



**In the
Missouri Court of Appeals
Western District**

LISA LANGSTON,

Respondent,

v.

JONATHAN LANGSTON,

Appellant.

WD82954

**OPINION FILED:
December 29, 2020**

**Appeal from the Circuit Court of Clay County, Missouri
The Honorable K. Elizabeth Davis, Judge**

Before Division One:

Thomas N. Chapman, P.J., Mark D. Pfeiffer and W. Douglas Thomson, JJ.

Jonathan Langston (“Father”) appeals from the judgment of the Circuit Court of Clay County modifying his child support obligation and awarding attorney’s fees to Lisa Langston (“Mother”). Father raises five points on appeal. In point one, he argues that the trial court erred in ordering Father to pay a portion of Mother’s attorney’s fees. In points two, three, four, and five, he asserts that the trial court erred in determining his monthly child support obligation, by miscalculating his income, and by erroneously including Mother’s work-related child care costs, the costs of the child’s therapy and psychiatric treatment, and the child’s tutoring expenses in its Form 14 calculation. We affirm.

Factual and Procedural Background¹

The Judgment Decree of Dissolution of Marriage (“Judgment of Dissolution”) entered on March 13, 2012, awarded Mother sole physical custody of the one child of the marriage (then age six), allowed supervised visitation with Father, and granted the parties joint legal custody. Father was ordered to pay \$453.00 per month in child support. Each party was ordered to pay half of the uninsured medical expenses and half of the extracurricular expenses of their child.

In the intervening years, Mother routinely incurred expenses on behalf of the child for tutoring, and medication and psychological counseling and therapy expenditures that were not fully reimbursed by insurance. When requested by Mother, Father refused or failed to pay his share of these expenses as required by the Judgment of Dissolution.

In early 2017, at the request of Mother, the Division of Child Support Enforcement initiated a proceeding for the modification of child support. Father filed a counter-motion for modification requesting that custody be changed to joint physical custody, that he be allowed unsupervised parenting time with the child, that the child’s residential designation be shifted to Father, that Mother be required to pay Father child support, or, in the alternative, requesting that Father’s child support obligation be reduced. Father’s pleadings also made allegations of abuse and/or neglect against Mother, necessitating the appointment of a guardian ad litem. Mother filed a counter-petition for modification in August of 2017, which included a request that she be awarded her attorney’s fees.

A prolonged and contentious litigation ensued including voluminous discovery and numerous disputes between the parties. During the course of the litigation, Father’s

¹ “We view the evidence in the light most favorable to the trial court’s judgment and disregard all contrary evidence and inferences.” *Collins v. Collins*, 586 S.W.3d 282, 286 n.1 (Mo. App. W.D. 2019).

circumstances changed significantly. In May of 2018, Father was charged with multiple felonies in Anderson County, Kansas, relating to an arrest for driving while intoxicated. Father did not disclose the charges to Mother or the guardian ad litem. Upon becoming aware of the circumstances giving rise to Father's felony charges, Mother propounded discovery attempting to gather additional information about the charges and Father's alleged conduct. Father sought an extension of time to respond to these discovery requests, and ultimately dismissed all of his claims the day before his discovery responses were due.

At trial, the court heard testimony and evidence from both parties relating to Mother's motion to modify and her request for assessment of attorney's fees. The trial court subsequently issued its Judgment of Modification, which increased Father's monthly support obligation and terminated some of his separate obligations to pay for a portion of the child's medical and counseling expenses. The trial court rejected both parties' proposed Form 14s as incorrectly calculated, and completed its own Form 14. The trial court increased Father's monthly child support obligation from \$453.00 to \$1,161.00, and effectuated this modification retroactively to September 1, 2017. This increase was based in part on Father's increased income, and the inclusion of the costs of work-related child care, uninsured medical costs for psychiatric therapy, and tutoring expenses in the trial court's Form 14.²

With respect to uninsured medical costs (related to therapy and psychiatric treatment) and tutoring, the trial court found that these expenses were reasonable and necessary. Although the original Judgment of Dissolution required the parties to share these expenses equally, the parties experienced consistent difficulties in communicating and agreeing on which of these expenses

