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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-42

No. COA21-457

Filed 18 January 2022

New Hanover County, No. 13 JA 187

IN THE MATTER OF: J.B.

Appeal by respondent-father from order entered 29 April 2021 by Judge J. H. Corpening, II, in New Hanover County District Court. Heard in the Court of Appeals 15 December 2021.

Parent Defender Wendy C. Sotolongo, by Assistant Parent Defender J. Lee Gilliam, for respondent-appellee mother.

Mary McCullers Reece for respondent-appellant father.

North Carolina Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for appellee Guardian ad Litem.

ARROWOOD, Judge.

¶ 1

Respondent-father (“father”), father of J.B. (“Jon”),¹ appeals from the trial court’s order modifying its previous custody order and awarding custody to respondent-mother (“mother”), Jon’s mother. For the following reasons, we affirm the trial court’s order.

¹ A pseudonym is used, consistent with that used in the briefs on appeal, to protect the identity of the juvenile and for ease of reading.

I. Background

¶ 2

In August 2013, mother, while fleeing arrest after shoplifting at a Wal-Mart, left then four-month-old Jon alone in the Wal-Mart parking lot for several hours while it rained. Subsequently, the New Hanover County Department of Social Services (“DSS”), who had had “CPS history with the family wherein neglect was substantiated[] and services [were] recommended on multiple occasions[,]” filed a petition for adjudication and disposition of Jon in New Hanover District Court. The matter came on for an adjudication and disposition hearing during the trial court’s 7 November 2013 juvenile session.

¶ 3

At the hearing, “[a]ll parties stipulated to the neglect allegations” pertaining to Jon. Counsel for mother stated that, since the trial court’s issuance of a Nonsecure Custody order on 30 August 2013, mother had visited Jon “consistently and [wa]s working well with the social worker[,]” was “currently looking for employment that [wa]s more flexible” with her ability to “work her case plan[,]” was scheduled to start therapy the following week, was seeking a new residence, and “request[ed] holiday visitation with the children.”²

² This hearing, as the review hearings that follow, was held for the adjudication and disposition of not only Jon but also his sister. Thus, use of the terms “the Juveniles” and “the children” throughout our citations to the record is in reference to both Jon and his sister.

¶ 4

The trial court adjudged Jon as neglected and placed him with a family friend, Ms. Hyman. The trial court ordered that legal custody of the children remain with DSS. It also ordered mother to comply with her Family Services Agreement, which included provisions such as: following recommendations from a mental health treatment professional, allowing for the release of mental health treatment information to DSS and the Guardian ad Litem (“GAL”), obtaining stable housing, ensuring the residence is safe and appropriate for her children, maintaining legal income, and completing a parenting assessment. The trial court also ordered that visitation for mother “be a minimum of four hours a month, to be supervised by [DSS]’s designee, the children’s maternal great-grandmother, Noretta Littlejohn” (“Ms. Littlejohn”).

¶ 5

At a periodic review hearing held on 15 January 2014, a social worker with DSS testified that mother had named father “as a putative father to [Jon] and requested that he be tested for paternity.” The social worker also testified that mother had recently been involved in an “altercation” that “left her with nerve damage to her leg and arm” after being “attacked by a woman affiliated with a gang” Thus, mother was “temporarily staying with her mother in the Raleigh area out of fear of further violence” at the time.

¶ 6

In an order filed 5 February 2014, the trial court ordered legal custody of Jon to remain with DSS, as well as to amend the juvenile petition to reflect father “as a

putative father” to Jon and for father to submit to paternity testing. Mother’s supervised visitation order remained unchanged, whereas visitation for father was “contingent upon confirmation of paternity.”

¶ 7

At another periodic review hearing on 2 July 2014, the trial court found Jon had been placed with Ms. Littlejohn and was “doing well” in this placement.³ Meanwhile, DSS recommended “to cease efforts towards reunification with” mother, who was “back living in Wilmington” at this time, as she had “lived a very transient life throughout this matter.” A volunteer GAL testified that mother “still ha[d] legal issues to resolve[,] d[id] not have permanent housing[,] . . . ha[d] not taken any drug screens[,] or secured employment.” Nonetheless, mother testified herself “that she want[ed] to be reunified with her children and requested that [DSS] not cease efforts towards reunification.”

