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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-641

Filed: 3 September 2019

Catawba County, No. 13 CVD 1111

ALLISON ANN LOYD (now KOCH), Plaintiff,

v.

ERIC CARL LOYD, Defendant.

Appeal by defendant from order entered 29 November 2017 by Judge Sherri W. Elliott in District Court, Catawba County. Heard in the Court of Appeals 27 March 2019.

Sigmon, Clark, Mackie, Hanvey & Ferrell, P.A., by J. Scott Hanvey and Jason White, for plaintiff-appellee.

Eric C. Loyd, pro se, defendant-appellant.

STROUD, Judge.

Eric Loyd ("Father") appeals from an order modifying custody of his daughter and denying his motion to modify custody, declining to deviate from the Child Support Guidelines, and granting attorney's fees. Father alleges the trial court erred by determining no substantial change of circumstances occurred and in calculating child support and awarding attorney's fees to Allison Koch ("Mother"). Because Father

failed to present competent evidence of a substantial change of circumstances affecting the best interest of his child and the trial court's findings as to the parties' financial circumstances were supported by the evidence, we affirm. However, we remand for the limited purpose of correcting errors in the allocation of uninsured medical expenses.

I. Background

Mother and Father married in 2004, and had one child, Elizabeth,[1] in 2005. The parties separated in 2012 and executed a separation agreement in May 2013. The trial court entered a consent order incorporating the terms and conditions of this agreement on 15 May 2013. Under the consent order, the parties had joint legal custody of Elizabeth, and Mother had primary physical custody. Father was required to pay child support of $150.00 per month, and Mother was required to provide medical insurance for Elizabeth. The parties divorced in September 2013.

On 1 September 2016, Mother filed a motion to modify child support based both upon a substantial change in circumstances and upon the allegation that the prior order was entered more than three years earlier and under the Child Support Guidelines there would be a change of more than 15% in the child support owed. In response, Father filed a motion titled "Father's Reply to Mother's Motion in the Cause to Modify Child Support, Notice of Intent to Deviate From the North Carolina

[1] Pseudonyms are used to protect the minor children's identities.

Presumptive Guidelines, and Motion to Modify Child Custody and Motion for Attorney's Fees." (Original in all caps.) Father issued a subpoena to Mother's husband, which was quashed by the trial court.

All of the pending motions were heard on 24 and 27 October 2017. The trial court dismissed Father's motion for modification of custody at the close of Father's evidence. The trial court entered an order on 29 November 2017 dismissing Father's motion to modify custody, granting Mother's motion to modify child support and attorney's fees, and denying Father's requests as to child support and attorney's fees. Father timely appealed.

II. Dismissal of Motion to Modify Visitation

A. Standard of Review

The trial court dismissed Father's motion to modify custody at the close of his evidence under Rule 41 of North Carolina's Rules of Civil Procedure:

> After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a).

N.C. Gen. Stat. § 1A-1, Rule 41(b). Therefore, on appeal, we review the order to determine if the evidence supports the findings of fact and if those findings support the conclusions of law:

> On appeal of a Rule 41(b) dismissal, this Court determines whether any evidence supports the findings of the trial judge, notwithstanding the existence of evidence to the contrary. If the findings of fact are supported by the evidence and those findings support the conclusions of law, they are binding on appeal.

Beck v. Beck, 175 N.C. App. 519, 523, 624 S.E.2d 411, 414 (2006) (citing *Lumbee River Elec. Membership Corp. v. City of Fayetteville*, 309 N.C. 726, 741-42, 309 S.E.2d 209, 218-19 (1983)).

B. Findings of Fact

Father argues that some of the trial court's findings of fact are not supported by the evidence and that the trial court's conclusion that custody should not be modified is in error. Since findings of fact must support the related conclusions of law, we will first address the findings of fact challenged by Father.

Father's motion for modification alleged he was entitled to a modification of custody based upon the following:

> 9. That since the entry of the prior Order there have been changed circumstances affecting the welfare of the minor child that now warrant a modification of the previous Order as follows:
>
> > a. The minor child is older and has expressed a desire to spend more time with Father.

