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ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-23-240

	Opinion Delivered April 24, 2024
CHRISTINE MARIE ZIHALA APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SECOND DIVISION
V.	[NO. 60DR-21-349]
BRADLEY THOMAS STALEY APPELLEE	HONORABLE CASEY R. TUCKER, JUDGE
	AFFIRMED

BRANDON J. HARRISON, Chief Judge

Christine Zihala appeals the decree that finalized her divorce from Brad Staley and argues that the circuit court erred in (1) finding that joint physical custody is in their child's best interest, (2) denying her request to relocate, (3) not deviating from the child-support chart, (4) equally dividing the marital property, and (5) finding her in contempt and ordering her to pay Staley's attorney's fees related to the contempt motion. We affirm.

The parties married in June 2013 but separated in June 2018. On 1 February 2021, Staley filed for divorce and asked for joint custody of their four-year-old son, MC. Zihala counterclaimed for divorce and asked for sole custody of MC subject to Staley's limited visitation. On 1 April 2021, the circuit court entered a temporary agreed order in which the parties stipulated that Staley would pay $1,024 a month in temporary child support. The order also directed that the parties would share joint custody of MC, with Zihala having

primary physical custody subject to Staley's visitation. The court noted that it was "important for both parents to have a good relationship with the minor child."

On 2 June 2021, Zihala filed a notice of relocation and stated that she has always been MC's primary caretaker, that she has been working remotely at a new job but will need to relocate to Viriginia later in the summer, and that she should be awarded permanent physical custody of MC subject to Staley's visitation. Staley objected to the relocation and argued that it would harm his relationship with MC and would not be in MC's best interest. After a hearing on the matter, the circuit court denied the request to relocate, found that it was in MC's best interest to remain in Little Rock where his support system is located, and ordered that the temporary order remain in effect.

In early November 2021, Staley moved the court to set holiday visitation and to allow him right of first refusal to care for MC whenever Zihala is unavailable or out of town. The motion explained that his current visitation was every other weekend from Friday at 5:30 p.m. until Sunday at 5:30 p.m. and every Wednesday from 5:30 p.m. until the following morning. Zihala objected and asserted that the schedule set by the court in the temporary order should remain in place until the final hearing. The parties eventually reached a resolution, and the court entered an order setting out the schedule for the 2021 Christmas holiday.

In April 2022, Staley moved for a finding of contempt and alleged that since the entry of the temporary order, Zihala had intentionally interfered with his visitation and had not communicated with him in matters concerning MC. In response, Zihala argued that there was no need for Staley's continued hearing requests and that MC had been spending

more time with Staley since the Christmas holiday. She also asserted that Staley's allegations of interference were false and misleading. According to Zihala, MC's reluctance to spend time with Staley stems from his "overall physical and emotional absence [due to] long term substance abuse." Staley replied that Zihala was "intentionally influencing an unjustified negative strain on the relationship" between him and MC. He described it as a "classic case of parental alienation" and asked the court to order a child-custody evaluation.

In May 2022, the circuit court ordered that the exchange for Staley's visitation be supervised by Lion Legal Services.

> 3. Defendant or a third-party agent of Defendant's will bring the child to the supervision facility at the time of the scheduled visitation at 5:30 p.m. in order to drop the child off for visitation. Defendant will encourage the child to stay for visitation and attempt to leave the facility without the child prior to Plaintiff's arrival. Plaintiff will park near the facility at the time that visitation is to begin, and Defendant will text Plaintiff to notify him that she has left, and Plaintiff will pick the child up from the supervised visitation facility to allow only minimal time for the child to be at the facility.
>
> 4. The visitation supervisor will provide notes to document the exchanges and how they go, which the parties and their counsel are entitled to receive copies of.

The court's order also dismissed Staley's motion for contempt.

Approximately one month later, Staley filed a motion for contempt and for custody. The motion alleged that despite detailed instructions from the circuit court on when and where the visitation exchange should occur, Zihala arrived twenty minutes late to the first exchange and did not leave MC with the visitation supervisor per the court's order. MC ultimately got back into Zihala's car and refused to leave with Staley. The visitation supervisor recommended that Zihala arrive on time and allow MC to become acquainted

with the supervisor and be left in the supervisor's care so Staley could arrive separately. The parties agreed to attempt the exchange again two days later.

