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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-557

No. COA21-48

Filed 5 October 2021

Halifax County, No. 13CVD237

SUZETTE MARIE WARREN, Plaintiff,

v.

DARREN HENRY GEMZIK, Defendant.

Appeal by Plaintiff from order entered 3 August 2020 by Judge Brenda G. Branch in Halifax County District Court. Heard in the Court of Appeals 10 August 2021.

*Pritchett & Burch, PLLC, by Lloyd C. Smith, III, for Plaintiff-Appellant.*

*No brief filed for Defendant-Appellee.*

COLLINS, Judge.

¶ 1

Plaintiff Suzette Marie Warren appeals from an order modifying the custody of the two children she shares with Defendant Darren Henry Gemzik. Plaintiff argues that the trial court failed to find sufficient facts to support conclusions of law that a substantial change of circumstances affecting the welfare of the children warranted a modification of custody, and that a modification of custody was in the children's best interests. We affirm.

## **I. Factual and Procedural Background**

¶ 2

In 2013, Plaintiff and Defendant entered into a separation agreement wherein they agreed upon child custody, child support, visitation, and equitable division of marital property. They specifically agreed that Plaintiff would have custody of the parties' two minor children, Elaine and Anna,<sup>1</sup> and Defendant would have visitation "as the parties may agree in writing under terms that will not interfere with the health, education and well-being of said children." Defendant would pay Plaintiff \$900 monthly in child support and maintain health insurance for the children. The separation agreement was subsequently incorporated into a judgment for absolute divorce.

¶ 3

Defendant filed a motion in the cause in September 2015, seeking to modify the child custody, child support, and visitation provisions of the divorce judgment. The parties entered into a Consent Order in December 2016, wherein they

agreed that there has been a substantial change of circumstances that justifies changing with specificity the visitation privileges granted to the Defendant with his aforesaid minor children as hereinafter set forth as the Plaintiff now spends a significant portion of her summer at her residence in Carolina Beach and the Defendant, who is a school teacher, has remarried and moved to Rocky Mount, North Carolina.

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<sup>1</sup> We use pseudonyms for the minors in this case to protect their identities. N.C. R. App. P. 42(b).

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¶ 4

The Consent Order left custody of the children with Plaintiff and granted Defendant visitation as follows: every other weekend during the school year, “in the months of June and July beginning at 5:00 p.m. on the second and fourth Friday of June and July until the following Friday at 5:00 p.m.,” and on specified holidays. Defendant was granted certain privileges regarding the children’s well-being, including access to medical information and school records and the right to communicate with physicians, schoolteachers, and school staff.

¶ 5

Defendant filed a motion in the cause in April 2019, seeking to modify the Consent Order. Defendant alleged there had been a substantial change of circumstances affecting the welfare of the children based on the following allegations: the children were older; Plaintiff had allowed the children to visit alone with a middle-aged, unrelated, male family friend; Defendant consistently warned Plaintiff of the inappropriate nature of these visits and the contact between the children and Plaintiff’s family friend; Plaintiff informed Defendant on 8 April 2019 that the family friend had been taking indecent liberties with at least one of the minor children; and Plaintiff was unable to protect the minor children and unwilling to expose and prosecute the family friend.

¶ 6

After a hearing on the motion, the trial court entered an Order on Modification of Custody/ Visitation on 3 August 2020 (“Order”). The trial court made 27 detailed findings of fact, upon which it concluded, in part, “[T]here has occurred a substantial

and material change in circumstances. It is in the best interests of the parties' aforesaid minor children to modify the custodial and visitation provisions" of the Consent Order.

¶ 7 The Order awarded the parties joint legal and physical custody of the children. During the school year, the children reside with Plaintiff in Carolina Beach on weekdays and one weekend each month; the children visit Defendant the first, second, and fourth weekends each month. During the summer, the schedule is reversed, with the children residing with Defendant weekdays and one weekend each month, and visiting Plaintiff the first, second, and fourth weekends each month. The parties share in making all major decisions that affect the children, have equal access to the children's records and information, and have the right to authorize medical treatment for the children. Plaintiff appealed.