> b. Mother has remarried.
>
> c. Father has always shared a strong bond with the minor child, as the child has matured, that bond has deepened through shared interests.
>
> 10. It is in the best interest of the minor child that Father be granted additional parenting time with the minor child.

The trial court made many findings regarding the motion for modification:

> 9. Since the entry of the prior Order, the Plaintiff married Alex Koch. No evidence was presented by the Defendant as to whether this remarriage affected the best interest and welfare of the minor child.
>
> 10. The Plaintiff does have another minor child from a prior relationship, named [Mary], who is currently 16 years of age and is a junior in high school. This minor child resides with the Plaintiff. After the entry of the prior Order, the Defendant exercised visitation with [Elizabeth] and was also allowed to exercise visitation with the minor child, [Mary].
>
> 11. In the Defendant's Motion to Modify Child Custody, the Defendant alleged that the minor child has expressed a desire to spend more time with the father. The Defendant did not present any evidence with regards to the child's wishes or desires to spend more time with the father.
>
> 12. In the Defendant's Motion to Modify Child Custody, he alleged that the father has always shared a strong bond with the minor child. Since the child, according to the Defendant, has always shared a strong bond with the minor child, this is not a substantial change of circumstances.

13. With regards to the Plaintiff's remarriage and the allegation that the minor child has expressed a desire to spend more time with the father, the Defendant did not present any evidence in Court whether this had a positive or negative impact on the child.

14 Since the entry of the prior Order, the Defendant has moved from an apartment in Charlotte to a home near the UNC Charlotte area. At the time the prior Order was entered, the Defendant resided in Mecklenburg County, and the Plaintiff resided in Catawba County, which is where the parties currently reside. This is not a substantial change in circumstances, and the Defendant did not present any evidence whether this may have had a positive or negative impact on the minor child.

15. The Defendant presented evidence that after the entry of the prior Order the Defendant coached the soccer activities of the minor child in Catawba County, North Carolina. The minor child is no longer playing soccer, and therefore the Defendant is no longer coaching the soccer activities. The Defendant has always been and is currently able to exercise custody and visitation with the minor child pursuant to the prior Order entered on May 15, 2013. This is not a substantial change affecting the best interests and welfare of the minor child.

16. In October of 2016, the Plaintiff and the Defendant agreed that the Defendant could keep the minor child overnight on Sunday and return the minor child to school on Monday morning, after the Defendant's weekend visitation. On this occasion, when the Defendant returned the minor child to school on Monday, the minor child did not have her book bag, and the minor child was late for school.

17. The prior Order provides that the parties should exchange the minor child in Lincolnton, North Carolina, after the Defendant's every other weekend visitation. The Plaintiff and the Defendant have been exchanging the

minor child in Gastonia, North Carolina, after the Defendant's weekend visitation, which requires the Plaintiff to drive further, and the Defendant to drive less than the Plaintiff, when exchanging the child.

18. The Plaintiff, on occasions, has been willing [to] allow the Defendant to visit with the minor child more than what the prior Order provides.

19. The current custodial schedule has not prevented the Defendant from participating in multiple activities with the child. In July of 2017, the Defendant was given an extra one (1) week to spend with the minor child, when the minor child participated in Star Talk at Queens College in Mecklenburg County, while she was in the custody of the Defendant. The Defendant has taken a cruise with the minor child. The Defendant has traveled out of town on multiple occasions with the minor child, including trips to Michigan and to Myrtle Beach. The Defendant took the minor child for four (4) days to Charleston, South Carolina to view the eclipse in August of 2017.

20. The Defendant has not been exercising his week day visits that are provided to him each week pursuant to the terms of the prior Order. During the two (2) months prior to the hearing of this matter, the Defendant did not exercise any of his week day visits. The Defendant opined the week day visit is not sufficient "quality" time.

21. The Plaintiff filed a Motion to Modify Child Support on September 1, 2016. After the Plaintiff filed her Motion to Modify Child Support on August 30, 2016, the Defendant filed his Motion to Modify Child Custody on November 22, 2016. Prior to the Plaintiff filing her Motion to Modify Child Support on September 1, 2016, the Defendant never complained about the current custodial schedule and never filed a Motion to Modify Child Custody.

