

## MEMORANDUM DECISION

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IN THE  
**Court of Appeals of Indiana**

Seth Allen Stanley,  
*Appellant- Petitioner*

v.

Amber Nicole Stanley,  
*Appellee- Respondent*



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March 13, 2024

Court of Appeals Case No.  
23A-DR-1832

Appeal from the Vanderburgh Superior Court  
The Honorable Thomas A. Massey, Judge  
Trial Court Cause No.  
82D07-1603-DR-000344

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**Memorandum Decision by Judge May**  
Judges Vaidik and Kenworthy concur.

**May, Judge.**

[1] Seth Allen Stanley (“Father”) appeals the trial court’s order denying his request to modify Amber Nicole Stanley’s (“Mother”) parenting time and his request for Mother to pay half of the cost of tuition not covered by scholarships or vouchers for the parochial schools M.S. and H.S. (collectively, “Children”) attend. In the same order, the trial court found Father in contempt of court for his actions surrounding Mother’s parenting time and contact with Children during her deployment in Kuwait. Based thereon, the trial court ordered Father to pay Mother \$15,000.00 in attorney’s fees.

[2] Father raises several issues on appeal, which we restate as:

1. Whether the trial court abused its discretion when it denied Father’s request to modify Mother’s summer parenting time;
2. Whether the trial court abused its discretion when it denied Father’s request for Mother to pay half of the cost of Children’s parochial school education after any scholarships and vouchers;
3. Whether the trial court abused its discretion when it determined Father was in contempt for his actions surrounding parenting time with Children’s stepfather (“Stepfather”) during Mother’s deployment to Kuwait; and

4. Whether the trial court abused its discretion when it ordered Father to pay \$15,000.00 for Mother's attorney's fees.

We affirm in part, reverse in part, and remand.

## Facts and Procedural History

- [3] Mother and Father divorced on May 19, 2016, after two children were born of the marriage – M.S., born January 28, 2008, and H.S., born July 9, 2012. In the dissolution order, the parties agreed Father would have primary physical custody and Mother would have parenting time based on the Indiana Parenting Time Guidelines (“IPTG”) and specific conditions as set forth in the trial court's order. Mother and Father agreed to joint legal custody of Children. During the entirety of the prior and current proceedings, Mother has been employed by the United States Army and has lived in Evansville.
- [4] At the time of the dissolution order, Father was enrolled in the Indiana Tech Law School in Fort Wayne. Around November or December 2016, Father transferred to the University of Toledo Law School because the Indiana Tech Law School indicated it would be permanently closing at the end of the school year. Father relocated Children to Toledo, Ohio, where they have lived ever since.
- [5] On March 29, 2017, Mother filed a motion to modify custody and a motion asking the trial court to find Father in contempt for failure to allow Mother to exercise her parenting time with Children. On April 7, 2017, Father filed a

motion to modify custody and a motion asking the trial court to find Mother in contempt. The trial court held a hearing on these motions on August 1, 2017.

[6] That same day, the trial court issued an order denying Mother’s motion to modify custody, however, the trial court noted “Mother’s parenting time . . . must be more clearly articulated.” (Appellee’s App. Vol. II at 19.) In its order, the trial court outlined specific times Father was required to afford Mother parenting time with Children. In the Chronological Case Summary, the trial court outlined those provisions:

Parties shall continue joint legal custody and are admonished to improve their communication regarding [Children]. . . . [Father] has and continues to be [Children’s] primary physical custodian and other than failing to insure [Mother] has an appropriate relationship with [Children] he is a good Father. [Mother] shall have parenting time as outlined with the parties every Spring Break[,] the months of June and July, Thanksgiving Break, and 7 days over the Christmas holidays, additionally she will travel to Toledo and visit [Children] on Labor Day weekend and October when [Children] have a [four] day weekend from school and President’s Day weekend. The parties will meet half way except for when [Mother] goes to Toledo and Christmas when Father is visiting the Evansville area to see family.

(Appellant’s App. Vol. II at 7.) Additionally, the trial court ordered, regarding the parties’ division of Children’s school expenses:

The parties agree that so long as [Children] qualify for vouchers, [Children] shall attend St. Ben’s Parochial School in Toledo, Ohio. The parties shall equally divide any tuition and required fees for the school which remain after application of the vouchers.

(Appellee's App. Vol. II at 22.)

[7] On December 21, 2017, the trial court issued an order on Mother's motion to find Father in contempt. The trial court found Father in contempt "for reasons outlined in open court including, but not limited to, threats regarding her boyfriend, her mental health status, taking advantage of his status as a law student and initiating proceedings in Ohio." (Appellant's App. Vol. II at 9.) Further, the trial court "emphasized to the parties that [Mother's] parenting time is a precious, fundamental right and the parties are ordered to redouble their efforts to overcome their differences to see that she enjoys the parenting time previously ordered." (*Id.*) On October 21, 2019, the trial court purged Father's contempt citation "because Mother was then getting her parenting time where distance is a factor and the Court did not want to jeopardize Father's ability to earn an income or to obtain a [law] license for his employment." (*Id.* at 36) (brackets in original). In May 2020, Mother married Stepfather. Sometime prior to September 2021, Father graduated law school and became employed as an attorney.

