

FILED

08/27/2026

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 4, 2026

JOSHUA M. GRACIN v. ANN MARIE HARVEY

Appeal from the Chancery Court for Rutherford County
No. 21CV-974 Bonita Jo Atwood, Judge

No. M2025-00619-COA-R3-CV

In this post-divorce action, the father challenges two orders in which the trial court found him to be in civil contempt. Discerning no reversible error, we affirm the trial court and remand for a determination of the mother's reasonable attorney's fees incurred on appeal.

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

ANDY D. BENNETT, J., delivered the opinion of the Court, in which JOHN W. MCCLARTY, P.J., E.S., and VALERIE L. SMITH, J., joined.

Joshua M. Gracin, Labadie, Missouri, pro se.

Heather Graves Parker, Murfreesboro, Tennessee, for the appellee, Ann Marie Harvey.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

Joshua M. Gracin ("Father") and Ann Marie Harvey ("Mother") were divorced by order of the court on February 12, 2015. In the final decree, the court incorporated the parties' Marital Dissolution Agreement ("MDA") and a permanent parenting plan for their four minor children. As relevant here, the MDA and permanent parenting plan required Father to provide support to Mother in the following ways: (1) child support in the amount of \$718 on the first and fifteenth of every month, (2) alimony in solido in the amount of \$11,325, and (3) alimony in solido in the amount of \$12,000 for Mother's attorney's fees. Father was also required to pay his prorated share of the children's uncovered medical and dental expenses.

Following the divorce, Father failed to pay the alimony in solido and paid only a portion of Mother's attorney's fees. He paid some child support but not always when it was due and, by the end of August 2016, he had an arrearage of \$5,548. In August 2016, Mother filed a petition for civil contempt against Father based upon his failure to pay alimony in solido and child support as ordered. Father made several post-petition payments to Mother that totaled \$26,400. The trial court conducted a trial on the matter and, on February 5, 2018, entered an order finding Father in contempt on twenty-eight counts. After reducing Father's child support arrearage and past-due alimony by his post-petition payments, the court ordered Father to pay \$14,861.56 ("child support and alimony judgment") to Mother. The court further ordered Father to pay Mother a fine in the amount of \$1,400 ("fine judgment") and to pay her attorney's fees in the amount of \$31,514 ("attorney's fees judgment").

On April 11, 2018, the court entered an order allowing Father to "slow-pay" his financial obligations to Mother. Per the order, Father was to begin making monthly payments of \$1,161.54 to Mother on July 1, 2018, to satisfy the child support and alimony judgment and the fine judgment by September 1, 2019. The order also provided that Father was to begin making monthly payments to Mother in the amount of \$1,750.77 on July 1, 2018, to satisfy the attorney's fees judgment by December 1, 2019.

On September 27, 2022, Father filed a pleading titled "Reopen Case Petition to Modify Child Support." In the petition, Father argued that his child support obligation should be reduced because: one of the parties' children had become emancipated upon graduating high school, there had been a significant reduction in Father's income, Mother had earned a college degree and was willfully underemployed, and Father had remarried and had additional children. Mother filed an answer and counter-petition to modify the parenting plan asserting that a material change in circumstance had occurred—namely, that Father relocated to another state and had only exercised one week of residential time with the children since July 2021. Mother also asserted in her counter-petition that Father should be found in civil contempt. She alleged that Father should be found in contempt because, despite having the ability to do so, he had failed to pay child support since January 2021, failed to pay his prorated share of uncovered medical and dental expenses in the amount of \$10,820, and failed to pay any money towards the February 5, 2018 civil contempt judgment and subsequent April 11, 2018 order setting forth the "slow-pay" monthly payment schedule for Father. Father filed an answer to the counter-petition on April 25, 2023.

Thereafter, Mother began serving Father with discovery requests. On August 22, 2023, she served Father, via his counsel of record at the time, with a subpoena ("the subpoena") commanding Father to appear at the office of Mother's counsel on September 25, 2023, at 2:00 p.m. and produce, among other records, complete and unredacted federal income tax returns filed by, for or on behalf of Father for tax years 2018 through 2022. When Father failed to produce the requested tax returns, Mother filed a motion to hold him

in civil contempt and served him with notice that a hearing on the motion was set for February 15, 2024. Father did not file a response to Mother's motion, and he did not appear at the hearing. Instead, the day before the hearing, Father filed a motion titled "Motion to Dismiss Motion to Modify Parenting Plan."

The day after the hearing on the motion for civil contempt, Mother's counsel submitted a proposed order finding Father in civil contempt for failing to comply with the subpoena. Father responded by filing an objection to the proposed order and submitting an alternative proposed order. He also filed a motion requesting that the court "Deem Father Purged of Civil Contempt" and allow him to testify via affidavit because "[i]n-person attendance at the hearing . . . would work a serious hardship on Father" as "he currently resides in Missouri."

The trial court heard Father's motion to be deemed purged of civil contempt on April 1, 2024, and entered an order on April 14, 2024, denying the motion because, "given the objection to the order of civil contempt filed by Father, no order of civil contempt was entered at the time of the hearing of this request." In that order, the court also denied Father's request to testify via affidavit because the court found his "credibility is at issue." The court then considered the parties' proposed orders regarding the motion for civil contempt and chose to prepare its own order, which was entered on April 18, 2024, and was designated "*nunc pro tunc* February 15, 2024." In the April 18, 2024 order, the court found that Father was in civil contempt for failing to comply with the subpoena because he had the ability to obtain the requested federal income tax returns but willingly failed to do so. The court then issued a writ of body attachment commanding the Sheriff of Rutherford County to arrest Father and keep him until "he has purged himself of civil contempt."