## **II. Discussion**

¶ 8 The law governing our review of the issues is well established:

[A] trial court may order a modification of an existing child custody order between two natural parents if the party moving for modification shows that a substantial change of circumstances affecting the welfare of the child warrants a change in custody. . . .

[A] trial court's principal objective is to measure whether a change in custody will serve to promote the child's best interests. Therefore, if the trial court does indeed determine that a substantial change in circumstances affects the welfare of the child, it may only

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modify the existing custody order if it further concludes that a change in custody is in the child's best interests.

The trial court's examination of whether to modify an existing child custody order is twofold. The trial court must determine whether there was a change in circumstances and then must examine whether such a change affected the minor child. . . . [If] the trial court determines that there has been a substantial change in circumstances and that the change affected the welfare of the child, the court must then examine whether a change in custody is in the child's best interests. If the trial court concludes that modification is in the child's best interests, only then may the court order a modification of the original custody order.

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. . . .

. . . .

In addition . . . , this Court must determine if the trial court's factual findings support its conclusions of law. With regard to the trial court's conclusions of law, . . . the trial court must determine whether there has been a substantial change in circumstances and whether that change affected the minor child. Upon concluding that such a change affects the child's welfare, the trial court must then decide whether a modification of custody was in the child's best interests. If we determine that the trial court has properly concluded that the facts show that a substantial change of circumstances has affected the welfare of the minor child and that modification was in the child's best interests, we will defer to the trial court's judgment and not disturb its decision to modify an existing custody agreement.

*Shipman v. Shipman*, 357 N.C. 471, 473-75, 586 S.E.2d 250, 253-54 (2003) (quotation marks and citations omitted).

### **A. Substantial Change of Circumstances**

¶ 9 Plaintiff first argues that the trial court failed to find facts sufficient to support a conclusion that there was a substantial change of circumstances affecting the welfare of the children.

¶ 10 The trial court made the following, relevant findings of fact:

9. That the minor children were educated at [] a private school in Roanoke Rapids. [Elaine] attended the school for all but [a] small portion of her education. [Anna] had never attended another school prior [to] August 2019 when the Plaintiff decided that the children would attend school in New Hanover County for a fresh start. [Anna] has always been a good student. [Elaine] has experienced some educational challenges.

10. That the Plaintiff informed the Defendant on April 8, 2019, that a family friend, Douglas Roberson, had allegedly been taking indecent liberties with [Anna]. [Anna] disclosed the abuse to a friend, the Plaintiff, and her teachers at [her school]. The Plaintiff confronted Mr. Roberson and thereafter notified law enforcement. Ms. Warren had [Anna] evaluated by her pediatrician. The Department of Social Services began an investigation. A forensic evaluation was scheduled initially for [Anna] and subsequently for [Elaine] with TEDI Bear Child Advocacy Center in Greenville. [Elaine] never disclosed any abuse. The TEDI Bear Report for [Anna] was admitted into evidence. According to the report, the history supported a diagnosis of sexual abuse even though the genital examination did not show signs of injury. Recommendations for after care were made for Trauma

Focused Counseling.

11. That the minor children were allowed to spend unsupervised time with Douglas Roberson. . . . The Defendant believed that the children had spent nights alone in the home of Mr. Roberson. The Plaintiff acknowledged that the minor children were allowed to visit in Mr. Roberson's home alone, but the children never stayed overnight alone at Mr. Roberson's home. . . . Ms. Warren grew up with Mr. Roberson. . . . He was a part of their tight-knit community. . . . The Plaintiff said that there were no red flags to indicate or signal danger. Mr. Roberson had never been arrested for abuse of children.

