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SUMMARY
August 15, 2024

2024COA92

No. 22CA1327, *Marriage of Humphries* — Family Law — Post-dissolution — Disputes Concerning Parenting Time — Modification of Custody or Decision-Making Responsibility

A division of the court of appeals holds that a district court may not modify an allocation of decision-making authority under section 14-10-129.5(2)(b) or (2)(h), C.R.S. 2024. Instead, if the court modifies decision-making as a remedy for a parent's violation of a parenting time order or schedule, it must do so under sections 14-10-129.5(2)(f) and 14-10-131(2), C.R.S. 2024.

COLORADO COURT OF APPEALS **2024COA92**

Court of Appeals No. 22CA1327
San Miguel County District Court No. 10DR38
Honorable Mary E. Deganhart, Judge

In re the Marriage of

John Michael Humphries,

Appellee,

and

Elizabeth Marshall Covington,

Appellant.

APPEAL DISMISSED IN PART, ORDER AFFIRMED IN PART
AND REVERSED IN PART, AND CASE REMANDED WITH DIRECTIONS

Division V
Opinion by JUDGE JOHNSON
Freyre and Brown, JJ., concur

Announced August 15, 2024

The Law Firm of Anderson & Baker, LLC, Curtis Kofoed, Durango, Colorado, for Appellee

Sherman & Howard L.L.C., Diane E. Wozniak, Denver, Colorado, for Appellant

¶ 1 In this post-dissolution of marriage case involving Elizabeth Marshall Covington (mother) and John Michael Humphries (father), mother appeals the district court's July 19, 2022 order (July 2022 order) granting father's motions concerning parenting time disputes under section 14-10-129.5, C.R.S. 2023, of the Uniform Dissolution of Marriage Act (UDMA).

¶ 2 We conclude that the district court erred by relying on subsections (2)(b) and (2)(h) of section 14-10-129.5 to reallocate sole decision-making responsibility from mother to father in its July 2022 order. Instead, if reallocation of decision-making responsibility is implicated as part of a parenting time dispute, section 14-10-129.5(2)(f) requires the court to comply with section 14-10-131, C.R.S. 2023. Section 14-10-131 governs modifications of decision-making responsibility, imposes a heightened standard of proof, and requires a district court to make certain findings not required by section 14-10-129.5.

¶ 3 Because the district court did not apply the correct standard or make the required findings, we reverse the portion of the July 2022 order reallocating sole decision-making responsibility from mother to father and remand the case to the district court for

further proceedings consistent with this opinion. We also reverse the portion of the July 2022 order imposing a civil fine against mother as the district court failed to make adequate findings as to how it decided the amount. And we address two evidentiary issues because they are likely to arise on remand. Finally, given that the district court has not entered a sum certain award of attorney fees to father, we dismiss that part of the appeal for lack of a final appealable order.

I. Background

¶ 4 In their stipulated parenting plan that was later made part of their 2012 dissolution decree, the parties agreed to split parenting time equally and share joint decision-making responsibility for their two children. The court approved their stipulated parenting plan in March 2012.

¶ 5 Seven years later, the district court issued an order (May 2019 order) that modified the parenting time schedule while maintaining equal parenting time and reallocated to mother all decision-making responsibility, except that it permitted both parents to schedule family therapy for themselves and the children.

¶ 6 Beginning about a year later, father filed a series of four motions concerning parenting time disputes under section 14-10-129.5, which collectively alleged that mother had violated the May 2019 order by depriving him of parenting time on numerous occasions in 2020.

¶ 7 In the July 2022 order, following a five-day evidentiary hearing, the district court granted father's section 14-10-129.5 motions. In doing so, the court rejected mother's claim that father abused the children, found that mother "severely alienated" the children from father, and determined that mother had violated the May 2019 order. The court ordered three remedies.