² Additional facts relevant to these Form 14 entries are provided in our analysis of these entries below.

were necessary. These difficulties had resulted in Father refusing or failing to reimburse Mother for one half of these expenses, as required by the original Judgment of Dissolution. To alleviate the difficulties between the parties, and to ensure that Mother would have the resources available to pay for these necessary expenses on behalf of the child, the trial court modified the original Judgment of Dissolution by including the uninsured medical expenses and tutoring in the appropriate sections of its Form 14. In doing so, the trial court relieved Father of any obligation to pay any portion of these expenses outside of his child support obligation.

With respect to Mother's request for assessment of her attorney's fees, the trial court indicated it had considered the financial resources of the parties, the merits of the case, and the conduct of the parties during the pendency of the litigation, and ordered Father to pay \$20,000 of the \$30,000 of attorney's fees that Mother had incurred during the litigation.

Father appeals to this court.

Standard of Review

In a court-tried case, we will affirm the trial court's judgment "unless it is not supported by substantial evidence, is against the weight of the evidence, or erroneously declares or applies the law." *Collins v. Collins*, 586 S.W.3d 282, 288 (Mo. App. W.D. 2019) (quoting *Ritter v. Ritter*, 920 S.W.2d 151, 159-60 (Mo. App. W.D. 1996)). "We view the evidence, and permissible inferences therefrom, in the light most favorable to the trial court's judgment, and we disregard all contrary evidence and inferences." *Jaco v. Jaco*, 516 S.W.3d 429, 432 (Mo. App. W.D. 2017) (quoting *Blue Ridge Bank & Trust Co. v. Trosen*, 309 S.W.3d 812, 815 (Mo. App. W.D. 2010)). "We defer to the trial court's factual findings, giving due regard to the trial court's opportunity to judge the credibility of witnesses." *Id.* We review an award of attorney's fees for abuse of discretion. *Collins*, 586 S.W.3d at 288.

Analysis

Father raises five points on appeal. In his first point, he argues that the trial court erred in ordering him to pay a portion of Mother's attorney's fees. In points two through five, he asserts that the trial court erred in determining his monthly child support obligation, by miscalculating his income, and by erroneously including Mother's work-related child care costs, the costs of the child's therapy and psychiatric treatment, and the child's tutoring expenses in its Form 14 calculation.

At the outset, we note that Father's points two through five contain multiple allegations of error and are, therefore, "multifarious in violation of Rule 84.04(d) and preserve[] nothing for appellate review." *Koch v. Koch*, 584 S.W.3d 347, 355 (Mo. App. S.D. 2019) (quoting *In re Marriage of Adams*, 414 S.W.3d 29, 33 (Mo. App. S.D. 2013)). Each of these points claim that the trial court's decision was: (1) against the weight of the evidence, (2) not supported by substantial evidence, and (3) an erroneous application of the law. Substantial evidence and against the weight of the evidence claims are distinct legal challenges which require "a distinct analytical framework[.]" *Koch*, 584 S.W.3d at 355 (quoting *Houston v. Crider*, 317 S.W.3d 178, 186-87 (Mo. App. S.D. 2010)). Father's brief fails to adhere to the analytical framework these distinct claims require. *See id.* (providing a detailed and sequential guide to the analytical steps necessary to sustain these distinct evidentiary challenges). In particular, Father's brief fails to make clear when his various arguments relate to the substantial evidence standard and when they relate to the against-the-weight-of-the-evidence standard. "Failure to follow the applicable framework means the appellant's argument is analytically useless and provides no support for his or her challenge." *Id.* (quoting *Adams*, 414 S.W.3d at 34).

“As a general rule, multifarious points preserve nothing for appellate review and, thus, are subject to dismissal.” *Fastnacht v. Ge*, 488 S.W.3d 178, 184 (Mo. App. W.D. 2016). However, because we prefer to decide cases on the merits, we nevertheless review Father’s points two through five *ex gratia* based on our best efforts at understanding his arguments and to the extent that his arguments substantially follow an appropriate analytical framework. We first address Father’s points two through five.

