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IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 5, 2026 Session

COURTNEY WELLS CANNON v. ASHLEY MATTE CANNON

Appeal from the Circuit Court for Davidson County
No. 22D-871 Phillip R. Robinson, Judge

No. M2025-00101-COA-R3-CV

This appeal arises from a divorce after a short same-sex marriage. One spouse was the breadwinner for the family, while the other spouse gave birth to triplets during the marriage and became a stay-at-home mother. After a six-day trial, the trial court named the breadwinner spouse primary residential parent and the stay-at-home mother the alternate residential parent. Although the stay-at-home mother had recently resumed employment, for purposes of calculating child support, the trial court deemed the stay-at-home mother underemployed and imputed income to her. The stay-at-home mother appeals. We affirm.

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

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., C.J., and W. NEAL MCBRAYER, J., joined.

Karla C. Miller, Nashville, Tennessee, for the appellant, Ashley Matte Cannon.

Rachel M. Thomas and Melissa B. Bergmann, Nashville, Tennessee, for the appellee, Courtney Wells Cannon.

OPINION

I. FACTS & PROCEDURAL HISTORY

Appellant Ashley Cannon is originally from Louisiana. She attended college at the University of Louisiana at Lafayette for two years and majored in music and fine arts but did not complete her degree. Ashley had been a touring musician and "gig player" since age fifteen. After leaving college, she moved to California and took a job in Los Angeles at a company called Star Education. Ashley worked as a director and instructor for an

after-school music and culinary program, teaching children how to play instruments and cook. At around age 29, Ashley decided to move to Nashville to pursue a career in music. Star Education agreed to start a Nashville program, so Ashley was able to maintain her employment. She hired teachers and implemented the after-school program in several Nashville schools, ultimately overseeing about 90 bands for kids along with cooking classes. Ashley was also a resident performer at a hotel, where she sang one night per week.

Appellee Courtney Cannon grew up in Pennsylvania. She moved to Atlanta for college and obtained a bachelor's degree in mechanical engineering, and she later earned a master's degree in business administration. After college, Courtney moved to Bowling Green, Kentucky, and worked as an engineer at an aluminum mill just north of Nashville. Ashley and Courtney met in 2012 and began dating. Later that year, Ashley moved in with Courtney in Bowling Green, but she commuted to her job in Nashville. In 2013, the parties moved to Nashville together, and Courtney bought a home there. She began working as an energy manager at Bridgestone. The parties married in March 2016. At that time, Ashley was 33 years old, and Courtney was 30. Courtney was earning $130,000 per year, while Ashley earned around $40,000 to $45,000 from her two jobs combined. At some point, Ashley's California employer decided to no longer have satellite campuses, so Ashley started a company called Kids Can LLC and maintained the same employees and after-school programs through her own company.

A large part of the reason the parties married was because both wanted to start a family. Both spouses wanted to carry a child, but they agreed that Ashley would attempt to carry a child first because she was older. With the assistance of a reproductive endocrinologist and sperm from Courtney's cousin, Ashley became pregnant with triplets. They learned of the pregnancy around August 2017, just one year into the marriage. The pregnancy went fairly smoothly. Ashley continued working both jobs until January 2018. She gave birth to two daughters and one son – Stella, Lia, and Wells – in March 2018. The triplets were born seven weeks early, and each weighed only two or three pounds. They stayed in the neonatal intensive care unit for periods of 20 days, 22 days, and 35 days, as they had to reach four pounds before they could leave the hospital. Aside from their low birth weights, however, the children were generally healthy.

Ashley remained home with the children and breastfed all three for about six months. Courtney did not have a designated period of leave from work but "jumped right in" to help whenever she was at home. Unfortunately, the parties' marital struggles began almost immediately. For example, one evening in May 2018, when the triplets were almost two months old, Courtney went with friends to a work-related event and came home late with her friends. Courtney had been drinking, and Ashley had sent Courtney text messages asking her to "make [it] known" to her friends that she and her sister-in-law had just put the three babies to bed. According to Ashley, Courtney came in "like a bull in a china shop" in a drunken state and grabbed one of the babies from a swing and started yelling

and cursing at her. The situation "got very heated," as Courtney accused Ashley of not being happy for her to go out with friends, and in text messages, called her a "reclusive wife who cannot see past herself" and "[did] not know how to delight in someone else's joy." The parties also had fights about out-of-town family members coming to visit.

When the triplets were five months old, the parties purchased a larger home because their previous one was too small for the family. According to Courtney, Ashley had previously agreed that they could move to Pennsylvania to be closer to Courtney's family before the triplets' first birthday, but Ashley refused to move when the time came, so the parties purchased another home in Nashville. They rented their smaller home through a property management company for additional income. By all accounts, caring for the three children was extremely difficult given that the parties had no family support in Tennessee. Ashley also experienced some postpartum health issues and health anxiety regarding the children and herself. She remained at home with the children but began playing a few gigs at night in September 2019, when the children were eighteen months old. Around this time, at the children's well-child examinations, their developmental milestone exams showed indicators of developmental delays and/or autism, so they qualified for Tennessee Early Intervention Services. After additional testing, all three qualified for behavioral and occupational therapy, and two qualified for speech therapy. They received in-home therapy multiple days per week.

In 2020, the Covid-19 pandemic ended Ashley's opportunity to play gigs because public performances ceased. Courtney began working at home and was available to help with the children more during the day. Finding childcare for triplets was difficult, and the children were on waitlists for months. The parties agreed that Ashley would not return to work until the children were in full-time daycare. In August 2020, at age two, the children began attending a Parent's Day Out program at a church two days per week. Around their third birthday, in March 2021, the parties found an in-home childcare option for the children on Fridays. In May 2021, they secured spots in a second Parent's Day Out program on the remaining two weekdays. With the combination of these providers, the children were finally enrolled in childcare five days per week, at age three. However, the church programs were only for limited hours – beginning at 9:00 a.m. and ending between 1:00 and 3:00 p.m. Ashley drove the children to and from the programs and used that time to run errands, buy groceries, and clean the house. The children tested out of their early intervention therapies around this time. Courtney and Ashley began marriage counseling.

During the summer of 2021, Courtney told Ashley that she wanted to investigate the possibility of freezing her eggs for the possibility of having additional children, but Ashley stated that she did not want to have any more children. In November 2021, while on a trip to visit family in Pennsylvania for Thanksgiving, Ashley saw messages on Courtney's watch that led her to believe Courtney was having an affair with the parties' realtor and property manager. According to Courtney, Ashley came downstairs, where the children and the grandparents were present, and started screaming that Courtney was

having an affair. Courtney admitted that she had kissed the parties' realtor and had feelings for her. According to Courtney, Ashley "went absolutely ballistic" and grabbed the children in a huddle, saying, "Look at her. She ruined your life. You'll never see her again." The parties attended therapy, and Ashley decided that she wanted to reconcile. However, Courtney filed for divorce in June 2022. By that time, the parties had been married for six years, and the triplets were four years old. Courtney resumed her relationship with the parties' realtor after she filed for divorce. The children began attending pre-K full-time at a public school in August 2022, and Courtney unilaterally signed them up for the school's after-care program as well.

In February 2023, an agreed order was entered acknowledging that the divorce action had "caused a contentious living environment" for the parties and children. The order states that the parties had reached a temporary agreement "to create a transition period," for the children to get used to a parenting time schedule and for Ashley to obtain full-time employment. The order provided that the children would continue to reside at the marital residence, and each parent would "come and go during their respective parenting time." They agreed to a "50/50" schedule. The order stated that the parenting time exchanges would occur through school dropoffs and pickups "so that the parties will not have to interact with one another," but if they were around one another, there was to be no discussion unrelated to the children. Each parent had designated living quarters within the marital home and was enjoined from entering the other's area or entering the home at all when it was not her parenting time, as each was required to reside elsewhere. The order stated that no paramours were allowed around the children. Another agreed order specified a "2-2-3" equal parenting time schedule. The children turned five in March and began kindergarten at a local elementary school in August.

In September 2023, the trial court entered an order addressing temporary support. The order states that, during the hearing, "[t]he Court cautioned [Ashley] that she must get a job as soon as she reasonably can and that working in daycares generally does not provide enough income to live off of." The order stated that Ashley "has had reasonable time to adjust and transition into fulltime employment over the past several months." The order noted the possibility that Ashley might ultimately be awarded some type of short-term transitional alimony but stated that she had a financial obligation to the children and needed to concentrate on generating income. In closing, the court stated that if Ashley believed coming to the divorce trial without a job was going to help her obtain a support award, "it is not," as it would indicate to the court that she had not been trying to get a job. Ashley was ordered to notify the court when she had obtained employment. In October 2023, Ashley filed a notice with the court stating that she had accepted employment with the Metro Nashville Public School System, at a starting wage of $21.15 per hour, working as a "paraprofessional."

The divorce trial was held over the course of six days between February and June 2024. The primary issue was which parent should be designated primary residential parent

of the triplets. Neither party suggested an equal parenting schedule. Both submitted proposed parenting plan schedules assigning 230 and 135 days. Under both plans, the alternate residential parent would have parenting time every other Thursday through the weekend, and one overnight visit during the "off" week. The triplets turned six during trial. The trial court primarily heard testimony from Courtney and Ashley, as the only other two witnesses were a neighbor and a friend who both testified very briefly.