In the April 18, 2024 order, the court acknowledged that, during the hearing, the chancery court clerk informed the court of Father's "Motion to Dismiss Motion to Modify Parenting Plan." The court noted that Father's motion to dismiss did not contain a notice of hearing and that no order was lodged with the court. As such, the court found that the motion was not properly before the court but, even if it were, "it would not change the Court's consideration of Mother's Motion for Contempt as Mother has a pending Counter Complaint against Father for his failure to pay child support . . ., discovery for which le[d] to this Contempt Motion." Shortly thereafter, Father submitted an order of voluntary dismissal of his complaint without prejudice, and the court entered the order on April 24, 2024.

In October 2024, Mother propounded requests for admissions on Father. When he failed to respond to the requests for admissions, Mother filed a motion to deem the admissions admitted. The trial court entered an order granting the motion on December 19, 2024. On December 27, 2024, Mother filed a motion to set her counter-petition for a hearing on January 10, 2025. The hearing on the motion to set had to be reset to January 24, 2025. On February 7, 2025, the trial court entered an order granting the motion to set

and ordered that the hearing on Mother's counter-petition would occur on February 25, 2025. In the order, the court noted that Father did not appear at the hearing on Mother's motion to set.

Following the hearing on Mother's motion to set, Father filed a "Motion to Cede Jurisdiction to Missouri, Stay All Proceedings, and Quash Civil Contempt Warrant," arguing that the court lacked jurisdiction to hold Father in contempt because Missouri held exclusive jurisdiction of the case because he was residing in Missouri with one of the parties' minor children and had commenced child custody proceedings there. Father then filed a motion to disqualify Mother's counsel and a motion to recuse the trial judge. Regarding the motion to recuse, Father alleged that there was "an Unavoidable Conflict of Interest" because he had filed a federal lawsuit that named the judge as a defendant. Judge Fann agreed that there was a sufficient basis for recusal and entered an order of recusal on February 19, 2025. The case was then assigned to Judge Atwood, whose office staff sent an email to the parties on February 21, 2025, confirming that the hearing on Mother's counter-petition and Father's pending motions was still proceeding on February 25, 2025. Father acknowledged receipt of this email by responding to it on the day it was sent.

Father did not appear in court on February 25, 2025. Mother informed the court at the hearing that she voluntarily dismissed her request for modification of the parenting plan. The hearing, therefore, proceeded upon her request to hold Father in civil contempt for failing to satisfy his financial obligations under the MDA, the parenting plan, and the April 11, 2018 civil contempt order. The court also considered Father's pending motions for the court to cede jurisdiction to Missouri, stay all proceedings, and quash the civil contempt warrant, and to disqualify Mother's counsel. On May 1, 2025, the trial court entered an order denying Father's motions and finding that he was in civil contempt for failing to pay child support, medical expenses, and attorney's fees that he was obligated to pay Mother. The court awarded Mother \$103,162.16 for unpaid child support, \$10,820.00 for unpaid medical expenses, and \$42,979.56 for her reasonable attorney's fees. Lastly, the court held that the writ for attachment of Father's body issued by the court on April 18, 2024, remained active and "in full force and effect."

Father timely appealed and presents the following issues for our review:

1. Whether the trial court lost exclusive, continuing jurisdiction under the Uniform Child Custody Jurisdiction Enforcement Act and the Uniform Interstate Family Support Act.
2. Whether the trial court erred in failing to hold a conference with the Missouri court.
3. Whether the trial court violated Father's due process rights.
4. Whether the timing of the May 1, 2025 order created an appearance of impropriety and collusion in violation of the Tennessee Supreme Court Rules.

5. Whether the trial court erred in allowing the contempt claim to survive Father's voluntary dismissal of his complaint.
6. Whether the trial court erred in assessing an arrears judgment against Father.

Mother presents the additional issue of whether she should be awarded her attorney's fees on appeal.

STANDARD OF REVIEW

In non-jury cases, we review the trial court's findings of fact de novo with a presumption of correctness unless the evidence preponderates otherwise. TENN. R. APP. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). We review a trial court's conclusions on issues of law de novo without a presumption of correctness. *Turner v. Turner*, 473 S.W.3d 257, 268 (Tenn. 2015).