[8] On November 5, 2020, Mother filed a "Motion to Delegate Parenting Time of Parent Receiving Military Deployment Order or, In the Alternative, Petition to Modify[.]" (*Id.* at 18.) The same day, Mother filed a motion to expedite the matter because she had received a "mobilization order requiring her to be deployed to Kuwait. Such deployment is scheduled to commence on November 12, 2020 and will last for approximately eleven (11) months, with at least nine (9) of those months being out of the United States." (Appellee's App.

Vol. II at 33.) The trial court held a hearing on the matter on November 9, 2020, and issued an order the same day. In the order, the trial court found the parties agreed that Stepfather would exercise part of Mother’s parenting time during her deployment “to maintain a reasonable level of contact with [Children] during [Mother’s] absence.” (*Id.*) Specifically, the trial court granted Stepfather parenting time during Thanksgiving, Christmas, Spring Break 2021, and a portion of summer vacation 2021. The trial court ordered Stepfather and Father to exchange Children for parenting time in Pendleton, Indiana. The trial court also required Father to facilitate voice or video contact between Children and Mother during her deployment.

[9] On March 6, 2021, Father contacted Mother via the Our Family Wizard app (“OFW”) asking Mother to delay Stepfather’s Spring Break visitation with Children because M.S. had soccer conditioning, H.S. had baseball practice, and Father scheduled M.S. to have her braces placed that week. Mother and Father could not come to an agreement regarding any change in parenting time. Despite Father’s representations to Mother regarding Children’s unavailability during Spring Break 2021, Father and Father’s girlfriend spent a portion of Spring Break, specifically April 2-4, 2021, with Children in the Evansville/Newburgh area during which Children visited with Father’s family.

[10] Stepfather’s Spring Break parenting time was to commence on Sunday, April 4, 2021. Instead of notifying Stepfather that Children were in the Evansville area, Father drove Children three and a half hours to Pendleton, Indiana, the previously agreed-upon exchange location. Stepfather then had to drive

Children back to the Evansville area, which meant Children spent approximately seven hours in the car.

[11] Stepfather's summer parenting time was to be held from June 24, 2021, to Sunday, June 27, 2021, and from July 12, 2021, to July 15, 2021. Father told Mother his vehicle was "in the shop for repairs" and thus he could not deliver Children to Pendleton, Indiana, to exchange them for Stepfather's parenting time. (Appellant's App. Vol. II at 37.) Father indicated Stepfather could travel to Toledo, Ohio, to pick up Children for Stepfather's parenting time, but Stepfather was unable to do so. Ultimately, Stepfather did not receive summer parenting time with Children during the times required by the trial court in its November 2020 order because Father insisted he was unable to transport Children due to his car being inoperable.

[12] During the time of Mother's deployment, Father was to facilitate voice and video contact between Mother and Children. Starting in June 2021, Mother contacted Father multiple times via OFW to tell Father she had been unable to reach M.S. via M.S.'s cell phone number. Mother suggested she contact Children via Father's cell phone but Father refused because: "I do not have my phone with me typically once I come home at night and dont [sic] check it until I go to bed." (Appellee's App. Vol. II at 46.) Mother indicated she had spoken with Children approximately ten times when Children were with Father since her deployment in November 2020, and she spoke with Children "freely" when they were in Stepfather's care. (*Id.*) Father dismissed Mother's concerns and sent her a message stating:

[Children's] phone is accessible to them at all times. [M.S.] is consistently on her phone texting and calling friends and family so I again must state that I find your assertion to be hard to believe and likely blown out of proportion. She takes her phone with her every day when she goes bike riding and has it in her hands most of the time when shes [sic] not in school. I do not monitor her communication with you and I am following the agreed upon order. I do not control when [M.S.] answers her phone or responds to people via text. All that I can tell you is that she says as of last night that yall [sic] text regularly and she talks to you on the phone and has talked to you in the past week.

[Children] are still in school and in sports so I would ask that you be patient with [M.S.] as I relay your concerns to her. . . . I would likely chalk up her alleged lack of communication with you to typical teenager behavior as she is more interested in friends these days than most anything else.

*(Id.)*

[13] In early 2021, during Mother's deployment, the parties discussed where M.S. would go to high school. At the time, based on the trial court's 2017 order, the parties were each paying \$600 per year for Children's tuition because Father qualified for vouchers to assist with tuition based on his residence in an underperforming school district. Father sent Mother a list of possible schools in the Toledo area via OFW. Mother indicated she would like to do independent research on the choices before making a joint decision with Father. Instead of allowing Mother to do so, Father unilaterally decided M.S. would attend Central Catholic High School. Sometime thereafter, Father also decided to transfer H.S. from St. Benedict Catholic School to St. Francis Catholic School.



