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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-629

No. COA21-330

Filed 16 November 2021

Pitt County, Nos. 20 JA 200-02, 21 CVD 672

In the Matters of: T.-N. J.J., T.-L. J.J., T.-H. J.J.

Appeal by Respondent-Mother from Orders entered 3 March 2021 by Judge Lee Teague in Pitt County District Court. Heard in the Court of Appeals 20 October 2021.

Freedman Thompson Witt Ceberio & Byrd, PLLC, by Christopher M. Watford, for respondent-appellant mother.

R. Matthew Gibson for Pitt County Department of Social Services.

Poyner Spruill, LLP, by Caroline P. Mackie, for Guardian Ad Litem.

HAMPSON, Judge.

Factual and Procedural Background

¶ 1 Respondent-Mother (Mother) appeals from the trial court's Three Month Review Order and Child Custody Order Pursuant to N.C.G.S. §7B-911 (Civil Order) terminating juvenile court jurisdiction, transferring the case to a civil child custody matter, and granting legal and physical custody to Respondent-Father (Father). The Record tends to reflect the following:

¶ 2 Mother has six children; Nicole, Linda, and Hanna[1] are the three children involved in this matter. On 28 August 2020, the Pitt County Department of Social Services (DSS) filed a Juvenile Petition (Petition) in Pitt County District Court alleging Nicole, Linda, and Hanna were neglected juveniles; however, DSS did not seek non-secure custody. The Petition alleged Mother had left the children unsupervised and in an injurious environment. The Petition came on for hearing on 29 October 2020. The same day, after the hearing, the trial court rendered its decision.

¶ 3 On 20 November 2020, DSS filed a Motion for Review alleging "inappropriate behavior" by Mother and "inappropriate contact" between the children and other siblings. The Motion sought to "address the cessation of visits and to request non-secure and custody with [Father]." On 15 December 2020, the trial court entered its written Order adjudicating the children neglected and ordering Mother and Father to share joint legal custody, while granting Father physical custody. This Order set a "Three Month Review Hearing" pursuant to N.C. Gen. Stat. § 7B-906.1 for 28 January 2021. Although originally calendared for 3 December 2020, the trial court continued the hearing for DSS's Motion until 28 January 2021—the date set for the Three Month Review hearing.

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[1] Pseudonyms to which the parties stipulated.

¶ 4 During the 28 January 2021 hearing, the trial court heard evidence that Mother had violated conditions on visitation ordered by the trial court as part of its disposition following the neglect adjudication. Moreover, the trial court also heard evidence of inappropriate touching and behavior between the children and another sibling while visiting Mother. After the close of evidence, the trial court stated it would order legal and physical custody of Nicole, Linda, and Hanna "be granted to Respondent-Father" and that Mother "have supervised visits with the girls four hours once a month" supervised "by the Family Center with the parties sharing equally the cost of that." The trial court also stated that it would "prepare a Chapter 50 file with the Father as the Plaintiff and Mother is the Defendant" and "terminate [juvenile] jurisdiction."

¶ 5 On 3 March 2021, the trial court entered its written Three Month Review Order. The Three Month Review Order included the following pertinent Findings of Fact:

> 6. On November 10, 2020 an investigative assessment was received by [DSS] for sexual abuse and improper supervision due to explicit photographs that were found on [Hanna's] tablet.
>
> 7. It was also reported by [Hanna] that she and her siblings were inappropriately touched by their older brother.
>
> 8. As a result of the November 10, 2020 assessment a safety plan was put in place by which [Nicole, Linda, and Hanna] were not to be left unsupervised with the Respondent Mother's sister.

> 9. The safety plan was violated the next weekend when the Juveniles were left alone with their brother and were left in the care of their maternal aunt.
>
> . . . .
>
> 17. The Respondent Mother is still unable to ensure that the Juvenile's needs are met on a consistent basis.
>
> . . . .
>
> 21. The Respondent Father and his wife have continued to provide appropriate care for the Juveniles.
>
> . . . .
>
> 23. Neither the Juveniles' best interests nor the rights of any party require that a review hearing be held after today.
>
> 24. Pursuant to N.C.G.S. §7B-911(c)(2), there is not a need for continued State intervention on behalf of the Juveniles. **[**

¶ 6 Based on these Findings, the trial court concluded:

> 3. This order is in the best interests of the Juveniles
>
> . . . .
>
> 4. Pursuant to N.C.G.S. §7B-911(c)(2), there is not a need for continued State intervention on behalf of the Juveniles.

