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NO. COA04-905

NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2005

DANNY WILLARD JOHNSON,
Plaintiff

v.

Martin County
No. 01 CVD 701

DEBBIE K. JOHNSON,
Defendant

Appeal by defendant from judgment entered 27 February 2004 by Judge Michael A. Paul in Martin County District Court. Heard in the Court of Appeals 2 February 2005.

Irvine Law Firm, PC, by David J. Irvine, Jr., for plaintiff-appellee.

Pritchett & Birch, PLLC, by Melissa L. Skinner, Lars P. Simonsen, and Lloyd C. Smith, Jr., for defendant-appellant.

CALABRIA, Judge.

Debbie K. Johnson ("defendant") appeals a 27 February 2004 order granting sole legal and physical custody of Willard Miles Johnson (the "minor child") to Danny Willard Johnson ("plaintiff") and visitation privileges to defendant. We affirm.

The minor child was born on 4 February 1997. Plaintiff and defendant were married on 3 March 1997, and the family resided in Williamston, North Carolina until their separation on 15 November 2001. On 25 February 2002, the trial court entered an initial custody order granting joint legal custody of the minor child to

plaintiff and defendant, primary physical custody to defendant, and visitation privileges to the plaintiff.

On 26 November 2003, plaintiff moved for a modification of child custody and an *ex parte* order modifying custody, and the trial court granted plaintiff temporary custody of the minor child. At the hearing to determine permanent custody of the child, the trial court ordered an immediate modification of child custody. Specifically, the court granted plaintiff primary legal and physical custody of the minor child, and defendant was granted visitation privileges. Defendant appeals.

On appeal, defendant asserts the trial court's findings of fact were not supported by competent evidence and its conclusions of law, regarding a substantial change of circumstances that warranted a modification of custody in the best interests of the minor child, were not supported by the findings of fact.

I. Findings of Fact

Defendant asserts that certain findings of fact of the trial court are not supported by the evidence. A trial court's findings of fact are conclusive on appeal if supported by competent evidence. *Sain v. Sain*, 134 N.C. App. 460, 464, 517 S.E.2d 921, 925 (1999). Specifically, defendant argues that no evidence in the record supports the trial court's findings that (1) defendant failed to provide a stable living arrangement for the minor child and (2) defendant was almost entirely dependent on others for her housing.

At the time of the 25 February 2002 custody hearing, defendant was employed at a daycare center and worked approximately thirty-four hours per week earning \$5.45 per hour. During the custody hearing, defendant stated her intention to move from Martin County to her hometown in Virginia if granted custody of the minor child. Approximately three weeks after the custody hearing, defendant left her job and moved with the minor child from Martin County to Hiltons, Virginia, where her mother, adult son, adult daughter, and grandchildren lived. Plaintiff introduced evidence that, approximately two weeks later, defendant and the minor child moved into a mobile home owned by Carl Blalock ("Blalock") and lived rent free until the summer of 2003 when they moved into another mobile home. Defendant did not check the condition of the other mobile home before relocating to it. The minor child slept on the only bed in the mobile home while defendant slept on the couch. In November 2003, defendant and the minor child returned to the mobile home owned by Blalock and again resided rent free. Defendant testified she did not intend to move from Blalock's mobile home, but if Blalock asked her to move, she would have no choice. She further stated, if Blalock asked her to start paying rent, that she would find full-time employment. Accordingly, the trial court's findings that defendant failed to provide a stable living arrangement and was dependent on others for housing were supported by competent evidence.

Defendant also argues no evidence supports the trial court's finding that "[d]efendant unilaterally discontinued [the minor

child's] speech therapy and [had] not sought any such therapy since, contending that the minor child's teachers did not request that she seek such therapy." Plaintiff, however, introduced evidence that, without consulting him or the minor child's speech therapist, defendant moved to Virginia prior to the minor child's completion of the therapy. After arriving in Virginia, she did not enroll the minor child in speech therapy and never took the minor child to a qualified speech therapist to determine if he needed to complete his therapy. Rather, she relied on the fact that "nobody said anything about his speech being bad" and that his kindergarten "teacher didn't seem to think he needed [speech therapy]." Accordingly, the trial court's finding that defendant unilaterally removed the minor child from speech therapy and did not seek to complete his therapy was supported by competent evidence.

