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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-440

Filed: 21 February 2017

Wake County, No. 11 CVD 14976

JAMIE LUNSFORD MASTNY, Plaintiff,

v.

CHAD JOSEPH MASTNY, Defendant.

Appeal by Defendant from order entered 21 December 2015 by Judge Christine M. Walczyk in District Court, Wake County. Heard in the Court of Appeals 3 October 2016.

Laura C. Brennan, PLLC, by Laura C. Brennan, for Plaintiff-Appellee.

Tharrington Smith, LLP, by Steve Mansbery, Jeffrey R. Russell, and Alice C. Stubbs, for Defendant-Appellant.

McGEE, Chief Judge.

I. Factual Background

Jamie Lunsford Mastny (“Plaintiff”) and Chad Joseph Mastny (“Defendant”) were married on 13 March 1999. One child (“Tyler”) was born of the marriage on 14 January 2007. During the marriage, Plaintiff and Defendant were awarded guardianship of Plaintiff’s niece (“Reagan” and along with Tyler, “the children”) by a court in Oklahoma. Plaintiff and Defendant separated on 4 April 2010, and a consent

order resolving issues of equitable distribution, alimony, child custody, and child support was entered 13 August 2012. Concerning custody of Tyler,¹ the consent order provided that Plaintiff and Defendant would share legal custody, but that Tyler would reside primarily with Plaintiff. Defendant was given “alternating weekend visitation from Thursday at the recess of school until Monday morning” when Tyler would be returned to school. On the weeks when Defendant did not have Thursday to Monday visitation, he was given “alternating Thursday overnight visitation with” Tyler from Thursday after school until Defendant dropped Tyler off for school the following morning. Finally, Defendant was granted “two (2) additional days per calendar month to be agreed upon by the parties and agreement shall not be unreasonably withheld or requested.” The parties refer to the two additional visitation days as “floating” days.

Special accommodations were made for holiday periods, but Tyler’s spring break was not specifically mentioned in the consent order. Both Plaintiff and Defendant were provided “one (1) week vacation per month during the summer break.” Plaintiff and Defendant were to “notify the other in writing by April 15th of the weeks they intend[ed] to exercise their weeklong visitation during the summer.” Plaintiff and Defendant were ordered to provide “open telephone access” to Tyler in

¹ Reagan is a recognized member of a Native-American tribe, and her custody situation falls under tribal jurisdiction. For this reason, the custody order before us only applies directly to the custody of Tyler.

order to facilitate contact between Tyler and the parent currently without physical custody. The consent order also mandated that “[b]oth parties shall exercise reasonable efforts to ensure that Reagan spends time with her brother, Tyler.”

Defendant filed a motion to modify custody on 14 May 2013, and a motion for temporary modification of child custody on 6 June 2013. The trial court heard Defendant’s motions on 18 September 2013 and, by order entered 1 November 2013, did not modify custody other than to provide Defendant seven additional days of visitation to make up for visitation that Plaintiff had denied him, in violation of the consent order.

Relevant to this appeal, Plaintiff filed a motion to modify the custody order on 2 October 2014, and Defendant filed a motion to modify the custody order on 2 September 2015. In Plaintiff’s motion, she requested that the trial court “eliminate the ‘floating’ visitation periods and . . . address the other provisions of the current plan that are causing the parties conflict[.]” Defendant requested that the trial court modify the custody order “to more solidly define Defendant’s custodial days with the minor children[.]” and “[m]aintain joint legal custody but grant primary physical custody to . . . Defendant[.]” The trial court heard the motions on 28 and 29 October 2015, and entered its order modifying the prior consent custody order on 21 December 2015. In its 21 December 2015 order, the trial court concluded “[t]here has been a substantial change of circumstances affecting the best interest and welfare of [Tyler]

pursuant to N.C.G.S. § 50-13.7[.]” and modified the consent custody agreement. Plaintiff and Defendant were awarded joint legal custody, but Plaintiff was awarded primary physical custody of Tyler during the school year. During the school year, Defendant was granted physical custody of Tyler “[e]very other weekend from the release of school on Friday until the return to school on Monday[.]” The trial court further ruled that during the summer holiday, “the parties shall alternate custody on a week-to-week schedule[.]” The trial court made further changes related to vacation periods and teacher workdays in its 21 December 2015 order. Defendant appeals.

