphasis added)

Father did not, however, ask the court to refer Mother’s 2024 petition or the question of school choice to mediation. In an affidavit submitted on July 11, 2024, Father stated that he was “willing and ready to participate in mediation regarding this dispute, as required by [the] Parenting Plan, should the Court order us to do so.” Again, Father did not pray for an order requiring mediation, he did not file a motion to compel mediation, and he asked the court to deny Mother’s request for mediation.

At the August 2024 hearing, the trial court stated:

So here we are, and I don’t see there’s any way that either of you all are going to cave on this. That’s why we’re hearing this today, and I waived mediation. I’m not making you all do it. There’s no way you all are going to agree to this, either one of you.

Thus, the court waived mediation upon finding it would be futile. The trial court’s determination is reinforced by Father’s counsel’s affidavit of fees, in which counsel stated: “Since the parties couldn’t agree on the school zone for the child, it was necessary for the court to determine the issue.”

It is well-settled that “trial courts enjoy substantial discretion to control the disposition of cases on their dockets[.]” *Kenyon v. Handal*, 122 S.W.3d 743, 751 (Tenn. Ct. App. 2003) (citing *Justice v. Sovran Bank*, 918 S.W.2d 428, 429–30 (Tenn. Ct. App. 1995) (additional citation omitted)). “Accordingly, we will let the trial court’s decision on

these matters stand in the absence of clear prejudicial error under the circumstances of the case.” *Id.* (citation omitted). In this case, Father essentially contends that the trial court erred by granting his request to deny Mother’s request for mediation. Father’s argument on this issue is totally devoid of merit.

#### **D. Material Change of Circumstance**

As noted above, when considering a petition to modify a permanent parenting plan, the trial court must first determine whether a material change of circumstance has occurred. *C.W.H.* 538 S.W.3d at 495. This is a factual question, and we will not reverse a trial court’s findings of fact unless the evidence preponderates otherwise. *Id.* Additionally, Tennessee Code Annotated section 36-6-101, establishes “‘a very low threshold for establishing a material change of circumstances’ when a party seeks to modify a residential parenting schedule.” *Armbrister*, 414 S.W.3d at 703 (quoting *Boyer v. Heimermann*, 238 S.W.3d 249, 257 (Tenn. Ct. App. 2007)) (additional citations omitted). As this Court has recognized, “children’s needs change as they grow,” *Boyer*, 228 S.W.3d at 257, and “changes relating to a child’s age or a parent’s living or working conditions may constitute a material change in circumstances[.]” *Armbrister*, 414 S.W.3d at 703.

In its December 2024 order, the trial court found that a material change of circumstance had occurred where 1) the child reached school age and 2) Mother had relocated to Pleasant View for employment. There is no dispute in this case that the child has reached school age, and we are not persuaded by Father’s argument that no change of circumstance has occurred because Oakland Elementary is located near the child’s pre-school. While the child has attended pre-school for the past two years, he presumably will be enrolled in the public school system for the next 13 years, and the courts have long recognized a child’s critical need for stability. *See id.* at 705-06. The evidence does not preponderate against the trial court’s finding that a material change of circumstance has occurred, and we turn to whether modification of the parenting schedule is in the child’s best interest.

#### **E. Best Interests**

Tennessee Code Annotated section 36-6-106 sets forth a nonexclusive list of factors for the trial court to consider when establishing a parenting plan that is in the child’s best interest. When so doing, “we must consider the concept from the child’s perspective rather than the parent’s.” *Kathryne B.F. v. Michael David B.*, No. W2014-01863-COA-R3-CV, 2015 WL 4366311, at \*14 (Tenn. Ct. App. July 16, 2015) (citation omitted). As noted above, whether modifying a parenting plan is in a child’s best interest is a question of fact, and we will not disturb the trial court’s findings of fact unless the evidence preponderates against them. *C.W.H. v. L.A.S.*, 538 S.W.3d at 495.

Section 36-6-106 provides, in relevant part:

In taking into account the child's best interest, the court shall order a custody arrangement that permits both parents to enjoy the maximum participation possible in the life of the child consistent with the factors set out in this subsection (a), the location of the residences of the parents, the child's need for stability and all other relevant factors.