Point Two³

In his second point on appeal, Father argues that the trial court erred in determining that his income was \$7,241.00 per month, because the trial court failed to consider his testimony and exhibits reflecting his past and present monthly income. This evidence, Father contends, was the most accurate predictor of his monthly income. As discussed above, Father’s point is multifarious in that he attempts to raise three different legal challenges in a single point on appeal. Thus, Father has preserved nothing for appeal. Nevertheless, we address Father’s point two *ex gratia* as to whether the trial court’s determination was against the weight of the evidence.

“A claim that the judgment is against the weight of the evidence presupposes that there is sufficient evidence to support the judgment.” *Ivie v. Smith*, 439 S.W.3d 189, 205 (Mo. banc 2014). In gauging the “weight of the evidence,” we examine the persuasive value of the evidence. *Id.* at 206. The trial court’s judgment is against the weight of the evidence only when

³ In full, Father’s second point states:

The trial court erred in determining the monthly income of Appellant to be \$7,241.00 per month because the trial court’s decision was against the weight of the evidence, not supported by substantial evidence and the trial court erroneously applied the law in that the court failed to take into consideration Appellant’s testimony as to his actual monthly income, both past and present, which was the most accurate predictor of his monthly income.

the trial court “could not have reasonably found, from the record at trial, the existence of a fact that is necessary to sustain the judgment.” *Id.* We defer to the trial court’s findings on contested factual issues and when the trial court’s findings depend on credibility determinations. *Id.* “The circuit court is able to judge directly not only the demeanor of witnesses, but also their sincerity and character and other trial intangibles that the record may not completely reveal.” *Id.*

Accordingly, appellate courts recognize that “the circuit court is free to believe all, some, or none of the evidence offered to prove a contested fact, and the appellate court will not re-find facts based on credibility determinations through its own perspective.” *Id.* “This includes facts expressly found in the written judgment or necessarily deemed found in accordance with the result reached.” *Id.* “When the evidence poses two reasonable but different conclusions, appellate courts must defer to the circuit court’s assessment of that evidence.” *Id.*

In determining Father’s gross monthly income for Form 14 purposes,

the trial court was free to consider both his past and present earnings to determine an average that was consistent with historical earnings and representative of future earnings. Likewise, the court, in its discretion, could have chosen to ignore his income history and look at his income from a single year, if it found that amount to be an accurate predictor of his income. Alternatively, the trial court could have chosen to look to his future earning capacity to determine his ability to support [his child].

Laubinger v. Laubinger, 5 S.W.3d 166, 178-79 (Mo. App. W.D. 1999) (internal citations omitted). When the trial court adopts a reasonable method of determining a party’s average monthly income, we will not reverse the trial court’s decision merely because another reasonable method for this calculation was available. See *In re Marriage of McDaniel*, 419 S.W.3d 828, 836 (Mo. App. S.D. 2013).

In the matter before us, Father testified at trial that he was employed as a union sheet metal worker and that he earned an hourly wage of \$42.10. In calculating Father’s gross income,

the trial court multiplied Father's hourly wage by a standard work week of 40 hours per week, and then multiplied that figure by 4.3 weeks per month to arrive at Father's gross monthly income of \$7,241. The trial court found that this method provided the most accurate indicator of Father's income. We likewise find that this is a reasonable method of calculating Father's gross income.⁴

Father contends that the trial court did not give appropriate weight to his testimony that his employment was subject to layoffs and job switches that caused his income to fluctuate such that his hourly wage was an inaccurate predictor of his gross income. However, the trial court was "free to believe all, some, or none" of his testimony. *Ivie*, 439 S.W.3d at 206. In finding that Father's current hourly wage was the most accurate predictor of Father's income, the trial court resolved this factual issue contrary to Father's testimony. We do not "re-find facts based on credibility determinations through [our] own perspective." *Id.*

Ultimately, Father wanted the trial court to find his income based on an average of his income from the four years preceding trial. The trial court, in its discretion, could have decided that his past earnings were the most accurate predictor of his income; however, it was also within the trial court's discretion to look to his future earning capacity to determine his income. *Laubinger*, 5 S.W.3d at 179. "When the evidence poses two reasonable but different conclusions, appellate courts must defer to the circuit court's assessment of that evidence." *Ivie*, 439 S.W.3d at 206. The judgment of the trial court, specifically with respect to its calculation of Father's income in calculating Father's child support obligation, was not against the weight of the evidence.