II. *Analysis*

As this Court has stated concerning custody and visitation rights:

In cases involving child custody, the trial court is vested with broad discretion. Matters of custody expressly include visitation rights. N.C. Gen. Stat. § 50A-2(2) (1989). The decision of the trial court should not be upset on appeal absent a clear showing of abuse of discretion. Findings of fact by a trial court must be supported by substantial evidence. A trial court’s findings of fact in a bench trial have the force of a jury verdict and are conclusive on appeal if there is evidence to support them. However, the trial court’s conclusions of law are reviewable *de novo*.

Browning v. Helff, 136 N.C. App. 420, 423, 524 S.E.2d 95, 97–98 (2000) (citations omitted). Further,

[a] court order for custody of a minor child “may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances. . . .” N.C. Gen. Stat. § 50-13.7(a) (1995). According to our Supreme Court, a custody order may not be modified until the moving party

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shows there has been a substantial change in circumstances affecting the welfare of the minor child. The required change in circumstances need not have adverse effects on the child. “[A] showing of a change in circumstances that is, or is likely to be, beneficial to the child may also warrant a change in custody.” Once the moving party has shown a substantial change in circumstances affecting the welfare of the minor child, the trial court must determine whether a change in custody is in the best interest of the child. “The welfare of the child has always been the polar star which guides courts in awarding custody.”

Id. at 423–24, 524 S.E.2d at 98 (citations omitted).

A. Findings of Fact

In Defendant’s first two arguments, he contends the trial court erred in making certain findings of fact, and further erred in failing to make additional findings of fact. In its 21 December 2015 order, the trial court included the following in its findings of fact section:

6. This court entered a Consent Order and Judgment in the instant action on August 13, 2012. Pursuant to said Order the parties share joint legal custody and [Tyler] primarily resided with Plaintiff and visited with Defendant on alternating weekends from Thursday following school until the Monday return to school and alternating Thursdays following school until the Friday return to school. In addition to the weekend and weekday visitation schedule, Defendant was entitled to two “floating” days per calendar month to be agreed to by the parties. Provision was also made for holiday and vacation visitation.

7. Both parents love and support their children and are actively involved in their lives.

....

9. Defendant is self-employed and owns his own business. Defendant's adjusted gross income in 2012 was \$193,872 and in 2013 was \$212,793.

10. Defendant regularly relies on an employee to pick up the children from school and spend time with them at his office during his custodial periods. While this is not a traditional commercial office - but is located in a single-family dwelling that Defendant and the children occupied as a residence during a period following the date of separation - this is the place that Defendant conducts his business. The children spend a significant amount of time there.

11. Defendant has provided the children with smartphones. They are password protected. Plaintiff calls the children on their smartphones while they are in the custody of Defendant.

12. Plaintiff is currently employed full-time at the children's school. This employment provides her with an opportunity to see the children each day and eliminates the need for a third-party caretaker before and after school during the school year.

13. Defendant's monthly gross income is \$2,075.

....

15. Since the entry of this Order, there has been a substantial change of circumstances justifying this court to assume jurisdiction to modify the August 13, 2012 Order as it relates to the custodial schedule:

(a) This is now a high-conflict case. The conflict has involved scheduling "floating" days, the sharing of the holidays, the exchange location and time when the exchanges are not at school, the use of car booster seats

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for the children, transportation of the children in the front seat of a vehicle, therapy, medication, PG-13 movies and television viewing, and the use of phones and electronic media.

(b) This conflict has resulted in excessive litigation.

(c) Both parents have different parenting styles and household rules which has contributed to the conflict.

(d) In 2012 Plaintiff did not work outside the home. She is now employed full-time.