On the second attempt, Zihala was again twenty minutes late. She again did not leave MC alone with the supervisor so that Staley could pick up MC; instead, she suggested that the supervisor and MC leave the room. MC again refused to leave his mother, and Staley did not receive visitation. Since then, he had not been able to exercise several weekend and Wednesday visitations. Staley asserted that there had not been a single visitation that went as scheduled since the court's May 2022 order. He argued that Zihala "continues to show a complete disregard for orders of this Court," that she was intentionally causing parental alienation, and that it would be in MC's best interest for Staley to have primary custody.

In response, Zihala asserted that Staley's motion should be dismissed for failure to state facts upon which relief can be granted. She argued, "The fact that the child is refusing to go to visitation with Plaintiff such that Plaintiff is not receiving the visitation he was granted under the Agreed Order is not per se contempt by Defendant."

On 8 July 2022, Zihala filed her own motion for contempt, for sanctions, and for modification of the temporary order and agreed order. She explained that the agreed order had instructed the attorneys to communicate about alternative methods of exchange if the court-ordered method was not successful, but instead of communicating, Staley filed another motion for contempt. Therefore, he should be held in contempt for willfully violating the provision requiring communication.

Zihala also requested that the agreed order be modified to allow the parties to go back to the previous visitation arrangement and work with a coparenting therapist. She also asked,

> [I]n order to avoid continued Motions for Contempt being levied against her, Defendant requests the Order be modified to state that if after both parties attempting to encourage the child to go with Plaintiff for visitation (and any physical attempts either feel comfortable pursuing), the child still resists going to visitation, he will be allowed to go back with Defendant, and the parties can make other arrangements for modified visitation as they are able to agree.

Staley responded that "continuing to allow the parties' five-year-old child to dictate and control visitation is not in the minor's best interest."

After a final divorce hearing spanning several days, the circuit court entered the divorce decree on 15 December 2022. The court found that Zihala had impeded Staley's ability to exercise his court-ordered visitation and found her in contempt, ordered the parties to share joint physical custody of MC, ordered Zihala to pay $635 a month in child support, and ordered that the parties' disputed marital property be divided equally. Zihala has timely appealed the circuit court's order. Additional facts related to the arguments on appeal will be discussed below.

I. *Joint Custody*

Arkansas Code Annotated section 9-13-101(a)(1)(A)(iii) (Supp. 2023) provides that joint custody is favored in Arkansas. In an action concerning an original custody determination, there is a rebuttable presumption that joint custody is in the child's best interest, but this presumption may be rebutted if the court finds by clear and convincing evidence that joint custody is not in the child's best interest. Ark. Code Ann. § 9-13-

101(a)(1)(A)(iv)(*a*) & (b)(1). Clear and convincing evidence is that degree of proof that will produce in the fact finder a firm conviction as to the allegation sought to be established. *Johnson v. Ark. Dep't of Hum. Servs.*, 2023 Ark. App. 296, 667 S.W.3d 582. While there is a statutory preference for joint custody, this preference does not override the ultimate guiding principle, which is to set custody that comports with the best interest of the child. *Hanson v. Hanson*, 2023 Ark. App. 363, 676 S.W.3d 8.

We perform a de novo review of child-custody matters, but we will not reverse the circuit court's findings unless they are clearly erroneous. *Hamerlinck v. Hamerlinck*, 2022 Ark. App. 89, 641 S.W.3d 659. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been made. *Id.* We recognize and give special deference to the superior position of the circuit court to evaluate the witnesses, their testimony, and the child's best interest. *Id.*

In its order, the circuit court made the following findings in regard to custody:

> The Court finds that there was not clear and convincing evidence to rebut the presumption of joint custody in order for Defendant to have full custody. In fact, Defendant's interference with Plaintiff's visitation and continued influence on the child with her emotions is troubling to the Court. Defendant is admonished that if her behavior continues and escalates, the Court believes that it could be a basis for a change to sole custody in favor of Plaintiff.

Zihala argues that the circuit court erred in finding that joint physical custody was in MC's best interest and that she had not rebutted the presumption in favor of joint physical custody. She asserts that it is undisputed that she had been MC's primary caretaker from when he was born in January 2017 until the court's April 2021 temporary order awarding

Staley regular visitation. She contends that at the time of the divorce, MC was five and half years old, and she had been his caretaker and physical custodian for his entire life as well as the only stable and consistent parent in his life. Due in large part to Staley's struggle with alcoholism, MC had never lived with or spent any significant length of time with Staley.[1]

Zihala argues that due to the parties' lengthy four-year separation before the divorce was granted, awarding joint custody after such a long period of her having primary physical custody should have been deemed tantamount to a custody modification for the purpose of considering MC's best interest because the rationale of promoting continuity and stability was paramount. Staley admitted that MC was happy and thriving in Zihala's care; Zihala contends that this, along with the "best-interest custodial factor," was clear and convincing evidence that awarding joint custody to Staley was not in MC's best interest.

