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

ALEX WILLIAMS v. DONNA HORTON (HOWELL)

Appeal from the Chancery Court for Giles County
No. 6729 Russell Parkes, Judge

No. M2025-00339-COA-R3-CV

Mother and Father filed competing petitions for modification of the parenting plan. Finding a material change in circumstances and finding modification to be in the child's best interests, the trial court named Father primary residential parent and awarded Father attorney's fees. Mother appeals. We affirm.

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

JEFFREY USMAN, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., C.J., and THOMAS R. FRIERSON II, J., joined.

L. Jeffrey Payne and Laurie Y. Young, Murfreesboro, Tennessee, for the appellant, Donna Horton (Howell).

Seth M. Lasater, Columbia, Tennessee, for the appellee, Alex Grover Williams.

OPINION

I.

Donna Horton, now Howell, (Mother) informed Alex Williams (Father) of her intent to relocate with their minor child to the State of Washington, where her husband, a member of the United States Army, had recently been stationed. Father opposed the relocation and petitioned for modification of the parenting plan to name him primary residential parent and to substantially increase his residential parenting time. He also sought sole power over educational decision-making for the child and asked the court to set a child support award. Mother responded with a competing petition to modify the parenting plan's residential parenting schedule, noting facial inconsistencies in the operative plan.

The trial court had previously entered the operative parenting plan, which was agreed to by Mother and Father, in April 2019. Pursuant to their agreement, Mother was named primary residential parent, and the parties shared joint decision-making in all major areas. Regarding residential time with each parent, the plan stated the following:

> Under the schedule set forth below, each parent will spend the following number of days with the children:
>
> Mother 182.5 days Father 182.5 days

The specifics of the schedule set forth in parenting plan, however, did not actually assign equal parenting time for Mother and Father; the schedule instead provided for the child to have more residential time with Mother than Father. The more detailed schedule provided as follows:

> Due to the distance between the parties' homes and their responsibilities with other children from previous relationships, Father will receive regular parenting time on the first, second, fourth, and (when applicable in a month) fifth weekends of each month, from Friday at 6:00 p.m. until Sunday at 8:00 p.m.
>
> In the Summer when school is not in session, Father will continue to have the weekends set out above, but the parties shall share the weekdays such that [F]ather receives 5 of the 9 summer weekday periods. Specifically, Father shall have the first full Monday through Friday period of summer beginning on Monday at 7:00 a.m. Mother will have the next full Monday through Friday period of summer, beginning on Monday at 7:00 a.m. This rotation will continue throughout the summer.

As for child support, the parenting plan stated that Mother's gross monthly income was $7,000 and that Father's gross monthly income was $9,000. Mother and Father used these incomes and the purported 182.5-day split, which inaccurately stated the parties had equal parenting time, to calculate a presumptive child support obligation of $14.00 to be paid monthly by Father. They agreed to a downward deviation in child support to $0, "as the child support obligation is de minim[i]s" and because "the distance between the parties' residences will cause them to incur substantial transportation costs."

In her counter-petition, Mother agreed with Father that there was a material change of circumstances, but she argued that the change only rose to a level sufficient to modify the residential parenting schedule, not to meet the higher burden for modification of the primary residential parent designation that Father was seeking. In addition to her request to relocate out of state with the child, Mother sought to modify the residential parenting schedule to conform more closely to the amount of time that each parent actually spent

with the child. According to her calculations, the parenting plan's "day-to-day schedule and holiday schedule reveal that Father only exercises 118 days on average per year" not 182.5. She also asked for an additional weekend of residential parenting time each month. Mother further requested that child support be modified in accordance with the applicable guidelines, and she asked for her reasonable attorney's fees incurred in the action.

Shortly before trial, Mother abandoned her request to relocate with the child, shifting the focus of the proceedings to the competing petitions to modify the parenting plan.[1] Mother explained that she had initially wanted to relocate in order to "live full time with her husband, her other child [from a prior relationship], her child [with Father], and [her] soon to be born new daughter [with her husband] so that they may live as a family unit." However, a different trial court had denied permission for her child from another prior relationship to relocate to Washington, and Mother informed Father that, accordingly, she no longer sought to relocate.

In the bench trial, Mother, Father, and Father's wife testified. Concerns about Mother's credibility and lack of truthfulness were a significant focus of the proceedings. Mother had previously pled guilty to two counts of aggravated perjury stemming from testimony she gave during the initial case that gave rise to the parenting plan that was in effect at the time of the trial in the present case. The perjury charges resulted from her denial, under oath, that she sent Father text messages while she was pregnant in which she told him that she had a prenatal paternity test performed and that the child was "for sure" not his biological child. Those text messages became a critical part of the trial related to the initial parenting plan, as Father had not spent any time with the child for the first five months of the child's life. Having believed Mother's representation via the text messages, Father indicated the reason he had not spent time with the child during those early months was because he had "no idea it was even remotely possible" that the child was his. Father indicated that he and Mother did not communicate for nearly a year after the text communication, until she reached out to him to tell him that the child looked like him and that she wanted to do a DNA test. Father had been a part of the child's life since he learned that the child was his.

Despite the perjury convictions, Mother testified at the modification hearing that she did not consider her actions to be lying and that she had only pled guilty because her "attorney told [her] to." Regarding her prior testimony, she stated, "I should have been more careful. I couldn't identify the text messages at the time, so I thought I didn't send them. I said I didn't. I spoke matter-of-factly, versus saying I don't recall or I can't identify that." She alleged that, because she "didn't remember much," she had not "want[ed] [Father's attorney] to ask [her] questions about the exact language of the text" at that time. She claimed that she had since learned that "it's ok to say 'I don't know' or 'I don't

[1] The trial court also considered Mother's petition to hold Father in civil contempt, which it denied. Mother has not appealed that decision.

remember'" and that she should "speak very carefully and be sure about what [she's] saying" when testifying.

Mother insisted, however, that she had never intentionally tried to deceive Father about his paternity of the child. Addressing the text message in which she denied Father's paternity, she stated the following: "So, hindsight learning that the baby is his, that is a lie. However, based on everything I knew at the time, I didn't believe that he was the father." Mother also testified that she had developed the belief that Father "did not believe or want to be the dad . . . and [she] made decisions around that." Nevertheless, she asserted that she had contacted Father "as soon as [she] knew the truth" in order to "unite them and rectify [her] mistake."

Mother and Father had agreed to the operative parenting plan in the midst of the initial parenting plan trial, and the perjury charges were resolved following that. Mother claimed that she had learned some "hard lessons" and "moved on" since completing probation, community service, and paying fines for her convictions.

While Mother insisted that she had learned her lesson, Father argued that Mother continued to be deceitful. He asserted that she lied to him about her marital status, where she lived, what school the child attended, and the child's health care. The parties' accounts as to these matters diverged widely.

Regarding his concerns with Mother's truthfulness about her marital status, Father testified that he received an email from Mother in November 2021 in which Mother told him that she would be getting married. Father came to believe she had gotten married in December 2021, though she had not actually married at that time. Father sent her a congratulatory message, and Mother responded without correcting his mistake. A few months later, Father asked Mother if he could meet her new husband, and again she did not correct him. For her part, Mother testified that the wedding had been postponed but that she had actually ended up marrying in September 2022. When questioned about whether she was deceitful in making Father believe she had married earlier than she really did, Mother responded, "I did not make him believe anything. I did not confirm or deny his digging for information." She told the court she "wasn't going to give [Father] information that he didn't need to have" and stated, "I don't feel like I have to update [Father] day by day on my personal life or personal change[s]." When pressed further, she conceded that, "sure," it was important for Father to know if his child's mother was married or not. However, she couched the admission with an accusation that, "historically speaking, [Father] would often ask those digging questions to see if I was in a relationship because he wanted to ask to have a sexual relationship with me." Mother indicated that "being that I was in a committed relationship, I was engaged, I wasn't going to engage in those kind of conversations with him where he was digging for information. I didn't know his intention, so I didn't confirm or deny."