The record provided in this appeal contains neither a transcript of the proceedings in the trial court nor a statement of the evidence that complies with Tenn. R. App. P. 24.¹ The appellant bears the burden "to provide the Court with a transcript of the evidence or a statement of the evidence from which this Court can determine if the evidence does preponderate for or against the findings of the trial court." *Coakley v. Daniels*, 840 S.W.2d 367, 370 (Tenn. Ct. App. 1992); *see also Greer v. Cobble*, No. E2015-01378-COA-R3-CV, 2016 WL 2898001, at *4 (Tenn. Ct. App. May 11, 2016). "A recitation of facts and argument in an appellate brief does not constitute evidence and cannot be considered in lieu of a verbatim transcript or statement of the evidence and proceedings." *In re M.R.*, No. M2007-02532-COA-R3-JV, 2008 WL 2331030, at *3 (Tenn. Ct. App. June 3, 2008). "We cannot simply assume that the facts as recited are true." *Id.*² Thus, when an appellant fails to provide this Court with a transcript or statement of the evidence, "there is a conclusive

¹ Tennessee Rule of Appellate Procedure 24(c) provides, in pertinent part:

If no stenographic report, substantially verbatim recital or transcript of the evidence or proceedings is available, or if the trial court determines, in its discretion, that the cost to obtain the stenographic report in a civil case is beyond the financial means of the appellant or that the cost is more expensive than the matters at issue on appeal justify, and a statement of the evidence or proceedings is a reasonable alternative to a stenographic report, the appellant shall prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement should convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal. The statement, certified by appellant . . . shall be filed with the clerk of the trial court within 60 days after filing the notice of appeal.

² Mother filed a motion to dismiss the appeal on the grounds that Father failed to file a transcript or statement of the evidence and that the factual assertions in Father's brief are not supported by the record. The motion is denied, but in addressing the issues Father raises, we have considered only the facts in the technical record before us.

presumption that there was sufficient evidence before the trial court to support its judgment, and this Court must therefore affirm the judgment.” *Coakley*, 840 S.W.2d at 370.

ANALYSIS

As a preliminary matter, we acknowledge that Father is a pro se litigant. We “take into account that many pro se litigants have no legal training and little familiarity with the judicial system.” *Young v. Barrow*, 130 S.W.3d 59, 62-63 (Tenn. Ct. App. 2003). Thus, we allow Father some latitude in preparing his brief by endeavoring to “give effect to the substance, rather than the form or terminology,” of his court filings. *Id.* at 63. We must be mindful, however, “of the boundary between fairness to a pro se litigant and unfairness to the pro se litigant’s adversary.” *Id.* A pro se litigant is not excused “from complying with the same substantive and procedural rules that represented parties are expected to observe.” *Id.*

I. Whether the trial court lost exclusive, continuing jurisdiction

Father’s first argument involves the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), Tenn. Code Ann. §§ 36-6-201 to -243. The UCCJEA “governs jurisdiction between Tennessee and other states over child custody proceedings.” *Button v. Waite*, 208 S.W.3d 366, 369 (Tenn. 2006). “Whether a court has jurisdiction under the UCCJEA is a question of law, subject to de novo review with no presumption of correctness.” *In re Arabella L.*, No. M2017-01069-COA-R3-JV, 2017 WL 5713939, at *1 (Tenn. Ct. App. Nov. 28, 2017). Father claims that Missouri had become the home state of one of the parties’ minor children because the child had resided there with Father for more than six consecutive months. He also claims that he commenced custody proceedings in Missouri regarding that child on February 13, 2024. Relying on this Missouri filing, Father asserts that all of the trial court’s orders entered after February 13, 2024, should be vacated because Tennessee no longer had exclusive, continuing jurisdiction over the matter. Essentially, Father’s argument here is that, as of February 13, 2024, Missouri had automatically become the child’s home state and Tennessee had been divested of jurisdiction to make any further determinations in the matter pursuant to the UCCJEA.

Father’s argument misinterprets the UCCJEA. Though he is correct that the UCCJEA defines “home state” as “the state in which a child lived with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of a child custody proceeding,” Tenn. Code Ann. § 36-6-205(7), the home state determination relates to whether the court has jurisdiction to make an initial custody determination. *Id.* § 36-6-216. When the parties divorced in 2015, both Mother and Father, along with all of their minor children, had resided in Tennessee for more than six consecutive months—making Tennessee the children’s home state. Thus, when the Tennessee court entered the final decree of divorce in 2015, that court made the initial child-custody determination and incorporated it into the final decree of divorce.

We note that, although Father asserts that one of the minor children has resided with him in Missouri for more than six months, the record contains no evidence establishing that fact. Even if that fact had been established, Missouri would not automatically gain jurisdiction of the case. Under Tenn. Code Ann. § 36-6-217(a), a Tennessee court that has made a child-custody determination retains “exclusive, continuing jurisdiction” over that determination until:

- (1) A court of this state determines that neither the child, nor the child and one (1) parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child’s care, protection, training, and personal relationships; or
- (2) A court of this state or a court of another state determines that the child, the child’s parents, and any person acting as a parent do not presently reside in this state.

In other words, once the Tennessee court made the initial child custody determination in 2015, the court retained jurisdiction until a court either from Tennessee or another state determined that jurisdiction was no longer proper pursuant to Tenn. Code Ann. § 36-6-217(a). The record contains no evidence showing that such a determination was made by any court. We, therefore, conclude that the trial court was not divested of its exclusive, continuing jurisdiction under the UCCJEA.

Father also asserts that the trial court lost exclusive, continuing jurisdiction under the Uniform Interstate Family Support Act (“UIFSA”), Tenn. Code Ann. §§ 36-5-2201 to -2211. In making this assertion, Father again misconstrues the issue of “home state” by arguing that, once Missouri became the child’s home state, the trial court was divested of jurisdiction to “issue or enforce new child-support orders” under Tenn. Code Ann. § 36-5-2205(a). That statute states as follows:

A tribunal of this state that has issued a child support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child support order if the order is the controlling order and:

- (1) At the time of the filing of a request for modification this state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or
- (2) Even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

Tenn. Code Ann. § 36-5-2205(a). The initial child support decision was incorporated into the 2015 final divorce decree and was consistent with the laws of this state. The record

contains no facts demonstrating the existence of any of the factors in Tenn. Code Ann. § 36-5-2205(a) that would divest the trial court of exclusive, continuing jurisdiction. This argument is unavailing.

