In the Missouri Court of Appeals Eastern District

DIVISION TWO

S.W.,	)	No. ED112541
	)	
Respondent,	)	
	)	
v.	)	
	)	
K.H.,	)	
	)	
Appellant.	)	Filed: December 2, 2025

Appeal from the Circuit Court of Jefferson County
The Honorable Katherine M. Hardy-Senkel, Judge

Introduction

K.H. ("Mother") appeals the circuit court's judgment modifying custody of A.W. ("Child") to award S.W. ("Father") sole legal and sole physical custody and modifying both parties' child support obligations. Mother raises ten points on appeal. In Point One, Mother argues the circuit court abused its discretion in denying her a continuance to obtain counsel. In Point Two, Mother argues the circuit court abused its discretion in excluding the guardian ad litem's ("GAL") custody recommendations made during the parties' settlement negotiations. In Point Three, Mother contends the circuit court abused its discretion in allowing Father to present rebuttal evidence after the case was reopened

for Mother to present testimony. In Point Four, Mother alleges the circuit court erred in modifying Father's original child support obligation and applying the presumed child support calculation without determining he could not support Child as contemplated under the original judgment. In Point Five, Mother claims the circuit court misapplied the law in "terminating" Father's child support obligation because he did not request it be terminated. In Point Six, Mother argues the circuit court erred in terminating Father's child support obligation retroactively because he did not comply with local court rules to warrant termination. In Point Seven, Mother contends the circuit court misapplied the law in modifying the parties' original custody agreement to award Father sole legal and sole physical custody. In Point Eight, Mother alleges the circuit court erred in modifying Father's child support obligation because there was no "requisite" change in circumstances justifying modification. In Point Nine, Mother alleges the circuit court's award of sole legal and sole physical custody was against the weight of the overwhelming evidence because it was not in Child's best interest. In Point Ten, Mother claims the circuit court misapplied the law in calculating her overnight visitation credit because it was premised on an improper application of the presumed child support amount.

Because Mother did not comply with Rule 65.03 in requesting a continuance and did not suffer prejudice from not receiving one, Point One is denied.[1] The circuit court did not abuse its discretion in excluding the GAL's recommendations made during the parties' settlement negotiations because Mother could not demonstrate prejudice. Point

[1] All Rule references are to the Missouri Supreme Court Rules 2021.

Two is denied. The circuit court did not abuse its discretion in admitting Father's rebuttal evidence because it was relevant to determining Child's best interests. Point Three is denied. The circuit court did not misapply the law in applying the section 452.375 best interest factors after finding a substantial change in circumstances warranted Father receiving sole legal and sole physical custody.[2] Points Seven and Nine are denied. The circuit court did not misapply the law when stating Father's child support obligation was "terminated" because the ruling's effect was to eliminate his support obligation after he was awarded sole legal and sole physical custody. Point Five is denied. Because the circuit court modified the parties' prior custody arrangement to award Father sole legal and sole physical custody, the circuit court did not err in eliminating his child support obligation without making a finding regarding the presumed child support calculation. Points Four and Eight are denied. The circuit court properly applied the local rules when ordering Father's child support obligation be eliminated retroactively. Point Six is denied. Finally, the circuit court miscalculated Mother's child support obligation as stated in the 2023 Judgment. Point Ten is granted.

The circuit court's judgment is affirmed in part, and reversed and remanded in part.

[2] All statutory references are to RSMo Supp. 2018 unless otherwise indicated.

Factual and Procedural History

2019 Consent Judgment

In June 2019, Mother and Father entered into a consent paternity judgment for Child's custody and support ("Consent Judgment"). The circuit court awarded the parties joint legal and joint physical custody, with Father serving as the residential parent for mailing and educational purposes. The circuit court found the strict application of Form 14 was unjust and inappropriate and ordered Father to pay $900 per month in child support and maintain Child's health insurance. Mother was ordered to pay childcare expenses. The Consent Judgment incorporated a parenting plan ordering the parties to alternate physical custody and requiring all exchanges to occur at Father's home with Mother providing all exchange transportation. The parenting plan required Child to attend a school in Father's residential school district. The parenting plan directed the parties to confer and agree before making any final decision about Child's childcare provider, school, extracurricular activities, camps and summer activities, non-emergency medical care, counseling, and travel away from home. The parenting plan stated the parties had to communicate about school information, school and sports activities, medical emergencies or illnesses, and childcare provider changes. The parties were directed to enroll Child in extracurricular activities that, to the extent possible, did not interrupt the other parent's custody or visitation. The parenting plan required statutory relocation notice.

2021 Modification Judgment

In September 2020, Mother filed a family access motion. In December 2020, Father moved to modify custody and support, alleging substantial and continuing

circumstances required him to have sole legal and sole physical custody. Father requested his child support obligation be adjusted, if necessary, to comport with Form 14 because his income involuntarily decreased and his child expenses changed. Father contemporaneously moved to hold Mother in contempt, alleging she failed to comply with the Consent Judgment as stated in his modification motion. The circuit court appointed a GAL for Child.[3]

In August 2021, Father requested and received a continuance because the parties were negotiating a settlement and needed time to draft and exchange documents. The GAL offered custody recommendations during these negotiations. The settlement negotiations ultimately failed. Mother terminated her counsel, dismissed her family access motion, and filed a "notice of hearing" on her "Motion to Continue the Trial."

On November 9, 2021, Mother, acting *pro se*, and Father appeared for trial ("2021 trial"). The circuit court explained Mother had the right to have an attorney represent her. Mother responded by orally requesting a continuance to rehire an attorney who represented her previously. The GAL strongly opposed the continuance, stating it could be detrimental to Child and it was in her best interest for the matter to be heard that day. The circuit court overruled Mother's request based on the GAL's recommendation and advised Mother she could file a motion to set aside if she was dissatisfied with the circuit court's decision.

[3] The GAL moved to strike the parties' motions for not complying with a court order directing them to pay her fees. The circuit court sustained the GAL's motion. The parties moved to set aside the order after paying the fees, which the circuit court granted.

Father testified Mother chose Child's school enrollment, childcare, and extracurricular activities without his input or consent. Father testified Mother did not regularly exercise her custody time, withheld Child from him during his custody time, and frequently impeded upon his custody time, which required him to adjust his work schedule or ask family members to pick up Child from school or activities. Father stated Child's grades suffered while in Mother's care because she did not assist Child with homework and kept her out of school due to concerns about Covid-19. Father stated Child experienced wetting accidents at school and bedwetting at home, which he believed caused her to develop urinary tract infections. Mother relocated several times without providing him notice. Father also testified Mother was convicted of trespassing in his home. Father discussed how Mother made hotline calls to the Children's Division, all of which were found unsubstantiated. Father testified extensively about the parties' inability to communicate or resolve conflict.

