FILED
11/05/2026
Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs November 4, 2025

GIOVANNA SARTIE BROWN v. CHRISTOPHER DOUGLAS BROWN

Appeal from the Chancery Court for Montgomery County
No. MC-CH-CV-DI-18-815 Matthew Joel Wallace, Judge

No. M2024-01584-COA-R3-CV

In this post-divorce action to modify child support, Appellant/Father appeals the trial court's: (1) finding that he was willfully underemployed; (2) imputation of income to his gross income; (3) calculation of Appellee/Mother's gross income; and (4) time frame used to calculate his arrearages. Mother asks this Court for an award of appellate attorney's fees. We conclude that the trial court erred when it: (1) failed to engage in a significant variance analysis before modifying Father's child support obligation; (2) determined that Father was willfully underemployed; and (3) imputed income to Father's gross income. Accordingly, we vacate Father's child support obligation. The trial court's judgments concerning Father's arrears are also vacated. The order is otherwise affirmed. Mother's request for appellate attorney's fees is denied.

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

VALERIE L. SMITH, J., delivered the opinion of the court, in which W. NEAL MCBRAYER, J., joined. D. MICHAEL SWINEY, J., not participating.

Stephanie Ritchie Mize, Clarksville, Tennessee, for the appellant, Christopher Douglas Brown.

Taylor R. Dahl and Joseph K. Robinson, Clarksville, Tennessee, for the appellee, Giovanna Sartie Brown.

OPINION

I. Background

In early 2020, Appellant Christopher Douglas Brown ("Father") and Appellee Giovanna Sartie Brown ("Mother") were divorced. At the time, Father was active-duty military. On February 20, 2020, the Chancery Court for Montgomery County, Tennessee (the "trial court") entered the final decree of divorce. A permanent parenting plan concerning their two minor children was also entered. The parenting plan awarded each parent 182.5 days with the children and designated the parties as joint, primary residential parents. Father's child support obligation was set at $991.00 per month, based on his $5,456.79 monthly income. Father was also ordered to pay an additional $100.00 per month towards his arrearages of $1,709.00 for temporary child support that he failed to pay during the pendency of the divorce. Additionally, Father was ordered to pay the attorney's fees Mother incurred while pursuing the arrearages, which totaled $569.66. Given the foregoing, the trial court entered a judgment of $2,278.66 against Father for the arrearages and for Mother's attorney's fees. While Father's child support obligation began in January 2020, he did not make his first payment until May 2020. Father paid only five months of support the entire year. He also failed to pay the $2,278.66 judgment.

Shortly after the divorce, Father attempted to solicit sex from a minor. Thereafter, Father entered a guilty plea for an attempt to commit a lewd act under the Uniform Code of Military Justice. Father was sentenced to 110 days in jail and separated from the military. Based on the foregoing, on September 22, 2020, Mother filed a petition for modification of parenting plan, finding of dependency and neglect, and for ex-parte emergency custody. On September 23, 2020, the trial court entered an order placing the children in Mother's sole care and suspending Father's visitation. In December 2020, Father was released from incarceration. On January 4, 2021, the parties entered an agreed order, which allowed Father to receive two hours of supervised visitation per week with the children. In February 2022, the trial court entered an order gradually increasing Father's visitation with the children. In May 2022, the parties resumed their schedule from the initial parenting plan.

On May 10, 2022, Father filed a petition for modification of child support. Father sought a reduction of his child support obligation based on his substantially lower income after his separation from the military. On June 10, 2022, Mother filed an answer to the petition and a motion to establish judgment for arrears. On March 18, 2024, the trial court heard the petition and motion. The parties were the only witnesses to testify. Eleven exhibits were entered into evidence.

On May 7, 2024, the trial court entered a memorandum opinion addressing certain modifications to the parenting plan as well as child support issues. Relevant here, and as discussed further below, the trial court entered a judgment of $16,812.35 against Father for

child support arrearages. The trial court also determined that Father was willfully underemployed and ordered that "Father's gross monthly income shall remain at $5,456.79 per month." As to Mother's gross monthly income, the trial court noted that Mother's employment had recently changed. For July 2022 through February 2024, the trial court concluded that Mother's gross monthly income was $3,467.00. The trial court also concluded that, beginning in March 2024, Mother's gross monthly income was $1,491.00. Father was given a credit for healthcare coverage for each child.

On June 21, 2024, the trial court entered an order titled "Final Order Modifying Parenting Plan, Child Support, and Establishing Arrears" (the "final order"). The final order incorporated the trial court's findings of facts and conclusions of law from the memorandum opinion. The trial court reaffirmed the $16,812.35 judgment against Father for child support arrearages through June 2022. Based on its previous findings, the trial court entered another judgment against Father for arrearages owed from July 2022 through May 2024, totaling $8,102.00. The modified parenting plan was attached to the final order. Therein, Father's gross monthly income was set at $5,456.79, and Mother's gross monthly income was set at $1,491.00. Father's child support obligation was set at $670.00 per month. As discussed further below, the Child Support Worksheet was attached to the modified parenting plan.

On July 18, 2024, Father filed a motion to alter or amend. Therein, Father, *inter alia*, asked the trial court to reconsider its finding that he was willfully underemployed. Father also asked the trial court to recalculate Mother's child support obligation to reflect her new, full-time employment. Lastly, Father asked the trial court to recalculate the healthcare coverage credit. On July 31, 2024, Mother filed a response.

On September 27, 2024, the trial court entered an order on Father's motion to alter or amend. The trial court denied Father's requests to reconsider its findings concerning Father's willful underemployment and Mother's income. The trial court recalculated Father's healthcare coverage credit. As a result, the trial court amended Father's current child support obligation to be $654.00 per month.

Also, on September 27, 2024, the trial court entered an amended final order in which it, *inter alia*, determined that Father's child support arrearages from: (1) July 2022 through August 2023 was $3,836.00; (2) September 2023 through May 2024 was $1,176.00; and (3) May 2024 through the entry of the trial court's order was $1,962.00. Accordingly, the trial court entered a judgment of $6,974.00 against Father. The trial court also reaffirmed the $16,812.35 judgment against Father for retroactive child support through June 2022. Thus, the trial court entered a total judgment against Father of $23,786.35. Attached to the amended final order was a revised Child Support Worksheet, which reflected $654.00 as Father's current monthly child support obligation.

Father filed a timely notice of appeal with this Court.

As discussed further below, on April 17, 2026, this Court entered an order suspending this appeal and remanding the case to the trial court to enter an order that was compliant with Rule 52.01 of the Tennessee Rules of Civil Procedure. The order directed the trial court clerk's office to file a supplemental record with this Court upon entry of the new order. Thereafter, the parties were given deadlines within which to file amended briefs with this Court.