¶ 8

In an order filed 25 July 2014, the trial court found the following:

It is not possible to return custody of the Juveniles . . . to their []Mother . . . today nor is it likely reasonable progress can be made within the next six months sufficient to warrant reunification of the Juveniles with their []Mother and a continuation of such efforts would be clearly futile and inconsistent with the Juveniles’ health, safety, and need for a safe, permanent home within a reasonable period of time, and, as such, efforts by [DSS] at reunification of the Juveniles with the []Mother should be ceased.

³ Ms. Hyman, with whom Jon was placed after the initial adjudication and disposition order, had moved out of state.

¶ 9

Then, the trial court ordered, among other things, that Jon should remain in the legal custody of DSS while “specifically authoriz[ing] continued placement” of Jon in the home of Ms. Littlejohn, to cease reunification efforts with mother, and that visitation for father “shall be provided liberally on a weekly basis” while “supervised by [DSS] or its designee,” Ms. Littlejohn. The court also changed mother’s visitation rights to “a minimum of one hour a month” under Ms. Littlejohn’s supervision, with the possibility of expansion subject to all parties’ agreement.

¶ 10

A permanency planning hearing was held on 2 July 2014. In an order filed 22 August 2014, the trial court found that Ms. Littlejohn had been “helping to support the new relationship for [Jon] with [father] and [wa]s allowing visitation at her home.” Counsel for mother stated that mother had been “incarcerated for a few months th[a]t year and [had] ha[d] medical issues.” Mother had also “relocated to Raleigh and visit[ed] the Juveniles when she travel[ed] to Wilmington[,] . . . plan[ned] to apply for public housing[,] and want[ed] to reunify with [Jon].” Although father was not present during the permanency planning hearing, his trial counsel stated he was “eager to comply with his case plan towards reunification[,]” was “happy with the placement of [Jon] with Ms. Littlejohn[,]” and “plan[ned] to work his case plan for reunification.”

¶ 11

Again, the trial court found it would not be possible to return legal custody of Jon to mother, nor that it was likely that progress would be made “within the next

six months sufficient enough to warrant reunification[.]” and further found returning Jon to the home of either parent at this time would be contrary to his “best interest and welfare.” The trial court also found that DSS had been making “reasonable efforts to implement the specific permanent plan of reunification with [father] for [Jon]”

¶ 12 The trial court ordered that DSS continue to retain legal custody of Jon while “authoriz[ing] continued placement of [Jon] with . . . [Ms.] Littlejohn[.]” and that father “shall comply with the elements of his Family Services Agreement, to include but not limited to” obtaining stable housing and maintaining legal income. Visitation for mother remained unchanged, and father continued to be granted “liberal[]” weekly visitation.

¶ 13 Another permanency planning hearing was held on 15 October 2014. Jon continued to live with Ms. Littlejohn and was “healthy and happy[.]” while Ms. Littlejohn continued to allow visitation for father at her home. Counsel for mother stated that “she [wa]s still trying to reunify with [Jon].” The trial court took “note of her progress[.]” specifically that mother was “engaged in counseling.” Mother’s counsel requested “that the [c]ourt review the matter in 90 days and with continued progress . . . that the [c]ourt change the plan back to reunification.”

¶ 14 In an order filed 3 November 2014, the trial court again found that returning custody of Jon to mother at that time was not possible, and that it would be unlikely

to take place over the next six months. The trial court also “admonished” father “to make more progress toward reunification in the next three months[,]” noting that he “did not arrive in [c]ourt until . . . his counsel was already in the process of conducting the hearing.” The trial court then concluded that DSS should continue to retain legal custody of Jon, with continued placement in Ms. Littlejohn’s home, and that “efforts towards reunification with [mother] shall remain ceased.” The trial court’s previous orders for mother’s and father’s respective visitation remained unchanged.

