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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-440

Filed: 4 February 2020

Moore County, No. 14-CVD-1022

ANTON ZACHARY ZAK, Plaintiff,

v.

SHANNON DENISE SWEATT, Defendant.

Appeal by Defendant from orders entered 6 February 2018, 2 March 2018, 15 March 2018, 7 November 2018, and 29 November 2018 by Judge Stephen A. Bibey in Moore County District Court. Heard in the Court of Appeals 13 November 2019.

Foyles Law Firm, PLLC, by Jody Stuart Foyles, for Plaintiff-Appellee.

Van Camp & Van O'Linda, PLLC, by James R. Van Camp and William M. Van O'Linda, Jr., for Defendant-Appellant.

COLLINS, Judge.

Defendant Shannon Denise Sweatt appeals from the trial court's orders: (1) granting Plaintiff Anton Zachary Zak's motion to modify child custody; (2) denying Defendant's motions to have the trial judge recuse himself and to refer Defendant's motions to recuse to another trial judge; (3) denying Defendant's motion for a new trial or an amended order; and (4) striking a previous order sealing certain documents

concerning the recusal dispute. We discern no error, and affirm the trial court's orders.

I. Background

Plaintiff and Defendant are the biological parents of a minor child, Mary,¹ who was born on 5 April 2013.

On 21 August 2014, Plaintiff filed a complaint asking the trial court, *inter alia*, to grant the parties joint legal custody of Mary, and to grant primary care, custody, and control of the child to him. Defendant answered the complaint on 10 September 2014 and, *inter alia*, asked the trial court to grant her primary care, custody, and control of Mary therein.

On 20 November 2014, the trial court entered a consent order decreeing, *inter alia*, that: (1) the parties would have joint legal custody, care, and control of Mary; and (2) Defendant would have primary, and Plaintiff secondary, care, custody, and control of the child.

On 28 March 2016, Plaintiff moved the trial court to modify the 20 November 2014 order, citing to substantial changes in circumstances affecting the welfare of Mary, including allegations that Defendant: (1) refused to share custody and respect the visitation provisions set forth within the 20 November 2014 order; (2) relocated from Richmond County to Moore County without informing Plaintiff of her new

¹ A pseudonym is used to protect the minor's identity.

address; (3) made significant decisions for the child without consulting or informing Plaintiff; and (4) made false accusations about Plaintiff to the Richmond and Moore County Departments of Social Services in an attempt to frustrate the 20 November 2014 order's grant of joint legal custody to the parties.

Defendant filed a response to Plaintiff's motion on 22 June 2016, in which she (1) generally denied that she refused to co-parent or was otherwise in violation of the 20 November 2014 order and (2) denied that there had been any substantial change in circumstances affecting Mary's welfare. In her response, Defendant admitted that she had temporarily stopped allowing Mary to stay overnight with Plaintiff while the Richmond County Department of Social Services² ("DSS") "investigated a questionable situation in the Plaintiff's home[.]" but stated that once "protective measures were instituted in [Plaintiff's] home, Defendant immediately allowed [Mary] to sleep at Plaintiff's home, returning to the overnight stays as scheduled." Thereafter, Defendant counterclaimed in her response for, *inter alia*, modification of child custody in her favor, citing to a substantial change in circumstances "due to the amount of transfer between residences, and the minor child's readjustment in the homes after arrival[.]" Defendant proposed that the trial court modify the visitation

² According to Plaintiff's amended motion to modify custody, the Moore County Department of Social Services was initially contacted by Defendant, but the Richmond County Department of Social Services ended up conducting the investigations into Mary's well-being.

schedule set forth within the 20 November 2014 order, *inter alia*, to (1) only allow Mary to visit Plaintiff's home when Mary's minor stepsister Helen³ was not in the home and (2) require Plaintiff to remove Mary's bed from the bedroom she currently shared with Helen. Plaintiff responded to Defendant's counterclaims on 13 September 2016, and generally denied Defendant's allegations.