On June 23, 2026, the trial court entered the supplemental order. The supplemental record was filed with this Court on July 1, 2026. On July 21, 2026, Father filed a notice with this Court that he intended to rely on his previously filed brief in this appeal. On August 20, 2026, after receiving no notice or amended brief by the deadline, this Court entered an order directing Mother to file an amended brief by a date certain or this Court would rely on her previously filed brief. On August 27, 2026, Mother filed a notice that she would also rely on her previously filed brief in this appeal.

II. Issues

Father raises five issues for our review, as stated in his brief:

1. Whether the trial court erred in finding [Father] willfully underemployed or unemployed contrary to the Tennessee Child Support Guidelines.

2. Whether the trial court erred in imputing wages to [Father] in violation of the Tennessee Child Support Guidelines.

3. Whether the trial court erred in its calculation of [Mother's] income to determine the amount of arrears.

4. Whether the trial court erred in its determination of time frame for child support arrearages.

5. Whether the trial court erred in denying [Father's] motion to alter/amend or set aside the final order modifying parenting plan, child support and establishing arrears.

Mother raises as an additional issue whether this Court should award her appellate attorney's fees.

III. Standard of Review

We review a non-jury case "*de novo* upon the record with a presumption of correctness as to the findings of fact, unless the preponderance of the evidence is otherwise." *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000) (citing Tenn. R. App. P.

13(d)). The trial court's conclusions of law are reviewed *de novo* and "are accorded no presumption of correctness." *Brunswick Acceptance Co., LLC v. MEJ, LLC*, 292 S.W.3d 638, 642 (Tenn. 2008).

IV. Analysis

"Parents have 'deeply rooted moral responsibilities' to support their minor children[,]" and "Tennessee law imposes a legal obligation on parents to support [them] in a manner commensurate with [the parents'] own means and station in life." *Richardson v. Spanos*, 189 S.W.3d 720, 724 (Tenn. Ct. App. 2005) (quoting *Boggs v. Boggs*, 520 U.S. 833, 847 (1997) and citing Tenn. Code Ann. § 34-1-102(a)) (other citations omitted). The Tennessee Department of Human Services Child Support Division promulgates the Child Support Guidelines (the "Guidelines"), which govern awards of child support. *Taylor v. Fezell*, 158 S.W.3d 352, 357 (Tenn. 2005) (citing Tenn. Code Ann. § 36-5-101(e)(2)). As such, courts have very limited discretion when determining awards of child support and such decisions "must be made within the strictures of the [Guidelines]." *Richardson*, 189 S.W.3d at 725. We review a trial court's decision concerning child support under an abuse of discretion standard. *Id.* A trial court abuses its discretion "when it applies an incorrect legal standard, reaches a decision that is illogical, bases its decision on a clearly erroneous assessment of the evidence, or employs reasoning that causes an injustice to the complaining party." *Richardson*, 189 S.W.3d at 725 (citing *Perry v. Perry,* 114 S.W.3d 465, 467 (Tenn. 2003)). This Court is not permitted to substitute our judgment for that of the trial court. *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001). Father's issues on appeal concern three decisions from the trial court regarding: (1) Father's income; (2) Mother's income; and (3) the time frame used for calculating Father's arrearages. Before turning to these issues, we first discuss the relevant pleadings and orders.

A. Relevant Pleadings and Orders

We recall that Father filed a petition for modification of child support on May 10, 2022. Therein, Father alleged that he and Mother had experienced significant changes in income and a significant variance existed that would allow for modification. In her response, Mother denied that significant changes in income had occurred. Mother also sought a judgment for child support arrearages. On May 7, 2024, the trial court entered a memorandum opinion and made findings concerning: (1) modifications to the parenting plan; (2) Father's child support arrearages from January 2020 through June 2022; (3) Father's current child support obligation; and (4) attorney's fees. Neither party appeals the modification of the parenting plan or the trial court's denial of the parties' requests for attorney's fees.

In the memorandum opinion, the trial court indicated that it was establishing a current child support obligation for Father from July 2022 through present. Under this section, the trial court first made the following "findings" concerning Father's employment

and gross monthly income:

> The court adopts the argument made by Mother regarding the facts of Father's employment or lack thereof and application of these facts to the Tennessee Child Support Guidelines regarding willful underemployment. (Pages 5-6 of Mother's Pretrial Brief filed May 1, 2024). As such, Father's gross monthly income shall remain at $5,456.79 per month.

The trial court then turned to work-related childcare, to-wit:

> Childcare stopped in August 2023. The childcare credit allocated to Mother shall terminate effective September 2023. Father shall receive a childcare credit from July 2022 through August 2023 of $433.00 and Mother's childcare credit shall be reduced by a like amount.

The trial court also made certain findings concerning Mother's employment and gross monthly income, discussed further below. In short, the trial court determined that Mother's gross monthly income from July 2022 through February 2024 was $3,467.00 and that her gross monthly income from March 2024 through the final hearing was $1,491.00. As discussed above, the trial court also found that Father was entitled to a credit for healthcare coverage for the children of $66.00 per child per month.

The trial court's final order was based on the above findings. Specifically, and as discussed above, the trial court entered a judgment against Father for $16,812.35, which represented his arrearages through June 2022. Concerning Father's current child support obligation, the trial court concluded:

> 5. Father's child support from July 2022 through August 2023 was $328.00 per month, for a total of $4,592.00.
>
> 6. Father's child support from September 2023 through February 2024 was $250.00 per month, for a total of $1,500.00.
>
> 7. Father's current child support beginning in March 2024 is $670.00 per month, for arrearages through May 2024 of $2,010.00.

Based on the foregoing, the trial court entered another judgment against Father "for child support arrears from July 2022 through May 2024 in the amount of $8,102.00."

As discussed above, the trial court entered an order on Father's motion to alter or amend as well as an amended final order based on Father's credit for healthcare coverage. The amended final order reaffirmed the "superseding judgment . . . against Father in the amount of $16,812.35 through June 2022." The amended final order also provided:

> 5. Father's child support from July 2022 through August 2023 was $274.00 per month, for a total of $3,836.00.
>
> 6. Father's child support from September 2023 through February 2024 was $196.00 per month, for a total of $1,176.00.
>
> 7. Father's current child support beginning in March 2024 is $654.00 per month, for arrearages through May 2024 of $1,962.00.

Based on the foregoing, the trial court amended the second judgment against Father "for child support arrears from July 2022 through May 2024" totaling $6,974.00. Thus, the trial court entered a total judgment against Father of $23,786.35.