¶ 8 First, the court determined that the younger child's best interests would be served by reallocating sole decision-making responsibility from mother to father.[1] The court relied on section 14-10-129.5(2)(b) and (2)(h) as its authority for the reallocation. Second, the court imposed a $36,500 civil fine against mother.

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[1] The older child, who was nearly seventeen years old at the time of the hearing, is not involved in this proceeding. And because the child is now eighteen years old, any determinations as to the child's parental responsibilities would be moot. *See In re Marriage of Badawiyeh*, 2023 COA 4, ¶ 8.

Finally, the court ordered mother to pay father's attorney fees, court costs, and expenses incurred in connection with his parenting time motions.

II. Parenting Time Disputes

¶ 9 The primary controversy between the parties concerns the proper scope of a district court's powers to resolve a parenting time dispute under section 14-10-129.5.

A. Standard of Review

¶ 10 Resolution of this issue requires us to interpret portions of the UDMA. Statutory interpretation is a question of law that we review de novo. *In re Marriage of Schlundt*, 2021 COA 58, ¶ 25.

B. Analysis

¶ 11 Section 14-10-129.5 governs disputes over parenting time. If, after a hearing, a district court finds that a party has not complied with a parenting time order, it may enter certain remedial orders. § 14-10-129.5(1), (2)(b). As relevant to this appeal, the district court relied on two provisions to reallocate decision-making responsibility: a court can (1) "modify[] the previous order to meet the [child's] best interests" or (2) enter "[a]ny other order that may promote the [child's] best interests." § 14-10-129.5(2)(b), (h).

Relying on these two provisions, the court took away mother's sole decision-making responsibility and gave that responsibility to father.

¶ 12 Mother contends that the district court improperly used section 14-10-129.5(2)(b) and (h) to circumvent sections 14-10-129.5(2)(f) and 14-10-131(2), which govern the modification of decision-making responsibility. We agree.

¶ 13 At the outset, we reject the district court's reliance on section 14-10-129.5(2)(b) as authority to modify decision-making responsibility. Under that provision, if a court finds that a parent "has not complied with *the parenting time order or schedule* and has violated the court order," it may issue "[a]n order modifying the *previous order* to meet the best interests of the child." § 14-10-129.5(2)(b) (emphasis added). The phrase "previous order" refers to the previous "parenting time order or schedule," not to an order allocating decision-making responsibility or, even more generically, permanent orders. If the General Assembly had intended for a district court to have authority under subsection (2)(b) to modify an order allocating decision-making responsibility in addition to the parenting time order, the language would be broader. *See In re*

Marriage of Turilli, 2021 COA 151, ¶ 41 (in interpreting statutory provisions, a court may not add or subtract words to legislation).

¶ 14 Section 14-10-129.5(2)(h), on which the district court relies, likewise cannot serve as authority to modify decision-making responsibility. In the July 2022 order, the court made detailed findings based on the evidence that mother had "thwarted" father's exercise of parenting time due to her acts of parental alienation. In resolving the parenting time dispute, the court explicitly said that it could impose more than one remedy for mother's violation of the parenting time order, relying on the "catch-all" provision in subsection (2)(h) that authorizes a court to issue '[a]ny other order that may promote the best interests of the child or children involved." *Id.* The court reasoned that section 14-10-129.5(2)(h) authorized it to craft a remedy that solely took into consideration the best interests of the child.

¶ 15 But the district court's expansive reading of section 14-10-129.5(2)(h) goes too far because its interpretation is inconsistent with at least three principles of statutory construction: (1) we must read the entire statutory scheme to ensure all parts are given effect, *see In re Marriage of Thorburn*, 2022 COA 80, ¶ 35; (2) if there

appears to be a conflict between two provisions, we must apply the more specific one, *see In re Marriage of Zander*, 2019 COA 149, ¶ 13, *aff'd*, 2021 CO 12; and (3) we must avoid interpretations that would render other provisions superfluous, *see Harvey v. Cath. Health Initiatives*, 2021 CO 65, ¶ 16. Therefore, we reject the court's interpretation for three reasons.

