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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1175

Filed: 7 August 2018

Durham County, No. 15 CVD 5703

JACQUELINE LOUISE NEWTON, Plaintiff,

v.

JEAN-FRANÇOIS GARIÈPY, Defendant.

Appeal by Defendant from order entered 31 March 2017 by Judge Brian C. Wilks in Durham County District Court. Heard in the Court of Appeals 20 March 2018.

Ellis Family Law, P.L.L.C., by Autumn D. Osbourne, Esq., for the Plaintiff-Appellee.

Jean-François Garièpy, Ph. D., pro se.

DILLON, Judge.

Jean-François Garièpy ("Father") appeals from a permanent child custody order in which the trial court awarded sole physical and legal custody of his child to his ex-wife, Jacqueline Newton ("Mother"), and denied Father visitation. Father also appeals from a previous temporary custody order which ordered Father to undergo a full-scale psychological evaluation. For the following reasons, we affirm.

I. Background

In early 2015, Mother and Father were married. The couple separated approximately six months later. In December 2015, after the parties separated, Mother gave birth to their child.

Shortly after the child's birth, Mother was granted temporary sole physical and legal custody of the child through an *ex parte* order. The trial court entered two subsequent temporary custody orders, both of which granted Mother sole physical and legal custody of the child and which denied Father visitation. Also, Father was ordered to engage in a full-scale evaluation with a court-designated psychologist. A court-designated psychologist who conducted the evaluation of Father expressed concern regarding Father's "serious mental health issues," emotional and interpersonal relationship skills, and lack of self-control. In November 2016, based in part on the psychologist's report, the trial court entered a temporary custody order.

In March 2017, after a hearing on the matter, the trial court entered a permanent custody order granting sole physical and legal custody of the child to Mother and denying Father visitation. The trial court made the following findings of fact in support of this order:

> 55. This Court remains severely concerned over [Father's] mental health status.
>
> 56. This Court remains concerned over [Father's] ability to follow procedures associated with supervised visitation and his ability to follow this Court's Orders.

> 57. Defendant has not adequately addressed his mental health issues since the release of the evaluation.
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> 58. This Court continues to have severe concerns over [Father's] ability to provide a safe and healthy environment for the minor child.
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> 59. It is within the minor child's best interest that his permanent legal and physical custody be placed solely with [Mother] and [Mother] is a fit and proper person to exercise sole legal and sole physical custody of the minor child with [Father] not having any visitation.

Father has timely appealed the permanent custody order.

II. Standard of Review

Our trial courts are vested with broad discretion in child custody matters. *Shipman v. Shipman*, 357 N.C. 471, 474, 586 S.E.2d 250, 253 (2003). Accordingly, where substantial evidence in the record supports the trial court's findings of fact, those findings are conclusive on appeal, even if record evidence might sustain findings to the contrary. *Id.* at 475, 586 S.E.2d at 254 (citation omitted).

Absent a showing of abuse of discretion, the trial court's decision in matters of child custody should not be upset on appeal. *Everette v. Collins*, 176 N.C. App. 168, 171, 625 S.E.2d 796, 798 (2006). An abuse of discretion exists when the trial court's ruling was manifestly unsupported by reason. *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (2013). The welfare of the child has always been the polar star which

guides the courts in awarding custody. *Pulliam v. Smith*, 348 N.C. 616, 619, 501 S.E.2d 898, 899 (1998) (citation omitted).

III. Analysis

Father enumerates fourteen (14) arguments in his brief on appeal, which we address in turn.

A. Expert Psychological Evaluation

Father brings a number of arguments regarding the report from the psychologist, who conducted the court-ordered evaluation of Father. This report was entered into evidence at the temporary custody hearing. In its temporary custody order, the trial court noted a number of recommendations made by the psychologist for Father to follow. Nothing in the record shows Father objected to the admission of the report at the temporary custody hearing, and Father did not appeal the temporary custody order, which relied upon the report. At the permanent custody hearing, Father admitted that he had not complied with any of the recommendations made by the psychologist in the report. Based upon its prior order and Father's failure to address his psychological issues, the trial court entered its permanent custody order, which is the subject of this appeal.