[14] Mother returned from deployment on September 6, 2021. On September 14, 2021, Mother contacted Father via OFW and asked if she could come to Toledo to visit with Children for a weekend. Father responded the next day but did not address Mother's request. Instead, he informed Mother of his new position as an assistant prosecuting attorney and informed Mother that she owed him a portion of Children's technology fee for their school. On September 20, 2021, Father finally responded to Mother's request to visit with Children for a weekend in Toledo and indicated Mother did not give him enough time to arrange a visit. Mother told Father she wished to visit with Children because she had not seen them in almost a year. Mother reasserted her request on September 21, 2021, and September 29, 2021, and proposed several dates, including the weekend of October 24, 2021. Father responded to Mother's communications on the issue on September 30, 2021. He told Mother she could visit with Children in Toledo, Ohio, over the weekend of October 24 but he needed to involve their respective attorneys to draw up a written agreement regarding the weekend visitation. Mother was able to visit Children over the weekend of October 24, 2021, almost six weeks after she returned from deployment in Kuwait.

[15] On November 12, 2021, Mother filed a motion for indirect contempt based on Father's denial of Stepfather's parenting time during her deployment. The trial court set a hearing on the matter for November 15, 2021. The trial court did not hold a hearing that day and, after a number of continuances, the trial court rescheduled the hearing for May 5, 2022. Because of trial court conflict, the trial

court rescheduled the May 5 hearing to July 25, 2022. On May 27, 2022, Mother filed a motion to resolve summer parenting time. On July 12, 2022, Father filed a motion to continue the July 25 hearing. Over Mother's objection, the trial court granted Father's request and rescheduled the hearing for November 1, 2022.

[16] On September 20, 2022, Father filed a motion for educational expenses. Therein, he alleged M.S.'s yearly tuition at Central Catholic High School would be "between \$9,600 and \$13,250 per year" and H.S.'s tuition at St. Francis Catholic School would be "between \$8,500 and \$13,250 per year." (Appellant's App. Vol. II at 75.) The change in educational expenses was attributed to Father losing access to vouchers because he relocated to an area in Toledo that did not have an underperforming school district.

[17] On October 7, 2022, Father filed a motion to modify holiday parenting time that requested the trial court allow Father to have Children on Easter Sunday. Just before a hearing scheduled for November 1, 2022, Father's counsel withdrew and Father requested a continuance. The trial court denied his continuance, though the hearing did not conclude on that day and was continued to November 21, 2022. On the trial court's own motion, it rescheduled the November 21 hearing to December 21, 2022, and ordered the parties to engage in mediation. On December 12, 2022, Father filed a motion to continue the December 21 hearing. The trial court granted Father's motion to continue.

[18] Mediation was unsuccessful. On February 9, 2023, the trial court held an attorney conference to reschedule the December 21 hearing. The hearing was rescheduled for May 9, 2023, with a backup date of July 11, 2023. On April 28, 2023, Father filed a motion to modify summer parenting time. The trial court held a hearing on all pending matters on May 9, 2023. Mother requested attorney's fees as a sanction for Father's alleged contempt. The trial court ordered the parties to file their request for relief by May 19, 2023.

[19] Mother filed her request for relief on May 19, 2023. Therein, she asked the trial court to:

. . . [Mother] would request that her parenting time with [H.S.] be exercised as previously ordered. . . .

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With regard to [M.S.], the Court is requested to enter a firm and very specific Order with regard to [Mother's] parenting time. Certainly four (4) weekends during the entire summer (with the resulting additional transportation, time and expense which will be incurred by [Mother]) is not sufficient and does not allow [Mother] to maintain meaningful and regular involvement with [M.S.]. [Mother] fears, however, that if specific dates are not set, [Father] will not comply with them. The Mother would also ask that there be some pre-determined punishment spelled out in the Order, including payment of her attorney fees, to prevent [Father] from further interfering with the Mother's Court-ordered parenting time as he has done in the past. The Father's hierarchy of priorities establish that his time with [M.S.] is the most important, then comes school activities (whether mandatory or not), athletics or other activities for which he signs them up (whether mandatory or not), and now even [M.S.'s] possible

employment, should all take priority over [Mother's] parenting time, which is just not fair and certainly not in the best interest of [Children]. To the extent possible, [Mother] is asking that the Court maintain the current, limited parenting time which she was allowed by the Court, making some concession [for] [M.S.'s] (what [sic] are actually "mandatory") commitments.

(*Id.* at 79-80) (emphases in original omitted). Father requested the trial court deny all of Mother's motions for contempt and modify Mother's parenting time with [M.S.] to "the first two (2) weekends in June and the first two (2) weekends in July[.]" (*Id.* at 86-7) (original formatting omitted). The recommended modification in Mother's parenting time was based on M.S.'s involvement in ACT/SAT preparation, marching band camp, crew practices, mandatory fundraisers, and M.S.'s summer job as a lifeguard.

[20] Regarding schooling, Father argued Mother and Father should "split all tuition regardless of whether scholarships are available[.]" Children should remain in parochial schools, and H.S. should be allowed to transfer from St. Benedict's school to St. Francis school for middle school. (*Id.* at 88.) Additionally, as to the issue of attorney's fees, Mother's attorney filed an explanation of billing history, indicating Mother had incurred \$6,399.21 in attorney's fees between June 2021 and May 2022, but it was "virtually impossible" to separate out the legal expenses incurred as a result of the current issues before the trial court. (*Id.* at 92.)