1. Reading the Entire Statutory Scheme

¶ 16 The district court does not appear to have considered section 14-10-129.5(2)(f). That provision says that a district court may enter "[a]n order scheduling a hearing for modification of the existing order concerning custody or the allocation of parental responsibilities with respect to a motion filed pursuant to section 14-10-131." Because section 14-10-129.5(2)(f) refers the district court to section 14-10-131, the General Assembly could not have intended for the court to rely on the catch-all provision in section 14-10-129.5(2)(h) to reallocate decision-making responsibility. *See In re Parental Responsibilities Concerning B.R.D.*, 2012 COA 63, ¶ 17.

¶ 17 Section 14-10-131 authorizes a district court to modify decision-making responsibility if it finds, on the basis of facts that

have arisen since the prior order or which were unknown to the court at the time of the prior order, that (1) a change has occurred in the circumstances of the child or the party to whom decision-making responsibility was allocated, and (2) the modification is necessary to serve the child's best interests. § 14-10-131(2); *see B.R.D.*, ¶ 17. This language is generally consistent with the district court's reasoning that it could reallocate decision-making responsibility in the child's best interests. But because the court failed to apply 14-10-131, it did not address two specific requirements that are not present in section 14-10-129.5.

¶ 18 First, the court did not presume that the prior order allocating decision-making responsibility must remain in effect absent a showing that one of the specified circumstances exists. *See B.R.D.*, ¶ 18. The statute provides that "the court shall retain the allocation of decision-making responsibility established by the prior decree" — meaning the *existing* decision-making responsibility order — unless one or more of five specific circumstances exist:

> (a) The parties agree to the modification;
>
> (b) The child has been integrated into the family of [one party] with the consent of the other party and such situation warrants a

> modification of the allocation of decision-making responsibilities;
>
> (b.5) There has been a modification in the parenting time order pursuant to section 14-10-129, [C.R.S. 2023,] that warrants a modification of the allocation of decision-making responsibilities;
>
> (b.7) A party has consistently consented to the other party making individual decisions for the child which decisions the party was to make individually or the parties were to make mutually; or
>
> (c) The retention of the allocation of decision-making responsibility would endanger the child's physical health or significantly impairs the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

§ 14-10-131(2); *see B.R.D.*, ¶ 18.

¶ 19 By contrast, section 14-10-129.5(2) contains no such presumption; rather, it simply requires the court to find that a parent has not complied with the parenting time order or schedule before it can order a remedy.

¶ 20 Second, the court must — and did not — make findings concerning the circumstance justifying the modification. The parties agree that the only circumstance that is potentially relevant here is paragraph (c) — endangerment. § 14-10-131(2)(c). The

district court resolved the parenting time dispute and reallocated decision-making responsibility solely based on the best interests of the child. But to modify an existing allocation of decision-making responsibility based on endangerment, the court must find both that "retention of the allocation of decision-making responsibility would endanger the child's physical health or significantly impairs the child's emotional development" and that "the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child." § 14-10-131(2)(c). The endangerment standard is more stringent than the best interests of the child standard. *See Schlundt*, ¶ 29 (the policy behind requiring the endangerment standard in a modification context is to recognize the disruption a change causes for a child and to promote stability for the child).[2]

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[2] Having concluded that the district court must comply with the requirements in section 14-10-131(2)(c), C.R.S. 2023, we necessarily reject the district court's sole reliance on the best interests standard under section 14-10-124(1.5)(b), C.R.S. 2023. *See* § 14-10-131(2)(c); *see also In re Parental Responsibilities Concerning B.R.D.*, 2012 COA 63, ¶¶ 17-18.