22. The parties have been exercising the custodial

> schedule pursuant to the prior Order for more than three (3) years. The minor child has been doing extremely well under the provisions of the prior Order, and is a straight "A" student.
>
> 23. The Defendant has a female partner whom he has been dating, but to whom he is not engaged. The Defendant has allowed the minor child to spend the night at his partner's house while the Defendant and his partner were at the same house, thereby violating the overnight guest provision of the prior Order.
>
> 24. The minor child, while in the primary custody of the Plaintiff, has made straight "A's", takes AG classes, and has been asked to participate in the Duke Tip Program, which she qualified for due to her test scores.

Father specifically challenges only four of these findings as unsupported by the evidence, and we will address these findings. As to the other findings, Father's brief does not challenge the findings as unsupported by the evidence but simply argues evidence he considered as favorable to his position or presents a different interpretation of the evidence than found by the trial court. But under our standard of review, even if there is evidence in the record which could support a different finding, the trial court's findings are binding if there is any evidence to support them. *Beck*, 175 N.C. App. at 523, 624 S.E.2d at 414. The trial court is the sole judge of the weight of the evidence and the credibility of the witnesses. *Montague v. Montague*, 238 N.C. App. 61, 64, 767 S.E.2d 71, 74 (2014) (citing *Phelps v. Phelps*, 337 N.C. 344, 357, 446 S.E.2d 17, 25 (1994)).

Father challenges four findings which stated that he did not present evidence of certain facts, as he argues he did present evidence.

> 9. Since the entry of the prior Order, the Plaintiff married Alex Koch. No evidence was presented by the Defendant as to whether this remarriage affected the best interest and welfare of the minor Child.
>
> . . . .
>
> 11. In the Defendant's Motion to Modify Child Custody, the Defendant alleged that the minor child has expressed a desire to spend more time with the father. The Defendant did not present any evidence with regards to the child's wishes or desires to spend more time with the father.
>
> . . . .
>
> 13. With regards to the Plaintiff's remarriage and the allegation that the minor child has expressed a desire to spend more time with the father, the Defendant did not present any evidence in Court whether this had a positive or negative impact on the child.
>
> 14. Since the entry of the prior Order, the Defendant has moved from an apartment in Charlotte to a home near the UNC Charlotte area. At the time the prior Order was entered, the Defendant resided in Mecklenburg County, and the Plaintiff resided in Catawba County, which is where the parties currently reside. This is not a substantial change in circumstances, and the Defendant did not present any evidence whether this may have had a positive or negative impact on the minor child.

Father argues that the evidence he presented included "testimony and school records. He testified that following his move from a two-bedroom apartment to a three-bedroom home, the children were each able to have their own room."

This case is distinct from others where this Court has found "no evidence" findings to be problematic. *See McKinney v. McKinney*, ___ N.C. App. ___, ___, 799 S.E.2d 280, 284 (2017); *In re C.W.*, 182 N.C. App. 214, 224, 641 S.E.2d 725, 732 (2007). Here, Father did not present any evidence regarding *Elizabeth's* desire to spend more time with him—Elizabeth did not testify, his testimony that she said she wanted to spend more time with him was hearsay, and we presume the trial court relies upon competent evidence. *See Little v. Little*, 226 N.C. App. 499, 502-03, 739 S.E.2d 876, 879 (2013). Nor did Father present any evidence regarding any effect of Mother's remarriage on Elizabeth. Father's argument ignores the trial court's unchallenged findings 27 and 28 regarding his move and its potential effect on the child:

> 27. According to Google Maps, the distance between the Defendant's home in Mecklenburg County and the child's school in Catawba County is approximately one (1) hour and five (5) minutes.
>
> 28. The Defendant voluntarily moved from Catawba County to Mecklenburg County just prior to the entry of the prior Order and knew that this move would prevent him from participating in some of the minor child's activities in Catawba County.