(e) Plaintiff's financial situation has changed. Although employed, she is no longer receiving alimony. Plaintiff continues to receive child support from Defendant.

(f) The parties now almost exclusively communicate via e-mail.

(g) Plaintiff does not allow [Tyler] to facetime with Defendant in her residence; rather, she makes the minor child go outside to facetime with Defendant.

15[A].² This change of circumstances has affected the minor children:

(a) The children missed an out-of-state wedding in Defendant's family during Plaintiff's Christmas vacation visitation.

(b) Tyler has not been allowed to attend NC State football games during Plaintiff's custodial period.

(c) There are no consistent rules between homes concerning the use of phones, on-line gaming, and television and movie viewing.

² The trial court inadvertently included the number fifteen twice when setting forth its findings of fact, so we identify the second "fifteen" as 15A.

(d) The children have been placed in the middle of the conflict.

(e) The children have not had things for school such as uniforms and supplies for classroom projects and/or activities.

16. Plaintiff has unreasonably denied Defendant extra custodial time with the children for specific events and refused to modify the schedule that would have provided the children with experiences with Defendant such as the family wedding and NC State football games.

17. Defendant's boundaries with the children are inappropriate. He speaks to them inappropriately about Plaintiff. When they ask about booster seats, therapy or why they must do certain things, Defendant will respond "because that's what mom wants you to do."

18. Defendant inappropriately involved the children in the decision-making about the selection of the "floating" days.

19. Defendant[s] boundaries concerning Plaintiff are also inappropriate. Following the first day of trial and after learning Plaintiff's salary at Trinity Academy, Defendant called Plaintiff's boss to ask him to give her a raise. Defendant had previously asked Plaintiff's employer for information on the tuition discount Plaintiff was entitled to as a result of her employment at Trinity.

20. Recently, Tyler had an accident at school injuring his ankle. Since this happened right before Defendant arrived to pick Tyler up from school both parents were present and concerned enough about his condition to jointly decide to take him to urgent care. The parents rode together to urgent care and after Tyler was treated, went to dinner together. Tyler rode in the front seat of Defendant's car and Plaintiff chose to ride in the backseat.

21. The August 13, 2012 Order is no longer in the best

interest of [Tyler].

22. It is in the best interest of [Tyler] that he be allowed to spend time with his sister “Reagan.”

23. A specific and detailed custody order will reduce the conflict between the parties.

24. The appointment of a Parenting Coordinator in this case is in the best interest of [Tyler].

25. The parties have the ability to pay the costs of the Parenting Coordinator as set forth below.

Defendant argues that “[i]nsufficient evidence was presented to the trial court to support Findings of Fact 15, 15(a), 15(b), 15(c), 15(d), 15(f), 15(g), 17, 21, and 22.” We note that “findings of fact” 15 and 21 are conclusions of law and we treat them as such. We consider in greater detail below the trial court’s conclusion of law that there has been a substantial change in circumstances affecting Tyler. Finding of fact 22 contains language more appropriate to a conclusion of law, “in the best interest of the minor child,” but we consider it as a finding that Tyler benefits from spending time with his “sister” Reagan, which is supported by the evidence.

Concerning findings of fact 15(a), 15(b), 15(c), 15(d), 15(f), and 15(g), to the extent that they are part of the trial court’s conclusion of law that there had been a substantial change in circumstances affecting Tyler, we consider that conclusion later in this opinion. When we consider these findings on their own, we find substantial record evidence to support the following findings: 15(a) that “[t]his is now a high-

conflict case,” 15(b) that the “conflict has resulted in excessive litigation,” 15(c) that the “parents have different parenting styles and household rules which . . . contributed to the conflict,” 15(d) that “Plaintiff did not work outside the home” in 2012, but that Plaintiff “is now employed full-time,” 15(f) that Plaintiff and Defendant “now almost exclusively communicate via e-mail,” and 15(g) that “Plaintiff does not allow [Tyler] to facetime with Defendant in her residence; rather, she makes [Tyler] go outside to facetime with Defendant.” We also hold that there is record evidence supporting the trial court’s seventeenth finding of fact, that “Defendant’s boundaries with the children are inappropriate. He speaks to them inappropriately about Plaintiff. When they ask about booster seats, therapy or why they must do certain things, Defendant will respond ‘because that’s what mom wants you to do.’”