[21] On June 15, 2023, Mother filed a motion to supplement the record or, in the alternative, re-open the matter. Based thereon, the trial court ordered Father to

file “[M.S.’s] summer schedule to date, [Mother’s] summer parenting time schedule to date, [M.S.’s] expected summer time schedule and [Mother’s] expected summer time schedule.” (*Id.* at 30.) On July 10, 2023, the trial court entered its order on all pending matters. Therein, in relevant part, it denied Father’s motion to modify Mother’s summer parenting time. In doing so, the trial court ordered, regarding Mother’s summer parenting time with M.S.:

39. Mother’s parenting time shall be subject to the rare accommodation of [M.S.’s] mandatory activities with her Parochial High School. This may include Confirmation classes/mass and ACT/SAT testing. Such mandatory school activities shall be subject to either make-up parenting time or Mother may exercise her parenting time in Toledo. This shall not include, unless the parties agree otherwise on OFW, band, sports, crew and part time employment.

(*Id.* at 43-4.) Regarding Father’s request for an order requiring Mother to pay for half of Children’s tuition, the trial court ordered:

26. With regard to Father’s September 20, 2022 Motion for Educational Expenses, Mother shall pay up to \$1,000.00 per semester for each child. If [Children] remain qualified for full or partial vouchers, the prior Order of August 1, 2017 shall remain in effect with Mother’s 50% net obligation capped at \$1,000 maximum contribution per semester per child. If [Children] will not receive vouchers regardless of the reason, Mother’s obligation remains capped at \$1,000.00 maximum contribution per semester per child.

(*Id.* at 40-1.)

[22] Finally, the trial court granted Mother’s motion to find Father in contempt. Regarding that issue, the trial court found, as to Father’s denial of Stepfather’s parenting time during summer 2021, that Father’s claim that he could not transport Children to Stepfather because he did not have a vehicle was “simply not credible” because “Father received child support from Mother, he was then gainfully employed at the Public Defender’s Office and he received monthly military disability payments” and additionally “Father was apparently able to find transportation to his employer while his Jeep was in the shop, just not transportation to comply with the Court’s summer parenting time Orders.” (*Id.* at 37-8.) As to the transportation issue during Spring Break 2021, during which Father did not tell Stepfather he was in Evansville/Newburgh where Stepfather lived and instead required Stepfather to travel seven hours round trip to exchange Children, the trial court found “Father’s actions were inexcusable” and also violated the “Special Notice of Availability” section of the IPTG. (*Id.* at 37.)

[23] Further, the trial court noted several other times during which Father failed to comply with the trial court’s orders, including thwarting Mother’s attempts to communicate with Children during her deployment and to see Children following her return from deployment. The trial court found Father’s actions in those instances were part of “a disturbing and continuing pattern of excuses by Father that he uses to justify disregarding the Court’s Orders.” (*Id.* at 38.) As a sanction for the contempt, the trial court ordered Father to pay a \$2,000.00 fine “for the purpose of coercing compliance with the existing parenting time Orders

and the fine is avoidable by compliance with the existing parenting time orders.” (*Id.* at 43.)

[24] The trial court also ordered Father to pay \$15,000.00 toward Mother’s attorney’s fees for “Father’s improper actions.” (*Id.*) The fees were to be paid in three payments of \$5,000.00 that were due 30, 60, and 90 days from the trial court’s order. The trial court reasoned “that Father has the ability to pay such legal fees” given his “employment, military disability and financial assistance from his fiancée.” (*Id.*)

## Discussion and Decision

[25] When reviewing cases involving family law matters we “grant latitude and deference to our trial judges” because “[a]ppellate courts are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence.” *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016) (internal citations and quotations omitted).

On appeal it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal. Appellate judges are not to reweigh the evidence [or] reassess witness credibility, and the evidence should be viewed most favorably to the judgment.

*Id.* When, as here, the trial court makes findings and conclusions sua sponte, we apply a two-tiered analysis whereby we first analyze whether the evidence supports the findings and then whether the findings support the trial court’s conclusions as to the issues covered in the findings. *McDaniel v. McDaniel*, 150 N.E.3d 282, 289 (Ind. Ct. App. 2020), *trans. denied*. We review issues not addressed by the trial court under the general judgment standard, “where the judgment will be affirmed if it can be sustained on any legal theory consistent with the evidence.” *Id.* “It is not necessary that each and every finding be correct, and even if one or more findings are clearly erroneous, we may affirm the judgment if it is supported by other findings or is otherwise supported by the record.” *Stone v. Stone*, 991 N.E.2d 992, 998 (Ind. Ct. App. 2013), *aff. on reh’g by Stone v. Stone*, 4 N.E.3d 666 (Ind. Ct. App. 2013). The trial court’s order is clearly erroneous “when the appellate court’s review of the evidence most favorable to the trial court’s judgment leaves us firmly convinced that a mistake has been made.” *McDaniel*, 150 N.E.3d at 289.