Courtney was 37 years old and in good health. She testified that she had always been very involved with the children despite working full-time. She had started working for Firestone just before the divorce was filed, and she earned almost $250,000 in 2023. Although she had taken several business trips during the parties' brief marriage,[1] she said her current position required very minimal travel. Courtney testified that her day-to-day schedule offered "tremendous flexibility" with a hybrid work environment so that she controlled her hours and could work from home two to three days per week. She testified that she was able to pick up the children from school and did not need any aftercare program. Courtney was also receiving rental income from the smaller home where the parties had lived, which she had purchased herself before the marriage. Courtney was in a relationship with the parties' realtor, who had just divorced her spouse as well, and Courtney was staying at her home when she was away from the marital residence. However, she testified that her paramour had not been around the children during the divorce.

Courtney claimed that Ashley's failure to return to work was one of the issues that contributed to the divorce. She testified that it was never her intention for Ashley to remain unemployed long-term after the triplets were born, but she admitted that "child care for the children was absolutely a prerequisite for Ashley going back to work." Courtney testified that the parties had discussed several options, such as reopening her Kids Can company or obtaining some type of culinary certification or schooling. She also testified that Ashley was very talented as a songwriter and played guitar and piano, and she could work in the evenings.

Courtney conceded that Ashley suffered from some health issues post-pregnancy, such as cysts and debilitating back pain. However, she also testified that Ashley suffered from mental health problems such as extreme health anxiety for herself and the children. She explained that Ashley was "obsessed with health ailments" and feared that she was going to die. Courtney testified that she sought help from Ashley's mother when the triplets were around eighteen months old because she believed Ashley needed help, as she talked about a long list of "bizarre things" like a brain worm. One evening while bathing the children she had called an ambulance because she feared she had a blood clot. On

[1] Ashley testified that Courtney went on many trips during the marriage, business and personal, and left her at home with the triplets, beginning in 2018 when they were only three months old. Her records indicated at least ten trips in 2019 alone.

another occasion, Courtney said, Ashley had some sort of anxiety or panic attack. She testified that this carried over into Ashley's care of the children when, for example, she "had their heads scanned" because she was concerned about the shape of their heads.

According to Courtney, she and Ashley also developed different parenting styles. She said the most notable differences were their positions on screen time, healthy food, and fostering relationships outside the home. She introduced reports from the children's tablets purporting to show that they used them for over two hours per day while in Ashley's care versus twenty minutes per day while with Courtney. Courtney acknowledged her own deposition testimony that she and Ashley had discussed traditional "gender roles in a marriage" many times and that Courtney had made it clear that once they had children she "did not want to be the primary caregiver." She conceded that she was now asking the trial court to designate her as the primary caregiver. Courtney said she believed that would serve the children's best interest more than an equal arrangement, as the parties had not been successful at coparenting over the last year. She testified that Ashley continually said negative things about her in front of the children, saying that Courtney had destroyed their lives and that she needed to withdraw from the divorce. She said it was impossible for them "to have any interaction where it didn't go sideways." Courtney claimed that Ashley had told her that these were her kids and that she would not coparent. She described several examples of ways that Ashley had allegedly not cooperated with her with respect to the children.[2]

Courtney also testified regarding a dispute that arose over medical care for Stella, which was reflected in the parties' emails. Stella needed to have a sleep study performed, and Ashley informed Courtney that she had taken the first available appointment the next day. Courtney responded with a message thanking her and stating that she would pick Stella up from school and meet Ashley there. Ashley then responded and insisted that she was going to pick Stella up from school and take her to the appointment because she was the one who scheduled it. Courtney said the appointment fell during her parenting time, so she would take her. Ashley then cancelled the appointment and rescheduled it for a day when she had parenting time. Courtney testified that this delayed Stella's medical care and that this type of conflict was typical of what it was like for the parties to try to coparent. She also testified that the parties had jointly used an email address that included the words

[2] For instance, while the children were in pre-K, the school wanted to have Stella tested for potentially being on the autism spectrum. According to Courtney, Ashley told her that the school wanted to have a support team meeting and evaluation and suggested that, if Stella had autism and Courtney proceeded with the divorce, it would ruin the child's chances of thriving and destroy her life. Courtney testified that she told Ashley to let her know when the meeting was scheduled, and Ashley assured her that she would. The following week, however, when the parties went to drop off the triplets at school one morning, she learned that the meeting was scheduled for 9:30 that morning, and Ashley had not informed her about it. She said she scrambled to find someone to cover a work meeting for her so that she could attend. Courtney testified that Ashley insinuated that the school had scheduled it and that it was "not her fault that the school didn't inform [Courtney] too."

"cannontriplets" for many things related to the children such as medical providers and schools since 2020. Courtney testified that both parents had equal access to the account and knew the password until Ashley recently changed it and refused to provide it to her. She described another incident in which both parents went to a birthday party with the children and their son broke out in hives, and they had a dispute over whether he should be treated with Benadryl or taken to the emergency room.

Courtney testified that the job Ashley had started was at the children's elementary school, and she believed that this was causing problems, as Ashley came to her car as she went through the carpool line, and teachers were not communicating with her as often since Ashley worked at the school. Courtney admitted that the children had been "kicked out" of their school's aftercare program due to their behavior. She testified that Stella had attempted to run away twice and had an individualized education plan. The trial judge then asked Courtney about how the parties had explained the divorce to the children and whether it was a joint conversation. Courtney said the children "do not know the word 'divorce.'" She testified that based on counseling the children had attended, the children had simply been told that they would have "special time with Mommy and special time with Mama" in an effort to explain the parenting schedule. The trial judge expressed disbelief at the fact that the parties were in the midst of the divorce trial and that no one had explained to the children that their parents were no longer going to be married and that they would be somehow shared between the two of them. The judge suggested that it was "a big mistake for your kids not to understand what's going on." Courtney went on to testify that Stella's behavior had improved since the IEP was developed.

Courtney presented the testimony of one witness – a former neighbor who testified remotely from Florida. He lived next door to the Cannon family for about three years and developed a very close relationship with the triplets. The neighbor testified that he would generally see the children on weekends when Courtney was outside doing activities with them or when he came to the house for visits. The neighbor described the difference in the two parents' parenting styles as "night and day." He testified that Courtney was "always involved in activities with them" while Ashley "was not ever really there." The neighbor explained that Courtney was the one who took interest "from a development perspective," ensuring the children were being creative and playing games, and he "never really saw Ashley in that mode." The neighbor described Ashley as stern and Courtney as "more hands-on" in her parenting. On cross-examination, however, the neighbor acknowledged that Ashley was serving as "the main caregiver" for the children during the day while Courtney worked, so he mainly observed her on the weekends.

Ashley was the next witness to testify, and her testimony began on day three of trial. She was 41 years old and in good health. She testified that, after the triplets were born, she had experienced ovarian cysts, bladder issues, a cyst on her kidney, anemia, and calcium depletion causing issues with her gums, teeth, and bone loss. She testified that she had been also diagnosed with ADHD and suffered from general anxiety. Ashley testified that

she had been on anxiety medication since she discovered her wife's affair, and it had resolved her health anxiety. She believed that many of her issues had been postpartum-related because she feared that something would happen to the babies or to her and that she would not be there to care for them.

Ashley testified that she had always earned around $30,000 annually from her work at the after-school program, whether in California or Nashville. In her role as a director, she did administrative work, hired teachers, handled payroll, and bought and delivered groceries for the culinary classes. Ashley testified that this employment allowed her to work on her music career as well. She testified that she was currently working at the school as a "special education paraprofessional ancillary," which meant that she was assigned "one-on-one" to shadow a student with special needs. She had accepted the job in October 2023 and started work on November 6, three months before trial. Ashley was earning $21.50 an hour for an annual salary of $31,883.63. She explained that she had only been hired as "a 10-month employee" and would not be paid for the summer months but hoped to be chosen for a summer position as well.

Ashley testified that she did not recall discussions about Courtney wanting her to get a full-time job, but she said Courtney did encourage her to play music to get out of the house and do something she enjoyed. She testified that she started playing gigs again in 2019, but that opportunity ended due to Covid. Ashley testified that she started looking for a job at the end of 2021, near the end of the marriage, as she "was always looking for things [she] could do even from home" so that she could still take care of the triplets and the household. She said that she "ran into a few things that might be promising, good potential with some of these jobs, and a lot of things fell through," as "we were still within the pandemic." Ashley testified that in 2022, the year the divorce was filed, she started playing shows again, signed up with job search companies, and got a LinkedIn account. She said the issue she "ran into the most" was that she did not have a degree. Ashley testified that in 2023 she had a handful of interviews, signed up for job searches, and tried to do as many gigs as she could. She said she was earning about $250 for each performance but was never able to get back on a regular schedule with those. Ashley explained that she applied at the school system because she was familiar with it and had some contacts there, having worked in several Metro schools with her after-school programs. She also said that it "just seemed fitting" to get a job there because she would have the same schedule as the children and she had worked with children at her previous job.