Defendant next argues that the trial court erred in *failing* to make required findings of fact. We disagree.

Defendant cites the following portion of N.C. Gen. Stat. § 50-13.2 in support of his argument:

An order for custody of a minor child entered pursuant to this section shall award the custody of such child to such person, agency, organization or institution as will best promote the interest and welfare of the child. In making the determination, the court shall consider all *relevant* factors including acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party. An order for custody must include written findings of fact that reflect the consideration of each of these factors and that

support the determination of what is in the best interest of the child. Between the parents, whether natural or adoptive, no presumption shall apply as to who will better promote the interest and welfare of the child. Joint custody to the parents shall be considered upon the request of either parent.

N.C. Gen. Stat. § 50-13.2(a) (2015) (emphasis added). Defendant contends that this statute required the trial court to make findings of fact concerning domestic violence, and the safety of the children. There is no record evidence that domestic violence was an issue in the case before us. Defendant made no argument that Plaintiff was violent, or a danger to him or the children. Defendant cites to no authority indicating that the trial court is required to make findings concerning issues that are not properly before it, and we find none. Because there was no evidence presented to the trial court indicating that domestic violence might be an issue, the issue of domestic violence *was not relevant* to the current proceeding, and the trial court was not required to make superfluous findings on that issue. *Id.* This argument is without merit.

B. Substantial Change in Circumstances

In Defendant's third argument, he contends "[t]he trial court erred in concluding . . . that there has been a substantial change in circumstances[.]" We disagree.

Defendant's motion for change of the prior consent custody order argued that difficulty in scheduling vacations, and especially "floating days," constituted a

substantial change in circumstances. The trial court agreed with Defendant, finding, *inter alia*: “This is now a high-conflict case. The conflict has involved scheduling ‘floating’ days, [and] the sharing of the holidays[.]” Defendant cannot now argue that the trial court erred in making the conclusion that Defendant moved the trial court to make. *In re K.C. & C.C.*, 199 N.C. App. 557, 563, 681 S.E.2d 559, 564 (2009) (citation omitted) (“According to well-established North Carolina law, a litigant will not be heard to complain on appeal about a decision that a trial judge made at that litigant’s request.”). Defendant’s true argument is not that the trial court found that there had been a substantial change of circumstances affecting Tyler’s best interests, but that the trial court changed custody in a manner not in accord with Defendant’s preferences.

Defendant moved to modify custody based upon a substantial change of circumstances. Specifically, Defendant argued that the visitation schedule that was then in place “has been extremely disruptive to [Tyler]. The constant change has affected [Tyler’s] stability and academic performance. It is in the best interest of [Tyler] that a week on/week off custodial schedule be implemented[.]” **R35** Defendant argued that the current schedule had resulted in a number of “tardies” for Tyler, and that Plaintiff had not been cooperating in scheduling the two “floating days” allocated to Defendant each month. Plaintiff also moved for modification of custody based upon an alleged substantial change of circumstances. Plaintiff’s argument in favor of

finding a substantial change in circumstances also included issues with the “floating days,” and attendant visitation scheduling difficulties.

It is well established in this jurisdiction that 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. The party seeking to modify a custody order need not allege that the change in circumstances had an adverse effect on the child. While allegations concerning adversity are “acceptable factor[s]” for the trial court to consider and will support modification, “a showing of a change in circumstances that is, or is likely to be, beneficial to the child may also warrant a change in custody.”

As in most child custody proceedings, a trial court’s principal objective is to measure whether a change in custody will serve to promote the child’s best interests. Therefore, if the trial court does indeed determine that a substantial change in circumstances affects the welfare of the child, it may only modify the existing custody order if it further concludes that a change in custody is in the child’s best interests.