¶ 15 A subsequent permanency planning hearing was held on 8 January 2015. In an order filed 9 February 2015, the trial court found that Jon had been “in a trial home placement with his father . . . since December 21, 2014” “[H]is previous caregiver, Ms. Littlejohn[,] continue[d] to be a support for [Jon] and s[aw] him regularly.” Mother’s counsel had “no comment” and mother was not present at this hearing. The trial court then ordered for Jon to remain in the legal custody of DSS, to continue the “trial home placement” of Jon with father “until the next court hearing[,]” and left unaltered mother’s visitation order.

¶ 16 Another subsequent permanency planning hearing was held on 30 April 2015. In an order filed 27 May 2015, the trial court found Jon had continued to live with father by way of “a trial home placement[,]” which was “going well.” Ms. Littlejohn continued to see and support Jon regularly. A DSS social worker testified that mother

had “obtained a job at Krispy Kreme and [wa]s in therapy.” Mother had also recently lost housing and, per a DSS report, was “residing with a friend” at the time.

¶ 17 The social worker also “testified that [DSS]’s recommendation [wa]s to return legal custody of [Jon] to his father[.]” Counsel for father “stated he [wa]s in agreement with the recommendations of [DSS] and [GAL]” and that father “ha[d] stepped up to be a father to his son and . . . [wa]s happy to have custody of [Jon].”

¶ 18 The trial court ordered that legal custody of Jon “be restored to his father[.]” It then “adopt[ed] the recommendations of [DSS] and [GAL] and order[ed]” that visitation for mother “be a minimum of two hours per month . . . to be supervised by . . . [Ms.] Littlejohn[.]” subject to expansion if “agreed upon by the parents.” Thus, “having fulfilled their respective duties[.]” the trial court “released from further obligation on this matter” GAL “and all counsel for the Respondent-Parents” “[A]bsent the filing of a motion for review by any party upon a substantial change of circumstances,” the trial court declared that “further reviews of this matter [we]re [t]hereby waived.”

¶ 19 Several years later, on 4 March 2020, mother submitted a motion for review “to conduct a post-termination of parental rights or relinquishment hearing” on the basis that she and Ms. Littlejohn “ha[d] been taking care of [Jon] [and] providing for him[.]” expressing that she “want[ed] [her] rights of his Legal Guardian back[.]” Father received notice of the hearing on the same day.

¶ 20 In a DSS report dated 11 February 2021 and filed in response to mother’s motion, DSS found that “[b]oth parents appear[ed] to be doing well[,]” “[we]re involved in the welfare of [Jon,]” and “resid[ed] in the same apartment complex[,]” allowing them to “support and transition of [sic] [Jon] between the homes easily.” DSS recommended that custody remain with father and that mother be allowed unsupervised and overnight visitations.

¶ 21 In GAL’s report, also dated 11 February 2021 and filed in response to mother’s motion, GAL stated that she had visited mother’s home, where mother lived with four of her children. “The children appeared well cared for, happy[,] and well adjusted.” “The home was clean, orderly, appropriately furnished[,]” though “the TV was blaring, and [mother] was somewhat distracted with the children.” According to mother, she had been “laid off from work” and was “receiving unemployment benefits” at that time. GAL also reported that mother’s “drug screen ha[d] come back clean”

¶ 22 GAL’s report reflected that Jon had been living with Ms. Littlejohn “for the past several years” after father “dropped him off.” Father provided support, such as clothes, haircuts, and food, and visited often, while mother visited Ms. Littlejohn’s home “almost daily” Ms. Littlejohn had “limited [Jon]’s overnight visits to [mother]’s house to every other weekend as there are so many children in [mother]’s home and it is somewhat chaotic.” “The bond between [Jon and mother] appeared

strong although [Jon] told . . . GAL that he would like to continue to live with Ms. Littlejohn.”

¶ 23 “[Jon] did appear to become uncomfortable when this GAL asked him if he liked spending time with his father. He said he loved him but became quieter.” Then father “communicated to this GAL that he would like to see [Jon] remain with Ms. Littlejohn and does not want to give up legal custody of his son.” Father also had “an upcoming court date for [a] felony heroin possession charge and other misdemeanor charges”; thus, GAL reported it was “unknown how . . . father w[ould] remain involved” in Jon’s life.