Ashley testified that in October 2021, shortly before she discovered the affair at Thanksgiving, Courtney had invited their realtor and her wife to have dinner at the parties' home. Ashley explained that Courtney kept "pressing" her to host them for dinner, stating that they needed "couple friends," even though Ashley had already developed some suspicions about Courtney and the realtor. Ashley testified that she observed inappropriate behavior by the couple that evening, as "they were smoking [marijuana] a lot and taking gummies." Ashley said they were "trying to get me and Courtney to take a gummy[.]"

She testified that she had "three babies to take care of" but "wanted Courtney to have a good time," so she took half of one gummy, while Courtney took two gummies. Ashley testified that the parties had "a very, very rough night," as "Courtney pretty much blacked out, hallucinated." She testified that the parties sent the guests home because Courtney was "hallucinating from whatever these gummies did." Ashley explained that the other couple "would do these things regularly." She also testified that the realtor "left her smoking device . . . marijuana pen with juice in it – I guess the cannabis juice inside of it in our children's playroom[.]" Ashley testified that she found the pen and had Courtney contact the realtor to come get it. She testified that the realtor and her spouse broke up a week later, and she discovered Courtney's affair at Thanksgiving. Ashley acknowledged that Courtney had mentioned freezing eggs a couple of months before all of this occurred and that she was not supportive of that decision because the triplets were only three and she was already worried that Courtney might be having an affair.

Ashley was also asked about the day that she discovered the affair, when the parties were visiting Courtney's family in Pennsylvania. She testified that she read messages from the realtor on Courtney's watch while it was charging, and she was overcome with grief. She recalled walking downstairs and immediately asking Courtney if she was having an affair. Ashley testified that she was "in shock" and "not calm," as this was a very traumatic experience for her. She said Courtney admitted that she was having the affair. Ashley recalled crying but said she did not believe that she was screaming. She said the children "were around" and that family members grabbed them and took them away to distract them. When asked if she believed she had "lost control over [her] emotions," Ashley said no. She said she believed she "reacted as any normal person would have who received such information. It was devastating at the time. And I believe that I acted like anyone would."

Ashley testified that the parties' parenting dynamic did not change much after the divorce was filed, as she still maintained the home and cared for the children most of the time. She said the situation became more divisive because they no longer did things as a family but separately, but this was difficult for the children because they did not understand and the parties still lived together. She testified that Courtney began to work more outside the home but started to be more present in dropping off the children at pre-K and involving herself in things she had not done before. She said Courtney would sometimes follow her to school drop-offs, and each parent would walk different children inside. Ashley was also asked if the parties sat down with the children when the agreed order with the parenting schedule was entered in order to explain what was going on. She said, "No. It was not discussed." She said there was no communication between her and Courtney about it, and she simply told the children, "Momma will be coming and going. But they don't have to leave right now. They'll have their home and their same bed, and . . . when Momma is here, Mommy won't be here." Ashley testified that it was Courtney who insisted that the parents have separate designated doors for entering and exiting the home so that they did not pass one another or communicate at all. She testified that she did not agree with that idea and believed it was harmful to the children and made them sad.

Ashley noted that the children had about six sessions of therapy while they were still in pre-K. She said she wanted them to start the counseling because she saw "a downhill spiral" in their behavior. Ashley testified that the children were "showing symptoms that they were negatively impacted by the divorce."[3] She testified that Stella had an IEP put in place after she reached out to the school due to the number of calls and emails she was receiving from the girls' teachers with concerns. When asked if she discussed these issues with Courtney, she replied, "No. There was no opportunity for that. . . . We were not speaking, really, at the time." She noted, however, that the parties had since learned to communicate necessary information when the children are exchanged, either through text message or speaking in passing. She said they are able to communicate "[o]n most occasions."[4]

Ashley also testified about a recent surgery Stella had for removal of her adenoids and tonsils. She testified that there was "a lot of tension" between her and Courtney and that Courtney wanted to be in charge of everything, rechecking paperwork Ashley had already completed and exhibiting bizarre behavior. Ashley claimed that Courtney raced ahead after surgery to get to Stella first and wrapped her arms around the child "for what felt like an eternity" before Ashley could even speak to or look at her. Ashley testified that she had wanted to be with Stella that evening once she was discharged from surgery and at the parties' home and even offered to leave before bedtime, but Courtney would not allow it because it was her parenting time. Ashley stayed with her mother in a hotel that evening, and when she arrived for her parenting time the next day, Courtney's mother exited the home and got into the vehicle of Courtney's paramour, who was parked in a nearby parking lot. Ashley admitted that she "had some words with Courtney" about this and that it was "a heated moment" where the parties exchanged unpleasant words. Ashley claimed that she was simply upset that her spouse's "affair partner" was that close to the children and the marital home after Courtney "barely let me see my child the day before." They had another dispute about Courtney leaving for vacation with Stella before the end of the two weeks her surgeon had suggested for recovery.

Ashley testified that the children's recent start to kindergarten had been rough. She said that Stella's behavior was not any better and that they went through the IEP process

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[3] Ashley explained that Lia was having problems at school and saying that her parents were "never coming back" and she had to "get a new family." She said Lia was "acting out," not wanting to be at school, crying at every dropoff and about aftercare. She testified that Stella was struggling and acted out a lot, throwing tantrums, yelling, screaming, and having meltdowns in and out of the classroom. She said Wells cried over small things and worried when one parent was not there.

[4] The trial judge then stated, "Both of you better have a wake-up call." He emphasized that the children were only six years old and that the parties would have to deal with each other for the next twelve years. He also observed that "it sounds like neither one of y'all are going to be able to coparent." The judge advised the parties that all they were doing was hurting the children by being too proud and stubborn to communicate with one another and share information.

again. She then clarified that it was rough for the girls but that Wells had a great start. Ashley testified that she was called multiple times a week to speak with the girls and calm them down and let them know that she would see them soon.[5] The children had been in kindergarten for several months by the time of trial, and Ashley testified that their behavior had improved. Ashley said that she had observed, when in the school hallways, that their tantrums and meltdowns had "gotten ten times better." She explained that she had been talking with the children about having good days and dropoffs, and she believed that her working at the school had been "unbelievably great" for all three kids, especially Stella. Stella received weekly speech therapy, daily social and emotional therapy, and a one-on-one paraprofessional for certain classes. Ashley expected these services to remain the same for first grade, but she said that everyone was worried about the transition.[6]

Ashley's testimony continued when trial resumed for a fifth day in May. She denied using screentime as a babysitter and suggested that the tracking data Courtney used was wrong because it continued to count time even after the children put down their tablets if they did not turn them off. She said she had tested it herself and that the data was completely inaccurate. She testified that she permitted the children to play educational games on their tablets for twenty to thirty minutes once or twice a day. Ashley testified that the children were still very confused and that they often asked if she and Courtney were still married. She denied Courtney's allegation that she had said she would not coparent and accused Courtney of being the one who was unable to coparent. Ashley believed that it was in the best interest of the children for her to be named primary residential parent in order to provide consistency and stability, especially with school. She testified, however, that the equal schedule had been beneficial in allowing the children to see both parents and that she did not believe they would do well "seeing less of a parent," as they already struggle and get very emotional after a long weekend without seeing her. She stated that the children had major struggles with transition and that consistency would

[5] Ashley explained that Stella was having lots of meltdowns and behavior issues, and several teachers expressed concern because "they all could hear her." She described tantrums, screaming at teachers and classmates, crying, flailing on the ground, and running out of the room. She clarified that this was when they were asked not to return to the aftercare program.

[6] At this point in the proceedings, at the end of the fourth day of trial, the trial judge gave a lengthy caution and instruction to both parents about their behavior. He recognized that Ashley was bitter about Courtney's paramour and acknowledged that her continuation of the relationship throughout the divorce case was "kind of rubbing the Judge's nose in your inappropriate behavior." At the same time, he noted that Courtney did not approve of Ashley working at the school and other matters. He admonished both parents to "get over it." He emphasized that their daughters were struggling as a result of the divorce, and it was the worst time for them to experience it when starting school. The judge stated that he did not want any more confrontations or harsh words. He warned, "Petty comebacks, and smart-aleck behavior, efforts to bully or intimidate the other parent better not occur. Because I'm going to put the offender in jail." He said if either parent tried to "take over" or cause problems in IEP meetings or doctor's offices, he would ban one from attending. He said the parties "owe it to your children" to be courteous and reasonable to one another.

be the key when it came time for them to change grades.[7] Although the marital residence was going to be sold, Ashley planned to look for a rental property in the same area close to the school.

Ashley testified that she had been hired to work at the school's summer camp in June and believed that she would be earning the same rate for an extra month. She testified that she was staying with friends or at Airbnb properties when she was away from the marital home, while Courtney was living with her paramour. Ashley testified that when she had returned to the marital home for her parenting time after the children's recent birthday party, she found the state of the home "overwhelming" and "wrecked." She explained that trash and toys were everywhere, and desserts from the party were thrown into the garage collecting ants. She testified that the recycling bin was filled to the top with empty cans from alcoholic beverages, and she was concerned about the level of supervision for the children given the number of drinking adults present. Ashley found this to be disrespectful given that she was now working full-time and unable to stay home and clean house. She said she regularly had to wash dishes and do the laundry that accumulated from Courtney's parenting time because she does not do it herself.