Defendant further argues no evidence supported the trial court's finding that the minor child's two episodes on pneumonia while living in Virginia "support[ed] [p]laintiff's contention that the [d]efendant's residence is not properly heated." After reviewing the evidence, because we determine "there is no [competent] evidence of record to dispute [this] finding of fact . . . [and] none to support it[,] . . . we [will] not consider [this] finding of fact . . . in our review of the trial court's conclusion of law" *Raynor v. Odom*, 124 N.C. App. 724, 730, 478 S.E.2d 655, 659 (1996).

II. Change in Circumstances

Defendant next argues the trial court erred in concluding that a substantial change in circumstances affecting the minor child had occurred since entry of the initial child custody order. Specifically, defendant argues no evidence supports the trial court's conclusion that there was a substantial change in circumstances, no evidence supports a connection between a change in circumstances and the minor child's welfare, and the trial court failed to make findings regarding the connection between a change in circumstances and the minor child's welfare.

"[A] trial court may order a modification of an existing child custody order between two natural parents if the party moving for modification shows that a 'substantial change of circumstances affecting the welfare of the child' warrants a change in custody." *Shipman v. Shipman*, 357 N.C. 471, 473, 586 S.E.2d 250, 253 (2003) (quoting *Pulliam v. Smith*, 348 N.C. 616, 619, 501 S.E.2d 898, 899 (1998)). See N.C. Gen. Stat. § 50-13.7(a) (2003) (providing that custody orders "may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party"). It is well established that a trial court's conclusions of law will be upheld if supported by its findings of fact. *Shipman*, 357 N.C. at 475, 586 S.E.2d at 254. A trial court's conclusion that a substantial change of circumstances occurred affecting the welfare of a child will be upheld where the effects on the child's welfare are self-evident. *Id.*, 357 N.C. at 478-79, 586 S.E.2d at 256. Where the effects of the substantial change in circumstances on the welfare of a child are not self-evident, "the

evidence must demonstrate a connection between the substantial change in circumstances and the welfare of the child, and . . . the trial court [must] make findings of fact regarding that connection." *Id.*, 357 N.C. at 478, 586 S.E.2d at 255.

Defendant first attacks the trial court's conclusion that her unilateral removal of the minor child from speech therapy was a substantial change affecting the child's welfare. We note that the trial court made no findings regarding the connection between defendant's removal of the minor child from speech therapy and the effect on his welfare. However, in the instant case, the effects on the minor child were self-evident. The trial court found "the Defendant unilaterally discontinued her son's speech therapy and has not sought any such therapy since, contending that the minor child's teachers did not request that she seek such therapy." This finding is supported by competent evidence. The record and transcripts show the minor child, a five-year-old, started school with limited language skills. Nonetheless, defendant removed the minor child from speech therapy prior to completion, without consulting a qualified speech therapist to determine whether he needed to finish therapy or be enrolled in another speech therapy program. *Cf. Trivette v. Trivette*, 162 N.C. App. 55, 61, 590 S.E.2d 298, 303-04 (2004) (stating that evidence the defendant "had interfered with his children's counseling, even to the extent of canceling a session when the children were not scheduled to be with him" supported the conclusion that "a substantial change of circumstances affecting the welfare of the minor children had

occurred"). We, therefore, hold that the trial court's competent finding supports its conclusion of law.

Defendant next challenges the trial court's conclusion that defendant's unstable living arrangements constituted a substantial change of circumstances. The trial court made findings of fact based on competent evidence that defendant "failed to provide a stable living arrangement for the [minor] child" and that the minor child's welfare necessitated "a more consistent living arrangement." As discussed above, plaintiff introduced evidence of defendant's unstable living arrangements including defendant's multiple moves and her return to the mobile home owned by Blalock, where she paid no rent and would have to leave upon Blalock's request. Plaintiff further testified that the minor child, who was staying with him during summer vacation, was upset upon learning he and defendant would again be moving into Blalock's mobile home. Accordingly, the trial court's finding that the minor child required "a more consistent living arrangement" and related findings supported its conclusion that defendant's unstable living arrangements constituted a substantial change of circumstances affecting the minor child's welfare. *Accord Shipman*, 357 N.C. at 475, 586 S.E.2d at 254 (recognizing that the custodial parent's frequent moves and dependence on others for housing as well as other circumstances were substantial changes, which when taken together had a self-evident effect on the child's welfare); *Flanders v. Gabriel*, 110 N.C. App. 438, 441, 429 S.E.2d 611, 613

(1993) (recognizing the importance of "a stable and continuous environment" to a child's best interests).

