

THE UTAH COURT OF APPEALS

JAYDEN HA HUYNH,
Appellee and Cross-appellant,

v.

DANIEL E. WITTE,
Appellant and Cross-appellee.

Opinion
No. 20220160-CA
Filed October 8, 2026

Third District Court, Salt Lake Department
The Honorable Paul B. Parker
No. 134903429

Daniel E. Witte, Appellant and Cross-appellee Pro Se

Julie J. Nelson and Albert N. Pranno,
Attorneys for Appellee and Cross-appellant

JUDGE GREGORY K. ORME authored this Opinion, in which
JUDGES RYAN M. HARRIS and RYAN D. TENNEY concurred.

ORME, Judge:

¶1 Shortly after Daniel E. Witte and Jayden Ha Huynh divorced pursuant to a stipulated divorce decree (the Decree), Witte initiated what would become a highly contentious, nearly decade-long post-divorce dispute in which custody of their shared son (Son) was one of the central issues. Witte, a licensed attorney representing himself, caused the focus of the proceedings to be repeatedly derailed by his excessive and unprofessional filings. This conduct ultimately compelled the district court to sanction Witte pursuant to rule 11 of the Utah Rules of Civil Procedure, requiring Witte to hire counsel rather than continue representing himself. Later, following a bench trial, the court awarded Huynh sole legal custody of Son and awarded attorney fees to each party for prevailing on different issues. But

after neither party submitted an affidavit of fees for over two years, the court rescinded the fee awards.

¶2 On appeal, we address Witte’s challenges to the district court’s rule 11 sanction and the court’s modification of legal custody. On cross-appeal, Huynh assails the court’s decision to rescind her award of attorney fees. We affirm on all fronts.

BACKGROUND¹

The Decree and Petition to Modify

¶3 Witte and Huynh were married in 2005. Son was born in early 2013, and Huynh initiated divorce proceedings five months later. In April 2014, pursuant to the parties’ stipulation, the district court entered the Decree, which awarded the parties joint legal custody of Son and awarded Huynh sole physical custody. Witte, who lived in California at the time, was granted parent time pursuant to Utah’s relocation statute. *See* Utah Code Ann. § 81-9-209 (LexisNexis Supp. 2025).² Under the Decree, Huynh had the express “right to relocate with [Son] so long as notice has been provided pursuant to” the relocation statute.

1. On appeal from a bench trial, “we view the evidence in a light most favorable to the trial court’s findings, and therefore recite the facts consistent with that standard. However, we present conflicting evidence to the extent necessary to clarify the issues raised on appeal.” *Mintz v. Mintz*, 2023 UT App 17, n.3, 525 P.3d 534 (quotation simplified), *cert. denied*, 531 P.3d 730 (Utah 2023).

2. Renumbering aside, because the applicable provisions of the Utah Code in effect at the relevant time do not substantively differ from those currently in effect in any way material to this appeal, we cite the most recent printed version of the code for convenience.

¶4 Within a year of the entry of the Decree, the parties switched states, with Witte relocating to Utah and Huynh, after giving proper notice, moving with Son to California. Witte filed a pro se petition to modify the Decree in September 2014, and in April 2015, he filed an amended petition to modify and an objection to Son’s relocation to California. In his amended petition, Witte sought sole physical custody of Son but did not request a change to the shared legal custody arrangement. In his supporting memorandum, Witte requested “relief and an order against . . . Huynh as set forth above and for other and such relief as the Court may deem proper.”

¶5 Huynh filed a counterpetition to modify the Decree, but she eventually withdrew that petition. She did not seek a change to legal custody in the withdrawn petition.

Rule 11 Sanction

¶6 The litigation soon became, in the words of the district court, “highly contentious.” Huynh first moved to designate Witte as a vexatious litigant in April 2015. *See* Utah R. Civ. P. 83. She complained that Witte had “filed numerous pleadings in this matter that were excessive in length” and “contain[ed] an exorbitant amount of pages of arguments and exhibits in light of the issues.” She noted that in the preceding seven months, Witte had filed approximately 79 different documents totaling a little over 1,700 pages. Accordingly, Huynh requested that the district court strike all of Witte’s prior filings, enter a default judgment against him, enter an award of attorney fees in her favor, and require Witte to obtain prior judicial approval before submitting any future filings.

¶7 Following a hearing in May 2015, a court commissioner denied Huynh’s motion to designate Witte as a vexatious litigant on the ground that the commissioner could not “make a finding that there is no reasonable probability that [Witte] will prevail on his Petition to Modify.” Nevertheless, the commissioner acknowledged that Witte’s filings included “inappropriate”

claims against Huynh’s counsel, “scandalous” “name-calling,” and language that rose “to the level of harassing” and violated the Utah Standards of Professionalism and Civility. The commissioner further found that the “volume and language in [Witte’s filings] go beyond clarifying the issue.” The commissioner admonished Witte “to take notice that he is close to rising to the level of a vexatious litigant in the volume of [filings], and the inappropriate contents of his [filings].” And the commissioner instructed Witte to “follow the [Utah Standards] of Professionalism and Civility.” The commissioner also invited Huynh to file a motion for an order to show cause if Witte violated those standards going forward.

¶8 Witte’s filings did not improve following the commissioner’s admonition. Six months later, in November 2015, Huynh filed a motion for sanctions pursuant to rule 11 of the Utah Rules of Civil Procedure and for an order to show cause. Following a January 2016 hearing before the district court, the court issued an order holding that Witte had violated rule 11 on a “repeated and consistent” basis. More specifically, the court ruled that between September 2014 and January 2016, Witte violated rule 11 on 27 separate occasions by “submitting pleadings for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in cost of litigation, as well as submitting allegations that do not have evidentiary support.”³ On the last point, the court found that no evidence supported Witte’s assertions that Huynh’s counsel had lied in the filings, threatened or retaliated against Witte, “attempted to sabotage the mediation process,” or had ideas that were “examples of reverse racism, anti-religious bigotry, Marxist feminist deconstructionalism, extreme leftism, and other related socially-radical nonsense.” The court also found that a 76-page affidavit Witte submitted in response to Huynh’s motion for rule 11 sanctions “was an attempt

3. The district court further concluded that Witte had “gone above and beyond in violating Rule 3 of the Utah [Standards] of Professionalism and Civility through a pattern of accusations against opposing counsel.”

to circumvent the page length requirements by placing argument in a document called an affidavit.”

¶9 The court thus ordered that (1) page limits for motions and memoranda would be enforced; (2) Witte must seek court permission to submit overlength pleadings and memoranda; (3) any references to Huynh’s counsel’s “nefarious intent, lying, collaboration, or other unprofessional conduct” would “be stricken from the record but the [filings] themselves will not be stricken”; and (4) going forward, any violation of rule 11 would “follow the procedure outlined in rule 11, which include[s] sending notice to opposing counsel and giving them an opportunity to cure the violation before filing a motion with the Court.” The court declined to award Huynh attorney fees at that time but indicated that any future rule 11 violations would result in an attorney fees award.

¶10 Once more, the court’s ruling did little to improve the volume and content of Witte’s filings. In April 2017, Huynh filed another motion for rule 11 sanctions. Huynh attached to the motion an 18-page summary of all Witte’s alleged violations of rule 11 since the court’s January 2016 order. This time, Huynh requested that (1) the court strike all “objectionable” filings, (2) Witte be required to obtain counsel, (3) Witte “be subject to a pre-filing order requiring [him] to get authorization from the Court before . . . any” filings, (4) she be awarded attorney fees, and (5) the court impose any other sanctions it deemed appropriate.