We have reviewed Father's arguments regarding the report from the court-ordered psychologist and conclude that the trial court did not commit reversible error in regards to matters pertaining to that report. Essentially, Father argues that the

report constitutes improperly-admitted hearsay and that the opinions of the psychologist do not comply with Rule 702 of our Rules of Evidence and with *State v. McGrady*, 368 N.C. 880, 888, 787 S.E.2d 1, 9 (2016) (adopting the *Daubert* standard). However, the record shows that the report was offered into evidence at the temporary custody hearing and does not indicate that Father objected to the consideration of the report by the trial court at *that* hearing; and, therefore, any objection to the trial court's consideration of the report at that temporary custody hearing was waived. N.C. R. App. P. 10.

The record shows that at the subsequent *permanent* custody hearing, the trial court did not specifically rely on the psychologist's report per se, but rather on the prior temporary custody order which makes reference to the psychologist's report:

> THE COURT: . . . But more importantly, the report from [the court psychologist] hasn't been moved into evidence. [Y]our argument so far is trying to rebut [the psychologist's] findings, which you ask to keep out, which weren't admitted. What is in consideration is the [temporary custody] order of this Court and whether they were complied with . . . whether those issues [identified in the temporary custody order] are still a problem for the Court that I need to decide whether they affect the best interest of the child.

We have held that the trial court may consider prior temporary orders when determining the issue of permanent child custody. *Raynor v. Odom*, 124 N.C. App. 724, 728, 478 S.E.2d 655, 657 (1996). Further, we have held that a trial judge may rely on prior orders when that trial judge is evaluating what is in the best interest of the child and whether a parent is unfit. *Id.* We conclude that the trial court properly

relied upon its prior temporary custody order (where it determined that Father suffered from serious psychological issues) and on Father's admission at the permanent custody hearing that he had not addressed his psychological issues.

B. Findings Regarding Father's Relationship with Child

In the permanent custody order, the trial court made fifty-nine (59) findings of fact. Father challenges findings that relate to his relationship with the child and Mother, findings regarding his mental health, and findings regarding his personal accountability for the proceedings of the custody litigation.

Father argues these findings were not supported by evidence in the record. North Carolina General Statutes provide that any order for custody shall include such terms as *will best promote the interest and welfare of the child.* N.C. Gen. Stat. § 50-13.2(b) (2015) (emphasis added).

After careful review of the record, we conclude that the findings of fact entered by the trial court are sufficiently supported by competent evidence. Pursuant to N.C. Gen. Stat. § 7B–901 (2015), the trial court properly considered evidence that it found to be relevant, reliable, and necessary to determine the needs of the child and to reach an appropriate disposition. The trial court's findings relating to Father's relationships, mental health, and the custody proceedings support its determination that Mother be granted sole custody without visitation. We find no reversible error based on Father's argument.

C. Procedural Violations

Father alleges that the trial court erred in "ordering [Father] to be absent" on the entry award date for signing of the permanent custody order. Here, though, the trial transcript clearly states that the trial judge said "neither side *has to appear* on the 31st [when the order was entered], especially one, if everything's emailed; two, if there's a request for more time." (Emphasis added.) We conclude that the trial judge properly informed the parties that their appearance on the entry award date was not compulsory. Accordingly, we find no error.

D. Other Arguments

Father has made other arguments which we have carefully reviewed and conclude to be wholly without merit.[1]

IV. Conclusion

The trial court did not abuse its discretion or otherwise commit reversible error in denying Father's request for shared legal and physical custody of the child, in determining that the Mother be granted sole legal and physical custody of the minor child, and denying Father visitation. Therefore, we affirm the trial court's order.

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[1] For example, Father argues on appeal that the trial court violated his First Amendment rights by allowing questions to be asked in the custody hearing regarding statements Father made online in videos and on social media pages. Clearly, the First Amendment does not apply here. Free Speech protections do not apply in this case because the court is not impeding Defendant's exercise of free speech. Therefore, we find this argument to be without merit. Here, the political position expressed by Father about the violations of rights that occur in family courts against men are completely irrelevant to whether or not he is a fit parent. Also, Father challenges the trial court's finding that he called Mother and her counsel "evil b****es." We find there was sufficient evidence in the record from which the trial court could conclude that Defendant made these statements.

AFFIRMED.

Judges BRYANT and TYSON concur.

Report per Rule 30(e).