STATE OF MICHIGAN

COURT OF APPEALS

LESLEY STRUYK, Plaintiff-Appellee,	UNPUBLISHED November 27, 2018
v	No. 341140 St. Clair Circuit Court
DAVID SCHWEIHOFER, Defendant-Appellant.	LC No. 13-000112-DM

Before: O'BRIEN, P.J., and TUKEL and LETICA, JJ.

PER CURIAM.

Defendant appeals as of right the November 2, 2017 order granting plaintiff sole legal custody of the minor children and other relief, and denying defendant's motion for sole legal and physical custody. Defendant also challenges the July 19, 2017 order finding him in criminal contempt of court. We affirm the trial court's custody and parenting time rulings, but lack jurisdiction to review the trial court's contempt order.

This appeal stems from a highly contentious post-judgment divorce action involving the parties' two minor children. On October 9, 2013, the trial court entered the judgment of divorce. Since then, the parties have filed numerous motions about parenting time and custody, as well as motions about the other party's alleged violations of the standing parenting time and custody orders. The issues on appeal arise from a 12-day evidentiary hearing that addressed custody and parenting time, and a separate order from a show-cause hearing on defendant's alleged violations of various earlier orders.

I. CUSTODY RULINGS—GREAT WEIGHT OF THE EVIDENCE

Defendant first contends that the trial court erred by denying his request for physical custody and awarding plaintiff sole legal custody of the children. Primarily, defendant takes issue with the trial court not affording greater weight to the testimony of an expert, Pamela Ludolph, Ph.D. Defendant asserts that because Ludolph was the only qualified expert, the trial court should have given more weight to her testimony and less weight to other testimony and evidence.

"All custody orders must be affirmed on appeal unless the circuit court's findings were against the great weight of the evidence, the circuit court committed a palpable abuse of discretion, or the circuit court made a clear legal error on a major issue." *Lieberman v Orr*, 319

Mich App 68, 76-77; 900 NW2d 130 (2017), citing MCL 722.28; *Pierron v Pierron*, 282 Mich App 222, 242; 765 NW2d 345 (2009), aff'd 486 Mich 81 (2010). A clear legal error occurs when the circuit court incorrectly chooses, interprets, or applies the law. *Kubicki v Sharpe*, 306 Mich App 525, 538; 858 NW2d 57 (2014). "An abuse of discretion, for purposes of a child custody determination, exists when the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Butler v Simmons-Butler*, 308 Mich App 195, 201; 863 NW2d 677 (2014).

When making a custody determination, a trial court must evaluate the children's best interests under the 12 statutorily enumerated factors. MCL 722.23; *Harvey v Harvey*, 470 Mich 186, 187; 680 NW2d 835 (2004). In *Kessler v Kessler*, 295 Mich App 54, 63-64; 811 NW2d 39 (2011), this Court explained:

> We review the trial court's findings of fact in a custody case under the "great weight of the evidence" standard. *Vodvarka v Grasmeyer*, 259 Mich App 499, 507; 675 NW2d 847 (2003). Under this standard of review, we affirm a trial court's findings "unless the evidence clearly preponderates in the opposite direction." *Berger* [*v Berger*], 277 Mich App [700,] 705; 747 NW2d 336 [(2008)].
>
> * * *
>
> We defer to the trial court's credibility determinations, and "the trial court has discretion to accord differing weight to the best-interest factors." *Berger*, 277 Mich App at 705.

Initially, we note that for this issue and the other issues on appeal, defendant substantively cites no legal authority to support his positions and arguments. "[W]here a party fails to cite any supporting legal authority for its position, the issue is deemed abandoned." *Berger*, 277 Mich App at 715 (quotation marks and citation omitted). "It is well established that '[a] party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim.' Indeed, this Court need not address an issue that is given only cursory consideration by a party on appeal." *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001) (citations omitted). Even though defendant abandoned his arguments on appeal, this Court nevertheless provides an analysis of defendant's claims of error.