Tenn. Code Ann. § 36-6-106(a).<sup>4</sup> Factors to be considered by the trial court include:

- (1) The strength, nature, and stability of the child's relationship with each parent, including whether one (1) parent has performed the majority of parenting responsibilities relating to the daily needs of the child;
- (2) Each parent's or caregiver's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, consistent with the best interest of the child. In determining the willingness of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, the court shall consider the likelihood of each parent and caregiver to honor and facilitate court ordered parenting arrangements and rights, and the court shall further consider any history of either parent or any caregiver denying parenting time to either parent in violation of a court order;
- (3) Refusal to attend a court ordered parent education seminar may be considered by the court as a lack of good faith effort in these proceedings;
- (4) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;
- (5) The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities;
- (6) The love, affection, and emotional ties existing between each parent and the child;
- (7) The emotional needs and developmental level of the child;

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<sup>4</sup> The version of the statute in effect when the trial court entered its order is the version to be applied. *C.W.H.*, 538 S.W.3d at 498. We observe that Tennessee Code Annotated section 36-6-106 has been amended since the trial court entered its judgment in this case.

(8) The moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the child. . . .

(9) The child's interaction and interrelationships with siblings, other relatives and step-relatives, and mentors, as well as the child's involvement with the child's physical surroundings, school, or other significant activities;

(10) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

(11) Evidence of physical or emotional abuse to the child, to the other parent, or to any other person, including the child's siblings. The court may, where appropriate, refer any issues of abuse to juvenile court for further proceedings;

(12) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child;

(13) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preference of older children should normally be given greater weight than those of younger children;

(14) Each parent's employment schedule, and the court may make accommodations consistent with those schedules;

(15) Any other factors deemed relevant by the court; and

(16) Whether a parent has failed to pay court-ordered child support for a period of three (3) years or more.

Tenn. Code Ann. § 36-6-106(a).

In this case, the trial court found that the child was thriving notwithstanding Parents' divorce. Regarding factors one through seven, the trial court found they weighed equally in favor of both parents. Regarding factor eight, the trial court found:

The Court's biggest concern is the communication between the parties that does not directly concern the minor child. The Court heard testimony that the Father has directed certain communication to the Mother that does not directly concern the child and that has more to do with the parties' relationship with each other. Ultimately for this reason, the Court finds that

this factor slightly favors the Mother.

The trial court found that factor nine weighed equally in favor of both parents. Regarding factor 10, the court found:

The Court finds that this factor is equal as to the parties as the Court is not making any drastic changes to the parties' existing parenting schedule. Her testimony however, and seeing the evidence, the back and forth under the current schedule has just been a little too much.

Similarly, regarding factor 11 the trial court found:

The Court did not review any evidence or proof that the minor child was being abused by any party in this matter. The Father's communications, however, not concerning the child, have been somewhat over the top and inappropriate and that needs to cease.

The court determined that factors 12 and 13 did not apply. Regarding factor 14, the trial court found:

The Court finds the parties' employment schedules to be a predominating factor in this cause. The Father's employment schedule allows for slightly more flexibility than that of the Mother. The Mother's employment schedule is less flexible than that of the Father's, but she also has assistance from her parents. Therefore the Court finds that Pleasant View Elementary School is better suited to accomplish maximizing each parent's time with the minor child.

Regarding factor 15 – any other relevant factor – the trial court stated:

The Court finds that both parties are good parents who [ ]each care deeply for the child. The parties are each trying to do what is best for the child. The Court finds this factor to be equal.

Upon consideration of all the factors, the trial court found that it was in the child's best interest to designate Mother as primary residential parent. The trial court further found that it was in the child's best interest for Parents to exercise "week on/week off" parenting time.

As the trial court noted, the modified parenting plan does not substantially alter the parenting plan. Mother and Father exercise equal parenting time under both plans. With respect to Father's argument that the trial court erred by failing to find that Oakview Elementary is the superior school, from our review of the record, we must disagree. The

schools have approximately equal scores, and the evidence pertaining to which school is superior does not weigh in favor of one over the other.

Additionally, we observe that Father makes the following assertion in his appellate brief:

Father testified that a week-on/week-off schedule would put their child away from each parent for seven days at a time – which is substantially longer than any time he had been apart from either so far. Again, this factor should have favored Father’s position.

As noted above, the modified, alternate week parenting plan includes a mid-week overnight stay at the alternate residential parent’s home. Contrary to Father’s suggestion, the modified plan does not change the amount of parenting time Parents will each have, nor does it substantially alter the amount of time the child will spend apart from each parent.

From our review of the record, we cannot say the evidence preponderates against the findings of the trial court.