The trial court entered an order on 21 September 2016 in which it directed DSS to produce a copy of any records concerning Mary in its possession to the court under seal, and contemplated an in-camera review of those records.

On 26 September 2017, Plaintiff moved the trial court for leave to amend his motion to modify child custody, and the trial court allowed Plaintiff's motion on 2 November 2017. Plaintiff's amended motion to modify child custody, *inter alia*, expounded upon the alleged false accusations regarding Plaintiff made to DSS by Defendant. Plaintiff alleged that Defendant: (1) unilaterally stopped allowing Mary to stay overnight with Plaintiff because she believed that Helen had inappropriately touched Mary's genital area while in Plaintiff's custody; (2) habitually took photographs of Mary's genital area when Mary returned from Plaintiff's custody; (3) initiated multiple investigations with DSS with allegations of abuse by Helen, all of which had closed without substantiating Defendant's allegations; and (4) admitted Mary to multiple doctors for genital examinations seeking to substantiate her

³ A pseudonym is used to protect the minor's identity.

concerns regarding Helen, and that the doctors did not find any signs of abuse. Defendant filed a response to Plaintiff's amended motion to modify on 13 November 2017, in which she generally denied Plaintiff's allegations, but specifically noted that Mary was taken for pediatric examinations on multiple occasions after Mary complained that her genital area was in pain.

The competing motions to modify custody came on for hearing on 30 November 2017 and 24 January 2018. On 6 February 2018, the trial court entered an order modifying the child custody arrangement.

In the 6 February 2018 order, the trial court found the following facts, *inter alia*: (1) Defendant admitted to taking photographs of Mary's genital area upon Mary's return from Plaintiff's custody, and there was no evidence presented that the photographs were shown to any doctor or any investigating agency (finding of fact 43); (2) Mary's pediatrician examined Mary in February 2016 pursuant to Plaintiff's allegations regarding inappropriate touching by Helen, but did not find any physical evidence of abuse, and did not report or seek involvement by DSS thereafter (finding of fact 45); (3) Defendant herself initiated multiple investigations into the suspected abuse with DSS, and took Mary to multiple physicians for examinations, none of which corroborated Defendant's suspicions; (4) a case conference took place between Plaintiff, Plaintiff's wife, Defendant, Defendant's husband, a clinical psychologist named Kristy Matala, and DSS worker Eboni Jones, in which the results of the DSS

investigations were discussed, including that Defendant's inspection of Mary's genital area was harmful to Mary and encouraged Mary to make false statements about what happened while she was in Plaintiff's care (finding of fact 58); (5) Defendant unilaterally refused to allow Plaintiff overnight visitation with Mary on multiple occasions; (6) Defendant allowed Plaintiff to "make up his lost time" with Mary after learning Plaintiff would file a contempt motion against her otherwise (finding of fact 62); (7) Defendant's behavior "made it extremely difficult for the parties to co-parent" Mary (finding of fact 73); and (8) Defendant had requested that the Moore County Sheriff's Office visit Plaintiff's home to check on Mary's well-being, and neither check-up resulted in further action (finding of fact 75). The trial court also found in the 6 February 2018 order that (9) Defendant's testimony at the hearing on the competing motions to modify custody "was neither consistent nor credible" and that when asked questions, "Defendant would often pontificate, provide a non-responsive answer, or respond with a question of her own" (finding of fact 67). The trial court then made its ultimate findings of fact that: (10) by a preponderance of the evidence, there had been a substantial change in circumstances since the entry of the 20 November 2014 consent order warranting modification of that order; and (11) modification of the order would be in Mary's best interests.

Based upon its findings of fact, and legal conclusions resulting therefrom that there had been a substantial change in circumstances warranting modification and

that it was in Mary's best interests to modify custody, the trial court decreed, *inter alia*, that: (1) the parties were awarded joint legal and physical custody of Mary; (2) Plaintiff was awarded primary, and Defendant secondary, physical custody of the child; and (3) Plaintiff would have ultimate decision-making authority where the parties did not agree upon any major decision affecting the child.