Neither party challenges the trial court's determination that an established joint custodial environment existed for the children, that proper cause or change of circumstances was sufficiently demonstrated to permit revisiting the custody order, or the trial court's requirement of clear and convincing evidence as its standard for review. See MCL 722.27(1)(c). Instead, defendant contends that the trial court's ruling was contrary to the great weight of the evidence because the trial court did not give enough weight to the opinions of Ludolph, as an expert, and instead deemed other evidence and testimony of greater significance when rendering its decision.

"[I]n a child custody dispute, MCL 722.27(1) allows a court to award custody to one or more of the parties and reasonable parenting time to the parties involved, both in accordance

with the best interests of the child. Physical custody refers to a child's living arrangements." *Lieberman*, 319 Mich App at 79. In turn:

> Parenting time is the time a child spends with each parent. Whereas the primary concern in child custody determinations is the stability of the child's environment and avoidance of unwarranted and disruptive custody changes, the focus of parenting time is to foster a strong relationship between the child and the child's parents. A court bases a parenting-time order on its determination of the best interests of the child, and grants parenting time in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time. A child has a right to parenting time unless the court determines on the record by clear and convincing evidence that parenting time would endanger the child's physical, mental, or emotional health. The trial court may consider the factors set forth in MCL 722.27a(7), along with the best-interest factors provided in MCL 722.23, when granting parenting time. [*Id*. at 80-81 (quotation marks and citations omitted).]

Legal custody pertains to the "decision-making authority as to the important decisions affecting the welfare of the child." MCL 722.26a(7)(b). For joint legal custody to function:

> [P]arents must be able to agree with each other on basic issues in child rearing—including health care, religion, education, day to day decision-making and discipline—and they must be willing to cooperate with each other in joint decision making. If two equally capable parents whose marriage relationship has irreconcilably broken down are unable to cooperate and to agree generally concerning important decisions affecting the welfare of their children, the court has no alternative but to determine which parent shall have sole custody of the children. The establishment of the right to custody in one parent does not constitute a determination of the unfitness of the noncustodial parent but is rather the result of the court's considered evaluation of several diverse factors relevant to the best interests of the children. [*Fisher v Fisher*, 118 Mich App 227, 232-233; 324 NW2d 582 (1982) (citations omitted).]

Here, the parties acknowledged their inability to effectively communicate or agree on the needs and best interests of their children, so it is clear that the trial court followed the proper procedure by awarding sole legal custody to one parent. Defendant's only argument is that the trial court's final determination was contrary to the great weight of the evidence.

Defendant argues that the trial court did not afford proper weight to Ludolph's testimony in light of her status as an expert. The weight given to the testimony of experts is for the factfinder to decide. *Guerrero v Smith*, 280 Mich App 647, 669; 761 NW2d 723 (2008). It is routinely recognized that "as the factfinder, the trial court is in a better position to judge the witnesses' credibility." *State Farm Fire & Cas Co v Couvier*, 227 Mich App 271, 275; 575 NW2d 331 (1998). "Discretion exists in the trial court to receive or reject the opinion of experts." *Mich Dep't of Natural Resources v Frostman*, 84 Mich App 503, 505; 269 NW2d 655 (1978).

Two general factors support the trial court's discounting of Ludolph's testimony: (a) the existence of several errors, mischaracterizations, and the suggestion of bias by Ludolph and (b) the completely contrary testimony of other witnesses, particularly of the various counselors involved with plaintiff, defendant, and the children over extended time periods: Kimberly Hazel, Sandy Burns, Erin McDaid and Danni Spresser.

Although the trial court adopted Ludolph's conclusion regarding the absence of parental alienation, it questioned many of Ludolph's other statements and findings. For instance, Ludolph was not charged with diagnosing either party, yet opined on plaintiff's "mental illness" while suggesting that defendant was "normal." But when pressed, Ludolph acknowledged that she did not perform tests to provide a clinical diagnosis and that her descriptions of plaintiff's mental health did not coincide with a particular diagnostic condition or category. Ludolph based her characterization of plaintiff in part on Ludolph's observation that plaintiff was disjointed and tangential in her thinking. Yet this was completely contrary to the observations of the counselors, all of whom had a long history of interactions with plaintiff. Perhaps more surprising, Ludolph's reports of her conversations with the various counselors were directly contradicted by every single counselor in each of their reports and sworn testimonies.

