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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-941

Filed: 20 March 2018

Cabarrus County, No. 07 CVD 4186

JENNIFER DIANE ATKINSON, Plaintiff,

v.

CHRISTIAN CHAMBERLIN-SPENCER, Defendant.

Appeal by Plaintiff from order entered 14 February 2017 by Judge Nathaniel M. Knust in Cabarrus County District Court. Heard in the Court of Appeals 21 February 2018.

Seth B. Weinshenker for Plaintiff-Appellant.

No brief filed by Defendant-Appellee.

INMAN, Judge.

Jennifer Diane Atkinson ("Plaintiff-Appellant" or "Mother") appeals from an order modifying a prior consent child custody order, granting primary custody of the minor child N.C.C. ("Natalie")[1] to her father, Christian Marquis Chamberlin-Spencer ("Defendant-Appellee" or "Father"). Mother argues that the trial court abused its

[1] A pseudonym is used to protect the identity of the child and for ease of reading.

discretion by determining that there was a substantial change in circumstances affecting Natalie's welfare, and that it was in Natalie's best interest to award primary custody to Father.

After careful review, we affirm the trial court's order.

Factual and Procedural History

The parties entered into a Consent Order (the "Consent Order") governing custody of Natalie on 29 February 2016. Per the agreement, Mother was awarded primary custody of Natalie, with a set visitation schedule for Natalie to stay with Father on certain school holidays. At the time of the Consent Order, Mother and Natalie were living in Michigan, while Father was residing in North Carolina.

On 9 May 2016, Mother and Natalie moved from Michigan to Charlotte, North Carolina, to escape abuse by Mother's then boyfriend. Mother's and Natalie's new residence was on the same street in Charlotte as Father's residence. Upon moving, Natalie was enrolled in Blythe Elementary School, where she finished her fifth grade year. Natalie's report card indicated her final grades as follows: English Language Arts – 79, Math – 79, and Science – 90.

On 14 August 2016, Mother moved with Natalie to Jacksonville, Florida. Three weeks after moving, Natalie was enrolled in Highland Middle School. School records from Highland show that Natalie received a 'D' in Language Arts, a 'C' in

Math, and a 'C' in Science for the second quarter of her sixth grade year.[2] Additionally, Natalie's report card from Highland shows that she was working below grade level standards in three subjects.

Shortly after moving to Florida, Mother sought out a physician and received a prescription for medical marijuana. Since entering the Consent Order, Mother has used marijuana at night while caring for Natalie.

On 16 September 2016, Father filed a Motion to Modify the Consent Order. After hearing evidence and argument in February 2017, the trial court determined that there had been a substantial change in circumstances affecting Natalie's welfare and modified the Custody Order. Mother timely appealed.

Analysis

Mother argues that the trial court abused its discretion in determining that a substantial change in circumstances affecting Natalie's welfare had occurred because there was no substantial evidence to support the trial court's findings of fact and because those findings of fact do not support its conclusions of law. Mother specifically challenges the findings that (1) Natalie's grades dropped following the move to Florida, (2) the moves from school to school negatively impacted Natalie, and (3) Mother has become dependent on marijuana use. We hold that substantial

[2] The report card uses a ten-point grading scale and gives the following designations A (90-100), B (80-89), C (70-79), D (60-69), and F (59 and below).

evidence supports these findings and that the findings support the trial court's conclusions of law.

1. Standard of Review

"When reviewing a trial court's decision to grant or deny a motion for the modification of an existing child custody order, the appellate courts must examine the trial court's findings of fact to determine whether they are supported by substantial evidence." *Shipman v. Shipman*, 357 N.C. 471, 474, 586 S.E.2d 250, 253 (2003) (citing *Pulliam v. Smith*, 348 N.C. 616, 625, 501 S.E.2d 898, 903 (1998)). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). "In addition to evaluating whether a trial court's findings of fact are supported by substantial evidence, this Court must determine if the trial court's factual findings support its conclusions of law." *Shipman*, 357 N.C. at 475, 586 S.E.2d at 254 (citing *Pulliam*, 348 N.C. at 628, 501 S.E.2d at 904). The trial court's conclusions of law are reviewed *de novo*. *Stephens v. Stephens*, 213 N.C. App. 495, 498, 715 S.E.2d 168, 171 (2011). Should our Court determine that the trial court properly concluded that a substantial change of circumstances affected the welfare of the minor child and that modification was in the child's best interests, "we will defer to the trial court's judgment and not disturb its decision to modify an existing custody agreement." *Shipman*, 357 N.C. at 475, 586 S.E.2d at 254 (citation omitted).