II. Whether the trial court erred in failing to hold a conference with the Missouri court

Father next argues that the final judgment violates the UCCJEA because the trial court entered it “without first conducting the mandatory judicial communication with the Missouri court” to determine that Tennessee retained jurisdiction of the case. According to Father, “when simultaneous proceedings concerning the same child are pending in two states,” Tenn. Code Ann. § 36-6-213(a) requires that the two courts “confer to determine which state is the appropriate forum.” Specifically, he asserts that “the statute’s use of the word ‘shall’ imposes a mandatory, not discretionary, duty” on the two courts to hold an “inter-court conference” to determine which court is the appropriate forum.

Contrary to Father’s assertion, Tenn. Code Ann. § 36-6-213(a) does not contain the word “shall.” Rather, the statute states that “[a] court of this state *may* communicate with a court in another state concerning a proceeding arising under this part.” *Id.* (emphasis added). When the word “may” is used in a statute, it “ordinarily connotes discretion or permission and will not be treated as a word of command, unless there is something in the context of the subject matter of the statute under consideration to indicate that it was used in that sense.” *Steppach v. Thomas*, 346 S.W.3d 488, 505 (Tenn. Ct. App. 2011) (quoting *Williams v. McMinn Cnty.*, 352 S.W.2d 430, 433 (Tenn. 1961)).

The official comment to Tenn. Code Ann. § 36-6-213 states that this section authorizes communication “whenever the court finds it would be helpful,” and, in general, the UCCJEA “strongly encourages the [Tennessee] court to communicate with the alternative forum before making a decision.” *In re Arabella L.*, 2017 WL 5713939, at *2 (citing Tenn. Code Ann. § 36-6-213 cmt.). Nothing in Tenn. Code Ann. § 36-6-213, however, indicates that “may” was used as a command requiring communication between courts in all circumstances. Although there are sections under the UCCJEA that do require communication between courts, Father does not cite those sections or present evidence relevant to those sections. *See* Tenn. Code Ann. § 36-6-213 cmt.; Tenn. Code Ann. § 36-6-219(d). Father’s argument on this issue is unavailing.

III. Whether the trial court violated Father’s due process rights

Father next contends that all of the trial court’s orders should be vacated because the proceedings “were permeated with violations of [Father’s] fundamental due process” rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 8 of the Tennessee Constitution. He makes several arguments related to this issue. We will address each in turn.

A. Failure to provide notice and opportunity to be heard

According to Father, the trial court denied him his right “to notice and an opportunity to be heard at a meaningful time and in a meaningful manner” because he did not receive timely or reliable notice of several hearings. In particular, Father claims that “[o]n multiple occasions, hearing notices were issued only a day before the proceedings or after they had already occurred.” The only hearing he refers to, however, is the February 15, 2024 hearing. Father asserts that this “hearing [was] originally scheduled to address procedural motions,” but the court “unilaterally converted [it] into a final judgment hearing.”

We discern from Father’s somewhat jumbled argument here that he believes that the hearing on February 15, 2024, was supposed to address Mother’s motion to set a hearing date for her motion for civil contempt rather than to hear the civil contempt issue itself. The record does not support Father’s argument. Mother filed the motion to set on January 9, 2024, and the motion included a notice that it would be heard on January 19, 2024. The motion to set also included a certificate of service stating that, on January 9, 2024, Father’s counsel was served a copy of the motion to set via the court’s electronic filing system. Father did not appear at the January 19, 2024 hearing, so the court heard the motion without him. On February 2, 2024, the trial court entered an order stating that the hearing on Mother’s motion for civil contempt was set for February 15, 2024. The court stated in the order that Father’s attorney appeared at the January 19, 2024 hearing and advised the court that Father was aware that the motion to set was being heard that day. Furthermore, the February 2, 2024 order setting the motion for civil contempt for hearing on February 15, 2025, included a certificate of service stating that a copy of the order was served on Father via mail at his Missouri address.

Under Tennessee law, “[a] certificate of service is prima facie evidence that a motion was served in the manner described in the certificate, and raises a rebuttable presumption that it was received by the person to whom it was sent.” *McBride v. Webb*, No. M2006-01631-COA-R3-CV, 2007 WL 2790681, at *3 (Tenn. Ct. App. Sept. 25, 2007). A party may rebut this presumption with proof that the document was not, in fact, received. *Est. of Vanleer v. Harakas*, No. M2001-00687-COA-R3-CV, 2002 WL 32332191, at *8 (Tenn. Ct. App. Dec. 5, 2002). Here, Father presented no evidence to rebut the certificate of service attached to the February 2, 2024 order setting the hearing on the motion for civil contempt on February 15, 2024. In the absence of such proof, he failed to meet his burden of proof on this issue.