12. That the Defendant texted the Plaintiff that the nature of the contact between Mr. Roberson and the minor children was highly inappropriate. Defendant provided written documentation and testimony supporting his warnings about the minor children's contact with Douglas Roberson. These warnings dated back many years. . . . When the Plaintiff notified the Defendant of the abuse, the Defendant was incensed and blamed the Plaintiff for [the] abuse.

13. That the Department of Social Services determined that the Plaintiff acted appropriately after the allegations were disclosed. The Agency determined that the perpetrator, Douglas Roberson, was not a caregiver for the minor child. The Agency determined that none of the caregivers were perpetrators; therefore, they closed their case. The Agency did not determine if the Plaintiff acted appropriately prior to the report of abuse.

14. That TEDI Bear recommended that [Anna] continue her routine care with her primary care physician; that she have a trauma focused mental health evaluation and participate in trauma focused mental health treatment; that all caregivers participate in trauma focused mental health treatment; and that she have no further contact

with Douglas Roberson. The Defendant and his wife Jennifer began to attend and continued to attend trauma focused therapy pursuant to the recommendations. The Plaintiff scheduled therapy for [Anna] but did not identify a trauma focused mental health therapist. The Plaintiff made arrangements for [Anna] to have counseling in Roanoke Rapids before she decided to move to Carolina Beach. [Anna] was seen once. All parties attended. Then the Plaintiff moved to Carolina Beach. She also made arrangements for counseling in the Carolina Beach area; however, neither was a certified trauma focused mental health therapist. In addition, Ms. Warren never enrolled herself in trauma focused mental health therapy.

....

17. That the Plaintiff unilaterally decided to move herself and the minor children to Carolina Beach for a fresh start. The Plaintiff and the minor children were familiar with the area. Although the children had never attended school in [Carolina Beach], they were very familiar with the area. . . . [Anna]’s grades from the first grading period at her new school were good. [Elaine]’s grades and performance were fair but consistent with her prior performance. Both girls have counselors in Wilmington. The counselors are not trauma focused counselors. The parties have disagreed about the selection of the girls’ counselors and healthcare providers. The Plaintiff selected the counselors and health care providers without any contribution from the Defendant. At the hearing of this matter, the Plaintiff was traveling almost every weekend. The children were visiting with the Defendant every other weekend. . . .

18. That the New Hanover County Public Schools offer a better opportunity for the minor children to experience diversity and the plentiful resources of that area. Public Schools would also allow the Defendant to be more involved in the children’s education by offering the increased ability to collaborate and communicate with the staff and



administrators. The minor children appeared to have weathered the transition relatively well at the hearing of this matter.

. . . .

20. . . . The minor children should have already been enrolled [in] trauma focused therapy. The Plaintiff should have considered the Defendant’s text messages and objections regarding the minor children’s involvement with Douglas Roberson.

21. That the Defendant should have more access to the minor children and more involvement in decisions involving the minor children. . . .

¶ 11 Plaintiff does not challenge these findings as unsupported by the evidence and they are, therefore, binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Based on its findings, the trial court concluded, in relevant part:

2. . . . [T]here has occurred a substantial and material change in circumstances. It is in the best interests of the parties’ aforesaid minor children that the Court modify the custodial and visitation provisions of the aforesaid Consent Order for Child Custody, as set out hereinafter with more specificity.

3. . . . [I]t is in the best interests of the said minor children, and would promote their general welfare, that their legal and physical custody be granted to the parties jointly . . . .

¶ 12 The findings of fact support the trial court’s ultimate finding and subsequent conclusion that “there has occurred a substantial and material change in circumstances.” Plaintiff argues that the trial court failed, however, to make

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sufficient findings to support a conclusion that this substantial change of circumstances *affected the welfare of the children*. We disagree.