¶11 In January 2018, following a hearing on the matter, the court entered an order. The court first noted that “this is a highly contentious matter by any standards” and stated that Witte’s response to Huynh’s apparent failure to timely disclose to him her new addresses and remarriage had “been extraordinarily intemperate.” The court further found that, as previously noted by the court commissioner in a minute entry, “the parties’ conflict ha[d] expanded into a conflict between” Witte and Huynh’s counsel, which “development appear[ed] to be the direct result of

the tone, content and volume of [Witte's] communications with counsel and the Court."

¶12 As an example, the court pointed to Witte's response to Huynh's "unnecessar[y] but innocent[]" filing of a Request to Submit for Decision Rule 11 Sanctions. Witte filed an Objection to Request to Submit for Decision Rule 11 Sanctions in which he made additional substantive arguments and disregarded the court commissioner's "prior admonition not to use single-spacing for any purpose other than quotation." Huynh's counsel next felt compelled to file a motion to strike Witte's objection. The court stated, "This sequence of events represents a perfect illustration of [Witte's] insistence on continuing to engage in a prolonged conflict" because although Witte's objection was itself not inappropriate, it "clearly . . . constituted an improper effort to make further substantive argument on the merits of [Huynh's] original motion after the matter had been fully briefed and argued."

¶13 The court next expressed its view that because Witte "is a practicing attorney and apparently his area of practice is litigation," it was "puzzling that he would display such a lack of understanding about proper court procedure as well as either an unfamiliarity, or simply a refusal to comply, with the Standards of Professionalism and Civility." The court found that some of Witte's direct communications with Huynh's counsel were "clearly offensive and abusive," and while not directly subject to rule 11 sanctions, those communications were relevant to Witte's "state of mind." The court further found that Witte had

filed numerous papers with the Court which have no support in the rules or the law. [Witte] has also repeatedly attempted to circumvent the Court's page limits, despite warnings in the past, by filing papers with lengthy footnotes for no good reason other than to squeeze more words into a smaller space. [Witte's] papers are replete with comments disparaging [Huynh] and her current husband, as

well as [Huynh's] counsel. [Witte's] characterizations of the Court in his filings are at best combative and highly disrespectful.

And the court noted that Huynh's "detailed Motion for Rule 11 Sanctions itemizes multiple instances of each of these categories of conduct."

¶14 The court went on to explain that "the sheer volume and tone of [Witte's] inappropriate communications to the Court and to counsel, even in the face of efforts by the Court to correct his behavior, demonstrate that [Witte] is acting out of malice and an intent to use the legal process for punitive purposes." The court also found that as an attorney, Witte had violated at least standards 1, 2, and 3 of the Utah Standards of Professionalism and Civility and that his "pattern of conduct constitutes an ongoing violation of Rule 11" of the Utah Rules of Civil Procedure, thereby subjecting him to sanctions.

¶15 Accordingly, after finding that Witte was able to afford an attorney and that his time and efforts would be better spent representing his own clients, the court entered an order requiring Witte to obtain counsel. The court determined that this measure was "entirely justified" given Witte's "history in this matter." The court further stated that the sanction would spare the court, Huynh, and her counsel "the necessity of contending directly with [Witte's] personal animosity" and that Witte "would benefit by having experienced, objective counsel represent and advise him in resolving the issues raised in the current proceedings." The court also prohibited Witte from communicating directly with Huynh's counsel. Lastly, the court entered a written order for an award of attorney fees to reimburse Huynh for fees "incurred specifically in responding to [Witte's] improper filings, in an amount to be established by affidavit of counsel, with the remainder of any fees she has incurred as a result of [his] conduct in the matter to be addressed at trial."

¶16 Years later, in 2022, Witte challenged the court’s sanctions order in a motion for a new trial, arguing that the requirement that he obtain counsel had deprived him of his right to a fair trial.⁴ The court rejected his argument, stating that although Witte had a right to self-representation, “this matter has some unusual circumstances.” The court then recounted how “throughout the proceedings,” Witte had accused Huynh “of various bad behaviors with limited or no justification” and his “verbal attacks have gone past inappropriate and are themselves abusive.” The court stated that Witte’s misbehavior also targeted Huynh’s counsel and that Witte had refused to comply with the commissioner’s or the court’s directions. The court noted that the commissioner had also “articulated his frustrations and difficulties trying to get [Witte] to follow the rules, procedures and directions” and that the commissioner had recommended that Witte be required to obtain counsel as “the only solution to the difficult issues presented by [his] behavior.” The court accordingly denied the motion for a new trial.

Legal Custody of Son

¶17 In October 2020, Huynh submitted a proposed order certifying various issues for trial, including, as relevant here, the legal custody of Son. Now represented by counsel, Witte objected to Huynh’s proposed order, arguing that the certified issues should be limited to those raised in his own pleadings or those that were certified at a motion hearing because Huynh had no pending counterpetition before the court. Nevertheless, among the issues Witte listed as appropriate for trial certification was “Legal Custody—[Witte’s] request for sole legal custody or final decision making ability to protect against interference, and/or other protective measures.” A few days later, the commissioner

4. In 2018, Witte also petitioned this court for leave to file an interlocutory appeal challenging the order requiring him to obtain counsel. This court denied that petition, and our Supreme Court denied Witte’s petition for certiorari seeking review of our denial.

entered an order certifying the issue of legal custody, among other issues, for trial.

¶18 Witte objected to the commissioner's certification order, arguing that it was entered prematurely and asserting that the purpose of the objection was "to preserve [his] right to complete any open-ended motions or other pending unresolved issues, and confirm [his] rights, pleadings, claims, causes of action, and remedies, are all certified." Witte sought "reassurance that the . . . core issues being addressed," including legal custody, "are all for the goal of trying to stop the interference and make modifications to better preserve and grow the father-son relationship."

¶19 What was initially intended to be a three-day bench trial was held in July 2021. At the outset of trial, Witte's attorney objected to Huynh's proposed findings of fact, which included a modification to joint legal custody. Asserting that this was "a new claim," she pointed out that Huynh had not filed a counterpetition requesting a modification to legal custody. She asserted that the issue was "not fairly pled," there had been "no discovery on it," and this was "essentially a trial by ambush." The court took the matter under advisement, stating that, in the meantime, "[W]e're going to go forward under the general guise that legal custody is at issue."

¶20 During Witte's trial testimony, when Witte's attorney asked him how he wished to deal with legal custody, Witte responded that he was not seeking a change to legal custody. Huynh, conversely, testified that shared legal custody was "very hard" because Witte did not "agree on anything that [she] believe[d was] best . . . for [Son], even like swimming or karate."

¶21 On the third day of trial, the district court stated, "Legal custody here is a difficult issue, and, frankly, is really the core of the problem between these two." But the court stated that because a request to modify the joint legal custody arrangement typically needed to be pleaded in a petition to modify, the court would consider legal custody only if it was "in play." Accordingly, the

court ordered written argument on the matter. In his memorandum, Witte objected to Huynh's "attempts to modify legal custody," arguing that legal custody was not at issue because it did not appear in his petition to modify or even Huynh's withdrawn petition to modify.