In response, Staley first clarifies that the divorce decree is the final custody determination in this case and is subject to the joint-custody presumption. Next, he contends that Zihala failed to produce the degree of evidence necessary to rebut the joint-custody presumption. He denies that her status as MC's primary caretaker during the marriage and the pendency of the divorce is determinative. *See Cunningham v. Cunningham*, 2019 Ark. App. 416, 588 S.W.3d 38 (explaining that the fact that one parent is the primary caretaker of the child during the marriage is not in and of itself determinative, although

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[1]Zihala makes the conclusory statement that the circuit court erred in not allowing her to admit Staley's credit-card records for the eighteen-month period between MC's birth and the parties' separation, as this evidence would have supported her testimony that he did not assist in caretaking responsibilities during that time. However, this allegation of error is undeveloped and not supported by convincing argument or authority; therefore, we will not address it. *Mercado v. Ark. Dep't of Hum. Servs.*, 2017 Ark. App. 232, 519 S.W.3d 715.

relevant and worthy of consideration). She did not allege that his status as a recovering alcoholic prevented him from being a good parent; in fact, she testified that there had been no incidents since he had achieved sobriety in January 2019 that caused her concern about his sobriety. She also admitted that MC had never been harmed while in Staley's care, and she had no evidence of any potential harm MC might face if in his care. She acknowledged that since his sobriety, Staley had visited MC whenever he had the opportunity, and she agreed that Staley and MC had a "meaningful" relationship. In addition, MC's counselor opined that based on her observations, Staley is a good father. He concludes that "there is no evidence—much less clear and convincing evidence—that it is not in [MC's] best interests to spend at least half of the time with [him]."

Zihala essentially argues that to provide MC with stability and continuity, she should have been given primary custody. But as noted above, her status as MC's primary caretaker during the marriage and pursuant to the temporary order is not determinative, although certainly relevant. *Cunningham*, *supra*. Notably, she did not allege that being in Staley's custody was unsafe or contrary to MC's best interest. We hold that the circuit court did not err in finding that the joint-custody presumption had not been rebutted and awarding the parties joint custody of MC.

II. *Relocation*

In determining whether a parent may relocate with a minor child, the circuit court must generally look to the principles set forth in the supreme court's decisions in *Hollandsworth v. Knyzewski*, 353 Ark. 470, 109 S.W.3d 653 (2003), and *Singletary v. Singletary*, 2013 Ark. 506, 431 S.W.3d 234. In 2003, the *Hollandsworth* court announced a

presumption in favor of relocation for custodial parents with sole or primary custody, with the noncustodial parent having the burden to rebut this presumption. Ten years later, in *Singletary*, the supreme court explained that the *Hollandsworth* presumption does not apply when the parents share joint custody of a child. In a joint-custody arrangement where both parents share equal time with the children, there is not one parent-child relationship to take preference over the other, and the *Hollandsworth* rationale is inapplicable. *Singletary*, *supra*. Instead, the proper analysis in a change-in-custody request due to the relocation of one parent in a joint-custody situation is the same as that when relocation is not involved: the court must first determine whether a material change in circumstances has transpired since the divorce decree or last order of custody and then whether the change in custody is in the best interest of the child. *Id*.

Recognizing the significant impact of the *Hollandsworth* presumption and the considerable burden of overcoming that presumption in relocation cases, the supreme court revised the *Hollandsworth* versus *Singletary* analysis in *Cooper v. Kalkwarf*, 2017 Ark. 331, 532 S.W.3d 58. The *Cooper* court clarified that the *Hollandsworth* presumption should be applied only when the parent seeking to relocate is not just labeled the "primary" custodian in the divorce decree but also spends significantly more time with the child than the other parent. *Id*. at 15, 532 S.W.3d at 67. This standard preserves the rights of a primary custodian when he or she has shouldered the vast majority of the responsibility of caring for and making decisions on behalf of the child, and it also more accurately reflects the best interest of the child, which is the polestar consideration in any custody decision. *Id*.