#### **F. Attorney’s Fees**

We next turn to Father’s assertion that the trial court erred by awarding Mother a portion of her attorney’s fees. Under Tennessee Code Annotated section 36-5-103(c), trial courts have the discretion to award attorney’s fees in specific situations, including proceedings to modify a permanent parenting plan. *Colley v. Colley*, 715 S.W.3d 293, 309 (Tenn. 2025). We review the trial court’s decision to award attorney’s fees under the abuse of discretion standard discussed above. *Id.*

In his brief, Father argues:

This reversal in ruling does not make sense and is reversible error. The Trial Court dismissed the contempt against Father in the initial trial. The Trial Court found that Father was trying to “control” the proceedings as a licensed attorney in its ruling on Father’s Motion to Alter or Amend. Among other extreme comments included by the Trial Court in the supplemental order, the Trial Court referred to Father as “boorish” and attempting to “run roughshod over Mother.”

*Colley*, supra, is instructive to our review of the trial court’s award of fees in this case. Examining the need for the statutory provision, the *Colley* court noted that “[i]t is not unusual in family law cases to see an obligor former spouse with significant monetary resources force a financially disadvantaged ex-spouse to incur attorney fees post-divorce to enforce or defend alimony, child support, or a parenting plan originally ordered by the

trial court.” *Id.*

In contrast to *Colley*, this is not a case involving a difference in monetary resources per se. However, Father is a licensed attorney, and his counsel’s affidavit of fees states that he agreed to represent Father “on a flat-fee basis in the amount of \$3,500.00” Father’s counsel stated:

[Father] is himself an attorney and took an active role in representing himself throughout the litigation. He was primarily responsible for preparing pleadings, drafting motions, and managing exhibits and filings. My services were limited to strategic consultations, select drafting and review/revisions, and representation at hearings.

Mother, on the other hand, is not an attorney and could not assist her legal counsel. Mother incurred attorney’s fees in the amount of \$12,375.50.

Additionally, Father’s argument that the trial court “*sua sponte*” decided to reconsider the question of fees is disingenuous at best. Indeed, the trial court ordered Parents to pay their own fees in its December 2024 order. However, contrary to Father’s assertion that there was “no pleading bringing [the] issue back up[,]” Father requested attorney’s fees in his January 2025 consolidated motion, and the trial court reconsidered that question of fees following proceedings relating to that motion. The court’s decision was neither *sua sponte* nor senseless.

The trial court found:

Were it not for [Father’s] attempts to be overly burdensome, oppressive and controlling of the litigation, as a practicing attorney, this was and still remains a relatively simple case factually, only complicated by [Father.] Were [Father] not an attorney, this matter would have been much less tedious and costly for his Ex-Wife/the Mother.

...

It is clear to the Court that [Father] has undertaken completing most of the lengthy and verbose pleadings filed on his behalf throughout these proceedings. This has enabled [Father] to save a great deal of fees, but has resulted in an amplification and increase of the fees of the Wife and her counsel contending with [Father’s] attempts to control these matters, especially after the final hearing.

The trial court found that Father had used his legal training to delay entry of a judgment and that Mother’s fees were “amplified” by Father’s litigation tactics. The court

reviewed Mother's attorney's fees under Rule 1.5 of the Tennessee Rules of Professional Conduct and awarded Mother fees in the amount of \$8,000. Discerning no abuse of discretion, we affirm the court's award of attorney's fees to Mother.

### **G. The Final Order**

Father argues that the trial court erred by utilizing the proposed December 2024 final judgment submitted by Mother rather than that submitted by Father. He also asserts that the trial court erred by inserting hand-written findings into the order regarding Mother's relocation and the necessity of an injunction against Father. Father further argues that, because the trial court did not include these findings in its oral ruling, his due process rights were violated.

"It is well-settled that a trial court speaks through its written orders—not through oral statements contained in the transcripts—and that the appellate court reviews the trial court's written orders." *Williams v. City of Burns*, 465 S.W.3d 96, 119 (Tenn. 2015) (citation and footnote omitted). A trial court does not need to incorporate its oral rulings into its written order, but its "order 'should be construed with reference to the issues it was meant to decide, and should be interpreted in light of the context in which it was entered.'" *Id.* at 120 (quoting *Morgan Keegan v. Smythe*, 401 S.W.3d 595, 608 (Tenn. 2013) (additional citation omitted)). Additionally, a trial court's oral ruling is subject to revision, and the court may "amend its judgment at any time before the judgment becomes final." *In re Taylor B.W.*, 397 S.W.3d 105, 112 (Tenn. 2013) (citation omitted).