Father also expressed frustration with Mother's history of relocations and attempted relocations. He testified that she had sought to move to Mississippi during the initial parenting plan litigation but never actually relocated. According to Father, Mother had indicated that she wanted to move to Mississippi for a job, but Mother was actually able to do the job remotely from Tennessee. He later found out that she did not take that job. Mother had also relocated multiple times within Tennessee, sometimes moving more than 50 miles, and she had recently sought to move to the State of Washington. Father had never opposed Mother's intra-state relocations because he "want[ed] to be accommodating and reasonable" and because the parties came to agreements about the location for parenting exchanges in connection with these relocations. At least one of the relocations brought Mother and the child closer to Father's residence, to which he "obviously" did not object but which he still pointed out to the court because he "thought it was noteworthy." Father conceded that he had moved residences also, but he claimed to have owned his current home, where he lived with his wife and their children, since 2019.

Mother admitted that, at one point during her moves, she had used the address of her oldest daughter's father to register the child for school. She testified that she had spoken with staff at the school about being in the process of moving to that area, and the school granted an exception to permit the child's enrollment for a year. She testified that the school permitted her to "use that address" for the child's enrollment, but she insisted that she "never claimed that we lived there." Father complained that Mother "didn't involve [him] in the registration decision," and he felt that her use of an address where she and the child did not reside was a "lie to the school." As for the school itself, Father indicated that he "had no problem with the school," which he described as "a great school" and a school at which the child had been "thriving."

The next school year, Mother again made a unilateral decision about the child's educational placement without informing Father. According to Mother, the school notified her that it did not have room for students who were not zoned to the area, so the child could no longer attend. She enrolled the child instead in a virtual school. Mother thought that she "had one brief conversation" with Father before the start of the school year, in which she had notified Father as to the school for which the child was zoned but failed to mention the virtual school. Regarding the zoned school, Mother indicated that she began to have "great concerns about just how [the child] would perform [at the zoned school]," especially based on the school's ratings. She claimed that she "didn't have a lot of time to look elsewhere," but then found the virtual school, which "was wonderful." She testified that it had "great" academic ratings.

Despite the parents having joint educational decision-making, Father did not actually learn that Mother had enrolled their child in virtual school until the first parenting exchange following the start of the school year. When he had texted Mother to ask about the child's first day of school, Mother had simply sent Father a photo of the child on the front porch. Father had believed that the child was attending the public school he and

Mother had previously discussed. When Father learned the truth, he felt deceived. He contacted Mother to address the matter. She responded that she needed the child's schooling to be flexible so that she could care for her sick father. Father indicated that he told Mother that the two of them needed to reconsider the child's school placement at the virtual school "either before next semester or before next school year." Mother, however, enrolled the child in virtual school again the following year.

In seeking modification of the existing plan, Father requested sole educational decision-making on the basis "that when [Mother] has executed educational decisions, they've been poor." He asserted that the virtual school was "not a healthy, conducive environment for a young boy to learn social skills and excel academically." He described it as essentially "home-schooling" but with a parent who did not have the time for home-schooling, where there were "two teachers for a short period of time during the school day and the rest of it is depending on the learning coach, or the parent, to augment the difference." It seemed to Father that the child "gets about two, maybe two and a half hours of teaching from a virtual teacher, and the rest of the time is self-work on a computer or something being taught by [Mother]," who was busy "trying to juggle full-time work, a spouse on the other side of the country, [and] multiple kids at home." Father testified that he was concerned that the child had a C grade in math at the time of trial, whereas the child was previously "making straight As." Father also testified that the school for which the child was zoned, despite Mother's purported ratings concerns with the zoned school, was actually rated higher academically than the virtual school, which was "at a 1" rating. Father wanted the child to attend the same school as his stepdaughter, which he said had a better rating of 4.

Mother was not as concerned as Father about the virtual school, the child's grades, or the child's socialization. Regarding the child's math grade, she thought it would "average out" over the semester as more grades were input. As for socialization, she explained that the child had "daily class breakouts where he is virtual with the other children. It's not in person, but he is interacting for problem-solving. They play in the classroom together, show and tell, they'll talk, socialize." She said that the child also regularly played with his cousins and other friends in person. While the child was not involved in any extracurricular activities, Mother asserted that they were "members of Urbanator, which allows us to have social time and physical activity in his home school environment."

Although Father did not seek to modify the provision of the parenting plan providing for joint health care decision-making, he expressed concerns about Mother's truthfulness regarding the child's mental health care. According to Father, Mother had also unilaterally taken the child to a counseling session without consulting him. Father was not opposed to counseling when "necessary," and the child had previously been in counseling after an incident in which Mother's former partner physically assaulted her while the child was present. However, at the time of trial, Father did not "see the point in [the child] seeing a

therapist when nothing is wrong," and Mother had not provided Father with any reason why the child may need therapy. For her part, Mother testified, "[the child] has made me concerned with things he has said — I won't mention them — that make it believable that he would benefit from seeing a counselor to learn more coping skills in blended families." She denied, however, having taken the child to any recent counseling appointments, though she did indicate that she once "set up an interview just to meet with a counselor [herself]" on the child's behalf. She claimed that the child "was not spoken to by [the counselor] outside of" an introduction and that he and his half-brother were "across the room playing in a toy area" during the interview.

Regarding the modifications that he was seeking, Father proposed a parenting plan that would make him primary residential parent, granting him 245.5 residential parenting days and granting Mother 119.5 residential parenting days. He said that he wanted these changes made to the parenting plan so that he could provide the child with "a stable environment, a stable home, . . . [and] a stable school." The proposed schedule would also be similar to the schedule with his daughter from a prior relationship, so the child would get to have "a lot of time together" with his half-sister.

According to Father, the actual amount of residential time he was already spending with the child each year was "somewhere between the 118 days that [Mother was] claiming and the 182.5 days that's in the plan." Father testified that he had "never sat down and penciled out the day-to-day calendar" but that "it was always understood that while we weren't exactly at 182.5 [days each], that difference would make up by agreeing on additional time" and that was what he and Mother had done since entry of the plan. As for the actual number of days he had spent with the child each year, Father testified, "if I have to guess, I would say it's exactly between the two [amounts], somewhere around that, you know, 140, 145, something like that." Mother disputed this testimony, asserting that Father had "never asked . . . for any additional time . . . maybe a day here and there, but nothing to get even close to the middle of 125 and 182."

Both parents testified that the other was a good parent who had a loving relationship with the child and was able to provide for the child's needs. They each testified to the child's close relationships with siblings and other family members. For her part, Mother testified that she had historically borne more of the child's expenses. She claimed that she "bought all of his school supplies," took him "to every doctor and dental appointment," and paid for his medical expenses, aside from "one medical that [Mother and Father] split and one recent dental [bill]." Father testified that he had been to "one of those appointments" for the child's primary care, but he did not know the name of the child's physician or dentist. Addressing expenditures on the child, he claimed, "I just simply don't know . . . whether I . . . spent more on our son tha[n] [Mother] did. I would say it's probably equal."