Defendant also contends the trial court erred in concluding her reduction in wages after moving to Virginia was "a substantial change in circumstances affecting the needs and welfare of the minor child." Competent evidence showed that prior to moving to Virginia, defendant worked thirty-four hours per week earning \$5.45 per hour. However, after her move, although she testified she was capable of working full-time and earning minimum wage, defendant worked no more than a total of three and one-half weeks *for the entire year*. Defendant's tax return showed her total income was approximately \$10,000.00 and consisted of approximately: \$3,000.00 in alimony, \$6,250.00 from a deceased husband's annuity, and \$794.00 in wages for the year. The alimony payments were scheduled to terminate in March 2004, and defendant had reduced her wages by approximately \$9,000.00 from the prior year. The trial court made findings based on this competent evidence that "[d]efendant earned less than \$800.00 in wages" and "could not have worked more than three and one-half weeks total during the entire year of 2002." This finding supports the trial court's conclusion that defendant's reduction in wages was a substantial change in circumstances. See *White v. White*, 90 N.C. App. 553, 558, 369 S.E.2d 92, 95 (recognizing that a finding regarding insufficient income supports a trial court's conclusion that there has been a substantial change in circumstances sufficient to modify custody). See also *Shipman*, 357 N.C. at 480, 586 S.E.2d at 257 (holding that obtaining

employment can amount to a substantial change of circumstances positively affecting a minor child).

Defendant next challenges the trial court's conclusion that exposure to violent family confrontations constituted a substantial change of circumstances affecting the minor child's welfare. Defendant had a violent argument with her adult daughter in front of the minor child that resulted in injury to the defendant, and upon viewing the altercation, the minor child was scared and crying. As such, the trial court's finding "that the minor child was crying, scared and upset at having witnessed this violent episode" was supported by competent evidence. This finding fully supported the conclusion that exposure to violent family confrontations constituted a substantial change of circumstances affecting the minor child's welfare.

III. Best interests

Defendant next argues that the trial court abused its discretion in concluding that a change in custody was in the minor child's best interests. If the trial court determines that a substantial change in circumstances affecting the welfare of the child has occurred, it must determine whether a change in custody is in the best interests of the child. *Evans v. Evans*, 138 N.C. App. 135, 139, 530 S.E.2d 576, 578-79 (2000). "In making the best interest decision, the trial court is vested with broad discretion and can be reversed only upon a showing of abuse of discretion." *Ramirez-Barker v. Barker*, 107 N.C. App. 71, 79, 418 S.E.2d 675, 680 (1992), *overruled on other grounds*, *Pulliam v. Smith*, 348 N.C. 616,

501 S.E.2d 898 (1998). An abuse of discretion occurs when a trial court's actions "are manifestly unsupported by reason." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). In light of defendant's numerous moves, unstable living conditions, failure to work despite her ability to maintain full-time employment, removal of the minor child from speech therapy, and violent altercations in front of the child, we hold that the trial court did not abuse its discretion in determining that a change in custody was in the minor child's best interests.

IV. Conclusion

In sum, we hold the trial court's findings of fact, with the above mentioned exception, were supported by competent evidence, and those findings of fact supported its conclusion that "the various factors set forth [in the order] . . . individually and cumulatively constitute[d] a substantial change in circumstances affecting the needs and welfare of the minor child, since entry of the [initial] Custody Order." We further hold the trial court did not abuse its discretion in concluding that the best interests of the minor child required modification of the initial custody order by placing the minor child in the care and custody of plaintiff so that "he can enjoy a more consistent living arrangement" in his former home in North Carolina.

We have carefully considered defendant's remaining arguments and consider them to be without merit. For the foregoing reasons, the trial court's order modifying custody of the minor child is affirmed.

Affirmed.

Judges HUNTER and JACKSON concur.

Report per Rule 30(e).