Mother testified that she relocated after the divorce. Thus, the trial court's finding is supported by the record, and Father does not contend otherwise. Further, as noted above, the trial court lifted its injunction against Father in its May 2025 order. Thus, even assuming that the trial court erred in its "finding" regarding the necessity of an injunction without a hearing with notice on the question, any error was cured by the court's May 2025 order. The question is moot.

Father's assertion that the trial court erred by adopting Mother's counsel's proposed order rather than Father's is without merit. A trial court's order must reflect the court's *independent* judgment. *Smith v. UHS of Lakeside, Inc.*, 439 S.W.3d 303, 315 (Tenn. 2014). Trial courts are not required to accept a party's proposed orders, and the appellate courts "continue to adhere to the view that findings of fact, conclusions of law, opinions, and orders prepared by trial judges themselves are preferable to those prepared by counsel." *Id.* at 314. A court's alteration of an order proposed by counsel demonstrates the trial judge's independent judgment based on the evidence. *Id.* at 315. This Court has also observed that a trial court's oral pronouncements may reflect only part of the court's ruling. *Irvin v. Irvin*, No. M2011-02424-COA-R3CV, 2012 WL 5993756, at \*24 (Tenn. Ct. App. Nov. 30, 2012).

In this case, the trial court determined that Father's proposed order did not accurately reflect the court's judgment. Additionally, as Father acknowledges, the trial court inserted hand-written findings into Mother's proposed order. Accordingly, we are satisfied that it reflects the court's independent judgment. This argument is without merit.

### **H. Post-judgment Discovery**

We turn next to Father's assertion that the trial court erred in denying his post-trial requests for discovery. We review a trial court's decision regarding whether to grant a motion to alter or amend under the deferential abuse of discretion standard. *Kirk v. Kirk*, 447 S.W.3d 861, 870 (Tenn. Ct. App. 2013). Further, it is well-settled that a trial court has "broad discretion over discovery matters . . . on appeal, that discretion will not be disturbed absent an affirmative showing that the trial court abused its discretion." *Siler v. Scott*, 591 S.W.3d 84, 112 (Tenn. Ct. App. 2019) (quoting *Parks v. Mid-Atlantic Fin. Co.*, 343 S.W.3d 792, 802 (Tenn. Ct. App. 2011)) (additional citation omitted). That discretion extends to a trial court's decision to disallow discovery on the basis that it "constituted post trial discovery or information that could have been easily obtained before trial." *Tepedino v. Tepedino*, No. 01A01-9701-CH-00035, 1997 WL 832608, at \*4 (Tenn. Ct. App. Dec. 30, 1997).<sup>5</sup>

We begin by noting that Father's discovery requests are not in the record. However, at the April 2025 hearing Father's counsel stated that Father sought discovery 1) to assist to "tailor the issue[.]" namely, the injunction imposed on Father by the trial court in its December 2024 order, and 2) related to Mother's work schedule. Counsel asked the court to dissolve or modify the injunction, and the court did so in its May 2025 order. As discussed above, issues related to the injunction accordingly are moot.

Regarding discovery related to Mother's work schedule, Father argues that the trial court failed to state a basis for denying the motions. Father concludes, "so we cannot know if discretion was abused or not." We must disagree.

As Father acknowledges in his brief, the trial court determined that discovery requests were "inappropriate" as untimely at the post-judgment stage of the proceedings. From our review of the record, we observe the trial court stated:

Well, that's totally inappropriate. This case is done. So I'm going to -- go ahead on the record. Hang on. I'm going to address that. I'm striking your

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<sup>5</sup> We also observe that the trial court and counsel engaged in some discussion regarding whether such post-judgment discovery is permitted except in the case of a judgment creditor seeking to enforce a judgment under Tennessee Rule of Civil Procedure 69.03. Although Father cites to no authority to support the proposition that post-judgment discovery regarding issues litigated in the underlying action is permissible under the Rules, we do not need to reach that issue here.

client's post-judgment discovery request.

In other words, the trial court denied Father's motion because Father sought information that was easily attainable before trial. We find no abuse of discretion on the part of the trial court.