Attached to the amended final order were three Child Support Worksheets. One of the worksheets reflected the child support calculations for July 2022 through August 2023. This showed Father's gross income as $5,456.79 and Mother's gross income as $3,467.00. Father's monthly child support obligation was $274.00, and Mother's was $0.00. A second worksheet reflected the child support calculations for September 2023 through February 2024. Although the parties' gross incomes were the same as the July 2022 through August 2023 worksheet, because the parties no longer incurred work-related childcare expenses, Father's monthly child support obligation decreased to $196.00. Mother's obligation remained $0.00. The final worksheet reflected the child support calculations for March 2024 through the trial court's final order. While Father's income remained the same, Mother's income was reduced to $1,491.00. The reduction in Mother's income resulted in an increase of Father's child support obligation to $654.00. Mother's obligation remained $0.00.

Our review of the substantive issues in this case is complicated by several issues. We begin by addressing the trial court's initial orders. First, notably absent from any of the trial court's orders is a finding of a significant variance, which, as discussed further below, is the threshold question any court must answer when deciding a petition to modify child support. *See* Tenn. Comp. R. & Regs. 1240-02-04-.05(2)(b); Tenn. Code Ann. § 36-5-101(g)(1); *Wine v. Wine*, 245 S.W.3d 389, 394 (Tenn. Ct. App. 2007). Second, as shown above, the entirety of the trial court's "findings" concerning Father's willful underemployment was an adoption of Mother's arguments and a citation to Mother's pretrial brief. This is problematic as more is required of the trial court. Tennessee Rule of Civil Procedure 52.01 requires trial courts, in all actions tried on the facts without a jury, to "find the facts specially and [] state separately its conclusions of law[.]" Tenn. R. Civ. P. 52.01. Our Supreme Court has emphatically explained that our 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." *Smith v. UHS of Lakeside, Inc.*, 439 S.W.3d 303, 314-15 (Tenn. 2014). Here, the trial court

made no independent findings and simply cited to a pleading that does not even appear in the appellate record.

The above issues led to this Court's April 17, 2026, order suspending the appeal and remanding the case to the trial court for entry of a supplemental order that complied with Rule 52.01. Therein, we specifically emphasized that the trial court's orders were silent as to whether a significant variance existed. We also highlighted the lack of appropriate findings concerning Father's willful underemployment, noting that there was no indication in the trial court's orders that it considered any of the factors outlined in the Guidelines concerning willful underemployment, discussed further below. *See* Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)2. Additionally, we identified that Father's petition to modify child support and Mother's response and motion to establish judgment for arrears were both absent from the appellate record.

On July 1, 2026, the supplemental record was filed with this Court. Included in it were Father's petition to modify child support, Mother's answer and motion to establish judgment for arrears, and the trial court's supplemental order. With the foregoing in mind, we turn to address the substantive issues.

B. Significant Variance

The threshold question in any petition to modify child support is whether a "significant variance," "defined as at least [a] fifteen percent (15%) difference in the current support obligation and the proposed support obligation," exists. Tenn. Comp. R. & Regs. 1240-02-04-.05(2)(b); *see also* Tenn. Code Ann. § 36-5-101(g)(1); *Wine*, 245 S.W.3d at 394 (quoting *Huntley v. Huntley*, 61 S.W.3d 329, 335 (Tenn. Ct. App. 2001)) ("[T]he initial inquiry in a petition for child support modification is 'whether there is a 'significant variance' between the current obligation and the obligation set by the Guidelines.'"). "To determine if a modification is possible, a child support order shall first be calculated on the Child Support Worksheet using current evidence of the parties' circumstances." Tenn. Comp. R. & Regs. 1240-02-04-.05(4). "In calculating guideline child support, the court initially would be required to determine the parents' respective gross incomes[.]" *Hill v. Hill*, No. E2019-02226-COA-R3-CV, 2021 WL 4745384, at *7-8 (Tenn. Ct. App. Oct. 12, 2021) (citing *Smith v. Smith*, No. M2003-02033-COA-R3-CV, 2005 WL 1384896, at *10 (Tenn. Ct. App. June 10, 2005)). Only upon the demonstration of a significant variance is a tribunal then permitted to increase or decrease a support order in accordance with the Guidelines. Tenn. Comp. R. & Regs. 1240-02-04-.05(5). "The party seeking to modify the child support obligation bears the burden of proving that a significant variance exists." *In re Jonathan S.*, No. M2021-00370-COA-R3-JV, 2022 WL 3695066, at *13 (Tenn. Ct. App. Aug. 26, 2022) (citing *Hill*, 2021 WL 4745384, at *7 (citing *Tigart v. Tigart*, No. M2020-01146-COA-R3-CV, 2021 WL 4352539, at *4 (Tenn. Ct. App. Sept. 24, 2021))).

Although the trial court impliedly denied Father's petition to modify child support, it decreased *Mother's* gross income, which affected Father's child support obligation. Problematically, the supplemental order again did not contain any discussion or finding of a significant variance. Additionally, the three Child Support Worksheets that were attached to the amended final order leave the following sections blank:

> 13a Current child support order amount for the obligor parent
> 13b Amount required for significant variant to exist
> 13c Actual variance between current and presumptive child support orders

As discussed above, whether a significant variance exists is the threshold question in any petition to modify child support. The trial court's failure to address this threshold question before modifying Father's child support obligation cannot be ignored by this Court. *See Gooding v. Gooding*, 477 S.W.3d 774, 779 (Tenn. Ct. App. 2015); *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 105 (Tenn. 2011); *In re Jonathan S.*, 2022 WL 3695066, at *14. Although this Court has, on occasion, conducted an independent review of the record to determine whether a significant variance existed when the trial court failed to do so, for the reasons discussed below, we decline to make this determination based on the record before us. *See Stacey v. Stacey*, No. 02A01-9802-CV-00050, 1999 WL 1097975, at *3 (Tenn. Ct. App. Oct. 6, 1999). Given that most of Father's issues concern the trial court's determination of his and Mother's gross incomes, which are central components of the significant variance analysis, and to correct certain errors of law and aid the trial court on remand, we address Father's issues below.