Finally, in considering the best interest of the child, the circuit court the court should take into consideration the following matters: (1) the reason for the relocation; (2) the educational, health, and leisure opportunities available in the location in which the custodial parent and child will relocate; (3) the visitation and communication schedule for the noncustodial parent; (4) the effect of the move on the extended family relationships in the location in which the custodial parent and children will relocate as well as in Arkansas; and, (5) the preference of the child, including the age, maturity, and the reasons given by the child as to his or her preference. *Hollandsworth*, *supra*. We review the denial of a petition to relocate de novo but will not reverse the circuit court's findings unless they are clearly erroneous. *Colston v. Williams*, 2018 Ark. App. 455, 556 S.W.3d 548.

At the conclusion of the relocation hearing in July 2021, the circuit court made the following remarks:

> I've had a chance to review the cases, the testimony, take that all in, and at this time the Court is going to deny the Defendant's Motion to Relocate. The compelling evidence on which the Court bases the decision is that it's clearly in [MC's] best interest that he remain in Little Rock where his support system is located. I think at this point it would be detrimental to the child to move him across the country with only one half of his support system able to go with him.
>
> I've reviewed our temporary Order that's in place where the parties were granted joint custody with defendant as a primary physical custodian, so in that sense, I've applied the *Singletary* case, which states that the best interest of the child is controlling, and that's the standard.
>
> So the legislature has shown a clear intent to move towards joint custody arrangements. At this point in the stage of this litigation, we are not to a final. The parties are not divorced, so *Hollandsworth*, in my opinion, does not apply.
>
> The Court has granted certain visitation rights at the temporary hearing, pending further testimony that will take place at a final hearing.

> I have considered that—I understand you took a job very comparable to the position that you held here, with the exception of some benefits and a trajectory that you wanted; however, you could have had that same trajectory here as well, if you had remained at Dillard's.
>
> The evidence also showed that there was ample opportunity for you to obtain like employment here. If you want to continue to work at Ferguson, I would say that the remote option still has not been completely closed on that, so that is a possibility.
>
> Also, I found it compelling that the parties were able to agree on a school track here, should the child remain in the jurisdiction of Little Rock.
>
> So as of today, and because we're still working under a temporary Order, then I'm denying the relocation motion.

Zihala asserts that instead of applying *Singletary*, the circuit court should have "analyzed what the custodial practice of the parties had been at the time the relocation request was considered" and applied *Hollandsworth*. She cites *Bell v. Bell*, 2022 Ark. App. 279, 646 S.W.3d 678, which notes that Arkansas uses a present-based analysis for custody issues, and circuit courts must examine the changes and best interest of the children presented as evidence to the court at the time of the final hearing, not changes that may occur weeks, months, or years down the road. Here, she contends, she had primary physical custody of MC for over three years while the parties were separated, and the circuit court had awarded her primary physical custody on a temporary basis. Therefore, the circuit court incorrectly applied *Singletary* instead of *Hollandsworth*.

She also argues that the circuit court erred in finding that relocating would be "detrimental" to MC, as there was no testimony that relocating would cause any harm to him. She had been searching for a new job for several months and kept Staley apprised of her job search, and he had never raised an objection to her relocating with MC until she

informed him that she had accepted the position in Virginia, and he then filed for divorce, thus thwarting her attempted career advancement. Zihala concludes that the circuit court clearly erred in denying her motion to relocate and that this court should reverse and remand with instructions for the court to determine a suitable visitation schedule upon her relocation to Virginia.

Staley first responds that this issue is not preserved for appellate review because Zihala did not obtain a final ruling. He contends that the circuit court denied her request to relocate because the parties had not yet completed their proof. The court's order denying the request states that relocation would not be in MC's best interest "at this time," and the temporary order would remain in effect "until further order of this Court." Clearly, Staley argues, the circuit court's decision was not final, and the court never made a final ruling because Zihala never renewed her request to relocate.

Alternatively, Staley contends that the circuit court did not clearly err in denying Zihala's request to relocate. He argues that Zihala does not cite any legal authority for her argument that *Hollandsworth* should be applied to a temporary custody order. The only legal authority she does cite, *Bell v. Bell*, is inapplicable because it involves a custody modification and not a request to relocate. Staley asserts that the circuit court correctly utilized a best-interest analysis when considering the request to relocate and did not err in finding that moving away from half of his support system and not having regular interaction with his father was clearly not in MC's best interest. Staley also notes that at the relocation hearing in July 2021, Zihala asserted that her employer required her to move and that she would

likely resign if not allowed to relocate. However, she was still employed by Ferguson and working remotely at the final hearing thirteen months later.