On 14 February 2018, Defendant filed a motion for a new trial pursuant to N.C. Gen. Stat. § 1A-1, Rule 59, or in the alternative for an amended order pursuant to N.C. Gen. Stat. § 1A-1, Rule 52. The same day, Defendant filed a motion to stay enforcement of the 6 February 2018 order pending resolution of her motion for a new trial or an amended order.

On 15 February 2018, Defendant filed a motion in the cause seeking to have Judge Bibey recuse himself from hearing any further matters in the cause, based upon allegations that: (1) certain of Judge Bibey's family members were connected on Facebook with Plaintiff's wife; and (2) Judge Bibey's niece was involved in a lawsuit with a person represented by a partner at Defendant's counsel's law firm, and that Judge Bibey discussed the lawsuit with his niece. Following a status conference on 20 February 2018, Defendant filed another motion in the cause on 26 February 2018 seeking to have her recusal motion heard by another trial judge.

On 2 March 2018, Defendant filed a renewed motion to recuse attaching unverified exhibits. Later that same day, the trial court entered orders: (1) denying

Defendant's 15 February 2018 motion to stay; (2) denying Defendant's 15 February 2018 motion to recuse; and (3) denying Defendant's 26 February 2018 motion to have the recusal motion heard by another trial judge.

Defendant filed an "AMENDED AND CORRECTED VERIFIED" motion in the cause on 5 March 2018, which reiterated the allegations of the previous motions, asked for Judge Bibey to recuse himself, and asked that the recusal motion be referred to another trial judge. The 5 March 2018 motion to recuse/refer attached the same documents that were attached to the 2 March 2018 unverified motion to recuse, and included a verification by Defendant's counsel. Plaintiff responded on 9 March 2018 and, *inter alia*: (1) moved to strike the documents attached to Defendant's 5 March 2018 motion pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(f); and (2) moved to dismiss the motion pursuant N.C. Gen. Stat. § 1A-1, Rule 12(b)(6) therein.

On 15 March 2018, the trial court entered orders denying Defendant's 2 March 2018 and 5 March 2018 motions to recuse/refer. In the 15 March 2018 orders, Judge Bibey noted that he exercised his discretion to summarily rule on the motions without further hearing, but said that he "deem[ed] it necessary to be explicit and state with particularity the consideration given by th[e] Court" in light of Defendant's repeated filings. Judge Bibey then stated: (1) regarding the purported Facebook connections, that he was unaware of any such connections or any communications between his family members and Plaintiff's wife, and that Defendant had not presented any

evidence of any improper communications that would support disqualification; and (2) regarding his niece's lawsuit, that he had been contacted by his niece regarding the lawsuit, but had not discussed the merits of the dispute, and had merely provided the names of attorneys she might contact for assistance. Judge Bibey then ruled that Defendant had not met her burden of objectively demonstrating grounds for disqualification, and denied the motions, as well as ordered that all documents concerning the recusal issue be severed from the child-custody dispute's file and placed under seal.⁴

Plaintiff responded to Defendant's motion for a new trial/an amended order on 20 March 2018. That motion came on for hearing on 20 September 2018, and the trial court denied the motion on 7 November 2018. On 29 November 2018, the trial court entered an order striking its previous order severing the recusal dispute and placing documents filed regarding the recusal dispute under seal.

Plaintiff timely noticed appeal from the trial court's 6 February 2018, 2 March 2018, 15 March 2018, 7 November 2018, and 29 November 2018 orders.

⁴ On 22 March 2018, Defendant noticed appeal from the trial court's 2 March 2018 and 5 March 2018 orders. Plaintiff filed a motion to dismiss the notice of appeal on 29 May 2018, arguing that the orders appealed from were interlocutory and not subject to immediate appellate review. The motion to dismiss was referred to this Court, and we dismissed Defendant's appeal on 4 December 2018, noting that at the time the appeal was taken, there had been no order entered by the trial court by which Defendant gained the right to appeal. *Zak v. Sweatt*, No. COA18-616, 2018 N.C. App. LEXIS 1159, at *12 (N.C. Ct. App. Dec. 4, 2018) (unpublished).