The trial court also struggled with Ludolph's apparent wholesale acceptance, without questioning, of statements or allegations made by the children and defendant compared to her apparent disbelief of anything reported by plaintiff, which was compounded by Ludolph's failure to even attempt to verify plaintiff's version of events. The trial court expressed particular concern, or at least skepticism, that Ludolph never critically evaluated statements by the children and defendant about their motivations to potentially misrepresent events and facts. The trial court also questioned Ludolph's suggestion that plaintiff had explosive anger in light of Ludolph's simultaneous description of plaintiff as tearful, withdrawn, and wanting to leave when involved in confrontational situations with the children. The trial court also noted that Ludolph formed certain opinions based on factual errors.

Questions also arose about Ludolph's reliability or neutrality. Plaintiff testified how Ludolph's behavior was demeaning to plaintiff in their interactions. Hazel and Burns—two of the counselors involved with plaintiff, defendant, and their children—believed that Ludolph was biased and had already arrived at her conclusions before she engaged them in conversation. According to Ludolph herself, when the parties' daughter suggested to Ludolph during an interview that she wished to discontinue her counseling because her counselor had "testified against her," Ludolph did not inquire further. The trial court found this response odd, even lackadaisical, because when the daughter made this statement to Ludolph, her counselor had not yet testified at the evidentiary hearing, so someone had likely improperly discussed with the daughter correspondence authored by the counselor and sent to the trial court. Yet, rather than question the source or accuracy of the statement, Ludolph accepted the statement without further inquiry. The trial court also expressed concern that, in several instances, Ludolph gave a conclusion, but when pressed, needed to "walk back" her statements by either acknowledging factual errors in the information she relied on or contradicting her own testimony.

Of additional concern to the trial court was Ludolph's belief that the parties' parenting time schedule was an anomaly because defendant's parenting time was not equal to that of plaintiff. The trial court saw nothing atypical about the parties' parent time schedule. Similarly,

the trial court had difficulty reconciling Ludolph's statement that defendant was respectful of plaintiff while also acknowledging that defendant often used denigrating terms to refer to her. Particularly concerning to the trial court was Ludolph's implication that she maintained statistics to "balance" the outcomes of her assessments to obtain a form of equivalency between her recommendations pertaining to mothers and fathers. During the evidentiary hearing, Ludolph was questioned whether the order in which she interviews parents contributed to her determination of favorability regarding a father or mother. While she denied such a correlation to the outcome of a case, Ludolph stated, "I do statistics on myself between whether the father wins or the mother wins. I keep on trying to, to even it out and there isn't." The trial court deemed these efforts problematic because each evaluation or case is independent and should be decided on its own merits, without statistical comparison or concern regarding the outcome. Based on all of these reservations identified by the trial court, the court was within its discretion to give limited weight to Ludolph's testimony when rendering its decision, and we find no error.

We now turn to the trial court's ultimate determinations concerning physical and legal custody, as well as its findings on the best interest factors. As recently observed by this Court:

> MCL 722.23 defines the "best interests of the child" as "the sum total of the . . . factors" set forth in MCL 722.23(a)-(l), which are to be "considered, evaluated, and determined by the court." "In child custody cases, the family court must consider all the factors delineated in MCL 722.23 and explicitly state its findings and conclusions with respect to each of them." "This Court will defer to the trial court's credibility determinations, and the trial court has discretion to accord differing weight to the best-interest factors." [*McRoberts v Ferguson*, 322 Mich App 125, 134; 910 NW2d 721 (2017) (citations omitted).]

At the outset, we acknowledge that the trial court evaluated factors (a) through (j) of MCL 722.23 and did not reference factors (k) or (l).[1] On factors (a), (e), and (f), the trial court found the parties equivalent. Likewise, the trial court deemed the parties equivalent with regard to physical custody on factors (d) and (g). Defendant was favored on factor (i), with plaintiff favored on factors (b), (c), (h) and (j) on the issues of legal and physical custody and also favored on factors (d) and (g) on the issue of legal custody. Though defendant does not specifically challenge the trial court's rulings on the best interest factors, they are relevant to whether the trial court's decisions on physical and legal custody were against the great weight of the evidence, so we address them.