⁴ Father does not challenge the trial court's determination in its Form 14 that Mother's income was \$4,072 per month.

Point two is denied.

Point Three⁵

In his third point, Father argues that the trial court erred in including work-related child care costs in section 6 of the court's Form 14, because there was no substantial evidence supporting the inclusion of the amount. In particular, Father argues that the work-related child care costs were not necessary or stable enough to be included. As previously discussed, Father's point three is multifarious and preserves nothing for review. However, we review this point *ex gratia* as to whether the trial court's judgment was supported by substantial evidence.

"Substantial evidence is evidence that, if believed, has some probative force on each fact that is necessary to sustain the circuit court's judgment." *Ivie*, 439 S.W.3d at 199. "Appellate courts accept as true the evidence and inferences . . . favorable to the trial court's decree and disregard all contrary evidence." *Id.* at 200 (internal quotations omitted).

"In doing its own Form 14 calculation, the trial court determines which Form 14 items and their respective amounts are properly included in the calculation based on the Directions for Completion of Form 14 and the evidence presented." *Keller v. Keller*, 18 S.W.3d 589, 597 (Mo. App. W.D. 2000) (internal quotations omitted). "Necessary child-care expenses required by the custodial parent who is working or attending school must be considered in determining a child

⁵ In full, Father's third point states:

The trial court erred in the inclusion of \$108.00 per month in section 6 of the Court's Form 14 for work-related child-care costs of Respondent because the trial court's decision was against the weight of evidence, not supported by substantial evidence and the trial court misapplied the law because substantial evidence did not exist at the trial for the inclusion of Respondent's work-related child care costs as the costs were not needed nor were stable enough to be included.

support award.” *Stufflebean v. Stufflebean*, 941 S.W.2d 844, 847 (Mo. App. W.D. 1997); *accord* § 452.340.1(6);⁶ Form 14, Line 6a.

The trial court properly considered Mother’s reasonable work-related child care costs in its Form 14 calculation. Mother testified that child care is necessary after school and during the summer. Mother testified that she incurred costs for after school care in the amount of \$40.00 per year through a program at her son’s middle school, and that she incurred costs for a summer program in the amount of \$1,260.00 per year.⁷ Mother testified that the child could be left home alone a day or so, here and there, but needed a more structured environment during the summer. The trial court found that Mother’s testimony was credible and that the costs incurred were reasonable. Mother’s testimony regarding the necessity and cost of her actual work-related child care expenses had probative force on the issue of Mother’s reasonable work-related child care costs going forward. Thus, substantial evidence supported the trial court’s inclusion of Mother’s reasonable work-related child care costs in its Form 14 calculation.

Although Father testified that such care was not necessary for the child, the trial court did not find Father’s testimony to be credible. Rather, it found Father’s testimony in this regard “to be merely self-serving in an effort to reduce [Father’s] child support obligation.” Moreover, in a substantial evidence challenge, we “accept as true the evidence and inferences . . . favorable to the trial court’s decree and disregard all contrary evidence.” *Ivie*, 439 S.W.3d at 200. Because Father’s testimony is contrary to the trial court’s finding as to the necessity of the child care, it need not be considered in this substantial evidence challenge.

⁶ All statutory references are to RSMo 2016, unless otherwise indicated.

⁷ The combined annual cost of Mother’s work-related child care was \$1,300, which, divided by twelve, results in the monthly figure of \$108 that the trial court used in its Form 14 calculation.

Point three is denied.