Mother proposed a plan that she described as "essentially what we've been following the last 6 years, except for I would have one additional weekend each month." She testified that, while she enjoyed the weekday time she had with the child, "there's no secret that the weekdays are school and chores and errands and doctor's appointments, and it's not the same as a weekend." Mother indicated that she "live[d] for" the one weekend she had the child each month. She further noted that an additional weekend would permit her "to have more bonding time with him" to "just play and relax." She also requested a change to the summer vacation schedule so that she would have the child for three consecutive weeks in order to visit her husband in Washington.

Mother was concerned that Father's proposed plan would be "swapped from what [the child] has known for eight years." In her view, it was "completely alienating him from the life that he's known." She worried that she would not "have any say in helping [the child] maintain the life and the friendships and relationships that he's always had." She wanted the child to be able to continue to spend time with her other children and to be able to see his maternal grandparents multiple times per week. She thought such a "substantial change of who's been his continuous primary caregiver" would be detrimental to the child emotionally. Mother also expressed concern about Father's new wife, who had been charged with criminal simulation for selling "counterfeit clothing" before dating Father.

Mother requested an award of attorney's fees in her answer to Father's modification petition, her counter-petition to modify and to relocate, and her petition for civil contempt. In support, she cited Tennessee Code Annotated sections 29-9-105 and 36-5-103(c). Mother also testified at trial that she was seeking an award of attorney's fees in the matter. She submitted as an exhibit an *Affidavit of Attorney's Fees and Costs for Mother*, which detailed the work her attorneys had done in connection with the matter. According to the exhibit, Mother had incurred attorney's fees of $10,285 up to trial.

Father requested an award of attorney's fees in his answer to Mother's petition for civil contempt only, though he asserted no basis for the award. The extent of Father's evidence addressing attorney's fees at trial was as follows:

> Q: So prior to that notice [that Mother was no longer pursuing relocation], did you incur attorney's fees in dealing with the relocation issue?
>
> A: Yes.
>
> Q: And have you thereafter incurred attorney's fees in dealing with the modification issue?
>
> A: I have.

> Q: And since October 9th or very shortly thereafter have you incurred attorney's fees in defending the contempt petition?
>
> A: Yes.

In closing arguments, for the first time, Father's attorney asked the court to award Father "attorney's fees for the prosecution of the petition with respect to the relocation, prosecution of his petition, defense of hers, and defense of the contempt." Father's attorney did not assert any basis for the requested award. At the close of the testimony, the trial court ordered both parties to submit attorney's fee affidavits. In its oral ruling, the court stated, "I will allow each [party] to submit attorney fee applications. Now, I'm not going to grant [Mother's] obviously, because [Father] is the prevailing party; but why I allow that is it gives me something to go by as to the reasonableness. And I think that's fair."

The parties filed post-trial attorney's fee affidavits. Mother's affidavit stated that she had incurred $14,430 in attorney's fees and $848.50 in costs in the matter. Father's affidavit stated that he sought costs and fees in the amount of $24,909.92 in the matter. Another $3,045.00 was listed on the billing sheet in connection with a separate matter, but Father indicated that he was not claiming reimbursement of those separate expenses.

Ultimately, the trial court determined that a material change had occurred and that modification of the parenting plan was in the child's best interests. Specifically, the court found "that the following constitute material change of circumstances":

> a. Each of these individuals since the adoption of the Parenting Plan has married. There are additional adults, stepparents in the home. There are multiple step and/or half-[siblings] in the home; and
>
> b. Both parties have moved residences.

The trial court also indicated that it "must make a determination under Tennessee Code Annotated § 36-6-101(a)(2)(B) as to whether a burden has been carried as it related to a change of custody." Additionally, the trial court stated that "[t]he Court will make additional findings of fact relative to all the foregoing."

The court analyzed the statutory factors for assessing the best interest of the child set forth in Tennessee Code Annotated section 36-6-106(a) (effective April 23, 2024 through May 1, 2025). Addressing these factors, the trial court found as follows:

> **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 this factor plays virtually not in favor of one parent or the other. Mother may have performed slightly more of the parenting responsibilities relating to the daily needs of the child, but simply slightly more. And the Court thus finds that while it weighs in favor of Mother, it does not weigh significantly in favor of Mother.

2. Each parent's or caregiver's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents and caregivers to facilitate and encourage a close and continuing parent child relationship between the child and both of the child's parents, consistent with the best interest of the child. In determining the willingness of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, the court shall consider the likelihood of each parent and caregiver to honor and facilitate court ordered parenting arrangements and rights, and the court shall further consider any history of either parent or any caregiver denying parenting time to either parent in violation of a court order;

The Court believes it can and should consider the proposed Permanent Parenting Plans. The Court has the Father who is essentially giving a mirror image, very much so, of the Parenting Plan they have been working under, except he is saying that he will be the designated primary residential parent.

While Mother is acknowledging that Father is a good father and the child loves Father, she now seeks to cut his parenting time for no apparent reason other than she wants an additional weekend.

And the Court finds that submission of . . . Mother's [proposed] Parenting Plan does not facilitate and encourage the close and continuing parent-child relationship that he has otherwise enjoyed. The Court further finds that, as it relates to this factor, the Court should consider the likelihood of each parent and caregiver to honor and facilitate Court ordered parenting arrangements and rights. Those rights should be construed through the lens of the 2019 Parenting Plan. The Court finds that there have been small issues relative to when to pick up and not pick up, and that is just the result of confusion. The Court does not think it is realistic for two individuals who are going to work together for five years and not, at some point during that five years, get confused by what can be a rather confusing Parenting Plan. And so the Court finds no fault for the Father in his beliefs that he was or was not to pick up the child at given points.

However, the Court finds it is clear that the parties agreed to joint-decision-making. And the Court finds Father's testimony relative to the choice of education for the child to be far more credible than Mother. The Court does not believe Mother when she says that it was her belief that she could choose and Father would be okay with it or that she didn't have time to look into other schools that may have been available, even out of zone or in zone in Maury County. And the Court finds the picture taken and sent to Father with the child in front of the house and not simply saying, "he is in home-school; I am home-schooling him," was misleading by Mother.

And the Court disagrees with counsel for Mother that this case is not about credibility. Virtually every custody case is about credibility, especially when you have two people, one who says black and one who says white. And that is one of the most distasteful things the Court does is to sit on the bench and have to make a credibility finding because the Court is essentially telling one or the other it does not believe that person. Frankly, it is harder than sending somebody to the Tennessee Department of Corrections for the Court. And these are the cases that wake the Court up at night, not sentencing somebody to 20 years as opposed to 14. As the parties can rest assured this case will wake the Court up at some point in the future.

But the Court finds that factor number two weighs certainly more in favor of Father considering Mother's proposed Parenting Plan and her inability or lack of desire for certainly not having worked with father relative to the educational decisions. The Court further finds, observing the demeanor of Mother, her explanation as to having her son meet with a therapist or a counselor is not credible. And the Court finds that she has made multiple unilateral parenting decisions in contravention of the agreement and the plan itself. And that would include the Court's now finding that she as caregiver did not honor and facilitate Court-ordered parenting arrangements.

3. Refusal to attend a court ordered parent education seminar may be considered by the court as a lack of good faith effort in these proceedings;

The Court finds there is no evidence as to this factor and it does not weigh in favor of either party.