2. More Specific Provision Controls

¶ 21 Under the canons of statutory construction, the more specific statute controls. Thus, section 14-10-131(2)(c) controls over section 14-10-129.5(2)(h). The former statute specifically addresses modification of decision-making authority, while the latter statute generally concerns the remedial orders the court may impose for a party's noncompliance with a parenting time order. *See Zander*, ¶ 13 (if UDMA statutes addressing the same subject conflict or cannot be harmonized, the more specific statute controls over the general one because it is a clearer indication of the legislature's intent in a specific area); *see also* § 2-4-205, C.R.S. 2023 ("If a general provision conflicts with a special . . . provision, it shall be construed, if possible, so that effect is given to both.").

3. Avoiding Superfluity

¶ 22 Finally, allowing decision-making responsibility to be modified under section 14-10-129.5(2)(h) would render superfluous section 14-10-129.5(2)(f), which refers the court to section 14-10-131(2). Because we must, whenever possible, interpret statutes to avoid illogical or absurd consequences, we reject the district court's broad reading of section 14-10-129.5(2)(b) and (h). *See Turilli*, ¶ 38. In

other words, we cannot read these two provisions, either separately or together, to allow the court to modify decision-making authority based solely on the best interests of the child, especially when there is another, more specific provision that governs the "remedy" the court ordered. Therefore, while a district court has authority to make or modify parenting time orders that are in the best interests of the child under section 14-10-129.5(2)(h), we cannot interpret that authority to supplant the legislative dictates in section 14-10-131. *See In re Marriage of Dean*, 2017 COA 51, ¶ 19.

¶ 23 Therefore, we reverse the portion of the July 2022 order reallocating sole decision-making responsibility from mother to father and remand the case to the district court. The court may impose an appropriate remedy, but to the extent any order affects decision-making responsibility, the court must comply with the applicable statutory requirements. The court on remand may rely on the existing record, but it must also provide the parties with an opportunity to present any admissible evidence bearing on the factors in section 14-10-130 and any other evidence it deems necessary and appropriate. *See Schlundt*, ¶ 56. The May 2019 order allocating mother sole decision-making responsibility shall

remain in effect pending entry of a new order by the district court. *See id.*

¶ 24 Given our disposition, we need not address mother's argument that the district court violated her procedural due process rights. But we next address mother's evidentiary contentions, as those issues are likely to arise on remand.

III. Evidentiary Issues

¶ 25 Mother contends that the district court erred by admitting expert testimony on parental alienation without making findings as to whether (1) the opinion was reasonably reliable and (2) the theory was relevant given mother's allegations of child abuse. We discern no error.

A. Standard of Review and Applicable Law

¶ 26 A district court has broad discretion to determine the admissibility of expert testimony, and its determination will not be overturned absent an abuse of discretion. *See also In re Marriage of Newell*, 192 P.3d 529, 533 (Colo. App. 2008). This deference reflects the district court's superior opportunity to gauge the competence of the expert and the extent to which the opinion would

be helpful. *Luster v. Brinkman*, 205 P.3d 410, 413–14 (Colo. App. 2008).

¶ 27 CRE 702 governs the admission of expert testimony. A witness qualified as an expert by knowledge, skill, experience, training, or education may offer testimony if he or she has scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence or to determine a fact in issue. CRE 702; *Gresser v. Banner Health*, 2023 COA 108, ¶ 46.

¶ 28 In determining whether such testimony is admissible under CRE 702, the district court must determine (1) the reliability of the scientific principles involved; (2) the witness's qualifications; and (3) the testimony's helpfulness to the fact finder. *People v. Wilson*, 2013 COA 75, ¶ 22. The court's determination must be based on specific findings on the record as to the reliability and helpfulness of the evidence. *People v. Shreck*, 22 P.3d 68, 78 (Colo. 2001).

¶ 29 Concerning the specific finding of reliability, the district court should apply a liberal standard that only requires proof that the underlying scientific principles are reasonably reliable. *Id.* at 77; *Kutzly v. People*, 2019 CO 55, ¶ 12. In doing so, the court must consider the totality of the circumstances and is not restricted to

any specific list of factors. *Shreck*, 22 P.3d at 77–78; *Bocian v. Owners Ins. Co.*, 2020 COA 98, ¶ 66.