¶ 24 GAL noted that, although mother requested legal guardianship of Jon, mother “did not intend to have either [Jon or his sister] physically live with her.” GAL recommended that father remain the legal guardian of Jon, that Jon “remain living with Ms. Littlejohn[,]” and that mother “shall have unsupervised visitation” with Jon, including overnight visits, educational appointments, and medical appointments.

¶ 25 Mother’s motion for review came on for hearing on 11 February 2021 in New Hanover County District Court, Judge Corpening presiding, where the trial court heard testimony from mother, father, a social worker, and Ms. Littlejohn.

¶ 26 In a written order dated 29 April 2021, the trial court found that, “several years after” being given custody of Jon “in April 2015,” father had “dropped [Jon] off

at Ms. Littlejohn’s[.]” where Jon had been residing “for at least the last three years.”⁴ The court also found that father “ha[d] not had independent housing since custody was granted in 2015” and “resided with either his sister or his grandmother[.]” had “over the years” visited Jon inconsistently and not at all “between October 2020 and December 2020[.]” had “attended some medical appointments with Ms. Littlejohn[.]” had provided “some shoes, clothing, haircuts, and money” while Jon lived with Ms. Littlejohn, “[had] not ma[de] himself available to DSS and . . . GAL until after Christmas 2020[.]” and, at the time of the hearing, had “pending drug charges.” However, DSS “found no reason to change custody as there were no safety concerns between” Jon and father, and father “had made proper arrangements for [Jon].”

¶ 27 As to mother, the trial court found she had been “working together” with Ms. Littlejohn “to take care of the children over the last several years[.]” and that she was, at the time of the hearing, living “with her four younger children in an apartment she ha[d] resided in for almost two years.” The trial court further found mother had secured “stable income,⁵ transportation, and ha[d] taken good care of her younger children[.]” and that she was “no longer on probation” nor had encountered “any new charges since 2013.” **[Id.]** “[I]n recent years[.]” Jon had stayed with mother

⁴ At the hearing, father testified that he wanted Jon to keep living with Ms. Littlejohn.

⁵ At trial, mother testified she had recently become re-employed.

“for up to three days a week at times[,]” and mother otherwise “visit[ed] with [Jon] very consistently.”

¶ 28 Subsequently, the trial court found mother “will be able to provide a safe and appropriate environment for [Jon] . . . in her home[,]” that she was “a fit and proper person to have custody of [Jon,]” and, thus, that there had been “a substantial change of circumstances” warranting “a change of custody” from father to mother.

¶ 29 The trial court modified its previous order and granted custody to mother. It also ordered father to have visitation with Jon “every other weekend[,]” with the possibility of “additional visitation” upon an agreement with mother, for Jon to “spend liberal time with Ms. Littlejohn[,]” and that mother should keep father updated with Jon’s “education and health.”

¶ 30 Father gave notice of appeal on 28 May 2021.

II. Discussion

¶ 31 Father argues the trial court erred in modifying the custody order because there had not been a change of circumstance to warrant modification. We disagree.

¶ 32 “It is a long-standing rule that the trial court is vested with broad discretion in cases involving child custody.” *Fecteau v. Spierer*, 277 N.C. App. 1, 2021-NCCOA-134, ¶ 10 (citation and quotation marks omitted). “The guiding principle to be used by the court in a custody hearing is the welfare of the child or children involved.” *Paynich v. Vestal*, 269 N.C. App. 275, 278, 837 S.E.2d 433, 436 (2020) (citation and

quotation marks omitted). “While this guiding principle is clear, decision in particular cases is often difficult and necessarily a wide discretion is vested in the trial [court].” *Id.* (citation and quotation marks omitted) (alteration in original). “The trial court has the opportunity to see the parties in person and to hear the witnesses, and [its] decision ought not to be upset on appeal absent a clear showing of abuse of discretion.” *Id.* (citation and quotation marks omitted) (alteration in original). “Accordingly, we review the trial court’s determination of a motion to modify custody for an abuse of discretion.” *Fecteau*, ¶ 10 (citation omitted).

