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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-648

Filed: 19 May 2020

Wake County, No. 10 CVD 19466

TU N. NGUYEN, Plaintiff,

v.

ALICIA A. HELLER, Defendant.

Appeal by defendant from order entered 25 January 2019 by Judge Anna E. Worley in Wake County District Court. Heard in the Court of Appeals 22 January 2020.

*No brief filed on behalf of plaintiff-appellee.*

*Gailor Hunt Jenkins Davis Taylor & Gibbs, PLLC, by Jonathan S. Melton, for defendant-appellant.*

ZACHARY, Judge.

Defendant-Mother Alicia A. Heller appeals from an order entered upon Plaintiff-Father Tu N. Nguyen's motion to modify custody. On appeal, Mother contends that the trial court erred by requiring her to pay a portion of the costs of court-ordered reunification therapy. After careful review, we remand for additional findings of fact regarding the parties' respective abilities to pay.

### **Background**

Mother and Father have been involved in protracted high-conflict litigation regarding child custody and support since 22 November 2010.<sup>1</sup> On 25 June 2014, Father filed a motion to modify child custody, alleging that there had been a substantial change in circumstances affecting the welfare of the parties' four minor children. In sum, Father alleged that Mother was attempting to alienate the children from him. Mother did not reply to Father's motion.

Father's motion came on for hearing before the Honorable Anna E. Worley in Wake County District Court on 29-30 January, 3 April, and 18 May 2018. On 25 January 2019, the trial court entered an order in which it found, *inter alia*, that two of the children "do not see" Father and "refus[e] to spend time" with him. Accordingly, the trial court ordered the parties to engage in reunification therapy, and appointed Dr. April Harris Britt to serve as the reunification therapist. The trial court further ordered the parties to share the costs of Dr. Britt's services, with Father paying 90% and Mother paying 10% of any expense not covered by insurance.

### **Discussion**

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<sup>1</sup> We note that the record on appeal is curiously sparse, given the age and central issues of this case. In her brief, Mother references many pleadings and orders—as well as an opinion by this Court, *see generally Nguyen v. Heller-Nguyen*, 248 N.C. App. 228, 788 S.E.2d 601 (2016)—which were purportedly entered in this matter, yet omitted from the appellate record. Indeed, the subject order notes that since 25 August 2011, "multiple orders have been entered addressing temporary custody, parent coordination, and reunification"; however, only the 27 March 2013 and 25 January 2019 orders are included in the record.

On appeal, Mother argues that the trial court erred in ordering her to share in the cost of the reunification therapy. Specifically, Mother contends that “[t]he trial court’s own findings of fact do not support its conclusion of law that [she] should, or is able to, pay any part of the cost of reunification therapy.”

Mother maintains that the trial court’s order contains “no findings of her ability to pay the reunification therapist, and in fact, the evidence overwhelmingly indicates that she could *not* pay.” (Emphasis added). In support of her contention, Mother references the following findings of fact:

35. The children are on Medicaid after a job change of [Father] and have been since Summer 2015. [Father] has maintained medical insurance for all children.

. . . .

54. [Mother] is employed as a paramedic in Orange County and makes \$17 per hour or approximately \$36,000 per year. As [Mother] was unable to pay for the children’s expenses, in the past she has received: heating assistance; free/reduced price school lunches; musical instruments from the school; Medicaid; Food Stamps; scholarships for summer camps, sports, and other activities; and donations from churches and charities.

We agree with Mother that the trial court’s findings of fact are insufficient to establish whether either of the parties can afford the cost of reunification therapy. In particular, we note that the order is silent regarding Father’s employment and income, current child support and spousal support obligations, the parties’ expenses, and—save for findings of fact #35 and #54—the parties’ respective sources of income.

Moreover, the order does not indicate the cost of reunification therapy, or whether insurance will cover any of this cost. Thus, the order lacks the findings of fact necessary to fully evaluate Mother's claim on appeal.

Our Supreme Court has previously explained that

[i]t is not enough that there may be evidence in the record sufficient to support findings which *could have been made*. The trial court must itself determine what pertinent facts are actually established by the evidence before it, and it is not for an appellate court to determine *de novo* the weight and credibility to be given to evidence disclosed by the record on appeal.

*Coble v. Coble*, 300 N.C. 708, 712-13, 268 S.E.2d 185, 189 (1980) (citations omitted).

“Effective appellate review of an order entered by a trial court sitting without a jury is largely dependent upon the specificity [with] which the order's rationale is articulated.” *Id.* at 714, 268 S.E.2d at 190. “[E]ach link in the chain of reasoning must appear in the order itself. Where there is a gap, it cannot be determined on appeal whether the trial court correctly exercised its function to find the facts and apply the law thereto.” *Id.*

Because the record is sparse and the trial court's order currently lacks the requisite findings of fact necessary for appellate review of Mother's claim, we conclude that the order must be remanded for additional findings of fact. On remand, the trial court may, in its discretion, receive additional evidence as necessary to make the requisite findings of fact and enter a new order.

NGUYEN V. HELLER

*Opinion of the Court*

REMANDED.

Judges BERGER and YOUNG concur.

Report per Rule 30(e).