### **I. Bias**

We turn next to Father's assertion that the trial court "demonstrated an inherent prejudicial bias against Father[]" that "created reversible error in and of itself." Father concludes:

The Trial Court committed reversible error by abusing its discretion on a number of fronts: Chiefly in misapplying the statutory best interest factors and improperly finding a material change in circumstances. Secondly, a number of subsidiary issues were incorrectly applied by the Trial Court. Coupled with the Trial Court's innate bias against Father, the cumulative effect of these rulings is reversible error.

We begin our discussion of this issue with the well-settled assurance that "Tennessee litigants are entitled to have cases resolved by fair and impartial judges." *Adams v. Dunavant*, 674 S.W.3d 871, 878 (Tenn. 2023) (quoting *Cook v. State*, 606 S.W.3d 247, 253 (Tenn. 2020)). As our supreme court recently has reiterated:

To preserve public confidence in judicial neutrality, judges must be fair and impartial, both in fact and in perception. *Cook*, 606 S.W.3d at 253; *Kinard v. Kinard*, 986 S.W.2d 220, 228 (Tenn. Ct. App. 1998). To these ends, the Tennessee Rules of Judicial Conduct ("RJC") declare that judges must "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." Tenn. Sup. Ct. R. 10, RJC 1.2. Another provision declares that judges "shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." *Id.*, RJC 2.2.

To act "impartially" is to act in "absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge." *Id.*, Terminology. "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." *Id.*, RJC 2.11(A).

Rule of Judicial Conduct 2.11 "incorporates the objective standard Tennessee judges have long used to evaluate recusal motions." *Cook*, 606

S.W.3d at 255. “Under this objective test, recusal is required if ‘a person of ordinary prudence in the judge’s position, knowing all of the facts known to the judge, would find a reasonable basis for questioning the judge’s impartiality.’ ” *Id.* (quoting *Davis [v. Liberty Mut. Ins. Co.]* 38 S.W.3d [560,] 564–65 [(Tenn. 2001)]).

*Id.*

Additionally, “[a] trial judge has a duty to serve unless the proponent establishes a factual basis warranting recusal.” *Id.* at 879 (citations omitted). The party seeking recusal of the judge “bears the burden of establishing that recusal is appropriate and that any alleged acts of bias or prejudice arise from extrajudicial sources rather than from events or observations during the litigation of the case.” *Id.* at 878-79 (citations omitted). A trial judge’s adverse rulings, “‘even if erroneous, numerous and continuous, do not, without more, justify disqualification.’” *Id.* at 879 (quoting *Alley v. State*, 882 S.W.2d 810, 821 (Tenn. Crim. App. 1994)).

As our supreme court has explained:

The “adversarial nature of litigation” makes it necessary for trial judges to “assess the credibility of those who testify before them, whether in person or by some other means,” and “the mere fact that a witness takes offense at the court’s assessment of the witness cannot serve as a valid basis for a motion to recuse.... If the rule were otherwise, recusal would be required as a matter of course since trial courts necessarily rule against parties and witnesses in every case, and litigants could manipulate the impartial[ity] issue for strategic advantage, which the courts frown upon.”

*Id.* (quoting *Davis*, 38 S.W.3d at 565).

The person moving for recusal bears the burden of proof to present evidence that would cause a reasonable, disinterested person to reasonably question the judge’s impartiality. *Adkins v. Adkins*, No. M2021-00384-COA-T10B-CV, 2021 WL 2882491, at \*5 (Tenn. Ct. App. July 9, 2021) (citations omitted). Additionally, as this Court has recently reiterated:

“If the bias is alleged to stem from events occur[ing] in the course of the litigation of the case, the party seeking recusal has a greater burden to show bias that would require recusal, i.e., that the bias is so pervasive that it is sufficient to deny the litigant a fair trial.” *Boren v. Hill Boren, PC*, 557 S.W.3d 542, 552 (Tenn. Ct. App. 2017) (quoting *Runyon v. Runyon*, No. W2013-02651-COA-T10B-CV, 2014 WL 1285729, at \*6 (Tenn. Ct. App. Mar. 31, 2014)).

*Cooper v. Cooper*, 704 S.W.3d 784, 799–800 (Tenn. Ct. App. 2024). We recently

emphasized:

“Even though the judge is expected to have no bias at the beginning of the trial, he must, perforce, develop a bias at some point in the trial; for the decision at the conclusion of the trial is based upon the impressions, favorable or unfavorable, developed during the trial.” *Watson v. City of Jackson*, 448 S.W.3d 919, 933 (Tenn. Ct. App. 2014) (quoting *Spain v. Connolly*, 606 S.W.2d 540, 544 (Tenn. Ct. App. 1980)).