Although Father stressed the size of his new residence, the trial court found the increased distance between his new residence and the child's school to be more

important. The trial court's findings that Father presented "no evidence" as to these facts are supported by the record. Father's argument is overruled.[2]

C. Conclusions of Law

Father challenges the following conclusions of law regarding the modification of custody:

> 2. As to the issue of modification of child custody, since the entry of the prior Custody Order, entered and filed on May 15, 2013, there has not occurred a material and substantial change of circumstances affecting the best interest and welfare of the minor child, and the Defendant's Motion to Modify Custody should be dismissed at the close of the Defendant's evidence.
>
> 3. The child custody provisions of the prior Order, entered and filed on May 15, 2013, should not be modified.

We review the trial court's conclusions *de novo*. *Beck*, 175 N.C. App. at 523, 624 S.E.2d at 414.

It is well established that

> the trial court has the authority to modify a prior custody order when a substantial change in circumstances has occurred, which affects the child's welfare. The party moving for modification bears the burden of demonstrating that such a change has occurred. The trial court's order modifying a previous custody order must contain findings of fact, which are supported by substantial, competent evidence. The trial court is vested with broad discretion in cases involving child custody, and its decision will not be

[2] Father is proceeding pro se and some of his challenges to the trial court's findings do not actually challenge the sufficiency of the evidence. To the extent that Father challenges finding 21, which states "the Defendant never complained about the current custodial schedule," this finding is also supported by competent evidence.

> reversed on appeal absent a clear showing of abuse of discretion. In determining whether a substantial change in circumstances has occurred: Courts must consider and weigh all evidence of changed circumstances which effect or will affect the best interests of the child, both changed circumstances which will have salutary effects upon the child and those which will have adverse effects upon the child. In appropriate cases, either may support a modification of custody on the ground of a change in circumstances.

Balawejder v. Balawejder, 216 N.C. App. 301, 304-05, 721 S.E.2d 679, 681 (2011) (brackets omitted) (quoting *Karger v. Wood*, 174 N.C. App. 703, 705-06, 622 S.E.2d 197, 200 (2005)).

The trial court's conclusion that Father failed to present evidence sufficient to carry his burden of showing a substantial change of circumstances affecting Elizabeth's welfare is supported by the findings of fact. Based on the evidence Father presented, no substantial change of circumstances affecting the best interest of the child has occurred, and the trial court properly dismissed Father's motion.

III. Modification of Child Support

A. Standard of Review

"Child support orders entered by a trial court are accorded substantial deference by appellate courts and our review is limited to a determination of whether there was a clear abuse of discretion." *Leary v. Leary*, 152 N.C. App. 438, 441, 567 S.E.2d 834, 837 (2002) (citing *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985)).

B. Exclusion of Relevant Evidence as to Child Support

Father argues that the trial court erred by sustaining Mother's objection to a question directed to her regarding a swimming pool:

> Q. And you all added a pool to your house,
>
> A. That was a wedding gift from my father-in-law.
>
> Q. And do you know how much that was?
>
> A. I think he --
>
> MR. HANVEY: I'm going to object to this as to relevance.
>
> JUDGE ELLIOTT: Sustained.

Father argues that he was prepared to present evidence regarding the cost of the pool, but Father did not make an offer of proof, so this argument was not preserved for appeal. N.C. Gen. Stat. § 8C-1, Rule 103(a)(2). And even if there was evidence of the cost of a wedding gift, we see no abuse of discretion in sustaining the objection. This argument is dismissed.

C. Contribution to Expenses by Mother's Husband

Father challenges finding of fact 53 which states in part that "[Mother] does not receive financial support from her current husband." However, Father ignores the trial court's other extensive findings of fact regarding the parties' financial circumstances. The treatment of Mother's new husband's contributions was within the trial court's discretion and supported by the findings. The trial court allocated

25% of the fixed expenses for Mother's household to her husband since four people live in their household.[3] This was not an abuse of discretion. As to findings Father claims the trial court should have made, there is again either no evidence to support any findings beyond what the trial court found or Father's arguments are based upon his interpretation of the evidence. This argument is overruled.

