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NO. COA11-519
NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2011

HOLLY JONES UNDERWOOD,
Plaintiff,

v.

Mitchell County
No. 09 CVD 348

GORDON B. UNDERWOOD,
Defendant.

Appeal by Defendant from order entered 15 December 2010 by Judge Greg Horne in Mitchell County District Court. Heard in the Court of Appeals 13 October 2011.

Lecroy and Willcox, PLLC, by M. Alan LeCroy, for Plaintiff-Appellee.

Hockaday & Hockaday, P.A., by Daniel M. Hockaday, for Defendant-Appellant.

BEASLEY, Judge.

Gordon B. Underwood (Defendant) appeals a child custody order awarding Holly Jones Underwood (Plaintiff) primary physical custody and awarding Defendant secondary physical custody while also ordering Defendant to pay Plaintiff child support. We affirm in part and reverse in part.

Plaintiff and Defendant were married on 21 June 2003. On 19 December 2006, the couple had a child. The couple later separated and Plaintiff initiated an action for child custody and equitable distribution on 2 October 2009. After a short reconciliation, the parties again separated on 5 May 2010. On 15 December 2010, the trial court awarded joint legal custody with primary physical custody to Plaintiff, and ordering Defendant to pay child support. Defendant filed notice of appeal on 13 January 2011.

First, Defendant argues that the trial court erred when it awarded primary physical custody to Plaintiff. We disagree.

"Under our standard of review in custody proceedings, the trial court's findings of fact are conclusive on appeal if there is evidence to support them, even though the evidence might sustain findings to the contrary." *O'Connor v. Zelinske*, 193 N.C. App. 683, 687, 668 S.E.2d 615, 617 (2008) (internal quotation marks and citations omitted). Because our Court has recognized that the trial court is in the best position to "detect tenors, tones and flavors that are lost in the bare printed record read months later by appellate judges[,] our Court will not disturb the trial court's findings absent a clear showing of abuse of discretion. *Hall v. Hall*, 188 N.C. App. 527, 530, 655 S.E.2d 901, 903 (2008).

"Before awarding custody of a child to a particular party, the trial court must conclude as a matter of law that the award of custody to that particular party will best promote the interest and welfare of the child." *Steele v. Steele*, 36 N.C. App. 601, 604, 244 S.E.2d 466, 468 (1978) (internal quotation marks and citation omitted). "When the trial court finds that both parties are fit and proper to have custody, but determines that it is in the best interest of the child for one parent to have primary physical custody, . . . such determination will be upheld if it is supported by competent evidence." *Hall*, 188 N.C. App. at 530, 655 S.E.2d at 904.

Defendant does not challenge the trial court's findings of fact. Instead, Defendant argues that the findings of fact support an award of joint physical custody.

In essence, [Defendant's] challenge to the trial court's order amounts to a request that we reweigh the evidence and reach a different conclusion on the facts than that deemed appropriate by the trial court. We are simply not permitted to act in accordance with [Defendant's] request under the applicable standard of review."

Leadman v. Leadman, ___ N.C. App. ___, 713 S.E.2d 251 (2011) (unpublished).

The trial court concluded that both Plaintiff and Defendant were fit and proper persons to share joint legal care, custody and control of the minor. Additionally the trial court

concluded that Plaintiff be awarded primary physical custody. Unchallenged Findings of Fact Numbers 13 and 14 support the award of primary physical custody to Plaintiff.

13. That the plaintiff has been the primary caregiver to the child. . . .

14. That the plaintiff has provided good care for the minor child and has been solely responsible for scheduling and attending medical and dental appointments for the child.

Based on the findings of fact, there is competent evidence to support the award of primary physical custody to Plaintiff. Accordingly, Defendant's argument is overruled.

Second, Defendant contends that the trial court erred in finding that Defendant had a duty to support the minor and further obligating Defendant to pay both ongoing and retroactive child support to Plaintiff when neither party had filed a claim for child support. We agree.

Plaintiff concedes, and we agree, that the award of child support was in error where neither party filed a complaint for support. "The trial court's jurisdiction is limited to the specific issues properly raised by a party or interested person." *Bogan v. Bogan*, 134 N.C. App. 176, 179, 516 S.E.2d 641, 643 (1999). Accordingly, we reverse the trial court's order of ongoing and retroactive child support.

Affirmed in part; Reversed in part.

Judges HUNTER, JR. and THIGPEN concur.

Report per Rule 30(e).