IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-189

No. COA20-307

Filed 4 May 2021

Mecklenburg County, No. 18 CVD 5805

ALVIS BALDWIN, Plaintiff,

v.

NICOLE JAMES, Defendant.

Appeal by Defendant from order entered 7 October 2019 by Judge Tracy H. Hewett in Mecklenburg County District Court. Heard in the Court of Appeals 9 February 2021.

No brief for the Plaintiff-Appellee.

Hunt Law, PLLC, by Gregory Hunt, for the Defendant-Appellant.

JACKSON, Judge.

¶ 1 Nicole James ("Defendant") appeals from the trial court's order awarding Alvis Baldwin ("Plaintiff") primary physical custody and joint legal custody of their daughter. We affirm the order of the trial court.

I. Background

¶ 2 Plaintiff and Defendant are the parents of one minor child, a girl, born 29 June 2013. From the minor child's birth until 15 April 2018, she resided in Charlotte,

North Carolina. For three months preceding the minor child's birth and for three months after her birth, Plaintiff lived with Defendant to assist with caring for the minor child. After living with Defendant for six months, Plaintiff moved into a home four miles away from Defendant. While living in separate residences, both parties "actively co-parented [the minor child], each providing her a loving home environment with the appropriate amount of food, clothing and shelter at their respective homes."

¶ 3 In 2014, however, the relationship between Plaintiff and Defendant began to deteriorate and Defendant requested a job location transfer to Georgia in 2017. Defendant's request was granted in 2018 and she began planning her move to Georgia. On 15 April 2018, Defendant moved with the minor child to Georgia.

¶ 4 Plaintiff initiated this action on 19 March 2018 after learning that Defendant had removed the minor child from daycare and Plaintiff was unable to reach Defendant by phone or text. In his complaint, Plaintiff requested that the court award him custody. On 13 April 2018, Defendant filed an answer and counterclaim for custody, child support, and other fees. Subsequently, Plaintiff filed a Motion for Temporary Parenting Arrangement. On 14 December 2018, the trial court entered a Temporary Custody Order awarding both parties shared legal and physical custody, with the minor child's primary residence being with Plaintiff.

¶ 5 On 20 August 2019, the motions for permanent custody came on for hearing

before the Honorable Tracy H. Hewett in Mecklenburg County District Court. On 7 October 2019, the trial court entered a permanent custody order awarding both parties joint legal and physical custody, with the minor child's primary residence being with Plaintiff. Defendant timely filed and served a Notice of Appeal.

II. Analysis

¶ 6 In child custody cases, we review permanent custody orders under a three-prong test to ascertain: "(1) whether the challenged findings of fact are supported by substantial evidence; (2) whether the trial court's findings of fact support its conclusions of law; and (3) whether the trial court abused its discretion in fashioning the custody and visitation order." *Peters v. Pennington*, 210 N.C. App. 1, 12, 707 S.E.2d 724, 733 (2011).

¶ 7 "[T]he trial court's findings of fact are conclusive on appeal if there is evidence to support them, even though the evidence might sustain findings to the contrary." *Estroff v. Chatterjee*, 190 N.C. App. 61, 68, 660 S.E.2d 73, 77 (2008) (internal citation omitted). Unchallenged findings of fact, however, are "presumed to be supported by competent evidence and [are] binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (internal citations omitted).

¶ 8 Where, as here, the trial court grants one parent primary physical custody after finding that both parties are fit and proper persons to have physical and legal custody of the child, such determination will only be upheld if it is supported by

competent evidence. *Green v. Green*, 54 N.C. App. 571, 574, 284 S.E.2d 171, 174 (1981). Competent evidence is such relevant evidence as "a reasonable mind might accept as adequate to support the finding." *State v. Wiles*, 270 N.C. App. 592, 597, 841 S.E.2d 321, 325 (2020). "Whether these findings support the trial court's conclusions of law is reviewable *de novo*." *Estroff*, 190 N.C. App. at 68, 660 S.E.2d at 77 (internal citation omitted).

A. Challenged Factual Findings

¶ 9 Defendant raises a number of challenges to the evidentiary support for the trial court's findings of fact, which we address in turn.

1. Finding of Fact Number 18

¶ 10 Plaintiff first challenges the trial court's eighteenth finding of fact, in which the court found:

> 18. There are no distinct advantages of relocating [the minor child] to Georgia in terms of its capacity to improve the life of the child.

Defendant argues that the trial court dismissed credible evidence that showed that the minor child would experience advantages if she relocated to Georgia.