Mother interrupted Father's testimony repeatedly and left the courtroom at least three times during his testimony. Father continued to testify in her absence. Mother did not return after leaving the courtroom the final time. After the lunch recess, Mother sent an email to the circuit court explaining she "became violently ill and had to leave." She stated she spoke with her "specialist," and she was going to the hospital. The circuit court stated Mother did not appear ill nor did she inform anyone she felt ill before leaving. Father continued testifying, and the GAL cross-examined him. Father admitted his Form 14 into evidence.

The GAL testified and recommended Father have sole legal and sole physical custody and Mother have supervised visitation. The GAL explained she was concerned with Mother's behavior, which included talking about the court case with Child, enrolling her in different schools and activities without Father's consent, and insinuating Father may be engaging in inappropriate sexual contact with Child because of her bedwetting and urinary tract infections. The GAL conceded the recommendations were "extreme" and "a big change" from the current arrangement, but believed Mother was "going to do what she wants to do … and will continue to put [Child] in the middle to alienate her from … [F]ather if she has unsupervised contact." The GAL explained "anything other than unsupervised contact would endanger [Child] because whether it's physically or emotionally … it's already impacting her negatively." When the hearing concluded, Father asked to close the record and offered to submit a proposed judgment. The circuit court took the case under submission when Father filed his proposed judgment.

On December 15, 2021, the circuit court adopted Father's 25-page proposed judgment verbatim ("2021 Judgment"). The judgment stated it previously provided Mother with other continuances to secure counsel and recover from various medical conditions, "which this [c]ourt later discovered were less than truthful." The circuit court acknowledged Mother's absence from the courtroom while Father testified and her email explaining she was ill. The circuit court found Mother's "claimed illness was [not] grounded in fact or truth." The circuit court provided a detailed procedural history, including Mother's prior continuance requests. The circuit court found credible evidence, consistent with Father's testimony, supporting Mother engaged in the behaviors Father

alleged in his modification and contempt motions. The circuit court further found Mother engaged in "lifestyle choices" which could be injurious to Child and gave rise to concerns about Mother exercising unsupervised contact.

The circuit court then applied the section 452.375 best interest factors and determined Child's best interest and the credible evidence required the Consent Judgment be modified. The circuit court found joint legal custody was unworkable because of Mother's unilateral decision-making and the parties' inability to communicate. The circuit court awarded Father sole legal custody. The circuit court further found joint physical custody was unworkable due to several factors and awarded Father sole physical custody. The circuit court ordered Mother to receive supervised visitation because her behavior endangered Child's physical well-being or impaired her emotional development.

The circuit court imputed full-time minimum wage income to Mother and granted her a 10% overnight visitation credit to offset her supervised visitation expenses. The circuit court found applying the Form 14 guidelines were inappropriate and unjust so as to apply the offset. The circuit court ordered Mother to pay $257 per month in child support, retroactive to July 1, 2021. The circuit court "terminated" Father's child support obligation "after considering the change in physical custody" and made the termination retroactive to July 1, 2021.

In January 2022, Mother secured counsel, who moved to set aside, otherwise amend, or reopen the record to allow additional evidence. The circuit court sustained Mother's motion to reopen the record to hear additional evidence but ordered the 2021 Judgment's custody and visitation provisions remain effective.

2023 Modification Judgment

The circuit court held several hearings over the next sixteen months to receive additional evidence from Mother.[4] Mother cross-examined Father and the GAL, gave direct testimony,[5] and was cross-examined by Father and the GAL. Mother acknowledged she and Father had "awful communication," and eventually conceded she enrolled Child in schools, daycares, and extracurricular activities without Father's consent. Mother stated she did not know she had to notify Father of her prior four relocations because she "didn't think [she had] read the whole [Consent Judgment and parenting plan] ever." Mother admitted she was convicted of trespassing at Father's home. Mother agreed she did not help Child complete all of her homework packets. Mother stated nothing restricted her from working full-time earning minimum wage so long as she did not have to lift anything due to a recent automobile accident injury. Mother testified about orders of protection she sought against Father which were denied. Mother denied engaging in "lifestyle choices" putting Child at risk, such as availing herself as a romantic companion for older men in exchange for money and giving these men information about Child.

[4] The 2023 Judgment lists the dates when additional evidence was adduced, including January 26, 2023, and June 9, 2023. Any transcripts from these hearings, if they were held, were not included in the record on appeal. The 2023 Judgment does not refer to hearings held on March 30, 2023, and March 31, 2023, which were included in the record on appeal.

[5] The September 13, 2022 hearing transcript refers to Mother's direct testimony given on August 5, 2022. There is no transcript from the August 5, 2022 hearing in the record on appeal nor is it mentioned in the 2023 Judgment.

The GAL gave supplemental testimony. On cross-examination, Mother attempted to elicit testimony about the GAL's recommendations during the parties' August 2021 settlement negotiations. The GAL and Father objected, arguing the information was inadmissible settlement negotiations. The circuit court sustained the objection. Mother made an offer of proof, arguing the August 2021 recommendations were "drastically different" from the 2021 trial recommendations. The GAL testified when parties discuss settlement, she does not want to impede them, even if what they agree to "might not be what [she] think[s] is best in an ideal world …" if it means the parties will have a better relationship and not subject their child to animosity. The GAL explained her supervised visitation recommendation was based on the totality of the circumstances at the 2021 trial, including Mother's abrupt departure and her insinuation Father may have been sexually abusing Child, while also not seeking medical attention to determine whether abuse was occurring as urged by Child's pediatrician. The circuit court noted Mother's visitation had increased since the 2021 trial and was no longer supervised. The GAL further testified her opinion regarding Child's best interest has "never been the exact same thing" throughout the case, but noted Child thrived after Mother's visitation was restricted.

Father was permitted to offer rebuttal testimony over Mother's objection. Father testified about Child's progress in school, counseling, extracurricular activities, and whether Mother was following the current visitation schedule. Father reiterated when he disagrees with Mother about Child's care, "she just runs through every stop sign" and does it anyway. Father offered additional testimony, texts, and emails about Mother's

alleged romantic companionship with older men and the information she provided to them about Child.