II. Discussion

Defendant argues that the trial court erred by (1) granting Plaintiff's motion to modify Mary's custody arrangement in the 6 February 2018 order and (2) denying her various motions seeking to have Judge Bibey recused and to have another trial judge hear her motions for recusal.⁵ We address those two aspects of Defendant's appeal in turn.

a. Custody Modification

"[A]n order of a court of this State 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 by either party or anyone interested." N.C. Gen. Stat. § 50-13.7(a) (2016).

Our Courts have interpreted N.C. Gen. Stat. § 50-13.7(a) as follows:

[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.

⁵ Although Defendant also noticed appeal from the trial court's (1) 7 November 2018 order denying her motion for a new trial or an amended order and (2) 29 November 2018 order striking its previous order severing/sealing the recusal dispute, she has presented no arguments regarding those orders in her brief, and those aspects of Defendant's appeal have accordingly been abandoned. N.C. R. App. P. 28(b)(6) ("Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned.").

Hibshman v. Hibshman, 212 N.C. App. 113, 121, 710 S.E.2d 438, 443 (2011)

(quotation marks, ellipsis, and citations omitted).

Regarding the “substantial change in circumstances affecting the welfare of the child” element, this Court has said:

In determining whether a substantial change in circumstances has occurred, courts must consider and weigh all evidence of changed circumstances which [a]ffect 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. . . .

This Court has held that the trial court commits reversible error by modifying child custody absent any finding of substantial change of circumstances affecting the welfare of the child. A determination of whether there has been a substantial change of circumstances is a legal conclusion, which must be supported by adequate findings of fact.

Before a child custody order may be modified, 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 connection. Where the effects of the change on the welfare of the child are not self-evident and therefore necessitate a showing of evidence directly linking the change to the welfare of the child, our appellate courts have required a showing of specific evidence linking the change in circumstances to the welfare of the child.

Id. at 121-22, 710 S.E.2d at 443-44 (internal quotation marks, brackets, ellipses, and citations omitted).

This Court has set forth the standard of review as follows:

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. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Additionally, if the trial court's findings of fact are supported by substantial evidence, the Court of Appeals must determine whether the facts support the conclusions of law. The trial court is vested with broad discretion in child custody matters. The trial court's conclusions of law receive *de novo* review.

Stephens v. Stephens, 213 N.C. App. 495, 498, 715 S.E.2d 168, 171 (2011) (internal quotation marks and citations omitted). A trial court's decision regarding whether modification is in the child's best interests is reviewed for a clear abuse of discretion. *Pulliam v. Smith*, 348 N.C. 616, 624-25, 501 S.E.2d 898, 902 (1998).

Regarding the trial court's findings of fact, Defendant contests findings of fact 43, 45, 58, 62, 67, 73, and 74. All of the trial court's other findings of fact are uncontested and therefore presumed to be supported by competent evidence. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) ("Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal.").

Each of the seven contested findings of fact are supported by substantial record evidence:

- In finding of fact 43, the trial court found that Defendant

admitted to taking photographs of Mary's genital area upon Mary's return from Plaintiff's custody, but that there was no evidence presented that the photographs were shown to any doctor or any investigating agency. Finding of fact 43 is supported by Defendant's admission in her brief on appeal that she took such photographs, and Defendant has not directed our attention to any evidence in the record that would contradict the finding that there was no evidence presented that the photographs were shown to a doctor or an investigating agency.