C. Father's Gross Income

When determining a new child support obligation based on the parties' current circumstances, courts must first determine each parent's gross income. The Guidelines are "based on an Income Shares Model," which "presumes that both parents contribute to the financial support of the child[ren] in pro rata proportion to the actual income available to each parent." Tenn. Comp. R. & Regs. 1240-02-04-.03(1). All modifications of child support orders are also calculated under the Income Shares Model. Tenn. Comp. R. & Regs. 1240-02-04-.05(1). Courts are directed to include "income from any source," and the Guidelines provide a lengthy, non-exclusive list of potential sources of income courts should consider when determining a parent's gross income. Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)1. The Guidelines also allow a court to impute additional gross income to a parent that the court determines is willfully underemployed or unemployed, *see* Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)2(i)(II), and when there is no reliable evidence of income because a parent has failed to participate in the proceeding or to supply adequate and reliable financial information. Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)2(i)(II). A child support order is only subject to modification after the date that an action for modification is filed. Tenn. Comp. R. & Regs. 1240-02-04-.05(8).

In the supplemental order, the trial court made the following findings of facts and conclusions of law concerning Father's gross income:

Findings of Fact

1. Father pleaded guilty to the crime of Attempt to Commit a Lewd Act of a minor and was sentenced to 110 days of incarceration on September 2, 2020.

2. As a result of his criminal conviction, Father was placed on the sex offender registry.

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5. Also, as a result of his criminal conviction, Father was separated from the military.

6. There was a period that Father was unemployed after his separation from the military.

7. Thereafter, Father was employed at Gordon's Food Service with an hourly rate of $14.27 per hour. He worked either 31 or 32 hours a week.

8. Father has also failed to produce reliable evidence of his income, as he had multiple sources of incomes.

9. Though Father is a registered sex offender, this status has not affected or impacted any of the jobs for which he has applied.

10. Father would have the [c]ourt believe that he was denied employment from lack of qualification and not because of his sex offender status. The [c]ourt finds this to be self-serving and not creditable.

***

Conclusions of Law

For the following reasons, Father's monthly income for child support purposes is imputed at the previous amount of $5,456.79, as Father is voluntarily underemployed. While he claims he is ineligible for jobs for lack of qualification and not because of his sex offender status, which this [c]ourt finds not creditable, this was a direct result of his own criminal actions, and neither Mother nor the children should be punished for this. Tennessee Child Support Guideline 1240-02-04.04(3)(a)(2)(ii), provides "the purpose of the

> determination, (of willful underemployment), is to ascertain the reasons for the parent's occupational choices, to assess the reasonableness of these choices in light of the parent's obligation to support his or her child(ren), and to determine whether such choices benefit the children."
>
> Tenn. Child Support Guidelines Rule 1240-02-04-.04(3)(a)(2)(ii)(I) further states that "a determination [of willful underemployment] may be based on any intentional choice or act that adversely affects a parent's income." As Father entered a guilty plea to Attempt to Commit a Lewd Act for trying to sexually solicit a sixteen-year-old girl, it is clear that he intentionally chose to commit those acts. In light of Father's obligation to support his children, it is clear that these choices are unreasonable, and do not benefit the children. Therefore, it is appropriate for Father's income to remain as previously set for child support calculation purposes.

As shown above, the trial court did not use Father's current income from Gordon's Food Service to establish his gross income. Rather, the trial court found that Father was willfully underemployed and imputed income to him as a result. If a significant variance is proven, a trial court may still deny a petition for modification if the variance is the result of willful underemployment. *Wine*, 245 S.W.3d at 394. The party alleging willful underemployment has the burden of proof. *Id.* (citing *Richardson*, 189 S.W.3d at 727; *Demers v. Demers*, 149 S.W.3d 61, 69 (Tenn. Ct. App. 2003)). Accordingly, it was Mother's burden to prove that Father was willfully underemployed. Below, we discuss the law concerning willful underemployment and the trial court's findings.

1. Willful Underemployment

> The Guidelines provide the following:
>
> (ii) Determination of Willful Underemployment or Unemployment.
>
> The Guidelines do not presume that any parent is willfully underemployed or unemployed. The purpose of the determination is to ascertain the reasons for the parent's ***occupational*** choices, to assess the reasonableness of these choices in light of the parent's obligation to support his or her child(ren), and to determine whether such choices benefit the children.
>
> > (I) A determination of willful underemployment or unemployment is not limited to choices motivated by an intent to avoid or reduce the payment of child support.

> I. The determination may be based on any intentional choice or act that adversely affects a parent's income.
>
> II. Under the Guidelines, however, incarceration of a parent shall not be treated as willful underemployment or unemployment for the purpose of establishing or modifying a child support order.

Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(ii) (emphasis added). As an initial matter, the trial court's conflicting findings are difficult to reconcile. In the first instance, the trial court found that Father's status as a registered sex offender "has not affected or impacted any of the jobs for which he has applied." However, the trial court also found that "Father would have the [c]ourt believe that he was denied employment from lack of qualification and not because of his sex offender status," which the trial court found to be "not creditable." The second finding implies that the trial court believed that Father was denied employment due to his sex offender status, which directly conflicts with the first finding. We deduce from the trial court's conclusions of law, that it concluded that Father has been ineligible for certain employment as "a direct result of his own criminal actions," *i.e.,* his choice to solicit a minor for sex. Concerning the willful underemployment finding, the trial court's reasoning appears to be: (1) Father made an intentional decision to commit an illegal act; (2) that choice adversely affected Father's income (separation from the military and inability to obtain comparable employment); (3) that choice was unreasonable and of no benefit to the children; accordingly, (4) Father was willfully underemployed.

We are mindful that the question of whether a parent is willfully underemployed is a question of fact, and we accord substantial deference to a trial court's determination of same. *Demers*, 149 S.W.3d at 69. Importantly, we observe that Father's decision to solicit a minor for sex was not simply unreasonable, it was reprehensible and indisputably of no benefit to his children (and the minor he attempted to solicit). However, we disagree with the trial court's conclusion that Father's decision to commit this act can serve as the basis for his willful underemployment. Under the Guidelines, the initial question of a parent's "choices" concerns his or her *occupational* choices. Courts are then directed to consider any intentional choice regarding a parent's *occupational* choice. Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(ii)(I)I. "Th[is] regulation is designed to prevent parents from avoiding their financial responsibility to their children by unreasonably failing to exercise their earning capacity." *Cain-Swope v. Swope*, 523 S.W.3d 79, 91 (Tenn. Ct. App. 2016) (citing *Massey v. Casals*, 315 S.W.3d 788, 795 (Tenn. Ct. App. 2009)); *see also Demers*, 149 S.W.3d at 69 (quoting *Eatherly v. Eatherly*, No. M2000-00886-COA-R3-CV, 2001 WL 468665, at *4 (Tenn. Ct. App. May 4, 2001)) ("Potential income, rather than actual income, can be used [to determine gross income] when the obligor 'has chosen to pursue an occupation or business venture which produces substantially less income than the parent

is capable of earning.'"). If we were to adopt the trial court's reasoning, a parent could be found willfully underemployed or unemployed based on *any* decision he or she made if the decision adversely affected his or her income, regardless of whether the decision concerned the parent's employment. This broad interpretation is simply not what the Guidelines intend. *See also Wine*, 245 S.W.3d at 396 ("The mere fact [that] Father lost one job, albeit a good job, for alleged improper conduct is not sufficient to constitute the type of 'intentional choice or act' contemplated in the 2005 revision to Tenn. Comp. R. & Regs. 1240-2-4-.04(3)(a)(2)(ii)(I).").[1] While we agree with the trial court that Father's conduct was condemnable, the Guidelines simply cannot be used to further punish Father for his crime. The trial court's reliance on Father's choice to engage in this criminal activity as the basis for a willful underemployment finding was improperly made. *Richardson*, 189 S.W.3d at 725.