B. Ignoring filed motions

Father next contends that the trial court violated his due process rights by failing “to rule on multiple pending motions.” He cites no motions in the record that were properly

set for a hearing and not ruled upon, and our review of the record has revealed none. This argument is unavailing.

C. Disregarding mandatory rules

Father also argues that the trial court violated his due process rights by disregarding mandatory rules, particularly by proceeding to trial on Mother's counter-petition on February 25, 2025, because the case had been "removed from the active docket pending proper reassignment." His argument here relates to the order Judge Fann entered on February 19, 2025, recusing himself from presiding over the case due to Father filing a federal lawsuit against him. The recusal order contains a statement that "[a]ll pending motions are stayed, and the trial shall be removed from the docket pending the assignment of a successor judge." On February 21, 2025, before an order officially assigning a new judge had been entered, Judge Atwood's office staff notified the parties via email that "Judge Atwood has agreed to hear this matter and will keep the previously set hearing date of Tuesday, February 25, 2025 at 9:00 a.m. in Courtroom 6B." Father responded to this email, stating that moving forward with the trial would violate his "due process and civil rights." The order officially assigning Judge Atwood to the case was entered on February 24, 2025.

Father argues that his due process rights were violated because the email sent by Judge Atwood's office staff was sent "before an official order of assignment had been filed, in direct violation of Tenn. Sup. Ct. R. 10, Canon 2.9(A)." "Tennessee Supreme Court Rule 10, the Code of Judicial Conduct, is the set of rules by which judicial conduct is to be determined." *In re Bell*, 344 S.W.3d 304, 313 (Tenn. 2011). Canon 2.9(A) governs ex parte communications and provides, in pertinent part, that "[a] judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter" TENN. SUP. CT. R. 10, RJC Canon 2.9(A). An ex parte communication is "[a] communication between counsel or a party and the court when opposing counsel or party is not present." *Ex parte communication*, BLACK'S LAW DICTIONARY (12th ed. 2024). The email from Judge Atwood's office staff was sent to both parties and Mother's counsel. As such, it was not an ex parte communication in violation of Tenn. Sup. Ct. R. 10, RJC Canon 2.9(A). The fact that the email was sent before the order of assignment was entered does not render the email an ex parte communication. This argument is unavailing.

D. Misuse of *nunc pro tunc* designation and denial of right to present purge evidence

Father's next argument relates to the February 15, 2024 hearing on Mother's motion to find him in civil contempt for failing to comply with the subpoena. The court entered an order stating its ruling from this hearing on April 18, 2024, and the court designated the order *nunc pro tunc* to February 15, 2024. According to Father, by designating the order

nunc pro tunc to February 15, 2024, the trial court “improperly altered the record to create a contempt finding that did not exist at the time.” Essentially, Father’s argument is that the trial court should not have designated the order *nunc pro tunc* to February 15, 2024, because nothing in the record indicates that the court intended the ruling to be entered on that date. Thus, Father argues, the court made its decision finding him in civil contempt on April 18, 2024, when the order was entered, rather than on February 15, 2024. Upon review of Tennessee’s *nunc pro tunc* jurisprudence, we agree.

In some circumstances, “where by mistake a court’s judgment was not entered on the date the judge intended, . . . the failure to enter an intended judgment may be remedied by an entry of the judgment *nunc pro tunc*.” *Blackburn v. Blackburn*, 270 S.W.3d 42, 50 (Tenn. 2008). Our Supreme Court has explained that “[t]he error justifying a *nunc pro tunc* entry must have been due to the inadvertence or mistake of the court, not the attorneys or parties.” *Id.* at 55. Further, “there generally must exist some written notation or memorandum indicating the intent of the trial court to enter the judgment on the earlier date,” and “the trial court should generally refer only to” those written notations or memoranda “when determining whether it should enter an order *nunc pro tunc*.” *Id.* at 54-55 (footnote omitted). This means that, although a trial court has the inherent authority to enter an order or decree *nunc pro tunc*, “a *nunc pro tunc* [order or] decree may not be entered in an attempt to make the record reflect what should have happened, rather than what actually did occur.” *Id.* at 55-56.

Here, Mother asserts that the court properly entered the order *nunc pro tunc* to the February 15, 2024 hearing because the trial court made an oral ruling that day, but the record does not contain a transcript or audio or video recording showing that the court orally rendered the decision or intended to render the decision. *See id.* at 54 n.20; *Zeitlin v. Zeitlin*, 544 S.W.2d 103, 106 (Tenn. Ct. App. 1976) (rejecting argument that the order at issue should have been entered *nunc pro tunc* because there was “no evidence that the Judge rendered the decision, even orally; that he intended to render the decision; that he made any memorandum of such a decision; or that he intended that such an order be entered”). The record also contains no written notation or memorandum indicating that the trial court made such a decision on February 15, 2024, or that it intended to enter an order finding Father in civil contempt on February 15, 2024. As such, we cannot say that the record establishes with certainty that the trial court orally ruled that it found Father in civil contempt at the February 15, 2024 hearing or that the court intended that an order finding him in civil contempt be entered on that date.

Lastly, and most importantly, the evidence that is in the record shows that entry of the order finding Father in civil contempt was not delayed due to inadvertence or mistake of the court, but rather, due to the parties filing competing proposed orders that resulted in the court deciding to prepare its own order. We, therefore, conclude that the trial court erred in entering the April 18, 2024 order *nunc pro tunc* to February 15, 2024, but this error was harmless because it only affected the date the civil contempt finding became effective.