¶22 Ultimately, after considering the parties' memoranda, the court held that the issue of legal custody had been "tried by consent of the parties" and that it would thus "be treated as having been raised in the petition." *See* Utah R. Civ. P. 15(b). The court stated that "the question . . . is how much attack on [Huynh's] . . . parenting decisions, abilities, [and] choices suffice until legal custody is an issue, even though . . . Witte denies and says that he has not consented to the issue." The court then proceeded to read several of the complaints Witte had made against Huynh in both his petitions to modify and another document referenced by the amended petition. This included allegations that Huynh had "demonstrated poor judgment, erratic behavior, and an unstable lifestyle"; had "become involved with a circle of radical, militant activists sympathetic to homosexual and bisexual views who are hostile to natural fathers"; had "dressed up [Son] in homosexual cross-dressing attire[, including] make-up, drag, female clothing, eyeliner, lipstick, nail polish, etc. in the manner of a Southeast Asian lady boy"; and had broken out in a "sudden and violent outburst of infantile, profane rage."

¶23 The court also pointed to the court commissioner's order certifying the issue of legal custody for trial and to the fact that Witte had been the first to broach the subject at trial during his own testimony. The court concluded that "the essence of all that is that the issue of legal custody was brought up both in the petitions, in the certified order by the commissioner, and then tried by consent of the parties," and thus, the court concluded that consideration of issues surrounding legal custody was proper.

¶24 Later, in its written Findings of Fact and Conclusions of Law, entered in January 2022, the court reiterated,

By repeatedly attacking [Huynh's] decisions and choices as a parent in his Petition to Modify and Amended Petition to Modify, . . . Witte has raised the issue of legal custody of [Son] in his pleadings. By first presenting evidence about what he wanted as far as legal custody, and by presenting evidence accusing [Huynh] of dressing [Son] up as a prostitute, and by [Huynh] responding to and presenting evidence on these issues, the parties have, by consent, tried the issue of legal custody.

¶25 After concluding that the issue of legal custody was properly before it, the court continued the trial, setting a fourth trial day for October 2021, at which the best interest of Son would be addressed. Following this fourth trial day, the court determined that “the complete breakdown” of the parties’ ability to co-parent constituted “a material change in circumstances relating to legal custody.” And after a lengthy recitation of facts supporting its decision, the court determined that it was “in the best interest of [Son] that one parent have sole legal custody rather than continue with the constant disputes now present with both parties” and that it was in Son’s best interest that Huynh have sole legal custody of Son. Relatedly, except for a few “[m]inor changes to the parent time schedule,” the court also declined to disturb the sole physical custody granted to Huynh under the Decree.

¶26 The district court again addressed the issue of whether modification of legal custody was properly before the court in its ruling on Witte’s motion for a new trial.⁵ *See supra* ¶ 16. In that order, the court reaffirmed its conclusion that the issue had been fully adjudicated with the consent of the parties, stating, “This court ultimately found that the issues referred to were brought up and tried by consent, had been raised in the pleadings or were certified for trial. This court noted that [Witte’s] frequent

5. In the interim, Witte sought Judge Parker’s disqualification. Associate Presiding Judge Laura S. Scott denied this request in March 2022. *See infra* note 12.

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accusations concerning [Huynh's] ability to parent placed all the evidence considered at trial in issue."

Attorney Fees

¶27 At the conclusion of the fourth day of trial, on October 27, 2021, the district court awarded attorney fees "over the joint and legal custody issue" to Huynh from the bench. The court asked Huynh's counsel to prepare an affidavit of fees within 60 days and indicated that Witte would then have 30 days to respond. No such affidavit was submitted within that timeframe.

¶28 In its written Findings of Fact and Conclusions of Law, entered 75 days later, on January 10, 2022, the court held that Huynh had prevailed on four issues, including "[l]egal and physical custody," and awarded her attorney fees on those issues. The court also awarded Witte attorney fees associated with two issues it found he had prevailed on at trial, namely "[m]inor changes to the modification of parent time" and "[h]ealth insurance premiums reimbursement." The court ordered each party to "submit affidavits on attorney fees taking into consideration fees already awarded on some of these issues." But the court's written order did not set a deadline for submitting those affidavits.

¶29 Witte subsequently filed his motion for a new trial on January 20, 2022, *see supra* ¶¶ 16, 26, and he filed a notice of appeal on February 7, 2022. In April 2022, because the motion for a new trial was still pending and because the attorney fees award remained outstanding, this court issued an order stating that "jurisdiction in this court has not yet been perfected" and staying the appeal "pending the entry of a final, appealable order and the resolution of postjudgment motions that toll the time to appeal." *See Utah R. App. P. 4(b).*

¶30 The district court denied Witte's motion for a new trial in December 2022, and Witte subsequently filed with this court a Motion, Notice, and Memorandum on Appeal to Begin

Progression of Appeal After “Final” Order and Judgment.⁶ In January 2023, this court issued another order indicating that the appeal “remain[ed] stayed pursuant to rule 4(b) [of the Utah Rules of Appellate Procedure] pending the entry of a final, appealable order, including the contemplated award of attorney fees.” And in November 2023, after no further progress was made in the district court on the matter of attorney fees, this court issued another order directing the parties to “file fee affidavits in the district court within 28 days” and stating that failure to do so by either party would result in dismissal of the appeal without prejudice. Both parties then filed their attorney fees affidavits before the 28-day deadline.

¶31 In conjunction with his fee affidavit, Witte moved for the district court to rescind its prior attorney fees awards and enter final judgment. In April 2024, following a hearing, the district court granted the motion. The court ruled that “the deadlines and requirements for submitting the affidavit of attorney fees were not met pursuant to the Court’s deadlines ordered from the bench on October 27, 2021,” and that, in any event, the affidavits would be untimely under rule 73 of the Utah Rules of Civil Procedure. The court stated that “[y]ears went by without either party filing any attorney fee affidavit or motions” since October 2021 when it, from the bench, “gave sixty days to submit any fee affidavits with thirty more days for any opposition.” The court also indicated that it was “not pleased with either party’s recent affidavit submissions, which make disproportionate requests for minor issues.” For those reasons, the court declined to award attorney fees in the matter and entered final judgment.

¶32 Thereafter, the stay of the current appeal was lifted, and the appeal proceeded to briefing.

6. On appeal, Witte has resumed representing himself. But in the district court, he continued to be represented by counsel.

ISSUES AND STANDARDS OF REVIEW

¶33 Although Witte’s briefing is largely unfocused, *see infra* Part I, we parse two main issues that he raises on appeal. First, he challenges the district court’s requirement that he obtain counsel as a sanction entered pursuant to rule 11 of the Utah Rules of Civil Procedure. In reviewing the imposition of rule 11 sanctions, we employ “a three-tiered approach: (1) findings of fact are reviewed under the clearly erroneous standard; (2) legal conclusions are reviewed under the correction of error standard; and (3) the type and amount of sanctions to be imposed are reviewed under an abuse of discretion standard.” *Ward v. McGarry*, 2024 UT App 169, ¶ 27, 561 P.3d 200 (quotation simplified), *cert. denied*, 564 P.3d 957 (Utah 2025).