4. The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;

The Court finds this factor weighs neither in favor of Mother or Father. They apparently both love this child and the child is lucky because of that. And both parties earn significant sums of money and have provided well for this child.

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;

This factor weighs in favor of Mother in that she has taken a greater responsibility for performing parental responsibilities. The Court finds that it is outweighed by some of the other factors.

6. The love, affection, and emotional ties existing between each parent and the child;

The Court finds this factor does not go in favor of one party or the other and that this child, based upon the testimony of Mother, has a wonderful relationship with Father. The fact is that Mother and Father both acknowledge that the child, when in the care of Father, is outdoorsy, enjoys baseball, golf, all sorts of outdoor activity. And the Court also finds, based on the testimony, that the child also enjoys many of those same things while in Mother's care. And the Court finds that the love, affection and emotional ties are strong between Mother and Father and child. So it weighs neither in favor of one or the other.

7. The emotional needs and developmental level of the child;

The Court also finds that the emotional needs and development level of the child appear to have been weighed. However, the Court will now make a finding relative to education. There are certain things that this Court must base its decision on and that is the proof that is elicited from the witness chair and or stipulations. The Court cannot decide the case on things in pre-trial briefs or what [Judge] Russ Parkes as a person may know as opposed to what the Judge hears in Court. What the Court has heard in this case in Court relative to the education is that the home-school, a term the Court uses broadly, that this child has been involved in for the last year has a rating of one, and that the other schools have a rating of four or three or one and a half. And thus, as it relates to the emotional needs and development level of the child, the Court finds that the Plan proposed by Father is superior to that which has been proposed by Mother and which Mother has enrolled the child in home-school. There is no other proof than that offered by Father before the Court relative to those schools, the development, and the educational

environment that the child would be exposed to while in custody or care of Father. The Court finds number seven weighs strongly in favor of Father.

8. The moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the child. The court may order an examination of a party under Rule 35 of the Tennessee Rules of Civil Procedure and, if necessary for the conduct of the proceedings, order the disclosure of confidential mental health information of a party under § 33-3-105(3). The court order required by § 33-3-105(3) must contain a qualified protective order that limits the dissemination of confidential protected mental health information to the purpose of the litigation pending before the court and provides for the return or destruction of the confidential protected mental health information at the conclusion of the proceedings;

One of the pre-trial briefs indicated that the Stepmother in Father's home had been convicted of some crime. The Court initially stated that it had not heard proof on that so it could not consider it. However, counsel for Mother reminded the Court that Father testified regarding Stepmother's prior conviction. The Court finds that does not alter its decision and/or findings. Father provided some explanation as to the crime. While the Court is not grading criminal offenses, as it relates to credibility, the Court finds it to be less offensive than Mother's aggravated perjury plea.

However, the Court finds it can consider Mother's previous pleas of guilty based on a factual basis to two counts of aggravated perjury when deciding this case. And the Court finds that is part of the moral fitness that this Court should and does now consider. The Court also was able to observe the demeanor of Mother during the cross examination, and the Court finds that Mother's demeanor was not good and at some points almost combative. Her inability to recall details was not believable. Her deposition testimony and testimony at trial that she simply couldn't remember the 2019 incident in the text messages was unbelievable. It was not only uncredible but incredible. This lady has admitted to having perjured herself two counts before this Court and the Court considers that.

However, mysterious to this Court, even after that, Father agreed that she was the fit and proper person to be designated the primary residential parent of the child; knowing that she lied to Father. [Father's counsel] said it well, it is a lie about a lie. But this Court can still consider that for purposes of Mother's moral fitness. And this Court does so. The Court also couples that with the Court's ability to observe Mother on the witness stand, and the

Court finds that at times throughout her testimony she was not credible at trial.

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 finds the child's interaction and interrelationships with the siblings to be good in both households. There is nothing that this Court has heard other than this child seems to love and get along with all of his half-siblings and/or step-siblings and thus on factor number nine, the Court does not favor one or the other.

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 views factor number 10 to be of great importance in this case. Clearly, if that is the factor to be used only looking in the rearview mirror, then anybody who has had custody and primary responsibility would always win factor number 10. But it is not simply continuity in the past. It is the anticipated continuity in the future. And the Court says that specifically referencing its obligation under Tennessee Code Annotated § 36-6-404 to adopt a parenting plan which should not be modified in the future.

Everyone recognizes that continuity in a child's life is best. And the proof has shown that since 2019, Mother has moved a number of times not just within Giles County or Maury County. She has moved back to Columbia. She has at one point proposed a move to Mississippi. She has now proposed through pleadings a move to the State of Washington. And that has all occurred within five years. And that would not provide this child with continuity. The Court has no faith that if it designated Mother primary residential parent that there would not be an attempt in the immediate future, or certainly in the distant future, to move this child yet again. And at this point, what the Court does know and the proof elicited is that she is married to a Chief Warrant Officer who was stationed in Washington. And while the Court salutes his service, it has to make a determination as to the continuity, which would include continuity of placement. And the Court finds that weighs heavily in favor of Father being designated primary residential parent.

11. Evidence of physical or emotional abuse to the child, to the other parent or to any other person. The court shall, where appropriate, refer any issues of abuse to juvenile court for further proceedings;

The Court finds that, although the child may have been in the home when Mother's then-boyfriend abused her, that this child has not been subject to physical or emotional abuse. Frankly, the Court salutes both parents for communicating and saying the child may need to see a therapist about this. The Court would hope that would be what every parent would do. And the communication between the two parents is what the Court would hope every parent would do. So the Court finds that number 11 is simply not applicable and there is no proof relative to the same.

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 not heard from the Step-Father, nor has it heard much about him other than that he is in the Army and has been there for seventeen years. The Court has not received any proof today relative to the Stepmother, who the Court has now seen, and while she was somewhat evasive at times on the witness stand, there is no proof that she has done anything contrary to or to harm this young man. The Court initially again stated that he had not heard proof of her criminal conviction; however, counsel for Mother reminded the Court that Father testified regarding Stepmother's prior conviction. The Court finds that does not alter its decision and/or findings. The Court finds factor number twelve does not weigh in favor of Father or Mother.

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

This factor does not apply.

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

The Court finds that this child is going to be in school for most of the year, but for nine weeks of the year. Mother's work schedule may be slightly better than Father's, but only slightly. And thus, while that may favor Mother, it will be ever so slightly.

15. Any other factors deemed relevant by the Court.

> Here, again, is where the Court believes that conflicting testimony must also be weighed. And the Court finds that to the extent there is conflicting testimony, after observing the demeanor of the parties on the witness stand, Father is simply a better witness than Mother. He answers questions in the Court's view candidly. Although the Court is admittedly troubled about this telephone thing and who sent the message.[[2]]
>
> As it related to the right of first refusal, which has been a big issue in this case for both parties, it is not a big issue for this Court. The Court does not see anything really wrong with [Mother] saying the child is going to a friend's house to have a play date or stay overnight with a grandparent because he wants to stay there. The Court does not see any problem if Mother's Husband comes home and Mother needs to go somewhere and have a spa day, leaving the child with her Husband for a while. Just like the Court does not find any fault with Father having his Wife pick up the child or stay with him while Father is called to work.