Where a trial court misstates the law, this Court need not afford full deference to the trial court's findings of fact that depend on or incorporate the erroneous rule of law. *Wine*, 245 S.W.3d at 394. Having determined that the trial court misapplied the Guidelines as to willful underemployment, we will examine the evidence and make our own determination of where the preponderance of the evidence lies. *Id.*

In determining whether a parent is willfully underemployed or unemployed, the Guidelines provide:

> (iii) Factors to be Considered When Determining Willful Underemployment or Unemployment.
>
> > The following factors may be considered by a tribunal when making a determination of willful underemployment or unemployment:
> >
> > > (I) The parent's past and present employment;
> > >
> > > (II) The parent's education, training, and ability to work;

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[1] The provision in the 2005 revision stated:

> A determination of willful and/or voluntary under or unemployment is not limited to occupational choices motivated only by an intent to avoid or reduce the payment of child support. *The determination may be based on any intentional choice or act that affects a parent's income.*

Wine, 245 S.W.3d at 395 (citing Tenn. Comp. R. & Regs. 1240-2-4-.04(3)(a)(2)(ii)(I) (2005) (emphasis in original).

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> (IV) A parent's extravagant lifestyle, including ownership of valuable assets and resources (such as an expensive home or automobile), that appears inappropriate or unreasonable for the income claimed by the parent; [and]
>
> ***
>
> (VII) Any additional factors deemed relevant to the particular circumstances of the case.

Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(iii). The trial court neither cited to nor engaged in any analysis concerning the above factors. However, it made two findings consistent with the first factor: (1) Father was unemployed for a period of time following his separation from the military; and (2) Father was employed at Gordon's Food Service making $14.27 per hour, working 31-32 hours per week. Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(iii)(I). Father's testimony supports both findings. Concerning Father's past employment, it is undisputed that Father's gross income was $5,456.79 while he was in the military. Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(iii)(I). As to the second factor, *i.e.,* a parent's education, training, and ability to work, Father testified that he had no advanced degree and limited transferable skills for civilian employment. Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(iii)(II). Specifically, he testified that he had not met the required qualifications "for multiple levels of job[s] in leadership on down," and that his applications were denied prior to any background checks being conducted. We recall that it was Mother's burden to prove Father's willful underemployment. *Wine*, 245 S.W.3d at 394. Mother provided no evidence to rebut Father's testimony. The only testimony that Mother elicited from Father on cross-examination concerning this issue could pertain to the fourth factor, *i.e.,* a parent's extravagant lifestyle, including ownership of valuable assets and resources that appear unreasonable for the income claimed by the parent. Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(iii)(IV). Although Father testified that he made $14.27 per hour, he admitted that he owned a Mercedes SUV and had taken the children on recent vacations to Hawaii and Aruba. However, Father also testified that he lived in a three-bedroom house, owned a "Walmart pool," and that his other vehicle was a Ford cross-over. Additionally, the record shows that Father's current wife is also employed, although the details of her employment and income were limited.

On our review of the limited evidence, we conclude that Mother simply failed to meet her burden to prove that Father was willfully underemployed. Father's unrebutted testimony showed that he was unable to find employment that would provide him with an income near that of his income from the military and that his job prospects were limited

due to his lack of formal education and training. We note that the trial court found uncredible Father's testimony that his employment opportunities were limited due to his education and training. Rather, the trial court believed that such limitations were the result of Father being a registered sex offender.[2] Even assuming, *arguendo*, that Father's employment opportunities were limited due to his sex offender status, this is simply an additional factor, which shows that Father's employment opportunities were indeed limited. *See* Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(iii)(VII). While there was proof that Father and his current wife *may* live slightly above their means, Father's lifestyle does not appear to be "extravagant." *See* Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(iii)(IV). Given the foregoing, we reverse the trial court's finding that Father was willfully underemployed. We now turn to discuss the trial court's imputation of income to Father.

2. Imputation of Income to Father

There are three instances when a court may impute additional gross income to a parent:

> (I) If a parent has been determined by a tribunal to be willfully underemployed or unemployed; or
>
> (II) When there is no reliable evidence of income due to a parent failing to participate in a child support proceeding or a parent failing to supply adequate and reliable financial information in a child support proceeding; or
>
> (III) When the parent owns substantial non-income producing assets, the court may impute income based upon a reasonable rate of return upon the assets.

Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(i). We recall that the trial court imputed $5,456.79, Father's income from the military, to his gross income on its willful underemployment finding. Briefly, we discuss the following additional findings concerning Father's income that muddy the trial court's order:

> 7. Thereafter, Father was employed at Gordon's Food Service with an hourly rate of $14.27 per hour. He worked either 31 or 32 hours a week.
>
> 8. Father has also failed to produce reliable evidence of his income, as he had multiple sources of incomes.

[2] We note that there is no evidence in the record to support this finding.

In making these findings, it appears that the trial court may have combined the first two instances when courts are permitted to impute additional income to a parent, *i.e.,* willful underemployment *and* a failure to supply reliable information in a child support proceeding. The issue with this combination is two-fold: (1) the burden to prove the amount of income to impute in these instances rests with different litigants; and (2) the Guidelines provide different instructions for each instance.

As discussed above, as the parent alleging that Father was willfully underemployed, it was *Mother's* burden to prove underemployment and the amount of income to be imputed to Father. *See Wine*, 245 S.W.3d at 394; *Richardson*, 189 S.W.3d at 727; *Demers*, 149 S.W.3d at 69. Thus, to the extent the trial court placed the burden on *Father* to prove his income for purposes of imputing additional income to him due to willful underemployment, this was error. However, as the parent seeking to modify child support, it *was* Father's burden to prove a significant variance. *See In re Jonathan S.*, 2022 WL 3695066, at *13; *Hill*, 2021 WL 4745384, at *7; *Tigart*, 2021 WL 4352539, at *4. Part and parcel of the significant variance analysis is determining the gross income of each parent. Accordingly, Father had the burden to prove that his income had decreased and/or that Mother's income had increased to such an extent that a significant variance existed and modification was possible.