¶ 13 The trial court found facts with respect to Plaintiff's relocation and the abuse of Anna by Plaintiff's family friend that support a conclusion that the substantial change of circumstances affected the welfare of the children. Specifically, the court found that Plaintiff and the children relocated from Halifax County to Carolina Beach, that Plaintiff enrolled the children in a new school, and that the children were doing well with the transition. The court found that before the move, Anna reported she had been inappropriately touched by Plaintiff's family friend Mr. Roberson, that Plaintiff reported the abuse to the police, that DSS initiated an investigation, and that Anna was evaluated by TEDI Bear. The court further found that Defendant had, for several years, been telling Plaintiff that he felt the children's relationship with Mr. Roberson was highly inappropriate, but that Plaintiff had repeatedly ignored his warnings.

¶ 14 The trial court also found that TEDI Bear recommended that Anna and each of her caregivers participate in trauma-focused counseling. In response to this recommendation, Plaintiff connected Anna and Elaine with general counselors in the Carolina Beach area but did not connect Anna with a trauma-focused counselor. Moreover, it found that Plaintiff had not herself participated in counseling, as was recommended for all caregivers, and that Defendant and his wife had enrolled in

trauma-focused therapy. The court further found that Plaintiff should have considered Defendant's objections and concerns regarding the minor children's involvement with Mr. Roberson, and that the children should have already been placed in trauma-focused therapy. Considering these facts, the trial court found that Defendant should have greater access to and more involvement in decisions regarding the children.

¶ 15 These findings, which establish that Anna experienced sexual abuse and required trauma-focused counseling, but had yet to receive such therapy, establish a sufficient "nexus" between the substantial change in circumstances and the effect on the welfare of the child. *See Shipman*, 357 N.C. at 478, 586 S.E.2d at 255 ("[F]ollowing from th[e] prerequisite [that the evidence must demonstrate a connection between change and effect] is the requirement that the trial court make findings of fact regarding that connection.") (citations omitted).

¶ 16 Although the trial court failed to specifically conclude that the substantial change of circumstances "affected the welfare of the children," "[t]he trial court is not constrained to using certain and specific buzz words or phrases in its order." *Karger v. Wood*, 174 N.C. App. 703, 709, 622 S.E.2d 197, 202 (2005) (quotation marks and citation omitted). It is implicit in the conclusion that "there has occurred a substantial and material change in circumstances [and i]t is in the best interests of the parties' aforesaid minor children that the Court modify the custodial and

visitation provisions” that the change in circumstances affected the welfare of the children, and thus, supported the change in custody. *See id.*

¶ 17 Accordingly, we conclude that the findings of fact support a conclusion of law that a substantial change of circumstances affecting the welfare of the children occurred.

### **B. Best Interests of the Children**

¶ 18 Defendant also argues that the trial court failed to make sufficient findings of fact to support its conclusion of law that a modification of custody was in the best interests of the children. We disagree.

¶ 19 The trial court found that the children had “weathered the transition” to Carolina Beach relatively well. The trial court also found that Plaintiff was traveling almost every weekend while the children were visiting with the Defendant every other weekend; Plaintiff should have considered Defendant’s text messages and objections regarding the minor children’s involvement with Mr. Roberson; the parties have disagreed about the selection of the children’s counselors; Plaintiff selected the children’s counselors, and the counselors chosen are not trauma-focused; the children should have already been enrolled in trauma-focused therapy; and Defendant should have more access to and involvement in decisions concerning the children. Taken together, these findings support the conclusion that “both the Plaintiff and the Defendant are fit and proper persons” to have custody of the children, and that

granting the parties joint legal and physical custody was “in the best interests of the said minor children, and would promote their general welfare.”

### **III. Conclusion**

¶ 20 The findings of fact support the conclusions of law that a substantial change of circumstances has affected the welfare of the minor children and that modification of custody was in the children’s best interests. Accordingly, we affirm the Order of the trial court.

AFFIRMED.

Judges DIETZ and GORE concur.

Report per Rule 30(e).