## 1. Modification of Mother’s Parenting Time

[26] Father challenges the trial court’s denial of his motion to modify Mother’s summer parenting time with M.S.<sup>1</sup> A decision about parenting time requires us

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<sup>1</sup> Father also asked the trial court to modify the time Children spent with him during the Easter holiday. He argued he was “more devoutly Catholic than [Mother], so [Children] should be with Father every Easter Sunday in Toledo.” (Appellant’s App. Vol. II at 40.) The trial court denied Father’s motion regarding Easter Sunday. Father’s brief indicates he wishes to challenge the trial court’s decision on this issue but then Father does not present any argument or cite any relevant case law to support such a challenge. Therefore, the issue is waived from our review. *See* Ind. App. R. 46(A)(8)(a) (requiring issues be supported by cogent argument



to “give foremost consideration to the best interests of the child.” *Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013) (quoting *Marlow v. Marlow*, 702 N.E.2d 733, 735 (Ind. Ct. App. 1998), *trans. denied*); *see also* Ind. Code § 31-17-4-2 (“The court may modify an order granting or denying parenting time rights whenever modification would serve the best interests of the child.”). Parenting time decisions are reviewed for an abuse of discretion. *Perkinson*, 989 N.E.2d at 761. Section III of the IPTG states, regarding summer parenting time when distance is a major factor:

3. Priority of Summer Visitation. Summer parenting time with the noncustodial parent shall take precedence over summer extracurricular activities (such as Little League, summer camp, etc.) when parenting time cannot be reasonably scheduled around such events.

[27] In concluding that modification of Mother’s parenting time with M.S. was not in M.S.’s best interests, the trial court found:

22. To summarize hours of testimony, [Father] has unilaterally enrolled [M.S.] in numerous activities in Toledo. These activities include in no particular order, crew, band, band camp, basketball, cross-country, soccer, and summer success classes for ACT/SAT. On May 9, 2023 Father testified that Mother’s regular summer parenting time was June 1 - July 31. However, with [M.S.’s] summer schedule of summer success classes (2 weeks), marching band camp (2 weeks) and crew practices, Father asserted [M.S.] may only be available for parenting time

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and relevant case law); *see also* *Martin v. Hunt*, 130 N.E.3d 135, 137 (Ind. Ct. App. 2019) (failure to make a cogent argument results in waiver of the issue).

with Mother for the first weekends in June and July 2023. Father claimed there were mandatory “fundraisers” for crew and band. Further, Father stated that [M.S.] completed Lifeguard and CPR certification and that [M.S.] accepted [a] Lifeguard position at the Sylvania County Recreational Pools. The implication is that her summer job would also take [precedence] over Mother’s parenting time.

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27. [M.S.] appeared with Father at the Court hearings on November 1, 2022 and on May 9, 2023. [M.S.] was the first witness on May 9, 2023. She is Freshman at Central Catholic High School after attending K – 8th grade at St. Benedicts. [M.S.] was a delightful young lady that loves both her Mother and Father very much. She is highly intelligent and very well spoken. [M.S.’s] newest sport is crew. 2-3 months ago, she joined the “Black Swamp” crew club (not the Central Catholic High School crew team). They have a shell with 5 rowers and [M.S.] (5’3” and 105 lbs.) is the coxswain. The Court became very concerned when [M.S.] said she hopes to get crew scholarship to “good schools”. She said the best colleges offer crew scholarships. Unfortunately, and unnecessarily, a heavy burden has been placed on [M.S.]. The implication is obvious to the Court that Father has convinced [M.S.] that she must be on the crew team in Toledo and attend all their practices, trainings and fundraisers to have chance to earn scholarship to an Ivy League College or similar prestigious college typically on the east coast. No young High School student should be under the pressure and stress of thinking they must earn an athletic scholarship.

28. Here, [M.S.] is suffering as result of Father’s continued interference with Mother’s parenting time, particularly the summer parenting time. This wrongfully puts [M.S.] in the middle. Father is pitting [M.S.’s] summer activities against Mother’s Court Ordered summer parenting time. All of this

could have been avoided if Father simply followed the prior advisements [that he cooperate with Mother to ensure she receives her court-ordered parenting time].

(Appellant's App. Vol. II at 39-41.)

[28] Father argues the trial court abused its discretion when it denied his motion to modify Mother's summer parenting time. He contends modification was in M.S.'s best interests because her summer activities, including band, rowing crew, a summer job, various fundraising activities, and SAT/ACT preparation courses were "aligned with M.S.'s wishes" and "were all consistent and healthy goals involving M.S.'s personal, educational, and professional growth."

(Father's Br. at 26.) Father's argument also focuses on various scenarios in which the trial court could have crafted novel ways to allow Mother to exercise her parenting time and without interfering with M.S.'s summer activities.

[29] Mother's previously-ordered summer parenting time started June 1 and ended July 31. Father asked the trial court to modify Mother's summer parenting time with M.S. to the first two weekends in June and the first two weekends in July. The modification does not comply with the recommendations made in the IPTG. Additionally, as the trial court found, the modification was not in M.S.'s best interests because Father continued to interfere with Mother's relationship with M.S. by thwarting Mother's ability to exercise her parenting time. Father's arguments are invitations for use to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See Steele-Giri*, 51 N.E.3d at 124 (appellate court cannot reweigh evidence or judge the credibility

of witnesses). Based thereon, we conclude the trial court did not abuse its discretion when it denied Father's motion to modify Mother's parenting time.

## 2. Payment of Tuition

[30] Father also argues the trial court abused its discretion when it denied his motion for Mother to pay half of Children's tuition to their parochial schools.