¶34 Second, Witte assails the court’s modification of legal custody. Specifically, he challenges the court’s determination that the issue of legal custody was tried by the consent of the parties under rule 15(b) of the Utah Rules of Civil Procedure. “We review the trial court’s application of rule 15(b) for correctness.” *In re A. Dean Harding Marital & Family Trust*, 2023 UT App 81, ¶ 66, 536 P.3d 38 (quotation simplified). But “because the trial court’s determination of whether the issues were tried with all parties’ implied consent is highly fact intensive, we grant the trial court a fairly broad measure of discretion in making that determination under a given set of facts.” *Pilot v. Hill*, 2019 UT 10, ¶ 9, 437 P.3d 362 (quotation simplified). In sum, whether the issue of legal custody was tried by consent “is a fact-intensive mixed question of law and fact entitling the trial court’s decision to broad deference.” *Id.*

¶35 Huynh cross-appeals the district court’s rescission of its initial attorney fees award. “We review a district court’s decision [whether] to award attorney fees for an abuse of discretion, but review its underlying legal conclusions for correctness.” *Miner v. Miner*, 2025 UT App 64, ¶ 13, 571 P.3d 788, *cert. denied*, 574 P.3d 526 (Utah 2025). We also “review a district court’s decision to reconsider an earlier decision for an abuse of discretion.” *Jordan*

Constr., Inc. v. Federal Nat'l Mortgage Ass'n, 2017 UT 28, ¶ 22, 408 P.3d 296.

ANALYSIS

I. Witte's Briefing

¶36 Before reaching the merits of the parties' arguments, we are compelled to first address the quality and content of Witte's briefing. On appeal, Witte has resumed representing himself and, regrettably, has continued many of the same briefing practices—both in form and substance—that characterized his disruptive conduct in the district court. Rather than assisting this court in navigating a complicated, nearly decade-long post-divorce dispute, his sprawling and largely disorganized brief has served as more of a hindrance than a help. Put differently, Witte has fallen well short of his “responsibility to assist the judiciary in advancing jurisprudence through diligent advocacy, adherence to our rules, and competent representation.” *Lamb v. Lamb*, 2024 UT App 16, ¶ 20, 545 P.3d 273.

¶37 Witte's principal brief does not come close to following the format mandated in rule 24 of the Utah Rules of Appellate Procedure. *See* Utah R. App. P. 24(a) (requiring principal briefs to contain specific sections appearing in a prescribed order). In Witte's brief, the “Statement of the Case” section curiously appears after what is effectively his argument section, toward the end of the brief. And rather than providing an objective, non-argumentative recitation of the facts of record, Witte uses his factual background section as a platform to restate his subjective trial-level assertions, some of which contradict the district court's findings of fact. *See, e.g., infra* ¶ 39 & nn. 8–10. Moreover, most of the facts relevant to the issues raised on appeal do not appear in that section of Witte's brief at all but have instead been woven, frequently alongside extensive editorializing and absent larger context, directly into the argument section. This has proved

particularly burdensome to untangle in a case where the district court record exceeds 17,300 pages.

¶38 Next, what is effectively the principal brief's argument section features an extensive and inappropriate overuse of bold text and underlining that has proved distracting. Although "[i]talics or boldface may be used for emphasis," *id.* R. 27(a)(2), their "unrestrained and unnecessary use" constitutes "a written form of shouting" that is "simply inappropriate in an appellate brief," *B.A.M. Dev., LLC v. Salt Lake County*, 2004 UT App 34, ¶ 71 n.30, 87 P.3d 710 (Orme, J., dissenting). Further, despite the district court's admonitions, Witte has continued his practice of, in the words of the court, "filing papers with lengthy footnotes for no good reason other than to squeeze more words into a smaller space." *See* Utah R. App. P. 27(a)(1) ("The text must be double spaced, except for matter customarily single spaced and indented."). To make matters worse, Witte's principal brief contains no fewer than 95 footnotes, several of which are nearly a full page in length and contain substantive arguments scattered throughout. Witte's burying substantive legal contentions in a cascade of footnotes, combined with the generally unfocused nature of his presentation, has forced this court to expend an inordinate amount of time simply trying to decipher the actual issues presented. But navigating through the smoke of the principal brief as best we can, we have identified two cognizable issues presented for our review: (1) the rule 11 sanction requiring Witte to retain counsel and (2) the modification of legal custody of Son.⁷

7. To the extent Witte intended to advance additional issues on appeal, those issues are inadequately briefed, and we do not reach their merits. *See Lamb v. Lamb*, 2024 UT App 16, ¶ 17, 545 P.3d 273 ("A party may not simply point toward a pile of sand and expect the court to build a castle. In both district and appellate courts, the development of an argument is a party's responsibility, not a judicial duty.") (quotation simplified).

¶39 Lastly, we address another of Witte’s unfortunate practices that he has carried over from the district court: the personal attacks directed toward Huynh, her legal counsel, and the district court. For example, Witte asserts that Huynh’s marriage to her current husband began as “a secret concealed adulterous relationship” and unnecessarily accuses her of “[a]dultery and gold-digging.”⁸ He also characterizes her move to California as a “straw relocation move-away scheme” and claims that she “fabricated evolving debunked fictitious narratives about why [she] relocated, including unpled, spontaneous, new false smearing allegations during trial.”⁹ Witte has also directed vitriol at Huynh’s legal team, claiming that one of her trial attorneys (who, to be clear, is not named in the caption or body of this opinion) was a “radical left-wing . . . activist” who suffered from “severe alcohol, drug, mental health, and gender confusion problems”; “stank of drugs and alcohol”; and “exhibited signs of mental, psychological, and emotional instability.” He digresses to unnecessarily accuse another of Huynh’s attorneys of various misconduct, such as not disclosing Huynh’s “adultery” for many years, “tampering with a lease” to conceal the identity of Huynh’s husband, and “filing a fabricated story about a private investigator accosting and frightening” Son. Finally, Witte targets the district court, accusing it of being “apoplectic” that he had washed makeup off Son¹⁰ and of acting “maliciously, repeatedly,

8. The district court found that although Huynh met her current husband in 2012, they did not begin a romantic relationship until after she filed for divorce from Witte in 2013.

9. The district court found that Huynh moved to California “because the warmer climate was better for her parents’ health and to take advantage of a job opportunity that provided training and a route to advance into a better job, specifically, a financial advisor.”

10. Neither party has indicated that Son’s gender identity does not align with his biological sex or that he otherwise identifies with
(continued...)

and in knowing defiance of governing legal authorities.” Witte also asserts that the court’s order that he retain counsel was motivated by “retaliatory animus” toward his moral and religious beliefs. *See infra* note 12.

¶40 Such personal attacks are inappropriate in judicial proceedings. As a licensed attorney, Witte remains fully responsible for understanding and adhering to the Utah Standards of Professionalism and Civility, and he appears to have violated, at the very least, the first and third of those standards. Standard 1 directs that “lawyers shall treat all other counsel, parties, judges, witnesses, and other participants in all proceedings in a courteous and dignified manner.” And standard 3 mandates that lawyers “shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct” and must “avoid hostile, demeaning, or humiliating words.” Standard 3 further cautions that filings should never “disparage the integrity, intelligence, morals, ethics, or personal behavior of an adversary unless such matters are

the LGBTQ+ community. Rather, Witte asserted at trial that Huynh dressed Son “up as a prostitute.” The district court noted that in support of this claim, Witte testified to one instance in which Son arrived for parent time wearing makeup. But the court observed that Witte had provided “poor quality” photographs in which Son’s clothing, in the court’s assessment, was “not unusual for a child [Son’s] age and the only makeup that can be seen is fingernail polish on one or two fingers and the thumb.” The court declined “to find that there’s anything improper about [Son] having makeup or being dressed” in the manner shown in the photographs. The court further stated that although “the way both parties dealt with [that situation was] troubling,” the court was “more disturbed” by Witte’s reaction to seeing Son in makeup, which was “to wash this poor child off with a garden hose rather than to deal with that in another manner.” In its Findings of Fact and Conclusions of Law, the court did not side with either parent on this issue, nor did the court reference the issue in its best-interest analysis.

directly relevant under controlling substantive law.” Far from presenting reasoned legal advocacy, Witte’s continued disparagement of Huynh, her counsel, and the district court is a breach of professional decorum that degrades the judicial process.¹¹

II. Rule 11 Sanction

¶41 Witte challenges the district court’s sanction entered pursuant to rule 11 of the Utah Rules of Civil Procedure requiring him to obtain counsel. Witte characterizes the order as an unconstitutional denial of his right to self-representation under the Open Courts Clause of the Utah Constitution.¹² He asserts that

11. We also note that the space used for unnecessary and inappropriate personal attacks would have been better spent developing actual legal arguments, particularly given this court’s denials of Witte’s repeated requests to file overlength briefs.