The directions in the Guidelines also differ depending on the circumstances before the court. When a court has determined that a parent is willfully underemployed or unemployed, the additional income allocated to the parent shall be determined using the following criteria:

> I. The parent's past and present employment; and
>
> II. The parent's education and training.

Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(ii)(II). When there is no adequate or reliable evidence of income, the Guidelines provide an entirely different analysis. First, the Guidelines separate the analysis into two parts: (1) when establishing an initial order; and (2) when modifying an existing order. Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(iv)(I), (II). Given that this case concerns the modification of an existing order, we focus on those regulations. The Guidelines provide:

> I. If a parent fails to produce adequate and reliable evidence of income (such as tax returns for prior years, check stubs, or other information for determining current ability to support); and
>
> II. The tribunal has no adequate and reliable evidence of that parent's income or income potential;

III. Then, in such cases, the tribunal must take into consideration the specific circumstances of the parent to the extent known, including, but not limited to, the following factors:

A. Assets;

B. Residence;

C. Employment and earnings history;

D. Job skills;

E. Educational attainment;

F. Literacy;

G. Age;

H. Health;

I. Criminal record and other employment barriers;

J. Records of seeking work;

K. The local job market;

L. The availability of employers willing to hire the parents;

M. Prevailing earnings level in the local community; and

N. Other relevant background factors.

Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(iv)(II). The trial court neither cited to nor engaged in any analysis concerning the foregoing regulations.

Briefly, we note that the evidence concerning either party's income was limited to their own testimony. Despite child support being a primary issue, neither party submitted a tax return or paystub. As discussed above, Father testified as to his pay and hours at Gordon's Food Service, and we note that he testified that this income was his "only source of income." Exhibit 9 consisted of Father's bank records from his joint account with his current wife. The records ranged from December 12, 2022, through January 11, 2024. We deduce that some of the deposits that appear in this exhibit may provide the basis for the trial court's finding that Father "had multiple sources of incomes."

Given that we reverse the trial court's finding that Father was willfully underemployed, we vacate its imputation of $5,456.79 to Father's gross income under this instance. Because the trial court failed to cite to 1240-02-04-.04(3)(a)(2)(iv)(II) or make any findings of fact concerning same, we are unable to determine if the trial court intended to impute additional income to Father under these regulations. If it did, this imputation is vacated due to the trial court's failure to "find the facts specially and state separately its conclusions of law." Tenn. R. Civ. P. 52.01; *Babcock v. Babcock*, No. E2014-01670-COA-R3-CV, 2015 WL 1059003, at *6 (Tenn. Ct. App. Mar. 9, 2015) (citations omitted) ("Generally, the appropriate remedy when a trial court fails to make appropriate findings of fact and conclusions of law is to 'vacate the trial court's judgment and remand the cause to the trial court for written findings of fact and conclusions of law,' unless the trial court's decision involves only a clear legal issue or the trial court's decision is readily ascertainable.").[3]

D. Mother's Gross Income

Father's next issue concerns the trial court's calculation of Mother's gross income. Father's arguments concerning Mother's gross income appear to be two-fold: (1) the trial court should have imputed additional income to Mother when determining her current gross income; and (2) the trial court miscalculated Mother's past gross income. As to Mother's gross income, the trial court found:

> Mother has had changes in employment. For purposes of calculation of child support between July 2022 through February 2024, the court finds her monthly gross income for child support purposes to be $3,467.00. This is based on the jobs she held at Oak Grove Racing and Gaming Hotel (Housekeeping Manager) and Rainbow (Administrative Assistant), where she was paid $20.00 per hour. Mother was laid off from this latter position effective February 27, 2024.
>
> At the time of the final hearing, Mother had a new job offer for a part-time job earning $17.20 per hour at Blanchfield Army Hospital; she estimates she will be offered the job pending completion of certain formalities. She expects the job to start with 20 hours per week but expects it to transition to full-time at some point. Based on this, the court finds her gross monthly income for child support purposes to be $1,491.00, effective March 2024 and thereafter.

[3] As noted above, this Court entered an order staying the appeal and remanding the case to the trial court for further findings of fact and conclusions of law. Given that the trial court's supplemental order did not contain sufficient findings of fact and conclusions of law concerning 1240-02-04-.04(3)(a)(2)(iv)(II), we must vacate any imputation of income under these regulations.

With the foregoing in mind, we turn to Father's arguments concerning Mother's current gross income.

1. Mother's Current Gross Income

As discussed at length above, a trial court may impute additional gross income to a parent when the parent is willfully underemployed or when there is no reliable evidence of a parent's income due to the parent failing to participate in a child support proceeding or a parent failing to supply adequate and reliable financial information in a child support proceeding. Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(i)(I), (II). On appeal, Father seems to argue that the trial court should have imputed gross income to Mother based on both circumstances. As an initial matter, it does not appear that Father argued to the trial court that Mother was willfully underemployed. Turning to the parties' opening statements, although Mother's counsel argued that Father was willfully underemployed—and Father's counsel responded to those arguments—Father's counsel did not argue that *Mother* was willfully underemployed.[4] "It is well settled that issues not raised at the trial level are considered waived on appeal." *PNC Multifamily Cap. Institutional Fund XXVI Ltd. P'ship v. Mabry*, 402 S.W.3d 654, 660 (Tenn. Ct. App. 2012) (citing *Waters v. Farr*, 291 S.W.3d 873, 918 (Tenn. 2009)). Accordingly, Father has waived this issue. Second, the record does not support Father's argument that the trial court should have imputed additional income to Mother based on 1240-02-04-.04(3)(a)(2)(i)(II), *i.e.,* a parent's failure to participate in a child support proceeding or to supply adequate and reliable financial information. Mother participated in the child support proceedings and her testimony, which Father does not argue was false, provided evidence of her current earnings. Accordingly, Father's arguments that the trial court should have imputed additional gross income to Mother are either waived or not supported by the record. The trial court's calculation of Mother's present income is affirmed.[5] We now turn to Father's argument that the trial court miscalculated Mother's past income.

2. Mother's Past Gross Income

[4] The transcript shows that pre-trial briefs were filed with the trial court. These briefs do not appear in our appellate record.