Accordingly, the trial court ordered "Legal and physical custody of the Juveniles . . . shall be placed solely with the Respondent Father"; Mother is to have four hours of supervised visitation once a month at "the Family Center" and that Mother and

Father should share the cost "associated with the use of the Family Center"; that "Pitt County Juvenile Court shall terminate jurisdiction over the matter"; that the "Pitt County Clerk of Superior Court shall treat this order as the initiation of a civil action for custody pursuant to N.C.G.S. 7B-911" and "cause a copy of this order to be placed into a civil file for the Juveniles" captioned "[Father] v. [Mother]" with a CVD case number; and "[a]ny court costs for the creation of that action are waived."

¶ 7 The same day, the trial court entered its written Civil Order in 21 CVD 672 labelled "Initial Custody Order" in the caption. In the Civil Order, the trial court made eight Findings including: two Findings as to Nicole, Linda, and Hanna's identity; that "[t]he Court finds it in the Juvenile's best interest that he be placed in the legal and physical custody of [Father]"; that Mother "shall have supervised visits with the Juveniles for four hours once a month" at the Family Center, and Mother and Father "shall share the cost associated with the use of the Family Center"; and that there "is no further need for State intervention on behalf of the children through a Juvenile court proceeding and the juvenile court terminates its jurisdiction upon entry of this order." Based on these Findings, the trial court concluded: "It is in the best interests of the child that he remains placed with [Father]"; and "It is in the best interests of the child that [Mother] have reasonable visitation as established by the court."

¶ 8 Accordingly, the trial court ordered: "Legal and physical custody of [Nicole, Linda, and Hanna] shall be granted to [Father]"; "[Mother] shall have supervised visit[s] with the Juveniles for four hours once a month . . . at the Family Center"; Mother and Father "shall share the cost associated with the use of the Family Center"; that "pursuant to N.C.G.S. § 7B-911, the Clerk of Superior Court shall treat this Order [as] the initiation of a civil action for custody, and shall assign a CVD number to this order. The filing fee for such action shall be waived"; the caption of the Civil Order should read [Father] v. [Mother]; that the "order constitutes a custody determination"; that "[t]he terms of this Order are temporary and non-prejudicial to the rights of either party and shall remain in effect until a permanent order is put in place or until it becomes a permanent order as a matter of law"; and that the "juvenile court's jurisdiction is terminated."

¶ 9 Mother timely filed written Notice of Appeal from both the Three Month Review Order and Civil Order on 18 March 2021.

Issues

¶ 10 The issues on appeal are whether the trial court: (I) complied with the requirements of N.C. Gen. Stat. § 7B-911 to properly terminate juvenile court jurisdiction and transfer this matter to a civil custody action; (II) made adequate Findings of Fact to support the Civil Order generally; and (III) abused its discretion

in ordering Mother to pay half the cost of the Family Center without making findings as to Mother's ability to pay.

Analysis

I. Termination of Juvenile Court Jurisdiction

¶ 11 Mother first argues the trial court improperly terminated juvenile court jurisdiction because the Civil Order did not contain necessary findings to satisfy the requirements set forth in N.C. Gen. Stat. § 7B-911. "We review an order's compliance with statutory requirements *de novo*." *In re S.M.L.*, 272 N.C. App. 499, 517, 846 S.E.2d 790, 802 (2020). An "order which both terminates juvenile court jurisdiction and serves as the 'civil custody order' under Chapter 50 . . . must include the proper findings of fact and conclusions of law required for each component of the order." *Sherrick v. Sherrick*, 209 N.C. App. 166, 172, 704 S.E.2d 314, 319 (2011) (citation omitted). "When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 18 years or is otherwise emancipated, whichever occurs first." N.C. Gen. Stat. § 7B-201(a) (2019). N.C. Gen. Stat. § 7B-911 provides a court may terminate juvenile jurisdiction and transfer the matter to a civil child custody action when it makes certain findings and meets certain requirements:

> (a) Upon placing custody with a parent or other appropriate person, the court shall determine whether or not jurisdiction in