12. Witte also asserts that the district court acted out of animus toward his sincere religious beliefs and in an effort to curtail his “petitional speech concerning transgender and LGBT matters” when it ordered him to retain counsel and later modified legal custody. Judge Scott addressed this claim when ruling on Witte’s motion to disqualify Judge Parker. *See supra* note 5. After acknowledging Witte’s “deeply held beliefs about what is in the best interest of” Son, she concluded that Witte had “not shown any *factual* basis for his allegation that Judge Parker is biased or prejudiced against *him*.” Rather, Judge Scott stated that Witte’s accusations were based on the speculation “that Judge Parker must be biased or prejudiced because he has ruled against him,” and, quoting *Boddell Construction Co. v. Robbins*, 2009 UT 52, ¶ 35, 215 P.3d 933, she concluded that “bias or prejudice cannot be inferred simply because Judge Parker exercised his broad discretion in determining ‘the most fair and efficient manner to conduct court business’ given the status of this highly contentious case and his knowledge of the ‘attitudes, motives, and credibility
(continued...)”

these violations resulted in “a profound, systematic, irreparable taint and prejudice of a kind requiring all portions of proceedings and adverse results challenged by [him] to be vacated.” Alternatively, he argues that the court’s rule 11 analysis was deficient and that the court’s imposition of a sanction amounted to an abuse of discretion. We address each argument in turn.

A. Constitutional Rights

¶42 As an initial matter, Witte is correct that civil litigants generally have a right to self-representation. *See* Utah Const. art. I, § 11 (“All courts shall be open, and every person, for an injury done to the person in his or her person, property, or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, *with or without counsel*, any civil cause to which the person is a party.”) (emphasis added); *Lundahl v. Quinn*, 2003 UT 11, ¶ 4, 67 P.3d 1000 (per curiam) (“Individuals have a right to represent themselves without being compelled to seek professional assistance.”). But without any supporting authority, Witte asserts that this right is “inviolable.” This is incorrect.

¶43 The right of self-representation is not absolute; it, like most constitutional rights, has its limitations. Even in the criminal context, where the right of self-representation enjoys its most robust constitutional protections,¹³ “the trial judge may terminate

of the parties.” Because Witte has not appealed Judge Scott’s ruling, we have no occasion to further address these conclusions.

13. The right to self-representation in the criminal context is addressed in a separate provision of the Utah Constitution, *see* Utah Const. art. I, § 12, and guaranteed by statute, *see* Utah Code Ann. § 77-1-6(1)(a) (LexisNexis Supp. 2025) (“In criminal prosecutions the defendant is entitled to . . . appear in person and defend in person or by counsel[.]”). In the federal context, the
(continued...)

self-representation by a defendant who deliberately engages in serious and obstructionist misconduct.” *Faretta v. California*, 422 U.S. 806, 834 n.46 (1975). This is because “[t]he right of self-representation is not a license to abuse the dignity of the courtroom,” nor “is it a license not to comply with relevant rules of procedural and substantive law.” *Id.* See *United States v. Akers*, 215 F.3d 1089, 1097 (10th Cir. 2000) (“When faced with a situation of potential abuse, the district court may properly impose restraints on the right to reject counsel to prevent the right from being manipulated so as to obstruct the orderly procedure of the courts.”) (quotation simplified); *State v. Bridgewaters*, 2025 UT App 184, ¶¶ 42–43, 585 P.3d 73 (holding that a criminal defendant may forfeit the right to self-representation by “engag[ing] in extremely dilatory conduct or abusive behavior” or may impliedly waive that right for less egregious conduct so long as the defendant was “warned that continuation of the unacceptable conduct will result in a waiver of the right”) (quotation simplified), *cert. granted*, 591 P.3d 746 (Utah 2026).

¶44 And in the civil context, our Supreme Court has recognized that “[t]he courts of this state possess the powers necessary to maintain the orderly disposition of matters brought before them, including the power to levy sanctions and, in appropriate cases, to hold in contempt the parties who appear before them,” *Lundahl*, 2003 UT 11, ¶ 15, and that an individual’s “privilege to access to the courts will be preserved in direct proportion to her willingness to accept the responsibilities accompanying that privilege,” *id.* ¶ 16. Cf. *Griffith v. Griffith*, 1999 UT 78, ¶ 13, 985 P.2d 255 (“The summary jurisdiction which the court has over its attorneys as officers of the court is inherent, continuing, and plenary and ought to be assumed and exercised not only to maintain and protect the integrity and dignity of the court, to secure obedience to its rules and process, and to rebuke interference with the

right to self-representation in criminal cases is enshrined in the Sixth Amendment to the United States Constitution; it has no civil constitutional counterpart. See U.S. Const. amend. VI; *Faretta v. California*, 422 U.S. 806, 822–35 (1975).

conduct of its business, but also to control and protect its officers, including attorneys.”) (quotation simplified); Utah Code Ann. § 78A-2-201(3) (LexisNexis 2022) (“Every court has authority to . . . provide for the orderly conduct of proceedings before it or its officers[.]”). To that end, rule 83 of the Utah Rules of Civil Procedure, for example, expressly authorizes courts to impose restrictive orders on vexatious pro se litigants for the purpose of curbing inappropriate conduct, including orders requiring such litigants to obtain legal counsel before proceeding.¹⁴ See Utah R. Civ. P. 83(b)(2) (“The court may, on its own motion or on the motion of any party, after notice and an opportunity to be heard, enter an order requiring a vexatious litigant to . . . obtain legal counsel before proceeding in a pending action[.]”).