[1] Factor (k) refers to domestic violence, while factor (l) is a catch-all for any other factors identified by the trial court to be relevant. MCL 722.23(k), (l). Neither the parties nor the trial court identified any additional relevant factors for consideration not already encompassed by the best interest factors (a) through (j). In addition, while domestic violence was alleged during the marriage, no evidence of domestic violence was presented for the time period encompassed by the evidentiary hearing, so any error by the trial court in failing to address these factors is harmless. *Fletcher v Fletcher*, 447 Mich 871, 882; 526 NW2d 889 (1994).

The parties were deemed equivalent by the trial court on factor (a), regarding the "love, affection, and other emotional ties existing between the parties" and the children, MCL 722.23(a). It was never disputed in the trial court that both parties loved the children; at issue was the respective parenting abilities of plaintiff and defendant.

Factor (b) pertains to the "capacity and disposition" of a parent to provide a child with "love, affection, and guidance and to continue the education" and religious training of a child, MCL 722.23(b). On this factor, the trial court criticized defendant for not understanding the changed circumstances and for improperly trying to control the children when they were not in his custody. But it also determined that plaintiff was "unreasonable and [unduly] restrictive" when sharing custody and scheduling activities. While plaintiff was slightly favored on this factor for both legal and physical custody, the trial court's ruling was premised on plaintiff's ability to better provide the children with guidance when compared to defendant's role in creating negative "interpersonal relationships," presumably referring to his derogatory references to plaintiff. Testimony during the evidentiary hearing also suggested that defendant was not involved in the children's educational needs, relinquished discipline to plaintiff, failed to exert control in situations where the children were openly disobedient to plaintiff, and empathized with the children when they complained about plaintiff instead of encouraging them to respect plaintiff and her decisions.

Factor (c) pertains to the respective abilities of the parties to provide the children with material needs, MCL 722.23(c). Although both parties are employed, the trial court recognized defendant's superior financial situation, particularly his earning capacity and his ability to provide the children with material things. The trial court noted, however, that defendant used his financial wherewithal to entice the children to live with him and failed to recognize the importance of the relationships of the children to both of their parents. This resulted in the trial court finding that defendant had a "narrow view of what is in the best interest of the children" and placed monetary comforts over interpersonal relationships.

Factor (d) pertains to the children having a "stable, satisfactory environment" and its "continuity," MCL 722.23(d). Despite recognizing the parties' problems, the trial court found that they provided stable environments for the children that were unlikely to be altered significantly in the future, rendering plaintiff and defendant equal on this factor for purposes of physical custody. But, for legal custody, plaintiff was slightly favored on this factor because defendant failed to comprehend the impact of his efforts to exert ongoing control over the children, even when in plaintiff's custody, and how it served to undermine plaintiff's authority.

The trial court deemed the parties equivalent on factor (e), MCL 722.23(e), involving the permanence of the family unit. The trial court based its finding on the lack of evidence to suggest that significant changes were likely to occur in either home. The trial court also found the parties equal on factor (f), MCL 722.23(f), pertaining to the moral fitness of the parties, given the lack of evidence to the contrary.

For factor (g), which concerns the physical and mental health of the parties, MCL 722.23(g), the trial court determined that the parties were equal for physical custody, but plaintiff was slightly favored for legal custody. There was no evidence suggesting either party was physically limited or unable to care for the children. The trial court recognized testimony and

allegations challenging plaintiff's mental fitness and the emotional difficulties she was confronting, but it did not find evidence to suggest that any psychological condition or diagnosis rendered plaintiff incapable of parenting her children. To the contrary, the trial court emphasized that, to plaintiff's benefit, she was aware of her shortcomings and was actively working to deal with her issues by participating in counseling and complying with suggestions provided during her sessions. The trial court rejected suggestions that defendant was a narcissist, but questioned his egocentric behavior, particularly his not recognizing—or worse, not caring—about how his actions affected the children and their relationship to plaintiff. The trial court also expressed concern that defendant failed to recognize and deal with his anger and emotional issues. In comparing the parties under this factor, the trial court highlighted plaintiff's ability to keep the needs of the children in perspective despite her own struggles, while defendant focused on his own needs and preferences, irrespective of the children.