It does not affect the court's finding that Father was in civil contempt for failing to comply with the subpoena. The writ for attachment of Father's body issued pursuant to the April 18, 2024 civil contempt order remains active, in full force and effect.

Father next challenges the trial court's April 14, 2024 order denying his motion to present evidence that he had purged himself of the civil contempt. In the April 14, 2024 order, the court stated that it was denying Father's motion to present purge evidence because no order of civil contempt had yet been entered, which was correct because, as already discussed, the civil contempt order was not entered until April 18, 2024. Though we agree with Father that the court improperly designated the April 18, 2024 order *nunc pro tunc* to February 15, 2024, we cannot agree that this error means he was denied the right to present evidence that he had purged himself of the civil contempt. The court expressly stated in the April 14, 2024 order that the denial of Father's motion was "without prejudice to his ability to file a subsequent motion to be deemed purged of civil contempt." Father could have refiled his motion after the court entered the April 18, 2024 order finding him in civil contempt and then presented evidence that he had purged the civil contempt, but he failed to do so. Indeed, he has made no further effort to appear before the court to prove he has purged the civil contempt since the entry of the April 18, 2024 order.

Based on the foregoing, we conclude that the trial court did not violate Father's due process rights.³

IV. Whether there was an appearance of impropriety

A. Timing of final judgment

Father contends that the trial court's final judgment should be vacated because the timing of the order's entry evidences "impropriety and ex parte communication." According to Father, the trial court entering the final judgment on the morning of his jurisdictional hearing in Missouri "reflects clear coordination between the court and opposing counsel." He, however, provides no factual basis to support this assertion, and we have found no evidence in the record suggesting that the entry date of the final judgment was the result of any impropriety or ex parte communication. This argument is unavailing.

B. Adoption of opposing counsel's proposed order

Father next asserts that the trial court "adopted counsel's proposed Final Judgment word for word," reinforcing the inference of impropriety and coordination between the court and opposing counsel. In other words, Father believes that the trial court failed to

³ Father also asserts that the alleged due process violations, taken together, amount to cumulative prejudice requiring that the trial court's orders be vacated and the case remanded for new proceedings. Given that we have rejected each of Father's due process challenges, this argument is unavailing.

make independent findings of fact and conclusions of law. It is well-settled in this state that “[a] trial court speaks through its written orders, and the judgment entered by the trial court must be the independent judgment of the trial court.” *Cunningham v. Eastman Credit Union*, No. E2019-00987-COA-R3-CV, 2020 WL 2764412, at *3 (Tenn. Ct. App. May 27, 2020) (citing *Williams v. City of Burns*, 465 S.W.3d 96, 119 (Tenn. 2015); *Smith v. UHS of Lakeside, Inc.*, 439 S.W.3d 303, 316 (Tenn. 2014)). The Tennessee Supreme Court has explained as follows:

The essential purposes of courts and judges are to afford litigants a public forum to air their disputes and to adjudicate and resolve the disputes between the contending parties. To carry out these purposes, judges must arrive at their decisions by applying the relevant law to the facts of the case. Because making these decisions is a “high judicial function,” a court’s decisions must be, and must appear to be, the result of the exercise of the trial court’s own judgment.

Smith, 439 S.W.3d at 312 (citations omitted).

Though the practice is not favored, a trial court may “receiv[e] and us[e] party-prepared findings of fact, conclusions of law, and orders [if] two conditions are satisfied.” *Id.* at 315-16. Those two conditions are: (1) “the findings and conclusions must accurately reflect the decision of the trial court,” and (2) “the record must not create doubt that the decision represents the trial court’s own deliberations and decision.” *Id.* at 316. Appellate courts “have declined to accept findings, conclusions, or orders when the record provides no insight into the trial court’s decision-making process or when the record ‘casts doubt’ on whether the trial court ‘conducted its own independent review, or that the opinion is the product of its own judgment.’” *Id.* (quoting *Bright v. Westmoreland Cnty.*, 380 F.3d 729, 732 (3rd Cir. 2004)).

When tasked with determining whether a trial court exercised its independent judgment, “we compare the trial court’s oral ruling with its written order.” *SecurAmerica Bus. Credit v. Southland Transp. Co.*, No. W2016-02505-COA-R3-CV, 2018 WL 1100958, at *6 (Tenn. Ct. App. Feb. 27, 2018). Because Father failed to provide us with a transcript or statement of the evidence, we are unable to determine whether the trial court made an oral ruling and, therefore, cannot compare such a ruling with the written final judgment. That is to say, we have not been presented with an adequate record from which we may determine whether the final judgment satisfied the first condition that must be met for a court to use a party-prepared order—that it accurately reflected the trial court’s decision. Therefore, we must conclusively presume that, if Father had provided an adequate record, it would have contained sufficient evidence to establish that the final decree accurately reflected the trial court’s decision and that it did not cast doubt that the final judgment represented the trial court’s own deliberations. *See Sherrod v. Wix*, 849 S.W.2d 780, 783 (Tenn. Ct. App. 1992) (“[W]e must assume that the record, had it been preserved,

would have contained sufficient evidence to support the trial court’s factual findings.”). This argument is unavailing.