Point Four⁸

Father argues in his fourth point on appeal that the trial court erred by including \$135.00 per month in section 6d of the court's Form 14 calculation for therapy, psychiatric treatment, and prescription medications because (1) Mother failed to consult with Father prior to incurring these expenses, and (2) the inclusion of these expenses in the trial court's Form 14 duplicated expenses to be paid by Father pursuant to the Judgment for Dissolution. Again, as noted above, Father's point four is multifarious and preserves nothing for review. We nevertheless address this point *ex gratia* as to whether it is supported by substantial evidence and whether the trial court misapplied the law in including these expenses in its Form 14 calculation.

"Form 14, Line 6d provides for the inclusion of 'uninsured extraordinary medical costs' in determining the presumed child support amount." *Keller*, 18 S.W.3d at 598. The relevant Form 14 directions and comments provide:

"Uninsured medical costs" are reasonable and necessary medical and dental expenses, as defined by section 213 IRC, incurred for the children who are the subject of this proceeding, to the extent that the uninsured portion of such expenses, including any deductibles and co-payments, exceeds \$250.00 per year per child. "Extraordinary medical costs" are predictable and recurring, such as expenses for dental treatment, orthodontic treatment, asthma treatment and physical therapy. Medical and dental expenses incurred for single occurrence illnesses or injuries that

⁸ In full, Father's fourth point states:

The trial court erred in the inclusion of \$135.00 in section 6d of the court's form 14 for therapy, psychiatric treatment and prescription medications because the trial court's decision was against the weight of evidence, not supported by substantial evidence and the trial court misapplied the law because substantial evidence did exist at the trial that: (1) Appellant had paid all previous medical reimbursements requested from Respondent; (2) that Respondent failed to consult with Appellant as required by the Judgment for Dissolution of Marriage for the treatment and prescriptions; (3) the inclusion of the expenses in the trial court's Form 14 duplicated the expenses to be paid by Appellant as the Judgment for Dissolution of Marriage was never modified; and (4) as the Judgment for Dissolution of Marriage was never modified, the inclusion of the expenses contradicts the judgment as for Appellant to be responsible for said expenses, Appellant must be consulted and agree on said expenses.

are not covered or fully paid under any health insurance policy should be handled by separate order.

Form 14, Line 6d, *Comment A*.

[T]he purpose of factoring in uninsured extraordinary medical expenses in child support calculations is to relieve the custodial parent from having to continually pursue the non-custodial parent, under a separate order, for payment of expenses that are so predictable, due to an ongoing condition requiring treatment and care, that they are likely to recur. In such circumstances, it seems only fair to remove that undue burden by building into the child support award the payment of such expenses.

Keller, 18 S.W.3d at 599.

Mother testified that the child had been seeing a therapist once per month since he was five years old; that the uninsured portion of the cost of therapy was about \$61.00 per month; and that Father refused to contribute to this expense. Mother also testified that the child sees a psychiatrist once per month; that the uninsured portion of the cost of these visits was \$74.00 per month; and that Father had not contributed to the cost of these visits. The combined total of these expenses results in the \$135.00 figure that the trial court used in section 6d of its Form 14. Mother's testimony, which the trial court found credible, provides substantial evidence to support the inclusion of these recurring expenses in the trial court's child support calculation.

The trial court found that the treatment was medically necessary for the child and that it was appropriate for Mother to incur these expenses on behalf of the child. The trial court found that Father disagrees with the need for this treatment and has not and will not reimburse Mother for Father's share of these expenses. The trial court based its finding on Father's "consistent history of refusal to pay for such expenses, and [Father's] clear testimony that [Father] has no intention of contributing to these expenses in the future." Accordingly, the trial court found it appropriate to include these expenses in its Form 14 calculation, because "if these expenses are

not included in the Form 14, [Father] will not reimburse [Mother] for [Father's] share of these expenses.”

In including these expenses in its Form 14 calculation, the trial court relieved Father “of any obligation to contribute, outside of [monthly] child support, to the minor child’s non-covered therapy, psychiatric and psychological treatment, medication and tutoring expenses[.]” The trial court reasoned that “[t]he difficulty the parties have consistently experienced in communicating regarding these expenses will be alleviated by removing [Father’s] obligation to pay any portion of these [particular] expenses outside of [Father’s] child support obligation and it will ensure that [Mother] has the resources available to pay for these necessary expenses on behalf of the child.”