- In finding of fact 45, the trial court found that Mary's pediatrician examined Mary in February 2016 pursuant to Plaintiff's allegations regarding inappropriate touching by Helen, but did not find any physical evidence of abuse, and did not report or seek involvement by DSS thereafter. Finding of fact 45 is supported by Defendant's testimony that the pediatrician performed a limited examination because Mary had no irritation at the time, and that the pediatrician did not contact DSS.⁶
- In finding of fact 58, the trial court found that a case conference took place between Plaintiff, Plaintiff's wife, Defendant, Defendant's husband, clinical psychologist Kristy Matala, and DSS worker Eboni Jones, in which the results of the DSS investigations were discussed, including that Defendant's inspection of Mary's genital area was harmful to Mary and encouraged Mary to make false statements about what happened while she was in Plaintiff's care. Finding of fact 58 is supported by Jones' testimony that such a conference took place and that the report memorializing the conference that Jones read on the witness stand accurately reflected her recollections regarding the conference.
- In finding of fact 62, the trial court found that Defendant allowed Plaintiff to "make up his lost time" with Mary after learning that Plaintiff would file a contempt motion against

⁶ See N.C. Gen. Stat. § 7B-301 (2016) (requiring "[a]ny person or institution who has cause to suspect that any juvenile is abused" to make a report to the department of social services in the county where the juvenile resides or is found).

her otherwise. Finding of fact 62 is supported by Defendant's testimony that she remembered discussing contempt charges with Plaintiff and that the parties "made arrangements to make up time" as a result.

- In finding of fact 67, the trial court found that Defendant's testimony at the hearing on the motions to modify custody "was neither consistent nor credible" and that "Defendant would often pontificate, provide a non-responsive answer, or respond with a question of her own" when asked questions. Finding of fact 67 is supported by the transcript of Defendant's testimony and case law setting forth that the credibility of a witness is for the factfinder alone to determine.⁷
- In finding of fact 73, the trial court found that Defendant's behavior "made it extremely difficult for the parties to co-parent" Mary. Finding of fact 73 is supported, e.g., by Defendant's admission in her brief on appeal that she unilaterally decided to "discontinue[]" allowing Mary to have the overnight visits with Plaintiff that were contemplated by the 20 November 2014 order.
- In finding of fact 74, the trial court found that Defendant requested that the Moore County Sheriff's Office visit Plaintiff's home to check on Mary's well-being and that neither check-up resulted in further action. Finding of fact 74 is supported by Plaintiff's testimony that such checks took place based upon "accusation[s] of touching" by Helen, and that Plaintiff was not aware of any further action taking place as a result thereof.

Because (1) we conclude that these seven findings of fact are supported by substantial evidence, and (2) the remainder of the trial court's findings of fact are

⁷ See *Smith v. Beasley*, 298 N.C. 798, 801, 259 S.E.2d 907, 909 (1979) ("It is the function of the jury alone to weigh the evidence, determine the credibility of the witnesses and the probative force to be given their testimony, and determine what the evidence proves or fails to prove.").

uncontested, we conclude that the trial court's findings of fact are binding on appeal.

Koufman, supra.

Moreover, the findings of fact support the trial court's legal conclusion that a substantial change in circumstances had occurred affecting Mary's welfare. The trial court's findings of fact indicate that Defendant (1) engaged in behavior that professionals with relevant expertise concluded was harmful to the child and (2) took unilateral action that contravened an order of the trial court and impaired Plaintiff's rights under that order. We conclude that the facts therefore indicate that a substantial change in circumstances that affected Mary's welfare had taken place since the entry of the 20 November 2014 order, and that the trial court did not err by reaching the same conclusion.

Finally, we discern no abuse of discretion in the trial court's determination that modification of the 20 November 2014 order was in Mary's best interests.

We accordingly conclude that the trial court did not err by granting Plaintiff's motion to modify Mary's custody arrangement.

b. Recusal

This Court has said:

When a party requests . . . recusal by the trial court, the party must demonstrate objectively that grounds for disqualification actually exist. The requesting party has the burden of showing through substantial evidence that the judge has such a personal bias, prejudice or interest that he would be unable to rule impartially. If there is

sufficient force to the allegations contained in a recusal motion to proceed to find facts, or if a reasonable man knowing all of the circumstances would have doubts about the judge's ability to rule on the motion to recuse in an impartial manner, the trial judge should either recuse himself or refer the recusal motion to another judge.

In re Faircloth, 153 N.C. App. 565, 570, 571 S.E.2d 65, 69 (2002) (internal quotation marks and citations omitted). A trial court's denial of a motion for recusal is reviewed for abuse of discretion. *See Roper v. Thomas*, 60 N.C. App. 64, 76, 298 S.E.2d 424, 431 (1982).