B. Reliability

¶ 30 Before the hearing, mother moved to exclude, as unreliable, expert testimony on the theory of parental alienation. The court denied her request, determining that the totality of the circumstances supported that the theory was reasonably reliable. *See Shreck*, 22 P.3d at 77–78. The court based its determination on numerous authorities father presented, including *In re Marriage of Wollert*, 2020 CO 47. The court also found that mother's disagreement with the expert's theory could be addressed through cross-examination and her presentation of competing expert testimony. *See Shreck*, 22 P.3d at 78 (vigorous cross-examination and the presentation of contrary evidence mitigates concerns about the liberal allowance of expert testimony); *see also Trujillo v. Vail Clinic, Inc.*, 2020 COA 126, ¶ 13 (the district court's inquiry "is focused on excluding junk science, recognizing that two experts may have conflicting but nevertheless equally admissible opinions on a particular issue"); *People v. Campbell*, 2018 COA 5, ¶ 42 ("Concerns about conflicting theories or the reliability of scientific

principles go to the weight of the [expert] evidence, not its admissibility."). We conclude that the court made sufficient findings as to the reliability of the evidence and did not abuse its discretion by admitting it.

¶ 31 We decline to consider mother's undeveloped argument that the district court failed to make specific findings as to the helpfulness of the proffered expert evidence or any potential prejudice under CRE 403. *See Zander*, ¶ 27 (an appellate court may decline to consider an argument not supported by legal authority or any meaningful legal analysis); *see also Vallagio at Inverness Residential Condo. Ass'n v. Metro. Homes, Inc.*, 2017 CO 69, ¶ 40 (an appellate court will "decline to assume the mantle" when parties offer no supporting arguments for their claims).

C. Parental Alienation and Child Abuse

¶ 32 Mother argues that the district court erred because it did not consider that there can be no parental alienation when the rejected parent commits child abuse. But the court found mother's claims that father had committed child abuse to be unsupported by the record, and because it determined that mother's experts had been given limited information about the case, the court rejected

mother's experts' opinions. We discern no error in the court's ruling.

¶ 33 After a five-day hearing, the court made extensive findings and concluded that there was insufficient credible evidence of father's alleged abuse. The court acknowledged that there was one founded report of father's abuse in 2013. But a Department of Human Services (DHS) interview from 2013 indicates that both children reported feeling safe with father, and the abuse allegations were "ultimately unfounded" and created "no safety concerns for the children." And despite numerous referrals to DHS in the years following 2013, the court determined there was no further evidence of substantiated abuse. The court also mentioned that DHS had moved for temporary protective custody of the children in 2016, alleging father was a danger to the children. But that motion was denied, in part, because such allegations had not been mentioned at a hearing on mother's request to relocate out of state with the children held just one month earlier.

¶ 34 With respect to the children's complaints about father's parenting style, the court reasoned that the claims, such as father was "mean," or the children did not like the food father gave them,

lacked specificity. When asked about safety in father's home in a 2018 interview, one of the children, M.H., repeated that "they are not hurt in the home and that dad does not hurt them"; instead, M.H. said "he does not like staying with dad mostly because his dad does not listen to them." Ultimately, the court found that "throughout the history of this case and up until summer 2019, the children were bonded with Father and had a reasonably close relationship with Father."

¶ 35 The court weighed the lack of substantiated evidence of abuse with the "ample evidence" of mother's alienating behaviors and found that "[m]other has engaged in persistent parental alienation in the relationship between father and children." In reaching this conclusion, the court found father's expert's opinion that mother engaged in parental alienation to be more credible than mother's experts' opinions that father's child abuse justified the children's rejection of him, given the unsubstantiated abuse allegations and the selective nature of the information given to mother's experts. Instead, the court found that the record supported a finding of parental alienation, including the following:

- Mother denigrated father in emails or texts, calling him "idiot, stupid, and a jerk."
- Mother had the children memorize her telephone number so they could be sure to call "the next time daddy is mean."
- Mother encouraged the children to keep secrets from their father and plot to run away from father, and she interfered with father's parenting time by "constantly" calling or watching the children's activities.
- Mother encouraged the children to report on their father's parenting style and activities, such as what food he served them.
- Mother urged a "campaign of denigration" in which the children incessantly made complaints without providing specifics.