Having considered the statutory factors, the trial court adopted Father's proposed parenting plan, naming Father primary residential parent and setting forth a residential parenting schedule under which Father would have the child for 245.5 days and Mother would have the child for 119.5 days. The trial court ruled that the parties would retain joint decision-making for non-emergency health care and religious upbringing. Regarding extracurricular activities, the parents would also maintain joint decision-making, except that "[n]either parent will have decision-making abilities regarding the child's work or sports activities during the other parent's time." Educational decision-making, however, was modified and assigned solely to Father. Based on the changes in the residential parenting schedule, child support was also modified with Mother being responsible for paying $418 to Father each month. As for attorney's fees, the trial court found that Father was "entitled to a judgment and award of attorney fees and costs against Mother in the amount of $27,160, plus post-judgment interest at the statutory rate, for which execution may issue if necessary."

Mother appeals, raising the following issues:

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[2] The court appears to be referencing an event about which Father's wife testified, wherein Father was out of the country and his wife retained his phone in her possession. Mother had messaged Father about picking up the child and about an allergic reaction the child had. Father's wife responded to Mother from Father's phone without informing Mother that it was not Father responding to the message. Father's wife testified that this was "the only time" this occurred.

> [I.] Whether the trial court erred in modifying custody to designate Father as the primary residential parent and, as a result, modifying the residential parenting schedule as well.
>
> [II.] Whether the trial court erred in awarding attorney's fees and costs to Father without making the proper findings, and whether Mother should be awarded her attorney's fees incurred at trial.
>
> [III.] Whether Mother should be awarded attorney's fees on appeal.

Father adds the following issue:

> [IV.] Whether Father should be awarded his attorney's fees and costs on appeal.

II.

Following a bench trial, we review the trial court's findings of fact "de novo upon the record with a presumption of correctness, 'unless the preponderance of the evidence is otherwise.'" *Mathes v. 99 Hermitage*, *LLC*, 696 S.W.3d 542, 552 (Tenn. 2024) (quoting *Regions Bank v. Thomas*, 532 S.W.3d 330, 336 (Tenn. 2017) (quoting Tenn. R. App. P. 13(d))); *see Armbrister v. Armbrister*, 414 S.W.3d 685, 692 (Tenn. 2013). "We review the trial court's resolution of questions of law de novo, with no presumption of correctness." *Armbrister*, 414 S.W.3d at 692.

"When it comes to live, in-court witnesses, appellate courts should afford trial courts considerable deference when reviewing issues that hinge on the witnesses' credibility because trial courts are 'uniquely positioned to observe the demeanor and conduct of witnesses.'" *Kelly v. Kelly*, 445 S.W.3d 685, 692 (Tenn. 2014) (citations omitted); *Mitchell v. Archibald*, 971 S.W.2d 25, 29 (Tenn. Ct. App. 1998) ("One of the most time-honored principles of appellate review is that trial courts are best situated to determine the credibility of the witnesses and to resolve factual disputes hinging on credibility determinations."). In conducting this deferential review, "a trial court's determination of credibility will not be overturned on appeal unless there is clear and convincing evidence to the contrary." *Allstate Ins. Co. v. Tarrant*, 363 S.W.3d 508, 515 (Tenn. 2012).

III.

Mother contends that the trial court erred in modifying the parenting plan to designate Father primary residential parent and to grant him a greater share of residential parenting time with the child. Mother argues that the trial court erred in finding a material change in circumstance sufficient to modify the primary residential parent designation.

Tennessee courts apply a two-step analysis to requests for modification of a parenting plan. *C.W.H. v. L.A.S.*, 538 S.W.3d 488, 496 (Tenn. 2017). The threshold issue is whether a material change in circumstances has occurred. *Id.* (citing *Armbrister*, 414 S.W.3d at 697); Tenn. Code Ann. § 36-6-101(a)(2)(B), (C). If the court finds that a material change has occurred, the court then must determine whether modification is in the best interest of the child by analyzing the statutory factors set forth in Tennessee Code Annotated section 36-6-106. *Brunetz v. Brunetz*, 573 S.W.3d 173, 179 (Tenn. Ct. App. 2018).

"[D]etermining the details of parenting plans is peculiarly within the broad discretion of the trial judge." *Armbrister*, 414 S.W.3d at 693 (internal quotation omitted). Accordingly, appellate courts review a trial court's decisions regarding parenting plans for an abuse of discretion. *C.W.H.*, 538 S.W.3d at 495 (citing *Armbrister*, 414 S.W.3d at 693). "An abuse of discretion occurs when the trial court applies incorrect legal standards, reaches an illogical conclusion, bases its decision on a clearly erroneous assessment of the evidence, or employs reasoning that causes an injustice to the complaining party." *West v. Schofield*, 460 S.W.3d 113, 120 (Tenn. 2015). "Appellate courts should not overturn a trial court's decision merely because reasonable minds could reach a different conclusion." *C.W.H.*, 538 S.W.3d at 495 (citing *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001)).

Tennessee Code Annotated section 36-6-101(a)(2)(B) sets forth the statutory standard for modification of the primary residential parent designation:

> If the issue before the court is a modification of the court's prior decree pertaining to custody, the petitioner must prove by a preponderance of the evidence a material change in circumstance. A material change of circumstance does not require a showing of a substantial risk of harm to the child. A material change of circumstance may include, but is not limited to, failures to adhere to the parenting plan or an order of custody and visitation or circumstances that make the parenting plan no longer in the best interest of the child.

Tenn. Code Ann. § 36-6-101(a)(2)(B); *see Rigsby v. Edmonds*, 395 S.W.3d 728, 734 (Tenn. Ct. App. 2012) (explaining that the statute's use of the term "custody" equates to the designation of "primary residential parent").

The standard for establishing a material change of circumstances differs depending on whether the court is asked to designate a different primary residential parent or to make a more basic change to a residential parenting schedule. *McAdams v. McAdams*, No. E2019-02150-COA-R3-CV, 2020 WL 4723762, at *3 n.4 (Tenn. Ct. App. Aug. 13, 2020). In assessing whether a sufficient showing has been made, the burden of proving a material change in circumstances is more demanding for modification of primary residential parenting status as compared to modification of a residential parenting schedule. *Leath v.*

Flowers, No. W2024-00047-COA-R3-JV, 2025 WL 1170764, at *5 n.6 (Tenn. Ct. App. Apr. 22, 2025); *see also Rushing v. Rushing*, 692 S.W.3d 82, 90 (Tenn. Ct. App. 2023) (holding "that a lower threshold of proof applies to a material change in circumstance to justify a change in the residential parenting schedule" as compared to the threshold required for modification of custody); *Tutor v. Tutor*, No. W2019-00544-COA-R3-CV, 2020 WL 1158075, at *2 (Tenn. Ct. App. Mar. 10, 2020) ("Tennessee courts have required a higher measure of proof when the petitioner seeks a change in custody (i.e., a change in the primary residential parent) than when he or she seeks only a change in the existing parenting schedule.").

In considering whether a material change of circumstances has occurred, this court has observed the following:

> Although there are no bright-line rules for determining whether such a change has occurred, there are several relevant factors to consider: (1) whether the change occurred after the entry of the order sought to be modified; (2) whether the change was not known or reasonably anticipated when the order was entered; and (3) whether the change is one that affects the child's well-being in a meaningful way. "Not every change in a child's life or the life of his or her parents rises to the level of a material or significant change warranting a change in his or her primary residential parent."

Rushing, 692 S.W.3d at 90 (quoting *McAdams*, 2020 WL 4723762, at *4) (citations omitted).