As mentioned above, Defendant filed four motions asking Judge Bibey to recuse himself and/or refer Defendant's recusal motion to another trial judge. The four motions were essentially duplicative of each other, and each expressed Defendant's position that it would be improper for Judge Bibey to hear any post-trial motions based upon allegations that: (1) certain members of Judge Bibey's family were connected on Facebook with Plaintiff's wife; and (2) Judge Bibey's niece was involved in a lawsuit with a person represented by a partner at Defendant's counsel's law firm, and that Judge Bibey and his niece discussed the lawsuit. The most complete and inclusive of Defendant's motions to recuse/refer is her 5 March 2018 "AMENDED AND CORRECTED VERIFIED" motion (the "Fourth Motion"), and we will accordingly conduct our analysis of that motion, as applicable to all four.⁸

⁸ Plaintiff argues that because the third and Fourth motions to recuse/refer were substantively identical to the first and second motions to recuse/refer denied by the trial court, Defendant was

As a threshold matter, it is important to make clear that an allegation regarding a fact is not evidence—let alone “substantial evidence”—of that fact. *See Collier v. Mills*, 245 N.C. 200, 203, 95 S.E.2d 529, 532 (1956) (“The question now presented concerns allegations, not evidence.”); *Brown v. Advocate S. Suburban Hosp. & Advocate Health & Hosps. Corp.*, 700 F.3d 1101, 1105 (7th Cir. 2012) (“Mere allegations in a complaint . . . are not ‘evidence’ and do not establish a triable issue of fact.”). Defendant’s counsel verified the Fourth Motion, meaning that we can treat that motion as an affidavit—and thus evidence, substantial or otherwise—if (1) Defendant’s counsel has personal knowledge of the facts verified, (2) the verified facts would be admissible in evidence, and (3) Defendant’s counsel shows affirmatively that he is competent to testify to the verified facts. *See Page v. Sloan*, 281 N.C. 697, 705, 190 S.E.2d 189, 194 (1972) (“A verified complaint may be treated as an affidavit if it (1) is made on personal knowledge, (2) sets forth such facts as would be admissible in evidence, and (3) shows affirmatively that the affiant is competent to testify to the matters stated therein.”). While Defendant’s counsel could

precluded from seeking the same relief based upon the same grounds in the third and Fourth motions. Accordingly, Plaintiff argues, the trial court’s orders denying the third and Fourth motions should not have been entered and are of no legal effect, and Plaintiff asks that we not consider their merits, including the trial court’s purported “findings of fact” contained within those orders.

However, because: (1) Defendant’s third motion seeking recusal was filed before the orders denying the first and second motions were entered; and (2) consideration of the trial court’s orders denying the third and Fourth motions does not change our conclusion that the trial court did not err, we will proceed assuming that the trial court’s orders denying Defendant’s third and Fourth motions are properly before us, and will analyze the merits of those orders.

conceivably testify that he personally logged on to Facebook and saw the purported connections between Judge Bibey's family members and Plaintiff's wife, Defendant's counsel neither (1) claimed to have any personal knowledge regarding the alleged discussion between Judge Bibey and his niece nor (2) affirmatively showed that he would be competent to testify regarding that alleged discussion.⁹ Accordingly, like Defendant's other motions to recuse/refer, the Fourth Motion contains mere allegations regarding the discussion Judge Bibey purportedly had with his niece, and we accordingly conclude that this mere allegation cannot provide "substantial evidence that [Judge Bibey] has such a personal bias, prejudice or interest that he would be unable to rule impartially." *Collier, supra*.