[5] In one sentence, Father also argues that the Guidelines require "income [to] be based on actual long-term earnings," before citing "*Marcel v. Marcel*, No.M2021-00594-COA-R3-CV." We deduce that Father is referencing 1240-02-04-.04(3)(b), which provides that "*variable* income such as commissions, bonuses, overtime pay, dividends, etc. shall be averaged over a reasonable period of time consistent with the circumstances of the case and added to a parent's fixed salary or wages to determine gross income." Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(b) (emphasis added). Although there is no pinpoint citation to *Marcel* in Father's brief, a quick review of the case shows this Court engaged in a discussion concerning variable income and child support. *See Marcel v. Marcel*, No. M2021-00594-COA-R3-CV, 2022 WL 17335655, at *5-6 (Tenn. Ct. App. Nov. 30, 2022). While Father fails to develop this "argument," the record shows that any discussion of variable income as it concerns Mother's gross income is inapplicable here.

The entirety of Father's appellate argument concerning the trial court's calculation of Mother's past income is:

> The court used $20/hour ($3,467/month) despite undisputed testimony that Appellee grossed $45,000 in 2023 and 2022 ($3,750/month) during the relevant period. The use of lower wages inflated Appellant's support obligation.

The record supports both Father's allegations and the trial court's findings. Mother testified that, from March 2022 through February 2024, she worked as an administrative assistant with Rainbow Inc., making $20.00 per hour. When asked on cross-examination about her gross income for 2022 and 2023, Mother estimated it to be "around $45[,000.00]" each year. It appears that Father's argument hinges on a mathematical calculation rather than any question of evidence. We deduce that the trial court made the following calculation to arrive at Mother's gross monthly income: $20.00/hour multiplied by 40 hours/week = $800.00 per week; $800.00/week multiplied by 52 weeks/year = $41,600.00; $41,600.00/year divided by 12 months = $3,467.00 per month. We contrast this number with what we deduce is Father's calculation: $45,000.00/year divided by 12 months = $3,750.00 per month. We recall that we are constrained by the abuse of discretion standard. *Richardson*, 189 S.W.3d at 725. Here, the trial court calculated Mother's past gross monthly income based on her testimony. Without a tax return or paystub to provide the most accurate evidence, the trial court relied on Mother's testimony concerning her hourly wage when setting her past gross income. This was not an abuse of discretion, and we affirm the trial court's calculation of Mother's past income.

E. Time Frame for Child Support Arrearages

We recall that Father's fourth stated issue is: "Whether the trial court erred in its determination of time frame for child support arrearages." The entirety of Father's argument in his initial appellate brief concerning this issue is:

> [Mother] initiated a parenting plan modification due to a material change in circumstance. The [trial c]ourt failed to recognize this modification should have include [sic] the period following the filing in September 2020. The Memorandum Opinion from the February 2021 trial only addressed the parenting schedule and left all other requests reserved with no final order. The [t]rial [c]ourt entertained modification to the original parenting plan based on [Mother's] original motion for modification of the parenting plan, but set an arrearage period starting June 2022 in error. Clearly, arrearage determinations should date to September 2020 and extend to February 2024. [Father] was incarcerated and required new employment after the release of incarceration. Incarceration is a substantial change of circumstances along with the initial filing for a petition of modification from the Appellant.

In her appellate brief, Mother argues that Father has waived this issue because he fails to cite to any legal provision or portion of the record to support his arguments. In his reply brief, Father acknowledges Mother's argument but again fails to provide any law or citations to the record to support his argument that the trial court erred in its determination of the *time frame* for Father's arrearages. Although Father briefly argues that the trial court "disregarded Father's pending [p]etition to [m]odify [child support]—which, under Tennessee law, should have tolled accrual of arrears from its filing date," the case Father provides as support for this proposition does not pertain to Father's issue. *See State ex rel. Vaughn v. Kaatrude*, 21 S.W.3d 244, 248 (Tenn. Ct. App. 2000) ("In appropriate circumstances, the court may require the father to pay back child support from the date of the child's birth."). Rather, much of Father's "argument" reiterates his previous argument concerning the trial court's calculation of his gross income. We note that Father also presents a new argument purportedly distinguishing between "nonpayment arising from inability to pay and that stemming from willful neglect."[6] Respectfully, Father's arguments in his reply brief are scattered and confusing. Regardless, he still fails to address his stated issue.

Tennessee Rule of Appellate Procedure 27(a)(7)(A), ***requires*** an appellant's brief to include:

> (7) An argument, which may be preceded by a summary of argument, setting forth:
>
> (A) the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, ***with citations to the authorities and appropriate references to the record*** (which may be quoted verbatim) relied on;

Tenn. R. App. P. 27(a)(7)(A) (emphasis added). In this portion of his appellate brief, Father presents no substantive argument concerning his stated issue and he fails to cite to a single authority or portion of the record to support same. "[P]arties cannot expect this [C]ourt to do its work for them," and we are under no duty to verify unsupported legal claims in a party's brief. *Bean v. Bean*, 40 S.W.3d 52, 56 (Tenn. Ct. App. 2000) (citing *England v. Burns Stone Company, Inc.*, 874 S.W.2d 32, 35 (Tenn. Ct. App. 1993) and *Duchow v. Whalen*, 872 S.W.2d 692, 693 (Tenn. Ct. App. 1993)). It is well-established "that a party's failure to cite authority for its arguments . . . in the body of its brief constitute[s] a waiver

[6] Even if we were able to decipher this new argument, because Father failed to raise it as an issue in his initial brief, it is waived. *See Garrett v. Hidden Valley Homes, LLC*, No. M2022-01531-COA-R3-CV, 2023 WL 6799153, at *3-4 (Tenn. Ct. App. Oct. 16, 2023).

on appeal." *Forbess v. Forbess*, 370 S.W.3d 347, 355 (Tenn. Ct. App. 2011); *see also Newcomb v. Kohler Co.*, 222 S.W.3d 368, 401 (Tenn. Ct. App. 2006) ("The failure of a party to cite to any authority or to construct an argument regarding his position on appeal constitutes waiver of that issue."). Indeed, "the Supreme Court has held that it will not find this Court in error for not considering a case on its merits where the [party] did not comply with the rules of this Court." *Bean*, 40 S.W.3d at 54-55 (citing *Crowe v. Birmingham & N.W. Ry. Co.*, 1 S.W.2d 781 (Tenn. 1928)). Here, given the complete lack of legal authority and any substantive argument concerning this issue, this Court would be tasked with making Father's arguments for him and with finding law to support such arguments. This we will not do. Father has waived his fourth issue.