Father’s contention that the inclusion of these costs in the Form 14 calculation is duplicative of costs allocated in the Judgment of Dissolution is without merit. Father ignores the fact that the trial court removed his obligation to pay any portion of these particular expenses outside of his modified child support obligation. Moreover, because Father testified that he refused to make any reimbursement for any expenses incurred regarding the child’s mental/emotional health, the court’s award (which excepted his obligation to pay these particular expenses outside of the child support award retroactive to the date of commencement of the modified monthly child support order) will not result in a windfall to Mother. That is, these expenses are not duplicative, because Father either refused to pay them in the past or has been relieved of the obligation to separately pay them in the future (outside of his monthly child support amount).

Point four is denied.

Point Five⁹

In his fifth point, Father argues that the trial court erred in including \$250.00 in section 6e of the court's Form 14 for tutoring. He contends that the tutoring was unnecessary; that Mother failed to consult with Father regarding the tutoring; and that the inclusion of the expenses in the Form 14 calculation resulted in duplicative expenses. Again, as noted above, Father's point five is multifarious and preserves nothing for review. We nevertheless address this point *ex gratia* as to whether it is supported by substantial evidence, and whether the trial court misapplied the law in including these expenses in its Form 14 calculation.

Line 6e of Form 14 provides for the inclusion of extraordinary child-rearing costs in the presumed child support amount. As relevant here, the comments on use provide:

“Other extraordinary child-rearing costs” may include, but are not limited to, *the cost of tutoring sessions*, special or private elementary and secondary schooling to meet the particular educational needs of a child, camps, lessons, travel and other activities intended to enhance the athletic, social or cultural development of a child.

Form 14, Line 6e, *Comment A* (emphasis added). In the matter before us, the trial court included the monthly cost of the child's tutoring sessions on Line 6e of its Form 14.

Substantial evidence supports the trial court's judgment. Mother testified that the child needs additional help with his academic performance, and that the child had been seeing a tutor

⁹ In full, Father's fifth point states:

The trial court erred in the inclusion of \$250.00 in section 6e of the court's form 14 for tutoring because the trial court's decision was against the weight of evidence, not supported by substantial evidence and the trial court misapplied the law because substantial evidence did exist at the trial that: (1) the tutor was unnecessary; (2) that Respondent failed to consult with Appellant as required by the Judgment of Dissolution of Marriage; (3) the inclusion of the expenses in the trial court's Form 14 duplicated the expenses to be paid by Appellant; and (4) as the Judgment for Dissolution of Marriage was never modified, the inclusion of the expenses contradicts the judgment as for Appellant to be responsible for said expenses, Appellant must be consulted and agree on said expenses.

for several years at the recommendation of his teachers. The cost for this tutoring is \$250.00 per month, which Mother has consistently (and solely) paid. The trial court found Mother's testimony to be credible and found that the tutoring is necessary. Although Father testified that tutoring was unnecessary, his contrary testimony can be disregarded when considering whether the judgment is supported by substantial evidence.

To the extent that Father's point five argues that the child support modification is duplicative of costs included in the Judgment of Dissolution, Father again ignores the fact that the trial court relieved him of any obligation to pay these expenses outside of his monthly child support obligation. As was the case with Father's point four above, these expenses are not duplicative.

Point five is denied.

Point One

In his first point, Father argues that the trial court abused its discretion in awarding Mother a portion of her attorney's fees. Father contends that there was misconduct by both parties during the litigation; that both parties testified that they lacked the financial resources to pay their attorneys; and that competent and substantial evidence does not exist to justify the award of attorney fees.