Factor (h) covers the home, school, and community record of the children, MCL 722.23(h). The trial court recognized the children's academic struggles, but rejected Ludolph's contention that all fault for their poor school performance was due to plaintiff. In support of its finding, the trial court discussed plaintiff's testimony to the contrary and the positive actions undertaken to address the concerns. In contrast, defendant did not proactively engage the children with their school, despite having knowledge of their difficulties. Instead, defendant took a hands-off approach to the children's school work while in his custody. Defendant also failed to support plaintiff when she attempted to implement consequences when the children failed to complete homework or focus on their school performance. Unsurprisingly, the trial court found that this factor favored plaintiff.

After interviewing the minor children—and in light of the testimony of defendant, the counselors, and others—the trial court recognized that the children preferred to reside with defendant, and favored him on factor (i), MCL 722.23(i).

Under factor (j), which addresses a continuation of the parent-child relationship, MCL 722.23(j), the trial court acknowledged that plaintiff was overly sensitive to slights by defendant over scheduling, while defendant and his family actively interfered with plaintiff's authority and parenting time. Although the trial court rejected plaintiff's claim of parental alienation, it opined that defendant did not promote a relationship between plaintiff and the children. Thus, while neither parent was perfect under this factor, defendant's actions implicitly served to undermine plaintiff's relationship with the children, while plaintiff's behavior could be construed as an absence of active promotion of defendant's relationship with the children.

As a result of its analysis of the best interest factors, the trial court denied plaintiff's motion to suspend defendant's parenting time as well as defendant's motion for a change of custody. Yet, the trial court also determined that it was in the best interests of the children to adjust parenting time to afford the children, pursuant to their expressed preference, additional time with defendant and to shift certain responsibilities to defendant to promote his greater involvement in the children's academic performance. This ruling was not contrary to the great weight of the evidence.

Similarly, the grant of sole legal custody to plaintiff was not contrary to the great weight of the evidence. No one disputed that the parties could not communicate effectively. Indeed,

this was amply demonstrated by the number and tone of the parties' emails and other written communication introduced into evidence, the testimony of plaintiff and defendant, and the restrictions placed on the frequency and method of communication permitted between the parties. While neither plaintiff nor defendant were stellar in their communication skills, the evidence showed that defendant would purposefully not inform plaintiff of incidents—like taking the children to the emergency room or their son's alleged panic attacks—when they occurred during defendant's parenting time. The testimony also showed that defendant would communicate with the children on certain subjects or plans before broaching the subject with plaintiff, suggesting that defendant was unwilling to involve plaintiff in certain decisions. While defendant's significant other, Karen Sheldon, opined that defendant would involve plaintiff in major decisions, she also suggested that defendant having sole legal custody would facilitate decision-making because it would impliedly obviate the need to consult plaintiff before defendant pursued his preferred course of action. Testimony also showed that defendant's approval was contingent upon his agreement with a proposed course of action and that he was unwilling to compromise in order to reach an accord with plaintiff on an issue. Further, granting sole legal custody to plaintiff was consistent with the trial court's finding that plaintiff was more likely to evaluate and consider the needs of the children when compared to defendant's more egocentric focus, and it comported with the recommendations of all of the counselors involved with the parties and the children. For these reasons, the trial court's ruling on sole legal custody was not contrary to the great weight of the evidence and comported with MCL 722.26a(1)(b), which requires a trial court to determine "[w]hether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child." It is assumed that the trial court hoped, in rendering this decision, that the placement of authority for major decisions involving the children with plaintiff would preclude the necessity of certain communications between plaintiff and defendant that have historically been negative and contentious, thereby alleviating some of the ongoing tensions. The trial court also noted that this ruling did not negate defendant's ability to "decide all routine matters concerning the child[ren]" while in his custody, in accordance with MCL 722.26a(4).