The trial court’s examination of whether to modify an existing child custody order is twofold. The trial court must determine whether there was a change in circumstances and then must examine whether such a change affected the minor child. If the trial court concludes either that a substantial change has not occurred or that a substantial change did occur but that it did not affect the minor child’s welfare, the court’s examination ends, and no modification can be ordered. If, however, the trial court determines that there has been a substantial change in circumstances and that the change affected the welfare of the child, the court must then examine whether a change in custody is in the child’s best interests. If the trial court concludes that

modification is in the child's best interests, only then may the court order a modification of the original custody order.

Shipman v. Shipman, 357 N.C. 471, 473–74, 586 S.E.2d 250, 253 (2003) (citations omitted). Though we hold that the trial court did not err in finding that there had been a substantial change in circumstances, as we discuss below, we also hold that the trial court did not enter sufficient findings of fact connecting any change in circumstances to the welfare of Tyler, or demonstrate that modification of the consent order in the manner that it was modified was in the best interest of Tyler.

C. Nexus Between Substantial Change and Welfare of the Minor Child; Best Interests

In Defendant's fourth argument, he contends "[e]ven if the trial court did not err in concluding . . . that there has been a substantial change in circumstances . . . , the trial court erred by failing to make sufficient findings of fact showing a nexus between the substantial changes in circumstances and the affect [sic] on the welfare of [Tyler]." We agree. In Defendant's sixth argument, he contends that the "trial court erred in failing to make detailed findings from which [this Court] can determine that the order is in the best interest of the child." We agree. For reasons that follow, we remand to the trial court for further action.

"[O]nce the custody of a minor child is judicially determined, that order of the court cannot be modified until it is determined that (1) there has been a substantial change in circumstances affecting the welfare of the child; and (2) a change in custody is in the best interest of the child." "[T]he evidence must demonstrate a connection

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between the substantial change in circumstances and the welfare of the child, and flowing from that prerequisite is the requirement that the trial court make findings of fact regarding that connection.” However, “[w]here the ‘effects of the substantial changes in circumstances on the minor child are self-evident,’ there is no need for evidence directly linking the change to the effect on the child.”

In re A.C., __ N.C. App. __, __, 786 S.E.2d 728, 742–43 (2016) (citations omitted).

As in most child custody proceedings, a trial court’s principal objective is to measure whether a change in custody will serve to promote the child’s best interests. Therefore, if the trial court does indeed determine that a substantial change in circumstances affects the welfare of the child, it may only modify the existing custody order if it further concludes that a change in custody is in the child’s best interests.

Shipman, 357 N.C. at 474, 586 S.E.2d at 253 (citations omitted).

We first note Defendant’s fifth argument, that “[t]he trial court erred by failing to conclude as a matter of law that the modification of child custody is in [Tyler’s] best interest.” We agree with Defendant that the 21 December 2015 order does not explicitly make this conclusion, as the relevant conclusion states: “There has been a substantial change of circumstances affecting the best interest and welfare of [Tyler] pursuant to N.C.G.S. § 50-13.7.” This conclusion simply states that there had been a substantial change in circumstances that had affected Tyler’s best interests. It does not conclude that modification of the prior consent order was in Tyler’s best interest. Upon remand, the trial court shall specifically address whether any modifications of the prior consent order are in Tyler’s best interests.

In addition to the relevant findings of fact enumerated above, the trial court made the following relevant conclusions of law, and ordered the parties as follows:

3. There has been a substantial change of circumstances affecting the best interest and welfare of [Tyler] pursuant to N.C.G.S. § 50-13.7.

4. The appointment of the Parenting Coordinator is made pursuant to N.C.G.S. § 50-91.

WHEREFORE, it is ORDERED, ADJUDGED and DECREED:

1. The parties are hereby awarded joint legal custody of Tyler Mastny, born January 14, 2007. Joint legal custody anticipates and requires that the parties consult with each other on all major decisions affecting [Tyler's] health, education, safety and welfare in an effort to arrive at a harmonious policy calculated to promote his best interest. Each parent is entitled to equal access to the records of [Tyler] involving his health, education and welfare.