D. Bad Faith and Suppression of Income

Father argues that Mother "voluntarily reduced her income to become a full time student and then strategically moved to modify child support when her income was at the lowest is [sic] has been since her separation." Father states the trial court's reliance on *Pataky v. Pataky* is misplaced and disagrees with the trial court's finding that Mother "has not reduced her income in bad faith to avoid her family responsibilities." Father further purports to challenge a number of findings regarding Mother's employment status.[4]

The trial court found:

> 50. Based on the case of Pataky v. Pataky, 160 N.C. App. 289, 585 se2d 404 (2003), normally a party's ability to pay child support is determined by that party's income at the time the award is made. Capacity to earn may be the basis for an award where that party has deliberately depressed her income or deliberately acted in disregard of her obligation to provide support. The Plaintiff has not

[3] Mother has another child from a prior relationship who also lives in the home.

[4] Listing findings and conclusions alone is not sufficient to make or preserve challenges that are not specifically made in Father's brief, and we have considered only the arguments actually made in his brief. *See* N.C. R. App. P. 28(b)(6).

> deliberately depressed her income or deliberately acted in disregard of her obligation to provide support, since at all times, she fully support her child in an adequate fashion, and met the reasonable needs and expenses of her minor child. The Plaintiff has not reduced her income in bad faith to avoid her family responsibilities. Pursuant to the Pataky v. Pataky case, where a party forgoes all employment to become a full-time student there may not be bad faith provided the party continues to adequately provide for his/her children. The Plaintiff has not acted in bad faith, did not forego all employment to become a student, continued to adequately provide for her children, and was not motivated by a desire to avoid her reasonable support obligations.
>
> 51. The Plaintiff's child support payments should be based on her current income of $2,018.75 per month, and income should not be imputed to the Plaintiff.

Once again, Father ignores the trial court's other extensive and detailed findings regarding Mother's employment history and education. These findings fully support the trial court's finding that Mother has not acted in bad faith to suppress her income. We find no basis for Father's argument and find no abuse of discretion by the trial court in concluding that Mother did not act in bad faith. Father's argument is overruled.

E. Denial of Deviation from Child Support Guidelines.

Father argues that his request to deviate from the Child Support Guidelines should have been granted because the amount of child support awarded under the Guidelines exceeds the reasonable needs of the child, and Father does not have the ability to pay the awarded amount. The trial court found in relevant part

> 63. The Defendant's request to deviate from the North Carolina Child Support Guidelines should be denied, and the Defendant should pay child support in accordance with Worksheet A of the North Carolina Child Support Guidelines.

Father's first argument for deviation is that Elizabeth's needs are less than the presumptive amount under the Guidelines. Since Father requested a deviation from the Guidelines, the trial court was required to

> hear evidence, and from the evidence, find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support. If, after considering the evidence, the Court finds by the greater weight of the evidence that the application of the guidelines would not meet or would exceed the reasonable needs of the child considering the relative ability of each parent to provide support or would be otherwise unjust or inappropriate the Court may vary from the guidelines.

N.C. Gen. Stat. § 50-13.4(c) (2017). Accordingly, the trial court found:

> 57. The Defendant has failed to present evidence of how the guidelines would exceed the reasonable needs of the child. The guideline amount of support does not exceed the reasonable needs of the minor child. The Defendant has not shown reasons why the application of the guidelines would be inappropriate or unjust. The Court finds that application of the North Carolina Child Support Guidelines would not be unjust or inappropriate.

Father challenges this finding, but we find no abuse of discretion by the trial court in declining to deviate from the guidelines. The trial court made findings regarding the reasonable needs of the child and both parents' ability to pay. "Furthermore, . . . the trial court is not required to deviate from the guidelines no matter how compelling

the reasons to do so[.] *Pataky v. Pataky*, 160 N.C. App. 289, 303, 585 S.E.2d 404, 413 (2003), *aff'd in part, review dismissed in part*, 359 N.C. 65, 602 S.E.2d 360 (2004).

Father's next argument is that he does not have the ability to pay the amount of child support awarded. In regard to Father's income and expenses, the trial court found:

> 60. The Defendant presented evidence that his monthly mortgage payment is $833.00 per month. The Defendant did not present any other evidence of his regular monthly expenses, nor did he file a financial affidavit enumerating fixed, actual, and/or anticipated expenses or expenditures. This Court does find that the Defendant makes $5,500.00 per month, resides in his home by himself, and his only major expense is his house payment of $833.00 per month. The Defendant does have the ability to provide support for the minor child pursuant to the North Carolina Child Support Guidelines.