2. Substantial Change in Circumstances

In order for a trial court to modify an existing child custody order, the trial court must properly determine "(1) that 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." *Evans v. Evans*, 138 N.C. App. 135, 139, 530 S.E.2d 576, 578-79 (2000) (internal citations omitted); *see also* N.C. Gen. Stat. § 50-13.7(a) (2015). The determination of whether changed circumstances exist is a conclusion of law, *Thomas v. Thomas*, 233 N.C. App. 736, 739, 757 S.E.2d 375, 379 (2014) (citation omitted), with the burden of proof being on the party seeking the modification. *Pulliam*, 348 N.C. at 619, 501 S.E.2d at 899.

Our courts have made clear that before a trial court may modify a child custody order, "the evidence must demonstrate a connection 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 conclusion." *Shipman*, 357 N.C. at 478, 586 S.E.2d at 255 (citations omitted). Certain changes may be considered self-evident as affecting the welfare of the child, while others are not. Those changes that are not self-evident, such as a move, require "a showing of evidence *directly* linking the change to the welfare of the child." *Id.* at 478, 586 S.E.2d at 256 (emphasis in original) (citation omitted); *see also Stephens*, 213 N.C. App. at 499, 715 S.E.2d at 172 ("Unless the effect of the change on the children is 'self-

evident,' the trial court must find sufficient evidence of a nexus between the change in circumstances and the welfare of the children." (citation omitted)); *and Evans*, 138 N.C. App. at 141, 530 S.E.2d at 580 (explaining that the relocation and remarriage of one of the parties could not have been deemed a substantial change in circumstances warranting modification of custody when the trial court "made no findings of fact indicating the effect of the remarriage and relocation on the child . . . "). "Evidence linking these and other circumstances to the child's welfare might consist of assessments of the minor child's mental well-being by a qualified mental health professional, *school records*, or testimony from the child or the parent." *Shipman*, 357 N.C. at 478, 586 S.E.2d at 256 (emphasis added) (citations omitted).

We cannot agree with Mother's assertion that the trial court's findings of fact related to Natalie's school performance are not supported by substantial evidence. At the hearing, Father submitted several of Natalie's school records from her last quarter of school in North Carolina and her first two quarters of school in Florida. The records indicate that Natalie's grades went from two 79's and a 90 in North Carolina, to three 'D's', three 'C's', a 'B', and an 'A' in Florida. Natalie's report card from Florida also indicates that she was "working below grade level standards" in three classes at the end of her second quarter. Based on this evidence, the trial court found that "the moves from school to school have had a negative impact on [Natalie's] grades and [Natalie] is performing below grade level in mathematics." While Mother

highlights additional evidence contained in the records suggesting that Natalie's "conduct does not hinder academic performance[,]" it is not our duty to reweigh the evidence. *See, e.g., Shipman*, 357 N.C. at 475, 586 S.E.2d at 253-54 ("[S]hould we conclude that there is substantial evidence in the record to support the trial court's findings of fact, such findings are conclusive on appeal, *even if record evidence might sustain findings to the contrary*." (emphasis added) (internal quotation marks and citations omitted)).

Mother further argues that this Court's decision in *Spoon v. Spoon*, 233 N.C. App. 38, 48, 755 S.E.2d 66, 74 (2014), mandates that, when comparing school records, a trial court must have evidence of the child's performance prior to the custody order for which modification is sought. Mother quotes the language from *Spoon* that the child's "report cards from her new school . . . show that [she] received more 'needs improvement' marks and less 'satisfactory' marks than in her *previous years of schooling*." *Id.* at 48, 755 S.E.2d at 74 (emphasis added). However, a close reading of *Spoon* reveals that its holding only requires a trial court to consider evidence from before and after the substantial change in circumstances, not necessarily from before the prior custody order. *Id.* at 48, 755 S.E.2d at 74. In the case of school records, it follows that records indicating the child's performance before and after the changed circumstance meet this requirement. *Id.* at 48, 755 S.E.2d at 74. Here, because Father submitted school records covering the relevant time period—before and after

Mother's and Natalie's move to Florida—we hold that the trial court's finding is supported by substantial evidence.

Mother also challenges the trial court's finding that Natalie's "social, academic, and emotional development are adversely impacted by the lack in stability in [Natalie's] life since the entry of the Consent Order . . . ." With regard to Natalie's social and emotional development, the record contains no evidence supporting a finding that the instability of moving negatively affected her. Therefore, we hold this finding is not supported by substantial evidences and may not be used to support the trial court's conclusion of law. However, as discussed above, the trial court's finding that Natalie's academic development has been harmed by the instability is supported by substantial evidence.