Generally, parties in domestic relations cases are responsible for their own attorney fees. *In re Marriage of Geske*, 421 S.W.3d 490, 496 (Mo. App. S.D. 2013). However, "section 452.355.1 specifically authorizes the circuit court to award attorney's fees after considering 'all relevant factors including the financial resources of both parties, the merits of the case and the actions of the parties during the pendency of the action.'" *Goins v. Goins*, 406 S.W.3d 886, 891 (Mo. banc 2013) (quoting § 452.355.1). The trial court has broad discretion in determining

whether an award of attorney's fees is warranted. *Id.* "The trial court is considered an expert as to the necessity, reasonableness, and value of attorneys' fees and thus, the trial court's decision is presumptively correct." *Collins*, 586 S.W.3d at 296 (quoting *Kelly v. Kelly*, 340 S.W.3d 673, 680 (Mo. App. W.D. 2011)). "We will only reverse an award of attorney[s'] fees when the award is so arbitrary and unreasonable as to indicate indifference or a lack of consideration in the trial court." *Id.* (alteration in original).

In this matter, the trial court found that an award of attorney's fees was warranted after considering the relevant statutory factors, including "the financial resources of both parties, the merits of the case and the actions of the parties during the pendency of the action[.]" § 452.355.1. As previously mentioned (in our discussion of Point Two), we find no error in the trial court's calculation of Father's income at \$7,241.00 per month, and Father does not dispute its determination that Mother's income was \$4,072 per month – a disparity of \$3,169 per month, \$38,028 per year.

Regarding the financial resources of the parties, Mother testified that she lacked the financial ability to pay her attorney's fees. The trial court found this testimony credible. The trial court had income information to support its determination that Mother lacked "the income or assets with which to pay her attorney's fees." The trial court also found that Father had the ability to pay Mother's attorney's fees. Although Father testified that he lacked the resources to pay these attorney fees, the trial court disbelieved his testimony and found that Father had a superior ability to pay these fees. The "credibility of witnesses and the weight to be given their testimony is a matter for the trial court, which is free to believe none, part, or all of the testimony of any witness." *In re Marriage of Colley*, 984 S.W.2d 163, 166 (Mo. App. S.D. 1998). We defer to the trial court's credibility determination.

As to the merits of the case and the actions of the parties during the litigation, the trial court noted Mother was required to hire private counsel to defend Father's claims for modification: claims that alleged that Mother had abused the parties' child and which were dismissed on the eve of trial. The trial court concluded that Father had filed "a tsunami of litigation which, at the end of the day, had no substance." Additionally, Father was charged with multiple felonies in May of 2018, but failed to disclose this information. The trial court found that written discovery had already been propounded which should have been properly updated to include this information. The trial court found further that Father's failure to disclose this information prolonged the litigation and led to the unnecessary accrual of attorney's fees. After Mother became aware of Father's felony charges, Mother made additional discovery requests regarding these charges, which were believed to be relevant to the issues raised in Father's pleadings including custody. Father sought and received an extension of time to respond to these discovery requests, only to dismiss all of his pleadings the day before his discovery responses were due. Although Father testified that he dismissed his pleadings solely because he no longer had the financial ability to continue pursuing them, the trial court expressly found that this allegation lacked credibility. The trial court properly considered this misconduct and its effect on the accrual of Mother's attorney fees, which totaled \$30,000.00. The trial court found that \$20,000.00 of the fees would not have been incurred but for Father's behavior.

Father argues that Mother also engaged in misconduct during the litigation, relating to the voluminous and contentious discovery between the parties. However, the trial court was in a superior position to observe the conduct of the parties and its effect on the litigation. On appeal, "[w]e view the evidence, and permissible inferences therefrom, in the light most favorable to the trial court's judgment, and we disregard all contrary evidence and inferences." *Jaco*, 516

S.W.3d at 432 (quoting *Trosen*, 309 S.W.3d at 815). The trial court, having observed and considered the conduct of the parties during the litigation, found that Father's conduct unnecessarily extended the litigation and led to the excessive accrual of Mother's attorney's fees. The record supports the trial court's finding.

In concluding that Father should pay a portion of Mother's attorney fees, the trial court considered the appropriate factors set forth in section 452.355.1. The partial award (\$20,000) of Mother's attorney's fees is neither arbitrary nor capricious, and does not indicate indifference or a lack of consideration in the trial court. *Collins*, 586 S.W.3d at 296.

Point one is denied.

Conclusion

The judgment is affirmed.

/s/ *Thomas N. Chapman*
Thomas N. Chapman, Presiding Judge

All concur.