¶45 Because Witte’s argument is premised on the faulty assumption that the right to self-representation is “inviolable,” and because he does not address limitations on that right, he has not carried his burden of persuasion on appeal, and our analysis ends here. See *Erda Comm. Assoc. v. Baugh*, 2025 UT 56, ¶ 41, 582 P.3d 810 (“A conclusory argument is not the type of reasoned analysis that allows us to rule in a party’s favor. An appellant that fails to devote adequate attention to an issue is almost certainly going to fail to meet its burden of persuasion.”) (quotation simplified); Utah R. App. P. 24(a)(8). For now, we leave for future determination any questions about the interplay between a civil litigant’s right of self-representation and a court’s inherent

14. We note, however, that it appears that the tension between rule 83 and a civil litigant’s right under the Utah Constitution to proceed pro se is yet to be directly addressed by Utah’s appellate courts. We also note that rule 83 does not apply to the current case because it requires, among other things, a finding that “there is no reasonable probability that the vexatious litigant will prevail on the claim.” Utah R. Civ. P. 83(c)(1)(B). Here, the court commissioner could not “make a finding that there is no reasonable probability that [Witte] will prevail on his Petition to Modify.” And the district court ultimately determined that Witte prevailed on two of the issues raised in the petition to modify.

authority to protect the judicial process from persistently disruptive conduct by requiring retention of counsel.¹⁵

B. Rule 11 Analysis

¶46 Rule 11 of the Utah Rules of Civil Procedure establishes that by filing any paper with the court, an attorney or unrepresented party certifies that the filing “is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation”; that “the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law”; that “the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery”; and that “the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.” Utah R. Civ. P. 11(b). Rule 11 further provides that a district court may, upon the satisfaction of certain conditions, “impose an appropriate sanction upon the

15. Witte also suggests that the district court’s rule 11 sanction was a pretextual attempt to censor what the court perceived as offensive opinions on LGBTQ+ issues, in violation of his First Amendment right to free speech. But, as discussed above, Witte does not challenge Judge Scott’s ruling on Witte’s motion to disqualify Judge Parker, in which Judge Scott held that Witte had “not shown any *factual* basis for his allegation that Judge Parker is biased or prejudiced against *him*.” See *supra* note 12. Further, as discussed below, the court’s detailing of the conduct prompting the sanction did not include Witte’s personal opinions or religious views. It is clear that the basis for the court’s sanctions was Witte’s persistently disruptive conduct, which by itself was sufficient to justify the court’s sanction.

attorneys, law firms, or parties” for violation of these requirements. *Id.* R. 11(c).

¶47 Witte contends that the district court’s sanction order fell short of satisfying rule 11’s requirement to “describe the conduct determined to constitute a violation of [rule 11] and explain the basis for the sanction imposed.” *Id.* R. 11(c)(3). He characterizes the court’s analysis as containing “only vague, general, conclusory, ethereal aspersions,” and he asserts that the court did not identify any “specific offending conduct that would justify *any* finding of a rule 11 sanction.” We disagree with this characterization.

¶48 As explained by the district court, its decision to sanction Witte under rule 11 was prompted by a multi-year pattern of highly contentious and procedurally improper conduct. The court found that Witte had “filed numerous papers with the Court which have no support in the rules or the law”; had “repeatedly attempted to circumvent the Court’s page limits, despite warnings in the past, by filing papers with lengthy footnotes for no good reason other than to squeeze more words into a smaller space”; had filed “papers . . . replete with comments disparaging [Huynh] and her current husband, as well as [Huynh’s] counsel”; and had made “characterizations of the Court in his filings [that] are at best combative and highly disrespectful.” The court further found that “the sheer volume and tone of [Witte’s] inappropriate communications to the Court and to counsel, even in the face of efforts by the Court to correct his behavior, demonstrate that [Witte] is acting out of malice and an intent to use the legal process for punitive purposes.”

¶49 As for specific examples of such conduct, the court’s order incorporated by reference Huynh’s 18-page summary of all Witte’s alleged violations of rule 11 since the court’s earlier January 2016 admonishment of his conduct. *See Golden Meadows Props., LC v. Strand*, 2011 UT App 76, ¶ 17, 249 P.3d 596 (holding that the district court judge’s “incorporation of the facts set forth in [the appellee’s] motion for sanctions into his order, combined

with his oral explanation of his decision, complied with the requirements of rule 11 of the Utah Rules of Civil Procedure”), *cert. denied*, 263 P.3d 390 (Utah 2011). The court also gave the specific example of Witte’s Objection to Request to Submit for Decision Rule 11 Sanctions, which the court found “clearly . . . constituted an improper effort to make further substantive argument on the merits of [Huynh’s] original motion after the matter had been fully briefed and argued” and that disregarded a “prior admonition not to use single-spacing for any purpose other than quotation.”

¶50 Witte’s argument fails to engage with this analysis. And because he does not explain with any particularity how the court’s analysis fell short of rule 11’s requirement, he has not carried his burden of persuasion on this issue. *See Big Game Forever v. Peterson*, 2024 UT App 78, ¶ 19, 551 P.3d 411 (“An appellant who does not meaningfully engage with the district court’s reasoning falls short of demonstrating any error on the part of the district court.”) (quotation simplified).

¶51 Witte next contends that the district court’s chosen sanction of requiring him to hire counsel was “disproportionate” and not authorized by rule 11. We again disagree.

¶52 “Rule 11 gives trial courts great leeway to tailor the sanction to fit the requirements of the particular case.” *Golden Meadows Props.*, 2011 UT App 76, ¶ 16 (quotation simplified). Rule 11 expressly authorizes “directives of a nonmonetary nature” so long as the sanction is “limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated.” Utah R. Civ. P. 11(c)(2). And district courts are afforded “considerable discretion to determine what sanction will be most effective to deter undesirable conduct.” *Golden Meadows Props.*, 2011 UT App 76, ¶ 16 (quotation simplified). *See Archuleta v. Galetka*, 2008 UT 76, ¶ 7, 197 P.3d 650 (“Decisions regarding rule 11 sanctions are best left in the hands of the trial court.”).

¶53 As a threshold matter, requiring a pro se litigant to hire counsel to curb inappropriate and disruptive conduct in judicial proceedings is not without precedent in the Utah Rules of Civil Procedure. That remedy is expressly authorized in rule 83, which governs vexatious litigants. *See* Utah R. Civ. P. 83(b)(2)–(3) (stating that “[t]he court may, on its own motion or on the motion of any party, after notice and an opportunity to be heard, enter an order requiring a vexatious litigant to,” among other things, “obtain legal counsel before proceeding in a pending action” or “obtain legal counsel before filing any future claim for relief”). Although rule 83’s requirements were not fully satisfied in this case, *see supra* note 14, both rules 11 and 83 address inappropriate and disruptive conduct. And as discussed above, district courts have “considerable discretion” to fashion an appropriate sanction for violations of rule 11, *Golden Meadows Props.*, 2011 UT App 76, ¶ 16 (quotation simplified), including issuing “directives of a nonmonetary nature,” Utah R. Civ. P. 11(c)(2). Given this framework, we reject Witte’s contention that the district court’s sanction exceeded rule 11’s limits.

¶54 Turning next to the specific facts of this case, it was not until the court was asked to address Witte’s inappropriate conduct for a third time that it determined that requiring Witte to hire counsel was an appropriate sanction. The first instance was in May 2015, when the court commissioner ruled on Huynh’s motion to designate Witte as a vexatious litigant. Although the commissioner did not designate Witte as such, the commissioner warned Witte “to take notice that he is close to rising to the level of a vexatious litigant in the volume of pleadings, and the inappropriate contents of his pleadings” and instructed him to “follow the [Utah Standards] of Professionalism and Civility.” But this admonishment did nothing to curb Witte’s conduct.

¶55 Next, in January 2016, in response to Huynh’s first motion for rule 11 sanctions, the court held that Witte had violated rule 11 on 27 separate occasions since September 2014 by “submitting pleadings for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, as

well as submitting allegations that do not have evidentiary support.” Although Huynh requested that Witte no longer be allowed to proceed pro se, the court did not impose that sanction at that time. Instead, the court ordered, among other things, that the page limits for motions and memoranda be enforced, that Witte seek court approval before submitting overlength filings, and that any references to “nefarious intent, lying, collaboration, or other unprofessional conduct” by Huynh’s counsel should “be stricken from the record but the pleadings themselves will not be stricken.” But this too did little to change Witte’s behavior. The list and summary of Witte’s subsequent rule 11 violations over the next two years filled 18 pages.