*Adkins*, 2021 WL 2882491, at \*5 (Tenn. Ct. App. July 9, 2021) (emphasis provided by *Adkins*).

In this case, it is clear that the trial judge found Father’s communications to Mother to be problematic to the extent that they bordered on harassment. Thus, the court enjoined Father from further such communication in its December 2024 order. It is equally clear that the trial court objected to what the court considered Father’s “boorish” conduct toward Mother.

However, under Rule 10B of the Rules of the Tennessee Supreme Court, “[a]ny party seeking disqualification, recusal, or a determination of constitutional or statutory incompetence of a judge of a court of record, or a judge acting as a court of record, shall do so by a written motion filed promptly after a party learns or reasonably should have learned of the facts establishing the basis for recusal.” Tenn. Sup. Ct. R. 10B, § 1.01, *Cooper*, 704 S.W.3d at 799.

Although Father filed a comprehensive consolidated post-judgment motion, Father did not file a motion to recuse the trial judge, nor did he argue that recusal was necessary or warranted. “A litigant may not wait until he sees the outcome of the case and then, having received a decision adverse to him, assert that the trial judge should have recused himself.” *Huan Ouyang v. Xiaohui Chen*, No. W2004-00335-COA-R3CV, 2005 WL 2089829, at \*6 (Tenn. Ct. App. Aug. 26, 2005) (citation omitted). Further, Father does not assert that the alleged bias stems from an extrajudicial source. Indeed, Father argued in his consolidated motion that Mother’s introduction of “the volume of communication [to her] from [Father]” was taken out of context, and he asserted “this tactic not only muddled the issues before the Court but also confused the Court and prejudiced the Court against [Father].” Father asserted: “The transcript reveals judicial bias against [Father] as the trial court’s findings appear to have been influenced by a misunderstanding of the evidence presented.” Because Father asserts that the trial judge’s alleged bias results from impressions of Father formed during the litigation, Father would be required to “meet the higher standard to show a bias so pervasive as to deny [him] the right to a fair trial.” *Stark v. Stark*, No. W2019-00901-COA-T10B-CV, 2019 WL 2515925, at \*7 (Tenn. Ct. App. June 18, 2019).

From our review of the record, it is clear that the trial court did not approve of Father's voluminous and lengthy post-divorce communications to Mother.<sup>6</sup> However, notwithstanding the trial judge's sometimes unfortunate choice of words, it is also clear from the record that Father was not denied a fair trial.<sup>7</sup> Additionally, the trial court's analysis of the best interest factors resulted in a modified parenting plan that is substantially similar to the 2022 plan. Parents have equal parenting time and mid-week visitation during their alternate non-residential weeks. Contrary to Father's argument, the "cumulative effect" of the trial court's rulings does not suggest prejudice or bias on the part of the trial judge.

### **J. Attorney's Fees on Appeal**

Parents both request attorney's fees on appeal. An award of attorney's fees on appeal is within the sole discretion of this Court. *Archer v. Archer*, 907 S.W.2d 412, 419 (Tenn. Ct. App. 1995). When determining whether such an award is appropriate, "we consider the ability of the requesting party to pay the accrued fees, the requesting party's success in the appeal, whether the requesting party sought the appeal in good faith, and any other equitable factor that should be considered." *Ellis v. Ellis*, 621 S.W.3d 700, 709 (Tenn. Ct. App. 2019). In light of the foregoing, we exercise our discretion to award Mother her attorney's fees on appeal. This matter is remanded to the trial court for the calculation of such reasonable fees.

### **V. CONCLUSION**

In view of the foregoing, the judgment of the trial court is affirmed. This matter is remanded to the trial court for entry of a judgment consistent with this opinion and for the calculation of reasonable attorney's fees to be awarded to Appellee Devon N. Bagwell for this appeal. The costs on appeal are assessed against the Appellant, Noel Reese Bagwell, III.

s/Valerie L. Smith  
VALERIE L. SMITH, JUDGE

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<sup>6</sup> Contrary to Father's assertions in his brief, we agree with the trial court that Father's communications to Mother were not confined to parenting matters.

<sup>7</sup> We remind and caution trial judges to remain "patient, dignified, and courteous to litigants" and all "others with whom the judge deals in an official capacity[.]" Tenn. Sup. Ct. R. 10, RJC 2.8.