On November 8, 2023, the circuit court adopted Father's 31-page proposed judgment almost verbatim and entered a second modification judgment ("2023 Judgment"). This judgment extensively repeated the 2021 Judgment findings of fact and conclusions of law modifying child custody to award Father sole legal and sole physical custody and "terminating" his child support retroactively. The circuit court ordered Mother to receive regular visitation as stated in the revised parenting plan, but found "it would be inappropriate to award to [Mother] substantial single-periods of custody." The circuit court granted Mother a 38% overnight credit and ordered her to pay $247 per month in child support. The circuit court found this amount was the presumed child support amount and was just and appropriate. The circuit court stated Mother did not have to pay child support arrearages which had accrued since the 2021 Judgment.[6]

2024 Amended Judgment

On December 8, 2023, Mother moved to amend, alter or reconsider the 2023 Judgment, or alternatively, for a new trial. On March 5, 2024, the circuit court entered an order stating "[m]otion to set aside judgment is hereby granted with regard to the mistake of the court's calculation of the Form 14 only. Cause taken under advisement this date with regard to the filing of the first amended judgment of modification." Mother

[6] Based on two transcript references stating Mother paid no child support since the 2021 Judgment was entered, by this Court's calculation, Mother was relieved from paying more than $7,100 in arrearages.

filed her notice of appeal on March 25, 2024. On May 9, 2024, the circuit court entered its "first amended judgment of modification in regard to child support" ("2024 Amended Judgment"). The circuit court found Mother's Form 14 was unjust and inappropriate and determined because each party was able to support Child while in their custody, no child support would be paid by either party.

This appeal follows.[7] Additional facts will be adduced to avoid repetition. Mother's points on appeal will be addressed out of order for clarity.[8]

General Standard of Review

"In a court-tried case, the [circuit] court's judgment will be affirmed unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law." *Hightower v. Myers*, 304 S.W.3d 727, 731–32 (Mo. banc 2010) (citing *Murphy v. Carron,* 536 S.W.2d 30, 32 (Mo. banc 1976)). "This Court views the evidence and permissible inferences drawn from the evidence in the light most favorable to the judgment." *Id.* at 732. This Court affords greater deference to a circuit court's custody determination than in other matters. *Id*. This Court "will not

[7] Father's brief alleges Mother's appeal is untimely to the extent it challenges the 2021 Judgment because no notice of appeal was filed until March 2024. Mother confirmed at oral argument the only judgment properly before this Court and from which she appeals is the 2023 Judgment, which was appealed timely.

[8] Father moves to strike Mother's amended brief for violating Rule 84.04. This Court is "generally reluctant to dismiss an appeal solely due to violations of Rule 84.04" especially when child custody matters are raised. *Ludwig v. Ludwig*, 126 S.W.3d 466, 471 (Mo. App. W.D. 2004). This Court declines Father's request because Mother's amended brief is not so deficient as to impede our ability to dispose of her claims including any point relied on considered multifarious.

reweigh the evidence or credibility of the witnesses." *Ball v. Ball*, 638 S.W.3d 543, 552 (Mo. App. E.D. 2021).[9]

Continuance

Party Positions

In Point One, Mother argues the circuit court abused its discretion when it denied her continuance request. She asserts the ruling lacked careful and deliberate consideration given her need to secure representation and the case's procedural history. Mother cites the circuit court's acknowledgment of her right to legal representation after her counsel

[9] Although not raised as a point on appeal, this Court recognizes the 2021 and 2023 Judgments were drawn almost verbatim from Father's proposed judgments. This Court does not condone the circuit court adopting a party's proposed findings verbatim. *Ball*, 638 S.W.3d at 553. Our Supreme Court described a trial judge's practice "of adopting, without modification, significant portions of a proposed order prepared by" one party's counsel as "often troublesome" because "[a]dvocates are prone to excesses of rhetoric and lengthy recitals of evidence favorable to their side but which ignore proper evidence or inferences from evidence favorable to the other party." *Massman Const. Co. v. Mo. Highway & Transp. Comm'n,* 914 S.W.2d 801, 804 (Mo. banc 1996). Hence, "[t]rial judges are well advised to approach a party's proposed order with the sharp eye of a skeptic and the sharp pencil of an editor." *Id*. "The preferable practice is for the [circuit] court to receive proposals from the parties and then prepare its own specific findings of fact, conclusions of law, and judgment." *Nolte v. Wittmaier*, 977 S.W.2d 52, 58 (Mo. App. E.D. 1998). Here, the circuit court did not engage Father's proposed 2021 or 2023 judgments "with the sharp eye of a skeptic" or "the sharp pencil of an editor" when it adopted the 2021 Judgment wholesale and large portions of the 2023 Judgment with scant modification. This lack of engagement resulted in confusion for this Court in determining when hearings occurred and seemingly prompted Mother to raise several points due to Father's inartful drafting. These disputes could have been avoided had the circuit court carefully considered the proposed judgments. "However objectionable we consider this practice, 'the verbatim adoption of a party's proposed findings of facts and conclusions of law is not per se erroneous.'" *Neal v. Neal*, 281 S.W.3d 330, 337–38 (Mo. App. E.D. 2009) (quoting *Nolte*, 977 S.W.2d at 58). This Court cautions circuit courts from engaging in this practice especially in hotly contested child custody matters in which findings are paramount to determining a child's best interests.

withdrew and how continuances were granted previously for settlement negotiations. Father argues the circuit court did not abuse its discretion in overruling Mother's oral continuance request because the circuit court has sound discretion in controlling litigation. Father further contends this point is moot because the circuit court granted Mother's motion to reopen the evidence, which provided her an opportunity to present her case.

Standard of Review

"The circuit court's decision to overrule a motion for continuance is reviewed for an abuse of discretion." *Macke v. Patton*, 591 S.W.3d 865, 868 (Mo. banc 2019). "The circuit court abuses its discretion 'when the ruling is clearly against the logic of the circumstances and is so unreasonable and arbitrary that the ruling shocks the sense of justice and indicates a lack of careful, deliberate consideration.'" *Id.* (quoting *Howard v. City of Kansas City*, 332 S.W.3d 772, 785–86 (Mo. banc 2011)).

Analysis

A request for a continuance must be in writing and accompanied by the moving party's affidavit setting forth the basis for the request, unless the adverse party consents to the request being made orally. Rule 65.03. Mother cites her "notice of hearing" filing which states she will call up her "Motion to Continue Trial" and her oral argument at the 2021 trial to demonstrate she complied with the rule. Mother did not include any written "Motion to Continue Trial" or an accompanying affidavit in the legal file for this Court's review. "When a moving party ignores the affidavit or verification requirements of Rule 65.03, no abuse can result in denying the continuance." *Aston as Trs. for KALA Tr.*

v. DBK Tr., LLC, 679 S.W.3d 584, 590 (Mo. App. E.D. 2023) (quoting *In re Marriage of House*, 292 S.W.3d 478, 483 (Mo. App. S.D. 2009)). Nor does Mother cite where in the record Father consented to her orally requesting a continuance. Thus, "[i]n the absence of compliance with the requirements of the rule, there can be no abuse of discretion in denying a continuance" even when the litigant is *pro se* at the time of the request. *Lamastus v. Lamastus*, 886 S.W.2d 721, 726 (Mo. App. E.D. 1994) (holding the circuit court did not abuse its discretion in overruling a *pro se* party's letter, which it construed as a continuance motion because the letter lacked the required affidavit and explaining *pro se* litigants are bound by the same rules and procedures as attorneys).