> the juvenile proceeding should be terminated and custody of the juvenile awarded to a parent or other appropriate person pursuant to G.S. 50-13.1, 50-13.2, 50-13.5, and 50-13.7.
>
> (b) When the court enters a custody order under this section, the court shall either cause the order to be filed in an existing civil action relating to the custody of the juvenile or, if there is no other civil action, instruct the clerk to treat the order as the initiation of a civil action for custody.
>
> . . . .
>
> If the court's order initiates a civil action, the court shall designate the parties to the action and determine the most appropriate caption for the case. The civil filing fee is waived unless the court orders one or more of the parties to pay the filing fee for a civil action into the office of the clerk of superior court. The order shall constitute a custody determination, and any motion to enforce or modify the custody order shall be filed in the newly created civil action in accordance with the provisions of Chapter 50 of the General Statutes. . . .
>
> (c) When entering an order under this section, the court shall satisfy the following:
>
> (1) Make findings and conclusions that support the entry of a custody order in an action under Chapter 50 of the General Statutes or, if the juvenile is already the subject of a custody order entered pursuant to Chapter 50, makes findings and conclusions that support modification of that order pursuant to G.S. 50-13.7.
>
> (2) Make the following findings:
>
> a. There is not a need for continued State intervention on behalf of the juvenile through a juvenile court proceeding.
>
> . . . .

N.C. Gen. Stat. § 7B-911 (2019).

¶ 12 Mother argues the trial court failed to include the necessary findings under N.C. Gen. Stat. § 7B-911 specifically in the Civil Order. However, the trial court also included findings to terminate juvenile court jurisdiction in the Three Month Review Order.

¶ 13 N.C. Gen. Stat. § 7B-201 allows a court to terminate juvenile jurisdiction "by order of the court" and not necessarily, specifically through a civil custody order. "The trial court *may* enter one order for placement in both the juvenile file and the civil file as long as the order is sufficient to support termination of juvenile court jurisdiction and modification of custody." *In re A.S.*, 182 N.C. App. 139, 142, 641 S.E.2d 400, 402 (2007) (emphasis added) (rejecting respondent's argument the trial court was *required* to enter two orders: "one terminating juvenile court jurisdiction, and one to be made part of the civil file"). When a trial court enters both a dispositional order and a civil order pursuant to N.C. Gen. Stat. § 7B-911, the dispositional order alone may terminate juvenile jurisdiction and transfer the matter to a civil child custody action so long as the dispositional order itself satisfies the statutory requirements. *In re E.P.-L.M.*, 272 N.C. App. 585, 599, 847 S.E.2d 427, 438 (2020) ("This deficiency in the 7B-911 Order is immaterial because the trial court's Disposition Order contained the requisite language to transfer the matter from juvenile court to a private civil proceeding."(citation omitted)).

¶ 14 Here, the trial court's dispositional Three Month Review Order properly terminated juvenile jurisdiction because it made all the requisite Findings pursuant to N.C. Gen. Stat. § 7B-911. First, the trial court made Findings and Conclusions to support a Chapter 50 custody order required under § 7B-911(c)(1). N.C. Gen. Stat. § 50-13.2 provides:

> An order for custody of a minor child entered pursuant to this section shall award the custody of such child to such person, agency, organization or institution as will best promote the interest and welfare of the child. In making the determination, the court shall consider all relevant factors including acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party. An order for custody must include written findings of fact that reflect the consideration of each of these factors and that support the determination of what is in the best interest of the child.

N.C. Gen. Stat. § 50-13.2(a) (2019). Again, Mother does not challenge the Three Month Review Order's Findings on this issue. "Unchallenged findings of fact are deemed to be supported by the evidence and are binding on appeal." *In re J.K.*, 253 N.C. App. 57, 60, 799 S.E.2d 439, 441 (2017) (citation and quotation marks omitted). Whether the trial court's findings of fact support its conclusions of law is reviewed de novo. *Hall v. Hall*, 188 N.C. App. 527, 530, 655 S.E.2d 901, 904 (2008) (citation omitted).

¶ 15 Here, the trial court, in the Three Month Review Order, found: "The safety plan was violated . . . when the Juveniles were left alone with their brother and were left in the care of their maternal aunt"; "The Respondent Mother is still unable to ensure that the Juvenile's needs are met on a consistent basis"; and "Respondent Father and his wife have continued to provide appropriate care for the Juveniles." Consequently, the trial court included Findings addressing the "welfare and best interests" of the children and Mother and Father's respective abilities to provide for the children's best interests.