¶ 36 All of these findings were based either on expert or lay witness testimony or on documentary evidence accumulated over the many years of this high-conflict divorce. Because the district court was in a better position to assess the credibility of the expert witnesses, we must defer to its credibility determinations. And we may not reweigh the evidence as mother asks us to do. *See Lodge Props.,*

Inc. v. Eagle Cnty. Bd. of Equalization, 2022 CO 9, ¶ 26; *Target Corp. v. Prestige Maint. USA, Ltd.*, 2013 COA 12, ¶ 24; *Chapman v. Willey*, 134 P.3d 568, 569 (Colo. App. 2006). Therefore, we affirm the district court's admission of the expert testimony.

IV. Civil Fine

¶ 37 While three of father's section 14-10-129.5 motions were pending, the court held a status conference, during which the court and the parties discussed the parenting time issues. Mother agreed to facilitate some limited interaction between the children and father during his scheduled parenting time. But father's counsel asked the court to make "clear that the parenting plan still is what it is," and the court said, "[A]bsolutely that's the case." The court explained that father would still have the opportunity to request make-up parenting time during the hearing on his parenting time dispute motions.

¶ 38 After the conference, the court issued an order (September 2020 order), which directed mother to arrange weekly visits between father and the children "for meals or other short outings" during his "scheduled parenting time." This "requirement," the court stated, "[did] not modify [the] current parenting time orders and will not

mitigate any possible future findings that may require make-up parenting time."

¶ 39 Mother contends that the total amount of the civil fine imposed in the July 2022 order cannot stand. To get there, she says that she complied with the "reduced time" required by the September 2020 order and that the district court should have excluded any fines imposed for alleged violations occurring after the court entered that order.[3] We conclude that more specific findings are needed concerning the civil fine imposed in the July 2022 order.

¶ 40 Section 14-10-129.5(2)(e.5) authorizes the district court to sanction a noncomplying party with a civil fine. The civil fine cannot exceed one hundred dollars per incident of denied parenting time. *Id.*

¶ 41 The district court's order stated the following:

> Mother shall pay a civil fine in the amount of $36,500 . . . representing generally a $100 fine per incident of denied parenting time in [the years] 2019, 2020, 2021. As noted in the September 11, 2020 order, the [May 2019] parenting time order[] [was] not modified . . .

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[3] Mother does not challenge the district court's finding that she was noncompliant with the May 2019 order before the entry of the September 2020 order. Nor does she challenge the individual fines imposed before the entry of the September 2020 order.

> and [m]other remained under an obligation to use her best efforts to comply.

¶ 42 The district court gave an inadequate explanation as to how it arrived at that amount. Nor did father request a certain amount.

¶ 43 Without more specific findings explaining the basis for the civil fine — or findings on the incidents of mother's noncompliance — we cannot determine the basis of the $36,500 fine imposed against mother, or whether the court sanctioned mother for conduct that occurred after it entered the September 2020 order. A district court must make sufficiently explicit factual findings to give an appellate court an understanding of its order's basis and to enable the appellate court to determine the grounds upon which it rendered its decision. *In re Marriage of Rozzi*, 190 P.3d 815, 822 (Colo. App. 2008). We therefore also reverse this portion of the court's July 2022 order, and on remand, the district court should make additional findings that identify the instances of mother's noncompliance and explain the basis of the civil fine amount. The court should also consider and make explicit findings on the

impact, if any, the September 2020 order has on the amount of the fine.[4]

V. Attorney Fees

¶ 44 Finally, mother contends that the district court erred by awarding father his attorney fees under section 14-10-129.5(4). Because we conclude that the award is not final, we dismiss this portion of the appeal.