Even if this Court overlooked Mother's procedural deficiencies to the extent she argues the parties tried the issue fully at the 2021 trial, we cannot find she suffered prejudice. The circuit court informed Mother if she was dissatisfied with its decision, she could move to set aside the ruling, which she did shortly after the 2021 Judgment was entered. The circuit court sustained her request, reopened the evidence, and allowed Mother a full opportunity to present her evidence over the course of several days. The circuit court did not abuse its discretion in overruling Mother's continuance request.

Point One is denied.

Evidence Admissibility

Standard of Review

"In a bench trial, the court is given more latitude in the admission of evidence." *State v. Coaston*, 609 S.W.3d 527, 528 (Mo. App. S.D. 2020). "[T]he erroneous admission of evidence in a court-tried case is not grounds for reversal as long as there is

substantial admissible evidence in the record to support the judgment." *Frawley v. Frawley*, 597 S.W.3d 742, 750 (Mo. App. W.D. 2020) (quoting *C.S. v. Mo. Dep't of Soc. Servs.*, 491 S.W.3d 636, 646 (Mo. App. W.D. 2016)). "Missouri Courts have described this standard as being 'practically impossible' to meet." *Id.* (quoting *S.M.S. v. J.B.S.*, 588 S.W.3d 473, 509 (Mo. App. E.D. 2019)). Thus, "[i]t is difficult to predicate reversible error upon the erroneous admission of evidence in a court-tried case." *Vogt v. Emmons*, 181 S.W.3d 87, 94–95 (Mo. App. E.D. 2005).

Point Two: GAL Recommendations During Settlement Negotiations

Party Positions

In Point Two, Mother argues the circuit court abused its discretion in finding the GAL's recommendations made during the August 2021 settlement negotiations were inadmissible. Mother contends the GAL conceded her prior statements and recommendations were not made for settlement purposes. Mother further argues the GAL's recommendations fall within the general exception against admission of evidence procured during settlement. Mother asserts she should have been permitted to introduce the GAL's contradictory recommendations to impeach and challenge her veracity and credibility.

Father argues the circuit court did not abuse its discretion in excluding the GAL's August 2021 recommendations because they were made during settlement negotiations. Father contends parties must have open and candid discussions to achieve a settlement, and any statements made during negotiations must be protected from admissibility to encourage settlements.

Analysis

"Negotiations for the peaceful settlement of disputes are encouraged under the law." *St. Louis Cnty. v. River Bend Estates Homeowners' Ass'n*, 408 S.W.3d 116, 128 (Mo. banc 2013). "Because settlements are encouraged under the law, the general rule is that evidence procured from settlement is to be excluded at trial." *Pitcher v. Centene Corp.*, 602 S.W.3d 216, 238 (Mo. App. W.D. 2020) (quoting *Hancock v. Shook*, 100 S.W.3d 786, 799 (Mo. banc 2003)). "[T]here is an exception to this general rule when the evidence constitutes an admission of independent fact relevant to an issue between the parties." *Vogt*, 181 S.W.3d at 95.

At the 2021 trial, the GAL asked Father, "I know that there was some discussion about settlement over the summer, and I'm not asking about those terms. But there was a certain recommendation made by me at that point," which Father acknowledged. The GAL then asked, "Since that recommendation has been made, have there been new allegations or additional developments made by [Mother] against you?" to which Father responded by describing Child's issues with bedwetting, wetting herself at school, and vaginal redness he believed was caused by a urinary tract infection. The circuit court later adopted the GAL's recommendation Mother have supervised visitation.

After the evidence was reopened, Mother questioned the GAL at the March 2023 hearing about why she recommended supervised visitation at the 2021 trial. Mother also attempted to cross-examine the GAL about her August 2021 recommendations during settlement negotiations. Both the GAL and Father objected. The circuit court noted the GAL's 2021 trial recommendations included supervised visitation, which had been

modified to less restrictive visitation when the GAL testified in March 2023. The GAL also explained her opinion about Child's best interest changed "several times, depending on the facts and circumstances." The circuit court determined the August 2021 recommendations were inadmissible settlement negotiations and it would not consider the emails Mother submitted.

This Court cannot say the circuit court erred in excluding this evidence because Mother cannot meet the practically impossible burden of demonstrating prejudice. Mother vigorously cross-examined the GAL about her changed recommendations from August 2021 to the 2021 trial. The GAL explained she recommended supervised visitation at that time because of Mother's abrupt departure from the 2021 trial and her insinuation Father may have been sexually abusing Child, while refusing to seek medical treatment to ascertain whether abuse was occurring. Ultimately, Mother's supervised visitation was lifted before the GAL testified in March 2023 and was not reinstated in the 2023 Judgment. In fact, during the GAL's supplemental testimony, the circuit court stated it disagreed with the GAL on some of her current recommendations so the parties could tailor their questioning to address the circuit court's concerns. The circuit "court has *sole* responsibility for determining custody" and is not bound by the GAL's recommendations. *Morgan v. Morgan*, 497 S.W.3d 359, 373 n.8 (Mo. App. E.D. 2016) (emphasis in original) (quoting *In re Marriage of Harris*, 446 S.W.3d 320, 330 (Mo. App. S.D. 2014)). Because Mother is no longer restricted to supervised visitation and the circuit court was not bound by the GAL's recommendations, she cannot demonstrate she

suffered prejudice from being unable to elicit the August 2021 recommendations. The circuit court did not abuse its discretion in excluding this evidence.

Point Two is denied.

Point Three: Father's Rebuttal Testimony

Party Positions

In Point Three, Mother argues the circuit court abused its discretion in allowing Father to give rebuttal testimony after the evidence was reopened because he rested his case-in-chief during the 2021 trial. Mother contends Father's later testimony was not offered to disprove new points she raised, but rather, was an improper attempt to impeach her on matters he interjected during the 2021 trial, during her cross-examination at later hearings, and with matters pre-dating the 2021 trial.

Father argues his testimony was proper rebuttal because it rebutted claims and evidence Mother presented in her case-in-chief. Father further argues his testimony appropriately updated the circuit court with evidence which was unavailable during the 2021 trial due to the substantial passage of time between hearings.