On cross-examination, Ashley was asked about her efforts to obtain employment. The February 2023 agreed order had discussed a transition period for her to obtain full-time employment, yet she did not accept employment until October 2023. Ashley testified that she "was certainly hunting for it, and taking interviews, and applying for jobs." Her testimony on this subject continued into the sixth and final day of trial in June 2024. Ashley clarified that when she testified about looking for work toward the end of 2021, this was limited to signing up for and searching on job search websites and looking for work she could do from home or part-time while the children were at Parent's Day Out. She admitted that she did not apply for any job in 2021. She testified that in 2022, the year the divorce was filed, she began putting in applications and actively interviewing. She said that her previous residency position as a performer at the hotel was no longer available, so she got a few gigs "here and there" but nothing as a resident although she tried. Ashley applied for jobs at three companies in 2022 to no avail. She testified that she applied at two nanny agencies in February 2023. In July 2023, she had applied to work with the Metro school system as a paraprofessional but was not hired for that particular position. Ashley then applied for other positions in the school system, including a "classroom associate" and in nutrition services. She testified that she also applied for a marketing position that would permit her to work from home, but it turned out to be a scam. She also applied for a position with the Metro Nashville parks program. Ashley had submitted seven unsuccessful applications in 2023 before she was hired. She testified that there were more positions that

[7] She testified that Lia was struggling the most and still made comments about her family being ripped apart or Ashley abandoning her when she had to leave the home, but her behavior in school had greatly improved. Ashley testified that Stella was also making huge progress at school. She said that Wells was handling the parenting schedule the best but worried a lot.

she "looked into" but did not list. She testified that she also stayed in touch with the hotel where she worked before and was still available if they needed her. However, Ashley admitted that as a mother in her 40s with triplets, she was no longer pursuing "a career in music" because it was "not something that I can do right now." When asked how many gigs she had played during the first six months of 2024, Ashley testified that she could not recall but that she had been very busy since starting her full-time job at the school. The trial judge noted that it was only June and questioned how Ashley was unable to remember if she had played any gigs that year. Ashley replied that she had "played a lot of shows in my lifetime" and would have to look at her calendar. She said anytime they reached out and she did not have the children she "absolutely" played.

Courtney's attorney introduced Ashley's Social Security statement and pointed out that Ashley earned $46,110 the year before the triplets were born, and she questioned why Ashley now claimed that she could only earn $31,000 at her current job.[8] Ashley explained that before the children were born she was working at her regular job and also a resident performer in the evenings, so that was combined income from two jobs. She estimated that she earned $30,000 from the after-school program and the rest from playing weekly at her residency gig on Thursday nights. She testified that the residency gig was no longer an option and noted that she now has to be at work at the school early in the mornings, so she could no longer work "late-night gigs." She was working forty hours per week at the school.

Ashley testified that she had never spoken negatively about Courtney to the children. When asked if she had any proof that Courtney's paramour had been around the children since the affair was discovered, she only mentioned a photograph of her vehicle across the street from the parties' home. Ashley was also asked to confirm that neither parent had "discussed the divorce with the children," and she said this was correct. However, she added that she was "pretty certain" that "the children have been talked to about divorce." She said this was "based off of things that they have been saying" but said

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[8] The statement listed the following earnings from the time she accepted the job in California in 2006 until she stopped working to have the triplets:

2006	$17,832
2007	$3,407
2008	$6,931
2009	$16,609
2010	$44,846
2011	$17,652
2012	$26,900
2013	$28,110
2014	$30,839
2015	$31,055
2016	$37,137
2017	$46,110

"[i]t did not come from me." Ashley said she had "envisioned" that she and Courtney would have a discussion first and then "talk to them together." Ashley concluded her testimony by admitting that the divorce had "blindsided" her and that she had really struggled when she was separated from the children for the first time when the parenting schedule began. She testified that she was "healing" and "not so easily triggered" anymore, and she wanted to get better at coparenting but was still learning. Ashley testified that the only thing that mattered to her was the children and that she was going to do her best to ease their anxiety. She presented the testimony of a friend of hers who had also been through a divorce and had discussed coparenting with her. The friend testified that she had seen positive growth in Ashley in the past year. Courtney testified very briefly in rebuttal and confirmed that she had not talked to the children about divorce. She said her only conversation with them was to the extent that she explained, when the parenting schedule began, that the children would have "special time with Mommy and special time with Mama to help them understand we wouldn't both be in the same house at the same time."

The trial court entered a final decree of divorce in September 2024. The decree itself spanned 53 pages. For reasons that will be explained in further detail below, the trial court designated Courtney as primary residential parent of the children and adopted a parenting plan providing 230 days of parenting time for Courtney and 135 for Ashley. The trial court decided that Courtney would make all major decisions affecting the minor children after consulting with Ashley, but Courtney would have the final authority. The court found that Ashley was underemployed and imputed income to her for purposes of child support. Child support was calculated based on monthly gross income of $3,842.50 for Ashley and $20,669 for Courtney, which resulted in Courtney paying $351 per month. Both parties filed motions to alter or amend, which were resolved by an order entered in January 2025. After additional orders resolved some outstanding issues, the trial court determined that it had entered a final order. Ashley timely filed a notice of appeal.

II. ISSUES PRESENTED

Ashley presents the following issues for review on appeal:

1. Whether the trial court abused its discretion in designating Courtney as primary residential parent;[9]
2. Whether the trial court abused its discretion in determining that Ashley was voluntarily underemployed and in determining her earning ability;
3. Whether Ashley should be awarded her attorney fees on appeal.

[9] We note that Ashley's brief contains a heading in the argument section stating that "the trial court abused its discretion in determining that Courtney Cannon should be designated as the children's primary residential parent and in the award of sole decision making to Courtney." However, as Courtney aptly noted in her brief, the argument section of Ashley's brief did not develop any argument regarding decision-making. As such, we deem that issue waived.

Courtney raises one issue: whether she should be awarded her attorney fees on appeal. For the following reasons, the decision of the circuit court is hereby affirmed.

III. DISCUSSION

A. Primary Residential Parent

The first issue presented by Ashley is whether the trial court abused its discretion in designating Courtney as primary residential parent. Appellate courts review a trial court's factual findings "de novo upon the record, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise." *Armbrister v. Armbrister*, 414 S.W.3d 685, 692 (Tenn. 2013). We review questions of law de novo with no presumption of correctness. *Id.* A trial court's decision as to which parent should be designated the primary residential parent is reviewed for abuse of discretion. *See Kelly v. Kelly*, 445 S.W.3d 685, 696 (Tenn. 2014). "Because decisions regarding parenting arrangements are factually driven and require careful consideration of numerous factors, trial judges, who have the opportunity to observe the witnesses and make credibility determinations, are better positioned to evaluate the facts than appellate judges." *Armbrister*, 414 S.W.3d at 693 (citations omitted).

When fashioning a residential schedule for a child, "[t]he court shall make residential provisions . . . consistent with the child's developmental level and the family's social and economic circumstances, which encourage each parent to maintain a loving, stable, and nurturing relationship with the child." Tenn. Code Ann. § 36-6-404(b). "If the limitations of § 36-6-406[10] are not dispositive of the child's residential schedule, the court shall consider the factors found in § 36-6-106(a)[.]" *Id.* "The paramount concern in establishing a permanent parenting plan is the best interest of the child[.]" *Maupin v. Maupin*, 420 S.W.3d 761, 770 (Tenn. Ct. App. 2013). Taking into account the child's best interest, the trial 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 [] 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). At the time the divorce was filed, the statute included sixteen factors for consideration. *Id.*

On appeal, Ashley begins by emphasizing that she carried and gave birth to the triplets, breastfed them for months, and acted as their primary caregiver while Courtney worked full-time. She notes that this arrangement continued until the divorce was filed and the parties entered the agreed order giving them equal parenting time. She rightly notes the trial court's broad discretion in this matter and the applicable statutory factors. Her

[10] The referenced section, 36-6-406, instructs a court to limit residential time for a parent who "has engaged in certain specified conduct or who exhibits certain traits." *Ford v. Ford*, No. M2023-01762-COA-R3-CV, 2026 WL 125827, at *4 n.9 (Tenn. Ct. App. Jan. 16, 2026).

argument on appeal is limited to four factors that she claims the trial court improperly weighed – factors 2, 4, 8, and 12. Her brief states that she does not repeat the trial court's findings regarding the other factors due to word count limits and therefore she "will address only those findings regarding factors with which Ashley takes issues." We interpret this to mean that Ashley does not disagree with the trial court's analysis of the remaining factors.