¶ 11 During the custody hearing, Defendant testified that she: (1) is employed and has a set schedule that allows her to pick the minor child up from school daily; (2) lives in a four-bedroom home where the minor child has her own room; (3) frequently volunteers at the minor child's school; (4) has provided the minor child with a set

schedule to include homework, snacks, play time, and dinner; and (5) is intentional about providing opportunities for the minor child to get "socialized and have fun."

¶ 12 To that end, Plaintiff testified that he too: (1) is employed and picks the minor child up from the bus stop after school; (2) attended the scheduled parent/teacher conference; and (3) has the minor child on a set schedule to include homework, study time, play time, dinner, and a preset bedtime. Plaintiff also indicated, and Defendant agreed, that the minor child is well-nourished, currently enrolled in a good school, and does not lack any social skills.

¶ 13 Altogether, both parties are active in the minor child's life. They both keep the minor child on a set schedule, monitor her relationships with friends and family, seek assistance from family in caring for the child, and remain involved in her academic affairs. Therefore, we hold that the evidence presented supports the trial court's finding that "[t]here are no distinct advantages of relocating [the minor child] to Georgia in terms of its capacity to improve [her] life."

2. Finding of Fact 11, 12, and 19

¶ 14 Plaintiff next challenges the trial court's eleventh, twelfth, and nineteenth findings of fact, in which the court found:

> 11. Mother did not inform Father of her intentions to move their daughter to Georgia and prevented Father from visiting [the minor child] until December 2019 when this Court granted him primary custody.

> 12. The actions of Mother to move their daughter to Georgia without informing Father severed the bond between Father and [the minor child] and was not in the best interest of their daughter.
>
> 19. The motives of the Mother in seeking the move are questionable, as she did not inform Father about her relocation.

¶ 15 Defendant contends that these findings are not supported by the evidence. Specifically, Defendant argues that she informed Plaintiff of her intent to relocate with the minor child at least two years prior to doing so and attempted to discuss the issue with Plaintiff in 2018, but he dismissed her. To that end, Defendant asserts that she informed Plaintiff where she and the minor child would be living in Georgia, and Plaintiff made no attempts to visit.

¶ 16 When asked about having prior knowledge of the relocation of the minor child, Plaintiff testified as follows:

> Q: Mr. Baldwin, the phone works two ways, doesn't it?
>
> A: Of course it does. It does.
>
> Q: And you could have reached out to Ms. James.
>
> A: In the beginning, I did reach out to Ms. James. Ms. James blocked my number.

Plaintiff thus testified that he had no prior knowledge of Defendant moving to Georgia with their minor child.

¶ 17 To the extent Defendant is asking this court to assess the credibility of

Plaintiff's testimony, we decline to do so. It is the duty of the trial judge to "pass upon the credibility of the witnesses and the weight to be given their testimony and the reasonable inferences to be drawn therefrom." *In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 168 (2016) (internal marks and citations omitted). Thus, Defendant's testimony relating to her failed attempt to discuss the matter of relocation with Plaintiff and her mention of the relocation two years prior to the actual move, along with Plaintiff's denial of notice, supports the trial court's findings as they relate to Plaintiff's lack of knowledge about Defendant's relocation.

3. Finding of Fact 8

¶ 18 Defendant next challenges the trial court's eighth finding of fact, in which the court found:

> 8. After the parties were living in separate residences, they actively co-parented [the minor child], each providing her a loving home environment with the appropriate amount of food, clothing and shelter at their respective homes. That during this time Father and [the minor child] developed a significant bond between one another.

¶ 19 Defendant contends that she was the minor child's primary caregiver prior to relocating. During the custody hearing, Plaintiff testified that he and Defendant "had split days" with their daughter. Defendant also acknowledged that there was a "sharing of custody," in which she emphasized that the minor child spent the "majority" of her time with Defendant. In any case, irrespective of who had the minor

child the majority of the time, both parties acknowledged that there was some form of co-parenting. Thus, the evidence presented at trial supports the trial court's finding that both parties "actively co-parented."

4. Finding of Fact 20

¶ 20 Lastly, Defendant challenges the trial court's twentieth finding, in which the trial court found as follows:

> 20. Father resisting the move to Georgia was reasonable, as it would sever the close relationship he had with their daughter and it would move [the minor child] out of the environment that she knew all of her life.

Defendant contends that this finding is not supported by the evidence.