¶ 33 “An abuse of discretion is shown only when the court’s decision is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *Paynich*, 269 N.C. App. at 278, 837 S.E.2d at 436 (citation and quotation marks omitted). “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.” *Fecteau*, ¶ 10 (citation omitted). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* (citation omitted).

¶ 34 Additionally, “this Court must determine if the trial court’s factual findings support its conclusions of law.” *Id.* (citation omitted). “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 discretion to modify an existing custody agreement." *Id.* (citation omitted).

¶ 35 On appeal, father does not challenge any of the trial court's findings; thus, these "are presumed to be supported by competent evidence." *Id.* ¶ 21 (citation omitted). Now, we must "determine whether the trial court's findings of fact support its conclusions of law." *Id.* ¶ 25 (citation omitted).

¶ 36 "[A]n order of a court of this State for custody of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested." N.C. Gen. Stat. § 50-13.7(a) (2019). In *Fecteau v. Spierer*, the trial court had found that all of the following, taken together, constituted a substantial change in circumstances: the father's "new employment which provided health insurance, paid vacation, and more flexibility"; the father's "new three-bedroom home"; the father's marriage to "his girlfriend"; and the minor child's "close relationships with [the father's new wife] and her stepbrother of the same age and grade." *Fecteau*, ¶ 30.

¶ 37 "Based on these factual findings," the father's "living situation, home life, and his ability to care and provide for [the minor child] had changed substantially since the 19 July 2017 consent order was entered." *Id.* Thus, on appeal, this Court concluded these "beneficial changes" in the father's life, "[t]aken in conjunction with"

the mother's unemployment, enrollment in rehab for drug addiction, and newborn third child, "warranted the trial court to modify the custody order in favor of [the father]." *Id.* ¶ 33.

¶ 38

Similarly, in *Shell v. Shell*,

the trial court found that due to Mother's maintenance of her sobriety, ability to maintain a stable job and provide a proper home, the children's close relationship to their stepfather, Father's increasingly "autocratic" control seeking to shut Mother out of the children's lives, and Father's continued need to rely on his parents to care for his children, it was in the best interests of the children to primarily reside with their Mother.

261 N.C. App. 30, 39, 819 S.E.2d 566, 573 (2018). Thus, this Court "discern[ed] no abuse of discretion with [the trial court's] determination." *Id.*

¶ 39

Here, mother's life has seen several "beneficial changes" since she lost custody of Jon several years prior. *See Fecteau*, ¶ 33. Previously, mother had had a history of neglect, unstable housing, unstable income, had faced "legal issues" and incarceration, had failed to submit drug screens, and had even failed to be present at the 8 January 2015 permanency planning hearing. Conversely, by the trial court's 11 February 2021 hearing on her motion for review, it had found that mother had been working together with Ms. Littlejohn to care for Jon, visited Jon often and consistently, had secured an apartment in which she had resided with four of her children for almost two years, had taken good care of these four children, was no

longer on probation, had not incurred any new charges since 2013, and had secured stable income.

¶ 40 Furthermore, the circumstances in father’s life have also changed, in a negative way, since he was granted custody of Jon in 2015. Although father had previously demonstrated to have “stepped up to be a father” to Jon, and Jon’s trial placement in father’s home had gone well, father had since left Jon in Ms. Littlejohn’s home, where Jon had been living for years by the time of the review hearing, had visited Jon inconsistently, had unstable housing, and had pending drug charges against him.

¶ 41 Taking into consideration the changes in mother’s life, which substantially contrast with her lifestyle at the time she lost custody of Jon, together with the changes in father’s life, the trial court concluded these changes were substantial and thus it was in Jon’s best interest to have the former custody order modified from father to mother. Accordingly, “[w]e discern no abuse of discretion” in the trial court’s determination. *See Shell*, 261 N.C. App. at 39, 819 S.E.2d at 573.

III. Conclusion

¶ 42 The trial court did not abuse its discretion by modifying its custody order in favor of mother.

AFFIRMED.

Judges INMAN and HAMPSON concur.

IN RE: J.B.

2022-NCCOA-42

Opinion of the Court

Report per Rule 30(e).