Father argues that "he did present evidence of recurring monthly expenses." He argues that he presented evidence as to the amounts of certain payments for student loans, credit cards, water, electricity, cable TV, internet services, telephone, and auto insurance, based upon his bank statements. At trial, although Father presented some of his bank statements as evidence, he did not testify regarding the purpose of any of the payments shown on the statements. The trial court could not make findings as to his particular expenses based only upon numbers on the bank statements. His testimony addressed only his mortgage payment and the ending monthly balances in his accounts, not his monthly expenses. Apparently, his point

was that the ending balances in his checking account were quite low each month, although he also testified that his annual income was over $66,000.00. As to his monthly expenses, he testified as follows:

> Q. -- and why is that and what extent, what are -- what would you say your biggest expenses every month are?
>
> A. The repairs to the home and just the, you know, like the mortgage. I would say the biggest items are the mortgage, the home, and just the upkeep.
>
> Q. Do you have a tax bill that you're continuing to pay?
>
> A. Oh, yes. I also have a tax bill.
>
> Q. And how much are you paying for that every month?
>
> A. One hundred dollars a month.
>
> Q. I'm sorry?
>
> A. One hundred dollars a month.

The trial court's finding that Father's "only major expense" is his house payment is consistent with Father's testimony.

Father acknowledges that he "did not file a financial affidavit, as would have been the better practice," but a financial affidavit is *required* if a party is requesting deviation from the child support guidelines. The 26th Judicial District Local Rules

require filing of certain information in child support cases, and one of those is form CCF-31, which has detailed information on monthly expenses:

> 8.1 In all cases involving claims for temporary child support, "permanent" child support, or a modification of a child support order, both Parties shall file and serve an AFS, using Form CCF-31, which contains all rules regarding mandatory disclosures.
>
> (a) In Guidelines Cases, the "short form" (pages 1-4, 8 and 9 of Form CCF-31) may be used. *In cases where the Child Support Guidelines do not apply, where one Party seeks a deviation from the Guidelines, or where one Party seeks application of Worksheet B of the Guidelines, the entire form shall be completed and served upon the other party, and the Party shall serve a Notice of Intent to Deviate or Seek Application of Worksheet B simultaneous to the Notice of Hearing.*
>
> . . . .
>
> (c) For trials of "permanent" child support claims and motions to modify, each Party shall serve the opposing Party with the AFS by 5:00 p.m. ten (10) calendar days prior to the date of the scheduled trial.

26th Judicial District Local Rules of Domestic Court, Rule 8.1 (emphasis added).

Although Father presented his bank statements, he did not present evidence to explain what expenses were reflected on the statements. The trial court had no evidence upon which to make detailed findings as to Father's reasonable expenses, other than his mortgage payment and taxes. We find no abuse of discretion by the trial court in determining Father's ability to pay.

In addition, Father argues that there is no evidence to support finding of fact 61:

> 61. The Defendant chose to move to the Charlotte, Mecklenburg County; North Carolina area, from Catawba County, North Carolina, and knew that his expenses would increase when he moved to Mecklenburg County. The Defendant is able to afford nice trips with the minor child, including a cruise, a trip to Charleston, South Carolina, and a trip to Michigan to visit his family.

Again, this finding is supported by the evidence. Father testified that he had taken a cruise, visited Michigan to visit family, and stayed in Charleston, South Carolina for four nights to view the solar eclipse. Father's arguments are overruled.

F. Health Insurance

Father argues that the "trial court erred by granting [Mother's] request and allowing her to provide insurance coverage without finding that it is affordable." The parties' 2013 consent order provided for Elizabeth to be covered by Mother's insurance. While Mother's premium for Elizabeth has increased since 2013 and Father testified that he had offered to put Elizabeth on his insurance, his modification motion did not address any proposed changes to insurance coverage. Father's argument is that the insurance cost of $204.00 per month is not "affordable" to *Mother*, but Father did not present any evidence as to any particular benefit or savings by changing to his medical insurance; he simply testified that he wanted to

provide the insurance. Accordingly, we find no abuse of discretion by the trial court in maintaining the status quo in regard to Elizabeth's insurance.