"Provisions for the payment of educational expenses are also modifiable because educational expenses are in the nature of child support." *Schacht v. Schacht*, 892 N.E.2d 1271, 1275 (Ind. Ct. App. 2008). Therefore, payment of educational expenses may be modified when "a party has been ordered to pay an amount in child support that differs by more than twenty percent (20%) from the amount that would be ordered by applying the child support guidelines[.]" Ind. Code § 31-16-8-1-(b)(2)(A).

[31] Regarding this issue, the trial court found:

24. On September 20, 2022 Father filed a Motion for Educational Expenses. [M.S.] is attending Central Catholic High School in Toledo which Father's Motion shows will cost between \$9,600.00 and \$13,250.00 per year. Despite the parties sharing joint legal custody of [Children], Father stated [H.S.] will transfer from St. Benedict Catholic School to St. Francis Catholic School in Toledo which costs between \$8,500.00 and \$13,250.00 per year.

25. There is an existing Educational Expense Order in Paragraph 3 of the August 1, 2017 Order (filed August 17, 2017), which provides as follows:

The parties agree that so long as [Children] qualify for vouchers, [Children] shall attend St. Ben's Parochial School in Toledo, Ohio. The parties shall equally divide any tuition and required fees for the school which remain after application of the vouchers.

The children qualified for vouchers to attend St. Ben's because Father's residence is in a failing Toledo public school district. Mother's half (50%) of the St. Ben's annual expense was around \$600.00 after vouchers. Father testified that if he is not in a failing public school district, [Children] will lose their vouchers. Father was willing to equally share (50/50) the Catholic School expense if [Children] lose their vouchers. Based on Father's testimony, Father may be contemplating moving to a nicer residence in Toledo that is not in a failing school district.

26. With regard to Father's September 20, 2022 Motion for Educational Expenses Mother shall pay up to \$1,000.00 per semester for each child at Parochial Schools in Toledo. If [Children] remain qualified for full or partial vouchers, the prior Order of August 1, 2017 shall remain in effect with Mother's 50% net obligation capped at \$1,000.00 maximum contribution per semester per child. If [Children] will not receive vouchers regardless of the reason, Mother's obligation remains capped at \$1,000.00 maximum contribution per semester per child.

(Appellant's App. Vol. II at 40-1.) Father argues the trial court's denial of his request that Mother pay half of Children's parochial school tuition was an abuse of discretion because the trial court's \$1,000.00 cap on education expenses "unreasonably places too large of the burden on Father." (Father's Br. at 39.)

- [32] Mother and Father have joint legal custody of Children. Joint legal custody “means that the persons awarded joint custody will share authority and responsibility for the major decisions concerning the child’s upbringing, including the child’s education[.]” Ind. Code § 31-9-2-67. Further, the party requesting an increase in child support as it relates to additional expenses is required to show those expenses are “reasonable and necessary.” *Tigner v. Tigner*, 878 N.E.2d 324, 329 (Ind. Ct. App. 2007). Here, Father made no such showing.
- [33] Mother presented evidence of Father’s unilateral decision regarding where Children would go to school during the upcoming school year. When Father suggested H.S. change schools from St. Benedict Catholic School to St. Francis Catholic School, Mother asked for more time to do research on these choices. Instead of allowing Mother to do that research, Father enrolled M.S. in Central Catholic High School and H.S. in St. Francis Catholic School.
- [34] The 2017 order indicates Mother agreed to pay for half of the out-of-pocket tuition and fees of parochial schools “so long as [Children] qualify for vouchers[.]” (Appellee’s App. Vol II at 22.) While at the time of the 2017 hearing on the matter, Father still lived in a failing school district and qualified for vouchers, he indicated he intended to move to an area where he would not. At the time of Father’s request for modification, Mother was paying approximately \$600 for Children’s educational expenses because Children received vouchers. The trial court increased Mother’s contribution to \$1,000.00 per semester per child. As Father did not comply with the requirement that the

parties agree about Children’s educational decisions, the trial court did not abuse its discretion when it denied his request for the trial court order Mother to pay half the tuition for Children’s new parochial schools. *See, e.g., Tigner*, 878 N.E.2d at 329 (reversal of the trial court’s order granting the mother’s request for modification of child support order to require the father to pay additional healthcare expenses when the mother unilaterally decided to incur the expenses and when the mother did not demonstrate the expenses were reasonable or necessary).

### 3. Contempt

[35] Father next argues the trial court abused its discretion when it found him in contempt. Generally, “contempt of court involves disobedience of a court which undermines the court’s authority, justice, and dignity.” *In re A.S.*, 9 N.E.3d 129, 131 (Ind. 2014) (quoting *State v. Heltzel*, 552 N.E.2d 31, 34 (Ind. 1990)). Indirect contempt involves those acts “committed outside the presence of the court ‘which nevertheless tend [ ] to interrupt, obstruct, embarrass or prevent the due administration of justice.’” *Id.* at 132 (quoting *Heltzel*, 552 N.E.2d at 34).

[36] “Trial courts maintain considerable discretion in determining whether a party should be found in contempt of court,” and these determinations are reviewed for an abuse of discretion. *In re Paternity of B.Y.*, 159 N.E.3d 575, 577 (Ind. Ct. App. 2020). We will reverse a finding of contempt only if there is no evidence or inferences drawn therefrom that support it. *Id.* “We do not reweigh the

evidence or judge the credibility of witnesses, and we will affirm the trial court's contempt finding unless review of the record leaves us with a firm and definite belief that a mistake has been made." *Clary-Ghosh v. Ghosh*, 26 N.E.3d 986, 993 (Ind. Ct. App. 2015), *reh'g denied, trans. denied*.