Zihala replies that the relocation denial is an intermediate order that she is allowed to appeal. She also replies that while the case law most often does involve a final order addressing the issue of relocation, this in and of itself does not automatically mean that one standard over the other has to be applied if relocation is being sought prior to entry of a final custody order. She insists that the circuit court should have analyzed the relocation issue by considering the custodial practice of the parties at the time the relocation request was considered. Finally, she reiterates that there was no evidence that relocating would be detrimental to MC.

We hold that the order denying Zihala's motion to relocate is an intermediate order that she can now bring up on appeal. However, we also hold that the circuit court did not clearly err in denying the motion to relocate. It appears that the circuit court's primary basis for denying the motion was the fact that a final custody determination had not been entered, and without that determination, it was premature to decide a relocation issue. In effect, the court would not know which standard to apply until the parties' custody arrangement had been decided. And in the meantime, it was not in MC's best interest to disrupt his life and move him away from half of his family support system.

III. *Child Support*

Our standard of review for an appeal from a child-support order is de novo on the record, and we will not reverse a finding of fact by the circuit court unless it is clearly erroneous. *Hall v. Hall*, 2013 Ark. 330, 429 S.W.3d 219. In reviewing a circuit court's

findings, we give due deference to that court's superior position to determine the credibility of the witnesses and the weight to be accorded to their testimony. *Id.* As a rule, when the amount of child support is at issue, we will not reverse the circuit court absent an abuse of discretion. *Id.* However, a circuit court's conclusion of law is given no deference on appeal. *Id.*

Administrative Order No. 10 provides the framework for calculating child support under the Income Shares Model. Administrative Order No. 10(II) provides,

> If an order deviates from the Guidelines amount, then the order must explain the reason(s) for the deviation. When deciding whether the Worksheet-based amount is unjust or inappropriate, the court must consider all the relevant factors, including what is in the child's or children's best interest. A deviation from these Guidelines should be the exception rather than the rule. . . . It shall be sufficient in a particular case to rebut the presumption that the amount of child support calculated pursuant to the Worksheet is correct if the court provides in the order a specific written finding that the Worksheet-based amount is unjust or inappropriate. When determining whether to deviate from the Guidelines' amount, a court should consider the following:
>
> a. Educational expenses for the child(ren) (i.e., those incurred for private or parochial schools, or other schools where there are tuition or related costs) and/or the provision or payment of special education needs or expenses for the child(ren);
>
> b. The procurement and/or maintenance of life insurance, dental insurance, and/or other insurance for the children's benefit (for health insurance premiums, see Section II.2 infra);
>
> c. Extraordinary travel expenses for court-ordered visitation;
>
> d. Significant available income of the child(ren);
>
> e. The creation or maintenance of a trust fund for the children;
>
> f. The support given by a parent for minor children in the absence of a court order;

> g. Extraordinary time spent with the payor parent;
>
> h. Additional expenses incurred because of natural or adopted children living in the home, including stepchildren if the court finds there is a court-ordered responsibility to a stepchild;
>
> i. The provision for payment of work-related childcare, extraordinary medical expenses for the child in excess of $250.00 per year per child, and/or health insurance premiums. Ordinarily, these expenses will be divided pro rata between the parents and added to the base child support of the payor parent on the Worksheet. In that scenario, it shall not support a deviation. However, if the court chooses not to add them in the total child-support obligation, they could support a deviation; and
>
> j. Any other factors that warrant a deviation.

Ark. Sup. Ct. Admin. Order No. 10(II)(2).