II. ADMISSIBILITY OF EVIDENCE

Defendant contends the trial court erred by (1) permitting the various counselors to offer their opinions and (2) failing to admit Ludolph's report into evidence. Defendant also takes issue with the trial court precluding defense counsel on redirect from questioning Ludolph on her qualifications and credentials to bolster Ludolph's opinions, while allowing plaintiff's counsel to challenge Ludolph's opinions during cross-examination.

We first address defendant's challenge to the trial court's allowing the counselors to offer their opinions without being qualified as experts. "Evidentiary rulings are reviewed for an abuse of discretion; however, we review de novo preliminary questions of law affecting the admission of evidence, e.g., whether a statute or rule of evidence bars admissibility." *In re Martin*, 316 Mich App 73, 80; 896 NW2d 452 (2016). It is well recognized that the rules of evidence govern admission of lay witness and expert testimony. Decisions about the admissibility of lay opinions are within the discretion of the trial court. *Chastain v Gen Motors Corp (On Remand)*, 254 Mich App 576, 588; 657 NW2d 804 (2002).

In general, lay witnesses "may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." MRE 602. Limited opinion testimony from a lay witness is permitted by MRE 701, which provides:

> If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

"Any witness is qualified to testify as to his or her physical observations and opinions formed as a result of them." *Lamson v Martin (After Remand)*, 216 Mich App 452, 459; 549 NW2d 878 (1996).

As noted, a lay witness is permitted to place his or her opinion into evidence if it is "rationally based on the perception of the witness[.]" MRE 701. While each of the lay witnesses challenged by defendant functions and has been trained as a counselor and maintains professional credentials, their individual testimony was premised on their observations and history of interactions with plaintiff, defendant, and the children, not their qualifications as experts. McDaid, Spresser, Burns, and Hazel served as counselors or therapists for the children or plaintiff, with all except McDaid having met or interacted with defendant. Their testimony focused on their observations of the parties' demeanors and attitudes, the parties' actions, and traits that the parties displayed like anger or aggressiveness. The counselors also described their contacts with the parties and children, the issues being dealt with in counseling, the goals the counselors established during counseling, and the progress being achieved. All of this testimony was rationally based on the counselors' perception and was helpful to understanding the issues in this case. So, by definition, the counselors' testimony was lay opinion testimony. See MRE 701. The trial court recognized that this was the context in which the counselors testified: when it denied plaintiff counsel's request to qualify Hazel as a "clinical therapist" expert, the court stated that "it's not necessary to receive her testimony in the form of, as an expert, she has entered her qualifications for her opinions and as long as you lay a foundation any lay person can establish, give an opinion and everything else goes to weight."

In short, it was not necessary to qualify the counselors as experts because the testimony and opinions they expressed "were based on the witnesses' own perceptions and the testimony was helpful to a clear understanding of a fact at issue." *McPeak v McPeak*, 233 Mich App 483, 493; 593 NW2d 180 (1999). "[O]nce a witness's opportunity to observe is demonstrated, the opinion is admissible in the discretion of the trial court, and the weight to be accorded the testimony is for the [factfinder] to decide." *Sells v Monroe Co*, 158 Mich App 637, 646-647; 405 NW2d 387 (1987). We conclude that the trial court did not err in the admission of the challenged lay opinion testimony or the weight it attributed that testimony.

Turning to defendant's next challenge, he asserts that the trial court erred by not admitting Ludolph's report into evidence. The trial court, however, explained that it would not rely on a boilerplate form authored by Ludolph and signed by the prior judge in this matter to permit admissibility of the report. Rather, the trial court required that the parties waive any objections to the report before allowing it into evidence, and it appears that plaintiff objected. The trial court did not err in denying the admissibility of Ludolph's report because it is

recognized that Friend of the Court (FOC) reports and other similar reports comprise inadmissible hearsay and cannot be admitted into evidence without the consent of both parties. See *Shelters v Shelters*, 115 Mich App 63, 68; 320 NW2d 292 (1982) (addressing FOC and social service agency reports); *Adams v Adams*, 100 Mich App 1, 15; 298 NW2d 871 (1980) (deeming foreign state conciliation service report to be inadmissible hearsay because it was "akin to a report from a Michigan friend of the court office"). Even so, defendant cannot reasonably suggest that he was harmed by the trial court's decision to not admit the report because Ludolph testified in conformance with her report at the evidentiary hearing. In other words, the material and opinions that defendant sought to have admitted by Ludolph's report were presented through her testimony.