C. The city-attorney conflict

Father also contends that “an appearance of impropriety” existed because the trial court denied his motion to disqualify Mother’s attorney, Evan Cope. In particular, Father alleges that, because Mr. Cope has “serve[d] as the long-time City Attorney . . . for the City of La Vergne,” he “routinely represented governmental entities before” the trial court. Father asserts that Mr. Cope’s role as city attorney “created an unavoidable appearance” of misconduct or collusion between Mr. Cope and the trial court. We find this argument unpersuasive. As city attorney, Mr. Cope may have appeared before the trial court representing the City of La Vergne, but Father cites to no relevant caselaw supporting a finding that this fact amounts to collusion or misconduct. Furthermore, he cites no relevant caselaw showing that this fact creates some conflict that would make it inappropriate for Mr. Cope to represent Mother in this case.

V. Whether the trial court erred in allowing Mother’s counter-petition to survive

Father’s next argument is that the April 18, 2024 civil contempt order is void ab initio. This argument relates to the filing titled “Motion to Dismiss Motion to Modify Parenting Plan” (“Motion to Dismiss”) that Father filed the day before the February 15, 2024 hearing on Mother’s motion to find him in civil contempt for failing to comply with the subpoena. According to Father, he “voluntarily dismissed his petition,” so the trial court should not have proceeded with the February 15, 2024 hearing because Mother’s counter-petition “was entirely derivative of [his] petition.” Thus, he asserts, the entire case “should have been automatically dismissed under Tenn. R. Civ. P. 41.01” when he filed the Motion to Dismiss.

We respectfully disagree for two reasons. The first reason is that Mother’s counter-petition for civil contempt and to modify the parenting plan was filed in answer to Father’s pleading titled “Reopen Case Petition to Modify Child Support.” Though not a model of clarity, the motion for voluntary dismissal indicates that the child support modification petition was not the pleading Father voluntarily dismissed. Rather, the motion appears to voluntarily dismiss a pleading Father filed on January 20, 2023, titled “Petition to Allow Father’s Relocation and to Modify the Parenting Plan” because the motion states that it is Father’s “Motion to Modify Parenting Plan” that is being voluntarily dismissed as it is no longer necessary due to the child now “resid[ing] in Missouri with the Father full time.” The April 24, 2024 order of voluntary dismissal shows that the trial court considered Father’s motion to dismiss as a notice of voluntary dismissal of his “pending parenting plan modification action” and dismissed that action without prejudice. The trial court then expressly stated that the order of voluntary dismissal did “not affect any other pending

action by either party, *including but not limited to Mr. Gracin's pending child support action.*" (Emphasis added).

The second reason we disagree is that, even if Father had voluntarily dismissed his petition to modify child support, that would not have dismissed Mother's counter-petition. As our Supreme Court has explained, "the dismissal of an original bill ordinarily carri[s] with it the dismissal of a cross bill or an answer filed as a cross bill, unless the answer or cross bill set up grounds for *affirmative relief.*" *Flade v. City of Shelbyville*, 699 S.W.3d 272, 298 (Tenn. 2024) (quoting *Blake v. Plus Mark, Inc.*, 952 S.W.2d 413, 416 (Tenn. 1997)) (emphasis added). Affirmative relief is relief that, if granted, operates as more than mere denial or avoidance of the opponent's cause of action. *Id.* at 298. It must be a counterclaim for a cause of action "on which the defendant might have secured affirmative relief had the defendant sued the plaintiff in a separate action." *Id.* at 299 (quoting 80 C.J.S. *Set-off and Counterclaim* § 2 (West 2024)).

Here, Mother's counter-petition asserted a cause of action for civil contempt against Father because he had failed to pay child support since January 2021 and had failed to pay any money toward satisfaction of the February 5, 2018 and April 11, 2018 orders. She could have secured affirmative relief for this cause of action even if Father had never filed his petition to modify child support. As such, her counter-petition was not "derivative" of Father's initial pleading. This argument is unavailing.

VI. Whether the trial court erred in assessing arrears judgment against Father

Lastly, Father asserts that the trial court erred in its calculation of the amount of Father's child support arrearage. He contends that the court was required to modify his child support due to the emancipation of some of the parties' four children and Father having two additional children from his current marriage. This argument is problematic for several reasons. First, Father presented no factual record regarding additional children from his current marriage. Second, even though the record shows that, at the time of the final hearing, two of the children had turned eighteen and graduated from high school, Father presented no proof of his income to demonstrate that removing these two children from the child support worksheet would have reduced his child support obligation. Indeed, the trial court found him in civil contempt because he failed to comply with the subpoena ordering him to produce his federal income tax returns.

In addition to Father's failure to present any proof related to this issue, his argument here ignores the trial court's ruling on December 19, 2024, which deemed the following relevant facts admitted because Father failed to respond to Mother's requests for admissions:

4. Admit that per the April 11, 2018 Order, Father was to begin making monthly payments of \$1,161.54 to Mother on July 1, 2018, in order to satisfy

the Child Support and Alimony Judgment (total judgment amount of \$14,861.56) and the Fine Judgment (total judgment amount of \$1,400).

5. Admit that Father has failed to pay Mother any money towards satisfaction of the Child Support Alimony Judgment and the Fine Judgment since July 1, 2018, despite having the ability to pay, and that as such, he is in civil contempt of court.