Even if we found that Father had not waived this issue due to improper briefing, he has waived it based on arguments made at trial. Turning to the trial transcript, in Father's counsel's opening statement, when discussing Father's arrearages, she asked the trial court "to consider everything being retroactive to May of 2022." *i.e.,* the date Father filed the petition to modify child support. *See* Tenn. Comp. R. & Regs. 1240-02-04-.05(8) (explaining that a child support order is only subject to modification after the date that an action for modification is filed). To the extent Father now argues to this Court that the arrearages should "date to September 2020," this argument is again waived. *Lowe v. Smith*, No. M2015-02472-COA-R3-CV, 2016 WL 5210874, at *13 (Tenn. Ct. App. Sept. 19, 2016) (quoting *State v. Abbott*, No. 01C01-9607-CC-00293, 1996 WL 411645, at *2 (Tenn. Crim. App. July 24, 1996)) ("Tennessee law is well-settled that it is inappropriate to allow a party to take one position regarding an issue in the trial court, and then 'change its strategy or theory in midstream, and advocate a different ground or reason in this Court.'").

F. Motion to Alter or Amend

In his final issue, Father argues that the trial court erred in denying his motion to alter or amend. In short, Father argues that the trial court erred in setting Father's child support obligation based on it finding that Father was willfully underemployed and its calculation of Mother's current income. As discussed at length above, we vacate the trial court's order on Father's child support obligation.

G. Mother's Appellate Attorney's Fees

Mother seeks an award of appellate attorney's fees. In Tennessee, "litigants are responsible for their own attorney's fees absent a statute or agreement between the parties providing otherwise." *Darvarmanesh v. Gharacholou*, No. M2004-00262-COA-R3-CV, 2005 WL 1684050, at *16 (Tenn. Ct. App. July 19, 2005) (citing *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 194 (Tenn. 2000)). Although Mother fails to cite to any statute that would allow her to recover attorney's fees, we note that Tennessee Code Annotated section 36-5-103(c) provides:

> A prevailing party may recover reasonable attorney's fees, which may be fixed and allowed in the court's discretion, from the nonprevailing party in any . . . proceeding to enforce, alter, change, or modify any decree of . . . child support . . . ."

Tenn. Code Ann. § 36-5-103(c). As to *appellate* attorney's fees, it is within the sole discretion of this Court whether to award them. *Hill v. Hill*, No. M2006-02753-COA-R3-CV, 2007 WL 4404097, at *6 (Tenn. Ct. App. Dec. 17, 2007); *Archer v. Archer*, 907 S.W.2d 412, 419 (Tenn. Ct. App. 1995). "In determining whether to award attorney's fees on appeal, 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). Although Mother has prevailed in the appeal on the issues concerning her income, Father has prevailed on the issues concerning his income. In exercising our discretion, we decline Mother's request for appellate attorney's fees.

H. On Remand

We summarize our holdings as follows. We reverse the trial court's finding that Father was willfully underemployed due to his decision to engage in illegal activity. Any imputation of income to Father due to this willful underemployment finding is vacated. To the extent the trial court imputed income to Father due to his failure to provide adequate financial information, Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(i)(II), that imputation is also vacated due to a lack of findings of fact and conclusions of law. We do not disturb the trial court's conclusions concerning Mother's gross income or the time frame used to determine Father's arrearages. Because we vacate the trial court's findings concerning Father's gross income, Father's current child support obligation is also vacated. Similarly, any arrearages based on the trial court's imputation of $5,456.79 to Father's gross income are vacated.

Although not an issue in this appeal, we briefly address a miscalculation of Father's arrearages from January 2020 through June 2022. As stated in the memorandum opinion, the trial court determined that Father's total child support obligation for this time was $28,739.00.[7] The trial court found that, during this time, Father "made total child support payments of $13,635.65." The trial court also found that Father "ha[d] not paid a prior judgment entered in this matter for prior child support arrearages and attorney's fees in the sum of $2,278.66." Given the foregoing, the trial court entered a new, superseding judgment for arrearages against Father of $16,812.35. By this Court's calculations, the

[7] Although the trial court's order stated that it calculated the arrearage through June 2022, it appears that the calculation is actually through May 2022. There are 29 months between January 2020 and May 2022; 29 x $991.00 (Father's child support obligation) = $28,739.00. In the memorandum opinion, it appears that the trial court intended to calculate the past child support arrearages until the date that Father filed the petition to modify child support, which was May 10, 2022.

trial court should have entered a judgment of $17,382.01 ($28,739.00 - $13,635.65 + $2,278.66). Accordingly, as it concerns a judgment for Father's arrearages from January 2020 through June 2022, we vacate the trial court's $16,812.35 judgment and direct the trial court on remand to enter a judgment of $17,382.01 against Father.

On remand, the trial court is instructed to first engage in a significant variance analysis. Given the amount of time that has passed since the original hearing, the trial court is permitted and encouraged to hear additional evidence from both sides to ascertain the parties' *current* circumstances. Tenn. Comp. R. & Regs. 1240-02-04-.05(4); *In re C.W.*, 420 S.W.3d 13, 22 (Tenn. Ct. App. 2013). Although we reverse the trial court's finding that Father was willfully underemployed due to his decision to engage in illegal activity, this conclusion does not preclude the trial court from finding that Father is willfully underemployed or unemployed due to different circumstances. Similarly, the trial court is not precluded from imputing additional income to Father if it determines that such imputation is necessary after hearing additional evidence. After determining the parties' respective gross incomes, the trial court shall calculate a child support order on the Child Support Worksheet. Tenn. Comp. R. & Regs. 1240-02-04-.05(4). Only if there is evidence of a significant variance between Father's previous child support obligation and his obligation based on the parties' *current* circumstances is the trial court then permitted to modify Father's child support obligation. Tenn. Comp. R. & Regs. 1240-02-04-.05(5). Thereafter, the trial court shall calculate Father's arrearages based on the relevant child support obligation and any additional evidence concerning Father's child support payments or arrears that the trial court may receive at a future hearing. The trial court is instructed to make the appropriate findings of fact and conclusions of law with citations to the appropriate Guidelines where necessary.

V. Conclusion

For the foregoing reasons, the trial court's order is reversed in part, vacated in part, and affirmed in part. Mother's request for appellate attorney's fees is denied. The case is remanded for such further proceedings as may be necessary and are consistent with this Opinion, and we specifically direct the trial court to follow the instructions set forth in subsection H. Costs of the appeal are assessed one-half to the Appellant, Christopher Douglas Brown, and one-half to the Appellee, Giovanna Sartie Brown. Execution for costs may issue if necessary.

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