2. [Tyler] shall primarily reside with Plaintiff during the school year and secondarily reside with Defendant under [the schedule set forth in the remainder of the order.]

In support of its conclusion that substantial changes had affected Tyler's welfare, and that the modification of the prior consent order was in Tyler's best interests, the trial court specifically found:

15[A]. This change of circumstances has affected the minor children:

(a) The children missed an out-of-state wedding in Defendant's family during Plaintiffs Christmas vacation visitation.

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(b) Tyler has not been allowed to attend NC State football games during Plaintiff's custodial period.

(c) There are no consistent rules between homes concerning the use of phones, on-line gaming, and television and movie viewing.

(d) The children have been placed in the middle of the conflict.

(e) The children have not had things for school such as uniforms and supplies for classroom projects and/or activities.

16. Plaintiff has unreasonably denied Defendant extra custodial time with the children for specific events and refused to modify the schedule that would have provided the children with experiences with Defendant such as the family wedding and NC State football games.

17. Defendant's boundaries with the children are inappropriate. He speaks to them inappropriately about Plaintiff. When they ask about booster seats, therapy or why they must do certain things. Defendant will respond "because that's what mom wants you to do."

18. Defendant inappropriately involved the children in the decision-making about the selection of the "floating" days.

19. Defendant[s] boundaries concerning Plaintiff are also inappropriate. Following the first day of trial and after learning Plaintiff's salary at Trinity Academy, Defendant called Plaintiff's boss to ask him to give her a raise. Defendant had previously asked Plaintiff's employer for information on the tuition discount Plaintiff was entitled to as a result of her employment at Trinity.

Findings 15A(a) and (b), and finding 16 involve Plaintiff's unwillingness to allow Defendant access to Tyler for specific events. To the extent Plaintiff's

unwillingness in this regard constituted a substantial change that affected Tyler's welfare, it was a change of Plaintiff's making, and the 21 December 2015 modification order does not address this situation. The concerns implicit in findings 15A(c) and (d) are likewise not addressed by the 21 December 2015 order. Rearranging the custody schedule will not serve to make rules between the two homes more consistent, nor remove Tyler from the "middle" of any conflicts between Plaintiff and Defendant, with the possible exception that removal of the "floating" days dispenses with one source of prior conflict. Removal of the "floating" days does also remedy the specific concern indicated in finding 18. However, the revised custody schedule does nothing to assist Defendant in having more appropriate "boundaries" with the children, as indicated in finding 17.

Defendant's having "inappropriate" boundaries concerning Plaintiff could theoretically affect Tyler's welfare, but there are no findings of fact supporting any conclusion that this has happened. Specifically, there is no indication that Tyler even knew Defendant had contacted Plaintiff's employer, much less that Defendant's having done so affected Tyler's welfare. There are no findings, and there is no evidence, that Tyler will be afforded more opportunities to spend time with Reagan as a result of the modification, which is a concern raised in finding 22. In short, these findings of fact do not support a conclusion that the modification of the existing

custody consent order, in the manner ordered by the trial court, served to promote Tyler's best interests. *Shipman*, 357 N.C. at 474, 586 S.E.2d at 253.

In finding 15A(e) the trial court found that “[t]he children have not had things for school such as uniforms and supplies for classroom projects and/or activities.” By reducing the number of times Tyler changes custody during the school year to once every two weeks instead of once every week, the trial court has reduced the chances that Tyler might not have access to certain items he needs for school because they have been left at the other parent's home. However, we do not find that this benefit is enough to support a conclusion that modifying the consent order in the manner done in the 21 December 2015 order was in Tyler's best interest. While it may well be correct, as stated in finding 23, that “[a] specific and detailed custody order will reduce the conflict between the parties[,]” we hold there are insufficient findings of fact concerning how the trial court's modifications will reduce conflict between Plaintiff and Defendant to such an extent that the modifications made were in Tyler's best interest. However, Defendant states that “[t]he trial court took the proper course of action by appointing a Parenting Coordinator” as indicated in finding 24, and we affirm that portion of the 21 December 2015 order appointing a parent coordinator.