¶56 Finally, after being asked to address Witte’s misconduct for a third time, the district court determined that an order requiring Witte to hire counsel was “entirely justified” given his “history in this matter.” The court noted that the commissioner had also “articulated his frustrations and difficulties trying to get [Witte] to follow the rules, procedures and directions” and had recommended that Witte be required to obtain counsel under rule 11 as “the only solution to the difficult issues presented by [his] behavior.” The court also specifically found that Witte could afford counsel, that his time would be better spent representing his own clients, and that he “would benefit by having experienced, objective counsel represent and advise him in resolving the issues raised in the current proceedings.” The court further stated that the sanction would benefit the court, Huynh, and Huynh’s counsel because they would be spared “the necessity of contending directly with [Witte’s] personal animosity.”

¶57 In sum, given this extensive history of Witte’s failure to abide by the court’s warnings and prior orders, it was entirely reasonable for the court to resort to the drastic measure of no longer permitting Witte to represent himself. The court thus acted within its “considerable discretion” when it ordered Witte to hire counsel as a rule 11 sanction. *See Golden Meadows Props.*, 2011 UT App 76, ¶ 16 (quotation simplified).

III. Legal Custody

¶58 Next, Witte argues that the district court erred by modifying the Decree's award of joint legal custody of Son when the issue was never formally raised in the pleadings. Although Witte's original and amended petitions to modify did seek modification of physical custody, he never expressly sought a change to the joint legal custody he and Huynh had stipulated to in the Decree. And Huynh had withdrawn her own petition to modify, which in any event did not seek modification of legal custody, long before trial. Notably, Witte does not—at least not meaningfully—challenge the court's underlying analysis that there was a material change in circumstances warranting reconsideration of legal custody and that modification was in Son's best interest.¹⁶ Rather, his challenge is procedural, arguing that the court misapplied rule 15(b) of the Utah Rules of Civil

16. Witte does suggest that the district court's modification of legal custody improperly violated the stipulated terms of the Decree. He also asserts that the court "lacked sufficient evidence, facts, law, connecting rationale, [and an] Evaluator report . . . to properly justify changing joint legal custody to sole legal custody for Huynh." But Witte's arguments on these points are limited to conclusory statements that do not provide, much less analyze, the relevant law or meaningfully engage with the district court's reasoning. *See* Utah R. App. P. 24(a)(8) ("The argument must explain, with reasoned analysis supported by citations to legal authority and the record, why the party should prevail on appeal."); *State v. Nelson*, 2015 UT 62, ¶ 40, 355 P.3d 1031 ("Bald assertions and platitudes are not enough to satisfy an appellant's burden to provide an adequate argument on appeal."); *Allen v. Friel*, 2008 UT 56, ¶ 9, 194 P.3d 903 ("An appellate court is not a depository in which a party may dump the burden of argument and research. A petitioner must plead his claims with sufficient specificity for this court to make a ruling on the merits.") (quotation simplified). Accordingly, we have no occasion to address these arguments further.

Procedure when it determined that the issue of legal custody had been tried by consent.

¶59 Rule 15(b) states, in relevant part,

When an issue not raised in the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

Utah R. Civ. P. 15(b)(1). Thus, under rule 15(b), “implied consent to try an unpleaded issue may be found where one party raises an issue material to the other party’s case or where evidence is introduced without objection, where it appears that the parties understood the evidence is to be aimed at the unpleaded issue.” *In re A. Dean Harding Marital & Family Trust*, 2023 UT App 81, ¶ 108, 536 P.3d 38 (quotation simplified). “The test for determining whether pleadings should be deemed amended under [rule] 15(b) is whether the opposing party had a fair opportunity to defend and whether it could offer additional evidence if the case were retried on a different theory.” *Hill v. Estate of Allred*, 2009 UT 28, ¶ 48, 216 P.3d 929 (quotation simplified). In other words, “in determining whether an unpleaded issue has been tried by implied consent, the court must consider whether the opposing party had adequate notice of the issue and an opportunity to meet it.” *Win-Win Invs. LLC v. Dutson*, 2021 UT App 18, ¶ 20, 483 P.3d 64 (quotation simplified).

¶60 In determining that the issue of legal custody had been tried by consent, the district court stated that “[b]y repeatedly attacking [Huynh’s] decisions and choices as a parent in his Petition to Modify and Amended Petition to Modify, . . . Witte has raised the issue of legal custody of [Son] in his pleadings.” To

provide a few examples, the court listed Witte's allegations that Huynh had "demonstrated poor judgment, erratic behavior, and an unstable lifestyle"; had "become involved with a circle of radical, militant activists sympathetic to homosexual and bisexual views who are hostile to natural fathers"; had "dressed up [Son] in homosexual cross-dressing attire[, including] makeup, drag, female clothing, eyeliner, lipstick, nail polish, etc. in the manner of a Southeast Asian ladyboy"; and had broken out in a "sudden and violent outburst of infantile, profane rage." The court also pointed out that the commissioner had certified the issue of legal custody for trial, that Witte had not objected to that issue being certified, and that Witte was the first to present evidence at trial on that issue in the form of his own testimony. The court concluded that "the essence of all that is that the issue of legal custody was brought up both in the petitions, in the certification order by the commissioner, and then tried by consent of the parties."

¶61 Witte asserts that the district court "knowingly defied governing precedents cited to it and [his] express nonconsent" to the issue of legal custody being tried. But apart from making these bald assertions, Witte does not meaningfully engage with the court's rationale behind its finding that the issue was tried by consent, and thus he has not overcome the "broad deference" to which the court's decision is entitled. *Pilot v. Hill*, 2019 UT 10, ¶ 9, 437 P.3d 362. See *Big Game Forever v. Peterson*, 2024 UT App 78, ¶ 19, 551 P.3d 411 ("An appellant who does not meaningfully engage with the district court's reasoning falls short of demonstrating any error on the part of the district court.") (quotation simplified). In a lengthy footnote, Witte cites a string of statutes and caselaw that he claims the court "knowingly defied." But apart from one-sentence parentheticals summarizing each citation, Witte has entirely failed to analyze how each cited case or statute applies to the case at hand. See *Wilson v. Educators Mutual Ins. Ass'n*, 2018 UT App 155, ¶ 12, 436 P.3d 144 ("An appellant must cite the legal authority on which its argument is based and then provide reasoned analysis of how that authority should apply in the particular case, including citations to the

record where appropriate.”) (quotation simplified). Apart from pointing to his objection on the first day of trial to the issue being tried (again, absent reasoned analysis), Witte also has not addressed the rationale that the court gave supporting its determination that the issue of legal custody had been tried by the consent of the parties despite Witte’s assertion to the court “that he ha[d] not consented to the issue.”