Analysis

"A party is entitled to introduce evidence to rebut that of his adversary, and for this purpose any competent evidence to explain, repel, counteract, or disprove the adversary's proof is admissible." *Taylor v. Taylor*, 25 S.W.3d 634, 647–48 (Mo. App. W.D. 2000) (quoting *Bray v. Bi–State Dev. Corp.,* 949 S.W.2d 93, 101 (Mo. App. E.D. 1997)). "The use of rebuttal is not, however, unfettered. 'A party cannot, as a matter of right, offer in rebuttal evidence which was appropriate or should have been proffered in

the case in chief, even if it tends to contradict or rebut the adverse party's evidence.'" *Aliff v. Cody*, 26 S.W.3d 309, 315–16 (Mo. App. W.D. 2000) (citation modified) (quoting *Bray*, 949 S.W.2d at 101)). Hence, the circuit court retains discretion to determine the scope of rebuttal and, absent an abuse of discretion, this Court will not disturb its ruling. *Id.*

When the March 31, 2023 hearing ended, Father asked to put on rebuttal evidence to "counteract" Mother's "information and statements and the assertions and representations that [she] made during her testimony." Mother objected to Father's testimony as an "attempt to bootstrap and sandbag impeachable evidence that should have been brought up" during Father's case-in-chief at the 2021 trial. Father explained he wanted to lay a foundation for certain documents to be received and provide an update on Child's counseling sessions because Mother did not reimburse him for the fees. The circuit court did not rule on the issue and continued the hearing to July 10, 2023.

At the July 10 hearing, Mother submitted a trial brief addressing the rebuttal evidence's admissibility and requested a continuing objection because Father's proposed testimony was "reverse impeachment" and being used only to address new points Mother raised. The circuit court overruled Mother's objection, finding it needed to consider Child's best interest and would allow the testimony. The circuit court further stated after Father offered his evidence, "if Mother has anything to say after that, the court will allow the same for her." Father then testified about Child's progress at home, school, extracurricular activities, and with counseling. Father also testified about whether Mother was following the current custody schedule. Mother strenuously objected when Father

testified about additional evidence regarding Mother's romantic companionship arrangements, which the circuit court overruled because it could consider this in determining Child's best interest. Father also testified Mother enrolled Child in summer camps and took her to the dentist without consulting him as recent examples of Mother's unilateral decision-making. Although the circuit court stated it would allow Mother to respond to Father's rebuttal evidence, she did not offer additional evidence.

While Mother contends Father's rebuttal testimony should have been excluded, she cites no case holding a circuit court commits reversible error when admitting rebuttal testimony relevant to determining a child's best interest in a custody matter. "The paramount concern in child custody cases is whether the [circuit] court's order serves the best interests of the child." *I.K.R. by J.M.R. v. K.L.D.*, 590 S.W.3d 847, 851 (Mo. App. E.D. 2019). Here, the circuit court explicitly stated it wished to hear Father's rebuttal testimony because it needed to examine Child's best interest and wanted to know "[h]as anything changed, gotten worse, gotten better, anything." [10] Further, this Court will not reverse a circuit court's judgment absent a showing prejudice resulted. *McAllister v. McAllister*, 101 S.W.3d 287, 291 (Mo. App. E.D. 2003). Mother does not elaborate on how this testimony was prejudicial, only to state "clearly the [r]ebuttal was considered

[10] "Orders concerning custody or visitation should not be made based on stale evidence from long-concluded hearings." *L.E.C. v. K.R.C.*, 674 S.W.3d 97, 111 n.12 (Mo. App. E.D. 2023) (citation modified) (quoting *M.P.P. v. R.R.E.*, 490 S.W.3d 781, 784 (Mo. App. E.D. 2016)). Based on the record before this Court, the first hearing after Mother's motion to reopen the evidence was held on March 30, 2022, with the final hearing concluding on July 10, 2023. This Court recommends a circuit court expeditiously resolve custody disputes to ensure a decision regarding a child's best interest is based on current evidence regarding the parties and the child.

and heavily weighed by the [circuit] court." In this point, Mother does not explain how the rebuttal testimony prejudiced the custody award or how it affected her child support award. *See In re S.H.P.*, 638 S.W.3d 524, 533 (Mo. App. W.D. 2021) (stating "[t]o develop a point relied 'arguments should show how the principles of law and the facts of the case interact.") (quoting *Wallace v. Frazier*, 546 S.W.3d 624, 628 (Mo. App. W.D. 2018)). The circuit court did not abuse its discretion in admitting Father's rebuttal evidence.

Point Three is denied.

Child Custody Modification

Standard of Review

This Court will affirm a circuit court's judgment modifying child custody "unless there is no substantial evidence to support it, it is against the weight of the evidence, or the court erroneously declared or applied the law." *Schiesswohl v. Spain*, 696 S.W.3d 907, 911 (Mo. App. S.D. 2024). This Court "presume[s] the court's judgment is in accordance with Child's best interests after reviewing all of the evidence, and we will not reverse its decision unless we are firmly convinced that the welfare and best interests of Child require otherwise." *Schuppan v. Ramos*, 663 S.W.3d 527, 534 (Mo. App. S.D. 2023) (citation modified) (quoting *Beshers v. Beshers*, 433 S.W.3d 498, 505 (Mo. App. S.D. 2014)). This Court defers "to the [circuit] court's factual findings, giving due regard to the … court's opportunity to judge the credibility of witnesses." *Woolery v. Woolery*, 679 S.W.3d 17, 22 (Mo. App. W.D. 2023) (quoting *Langston v. Langston*, 615 S.W.3d 109, 115 (Mo. App. W.D. 2020)).

Point Seven: Custody Modification

Party Positions

In Point Seven, Mother argues the circuit court erred in modifying the Consent Judgment to award Father sole legal and sole physical custody. Mother claims the circuit court misapplied the law in analyzing the factors in section 452.375 rather than applying the heightened standard of proof of a "drastic and substantial" change in circumstances necessary to modify the Consent Judgment's award of joint legal and joint physical custody. Father argues the circuit court properly applied the law under the appropriate burden of proof to find a substantial change warranted custody modification.

Analysis

Whether the circuit court applied the correct legal standard in ruling on a child custody modification motion is a question of law this Court reviews *de novo*. *Schiesswohl*, 696 S.W.3d at 911–12. Section 452.410 governs child custody modification. *Hark v. Hark*, 567 S.W.3d 671, 677 (Mo. App. E.D. 2019). "A movant must first show a change has occurred in the circumstances of the children or the custodial parents based upon facts that have arisen since the prior decree or facts that were unknown to the court at the time of the prior decree." *Id.*; section 452.410.1. "If the necessary level of change in circumstances is shown, movant must next show modification is necessary to serve the" child's best interests. *Id.* "The change required in the first step differs based on the type of modification sought." *Id.* "When … custody is modified from joint to sole, a 'substantial change' must be shown. *Id.*; *see also Morgan*, 497 S.W.3d at 365–66. Here, the Consent Judgment awarded the parties joint legal and joint physical custody. Father

sought sole legal and sole physical custody. Thus, Father needed to show a substantial change in circumstances to warrant modification.