In the divorce decree, the circuit court denied Zihala's request for a deviation from the child-support chart based on the disparity of income between the parties. On appeal, she argues that the court clearly erred in not deviating from the chart given the additional support that she provided to MC above and beyond the chart. She contends that from June 2018, when Staley moved out of the marital home, to April 2021, when the circuit court ordered Staley to pay child support, she had provided all financial support for MC. In addition, Zihala testified that she paid private-school tuition in the amount of $506 a month, paid extracurricular fees, and contributed to a 529 college-savings plan for MC. While she earns a higher income, both she and Staley have six-figure incomes and the capacity to solely support MC. Therefore, she argues, it was clearly erroneous for the circuit court to refuse to deviate from the child-support chart and consider the extra expenses that Zihala incurs.[2]

[2]Zihala also includes this one sentence argument: "Further, it was also erroneous to find that Chrissie should solely be responsible for all costs of co-parenting therapy instead of

Staley argues in response that Zihala failed to rebut the presumption that the amount of child support on the chart is correct and that the circuit court did not abuse its discretion by ordering the presumptively correct amount of child support. He contends that if she wanted compensation for her previous support of MC, she should have requested retroactive child support. He also explains that she was not MC's sole financial supporter until April 2021; during its oral ruling at the final hearing, the circuit court recognized that during the marriage, "Plaintiff's check went into a joint account from which Defendant paid all of the bills, and she chose what bills to pay out of which account. Plaintiff contributed to the household nonetheless."

Staley also argues that Zihala earns almost two and half times more in monthly gross income than he does, and after her monthly expenses and child support are paid, she has a surplus in income of $20,062 a month. Therefore, she can easily afford $506 a month in private-school tuition. As to extracurricular expenses, Staley contends that Zihala did not introduce any evidence of those expenses, and the divorce decree does not address extracurricular expenses. Finally, regarding the 529 account, Staley explains that Zihala funded the account during the parties' marriage with marital funds obtained from selling marital stock. Thus, she is not entitled to reduce her child-support obligation based on those contributions.

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ordering this cost to be equally split, as there was no rationale for this decision." As noted earlier, we do not address arguments that are undeveloped and not supported by convincing argument or authority. *Mercado*, *supra*. Also, the court clearly stated the rationale for its decision: "Because the counseling is still necessary and the Court believes the issues to have been created by the Defendant, Defendant is ordered to pay the cost of such counseling over and above any insurance."

The abuse-of-discretion standard is a high threshold that does not simply require error in the circuit court's decision but requires that the circuit court act improvidently, thoughtlessly, or without due consideration. *Minor Child v. State*, 2023 Ark. App. 592, 680 S.W.3d 787. We hold that Zihala has not shown that the circuit court abused its discretion in declining to deviate from the presumptive child-support amount.

IV. *Division of Marital Property*

In accordance with Ark. Code Ann. § 9-12-315(a)(1) (Repl. 2020), when the circuit court enters a divorce decree, it shall equally distribute all marital property one-half to each party unless it is determined that such a distribution would be inequitable. *Booker v. Booker*, 2022 Ark. App. 473, 655 S.W.3d 562. In that event the court shall make some other division that the court deems equitable taking into consideration:

> (i) The length of the marriage;
>
> (ii) Age, health, and station in life of the parties;
>
> (iii) Occupation of the parties;
>
> (iv) Amount and sources of income;
>
> (v) Vocational skills;
>
> (vi) Employability;
>
> (vii) Estate, liabilities, and needs of each party and opportunity of each for further acquisition of capital assets and income;
>
> (viii) Contribution of each party in acquisition, preservation, or appreciation of marital property, including services as a homemaker; and
>
> (ix) The federal income tax consequences of the court's division of property.

Ark. Code Ann. § 9-12-315(a)(1)(A).

A circuit court has broad powers to distribute property in order to achieve an equitable distribution, and the overriding purpose of the property-division statute is to enable the court to make a division of property that is fair and equitable under the circumstances. *Wilcox v. Wilcox*, 2022 Ark. App. 18, 640 S.W.3d 408. With respect to the division of property, we review the circuit court's findings of fact and affirm them unless they are clearly erroneous or against the preponderance of the evidence; the division of property itself is also reviewed, and the same standard applies. *Doss v. Doss*, 2018 Ark. App. 487, 561 S.W.3d 348. A circuit court's finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id*.

In the divorce decree, the circuit court awarded each party his or her nonmarital property and accepted the parties' list of undisputed property. As to the remaining accounts on the parties' disputed property list, the court did not find that there was sufficient testimony to satisfy an award for an unequal division. The court found,

> Both parties are very successful in their own rights. The Court agrees with Plaintiff that alcohol could be treated like any other illness, and the parties married knowing that Plaintiff earned this typical type of income and Defendant made substantially more than Plaintiff did. Therefore, the Court finds that the accounts identified on the attached worksheet should be divided equally between the parties.