Defendant also takes issue with the trial court's preclusion of his counsel questioning Ludolph about her credentials in an effort to bolster her testimony after plaintiff's counsel challenged Ludolph's opinions or methodology without reliance or presentation of testimony by a commensurate expert. As recognized by this Court:

> [W]hen determining whether a witness is qualified as an expert, the trial court should not weigh the proffered witness's credibility. Rather, a trial court's doubts pertaining to credibility, or an opposing party's disagreement with an expert's opinion or interpretation of facts, present issues regarding the weight to be given the testimony, and not its admissibility. " 'Gaps or weaknesses in the witness' expertise are a fit subject for cross-examination, and go to the weight of his testimony, not its admissibility.' " The extent of a witness's expertise is usually for the [factfinder] to decide. [*Surman v Surman*, 277 Mich App 287, 309-310; 745 NW2d 802 (2007) (citations omitted).]

Ludolph was qualified as an expert well before the onset of the evidentiary hearing and her credentials or status as an expert were not challenged by the trial court or plaintiff's counsel. In other words, the issue was not with Ludolph's status but with her methods and opinions. Thus, it was unnecessary for defense counsel to spend additional time, in an already prolonged 12-day evidentiary hearing, establishing Ludolph's credentials; her credentials were already recognized and cross-examination focused on her opinions and not her credentials. We also reject defendant's tangential argument that it was necessary for a different expert to challenge Ludolph because cross-examination was an equally proper mechanism for doing so.

III. CONTEMPT ORDER

Lastly, defendant contends that the trial court erred by finding him in criminal contempt because there was no demonstration of his willful intent to disobey the trial court's orders. On appeal, plaintiff asserts that this Court lacks jurisdiction because defendant failed to appeal the contempt ruling.

"We review for an abuse of discretion a trial court's decision to hold a party or individual in contempt. However, to the extent that our review requires us to examine questions of law, such as constitutional issues, our review is de novo." *In re Contempt of Dudzinski*, 257 Mich App 96, 99; 667 NW2d 68 (2003). Jurisdiction comprises a question of law that this Court

reviews de novo. *W A Foote Mem Hosp v Dep't of Public Health*, 210 Mich App 516, 522; 534 NW2d 206 (1995).

We agree with plaintiff that this issue is not properly before this Court. Defendant suggests that because the contempt hearing and evidentiary hearing overlapped, he was permitted to wait for the conclusion of the evidentiary hearing to file an appeal that encompassed both rulings. But the order appealed by defendant is the custody and parenting time order, not the contempt order. This Court only had subject matter jurisdiction to consider the order appealed. *In re Contempt of Johnson*, 165 Mich App 422, 427; 419 NW2d 419 (1988).

As discussed in *Surman*, 277 Mich App at 293-294, in the context of child custody orders:

> This Court has jurisdiction of an appeal of right filed by an aggrieved party from . . . [a] final judgment or final order of the circuit court. . . . When a final order is entered, a claim of appeal from that order must be timely filed. A party cannot wait until the entry of a subsequent final order to untimely appeal an earlier final order. [Citations and quotation marks omitted.]

Under MCR 3.709(C), which deals with findings after violation hearings, "[t]he respondent has an appeal of right from a sentence for criminal contempt entered after a contested hearing," and "[a]ll other appeals concerning violation proceedings are by application for leave." In accordance with MCR 7.204(A)(1)(a): "An appeal of right in a civil action must be taken within 21 days after entry of the judgment or order appealed from[.]" Clearly, defendant was not permitted to rely on the trial court's November 2, 2017 custody order to appeal the ruling memorialized in the contempt order entered July 19, 2017.

Affirming the trial court's rulings on custody and parenting time, and declining to consider defendant's allegation of error regarding the trial court's contempt order due to lack of jurisdiction.

/s/ Colleen A. O'Brien
/s/ Jonathan Tukel
/s/ Anica Letica