While there is reason for skepticism as to whether the trial court's two expressly stated rationales for the existence of a material change of circumstances in and of themselves support the trial court's finding of a material change of circumstances for purposes of modifying primary residential parent status,[3] the trial court's additional findings support its ultimate conclusion. In rendering its decision, the trial court expressly indicated that it would "make additional findings of fact relative to all the foregoing," including "whether [Father's] burden has been carried as it related to a change of custody."

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[3] While a new spouse or relocation can be the underlying basis or catalyst for a material change of circumstance warranting a change in primary residential parenting designation, a new spouse or a relocation, standing alone, is not a material of change of circumstances for purposes of changing the primary residential parent. The "marriage of either parent does not, in and of itself, constitute a material change of circumstances warranting a change in custody." *In re T.C.D.*, 261 S.W.3d at 744. Depending upon the particular circumstances, a new spouse can potentially provide a basis for a finding of a material change of circumstances. *See*, *e.g.*, *id.* at 744-46; *Leath*, 2025 WL 1170764, at *5-6. Like the marriage of a parent, "relocation, in and of itself, is not a material change of circumstances sufficient to justify a redetermination of custody." *Gensmer v. Gensmer*, No. W2017-00443-COA-R3-CV, 2017 WL 5952918, at *14 (Tenn. Ct. App. Nov. 30, 2017) (quoting *Winans v. Winans*, No. M2004-02566-COA-R3-CV, 2006 WL 1865027, at *8 (Tenn. Ct. App. June 30, 2006)); *Taylor v. Taylor*, 849 S.W.2d 319, 328 (Tenn. 1993).

Additionally, both parties agreed at oral argument that this court could consider the entirety of the trial court's order, including the findings set forth within the trial court's best interest analysis, in determining whether a sufficient change of circumstance occurred so as to constitute a material change of circumstances for changing the primary residential parent.[4]

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[4] At oral argument, Mother's attorney thoughtfully explained Mother's position as follows:

[Judge's Question:] In figuring out . . . what exactly the material change of circumstances are that we are supposed to look at? I want to get a clear sense of what is fair game for consideration because there are a number of things referenced in the best interest analysis, and I am not sure whether they are fair game or not for the material change of circumstance analysis. In looking at the order, the court . . . makes a finding . . .:

> the following constitute material change of circumstances:
>
> a. Each of these individuals since the adoption of the Parenting Plan has married. There are additional adults, stepparents in the home. There are multiple step and/or half-[siblings] in the home; and
>
> b. Both parties have moved residences.

In considering whether the trial judge erred with regard to the material change of circumstances, is that where we are limited? Are those two — those are the material change of circumstances, and if that is enough, then it is enough, and if it is not enough, then it is not sufficient? Or can we venture into the best interest analysis in considering whether a material change of circumstances occurred?

[Mother's Attorney:] Sure, and I understand the significance of your question because without that threshold analysis of the material change in circumstance, the heightened threshold analysis — this being a change in [primary residential parent] designation — the court never should have conducted the best interest analysis. But it did so — the question is whether or not you should consider those. Our position would be that, even if you did, it still does not rise to the higher standard.

[Judge's Question:] Before we get to the even if, should we? Trial courts speak through their written orders. This is what the trial judge said the material change of circumstance are. Is this court free to go through the best interest analysis and say, 'Well, maybe this [(the trial court's findings as to material change of circumstance)] is insufficient, but I can see something in there that might have been — which the trial judge did not say was a material change of circumstance, but maybe that actually does constitute a material change of circumstance." Is that fair game, or are we confined to the order that says, 'Here is what I found it to be'?

[Mother's Attorney:] Sure, and I appreciate the distinction between the even if and what if they did. And I assure you when I was researching this case I was looking for a silver bullet along those lines — if I could have found a case to draw on that explicitly said, 'You are supposed to stop and not even look at this other stuff the court said . . . .'

Mother has taken the position that, even reviewing the order as a whole, there was no material change sufficient to change the primary residential parent to Father. Father has responded that the trial court made "multiple findings of a material change in circumstances." From our review of the record and the trial court's order, we conclude that the trial court's findings regarding the child's education support its ultimate determination that that a material change in circumstances occurred.

The trial court made the following findings regarding changes to the child's education since entry of the operative parenting plan:

> [T]he Court finds it is clear that the parties agreed to joint-decision-making. And the Court finds Father's testimony relative to the choice of education for the child to be far more credible than Mother. The Court does not believe Mother when she says that it was her belief that she could choose and Father would be okay with it or that she didn't have time to look into other schools that may have been available, even out of zone or in zone in Maury County. And the Court finds the picture taken and sent to Father with the child in front of the house and not simply saying, "he is in home-school; I am home-schooling him," was misleading by Mother.
>
> [. . . .]
>
> . . . [Mother did not] work[] with [F]ather relative to the educational decisions. . . . And the Court finds that she has made multiple unilateral parenting decisions in contravention of the agreement and the plan itself.
>
> [. . . .]
>
> . . . What the Court has heard in this case in Court relative to the education is that the home-school, a term the Court uses broadly, that this child has been involved in for the last year has a rating of one, and that the other schools have a rating of four or three or one and a half. And thus, as it relates to the emotional needs and developmental level of the child, the Court finds that

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I would certainly prefer the court did not look at the best interest analysis because some of it helps us and some of it hurts us, but the two [material change of circumstance findings] would certainly give us a win. The best interest analysis muddies the water. But to give you a fair assessment of my understanding of the law and the sort of sense I get, I would tend to think that, you know, the courts of appeal are meant to review trial court orders in their completeness, even if something's out of order or the factors weren't, you know, gone through with exacting detail, . . . the cumulative overall findings in the court's order could still be considered. So I would say that my inclination from reading over the law . . . would tend to indicate that the court, this court, could probably consider the entirety of the order.

> the Plan proposed by Father is superior to that which has been proposed by Mother and which Mother has enrolled the child in home-school.

The record further demonstrates that, after entry of the parenting plan, Mother unilaterally enrolled the child in virtual school without any input from Father. Even after Father expressed that he felt deceived by Mother and that he wanted to change the child's school placement at the next semester or next school year, Mother again unilaterally enrolled the child in virtual school.

Mother's refusal to adhere to the joint educational decision-making required by the parties' parenting plan was certainly not anticipated at the outset and evidence at trial demonstrated that it caused harm to the child. Father testified that, at the virtual school, the child had only a few hours of interaction with virtual teachers each day and then was reliant on self-study or Mother's teaching for the remainder of the day. Such reliance was especially problematic because Mother was being pulled in multiple directions involving responsibilities ranging from care for other children and for her ailing Father to her work obligations. As for the school itself, Father observed that the virtual school had a poorer academic achievement rating than the public schools for which he and Mother were zoned. Father further testified that the child's math grade had dropped significantly and that he was concerned about the child's lack of in-person socialization with other children during the school day. The trial court made adverse findings as to Mother's credibility and rejected her contention that the virtual school actually had a higher rating, her purported reason for selecting it. The trial court instead found that the virtual school had an extremely low academic rating and the zoned in-person schooling available to the child had a significantly higher educational quality rating. The trial court was plainly extremely concerned about the decision Mother made regarding the child's education and the injuries caused thereby, her manner of making that decision in contravention of the parenting plan, her untruthfulness in connection with that decision, and the deficiency of her performance of the role of educator in the home-schooling virtual school that she had independently decided upon for her son. Additionally, the trial court also made findings regarding the instability Mother's choices had caused for her child and the deficiencies as to her moral fitness for parenting, expressing particular concern about Mother's recurring lack of truthfulness.