¶ 16 Moreover, the trial court also found: "Pursuant to N.C.G.S. §7B-911(c)(2), there is not a need for continued State intervention on behalf of the Juveniles." As such, the trial court ordered: "Legal and physical custody of the Juveniles . . . shall be placed solely with the Respondent Father"; Mother is to have four hours of supervised visitation once a month at "the Family Center"; that "Pitt County Juvenile Court shall terminate jurisdiction over the matter"; that the "Pitt County Clerk of Superior Court shall treat this order as the initiation of a civil action for custody pursuant to N.C.G.S. 7B-911" and "cause a copy of this order to be placed into a civil file for the Juveniles" captioned "[Father] v. [Mother]" with a CVD case number; and "any court costs for the creation of that action are waived." Thus, the trial court's Three Month Review Order met the requirements for an order entered pursuant to N.C. Gen. Stat.

§ 7B-911. Therefore, the trial court did not err in terminating juvenile court jurisdiction in this case and transferring this matter to a civil custody action.

II. Sufficiency of the Civil Custody Order

¶ 17 Mother further argues the Civil Order is facially insufficient to support a child custody determination and, alternatively, that the Civil Order "lacks findings to support a custody determination."

¶ 18 Mother first contends the Civil Order is facially insufficient because it contains discrepancies in its Findings and Conclusions and, thus, the Findings do not support the Conclusion Father should have sole legal and physical custody. Generally, we review a trial court's determination of the children's best interest for an abuse of discretion. *J.K.*, 253 N.C. App. at 60, 799 S.E.2d at 441. However, again, we review whether the trial court's findings of fact support its conclusions of law de novo. *Hall*, 188 N.C. App. at 530, 655 S.E.2d at 904. "An order for custody must include written findings of fact that reflect the consideration of each of these factors and that support the determination of what is in the best interest of the child." N.C. Gen. Stat. § 50-13.2(a) (2019). Therefore, a trial court must make findings of fact "regarding the competing parties . . . to support the necessary legal conclusions." *Carpenter v. Carpenter*, 225 N.C. App. 269, 271, 737 S.E.2d 783, 785 (2013) (citation and quotation marks omitted). "[A] custody order is fatally defective where it fails to make detailed

findings of fact from which an appellate court can determine that the order is in the best interest of the child . . . ." *Id.* at 273, 737 S.E.2d at 787. "These findings may concern physical, mental, or financial fitness or any other factors brought out by the evidence and relevant to the issue of the welfare of the child." *Id.* at 21, 737 S.E.2d at 785. "The trial court is required to find specific ultimate facts to support the judgment, and the facts found must be sufficient for the appellate court to determine that the judgment is adequately supported by competent evidence." *Montgomery v. Montgomery*, 32 N.C. App. 154, 156-57, 231 S.E.2d 26, 28 (1977) (citations omitted). " 'A custody order will . . . be vacated where the findings of fact are too meager to support the award.' " *Carpenter*, 225 N.C. App. at 273, 737 S.E.2d at 787 (quoting *Dixon v. Dixon*, 67 N.C. App. 73, 76-77, 312 S.E.2d 669, 672 (1984) (citations omitted)).

¶ 19 Here, the trial court concluded in the Civil Order that "[i]t is in the best interests of *the* child that *he* remains placed with [Father]." The trial court included a Finding with similar language stating it was in "the Juvenile's best interest that *he* be placed in the legal and physical custody of [Father]." However, this case involves three girls—not a single boy. This is not the only discrepancy or inconsistency in the trial court's Civil Order. The Civil Order purports to be an "Initial Custody Order" and states that the Civil Order "constitutes a custody determination and any motion

to enforce or modify the custody order shall be filed in accordance with the provisions of Chapter 50 of the North Carolina General Statutes." This Initial Custody Order would appear to be a permanent order because it does not "state[] a clear and specific reconvening time that is reasonably close to the date of the order[,]" and it seems to "determine all the issues pertinent to the custody or visitation determination." *Simmons v. Arriola*, 160 N.C. App. 671, 674-75, 586 S.E.2d 809, 811 (2003) (citation and quotation marks omitted). Moreover, the Three Month Review Order states: "Any party may seek modification of this order . . . by filing a motion and showing a substantial change in circumstances." Modification of a custody order based on a change in circumstances is reserved for permanent custody orders. *Catawba Cnty. ex rel. Child Support Agency v. Loggins*, 246 N.C. App. 387, 393, 784 S.E.2d 620, 625 (2016), *rev'd on other grounds sub nom. Catawba Cnty. ex rel. Rackley v. Loggins*, 370 N.C. 83, 804 S.E.2d 474 (2017) ("[The burden of proving changed circumstances] is unique to modifying permanent support orders because temporary support orders are designed to be in effect for a finite period of time, thereby making them inherently subject to modification." (citation omitted)).