[37] The trial court determined Father was in indirect contempt for violating the trial court's parenting time orders. (Appellant's App. Vol. II at 38.) The trial court then imposed a sanction of \$2,000.00 "for the purpose of coercing compliance with the existing parenting time Orders[.]" (*Id.* at 43.) However, the trial court ordered "the fine is avoidable by compliance with the existing parenting time Orders." (*Id.*) In support of its decision, the trial court found:

15. On March 26, 2021 Father communicated with Mother via Our Family Wizard ("OFW") asking to "put off" spring break visitation with [Stepfather] so that [Children could] attend sports practices and appointments in Toledo. OFW communications continued through March 30, 2021 where Father continued making proposals to change [Stepfather's] spring break parenting time due to the [Children's] wishes regarding activities. Ultimately the Father and his girlfriend drove down from Toledo with [Children] to spend the April 2-4, 2021 weekend visiting Father's family in the Evansville/Newburgh area. Father did not notify either Mother or [Stepfather] that [Children] were in the Evansville/Newburgh area. Father intentionally failed to contact [Stepfather] so [Children] could be exchanged Sunday in the Evansville/Newburgh area. Father then drove [Children] on Sunday April 4, 2021 three and one-half (3 1/2) hours to Pendleton, Indiana where [Stepfather] met them and [Stepfather] then drove [Children] back three and one-half (3 1/2) hours to his residence in Newburgh. Father's actions were inexcusable, causing [Children] to needlessly travel hours by car. Father's actions also violated the Special Notice of Availability in Section



111(5) of the Indiana Parenting Time Guidelines (“IPTG”), which IPTG and Commentary was specifically adopted in the parties May 19, 2016 Summary [Dissolution] Decree.

16. Paragraph 3(e) of [the] November 9, 2020 Order Entry provided [Stepfather] shall be allowed to exercise Mother’s parenting time for a portion of summer vacation commencing on Thursday, June 24, 2021 at 6:00 p.m. until Sunday, June 27, 2021 at 6:00 p.m. E.S.T. and again Monday, July 12, 2021 at 6:00 p.m. until Thursday, July 15, 2021 at 6:00 p.m. E.S.T. with all exchanges to take place at the normal location in Pendleton, Indiana. Unfortunately, Father did not deliver [Children] as Ordered on June 24 and July 12, 2021. Father’s excuse was that his Jeep was in the shop for repairs. On June 24, 2021, Father claimed in OFW that he could not afford a rental car. Father’s claim was simply not credible. Father received child support from the Mother, he was then gainfully employed at the Public Defender’s Office and he received monthly military disability payments. On July 9, 2021 Father stated in OFW that [Stepfather] is always more than welcome to drive the entire way. Father was apparently able to find transportation to his employer while his Jeep was in the shop, just not transportation to comply with the Court’s summer parenting time Orders.

\* \* \* \* \*

20. When the Mother returned from her deployment, Mother asked Father for a weekend with [Children] in Toledo via OFW on September 14, 2021. She had not seen [Children] for almost year. Father replied to Mother via OFW on September 15, 2021 that he was starting new position with the Lucas County Prosecutor’s Office and will no longer be with the Public Defender’s Office. On September 20, 2021, Father complained to Mother that she should have given him more notice of her request for “make-up time” with [Children], but Father failed to provide any proposed dates for her parenting time in Toledo. It

took Father a month to set up Mother's weekend in Toledo with Father insisting that weekend was "make-up" parenting time. The OFW communications from September 14 to October 22, 2021 show the Mother at all times was civil, proper and non-evasive in her messages to Father. However, Father[']s replies were often days late and Father required that parties' attorneys be involved in what should be very simple matter between parents. This is but one example of Father's continuing refusal and/or inability to deal in good faith with the Mother.

(*Id.* at 37-9) (citations to the record omitted).

[38] Father argues his requirement to ensure Mother received her court-ordered parenting time "was impeded for good cause during the time Mother and Stepfather did not receive their ordered parenting time." (Father's Br. at 29.) Regarding the spring break parenting time, Father asserts he followed Mother's instructions to exchange Children in Pendleton, Indiana and he should not be found in contempt for doing so even though he was in the Newburgh/Evansville area where Stepfather lived. Regarding the summer parenting time, Father contends Stepfather refused to pick up Children in Toledo to exercise that time. He further asserts that he was "simply not able to comply with the court's 2020 order regarding parenting time during Mother's deployment because he was financially unable to rent a car during the time his Jeep was unavailable. Father's alternate version of the facts is an invitation for us to reweigh the evidence, which we cannot do. *See Clary-Ghosh*, 26 N.E.3d at 993 (appellate court cannot reweigh evidence or judge the credibility of witnesses). Based thereon, we conclude the trial court did not abuse its discretion when it found Father in indirect contempt for knowingly and

intentionally failing to follow the trial court’s parenting time orders. *See, e.g., id.* at 994 (mother properly found in indirect contempt of court for failure to pay the child’s preschool fees in violation of the trial court’s order that she do so), *reh’g denied, trans. denied.*

#### **4. Attorney’s Fees**

[39] Finally, Father argues the trial court abused its discretion when it ordered him to pay \$15,000 in Mother’s attorney fees.