¶ 21 Aside from this finding, the trial court also found that there was no evidence to suggest that Defendant would not comply with the court's custody order and both parties had been "abiding by the Temporary Custody Order set by the court and have been able to maintain a cordial relationship with respect to [the minor child]."

¶ 22 Presumably, if both parents are abiding by the custody order, the minor child's relationship with Plaintiff would be preserved if the child relocated to Georgia with Defendant, as would her relationship with Defendant if she remains in North Carolina with Plaintiff. Thus, in light of both parties previously abiding by the temporary custody order and the reality that only one parent can be awarded primary physical custody—depriving the other parent of primary physical contact with the

minor child, but not necessarily severing the noncustodial parent's relationship with the minor—this finding is not supported by the evidence. However, this finding of fact is not needed to support the trial courts order, and we disregard the challenged finding, even if erroneous, as harmless. *See In re A.C.*, 247 N.C. App. 528, 533, 786 S.E.2d 728, 733 (2016).

B. Best Interest Determination

¶ 23 Defendant also argues that the trial court abused its discretion in awarding primary physical custody to Plaintiff. "We review a trial court's [legal conclusion] as to the best interest of the child for an abuse of discretion." *In re C.P.*, 252 N.C. App. 118, 122, 801 S.E.2d 647, 651 (2017) (internal citation omitted). "[T]he paramount consideration and polar star which have long governed and guided the discretion of our trial judges in [these] matters, are the welfare and needs of the child, not the persons seeking his or her custody, and even parental love must yield to the promotion of those higher interests." *In re Custody of Peal*, 305 N.C. 640, 645-46, 290 S.E.2d 664, 667-68 (1982) (internal marks and citations omitted).

¶ 24 Thus, the trial judge is entrusted with broad discretion in choosing the "environment which will, in [her] judgment, best encourage full development of the child's physical, mental, emotional, moral and spiritual faculties." *Id.* at 645, 290 S.E.2d at 667 (internal citation omitted). "A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason

. . . [or] upon a showing that [its ruling] was so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

> In exercising its discretion in determining the best interest of the child in a relocation case, [such as this,] factors appropriately considered by the trial court include but are not limited to: the advantages of the relocation in terms of its capacity to improve the life of the child; the motives of the custodial parent in seeking the move; the likelihood that the custodial parent will comply with visitation orders when he or she is no longer subject to the jurisdiction of the courts of North Carolina; the integrity of the noncustodial parent in resisting the relocation; and the likelihood that a realistic visitation schedule can be arranged which will preserve and foster the parental relationship with the noncustodial parent.

Ramirez-Barker v. Barker, 107 N.C. App. 71, 79-80, 418 S.E.2d 675, 680 (1992), *overruled on other grounds by Pulliam v. Smith*, 348 N.C. 616, 501 S.E.2d 898 (1998).

¶ 25 In considering the relocation factors presented in *Barker*, the trial court's evidence supported the following relevant findings:

> 18. There are no distinct advantages of relocating [the minor child] to Georgia in terms of its capacity to improve the life of the child.
>
> 19. The motives of the Mother in seeking the move are questionable, as she did not inform Father about her relocation.
>
> . . .
>
> 21. There was no evidence presented that would suggest that Mother would not comply with visitation orders.

> 22. Due to the distance between the parties, it is unlikely that a realistic visitation schedule can be arranged which will preserve and foster the Father's relationship with their daughter if [the minor child] was relocated to Georgia.

Based on these findings, and the court's consideration of North Carolina as the minor child's "home state," the trial court concluded that it was in the best interest of the child that plaintiff be awarded primary physical custody.

¶ 26 Here, "[t]he trial court ha[d] the unique opportunity to see and hear the parties, [and] witnesses. . . . Although reasonable persons presented with the very difficult issue before the trial court could disagree, we are unable to say that the trial court abused its discretion." *Barker*, 107 N.C. App. at 80, 418 S.E.2d at 680. Therefore, we hold that the trial court's findings supported its conclusion that it was in the best interest of the child that Plaintiff be awarded primary physical custody and further, that the court's conclusion was not "manifestly unsupported by reason . . . [or] so arbitrary that it could not have been the result of a reasoned decision." *White*, 312 N.C. at 777, 324 S.E.2d at 833.

III. Conclusion

¶ 27 We affirm the order of the trial court because the trial court's findings relating to relocation were supported in relevant part by the evidence presented, and these findings supported the court's conclusion that it was in the best interest of the child that Plaintiff be awarded primary physical custody.

AFFIRMED.

Judges COLLINS and GORE concur.

Report per Rule 30(e).