Mother asserts that a change of school alone is insufficient to constitute a material change of circumstance for purposes of changing the primary residential parent. However, this is an overly thin understanding of the trial court's findings. The trial court did not simply find that the child had changed schools and there were differences between the two schools. The trial court's ruling reflects an understanding that the change of schools impacted the child's academic education and socialization in a meaningful and adverse manner.

Ultimately, having considered the trial court's findings and the record in light of the arguments presented to us, we conclude that the evidence does not preponderate against the trial court's finding that there was a material change in circumstance sufficient to change the primary residential parent from Mother to Father.

IV.

Having concluded that the trial court did not abuse its discretion in finding a material change in circumstance sufficient to warrant a change in the primary residential parent, we turn to Mother's contention that the trial court erred in its analysis of the best interest of the child. In challenging the trial court's decision, Mother contends that the trial court abused its discretion by incorrectly weighing the statutory factors in reaching its decision as to the best interest of the child.

In considering a trial court's ruling as to custody, "[a]ppellate courts should reverse custody decisions 'only when the trial court's ruling falls outside the spectrum of rulings that might reasonably result from an application of the correct legal standards to the evidence.'" *Kelly*, 445 S.W.3d at 696 (quoting *Armbrister*, 414 S.W.3d at 693). The determination of a child's best interest in making a primary residential parent determination is "a fact-sensitive inquiry" in which "[t]he relevancy and weight to be given each factor depends on the unique facts of each case. Thus, depending upon the circumstances of a particular child and a particular parent, the consideration of one factor may very well dictate the outcome of the analysis." *Grissom v. Grissom*, 586 S.W.3d 387, 393 (Tenn. Ct. App. 2019) (quoting *Solima v. Solima*, No. M2014-01452-COA-R3-CV, 2015 WL 4594134, at *4 (Tenn. Ct. App. July 30, 2015)).

Specifically, Mother's arguments appear to address the trial court's findings in connection with factors (1), (2), (4), (5), (6), (7), (8), (9), and (10) of Tennessee Code Annotated section 36-6-106(a):

> (1) The strength, nature, and stability of the child's relationship with each parent, including whether one (1) parent has performed the majority of parenting responsibilities relating to the daily needs of the child;
>
> (2) Each parent's or caregiver's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, consistent with the best interest of the child. In determining the willingness of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, the court shall consider the likelihood of each parent and caregiver to honor and facilitate court ordered parenting arrangements and rights, and

> the court shall further consider any history of either parent or any caregiver denying parenting time to either parent in violation of a court order;
>
> . . .
>
> (4) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;
>
> (5) The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities;
>
> (6) The love, affection, and emotional ties existing between each parent and the child;
>
> (7) The emotional needs and developmental level of the child;
>
> (8) The moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the child. The court may order an examination of a party under Rule 35 of the Tennessee Rules of Civil Procedure and, if necessary for the conduct of the proceedings, order the disclosure of confidential mental health information of a party under § 33-3-105(3). The court order required by § 33-3-105(3) must contain a qualified protective order that limits the dissemination of confidential protected mental health information to the purpose of the litigation pending before the court and provides for the return or destruction of the confidential protected mental health information at the conclusion of the proceedings;
>
> (9) The child's interaction and interrelationships with siblings, other relatives and step-relatives, and mentors, as well as the child's involvement with the child's physical surroundings, school, or other significant activities;
>
> (10) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;
>
> . . . .

Tenn. Code Ann. § 36-6-106(a) (effective April 23, 2024 through May 1, 2025).

As to factors (1) and (5), Mother does not quarrel with the trial court's finding that these factors favored her, nor does she disagree with the trial court's finding that factors (4), (6), and (9) were neutral. Instead, as to these factors, her argument is that the neutrality of the latter and the weight of the former strongly indicate that the child's best interest is

not served by changing the primary residential parent status. Reasonable minds could differ on the weight to be allocated to these factors given the particular circumstances of this case when determining the child's best interest. Mother makes a reasoned argument that these factors point toward the child continuing with her as a primary residential parent, but the trial court's conclusion that other factors are of more importance in light of the particular circumstances of the present case is not unreasonable. We simply do not see any basis for finding an abuse of discretion in connection with the trial court's analysis of these factors.

Mother's argument suggests a more fundamental error with regard to the trial court's analysis as to factors (2), (7), (8), and (10). As to factor (2), Mother essentially argues that she has facilitated Father's visitation with child throughout the relationship and that there is nothing in the record that suggests she has improperly interfered. She also suggests that her attempt to increase her parenting time and to reduce Father's parenting time through seeking modification of the parenting plan should not be considered. Accepting for purposes of argument that the trial court erred in considering Mother's proposed parenting plan in determining factor (2) favored Father, the trial court's findings still properly support a determination that factor (2) favors Father. Tennessee Code Annotated section 36-6-106(a)(2) expressly provides that "[i]n determining the willingness of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, the court shall consider the likelihood of each parent and caregiver to honor and facilitate court ordered parenting arrangements and rights . . . ." The trial court made a determination, which is supported by the record, that Mother had not honored the court ordered parenting arrangements with regard to the education of the child. In doing so, Mother cut Father out of having a parental role in educational decision-making for the child with the effect of adversely impacting the education and socialization of the child. This was plainly a matter of significant concern for the trial court, and the record does not reveal error by the trial court in its determination as to this matter.

As to factor (7), Mother argues in defense of the virtual school that she selected for the child. In terms of academic quality, she argues in favor of the quality of the program. Mother also defends the socialization available through the online educational program and outside socialization opportunities through relationships with broader family, such as cousins, and home-schooling related community socialization programs. The trial court heard dueling testimony about the quality of the program and the socialization of the child in connection with the program and beyond. The trial court expressed concerns about Mother's credibility and plainly resolved the dueling testimony in favor of Father's understanding of the deficiencies of the virtual program in which Mother had enrolled the child to the child's detriment.

"When it comes to live, in-court witnesses, appellate courts should afford trial courts considerable deference when reviewing issues that hinge on the witnesses' credibility

because trial courts are 'uniquely positioned to observe the demeanor and conduct of witnesses.'" *Kelly*, 445 S.W.3d at 692 (Tenn. 2014) (citations omitted); *see Mitchell v. Archibald*, 971 S.W.2d 25, 29 (Tenn. Ct. App. 1998) ("One of the most time-honored principles of appellate review is that trial courts are best situated to determine the credibility of the witnesses and to resolve factual disputes hinging on credibility determinations."). In conducting this deferential review, "a trial court's determination of credibility will not be overturned on appeal unless there is clear and convincing evidence to the contrary." *Allstate Ins. Co. v. Tarrant*, 363 S.W.3d 508, 515 (Tenn. 2012). There is simply no basis from the record before us to conclude that the trial court erred in its assessment of the relative credibility of Father and Mother.

As to factor (8), Mother's argument focuses on the trial court assigning significant weight to her prior perjury in determining best interest, which was known at the time of the initial decision to award her primary residential parent status. However, the trial court's ruling was not limited exclusively to addressing her past perjury convictions; rather, the trial court determined that Mother was continuing to be untruthful in these proceedings and was untruthful in her communications with Father. For example, the trial court noted her deception in connection with the child's transition to a virtual school. The trial court certainly considered the prior perjury convictions but did so in the context of a broader determination that, in combination with her more recent behavior, Mother has significant deficiencies with regard to honesty. Even if we were to accept for purposes of argument Mother's contention that her perjury in the earlier proceedings would not in isolation be a proper consideration, we find no fault in the trial court seeing a more fundamental problem of a general lack of truthfulness that is now apparent based upon Mother's subsequent actions.