A. Standard of Review

¶ 45 We must address our jurisdiction even if the parties do not raise the issue. *People v. S.X.G.*, 2012 CO 5, ¶ 9.

¶ 46 A final order generally is one that ends the particular litigation on the merits, leaving nothing further for the issuing court to do but execute the order. *See In re Marriage of January*, 2019 COA 87, ¶ 11.

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[4] In her reply brief, mother insists for the first time that the district court lacked the authority to enter a civil fine as father did not request that as a remedy under section 14-10-129.5(1), C.R.S. 2023 (a motion alleging noncompliance should set forth the possible sanctions that may be imposed by the court). We decline to address this argument that mother raises for the first time in her reply brief. *See In re Marriage of Herold*, 2021 COA 16, ¶ 14.

B. Analysis

¶ 47 In its July 2022 order, the district court ordered mother to pay father's attorney fees, court costs, and expenses under section 14-10-129.5(4). The day before mother filed her notice of appeal, she filed an objection contesting the amount of attorney fees and costs and requesting an evidentiary hearing. The court stayed its ruling on the issue "pending the outcome of [this] appeal."

¶ 48 In a post-decree order, the issue of attorney fees is a separately appealable issue. *See USIC Locating Servs. LLC v. Project Res. Grp. Inc.*, 2023 COA 33, ¶ 34 (an award of attorney fees, which is distinct and separately appealable from a judgment on the merits, is nonfinal until the district court has determined the amount of the fees); *see also L.H.M. Corp., TCD v. Martinez*, 2021 CO 78, ¶ 23 (judgment on the merits is considered final and appealable notwithstanding unresolved issues of attorney fees and costs); *In re Marriage of Nelson*, 2012 COA 205, ¶¶ 17–18 (an order fully resolving a post-decree modification motion is a final appealable order, notwithstanding an unresolved request for attorney fees); § 14-10-129.5(4) ("*In addition to any other order entered pursuant to subsection (2) of this section*, the court shall

order . . . attorney's fees, court costs, and expenses . . . .") (emphasis added).

¶ 49 We note that, although mother appealed the court's order resolving the parenting time dispute, the district court was not deprived of jurisdiction to rule on the attorney fee issue related to the parenting time dispute. Because there is more for the district court to do, the portion of the order regarding father's award of attorney fees, costs, and expenses under section 14-10-129.5 is not final for our review. *See January*, ¶ 11; *see also Nelson*, ¶ 20 (issue of attorney fees was not properly before the appellate court when the district court had granted a party leave to file a motion requesting fees but had not ruled on the issue). As a result, we dismiss this part of the appeal.

VI. Appellate Attorney Fees and Costs

¶ 50 Asserting that mother's appeal lacks substantial justification under section 13-17-102(4), C.R.S. 2023, and C.A.R. 38(b), father asks for his appellate attorney fees and costs. Because mother has prevailed on a substantial aspect of her appeal, we deny his request. *See* C.A.R. 38(b) (appellate court has discretion to order

attorney fees and costs); *see also In re Marriage of Poland*, 264 P.3d 647, 650 (Colo. App. 2011).

VII. Conclusion

¶ 51 We dismiss the appeal in part, reverse in part, and affirm in part. We dismiss as nonfinal the portion of the appeal related to the July 2022 order's award of father's attorney fees, costs, and expenses under section 14-10-129.5(4). We reverse the district court's July 2022 order to the extent it (1) modified the allocation of decision-making responsibility from mother to father and (2) imposed a $36,500 civil fine against mother as remedies for mother's violation of the parenting time orders. We remand the case to the district court to conduct further proceedings consistent with this opinion. And in all other respects, we affirm.

JUDGE FREYRE and JUDGE BROWN concur.