¶62 Witte also has not demonstrated that he lacked “adequate notice of the issue” of legal custody or “an opportunity to meet it.” *Win-Win Invs.*, 2021 UT App 18, ¶ 20 (quotation simplified). Although he asserts that Huynh failed to make disclosures relating to legal custody under rule 26 of the Utah Rules of Civil Procedure, he does not explain how his preparation for trial was thereby compromised other than asserting, without relevant citations to the record or further explanation, that the court “expressly disallowed any supplementary discovery or use of new witnesses, evaluators, or experts for rebuttal or Huynh’s . . . belated trial quest for sole legal custody.” That omission is fatal to his argument, especially given that physical custody was already squarely at issue at trial and there is substantial overlap between the two inquiries. For instance, district courts consider the same factors when deciding whether modification of either physical or legal custody is in the best interest of the child. *See* Utah Code Ann. § 81-9-208(4)(a) (LexisNexis Supp. 2025) (“In determining whether the best interest of a child will be served by either *modifying or terminating the joint legal custody or joint physical custody order*, the court shall, in addition to other factors the court considers relevant, consider the factors described in Sections 81-9-204 and 81-9-205.”) (emphasis added). And as noted by the district court, Witte was already prepared to discuss tensions in the existing co-parenting arrangement regarding Son’s clothing and alleged wearing of makeup. In light of all this, Witte also has not carried his burden of persuasion on this point.

IV. Attorney Fees

¶63 On the last day of the bench trial, October 27, 2021, the court awarded Huynh attorney fees “over the joint and legal custody issue” and asked her counsel to submit an affidavit of fees within 60 days. Huynh did not submit the affidavit within that timeframe. 75 days later, on January 10, 2022, the court entered its written Findings of Fact and Conclusions of Law in which it awarded Huynh and Witte attorney fees on the issues the court determined they had each prevailed on at trial. The court ordered the parties to “submit affidavits on attorney fees taking into consideration fees already awarded on some of these issues.” Notably, in its written order, the court did not give a deadline for the parties to do so. But neither party filed their fee affidavits for nearly two years until this court, in an effort to perfect appellate jurisdiction, ordered the parties to file the affidavits within 28 days. The parties complied with this deadline, and at an April 2024 hearing, the district court rescinded its earlier attorney fees awards, stating that “[y]ears went by without either party filing any attorney fee affidavit or motions” since it, from the bench, “gave sixty days to submit any fee affidavits” and since it entered its written Findings of Fact and Conclusions of Law. This rescission of the attorney fees award is the subject of Huynh’s cross-appeal. We hold that the district court did not exceed its discretion here.

¶64 Under rule 54(b) of the Utah Rules of Civil Procedure, “any [non-final] order or other decision . . . may be changed at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.” In other words, “while a case remains pending before the district court prior to any appeal, the court is free to reconsider an earlier decision, even one entered by a prior judge, either sua sponte or at the suggestion of one of the parties.” *Fleming v. Dullanty*, 2025 UT App 128, ¶ 47, 579 P.3d 365 (quotation simplified). A district court also “has broad discretion” under the law of the case doctrine “to revisit earlier rulings before a case has proceeded to a final judgment.” *Jordan*

Constr., Inc. v. Federal Nat'l Mortgage Ass'n, 2017 UT 28, ¶ 29, 408 P.3d 296.

¶65 Huynh attempts to skirt this principle, arguing that this court's order directing the parties to submit attorney fees affidavits within 28 days implicated the mandate rule and thus "established the 'law of the case' when it set new deadlines for the parties' affidavits." She asserts that the district court thus "lacked the authority to vacate or override those deadlines." Under the mandate rule, "the decisions of an appellate court become the law of the case and cannot be reconsidered on remand." *Blocker v. Blocker*, 2019 UT App 82, ¶ 9, 444 P.3d 541 (quotation simplified). But under the unique procedural posture of this case, because this court had not yet acquired jurisdiction over the appeal when it issued the order containing the 28-day deadline in an effort to perfect the appeal, the mandate rule does not apply to prevent modification of the district court's earlier attorney fees award.

¶66 Subject to a few narrow exceptions that do not apply here, appellate courts do not have jurisdiction to consider an appeal unless it is taken from a final judgment or order. *See Loffredo v. Holt*, 2001 UT 97, ¶¶ 10, 15, 37 P.3d 1070. Indeed, an earlier order from this court expressly explained that "jurisdiction in this court has not yet been perfected" and that the appeal was thus "stayed pending the entry of a final, appealable order and the resolution of postjudgment motions that toll time to appeal." And after the district court resolved Witte's motion for a new trial, this court, in response to a filing by Witte, reiterated in an order dated January 2023 that the appeal "remain[ed] stayed . . . pending the entry of a final, appealable order, including the contemplated award of attorney fees." Finally, after nearly a year had passed without any progress being made in the district court toward entry of the attorney fees awards, this court issued the order directing the parties to "file fee affidavits in the district court within 28 days" and indicating that failure to do so would result in dismissal of the appeal without prejudice. The purpose of this order was merely to advance the cause of perfecting appellate jurisdiction. And because this court had not yet acquired jurisdiction over the

merits of the appeal, our administrative directive could not constitute a binding mandate. With no final judgment yet in place, the district court was thus free to revisit its earlier grant of attorney fees.

¶67 Huynh alternatively contends that the district court’s decision to rescind the attorney fees award was an abuse of discretion because any delay on her part in submitting the affidavits was “entirely excusable.”¹⁷ She points to the court’s written Findings of Fact and Conclusions of Law, which the court entered after the 60-day timeframe the court originally imposed from the bench had expired, and which she asserts “represented itself as awarding *fees as of that date*, and imposed no deadline to filing the affidavit.” She further contends that her delay in submitting the affidavits was excusable because her efforts throughout the year 2022 were focused on opposing Witte’s motion for a new trial and his motion to disqualify Judge Parker. Huynh’s arguments fall short of establishing an abuse of discretion by the district court.

¶68 By the time the district court reversed its attorney fees award, approximately two and a half years had passed since it first directed Huynh to submit fee affidavits within 60 days and about two years and three months had passed since the court’s written order directing the parties to submit fee affidavits—albeit without an express deadline. Even accepting Huynh’s explanation that her counsel was otherwise occupied in 2022 with defending the court’s rulings against Witte’s post-trial motions, a two-year delay is extraordinary—especially given the court’s verbal 60-day deadline. Further, the post-trial motions were all resolved in 2022 but Huynh still did not submit the requested

17. Huynh also argues that the district court misinterpreted rule 73 of the Utah Rules of Civil Procedure. But because the court’s timeliness ruling under rule 73 was an alternative basis for its decision, and because we ultimately hold that the court did not abuse its discretion in rescinding its fee award, we need not reach this argument.

affidavits until November 2023. Indeed, in January 2023, this court notified the parties that the outstanding attorney fees had to be resolved in the district court before we could obtain appellate jurisdiction. But again, for nearly another year, neither party submitted the requested fees affidavits until this court ordered them to do so within 28 days. In light of all this, we cannot say the district court exceeded its “broad discretion” in revisiting the issue of attorney fees after finally receiving the affidavits and upon consideration of Witte’s motion to reconsider. *See Jordan Constr.*, 2017 UT 28, ¶ 29.

CONCLUSION

¶69 The district court neither violated Witte’s right to self-representation under the Utah Constitution nor abused its discretion under rule 11 of the Utah Rules of Civil Procedure when it ordered Witte to retain counsel. And because Witte has not meaningfully challenged the court’s reasoning in determining that modification of legal custody had been tried by the consent of the parties, he has not carried his burden of persuasion on this issue. Lastly, the court did not exceed its discretion when it rescinded its prior award of attorney fees.

¶70 Affirmed.