III. *Conclusion*

The trial court agreed with both Plaintiff and Defendant when it concluded there had been a substantial change of circumstances that affected Tyler. However,

the 21 December 2015 order does not contain sufficient findings of fact demonstrating that the change of circumstances — specifically concluded by the trial court — affected Tyler’s welfare in such a manner that the custody changes specified were in Tyler’s best interest. While it is clear from the evidence and from the trial court’s findings that Plaintiff and Defendant did not cooperate well concerning the custody schedule as set forth in the consent order, especially with regard to the “floating” days and certain holidays, the trial court’s findings of fact are not sufficient to demonstrate the nexus between the change of circumstances and any effect on Tyler’s welfare. Further, the 21 December 2015 order fails to demonstrate that the particular remedy chosen — a significant reduction in Defendant’s custodial time for nine months with an increase in Defendant’s custodial time for three months — addresses the concerns raised in light of any change in circumstances.

In addition, the findings of fact and conclusions of law are insufficient to demonstrate that the changes in custody mandated by the 21 December 2015 order were in Tyler’s best interest. For these reasons, we reverse those portions of the 21 December 2015 order modifying the custody schedule agreed upon in the prior consent order, and remand for further action. We affirm that portion of the 21 December 2015 order appointing a parent coordinator and arranging for payment of same. Upon remand, the trial court may take additional evidence in its discretion, and shall revisit the question of whether there has been a significant change of

circumstances affecting Tyler’s welfare and, if so, whether modification of the custody provisions of the prior consent order would be in Tyler’s best interest. If the trial court decides that modification of the custody provisions of the prior consent order are warranted, it shall demonstrate through sufficient additional relevant findings of fact that there is a nexus between any change in circumstances and Tyler’s welfare, and that any particular modifications of the custody portions of the prior consent order are in Tyler’s best interest. *See Shipman*, 357 N.C. at 474, 586 S.E.2d at 253; *Browning v. Helff*, 136 N.C. App. 420, 424–25, 524 S.E.2d 95, 98–99 (2000).

Upon remand, we give the following additional specific guidance based upon *Shipman*, 357 N.C. at 474, 586 S.E.2d at 253 (citations omitted) (“if the trial court does indeed determine that a substantial change in circumstances affects the welfare of the child, it may only modify the existing custody order if it further concludes that a change in custody is in the child’s best interests”): (1) Substantial change in circumstances – because both Plaintiff and Defendant argued to the trial court that issues concerning “floating” days and vacations constituted a substantial change in circumstances, the trial court need not revisit this issue. However, the trial court is free in its discretion to reconsider its conclusion upon remand. (2) The substantial change(s) found must have had an effect on Tyler’s welfare. The trial court should include sufficient findings of fact indicating that any substantial changes found have had either positive or negative effects on Tyler’s welfare. Substantial changes that

have not affected Tyler's welfare are irrelevant and need not be included in the trial court's order. (3) Any modification to the existing consent custody order must be shown to be not only in Tyler's best interest, but in direct response to, or remedy of, any substantial changes that the trial court concludes have affected Tyler's welfare. Modifications of the existing consent custody order that do not *both* respond to a need indicated by any substantial change affecting Tyler's welfare *and* promote Tyler's best interest are not authorized by law as set forth in *Browning*, 136 N.C. App. at 423-24, 524 S.E.2d at 98.

The trial court's findings of fact must be sufficient to demonstrate the nexus between any substantial change in circumstances and Tyler's welfare, and further demonstrate the nexus between any substantial changes in circumstances affecting Tyler's welfare and, based upon those substantial changes, that any modifications of the existing consent custody order are both in response to the substantial changes, and in Tyler's best interest.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.

Judges DIETZ and TYSON concur.

Report per Rule 30(e).