To the extent Mother's point argues there was no evidence to support a "the drastic and substantial change" to award Father sole legal and sole physical custody, she points to the GAL and Father not seeking a temporary custody arrangement before the 2021 Judgment, the GAL admitting Child was not in danger, the GAL's August 2021 recommendations before the 2021 trial, and the fact the parties continued to exercise joint custody until Mother's motion to reopen the evidence was granted in January 2022. Mother cites no case holding any of these considerations support a finding custody should not be modified or deeming them a prerequisite to demonstrating a substantial change has occurred.[11] Further, Mother focuses only on evidence which supports her position. This focus disregards this Court's standard of review, which requires us to defer to the circuit court's factual findings. *Woolery*, 679 S.W.3d at 22. Mother does not challenge—and wholly disregards—the circuit court's more than a dozen references to credible evidence of her violating the parenting plan and the parties' inability to communicate which constituted a substantial change in circumstances warranting the sole custody award.

Mother is correct the circuit court did not use the word "substantial" to describe the change in circumstances when modifying custody from joint legal and joint physical

[11] Mother's arguments regarding the GAL's actions and recommendations are unpersuasive because the circuit court was not bound by any of the GAL's recommendations. *Morgan*, 497 S.W.3d at 373 n.8.

custody to sole legal and sole physical custody.[12] However, this Court has held "[t]he 'breakdown in communication and cooperation alone is sufficient to constitute a change of circumstances warranting the modification of legal custody.'" *Morgan*, 497 S.W.3d at 373 (quoting *Mehler v. Martin*, 440 S.W.3d 529, 536 (Mo. App. E.D. 2014)). "[T]his Court has repeatedly emphasized that an award of joint legal custody is not appropriate where the parties are unable to communicate with one another[] and co-parent in the best interest of their child." *Irving v. Angstrom*, 702 S.W.3d 248, 254 (Mo. App. W.D. 2024). Mother does not address or dispute the parties' complete inability to communicate and cooperate as co-parents. Thus, this Court finds there was a substantial change in circumstances warranting a custody modification based on the evidence presented.

After finding a substantial change has occurred, the circuit court must next determine modification is in the child's best interest. *Hark*, 567 S.W.3d at 677. The Supreme Court of Missouri explained how the circuit court must apply the section 452.375.2 best interest factors when ruling on a modification motion:

> On a motion to modify pursuant to section 452.410, if the evidence persuades the [circuit] court that there has been a change in circumstances, the … court must order whatever modifications are in the child's best interest. The judgment must demonstrate how these modifications serve the child's best interest, and this is done by considering the evidence in light of the factors listed in section 452.375.2. Those factors are not a checklist, however, and the movant is not required to present evidence regarding every factor.

Soehlke v. Soehlke, 398 S.W.3d 10, 20 (Mo. banc 2013).

[12] This is an example of the confusion which may arise when a circuit court does not carefully scrutinize a party's proposed judgment.

Because *Soehlke* explicitly states courts should consider the section 452.375 factors to determine a child's best interest when a parent seeks modification, this Court holds the circuit court appropriately applied those factors in making its decision here after finding a substantial change occurred. The circuit court did not misapply the law in finding a substantial change occurred warranting custody modification.

Point Seven is denied.

Point Nine: Best Interest Finding

Party Positions

In Point Nine, Mother argues the circuit court erred in modifying the Consent Judgment to find sole legal and sole physical custody were in Child's best interest because this finding is against the overwhelming weight of the evidence. Mother contends no substantial change in circumstances occurred warranting such an extreme departure from the Consent Judgment's joint custody award. Father argues custody modification was in Child's best interest because Mother repeatedly violated the Consent Judgment when considering the totality of the evidence.

Analysis

"This [C]ourt must exercise extreme caution in setting aside a judgment as against the weight of the evidence and will do so only upon a firm belief that the judgment was wrong." *Hark*, 567 S.W.3d at 679. "'[A] claim that the judgment is against the weight of the evidence presupposes that there is sufficient evidence to support the judgment.'" *Prevost v. Silmon*, 645 S.W.3d 503, 512 (Mo. App. W.D. 2022) (quoting *Ivie v. Smith*, 439 S.W.3d 189, 205 (Mo. banc 2014)). "To successfully challenge the weight of the

evidence, Mother must demonstrate that the circuit court 'could not have reasonably found, from the record at trial, the existence of a fact necessary to sustain the judgment.'" *J.R.M.-J. by and through S.J. v. R.T.M.*, 674 S.W.3d 516, 522 (Mo. App. E.D. 2023) (quoting *Ivie*, 439 S.W.3d at 206). "Where there are 'two reasonable but different conclusions' based on the evidence, this Court will defer to the circuit court's finding." *Id.* "A challenge to the weight of the evidence requires Mother to comply with a four-part analytical framework." *Id.* Mother must:

> (1) identify a challenged factual proposition, the existence of which is necessary to sustain the judgment;
>
> (2) identify all of the favorable evidence in the record supporting the existence of that proposition;
>
> (3) identify the evidence in the record contrary to the belief of that proposition, resolving all conflicts in testimony in accordance with the [circuit] court's credibility determinations, whether explicit or implicit; and,
>
> (4) demonstrate why the favorable evidence, along with the reasonable inferences drawn from that evidence, is so lacking in probative value, when considered in the context of the totality of the evidence, that it fails to induce belief in that proposition.

Id. (quoting *O.H.B. by next friend S.M.B. v. L.Y.S.*, 665 S.W.3d 329, 333 (Mo. App. E.D. 2023)). "An argument that does not comply with this framework fails." *Id.*

Although Mother cites the challenged proposition, she fails to satisfy the second step by not identifying favorable evidence in the record supporting the circuit court's finding it was in Child's best interest to award Father sole legal and sole physical custody. The record is replete with examples of Mother persistently disregarding the parenting plan directives throughout the entirety of the proceedings, including: refusing to communicate with and obtain consent from Father about school enrollment, daycare

providers, and extracurricular activities; withholding custody time and impeding exchanges; speaking to Child about court-related proceedings and blaming Father for the change in custody; reporting sexual abuse allegations which were later found unsubstantiated; enrolling Child in summer camps without Father's consent; taking her to a dentist Father did not know about and without his consent; and generally disregarding Father's wishes regarding parental decisions which required his consent. Mother also ignores the circuit court's finding Father presented credible evidence on nearly every allegation he put forth. "The court is in the best position to find the facts and weigh the evidence" and "is free to believe all, some, or none of the evidence offered to prove a contested fact." *Hark*, 567 S.W.3d at 678–79.

Because Mother's argument does not comply with the framework, she cannot "demonstrate the circuit court 'could not have reasonably found, from the record at trial, the existence of a fact necessary to sustain the judgment.'" *J.R.M.-J.*, 674 S.W.3d at 522 (quoting *Ivie*, 439 S.W.3d at 206). The circuit court's determination awarding Father sole legal and sole physical custody was in Child's best interest was not against the overwhelming weight of the evidence.

Point Nine is denied.