On appeal, Zihala cites *Waggoner v. Waggoner*, 2012 Ark. App. 286, 423 S.W.3d 117, for the proposition that an unequal division of property is appropriate when one party has contributed significantly more than the other to the marital estate. She contends that her contributions to the marital estate were more significant than Staley's, and in addition to her financial contributions, she performed the majority of the household chores and was the

primary financial caregiver for MC. She also argues that the circuit court should have considered the amount of time the parties lived separately during the marriage. Zihala insists that it is "unjust" to allow Staley to benefit financially from her hard work.

Regarding the circuit court's specific findings on the issue, Zihala contends that the circuit court "agreed that both parties were successful in their own rights but only focused on [Staley's] alcoholism, finding it should be treated as any other illness." She disagrees that alcoholism is the same as any other illness "because the person with alcoholism has some control over their choices and sobriety, including whether to seek treatment." She also argues that there is no evidence in the record to support the court's finding that "the parties married knowing that Plaintiff earned this typical type of income and Defendant made substantially more than Plaintiff did." She concludes that it was inequitable to her to equally divide the marital estate and that "each party should have been awarded the assets in their separate names that they actually contributed to and acquired."

Staley responds that Zihala is primarily relying on the eighth factor listed above—contribution of each party in acquisition, preservation, or appreciation of marital property, including services as a homemaker—for her argument that the disputed marital property should have been distributed unequally in her favor. He argues, however, that if the legislature had intended for marital property to be divided based on each party's respective contributions to the marital estate, it would not have enacted a statute that requires an equal division of that property. He reasons that Zihala was making two and a half times more than he, so it makes sense that she was able to save more money than he did. He argues that the "lower-earning spouse in a marriage should not be penalized for having less

income." In fact, he contends, Zihala's superior earning capacity could weigh in favor of an unequal division in his favor. *See Delacey v. Delacey*, 85 Ark. App. 419, 155 S.W.3d 701 (2004) (affirming circuit court's award of entire retirement account to wife, even though part of the account's value was earned during the marriage, based in part on husband's superior earning ability). Staley also discusses each of the other eight factors in the statute listed above and asserts that none of them weigh in favor of an unequal division of marital property.

Given the circuit court's broad power in the distribution of property, we hold that the circuit court did not clearly err in its decision. We therefore affirm the circuit court's equal division of the disputed marital property.

V. *Contempt*

In the divorce decree, the circuit court found Zihala in contempt and found that she had impeded Staley's ability to exercise his court-ordered visitation, which was against MC's best interest. The court remarked,

> Time at Chuck E. Cheese or Waffle House is not a true replacement for quality time with a parent, especially knowing that [Defendant] was sitting outside in the car. The Court further finds Plaintiff's testimony credible that Defendant was the one who pulled back on visitation after his divorce action was filed. It was uncontroverted that it was Defendant's actions that created the difficult exchanges and her behavior that influenced the child's demeanor. As a result of Defendant's contemptuous actions, Plaintiff may file a petition for fees.

The court also denied Zihala's motion for contempt filed against Staley.

Staley later filed a motion for attorney's fees and costs totaling $5,875.50 "incurred as a result of Defendant's intentional impediment of Plaintiff's court ordered visitation." Zihala disputed the motion and argued that Staley was claiming fees for actions not related

to the June 2022 motion for contempt. She concluded that, at most, $576.50 should be awarded. The circuit court ultimately awarded Staley $2,553 in attorney's fees and costs.

Contempt is a matter between the judge and the litigant and not between the two opposing litigants. *Holifield v. Mullenax Fin. & Tax Advisory Grp., Inc.*, 2009 Ark. App. 280, 307 S.W.3d 608. Willful disobedience of a valid order of a court is contemptuous behavior. *Rye v. Rye*, 2021 Ark. App. 286, 625 S.W.3d 761. Contempt is divided into criminal contempt and civil contempt; criminal contempt preserves the power of the court, vindicates its dignity, and punishes those who disobey its orders, while civil contempt protects the rights of private parties by compelling compliance with orders of the court made for the benefit of private parties. *Omni Holding & Dev. Corp. v. 3D.S.A., Inc.*, 356 Ark. 440, 156 S.W.3d 228 (2004). Stated more concisely, criminal contempt punishes while civil contempt coerces. *Baggett v. State*, 15 Ark. App. 113, 690 S.W.2d 362 (1985). Therefore, the focus is on the character of relief rather than the nature of the proceeding. *Fitzhugh v. State*, 296 Ark. 137, 752 S.W.2d 275 (1988).