In post-dissolution proceedings, the trial court may order a party to pay a reasonable amount for attorney’s fees. The trial court has broad discretion in awarding attorney’s fees. Reversal is proper only where the trial court’s award is clearly against the logic and effect of the facts and circumstances before the court. In assessing attorney’s fees, the trial court may consider such factors as the resources of the parties, the relative earning ability of the parties, and other factors bearing on the reasonableness of the award. In addition, any misconduct on the part of a party that directly results in the other party incurring additional fees may be taken into consideration.

*Julie C. v. Andrew C.*, 924 N.E.2d 1249, 1261 (Ind. Ct. App. 2010) (internal citations omitted).

[40] The trial court ordered Father to pay \$15,000 toward Mother’s attorney’s fees and stated that its order was “compensatory in nature.” (Appellant’s App. Vol II at 43.) Additionally, the trial court ordered Father to pay the amount in three increments - “\$5,000.00 due within 30 days, \$5,000.00 due within 60 days and the final \$5,000.00 due within 90 days.” (*Id.*) Father argues the amount of the

attorney's fees and the time frame in which he was ordered to pay the fees was an abuse of discretion because the award was excessive and he did not have the means to pay the amount within ninety days. He asserts the trial court's order that he do so in addition to other expenses ordered by the trial court caused him financial hardship.

[41] The trial court asked Mother to present the amount she paid for attorney services related to her two motions for contempt. Mother presented as evidence an explanation of billing history from her attorney, Robert E. Zoss. In that explanation, Zoss indicated Mother had incurred \$6,399.21 in attorney's fees for most of the services rendered to Mother from June 24, 2021, to May 27, 2022. He told the trial court that "it would be virtually impossible to separate which legal services related to what pleading" after May 27, 2022, because the services required to address other issues in the case were intertwined with those regarding the two motions for contempt. (Appellant's App. Vol. II at 92.)

[42] In ordering Father to pay \$15,000 in attorney's fees, the trial court stated Father had the ability to pay those fees "for his improper actions based on "Father's employment, military disability and financial assistance from his fiancée[.]" (*Id.* at 43.) In that same order, the trial court required Father to pay \$2,000.00 for indirect contempt, which was stayed as long as Father complied with the parenting time orders, and it capped Mother's contribution to Children's tuition at \$1,000.00 per child per semester.

[43] Father makes \$65,000.00 per year as an assistant prosecuting attorney and \$1,416.20 non-taxable military disability payment per month. For child support purposes, the trial court imputed his weekly income as \$1,577.00. In contrast, Mother's weekly income for child support purposes was \$2,307.00. The trial court also indicated Father was able to pay Mother's attorney's fees because he received financial assistance from his fiancée, but there is no evidence what that amount was at the time of the trial court's order.

[44] As noted above, attorney Zoss submitted an expense history indicating the bill for his services from June 24, 2021, to May 27, 2022, was \$6,399.21. It is unclear what attorney's fees Mother incurred for the contempt motions after May 27, 2022, because attorney Zoss indicated he was unable to parse the fees used for the contempt issues and other issues within the case. Mother testified she had paid approximately \$4,000.00 in attorney's fees at the time of the May 19, 2023, hearing. Thus, the trial court's \$15,000.00 figure is not supported by the evidence because Zoss could only attribute \$6,399.21 to the relevant contempt proceedings. There is no indication in the record how the trial court determined Father should pay the additional \$8,600.79 in Mother's attorney's fees. Based thereon, we conclude the trial court abused its discretion when it ordered Father to pay \$15,000.00 in Mother's attorney's fees within ninety days of the trial court's order. *See, e.g., Ahls v. Ahls*, 52 N.E.3d 797, 803-4 (Ind. Ct. App. 2016) (trial court abused its discretion when it awarded the wife attorney's fees because wife's income exceeded that of the husband and the wife had not presented evidence of the fees incurred as part of the relevant portions of the

litigation). However, we believe Father should pay a portion of Mother's attorney's fees to compensate her for the fees incurred as part of her motions for contempt, so we remand to the trial court for determination of those attorney's fees and Father's ability to pay them.

## Conclusion

[45] We hold the trial court did not abuse its discretion when it denied Father's motion to modify Mother's summer parenting time and motion for educational expenses. Further, the trial court did not abuse its discretion when it found Father in contempt because the trial court noted several times during which Father did not allow Mother to exercise her parenting time as ordered by the trial court. However, the trial court abused its discretion when it ordered Father to pay \$15,000.00 of Mother's attorney's fees because there was no evidence regarding Father's ability to pay those fees in addition to the other fees and sanction ordered by the court and there was no evidence to support the trial court's conclusion that Mother owed \$15,000.00 in attorney's fees. We remand to the trial court for proper consideration of Mother's attorney's fees and Father's ability to pay them. Therefore, we affirm in part, reverse in part, and remand.

[46] Affirmed in part, reversed in part, and remanded.

Vaidik, J., and Kenworthy, J., concur.

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