Child Support Modification and Calculation

General Standard of Review

The standard of review governing child support modification judgments is the same as in any other court-tried case. *Tolu v. Stientjes*, 703 S.W.3d 619, 628 (Mo. App. E.D. 2024). "[This Court] will affirm the judgment for a motion to modify child support

unless it is not supported by substantial evidence, it is against the weight of the evidence, or it erroneously declares or applies the law." *Hark*, 567 S.W.3d at 676.

Point Five: Child Support Termination

Party Positions

In Point Five, Mother argues the circuit court misapplied the law in "terminating" Father's child support obligation because his modification motion did not seek termination. Mother further argues termination is only appropriate under section 452.340.3, which did not apply to Father's modification motion. Father argues the circuit court did not err in applying section 452.340 because the circuit court did not terminate either parent's child support obligation. Father also maintains child support is subject to future modification.

Analysis

Section 452.340.3 states a parent's obligation to pay child support "shall terminate" when the child dies, marries, enters active military duty, or is emancipated, with certain exceptions not applicable here. Section 452.340.3(1)–(6). Mother is correct Father's modification motion did not seek to "terminate" his child support obligation under this provision. He instead requested his support obligation "be adjusted, if necessary, to comport with … Form 14" if he were awarded sole legal and sole physical custody and because his income involuntarily decreased rendering the existing support award unjust and unreasonable. Mother essentially asks this Court to find "terminate" is a term of art which only applies when a party requests relief under section 452.340.3(1)–(6). Mother cites no authority for this position.

Although the circuit court's judgment stated Father's child support obligation was "terminated," this inartful drafting does not entitle Mother to relief.[13] The 2023 Judgment's effect was to *eliminate* Father's child support obligation based on the transfer of custody, not foreclose either party from ever seeking modification in the future as section 452.340.3(1)–(6) contemplates. This Court has analyzed and affirmed similar judgments stating a parent's child support obligation was "terminated" based on a change of custody rather than on one of section 452.340.3's criteria to terminate child support. For example, in *J.R.M.-J.*, this Court affirmed a judgment which modified custody to award one parent sole legal and sole physical custody and "terminated" the parent's child support obligation. *J.R.M.-J.*, 674 S.W.3d at 520. No party argued section 452.340.3 applied; rather, the parties disputed whether eliminating child support after the substantial change in custody was proper. *Id.* at 523. Likewise, in *Hermann v. Heskett*, 403 S.W.3d 136, 142–43 (Mo. App. E.D. 2013), this Court affirmed a judgment stating child support was "terminated" due to the change in custody "and thereby eliminat[ed]" the parent's responsibility to pay child support. Hence, this Court focused on the judgment's substance or effect rather than the label used.

Here, the judgment's effect was to eliminate Father's child support obligation, not terminate it under these facts. The circuit court did not misapply the law in labeling Father's child support obligation as "terminated" instead of "eliminated."

Point Five is denied.

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[13] This is yet another example of why a circuit court should thoroughly review a party's proposed judgment to ensure the requests for relief are correctly described.

Points Four and Eight: Application of Presumed Child Support Calculation and Child Support Modification

Party Positions

In Point Four, Mother argues the circuit court erred in modifying the Consent Judgment and applying the presumed child support calculation without determining Father cannot support Child as contemplated under the Consent Judgment. Mother argues this finding was required because the Consent Judgment specifically rejected the presumed child support calculation under Form 14. Father contends the circuit court had the authority to examine the Consent Judgment award and determine whether it was unjust or inappropriate given the circuit court's finding Child's best interest would be served by a change in custody.

In Point Eight, Mother argues the circuit court erred in modifying Father's child support obligation because the finding is not supported by substantial evidence. Mother alleges the uncontroverted evidence shows Father had no requisite change in financial circumstances from the Consent Judgment to when the 2023 Judgment was entered. Father argues the circuit court appropriately modified his child support obligation because he need not establish an inability to pay before modification can occur. Father contends the statutory framework only requires the circuit court to determine whether the presumed child support amount is just and appropriate or whether to depart from this presumption.

Analysis

This Court has held when a parent is awarded sole custody after a modification proceeding, it is appropriate to eliminate that parent's child support obligation. *See J.R.M.-J.*, 674 S.W.3d at 523 (holding "[b]ecause the circuit court did not err in awarding [f]ather sole physical custody, the circuit court could not have erred in eliminating [his] child support obligation."); *Ball*, 638 S.W.3d at 554 (finding the mother cited no authority to support her position the court abused its discretion by eliminating the father's child support obligation "despite physical custody transferring to" the father); and *Johnson v. Johnson*, 758 S.W.2d 721, 726 (Mo. App. W.D. 1988) (ordering the circuit court on remand to place the child in his father's custody and "entirely eliminate" the father's child support obligation).

As in *J.R.M.-J.*, *Ball*, and *Johnson*, Father need not pay Mother $900 per month for child support because he has been awarded sole legal and sole physical custody. The circuit court did not err in modifying Father's child support obligation to eliminate payment after awarding him sole legal and sole physical custody and without a determination he could not support Child as contemplated under the Consent Judgment.

Points Four and Eight are denied.

Point Six: Retroactive Child Support Termination

Party Positions

In Point Six, Mother argues the circuit court erred in ordering Father's child support obligation be terminated retroactively because it misapplied the Jefferson County Local Rules. Mother maintains these local rules required Father to file financial forms to

obtain a retroactive award and he failed to do so. Mother also argues the circuit court made no finding regarding why it chose the retroactive date. Father argues the local rules did not limit the circuit court's authority to order a retroactive child support award because section 452.340 permits any child support obligation to be applied retroactively.

Analysis

The circuit court retains discretion to determine whether a child support award should be retroactive. *Whitton v. Whitton*, 707 S.W.3d 42, 46 (Mo. App. W.D. 2025). Further, the circuit court's "determination of the effective date of the modified child support amount should not be disturbed absent an abuse of discretion." *Id.* at 46–47. "In deciding whether to order a modification retroactively, the [circuit] court should consider all factors relevant to the issue and balance the equities as called for by the facts and circumstances of the particular case." *Id.* at 47.

Although Mother cites two Jefferson County Local Rules, only Local Rule 68.13 applies to retroactive child support payments. Jefferson County Local Rule 68.13(a) states in all proceedings to modify child support, "there shall exist a presumption that any modification … shall be retroactive to the date of filing the movant's statement of [i]ncome & [e]xpenses *or* the date of service of movant's motion to modify, whichever shall occur later." (Emphasis added). The ordinary use of "or" is "almost always disjunctive." *Boles v. City of St. Louis*, 690 S.W.3d 592, 601 (Mo. App. E.D. 2024) (quoting *Hoeft v. True Mfg. Co., Inc.*, 604 S.W.3d 337, 341 (Mo. App. E.D. 2020)). This local rule is also consistent with section 452.340.1, which permits the circuit court to issue an order related to child support which is "retroactive to the date of the filing of the

petition…." Here, Father's motion to modify was filed on December 26, 2020. Because Father did not file a statement of income and expenses, the motion to modify controls to determine the earliest date the circuit court could have ordered Father's retroactive elimination of his child support.