Of course, we cannot ignore the remaining factors on appeal because the relevancy and weight of each factor depends on the specific facts of the case, and any one factor may prove determinative. *Grissom v. Grissom*, 586 S.W.3d 387, 393 (Tenn. Ct. App. 2019). "Determining best interest is not a mathematical formula wherein one can find that certain factors favor one parent over another and then somehow add up the factors to determine the end result." *Broadnax v. Lawrence*, No. E2016-01176-COA-R3-CV, 2017 WL 2482986, at *26 (Tenn. Ct. App. June 8, 2017). Thus, we will first quote the trial court's findings regarding the factors that it deemed applicable and which Ashley does not challenge (with the language of the statutory factors bolded and the trial court's analysis italicized):

> **(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;**
> *The Court finds that currently, each of the parties has a strong and stable relationship with the children. The Court bases this finding on the fact that during the pendency of this action, the parties entered into two (2) agreed orders, dated February 10, 2023 and March 17, 2023, defining each parent's parenting time during the pendency of this divorce action. The order of February 10, 2023 provides a phasing-in "nesting" arrangement where Courtney began exercising more and more extended parenting time with the children while the parties alternated the use of the marital residence. The parties' goal was to achieve a substantially equal parenting arrangement. By March 17, 2023, the Court finds that the parties had achieved a substantially equal parenting arrangement. Since that date, the parties have been sharing the children equally. The Court finds, however, that from the birth of the children in March 2018 until March 17, 2023, Ashley has been the primary caregiver of the parties three (3) minor children. As such, Ashley breastfed the children and primarily cared for them on a day-to-day basis with the assistance of friends and family members who were available from time-to-time. Further, Ashley credits Courtney with pitching in and helping when she arrived home from work and during those periods that she was off work or allowed to work from home. The Court finds that this consideration favors Ashley.*
> . . .

(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;
The Court finds that this consideration favors Ashley who has acted as the children's primary caregiver for the majority of their lives.
(6) The love, affection, and emotional ties existing between each parent and the child;
The Court finds that both parties have great feelings of love, affection and emotional ties to these children. The Court finds this consideration to be neutral.
(7) The emotional needs and developmental level of the children;
The Court has heard little of any specific emotional needs or developmental issues of the children that need to be addressed. As noted herein, because these children were approximately seven (7) weeks premature they were identified as potentially having issues that may need to be addressed. The Court finds that both parents were actively involved in the children's various therapies. and both have been there for the children at all times. The Court also finds that the children's teachers are proactively addressing any of the children's educational issues with IEP's. The Court finds this to be a neutral consideration.
. . .
(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;
The Court received little information regarding the interaction and interrelationships between the children and other family members. The Court finds that both families visited the parties at various times and assisted in caring for the children. The Court finds this consideration to be neutral.
(10) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;
The Court finds that because of the pending divorce, the parties' parenting arrangements have gone from the children being primarily cared for by Ashley with assistance from Courtney, to each party having substantially equal intervals of time with the children during which the possessory parent is the primary parent. The Court has no concerns about either party's ability to care for the children. Prior to the filing of the divorce, however, the children had been primarily cared for by Ashley. This consideration favors Ashley.

Again, Ashley does not challenge the trial court's findings regarding these factors. We now turn to the factors with which she "takes issues." We begin with factor 2 and the trial court's findings with respect to it:

(2) Each parent's [] past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents [] 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 [] 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 [] to honor and facilitate court ordered parenting arrangements and rights, and the court shall further consider any history of either parent [] denying parenting time to either parent in violation of a court order;
The Court finds that each of the parties has the potential for future satisfactory performance of parenting responsibilities. Each of the parties has demonstrated their ability to maintain and care for these children. The Court finds that Ashley made derogatory comments about Courtney to and in the presence of the parties' minor children in November 2021 while the parties were visiting Courtney's family for Thanksgiving in Philadelphia. When she first learned that Courtney had feelings for another person and had, in fact, kissed that person, Ashley stated to Courtney, and in the presence of the children, that Courtney had ruined the children's lives, and they would never see her again. The Court acknowledges that this was a shocking revelation to Ashley. However, the Court finds that Ashley used inexcusably poor judgment in accusing Courtney of inappropriate behavior in the presence of the minor children. Life is full of similar circumstances that are shocking and often times extremely upsetting. It is for that reason that parents must maintain control over their emotions and remain calm in the presence of their minor children, especially younger children, as was the case here. Ashley admitted in her testimony that she previously had concerns that her marriage was unraveling. Her behavior transferred her shock, distress and anger directly to the children. Ashley's behavior also created conflict between the parties on other occasions. In one incident, while the parties were alternating parenting time and Courtney had possession of the children, one of the children developed hives. Courtney intended to treat the child with Benadryl, an over-the-counter medication, but Ashley attempted to dictate to her and insisted that the child be taken to the emergency room. Courtney consulted her mother and took the child to a walk-in clinic. The child recovered without incident and without the more extreme treatment insisted upon by Ashley. Ashley's attempt to dictate the child's treatment to Courtney created animosity between the parties. Despite this, Ashley testified that she believed her behavior was appropriate. On another occasion, after one of the girls had her adenoids removed, the child's doctor recommended a two (2) week recovery period. After the child had spent approximately eight

> *(8) days recuperating, Courtney took the children on a vacation out-of-state. The child completed her recovery without incident. However, Ashley insisted that Courtney's behavior was bad parenting and had put the child at risk. The Court finds no indication that either of these parties would intentionally put their children at risk. The Court finds that common sense should prevail at all times. Many times, the decision of "doctor mom" is a sensible one. The Court finds that criticism of the other parent over such relatively minor incidents makes Ashley less likely to encourage a close and continuing relationship between the children and the other parent and could possibly alienate the children from the other parent. The Court finds this consideration favors Courtney.*

Ashley admits that the trial court "found that each of these parties has the potential for future satisfactory performance of parenting responsibilities and that each of the parties has demonstrated their ability to maintain and care for these children," but she insists that the court "really didn't give Ashley the credit she deserves for past performance of the parenting responsibilities." It is clear, however, that the trial court gave Ashley sufficient "credit" for her past performance of parenting responsibilities when discussing several other factors in its analysis. Her past performance of parenting responsibilities does not tip the scale in her favor as to *this* factor given the trial court's clear concern about her ability to encourage a close and continuing relationship between the children and Courtney.

Ashley argues that factor 2 should have been deemed neutral or weighed in her favor. She admits that she "didn't always handle every situation well after the divorce was filed" but recounts ways that she demonstrated good coparenting and what she describes as numerous "examples of Courtney's poor co-parenting." She complains that the trial court's analysis of this factor "didn't cite any of Courtney's shortcomings." That is true, but it does not mean that the trial court did not hear and consider them. The trial judge heard six days of testimony about the shortcomings and positive aspects of both parties' parenting. The judge made that clear when ruling on the parties' motions to alter or amend, when he stated at the hearing:

> But in this situation, each party did -- did things they shouldn't have done. Each party made mistakes. And I'm sure both of them probably regret things they've done. Maybe not. I don't know.
>
> But during the period of time that the Court watched these parties, went through hearing testimony, hearing proof in this matter, the Court found these parties cannot coparent. . . .
>
> . . .
>
> But I think that one of the parties that was having the biggest problem with this par[en]ting was Ms. Ashley Cannon. She did make comments, she did make statements. . . . .
>
> . . . . There were a number of different things. There were failures to

> obey orders properly. There were a number of things the Court took into consideration about these parties' ability to get along.
>
> And when you have a shared arrangement, the parties have to interface with one another, have to work with one another. And these parties can't do that. And the Court finds that during the period of time that we were dealing with this case, I found the greater fault to be on Ms. Ashley Cannon.
>
> And the Court felt that Ms. Courtney Cannon would be the better parent to try to work with the other parent and this sort of thing under – under Consideration No. 2, the greater willingness to promote a good relationship with the other parent.

"[T]his factor may, depending upon the circumstances of the case, be an important part of the court's best interests determination and 'may very well dictate the outcome of the analysis.'" *Solima v. Solima*, No. M2014-01452-COA-R3-CV, 2015 WL 4594134, at *5 (Tenn. Ct. App. July 30, 2015) (quoting *In re Marr*, 194 S.W.3d 490, 499 (Tenn. Ct. App. 2005)). "Our case law is accordingly replete with examples where the greater willingness of one parent to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent has been the decisive factor in determining parenting arrangements." *In re Zamorah B.*, No. M2011-00864-COA-R3-JV, 2013 WL 614449, at *6 (Tenn. Ct. App. Feb. 15, 2013) (citing *In re Jonathan S. C-B*, M2010-02536-COA-R3-JV, 2012 WL 3112897 (Tenn. Ct. App. July 31, 2012); *Howe v. Howe*, E2008-02580-COA-R3-CV, 2010 WL 323068 (Tenn. Ct. App. Jan. 28, 2010); *Morman v. Morman*, M2005-00931-COA-R3-CV, 2006 WL 2068757 (Tenn. Ct. App. July 25, 2006)). Factor 2 clearly weighed heavily in the trial court's decision here, and the record supports its findings and conclusions, especially given our deference to the trial court's credibility determinations. *See, e.g.*, *In re B.C.*, No. W2021-00910-COA-R3-JV, 2022 WL 11121595, at *13 (Tenn. Ct. App. Oct. 19, 2022).

The next factor Ashley analyzes is factor 4, for which the trial court found:

> **(4) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;**
> *The Court finds that while both parents are disposed to providing education, medical care and the necessities of life for these children, Courtney is in the better financial position to provide such necessities. Further, because she acquired a good education, and has reaped the rewards and benefit of her efforts, the Court finds that Courtney would be more encouraging and insistent that her children pursue higher education. The Court finds this consideration favors Courtney.*

Ashley argues that this factor should have been deemed neutral. She claims that this factor "doesn't really call upon the Court to decide who might be in the better financial position to provide such necessities," and the court failed to recognize her contribution as a

homemaker and that "both parties had busted their rear ends to provide for the family."