Father alleges that the trial court erred in allocating responsibility for uninsured medical expenses and points out that the trial court made an error in dividing uninsured medical costs. Under the text of the order, Father is responsible for 77% of uninsured medical costs and Mother is responsible for 33%; this totals 110%. But the Child Support Worksheet showing the calculation of child support is attached to and incorporated into the Order, and it shows that Father is responsible for 76.87% of the child's support and Mother is responsible for 23.13%. Therefore, the reference to 33% in the body of the order is a clerical error. *In re D.B.*, 214 N.C. App. 489, 497, 714 S.E.2d 522, 527 (2011) ("A clerical error is an error resulting from a minor mistake or inadvertence, especially in writing or copying something on the record, and not from judicial reasoning or determination." (brackets and quotation marks omitted)).

In addition, Father argues that Mother should be responsible for the first $250.00 in uninsured medical expenses based on the Child Support Guidelines:

> [T]he court may order that uninsured medical or dental expenses in excess of $250 per year or other uninsured health care costs (including reasonable and necessary costs related to orthodontia, dental care, asthma treatments, physical therapy, treatment of chronic health problems, and counseling or psychiatric therapy for diagnosed mental disorders) be paid by either parent or both parents in such proportion as the court deems appropriate.

N.C. Child Support Guidelines, AOC-A-162, at 5 (2015). The trial court did not allocate the first $250.00 in uninsured expenses to Mother but ordered a division of all of the uninsured medical or dental expenses in accord with the parties' percentages of responsibility.

We remand for correction of the clerical error as to Mother's responsibility for 33% of the uninsured medical expenses to conform to the worksheet calculation that she is responsible for 23%. *See In re D.B.*, 214 N.C. App. at 497, 714 S.E.2d at 527 ("When, on appeal, a clerical error is discovered in the trial court's judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record speak the truth." (quotation marks omitted)). In addition, the trial court on remand shall allocate responsibility for the first $250.00 of uninsured medical or dental expenses and other uninsured health care costs to Mother in accord with the Child Support Guidelines.

IV. Attorney's Fees

Father argues that Mother was not acting in good faith and has sufficient means to defray the cost of the suit. Father does not challenge the amount of attorney's fees, so we only consider whether the statutory requirements of North Carolina General Statute § 50-13.6 were met.

Before awarding fees, the trial court must conclude that the party seeking an award of fees is "an interested party acting in good faith who has insufficient means

to defray the expense of the suit." N.C. Gen. Stat. § 50-13.6 (2017). "Whether these statutory requirements have been met is a question of law, reviewable on appeal. Only when these requirements have been met does the standard of review change to abuse of discretion for an examination of the amount of attorney's fees awarded." *Schneider v. Schneider*, ___ N.C. App. ___, ___, 807 S.E.2d 165, 166 (2017).

Here, the trial court found:

> 72. The Plaintiff is an interested party acting in good faith. The Plaintiff's current gross income is $2,018.75 per month. Since the entry of the prior Order, the Plaintiff has adequately support the minor child and met the reasonable needs and expenses of the minor child while only receiving $150.00 per month in child support from the Defendant. The Defendant's $150.00 in child support does not even cover the amount of the minor child's health insurance expenses of $204 per month. The Plaintiff has insufficient means to defray the expenses of this lawsuit.
>
> 73. The Plaintiff is entitled to an award of counsel fees in the sum of $6,438.50, which is a reasonable attorney fee in the matter. The Defendant has the means and ability, and he is fully capable of paying attorney fees as provided in this Order.

The parties obviously had a genuine dispute over custody and modification of child support, and Mother acted in good faith to defend against Father's motion to modify custody and to request a modification of child support. Mother's monthly income at the time of trial was $2,018.75 and Father's monthly income was $5,500.00. Father argues that Mother could afford to pay her own attorney's fees, but once again, this is Father's interpretation of the evidence. The statutory requirements for awarding

attorney's fees were met.

V. Conclusion

For the foregoing reasons, we affirm in part but remand for the limited purpose of correcting the errors with uninsured medical expenses noted above.

AFFIRMED IN PART AND REMANDED.

Judges INMAN and ZACHARY concur.

Report per Rule 30(e).