¶ 20 However, the Civil Order itself also states that the "terms of this Order are temporary and non-prejudicial to the rights of either party and shall remain in effect until a permanent order is put in place . . . ." suggesting the Civil Order is a temporary

custody order. Thus, the Civil Order, insofar as it purports to be a temporary custody order, is—at a minimum—inconsistent with the Three Month Review Order which appears to grant permanent custody to Father. However, even if the trial court intended the Civil Order to be a temporary order: "N.C. Gen. Stat. § 7B-911(b) requires that the juvenile court enter a permanent order prior to termination of its jurisdiction." *Sherrick*, 209 N.C. App. at 169, 704 S.E.2d at 317. Therefore, if the trial court intended the Civil Order to be a temporary custody order, the Civil Order would not satisfy the statutory requirement the trial court "enter a permanent order prior to termination of its jurisdiction." *Id.*

¶ 21 Further, the Civil Order does not independently include findings necessary to support the Conclusion Father should have sole legal and physical custody. Here, the trial court made no findings as to the fitness of either Mother or Father. The trial court only found it was in the "Juvenile's best interest that he be placed" with Father. Moreover, the trial court did not expressly incorporate the Findings from its Three Month Review Order in its Civil Order. *See A.S.*, 182 N.C. App. at 143-44, 641 S.E.2d at 403-04 (holding the trial court's finding incorporating the prior adjudication order in the custody order, in conjunction with independent findings in the custody order, were sufficient to support a modification of custody). Thus, given these inconsistencies and lack of express findings, as a stand-alone civil child custody order,

the trial court's Civil Order is insufficient to permit appellate review. Therefore, we remand this matter to the trial court to correct any inconsistencies in its Civil Order and include or incorporate any findings it deems necessary to support its conclusions of law and its award of child custody for all three juveniles.

III. Ability to Pay

¶ 22 Last, Mother argues the trial court abused its discretion when it ordered in both the Three Month Review Order and the Civil Order that Mother share in the visitation costs for the Family Center without including findings as to her ability to pay. "A general finding of present ability to comply is sufficient when there is evidence in the record regarding defendant's assets." *Watson v. Watson*, 187 N.C. App. 55, 66, 652 S.E.2d 310, 318 (2007) (citation omitted) (upholding a trial court's finding the defendant had the present means to comply after considering the defendant's net assets). However, here, the trial court included no finding as to Mother's present ability to pay—the trial court merely ordered Mother share in the costs. Orders requiring a party to pay costs as a condition on visitation must include findings as to that party's ability to pay. *In re Y.I.*, 262 N.C. App. 575, 582, 822 S.E.2d 501, 505-06 (2018) (citing *In re J.C.*, 368 N.C. 89, 772 S.E.2d 465 (2015) (*per curiam*)). Petitioners concede the Order does not contain such a finding. Thus, the trial court erred by not including findings as to Mother's ability to pay visitation costs.

Therefore, without making the requisite findings, the trial court abused its discretion in ordering Mother to share the cost of the Family Center as a condition of her visitation with the juveniles. Consequently, we vacate the portions of both Orders which require Mother to share in paying the cost of the Family Center and remand this matter to the trial court for reconsideration of this condition of visitation in conjunction with its award of child custody.

Conclusion

¶ 23 Accordingly, for the foregoing reasons, we conclude the trial court properly terminated juvenile court jurisdiction in its Three Month Review Order and transferred the matter to a civil child custody action consistent with N.C. Gen. Stat. § 7B-911. However, the Civil Order failed to include sufficient findings to support a custody award and included inconsistencies that warrant correction. Moreover, the trial court abused its discretion in both the Three Month Review Order and the Civil Order by ordering Mother to share the cost of visitation without including findings as to her present ability to pay. Therefore, we affirm the trial court's Three Month Review Order in part and vacate it in part. We also vacate the Civil Order and remand the civil child custody matter in File Number 21 CVD 672 to the trial court to correct any inconsistencies or discrepancies in the Civil Order and to include or incorporate additional findings supporting its award of custody. On remand, the trial

court, upon making supporting findings of fact, may also reconsider its decision to require Mother to share in the cost of the Family Center.

AFFIRMED, IN PART; VACATED, IN PART, AND REMANDED.

Judges DILLON and DIETZ concur.

Report per Rule 30(e).