We recognize that financial care is not the only type of care to be considered under factor (4). *See Stierle v. Vallvey*, No. E2024-00866-COA-R3-CV, 2025 WL 1068254, at *10 (Tenn. Ct. App. Apr. 8, 2025). As this Court has previously explained,

> "While a parent's financial ability to provide for the child may be relevant, this factor is not to be judged solely on an assessment of the parents' respective incomes, assets, and/or liabilities." *Kincade v. Kincade*, No. M2017-00797-COA-R3-CV, 2018 WL 1631415, at *6 (Tenn. Ct. App. Apr. 4, 2018). Rather, "the focus should be on each parent's *disposition to provide*, which may hinge on each parent's track record of providing and each parent's present intention to provide for the child in the future." *Id.* Moreover, this factor is not limited to providing the child with food and clothing but also "medical care, education and other necessary care." Tenn. Code Ann. § 36-6-106(a)(4).

Schanel v. Richardson, No. M2022-00800-COA-R3-CV, 2023 WL 6334194, at *13 (Tenn. Ct. App. Sept. 29, 2023). Here, the trial court did not limit its analysis to financial considerations but noted other types of care as well. It began by noting that both parents were disposed to providing education, medical care, and necessities for the children. The trial court simply concluded that Courtney was in a better financial position to provide for the children and had acquired a good education, so overall, this factor weighed in her favor. In light of the trial court's findings regarding Ashley's underemployment, the record supports the trial court's conclusion as to this factor.

The next factor Ashley discusses is number 8, for which the trial court made the following findings:

> **(8) The moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the children;**
> *The Court finds no physical deficiencies that would impair either parent's ability to parent these children. The Court does have concerns regarding Ashley's moral and emotional fitness, however. As has been noted in the pretrial brief prepared by counsel for Ashley, the brief contained unfounded accusations by Ashley that Courtney had intentionally removed Ashley's name from the mortgage on the 1304 Porter Road property. She also alleged that her spouse had borrowed approximately $48,000 against the Porter Road property without Ashley's knowledge or approval and used these funds to enhance the Jackson Street property which Courtney claimed to be her separate property. She also alleged that some of these funds had been dissipated on gifts to Courtney's paramour. However, the facts established that Ashley herself had actually participated in the refinance closing and*

signed the refinancing paperwork. Ashley's name had never been on the mortgage. Courtney had never spent $48,000 on the Jackson Street property nor was there any evidence produced that she had spent any funds on a paramour. Further, this Court has questioned her veracity on other issues such as her efforts to find employment and her allegations that Courtney had never attended any of the children's dental appointments when the dental records established otherwise. Such reckless allegations, which proved to be patently false, compel the Court to find that Ashley, whether by design or lapse of memory, is not a credible witness.

This Court also has concerns about Ashley's mental and emotional issues. As noted, she has suffered ADHD since her early teens and currently is on medication for this condition. In addition, as described by Courtney, Ashley developed health anxieties about herself and the children. In her testimony, Ashley admitted having these anxieties about her own medical condition and that of the children. She acknowledged the incident when she called for an ambulance but declined to go to the hospital after the EMTs examined her. She also admitted another occasion when she asked Courtney to drive her to the emergency room with similar concerns about her health. The children were exposed to both of these incidents. Ashley continues to be on the antianxiety and antidepressant, Lexapro. The Court has concerns about the long-term impact on small children of a parent and caregiver who is constantly anxious about the children's health and her own medical issues and health.

Finally, the Court finds that based on Courtney's testimony, Ashley is still having difficulty letting go of her anger and hostility despite her becoming aware of Courtney's inappropriate behavior with another woman in November 2021 and that in many of their interactions, Ashley tells her that she ruined the children's and Ashley's lives. Her continued upset is evidenced by her and Courtney's interactions as they attempted to co-parent the children after entering an order sharing the children during the pendency of this divorce. In scheduling their minor daughter Stella's, sleep evaluation, Ashley scheduled the appointment the next morning at 11:00 a.m. without consulting Courtney, perhaps understandable in trying to get the child in as soon as possible. But when Ashley insisted on picking the child up from school the following morning when the child was actually in Courtney's possession by Court order, the Court finds Ashley's behavior to be inappropriate. Ashley was, of course, welcome to participate in the appointment but instead, without consulting Courtney, Ashley reset the child's appointment to May 4, 2023, a day when Ashley had possession of the child. [] Such behavior is unreasonable and negatively impacted the child by delaying this important evaluation. Likewise, the parties used a shared home calendar app through Apple under Ashley's email address. They could each post significant events on the calendar so the other party would have

> *access to the information. On October 30, 2023, Courtney received notice on her cellular phone that the home calendar was no longer being shared because Ashley had stopped sharing it. [] As a result, Courtney missed some of the children's events which she would like to have attended. The Court finds this to be petty behavior on Ashley's part. In a similar vein, on December 18, 2023, the school had scheduled "Romp Day." It was a celebration before winter break where parents were invited. There were photo booths, face painting and similar activities. As a parent, Courtney volunteered to help on her lunch break. Ashley had started working at the school as a teachers' assistant in November of that year. As Courtney came up the steps of the school, she was confronted by Ashley who asked what she was doing there. Courtney responded that she was there as a parent volunteer for Romp Day. Courtney then went into the school without further comment. Later that day, she received a text message from Ashley berating her for doing "certain things just to hurt/torture me and not let me have any peace." [] In her testimony, Ashley acknowledged that her text message to Courtney, after finding out that she was volunteering at the children's school, was "not a great success in co-parenting" by her. The Court finds this consideration favors Courtney.*

To begin, Ashley again takes the approach of "she did it too," pointing out that Courtney made a false statement in her written closing argument, claiming that she was the children's primary caregiver. The difference here is that this was a mere statement in a post-trial brief, which the trial court obviously disregarded in finding that Ashley was the primary caregiver of the children from their birth until the divorce was filed. Ashley included allegations in her pre-trial brief that proved to be false, but only after Courtney testified and presented evidence demonstrating that they were.[11]

[11] In her reply brief, Ashley further argues that statements of counsel or allegations in briefs are not evidence. However, the trial court could consider Ashley's pretrial brief as attributable to her and as a statement of her positions. *See Dye v. Dye*, No. W2019-02011-COA-T10B-CV, 2019 WL 6888673, at *6 (Tenn. Ct. App. Dec. 18, 2019) ("Courts review the pretrial briefs of attorneys on a regular basis[.]"); *C.D.B. v. A.B.*, No. M2018-00532-COA-T10B-CV, 2018 WL 1976119, at *6 (Tenn. Ct. App. Apr. 26, 2018) (acknowledging that allegations in a pretrial brief "are not evidence" but recognizing that "they were filed with the court" and that "trial courts are often called upon to evaluate pleadings prior to the submission of any evidence"). In addition, these allegations were not limited to a mere brief filed prior to trial. The pretrial brief was also admitted as an exhibit at trial without objection. Courtney was asked about the allegations from the pretrial brief during her testimony and discussed some of the issues in dispute, introducing numerous documents to explain the relevant transactions. She testified that she had "secured all these closing documents from both the original closing around the cash-out refinance so that we can prove all of this to the Court." The next day, Ashley's trial counsel addressed the trial court and admitted that there was "an issue with our pretrial brief," that Courtney had presented proof "that completely counteracts that," and after going back to look at the documents, counsel needed to "apologize for that," as some things reviewed by her office had been inappropriately "looked at." She said "we just didn't catch it in our prep" and "didn't mean to purposely mislead anyone." Still, when Ashley testified later at trial, she initially would not admit that her allegations were false and still suggested there was some question about

The trial court also had warranted concerns about Ashley's health anxiety. The court noted that Ashley was taking medication but still had "concerns about the long-term impact on small children of a parent and caregiver who is constantly anxious about the children's health and her own medical issues and health." Ashley points out that she did suffer from postpartum cysts, back pain, and issues with her gums and teeth, but the list of ailments of which she complained, according to Courtney, was much longer than that. Courtney testified that she had spoken to Ashley's mother because she believed Ashley needed help. Moreover, Ashley admitted at trial that "I was really scared a lot. I had a lot of health anxiety." The trial court's concern is legitimate.

Ashley argues the court "ignored facts bearing upon moral and emotional fitness that were unfavorable to Courtney, such as her bringing friends home drunk when the babies were barely 2 months old; and having her paramour Darbi Bolton and her wife over for dinner, smoking marijuana and taking gummies to the point where she blacked out." We agree that these facts do bear on the moral and emotional fitness of a parent. We note, however, that Ashley admittedly took half of a gummy that night and apparently did not have any objection to the behavior until she discovered that one of the participants was Courtney's paramour. The incident when the babies were two months old does not reflect positively on Courtney's moral fitness, but Ashley does not explain how it would bear on her present ability to parent the children, as there was no testimony as to similar incidents.[12] This factor requires us to examine the moral and emotional fitness *of each parent as it relates to their ability to parent the children.* Finally, Ashley's allegation regarding Courtney inviting her paramour to dinner at their house bears little weight on this factor considering that she had not had her paramour around the children since then. The agreed order entered early in the proceedings provided that no paramours would be permitted around the children during the pendency of the divorce, and there is no evidence that Courtney violated that provision prior to or during trial. We reject Ashley's arguments that these issues should have resulted in this particular factor weighing in her favor.