We disagree with Mother's contention that there is no substantial evidence to support the trial court's finding of fact regarding her marijuana use. Mother's own testimony at the hearing provided the trial court with evidence upon which to base its finding. Mother testified that she was approved for medical marijuana use in Florida. Mother stated that she "has to have [marijuana] in [her,]" and that she "only [does] it at nighttime because [she has] a zero tolerance . . . ." This testimony supports the trial court's finding that Mother "has been using medical marijuana which has THC since the February 29, 2016, Consent Order was entered[,]" and that "[Mother]

ingested marijuana or products containing THC during the evening while caring for [Natalie]." We therefore hold these findings are supported by competent evidence.[3]

The trial court relied on the decline in Natalie's school performance and Mother's marijuana use to support its conclusion that "there has been a substantial change of circumstances affecting the welfare of [Natalie]." Pursuant to the North Carolina Supreme Court's decision in *Shipman*, a substantial change, such as a move, may be held as affecting a minor child when accompanied with evidence directly linking the change to the welfare of that child. *Shipman*, 357 N.C. at 478, 586 S.E.2d at 255-56. Here, even without evidence supporting the trial court's finding related to Natalie's social and emotional development, the evidence of Natalie's school performance, which we hold was supported by substantial evidence, directly links the move to her wellbeing and therefore supports the trial court's conclusion that a substantial change in circumstances affected Natalie's welfare. *See, e.g., Spoon*, 233 N.C. App. at 48, 755 S.E.2d at 73-74. Accordingly, we hold that the trial court's order modifying custody demonstrates "a substantial change in circumstances," and

[3] Mother challenges several specific statements within the trial court's finding of fact regarding her marijuana use, including the trial court's statement that "THC medications put [Mother] in a catatonic state[,]" and Mother "is the 'girl that stops [sic] a stop sign and waits for it to turn green." Because neither of these statements are necessary to support the trial court's ultimate findings or conclusions, this language may be ignored. *See, e.g., In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) ("When . . . ample other findings of fact support an adjudication . . . erroneous findings unnecessary to the determination do not constitute reversible error.").

establishes "a sufficient nexus between the change in circumstances and [Natalie's] welfare." *Id.* at 48, 755 S.E.2d at 74.

3. Best Interests of the Child

Mother also challenges the trial court's determination, and supporting findings of fact, that it is in Natalie's best interests to modify the Custody Order. We disagree.

> Once the trial court makes the threshold determination that a substantial change has occurred, the court then must consider whether a change in custody would be in the best interests of the child. As long as there is competent evidence to support the trial court's findings, its determination as to the child's best interests cannot be upset absent a manifest abuse of discretion.

Metz v. Metz, 138 N.C. App. 538, 540-41, 530 S.E.2d 79, 81 (2000) (internal citations omitted). In determining the best interests of the child, the trial court must consider "any evidence which is competent and relevant to a showing of the best interest of that child . . . ." *Stephens*, 213 N.C. App. at 503, 715 S.E.2d at 174 (internal quotation marks and citation omitted).

In evaluating whether a relocation is consistent with the best interests of a child, a trial court should consider several factors including:

> [T]he advantages of the relocation in terms of its capacity to improve the life of the child; the motives of the custodial parent in seeking the move; the likelihood that the custodial parent will comply with visitation orders when he or she is no longer subject to the jurisdiction of the courts of North Carolina; the integrity of the noncustodial parent in resisting the relocation; and the likelihood that a realistic visitation schedule can be arranged which will

> preserve and foster the parental relationship with the noncustodial parent.

Evans, 138 N.C. App. at 142, 530 S.E.2d at 580 (citation omitted).

Here, in supporting its determination that a modification of the Consent Order was in Natalie's best interests, the trial court found Natalie "lacks stability in her academic and social development from being moved from Michigan, to North Carolina, to Florida since the last consented child custody order was entered . . . ." As discussed above, the trial court's finding related to Natalie's academic development is supported by competent evidence. Moreover, the trial court made the following unchallenged findings: Father "has consistently resided in North Carolina for the last eleven years[;]" he is "a fit and proper person to have primary physical custody and control of [Natalie][;]" Father's "integrity in resisting the relocation is evident in that he tried to contact [Mother] about the move and was not told the specific locations where [Mother] and [Natalie] were staying . . . [and] he filed his Motion to Modify Custody four weeks after [Mother] moved to Florida[;]" and that Natalie "has attended at least 15 different schools, in four different states over the last seven years of her life." Based on our examination of the entire record, including the hearing transcript, we are satisfied that the trial court did not abuse its discretion in concluding that modification of the Custody Order was in Natalie's best interests.

Conclusion

For the foregoing reasons, we hold that the trial court properly determined that there existed a substantial change in circumstances affecting Natalie's welfare and that it was in Natalie's best interests to modify the Custody Order. Accordingly, we affirm the trial court's modification order.

AFFIRMED.

Judges ELMORE and BERGER concur.

Report per Rule 30(e).