Mother also takes issue with the retroactive date the circuit court chose. Both section 452.340.1 and Local Rule 68.13(a) allow a child support modification to be retroactive to the date of the movant's motion to modify. Yet, "[a]lthough the [circuit] court is not required to use the filing date as the retroactive date, it should be clear from the record that the date chosen … is not arbitrary." *Barbieri v. Barbieri*, 633 S.W.3d 419, 430 (Mo. App. E.D. 2021). Here, the circuit court did not choose an arbitrary date. The circuit court explained it chose July 1, 2021, as the date to retroactively eliminate Father's child support award because a trial was scheduled to occur on June 29, 2021, but it was continued at Mother's request and over Father's objection. This date was over six months after he filed his modification motion, which inured to Mother's benefit. The circuit court did not abuse its discretion in ordering Father's child support obligation be eliminated retroactively nor in choosing the retroactive date.

Point Six is denied.

Point Ten: Overnight Visitation Credit

Party Positions

In Point Ten, Mother argues the circuit court misapplied the law in calculating her overnight visitation credit. Mother contends this miscalculation resulted in an award of child support to Father based upon an improper application of the presumed child support

amount under Form 14. Father argues the circuit court did not misapply the law in calculating the presumed child support amount because the calculation was based on the evidence presented and was corrected in the 2024 Amended Judgment.

Analysis

Both parties cite the 2024 Amended Judgment as support for this Court to find Mother's argument is moot because that judgment eliminated her child support obligation. Yet, Mother contends she raised this point "out of an abundance of caution" if the 2024 Amended Judgment was entered without authority.

The Southern District addressed this same concern in *In re Marriage of Noles*, 343 S.W.3d 2 (Mo. App. S.D. 2011). In *Noles*, the circuit court entered a judgment ordering a father to pay child support. *Id.* at 4. The father timely moved for reconsideration and/or new trial, which was construed as a motion to amend. *Id.* at 7 n.8. Before the ninetieth day, the circuit court issued a docket entry stating the father's motion was "granted/sustained" and "[j]udgment … to be amended" as described in a letter the court sent to counsel. *Id.* at 4–5. The letter stated the father's motion "is amended," listed the new child support amount, and requested the parties to prepare proposed amended judgments. *Id.* at 5. On the ninety-first day after the original judgment was entered, the circuit court entered its amended judgment from which the mother appealed. *Id.*

To determine whether it had jurisdiction to decide the appeal, the Southern District analyzed when the circuit court "ruled on" the father's motion to amend within the time frame contemplated by Rules 75.01 and 81.05. *Id.* at 6. The Southern District recognized applying these rules was "less clear" when the circuit court explicitly announced it was

granting a motion to amend without actually entering the amended judgment "to prevent the motion from being denied by operation of law under Rule 78.06 at the expiration of the ninetieth day following the filing of the motion." *Id.* Although *Noles* recognized the circuit court's docket entry and accompanying letter plainly stated it "reached a final *decision*" and announc[ed] provisions it intended to include in its amended judgment," these actions "did not constitute a *judgment*" because it ordered the parties to prepare proposed judgments to be entered. *Id.* at 8 (emphasis added). Even if these actions did "rule on" the father's motion, the "ruling was nothing more than an interlocutory order" which was not final or appealable. *Id.* at 8–9. *Noles* held "a motion to amend the judgment is 'ruled on' when, within ninety days of its filing: (1) the motion is explicitly denied; (2) the [circuit] court takes no action on it; or (3) an amended judgment is actually executed and filed." *Id.* at 9. Because the circuit court did not execute and file the amended judgment within 90 days, the Southern District found the amended judgment "was a nullity and must be vacated" and dismissed the appeal. *Id.*

As in *Noles*, this Court finds the circuit court did not "rule on Mother's timely, authorized after-trial motion to amend within the 90-day window. On December 8, 2023, Mother moved to amend, alter, or reconsider the 2023 Judgment, or alternatively, for a new trial. On March 5, 2024, the eighty-seventh day, the circuit court entered an order stating "[m]otion to set aside judgment is hereby granted with regard to the mistake of the court's calculation of the Form 14 only. Cause taken under advisement this date with regard to the filing of the first amended judgment of modification." This order is problematic for two reasons. First, Mother's authorized after-trial motion did not request

the judgment be "set aside." The circuit court's authority to act on an authorized after-trial motion under Rule 81.05 is limited "to those grounds raised in a timely filed after-trial motion." *State ex rel. Hawley v. Pilot Travel Ctrs, LLC*, 558 S.W.3d 22, 28 (Mo. banc 2018). Second, even if this Court overlooked the imprecise drafting, the circuit court's order merely demonstrated its intent to take the motion "under advisement" and execute an amended judgment at a future date, as in *Noles*. The circuit court did not act until May 9, 2024, more than two months after the order.

Yet, Mother's motion to amend was overruled by operation of law on March 8, 2024, absent an executed amended judgment. *See* Rule 78.06 ("[a]ny … motion to amend is deemed overruled if not ruled on within 90 days."). Hence, the circuit court had no authority on May 9, 2024, to rule on Mother's December 8, 2023 motion. *Noles*, 343 S.W.3d at 9.[14] Because the 2024 Amended Judgment is a nullity, the 2023 Judgment is the only judgment this Court can review when considering this point.

Both parties and this Court agree the 2023 Judgment miscalculated Mother's child support obligation. The 2023 Judgment is reversed and remanded only for the circuit court to recalculate Mother's child support obligation and determine whether the presumed child support amount is just and appropriate under the circumstances. Point Ten is granted.

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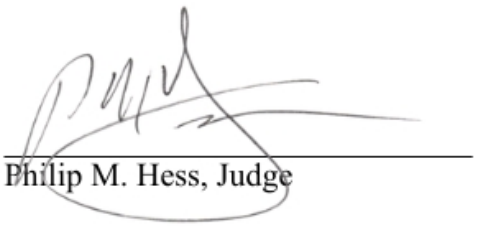
[14] This case is distinguishable from *Pilot Travel Centers*, 558 S.W.3d at 29–30, which held a circuit court retained jurisdiction over a case after issuing an order sustaining a motion to vacate, but entering a judgment explaining its reasoning outside the 90-day window because the *Pilot* order "ruled on" the motion to vacate leaving nothing more to be done within the 90-day window.

Conclusion

The circuit court's judgment is affirmed in part, and reversed and remanded in part for further proceedings consistent with this opinion.



Philip M. Hess, Judge

Michael S. Wright, Presiding Judge and
Virginia W. Lay, Judge concur.