Lastly, Ashley asserts error with respect to the trial court's findings on factor 12:

> **(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;**
> *The Court has been presented with no evidence of any inappropriate*

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the transaction at issue. We discern no error in the trial court's consideration of this matter in concluding that Ashley "whether by design or lapse of memory, is not a credible witness."

[12] The trial court appeared to reference this incident elsewhere in its order, as it stated that: "[T]hree (3) children were conceived. This means that three times as much responsibility was placed on Ashley's shoulders once the children were born. It is little wonder that Courtney felt that Ashley was reclusive when Courtney got home. She was almost certainly exhausted and ready to hand the children off to another caregiver. Further, she was attempting to maintain a home at the same time."

> *behavior by any of the parties friends or families that have visited in the parties' home. The Court has heard evidence that Courtney continues her romantic relationship with Darby Bolton. However, the Court has been presented with no evidence that the children have been exposed to Ms. Bolton during the pendency of this divorce after Courtney became romantically involved with her. The Court finds this consideration is not applicable.*

We agree with Ashley that this factor should have weighed against Courtney. Courtney was living with her paramour when not exercising parenting time at the marital home. The proof at trial showed that during the paramour's one visit to the parties' home during the marriage, she encouraged the parties to take the gummies even though they had "three babies to take care of," and she smoked marijuana at the home. Ashley testified that the paramour "would do these things regularly." The paramour left her marijuana pen in the children's playroom. Courtney concedes in her brief that her paramour was "in the presence of the parties' children" that evening and also "incidentally while she was the parties' realtor in 2018 when the children were infants." As for the paramour's "interactions with" the children since then, we again recognize that the children had not been exposed to the paramour while the divorce case was pending. However, because she continued her relationship with Courtney throughout the divorce proceeding and lived with her part-time, it was appropriate to consider her behavior as a "person who resides in or frequents the home of a parent."[13] We conclude that this factor weighs against Courtney.

In summary, the evidence supports the trial court's findings of fact concerning the aforementioned best interest factors, with the exception of factor 12. Having considered all of the best interest factors, we cannot say that the trial court abused its discretion in designating Courtney as primary residential parent. That decision was within "the spectrum of rulings that might reasonably result from an application of the correct legal standards to the evidence found in the record." *Armbrister*, 414 S.W.3d at 693. "[A] trial court's designation of a primary residential parent 'often hinge[s] on subtle factors, including the parents' demeanor and credibility during the divorce proceedings themselves," so "appellate courts are reluctant to second-guess a trial court's decisions." *Brown v. Brown*, 571 S.W.3d 711, 716 (Tenn. Ct. App. 2018) (quoting *Gaskill* v. *Gaskill*, 936 S.W.2d 626, 631 (Tenn. Ct. App. 1996)). "Appellate courts should not overturn a trial court's decision merely because reasonable minds could reach a different conclusion." *C.W.H. v. L.A.S.*, 538 S.W.3d 488, 495 (Tenn. 2017). Under the abuse of discretion standard, "we will uphold the trial court's determination, irrespective of our inclination to decide the issue differently, so long as the trial court's decision is within the range of acceptable alternatives." *Artist Bldg. Partners v. Auto-Owners Mut. Ins. Co.*, 435 S.W.3d 202, 220

[13] We also note that in her motion to alter or amend, Ashley accused Courtney of bringing her paramour to the marital residence during her parenting time. Courtney admitted in her response that she had been at the home and that the children had been introduced to her. The trial judge found it "inappropriate and offensive" for a party to bring a paramour to the jointly owned home and enjoined the parties from doing so pending its sale.

(Tenn. Ct. App. 2013) (citing *Tait v. Tait*, 207 S.W.3d 270, 275 (Tenn. Ct. App. 2006)). We conclude that the trial court did not abuse its discretion in its designation of the primary residential parent in this case and therefore affirm its decision to that effect.

B. Voluntary Underemployment

The next issue Ashley raises is whether the trial court abused its discretion in determining that she was voluntarily underemployed and in deciding her earning ability. The Tennessee Child Support Guidelines provide that "[i]mputing additional gross income to a parent is appropriate . . . [i]f a parent has been determined by a tribunal to be willfully underemployed[.]" Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(i)(I). The Guidelines do not presume that any parent is underemployed. Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(ii). "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." *Id.* A determination of willful underemployment "is not limited to choices motivated by an intent to avoid or reduce the payment of child support." Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(ii)(I). Rather, "[t]he determination may be based on any intentional choice or act that adversely affects a parent's income." Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(ii)(I)(I).[14]

[14] According to the Guidelines, the following factors may be considered by a tribunal when making a determination of willful underemployment:

> (I) The parent's past and present employment;
> (II) The parent's education, training, and ability to work;
> (III) The State of Tennessee recognizes the role of a stay-at-home parent as an important and valuable factor in a child's life. In considering whether there should be any imputation of income to a stay-at-home parent, the tribunal shall consider:
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> I. Whether the parent acted in the role of full-time caretaker while the parents were living in the same household;
> II. The length of time the parent staying at home has remained out of the workforce for this purpose; and
> III. The age of the minor children.
>
> (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;
> (V) The parent's role as caretaker of a handicapped or seriously ill child of that parent, or any other handicapped or seriously ill relative for whom that parent has assumed the role of caretaker which eliminates or substantially reduces the parent's ability to work outside the home, and the need of that parent to continue in that role in the future;
> (VI) Whether unemployment or underemployment for the purpose of pursuing additional training or education is reasonable in light of the parent's obligation to support his/her children and, to this end, whether the training or education will ultimately benefit the child in the case immediately under consideration by increasing the parent's level of support for that child in the future; and
> (VII) Any additional factors deemed relevant to the particular circumstances of the case.

The trial court made lengthy findings relevant to these issues:

> The Court finds that Ashley is 41 years of age. She has a high school education and two (2) years of college but no degree. She is originally from Louisiana. She is a singer/songwriter and at the time of the marriage, she earned money performing at various locations in Nashville. She started and ran an after school music enrichment program, called Rock Star Music Education, for children in elementary and middle school. The program branched out to include a culinary program as well. She claims and appears to be in good health although during the marriage and after the birth of the parties' triplets, Ashley complained of various self-diagnosed ailments. However, the Court has seen no competent evidence, medical or otherwise, that she is incapable of working. At the time of the parties' marriage in March 2016, she earned approximately $37,137 for the year 2016, and she earned $46,110 in 2017. Her 2017 income is the highest annual earnings she has ever achieved. In November 2023, she began working for the Metropolitan Nashville Board of Education as a paraprofessional, assisting schoolteachers with disabled children in elementary school. Her January 5, 2024 pay stub reflects that for the pay period of December 15, 2023 through December 28, 2023, she earned gross income of $1,586.28, paid biweekly, with a net income of approximately $1,350.88 per pay period. The pay stub also reflects that she is paid over a ten-month period. It further reflects that her annual gross salary is $31,883.63. The Court finds that over a calendar year, her average gross monthly income would be approximately $2,656.97.
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> The Court finds that in 2019, Courtney began having conversations with Ashley about Ashley returning to the workforce to help generate income. The parties had never agreed that Courtney would be the sole provider for the family. Ashley appeared to make a good faith effort to generate some income. She got several bookings to play music. Then COVID-19 hit, and there were no opportunities to perform. One impediment to her full-time employment was the lack of available daycare for the three (3) children. As result of the pandemic, many daycares had closed, and others were full. The Court finds that it took the parties approximately two (2) years to get all of the children into daycare. However, since the children were three (3) years old, they have been in five-day a week daycare. Despite this, Ashley still did not find employment.
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> In the year of the parties' marriage, she earned approximately $37,000 from

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Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(iii).

performing and a side job. The following year, she earned approximately $46,000 which was her highest earning year. The parties started a family, and she was a stay-at-home mom, understandably struggling and sometimes overwhelmed with the responsibility of taking care of three (3) babies. The children were born in 2018. In 2020, the COVID-19 pandemic made daycare difficult. However, by 2021, the parties had the children in daycare or with babysitters five (5) days a week. Courtney encouraged Ashley to seek employment outside the house both for the extra money and for Ashley's mental health. She did not obtain employment. After the divorce action was filed in June 2022, this Court encouraged her to seek employment. During the pendency of this action, the parties agreed to a temporary, shared custody arrangement. The parties had full-time daycare, allowing each of the parties to work if they desired. However, Ashley did not secure employment until late 2023, only a couple of months prior to the trial. She currently works for the Metropolitan Nashville Board of Education as a paraprofessional teachers' assistant, working with disabled children and earning approximately $31,000 . . . .

. . . .

. . . Based on her previous earnings, the Court would consider her underemployed at this time. As she discovered during her job hunt, lacking an undergraduate degree seriously impairs one's opportunity for employment. Although her pay stub reflects that she is paid at the rate of $21.15 per hour, it also reflects that her annual salary is $31,883.63. It is the Court's understanding that she currently does not work in the months of June and July. She is hopeful that she will be allowed to work in the Promising Scholars program during the summer to earn additional money. However, given time and hard work the Court finds that she can improve her earning capability.