Regarding factor (10), Mother asserts that the trial court's concern with instability was unwarranted. She essentially faults the trial court for considering not simply her past relocations but the possibility of future relocation. The trial court however, reflected upon a pattern of repeated relocations and attempted relocations by Mother. It also considered the instability in the child's circumstances arising from Mother being married and having a young child with a spouse who lives on the opposite side of the country and her understandable desire to be together in the same place with her spouse. The record supports the trial court's concern with instability that this causes for a child whose life is anchored in Tennessee.

While there are imperfect aspects of the trial court's analysis and reasonable minds could differ as to the overall conclusion, the record simply does not support Mother's contention that the trial court abused its discretion in concluding that making Father the primary residential parent was in the child's best interest.

V.

Mother also argues that the trial court erred in awarding attorney's fees to Father. Her argument is grounded in two distinct rationales. Insofar as her argument is predicated upon the trial court having erred in ruling for Father by changing the primary residential parent from Mother to Father, we have rejected her contention that the trial court erred in doing so. Accordingly, her claim that this underlying error rendered the award of attorney's fees improper loses its underpinning. However, Mother also points to deficiencies in the trial court's order awarding attorney's fees to Father.

With regard to attorney's fees, Tennessee "adheres to the 'American rule.'" *Cracker Barrel Old Country Store, Inc. v. Epperson*, 284 S.W.3d 303, 308 (Tenn. 2009). "Under the American rule, 'a party in a civil action may recover attorney fees only if: (1) a contractual or statutory provision creates a right to recover attorney fees; or (2) some other recognized exception to the American rule applies, allowing for recovery of such fees in a particular case.'" *Individual Healthcare Specialists, Inc. v. BlueCross BlueShield of Tenn., Inc.*, 566 S.W.3d 671, 705 (Tenn. 2019) (quoting *Cracker Barrel*, 284 S.W.3d at 308).

There are potential reasons for concern regarding the award of attorney's fees to Father in this case. There was no express reference to attorney's fees in Father's petition; the first express reference to seeking an award of attorney's fees to Father did not arise in the modification proceedings until closing arguments from Father's counsel.[5] There is also a thinness to the trial court's explanation of its reasoning regarding the award of attorney's fees to Father and the amount thereof. In its order, the trial court wrote:

> The Court instructed counsel for both parties to submit Attorney Fee Affidavits, which they did. The Court will not grant Mother's fees because Father was the prevailing party; however, it gives the Court something to go by as to reasonableness, and the Court thinks that is fair. After reviewing the same, the Court finds Father is entitled to a judgment and award of attorney fees and costs against Mother in the amount of $27,160, plus post-judgment interest at the statutory rate . . . .

The prevailing party statute, under which the trial court appeared to grant Father's request, does not mandate the award of attorney's fees to the prevailing party in a modification action, but grants the court discretion to decide whether to award reasonable attorney's fees. *See* Tenn. Code Ann. § 36-5-103(c); *Colley v. Colley*, 715 S.W.3d 293, 313 (Tenn. 2025) ("Awards of attorney fees under section 36-5-103(c) are permissive, not mandatory."); *Eberbach v. Eberbach*, 535 S.W.3d 467, 476 (Tenn. 2017) ("[T]here is no absolute right to such fees . . . ."). Furthermore, this court has observed that "in order '[t]o

[5] Father's amended modification petition does not include an express request for attorney's fees but does in its prayer for relief seek "further and general relief to which [Father] may be entitled . . . ."

enable appellate review, trial courts should clearly and thoroughly explain the particular circumstances and factors supporting their determination of a reasonable fee in a given case.'" *Blount v. Blount*, 720 S.W.3d 295, 354 (Tenn. Ct. App. 2024) (quoting *Wright ex rel. Wright v. Wright*, 337 S.W.3d 166, 186 (Tenn. 2011)). A trial court's failure to adhere to such process has resulted in this court vacating awards and remanding to trial courts to adhere to the proper procedure. *Id.* at 354. This court, however, has also noted that such a challenge can be waived by failure to challenge the reasonableness of the award of attorney's fees before the trial court. *Id.*; *see also Retail Direct, LLC v. Payano Express, LLC*, No. M2024-01896-COA-R3-CV, 2026 WL 1430699, at *8 (Tenn. Ct. App. May 21, 2026) ("It is a well-settled principle of Tennessee appellate practice that issues raised for the first time on appeal are waived.").

Father asserts that waiver is precisely what has occurred in the present case. In this case, the trial court noted that it would be considering the reasonableness of an award of attorney's fees to Father and expressly invited "either side" to initiate a hearing on "the attorney's fees issue." Mother, however, failed to initiate such a proceeding. Here, Mother has pointed us to nothing in the record to demonstrate that she challenged the attorney's fee award before the trial court. From our review of the record, we have found no indication that she challenged the award. Having failed to do so, we conclude that Father is correct that Mother has waived this issue.

VI.

Father seeks attorney's fees on appeal pursuant to the prevailing party statute, Tennessee Code Annotated section 36-5-103(c). The statute states:

> A prevailing party may recover reasonable attorney's fees, which may be fixed and allowed in the court's discretion, from the nonprevailing party in any criminal or civil contempt action or other proceeding to enforce, alter, change, or modify any decree of alimony, child support, or provision of a permanent parenting plan order, or in any suit or action concerning the adjudication of the custody or change of custody of any children, both upon the original divorce hearing and at any subsequent hearing.

Tenn. Code Ann. § 36-5-103(c).

When a party requests a discretionary award of fees, "the Court of Appeals should analyze any such request by exercising its discretion to determine whether an award to the prevailing party is appropriate." *Eberbach*, 535 S.W.3d at 477. In making a determination of whether to award attorney's fees to a prevailing party, this court has considered the parties' economic circumstances, whether the appeal was in good faith, and any other equitable factor relevant in the particular case. *See*, *e.g.*, *Blount*, 720 S.W.3d at 357; *Chase v. Chase*, 670 S.W.3d 280, 304-05 (Tenn. Ct. App. 2022); *Baxter v. Rowan*, 620 S.W.3d

889, 897-98 (Tenn. Ct. App. 2020); *Ellis v. Ellis*, 621 S.W.3d 700, 709 (Tenn. Ct. App. 2019). "Concerning *appellate* attorney's fees, it is within the sole discretion of this Court whether to award said fees." *Ford v. Ford*, No. M2023-01762-COA-R3-CV, 2026 WL 125827, at *11 (Tenn. Ct. App. Jan. 16, 2026).

Father fails to articulate or develop an argument for why attorney's fees are warranted in the present case, failing to engage with the considerations that have been set forth by this court as guiding our determination in assessing such requests. Additionally, while unsuccessful in her appeal, Mother has presented thoughtful and developed arguments in advancing her contention that the trial court erred. Father is also economically better positioned than Mother to pay the costs of attorney's fees on appeal. There is no readily discernable equitable factor in the present case that points towards an award of attorney's fees being warranted in this case. Accordingly, we decline to award Father attorney's fees in connection with this appeal.

VII.

For the aforementioned reasons, we affirm the judgment of the trial court. Costs of this appeal are taxed to the appellant, Donna Horton (Howell), for which execution may issue if necessary. The case is remanded for such further proceedings as may be necessary and consistent with this opinion.

s/ Jeffrey Usman
JEFFREY USMAN, JUDGE