Even if established as facts, neither of Defendant's allegations would provide "substantial evidence" that Judge Bibey was unable to rule impartially. First, the purported Facebook connections would merely provide evidence that Plaintiff's wife—a nonparty to the custody dispute—is acquainted with certain members of Judge Bibey's family, and would not provide evidence that Judge Bibey himself was acquainted with anyone at all. Without more, such an attenuated connection between the fact purportedly supporting recusal and the instant dispute would provide nothing more than grounds for speculation regarding bias, and we accordingly conclude that it would not cause a reasonable man with knowledge of the

⁹ The documents attached to the Fourth Motion do not change this fact, and are not themselves any evidence of any discussion between Judge Bibey and his niece.

circumstances to doubt Judge Bibey's ability to rule impartially. The purported Facebook connections are therefore insufficient to mandate recusal.

Second, even if the allegation regarding Judge Bibey's niece's lawsuit were true, that fact would provide evidence that Judge Bibey was aware that Defendant's counsel's law partner represented a client with interests adverse to his niece in a lawsuit, and that Judge Bibey discussed the lawsuit with his niece. Like the purported Facebook connections, we are left to speculate as to how a discussion between Judge Bibey and his niece regarding an unrelated lawsuit is evidence of bias in this litigation, and accordingly conclude that evidence that such a discussion took place would not cause a reasonable man with knowledge of the circumstances to doubt Judge Bibey's ability to rule impartially. Therefore, even if it were more than a mere allegation—which as discussed above, it is not—Defendant's allegation regarding Judge Bibey's niece's lawsuit would not mandate recusal.

The question remains whether Judge Bibey's purported "findings of fact" in his order denying the Fourth Motion require reversal. As mentioned above, we have said that "[i]f there is sufficient force to the allegations contained in a recusal motion to proceed to find facts . . . the trial judge should either recuse himself or refer the recusal motion to another judge." *Faircloth*, 153 N.C. App. at 570, 571 S.E.2d at 69; *see also N.C. Nat'l Bank v. Gillespie*, 291 N.C. 303, 311, 230 S.E.2d 375, 380 (1976)

(“it was not proper for this trial judge to find facts so as to rule on his own qualification to preside when the record contained no evidence to support his findings”).

However, Judge Bibey did not find any facts in any of his orders ruling upon Defendant’s motions to recuse/refer, and Defendant’s characterization of the orders as containing such findings is therefore inaccurate. In the 15 March 2018 order denying the Fourth Motion, Judge Bibey specifically set forth that he was ruling summarily, but that given the flurry of motions to recuse/refer filed by Defendant, he wished “to be explicit and state with particularity the consideration” he gave to Defendant’s motions. Nowhere in that order—or any of his other orders denying Defendant’s motions to recuse/refer—did Judge Bibey state that he was making any finding of fact. Defendant has directed our attention to no authority standing for the proposition that it is error for a trial judge to memorialize his deliberative process within an order denying a motion to recuse or refer, and we are aware of no such authority. Accordingly, while it was unnecessary and somewhat unusual for him to have done so, because he specifically set forth that he was ruling summarily and did not state in any of his orders ruling upon Defendant’s motions to recuse/refer that his deliberations contained findings of fact, we conclude that Judge Bibey did not err by including his deliberative process within those orders.

We accordingly conclude that the trial court neither erred nor abused its discretion by denying Defendant’s motions to recuse/refer.

III. Conclusion

Because we conclude that (1) substantial evidence supports the trial court's findings of fact contested by Defendant, (2) the facts support the trial court's conclusion that a substantial change in circumstances that affected Mary's welfare had taken place since the 20 November 2014 custody order, and (3) the trial court did not abuse its discretion by determining that it was in Mary's best interests to do so, we affirm the trial court's 6 February 2018 order modifying Mary's custody arrangement.

Because Defendant failed to present substantial evidence that would cause a reasonable person knowing all of the circumstances to conclude that Judge Bibey would be unable to rule impartially, we conclude that the trial court did not err or abuse its discretion by denying Defendant's motions to recuse/refer in its 2 March 2018 and 15 March 2018 orders, all of which we affirm.

Because Defendant abandoned her appeal of the trial court's 7 November 2018 and 29 November 2018 orders, we affirm those orders as well.

AFFIRMED.

Judges TYSON and YOUNG concur.

Report per Rule 30(e).