. . . .

. . . Ashley stopped working in January 2018, approximately one-third of the way through her pregnancy. The triplets were born two (2) months later. She did not return to work, except for occasional gigs, until November 2023.

. . . .

. . . She has previously earned as much as approximately $46,000 annually. The Court finds that Ashley is currently underemployed and based on past earnings, she is capable of earning approximately $3,842 per month.

. . . .

[Ashley] became pregnant with the parties' triplets who were born in March 2018. At that point, Ashley took on the primary role of parenting their three (3) children while Courtney generated income for the marriage. The Court finds that Ashley's contribution to the marriage as a parent to their children was extensive, and her responsibilities were all but overwhelming.

> Although friends and family assisted when they were available, maintaining the home and caring for these children fell primarily on Ashley's shoulders. . . . From the children's birth in March 2018 until the divorce was filed in June 2022, a period of approximately four (4) years, Ashley was the primary caregiver for these children.
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> . . .
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> As previously noted, Ashley has a high school degree and two (2) years of college but no degree. Prior to the marriage, she was a songwriter and performer from which she generated income. She also worked for a company providing after school care/enrichment. When her employer went out of business, she started her own business providing an after school musical enrichment program which she later expanded to include a culinary class. As noted above, in 2016, the year of the marriage, Ashley earned approximately $37,137. The following year, 2017, she earned $46,110, the highest income for any one year in her work history.
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> Thus, the Court finds Ashley to be a person capable of generating higher income than she is currently generating. This Court encouraged Ashley to find employment as soon as possible in its order of September 7, 2023. In her cross-examination, she was questioned about her efforts to locate employment. The Court finds her testimony in her deposition and in court to be evasive, vague and not credible on this issue and other issues. On one occasion in her testimony, she mentions possibly securing additional education. However, she made no effort to present a plan to the Court to facilitate additional education. She had done no research into tuitions or requirements needed to complete her undergraduate degree. Finally, in approximately November 2023, she found employment with the Metropolitan Nashville Board of Education as a teacher's assistant working with disabled children. Amazingly, she found a position in the very elementary school that her children started attending in August 2023. Considering her past earnings and her delays in finding employment until approximately ten (10) weeks before trial, the Court finds that this position was taken more for the opportunity to interact with her children during the school day than for the salary that was offered. As previously noted, her salary is $31,883.63 for ten (10) months. The Court finds her to be underemployed for the purpose of setting child support[.]
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> . . . .
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> The Court finds that Courtney's gross monthly income is $20,668.66 and the Court, finding Ashley to be voluntarily underemployed, imputes a gross monthly income to her consistent with her past earning ability of $3,842.50.

(record citations omitted). In its order resolving the motions to alter or amend, the trial court further found:

> During the course of this litigation, the Court repeatedly advised Ashley to secure employment. Ashley delayed securing employment, but eventually did secure a job at the children's school. The Court finds that Ashley's employment as a teacher's aide at the children's school is not in the children's best interest because they need to learn to be independent. Having a parental advocate working in the children's elementary school and interacting with their teacher undermines their learning responsibility. The Court further finds that Ashley is a talented enough woman to earn more money than she is currently earning as a teacher's aide.

On appeal, Ashley argues that "the Trial Court's findings regarding [her] employment and income earning ability are against the weight of the evidence. She argues that the most she had ever earned was $46,000 in 2017, which was her combined income from the afterschool program and playing gigs as a resident performer at the hotel. Ashley contends that the trial court primarily relied on the fact that "she had previously earned more money" and simply imputed income to her at the highest level she had ever earned, while it "ignored other important factors" such as the fact that she gave birth to triplets and was out of the workforce for five years. However, the trial court's lengthy findings demonstrate that it did not ignore the fact that Ashley gave birth to triplets and was out of the workforce. The purpose of the court's 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," Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(ii), and the trial court clearly considered all of that. "A trial court's determination regarding willful and voluntary underemployment is entitled to a presumption of correctness, and we accord substantial deference to the trial court's decision, especially when it is premised on the trial court's singular ability to ascertain the credibility of the witnesses." *Cox v. Cox*, No. M2024-00827-COA-R3-CV, 2025 WL 1517810, at *7 (Tenn. Ct. App. May 28, 2025) (quoting *Miller v. Welch*, 340 S.W.3d 708, 712-13 (Tenn. Ct. App. 2010)). "The trial court has considerable discretion in its determination of whether a parent is willfully or voluntarily underemployed." *Id.* at *9. In light of the trial court's finding that Ashley's testimony regarding her efforts to locate employment was "evasive, vague and not credible," we conclude that the evidence supports the trial court's finding of underemployment.

Ashley also argues that the trial court erred "in the determination of her earning ability." She insists "it is unreasonable to expect a woman who has been out of the workforce for over 5 years (for a reasonable purpose, such as being the primary caregiver to three children, which is not disputed) to suddenly re-enter the working world and earn at least what she did in her last year of employment six years before that when she was working two jobs but with no children." The Guidelines provide that once a parent has been found to be willfully underemployed, "additional income can be allocated to that parent to increase the parent's gross income to an amount which reflects the parent's

income potential or earning capacity[.]" Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2)(ii)(II). The court should consider the parent's past and present employment and education and training. *Id.*

Ashley first claims that "working two jobs, particularly one of which is playing music at night, is no longer an option because of her work hours, her time with the children and her age as a singer/performer." The record does not support this claim. Ashley testified that "whenever they reach out to me and I'm absolutely available and I don't have my children, I absolutely play shows." She did testify that pursuing "a career in music" was "not something that I can do right now" and that "late-night gigs" were no longer an option due to her early work hours at the school. She testified that in 2023, while the divorce was pending, she was "just trying to do as many gigs as I could" but simply "[w]asn't as busy with the shows as I would like to be." She also testified as follows:

> Q. Now, you testified at your deposition, if you recall, that you were no longer pursuing musical gigs. Do you remember that?
> A. I don't remember that.
> Q. You don't remember saying that you had chosen not to pursue musical gigs?
> A. No, I don't. I don't remember that. Because I was pursuing musical gigs.
> Q. You're always pursuing musical gigs?
> A. Absolutely. I stay in touch with the hotel I've worked at before, if they need me.
> Q. Okay. Do you agree with me that pursuing musical gigs is a way to earn extra money?
> A. Yes, of course.

Thus, we find no support for Ashley's assertion in her brief that working two jobs to include playing music is "no longer an option."

Determining what a parent's potential income would be is a question of fact that requires careful consideration of all the attendant circumstances. *Miller*, 340 S.W.3d at 712. Here, Ashley testified that she had always earned around $30,000 a year from her position in the after-school program, and combined with her supplemental income from singing, she earned $46,000 the year before the children were born. The trial court found her current salary "is $31,883.63 for ten (10) months." The court noted that Ashley hoped to work during the summer months to earn additional money. In fact, however, Ashley testified on day five of the trial that she had secured a position working in the summer program and expected to be paid the "same rate for an extra month." She said she would be "paid for June because I work the summer program," and her salary would be based on eleven months of work. Therefore, it appears that Ashley would be earning an additional $3,000 or so from that additional month of employment in the summer, bringing her annual

salary to around $35,000.[15] The trial court imputed income to Ashley in the sum of $46,110. Ashley testified that she typically earns $250 per gig. As such, if she performs one night per week, as she did before the children were born, she can earn an additional $1,000 per month, or $12,000 annually. This would bring her annual income to roughly $47,000. Thus, the evidence does not preponderate against the trial court's imputation of income to Ashley of $46,110 annually.

C. Attorney Fees

Both parties seek an award of attorney fees on appeal. Ashley sought an award pursuant to Tennessee Code Annotated section 36-5-103(c) in the event she was the prevailing party. Because she was not successful on appeal, her request for attorney fees is denied. Courtney seeks an award pursuant to the same statute or Tennessee's frivolous appeal statute, Tenn. Code Ann. § 27-1-122. "Both of these statutes expressly provide for the use of the court's discretion in determining whether attorney's fees are warranted in a particular case." *Eberbach v. Eberbach*, 535 S.W.3d 467, 476 (Tenn. 2017). We do not deem this appeal frivolous. Exercising our discretion, particularly in light of the parties' economic circumstances, we decline Courtney's request for an award of attorney fees on appeal.

IV. CONCLUSION

For the aforementioned reasons, the decision of the circuit court is affirmed. Costs of this appeal are taxed to the appellant, Ashley Matte Cannon, for which execution may issue if necessary.

s/ Carma Dennis McGee
CARMA DENNIS MCGEE, JUDGE

[15] We recognize that Ashley listed $2,600 per month in gross income on her income and expense statement. However, she admits in her brief that her annual salary of $31,000 was based on ten months of employment. Dividing her salary of $31,883 by ten months equates to $3,188 in gross income per month. Ashley initially testified that she was hired as a ten-month employee and did not qualify for the twelve-month pay option, meaning that she would not be paid in the summer. It appears that the figure of $2,600 was calculated by averaging her ten-month salary over a twelve-month period ($31,883 divided by 12 = $2,656.92).