Our standard of review for criminal contempt is whether the decision is supported by substantial evidence, viewing the record in the light most favorable to the circuit court's decision. *Bartley v. State*, 73 Ark. App. 452, 45 S.W.3d 387 (2001). Substantial evidence is evidence of sufficient force and character to compel a conclusion one way or the other, forcing the mind to pass beyond suspicion or conjecture. *Ark. Dep't of Hum. Servs. v. Hellyer*, 2017 Ark. App. 294, 521 S.W.3d 158. For civil contempt, the standard of review is whether the circuit court's finding is clearly against the preponderance of the evidence. *Rye*, *supra*. A finding is clearly against the preponderance of the evidence if, although there is evidence

to support it, the reviewing court on the entire evidence is left with a firm conviction that a mistake has been committed. *Potter v. Holmes*, 2020 Ark. App. 391, 609 S.W.3d 422. Issues of credibility, however, are for the fact-finder. *NAACP v. Bass*, 2017 Ark. App. 166, 519 S.W.3d 336.

As an initial matter, Zihala claims that she was found in criminal contempt because the court penalized her by ordering her to pay Staley's attorney's fees related to the contempt motion. Staley contends that the contempt in this case was civil, not criminal, because the award of attorney's fees and costs was for his benefit and thus remedial in nature. The parties agree, however, that whether the standard of review for civil contempt or criminal attempt applies, their respective positions on the finding of contempt are supported by the evidence. We hold that the contempt finding here is civil in nature. *See Scudder v. Ramsey*, 2013 Ark. 115, 426 S.W.3d 427 (finding that award of attorney's fees to grandmother after mother denied visitation was remedial in nature and thus civil contempt). Thus, our standard of review is whether the circuit court's finding is clearly against the preponderance of the evidence. *Rye*, *supra*.

On appeal, Zihala takes issue with the circuit court's statement that it was "uncontroverted" that it was her actions that created the difficult exchanges and that her behavior influenced MC's demeanor. She asserts that the matter was disputed and that there is a "plethora of evidence in the record" that she did not intentionally create the difficult exchanges. She cites her own testimony that she had not done anything to interfere with Staley's relationship with MC or to stop visitation from occurring. According to her testimony, she supported and encouraged MC to go to visitation with Staley and attempted

to arrange visitation even in those times when MC refused to go with Staley. She also testified how MC "would not leave her side in order to allow her to leave him at the supervised facility."

Zihala discusses testimony from the visitation supervisor, Staley, and the child's therapist and notes that "not a single person testified definitively that [she] acted intentionally or willfully, as the testimony all amounted to speculation and conjecture as to her motives and intent." While acknowledging that the circuit court is given deference on credibility matters, she still concludes that there was no substantial evidence that she acted intentionally and willfully to disrupt Staley's visitation and therefore no substantial evidence to support the court's contempt finding.

Staley counters that the court's contempt finding is well supported by the evidence. The visitation supervisor testified that at the attempted visitation exchanges she observed, Zihala arrived late and then failed to leave MC with the supervisor as ordered. Zihala also occasionally suggested that the parties and MC go out to eat together, which cut into Staley's visitation time with MC. Staley also notes ample evidence that Zihala's failure to control her emotions around MC caused his anxiety regarding visitation. For example, at one visitation exchange, Zihala was "crying uncontrollably . . . standing behind the car bent over and sobbing" so loudly she could not hear the visitation supervisor speak to her. Finally, MC's counselor testified that some of Zihala's actions could be considered intentional sabotage and that being purposefully kept from his father could be damaging to MC. Staley cites the circuit court's superior position to weigh the credibility of the witnesses and asserts that the circuit court simply did not believe Zihala's self-serving testimony.

Zihala is essentially asking this court to reweigh the evidence and hold that her actions were not willful. However, this case turns almost entirely on credibility, and as noted above, credibility is an issue for the fact finder to determine. *NAACP v. Bass*, *supra*. In addition, the circuit court's use of the word "uncontroverted" is not reversible error. We are not left with a firm conviction that a mistake has been committed; therefore, we affirm the circuit court's order.

Affirmed.

VIRDEN and BARRETT, JJ., agree.

The Applegate Firm, PLLC, by: *Kayla M. Applegate*, for appellant.

Kamps & Griffis PLLC, by: *Adrienne M. Griffis*, for appellee.