# OPINION SUMMARY
# MISSOURI COURT OF APPEALS EASTERN DISTRICT

## DIVISION THREE

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| KIMBERLY L. BALL, | ) | No. ED109532 |
| | ) | |
| Appellant, | ) | Appeal from the Circuit Court of |
| | ) | St. Charles County |
| vs. | ) | |
| | ) | Honorable John P. Banas |
| MICHAEL R. BALL, | ) | |
| | ) | |
| Respondent. | ) | Filed: November 23, 2021 |

Kimberly Guinn ("Mother") appeals the trial court's judgment modifying an Illinois court's child custody judgment and giving Michael Ball ("Father") sole physical custody of their daughter, MB. Mother raises eight Points on appeal. In Point I, Mother challenges the trial court's "jurisdiction" to modify an Illinois court's dissolution judgment. In Point II, Mother argues the trial court improperly entered a temporary custody order without a hearing and delegated its judicial authority to enter a custody order to a guardian ad litem ("GAL"). In Points III-IV, Mother argues the trial court erred by awarding the parties joint legal custody, giving Father final decision-making authority, and awarding Father sole physical custody of MB. In Point V, Mother argues the trial court uncritically "rubber stamped" Father's proposed findings of fact and conclusions of law. In Point VI, Mother argues the trial court lacked jurisdiction to amend the Illinois judgment's award of a tax credit to her. In Point VII, Mother argues the trial court erred by dismissing her motion for new trial as untimely. In Point VIII, Mother argues the trial court lacked jurisdiction to amend the child support order because it was not registered for modification.

AFFIRMED.

DIVISION III HOLDS:

Point I is denied. Subject matter jurisdiction of Missouri courts is governed by Article V, section 14 of the Missouri Constitution, which provides in relevant part: "the circuit courts shall have original jurisdiction over all cases and matters, civil and criminal." This is a civil case. Mother's position is based on a statutory filing defect, which raises the court's authority to act, not subject matter jurisdiction. *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 251-54 (Mo. banc 2009). Her argument is unpreserved. Unpreserved authority arguments framed as jurisdictional arguments are waived. *Hightower v. Myers*, 304 S.W.3d 727, 733 (Mo. banc 2010).

Point II is denied. Mother's argument is unpreserved. Section 452.380(1) provides: "A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit. The court may award temporary custody after a hearing or, if there is no

objection, solely on the basis of the affidavits." Nothing in the record supports Mother's claim she objected to the temporary custody order.

Points III-IV are denied. A trial court's custody determination is afforded greater deference than other decisions and we will not reweigh the evidence or credibility of the witnesses. *Thorp,* 390 S.W.3d at 877. Mother's claims ignore our standard of review and are replete with speculation about facts outside the record.

Point V is denied. This Court "does not condone [verbatim adoption of proposed findings] by a trial court, and strongly encourage[s] all trial courts to avoid such a practice." *Arcese v. Daniel Schmitt & Co.,* 504 S.W.3d 772, 778 n.7 (Mo. App. E.D. 2016 (*citing State v. Griffin,* 848 S.W.2d 464 (Mo. banc 1993)). Here, the trial court's partial adoption of Father's proposed findings did not indicate a lack of careful consideration because the court modified the proposed findings to reflect its view of the evidence.

Point VI is denied. In its modification judgment, the Missouri trial court stated, "Father shall be entitled to the tax exemption for the child as set forth in the previous judgment" and "In all other respect[s] not specifically modified herein, the provisions of the [Illinois Judgment] . . . shall remain in full force and effect." Nothing in the Missouri modification judgment contradicted the agreement the parties reached in their Illinois settlement.

Point VII is denied. Mother moved for a new trial more than thirty days after the judgment was entered. Under Rule 78.04, "any motion for new trial and any motion to amend the judgment or opinion shall be filed not later than thirty days after the entry of the Judgment." Her post-trial motion was untimely and the trial court did not err by dismissing it.

Point VIII is denied. Unlike subject matter jurisdiction, personal jurisdiction objections can be waived if not timely and properly raised. *Interest of A.R.B.*, 586 S.W.3d 846, 859 (Mo. App. W.D. 2019). Similarly, failure to timely challenge the trial court's statutory authority also waives the issue. *Hightower,* 304 S.W.3d at 733.

Opinion by: Philip M. Hess, Presiding Judge
Angela T. Quigless, Judge and Colleen Dolan, Judge concur.

Attorney for Appellant: Edwin V. Butler

Attorney for Respondent: Melissa A. Featherston Lecour

Guardian Ad Litem: Joshua G. Knight

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