...

8. Admit that pursuant to the PPP, Father is obligated to pay his prorated share of uncovered medical and dental expenses.

9. Admit that Father has failed to pay his prorated share of uncovered medical and dental expenses in the amount of \$10,820 despite having the ability to do so.

10. Admit that pursuant to the PPP, Father is obligated to pay child support in the total amount of \$1,436.00 per month to be paid in equal installments of \$718 on the 1st and 15th day of each month.

11. Admit that from September 1, 2017 through the date of the filing of the counter-petition on November 18, 2022, Father should have paid a total of \$90,468 in child support to Mother.

12. Admit that, despite having the ability to pay his monthly child support obligation in full, Father has only paid \$28,949.84 in child support since September 1, 2017.

13. Admit that Father's last child support payment was \$200 paid on January 29, 2021.

...

15. Admit that Father has failed to pay any child support whatsoever since January 2021.

16. Admit that the total amount of money Father owes Mother for unpaid child support through September 1, 2024 is \$94,546.16.

17. Admit that Father has the ability to pay Mother \$94,546.16 but has willfully failed to do so such that he is in civil contempt of court.

18. Admit that Mother is entitled to a judgment for unpaid child support through September 1, 2024, in the amount of \$94,546.16.

The trial court calculated Father's child support arrearage based on these admitted facts. If Father believed these facts were not true and that he was entitled to have his child support obligation reduced, he should have responded to the requests for admissions and presented some proof to allow the trial court to determine whether his child support obligation should be reduced when it calculated the arrearage amount. His failure to do this, in addition to his failure to file a transcript or statement of the evidence from the February 25, 2025 hearing, requires this Court to presume that the evidence sufficiently supports the trial court's judgment. His argument on this issue is unavailing.

VI. Whether Mother should be awarded her attorney's fees

In post-divorce proceedings, parties “may seek to recover appellate attorney fees under the attorney fee provision in their MDA, or on statutory grounds such as section 36-5-103(c).” *Colley v. Colley*, 715 S.W.3d 293, 314 (Tenn. 2025). Here, Mother seeks an award of her attorney's fees incurred on appeal pursuant to the parties' MDA and Tenn. Code Ann. § 36-5-103(c).

Our Supreme Court has explained that a request for appellate attorney's fees should be analyzed as follows:

“In cases in which parties seek an award of attorney's fees under statutory authority alone, the statute governs the award of fees. In such cases, the statute is . . . the basis for the court's authority to grant fees on appeal. Thus, when appellate attorney's fees are requested pursuant to statutes like . . . section 36-5-103(c), which expressly permit the court to exercise its discretion, the [appellate court] should analyze any such request by exercising its discretion to determine whether an award to the prevailing party is appropriate.

The same is not true when the parties to post-divorce litigation have a marital dissolution agreement that contains a mandatory fee award provision. Our courts long have observed at the trial court level that parties are contractually *entitled* to recover their attorney's fees when they have an agreement that provides the prevailing party in litigation is entitled to such fees.”

Colley, 715 S.W.3d at 314 (quoting *Eberbach v. Eberbach*, 535 S.W.3d 467, 475 (Tenn. 2017)).

An appellate court has “no discretion whether to award attorney's fees when the parties have a valid and enforceable marital dissolution agreement which requires an award of reasonable attorney's fees to a prevailing or successful party.” *Id.* at 314-15 (quoting *Eberbach*, 535 S.W.3d at 478). Thus, we must first look to the parties' MDA to determine whether Mother is entitled to an award of her appellate attorney's fees. The MDA provides that, “Should litigation be necessary to enforce any provision of this agreement, the prevailing party shall be entitled to attorney fees.” Mother's counter-petition for civil contempt sought to enforce the parties' MDA, particularly the child support and alimony *in solido* provisions. On appeal, we have affirmed the trial court's judgment in Mother's favor. She is therefore the prevailing party and is entitled to an award of her reasonable

appellate attorney's fees.⁴ We remand the case to the trial court for a determination of Mother's reasonable attorney's fees incurred on appeal.

CONCLUSION

The judgment of the trial court is affirmed. The case is remanded to the trial court to determine the amount of Mother's attorney's fees incurred on appeal. Costs of this appeal are assessed against the appellant, Joshua M. Gracin, for which execution may issue if necessary.

/s/ Andy D. Bennett

ANDY D. BENNETT, JUDGE

⁴ “While fees under the MDA are mandatory, fees under section 36-5-103(c) are discretionary.” *Colley*, 715 S.W.3d at 315. In cases like this one, “the possibility of being required to pay a former spouse’s attorney fees ‘helps deter unwarranted or unjustified attempts by an obligor to evade or reduce an existing support obligation.’” *Id.* (quoting *Stratienko v. Stratienko*, No. E2022-01802-COA-R3-CV, 2023 WL 7326321, at *12 (Tenn. Ct. App. Nov. 7, 2023)). Thus, we conclude that Mother is also entitled to an award of her reasonable attorney’s fees incurred on appeal under Tenn. Code Ann. § 36-5-103(c). *See Eberbach*, 535 S.W.3d at 479 n.6 (directing courts “to ensure they conduct an analysis under both the parties’ contract and any applicable statutes or other equitable grounds . . . [to] ensure[] judicial economy is maximized”).