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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-325

Filed: 4 February 2020

Mecklenburg County, No. 17 CVD 10705

RANDOLPH POWELL, JR., Plaintiff,

v.

CYNESHA HAMILTON, Defendant.

Appeal by defendant from order entered 9 August 2018 by Judge Gary L. Henderson in Mecklenburg County District Court. Heard in the Court of Appeals 16 October 2019.

Tom Bush Law Group, by Nicholas L. Cushing, for plaintiff-appellee.

Hunt Law, PLLC, by Gregory Hunt, for defendant-appellant.

DIETZ, Judge.

Randolph Powell and Cynesha Hamilton are the parents of a three-year-old child. In this appeal, Hamilton challenges a child custody order awarding both parents joint custody of their child. She contends that the trial court's best interests determination ignored her evidence.

Our analysis on appeal is constrained by the narrow standard of review for best interests determinations. After hearing the parties' evidence, the trial court made a reasoned decision based on relevant fact findings. This Court has no power to second-guess that discretionary best interests decision. Accordingly, we affirm the trial court's order.

Facts and Procedural History

The following background facts are based on unchallenged findings in the trial court's order.

In July 2016, Randolph Powell and Cynesha Hamilton began a romantic relationship. After Hamilton learned she was pregnant with the couple's child, she moved to live with Powell in Alabama. Hamilton returned to North Carolina before the child was born. Powell remained in Alabama.

During their romantic relationship, Hamilton was abusive to Powell. She sent Powell abusive text messages and was convicted of "domestic violence related criminal offenses" directed at Powell. At the hearing, Hamilton testified that Powell likewise was abusive towards her, but the trial court found that Hamilton's "testimony lacks credibility."

After some additional findings concerning the parents, the court found that both parents were "fit and proper persons to assume responsibility for the care, custody and control of the minor child." The court then found that it was in the child's

best interests for the parents to share joint custody on alternating weeks. The Court acknowledged that “the child will reach school age in a few years which makes it impossible to continue a one week on/one week off custody schedule because the parties live in different states.” Thus, the court found that when the child reaches school age, Powell should have primary custody with Hamilton having alternating weekend visitation. But the court also found that, if the parties “live nearby each other” when the child reaches school age, it was in the child’s best interests to instead continue the existing, alternating-week joint custody arrangement.

The court entered corresponding conclusions of law and ordered the parties to begin the joint custody arrangement described in the order. Hamilton appealed.

Analysis

Hamilton’s sole argument on appeal is that the trial court’s “best interests” determination is not supported by the record.

In child custody cases, “the best interests of the child is the polar star by which the court must be guided.” *McRoy v. Hodges*, 160 N.C. App. 381, 386, 585 S.E.2d 441, 445 (2003). Trial courts are given “broad discretion” when assessing a child’s best interests. *Green v. Kelischek*, 234 N.C. App. 1, 13, 759 S.E.2d 106, 114 (2014). “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.” *Id.* This Court cannot find “manifest abuse of discretion” unless the

trial court's ruling "is manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision." *Id.*

Hamilton first contends that the trial court's findings ignored evidence favorable to Hamilton. But, importantly, nothing in the record suggests that the trial court refused to *consider* this evidence. Instead, Hamilton points to the lack of *findings* addressing this evidence. There is nothing unusual about the lack of evidentiary findings concerning every piece of evidence introduced at a custody hearing. In a child custody case, the trial court "is not required to find all the facts shown by the evidence, but only enough *material* facts to support the judgment." *Green v. Green*, 54 N.C. App. 571, 575, 284 S.E.2d 171, 174 (1981). The trial court did so here.

Hamilton also contends that the trial court relied on evidence "outside the record" to find that Hamilton's testimony "lacked credibility." Specifically, the trial court made findings concerning "untruthful" statements that Hamilton made at a contempt hearing in this case the week before this custody hearing. Hamilton argues that those findings are improper because there is no transcript or other documentation of Hamilton's previous testimony.

Even assuming this argument is correct, the trial court's order found that Hamilton's testimony lacked credibility for several other reasons. Thus, this finding was not a determinative one. Moreover, at the custody hearing, the trial court

informed the parties that it was relying on the court's notes from earlier hearings to evaluate Hamilton's credibility. Hamilton did not object to the court's consideration of that evidence. Thus, even if there were merit to this argument (and there is not), it is waived because Hamilton failed to timely assert it to the trial court. *In re A.E.*, 171 N.C. App. 675, 679, 615 S.E.2d 53, 56 (2005).

Finally, Hamilton challenges the trial court's overall best interests determination, arguing that the evidence in the record supports a contrary determination. This argument fails because of the narrow standard of review applicable on appeal. Although there may be other, competing best interests determinations supported by this record, the trial court's findings are supported by competent evidence and, based on those findings, the trial court's determination of the child's best interests was a reasoned decision within the court's sound discretion. *Green*, 234 N.C. App. at 13, 759 S.E.2d at 114. That is the extent of this Court's permissible review on appeal. Accordingly, we reject Hamilton's arguments and affirm the trial court's order.

Conclusion

We affirm the trial court's order.

AFFIRMED.

Judges INMAN and YOUNG concur.

Report per Rule 30(e).